



Department of
Building and Housing
Te Tari Kaupapa Whare

Building Act 2004: Guide to exemptions from building consent requirements

October 2008



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Guidance

This document is intended as a general guide to Schedule 1 of the Building Act and should be read in association with the Act. While the Department of Building and Housing (the Department) has taken every care in preparing this document, it should not be relied upon in establishing whether building work requires a building consent or the exemptions under Schedule 1 apply. Readers should always refer to the source documents, including the New Zealand Building Code, and be aware that in specific situations it may be necessary to seek independent technical and/or legal advice.

Purpose

The purpose of these guidelines is to assist building consent authorities and building officials to deal with changes to Schedule 1 of the Building Act 2004, that come into force on 16 October 2008. The changes to Schedule 1 of the Building Act increase the range of exempt building work (ie, building work that does not require a building consent under the Act).

These guidelines will help you to decide whether building work is exempt and how to deal with consumer inquiries and building consent applications around the time the new exemptions come into force.

While these guidelines are intended to assist building consent authorities and building officials, every individual undertaking building work is responsible for deciding whether the work is either work requiring a building consent or that it meets the specific exemptions set under Schedule 1 of the Building Act.

Guidance for building consent authorities

BACKGROUND

When the Building Act was passed in 2004, it contained a number of exemptions that are applied daily without reference to a building consent authority. Mostly, the original exemptions apply to minor building work (eg, repair and maintenance and small non-habitable structures).

Additional building work exemptions will be added to Schedule 1 of the Building Act, and will come into force on 16 October 2008 (see Appendix 1). Practical implications for building consent authorities are that people not skilled or qualified to make a decision about whether a building consent is necessary will be seeking advice about whether or not their intended building work is exempt.

The Department has developed a basic three-part guide for building consent authorities to apply when asked to provide advice to the public. This guidance is simply a suggested approach for building consent authorities to consider using or further developing to suit their particular circumstances.

Part one: Updating and empowering building control staff and developing information for consumers

Whenever there is a change to building control legislation, it is important to ensure building control staff are among the first to be informed about the detail of the changes so they are ready and able to deal with consumer enquiries. The development of information for staff and consumers is also very important.

Accordingly, the Department has drafted some general information that may be used to inform building control staff and to assist building consent authorities to develop consumer guidance materials (see Appendix 2). The Department envisages building consent authorities incorporating similar guidance information in the consumer information they publish (eg, in pamphlets, on their websites and in newsletters they issue from time to time).

Staff who have the initial contact with consumers or who carry out the first checks on a building consent application will play a key role in assisting consumers to decide whether building work requires a consent or not. We therefore encourage building consent authorities to:

- provide building control counter staff and others involved in consumer services with up-to-date information on the proposed changes to Schedule 1
- provide appropriate technical support, to assist consumers with determining whether or not an exemption applies to their building work.

Part two: Before the new exemptions come into force

Before the new exemptions come into force, building consent applications will have been lodged for processing. If those same applications had been lodged after the new exemptions had come into force, the subject of the application might qualify as exempt building work (not requiring a building consent). When those circumstances come to the attention of the building consent authority, the Department suggests that the authority takes the following steps.

1. Sends written advice to the affected applicant(s) informing them about the changes to Schedule 1 of the Building Act, giving them the option of withdrawing their application (with minimal or no fees applying) to allow them time to determine whether all or part of the building work in their application will be exempt once the changes come into effect. Once the new exemptions are in force, they can reapply with an amended application (or not apply at all, if all the building work qualifies as exempt).

2. Includes in the advice to the applicant(s) a recommendation that they obtain further advice from a suitably qualified person about whether some or all of the work is likely to be exempt (as it may be worth proceeding with the building consent application to avoid delays). Depending on the nature of the building work, suitably qualified people would include a licensed building practitioner (LBP), architect, building surveyor, engineer, or some other person with experience in the building industry.
3. Includes in the advice to the applicant(s) notice that a period of five (5) working days (from the date they received the letter) will be allowed for them to withdraw their consent application, otherwise the authority will process the application in the normal manner and the relevant fees will apply.
4. Includes in the advice a warning that, even if the applicant(s) believes that an exemption will apply to their project, they cannot proceed with the proposed building work without a building consent until 16 October 2008 when the exemptions come into force (as to do so would be a breach of the Building Act).
5. Includes in the advice that all building work must comply with the Building Code, regardless of whether a building consent is required.

