

Review of the Building Act 2004: Terms of Reference

Background to the Review

- 1 The building and construction sector is vital for New Zealand's economic performance and prosperity. In a typical year, the building and construction sector (encompassing non-residential civil construction, non-residential building and residential building):
 - builds about 24,000 new houses and renovates approximately 32,000 existing homes
 - builds \$4,000 million worth of non-residential buildings – offices, warehouses, factories and other facilities crucial to the performance of every other sector in New Zealand
 - provides key components of the infrastructure required for the successful growth Auckland and other cities
 - employs about 176,000 people – about one person in every twelve in the workforce
 - contributes approximately 5% to New Zealand's GDP.
- 2 The Building Act 2004 sets out the regulatory framework for ensuring building quality and performance in New Zealand. Its purpose is to set performance standards for buildings to ensure that:
 - People who use buildings can do so safely and without endangering their health
 - Buildings have attributes that contribute, as appropriate, to the health, physical independence and well-being of the people who use them
 - People who use a building can escape from it, if it is on fire
 - Buildings are designed, constructed and able to be used in ways that promote sustainable development.
- 3 The Act also sets out sixteen principles to be applied when performing functions under the Act, with regard to such things as:
 - Recognising the special traditional and cultural aspects for the intended use of a building
 - The importance for allowing for continued innovation in building design and construction
 - Protecting other property from physical damage when constructing or demolishing a building
 - Ensuring reasonable and adequate provision for people with disabilities
 - The need to facilitate the efficient use of energy, energy conservation and the use of renewable sources of energy
 - The need to facilitate the efficient use of water and water conservation in buildings
 - The need to facilitate the reduction of waste during the construction process.
- 4 As part of the Government's regulatory reform programme, a review of the Building Act 2004 will be undertaken in response to concerns about:
 - its implementation at a local government/consent authority level
 - the costs and complexity associated with the building consent processes

- consumer confidence in the technical capability of practitioners
 - the allocation of risk and liability between the parties.
- 5 The following key issues have been identified for investigation as part of a review of the Building Act 2004:
- the cost and timeliness of building consent processing
 - unpredictability of timeframes for consent approval
 - inconsistency of decision making by councils
 - ensuring that key processes of the building control system deliver value for money
 - reducing the complexity and cost of licensing of building practitioners
 - the allocation of risk and liability within the sector, which is leading to excessively risk averse behaviour by territorial authorities resulting in delays and additional costs [EGI (09) 5 and CAB Min (09) 6/5A refer].

Outcomes from the review

- 6 The review will identify reforms to the Act, its associated regulation and its administration, to reduce the costs but not the quality of the building control system to achieve the following results:

<u>Results</u>	<ul style="list-style-type: none"> • Quality homes and buildings are produced through a business enabling and efficient regulatory framework • Consumers can make informed decisions and have confidence in transacting in the building and housing market • Homes and buildings are produced cost effectively by a productive sector who have the right skills and knowledge • The regulatory system is administered in an efficient and cost-effective manner.
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- 7 The review will achieve these results by identifying ways to reform the Building Act and its administration in the following areas in particular:

Result: Quality homes and buildings are produced through a business enabling and efficient regulatory framework

- a Remove building regulation that is adding cost and little benefit
- b Building consent requirements are streamlined to reflect risk and complexity, with a view to decreasing the amount of building work that requires a consent
- c improving the alignment of the Building Code and NZ standards
- d Improve the way that risk and liability is allocated across parties in the sector – including (but not limited to) options for the reform of the joint and several liability framework as applied in the building sector - and the greater use of insurance/warranty products for better managing risk.

Result: consumers can make informed decisions and have confidence in transacting in the housing market

- e Increase support for consumers through greater information and disclosure, and improve the mechanisms for resolving disputes with practitioners.

Result: Homes and buildings produced cost effectively by a productive sector that has the right skills and knowledge

- f provide increased incentives for professional performance of practitioners (for example, licensing linked to the ability to self-certify)

Result: The required regulatory system is administered in an efficient and cost effective manner.

