



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

# Cost-effective quality: next generation building control in New Zealand

Building Act Review discussion document  
February 2010



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# Minister's foreword

Without compromising safety and quality, the Government is working on a number of ways to make it easier and cheaper for New Zealanders to build dependable-quality, cost-effective homes and buildings.

The misery that the weathertightness problem has caused for many New Zealand homeowners is an ongoing reminder of the need to ensure our buildings are of dependable quality. There will be no easing up on this – in fact, we are determined to continue to improve quality over time. Better building safety and quality is the focus of a series of initiatives collectively known as the Better Building Blueprint.

The response to the problems of the 1990s has made some parts of the system overly cumbersome and costly. Without cutting corners, we need to get rid of unnecessary red tape that adds cost without adding value. We also need to have everyone involved in building taking a fair share of responsibility for getting the job done right first time, and for fixing any problems that may arise.

I instructed the Department of Building and Housing to review the Building Act because we need to strike a better balance between the amount of control, the level of risk, and the capability and responsibility of those involved.

We want competent building professionals and tradespeople to be able to get on with building without unnecessary costs and delays. We want the amount of council oversight to be related to the risk and complexity of the building work and the skills of the people doing the work. And we want consumers to be confident that the people building their home will do the job well and stand behind their work.

We can only move in this direction if we can rely on the skills and competence of the building professionals and tradespeople doing the work. That's where the Licensed Building Practitioner Scheme comes in, because it gives us a way of recognising the skilled people and holding them to account.

I want to thank the members of the sector reference group and others who have contributed their perspectives and ideas to the review of the Building Act to date. With their input, the Department has come up with the options for updating the building control system contained in this discussion document.

These options fall into the following areas:

- moving to a more balanced building control system, where the consenting process reflects the risks and complexity of the building work and the skills of the people involved
- building consumer confidence, by making sure consumers know what they can expect from building professionals and tradespeople and how to hold them to account
- clarifying the fundamentals – the purpose and principles of the Act and the requirements of the Building Code – so everyone involved knows what's expected of them.

I expect this package of options to result in a rebalancing of responsibility towards building professionals and tradespeople who are making decisions about building work, away from an undue over-reliance on building consent authorities.

The Government now wants to test these ideas with New Zealanders. The public must be able to have confidence in the system, which is why I want their input into these proposals.

This is about reducing costs, not cutting corners.



Maurice Williamson  
Minister for Building and Construction  
February 2010

# About this document

## PURPOSE

This discussion document is the next step in the review of the Building Act being conducted by the Department of Building and Housing. The purpose of this document is to seek your feedback on proposed measures to update the building control system.

As part of the consultation process, we are seeking your feedback in four areas:

- Part 1: Clarifying the purpose and principles of the Building Act 2004 and the requirements of the Building Code
- Part 2: Moving to a more balanced approach to building regulatory control
- Part 3: Building consumer confidence
- Part 4: The impacts of improving building control in New Zealand.

## HOW TO HAVE YOUR SAY

There are questions in each part of this document that may help you formulate your feedback. You are also welcome to make other comments. The questions are listed in a feedback form at the end of this document. You don't have to use the feedback form, or comment on all the questions, but please make sure it's clear which part of the document you are commenting on.

### Submissions close at 5pm Friday 23 April 2010

You can give us feedback in several ways.

#### Online

Provide your comments online through the consultation section on our website  
[www.dbh.govt.nz/current-consultations](http://www.dbh.govt.nz/current-consultations)

#### Email

Send your comments to us at  
[buildingactreview@dbh.govt.nz](mailto:buildingactreview@dbh.govt.nz)

#### Fax

Put 'Building Act Review' in the subject line and fax to (04) 494 0290

#### Post or courier

Building Act Review Team  
Department of Building and Housing  
Level 6, 86 Customhouse Quay  
PO Box 10-729  
Wellington 6143

#### Further enquiries

Use the addresses above to contact us for any further information you require.

## WHAT HAPPENS WITH YOUR FEEDBACK?

We will consider all submissions we receive as final proposals are developed for Government consideration.

A summary of submissions will be made public at the time the Government announces its decisions.

All written responses will be public information. Responses may be the subject of requests under the Official Information Act 1982 (OIA). The OIA specifies that information is to be made available to requesters unless there are sufficient grounds for withholding it. While we will take into account any specific request you make for us to keep information confidential, we cannot guarantee that information you provide us with will not be made public. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.

# Introduction

## **WHY BUILDING CONTROLS ARE IMPORTANT**

The building and construction sector is vital for New Zealand's economic performance and prosperity. The sector contributes around 5 percent of Gross Domestic Product (GDP).

In a typical year, the sector builds about 24,000 new homes, and renovates approximately 32,000 existing homes, although there were fewer homes built in 2009. The sector also builds \$4,500 million worth of non-residential buildings a year – schools, hospitals, offices, factories and other facilities. These buildings are crucial to the performance of every other sector in New Zealand.

Much of our wealth is tied up in buildings, particularly houses, and any unnecessary costs or delays in the sector have an impact on New Zealand's economy and on New Zealanders' net wealth.

New Zealanders expect to live and work in quality buildings that are safe, healthy and free of defects. We also expect the building and construction sector to work in an efficient, cost-effective manner.

Ideally, New Zealanders would have cost-effective, quality buildings that:

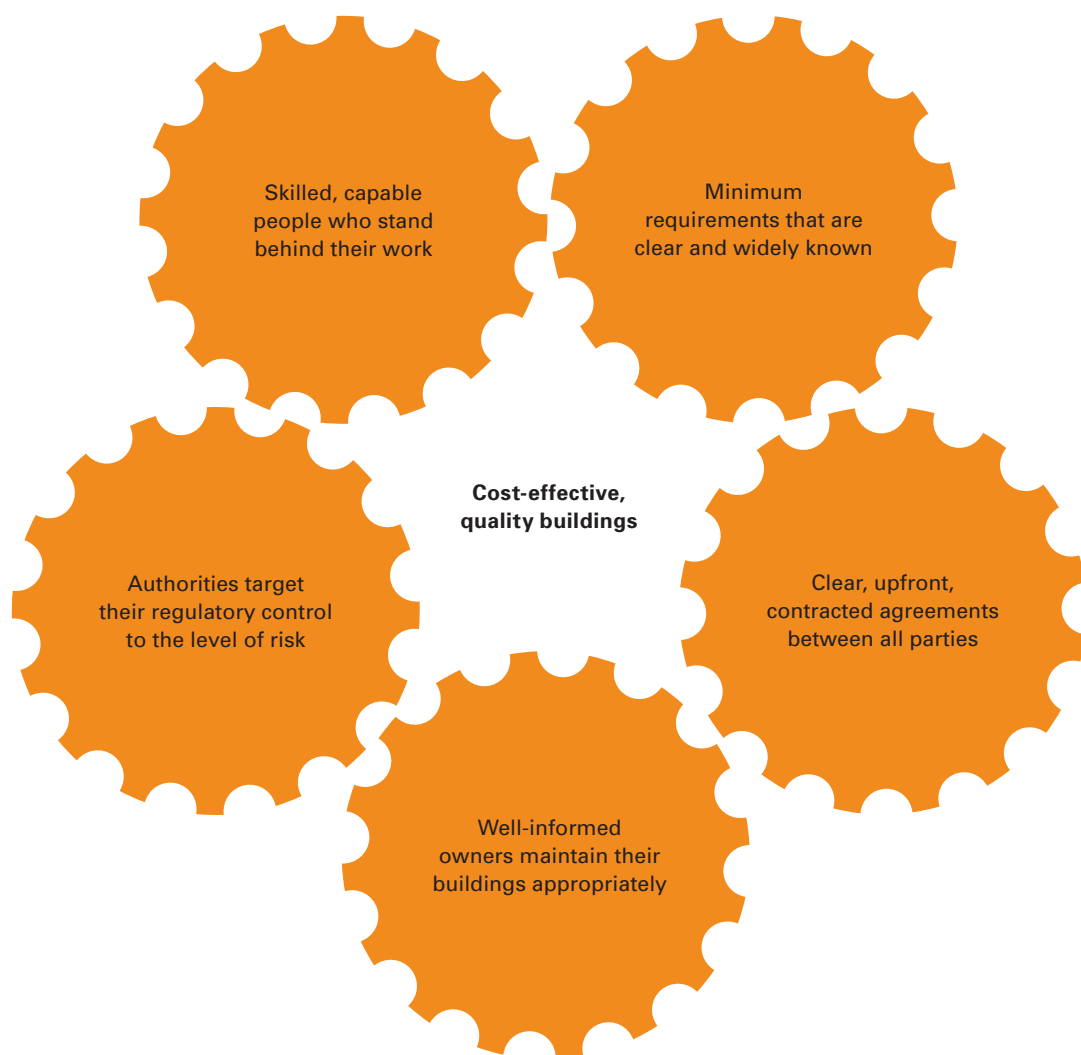
- are designed and built by skilled, capable people who stand behind their work
- meet or exceed minimum requirements that are clear and widely known
- are constructed according to clear, upfront, contracted agreements between all parties about what is going to be built, how any faults will be fixed, and how arguments will be resolved
- are appropriately maintained by well-informed owners
- are overseen by authorities who target their regulatory control according to the level of risk and the consequences of failure.

In this ideal scenario, everyone – consumers, building professionals and tradespeople, and building consent authorities – would interact with confidence and a clear understanding of responsibility for decision-making. If things went wrong, there would be quick, fair and cost-effective ways of resolving disputes.

## The ideal scenario

### Why building controls are important

New Zealanders expect to live and work in quality buildings that are safe, healthy and free of defects. We also expect the building and construction sector to work in an efficient, cost-effective manner.



In a well-running building and construction market the elements mesh together smoothly to deliver cost-effective, quality buildings.

## THE CURRENT BUILDING CONTROL SYSTEM

The current system was established in 1991 and was significantly amended in 2004 in response to systemic problems that failed to prevent the construction of a large number of leaky buildings.

The key problems with the system were:

- lack of skills and capability
- lack of responsibility and accountability for building quality
- poorly articulated building standards
- inadequate regulatory oversight by the Building Industry Authority (the central regulator at the time)
- inadequate focus on consumers' interests.

The Building Act 2004 significantly tightened regulation to strengthen the existing performance-based regulatory approach.

Since 2004, amendments to the system include:

- strengthening the role of the central regulator, now the Department of Building and Housing
- reviewing the Building Code and producing more guidance in support of the Code
- requiring building consent authorities to become accredited and to have periodic performance audits
- introducing a voluntary Licensed Building Practitioner Scheme to recognise and improve capability
- introducing statutory warranties into every residential building contract.

In August 2009, the Government confirmed its support for the Licensed Building Practitioner Scheme, and defined the scope of restricted building work, which from March 2012 will have to be carried out or supervised by licensed building practitioners.

The building consent authority accreditation programme is also well advanced.

In addition, a new national process for approving standard multiple-use building designs will be under way from February 2010. More information is available at [www.dbh.govt.nz/multiproof](http://www.dbh.govt.nz/multiproof)

Since 2004, there has been a general improvement in building quality, but it appears the current system is out of balance, relying too heavily on building consent authorities. The system is overly cumbersome and there are concerns about costs, complexity and delays.

## ABOUT THE REVIEW OF THE BUILDING ACT

In August 2009 the Government announced a review of the Building Act 2004 to find out how the Act could be updated to minimise the cost of compliance without compromising quality of building and construction.

The Government wants:

- quality homes and buildings produced through a business-enabling and efficient regulatory framework
- consumers able to make informed decisions and have confidence in carrying out transactions in the building and housing market
- homes and buildings produced cost-effectively by a productive sector with the right skills and knowledge
- a regulatory system that is administered in an efficient and cost-effective manner.

The full Terms of Reference of the review are available from the Department of Building and Housing website ([www.dbh.govt.nz/buildingactreview](http://www.dbh.govt.nz/buildingactreview)).

The Department of Building and Housing is conducting the review. To ensure the sector's issues are adequately addressed, the Department is working with a reference group of people from building consent authorities, the building and construction sector and consumer representatives. The reference group members are Peter Neven (Fletcher Construction), Richard Harris (New Zealand Institute of Architects), John Gray/Roger Levie (Home Owners and Buyers Association), Brent Mettrick (Registered Master Builders Federation), Richard Merrifield (Certified Builders Association),

Gordon Buswell (ITM Building Supplies), Adam Thornton (Institution of Professional Engineers New Zealand and Association of Consulting Engineers New Zealand), John Duthie (Auckland City Council), George Skimming (Wellington City Council) and Irene Clarke (Local Government New Zealand).

A group of senior officials from other government agencies is providing strategic oversight of the review. This group includes representatives from the Department of Prime Minister and Cabinet, Treasury, Ministry of Economic Development, Ministry for the Environment and the Department of Internal Affairs.

The first phase of the review (August–December 2009) examined the issues and possible options for updating the building control system. These are set out in this document.

The second phase, now under way, invites the public and industry to consider and comment on these options.

The third phase, in mid-2010, will see the Government make final decisions on amendments to the Building Act and any other changes to the building control system, and present them to Parliament. An implementation phase will follow.

## **FINDINGS OF THE REVIEW**

The review found that the building regulatory system is not broken, and changes made by the Building Act 2004 have contributed much-needed improvements to the quality of building work. However, it also found that the system is more costly than necessary, and less efficient and effective than it could be.

The review found that there are weaknesses in certain parts of the system such as consumer protection, and the system is out of balance.

The current regulatory settings have resulted in an unduly low tolerance for risk, with a strong emphasis on central and local government protecting homeowners from the risks of building defects and failures.

Since 2004 building quality has improved as a result of strengthened regulation and adjustments within the sector, and the foundation for recognising and improving skills and capability has been put in place through the Licensed Building Practitioner Scheme.

There is now an opportunity to update the current system with a view to reducing the amount and cost of regulation, particularly for low-risk work, where it is carried out by people with recognised skills and capability. At the same time, it is important not to lose sight of the critical importance of having an appropriate level of regulation to govern the quality of building work. It's about getting the balance right.

The issues identified by the review are as follows.

### **Problems with ensuring responsibility sits in the right place**

Responsibility and accountability for ensuring building quality and reducing the rate of defects is not well aligned to the ability of each party to actually do anything about it. The roles of the different parties – consumers, building professionals and tradespeople, and building consent authorities – are not always clearly defined or understood.

- Many consumers, especially homeowners, are often unaware of their rights and obligations, and are not sufficiently informed to recognise and manage risk when commissioning building work. They also find it difficult to hold building professionals and tradespeople to account for defective work, for various reasons including a lack of access to low-cost dispute resolution.

- People in the building sector are sometimes able to avoid carrying the cost of poor performance or reduce it (for example through limited-life companies).
- Building consent authorities end up carrying a share of the responsibility that is out of proportion to their ability to influence the quality of the final product.

This is less of an issue in the commercial sector because of the greater experience of the parties, who are generally more familiar with commercial contracting arrangements and have more sophisticated risk-management practices.

### Undue reliance on building consent authorities

There is currently a heavy reliance on the role of building consent authorities in reviewing plans and construction to protect consumers from defective building work, even when the likelihood and consequences of failure are low.

This has understandably translated into a risk-averse approach because of a number of factors:

- the duty of care imposed by the courts on local authorities in respect of residential homeowners because of their statutory responsibility to issue building consents, carry out inspections and issue code compliance certificates
- the use of risk-avoidance techniques (such as creating limited-life companies) by people in the building sector, which means they sometimes fail to stand behind their work
- the fact that in negligence cases related to leaky buildings where liability is apportioned between several parties, the payment of damages (financial compensation) must be shared by the parties. Where some of the parties cannot pay their share, the cost of damages must be carried by those who can pay, and in practice this means that the 'deep pockets' of local authorities, as the parent organisations of building consent authorities, are covering much of the cost.

This reliance on building consent authorities is out of balance with their actual ability to influence building quality through documentation and inspection, and their capacity to do so without considerable cost. It has had the consequence of imposing higher-than-necessary costs.

Common issues raised during the review include:

- excessive requests by building consent authorities for documentation and plans
- slow processing of consents
- a large number of inspections during the course of construction – too many in the case of simple buildings
- a reluctance by building consent authorities to approve new or novel building designs, products or processes.



## Fragmented administration of the building control system

There are currently 75 local authorities that process building consents.

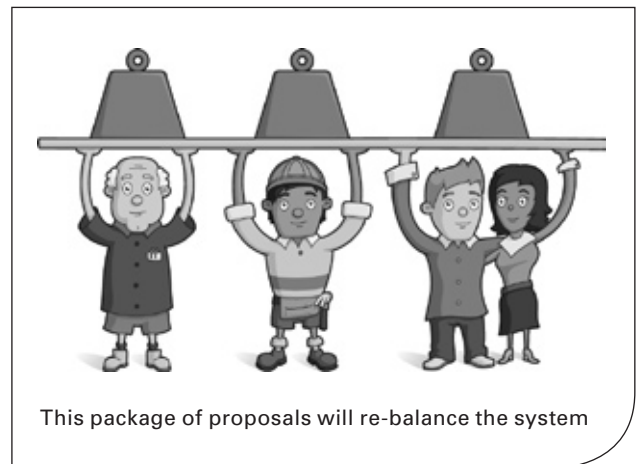
The Building Act 2004 provides for building consent authorities to share functions and cooperate in providing services, and it was anticipated that this might lead to some consolidation. However, progress towards consolidation has been limited, other than in Auckland where it has been driven by broader changes to local authority structure.

