



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Building and Construction
Title of Cabinet paper	Proposed Administrative Changes to the Building Act 2004	Date to be published	2 August 2022

List of documents that have been proactively released

Date	Title	Author
May 2022	Proposed Administrative Changes to the Building Act 2004	Office of the Minister for Building and Construction
18 May 2022	Building Act 2004: Proposed Administrative Changes DEV 22-MIN-0112	Cabinet Office

Information redacted:

YES

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Some information has been withheld for the reason of Confidential advice to Government.

In Confidence


Office of the Minister for Building and Construction
Cabinet Economic Development Committee

Proposed Administrative Changes to the Building Act 2004

Proposal

1. This paper seeks agreement to amend the Building Act 2004 (Building Act) to provide a more efficient process for building consent authorities that are not part of a territorial authority ('stand-alone building consent authority').

Executive Summary

2. The Building Act sets standards and requirements for building work in New Zealand. One of these requirements is for developers and landowners to apply and obtain a building consent for certain types of building work. Building consents are issued by building consent authorities.
3. Under the Building Act, the building consent accreditation body may accredit a person to perform the functions of a building consent authority. Until recently, all building consent authorities were part of territorial authorities. In November 2020, the first building consent authority that was not part of a territorial authority was approved following a strict approval process under the Building Act. This building consent authority was established by Kāinga Ora – Homes and Communities and is called Consentium.
4. Consentium has requested, and territorial authorities support, changes to the Building Act to clarify and amend outdated requirements in order to improve efficiency. Having considered these requests, I recommend that changes are made to the Building Act that relate to:
 - 4.1. the payment of the building levy directly to the Ministry of Business, Innovation and Employment (MBIE)
 - 4.2. provision of information from the building consent authority to the territorial authority at set milestones.
5. While these challenges are currently only faced by Consentium and the 40 territorial authorities it works with, they will also be an issue for any building consent authority that is not part of a territorial authority ('stand-alone building consent authority') that may be approved in the future.
6. Confidential advice to Government 

Background

7. The Building Act 2004 (Building Act) sets standards and requirements for building work in New Zealand. One of these requirements is for developers and landowners to apply and obtain a building consent, for certain types of building work. Building consents are issued by building consent authorities.
8. Under the Building Act, the building consent accreditation body may accredit a person to perform the functions of a building consent authority. Until recently, all building consent authorities were part of territorial authorities. In November 2020, the first building consent authority that was not part of a territorial authority was approved following a strict approval process. Such building consent authorities are known as 'stand-alone building consent authorities'.
9. The stand-alone building consent authority is called Consentium, and is a stand-alone independent division of Kāinga Ora - Homes and Communities. Consentium can issue building consents, carry out inspections and certify building work for Kāinga Ora developments, provided that they are for new or existing homes of up to four levels.
10. Consentium has requested that various administrative Building Act provisions be amended to improve efficiency for stand-alone building consent authorities. After considering their request, I propose that changes are made to the Building Act that relate to:
 - 10.1. the payment of the building levy directly to MBIE
 - 10.2. the provision of information from the building consent authority to the territorial authority.

The payment of the building levy directly to MBIE

11. I propose to amend the Building Act to allow Consentium, and other stand-alone building consent authorities, to pay the building levy direct to MBIE by the 20th of the month following consent being granted. Consentium estimates that this amendment would reduce the time required to process the levy from 50 hours per month to one hour a month.
12. This amendment is also consistent with the practice of Building Consent Authorities paying the Building Research Association of New Zealand levy directly to Building Research Association of New Zealand in accordance with the Building Research Levy Act 1969.

The current process for stand-alone building consent authorities is time consuming and inefficient

13. Building consent authorities are required to collect the building levy for building consent applications over \$20,444 and provide this payment to the relevant territorial authority.