- g Streamline building consent functions, including options to:
 - o facilitate or incentivise building consent authorities to consolidate and rationalise building consent functions (including options for the functions to be carried out by groupings of councils, or at a regional or national level)
 - o facilitate the development of other building consent providers
- h Identify how smart technology and other systems could improve the efficiency and timeliness of the consenting process, such as shared IT platforms and improved product assurance databases
- i Identify other options to improve the consistency and cost of decision-making across the consenting, inspection and certification process.

Scope of the review

- 8 The review will focus on all building work covered by the Act.
- 9 The following table sets out what is in the scope of the review, and what is outside the review’s scope:

Within Scope	Out of Scope
<p>The design of the Act, and the role and design of supporting regulation (such as Building Codes and Standards) with particular reference to:</p> <ul style="list-style-type: none"> • Addressing elements of the regulatory system to allow a better balance of the risk and liability borne by parties within the building sector • The roles and responsibilities of the parties within the building sector • Supporting better decision-making by consumers, for example by improving support and education for consumers and building owners and improving redress when things go wrong • Providing incentives for better performance by practitioners, including options for greater self regulation of building work by skilled practitioners • Developing a more risk-based approach to building control activity and removing regulation that does not meet a cost: benefit test • Simplifying and streamlining the administration of building regulation, including the rationalisation of building consent/inspection functions and exploring whether/how to facilitate other providers. 	<ul style="list-style-type: none"> • Administration of the NZ Standards system

Governance

- 10 The Minister for Building and Construction will report to the Cabinet EGI Committee on at least a quarterly basis on the review's progress through the quarterly updates on the Regulatory Reform Programme. Before reporting to the Cabinet EGI Committee on the substantive proposals for reform arising from the review, the Minister will consult with the following Ministers:
 - The Minister of Finance
 - The Minister for Economic Development
 - The Minister for the Environment
 - The Minister for Regulatory Reform and the Minister of Local Government
 - The Minister of Housing

- 11 A Senior Officials Steering Group will be formed to provide strategic oversight of the review at an officials' level. The Senior Officials Steering Group will operate at a Deputy CE/Deputy Secretary level, and will provide a means to share agency positions, allocate resources, clear blockages, make connections, and provide high-level ownership and sign off of Cabinet advice. The Senior Officials Steering Group would comprise:
 - Department of Building and Housing (chair)
 - Department of Prime Minister and Cabinet
 - Treasury
 - Ministry of Economic Development
 - Ministry for the Environment (RMA interface)
 - Department of Internal Affairs (Local Government and NZ Fire Service interfaces)

- 12 A particular focus of the Senior Officials Steering Group will be to ensure that the proposals from the review will be aligned with the recommendations arising from the:
 - Resource Management Act Phase 2 review, particularly the workstream regarding the interface between the Building Act and the Resource Management Act
 - current work in the Local Government portfolio, including Auckland governance.

- 13 The review will establish a Sector Reference Group to ensure that the sector's issues are being addressed, test analysis for sector perspectives, advise on consultation, and provide advice on the recommendations of the review. The Sector Reference Group would comprise:
 - Peter Neven – General Manager Infrastructure Division, Fletcher Building
 - Richard Harris – Director Jasmox Ltd and President NZ Institute of Architects
 - John Gray – President Home Owners and Buyers Association
 - Brett Mettrick, President, Registered Master Builders Federation
 - Richard Merrifield, Recent President, Certified Builders Association
 - Nominee from ACENZ/IPENZ
 - John Duthie – General Manager City Development Auckland City Council
 - George Skimming, Special Projects Manager, Wellington City Council
 - Irene Clark, Manager Environment and Regulation, Local Government NZ

- 14 As appropriate, the review will establish sector working groups to ensure a sector input into the review's work at a working level.