This fragmentation causes a number of problems.

- There is considerable variation in the scale of building control activity across districts and regions, with 17 building consent authorities each granting fewer than 500 consents a year. Some small building consent authorities have reported they can find it difficult to attract and retain capable staff, and to invest in efficient technology, systems and processes.
- Despite there being a national Building Code, there is inconsistency in regulatory decision-making across local authorities that raises the costs of doing business nationally.
- Local authorities are accountable to their local ratepayers rather than the central regulator in respect of the building control system, which can sometimes make it difficult to balance national benefits against local costs.
- It is difficult to coordinate activities and implement a national compliance and enforcement strategy across 75 building consent authorities.

## THE CHANGES WE ARE PROPOSING

This document sets out a package of proposals that would update the system and move us to the next generation of building controls, which will meet our requirements now and into the future, while retaining the lessons of the past.



The changes proposed are outlined below.

### Clarifying the purpose, principles and requirements (Part 1, page 12)

To get the fundamental elements right for the next generation, the Government proposes clarifying the purpose and principles of the Building Act, and continuing work to clarify the requirements set out in the Building Code. There are also proposals to improve access to requirements and supporting information.

### **Moving to a more balanced approach to building control (Part 2, page 17)**

This proposal would see building consent authorities targeting their oversight at buildings and building work where the risks and consequences of failure are most significant. The options put forward for feedback include:

- exempting more of the lowest-risk work from consenting requirements, especially where it is undertaken or overseen by licensed building practitioners
- a more streamlined process for low-risk (simple residential) buildings when the work is undertaken or overseen by licensed building practitioners
- in the commercial sector, a more streamlined process for complex commercial building work that acknowledges the commercial risk-management and quality-assurance processes already in use
- importantly, retaining the current building consent system for more complex and less conventional residential buildings, and some commercial buildings, because of the higher risk and greater consequences of failure
- simplifying other processes, including fire safety review of plans, and maintaining essential systems through building warrants of fitness and compliance schedules
- exploring options for more cost-effective administration of the building regulatory control system to reduce costs, improve consistency of practice and ensure critical mass of capability, especially for key technical skills.

### **Building consumer confidence (Part 3, page 30)**

This proposal would see consumers better equipped to make informed decisions, more aware of their rights and obligations, and better able to enforce those rights. Changes include:

- informing consumers better
- improving contracting practices
- making warranties more effective
- encouraging surety as a financial backstop for warranties
- providing better access to dispute resolution.

All the proposals are inter-dependent – a balanced system requires all these elements to be put in place. The proposals are also part of and linked to a broader programme of building sector initiatives, including:

- the Licensed Building Practitioner Scheme, which will ensure critical elements of a building can only be built or supervised by practitioners who have an appropriate level of skill<sup>1</sup>
- a new national system for approving standard building designs that will be built repeatedly, rather than requiring a separate approval for each individual build (MultiProof<sup>2</sup>).

### **What these changes would achieve**

These proposed changes are expected to result in:

- building professionals and tradespeople taking more responsibility for getting it ‘right first time’ and efficiently fixing defects if they occur
- building consent authorities targeting their attention to higher-risk areas and relying more on building professionals and tradespeople to confirm that lower-risk work meets Building Code requirements (with specific arrangements for expert peer-review of complex commercial work)

<sup>1</sup> Details of restricted work under the Licensed Building Practitioner Scheme and the exemptions for owner-builders (DIYers) are available at [www.dbh.govt.nz/UserFiles/File/News/Building/pdf/LBP-Summary-of-changes.pdf](http://www.dbh.govt.nz/UserFiles/File/News/Building/pdf/LBP-Summary-of-changes.pdf)

<sup>2</sup> Volume builders can apply to obtain national MultiProof approvals for building designs that will be replicated multiple times in any part of New Zealand. Details are available at [www.dbh.govt.nz/multiproof](http://www.dbh.govt.nz/multiproof)

- tried and true building designs and practices going through a streamlined process, especially where competent building professionals and tradespeople are in charge of the work
- residential consumers confidently making informed decisions when selecting and contracting with building professionals and tradespeople, backed up by contracts, warranties and dispute resolution processes to hold them accountable for any defects.

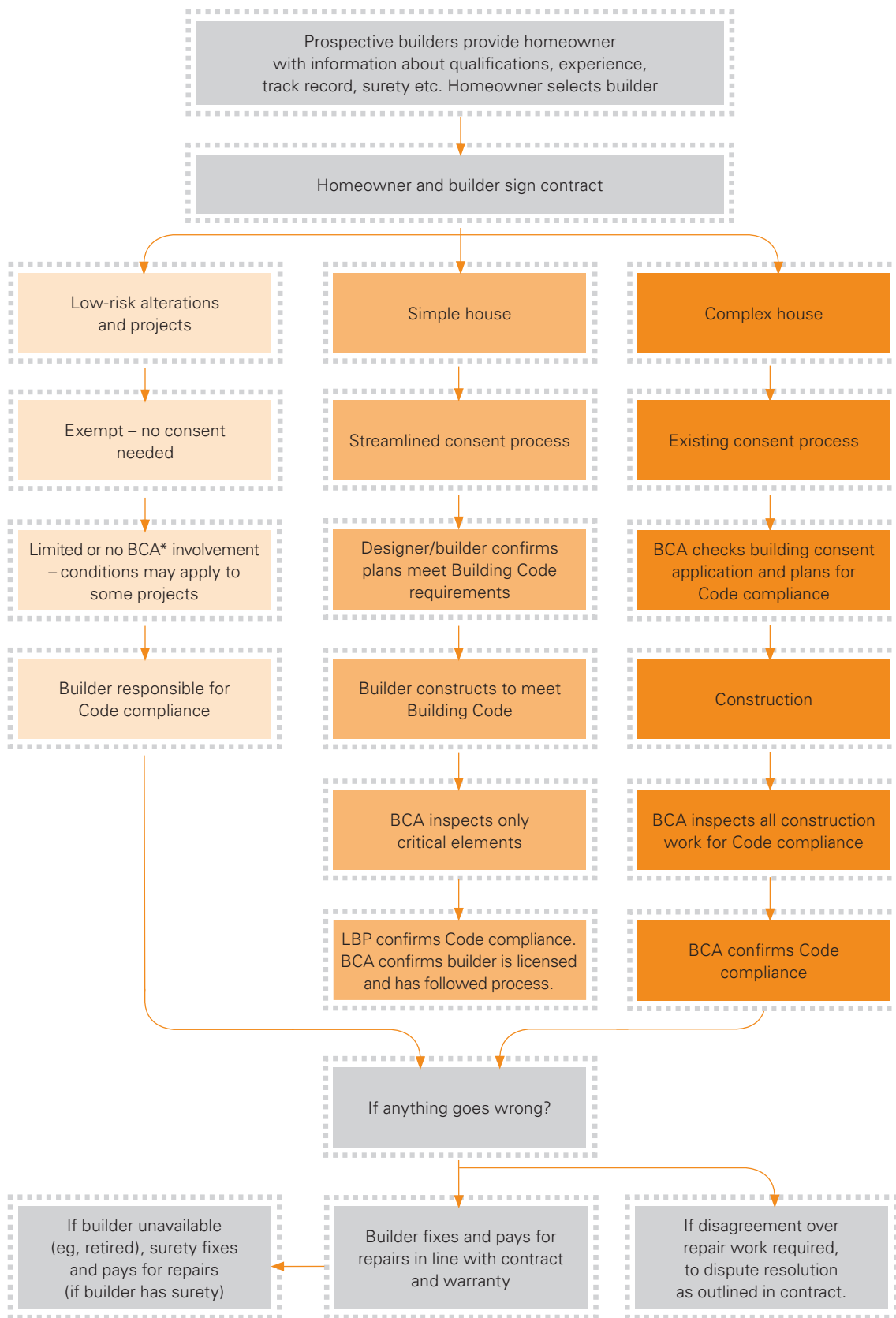
### **How this review links to the Resource Management review**

In a separate process – the Resource Management Phase Two review – the Government is looking at how the Resource Management Act and Building Act work together, seeking opportunities to:

- streamline and align the processes for approving resource consents and building consents when both are required for a building project
- improve consistency of definitions, terminology and provisions between the two Acts
- improve public understanding of the processes for the two Acts and how they inter-relate.

Emphasis will be on reducing duplication, particularly in regard to simple building projects.

**An overview of the proposed updated building control system as a starting point for discussion**



\* Building consent authority

# Part 1: Clarifying the purpose and principles of the Building Act and the requirements of the Building Code

To get the basic elements right for proposed improvements to building controls, the Government wants to ensure that:

- the purpose and principles of the Building Act are clear and provide appropriate direction to those who implement and administer the building control system
- the Building Code performance requirements are clear, unambiguous and easy to access.

This would contribute to a more consistent approach to building control nationwide and reduce the cost of doing business.

## 1.1 CLARIFYING THE PURPOSE AND PRINCIPLES OF THE BUILDING ACT

Those who implement and administer the building control system would have clear and appropriate direction, leading to more national consistency in the building control system.

### The current situation

The Building Act 2004 includes a purpose statement and principles to guide those responsible for implementing and administering the building control system. In practice, the purpose and principles should guide the decisions and discretionary judgements of those administering the Act and its regulations.

The purpose stated in section 3 of the Building Act is to regulate building work, establish a licensing regime for building practitioners and set performance standards for buildings, to ensure:

- people can use buildings safely and without endangering their health
- buildings contribute appropriately to the health, physical independence and wellbeing of the people who use them
- people can escape from the building if it is on fire
- buildings are constructed and can be used in ways that promote sustainable development.

The review heard that the meaning of the reference to sustainable development is unclear and has been interpreted differently by different people. Questions were also raised about whether there needed to be a reference to buildings being designed and built to ensure their suitability for their intended purposes.

The principles are detailed in section 4(2) of the Building Act. In simple terms, they require that administrators of the Act take into account:

- the important role of homes in people's lives, the need for homes to comply with the Building Code and the importance of maintaining them
- the need to prevent or minimise any harm to people's health from building design, methods or materials
- the need to ensure buildings are durable for their intended use
- the need to recognise any special traditional and cultural aspects of the intended use of a building
- the cost of a building (including maintenance) over the whole of its life
- the importance of standards of building design and construction
- the importance of allowing for continuing innovation in building design and construction methods
- the right of emergency workers to be protected from injury or illness when they have to enter the building
- the need to limit the spread of fire
- the need to protect other property from damage when constructing, using or demolishing a building
- the need to provide for people with disabilities
- the need to facilitate the preservation of buildings of significant cultural, historical or heritage value
- the need to facilitate energy efficiency and conservation, and renewable energy use
- the need to use materials efficiently and sustainably
- the need to facilitate efficient use and conservation of water
- the need to minimise waste during construction.

The review heard that some of these principles, such as durability and special traditional and cultural aspects, could be interpreted in a range of ways. Questions were also raised about whether all the principles are equally important and whether there are some matters missing, such as the importance of national consistency, and the importance of ensuring costs are in proportion to risk.

The Act’s purpose and principles currently apply primarily to the regulation-making and other statutory functions of the Minister for Building and Construction and the Chief Executive of the Department of Building and Housing. They apply to only a narrow range of building consent authority functions, such as when they are developing policies in relation to dangerous buildings, and do not apply to all their administration of the building control system.

### What is being considered

We propose to amend the purpose and principles of the Act, subject to feedback, to ensure they are clear and provide appropriate direction to those who implement and administer the building control system.

QUESTIONS ABOUT THE PURPOSE AND PRINCIPLES OF THE BUILDING ACT	
Q1	Does the reference to sustainable development in the purpose statement (Building Act 2004 section 3(d)) provide clear and appropriate guidance to those administering the Act? If not, why not?
Q2	Should suitability for purpose be referred to in the purpose statement? If so, how should this be worded?
Q3	Should other changes be made to the purpose statement? If so, what are they?
Q4	Do you agree that all of the 16 existing principles (Building Act 2004 section 4) are necessary to guide those administering the Act? If not, which principles do you consider fundamental?
Q5	Should other matters be referred to in the principles? If so, what are they?
Q6	Do you agree that the purpose and principles should apply to building consent authorities in their administration of all, not just some, of their building control functions? If not, in which circumstances should they be able to make decisions without regard to the purpose and principles?
Q7	Do you have any other comments on the Building Act’s purpose and principles?

## 1.2 CLEARER REQUIREMENTS IN, AND IMPROVED ACCESS TO, THE BUILDING CODE AND SUPPORTING INFORMATION

Everyone involved in a building project – consumers, building professionals and tradespeople, and building consent authority staff – should be able to easily find out what’s required for a building to comply with the Building Code; that is, meet the necessary requirements for health, safety and other essential aspects. This is particularly important in a system where there will be more reliance on licensed building practitioners to confirm that work is Code compliant (rather than leaving it up to building consent authorities), as proposed in Part 2 of this document.

### The current situation

The Building Code<sup>3</sup> is central to the building control system. It sets out the minimum performance requirements for buildings. The rest of the building control system exists mainly to achieve compliance with these requirements.

In simple terms, the Building Code sets out requirements for:

- structure that will withstand loads such as earthquake, wind and snow
- durability of building materials, components and construction methods
- fire safety including reducing the chance of fire and providing for people to escape
- access that is safe and easy
- moisture resistance so that buildings are dry and water damage is avoided
- protection against hazardous contaminants, building materials, substances and processes, and against construction and demolition hazards

- adequate safety measures including safety from falling, visible escape routes, and appropriate warning systems and signs
- adequate services and facilities including ventilation, sound, warmth, light, electricity, water, waste, and provision for personal and food hygiene
- energy efficiency.

The Code does not prescribe how building work should meet requirements (that is, there are no detailed requirements for design and construction), but states how completed building work, and its components, must perform. In practice this means there can be many ways of meeting the requirements, some based on new materials and/or design methods. The Code thus enables designers and the industry to develop innovative and cost-effective solutions.

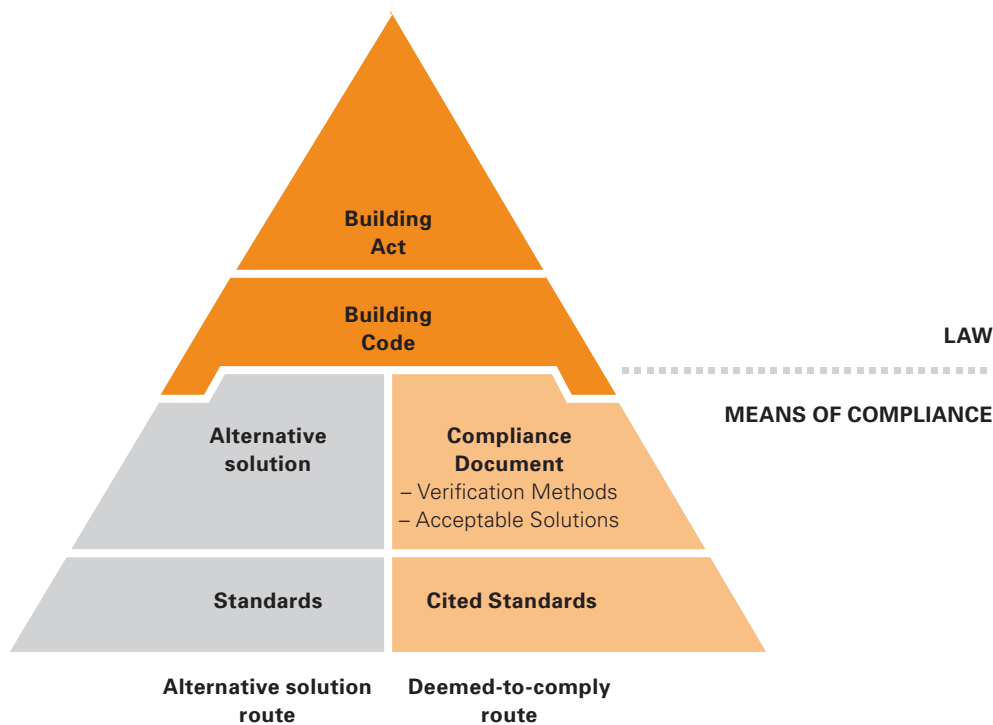
The Building Act also provides for the publication of information about designs and/or methods that provide one way of meeting Code requirements, in documents called Compliance Documents. It is not mandatory to use these documents, but if they are used, then building consent authorities must accept the building work as Code compliant.

The term ‘Compliance Document’ may in itself be unhelpful as it tends to suggest that the designs and/or methods it sets out must be complied with, rather than being just one possible approach.

Compliance Documents can cite Standards that have been developed by internationally recognised standard-setting bodies including Standards New Zealand. These Standards set agreed specifications for products, processes, services or performance.