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14. Section 58 of the Building Act requires the building consent authority to pay the building levy to territorial authorities within five working days of the consent being issued. Territorial authorities are then required to pay the levy to MBIE by the 20th of the month following the consent being granted.
15. Consentium has experienced inefficiencies and challenges with meeting its levy payment obligations. This creates additional steps for paying the levy and has inadvertently resulted in added cost and work for both territorial authorities and Consentium. These challenges would also be faced by any other future stand-alone building consent authority that is accredited under the Building Act.
16. Furthermore, because territorial authorities are not designed to receive levy payments for work carried out by building consent authorities, they are unable to generate invoices for work carried out by Consentium. This generates further work because manual work arounds are required.
17. To address the challenges of a stand-alone building consent authority not having access to the territorial authorities' systems, Consentium has negotiated processes with the territorial authorities to pay the building levy so it is able to meet the current requirements in the Building Act. These processes require additional work to be completed by both the territorial authority and Consentium.
18. These processes negotiated with the territorial authorities to pay the levy, make it challenging for Consentium (and any future stand-alone building consent authority) to pay the levy to the territorial authority within five working days. The current process that Consentium has to follow to calculate the building levy each time it receives a consent application from Kāinga Ora is:
 - 18.1. Email the relevant territorial authority a purchase order that includes the estimated value of the building work, the property address, the consent number and the levy amount.
 - 18.2. When the territorial authority receives the information, it creates a file in its document management system for the application and generates an invoice for the levy to Kāinga Ora as the applicant.
 - 18.3. If the estimated value of the build changes before consent is granted, Consentium, must notify the territorial authority. The territorial authority must provide an updated invoice to Kāinga Ora.
 - 18.4. Once Consentium grants Kāinga Ora a building consent, it receipts and pays the building levy to the relevant territorial authority within five working days.
 - 18.5. The territorial authority then adds the Consentium levy to its monthly returns and makes the payment to MBIE on Consentium's behalf.
19. Both territorial authorities and Consentium incur costs to implement these additional processes. While territorial authorities can retain three percent of

the total levy payable as an administration fee, this does not always recover the costs of the resourcing that they are required to put into the levy payment process for the work.

20. Territorial authorities have advised that while they have an interest in the building work being conducted in their region, they believe that being involved in the calculation, reporting and paying of the building levy on behalf of a stand-alone building consent authority places unnecessary cost, time and resourcing needs on them.

I propose to amend the Building Act to improve the process for paying the building levy

21. To address the concerns raised by Consentium and territorial authorities, I propose that the Building Act is amended to require a stand-alone building consent authority to pay the building levy directly to MBIE.
22. To provide for consistency between stand-alone building consent authorities and territorial authorities when they pay the building levy to MBIE, other supporting amendments to the Building Act will be required. I propose that the Building Act be amended to:
 - 22.1. Require a stand-alone building consent authority to pay the building levy to MBIE by the 20th of the month following the building consent being granted. This is consistent with section 59 of the Building Act and will ensure timely payment of the levy to MBIE.
 - 22.2. Allow a stand-alone building consent authority to deduct three percent of the total levy payable to MBIE each month if payment is made by the 20th of the month following the building consent being granted. This is consistent with section 60 of the Building Act and incentivises the levy to be paid on time each month. There is no reason for setting a lower level of administration fee for a stand-alone building consent authority.
 - 22.3. Make it an offence for a stand-alone building consent authority to fail to pay the building levy to MBIE. This offence should be consistent with section 58 of the Building Act and be a fine of up to \$5,000 for individuals and \$25,000 for body corporates.
23. I also propose an amendment to the Building Act to require a stand-alone building consent authority to provide MBIE with confirmation that according to their financial records and to the best of their knowledge that the payment reported and paid to MBIE is correct. This will reduce the risk of inadvertent or deliberate miscalculations by stand-alone building consent authorities.

Risks associated with the proposed changes to the building levy process

24. Whilst the proposed change is minor, there is a risk that this change will remove a layer of transparency by no longer requiring the territorial authorities to confirm that the levy was calculated correctly. I consider this risk to be low, because a territorial authority typically tends to rely heavily on the building

consent authority's advice on the correct estimated value of the build and therefore does not currently provide oversight.

25. Furthermore, MBIE will continue to have the ability to audit all building consent authorities to ensure that the correct levy amount is being collected and paid.
26. There is a risk that some councils may be opposed to the change in process because it will decrease the amount of revenue that they receive from the building levy. However, the majority of territorial authorities MBIE consulted with would prefer to avoid the time spent on processing building levy payments from other building consent authorities than receive the administration fee that can be deducted under section 60 of the Building Act.

Information provision to territorial authorities is time consuming for stand-alone building consent authorities

27. I propose that the Building Act is amended to specify milestones that stand-alone building consent authorities must provide certain information to territorial authorities.

