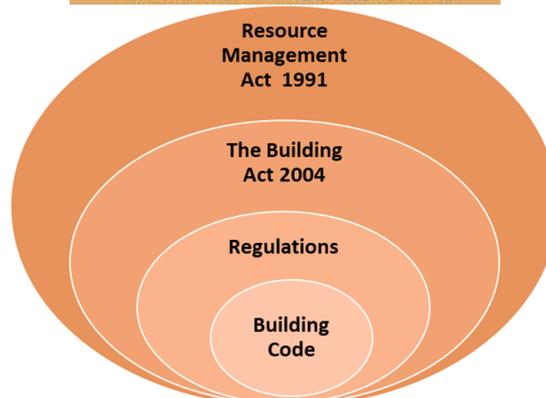


**NZ Certificate in Real Estate (Salesperson) (Level 4)****MODULE 1 – UNIT STANDARD 29882 (V3)**

**Demonstrate knowledge of the resource management and building law relevant to real estate licensees (Level 4, Credits 4)**

**Learner Guide**

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## The Resource Management Act 1991

The Resource Management Act 1991 is the key piece of legislation in New Zealand relating to environmental management.

The resource management law, building law, the roles of authorities, property-related documentation and how land sites and land issues affect building construction have implications for licensees when carrying out real estate work.

### Purpose and principles

The purpose and principles of the Resource Management Act 1991 (RMA) are defined in Section 5 of the Resource Management Act 1991.

#### Resource Management Act 1991

##### Section 5 – Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
  - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
  - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
  - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

This is the prime goal of all decision-making carried out under this Act. A number of national environmental priorities are also specified to guide decision-making including ecological and cultural considerations which take into account the principles of the [Treaty of Waitangi](#).

### Local government structures

Local government in New Zealand varies in its set up depending on the region in question.

New Zealand has:

- 11 Regional Councils
- 61 Territorial authorities,
  - 11 are city councils
  - 50 are district councils.

Their functions are described in Section 30 and 31 of the Resource Management Act.

### **Regional Councils**

Regional council responsibilities include the following:

- Managing the effects of using freshwater, land, air and coastal waters, developing regional policy statements, issuing consents, managing rivers, mitigating soil erosion and flood control, regional emergency management and preparation for civil defence, regional land transport planning (including contracts for passenger services), harbour navigation and safety, oil spills and other marine pollution (Department of Internal Affairs, 2011).

### **Territorial authorities (city and district councils)**

In New Zealand, territorial authorities are the second tier of local government below regional councils. They can be city councils or district councils.

There are currently:

- 61 Territorial authorities,
  - 11 are city councils
  - 50 are district councils

Territorial authorities' responsibilities include the following: providing local infrastructure (this includes water, sewerage, storm water, roads), environmental health and safety, district emergency management and preparation for civil defence, building control, public/environmental health inspections, control of land use and its effects, noise control, and the effects of activities on the surface of lakes and rivers (Department of Internal Affairs, 2011).

### **Unitary authority**

As well as having territorial authority, some district and city councils have Unitary authorities which have the powers of regional councils.

There are currently six unitary authorities in New Zealand. These are Auckland Council, Chatham Islands Council, Nelson City Council, Tasman District Council, and Gisborne District Council.

### **The territorial authorities have several functions under the Resource Management Act.**

They territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

- the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
- the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:
- the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—
  - the avoidance or mitigation of natural hazards; and
  - the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:
  - the maintenance of indigenous biological diversity:
  - the control of the emission of noise and the mitigation of the effects of noise:
- the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:

The methods used to carry out any functions under subsection (1) may include the control of subdivision.

## Matters of National Importance

### 6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights:
- (h) the management of significant risks from natural hazards.

### Protected customary right

A protected customary right classification applies to coastal marine areas where activities, uses or practices meet the requirements of the Marine and Coastal Area (Takutai Moana) Act 2011.

A protected customary right is a right that:

- (a) has been exercised since 1840; and
- (b) continues to be exercised in a particular part of the common marine and coastal area in accordance with tikanga by the applicant group, whether it continues to be exercised in the same or a similar way, or evolves over time; and
- (c) is not extinguished as a matter of law.

A protected customary right relating to a specified part of the common marine and coastal area may be recognised by an agreement between the protected customary right group and the responsible Minister on behalf of the Crown or an order of the Court.

Protected customary rights can be carried out without a resource consent, irrespective of any restrictions under the RMA. However, they must be carried out in accordance with tikanga, any terms specified in the order or agreement and any controls imposed by the Minister of Conservation (Environment Guide, 2018).

## Controls for use and development of land

The Resource Management Act stipulates that authorities must prepare plans to help them manage the environment in their area. It is these plans that outline what can and cannot be done 'as of right'.

The following types of plan affect the use and development of land and properties.

### Regional plans

Regional councils are responsible for preparing regional plans that guide the management of environmental issues (i.e., issues affecting air, water, land, soil and coastline).

Regional plan rules cover issues such as water quality and quantity, aquatic ecosystems, contamination through discharge into waterways, pollution, allocation of natural resources biodiversity, natural hazards, soil conservation, and the use and disposal of hazardous substances.

### District plans

Territorial authorities (city and district councils) are responsible for preparing district plans.

These plans are used to manage aspects of land use and subdivision that have an **environmental impact**.

District plans must be consistent with national policy statements, regional policy statements and regional plans, as well as any planning documents lodged with council by iwi authorities.

District plans cover issues that occur because of activities and development carried out in the area: for example, location, height and appearance of buildings, noise pollution, glare (light pollution), and odour.

Key points about district plans are as follows:

- Land cannot be used in a way that breaches a rule in a district plan unless it is explicitly allowed by a resource consent.
- Land cannot be subdivided in a way that breaches a rule in a district plan unless it is explicitly allowed by a resource consent.
- Consent authorities must consider the relevant district plan and any relevant orders when considering an application for a resource consent.
- Because demands on the use of land change constantly, the district plan must be updated every few years.
- When a new district plan is proposed it will be submitted as a proposed district plan, and members of the public may make objections to it or to any item it contains. The authority will consider these objections and once resolved, the proposed district plan will become operative.
- The District Plan usually comprises two parts; the planning maps (cadastral plans) on which all land is surveyed, and the plan itself which contains details of the council's future for the district and all the rules for any activities on the land, such as subdivision, building, etc.
- The current district plan for an area, is available for public inspection in the authority's offices and is generally available in the local library or online.

## Unitary plans

Unitary authorities are responsible for preparing unitary plans. Unitary plans include planning at both regional plan and district plan levels.

### The Auckland Unitary Plan

The Unitary Plan was released in 2016 and saw the introduction of new zonings for the entirety of the Auckland Region. The Unitary Plan identifies 7 types of zonings with different development, activity rights and overarching aim of what they are each trying to achieve.

The zones include the following:

- Residential Zones (6 Sub Zones)
- Business Zones (10 Sub Zones)
- Open Space Zones (5 Sub Zones)
- Rural Zones (5 Sub Zones)
- Future Urban Zone
- Strategic Transport Corridor Zone
- Special Purpose Zones (8 Sub Zones)

The zoning of a site will determine what development or activity can be undertaken on it. However, each category has various sub zonings.

### Regional coastal plans

The Department of Conservation (n.d.) describes regional coastal plans as plans prepared by regional councils and unitary authorities for the coastal marine area of a region.

The purpose of a regional coastal plan is to assist regional councils and unitary councils in achieving sustainable management of the coastal environment in their region.

The plans include objectives, policies and rules about the activities allowed, controlled, or prohibited in the coastal environment.

The Resource Management Act 1991 requires the preparation of regional coastal plans which give effect to the New Zealand Coastal Policy Statement.

The Minister of Conservation approves all regional coastal plans and any changes made to them (Department of Conservation).

## Survey plans

In some cases, a buyer and seller may sign a Sale and Purchase Agreement for subdivision property before the survey plan for that property is approved under section 223 of the Resource Management Act 1991.

In this case, the agreement is subject to the following conditions under **Section 225** of the Resource Management Act 1991:

1. The survey plan must be deposited in due course under the Land Transfer Act 1952 or in the Deeds Register Office (even though the agreement is already signed).
2. If any resource consents are issued on the property to impose covenants, easements, consent notices, or right of ways, these consents will apply even though they were not in place when the Sale and Purchase Agreement was signed.
3. The buyer is entitled to cancel the agreement by giving written notice to the seller under the following conditions:
  - The buyer provides written notice of the cancellation within 14 days of the date when both parties signed the agreement
  - The seller fails to make reasonable progress towards submitting a survey plan for the territorial authority's approval or depositing the survey plan after it has been approved. The buyer can cancel on this basis once one year has passed from the date the sale and purchase agreement were signed or two years has passed from the date the resource consent was granted (whichever date is the later of the two).

As a licensee, you need to disclose these conditions to a prospective buyer.

### Resource Management Act 1991

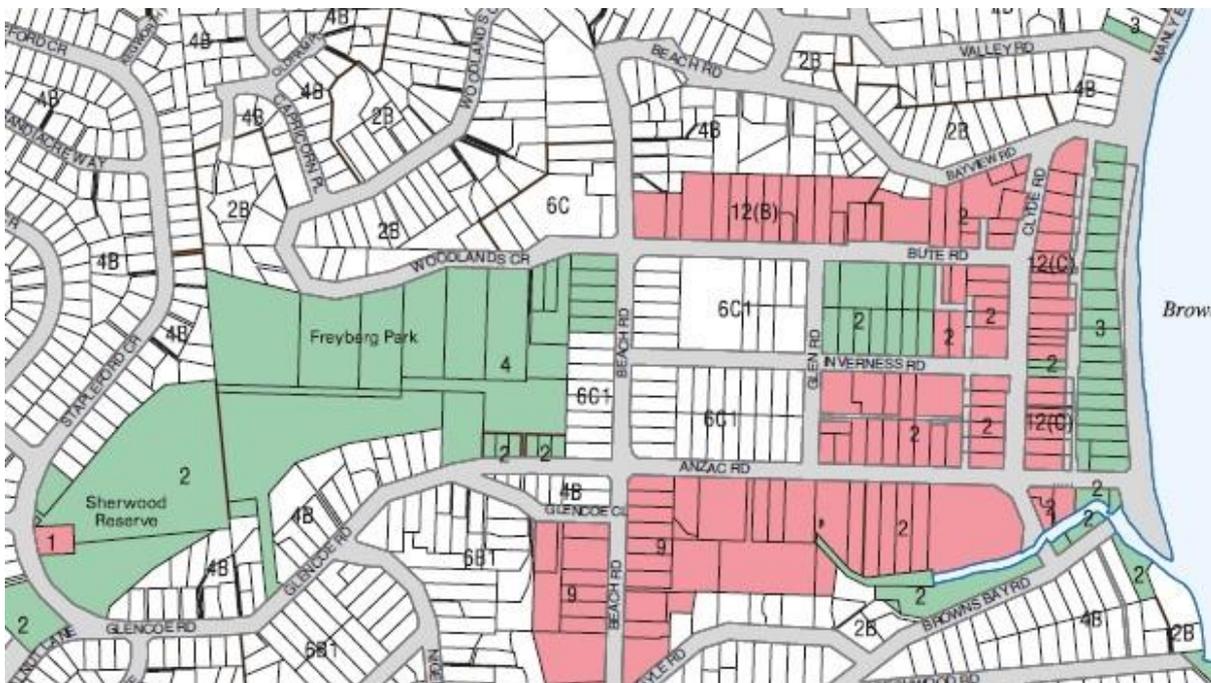
#### 225 Agreement to sell land or building before deposit of plan