<sup>3</sup> The Building Code is Schedule 1 of the Building Regulations 1992, [www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html?search=ad\\_regulation\\_building+regulations+1992\\_ra\\_rc%40rrev\\_rbuil](http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html?search=ad_regulation_building+regulations+1992_ra_rc%40rrev_rbuil)

## An overview of building regulation



The Department of Building and Housing has previously reviewed the Building Code. That review found that, while the framework is conceptually sound and in accordance with international best practice, building professionals, tradespeople and building consent authority staff can have difficulty accessing and understanding the detailed requirements.

Some Code requirements are open to interpretation with the use of terms such as 'adequate' or 'low probability'. Where Code requirements are vague or poorly described, building consent authorities tend to give preference to the methods and standards cited in Compliance Documents. This can be a barrier to innovation and efficiency.

The Code has been updated but the Department has heard that some consumers and people in the building and construction sector are not aware of the latest Code requirements, or advice on meeting them.

Issues with access to Code requirements and supporting information include the following.

- The Code and Compliance Documents are organised by building function (structural, fire, access, and so on) rather than building type. This means people in the building sector have to read and follow several Code clauses, related Compliance Documents, and related Standards and other documents for any one project. It can be difficult for them to readily access the information they need.
- While the Code, Compliance Documents and Standards are available on the internet, they are still organised on a traditional model – essentially a paper-based system which requires people to go through several volumes to determine requirements.
- The large number of different documents can create difficulties in keeping information up to date and consistent.

## What is being considered

To address the issues noted above, the Department is currently working to:

- improve the specification of the following Code clauses:
  - visibility in escape routes – more specific requirements were introduced in July 2007 ([www.dbh.govt.nz/bcupdate-article-65](http://www.dbh.govt.nz/bcupdate-article-65))
  - fire safety clauses – work in conjunction with industry is under way to improve the clarity of design requirements; public consultation on revised fire safety design requirements is planned for mid-2010
- improve the way information on Code requirements and related Compliance Documents and Standards is provided, so that building professionals and tradespeople, building consent authority staff and consumers are all able to access the information they need to inform their decisions on building work, in ways that make sense to them.

QUESTIONS ABOUT BUILDING CODE REQUIREMENTS AND ACCESS	
Q8	Do you agree that some Code performance requirements are ambiguous or unclear?
Q9	If so, what is the impact of this for you?
Q10	Which Code performance requirements do you think need to be clarified and which would you make top priority for clarification? (Note that work is under way on requirements related to visibility in escape routes and fire safety.)
Q11	Do you believe that Code performance requirements are well known to those who need to know them? If not, how could they be made better known?
Q12	Do you have any problems accessing Code performance requirements and supporting information (including Compliance Documents and Standards)? If so, what are the problems and what could be done about them?
Q13	Do you agree that the label 'Compliance Document' creates an expectation that it must be used? If so, can you suggest a better label for this type of document?
Q14	Do you have any other comments on clarifying Code requirements or improving access to the Code requirements and supporting information?

## Part 2: Moving to a more balanced approach to building control

The overall proposal is to strike a better balance between regulation and risk, so that building consent authority oversight and control of building work is in proportion to the risks and consequences of failure, and the skills and capability of the people involved.

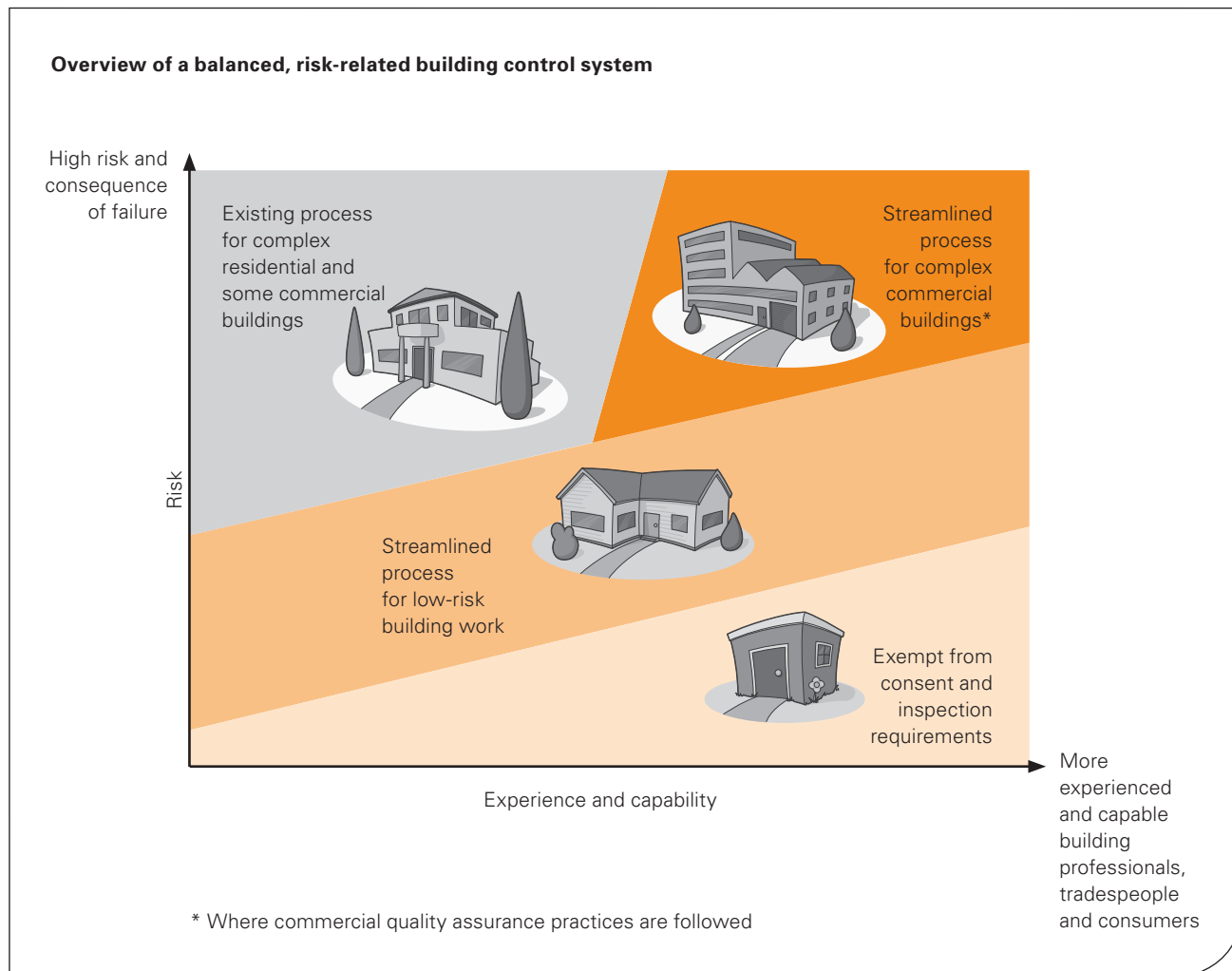
Buildings would still have to comply with the Building Code – that is, they would have to meet requirements for health, safety and other essential matters. However, different buildings and building work have different challenges for building professionals and tradespeople, and present different risks for owners and users, and we see sense in reflecting those differences in the building control system.

With the Licensed Building Practitioner Scheme being rolled out, it should be possible to place more reliance on licensed building professionals and tradespeople having the skills and capability to deliver dependable quality. We propose that for lower-risk work there would be more reliance on licensed building practitioners taking responsibility for confirming Building Code compliance, with the licensing regime holding them to account.

It is important to note that we propose retaining the current building consent system for more complex and less conventional residential buildings, as well as some commercial buildings, because of the higher risk and higher consequences of failure.

However, for more complex commercial buildings, we recognise there are qualified, experienced professionals using sophisticated risk management and quality assurance processes, and on that basis we propose moving to a more streamlined process.

There is a strong link between these proposals and the proposals to strengthen consumer protection (Part 3). Effective contracts and mandatory warranties are expected to motivate building professionals and tradespeople to take more responsibility for getting it 'right first time' and accepting liability for fixing problems when they occur. Such contracts and warranties will also better equip consumers to enforce their rights.



## 2.1 LOWEST-RISK BUILDING WORK EXEMPT FROM CONSENT REQUIREMENTS

Building professionals, tradespeople and owner-builders would be able to undertake more of the lowest-risk work without needing building consents.

### The current situation

Some low-risk building work is currently exempt from the need for a building consent (under section 41 and Schedule 1 of the Building Act), such as installing or replacing doors or windows. Schedule 1<sup>4</sup> also contains a general principle that allows territorial authorities to exempt other low-risk building work

on a case-by-case basis where they consider the completed work is unlikely to be non-compliant, or to endanger people if it is non-compliant.

### What is being considered

We propose expanding the range of work exempt from consent requirements to include building work that is unlikely to fail or where the consequences of failure (especially for health and safety) are minimal.

As a starting point for discussion, a list of building work proposed for exemption is set out in Attachment 1 (page 44). This includes building work

<sup>4</sup> A guide to the current exemptions from building consent is available to view at [www.dbh.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/guide-to-exemptions.pdf](http://www.dbh.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/guide-to-exemptions.pdf)

such as simple sheds, low decks, signs, adding a basic room to a house, replacing a hot water heater or internal linings, or installing a heat pump.

This list has been developed on the principle that the work is low risk; that is, the building is unlikely to fail or, if it does, the failure will have little consequence for people’s health, safety or finances. Some of the proposed exemptions are conditional on licensed building practitioners designing, doing or overseeing the work, to reduce the likelihood of it failing. Some may still require detail of the work to be lodged with local authorities for land information and other reasons.

QUESTIONS ON EXEMPTIONS FROM CONSENT REQUIREMENTS	
Q15	Do you agree the items or areas of work listed in Attachment 1 are low risk?
Q16	Are there any items or areas of work listed in Attachment 1 that should not be exempt from building consent requirements? If so, which ones (please use identification number/letter when commenting) and why should they be subject to building consent requirements? Are there any limitations or conditions that would address your concerns?
Q17	What other items or areas of work do you think should be added to Schedule 1 of the Act? Why are these low risk?
Q18	Is there any essential or useful information that is currently gathered through building consent applications that would be unavailable under this proposal?
Q19	Do you have any other comments on exemptions for lowest-risk building work?

## 2.2 A MORE STREAMLINED PROCESS FOR LOW-RISK RESIDENTIAL BUILDING WORK

Licensed building practitioners would take responsibility for confirming that buildings they design and construct comply with the Building Code, for a specified range of low-risk building work. Building consent authorities would continue to check on critical construction points (foundations, framing and insulation, plumbing, drainage, claddings and flashings) through inspection.

### The current situation

At present, most building projects have to go through a standard process of obtaining a building consent, undergoing inspection by building consent authorities at key stages during construction, and getting a code compliance certificate on completion of the work. The Building Act requires building consent authorities to make judgements about what’s required at each stage of the process on ‘reasonable grounds’,<sup>5</sup> but provides little direction on how to do this.

<sup>5</sup> Section 49 Building Act 2004 relates to granting a building consent and section 94 Building Act 2004 relates to issuing a code compliance certificate.

The review of the Building Act heard that the current building control system has resulted in building consent authorities generally making conservative, risk-averse judgments (see more discussion on page 7). We also heard that building consent authorities are inclined to adopt a 'one size fits all' approach to all building projects, regardless of the risk and consequences of failure, and this has resulted in over-regulation of low-risk work.

### What is being considered

The proposed streamlined process for simple timber, brick or stone houses (Category 1)<sup>6</sup> and other low-risk buildings would see licensed building practitioners taking responsibility for confirming that plans and construction comply with the Building Code. Building consent authorities would continue to inspect critical construction points (foundations, framing and insulation, plumbing, drainage, claddings and flashings).

This proposal is based on the principle that skilled and capable building practitioners can design and construct simple buildings that meet Building Code requirements without the level of third-party oversight currently applied. It is also based on ensuring Code requirements are clear and unambiguous (see Part 1.2, page 14).

This proposal is also aligned with the scope of restricted building work (that is, work that from March 2012 can only be carried out or supervised by licensed building practitioners). Restricted building work for Category 1 houses will be the design and construction of:

- the primary structure (foundations and framing)
- external moisture management systems (such as roofing and cladding).

We propose, for the purposes of discussion, that this streamlined process would apply to buildings that meet all of the following criteria:

- simple, low-risk buildings, including Category 1 buildings
- designed and certified as Code compliant by a design-licensed building practitioner, registered architect or chartered professional engineer
- construction is overseen by a site-licensed building practitioner who certifies that the work is Code compliant
- constructed by licensed building practitioners where relevant licensing classes apply
- subject to a warranty that meets minimum prescribed criteria (see Part 3.3, page 35 for warranty proposals).

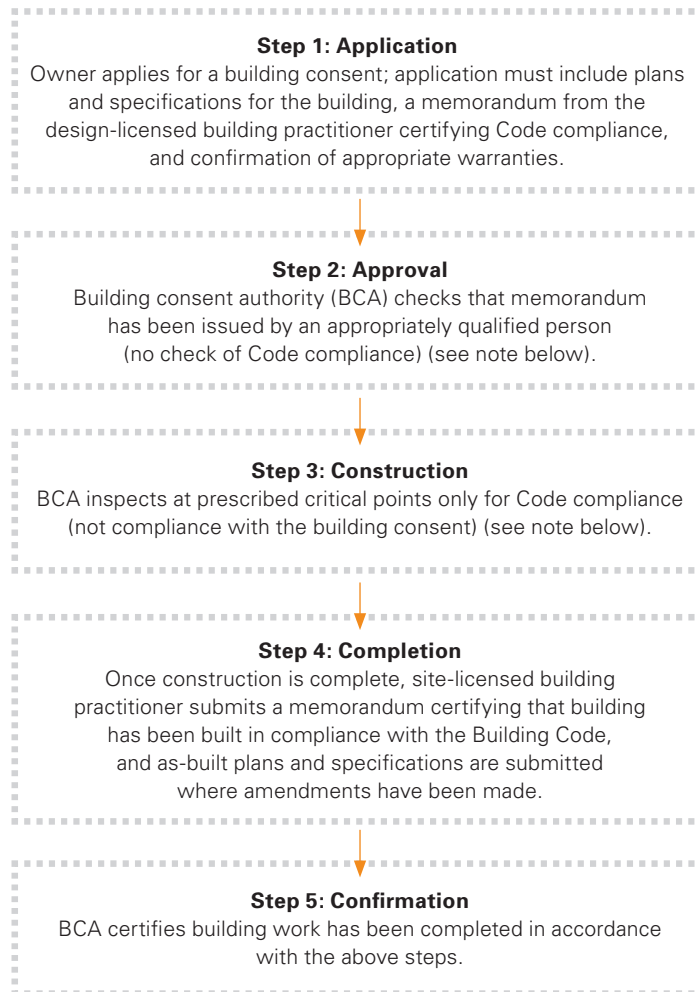
It is possible that this process may also apply to buildings covered by a MultiProof approval.<sup>7</sup>

Table 1 opposite indicates one option for the proposed streamlined process, as a starting point for discussion.

<sup>6</sup> A Category 1 building is a detached or semi-detached residential dwelling of conventional timber-frame or masonry construction, and low- or medium-risk envelope design [www.dbh.govt.nz/lbp-building-categories-2](http://www.dbh.govt.nz/lbp-building-categories-2)

<sup>7</sup> Volume builders can apply to obtain national MultiProof approvals for building designs that will be replicated multiple times in any part of New Zealand. Details are available at [www.dbh.govt.nz/multiproof](http://www.dbh.govt.nz/multiproof)

**Table 1: Indicative option for streamlined process for simple, low-risk residential building work**



**Notes to table:**

Step 2: The BCA would:

- accept the design memorandum as establishing Code compliance, without doing its own checks of the plans and specifications
- have a limited time to respond to an applicant; for example, a refusal to accept an application or a request for more information must be given within a short time, such as a maximum of five days
- keep a public record of the documentation.

The territorial authority would issue resource consents as it currently does.

Step 3:

- BCA inspections would be limited to critical parts of the building.
- Inspections would be made within a time limit, for example within two days of request.
- Variations to the design would follow the same process, with the BCA accepting designers’ memoranda.
- Follow-up inspections would be made as needed to confirm remedy of defects in critical parts of the building.

## QUESTIONS ABOUT A STREAMLINED PROCESS FOR LOW-RISK RESIDENTIAL BUILDING WORK

Q20	Do you agree that building consent authority oversight and control of a building or building work should be in proportion to the risk and consequences of failure? If not, why not?
Q21	Do you agree that licensed building practitioners should be able to be relied on to design and construct simple buildings that meet Building Code requirements without the level of third-party oversight currently applied? If not, why not?
Q22	Do you agree that the proposed streamlined process is adequate to ensure simple buildings are Code compliant? If not, why not?
Q23	Do you have any comment on the indicative steps in Table 1, including the notes to the table?
Q24	Are there any other steps that should be part of a streamlined process for simple, low-risk residential building work?
Q25	Do you agree that the foundations, framing and insulation, plumbing, drainage, claddings and flashings are critical elements that would still need to be inspected by building consent authorities in a streamlined process? If not, what elements do you think would still need to be inspected?
Q26	Do you agree with the criteria for buildings to be covered by the proposed streamlined process for simple, low-risk residential building work? If not, which criteria would you change and why?
Q27	Should the proposed streamlined process apply to buildings covered by a MultiProof approval?
Q28	Should the proposed streamlined process apply to any other low-risk buildings or building work? If so, how would you define which buildings or building work?
Q29	Does the proposed process align appropriately with the rules on restricted building work? If not, why not?
Q30	Do you have any other comments on the proposed streamlined process for simple, low-risk residential building work?