The building information requirements are imposing a significant burden on both territorial authorities and stand-alone building consent authorities

28. Building consent authorities are required under section 238(2) of the Building Act to provide the relevant territorial authority information it receives or issues in respect of a building. This information must be provided to the territorial authority within five working days of it being received by the building consent authority. This includes information relating to the building consent, code compliance certificate and notices to fix.
29. The requirement under section 238(2) is consistent with section 216 of the Building Act, which requires territorial authorities to keep available information on buildings in their district. This requirement enables members of the public to be informed about their obligations under the Act and enables them to participate in relevant building procedures effectively.
30. While most of the information required to be provided to the territorial authority can be aligned to specific stages of building work, this does not always reflect how information is received and issued in practice. Building consent authorities are continuously receiving, issuing and retaining information when performing their functions, including information that is insignificant.
31. While existing building consent authorities, who are part of territorial authorities, can comply with the section 238 requirements with relative ease, this has not been the case for Consentium as a stand-alone building consent authority. Due to the frequency and volume of information that is received and issued under section 238(2) of the Building Act, complying with the requirements is imposing a significant administrative burden on both Consentium and territorial authorities.

32. The nature of the information flow during a building project and the processes that territorial authorities have to establish to receive the information is making complying with section 238 requirements both time-consuming and costly to administer.
33. The cost burden is driven by the fact that stand-alone building consent authorities do not use the same document management system as the relevant territorial authority. This means it takes more time to send, receive and store the relevant information within five working days required by section 238 of the Building Act.
34. It takes time to send, receive and store the relevant information within five working days. The section 238 requirements are time consuming, costly to administer and result in duplication of information. There can also be additional complications, as different territorial authorities can have different processes. This has required Consentium to establish bespoke online processes to deliver the information that is specific to each territorial authority. The alternative to tailored online processes is to deliver information by couriering a USB stick.
35. The current requirements in section 238 of the Building Act can also mean that building consent authorities need to provide minor and insignificant responses to questions to the territorial authority for filing. There can also be instances where information could be misleading as it has not been reviewed by technical experts or there may be unanswered questions.
36. During targeted consultation, territorial authorities have consistently advised that they only want to receive information at key milestones to reduce the administrative burden.

I propose a new milestone approach for sharing information with the Territorial Authority

37. I propose that the Building Act is amended so that stand-alone building consent authorities provide certain information to the relevant territorial authority within five working days of set milestones, rather than within five working days of that information being received, issues, as is currently required. The information and milestones are outlined in the following table:

Milestone	Information to be shared by a stand-alone building consent authority	Tasks for territorial authority
Milestone 1: Acceptance of building consent application	<p>Detailed plans and specifications showing site, foundations, drainage and bracing.</p> <p>Detail of any practitioners engaged to carry out restricted building work.</p> <p>Relevant correspondence and any other relevant information that the building</p>	<p>Create a file and store the relevant information so that it is available as part of any official information request.</p> <p>Update the property file.</p> <p>Development contributions</p>

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	<p>consent authority has receipt of at the time application accepted.</p> <p>Project information memorandum as per section 31 of the Building Act.</p>	<p>are assessed as part of the project information memorandum process and must be paid before code compliance certificate.</p>
<p>Milestone 2: Building consent decision</p>	<p>The building consent as per section 45 of the Building Act.</p> <p>Requests for further information and responses to requests for further information under section 48.</p> <p>All correspondence between the building consent authority and the applicant during the consenting process including updated plans.</p> <p>Project information memorandum (if received after accepting application).</p> <p>Any additional documents required to process an application.</p>	<p>Store the relevant information so that it is available as part of any official information request.</p>
<p>Milestone 3: Code compliance certificate decision</p>	<p>Information related to the outcome of the code compliance certificate including:</p> <ul style="list-style-type: none"> • The code compliance certificate as per section 91 of the Building Act or decision to refuse under section 95A of the Building Act • All inspection outcomes under section 90 • Any minor variations agreed on site • Records of work and certificates of work provided by Licensed Building Practitioner • Energy work certificate • Compliance schedule (where relevant). <p>All relevant correspondence and supporting documentation received during this time period.</p>	<p>Store the relevant information so that it is available for any official information request.</p> <p>Issue compliance schedule statement (where relevant).</p> <p>Update the property file.</p> <p>Enable property valuations to be updated for rating purposes.</p> <p>Update the earthquake prone building register, if relevant.</p>
<p>Other events that result in communication between the building consent authority and the building</p>	<p>Information that does not fall within a milestone stage, or information that is required to undertake reactive territorial functions. Examples of events that will require information to be provided to the building consent authority include:</p> <ul style="list-style-type: none"> • Information related to a building consent lapsing if the building work hasn't started within 12 months in 	<p>Store the relevant information so that it is available for any official information request.</p> <p>Update the property file.</p> <p>Enforce the notice to fix.</p> <p>Enforce any other legislation that relates to the failed</p>

