



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

# Guidelines on Registration of Private Organisations as Building Consent Authorities

November 2008



# Contents

- 01 PURPOSE OF THESE GUIDELINES**
- 02 BACKGROUND**
- 03 INTRODUCTION**
- 05 REGISTRATION CRITERIA AND STANDARDS**
- 06 HOW TO APPLY FOR REGISTRATION**
- 11 WHAT DOES THE REGISTRATION FEE COVER?**
- 12 WHAT IS THE PROCESS ONCE THE APPLICATION HAS BEEN LODGED?**

## **Status of this document**

This document has been prepared by the Department of Building and Housing (the Department) as guidance information. The recommendations and suggestions in this guide are not mandatory and are not intended to be prescriptive. This guide is intended to provide guidance only. This document is not a substitute for legal or other professional advice. While the Department has taken care in preparing the document, it should not be relied upon as establishing compliance with the Building Act 2004 in all cases that may arise. This document may be updated from time to time. The latest version is available from the Department's website at [www.dbh.govt.nz](http://www.dbh.govt.nz)

# Purpose of these guidelines

These guidelines provide information to assist private organisations<sup>1</sup> which may be considering applying to be registered as a building consent authority under the Building Act 2004.

In particular, the guidelines explain the requirements of the Building (Registration of Building Consent Authorities) Regulations 2007 around information that must accompany a registration application. That is, the information needed to inform the assessment of whether an applicant organisation is 'fit and proper' to be registered as a building consent authority.

These guidelines should be read in association with the relevant provisions of the Act, regulations and other guidance materials referred to in this document.

Particularly relevant is the April 2008 Department of Building and Housing publication *Guidelines on 'Adequate Means' for Private Building Consent Authorities*. These guidelines can be downloaded from the Department's website at:

<http://www.dbh.govt.nz/UserFiles/File/Publications/Building/BCA/guidelines-on-adequate-means.pdf>

<sup>1</sup> A private organisation is an organisation that is not a territorial or regional authority and that is applying to be empowered under the Building Act 2004 to undertake the functions of a registered building consent authority (eg, issuing building consents, undertaking building inspections and issuing related certificates and approvals).

# Background

## THE BUILDING ACT 2004

Part 3 of the Building Act 2004 establishes the responsibilities of the Chief Executive of the Department of Building and Housing (the Chief Executive). Sections 191–203 of the Act provide the Chief Executive with powers to register people<sup>2</sup> as building consent authorities.

Those sections include information about:

- criteria for registration
- registration applications
- consequences of failure to meet registration criteria
- complaints about registered building consent authorities
- investigative and disciplinary powers of the Chief Executive.

Sections 192 and 194 of the Building Act 2004 set out the criteria for registration and applying for registration as follows.

### 192 Criteria for registration—

- (1) Before entering a person's name in the register of building consent authorities, the Chief Executive must be satisfied that—
  - (a) the person holds a current accreditation from a building consent accreditation body appointed under section 248; and
  - (b) the person meets the prescribed criteria and standards for registration; and
  - (c) in the case of a person who wishes to be registered as a building consent authority but who is not a territorial authority or a regional authority, the person has adequate means to cover any civil liabilities that may arise in the performance of the functions of a building consent authority.

- (2) In considering whether a person has adequate means to cover any civil liabilities under subsection (1)(c), the Chief Executive may have regard to whether the person—
  - (a) holds an insurance policy that meets the minimum terms and conditions prescribed by regulations made under section 402; or
  - (b) holds an insurance policy under a scheme of insurance approved by regulations made under section 402; or
  - (c) has put in place any arrangements that provide for effective consumer protection (for example, by giving a bond or having a guarantor).

### 194 Application for registration—

An application for registration under section 191 must—

- (a) be made in writing to the Chief Executive; and
- (b) be given in the prescribed manner (if any); and
- (c) contain the prescribed information (if any); and
- (d) be accompanied by the prescribed fee (if any).

