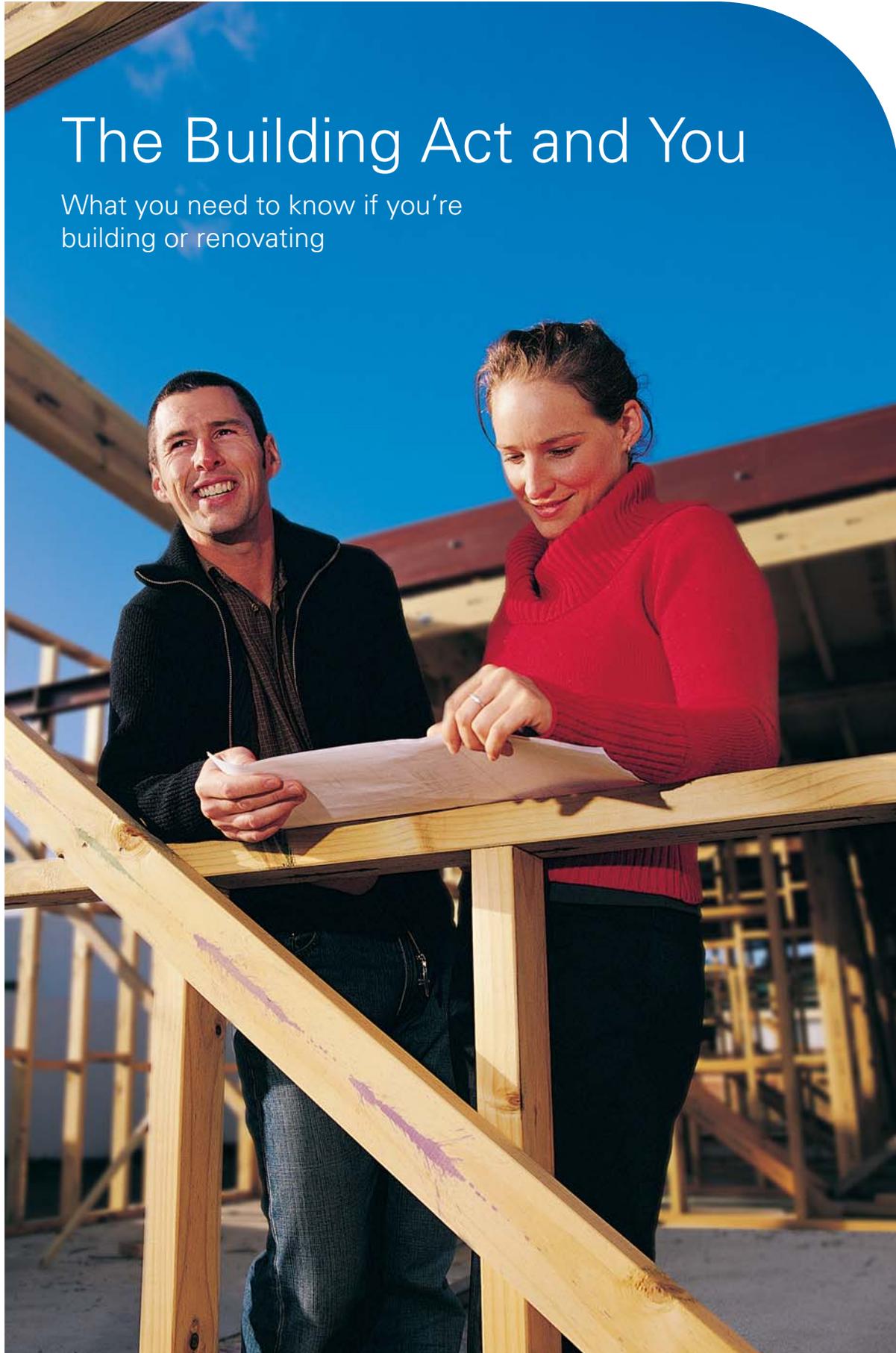




Department of
Building and Housing
Te Tari Kaupapa Whare

The Building Act and You

What you need to know if you're
building or renovating



A GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES UNDER THE BUILDING ACT 2004

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About this guide

If you are building or renovating it is likely you will be affected by the Building Act. Building or renovating is expensive and often disruptive, so you will probably rely on the advice of a professional to get the job done properly.