- (1) Any agreement to sell any land or any building or part of any building that constitutes a subdivision and is made before the appropriate survey plan is approved under section 223, shall be deemed to be made subject to a condition that the survey plan will be deposited under the Land Transfer Act 1952 or in the Deeds Register Office, as the case may be; and no such agreement is illegal or void by reason that it was entered into before the survey plan was deposited.
- (2) Subject to subsection (1), any agreement to sell any allotment in a proposed subdivision made before the appropriate survey plan is approved under section 223 shall be deemed to be made subject to the following conditions:
  - (a) that the purchaser may, by notice in writing to the vendor, cancel the agreement at any time before the end of 14 days after the date of the making of the agreement:
  - (b) that the purchaser may, at any time after the expiration of 2 years after the date of granting of the resource consent or 1 year after the date of the agreement, whichever is the later, by notice in writing to the vendor, rescind the contract if the vendor has not made reasonable progress towards submitting a survey plan to the territorial authority for its approval or has not deposited the survey plan within a reasonable time after the date of its approval.
- (3) An agreement may be rescinded under subsection (2) notwithstanding that the parties cannot be restored to the position that they were in immediately before the agreement was made, and in any such case the rights and obligations of each party shall, in the absence of agreement between the parties, be as determined by a court of competent jurisdiction.

## Zoning categories

District and unitary plans show the different zones within the district - such as commercial, residential, and rural. Each zone is often then broken down further into sub-zones. For example, some residential zones will allow for development of high-density housing while others will restrict development to larger lots.

- Each zoning category has its own common standards or requirements. Specific aims, objectives, and rules are established for the zone to achieve these standards or requirements.
- Rules are used to set limits on the development of individual sites. They are also used to place limits on the types of use, activity, and development that can take place in a particular zone.
- If a use or activity is not automatically allowed in a zone, resource consent would need to be applied for and approved.
- Here is an example of a planning map showing different zones and subzones within the district (e.g., zone 6C or zone 4B).



Here are some of the designations, special provisions and zonings shown in the map above:

	Residential 1 to 7 Zones		Business 1 to 12 Zones
	Recreation 1 to 4 Zones		Road, service lane, accessway (Designated/Vested)

## Use or activity allowed in a particular zone

Zoning will show the types of development, use or activity allowed in a particular zone.

The six main categories of uses and activities (under section 77A (2) of the Resource Management Act) are as follows:

- Permitted.
- Controlled.
- Restricted discretionary.
- Discretionary.
- Non-complying.
- Prohibited.

An additional category is the 'protected customary right' category. This applies to activities, uses or practices established in accordance with the requirements under the Marine and Coastal Area (Takutai Moana) Act 2011. It gives protection to customary rights in marine and coastal areas.

The local authority decides which category any proposed development fits into in accordance with rules laid out in the regional and district plans.

These different categories determine aspects such as whether resource consent is required before carrying out the activity, what will be considered when deciding on a resource consent application, and whether resource consent must, may or may not be granted.

A 'reasonably competent licensee' will need to be familiar with zoning and proposed zoning changes or planned developments in the areas in which they carry out real estate agency work so they can provide accurate information to customers. This is considered part of the basic knowledge that a licensee should obtain, as has been reflected in Complaints Assessment Committee and Disciplinary Tribunal case decisions.

The following information on the six categories is from Environment Guide (2018). For more information, visit <http://www.environmentguide.org.nz/rma/resource-consents-and-processes>.

### Permitted activity

**A permitted activity may be carried out without the need for a resource consent so long as it complies with any requirements, conditions and permissions specified in the Resource Management Act**, in any regulations, and in any applicable plans or proposed plans (RMA 1991, section 87A (1)). A building consent will usually still be required if the activity is a building (Environment Guide, 2018).

For example, in a residential zone, permission would automatically be given to build a single household unit. Any new buildings constructed or alterations to existing buildings, must be carried out within the requirements of the Building Act 2004.

## Controlled activity

**A controlled activity requires a resource consent before it can be carried out.**

**The consent authority must grant the consent (RMA 1991, Section 87A(2)(a)), unless**

- [section 55\(2\)](#) of the Marine and Coastal Area (Takutai Moana) Act 2011 applies; or
- there is significant risk from natural hazards (RMA 1991, section 106(1)(a)).
- there is insufficient legal and physical access to each proposed allotment to be created by a subdivision (RMA 1991, section 106(1)(c)).

**The consent authority can impose conditions on the consent, but only for those matters over which the council has reserved control in the relevant plan or over which control is reserved in national environmental standards.** The activity must also comply with any requirements, conditions and permissions specified in the RMA, regulations, or relevant plan (RMA 1991, Section 87A(2)(c)) (Environment Guide, 2018).

For example, a controlled activity could be where a local authority provides consent for an off-street carpark to be created for a small business in a residential zone but places controls on the size of the carpark and its proximity to neighbouring properties.

## Restricted discretionary activity

**A restricted discretionary activity requires a resource consent before it can be carried out.**

**The consent authority can exercise discretion as to whether to grant consent, and to impose conditions, but only in respect of those matters over which it has restricted its discretion** in the plan or over which discretion is restricted in national environmental standards or other regulations (RMA 1991, section 87A(3)(a)).

The activity must also comply with any requirements, conditions and permissions specified in the RMA, regulations, or relevant plan (RMA 1991, Section 87A(3)(b)) (Environment Guide, 2018).

## Discretionary activity

**A discretionary activity requires a resource consent before it can be carried out.**

**The consent authority can exercise full discretion as to whether to grant consent and as to any conditions to impose on the consent if granted** (RMA 1991, section 87A(4)(c)).

A discretionary activity must also comply with any requirements, conditions and permissions specified in the RMA, regulations, or relevant plan (RMA 1991, Section 87A(4)(b)) (Environment Guide, 2018).

**This category of activity is used for activities that may be acceptable within a zone, but not be appropriate on every site.**

For example, a rest home may be suited to some sites in a residential area but would not be suited in other locations where there are issues associated with traffic safety.

## Non-complying activity

**A non-complying activity requires a resource consent before it can be carried out.**

**A resource consent can be granted, with or without conditions for a non-complying activity, if it is established that the adverse effects of the activity on the environment will be minor** or that the activity will not be contrary to the objectives of the relevant plan or proposed plan (RMA 1991, section 87(A)(5)) (Environment Guide, 2018).

For example, in relation to a proposed retail complex on the outskirts of a residential area, the council may approve resource consent but impose measures to minimise the impact of the development on neighbouring residential properties. Required measures could include the use of high fencing to reduce the amount of night light affecting properties close by and to screen the carpark to reduce visual disturbance.

## Prohibited activity

**A prohibited activity may not be carried out in the zone in which it is prohibited. Resource consent cannot be applied for or granted (RMA 1991, Section 87A (6)).**

The only possible option for parties wishing to carry out a prohibited activity is to apply for a change to the plan to reclassify the activity (Environment Guide, 2018).

The following table summarizes decision-making on various categories of activity.

Type of activity	Requires resource consent	Must be granted consent	Can be granted consent	Can restrict matters to be considered	Must have effects that are minor or consistent with plan
<b>Permitted</b>	No	N/A	N/A	N/A	N/A
<b>Controlled</b>	Yes	Yes	Yes	Yes	No
<b>Restricted discretionary</b>	Yes	No	Yes	Yes	No
<b>Discretionary</b>	Yes	No	Yes	No	No
<b>Non-complying</b>	Yes	No	Yes	No	Yes
<b>Prohibited</b>	N/A	N/A	No	N/A	N/A

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**Zoning sample document**

This is an example of a section of a plan which covers the rules applicable to the different zones. It will list the activities, for each type of zoning, categorized under 'Types of activities. On the following page there is an example of district plan rules for residential activities.

**Table:**

P	=	Permitted activity
C	=	Controlled activity
D	=	Discretionary activity
LD	=	Limited Discretionary activity

**Limited Discretionary Activities, Discretionary Activities and Controlled Activities require resource consent before they can be carried out**

Table 16.2 Residential Activities								
Activities	Zones							
	Settle- ment 1	Natural 2	Built 3	Main 4		Peripheral 5	Intensive 6	Office 7
				A	B			
Service stations and local shops which:  <ul style="list-style-type: none"> <li>• Front and have access from a primary or secondary arterial route; and</li> <li>• Adjoin the boundary of a Business 1, 2 or 3 zone which has a continuous zone area exceeding 2500m<sup>2</sup>; and</li> <li>• Are located on a site with an area of not more than 2500m<sup>2</sup></li> </ul>				D	D	D	D	D
<b>FARMING</b>								
Glasshouses, not exceeding 50m <sup>2</sup>	P		LD	C	C	C		
Glasshouses, exceeding 50m <sup>2</sup>	D					D		
Grazing of animals in compliance with bylaws	P		C	P	P	P		
Horticulture	P		C	D	D	P		

**This blank box shows that glasshouses covering an area of 50m<sup>2</sup> or less are not permitted at all in Zone 2**

**This shows glasshouses 50m<sup>2</sup> or less are a controlled activity in Zones 4A, 4B and 5**

**This shows that horticulture is a discretionary activity in Zones 4A and 4B**

## Zoning sample continued

You will also need to refer to the district plan information in Appendix 1 to complete Task 1 of the assessment.

### Site area requirements

There is usually a chapter in the District Plan on 'subdivision standards' which will state the minimum site size in each zone. It may also specify that there is a minimum acceptable road frontage and/or a required shape factor. This is to prevent someone from demanding the right to create a new lot which qualifies in total area, but which does not provide adequate land for access to rear sites and is, therefore, an unworkable shape.

Example:

This shows that a subdivided property in Residential Zone 3A that was built or had a resource or building consent lodged after 6 April 2006 would need to have a net site area of 450m<sup>2</sup> or more.