Part three: After new exemptions take effect on 16 October 2008

Until the wider building sector and consumers become familiar with the new exemptions, building consent authorities will need to consider how to inform the sector and consumers about the additional exemptions and how to manage enquiries and consent applications that appear to include exempt building work (eg, by allowing the applicant to withdraw and resubmit (if necessary) the application).

After the new exemptions take effect, a building consent authority may be faced with two situations.

1. An owner will be intending to carry out building work, and will be seeking advice about whether the building work is exempt, and how they can ensure that they are applying the legislation correctly, or
2. A building consent application is already lodged, and the building consent authority (having examined the consent application) discovers that all or part of the work is likely to have become exempt.

In the first case, the Department suggests that the building consent authority should provide the person making the enquiry with a copy of the amended Schedule 1 to the Building Act and the authority's own guidance material on exempt building work. If applicable, the building consent authority may also recommend that they obtain specific technical or legal advice to determine whether or not the intended building work is 'exempt building work'.

In the second case (ie, where the consent application has already been made) and the building consent authority believes the application probably now includes 'exempt building work', the Department suggests that the building consent authority informs the applicant that they may withdraw their application and resubmit it with any exempt building work excluded.

It is important to note that all building work (regardless of the need for a building consent) must comply with the Building Code.

Where a building consent authority receives a request for general advice on building work exemptions, in addition to any consumer information the authority can provide (eg, in the form of pamphlets, web-based information and newsletters), the customer could also be directed to the Department of Building and Housing website www.dbh.govt.nz to view a copy of the Building Act, or to read further information about the Schedule 1 exemptions.

Appendices

APPENDIX 1

Schedule 1 to the Building Act 2004 – Exempt building works (with new additions in force on 16 October 2008)

A building consent is not required for the following building work:

- (a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976, except—
 - (i) complete or substantial replacement of a specified system; or
 - (ii) complete or substantial replacement of any component or assembly contributing to the building's structural behaviour or fire-safety properties; or
 - (iii) repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or
 - (iv) repair or replacement of any water storage heater connected to a solid-fuel heater or other supplementary heat exchanger, except for the repair, or replacement with a comparable heater, of any open-vented water storage heater using the same pipework:
- (ab) the opening and reinstatement of any purpose-made access point within a drainage system that—
 - (i) is not a NUO system or part of a NUO system; and
 - (ii) is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976:
- (ac) the alteration to drains for a dwelling, if the alteration—
 - (i) is of a minor nature (for example, shifting a gully trap); and
 - (ii) does not include making any new connection to a service provided by a network utility operator; and
 - (iii) is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976:
- (ad) the alteration to existing sanitary plumbing (as defined in section 3 of the Plumbers, Gasfitters, and Drainlayers Act 1976) in a dwelling (for example, replacing a bath with a shower or moving a toilet) carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976:
- (ae) the installation, replacement, or removal in any existing building of a window (including a roof window) or an exterior doorway if—
 - (i) compliance with the provisions of the building code relating to structural stability is not reduced; and
 - (ii) in the case of replacement, the window or doorway being replaced satisfied the provisions of the building code for durability:
- (af) the alteration to an entrance or an internal doorway of a dwelling to improve access for persons with disabilities, if compliance with the provisions of the building code relating to structural stability is not reduced.
- (ag) the alteration to the interior of any non-residential building (for example, a shop, office, library, factory, warehouse, church, or school), if the alteration does not—
 - (i) reduce compliance with the provisions of the building code that relate to means of escape from fire, protection of other property, sanitary facilities, structural stability, fire-rating performance, and access for persons with disabilities; or
 - (ii) modify or affect any specified system.

