

## Issuing building consents

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Information for building officials about processing and issuing building consents, as well as alterations to existing buildings, change of use, extension of life, and subdivision of buildings.

A person cannot carry out building work except in accordance with a building consent. There are some exceptions to when a building consent is required (see section 41 of the Act), but section 17 still requires building work to be carried out in accordance with the building code even if no building consent is required.

A code compliance certificate is issued against the building consent documents, therefore the applicants must ensure the building consent documents accurately describe what they want. Changes during construction will require an amendment to the building consent, be that a minor variation or a formal amendment.

## Assessing applications for a building consent

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When an owner intends to carry out building work they must apply for a building consent before the work begins. (A building consent is not required in some cases; see sections 41 and 43 and Schedule 1 of the Act.)

The must be made to a building consent authority that is authorised within the scope of its accreditation and registration to grant a building consent for the proposed building work.

### What the application must include

This application must be on Form 2 from the Building (Forms) Regulations 2004. It must include the following:

- Clauses of the Building Code complied with.
- Waivers/modifications to Building Code clauses, and the reasons for this.
- Development notice on Form 3 from the Building (Forms) Regulations 2004, if applicable.

#### Form 3 - Development Contribution Notice

[DOC 30 KB]

<https://www.building.govt.nz/assets/Uploads/building-officials/guides/form-03.doc>

#### PIM application

[PDF 86 KB]

<https://www.building.govt.nz/assets/Uploads/building-officials/guides/form-2-project-memorandum-application.pdf>

The Building Act 2004 requires this form to be accompanied by:

- the charge fixed by the building consent authority
- the plans and specifications required by regulations or, if there are no requirements in regulations, as required by the building consent authority
- the PIM, only if the owner has applied for one
- any development contribution notice, and any resource consent certificate attached under section 37 and a list of the specified systems for the building (from the compliance schedule) whether the systems are existing, new, altered or removed
- any other information the building consent authority reasonably requires.

### Assessing staged consents

An owner may make a series of building consent applications for stages of the proposed building work. This may be useful where the scope of the work can be clearly defined in each case. Where an owner wishes to occupy parts of the building during construction, they may apply to the territorial authority for a certificate for public use. This will avoid the owner being in breach of section 363 of the Act. Staged consents may also be useful where household units may be subject to section 362V relating to on-selling.

### Accepting and considering producer statements

Although not expressly referred in the Act, these could be accepted and considered as part of the plans or specifications, however producer statements have no legal status under the Act. This will assist the building consent authority in deciding whether it is satisfied on reasonable grounds that the provisions of the building code will be met if the building work is completed in accordance with the plans and specifications.

### Dealing with amendments

It is important that any changes to the building work that affect compliance with the building code are properly dealt with by an application to amend the building consent, irrespective of whether it is considered a minor variation or whether it requires a formal amendment. This is because a code compliance certificate is issued by a building consent authority if the building work complies with the building consent.

### What constitutes minor variations

A minor variation is a minor modification, addition or variation to a building consent that does not deviate significantly from the plans and specifications to which the building consent relates.

Minor variations only apply to issued building consents, where the code compliance certificate has not been issued. In addition, minor variations neither affect compliance with the building code nor the granting of a code compliance certificate.

**Note:** To avoid doubt, a minor variation does not include any building work in respect of which compliance with the building code is not required by the Act (for example, changing water taps from chrome to gold plated is not considered a minor variation as the tap finish does not need to comply with the building code).

### Applications with restricted building work

If an application for a building consent relates to restricted building work, the name of the licensed building practitioner carrying out or supervising that work must be stated in the application (see section 45(1)(e) of the Building Act 2004).

Plans and specifications used in an application for a building consent in relation to restricted building work must be prepared and certified by, or under the supervision of, one or more licensed building practitioners. These must be licensed building practitioners whose licences authorise them to certify the plans and specifications (see section 45(2)-(4) of the Act).

## Processing a building consent

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### Processing time

A building consent authority has 20 working days from the date the application for a building consent is received to decide whether to refuse or grant the application.

A building consent authority may request more information about the application within 20 working days from the date the application is received. If a request is made, the 20-working-day period is suspended until the building consent authority receives this information.

This time is not suspended if the application has to go to the Fire and Emergency New Zealand.

### Fire and Emergency New Zealand

The building consent authority must forward certain applications, which have been specified by the Chief Executive of the Ministry of Business, Innovation and Employment in a Gazette notice, upon receipt to Fire and Emergency New Zealand.

Fire and Emergency New Zealand may provide the building consent authority, within 10 working days, with a memorandum in the building consent application advising on the provisions for means of escape from fire and the need for people authorised by law to enter the building for firefighting.

Fire and Emergency New Zealand must not give advice in the memorandum that requires the building to meet performance criteria that exceed the requirements of the Building Code. If Fire and Emergency New Zealand does not provide the memorandum within 10 working days, the building consent authority may proceed to determine the application without it.

## Issuing a building consent

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Only a building consent authority that is authorised within the scope of its accreditation and registration to grant a building consent can issue a building consent.

The building consent authority must grant the consent if it is satisfied on reasonable grounds that the provisions of the Building Code will be met if the building work is completed in accordance with the plans and specifications.

The building consent authority is not required to grant the consent until the charge fixed for the consent and the building levy are both paid.

If the building consent is refused, the building consent authority must write to the applicant and state the reasons. This must be done within the 20-working-day timeframe.

### Content of a building consent

A building consent must be issued on Form 5 from the Building (Forms) Regulations 2004. It must include the following:

- Details of the location of the building work (must align with PIM if applied for).
- If a compliance schedule or an amendment to an existing compliance schedule is required as a result of building work, the consent must state the specified systems that must be covered by the compliance schedule.
- If the building work has a specified intended life, the consent must specify certain conditions that must be complied with at the end of that specified life (for example, alteration, demolition or removal).
- Any other conditions.

The Building Act 2004 requires this form to be accompanied by the:

- PIM, only if one is applied for
- development contribution notice (section 36) (if any)
- section 37 certificate (if any).

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### Form 5 - Building Consent

[DOC 36 KB]

<https://www.building.govt.nz/assets/Uploads/building-officials/guides/form-05.doc>

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## Matters for consideration

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The building consent authority must take into account any:

- memorandum from Fire and Emergency New Zealand
- warning or ban on a building product or method to be used. If a ban has been imposed, a consent cannot be granted (see section 28(2) of the Building Act 2004).

A building consent authority (that is not a territorial authority) must apply for a PIM from the territorial authority within 20 working days, that building consent authority may issue a building consent (if all other information has been obtained, provided, processed and approved).

When the building consent authority that is not a territorial authority receives the PIM, it must provide a copy to the owner, together with any development contribution notice and any section 37 certificate.

### Section 112 Alterations to existing buildings

The building consent can only be granted where the building consent authority/territorial authority is satisfied that the building will:

- comply as nearly as is reasonably practicable with the Building Code provisions for means of escape from fire and access and facilities for people with disabilities (if required)
- continue to comply with the other provisions of the Building Code to at least the same extent as before the alteration.

Building consent authorities are allowed to grant a building consent for the alteration of an existing building.

The Act clarifies that if part of a building is altered, the upgrade provisions are triggered for the whole building.

A territorial authority may, by written notice, grant an application to allow alterations to take place without the building complying with the relevant provisions of the Building Code. A territorial authority can only grant such an application if it is satisfied that:

- if the building were to comply with the relevant provisions of the Building Code, the alteration would not take place
- the alterations will result in improvements to the means of escape from fire or access and facilities for people with disabilities
- the improvements outweigh any detriment likely to arise as a result of the other non-compliance with the Code.

Alterations to earthquake-prone building are now under section 133AT of the Building Act.

[Substantial alterations to an earthquake-prone building \(https://www.building.govt.nz/managing-buildings/managing-earthquake-prone-buildings/what-earthquake-prone-buildings-system-means-for-you/owners-of-earthquake-prone-buildings/#jumpto-substantial-alterations-to-an-earthquake\\_002dprone-building\)](https://www.building.govt.nz/managing-buildings/managing-earthquake-prone-buildings/what-earthquake-prone-buildings-system-means-for-you/owners-of-earthquake-prone-buildings/#jumpto-substantial-alterations-to-an-earthquake_002dprone-building) has further information.

## Sections 114-116A change of use, extension of life, and subdivision of buildings

An owner of a building must give written notice to the territorial authority if they propose to change the use of a building, or extend the life of a building with a specified intended life.

Notice must also be given if the owner of a building proposes to subdivide land in a manner that affects a building. If the owner fails to give written notice in these circumstances they commit an offence and are liable to a maximum fine of \$5,000.

### Change of use

An owner of a building must not change the use of a building unless the territorial authority gives the owner a written notice stating that the territorial authority is satisfied that the building in its new use will comply with the provisions of the Building Code that relate to:

- means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire-rating performance
- access and facilities for people with disabilities.

It must also comply with the other provisions of the Building Code to at least the same extent as before the change of use.

If the use of a building is being changed to include household units where these did not previously exist, the building must then comply as nearly as is reasonably practicable with the Building Code in all respects.

This will require a significant assessment of the existing building across all relevant aspects of the Building Code, and decisions will need to be made about what constitutes 'as nearly as is reasonably practicable' about a range of Building Code clauses.

### Specified intended life

Only a territorial authority can grant a building consent for a building with a specified intended life.

This is on the condition that the building must be altered, removed or demolished before the end of the specified life, and any other conditions the territorial authority considers necessary.

### Extension of life

Where a building consent has been issued subject to the condition that the building must be altered on or before its specified intended life (imposed under section 113(2) of the Building Act 2004) the life of such a building may not be extended unless written consent is obtained from the territorial authority.

The territorial authority can only give its consent if it is satisfied that the building has been altered in accordance with the condition and it will comply with section 112 of the Building Act.

### Subdivision

A territorial authority must not issue a certificate under section 224(f) of the Resource Management Act 1991 for the purposes of giving effect to a subdivision affecting a building or part of a building unless it is satisfied, on reasonable grounds, that the building will comply, as nearly as is reasonably practicable, with every provision of the Building Code that relates to one or more of the following.

- Means of escape from fire.
- Access and facilities for people with disabilities (if this is a requirement for the building).
- Protection of other property.

The building must also continue to comply with the other provisions of the Building Code to at least the same extent as before the subdivision application was made.



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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New Zealand Government

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- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.