### 9.4.5.3 Residential 3 Zone

#### a) Site Area Requirements

- Residential 3A Zone

Minimum Net Site Area	450m <sup>2</sup>
-----------------------	-------------------

Except, the following minimum net site area shall apply to applications for resource and building consent lodged with the Council prior to 6 April 2006 or any residential unit lawfully established prior to 6 April 2006 - 400m<sup>2</sup>

- Residential 3B Zone

Minimum Net Site Area	500m <sup>2</sup>
-----------------------	-------------------

- Residential 3C Zone

Minimum Net Site Area	600m <sup>2</sup>
-----------------------	-------------------

#### b) Minimum Frontage Requirements

Residential 3A, 3B and 3C zones

Front Sites	12m
Corner Sites	24m
Rear Sites	See Rule 9.4.5.8

This shows that a subdivided property in Zones 3A, 3B or 3C that is a front site would need to have a frontage width of 12m or more.

## **Resource consent**

A resource consent provides permission to carry out an activity that would otherwise contravene section 9, 11, 12, 13, 14, 15, 15A or 15B of the Resource Management Act, so long as the activity complies with any conditions attached to the consent (Environment Guide, 2018).

As we have seen, activities that need a resource consent are classified as controlled, restricted discretionary, discretionary and/or non-complying. A resource consent cannot be applied for or granted for prohibited activity.

Most resource consent applications are dealt with by the relevant local authority.

In some cases, resource consent applications may not be decided by the local authority. This may be the case if an application has been directly referred to the Environment Court. It may also happen if the Minister for the Environment refers a proposal of national significance to a board of inquiry or to the Court to be decided.

## **Types of resource consent**

There are five different types of resource consents which can be granted, depending on the kind of activity proposed.

These are as follows:

- Land use consent
- Subdivision consent.
- Water permit.
- Discharge permit.
- Coastal permit.

## **Land use consent**

Under section 9 of the Resource Management Act, a land use activity generally requires a resource consent if it contravenes a national environmental standard, a regional plan rule or a district plan rule (either an operative rule or a proposed rule which has legal effect). 'Land use' includes building, altering and demolishing structures, excavation and drilling, disturbing habitats of plants and animals, depositing substances on land and certain uses of the beds of lakes and rivers.

## **Subdivision consent**

Under section 11 of the Resource Management Act, a subdivision activity generally requires a resource consent if it contravenes a national environmental standard, a regional plan rule or a district plan rule (either an operative rule or a proposed rule which has legal effect).

Further detailed explanations can be found under Building Legislation.

In this case here is the process for subdividing a property and obtaining new titles:

- Apply for a resource consent(s).
- Apply for district council approval of the survey plan and obtain a Section 223 Certificate.
- Submit the approved survey plan and Section 223 Certificate to LINZ for surveyor approval.
- Comply with the resource consent – carry out earthworks to create roads, drains and services, etc.
- The council will then issue a Section 224c Certificate which states that the Council accepts the assets created. This gives consent for titles to be issued.
- The solicitor deposits the Section 224c Certificate, survey plan and any other legal documentation required with LINZ
- LINZ issues the title allowing sale of the lots.

Note: Sections 223 and 224c are referred to in the Resource Management Act 1991 (RMA).

### **Coastal permit**

Under section 12 of the Resource Management Act, certain activities in the coastal marine area require a resource consent unless such activity is expressly allowed by a national environmental standard or a rule in a regional coastal plan (either an operative rule or a proposed rule which has legal effect).

### **Water permit**

Under section 14 of the Resource Management Act, in relation to open coastal water, a water permit is required to take, use, dam or divert water if the activity contravenes a national environmental standard, or a proposed or operative regional rule.

'Open coastal water' is defined as being remote from estuaries, fiords, inlets, harbours and embayments.

This situation is reversed for inland coastal water, freshwater and geothermal resources.

Under section 14, in relation to inland coastal water, a water permit is required to take, use, dam or divert water (except for limited circumstances), unless such activity is expressly allowed by a national environmental standard; or by a rule in a regional plan (either an operative rule or a proposed rule which has legal effect).

### **Discharge permit**

Under section 15 of the Resource Management Act, unless such discharge is expressly allowed by a national environmental standard, other regulations, or by a rule in a regional plan (either an operative rule or a proposed rule which has legal effect), a discharge permit is required for the following:

- the discharge of any contaminant or water into water (or onto land in circumstances where it may enter water)
- the discharge of any contaminant from any industrial or trade premises into air or onto land.

## BUILDING LEGISLATION

In New Zealand, the Building Act 2004 controls the building of houses and other buildings. Specific requirements are set under the Building Code.

The Building Act and the Building Code apply to the construction of new buildings as well as the alteration and demolition of existing buildings.

### The Building Act 2004

The purpose of the Building Act 2004 is outlined in section 3.

#### **Building Act 2004**

##### **3 Purposes**

This Act has the following purposes:

(a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—

- (i) people who use buildings can do so safely and without endangering their health; and
- (ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
- (iii) people who use a building can escape from the building if it is on fire; and
- (iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:

(b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.

### The Building Code

The Building Code is a 'performance-based' code that states how a building, and its components must perform, rather than how it is to be designed and constructed.

The Building Act 2004 establishes the legal requirements for building work. The Building Code sets out performance standards that building work must meet, and covers aspects such as structural stability, durability, access, fire safety, moisture control, services, and facilities.

The New Zealand Building Code is found in Schedule 1 of the Building Regulations 1992.

The Building Code is made up of preliminary clauses and technical clauses. Each technical clause sets out:

- an objective (the social objective that completed building work must achieve)
- a functional requirement (what the completed building work must do to satisfy the social objective)
- performance criteria (qualitative or quantitative criteria which nominates how far the completed building work must go to comply).

## Acceptable solutions and verification methods

Acceptable solutions and verification methods are technical building method documents which are produced by the Ministry of Business, Innovation and Employment (MBIE). They give standards and specifications for builders to follow to ensure their work meets building code requirements.

It is not compulsory for builders to follow an acceptable solution or verification method but if they are followed correctly, they must be accepted by a building consent authority (BCA) as evidence of compliance with the Building Code.

Building Code clauses generally have more than one acceptable solution. They may also have more than one verification method.

In the building trade, alternative solutions can also be used to show compliance with the Building Code. These are typically used by builders where a building design is completely or partially different from an acceptable solution or verification method.

## Restricted building work

Under section 84 of the Building Act, critical building work, known as restricted building work, must be undertaken, or supervised by a Licensed Building Practitioner (LBP).

### Building Act 2004

#### **84 Licensed building practitioners must carry out or supervise restricted building work**

All restricted building work must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise the work.

Under sections 85 and 86 of the Building Act, if the person who carries out the work is not licensed, that person could be fined up to \$50,000, as could the person engaging them to carry out the work.

There are three categories of restricted building work for houses and small to medium apartment buildings. These are as follows:

- Design and construction of the primary structure.
- Foundations and subfloor framing, floors, walls, roofs, columns and beams and bracing.
- Design and construction of external moisture management systems.
- Damp-proofing, roof/wall cladding and roof/wall cladding systems, water- proofing.
- Design of fire safety systems.
- Emergency warning systems, evacuation and fire service operation systems, suppression or control systems, other parts of design.

The Licensed Building Practitioner scheme has little effect on the type of work most often done by 'do-it-yourselfers' (DIYers). They can maintain their properties and undertake alterations to their houses.

Most DIY work does not need a building consent, and a lot of the work that needs a consent will not be restricted building work.

Licence classes in the Licensed Building Practitioner scheme are based on roles or occupations that are vital to a building's performance.

The scheme has seven licence classes as follows:

- Designers.
- Carpenters.
- External Plasterers.
- Bricklayers and Block layers.
- Foundation specialists.
- Roofers.
- Site (for on-site supervisors and managers).

Registered Architects and Plumbers and Chartered Professional Engineers are also judged to be licensed.

Electrical workers come under the jurisdiction of the Electrical Workers Registration Board which promotes safety by ensuring competency of electrical and electronic workers. The Electrical Workers Licensing Group provides for registration and complaints.

Further information on the Licensed Building Practitioner scheme is available from: [www.lbp.govt.nz](http://www.lbp.govt.nz).

### **Consents and compliance documentation for building work**

As we have seen, the environmental impacts of activities are primarily controlled by the Resource Management Act. This is achieved through any conditions for permitted activities included in the relevant regional or district plan and through the requirement to apply for a resource consent if an activity is not automatically permitted in each zone (Environment Guide, 2018).

Building consents and compliance certificates for building work fall under the Building Act 2004. Under this legislation, there are specific roles for territorial authorities and regional authorities acting as building consent authorities (BCAs).

The Building Act allows private organisations to act as BCAs and to perform certain consent and inspection functions under specific circumstances.

### **Building consent authorities (BCAs)**

BCAs are usually part of the local territorial, regional or unitary authority, i.e., city, district or regional councils.

Under section 212 of the Building Act, a territorial/unitary authority must act as a BCA for its own city or district.

In terms of building permits and compliance documents for building work a territorial/unitary authority has the following roles as a BCA:

- Processing building consent applications (including those that are subject to a waiver or modification).
- Granting waivers or modifications (as applicable) for building consent applications that are subject to waiver or modification in accordance with the Building Code.
- Certifying that completed building work is compliant with the building consent.
- Issuing notices for building work to be fixed.
- The authority may also issue infringement notices under section 372 of the Building Act.

BCAs also provide functions relating to buildings that are not stand-alone houses (for example, commercial office blocks, apartment complexes) in relation to administering annual building warrants of fitness and enforcing the relevant provisions in the Building Act, including compliance schedules.

Under section 215 of the Building Act, a regional authority/unitary authority must be accredited and registered as a BCA to perform building control functions (MBIE 2017c).

An authority may make decisions regarding how they deliver their building control function. Both territorial and regional authorities may formally transfer their BCA functions under the Building Act (MBIE 2017b).

Private organisations and people can be accredited and registered as independent BCAs. To do this, they must be assessed to demonstrate that they meet the minimum standards and criteria to become a BCA and must be registered under the Building (Registration of Building Consent Authorities) Regulations 2007.

An accredited and registered private organization/person can perform the functions of a BCA with some exceptions, including the following:

- They may issue building consents (except consents subject to a waiver or modification).
- They must obtain project information memorandums from the territorial authority.
- Copies of all documentation they issue must be provided to the authority for the district within legally required timeframes.

Sections 222-228 of the Building Act outlines the powers of an authority and authorised officer to enter land and carry out inspections. In simple terms, they must provide the owner, occupier, or builder with an explicit reason for any inspection.

## **Building consent**

A building consent is written approval to carry out specific building work on a specific site. A building consent is obtained from the relevant BCA. This documentation is required to confirm the building is legal before building starts.

All work carried out under a building consent must meet the requirements of the consent and the Building Code.

Most significant building work needs a building consent unless it is listed in Schedule 1 of the Building Act 2004.