As the owner, it is important you make sure work on your property is done in accordance with the law and to a good standard – for your protection and to protect people who buy your property in the future.

This guide gives you essential information about your rights and responsibilities as you build or renovate. It tells you what you need to do at each step to ensure your building project is done legally, which will help avoid potentially costly mistakes or delays.

It also explains how the law will protect you if things don't go to plan.

Most technical terms are explained as they appear, but this guide also contains a glossary for easy reference.

More information is available at www.consumerbuild.org.nz. ConsumerBuild is an easy-to-use website with a wide range of clear, independent information. It was developed as a partnership between the Department of Building and Housing and Consumers' Institute. It will help guide you through the building process and provide the information you need to make informed decisions about your project.

CONSUMER build

Building basics

The Building Act 2004

The Act affects the construction, alteration, demolition and maintenance of new and existing buildings throughout New Zealand.

It sets standards and procedures for people involved in building work to ensure buildings are built right first time. It covers how work can be done, who can do it, and when it needs to be inspected.

Parts of the Act first came into effect on 30 November 2004, and the rules around building consents and inspections explained in this guide came into force on 31 March 2005.

If you have been involved in a building project before this, you will find there have been some changes to strengthen the system and ensure building work is right first time.

If your building project was consented before 31 March 2005, most of the provisions in this guide apply to you. The only exception is around issuing your code compliance certificate (CCC), which will follow a slightly different process. From 31 March 2005 CCC inspections for projects consented before that date will be considered against the Building Code in place at the time the consent was issued.

The Building Act covers building work, but there are other laws that could affect your project. These include council bylaws, the Resource Management Act, and the laws specifying that certain plumbing, gas and electrical work must be done by qualified professionals.

The Building Code

The Building Code is an important document.

It is a set of regulations that define the performance standards buildings must meet, for example how strong an earthquake they must be able to withstand, or how much natural light there must be in a bedroom.

The Building Code sets minimum standards. You may decide to exceed those standards, but you cannot do less than the Building Code requires.

To ensure your project goes smoothly, it is important the person who draws your project plans understands the Building Code requirements and how to meet them, and that the builder builds the building outlined in the approved plans.

Councils have powers to require that property owners fix work not complying with the Building Code.

Who's who?

Building consent authorities

Your day-to-day dealings about building matters are likely to be with your builder, architect or project manager. You or they, depending on how much involvement you have chosen to have, will also work with your building consent authority (BCA) on the project. Most city and district councils are BCAs.

BCAs issue building consents, undertake inspections during construction and issue code compliance certificates, certifying that the finished work complies with the Building Code. They also issue notices to fix and compliance schedules (see Glossary, page 13).

BCAs charge a fee for these services. The fee depends on the BCA and the amount of work involved, but is generally set for the recovery of reasonable costs. It will be as a proportion of the whole building project to provide assurance that the job has been done properly.

District and city councils

In addition to providing a BCA service (around the issuing of consents and inspections), councils have a range of other building-related responsibilities.

They keep records about all the properties in their area, issue project information memoranda and certificates of acceptance, and monitor compliance schedules and follow-up notices to fix – (see Glossary, page 13).

Councils also have powers to address breaches of the Building Act. They can issue infringement notices or, in very serious circumstances, organise for remedial work to be done.

Department of Building and Housing

The Department of Building and Housing manages the system that regulates building work and monitors its effectiveness.

This includes reviewing the Building Code and producing documents to show how to comply with it. The Department also monitors the performance of BCAs and district and city councils, and can investigate complaints.

If a dispute arises over compliance with the Building Code, or a decision made by a BCA (eg, about whether a building consent should be granted or not), either party can apply to the Department for a determination, which is a legally binding decision.

Know the basics before you get started.



Choosing your designer, builder and specialists

From 30 November 2009 any work which is critical to a building must be carried out or supervised by a licensed building practitioner.