## THE BUILDING (REGISTRATION OF BUILDING CONSENT AUTHORITIES) REGULATIONS 2007

The Building (Registration of Building Consent Authorities) Regulations 2007 came into force on 1 November 2007.<sup>3</sup>

The regulations prescribe criteria and standards for registration as a building consent authority, the form and content of an application for registration and the registration application fees.

These matters are discussed in more detail in these guidelines.

<sup>2</sup> Section 7 of the Building Act 2004 provides that a 'person' includes the Crown, a corporation sole and a body of people (whether corporate or unincorporated). The Building Act 2004 may be viewed at: [www.legislation.govt.nz](http://www.legislation.govt.nz)

<sup>3</sup> The regulations may be viewed at: [www.legislation.govt.nz](http://www.legislation.govt.nz)

# Introduction

## BUILDING SECTOR REFORMS

Building construction and housing are important to the economy and in all New Zealanders' daily lives. High-quality building control work is essential to ensure buildings are constructed to comply with the New Zealand Building Code (the Code).

Problems not detected during the consenting stage or during inspections may be difficult and costly to repair afterwards, involving a substantial financial risk and burden to owners. Buildings that do not comply with the Code may potentially be unsafe or insanitary, posing risks to health and safety for those who use them – a problem that may be made worse by the difficulty of detecting some non-compliance before a significant failure.

Accordingly, the Government is implementing a series of reforms to improve consumer protection and increase public confidence in the building control sector. Along with a review of the Code, licensing of building practitioners and product certification, the accreditation and registration of building consent authorities (under the Building Act 2004) is a key aspect of the improvement process.

Collectively, this and other initiatives will help to ensure:

- improvements in the competencies and performance of all who participate in the building sector, including designers, constructors and regulators
- upgrading of quality assurance measures in the building consenting and inspection processes
- better-quality buildings and outcomes for all consumers.

## THE PURPOSE OF REGISTRATION RELATIVE TO ACCREDITATION

The focus of building consent authority accreditation is on technical competence, capacity and capability. The independent building consent accreditation body, IANZ,<sup>4</sup> will complete its assessments against accreditation standards and criteria<sup>5</sup> that aim to ensure building consent authorities have:

- sound and documented policies, systems and processes to underpin their regulatory building control functions
- sufficient skills (technical competence), staff resources and equipment to undertake their functions properly
- robust quality-assurance systems
- staff with appropriate building control qualifications.

The Building Act 2004 is clear, however, that the Chief Executive should determine whether an organisation is suitable to perform the regulatory functions associated with building control work. Therefore, an organisation wishing to undertake building control work must apply to the Chief Executive to be added to a register of building consent authorities.

The Chief Executive must be satisfied that the organisation has already been accredited by the building consent accreditation body and meets the standards and criteria for registration set out in regulations made under the Act.

<sup>4</sup> International Accreditation New Zealand (IANZ) is the building consent accreditation body appointed under the Building Act 2004. More information about IANZ can be found at: [www.ianz.govt.nz](http://www.ianz.govt.nz)

<sup>5</sup> Standards and criteria are prescribed by the Building (Accreditation of Building Consent Authorities) Regulations 2006.

The Building Act 2004 requirement for building consent authorities to be registered is intended to help manage risks<sup>6</sup> and to improve the overall quality of building controls by:

- supporting consumer choice – the building consent authority register is a source of information about building consent authorities that must be open to public examination
- enabling consistent and timely gathering of information to inform the Department's regulatory oversight and investigative roles
- providing assurances about the steps taken to ensure the general suitability and integrity of organisations that act as building consent authorities (their 'fit and proper' status).

<sup>6</sup> Examples of risks that registration criteria and standards will help to mitigate include the risks that a building consent authority may accept payments or favours to approve buildings that do not comply with the Code, fail to carry out their building control functions impartially, or fail to deliver building control services that have been paid for in advance.

# Registration criteria and standards

Regulation 4 of the Building (Registration of Building Consent Authorities) Regulations 2007 sets out the criteria and standards referred to in section 192(1)(b) of the Building Act 2004.