<http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM5770963.html>

Section 17 of the Building Act confirms that all building work in New Zealand, whether it requires a consent or not, must comply with the Building Code.

### **Building Act 2004**

#### **17 All building work must comply with building code**

All building work must comply with the building code to the extent required by this Act, whether a building consent is required in respect of that building work.

In other words, even if no building consent is required (for instance, repairing a damaged partition wall) the work must still comply with the Building Code.

Sections 40 to 52 of the Building Act 2004 cover building consents.

## Building Act 2004

### Section 40 Buildings not to be constructed, altered, demolished, or removed without consent

- (1) A person must not carry out any building work except in accordance with a building consent.
- (2) A person commits an offence if the person fails to comply with this section.
- (3) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.

**Section 45** of the Building Act sets out the rules for applying **for a building consent** application.

Your application when applying [for building consent](#) will need to include:

- Information about the owner (name, address, property **certificate** of title, etc) relevant clauses of the Building Code
- Details of the proposed building work and its location,
- Plan and Specifications
- How the work complies with the Building Code (design summary)
- A PIM if one was obtained
- Names of each Licensed building practitioner who will be involved in carrying out or supervising any restricted building work.
- Receipt of fees.

***All building work must meet the minimum requirements of the Building Code even if no building consent is required.***

**The Building Consent Authority needs to know these criteria when granting a building consent:**

- that the building is to be erected entirely on the owner's land
- that it will not interfere with the neighbour's light or privacy by towering over them
- that it will not exceed permitted site coverage restrictions (which would prevent rain from soaking into the land and could alter aspects such as drainage and the underlying water table), and
- that the building is to be correctly built meeting all required standards so that it will be safe and durable.

Under section 40 of the Building Act, if work that should require a building consent is carried out without a consent, the party is liable on conviction to a fine of up to \$200,000.

The authority may order the removal of the building work completed and may impose a fine of up to \$10,000 a day for the period the work remains illegally in place.

## Property development and House and Land Packages

A property developer selling a newly built home must comply with Section 362V of the Building Act 2004.

Under 362V is an offence for a commercial on-seller to transfer household unit without code compliance certificate being issued in relation to a household unit.

Without a CCC they cannot:

- (a) complete a sale of the household unit:
- (b) allow a purchaser of the household unit to enter possession of the household unit.

There is an exception if the commercial on-seller and the purchaser of the household unit enter into a written agreement, in the form (if any) prescribed by regulations made under this Act. The agreement is between the developer and buyer and states the property developer may sell the property before the Code Compliance Certificate is issued.

A person who fails to comply with subsection (1)—

- (a) commits an offence; and
- (b) is liable on conviction,
  - (i) in the case of an individual, to a fine not exceeding \$300,000:
  - (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.

## Implications of The Fair-Trading Act for Disclosure

Section 9 of the Fair-Trading Act covers misleading and deceptive conduct.

### Fair Trading Act 1986

#### Part 1 Unfair conduct

#### Misleading and deceptive conduct

#### 9 Misleading and deceptive conduct generally

No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Agents and licensees are liable for misleading or deceptive conduct under the Fair-Trading Act 1986.

The term 'misleading and deceptive conduct' is used to describe actions that encourage someone to believe something that is not true.

It includes the following behaviours:

- Doing or saying something that gives someone a false impression or idea.
- This is the more common breach of section 14(1) of the Fair-Trading Act 1986, which prohibits false representations.
- An example would be a licensee who makes a false claim about the value of a property to a seller so that they think it is worth less than its true value.
- Not doing or saying something so that it creates a false impression or idea (for example, failing to disclose information about a building defect to a buyer so that they remain unaware of the defect).

There is no distinction between whether the behaviour was verbal (such as a phone call or in-person conversation) or written (such as promotional material or an email).

It is important to understand that intention is **not** an important element of misleading and deceptive conduct. Under Section 9 of the Act, any licensee or agent who behaves in a way that is likely to deceive or mislead another party is liable, regardless of whether they intended to deceive or mislead.

Be aware that, if a client or customer has signed a misleading or deceptive contract, the responsible agent and/or licensee will generally be liable for this under the Fair-Trading Act.

False representations and misleading conduct in relation to land are covered in more detail by Section 14 of the Fair-Trading Act. For the purposes of this section, 'land' includes:

- The physical land itself
- Any buildings on the land (whether they are completed)
- any legal estate or interest that applies to the land
- any equitable estate or interest that applies to the land.

Section 14 helps to clarify some of the specific ways in which misleading and deceptive conduct might occur in relation to real estate. For example, this section shows that it would be misleading to advertise that a property has a separate dwelling if the second building was not legally classified as a separate dwelling. Similarly, if an agent was selling a property with an easement which gave a third party the right to access that land, it would be misleading for the agent not to identify this to the buyer.

## **Fair Trading Act 1986**

### **14 False representations and other misleading conduct in relation to land**

- (1) No person shall, in trade, in connection with the sale or grant or possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land, —
  - (a) make a false or misleading representation that a person has any sponsorship, approval, endorsement, or affiliation; or
  - (b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put, or the existence or availability of facilities associated with the land.
- (2) No person shall use physical force, harassment, or coercion in connection with the sale or grant or possible sale or grant of an interest in land, or the payment for an interest in land.
- (3) In this section interest, in relation to land, means a legal or equitable estate or interest in the land; and includes—
  - (a) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in a company that owns the land or building; or
  - (b) a right, power, or privilege, over, or in connection with, the land.

## **Formal or legal steps available to clients and customers**

Clients and customers have the option of taking formal and/or legal action if they believe that a licensee has engaged in misleading or deceptive conduct.

One option is to lay a formal complaint with the Real Estate Authority (REA).

If the client or customer considers that they have experienced loss or damage because of the conduct, they can also sue (take legal action against) the agent or salesperson in a civil court.

Remember that a licensee cannot defend themselves on the basis that they did **not** say anything if this silence left the other party with a false impression.

## PROPERTY-RELATED DOCUMENTATION

In this section we will consider the following property-related documentation:

- Land Information Memorandum (LIM report).
- Property file (property bag).
- Project Information Memorandum (PIM report).

### Land Information Memorandum (LIM) report

A Land Information Memorandum (LIM) gives you an up-to-date summary of information that a council holds about a property on the day the **LIM was issued**. It is provided on application by the relevant local authority.

- It is a comprehensive property report from a council.
- Buyers can also make a satisfactory LIM a condition for purchase.
- If a council does not know of unconsented works, unreported weathertightness issues or the fact that the property has been used for the manufacture of methamphetamine, **it will not be included on the LIM**.

**Section 44A of the Local Government Official Information and Meetings Act 1987** states what information that the Authority must provide in a LIM. A LIM report must be provided within 10 working days from the date the application was made. The cost of a LIM report varies between different authorities and prices also vary depending on whether it is a standard or urgent application.

It is common practice for purchasers to obtain a LIM report and to make their offer subject to satisfactory information in the LIM report. Mortgage lenders will often require a LIM report to be obtained before approving the loan.

### Information that can be found on a LIM report:

- District Plan zoning and designations relevant to the land or buildings.
- Any relevant planning issues or planning zones that impact the property.
- Special land features or characteristics, including potential or actual flooding, erosion, falling debris, slippage, subsidence, or hazardous substances.
- If it is a protected/historic building, or site.
- If there are any protected trees or structures.
- Building, plumbing/drainage, and resource planning consents (including notice, order or requisition affecting the land or buildings).
- Resource consents in the immediate neighbourhood.
- Known developments and subdivisions relating to the property and the area immediately around it.
- Storm water and sewerage drain information (both private and public sewer and/or storm water on the property).
- Annual rates for the property (including if there are any unpaid rates).
- Water charges (as applicable).
- Valuation information.
- Methamphetamine contamination (this may be included in relation to a property if the council has been notified - the inclusion of this information varies under different authorities).

Click on this link to see what information that must be found in a LIM:

**Section 44A of the Local Government Official Information and Meetings Act 1987.**

## Limitations relating to information available on a LIM report

A LIM report will only include information that is legally required to be in the report within the constraints of what the authority knows about.

Records before 1991 might be incomplete, as authorities are not legally required or responsible to hold information for building work carried out before the Building Act 1991 came into force.

The authority may not know about all work or alterations on a property; for example, illegal or unauthorised work carried out since 1991 that they have not been notified about.

Some aspects of the property **may not be included in the LIM report**: for example, a septic tank. In these situations, expert advice may be required.

- A LIM report does not show, any money owing on a property: for example, money owed to the authority under an insulation programme.
- A LIM report does not show if a property is subject to right of acquisition.
- A LIM report does not contain enough detailed information about suitability for cross lease or redevelopment.
- LIM reports will not show illegal or unauthorised work on the property if it is not known to the council. For example, the non-consented removal of a load-bearing wall.
- Some elements of the property may be excluded from LIM reports. For example, installations of septic tanks, gas bottles, etc. If these types of installations are present at the property you may need to seek expert advice on these items.
- A LIM will also not advise what services are available to a property, any money owing on a property; for example, schemes such as insulation programmes which may attach repayment obligations to regional authority rates, or whether the property is subject to central government right of acquisition

The accuracy of information included in a LIM report, or the current condition of a property, is not verified through an inspection visit by the local authority. This means that some information might not be accurate; for example, boundary measurements may not be accurate on the authority's records.

## Licensee responsibilities in relation to a LIM report

Where a licensee is in possession of a LIM report for a property they have listed or are selling, they are required to read and understand the basics of the report.

If the situation occurs where a licensee receives a copy of LIM report from a seller, or obtains a copy themselves, the licensee will be expected to read the report and understand the basic information. A licensee must not just pass on information to customers without looking into it themselves.

Any known issues in a LIM report must be properly disclosed to prospective buyers, and other licensees in the agency who may be involved in the transaction will need to be aware of the issues.

It is important that prospective customers understand that they need to compare structures to information contained in the LIM report and that it is in their best interests to get their own independent technical or legal advice as required.

### **A licensee needs to know how to read a LIM and understand the important things to check:**

- Check things such as building consents and permits, do they match the house plan?
- What building consents have been issued and signed off? Was a Code Compliance Certificate issued for any completed works done after 1991.
- Check for weathertightness issues that may have been reported.
- Investigate whether the property has unpaid rates or other Council fees.
- Look at, the wind or earthquake rating - are there any warnings?
- What is the zoning? Are there any notifications regarding neighbouring properties or infrastructure in the surrounding area.
- Is there mention of a history of flooding, erosion, or land contamination?
- Are there any notifications regarding neighbouring properties, roading or any other proposed development in the area?
- What was the land previously used for?
- Do any drainage pipes run underneath the property? Have there been any drainage issues?

Check for Compliance, permits and Consents if the property has any of these features:

- Swimming pool
- Retaining wall
- Deck
- Fireplace
- Conservatory
- Sheds
- Any recent renovations

If there are any differences between the property and the LIM, you can talk to the council and the vendor to try and find the underlying cause of it.