Hiring good professionals to help you can be crucial to the whole building experience. When you ask a designer or builder to put in tenders for the job, you should consider price, examples of their work, qualifications, whether they're a member of a professional organisation, and what guarantees they offer. If you're still unsure, get an opinion from an independent person, for example a quantity surveyor or another builder.

From early 2007 you will be able to access a register of licensed building practitioners online.

This register will list all designers, builders and specialist tradespeople who have shown that their work meets national standards. Consumers will be able to make complaints to a Building Practitioners Board about licensed building practitioners if they carry out substandard work.

Not everyone will have to have a licence, but from 30 November 2009 any work which is critical to a building must be carried out or supervised by someone with the appropriate licence. This work will be called 'restricted work'.

Doing it yourself

Any building work that requires a building consent must be completed to the appropriate standards set by the Building Code. Some work, notably gas, plumbing and electrical work, must be done by a professional.

After 30 November 2009, DIY renovators will still be able to carry out work which falls outside the restricted work category. It is intended that they will also be able to do restricted work as long as it is supervised by a licensed building practitioner.

Essential planning

The same basic process applies whether you're thinking about building a new home, or undertaking renovations that require a building consent. How much planning is required will depend on the size of your project and how complicated it is.

The building process

PIM (project information memorandum)

You can find out about the site with a project information memorandum.



Building consent

You will then need to submit plans and specifications to show the construction of the building you are planning or renovating. You'll need this for your BCA to ensure your building work will meet the standards set by the New Zealand Building Code.



Inspections

As you build, there will be inspections at key stages to confirm that the work is done to the plans and specifications in the building consent.



CCC (code compliance certificate)

You must apply for a CCC to assess the building work against the consent once the work is complete (see over). A CCC provides assurance to you and to future owners of the property that the work has been done to appropriate standards.

Your planning checklist

YOUR PLANNING CHECKLIST

Scope the project

- Decide what you want and need (what's a must and what's a bonus?).
- Are there any special requirements associated with your site, such as a need for earthworks or heritage restrictions? (This information is available from your council).
- How involved do you want to be? (For example do you have the time and expertise to be a hands-on project manager?)

Organise your finances

- What is your total budget?
- Arrange finance if required.

The design

- Decide your design needs – do you want an architect, drafts person or designer/builder?
- Appoint designer and confirm contract.
- Brief the designer and ensure they understand the budget.
- Agree concept drawings.
- Optional: get a PIM.
- How will you use the space? What will it look like? Will there be enough light? Go through the design in great detail. Once your consent is issued it is costly and time-consuming if you change your mind. Variations from the consented plans may lead to problems getting the work signed-off.
- Confirm final plans.

Project management

- Decide who will manage the project (it could be your architect, designer, builder or a professional project manager. If you wish to manage it yourself be aware that it is likely to be a major responsibility).
- Confirm the project management contract, if project management is not covered in your design or building contracts.

Project manager arranges the builder and other tradespeople

- Decide what kind of building contract you want. Typically, there's labour only (the builder supplies the labour, the project manager supplies everything else), managed contract (the builder manages the project and the sub-trades such as plumbers and plasterers, but doesn't supply the materials) and full contract (the builder manages everything).
- Optional: get a quantity surveyor to confirm how much of each material is needed, based on your plans, and provide a cost estimate.
- Approach a shortlist of builders and ask for tenders and quotes, based on the project plans and/or the quantity surveyor's report. Make sure they can work within your timeframe.
- Choose a builder.
- Follow the same process to engage subcontractors if required.
- Get a written contract with your builder, including details of guarantees, payment schedules and completion dates. Because the Act requires that builders use new materials unless otherwise specified, your contract will also need to specify if any recycled materials are to be used.

YOUR PLANNING CHECKLIST CONTINUED

Review

- Review the plans and budget. If you need to alter your plans to reduce costs, do it now before you apply for your building consent. If you don't, and you want to make variations later, you will need to apply for the consent to be amended first and this will involve a fee and a time delay for your project.