In particular, regulation 4(2) requires the applicant to be 'a fit and proper person to be registered' by reference to their:

- character and integrity
- likely ability to maintain an appropriate degree of impartiality and independence in relation to their building control functions
- reputation for professional conduct
- likely ability to conduct a business in a responsible and ethical manner.

Accordingly, the determination of an applicant's 'fit and proper' status would involve relatively detailed information and enquiries about such attributes.

Determining the suitability of an applicant in terms of their character and integrity is intended to assist with excluding from regulatory building control work organisations that are corrupt, partial or who have a history of poor contractual performance.

As indicated earlier, registration criteria and enquiries are complementary to and distinct from the assessment of compliance with accreditation.

Information sought for registration purposes highlights the clear conduct expectations of government and consumers for building consent authorities.

In addition to the matters summarised above, the applicant must be a New Zealand citizen or permanent resident of New Zealand or a body that is incorporated in New Zealand. This ensures that all registered building consent authorities are subject at all times to New Zealand laws. It also means that all registered building consent authorities are more likely to be readily available in the event of proceedings being taken against them in New Zealand; and so any legal and practical difficulties in initiating proceedings against building consent authorities that are not resident or incorporated in New Zealand are avoided.

# How to apply for registration

A private organisation wishing to undertake building control work must apply in writing to the Chief Executive to be added to the register of building consent authorities. The register may be found on the Department's website **[www.dbh.govt.nz](http://www.dbh.govt.nz)**

All applications must be on the prescribed form (Form 1 in the schedule to the regulations), contain or be accompanied by all the required information, and be accompanied by the prescribed fee of \$6,388.88 (GST inclusive).

The application form (which can also be downloaded from the Department's website) must be completed in full. The tables below set out the information required by the application form. Where the requirements may not be self-explanatory, further information is provided to assist applicants to complete the form.



DETAILS OF APPLICANT
Full legal name:
Nature of applicant (incorporated or otherwise):
<p><b>If unincorporated, attach proof of identity and of New Zealand citizenship or permanent residency.</b></p> <p>To be accepted by the Department, copies of documents submitted with the application must be verified as true copies by a Justice of the Peace, a Solicitor, or the Registrar or Deputy Registrar of the Court.</p>
<p><b>If incorporated, attach evidence of incorporation in New Zealand and provide full names and dates of birth of each member of management.</b></p> <p>'Management', in relation to an applicant, means the chief executive of the applicant, and every manager and director of the applicant who is responsible for directing or controlling the applicant's building control functions.</p>
Physical address of all permanent offices in New Zealand: .....
.....
Physical address for delivery and service of notices: .....
.....
Postal address (if different from physical address): .....
Email: .....
Telephone: Day: ..... Mobile: ..... Fax: .....

You should also give notice to the Department of any change in such details after the application has been made.

DETAILS OF PERSON RESPONSIBLE FOR APPLICATION
Full legal name:
Title:
Email address:
Direct dial telephone number:
Mobile telephone number:
Fax number:

## SCOPE LIMITATION

**Please provide details of any limitation on the scope that would apply to building control function work that would be undertaken if registration is granted.**

The scope of building control work that can be undertaken by the applicant is limited by the scope of the applicant's accreditation. Scope restrictions will usually be expressed in terms of the range of building consent authority functions that can be carried out and/or the types of buildings and/or clauses of the Code that functions may relate to. The means an organisation has to meet any civil liabilities (eg, insurance cover) may also have a bearing on scope limitations.

## SUPPORTING INFORMATION (ATTACH SEPARATELY AS APPROPRIATE)

The requirements for supporting information complement outcomes from the accreditation process and provide useful information for the Chief Executive about the applicant's general suitability for registration. This information also supports specific consideration of the scope of the building control work a registered private building consent authority will be permitted to carry out.

The Chief Executive may also request from the applicant any further information that he or she considers necessary for the purposes of assessing whether the applicant has met the criteria and standards set out in regulation 4. For example, the Chief Executive may request the applicant to submit to formal suitability checks, such as vetting of relevant employees and directors.

This general requirement is to help ensure the Chief Executive is not unduly confined in considering an applicant's suitability. Also, because the nature, operating characteristics and other circumstances of applicants are likely to be highly variable, there is value in ensuring the Chief Executive has reasonable discretion in determining what additional information is needed to determine each registration application.

**For the applicant and each member of management please provide details of—**

- **any prior professional misconduct, such as disciplinary proceedings initiated or action taken by a professional institute or association, and**
- **any civil claims made against that person in relation to contractual performance or tortious liability, and**

Many professional associations have a process and structures for reviewing alleged misconduct among peers and for disciplinary action where misconduct is substantiated. A significant history of professional misconduct, appearances at disciplinary proceedings or civil claims may call into question the suitability of the applicant or its directors or management. This information helps the Chief Executive determine the character and likely conduct of the applicant and therefore their suitability to undertake building control work.

- **any New Zealand or overseas convictions, or pending proceedings, in relation to dishonesty offences (such as fraud or forgery) or offences under enactments relating to building, and**

Information must be provided subject to the Criminal Records (Clean Slate) Act 2004. Convictions for such offences could potentially be seen as a serious impediment to registration. The Chief Executive must exercise judgment to determine the relevance, if any, of this information to registration. This information will also help the Chief Executive determine the character and suitability of the applicant.

- **any prior suspension, cancellation, or refusal of, or lapse in, status as—**
  - **a building certifier under the Building Act 1991, or**
  - **an accredited or registered building consent authority in New Zealand, or**
  - **any overseas equivalent building control authority, and**

A pattern of prior suspension or cancellation of registration or licensing can inform judgments about the suitability of an applicant. This adds to the information available to the Chief Executive about the character and past conduct of an applicant – in this case, information specifically related to their prior involvement in building control work.

This also provides an opportunity to clarify whether a lapsed registration was for legitimate reasons (such as a change in career or insurance becoming unavailable) or some other cause that might be of concern.

- **any prior building control experience in New Zealand or overseas.**

**Please provide evidence that the applicant holds a current accreditation from a building consent accreditation body appointed under section 248 of the Building Act 2004.**

To be accepted by the Department, copies of documents submitted with the application must be verified as true copies by a Justice of the Peace, a Solicitor, or the Registrar or Deputy Registrar of the Court.

## SUPPORTING INFORMATION (ATTACH SEPARATELY AS APPROPRIATE) CONTINUED

**Please provide evidence that the applicant has adequate means to cover any civil liabilities that may arise in the performance of the functions of a building consent authority – including insurance policies or any other arrangements that provide for effective consumer protection (for example, by giving a bond or having a guarantor).**

The Building Act 2004 makes a clear distinction between building consent authorities that are territorial and regional authorities, and private building consent authorities.

In particular, section 192(1)(c) requires private building consent authorities to have 'adequate means' to cover any civil liabilities that may arise when performing the functions of a building consent authority. The Building Act 2004 does not require the same of territorial or regional authorities. This is because, in the event that a territorial or regional authority is found to have been negligent in carrying out its building consent authority functions, there is an assumption that every territorial and regional authority will be able to meet their consequent civil liabilities.

Please also refer to the April 2008 Department publication *Guidelines on 'Adequate Means' for Private Building Consent Authorities*. Those guidelines may be downloaded from the Department's website at:  
<http://www.dbh.govt.nz/UserFiles/File/Publications/Building/BCA/guidelines-on-adequate-means.pdf>

**Please confirm that the applicant would have no conflicts of interest in fulfilling the role of a building consent authority and how the applicant would act to avoid such conflicts.**

Conflicts of interest include situations where conflict arises between a public duty and private interests that could influence the performance of duties and responsibilities. Building consent authorities must exercise their regulatory powers impartially. Political, commercial, financial and other pressures must not compromise the integrity of their building control work.

The applicant is required to confirm that the applicant has no conflicts of interest in fulfilling the role of a building consent authority. This requirement helps to ensure that building consent authorities exercise powers 'without fear or favour'.

