Engineering New Zealand
Te Ao Rangahau

# The Ministry for Regulation is reviewing work that is exempt from needing a building consent

The review is focused on building work that can be carried out without a building consent under Schedule 1 or Schedule 1A of the Building Act 2004.

## What works well in relation to building work that does not need a building consent?

The consent exemption process works well where the risk of illness or serious injury from defective building work is genuinely low. Examples include pole sheds within specified parameters, garden sheds and carports – particularly structures without water or electrical connections and that are not regularly occupied by people or animals.

For building work that is exempt from requiring a building consent, Chartered Professional Engineers (CPEng) can already provide A-Series Producer Statements confirming that a design complies with the New Zealand Building Code. This provides an existing mechanism for independent professional assurance where council oversight through the formal building consent process is not required.

## What problems or issues have you experienced or observed?

While targeted exemptions can suit genuinely low-risk work, we have significant concerns about extending consent exemptions to a broader range of structures without alternative mechanisms that provide equivalent assurance of design quality, construction quality, and Building Code compliance.

### Higher-risk structures are a concern

We are concerned about the capability of practitioners undertaking consent-exempt work for higher-risk structures where failures could cause injury or illness, including occupied buildings involving restricted building work. Without BCA review, fewer opportunities exist to identify design or construction deficiencies before they become latent defects. As the scope of consent-exempt work expands, competency requirements and assurance mechanisms must remain commensurate with the risks involved.

### CPEng sign off only mitigates some risk

It is often suggested that higher-risk structures could be consent-exempt if a CPEng signs off the design. While this may reduce some risk, significant gaps remain: no one party can verify that the entire construction complies with the design and the Building Code, and CPEng engineers are limited to their areas of practice. For example, a structural engineer may not be able to provide assurance on areas outside their competence, such as fire or geotechnical matters. They also cannot certify weathertightness, plumbing, or ventilation. These are well-known failure points (and a major cause of the leaky homes crisis) that BCA inspections typically catch.

### Granny flats provide a practical example of risk

Granny flats provide a practical example. They are now exempt from building consent requirements and therefore do not receive routine BCA oversight of design, construction quality or materials. Engineering New Zealand is aware of reports that some consent-exempt granny flats may already have quality issues, including inappropriate materials in structural elements. In one reported case, non-structural timber was used in a critical load-bearing application. Without independent inspection or verification, such issues may go undetected until defects emerge, increasing the risk of rework. While serious structural failure is unlikely in this type of building, it can still have serious health and economic consequences, as the leaky buildings crisis showed.

It is possible that these issues would have been picked up by the BCA in a standard consent process. Remediating latent defects after construction can be significantly more expensive; in this example, entire beams may need to be replaced or affected sections cut out and replaced. Remediation costs also rise over time with inflation and increasing material prices.

### Consumers bear risk for decisions they may not fully comprehend

Consumers often must make decisions in a market where the quality of work and practitioners' competence can be difficult to assess. In these circumstances, cost frequently becomes the primary differentiator between providers. While this is understandable, it can incentivise lower-cost solutions that may not deliver the same quality, assurance, or long-term performance. Independent oversight helps mitigate this risk by adding a layer of quality assurance that consumers often cannot assess themselves. When defects emerge, consumers typically bear the cost and disruption of remediation.

We also have concerns about consumer protections for consent-exempt structures. Under the proposed liability system, it is unclear how structures valued above $100,000 would be treated or whether insurers would accept the increased risk.

### Unforeseen demand on network infrastructure creates further challenges

Another concern is how unforeseen demand would affect network infrastructure, particularly where structures such as granny flats also do not require resource consent. Without an approval process, managing and having oversight of additional network demand is difficult. We are already seeing councils having to pause new construction while they upgrade infrastructure.[1] Any additional habitable structure inherently increases pressure on network infrastructure.

### Recent reform needs time to bed in before more work is exempt

Finally, latent defects often emerge with a significant lag. Many defects take 1-2 years to emerge, but some can take many years. However, we are already seeing defects being reported in unconsented granny flats, indicating the issues are ahead of the typical curve. It is worth noting that the reported issues are only the tip of the iceberg. This demonstrates the need to assess the effects of recently introduced consent exemptions on the system and wider market. We should allow enough time to evaluate the full effects of exempting higher-risk structures, such as granny flats, before extending exemptions further.

## What changes, if any, would you recommend?

Rather than expanding consent exemptions, we feel that other options to improve efficiency of the system should be considered before expanding consent exemptions. The Government could further streamline consenting for established off-site manufacturers that produce consistent, high-quality habitable structures (such as granny flats). A faster, simpler process could reduce overall costs while maintaining assurance and providing consumers with cost-effective options.

We support consent exemptions for structures that pose little life-safety risk or risk to animals. People should not become sick or injured because of the buildings they occupy.

Ideally, structures that are regularly inhabited should not be exempt from the consent process. We are particularly concerned about primary load-bearing systems, fire-safety systems, modifications to firewalls, areas consistently exposed to high moisture levels, and connections to the water network.

Where consent exemptions are permitted, practitioners should provide proportionate, documented quality assurance, including hold-point photographs, product traceability, sign-offs, and independent review of higher-risk details. Guidelines, examples, and templates of what is expected should be provided, as Engineering New Zealand has done with the Structural Design Documentation suite.[2]

Engineering New Zealand would be happy to support officials through this process.