Sellers can sometimes make a LIM available to prospective buyers. If this is the case, be sure to check that it is current (issued very recently) and complete.

### **Who should see the LIM report?**

It is a good idea to get your lawyer to read through it, so they will be able to help you fully understand what the LIM means for the property and your future plans.

While a LIM report contains a wealth of information, it is limited to what the council is aware of and is required to include. Keep in mind that it may not cover everything in a property's history. [You can also ask the real estate agent questions about the property.](#)

A LIM is not a replacement for having [an accredited building inspector](#) check over a property.

Prospective buyers should also know that the property file at your local council may contain other relevant information that is not included on the LIM.

**Always clarify any concerns with your Lawyer.**

## Property file

A property file (also known as a property bag) is issued by most local authorities on request. Different authorities provide property file information in different ways (for example, options for posted information, digital copies or viewing in person). Costs also vary depending on the authority and urgency of the application.

It is important to note that a property file does not replace a LIM report; it is meant to provide information additional to a LIM report.

A property file holds additional information that is not included in a LIM report.

For example, the additional information might include the following:

- Plans, specifications, building and resource consent documentation relating to applications that are in progress.
- Copies of any correspondence from owners or neighbours relating to the property that have been sent to the authority.
- Any other property-related information that is held by the authority that is not included on the LIM report.

## Licensee responsibilities in relation to a property file

In a situation where a reasonably competent licensee recognizes 'red flags' (has suspicions) about a property being marketed, and the client cannot provide any confirmation, it may be advisable for the licensee to obtain a copy of the property file and read and understand it.

These circumstances should be dealt with under the direction and control of a supervising agent/branch manager.

If any information from a property file is passed on to customers, it is particularly important that the client has consented, and that the licensee fully understands that information and discloses any issues.

## **Project Information Memorandum (PIM) report**

A Project Information Memorandum (PIM) is a report issued by the relevant authority.

A PIM report has relevance in relation to proposed building work when resource consent and/or building consent will be applied for.

A PIM report provides the following guidance:

- Information about any special features of the land (this might include erosion and land collapse or movement, falling debris, subsidence, slippage, history of flooding, silt deposited because of flooding, hazardous contaminants present).
- Information the territorial authority holds from any statutory organisation (such as Heritage New Zealand Pouhere Taonga or the Department of Conservation).
- Information about existing utility services (storm water or wastewater) related to the proposed building work, or adjacent to the building site.
- It will indicate any regulatory requirements likely to be relevant to the proposed building work (consents, approvals and geotechnical reports that will be needed for the consent application).

A PIM report can be applied for any time before an application for a resource consent or building consent is completed. It is recommended that the authority is provided with a site plan, floor plan and drawn up building elevations, so the authority can provide accurate information about the consents and approvals that may be needed.

Under section 34 of the Building Act 2004, an authority must issue a PIM report within 20 working days after receiving an application, subject to them having received all the information they need from the applicant.

If the authority needs more information from the applicant, the authority must then provide the PIM report within days 10 of receiving the additional information.

A reissue of the PIM report may occur within those timeframes if any errors or omissions come to light.

And, as far as land is concerned it means the land on which the proposed building work is to be carried out; and includes any other land likely to affect or be affected by the building work, special feature of the land concerned includes, without limitation, potential natural hazards, or the likely presence of hazardous contaminants, that is likely to be relevant to the design and construction or alteration of the building or proposed building; and is known to the territorial authority; and is not apparent from the district plan under the Resource Management Act 1991.

## Building Act 2004

### 35 Content of project information memorandum

(1AA) A project information memorandum must be issued in the prescribed form (if any).

(1) A project information memorandum must include—

- (a) information likely to be relevant to the proposed building work that identifies—
  - (i) the heritage status of the building (if any); and
  - (ii) each special feature of the land concerned (if any); and
- (b) information likely to be relevant to the proposed building work that, in terms of any other Act, has been notified to the territorial authority by a statutory authority; and
- (c) details of any existing stormwater or wastewater utility systems that—
  - (i) relate to the proposed building work; or
  - (ii) are on, or adjacent to, the site of the proposed building work; and
- (d) details of any authorisation in respect of the proposed building work that the territorial authority, on its own behalf and on behalf of any network utility operator (if the territorial authority is acting as agent for a network utility operator by prior agreement with the network utility operator), is authorised to refuse or require under any Act, except this Act, and, in respect of each authorisation,—
  - (i) a statement of the requirements to be met in order for the authorisation to be granted or imposed; and
  - (ii) the conditions to which an authorisation will be subject; and
- (e) if the territorial authority considers that the owner of the building or proposed building to which the project information memorandum relates is likely to be required, under [section 76](#) of the Fire and Emergency New Zealand Act 2017, to make provision for a scheme that provides for evacuation from the scene of a fire, a statement to that effect; and
- (f) if the territorial authority considers that notification to Heritage New Zealand Pouhere Taonga is likely to be required under [section 39](#), a statement to that effect; and
- (g) either—
  - (i) confirmation, subject to this Act, that building work may be carried out subject to the requirements of a building consent and subject also to all other necessary authorisations being obtained; or
  - (ii) notification that building work may not be carried out because any necessary authorisation has been refused, despite the issue of any building consent; and
- (h) if [section 75](#) applies, the statement referred to in [section 75\(2\)](#); and
- (i) if the building is one that is intended to be used for, or associated with, 1 or more of the purposes specified in [Schedule 2](#), a statement that the building must comply with—
  - (i) [section 118](#) (relating to access and facilities for persons with disabilities to and within buildings); and
  - (ii) the provisions of the [building code](#) that relate to providing for persons with disabilities to have access to buildings and to facilities within buildings.

(2) In this section, —

#### land concerned—

- (a) means the land on which the proposed building work is to be carried out; and
  - (b) includes any other land likely to affect or be affected by the building work
- special feature of the land concerned** includes, without limitation, potential natural hazards, or the likely presence of hazardous contaminants, that—
- (a) is likely to be relevant to the design and construction or alteration of the building or proposed building; and
  - (b) is known to the territorial authority; and
  - (c) is not apparent from the district plan under the Resource Management Act 1991

## Key Compliance Documentation you may find in the LIM are:

- Code Compliance Certificate
- Certificate of Acceptance
- Building Permit
- Safe and sanitary report (Letter)
- Notice to Fix

### Code compliance certificate (CCC)

A code compliance certificate is issued by the consent authority that granted the building consent, after they have completed a final inspection of the completed building work that required a building consent. It is issued when it is confirmed that the building work complies with the building consent.

The authority may refuse to issue a code compliance certificate if:

- the work was not completed in accordance with the building consent
- the applicant does not supply the required documentation
- a final inspection is not completed.

The consent authority may also refuse to consider an application for a code compliance certificate if it is applied for more than two years after the building consent was granted.

### Building Permits

Building permits (not building consents) were issued up until 1992. A building permit was signed off after work was completed and following the final inspection, provided the structure met the required building standards.

Local authorities still hold some building permit records, but it is important to remember that there was no legal requirement for them to do so and the records may be incomplete or missing. Signed off permits may, however, have been retained by the property owner, or other parties such as an architect involved in the building project.

### Certificate of acceptance

A certificate of acceptance can be applied for when work that required a building consent was done without a building consent, or where a building permit was in place, but no code compliance certificate (CCC) was issued.

- Certificates of acceptance can usually be issued for work done after 1st July 1992 when building consents were introduced.
- A certificate of acceptance confirms that, as far as the inspector can tell, the building work sufficiently complies with the current clauses of the **Building Code**.
- A certificate of acceptance provides some verification for a building owner or potential owner that part, or all, of certain building work complies with the **Building Code**.

The value of a certificate of acceptance to the building owner and a potential buyer depends, however, on how much of the work the authority was able to inspect. In many circumstances, it is not possible to see everything so the certificate will only specify the elements of the building that can be approved.

On inspection, if the work is found to be non-compliant, a notice to fix will be issued. The notice to fix sets out the remedial work that needs to be done to make the building work compliant.

In some circumstances, an authority may issue an infringement notice for having carried out building work without a building consent, even if a certificate of acceptance is issued.

## Safe and sanitary report

Under the building permit regime (prior to 1992), there was no code compliance certificate (CCC) issued and you could not apply for a certificate of acceptance if you didn't get a permit.

You could however apply for a 'safe and sanitary' report. **Prior to July 1,1992**, they were issued for any building work undertaken that required, but was not issued with, a building permit.

A **safe and sanitary report** is a report that is prepared by a private building consultant and a copy is usually forwarded to the relevant authority who may record it on the property file.

If the work is not considered to meet requirements, the safe and sanitary report should identify remedial work that is necessary to bring the building work up to the required standards.

## Notice to fix

Sections 163-168 of the Building Act cover notices to fix.

A code compliance certificate cannot be issued for work carried out without a building consent when one was required, nor for work carried out under a building consent but when that work does not meet the requirements of the consent given.

In these circumstances, and in relation to any building work that does not meet the requirements of the Building Act or the Building Code, the relevant BCA may issue a notice to fix.

A notice to fix can be issued for completed building work, or for building work that is in progress.

A notice to fix can be issued to the person carrying out the work, the supervisor of the work, and/or the owner of the building.

When a notice to fix is issued, it may require any of the following:

- If building work is still in progress, the authority may order that the building work is stopped straight away and is not started again without the authority's permission.
- If the notice to fix relates to building work being carried out without a building consent, the owner may be required to apply for a building consent.
- If the notice to fix relates to building work being carried out outside the requirements of a building consent, the owner may be required to apply for an amendment to the existing building consent.
- If the work was completed without a building consent, the owner may be required to apply for a [certificate of acceptance](#).
- The authority may order that specific remedial work is carried out to bring the building work in line with the required standards.

A notice to fix must be issued on Form 13 of the Building (Forms) Regulations 2004. It must give a reasonable timeframe within which it must be complied with.

When a notice to fix is issued by an independent BCA, they must notify the authority in accordance with requirements. The authority must then decide whether the notice has been complied with and provides written confirmation of this.

Under section 168(2) of the Building Act, a person who fails to comply with a notice to fix is liable on conviction to a fine of up to \$200,000 and, a fine of up to \$20,000 a day for the period the notice to fix is not complied with.

Section 168(2) applies to all notices to fix besides those relating to the means of restricting access to a residential pool (where the fine can be up to \$5,000).

## Best practice guidelines

The following are some best practice guidelines for achieving compliance.

Licensees should:

- Inform their supervising agent or branch manager if the legal compliance of a property or building becomes an issue and then work under that person's direction
- Talk to their client first before disclosing any defects relating to the property/space/business they are marketing.
- Obtain written confirmation from the client that they have given informed consent to disclose property related information.
- Inform prospective buyers about the defect and/or that the licensee has been unable to sight compliance documentation.
- Advise prospective customers to seek independent legal/technical advice before proceeding to enter a transaction (before making a written offer).
- Follow up verbal disclosure to customers in writing: for example, by email.
- Include an exclusion clause for the seller's warranties in the sale and purchase agreement when the defect has been disclosed and a prospective customer is willing to proceed OR invite the potential buyer to make an offer subject to the seller fixing the compliance issue.

Licensees should understand and explain to their client and customers (sellers and buyers) that, in many cases, these types of transactions may not successfully complete.

It is also important to understand that the 'as is/where is' provision does not negate a licensee's disclosure obligations under rules 6.4 and 10.7. In an 'as is/where is' transaction, the standard seller's warranties would be deleted from the sale and purchase agreement. If a licensee is aware of, or should be aware of, anything that may be material to a prospective buyer, that information must be fully disclosed, no later than the point of inducement.

Potential buyers interested in a property being sold 'as is/where is' should be urged to seek independent legal/technical advice.

## Disclosure of the legal status of building structures

Not being able to provide documentation to prove the legal status of building structures can create significant problems in a transaction.

Some non-complying work (depending on its seriousness) may mean that the building, structure, or parts of it are uninsurable. This could mean that a prospective customer may not be granted a mortgage.

Even where this is not the case, non-compliant buildings and structures can be very off-putting to prospective customers and they are a common reason why transactions do not successfully complete.

Many property owners do not realize that their property has these issues until they decide to put it on the market. At the listing stage, when the licensee is obtaining all documents from the client, if it is discovered that compliance documents are not available, this needs to be discussed with the client.

The client may decide to try to obtain the compliance documents needed before proceeding with marketing of the property.

This section provides a summary of the key rules from the Code of Conduct that impact on a licensee's disclosure obligations when documents are not available to confirm that building structures on a property are permitted and compliant.

A licensee's fiduciary obligation to their client (rule 6.1) is a primary duty, and the licensee must act in accordance with the lawful instructions of their client (rule 9.1).

Rule 6.4 requires that a licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law, or in fairness, be provided to a customer or client.

Rule 10.7 requires a licensee to disclose known defects to a customer. This includes unconsented or illegal building work or no code compliance certificate.

Rule 10.7 also provides a two-step approach when it appears likely to a reasonably competent licensee that a property may be subject to hidden or underlying defect (for example, it is a monolithic clad building)

- (a) Obtain written evidence from the client or the client's expert that there is no defect, or
- (b) Inform customers of the significant risk of the defect(s) so they can seek independent legal/technical advice before proceeding to enter a transaction (before making a written offer) if they choose.

If a client directs the licensee to withhold information about known or potential defects the licensee must no longer act for them. In other words, the licensee must cancel the agency agreement. (Rule 10.8)

When a licensee stops acting for a client in these circumstances, under the continuing fiduciary obligation, the licensee may not disclose the reason for ending the agency relationship.

## Change of use and alterations

The implications of building legislation in relation to change of use and alterations

As we saw earlier, rules under the Resource Management Act set limits on allowed use and activities of land and buildings in a particular zone. If a use or activity is not automatically allowed in a zone, resource consent would need to be applied for and approved.

There are also implications under building legislation that need to be complied with in situations where an owner, or prospective owner, wants to change the use of a building.

MBIE (2017a) states that every building must meet Building Code requirements that ensure it will be safe, healthy, and durable. If its use changes, the building may need to be altered to safely support the new use.

For example, single residential dwellings are sometimes converted for use for another purpose. A single residential dwelling does not generally require disabled access and facilities. However, these alterations may be required if the building, or part of the building is intended to be used for another purpose: for example, conversion of single residential dwelling into a doctor's surgery. More people being present on the premises because of the new use may also require alterations to fire exits etc. (MBIE, 2017a).

Sections 114, 115 and 118 of the Building Act and the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 cover change of use.

### **Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005**

#### **5 Change the use: what it means**

For the purposes of sections 114 and 115 of the Act, change the use, in relation to a building, means to change the use (determined in accordance with regulation 6) of all or a part of the building from one use (the old use) to another (the new use) and with the result that the requirements for compliance with the building code in relation to the new use are additional to, or more onerous than, the requirements for compliance with the building code in relation to the old use.

A change of use is defined as follows:

For the purposes of the Building Act, the use of every building or part of a building is categorised in Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.

MBIE (2017a) provides the following information on understanding a building's legal use. Schedule 2 divides the uses for all or parts of buildings into four broad activity groups:

- Crowd activities.
- Sleeping activities.
- Working, business or storage activities.
- Intermittent activities.

Each activity group is then sub-divided into more use categories.

For example, a building might be designed to be used for sleeping activities, so it falls into the sleeping activity group. This group covers a variety of buildings ranging from a private residential dwelling to a hospital, to a prison.

The sleeping activity group has five use categories under Schedule 2:

- SH (sleeping single home, detached dwelling where people live as a single household)
- SR (sleeping residential, attached, and multi-unit residential dwellings)
- SA (sleeping accommodation, spaces providing transient accommodation)
- SC (sleeping care, where people are provided with special care or treatment)
- SD (sleeping detention, where people are detained or physically restrained).

Depending on the change of activity group and use category, the building may need to meet additional Building Code requirements.

The new use might increase the fire hazard or the risk to life if appropriate alterations are not made.

Schedule 2 can be found in 'Support Resources' document and at this link:  
<http://www.legislation.govt.nz/regulation/public/2005/0032/7.0/DLM313979.html>.

### **When a change of use is proposed**

MBIE (2017a) provides the following guidance on a proposed change of use.

- The owner or prospective owner will need to discuss the proposed change of use with the relevant authority in the early stages of planning.

This is especially important, so it can be established if the building will need upgrading.

The authority must then provide written confirmation of whether the building in its new use will meet Building Code requirements or whether building alterations would be necessary.

Depending on the new use and circumstances, considerations may include the following:

- The authority must be satisfied on reasonable grounds that the building in its new use will continue to comply with the Building Code.
- Alterations may be required in relation to means of escape for fire, protection of other property, sanitary facilities, structural durability, and fire-rating of the building.
- Alterations may be required to provide access and facilities for people with disabilities (if the new use relates to use by the general public where people with disabilities may be expected to visit or work in that building; and carry out normal activities and processes in that building).

Where alterations are required, the authority will consider the intended change of use and the proposed building work to see if the building, in its new use, will adequately comply with the Building Code as required by the Building Act.

A building consent will be required if the alterations needed to facilitate the change of use to the building would ordinarily require a building consent.

**When the authority is not notified about change of use**

If an owner changes the use of a building without notifying and getting approval from the relevant authority, they are liable on conviction to a fine of up to \$5,000.

If the owner also fails to get a building consent where one is needed for the building work required to change the use section 40 of the Building Act applies. If work that should require a building consent is carried out without a consent, the party is liable on conviction to a fine of up to \$200,000.

The authority may order the removal of the building work completed and may impose a fine of up to \$10,000 a day for the period the work remains illegally in place.

Depending on the circumstances, the authority may:

- issue an infringement notice
- issue a notice to fix
- require the owner to apply for a certificate of acceptance (MBIE, 2017a).

## BUILDING STRUCTURES AND LAND SITES

Land sites and land issues affect building construction. Potential customers acquiring land for development, or planning significant additional building on a site, must always be advised to seek appropriate legal and technical advice.

### Building Act 2004

#### 71 Building on land subject to natural hazards

- (1) A building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, if—
  - (a) the land on which the building work is to be carried out is subject or is likely to be subject to 1 or more natural hazards; or
  - (b) the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
- (2) Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to—
  - (a) protect the land, building work, or other property referred to in that subsection from the natural hazard or hazards; or
  - (b) restore any damage to that land or other property because of the building work.
- (3) In this section and sections 72 to 74, natural hazard means any of the following:
  - (a) erosion (including coastal erosion, bank erosion, and sheet erosion):
  - (b) falling debris (including soil, rock, snow, and ice):
  - (c) subsidence:
  - (d) inundation (including flooding, overland flow, storm surge, tidal effects, and ponding):
  - (e) slippage.

### Site assessment

A thorough investigation and assessment of ground conditions and stability is essential to determine whether a site is suitable for building on, where the best place may be to locate a building and the type and size of foundations that will be required.

A preliminary survey of the site should include consideration of the following:

- General landform [geographical location and topography]
- Flooding
- Soil types for load-bearing capacity
- Drainage and runoff
- The water table, and presence of natural springs or waterlogged soils.
- Risk of landslide or subsidence.
- The proximity of the site or proposed building to excavations.
- The proximity of the site or proposed building to exposed banks.
- The previous use the site has been put to and implications such as buried structures, contamination, earthworks, and uncompacted fill.

See <http://www.level.org.nz/site-analysis/site-conditions-and-ground-stability>

## Natural hazards

Under section 71 of the Building Act 2004, unless an authority is satisfied that adequate provision has been made or will be made, the authority must refuse to grant a building consent if the land is at risk of a natural hazard (this can include erosion, falling debris, flooding, subsidence, slippage, or slumps), or if the building work itself is likely to accelerate the problem.

## Geotechnical report

Geotechnical reports provide information on the physical properties of land.

Soil type and rock present on a site have impact on earthworks required, they affect the foundations needed for proposed buildings and indicate the type of repair-work that may be needed for existing buildings.

A geotechnical report is put together after a site investigation which includes surface and subsurface exploration of a site.

## Foundations

Foundations provide a way for buildings to withstand the loads that are placed on them by transferring those loads to the ground.

Pile foundations include ordinary piles, driven timber piles, driven timber cantilevered piles, anchor piles, braced pile systems, pile footings, and concrete encasement.

In simple terms, a pile is a long cylinder of a strong material that is pushed into the ground to support any structure(s) on top of it.

For example, pile foundations are typically used when there is a layer of weak soil at the surface or when a building has very heavy, concentrated loads.

## Contoured land

If a site is flat, the topography may not influence the location and layout of the building. On a sloping site, the topography is likely to be a significant design factor.

The slope of a site and/or the slope of adjacent sites may affect access to sun and views. For example, an east-facing hillside will have reduced afternoon and evening sunlight, particularly in winter. Depending on the height and steepness, a south-facing site may receive little or no sun during the winter months.

The location and layout of the building should be designed to minimise:

- the need for excavation or fill – as well as increasing costs, large-scale earthworks increase the risk of erosion by altering soil stability and water run-off patterns, increase sediment run-off during construction and significantly affect natural biodiversity by removing soils and plants
- the building's footprint by using low-impact foundation systems such as pole frame construction to reduce the amount of site work and disruption
- the visual impact of the building form on the landscape.

. See <http://www.level.org.nz/site-use/positioning-a-house-on-the-site/topography>

Note: Licensees are not expected to identify aspects of the land such as whether the soil is peaty or sandy, nor the effect of the type of soil on land development and construction. However, the intent of this section is to provide a general background on this topic. Expert advice is required for identifying soil types.

## Soil type

A thorough investigation and assessment of ground conditions and stability is essential to determine whether a site is suitable for building on, where the best place may be to locate a building and the type and size of foundations that will be required. Inadequate bearing or ground instability may result in minor or major building failure. Landowners or potential buyers of land should seek advice on this from a structural or geotechnical engineer, where there are potential issues regarding ground condition and stability.

The bearing pressure of soil is its ability to carry the load of the building without excessive settlement (more than 25 mm). Bearing pressure depends on soil type. It must be assessed at the base of the foundations.

BRANZ identifies a range of considerations concerning the bearing pressure of different soils.

## Expansive clay

Expansive clay increases significantly in volume when wet and shrinks again when dry.

When expansive clay extends a significant depth below the surface and particularly if it occurs at a depth where the water level fluctuates, substantial uplift of the ground's surface may occur during wet periods, followed by subsidence during a dry period. The amount of uplift will vary according to the clay content of the soil but may be up to 50 mm.

**Clay** Soil is soft and sticky when wet and hard when it is dry. It can crack and weighs more than sand, making it a heavy soil that benefits from high nutrients.

Building on a clay soil will affect the ground moisture content and result in a different pattern of expansion and contraction. Moisture content will also be reduced by large, paved areas, tree planting and subsoil drainage.

If expansive clay is present, a structural or geotechnical engineer should be consulted.

If areas of the building site contain fill, it must comply with NZS 4431:1989 Code of practice for earth fill for residential development.

Tests must be carried out to check the fill's bearing capacity. In most cases, fill is unlikely to meet the required bearing capacity, so foundations are usually constructed to pass down to solid bearing below the fill.

**Silt** Soil is often mixed with sand or clay and water, it is often found in rivers and creeks. It appears dust like

**Loamy** Soil is composed of almost equal amounts of sand and silt with a little less clay. Generally speaking, **loam** is ideal for gardens.

See <http://www.level.org.nz/site-analysis/site-conditions-and-ground-stability>

## Peat

**Peat** soil are **soils** high in organic matter content. **Peat** formation is influenced by moisture and temperature.

Although the surface of the ground can appear stable and dry, peat may be present below the surface in a deep layer that will compress under the weight of a building.

If the presence of peat is suspected, a soil engineer should be consulted. The extent and depth of the peat will need to be determined by drilling bore holes. Where there is only a thin layer of peat, it may be able to be removed to expose firmer soil below. Alternatively, a specifically designed raft foundation and floor slab may be needed.

## Sand

**Sandy Soil** has a high percentage of **sand**, or **soil** particles. It mainly consists of rock particles, like limestone, shale, granite, and quartz. Water travels through **sandy soil** easily and so it dries out quickly.

Sands vary in particle size and in compaction, and some types of sand have low bearing capacity. If the soil type is sand, piles driven down to a good bearing layer may be required in conjunction with a concrete slab.

There are many methods that could be used to help prevent or stop erosion on steep slopes, some of which are listed below.

- Plants Grass and Shrubs are a highly effective way to minimise soil erosion
- Use of Erosion Control Blankets can be added to vegetation and slopes
- Placing crushed stone, wood chips, and other similar materials in heavily used areas where vegetation is hard to establish and maintain.
- Build Terraces and Retaining Walls
- Adding extra drainage or creating diversions to help with drainage.

## Erosion, subsidence, landslides, and slumps can influence building structures and placement

Landslides, slumps, and soil erosion can undermine a building structure.

The risk is likely to be high where the site:

- has been substantially altered through earthworks or removal of vegetation
- has a river or beach frontage
- is at the top of a cliff
- is on a Faultline
- is sloping and a in high rainfall area where the soil readily becomes saturated
- has had mining activity in the past
- is in a geothermally active area.

See [http://www.level.org.nz/site-analysis/hazards/landslides- slumps-and-erosion \)](http://www.level.org.nz/site-analysis/hazards/landslides-slumps-and-erosion)

Subsidence is the sudden sinking or gradual downward settling of the ground's surface with little or no horizontal motion.

- It may be caused by natural processes or by human activities, like:
- Soil types
- Humans – disturbing the land when developing it
- Aquifer-system compaction, drainage of organic soils, underground mining, compaction, sinkholes, and thawing permafrost.

There are many methods that could be used to help prevent or stop erosion on steep slopes, some of which are listed below.

- Plants Grass and Shrubs are a highly effective way to minimise soil erosion
- Use of Erosion Control Blankets can be added to vegetation and slopes
- Placing crushed stone, wood chips, and other similar materials in heavily used areas where vegetation is hard to establish and maintain.
- Build Terraces and Retaining Walls
- Adding extra drainage or creating diversions to help with drainage.

Note that a LIM report or PIM report should contain information about previous incidents affecting the location. Aerial photos can be used to help identify areas at risk.

### **Flood prone areas**

Flood risk occurs in low lying areas of land such as:

- flood plains
- by rivers and watercourses
- below a hill
- close to a valley mouth
- close to drainage channels
- natural depressions or swamps that have been drained.

Council records should be checked for information such as the LIM and past flood risk. Consider the impact of flooding on stormwater and sewer systems and erosion.

Some local authorities have defined and mapped flood management areas. The council may have a requirement for new buildings in these areas to have a floor level higher than other areas. If you are planning to build or extend a house in the Christchurch flood management area, for example, your minimum floor level may need to be high enough to protect from a 1-in-200-year flood event. If construction of a new building goes ahead on a site prone to flooding, minimise the risk by:

- ensuring the building is located on the highest section of the site
- building away from natural drainage paths or channels
- making the finished floor level of the lowest floor well above (600 mm minimum) the maximum flood level
- installing additional land drainage for low-lying areas (there must be somewhere for water to drain to).

See <http://www.level.org.nz/site-analysis/hazards/flood-risk> )

## Proximity to sea

### Sea Spray

When a building is located nearby the sea and is close enough to be affected by sea spray, consideration needs to be given to the impact of the sea spray on building materials. This is because building materials may be corroded by exposure to sea salt.

Clause B2 from the Building Code sets a general durability requirement. Under clause B2, building materials, components and construction methods need to be sufficiently durable to meet functional requirements throughout the life of the building.

In a sea spray zone, special consideration needs to be given to materials such as fastenings, claddings, and metal flashings. Fastenings are generally required to be stainless steel to prevent corrosion from the salt.

### Wind zones

Wind direction, speed and frequency will influence the building design including bracing requirements, roof, and wall cladding selection, weathertightness detailing, building entry locations, window size and placement and provision of shelter for outdoor spaces.

The building standard NZS 3604 Timber framed buildings requires buildings to be designed to withstand the winds that they are likely to be subjected to in terms of their geographical location and the wind zone of the area.

See <http://www.level.org.nz/site-analysis/wind>

Wind zones are calculated (usually by a designer or engineer) based on the wind region the site is in, whether the land is built-up or open, the slope of the land and whether the site is sheltered or exposed.

NZS 3604 provides a map of wind regions and lee zones.

Wind zones fall into the following categories

Low (L): below 32 m/s

Medium (M): 32 – 37 m/s

High (H): 38 – 44 m/s

Very High (VH): 45 – 50 m/s

Extra High (EH): 51 – 55 m/s

Specific Design (SD): over 55 m/s

It is sometimes possible to find out the wind zone that a particular property is from a LIM report.

## Rising sea levels

The IPCC (Intergovernmental Panel on Climate Change) has projected a global average sea-level rise of up to 980 mm before the end of the century. Many houses being built today will still be standing then.

A joint report from the Ministry for the Environment and Statistics New Zealand in October 2017 found that, together with rising seas, “We can expect tides, waves, and storm surges (extremely long, slow waves) to reach further inland more regularly, resulting in more frequent and serious flooding...” In a 2015 study by the Parliamentary Commissioner for the Environment, 43,680 homes and 133,265 people were identified as being in higher-risk areas.

Erosion will be a growing problem in many areas, particularly on the east coast of both main islands.

For new house construction this will mean that some locations that could have been built on in the past may no longer be suitable because of:

- the threat of damage from flooding or erosion
- inability to get insurance
- local authority restrictions. (Under the Resource Management Act, local authorities are required to have regard to the effects of climate change.)

Where construction is permitted, higher floor levels may be required by local authorities or greater setbacks, such as longer erosion hazard setbacks for cliff-top or beachside homes.

New restrictions may apply in existing settlements. In Mapua and Ruby Bay, for example, there are Residential Closed Zones where further subdivision is prohibited, there can be no land filling, no new habitable buildings and no extension or replacement of existing habitable buildings closer to the shore.

For some existing settlements, choices will have to be made whether to restore natural defences to sea level rise (such as sand dunes or estuaries) or carry out (if possible) a managed retreat of existing buildings, giving up on land that is subject to high levels of flooding or erosion.

A 2015 study by the Parliamentary Commissioner for the Environment found that there were 43,680 homes and 133,265 people in the higher-risk areas – less than 3 metres above mean high water spring.

The hazard varies by location. Canterbury and Hawke’s Bay have the highest risk exposure, but the challenges are high in other locations too. In South Dunedin, for example, nearly 2,700 homes are less than 500 mm above the spring high-tide mark, with more than 70 percent of homes lying lower than 250 mm elevation.

See <http://www.level.org.nz/site-analysis/hazards/rising-sea-levels>

## Earthquake zones

Earthquakes can bring rapid, violent shaking both sideways and/or up and down, or slower rolling movements.

In some areas – especially hillsides – unstable ground may slide, and rocks may fall. On flat ground where there is a high-water table and the soil is low-density sand or silt, liquefaction can take place. Liquid is forced to the surface, carrying sand and silt with it; land can slump; surface soil close to sloping ground (such as stream banks) can spread, with cracks opening.

### **Depending on the location, earthquakes can bring other hazards such as tsunamis.**

There are strong rules around house construction to help houses better cope with earthquakes, and some of these rules were strengthened following the Canterbury earthquakes of 2010/2011.

Under NZS 3604:2011 Timber-framed buildings, bracing must be provided for all buildings, with greater bracing being required for buildings:

- in a higher earthquake zone
- where heavy roof and/or wall claddings are specified.

Earthquake bracing demand is covered in section 5.3 of NZS 3604:2011. The section includes maps showing earthquake zones 1–4. [The four earthquake risk zones determine the bracing requirements of buildings to resist earthquakes. See

[http://www.level.org.nz/fileadmin/downloads/Site\\_Analysis/Earthquake\\_Zones\\_Map.pdf](http://www.level.org.nz/fileadmin/downloads/Site_Analysis/Earthquake_Zones_Map.pdf)]

Earthquake bracing is provided by lengths of wall where the cladding and/or lining works with the timber frame to form a bracing panel. NZS 3604 ensures an even distribution of bracing elements, so the building is not expected to twist significantly in an earthquake.