### 2.3 A MORE STREAMLINED PROCESS FOR COMPLEX COMMERCIAL BUILDING WORK

The people commissioning complex commercial building work and qualified and licensed/registered building professionals would take responsibility for confirming that buildings they commission, design and construct comply with the Building Code. They would use commercial quality assurance and risk management systems to achieve this.

#### The current situation

Complex commercial or public buildings and building work (such as Category 3<sup>8</sup> buildings) are subject to the same building consent requirements as residential homes. They go through a standard process of obtaining a building consent, undergoing inspection at key stages during construction, and getting a code compliance certificate on completion of the work.

However, the review of the Building Act found that in practice, many of these projects are commissioned by well-informed consumers and are designed, built, supervised and peer-reviewed by experienced, contractually accountable professionals. The review heard questions about whether building consent authority inspections add value in these circumstances.

#### What is being considered

This proposal provides for a more streamlined process for complex commercial buildings. It relies on the skills and experience of qualified professionals and the sophisticated quality assurance and risk management systems that are used to ensure contractual obligations are met when large, complex buildings are designed and constructed.

<sup>8</sup> A Category 3 building is a building considered to be of high complexity because of: the risk to occupants because of what the building is used for or the high number of occupants or the community importance or Historic Places Act rating.

The review heard that strong commercial contracting arrangements underpin a clear allocation of responsibilities amongst those involved.

Qualified, experienced experts oversee the design and construction process, including peer review of critical design elements. The review heard that most building consent authorities do not have the capability (qualifications and/or competencies) needed to review such developments. This suggests that building consent authorities' involvement could reduce substantially without any loss of building quality, provided that design and construction quality assurance and risk management systems can be verified as 'fit for purpose' and are consistently being followed.

Under the proposed consent system for complex commercial developments, appropriately qualified people within the project team would certify compliance of the design and construction. Building consent authorities would verify that appropriate quality assurance and risk management systems were operating and that certificates were correct, and would hold public records of the work.

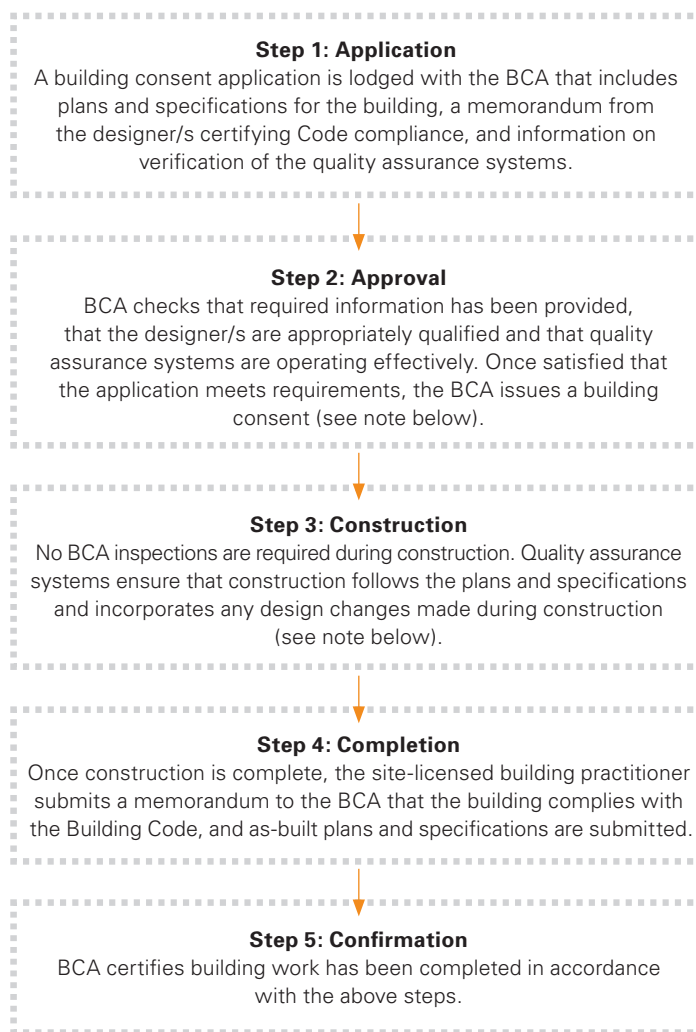
This more streamlined process would only relate to building consents, and those commissioning buildings would still have to meet other requirements such as those set by the Resource Management Act, District Plans and local bylaws.

For the purposes of discussion, we propose that this streamlined process would apply to buildings that meet the following criteria.

- The building is designed and certified as Code compliant by professional designers (registered architects, chartered professional engineers, and design-licensed building practitioners). The professional designer would have to meet prescribed minimum requirements such as compliance with a code of ethics and the use of appropriate quality assurance measures including peer review.
- Construction is overseen by a site-licensed building practitioner, who certifies that the work is Code compliant
- The building is constructed (where relevant licensing classes apply) by suitably licensed building practitioners.

Table 2 overleaf indicates one option for the proposed streamlined process as a starting point for discussion.

**Table 2: Indicative option for streamlined process for complex commercial building work**



**Notes to table**

Step 2: Note that the BCA would:

- accept the design memorandum as establishing Code compliance, without doing its own checks of the plans and specifications
- have a limited time to respond to an applicant; for example, a refusal to accept an application or a request for more information must be given within a short time, such as a maximum of five days
- keep a public record of the documentation.

The territorial authority would issue resource consents as it currently does.

Step 3: Minor variations to the design would not require the BCA to amend the consent. In such cases, construction documentation is updated appropriately, and quality assurance systems ensure changes are Code compliant.

### QUESTIONS ABOUT A STREAMLINED PROCESS FOR COMPLEX COMMERCIAL BUILDING WORK

Q31	Do you agree that people commissioning complex commercial buildings and building work are generally better informed and better equipped to hold contractors to account than consumers of residential building work? If not, why not?
Q32	Do you agree that chartered professional engineers, registered architects and other licensed or certified professionals should be able to be relied on to design and supervise complex building projects that comply with the Building Code, without the current level of building consent authority review? If not, why not?
Q33	Do you agree that the proposed streamlined process for complex building work is adequate to ensure buildings are Code compliant? If not, why not?
Q34	Do you have any comment on the indicative steps in Table 2, including the notes to the table?
Q35	Are there other building projects with the necessary quality assurance systems in place that could also be subject to the proposed streamlined process for complex commercial buildings?
Q36	Do you have any other comments on the proposed streamlined process for complex commercial building work?

## 2.4 PUBLIC INFRASTRUCTURE WORKS

Public infrastructure works such as bridges and tunnels would be subject to the most appropriate oversight to ensure safety and quality.

### The current situation

The Building Act covers ‘ancillary buildings’, which are not for human habitation but which are still required to comply with structural and safety-related aspects of the Building Code, such as bridges and tunnels.

### What is being considered

We propose to further explore how best to provide appropriate oversight of public infrastructure works, including bridges and tunnels connected to the land transport network.

### QUESTIONS ABOUT ENSURING QUALITY OF PUBLIC INFRASTRUCTURE WORKS

Q37	Do you agree that the building control system provides an appropriate means of ensuring the safety and quality of all public infrastructure works? If not, why not?
Q38	Are there some categories of public infrastructure work where other arrangements may more efficiently and effectively ensure safety and quality? If so, what types of works and what sort of arrangements?

## 2.5 STREAMLINED PROCESS FOR REVIEWING FIRE SAFETY OF BUILDING PLANS

Buildings would be designed with appropriate input from the New Zealand Fire Service Commission.

### The current situation

It is important that buildings are designed for fire safety, including easy escape routes for occupants and access for fire fighters.

Building consent authorities must refer building consent applications for some public and commercial buildings,<sup>9</sup> such as warehouses, supermarkets and apartment blocks, to the New Zealand Fire Service Commission for its advice on:

- providing means of escape from fire
- meeting the needs of authorised fire fighters entering the building to undertake fire fighting.

The building consent authority must in turn consider the Fire Service Commission advice before making its decision on whether or not to grant a building consent.

The Fire Service Commission must not give advice that would result in the building exceeding the requirements of the Building Code.

These provisions were included in the Building Act to provide a practical means for the Fire Service Commission to give 'front end' advice on any issues it may have with a proposed design.

This was intended to create better links between Building Act and Fire Service requirements, to increase 'front end' certainty, solve the problem of buildings being constructed without adequate Fire Service Commission comment and advice on fire safety, and to minimise disputes and delays in completing these buildings.

In practice, however, the process is proving frustrating and inefficient and has only provided a limited solution, due to:

- differences in interpretation of Building Code requirements between building consent applicants and the Fire Service Commission
- those applying for consents having no direct interaction with the Fire Service Commission
- some building consent authorities being reluctant to make decisions on consent applications where there is a difference of opinion between the applicant and the Fire Service Commission.

The proposal to streamline the process for complex commercial buildings set out in Part 2.3 on page 22 also requires us to reconsider how best to provide for Fire Service Commission involvement.

### What is being considered

We propose to amend the Building Act to require applicants for building consents for certain specified buildings to seek advice directly from the Fire Service Commission before submitting their application. Their application would state that advice had been sought and the weight they had given to the advice received.

It would be up to the applicant to decide how to act on the advice provided, bearing in mind the consequences of their decision. Those consequences may include the building consent authority declining to give consent if it is not convinced the application meets Code requirements; or the Fire Service Commission formally challenging whether the building is Code compliant by seeking a determination.<sup>10</sup>

We are also working on improving the clarity of fire safety design requirements in the Building Code, as noted in Part 1.2 (page 14).

<sup>9</sup> *New Zealand Gazette*, 24 March 2005 (Notice number 1648), p. 1432 : Any type of building or part of a building described in section 21A of the Fire Service Act 1975 regardless of whether the building or part of the building is sprinkler protected. This means an application (a) where compliance with clauses C1-4, D1, F6 or F8 of the Building Code will be established other than by compliance with the provisions of an applicable Compliance Document; or (b) that involves a modification or waiver of clauses C1-4, D1, F6 or F8 of the Building Code, under section 67 of the Building Act 2004; or (c) that involves an alteration, change in use or subdivision and affects the fire safety systems, including any building work on a specified system relating to fire safety, except where the effect on the fire safety system is minor.

<sup>10</sup> A determination is a binding decision made by the Department of Building and Housing under the Building Act 2004. It provides a way of solving disputes or questions about the rules that apply to buildings, how buildings are used, building accessibility, health and safety.

## QUESTIONS ABOUT REVIEWING FIRE SAFETY OF BUILDING PLANS

Q39	At what point in building design and construction is Fire Service Commission involvement most useful? Please explain why.
Q40	What weight should be given to Fire Service Commission's advice – for example, should it be treated as consultative input, should following the advice be mandatory, or should the weight given depend on the circumstances? Please explain why.
Q41	Do you have any other comments on fire safety review of building plans?

## 2.6 IMPROVED PROCESS FOR BUILDING WARRANTS OF FITNESS

Fundamental systems such as sprinklers, fire alarms and lifts would be inspected and maintained in a nationally consistent, effective and efficient manner.

### The current situation

Some systems in buildings are so fundamental to the ongoing safe use of the building that they must be regularly inspected, tested and maintained, and records of these activities kept. These specified systems<sup>11</sup> include sprinklers, fire alarms and lifts.

The building warrant of fitness is a statement from a building owner that the systems have been maintained and checked for the previous 12 months (in accordance with a compliance schedule), and that the systems will continue to perform as required. An independent qualified person<sup>12</sup> must certify this maintenance and inspection for each specified system.

The review heard some suggestions that a lack of clarity exists about exactly which systems are covered. This means it is possible some building owners are paying to inspect systems that are not essential, while in other cases essential systems may not be maintained or inspected.

The review also heard there may be inconsistency in the way the requirements are interpreted and applied by different building consent authorities, which in some cases may be leading to unnecessary complexity and compliance costs.

### What is being considered

We propose that, subject to feedback, we will clarify the regulations to ensure the focus is only on systems that are critical to safety and the system is administered consistently and efficiently.

## QUESTIONS ABOUT IMPROVED PROCESS FOR BUILDING WARRANTS OF FITNESS

Q42	Do you agree that the administration of the building warrant of fitness and compliance schedule requirements is more complex or costly than necessary? If so, what issues does this cause for you?
Q43	Do you agree that there is a lack of clarity about building warrants of fitness and compliance schedules? If so, what is unclear and what issues does this cause for you?
Q44	What changes should be made to the requirements to simplify administration while still ensuring critical systems are maintained and inspected? You may want to comment on the description of specified systems in the regulation, the definition of 'independent qualified person', or any other issues.
Q45	Do you have any other comments on the building warrant of fitness and compliance schedule requirements?

<sup>11</sup> Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005

<sup>12</sup> A person (or firm) approved by a territorial authority as qualified to inspect, maintain and report on certain specified systems.

'Independent' means that the person has no financial interest in the building.

## 2.7 MORE EFFICIENT BUILDING CONTROL ADMINISTRATION

Building consent authorities across the country would administer the building control system consistently and cost-effectively.

### The current situation

The building control system is a national system administered locally by 75 building consent authorities (mostly territorial local authorities). Together these building consent authorities process around 70,000 building consents a year.

There is significant variation in the volume of building consents across districts, with several territorial authorities dealing with relatively small consenting volumes. In 2008/09, 17 territorial authorities granted fewer than 500 consents each.

The review heard that the large number of building consent authorities has contributed to:

- duplication of management, systems and overhead costs across the country
- inconsistency in decision-making by building consent authorities, so that the same or similar building work can be approved smoothly in some areas but face obstacles in other areas.

The small size of some building consent authorities also poses challenges, as some small territorial authorities report they find it difficult to attract and retain suitably qualified and experienced staff and to invest in necessary technology, systems and processes. Significantly, opportunities may be being missed to achieve improved service quality and cost-effectiveness through use of technology (for example, online consenting).

The review heard that the current arrangements add costs to doing business nationally. Questions were also raised about the economies of scale and other efficiency gains that may be possible under alternative arrangements (for example, if there was more consolidation of building control functions).

The review also heard that the fact that local authorities are accountable to their local ratepayers rather than the central regulator in respect of the building control system can lead to national benefit considerations being outweighed by local costs.

The proposals to move to a more balanced approach to building control outlined in this document are expected to result in a significant reduction in the overall volume of consenting and inspection work.

The Building Act does provide for building consent authorities to share functions and cooperate in providing services, but there have been few examples of significant cooperation or clustering.

In Auckland, broader changes to local authority structure are driving work on a streamlined, business-focused, single building consent authority.

In the Wellington region, the eight territorial local authorities are working with the Department of Building and Housing on assessing the optimal arrangements for the provision of building control functions in the region.

The Building Act also provides for private provision of building regulatory services but there are few examples, and no private provider has registered as a building consent authority.

## What is being considered

We propose to develop options to improve administration of the building control system to:

- reduce costs
- improve consistency of practice
- improve efficiency of consent processing
- ensure critical mass of capability, especially for key technical skills.

This work will consider a wide range of alternative arrangements, including clustering options that could, for example, see building consent authorities operating on a regional rather than district basis, providing building control functions across several territorial authority districts. It will also explore the costs and benefits of greater consolidation of building consent functions nationally and the scope for private provision of building regulatory services.

This work to evaluate the costs, benefits and risks of alternative arrangements will be led by the Department of Building and Housing in consultation with the local government sector, Department of Internal Affairs and other interested stakeholders.

The Government will then consider the options and make a decision on the way forward.

QUESTIONS ABOUT BUILDING CONSENT ADMINISTRATION	
Q46	Do you agree that the number of building consent authorities and the variation in size is causing issues as outlined in Part 2.7? If not, why not?
Q47	Are there any other issues or problems resulting from the current administrative arrangements that have not been identified in this document?
Q48	Do you see benefits in greater cooperation between building consent authorities, or clustering or consolidation of building control functions? What would be the main benefits?
Q49	Do you see costs and risks associated with greater cooperation between building consent authorities, or clustering or consolidation of building control functions? What would be the main costs and risks?
Q50	What, if any, role should the private sector have in the administration of building controls?
Q51	Which elements of building control require local input and why?
Q52	Which elements of building control would most benefit from a national approach?
Q53	Do you have any other comments on options for more efficient building control administration?

## Part 3: Building consumer confidence

Building cost-effective, dependable-quality buildings requires consumers (the people commissioning building work) to be better equipped to participate confidently in the building and construction market.

Participating confidently means being able to make informed decisions, being aware of their rights and obligations, and being able to enforce those rights.

Many New Zealanders commission residential building work, including new homes and renovations where the financial investment is substantial, with very limited knowledge of their rights and responsibilities, the risks they may face, and the steps they can take to manage those risks.