Get building consent and any resource consents

- If you didn't get a PIM, confirm with your BCA what consents and permits will be needed.
- Ensure your building consent application has all the required documentation to show compliance with the Building Code, and pay the fee.
- Apply for a resource consent and any other permits, if required.

Construction begins

- Monitor progress.
- Pay bills as milestones are met.
- Organise inspections and ensure they are occurring as required.
- Typical inspections will include:
 - foundations
 - framing
 - insulation
 - plumbing and drainage
 - cladding and flashings.
- Collect energy work certificates for electrical and gas work as it is finished.
- Ensure the building is progressing in accordance with the plans and the consent is amended if changes are made.

Completion

- Ensure everything has been done as per the contracts and the plans.
- Ensure all fees to the BCA and/or council have been paid.
- Apply for a code compliance certificate from your BCA.
- Make final payment to your project manager and builder, if this is specified in your contract.

The building process

Do you need a building consent?

Basic building, such as laying a patio or installing kitchen cupboards, does not require a building consent. But many more complicated household projects do.

If you are considering building or plumbing work, you should talk to your BCA to be sure. Work that does not require a consent is set out by the Building Act 2004 (Schedule 1).

EXAMPLES OF WORK REQUIRING A BUILDING CONSENT

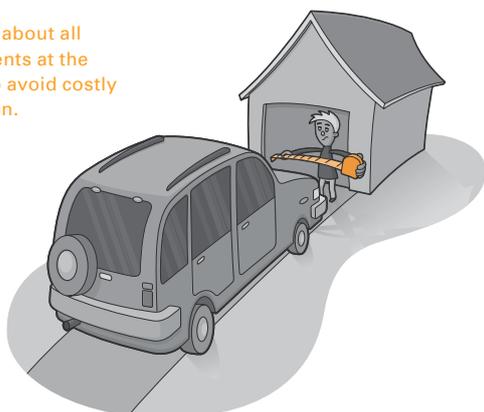
- Structural building – additions, alterations, re-piling, demolition.
- Plumbing and drainage (except the repair and maintenance of existing components).
- Relocating a building.
- Installing a wood burner or air-conditioning system.
- Retaining walls higher than 1.5 metres.
- Fences or walls higher than 2 metres, and all swimming pool fences.
- Swimming pools.
- Decks, platforms or bridges more than 1 metre above ground level.
- Sheds greater than 10 square metres in floor area.

EXAMPLES OF WORK THAT DOESN'T REQUIRE A BUILDING CONSENT

- A patio or deck at ground level.
- Garden trellis less than 2 metres high.
- Installing kitchen cupboards.
- A small garden pond.
- Maintenance of your house, for example replacing spouting or a piece of weatherboard.
- Building a small garden shed.

Some earthworks also require a building consent. Check with your BCA.

Think carefully about all your requirements at the design stage to avoid costly changes later on.



Find out about the site

If you are considering building you can ask your local district or city council for a **project information memorandum (PIM)**. A PIM is a report about a building proposal on a specific site.

PIMs are useful for clarifying, at an early stage, what will be involved in a project.

A PIM will tell you how your project will be affected by legislation other than the Building Act, for example if you will need a resource consent, or if your project is affected by any council bylaws. It will also tell you about any special features of the land such as erosion or the presence of hazardous materials, the details of any storm-water or wastewater systems relating to or near the site, and if you will need to pay a development contribution.

If you choose not to apply for a PIM separately, your application will be treated as an application for both a PIM and a consent.

To get a PIM you, or your representative, need to apply to your council. You will need the address and legal description of the property, and details about the kind of building you propose. A PIM will be issued within 20 working days and councils will charge a fee for this service.

Building consents – your founding document

No physical work can begin on your project until you have a **building consent** (and all other required authorisations such as a resource consent).

A BCA issues a building consent if your detailed plans show that the finished building would comply with the Building Code. The consent gives approval for you to carry out building work, in accordance with the plans and specifications you submitted in your consent application.

If you build without a building consent you may be liable for a fine and may have difficulty selling the building in the future or even getting insurance.

A building consent lapses if the building work does not start within 12 months, unless you make arrangements with your BCA. If the consent has lapsed and you want to do the work, you will have to re-apply for a consent.

IMPORTANT: Your building consent authorises you to build what is detailed in your plans. If you make changes to the plans – including changing the materials used – you will need to inform your BCA and have the consent amended.

Failure to do so will delay your project at inspection time and could mean you can't get a code compliance certificate. Because amending a consent involves time and money, it is worth making sure you get the design right before you apply for a consent.

From the date the consent is granted, you have 2 years to complete your building work, unless you agree otherwise with your BCA. At the end of the 2 years (or at the end of the period agreed with your BCA) the BCA must decide whether to grant or refuse to sign off the work (see section on Final sign-off on page 9).

Applying for a building consent

You, or a representative such as your builder or architect, apply for a building consent by filling in an application form and supplying necessary information.

The application form lists each section of the Building Code and asks you to show how your project meets the relevant requirements. The BCA will also ask you for construction drawings, specifications and other necessary information to support your application.

The amount of information required will depend on the complexity of your building project. As a minimum, you are likely to need to include a recent certificate of title and detailed plans showing the site, the foundations, drainage and bracing.

Fees for issuing a building consent vary, and there will be some government levies included. The Act specifies that applications be processed within 20 working days.

The process for amending a building consent is the same as the initial application.

Further information about how to demonstrate Building Code compliance in a building consent application is on page 12.

Inspections

Once you begin building, an official from your BCA will **inspect** your project regularly to ensure the work meets the appropriate standards.

The inspection requirements for your project will normally be specified in your building consent, but typically they will cover the foundations, framing and insulation, plumbing, drainage, cladding and flashings, and the finished building.

Without regular inspections there may not be enough information on record to issue a code compliance certificate at the end of the project for assurance that the work has been done to the appropriate standard. By the time you finish the project it is likely to be too late, for example the framing can no longer be checked without removing all the interior linings.

Builders and installers usually arrange inspections relevant to their work, but property owners are ultimately responsible. Usually at least one day's notice is required to arrange an inspection. You should check that your builder or installer is doing this.

If any of your building or plumbing work is not approved, you will be issued a notice to fix detailing what must be done and by when.

Generally, gas and electrical work is not inspected. Any work must be done by a licensed professional and on completion he/she will give you a signed energy work certificate. You will need the energy work certificates to get a code compliance certificate.

Typically, inspections may include the following stages in the construction process:

1. Foundations
2. Framing and insulation
3. Plumbing
4. Drainage
5. Claddings and flashing
6. Finished building.



Final sign-off – code compliance certificates

A **code compliance certificate (CCC)** is issued after the final inspection of the finished building project. A CCC confirms that the BCA is satisfied the completed project meets the appropriate standards.

CCCs are important. When you sell your property, having a CCC shows the buyer that the building or renovations were done properly. If you build a house or unit for the purpose of selling it immediately (ie, act as a residential property developer) the Act prohibits you from selling the property without a CCC.



Where building owners have not submitted an application for a CCC in two years, the BCA will follow this up.

A CCC will be issued after the final inspection, if the building has been built in accordance with the approved plans. That's why it is important that, if you think you're going to change your plans in any way during the project, you advise your BCA and amend your building consent first. If your property does not pass the CCC inspection, the BCA will issue a notice to fix, specifying what must be done and by when.

In addition to having completed the building work correctly, to get a CCC you will need to supply all the relevant energy work certificates and ensure that fees and development contributions have been paid.

CCC applications are compulsory and the responsibility of the homeowner. Where building owners have not submitted an application for a CCC within two years from the date the building consent was issued, the BCA will follow this up with the owner (unless you have agreed an extension with your BCA, which you would normally do at the time of your building consent application). In the first instance, you should apply to the BCA that issued the building consent. The Act says the application must be considered within 20 working days.

Ongoing maintenance requirements

For most domestic building projects, the CCC is the end of the inspection process. However, if your house has a cable car it will need regular, ongoing monitoring for safety reasons.

If this applies to you, your BCA will issue you a **compliance schedule** with your CCC. The schedule will specify how often the cable car needs to be inspected, by whom, and your obligation to inform council.

Council can issue a notice to fix to you for failing to obey a compliance schedule.

Urgent work or special circumstances

Councils may decide to issue **certificates of acceptance** when work has been done without a building consent, or in certain specific circumstances when a CCC can't be issued.

This could be because urgent work was needed to protect lives or property and there was no time to get a consent, or the private BCA that issued the consent is unable or refuses to issue a CCC.

A certificate of acceptance confirms that, to the extent an inspection was able to be carried out, the work complies with the Building Code.

Certificate of acceptance applications for unconsented building work can only be made if the work was done after 1 July 1992 (the date building consents were introduced). The worth of a certificate of acceptance to the homeowner and a potential buyer will ultimately depend on the extent to which the work is able to be inspected. In many circumstances a complete inspection of the work will be impossible and the certificate will specify only the elements of the building that can be approved.

It remains a serious offence to build without a building consent and this may result in court action.

Applications for a certificate of acceptance should be processed in 20 working days. Your council may decide not to issue a certificate of acceptance.

What about consumer protection?

Unfortunately, building does not always go according to plan. If there is a problem it is likely that first you will try to resolve the issue through negotiation.

Disputes

If you dispute any decisions made by a BCA about the compliance of your building work, you can apply for a determination from the Department of Building and Housing.

A determination is a binding decision on technical matters of doubt or dispute about compliance with the Building Code or a decision by a BCA. It is made by the Chief Executive of the Department. A determination is legally binding on the parties involved unless overruled by a District Court on appeal.

Applying for a determination involves paying a processing fee.

Warranties

Under the Act, your consumer rights are protected in a set of warranties that a tradesperson automatically makes when you agree to them doing the work.

Summarised, the warranties are:

- the building work will be done properly, competently, and in accordance with the plans and specifications
- all the materials used will be suitable and, unless otherwise stated in the contract, new
- the building work will be carried out in accordance with all law and requirements, including the Building Act and regulations (including the Building Code)
- the building work will be carried out with reasonable care and skill and completed within the time specified, or a reasonable time if no time is stated
- the household unit will be suitable for occupation at the end of the work
- that if the contract states any particular outcome and the owner relies on the skill and judgement of the contractor to achieve it, the building work and the materials will be fit for purpose and be of a nature or quality suitable to achieve that result.

These warranties apply to all contracts for building work involving household units, whether written or verbal. They also apply to the sale of one or more household units by a residential property developer. It is not possible to contract out of them.

For example, under the Building Act, if the builder substitutes lower quality wallboard than is stipulated in the specifications without your agreement and this causes damage to the property, this is a breach of contract. The implied warranty states that work will be done in accordance with the plans and specifications.

Putting it right

If you believe any of the warranties have been breached, you can take the tradesperson to court for breach of contract. You can do this whether you are the person who employed the tradesperson, own the property, or in some circumstances if you are a subsequent owner of the property (depending on the time involved).

Proceedings for a breach of the implied warranties may be taken in the District Court or High Court depending on how much money is involved. Clear evidence will be needed to support the claim. To be successful in court, you will have to show you have suffered loss or damage as a result of the actions of the tradesperson. The Court can award the consumer compensation for the breach.

Other laws that protect you

The Consumer Guarantees Act doesn't apply to buildings and building materials, but it does cover services provided by the building industry. This could include any trade work, design work or inspection services.

The Fair Trading Act ensures people can't mislead you about products or services (for example, you see an advertisement for a bathroom cabinet for \$250 and order one, but when it arrives the bill is \$350).

The Construction Contracts Act covers payment of builders and other contractors. It includes a formal process to manage disputes.

More information

For more information about how to resolve problems using any of these laws see www.consumerbuild.org.nz



If something doesn't go as expected, your consumer rights may be protected by warranties under the Building Act.

How do you comply with the Building Code?

The New Zealand Building Code is performance-based. That means the Building Code specifies the minimum structural and safety standards building work must perform to, but not how the building should meet them.