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[1] https://swdc.govt.nz/news/martinboroughs-building-consents-to-get-moving-again/

[2] https://www.engineeringnz.org/engineer-tools/engineering-documents/structural-design-documentation/

## Do you have any other comments on other parts of the building regulatory system?

History shows that deregulation can create significant problems and ultimately require central government to fund costly remediation of widespread defects caused by limited oversight, as seen with the Leaky Homes crisis. This risk will be increasingly difficult to manage as the system adapts to the proposed proportionate liability changes. Homeowners need adequate protections in place before further deregulation increases the risk of widespread defects and leaves them bearing the costs. In the Leaky Homes crisis, central government had to step in and resolve remaining and outstanding issues.

Engineering New Zealand has long advocated shifting the building system from minimum compliance towards consistent quality outcomes. This would better encourage fit-for-purpose structures designed to perform throughout their lifecycle, rather than merely meet minimum standards.

### Challenges with documentation

One of the key challenges within the building system is the quality of documentation submitted to BCAs. Many participants across the sector appear to treat BCAs as the final quality-assurance check, submitting incomplete or substandard documentation and expecting the consenting process to identify issues. This challenge has been highlighted in initiatives such as the ModelDocs report and is reflected in the large number of Requests for Further Information (RFIs) BCAs issue.

While a BCA sometimes asks an irrelevant question, qualitative evidence shows that the questions are relevant about 75-80% of the time. Estimates assume that more than 50% of consent applications may be submitted with incomplete information, and that some applications can require 20-30 RFIs before they can be adequately assessed. This information was corroborated by the MBIE report 'Monitoring the efficiency of building consent processes for new Kainga Ora public housing.' (Independent Expert Panel, 2021)

There are limited mechanisms to incentivise high-quality documentation or hold practitioners accountable for consistently poor submissions, despite professional bodies setting clear expectations for practice standards. While BCAs are often criticised for inefficiency or extensive information requests, it is understandable that they adopt risk-averse approaches when assessing incomplete applications, particularly given the regulatory and liability exposure they may face if defects are not identified during the consenting process.

BCAs should be able to reject incomplete consent applications. A collaborative process between BCAs and professional bodies to establish minimum documentation standards would enable those bodies to train their professions and give BCAs a clear basis for rejecting applications below the threshold.

The system should reward practitioners who consistently deliver quality outcomes and are trusted by BCAs, for example through greater market visibility or faster processes.

### Need for improved feedback loops

Another challenge is the lack of formal feedback loops in the building system. It is difficult to share lessons across the system or identify areas where professions need further training. As system steward, MBIE should collect and synthesise information so the sector can improve and mature. Without system-wide information, we rely on targeted reports focused on specific issues, such as the **Residential Design Roadmap** commissioned by the Natural Hazards Commission, or informal feedback from individual BCAs to professional bodies. We recommend that MBIE collect data on RFI content, failed inspections and defect claims, then analyse and consolidate it so the sector can learn from emerging issues.

### Consolidation of BCAs and plans would help coherence

Although BCAs are not the primary source of inefficiency in the system, New Zealand would benefit from consolidation. New Zealand has over 70 BCAs (according to International Accreditation New Zealand), more than 100 resource management policy statements and plans, and over 1,000 planning zones that designers, architects, engineers and developers may need to navigate. For example, a footpath crossing the boundary between Feilding and Palmerston North is subject to different rules on either side. Greater consistency and better integration of the planning and building systems are needed to avoid different design requirements within a few streets of one another.

## Improving the efficiency of producer statements

Government should increase the use and recognition of independently assessed practitioner competence frameworks, including CPEng, where engineering judgement is used to manage risk. One practical step would be to require a CPEng to sign relevant producer statements – giving them legal standing.

Additionally, all parties who contributed to a consent should be notified of any conditions and when consent is granted. This would help engineers understand what has changed, where their liability ends, and could help identify potential fraud. Two common problems in the existing system prevent this from happening. A PS1 author has limited opportunity to discuss inspection or quality-assurance requirements with the project team once a consent has been issued and before work begins, even if the BCA has additional requirements to those in the construction monitoring schedule.

Despite a PS4 requiring work to comply with consent conditions, once a consent is issued the PS1 author cannot recommend changes to consent conditions before construction starts. Unless they are aware of a consent being issued, the engineer has no opportunity to discuss them with the BCA. In many cases, engineers are not even aware if a project is continuing. Current workarounds, such as listing authors as parties to the consent, are ad hoc; a regulatory solution is needed. Noting some BCAs have made a system to notify engineers at this point, we would recommend adopting something similar Christchurch City Council's system.

## The standards system is a critical constraint

New Zealand's standards system is a critical constraint on productivity, building outcomes and safety. It is chronically underfunded and increasingly outdated, creating unnecessary costs, regulatory uncertainty and missed opportunities to improve safety, productivity and resilience. Reform should begin with the funding model, to better align with other jurisdictions that recognise the public good of standards and provide central funding. The benefits of a high-performing standards system are well documented; for example, the BERL report estimates that a 1% increase in the use of standards is associated with $1.1 billion in GDP. Although this submission does not address the issue in detail, we would welcome the opportunity to discuss a review with the Ministry for Regulation.

Engineering New Zealand is committed to improving outcomes across the building system and welcomes opportunities to support officials in ensuring our built environment is safe, healthy and productive for all New Zealanders.