Timeframes and Milestones

- 15 The overall approach to the structure and timeline for the review is:

Timeline	Deliverables
By end of 2009:	<ul style="list-style-type: none"> Identify immediate opportunities for simplifying/streamlining the current regulatory system Options for reform of the regulatory system, for example to change the balance of risk and liability <p><i>Subject to Cabinet decisions</i></p> <ul style="list-style-type: none"> Implement immediate simplifying/streamlining opportunities that do not require legislative change
By mid-2010:	<ul style="list-style-type: none"> Passage of legislation required for those immediate simplifying/streamlining opportunities requiring legislation subject to Cabinet approval, consult more widely on options for the reform of the regulatory system in the first half of 2010. Final Cabinet decisions would be agreed by the end of June 2010
By end of 2010:	<ul style="list-style-type: none"> Implementation of immediate simplifying/streamlining opportunities requiring legislation (final timing for implementation subject to the nature of the changes being made) introduction and passage of changes to the Building Act to give effect to Cabinet's June-2010 decisions
From 2011:	<ul style="list-style-type: none"> Implementation of new Act

- 16 The approach gives rise to a four phase review timetable, set out below. The exact scope and timing for the latter phases of the review are contingent upon decisions made at the end of the first phase.

Phase 1

<p>Options for the reform of the regulatory system Immediate Opportunities to Streamline and Simplify</p> <p>Options and recommended directions to Ministers on:</p> <ul style="list-style-type: none"> Improving the way that risk and liability is allocated across parties, and mechanisms for better managing risk Increased support for consumers and improved dispute resolution Facilitating where appropriate greater use of self-certification of work by competent licensed practitioners and greater self-regulation within the sector 	<p>Report to Ministers at the end of October 2009 on directions for reform and opportunities for short term changes</p> <p>Reporting to Cabinet and Cabinet decisions by the beginning of December 2009</p>
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<ul style="list-style-type: none"> • Removing building regulation that is adding cost for little benefit • Developing more targeted risk-based approaches to the coverage of the building consent, inspection and certification processes • Simplifying/streamlining the administration of building regulation, including the rationalisation of building consent/inspection functions and exploring whether/how to facilitate other providers • Operational reforms to reduce administration costs 	
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Phase 2

<p><i>Phase 2a: Implement immediate streamline and simplify decisions</i> <i>Phase 2b: Consult on options for the reform of the regulatory system</i></p> <p><i>Phase 2a</i></p> <p>If Ministers agree in December 2009 to options to streamline and simplify the provisions of the Act, and if these require regulatory or legislative change:</p> <ul style="list-style-type: none"> • Preparation of drafting instructions • Preparation of Cabinet papers seeking approval for introduction of legislation or promulgation of Orders-in-Council • Introduction and passage through Parliament 	<p><i>Phase 2a</i></p> <p>Implement streamlining/simplification opportunities that do not require legislation by December 2009.</p> <p><i>For those that do require legislation:</i></p> <p>Reporting to Cabinet to approve introduction of legislation (if required) in February 2010</p> <p>Legislation introduced into the House February/March 2010</p> <p>Legislation passed by June 2010</p>
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<p><i>Phase 2b</i></p> <p>If Ministers agree in December 2009 to consult with the sector on options for the reform of the regulatory system:</p> <ul style="list-style-type: none"> • Prepare and disseminate consultation document of proposed changes • Receive and analyse submissions • Reporting to Ministers • Prepare final recommendations for change to Cabinet 	<p><i>Phase 2b</i></p> <p>Consultation document to Cabinet for sign-off in February 2010</p> <p>Report to Ministers by beginning of May 2010 on results of the consultation</p> <p>Reporting to Cabinet and Cabinet decisions by the end of June 2010</p>
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Phase 3 – Legislative Phase

17 Changes to the Building Act to give effect to June 2010 Cabinet decisions. Expected timeframe July 2010 to December 2010, but the timing is contingent upon the nature and scope of the agreed changes, and the resulting complexity of the Parliamentary process.

Phase 4 - Implementation

18 Implementation of changes to the Building Act enacted at the end of 2010. Expected timing from 2011, but this timing is contingent upon the nature and scope of the agreed changes.

Resourcing

19 The cost of the review will be funded by the Department of Building and Housing from existing baselines.