- (b) the construction or alteration of any motorway sign, stopbank, culvert for carrying water under or in association with a road, or other similar structure that is a simple structure and is owned or controlled by a network utility operator or other similar organisation:
- (c) construction or alteration of any retaining wall that retains not more than 1.5 metres depth of ground and that does not support any surcharge or any load additional to the load of that ground (for example, the load of vehicles on a road):
- (ca) the construction, alteration, or removal of an internal wall (including the construction, alteration, or removal of an internal doorway) in any existing building if—
 - (i) compliance with the provisions of the building code relating to structural stability is not reduced; and
 - (ii) the means of escape from fire provided within the building are not detrimentally affected; and
 - (iii) the wall is not made of units of material (such as brick, burnt clay, concrete, or stone) laid to a bond in and joined together with mortar.
- (d) the construction or alteration of any wall (except a retaining wall or internal wall), fence (except a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987), or hoarding, in each case of a height not exceeding 2 metres above the supporting ground:
- (da) the construction or alteration of any dam that is not a large dam:
- (e) the construction or alteration of any tank or pool and any structural support of the tank or pool (except a swimming pool as defined in section 2 of the Fencing of Swimming Pools Act 1987), including any tank or pool that is part of any other building for which a building consent is required,—
 - (i) not exceeding 35 000 litres capacity and supported directly by the ground; or
 - (ii) not exceeding 2 000 litres capacity and supported not more than 2 metres above the supporting ground; or
 - (iii) not exceeding 500 litres capacity and supported not more than 4 metres above the supporting ground:
- (f) the construction, alteration or removal of any tent or marquee that has a floor area not exceeding 50 square metres if that tent or marquee is to be, or has been, used for public assembly for a period of not more than 1 month:
- (fa) the construction, alteration or removal or any tent or marquee that has a floor area not exceeding 100 square metres if that tent or marquee is, or has been, for private use for a period of not more than 1 month.
- (g) the construction or alteration of any platform, bridge, or the like from which it is not possible for a person to fall more than 1 metre even if it collapses:
- (h) the construction or alteration of any temporary storage stack of goods or materials:
- (i) building work in connection with any detached building (except a building that is required to be licensed in terms of the Hazardous Substances and New Organisms Act 1996 or a building closer than its own height to any residential accommodation or to any legal boundary) that—
 - (i) houses fixed plant or machinery, the only normal visits to which are intermittent visits for routine inspection and maintenance of that plant or machinery; or
 - (ii) into which, or into the immediate vicinity of which, people cannot or do not normally go; or
 - (iii) is used only by people engaged in the construction or maintenance of another building for which a building consent is required; or

- (iv) does not exceed 1 storey, does not exceed 10 square metres in floor area, and does not contain sanitary facilities or facilities for the storage of potable water, but may contain sleeping accommodation (without cooking facilities) if the detached building is used in connection with a dwelling:
- (j) building work in connection with the closing in of an existing veranda, patio, or the like so as to provide an enclosed porch, conservatory, or the like with a floor area not exceeding 5 square metres:
- (ja) the construction, alteration, or removal of any fabric, glass, or metal awning on any building that—
 - (i) is on the ground or first storey level; and
 - (ii) does not exceed 15 square metres in size:
- (jb) the construction, alteration, or removal of a pergola:
- (jc) the construction, alteration, or removal of a porch or verandah on any building where that porch or verandah—
 - (i) is on the ground or first storey level; and
 - (ii) is over a deck or a patio; and
 - (iii) does not exceed 15 square metres in size:
- (k) any other building work in respect of which the territorial authority (or, as the case requires, the regional authority) considers that a building consent is not necessary for the purposes of this Act because that building work—
 - (i) is unlikely to be carried out otherwise than in accordance with the building code; or
 - (ii) if carried out otherwise than in accordance with the building code, is unlikely to endanger people or any building, whether on the same land or on other property.

APPENDIX 2

General information that may be used in developing building consent authority (BCA) consumer guidance

Introduction

This document explains issues related to exempt building work under Schedule 1 of the Building Act 2004 (the Building Act). If you are intending to start a building project, it is recommended that you check whether the building work requires a building consent. If the work, or part of it, does not require a consent you may save time and money.

The Building Act 2004

The Building Act introduced changes to the way the building industry in New Zealand is regulated, with the intent of providing greater assurance to consumers. The Building Act provides a framework to support and promote safe, high-quality building work that will satisfy the expectations of consumers, government and the building industry. Continued successful implementation of the Building Act is critical for development and growth in all regions of New Zealand.

The government's aims in introducing the Building Act are to achieve:

- more clarity on the standards buildings are expected to meet
- more guidance on how those standards can be met
- more certainty that competent and capable people are undertaking the work
- more scrutiny in the building consent and inspection process.

The Building Act helps ensure better decision-making throughout the building process, and provides more assurance to consumers and homeowners that buildings are designed and built right the first time. The Building Act requires territorial and regional authorities (councils) to be accredited as building consent authorities. Building consent authorities issue building consents and undertake enforcement where building work fails to meet the requirements of the Building Act.