Nowadays, many light timber-framed buildings are not designed completely to NZS 3604 because homeowners want large windows on one side of the house to enjoy a view. This often requires special bracing elements designed by a structural engineer. The rest of the building can still be designed and constructed to the standard.

Simple houses constructed to NZS 3604 performed well in the Canterbury earthquakes, but houses with a mixed bracing system often had significant damage.

Another key standard regarding earthquakes is NZS 1170.5:2004 Structural design actions – Part 5: Earthquake Actions – New Zealand.

Depending on when and where a house was built, and what construction methods were used, there may be steps that can be taken to make it more resilient to earthquakes.

Houses with simple shapes and with timber frames and timber cladding tend to withstand earthquake shaking better, while unreinforced brick buildings are more likely to suffer damage.

Work that can be done to earthquake strengthen a house includes:

- Fixing or replacing damaged piles
- Making sure that piles are fixed to bearers
- Adding timber braces between piles and bearers or joists, or between piles and corner foundations
- Adding new plasterboard lining over old sarking on interior walls
- Removing or replacing unreinforced masonry chimneys
- Making sure clay or concrete tiles are properly fixed

Removal of a building element such as an unsound chimney does not require a building consent (but the work must still meet Building Code requirements). This exemption is limited to any building up to 3 storeys high if the removal does not affect the primary structure, any specified system or any fire separation (which includes firewalls protecting other property).

Any repair work that is necessary – for example, making good the gaps left in a roof after chimney removal – can also be done without a consent.

A chartered professional engineer should be consulted over what may be possible with unreinforced masonry walls.

See <http://www.level.org.nz/site-analysis/hazards/earthquake-risk>

## **Contamination**

The Resource Management Act defines contaminated land as “land that has a hazardous substance in it or on it that has significant adverse effects on the environment or is reasonably likely to have [those effects]”.

Hazardous substances can threaten the health of people, animals, or the environment where there is direct contact with contaminated soil, vapours or dust are ingested, or food or water from contaminated places is consumed.

Some contaminants may also cause aggressive ground conditions that can attack concrete foundations, speed-up rust in steel or even dissolve plastic pipework.

See <http://www.level.org.nz/site-analysis/hazards/contamination-and-pollution>

There are several ways to check on whether land may be contaminated. The relevant authority may hold a register of contaminated or potentially contaminated land. A LIM report or PIM report should contain any information the council holds about the likely presence of hazardous contaminants.

Land that is (or was) used for a hazardous activity should be listed on the Hazardous Activities and Industries List (HAIL).

There may be physical indications that activities have taken place at a property that puts it at risk from contamination, such as containers or equipment.

BRANZ states that, if evidence suggests that land may be contaminated, it is important to talk to a qualified and experienced contaminated land consultant. A consultant will be able to carry out a more detailed land use survey, and, if necessary, arrange appropriate soil analysis.

See <http://www.level.org.nz/site-analysis/hazards/contamination-and-pollution>

## Activities that cause contamination

Contamination of a site may occur from past industrial, horticultural, or agricultural activity. Typical examples of contaminated sites are when:

- pesticides and herbicides were manufactured or stored
- fertilisers were stored
- timber was treated
- sheep were dipped
- petroleum, gas, or coal products were produced, used, stored or sold
- metals or minerals were mined
- hazardous waste was dumped or landfilled (legally or illegally)
- asbestos is or was present
- land is affected by discharges from other contaminated sites
- scrapyards or recycling activities were carried out.

See <http://www.level.org.nz/site-analysis/hazards/contamination-and-pollution>

Methamphetamine manufacture or use is another common source of contamination.

## Contaminated land laws and standards

Buildings generally must comply with the Building Code. Clause F1 *Hazardous agents on site* requires that “sites shall be assessed to determine the presence and potential threat of any hazardous agents or contaminants” and that “buildings shall be constructed to avoid the likelihood of people within the building being adversely affected by hazardous agents or contaminants on a site”.

A resource consent is needed to subdivide or change the use of potentially contaminated land. A consent may also be needed to undertake earthworks, advance bores, or discharge water from the land.

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health came into effect on 1 January 2012. It ensures that contaminated land is identified and assessed before development. The land may need to be remediated or the contaminants contained so the land is safe for use. City and district councils must carry out and enforce its requirements. The standard does not affect existing land uses.

Regional and district plans may also contain rules relating to contaminated land.

See <http://www.level.org.nz/site-analysis/hazards/contamination-and-pollution>

REINZ provides an information sheet that provides guidance in relation to dealing with methamphetamine contamination.

## Historical and cultural heritage

The Heritage New Zealand Pouhere Taonga Act 2014 promotes the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.

This Act repealed the Historic Places Act 1993. It continues the body formerly known as the New Zealand Historic Places Trust (Pouhere Taonga) under the name Heritage New Zealand Pouhere Taonga and continues the Māori Heritage Council.

Heritage New Zealand (2018) provides the following information about historical and cultural heritage in relation to New Zealand land.

Amongst other functions, the Heritage New Zealand Pouhere Taonga Act 2014 provides for protection and conservation of a historic place, historic area, wahi tapu, or wahi tapu area through covenants.

These covenants can affect various historic places including private homes, archaeological sites, commercial buildings, public buildings, farms, and other sites of significance to Māori.

The property must meet the definition of a historic place specified in section 6 of the Heritage New Zealand Pouhere Taonga Act 2014:

This definition is as follows:

### **historic place—**

- (a) means any of the following that forms a part of the historical and cultural heritage of New Zealand and that lies within the territorial limits of New Zealand:
- (i) land, including an archaeological site or part of an archaeological site:
  - (ii) a building or structure (or part of a building or structure):
  - (iii) any combination of land, buildings, structures, or associated buildings or structures (or parts of buildings, structures, or associated buildings or structures); and
- (b) includes anything that is in or fixed to land described in paragraph (a).

Heritage covenants can arise in different ways:

- by request of an owner to give long term protection to their property
- through the requirements for protection of places or areas as part of the resource consent process
- as a condition of a grant under the National Heritage Preservation Incentive fund
- to reduce or prevent damage to archaeological sites.

A heritage covenant is usually permanently registered against the land title though a heritage covenant can be varied by agreement between Heritage New Zealand Pouhere Taonga and the property owner when in the best interests of long-term conservation of the property.

A heritage covenant can be cancelled under agreement if the historic place has been destroyed.

A heritage covenant places conditions on the management and use of the place or wahi tapu. Unless cancelled, historic covenant restrictions will legally bind all subsequent owners.

In certain circumstances, covenants can be unregistered and defined number of years (Heritage New Zealand, 2018).

## **Māori artefacts**

The Heritage New Zealand Pouhere Taonga Act 2014 prohibits the modification or destruction of an archaeological site unless an authority for the modification or destruction is obtained from Heritage New Zealand Pouhere Taonga.

In a situation where Māori artefacts are found on any development site, work would need to be suspended until an archaeological assessment of the site is carried out. This can occur regardless of having other required building consents in place and may be a condition of a resource consent.

An archaeological assessment would involve the Heritage New Zealand Pouhere Taonga and consultation with local iwi.

For more information visit: <http://www.heritage.org.nz/>

## TEST YOUR KNOWLEDGE

	TRUE	FALSE
The Resource Management Act 1991 is the legislation in New Zealand relating to environmental management		
Zoning can determine the use of land		
CCC stands for Council Certificate of Compliance		
COA stands for Certificate of Acceptance		
A Certificate of Acceptance protects the customer more than a Code Compliance Certificate		
A CCC says that the building work complies with the Building Code		
A COA says all the work complies with the building code as far as the Council can tell		
A Building Consent you must include the name of each licensed building practitioner completing any restricted building work		
Rules 6.4 and 10.7 set out your disclosure obligations for unconsented work		
A purchaser can move into their new house before the CCC is issued		
Alterations to your own home do not come under the building Act		
Building work carried out without a building consent is liable for a fine of up to, \$200,000 and \$10,000 a day if the offence continues.		

## Resources

Department of Conservation. (n.d.). *Regional coastal plans*. <https://www.doc.govt.nz/about-us/our-role/managing-conservation/coastal-management/regional-coastal-plans>

Department of Internal Affairs. (2011). *Councils' roles and functions*. [http://www.localcouncils.govt.nz/lqip.nsf/wpg\\_url/About-Local-Government-Local-Government-In-New-Zealand-Councils-Roles-and-Functions](http://www.localcouncils.govt.nz/lqip.nsf/wpg_url/About-Local-Government-Local-Government-In-New-Zealand-Councils-Roles-and-Functions)

Environment Guide. (2018). *Resource consents and processes*. <http://www.environmentguide.org.nz/rma/resource-consents-and-processes>

Heritage New Zealand. (2018). <http://www.heritage.org.nz/protecting-heritage/heritage-covenants>

Level. (2016). *Site conditions and ground stability*. <http://www.level.org.nz/site-analysis/site-conditions-and-ground-stability>

Level. (2017a). *Contamination and pollution*. <http://www.level.org.nz/site-analysis/hazards/contamination-and-pollution>

Level. (2017b). *Flood risk*. <http://www.level.org.nz/site-analysis/hazards/flood-risk>

Level. (2017c). *Landslides, slumps and erosion*. <http://www.level.org.nz/site-analysis/hazards/landslides-slumps-and-erosion>

Level. (2018a). *Earthquake risk*. <http://www.level.org.nz/site-analysis/hazards/earthquake-risk>

Level (2018b). *Rising sea levels*. <http://www.level.org.nz/site-analysis/hazards/rising-sea-levels>

Level (2018c). *Wind*. <http://www.level.org.nz/site-analysis/wind>

Level. (n.d.). *Topography*. <http://www.level.org.nz/site-use/positioning-a-house-on-the-site/topography>

Ministry of Business, Innovation & Employment (MBIE). (2017a). *Change of use, alterations and extension of life*. <https://www.building.govt.nz/managing-buildings/change-of-use-and-alterations>

Ministry of Business, Innovation & Employment (MBIE). (2017b). *Key roles and responsibilities*. <https://www.building.govt.nz/building-officials/bca-accreditation/key-roles-and-responsibilities>

Ministry of Business, Innovation & Employment (MBIE). (2017c). *Legislative requirements of the BCA accreditation scheme*. <https://www.building.govt.nz/building-officials/bca-accreditation/legislative-requirements-bca-accreditation-scheme>

Real Estate Authority (REA). (2012). *Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012*. <https://www.rea.govt.nz/assets/Uploads/Resources/Guides/Code-of-conduct.pdf>