This is partly because for many people commissioning building work is a rare event, so they have little experience to call on. Building work is typically complex and involves many different parties and arrangements. Consumers often find it difficult to assess the quality of the plans or the skills of the people doing the work, and have trouble identifying who is responsible when things go wrong and how to get it put right.

When things go wrong, and in the absence of agreed means of resolving disputes and fixing defects, often the only legal recourse available to disaffected consumers can be to sue for negligence and rely on the rule of joint and several liability.

'Joint and several' means that liability is jointly shared between multiple parties, and the payment of damages must be shared by the parties (in the proportion determined by the Court). However, where some of the parties cannot pay their share, the cost of damages must be carried by those who can pay, and in practice in many weathertightness cases this has seen much of the cost carried by local authorities, even when their responsibility for the defects was small relative to other parties.

The proposed measures are expected to result in a more balanced allocation of responsibility between consumers, building professionals and tradespeople, and building consent authorities, and more options for fixing defects and resolving disputes under contract law or through alternative dispute resolution procedures rather than through suing for negligence. These proposed measures include:

- better informed consumers
- improved contracting practices
- effective warranties
- financial backstops for warranties – surety
- access to fair and prompt dispute resolution at reasonable cost.

These proposed measures are expected to motivate building professionals and tradespeople to take more responsibility for getting it 'right first time' and accept responsibility for efficiently fixing defects when they occur.

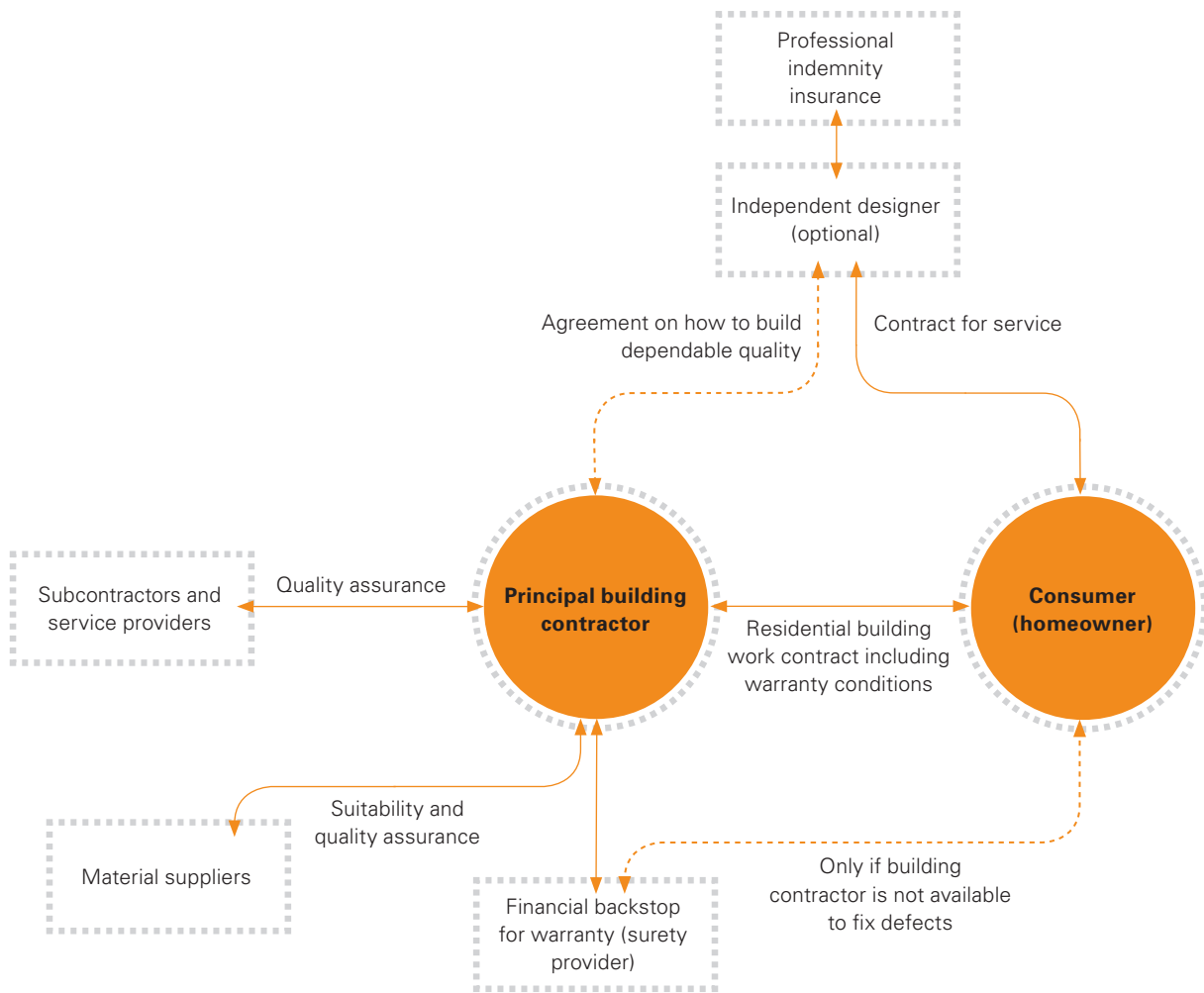
If warranties and surety become mandatory, this could also include limits on the rights of surety providers to pursue other parties.

Consumers would be better equipped to take more responsibility for decisions they make about what to build, who to contract to build it, what materials to use and how to make sure what is built is appropriately maintained.

This would provide an environment where building consent authorities could step back from regulation of lower-risk building work (as proposed in Part 2) because the other parties are stepping up to take responsibility.

This would benefit consumers and building professionals and tradespeople, because less regulation of lower-risk building work will reduce costs.

**Overview of the connections between measures to build consumer confidence**



### 3.1 WELL-INFORMED CONSUMERS

Well-informed consumers would be better equipped to recognise their responsibilities, make informed choices, and take steps to manage the risks that lie appropriately within their sphere of influence.

#### The current situation

In comparison with other countries, New Zealand’s approach to informing consumers about building and home maintenance matters is relatively passive. Good-quality information and advice is available from a number of sources, including the Department of Building and Housing and the website [consumerbuild.org.nz](http://consumerbuild.org.nz), but the onus is on the consumer to recognise that they need such information and to seek it out.

#### What is being considered

We propose a more proactive approach to consumer education and information for residential building work. A more proactive approach would raise consumer awareness of the steps they can take to reduce the likelihood of problems arising, and how to resolve any problems that do arise.

A range of communications tools would be developed – building on what is already available – to:

- raise consumer awareness of their rights and responsibilities and how they can enforce those rights
- encourage informed decisions about matters such as choice of contractor, contractual arrangements, design and materials
- raise awareness of warranties, ways of preventing and resolving disputes, and post-construction maintenance obligations.

#### QUESTIONS ABOUT WELL-INFORMED CONSUMERS

Q54	Do you agree the Government should do more to inform consumers about their responsibilities and rights in relation to residential building projects? If so, why?
Q55	What further information do consumers need?
Q56	Should the Government publish information on acceptable standards of workmanship for residential building work?
Q57	Are there other steps that would help consumers commission residential building work knowledgeably and with confidence? If so, what are they?
Q58	Do you have any other comments about consumer knowledge and behaviour in relation to residential building work?

### 3.2 IMPROVED CONTRACTING PRACTICES

Improving contracting practices in the domestic building market would better protect the interests of all parties by:

- providing clarity about specifications, plans, standards, tolerances, timeframes and price
- making it easier for disputes to be resolved in contract law
- providing for a shared understanding of respective rights and responsibilities
- encouraging better performance.

#### The current situation

Currently, residential building work does not need to be covered by a written contract. Many projects are entered into without adequate contractual documentation. This differs from other major purchases, such as cars purchased from dealers and real estate where, for the protection of consumers, written contracts are required by law.

If the consumer does not have an adequate written contract there is a greater risk that problems and disputes will arise, and resolving them becomes more difficult, because:

- the parties may have different understandings of what has been agreed
- as time passes, people's recall of what was agreed may change
- consumers and building professionals and tradespeople may be unaware of their respective rights and responsibilities
- where problems arise, the parties may be unsure of, or unable to agree on, appropriate steps to resolve them fairly, promptly, and at reasonable cost.

#### What is being considered

We propose that all contracts between consumers (such as homeowners) and principal building contractors (the main contractor who manages the project for residential building work) will be in writing and signed by all parties. The contract would have minimum terms that apply in all cases and cannot be contracted out of. Principal building contractors would be required to disclose certain information to the consumer before the contract is entered into, so consumers can make informed decisions. If homeowners project manage or do the building work themselves, this would be disclosed when the house is sold (see page 37).

#### Minimum contract terms

The suggested minimum contract terms, for the purposes of discussion, include:

- the full names and addresses of the parties
- the date the contract is agreed and signatures
- a description of the work to be carried out (plans and/or specifications to be appended)
- details of warranty (see Part 3.3 below) and the arrangements to back up the warranty (see Part 3.4 below), or a statement that there is no warranty
- the contract price and payment schedule or, if the contract price is not fixed, an explanation of the basis on which the price will be calculated
- a clause stating that any agreement to vary the contract will be taken to form part of the contract, and must be in writing and signed by both parties
- start and completion dates (or, if not known, an explanation of how these are to be determined)
- an outline of who to contact and the process to be followed in the event of a dispute.

### Required disclosures

We suggest for the purposes of discussion that principal building contractors disclose the following before entering into an agreement with the consumer:

- trade qualifications, number of years in practice, practitioner licence number (if licensed) and any professional memberships of everyone working on the site, including subcontractors
- details of arrangements to back up the warranty (see Part 3.4 below) or, alternatively, a statement that no such backing exists
- information to prompt consumers to consider all relevant matters before signing a contract (for example a checklist)
- details of any previous disputes over warranty obligations.

QUESTIONS ABOUT IMPROVED CONTRACTING PROCESSES	
Q59	Do you agree that contracting arrangements between consumers and principal building contractors for residential building projects need to be strengthened? If so, why?
Q60	Do you agree that all contracts between consumers and principal building contractors for residential building work should have to be in writing and signed by both/all parties? If not, in what circumstances, or for what type of building projects, should written contracts not be required?
Q61	Do you have any comments on the proposed minimum terms for contracts as set out in Part 3.2? Please indicate what, if any, information you would like to see added to or removed from the proposed list.
Q62	Do you have any comments on the proposed required disclosures for residential building projects? Please indicate whether there is any information you would like to see added to or removed from the proposed list of required disclosures.
Q63	How should information required to be disclosed be provided?
Q64	Are there other steps the Government could take to improve contracting practices for residential building projects? If so, please indicate what additional measures should be taken.
Q65	Do you have any other comments about contracting practices for residential building work?

### 3.3 DEVELOP MORE EFFECTIVE WARRANTIES

Effective warranties would ensure any defects in building work were fixed efficiently.

A warranty is a guarantee from the principal building contractor about the quality of the building work and states the conditions under which no-cost repairs will be made. As well as immediately obvious defects, a warranty addresses the risk of latent defects (flaws in the building work that are not immediately obvious but surface later). Warranties can also apply to standards of workmanship and completion of work.

#### The current situation

There is currently some consumer protection for building work in New Zealand law. The Consumer Guarantees Act 1993 applies to building services and materials supplied to consumers but excludes a whole house.<sup>13</sup>

The Building Act (sections 397–399) currently provides statutory warranties that apply to:

- workmanship and materials
- compliance with legal requirements, including consent requirements
- compliance with contractual obligations (the plans and specifications)
- fitness for purpose (the building will be habitable and reasonably achieve the owner’s stated objectives)
- completion.

However the current statutory warranties are uncapped, where generally commercial building warranties are capped at a dollar amount or the contract price.

The obligation to fix defects (the warranty service obligation) currently lasts for up to six years from when the defective work was performed (bound by the Limitations Act 1950). The review heard that this may be:

- too long for many building defects
- too short for some critical building performance elements such as structural stability and weathertightness
- mismatched with the 10-year longstop limitation on building consent authority liability under section 393 of the Building Act.

There are currently no generally accepted standards for workmanship, and no mechanisms for making claims or resolving disputes under the current statutory warranties.

Currently, if the building contractor will not fix a defect that falls within the scope of the statutory warranties as requested by the consumer, the consumer’s only recourse is to sue the building contractor.

In addition to these statutory warranties, builders often offer their own warranties.

#### What is being considered

We propose to amend the sections of the Building Act that relate to statutory warranties so that the obligations on building contractors are more practical. Below, we list the elements of the warranty we propose to amend, subject to feedback.

<sup>13</sup>Consumer Guarantees Act 1993 section 2 paragraph ‘c’ of goods definition: interpretation of ‘goods’ does not include a whole building, or part of a whole building, attached to land unless the building is a structure that is easily removable and is not designed for residential accommodation.

### **Length of the statutory warranty**

The length of the statutory warranty would differ depending on whether the building element is critical or non-critical.

For critical building elements, such as being weathertight and structurally stable, the building contractor's obligation to perform warranty service could be for either six or 10 years. For non-critical elements, such as interior fittings, the period could be two or three years.

The statutory warranty could be assigned to the building, so that subsequent owners have the same rights and obligations as the original owner.

### **Cap**

The current statutory warranty is not capped. It could be capped at:

- the contracted value of building work
- a fixed amount such as \$500,000 or some other amount.

### **Coverage**

The warranty could cover :

- compliance with legal requirements (Building Act and Building Code)
- suitability of materials (possibly with exceptions where the building owner requires particular materials to be used)
- standard of work and exercise of care and skill
- adherence to plans and specifications
- suitability of the premises for habitation
- carrying out the building work with reasonable diligence (completion)
- calculation of claims for provisional sums.

### **Loss of deposit and non-completion**

The warranty could include guarantees in relation to:

- loss of deposit
- non-completion of the contracted building work within a reasonable period of time.

### **Voided in some circumstances**

The obligation to fix defects (the warranty service obligation) could be voided (no longer apply) if certain events occur, such as:

- a change of use from residential to commercial
- the owner's actions or inactions (such as inadequate or improper maintenance, for example incorrect use of a water-blaster).

### **Types of building projects covered by the warranty**

We are also considering whether the warranty obligation should be mandatory for all residential building work, or:

- limited to residential building work where the contract price is over a threshold amount, for example \$15,000
- limited to new residential dwellings
- able to be renounced at the option of the building owner – that is, the principal building contractor would be required to offer a warranty, but the building owner could decide to go ahead without a warranty.

### **Other issues**

The current Building Act statutory warranties apply to the sale of homes by property developers (people whose business is arranging the construction of properties). Developers may use special purpose companies that are liquidated when the development is complete. This may make it difficult for buyers of the property to get defects fixed under warranty if something goes wrong. One option would be to require developers of residential properties to offer an independent third-party warranty at no extra cost to the buyer.

Where people do building work themselves on their own property (owner-builders), subsequent buyers of the property would not have any warranty protection. This could be overcome by requiring owner-builders to make it clear to prospective buyers that there is no warranty, or by requiring them to purchase a third-party warranty when they sell the property.

As individuals who are building contractors approach retirement from the industry, or plan to wind up their company, they would remain liable for warranty service claims for six or 10 years after they finish working. An arrangement is needed to ensure their obligations continue to be met. This might happen by transferring the unexpired portion of the warranty to another building contractor or to a third-party warranty provider or surety plan provider (see Part 3.4 below).

QUESTIONS ABOUT MORE EFFECTIVE WARRANTIES	
Q66	Do you agree there should be a mandatory warranty for residential building work? Please give reasons.
Q67	Which of the options for warranty listed in Part 3.3 do you prefer? Which do you disagree with? Please comment on: <ul style="list-style-type: none"> <li>• length</li> <li>• cap</li> <li>• coverage</li> <li>• loss of deposit and non-completion</li> <li>• circumstances where the warranty service obligation could be voided</li> <li>• projects covered.</li> </ul>
Q68	Should the building owner be able to renounce the offer of a warranty by a building contractor by signing a notice revoking the warranty?
Q69	Should developers be required by law to provide third-party warranty cover?
Q70	Should owner-builders, or those who renounce the offer of a warranty, be obliged to: <ul style="list-style-type: none"> <li>• disclose on sale of the building that no warranty is offered?</li> <li>• purchase a third-party warranty on sale of the building?</li> </ul>
Q71	Should building contractors upon retiring or winding up their company be required to transfer warranty service obligations to another party: <ul style="list-style-type: none"> <li>• with prior notice to affected building owners?</li> <li>• with prior consent of building owners?</li> </ul>
Q72	Do you have any other comments on warranties?

### 3.4 SURETY AS A FINANCIAL BACKSTOP FOR WARRANTIES

Providing a financial backstop for warranties would provide extra protection for consumers.

A surety is an organisation that agrees to be responsible for the obligation of the principal building contractor to fix defects under warranty (warranty service obligation). Having a surety backing a building contractor's warranty gives the consumer added certainty that problems will be fixed even if the builder is no longer around, for example if he or she has died or gone out of business. A surety backing means that if the building contractor is not available to fix defects or refuses to do so, then the consumer goes to the surety provider, who gets the work done. Home warranty insurance schemes in Australia are one example of this.