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owner	<p>accordance with section 52</p> <ul style="list-style-type: none"> • Extension of time letters issued under section 93 • Notices to fix issued under section 166 (2) • Compliance schedule under section 104 • Two-year reminders for code compliance certificate under section 93 • Information listed in section 238(c) to (e) of the Building Act. 	building inspection.
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38. I also propose that any information that is required to be provided under section 238, and which does not naturally fall into one of the set milestones listed above, continues to be required to be provided to the territorial authority within five working days. Examples of documents that might fall in this category include building consent lapses and notices to fix.
39. Consentium has estimated that by taking a milestone approach it will be able to save 80 hours per week in administration time. They also expect that territorial authorities will save a similar amount of administration time. Any future stand-alone building consent authority would also benefit from the proposed changes.
40. These amendments would also improve the quality of the building records held by territorial authorities because:
- 40.1. It will reduce duplication of the information received under section 238. For example, under the current approach, territorial authorities are receiving the same documents during the building process and again when the building consent or the code compliance certificate is issued.
- 40.2. It will also reduce the inaccuracy of building records. For example, under the current approach, there can be instances where information provided could be misleading as it has not been reviewed by technical experts or there may be unanswered questions.
41. This amendment will only change the processes for stand-alone building consent authorities. The new process will allow stand-alone building consent authorities to group the information together for efficiency purposes and ensure the information is complete before it is provided to the territorial authority. Stand-alone building consent authorities will still be subject to the same offences and penalties for not providing the information to a territorial authority that is currently provided for in section 238 of the Building Act.

42. The key milestone approach also takes into consideration other statutory requirements that the territorial authority undertakes during the building consenting process such as requiring development contributions under the Local Government Act 2002.

Risks associated with this proposal

43. While there is a risk that there may be some delays in the territorial authority storing the information, the milestone proposal will not result in any additional barriers to the public being able to access building information. The milestone approach aligns with the existing process that territorial authorities follow when dealing with official information requests.

Financial Implications

44. There are no direct financial implication of this proposal to the Crown.

Legislative Implications

45. There is an opportunity to include these potential amendments to the Building Act in a Building Amendment Bill. Confidential advice to Government

[Redacted]

46. Confidential advice to Government

[Redacted]

47. This approach is subject to discussions with the Parliamentary Counsel Office.

Impact Analysis

48. The Treasury's Regulatory Impact Analysis team has determined that the technical changes to building levy payments and building consent information provisions are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

49. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to either of these proposals as there is no direct emissions impact.

Population Implications

50. The proposals in this paper are not expected to have significant implications for population groups.

Human Rights

51. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

52. The following departments and crown entities were consulted on these proposals: Ministry of Housing and Urban Development, Kāinga Ora, Department of Internal Affairs, Ministry of Justice, Department of Prime Minister and Cabinet, The Treasury, Inland Revenue.
53. MBIE has undertaken targeted consultation with Consentium, Kāinga Ora and territorial authorities on these proposals. This included two focus sessions with multiple council managers with responsibility for processing building consent information.
54. All of the territorial authorities that responded supported the proposed changes. The key points from this consultation included:
 - 54.1. Councils have consistently advised that they only want to receive information at key milestone points.
 - 54.2. Sending information too frequently sends the wrong message – it implies the council has some responsibility to monitor the process or an obligation to do something straight away with the information, when Consentium is the responsible building consent authority.
 - 54.3. There is considerable duplication in the documentation – for example, all requests for information are also provided when the building consent or code compliance certificate is issued.
 - 54.4. It is time-consuming for councils to manage the frequency and volume of documentation.

Communications

55. MBIE will contact key stakeholders such as territorial authorities and Consentium to advise them of these decisions.


Proactive Release

56. I intend to release this paper proactively, subject to any redactions consistent with the Official Information Act 1982, within 30 days. MBIE will publish a copy of this paper on its website.