Building owners are generally required to obtain a building consent from a building consent authority to carry out building work. In practice a builder, designer or architect acting as the owner's agent may also obtain a consent on behalf of the building owner. The consent is necessary to ensure proposed building work complies with the New Zealand Building Code (eg, building, plumbing, drainage, fire and accessibility requirements) and is therefore, safe, sanitary and otherwise suitable for its intended use.

The Building Act does allow a limited range of building work to be carried out without a building consent. Most 'exempt building work' is listed in Schedule 1 to the Building Act.

Overview

The Building Act prescribes the process that building consent authorities and building owners must comply with when undertaking building work.

The Act requires people intending to undertake building work to apply for a building consent unless the work is 'exempt'. Schedule 1 of the Act lists the building work that does not require a building consent.

Seeking advice on exempt building work

Obtaining a building consent for building work is the responsibility of the building owner. It is important therefore to obtain good advice before deciding that the building work is covered by the exemption provisions set out in the Schedule 1.

If you are experienced in the building industry, and understand the technical requirements of the Building Act and the New Zealand Building Code, you should easily recognise whether exemptions apply to your project. If you are unsure, however, then you should contact your local building consent authority (your local city or district council) for advice. Building consent authorities have a wide range of building control expertise and information about exemptions and the building consent process.

Depending on the nature of the building work, you might also wish to seek advice from a licensed building practitioner (LBP), architect, building surveyor, engineer, or some other person with experience in the building industry. In dealing with LBPs it is important to note that there are several different categories of LBP, and you should ask the LBP if they are licensed in the relevant class before accepting their advice.

All registered architects or LBPs holding a Design 3 class will also be able to advise you about the building work you intend to carry out, and whether the exemptions in Schedule 1 apply to that work.

How is building work defined and are there exemptions from the requirement to get a building consent?

The Building Act applies to all building work. Building work is defined under section 7 of the Act and the Act generally requires a building owner to obtain a building consent from a building consent authority before undertaking building work. All building work (regardless of the need for a building consent) must comply with the Building Code.

The definition of building work in the Building Act is any work related to or in connection with the construction, alteration, demolition or removal of a building. Because the definition is so broad, it is generally the case that almost all building work is potentially work that requires a building consent. Certain building work is exempt from the building consent requirements of the Act. Most of the exempt building work is listed in Schedule 1 to the Act.

When exemptions apply will depend on the kind of work being undertaken, the scope of the work, and the extent of the proposed building work. For example, a retaining wall may be exempt if the dimensions of the retaining wall are such that the wall is less than 1.5 metres in height and the retaining wall is not supporting surcharge or additional loads such as vehicle access or foundations.

While the Building Act provides for exemptions, there might be other laws that you need to comply with. These include, but are not limited to:

- the Building Code
- the Resource Management Act 1991
- the Plumbers, Gasfitters, and Drainlayers Act 1976
- the Electricity Act 1992
- the Health Act 1956
- any local government bylaws.

Why were the exemptions included in the Building Act?

Because the Building Act covers such a broad range of building work, it was anticipated that some low-risk building work should not be subject to the normal requirements of the building consent approval process. Exempt works are generally works that will not impact on the structural integrity or safety components of the building. For example, repair and maintenance work is exempt provided the work is lawful and comparable materials are used, or the work is a replacement with a comparable component or assembly in the same position. However, even exempt building work must comply with the Building Code.

What building work is listed as exempt building work

Schedule 1 of the Building Act 2004 sets out the circumstances where building work is exempt from needing a building consent. Its intent is to apply an appropriate balance between minimising compliance costs (by exempting low-risk and minor building work from the consent process), and requiring some consistent regulatory oversight of building work that could risk health and safety.

Schedule 1 to the Building Act 2004 will shortly be amended to expand the range of building work that does not require a building consent (a copy of the proposed revised Schedule is attached as Appendix 1). While the proposed amendments have been widely publicised, we wish to raise awareness about the amendments.

The amendments to Schedule 1 provisions for building consent exemptions are intended to:

- clarify the 'in or out' status of some specific types of building work that have created uncertainty
- confirm that, in particular, 'durability' matters such as weathertightness repairs are not appropriate to exempt from building consent requirements
- reflect more clearly the principles and policy intent behind the provision for exemptions for some building work from requiring a building consent (work that is 'low risk and minor').

Further information

If you have any further questions about exempt building work, or are uncertain whether the work you wish to undertake is exempt building work, you should contact the Council as your local building consent authority.

Even though some work may be exempt under Schedule 1, owners may wish to submit records of the changes to the building consent authority to be placed on the property file.



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