As a property owner you can choose your designs, products or building methods, as long as your building consent application demonstrates that your proposal meets Building Code requirements. Your BCA will use the consent documentation in its assessment of the consent against the Building Code, and later when it inspects the work during construction and at the end of the project.

There are a number of ways your application can show compliance with the Building Code.

Compliance Documents

The Department of Building and Housing publishes Compliance Documents. These set out a method of complying with a specific requirement of the Building Code.

Though optional, Compliance Documents are commonly followed in domestic building projects because they provide a straightforward 'building recipe'. BCAs must approve building consent applications that show the proposed work follows relevant Compliance Documents.

Compliance Documents can prescribe a particular building method or use of a particular material in certain situations. These types of Compliance Documents are called Acceptable Solutions. They cover, for example, what insulation will comply with energy efficiency requirements of the Building Code or what level of timber treatment will meet durability requirements.

Another type of Compliance Document is called a Verification Method. These are tests or calculations that are recognised as proving Building Code compliance, for example the formula to confirm you have specified the correct amount of bracing.

Certified products

Another way to demonstrate Building Code compliance is to specify the use of a certified product.

Certified products, systems or methods are certified as meeting nominated provisions of the Building Code. Certification has legal status which means that BCAs must accept a certified item as Code compliant, subject to the conditions of the certificate.

Alternative solutions

You may have a site that needs an innovative design. If your proposal is outside the building methods detailed in the Compliance Documents your building consent application will need to include other evidence that your project complies with the Building Code.

A range of methods exists to establish compliance. It includes a calculation or test result, comparison with a Compliance Document, a determination on a similar product, technical data from the manufacturer's literature, or expert testimony.

Glossary

Building Code:

regulations, established under the Building Act, that set the minimum performance standards New Zealand buildings must meet.

Building consent:

a consent for building work to begin in accordance with the approved plans and specifications. It is not a resource consent.

Certificate of acceptance:

a certificate issued by a council in special circumstances when a code compliance certificate cannot be issued which confirms that, to the extent an inspection was able to be carried out, the work complies with the Building Code.

Code compliance certificate (CCC):

a certificate issued at the completion of building work confirming that the work has been completed in accordance with the building consent.

Compliance Document:

a document, published by the Department of Building and Housing, that sets out a method of complying with a specific requirement of the Building Code. Though optional, Compliance Documents are commonly followed in domestic building projects because they provide a straightforward recipe for building.

Compliance schedule:

a document that lists the inspection, maintenance and reporting procedures for systems in a building (eg, lifts, fire alarms) to ensure their continued safety of operation. For single residential dwellings, compliance schedules are only required if there is a cable car.

Determination:

a binding decision on matters of doubt about specific compliance with the Building Code or disputes over a BCA's decision. Determinations are made by the Chief Executive of the Department of Building and Housing. Determinations are legally binding unless overruled by a District Court on appeal. Property owners, councils and BCAs and licensed building practitioners can seek a determination.

Energy work certificate:

a licensed plumber, electrician or gasfitter will give you an energy work certificate when they finish the work. It certifies the work has been done in accordance with the relevant codes.

Land information**memorandum (LIM):**

a report issued by the council, usually to a potential purchaser. It lists information the council has about the property, including what building consents and code compliance certificates have been issued.

Notice to fix:

a notice issued by a BCA, a council or regional authority for breaches of the Building Act or regulations (eg, where building work does not comply with the Building Code). It specifies what remedial work must be done and by when. It is an offence to fail to comply with a notice to fix and a building owner can be fined up to \$200,000, plus a further \$20,000 a day as long as the offence continues.

Project information**memorandum (PIM):**

a report that can be issued before a building consent is issued or with the building consent that lists any requirements under Acts other than the Building Act (eg, the Resource Management Act). It also includes information likely to be relevant to the proposed work, such as potential erosion or flood risk.

Quantity surveyor:

a person who can assess your plans and tell you what materials you will need, in what quantities, and an estimate of how much it should cost.

More information is available at
www.consumerbuild.org.nz



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Disclaimer:

While we have tried to make this
educational information as accurate as possible,
it does not cover every situation and
should not be regarded as legal advice.

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