Recommendations

The Minister for Building and Construction recommends that the Committee:

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- 1 **note** that in November 2020, the first stand-alone building consent authority, known as Consentium, was registered as it meets the Building Act requirements;
- 2 **note** that Consentium is a stand-alone division of Kāinga Ora and has been experiencing inefficiencies and unnecessary cost burdens with meeting its statutory obligations to pay the building levy and providing consenting information to the relevant territorial authority;
- 3 **note** that in order to make the process more efficient, changes need to be made to the Building Act 2004 (the Building Act);
- 4 **note** that, subject to advice from the Parliamentary Counsel Office, it may be possible to make these amendments as part of a Building Amendment Bill
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- 5 **agree** to amend the Building Act so that any stand-alone building consent authority (such as Consentium) is required to pay the building levy directly to MBIE;
- 6 **agree** subject to agreement to paragraph 5 that the following supporting amendments be made to the Building Act:
 - 6.1 that a stand-alone building consent authority is required to pay the building levy to MBIE by the 20th of the month following the building consent being granted;
 - 6.2 that a stand-alone building consent authority may deduct three percent of the total levy payable to MBIE each month if payment is made by the 20th of the month following the building consent being granted;
 - 6.3 that it is an offence for a stand-alone building consent authority to fail to pay the building levy to MBIE, this will result in a maximum penalty on conviction consistent with section 58 of the Building Act of \$5,000 for an individual and \$25,000 for a body corporate;
 - 6.4 that a stand-alone building consent authority must provide MBIE with confirmation that, according to their financial records and to the best of their knowledge and belief, the payment reported and paid to MBIE is correct;
 - 6.5 that the Chief Executive of MBIE is able to recover unpaid building levies from the stand-alone building consent authority;
- 7 **agree** that the Building Act be amended to require stand-alone building consent authorities to provide appropriate information to territorial authorities within five working days of the following three key milestones during the building consent process:
 - 7.1 Milestone 1: Acceptance of building consent application;

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- 7.2 Milestone 2: Building consent decision;
- 7.3 Milestone 3: Code compliance certificate decision;
- 8 **agree** that within five working days of Milestone 1, appropriate information must be provided to the territorial authority and are likely to include:
 - 8.1 Detailed plans and specifications showing site, foundations, drainage and bracing, if applicable;
 - 8.2 Detail of any practitioners engaged to carry out restricted building work as required, if applicable;
 - 8.3 Details of the project information memorandum;
 - 8.4 any other relevant information that the building consent authority has receipt of at the time application accepted;
- 9 **agree** that within five working days of Milestone 2, appropriate information must be provided to the territorial authority and are likely to include:
 - 9.1 A copy of the final building consent;
 - 9.2 Requests and responses to request further information;
 - 9.3 All correspondence between the building consent authority and the applicant during the consenting process including updated plans;
 - 9.4 Project information memorandum (if received after accepting application);
 - 9.5 Any additional documents required to process an application;
- 10 **agree** that within five working days of Milestone 3, appropriate information must be provided to the territorial authority and are likely to include:
 - 10.1 A copy of the code compliance certificate;
 - 10.2 Any minor variations agreed on site;
 - 10.3 Information related to the outcome of the code compliance certificate including: all inspection outcomes, records of work and certificates of work provided by Licensed Building Practitioner, energy work certificate. compliance schedule (where relevant);
 - 10.4 Any other relevant correspondence received by the stand-alone building consent authority between building consent decision and code compliance certificate;
- 11 **agree** that any building information required to be provided under section 238(1) of the Building Act, and which does not relate to one of the three key milestones referred to in paragraph 7, is required to be provided to the territorial

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authority within five working days after the building consent authority issues or receives the information;

- 12 **note** that it is an offence for a stand-alone building consent authority to not provide the information within five working days of the milestone or other requirement outlined in recommendation 11 and would result in a fine on conviction not exceeding \$5,000 and, in the case of a continuing offence, a further fine not exceeding \$500 for every day or part of a day during which the offence has continued;
- 13 **agree** that the territorial authority can request any building information from a stand-alone building consent authority that must be provided within 20 working days;
- 14 **agree** that it is an offence for a stand-alone building consent authority to not provide building information requested by a territorial authority within 20 working days of a request for information and would result in a fine on conviction not exceeding \$5,000 and, in the case of a continuing offence, a further fine not exceeding \$500 for every day or part of a day during which the offence has continued;
- 15 **authorise** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to Cabinet decisions in this paper;
- 16 **authorise** the Minister for Building and Construction to make decisions, consistent with the proposals in these recommendations, on any issues that arise during the drafting process;
- 17 **note** that this Cabinet paper and the associated Cabinet minute will be released under the Government's proactive release policy.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction