

## Territorial and regional authority discretionary exemptions

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This section allows territorial authorities (city or district councils) or regional authorities (regional councils) to use their discretion to exempt any proposed building work if it complies with the Building Code and is unlikely to endanger people or buildings.

Territorial authorities or regional authorities can use their discretion to exempt any proposed building work from the requirement to obtain a building consent if;

- a. the completed building work is likely to comply with the Building Code; or
- b. if the completed building work does not comply with the Building Code, it is unlikely to endanger people or any building, whether on the same land or on other property.

This is the only exemption in Schedule 1 which requires a territorial or regional authority to make a decision about any proposed building work. For all the other exemptions, it is up to the owner to decide whether an exemption in Schedule 1 applies.

This exemption can be applied across a wide range of building work. At one end of the scale, the council may choose to exempt simple, low-risk, repetitive-type building work, such as that relating to farm buildings, proprietary garages or bus shelters. These are typically buildings of importance level 1 from Building Code clause A3 – Building importance levels.

At the other end of the scale, the building work could be for complex engineered projects where the construction will be designed and supervised by chartered professional engineers. These might include single-span bridges on public land, complex temporary stage and lighting towers, or major infrastructure projects such as motorway tunnels, electrical substations for rail networks or substantial wharf repairs. In these cases, the work is likely to comply, because skilled professionals are doing or supervising the work, and furthermore, council's processing and inspecting procedures would add little value to the overall process.

### As a building owner

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If you want your proposed building work to be considered for this exemption, we suggest that you or your agent start by discussing it with the relevant council. It is then likely that you will have to make a formal written request. The council may charge a fee for issuing a discretionary exemption.

The council will take into account what it considers the risk to be, whether your building work will comply with the Building Code and whether it will endanger people or property.

It is recommended that you check with your council to see if they have a policy to exempt certain building work under exemption 2. This may or may not require a formal application.

### As a territorial or regional authority

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You should have procedures for making formal decisions under exemption 2 that meet the criteria of (a) and (b) above.

When determining the likelihood of compliance, we suggest your considerations include:

- any substantial previous demonstration of competence in carrying out similar work by the people who will carry out this work (eg a history of previous building work in the council's district)
- the complexity of the building work relative to the competence of the people who will carry it out
- any independent quality assurance systems or checks that will be applied in the course of the work.

In determining the likelihood of endangerment, we suggest your considerations include:

- the location of the building work (eg whether it is high density urban or remote rural)
- how close it will be to the property boundary and/or other buildings.

In all cases, we recommend that you record your decision, the reason for it and the outcome, and place this information on the property file relating to the building work.

MBIE has produced a guidance document that outlines good practice relating to the use of this exemption (which corresponds to Clause 2 of Part 1 of Schedule 1 of the Building Act 2004) and also covers some suggested policy and procedures.

[Guidance in relation to Clause 2 of Part 1 of Schedule 1 and issuing building infringement notices.](https://www.building.govt.nz/assets/Uploads/building-officials/technical-review/2012-wellington-technical-review.pdf)  
(<https://www.building.govt.nz/assets/Uploads/building-officials/technical-review/2012-wellington-technical-review.pdf>)

Any type of building work could potentially be considered under this exemption. However, all building work carried out under this exemption should comply fully with the Building Code and all other [relevant legislation \[PDF 594KB\]](https://www.building.govt.nz/assets/Uploads/building-officials/technical-review/2012-wellington-technical-review.pdf) (<https://www.building.govt.nz/assets/Uploads/building-officials/technical-review/2012-wellington-technical-review.pdf>).

Council policies for allowing discretionary exemptions will vary depending on the scope of the building work and who is undertaking that work. Below are some examples of building work that have been accepted under this exemption. These were:

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Projects that were considered exempt building work by one territorial authority



## What the law says

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### 2. Territorial and regional authority discretionary exemptions

1. Any building work in respect of which the territorial authority or regional authority considers that a building consent is not necessary for the purposes of the Building Act 2004 because the authority considers that:

- (a) the completed building work is likely to comply with the Building Code; or
- (b) if the completed building work does not comply with the Building Code, it is unlikely to endanger people or any building, whether on the same land or on other property.



New Zealand Government

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