The applicant is also required to describe how the applicant will act to avoid such conflicts in the future. This requirement enables the establishment of requirements for policies, operating procedures and systems to ensure conflicts of interest are avoided or properly managed (or at least the gathering of information confirming that such conflicts will be avoided). This information complements related accreditation requirements. Accordingly, it would be prudent to also provide a copy of policies and procedures relating to conflicts of interest that form part of the organisation's accredited systems, policies and procedures.

## STATUTORY DECLARATION

As outlined below, applicants (or the person legally authorised to sign on their behalf) must, as part of the application for registration as a building consent authority, make a statutory declaration in accordance with the Oaths and Declarations Act 1957.

Significant penalties may be imposed under section 111 of the Crimes Act 1961 for making a false statutory declaration, including a term of imprisonment of up to 3 years.

The requirement for a statutory declaration provides another level of assurance that information included with an application is accurate and complete.

**When you have completed the rest of this form, and all the supporting information has been prepared and attached, please take it to a Justice of the Peace, a Solicitor, or the Registrar or Deputy Registrar of the Court to be witnessed. The declaration must be completed by a person who has legal authority to sign on behalf of the applicant. A significant penalty, including a term of imprisonment of up to three years, may be imposed under the Crimes Act 1961 for making a false declaration.**

I, ....., [full name and designation] solemnly and sincerely declare that—

\*I am the applicant for which this licence application is being made

\*I am authorised to make this application on behalf of the applicant

\*Delete if inapplicable

**I have made all reasonable inquiries and the information contained in this application is true and correct to the best of my knowledge and belief and is accompanied by all relevant information known to the applicant.**

**I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.**

Signature: .....

Full name:

Declared at: ..... [place] on: ..... [date]

Witness signature:

Witness name:

Witness designation:

# What does the registration fee cover?

The registration application fee of \$6,388.88 (GST inclusive) is set by regulation 6 of the Building (Registration of Building Consent Authorities) Regulations 2007. The fee is the estimated average cost of receiving and processing registration applications from private organisations. Detailed information about the estimates was provided during consultation prior to the making of the regulations.

In addition to the processing undertaken by Department staff, the Department is also likely to engage external specialist advisors (most likely from the fields of insurance, law, investigation, finance/accounting and risk management) to assess information provided by the applicant.

The role of such specialists would include checking and preparing comments on the applicant's own assessment of 'adequate means', including in relation to:

- the nature and extent of the applicant's risk exposure
- the applicant's risk-management arrangements
- the applicant's likely retained liability
- capital available to support the likely liability
- the adequacy of the applicant's insurance relative to the requirements of regulations made under the Building Act 2004
- whether 'adequate means' is assured for the full responsibility period.

Checks would also be concerned with confirming that the applicant is 'fit and proper' to be registered by reference to their:

- character and integrity
- likely ability to maintain an appropriate degree of impartiality and independence in relation to their building control functions
- reputation for professional conduct
- likely ability to conduct a business in a responsible and ethical manner.

# What is the process once the application has been lodged?

The time taken to grant or decline each application will vary depending on the scope of the application, information provided, any further information required and the complexity of the assessment required to confirm the suitability of the applicant.

The registration process undertaken by the Department will generally involve:

- receiving, recording and acknowledging each application
- making an initial assessment of the application and supporting information against the standards and criteria in the Building Act 2004 and in regulations
- carrying out any follow-up necessary to clarify or obtain further information
- making further enquiries to verify information or to seek information from third parties, in addition to the information provided by the applicant
- interviewing the applicant and relevant members of the applicant's management team (eg, managing directors, operations managers, quality assurance managers, and technical leaders)
- making a final assessment of the application, supporting information and any further information collected against the criteria in the Act and the regulations
- deciding whether to approve the application or to decline the application
- preparing and dispatching advice to the applicant of the decision and, where applicable, confirmation of registration
- preparing related physical and electronic records for the register.

## FOR MORE INFORMATION

For more information or if you have any questions please contact the Consent Authority Capability and Performance Group at the Department on 0800 242 243 or [info@dbh.govt.nz](mailto:info@dbh.govt.nz)



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