#### The current situation

Surety can be provided in many ways by organisations that provide financial services. Typical surety plan providers are bonding agents, banks offering guarantees, credit insurance underwriters or fidelity funds. Warranty associations are groups of building contractors who, by mutual agreement, stand behind the quality of the workmanship of the members of the association. There are also specialist warranty companies that combine elements of the various approaches and offer third-party warranty.

Currently, there is no obligation on building contractors to have surety to back up their warranty obligations, but many choose to do so. There are two main providers, the Registered Master Builders Federation and the Certified Builders Association New Zealand.

Consumers may face an undue level of risk if they choose building contractors without knowing whether the contractor has the financial backing and intention to stand behind their warranty service obligation. Even if the building contractor intends to stand behind their work, events beyond his or her control may result in default on their warranty service obligation.

#### What is being considered

We propose that principal building contractors must disclose whether they have surety, and who is providing that backing, so that consumers can make an informed decision on whether or not to purchase building work from that contractor. This would be achieved through the proposed mandatory written contract and disclosure (see Part 3.2 above). This would be supported by better information for consumers about the questions to ask. We expect well-informed consumers would opt for the added protection of surety.

We are also considering whether principal building contractors should be required by law to have surety, and under what conditions, or whether it should be left to the consumer to decide on the benefits of surety relative to the cost. If surety were to be mandatory, consideration would also be required as to whether or not surety providers would be allowed to pursue other negligent parties such as building consent authorities.

Making it mandatory for principal building contractors to have surety may result in more surety providers entering the market. However, it may also be necessary for the Government or industry to set up a default provider. This would provide cover for any building contractors who were unable to get surety cover from a commercial provider. There would be costs associated with setting up a default provider.

#### Required disclosures

We propose the providers of surety (whether it is voluntary or mandatory) should be required to provide certain information to consumers. This is likely to have to be provided as part of the principal building contractor's requirement to provide certain information as set out in Part 3.2 above. The information to be disclosed may include:

- name and address
- who to contact and how to contact them
- a plain language description of what is covered and what is not covered by the surety plan

- a plain language description of the consumer’s obligations and any conduct that would see the warranty and surety arrangements no longer apply
- information about avenues for appeal
- a summary of the surety’s financial statements (prepared in accordance with the requirements of the Financial Reporting Act 1993)
- an insurance rating if the surety plan provider is an insurance company
- a summary of all recent actuaries’ reports on claims paying ability
- information on claims handling and fulfilment performance.

QUESTIONS ABOUT SURETY	
Q73	Do you agree that building contractors should have to disclose whether they have surety backing? If not, why not?
Q74	Do you agree that building contractors should be obliged by law to have surety backing? If not, why not?
Q75	What do you see as the benefits and/or costs of mandatory surety? What is your view on when the benefits would outweigh the costs?
Q76	Do you agree with the proposed list of required disclosures about surety? Is there is any information that should be added or removed?
Q77	If surety were to be mandatory, should surety providers be restricted in their ability to pursue other negligent parties such as building consent authorities?
Q78	Do you have any other comments on surety?

### 3.5 BETTER ACCESS TO DISPUTE RESOLUTION

Better access to fair, prompt and cost-effective dispute resolution would protect consumers better by improving their ability to hold poor-performing building contractors to account.

When disputes arise between consumers and building contractors it is desirable that these are resolved fairly, promptly and at reasonable cost in proportion to the value of the dispute.

If consumers and building contractors are unable to resolve an issue between them, they may seek the assistance of a third party with experience in dispute resolution, take the matter to the Disputes Tribunal, or take action through the courts.

#### The current situation

Currently, despite the options for dispute resolution, consumers can find it difficult to hold building contractors to account when building work is defective or unfinished. The reasons consumers find it difficult are that:

- the majority of consumers embark on building projects relatively infrequently and therefore tend to be unfamiliar with both technical building matters and the options for dispute resolution
- there are gaps in the coverage of current mechanisms available for resolving disputes, notably for disputes that are too high in value to be heard by the Disputes Tribunal<sup>14</sup> and too small for court action to provide a cost-effective and timely solution.

<sup>14</sup>\$15,000, or \$20,000 if both parties agree.

There are opportunities to strengthen the system for protecting consumers by ensuring they have better access to dispute resolution services other than the court system (known as alternative dispute resolution).

### What is being considered

We propose that, subject to feedback on the need for better access to alternative dispute resolution services, we recommend an option for improving dispute resolution.

There is a range of options for how this could be done, for example:

- requiring contracts for residential building work to state that an alternative dispute resolution process will be followed in the event of a dispute that cannot be resolved directly between the consumer and principal building contractor, and allowing the parties to the contract to determine what that alternative dispute resolution process would be (see Part 3.2 above)
- specifying the type of alternative dispute resolution process to be followed for various types of residential building disputes
- establishing a specialist service for resolving disputes between consumers and building contractors in relation to residential building matters, similar to the dispute resolution process for tenancy disputes.

3.5 QUESTIONS ABOUT BETTER ACCESS TO DISPUTE RESOLUTION	
Q79	Do you agree that consumers currently face barriers or problems in resolving disputes with building contractors? If so, why?
Q80	Do you agree that consumers need more information about options for resolving disputes with building contractors? If so, how could this be provided?
Q81	Do you think there are adequate services available to resolve disputes between consumers and building contractors? If not, what other dispute resolution services do you suggest?
Q82	What would be the characteristics of an appropriate dispute resolution service?
Q83	Do you have any other comments about disputes between homeowners and building contractors?

# Part 4: The impacts of improving building control

The package of proposals outlined in this discussion document is expected to have wide-ranging impacts. The impacts will be felt in different ways by all parties – consumers, building professionals and tradespeople, building consent authorities and central government.

## 4.1 IMPACTS OF MOVING TO A MORE BALANCED APPROACH TO BUILDING CONTROL

Proposals to move to a more balanced approach to building control are outlined in Part 2 of this document. These proposals would see building consent authority oversight more in proportion to the risks and consequences of failure and the skills and capability of the people involved.

These proposals are conservatively expected to reduce the volume of building consents and inspections required by between 10 and 15 percent a year, generating savings for residential consumers and building professionals and tradespeople, and reducing demands on building consent authorities.

For building work that no longer requires consent, consumers would save the full costs associated with the building consent and inspection process (for example, fees and charges paid to building consent authorities, costs associated with delays in the consenting process).

For building work that requires a consent but is relatively low-risk (for example, simple homes designed and constructed by a licensed building practitioner), there are expected to be significantly reduced consent and inspection costs.

A key result of the proposals would be to ensure that the total cost associated with a consent and related inspections is commensurate with the risk of building work failing to perform (that is, lower risk equals lower cost).

Beyond the direct benefits to the consumer, a more balanced approach to building control would enable building consent authorities to focus their resources on higher-risk work, resulting in improvements in the quality and efficiency of decision-making.

Further consolidation of building regulatory functions also offers scope for investments in productivity-enhancing systems (for example online consenting) and processes, and would facilitate greater consistency of decision-making across the country.

## 4.2 IMPACTS OF PROPOSALS FOR BUILDING CONSUMER CONFIDENCE

Proposals to better equip residential consumers to play their part, make informed decisions, be aware of their rights and obligations, and be able to enforce those rights, are outlined in Part 3 of this document. These proposals have impacts for consumers, building professionals and tradespeople, and building consent authorities.

### Impacts on consumers

We expect that consumers will be more careful when choosing and contracting with building professionals and tradespeople because they will have a clearer understanding of the implications of their decisions, including the extent of the accountability of the building contractors and authorities when things go wrong. Under proposed warranties, consumers would face stronger incentives to ensure their obligations, such as ongoing maintenance, are fulfilled.

Consumers are also expected to more assertively enforce contractual warranties when building work fails to meet requirements. Where a building contractor fails to meet their obligations, a surety plan would make it easier for consumers to get any defects fixed.

### Impacts on building professionals and tradespeople

We expect building contractors (building professionals and tradespeople), as a result of their strengthened responsibilities under proposed warranties, would more proactively manage the risks they face.

For example, they will manage their risks by:

- considering more carefully what work they take on
- focusing more strongly on their contracting arrangements with consumers and their arrangements with others in the building sector (for example, architects, subcontractors, suppliers)
- pricing their work appropriately, taking into account the costs of standing behind their work (for example, surety premiums)
- investing in training and professional development in order to build skills and capabilities
- focusing more strongly on the relationship between design and construction, including the construction risks that flow from poor design.

Delivering this package would have a particular impact on licensed building practitioners because many of the proposals are conditional on their involvement. Indeed, this package is expected to strengthen incentives for building practitioners to become licensed, with benefits in terms of:

- making the quality of building practitioners clearer to the market.
- sharpening incentives to put work right if it is not done correctly
- strengthening incentives to upgrade and maintain knowledge and skills
- preventing insufficiently skilled practitioners from carrying out critical building work without adequate supervision.

### Impacts on building consent authorities

We expect the heavy reliance on third-party review by building consent authorities to reduce and to, in effect, be substituted by a stronger role played by competent building professionals and tradespeople.

This would facilitate and reinforce the desired shift to a more targeted approach to building control. Over time, this is expected to lead to a reduction in barriers to innovation, and more efficient and effective decision-making by building consent authorities.

### Impact on quality

The proposed changes would result in improvements in the quality of building work, as evidenced by less defective work, less rework and fewer disputes. Where disputes do arise, faster fixes without significant cost to the consumer could be expected, together with improved protection for consumers in the event that a building contractor defaults.

## 4.3 COSTS AND RISKS

Depending on the detailed design of options, implementation of this package is likely to involve some costs for residential consumers, building professionals and tradespeople, and building consent authorities, as well as ratepayers and taxpayers.

Proposals to move to a more balanced approach to building control are expected to save significant costs in the medium to long term, but in the short term there would be additional costs to implement the changes. Building consent authorities would need to make changes to their consenting and inspection systems and processes, with the extent of these implementation costs depending on the design of the new system. Some or all of these costs would be passed on to consumers and ratepayers.

Proposals to build consumer confidence may generate some additional costs, depending on the overall shape of the package and policy design choices. These costs could include the following.

- The costs associated with warranties backed by surety. If surety backing was mandatory, there may be a need for the industry or the Crown to temporarily underwrite a fidelity fund. Mandatory provision of surety would also require regulation, with associated costs to administer that regulation.
- The costs of requiring written contracts between consumers and principal building contractors for residential building work, and any associated disclosure requirements. These costs are not expected to be high, since standard contracts and disclosures would be expected to become commonplace.
- The costs of providing increased consumer education and information and potentially establishing and operating an alternative dispute resolution service. There would be an additional impact if more accessible dispute resolution services resulted in increased demand.

Key risks associated with the package, which would need to be addressed through detailed design work, include the following.

- Building contractors and their backers (such as surety providers) may adopt a very conservative approach, resulting in additional costs to consumers. Competitive pressures would be expected to mitigate this outcome.
- The introduction of warranty and surety requirements may raise barriers to entry and/or the costs of ongoing participation in the industry, resulting in higher costs for consumers.
- A number of the proposals depend on there being a sufficient supply of skilled and capable building professionals and tradespeople – if this is incorrect, the benefits of the package could be overstated.
- Striking the right balance in the overall package, particularly in terms of the design of warranties and any surety arrangements, is key to ensuring any costs remain reasonable and do not outweigh the benefits.

#### QUESTIONS ABOUT THE IMPACTS OF IMPROVING BUILDING CONTROL

Q84	Is it realistic to assume residential consumers, building professionals and tradespeople, and building consent authorities would behave differently if this package of proposals was introduced? Please comment.
Q85	Have the main benefits of the package of proposals been identified above and, if not, what is missing?
Q86	Which benefits do you expect to be most significant and why?
Q87	Have the main costs of the package of proposals been identified above? If not, what is missing?
Q88	Which costs do you expect to be most significant and why?
Q89	What are the main risks associated with the package of proposals?

# Attachment 1: Proposals for Schedule 1 inclusion

**TABLE A: PROPOSED ADDITIONS TO SCHEDULE 1<sup>15</sup>**

Note: The proposals in column 1 would be subject to the limitations in column 2 and should be considered in the light of the notes in column 3. When commenting on specific proposals, please refer to the identification letter or number in the ID column.

ID	PROPOSAL	LIMITATIONS	NOTES
A	Construction of a detached non-habitable or habitable building that does not contain cooking facilities or plumbing, if:	<ul style="list-style-type: none"> <li>– single storey, and</li> <li>– floor area &lt; 20 m<sup>2</sup>, and</li> <li>– floor level &lt; 1.0 m above ground level, and</li> <li>– not closer than 1.0 m to any legal boundary or existing building, and</li> <li>– not required to be licensed in terms of the Hazardous Substances and New Organisms Act 1996, and</li> <li>– used in connection with an existing building</li> </ul>	<ul style="list-style-type: none"> <li>– All work is subject to planning rules and controls</li> <li>– There is an existing exemption for 10 m<sup>2</sup> sleepout</li> <li>– Should plumbing be exempt in these circumstances?</li> </ul>
B	Construction of an addition to a residential building that does not contain cooking facilities or plumbing, if:	<ul style="list-style-type: none"> <li>– single storey, and</li> <li>– floor area &lt; 20 m<sup>2</sup>, and</li> <li>– floor level &lt; 1.0 m above ground level, and</li> <li>– not closer than 1.0 m to any legal boundary, and</li> <li>– not required to be licensed in terms of the Hazardous Substances and New Organisms Act 1996, and</li> <li>– built by a licensed building practitioner, and</li> <li>– does not reduce the performance of the altered building relating to structural stability, means of escape from fire, fire-rating performance and weathertightness, and</li> <li>– weathertightness risk score ≤ 12</li> </ul>	<ul style="list-style-type: none"> <li>– All work is subject to planning rules and controls</li> <li>– Should plumbing be exempt in these circumstances?</li> <li>– Are the consequences of failure in private vs public buildings different?</li> </ul>
C	Construction of a detached non-habitable building (ie, people do not live, work or assemble in it) that is < 40 m <sup>2</sup> , if:	<ul style="list-style-type: none"> <li>– single storey, and</li> <li>– floor level &lt; 1.0 m above ground level, and</li> <li>– not closer than 1.0 m to any legal boundary or existing building, and</li> <li>– not required to be licensed in terms of the Hazardous Substances and New Organisms Act 1996, and</li> <li>– built by a licensed building practitioner</li> </ul>	<ul style="list-style-type: none"> <li>– All work is subject to planning rules and controls</li> </ul>
D	Construction of a detached non-habitable building (ie, people do not live, work or assemble in it) that is < 100 m <sup>2</sup> , if:	<ul style="list-style-type: none"> <li>– single storey, and</li> <li>– floor level &lt; 1.0 m above ground level, and</li> <li>– not closer than 1.0 m to any legal boundary or existing building, and</li> <li>– not required to be licensed in terms of the Hazardous Substances and New Organisms Act 1996, and</li> <li>– designed by a design-licensed building practitioner and built by a licensed building practitioner</li> </ul>	<ul style="list-style-type: none"> <li>– All work is subject to planning rules and controls</li> <li>– What is the likelihood of a high fuel load and fire occurring in such a building that would cause damage to neighbouring property? Would a building consent mitigate this problem? Limit to fire hazard category 1?</li> <li>– Is 100 m<sup>2</sup> an appropriate size limit?</li> </ul>

<sup>15</sup>A guide to the current exemptions in Schedule 1 is available to view at [www.dbh.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/guide-to-exemptions.pdf](http://www.dbh.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/guide-to-exemptions.pdf)

ID	PROPOSAL	LIMITATIONS	NOTES
E	Replacement of piles in an existing building, if:	<ul style="list-style-type: none"> <li>– work done by a licensed building practitioner, and</li> <li>– single storey building, and</li> <li>– floor &lt; 1.5 m above the ground</li> </ul>	<ul style="list-style-type: none"> <li>– Would not be limited to housing (for example, would include churches, shops, halls, schools)</li> <li>– The replacement of a few piles is already covered by the existing exemption (a), but the complete or substantial replacement is not exempt</li> </ul>
F	Replacement of a water heater, if:	<ul style="list-style-type: none"> <li>– work is done by a craftsman plumber registered with the Plumbers, Gasfitters and Drainlayers Board, and</li> <li>– gasfitting and prescribed electrical work is done in accordance with the Plumbers, Gasfitters, and Drainlayers Act and the Electricity Act respectively, and</li> <li>– the replacement water heater has a controlled heat source (gas or electricity) or the replacement water heater is open vented if it includes a storage cylinder</li> </ul>	<ul style="list-style-type: none"> <li>– Existing exemption (a) only allows like-for-like replacement in the same position</li> <li>– Existing exemption (ad) allows plumbing to be moved within a room</li> <li>– Proposal would allow replacement of a water heater with different type of heater (for example, instant gas for electric storage)</li> <li>– Would allow replacement of a water heater in a different position (for example, outdoor integral heat pump for indoor gas storage)</li> <li>– Would allow replacement of an open or valve-vented water heater with an open or valve-vented water heater (mains pressure cylinder for low pressure cylinder) if heat source is controlled</li> <li>– Proposal would not allow valve-vented, uncontrolled heat source (eg, wetback, solar, geothermal) water heaters to be exempt</li> </ul>
G	Replacing internal floor and wall finishes in dwellings, if:	<ul style="list-style-type: none"> <li>– fire performance is not reduced, and</li> <li>– the moisture resistance of the building element is not reduced in wet areas, and</li> <li>– skid resistance of floor finishes is not reduced</li> </ul>	
H	Replacement of cladding on a timber-framed roof, if:	<ul style="list-style-type: none"> <li>– work is done by a licensed building practitioner, and</li> <li>– structural stability of the roof is not reduced (that is, no substantial increase in weight of cladding), and</li> <li>– weathertightness is not reduced</li> </ul>	
I	Retrofitting insulation, if:	<ul style="list-style-type: none"> <li>– unlikely to cause moisture to accumulate in the building element, and</li> <li>– does not block ventilation or drainage cavities, and</li> <li>– not installed external to the existing building envelope</li> </ul>	<ul style="list-style-type: none"> <li>– Guidance needed to support good installation solutions/practices</li> </ul>

ID	PROPOSAL	LIMITATIONS	NOTES
J	Pipe and cable penetrations through walls, if:	<ul style="list-style-type: none"> <li>– fire, structural and weathertightness performance of the building is not reduced</li> </ul>	<ul style="list-style-type: none"> <li>– Guidance needed to support good installation solutions/practices</li> </ul>
K	Heat pump installation, if:	<ul style="list-style-type: none"> <li>– used for space heating, and</li> <li>– prescribed electrical work is done in accordance with the Electricity Act</li> </ul>	<ul style="list-style-type: none"> <li>– Replacement heat pump water heaters would be exempt from consent under proposal F above</li> </ul>
L	Construction, alteration or removal of an awning, <sup>16</sup> canopy or shade sail, if:	<ul style="list-style-type: none"> <li>– on the ground or first storey level, and</li> <li>– area is &lt; 20 m<sup>2</sup>, and</li> <li>– attached to, or used in connection with, a residential building, and</li> <li>– not closer than 1.0 m to any legal boundary</li> </ul>	<ul style="list-style-type: none"> <li>– Existing exemption (ja) allies to all types of building but is limited to less than 15 m<sup>2</sup> in size</li> <li>– All work is subject to planning rules and controls</li> <li>– All work is subject to any local bylaw restrictions</li> <li>– Should the exemption be limited in relation to wind (for example, not in high wind zones)?</li> </ul>
M	Installation or removal of signs, if:	<ul style="list-style-type: none"> <li>– designed by chartered professional engineer or design-licensed building practitioner</li> </ul>	<ul style="list-style-type: none"> <li>– All work is subject to planning rules and controls</li> </ul>
N	Installation or removal of signs, if:	<ul style="list-style-type: none"> <li>– area &lt; 6 m<sup>2</sup>, and</li> <li>– &lt; 3 m above the ground</li> </ul>	<ul style="list-style-type: none"> <li>– All work is subject to planning rules and controls</li> </ul>
O	Plinth, platform or other base with a visible height not exceeding 1 metre and erected for the purpose of supporting any mechanical plant, tank, equipment, machinery or other components (other than a building), if:	<ul style="list-style-type: none"> <li>– designed by design-licensed building practitioner</li> </ul>	
P	Domestic and commercial (non NUO) wind turbines and frost fans, if:	<ul style="list-style-type: none"> <li>– not attached to a building, and</li> <li>– designed by a chartered professional engineer</li> </ul>	<ul style="list-style-type: none"> <li>– All work is subject to planning rules and controls</li> </ul>
Q	Decks and boardwalks, if:	<ul style="list-style-type: none"> <li>– designed by design-licensed building practitioner and construction is supervised by licensed building practitioner</li> </ul>	<ul style="list-style-type: none"> <li>– Existing exemption (g) applies when platform is less than 1.0 m above ground</li> </ul>
R	Decks and boardwalks, if:	<ul style="list-style-type: none"> <li>– complies with NZS 3604, and</li> <li>– construction is supervised by licensed building practitioner</li> </ul>	<ul style="list-style-type: none"> <li>– Existing exemption applies when platform is less than 1.0 m above ground</li> </ul>
S	Height restriction gantry (such as vehicle height warning in car park)		

<sup>16</sup>An awning is defined as ‘a sheet of canvas, metal or glass fixed on a frame and used to shelter a window or doorway’ in Schedule 1 guidance issued by the Department of Building and Housing (see [www.dbh.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/guide-to-exemptions.pdf](http://www.dbh.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/guide-to-exemptions.pdf))

**TABLE B: FURTHER POTENTIAL EXEMPTIONS FOR DISCUSSION**

Table B lists ideas for possible exemptions. These ideas are not included in the Table A proposals as they are considered to be higher risk – that is, the consequences of failure are potentially greater, or the likelihood that failures could occur is greater.

Note: The ideas for exemptions in column 1 could be subject to the limitations in column 2 and should be considered in the light of the notes in column 3. When commenting on specific proposals, please refer to the identification letter or number in the ID column.

ID	IDEA FOR EXEMPTION	POSSIBLE LIMITATIONS	NOTES
1	Construction of a detached non-habitable building (people do not live, work or assemble in it) that is < 100 m <sup>2</sup> and in a rural zone, if:	<ul style="list-style-type: none"> <li>– single storey, and</li> <li>– floor level &lt; 1.0 m above ground level, and</li> <li>– not closer than 1.0 m to any legal boundary or existing building, and</li> <li>– not required to be licensed in terms of the Hazardous Substances and New Organisms Act 1996, and</li> <li>– designed by a design-licensed building practitioner</li> </ul>	<ul style="list-style-type: none"> <li>– This differs from proposal D above by allowing anyone to construct a non-habitable farm building</li> <li>– All work is subject to planning rules and controls</li> <li>– What is the likelihood of a high fuel load and fire occurring in such a building that would cause damage to neighbouring property? Would a building consent mitigate this problem? Limit to fire hazard category 1? Is 100 m<sup>2</sup> an appropriate size limit?</li> </ul>
2	Construction of a detached non-habitable building (people do not live, work or assemble in it) in a rural zone, if:	<ul style="list-style-type: none"> <li>– single storey, and</li> <li>– floor level &lt; 1.0 m above ground level, and</li> <li>– not closer than 1.0 m to any legal boundary or existing building, and</li> <li>– not required to be licensed in terms of the Hazardous Substances and New Organisms Act 1996, and</li> <li>– designed by a design-licensed building practitioner and built by a licensed building practitioner</li> </ul>	<ul style="list-style-type: none"> <li>– Differs from the above idea by removing the size limitation</li> <li>– All work is subject to planning rules and controls</li> <li>– Limit to fire hazard category 1?</li> </ul>
3	Additions to existing sanitary plumbing, if:	<ul style="list-style-type: none"> <li>– work is done by a craftsman plumber</li> </ul>	<ul style="list-style-type: none"> <li>– Existing exemption (ad) is intended to only allow existing plumbing to be moved; it does not allow another toilet or shower to be installed</li> <li>– The intent is to allow an ensuite, a water heater or another toilet to be added to an existing building</li> <li>– What limits should be placed on the type of building or amount of additions that can be exempted?</li> <li>– Is a public record of such work needed to manage loads on water supply and/or sewage systems?</li> </ul>
4	Construction of playground equipment, if:	<ul style="list-style-type: none"> <li>– designed, constructed and installed in accordance with NZS 5828: 2004</li> </ul>	<ul style="list-style-type: none"> <li>– What is a suitable definition for 'playground equipment'?</li> </ul>
5	Construction of playground equipment on private residential properties		<ul style="list-style-type: none"> <li>– What is a suitable definition for 'playground equipment'?</li> </ul>

ID	IDEA FOR EXEMPTION	POSSIBLE LIMITATIONS	NOTES
6	Installation of domestic free-standing solid fuel fire appliances, if:	<ul style="list-style-type: none"> <li>– do not have wetbacks</li> <li>– installed by a craftsman plumber</li> </ul>	<ul style="list-style-type: none"> <li>– There are high consequences of failure if faulty installation causes a fire</li> <li>– Which tradespeople would have the necessary competence to install solid fuel burners without building consent authority checks?</li> </ul>
7	Tents and marquees, if:	<ul style="list-style-type: none"> <li>– subject to appropriate size limits</li> </ul>	<ul style="list-style-type: none"> <li>– Existing exemptions for 50 m<sup>2</sup> marquees open to the public and 100 m<sup>2</sup> marquees for private use</li> <li>– What are the consequences of increasing the size of public marquees to the same size as private marquees?</li> <li>– Should the number of fire exits be used to limit the exemption rather than size?</li> </ul>
8	Temporary structures that are used/ re-erected repeatedly for public/ private events (such as fair ground equipment), if:	<ul style="list-style-type: none"> <li>– subject to council inspection before occupation/use</li> </ul>	<ul style="list-style-type: none"> <li>– Consequences are potentially high if structure fails or outbreak of fire</li> <li>– What types of temporary structure should not be exempt?</li> </ul>
9	Outdoor concert stages, if:	<ul style="list-style-type: none"> <li>– designed and supervised by a chartered professional engineer, and</li> <li>– erected by licensed building practitioners</li> </ul>	<ul style="list-style-type: none"> <li>– Should building consent authorities be notified?</li> <li>– Should building consent authorities inspect prior to occupation?</li> </ul>
10	Stall or shed of lightweight material within any premises used for the purpose of holding a trade fair, fun fair or any exhibition		

# Feedback

Please have your say. You can give us feedback online at [www.dbh.govt.nz/current-consultations](http://www.dbh.govt.nz/current-consultations), or cut out and use this form, or write to us separately. If you do not use this form, please make sure it's clear which part of the document you are commenting on. To fax this form, put Building Act Review in the subject line and fax to (04) 494 0290.

Post or courier this form to:

Building Act Review Team  
Department of Building and Housing  
Level 6, 86 Customhouse Quay  
PO Box 10-729  
Wellington 6143

## PART 1.1: CLARIFYING THE PURPOSE AND PRINCIPLES OF THE BUILDING ACT

- |    |  |
|----|--|
| Q1 | Does the reference to sustainable development in the purpose statement (Building Act 2004 section 3(d)) provide clear and appropriate guidance to those administering the Act? If not, why not?  |
| Q2 | Should suitability for purpose be referred to in the purpose statement? If so, how should this be worded?  |
| Q3 | Should other changes be made to the purpose statement? If so, what are they?   |
| Q4 | Do you agree that all of the 16 existing principles (Building Act 2004 section 4) are necessary to guide those administering the Act? If not, which principles do you consider fundamental?  |
| Q5 | Should other matters be referred to in the principles? If so, what are they?   |
| Q6 | Do you agree that the purpose and principles should apply to building consent authorities in their administration of all, not just some, of their building control functions? If not, in which circumstances should they be able to make decisions without regard to the purpose and principles? |

**PART 1.1: CLARIFYING THE PURPOSE AND PRINCIPLES OF THE BUILDING ACT (CONTINUED)**

Q7 Do you have any other comments on the Building Act's purpose and principles?

**PART 1.2: CLEARER REQUIREMENTS IN, AND IMPROVED ACCESS TO, THE BUILDING CODE AND SUPPORTING INFORMATION**

Q8 Do you agree that some Code performance requirements are ambiguous or unclear?

Q9 If so, what is the impact of this for you?

Q10 Which Code performance requirements do you think need to be clarified and which would you make top priority for clarification? (Note that work is under way on requirements related to visibility in escape routes and fire safety.)

Q11 Do you believe that Code performance requirements are well known to those who need to know them? If not, how could they be made better known?

Q12 Do you have any problems accessing Code performance requirements and supporting information (including Compliance Documents and Standards)? If so, what are the problems and what could be done about them?

Q13 Do you agree that the label 'Compliance Document' creates an expectation that it must be used? If so, can you suggest a better label for this type of document?

**PART 1.2: CLEARER REQUIREMENTS IN, AND IMPROVED ACCESS TO, THE BUILDING CODE AND SUPPORTING INFORMATION (CONTINUED)**

Q14 Do you have any other comments on clarifying Code requirements or improving access to the Code requirements and supporting information?

**PART 2.1: LOWEST RISK BUILDING WORK EXEMPT FROM CONSENT REQUIREMENTS**

Q15 Do you agree the items or areas of work listed in Attachment 1 are low risk?

Q16 Are there any items or areas of work listed in Attachment 1 that should not be exempt from building consent requirements? If so, which ones (please use identification number/letter when commenting) and why should they be subject to building consent requirements? Are there any limitations or conditions that would address your concerns?

Q17 What other items or areas of work do you think should be added to Schedule 1 of the Act? Why are these low risk?

Q18 Is there any essential or useful information that is currently gathered through building consent applications that would be unavailable under this proposal?

Q19 Do you have any other comments on exemptions for lowest-risk building work?

## PART 2.2: A MORE STREAMLINED PROCESS FOR LOW-RISK RESIDENTIAL BUILDING WORK

Q20 Do you agree that building consent authority oversight and control of a building or building work should be in proportion to the risk and consequences of failure? If not, why not?

Q21 Do you agree that licensed building practitioners should be able to be relied on to design and construct simple buildings that meet Building Code requirements without the level of third-party oversight currently applied? If not, why not?

Q22 Do you agree that the proposed streamlined process is adequate to ensure simple buildings are Code compliant? If not, why not?

Q23 Do you have any comment on the indicative steps in Table 1, including the notes to the table?

Q24 Are there any other steps that should be part of a streamlined process for simple, low-risk residential building work?

Q25 Do you agree that the foundations, framing and insulation, plumbing, drainage, claddings and flashings are critical elements that would still need to be inspected by building consent authorities in a streamlined process? If not, what elements do you think would still need to be inspected?

Q26 Do you agree with the criteria for buildings to be covered by the proposed streamlined process for simple, low-risk residential building work? If not, which criteria would you change and why?

Q27 Should the proposed streamlined process apply to buildings covered by a MultiProof approval?

**PART 2.2: A MORE STREAMLINED PROCESS FOR LOW-RISK RESIDENTIAL BUILDING WORK (CONTINUED)**

Q28 Should the proposed streamlined process apply to any other low-risk buildings or building work? If so, how would you define which buildings or building work?

Q29 Does the proposed process align appropriately with the rules on restricted building work? If not, why not?

Q30 Do you have any other comments on the proposed streamlined process for simple, low-risk residential building work?

**PART 2.3: A MORE STREAMLINED PROCESS FOR COMPLEX COMMERCIAL BUILDING WORK**

Q31 Do you agree that people commissioning complex commercial buildings and building work are generally better informed and better equipped to hold contractors to account than consumers of residential building work? If not, why not?

Q32 Do you agree that chartered professional engineers, registered architects and other licensed or certified professionals should be able to be relied on to design and supervise complex building projects that comply with the Building Code, without the current level of building consent authority review? If not, why not?

Q33 Do you agree that the proposed streamlined process for complex building work is adequate to ensure buildings are Code compliant? If not, why not?

Q34 Do you have any comment on the indicative steps in Table 2, including the notes to the table?

Q35 Are there other building projects with the necessary quality assurance systems in place that could also be subject to the proposed streamlined process for complex commercial buildings?

**PART 2.3: A MORE STREAMLINED PROCESS FOR COMPLEX COMMERCIAL BUILDING WORK (CONTINUED)**

Q36 Do you have any other comments on the proposed streamlined process for complex commercial building work?

**PART 2.4: PUBLIC INFRASTRUCTURE WORKS**

Q37 Do you agree that the building control system provides an appropriate means of ensuring the safety and quality of all public infrastructure works? If not, why not?

Q38 Are there some categories of public infrastructure work where other arrangements may more efficiently and effectively ensure safety and quality? If so, what types of works and what sort of arrangements?

**PART 2.5: STREAMLINED PROCESS FOR REVIEWING FIRE SAFETY OF BUILDING PLANS**

Q39 At what point in building design and construction is Fire Service Commission involvement most useful? Please explain why.

Q40 What weight should be given to Fire Service Commission's advice – for example, should it be treated as consultative input, should following the advice be mandatory, or should the weight given depend on the circumstances? Please explain why.

Q41 Do you have any other comments on fire safety review of building plans?

**PART 2.6: IMPROVED PROCESS FOR BUILDING WARRANTS OF FITNESS**

Q42 Do you agree that the administration of the building warrant of fitness and compliance schedule requirements is more complex or costly than necessary? If so, what issues does this cause for you?

Q43 Do you agree that there is a lack of clarity about building warrants of fitness and compliance schedules? If so, what is unclear and what issues does this cause for you?

Q44 What changes should be made to the requirements to simplify administration while still ensuring critical systems are maintained and inspected? You may want to comment on the description of specified systems in the regulation, the definition of 'independent qualified person', or any other issues.

Q45 Do you have any other comments on the building warrant of fitness and compliance schedule requirements?

**PART 2.7: MORE EFFICIENT BUILDING CONTROL ADMINISTRATION**

Q46 Do you agree that the number of building consent authorities and the variation in size is causing issues as outlined in Part 2.7? If not, why not?

Q47 Are there any other issues or problems resulting from the current administrative arrangements that have not been identified in this document?

Q48 Do you see benefits in greater cooperation between building consent authorities, or clustering or consolidation of building control functions? What would be the main benefits?

Q49 Do you see costs and risks associated with greater cooperation between building consent authorities, or clustering or consolidation of building control functions? What would be the main costs and risks?

**PART 2.7: MORE EFFICIENT BUILDING CONTROL ADMINISTRATION (CONTINUED)**

Q50 What, if any, role should the private sector have in the administration of building controls?

Q51 Which elements of building control require local input and why?

Q52 Which elements of building control would most benefit from a national approach?

Q53 Do you have any other comments on options for more efficient building control administration?

**PART 3.1: WELL-INFORMED CONSUMERS**

Q54 Do you agree the Government should do more to inform consumers about their responsibilities and rights in relation to residential building projects? If so, why?

Q55 What further information do consumers need?

Q56 Should the Government publish information on acceptable standards of workmanship for residential building work?

Q57 Are there other steps that would help consumers commission residential building work knowledgeably and with confidence? If so, what are they?

**PART 3.1: WELL-INFORMED CONSUMERS (CONTINUED)**

Q58 Do you have any other comments about consumer knowledge and behaviour in relation to residential building work?

**PART 3.2: IMPROVED CONTRACTING PRACTICES**

Q59 Do you agree that contracting arrangements between consumers and principal building contractors for residential building projects need to be strengthened? If so, why?

Q60 Do you agree that all contracts between consumers and principal building contractors for residential building work should have to be in writing and signed by both/all parties? If not, in what circumstances, or for what type of building projects, should written contracts not be required?

Q61 Do you have any comments on the proposed minimum terms for contracts as set out in Part 3.2? Please indicate what, if any, information you would like to see added to or removed from the proposed list.

Q62 Do you have any comments on the proposed required disclosures for residential building projects? Please indicate whether there is any information you would like to see added to or removed from the proposed list of required disclosures.

Q63 How should information required to be disclosed be provided?

Q64 Are there other steps the Government could take to improve contracting practices for residential building projects? If so, please indicate what additional measures should be taken.

Q65 Do you have any other comments about contracting practices for residential building work?

### PART 3.3: DEVELOP MORE EFFECTIVE WARRANTIES

Q66 Do you agree there should be a mandatory warranty for residential building work? Please give reasons.

Q67 Which of the options for warranty listed in Part 3.3 do you prefer? Which do you disagree with? Please comment on:

- length
- cap
- coverage
- loss of deposit and non-completion
- circumstances where the warranty service obligation could be voided
- projects covered.

Q68 Should the building owner be able to renounce the offer of a warranty by a building contractor by signing a notice revoking the warranty?

Q69 Should developers be required by law to provide third-party warranty cover?

Q70 Should owner-builders, or those who renounce the offer of a warranty, be obliged to:

- disclose on sale of the building that no warranty is offered?
- purchase a third-party warranty on sale of the building?

Q71 Should building contractors upon retiring or winding up their company be required to transfer warranty service obligations to another party:

- with prior notice to affected building owners?
- with prior consent of building owners?

Q72 Do you have any other comments on warranties?

**PART 3.4: SURETY AS A FINANCIAL BACKSTOP FOR WARRANTIES**

Q73 Do you agree that building contractors should have to disclose whether they have surety backing? If not, why not?

Q74 Do you agree that building contractors should be obliged by law to have surety backing? If not, why not?

Q75 What do you see as the benefits and/or costs of mandatory surety? What is your view on when the benefits would outweigh the costs?

Q76 Do you agree with the proposed list of required disclosures about surety? Is there any information that should be added or removed?

Q77 If surety were to be mandatory, should surety providers be restricted in their ability to pursue other negligent parties such as building consent authorities?

Q78 Do you have any other comments on surety?

**PART 3.5: BETTER ACCESS TO DISPUTE RESOLUTION**

Q79 Do you agree that consumers currently face barriers or problems in resolving disputes with building contractors?  
If so, why?

Q80 Do you agree that consumers need more information about options for resolving disputes with building contractors?  
If so, how could this be provided?

Q81 Do you think there are adequate services available to resolve disputes between consumers and building contractors?  
If not, what other dispute resolution services do you suggest?

Q82 What would be the characteristics of an appropriate dispute resolution service?

Q83 Do you have any other comments about disputes between homeowners and building contractors?

**PART 4: IMPACTS OF IMPROVING BUILDING CONTROL**

Q84 Is it realistic to assume residential consumers, building professionals and tradespeople, and building consent authorities would behave differently if this package of proposals was introduced? Please comment.

Q85 Have the main benefits of the package of proposals been identified above? If not, what is missing?

Q86 Which benefits do you expect to be most significant and why?

Q87 Have the main costs of the package of proposals been identified above and, if not, what is missing?

Q88 Which costs do you expect to be most significant and why?

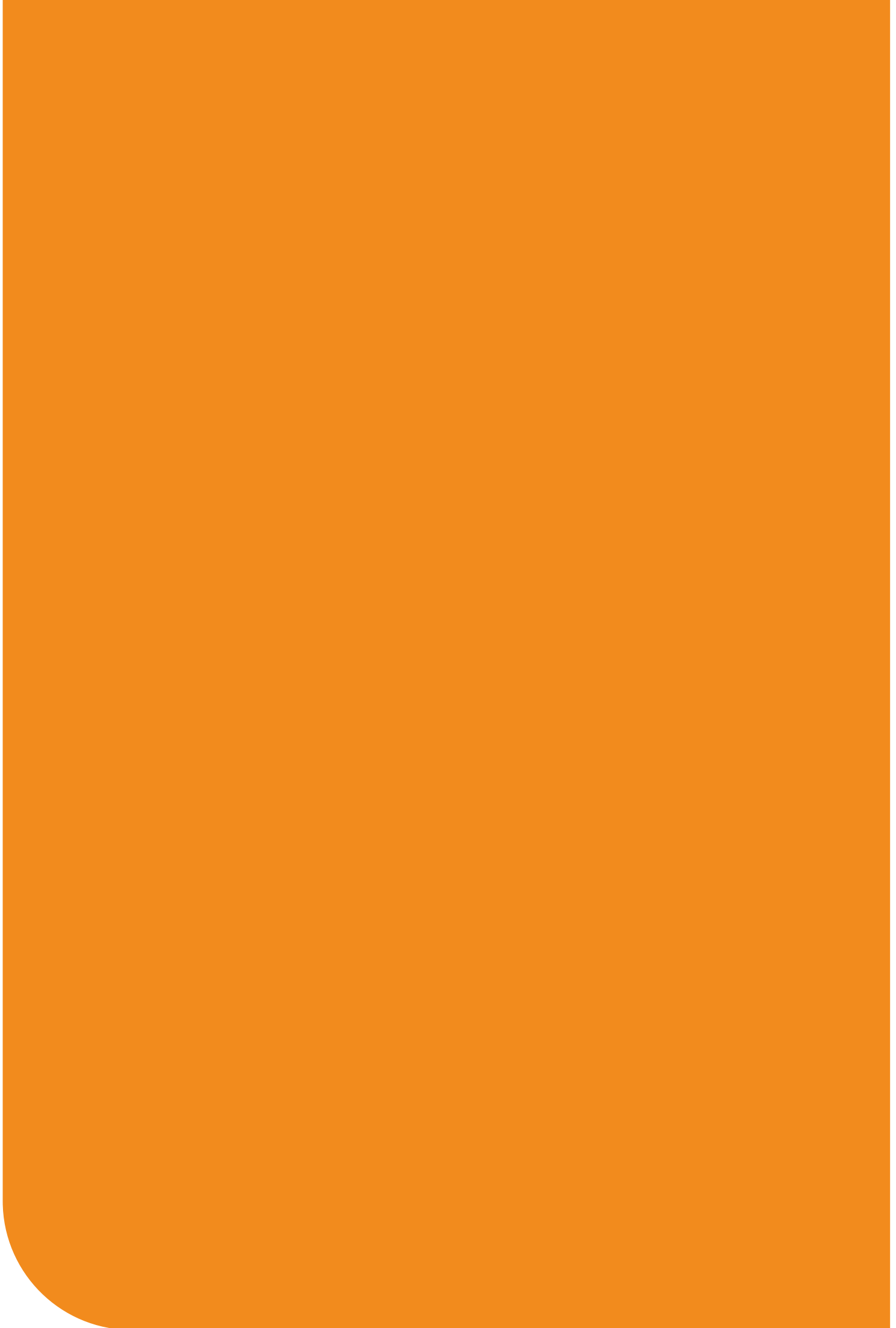
Q89 What are the main risks associated with the package of proposals?

# Glossary

TERM	DEFINITION
Acceptable Solution	A prescriptive design solution comprising step-by-step instructions which, if followed, is deemed to comply with the Building Code. Acceptable Solutions and Verification Methods are contained in the Department of Building and Housing's Compliance Documents, and often quote other documents such as New Zealand Standards. Designers and builders are not obliged to use Acceptable Solutions, and may put forward their own alternative solution proposal.
Alternative solution	A design solution that differs totally or partially from Acceptable Solutions or Verification Methods in the Compliance Documents, yet complies with the performance requirements of the Building Code. These are 'standalone' solutions put forward and substantiated by the building consent applicant and considered and approved on their individual merits by a building consent authority.
Building	Any temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machines or chattels).
Building Code	The First Schedule to the Building Regulations 1992 that sets national, mandatory standards for building work. All building work in New Zealand must comply with the Building Code. The Code is performance-based and specifies how a building and its components must perform, as opposed to how the building must be designed and constructed.
Building consent	Permission to do building work. Formal recognition that the work will comply with the Building Code if it's done as described in the plans and specifications that accompany the building consent application. Granted by a building consent authority.
Building consent authority (BCA)	An organisation that is authorised to issue building consents, undertake inspections during construction and issue code compliance certificates, notices to fix and compliance schedules. A BCA is a territorial authority, regional authority or private body that has been registered by the Department of Building and Housing after having been assessed and accredited by the Building Consent Accreditation Body. The BCA must have demonstrated that the necessary processes and systems are in place to meet the accreditation regulations/standards.
Building controls	Regulation of the construction and use of buildings with the primary objective of safeguarding the health and safety of occupants. In New Zealand, these controls are largely set out in a two-part framework: the Building Act 2004 setting out the law on the construction, alteration, demolition and maintenance of buildings, and the Building Regulations containing the New Zealand Building Code.
Building official	Person employed by a building consent authority who is responsible for carrying out building control functions. May also be known by other titles, such as building officer, consent or processing officer, field inspector.
Building Practitioners Board	An independent board established by the Building Act 2004 that is responsible for approving rules, dealing with complaints and hearing appeals relating to licensed building practitioners.
Building warrant of fitness	A statement signed by the building owner (or manager) stating that the requirements of the building's compliance schedule have been fully met in the previous 12 months.
Building work	Work for, or in connection with, the construction, alteration, demolition or removal of a building, including sitework.
Category 1	A Category 1 building is a detached or semi-detached residential dwelling of conventional timber-frame or masonry construction, and low- or medium-risk envelope design. Category descriptions are due to be amended to make them simpler.
Category 2	A Category 2 building is a building of moderate complexity, either commercial or less-conventional residential, with the highest occupied floor less than 10 metres above the exit (typically up to 3 floors) and limited occupant numbers. Category descriptions are due to be amended to make them simpler.
Category 3	A Category 3 building is a building considered to be of high complexity because of: the risk to occupants because of what the building is used for or the high number of occupants or the community importance or Historic Places Act rating. Category descriptions are due to be amended to make them simpler.

TERM	DEFINITION
Compliance Documents	Documents published by the Department of Building and Housing to help people comply with the Building Code that provide one way of establishing compliance with a particular clause of the Building Code. If followed correctly, Compliance Documents must in law be accepted by building consent authorities as demonstrating Code compliance.
Compliance schedule	A schedule issued by the building consent authority listing the specified systems within a building (eg, sprinkler systems, lifts, smoke detectors). These systems ensure a building is safe and healthy for members of the public to enter, occupy or use. The compliance schedule for a building must identify which specified systems are present, the performance standards for those systems, and how those systems will be monitored and maintained, as well as inspections and reporting carried out to ensure they will continue to function.
Consumer	A homeowner or other person purchasing building work or commissioning a new building.
Designer	A broad term to describe people who design buildings. It may include engineers, architects, architectural designers, design technicians and draughtspeople. A designer is usually (but not always) qualified and trained to design and document building design. They may also be capable of coordinating and administering all aspects of building design and construction.
Determination	A binding decision made by the Department of Building and Housing under the Building Act 2004. It provides a way of solving disputes or questions about the rules that apply to buildings, how buildings are used, building accessibility, health and safety.
Developer	An organisation or individual who builds, or arranges the building of, a commercial or residential property to sell or rent, for the purpose of carrying on a business. Includes volume builders.
DIY ('Do it yourself')	A term applied to work undertaken by building owners (generally residential) on their building or house.
Duty of care	The legal obligation to adhere to a standard of reasonable care when performing any act that could foreseeably cause harm to others.
Exempt work	Low-risk, minor work for which a building consent is not required. Exempt work is defined in Schedule 1 of the Building Act. Includes some repair and maintenance where like is replaced with like.  Exempt building work must still comply with the Building Code.
Household unit	Any building or group of buildings, or part of any building or group of buildings, used or intended to be used solely or principally for residential purposes, and occupied or intended to be occupied exclusively as the home or residence of not more than one household. This does not include a hostel or boarding house or other specialised accommodation.
Independent qualified person (IQP)	A person (or organisation) approved by a territorial authority as qualified to inspect, maintain and report on certain specified systems. 'Independent' means that the person has no financial interest in the building.
Joint and several liability	Joint and several liability means a plaintiff (claimant) may recover all the damages (financial compensation) from any of the defendants, regardless of their individual share of the liability.
Licensing	Occupational licensing aims to ensure that people in the building industry who are responsible for the work done are competent and accountable, so that homes and buildings are designed and built right the first time.
Licensed Building Practitioner (LBP) Scheme	A licensing system for the building industry was introduced by the Building Act 2004. It formally recognises the skills and experience of building practitioners, and the Government has agreed that from March 2012 only licensed building practitioners will be able to undertake restricted building work.
Licensed building practitioner (LBP)	A building professional or tradesperson who is licensed under the Licensed Building Practitioners Scheme. This includes carpenters, roofers, bricklayers, blocklayers, plasterers, site supervisors and designers. Registered architects, engineers, plumbers and electricians are also considered to be licensed building practitioners.

TERM	DEFINITION
Owner-builder	A person who carries out building work on a property that they own and live in, or intend to live in.
Principal building contractor	The company or individual with whom a consumer enters a residential building work contract. The principal building contractor could be a licensed building practitioner. For example, a builder who is not licensed, a volume builder or a developer.
Proportionate liability	A plaintiff (claimant) may recover from a defendant only a proportion of the total damages (financial compensation) that, in the court's assessment, that defendant's behaviour has caused.
Quality assurance system	A documented system describing the organisational structure, responsibilities, procedures, processes and resources for implementing quality management principles to achieve management goals and objectives (including statutory) within a business. This includes all activities that contribute to quality, directly or indirectly.
Residential building work contract	A contract to carry out building work on a household unit, and/or to manage residential building work. It does not include contract relationships between the main contractor and subcontractors or other parties.
Restricted building work	Building work that is defined in regulations as 'restricted'. Necessary preconditions are that it requires a building consent and is critical to the integrity of the building (for example its envelope and structure) (section 7 of the Building Act 2004). Restricted building work will have to be carried out or supervised by a licensed building practitioner from March 2012.
Specified systems	A system or feature in a building that contributes to the proper functioning of the building: for example, an automatic sprinkler system. It includes a cable car servicing a building (see full definition in section 7 of the Building Act 2004). The specified systems that must be inspected for building warrant of fitness purposes are listed in the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.
Standard	A New Zealand Standard, Australia/New Zealand Standard or other international standard published by a standards organisation such as Standards New Zealand or Standards Australia.
Standards New Zealand	The trading arm of the Standards Council, a Crown entity operating under the Standards Act 1988.
Subcontractor	A tradesperson hired to do specific work such as roofing, plumbing, wiring or painting. The subcontractor takes instructions from, is paid by, and is responsible to the main contractor
Surety	A surety is a person or organisation who agrees to be responsible for the debt or obligation of another. In this context, a surety is a person or organisation who agrees to be responsible for the obligation of the building contractor to perform warranty service.
Territorial authority	City or district council (as named in Schedule 2, Part 2 of the Local Government Act 2002) responsible for community wellbeing and development, environmental health and safety (including building control, civil defence, and environmental health matters), infrastructure (roading and transport, sewerage, water/stormwater), recreation and culture, and resource management including land use planning and development control.
Volume builder	A company or individual who builds multiple homes using the same, or similar, designs on sites across the country.
Warranty	A guarantee or written assurance that a product or service will be provided or will meet certain specifications, and often provides a specific remedy if the product or service fails to meet the warranty. In this context, a warranty is a guarantee from the building contractor about the quality of the building work and states the conditions under which no-cost repairs will be made.



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