



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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**BUILDING, RESOURCES AND
MARKETS GROUP**



Regulatory Charter

Building regulatory system

Context: regulatory charters

Why have a regulatory charter?

Government entities have stewardship obligations under the State Sector Act to monitor the performance of the regulatory systems they oversee. A charter supports the living regulatory system approach¹ and reinforces shared ownership for the system among those with regulatory functions. The charter is designed to support cooperation between system participants and ensure any changes contribute to the desired outcomes of the system as a whole.

What's in the regulatory charter?

Regulatory charters:

- clarify roles and responsibilities of system participants
- identify overlaps in the regulatory system
- identify gaps in the regulatory system
- provide guidance to resolve systemic uncertainties when they arise

To complement charters MBIE periodically undertakes system assessments to identify risks and gaps and review its own performance as the steward of the system.

Charter ownership

The Ministry of Business, Innovation and Employment (MBIE) is formally responsible for the charter. The charter must record the shared understanding of all organisations with key roles in the building regulatory system. It is a product of, and vehicle for, dialogue across the system.

Charter functionality

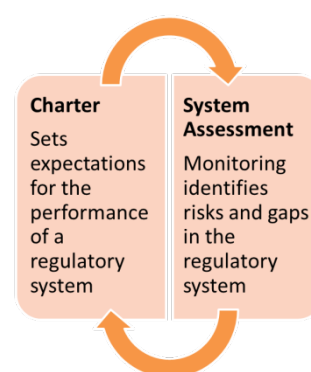
The charter describes the current building regulatory system and how it ought to work. It sets out the purpose of the system, the roles and relationships between participants. The building regulatory system is complex and MBIE is working to simplify as it aims to improve the system. Changes are underway and further work is planned. The Charter does not capture the future work programme, but provides a foundation for understanding the current state and roles and responsibilities.

Charter review and management

The responsibility for keeping and reviewing this charter document sits with the MBIE. A review of this document should occur at least every five years and after significant changes to the Building Act. A charter review should include assessments of:

- Whether system objectives, policy or context have changed over time
- Whether the charter document should be updated to reflect these changes
- Whether, as a result of system assessments, progress has been made in addressing identified risks and closing gaps.

Figure 1 Charters and System Assessments complement each other



¹ A living system is one which is continuously monitored and improved, rather than set and forgotten. A living system incorporates mechanisms to enable the regulators in the system to identify, assess and evaluate the system and make adjustments where appropriate to meet evolving opportunities and risks. In a living system, the system's owners have shared expectations of how the system is supposed to perform and can assess how that system is performing against those expectations.

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1. Regulating the building sector

1.1 The building sector is crucial to New Zealand's social and economic outcomes

A well-functioning building sector will have a positive effect on New Zealand's economic stability, health, and security. People expect that the buildings they live and work in are safe and well-built, and this is a key objective of the building regulatory system.

Work in the building and construction sector has a significant impact on New Zealand's economic performance. The sector:

- makes up approximately **6% of New Zealand's GDP** annually
- **employed 9.6% of the workforce** at the end of December 2016 – nearly **243,000 people**
- drives and supports activity in other parts of the economy, such as manufacturing, mining, transport, property and business services – Price Waterhouse Coopers has estimated that a **\$1 investment in construction produces between \$2.51 and \$3.11** in economic activity²
- has a significant impact on consumption levels, as home ownership and property values affect people's perception of their wealth and financial security – for most New Zealand households, their home is their largest asset
- delivers a key component of core infrastructure needed to support successful growth of the country.

The building regulatory system is largely user pays, with core regulator activities funded by a building levy payable on work granted a building consent and valued above \$20,000.

1.2 The building regulatory system is broad and complex

The building sector is made up of the institutions and markets involved in the building, construction and maintenance of commercial and residential property in New Zealand, and covers:

- direct service providers (designers, architects, engineers, builders and other tradespeople) and product suppliers
- financial institutions (banks and insurance companies)
- research agencies (Building Research Association of New Zealand (BRANZ), universities)
- quality assurance and compliance organisations (Territorial Authorities, Building Consent Authorities, and Conformity Assessment bodies)
- residential and commercial building owners and developers
- building users.

The sector is characterised by large numbers of small, diverse businesses, with many self-employed people. In 2015, 90% of businesses involved in construction had five or fewer employees and there is

² PWC (2016), *Valuing the role of construction in the New Zealand economy*, <http://www.pwc.co.nz/services/management-consulting/publications/valuing-the-role-of-construction-in-the-nz-economy/>

high churn in the sector. This may contribute to historically low productivity, and adds a level of challenge to communicating and influencing change consistently across the sector and requiring performance.

1.3 Regulation of the building sector aims to deliver good building performance

New Zealand's building regulatory system focuses on good building performance, so that everyone has access to safe, healthy, durable homes and buildings. Regulation is a key tool used to influence the performance of the building sector, because:

- the building sector delivers **public good benefits** – poor performance in the sector has broad and significant negative impacts
- there is **information asymmetry** – providers of services or products often have superior information to individual customers and regulation is used to protect consumers
- it needs to reflect **societal expectations about health and safety** and system-wide coordination – the overall integrity, soundness, and efficiency of the building sector call for a role for government.

2. The scope and purpose of the building regulatory system

2.1 New Zealand has a performance-based building regulatory system

The Building Act 2004 specifies four purposes that regulation of building work, licensing building practitioners, and setting performance standards for buildings should achieve:

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

The Building Act is also aimed at promoting the accountability of owners, designers, builders, and building consent authorities – all of whom have responsibilities to ensure that building work complies with the Building Code.

To achieve these objectives, building work must meet certain requirements set out in legislation and regulations. These determine how work can be done, who can do it, and ensure that the system has adequate checks and consumer protection in place. The current performance-based approach allows development and innovation in building design, technology and systems.

2.2 The Building Act controls building design and construction

The Building Act applies mainly to the physical aspects of building work and establishes a framework for good decision-making, with checks and balances at each stage of the building or alteration process. The Act provides for:

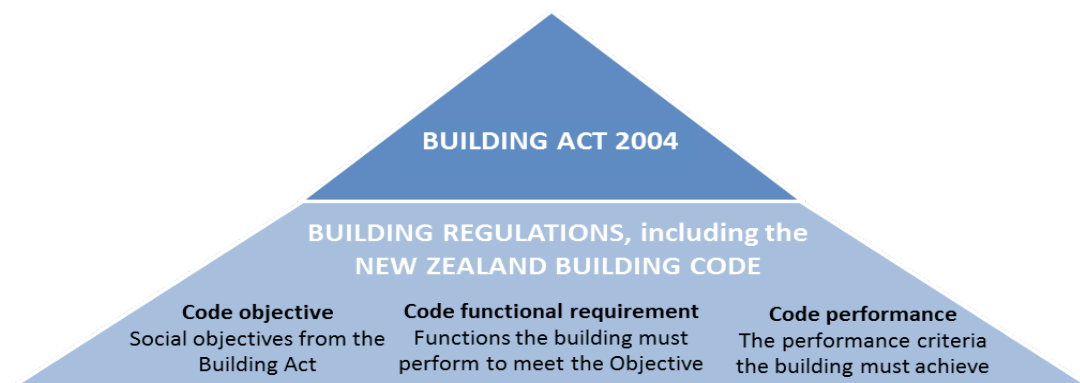
- requirements relating to building work
- the functions of MBIE, Territorial Authorities, Councils, Building Consent Authorities (BCAs) and their accreditation
- licensing of building practitioners
- mandatory contracts and implied warranties for the benefit of consumers
- defined responsibilities for owners, designers, builders and manufacturers/suppliers
- guidance from the regulator.

Figure 2 below sets out the key components of the building regulatory system, and methods for demonstrating compliance, covering:

- Building Act 2004 – the primary legislation governing the building and construction industry
- Building Regulations – detail for particular building controls (eg prescribed forms, list of specified systems, definitions of 'change the use' and 'moderate earthquake', levies, fees and infringements)

- Building Code – contained in Schedule 1 of the Building Regulations 1992, sets the minimum performance standards buildings must meet.

Figure 2: Components of the building regulatory system



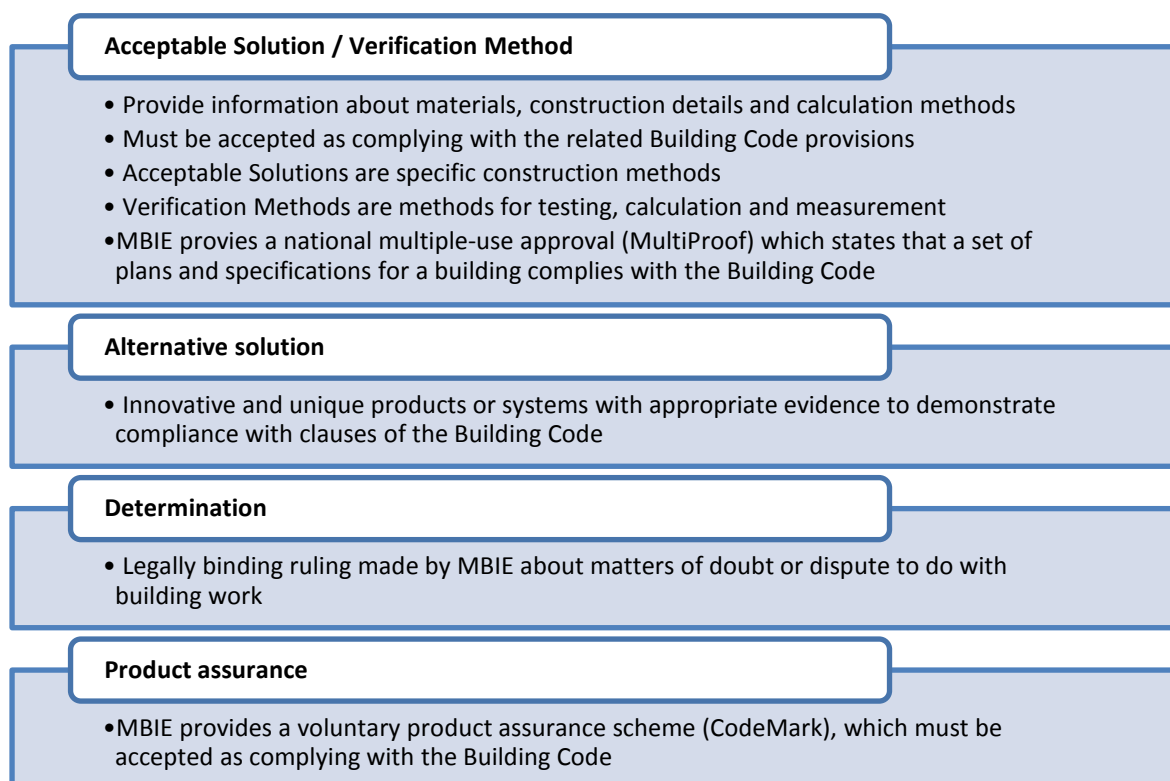
The Building Act 2004 works alongside other legislation affecting the building and construction sector, including:

- Chartered Professional Engineers of New Zealand Act 2002
- Construction Contracts Act 2002
- Electricity Act 1992
- Engineering Associates Act 1961
- Fire Service Act 1975
- Plumbers, Gasfitters, and Drainlayers Act 2006
- Registered Architects Act 2005
- Resource Management Act 1991
- Weathertight Homes Resolution Services Act 2006
- council bylaws.

2.3 There are different ways to demonstrate compliance with the Building Code

The building consent system is set up to ensure that building projects above a certain threshold of complexity and risk are undertaken in such a way that people's health and safety is safeguarded. To issue a building consent, a BCA must be reasonably satisfied that the plans and specifications demonstrate compliance with the Building Code. Compliance may be demonstrated in a number of ways, set out in Figure 3.

Figure 3: Methods of demonstrating compliance with the Building Code

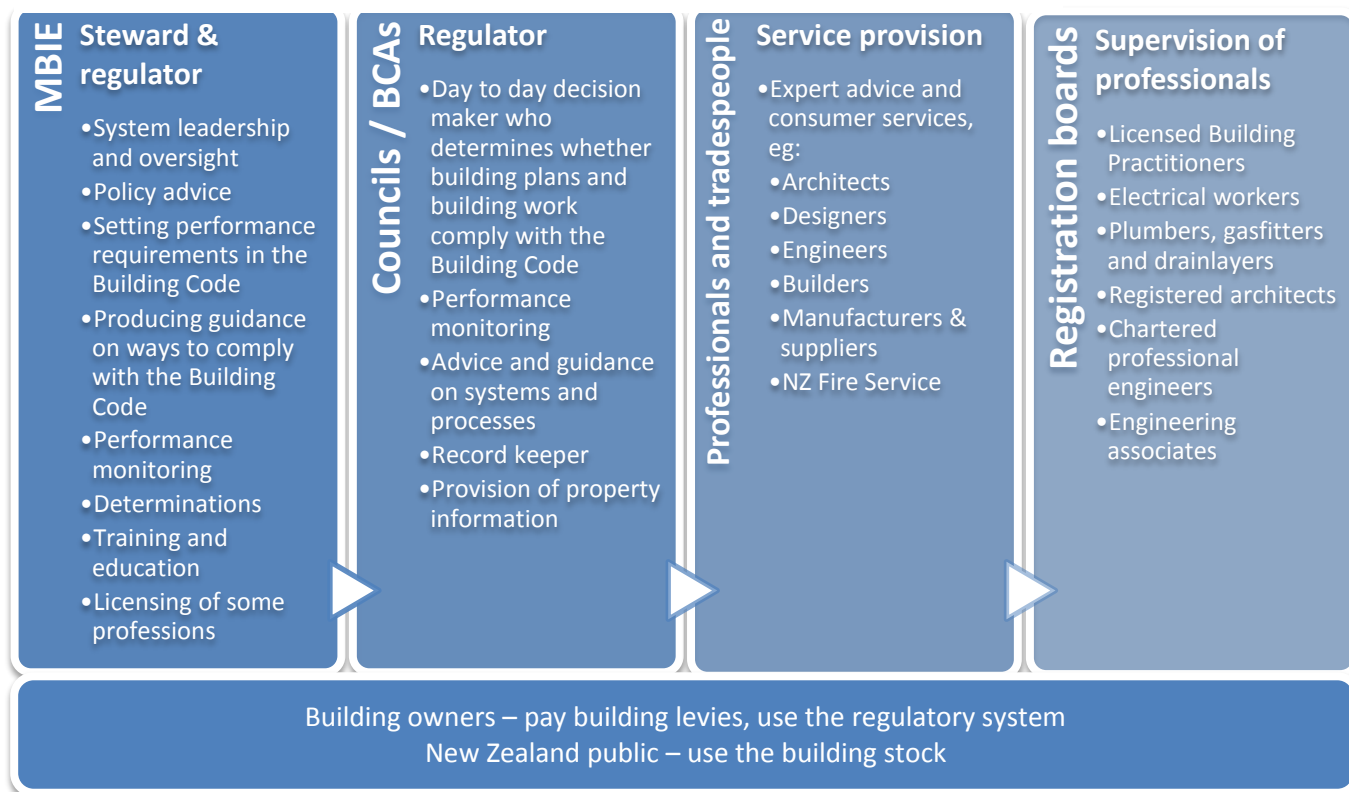


3. Roles within the regulatory system

3.1 Overview of building regulatory system roles

Figure 4 below provides an overview of the different roles in the regulatory system and who carries them out.

Figure 4: Overview of roles within the building regulatory system



3.2 MBIE's roles: Steward and central regulator

MBIE is the lead policy advisor to government on the building regulatory system. It is responsible for advice on legislation and regulations, including the Building Code. The stewardship role requires MBIE to look across the system as a whole and provide advice on how to ensure the building regulatory system is high performing. As the central regulator, MBIE manages the system that regulates building work. It is responsible for:

- reviewing and maintaining the Building Code
- producing documents that show ways to comply with the Building Code
- monitoring the performance of district and city councils in the building regulatory system
- investigating complaints
- making determinations about disputes on certain building matters
- aspects of occupational regulation of some professions.

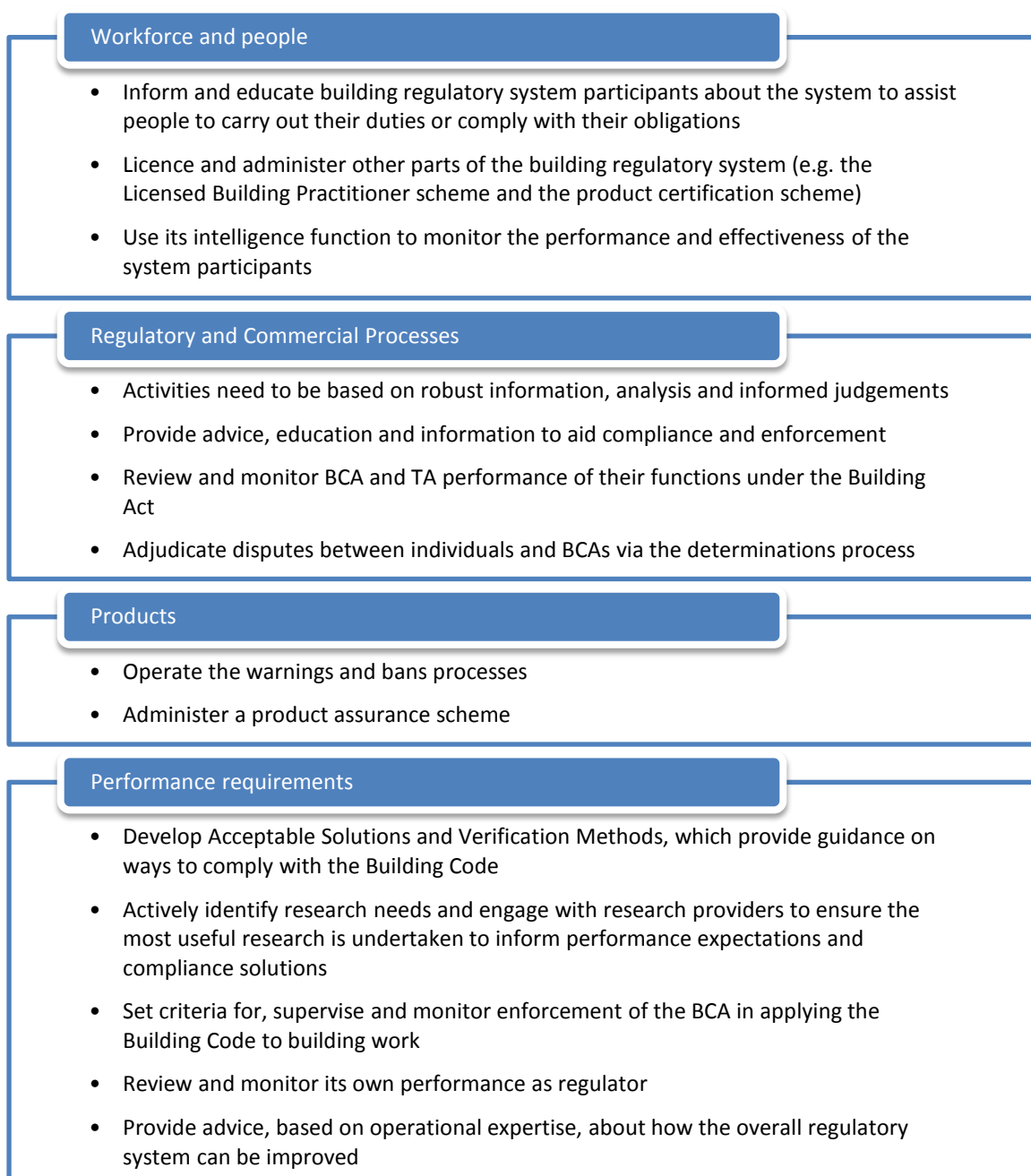
MBIE's central regulator role is prescribed in the Building Act, detailed in Annex 1.

MBIE works alongside building practitioners, government agencies, other regulators and the construction industry to understand what matters to the sector and to improve the regulatory system.

MBIE's approach

In exercising its roles, MBIE has four broad levers it uses: People, Processes, Products and Performance. The diagram below describes MBIE's approach under these levers.

Figure 5: MBIE's building regulatory system levers



3.3 Territorial Authorities and Building Consent Authorities are the frontline of the building regulatory system

Territorial authorities

The Building Act requires Territorial Authorities to keep records about all properties in their area, issue project information memoranda and certificates of acceptance, monitor compliance schedules and follow up notices to fix.

Territorial Authorities also have powers to address breaches of the Building Act. They can issue infringement notices or, in some circumstances, organise for remedial work to be done.

Territorial Authorities also have a role in managing buildings in their area after an emergency event.

Building Consent Authorities

BCAs are responsible for

- checking that applications for building consents comply with the Building Code and issuing buildings consents
- carrying out inspections to determine whether building work has been carried out in compliance with the consent and the Building Code, and issuing Code Compliance Certificates certifying this
- issuing notices to fix, which require a person to remedy a breach of the Building Act or its regulations
- compliance schedules.

Most Territorial Authorities are BCAs. They may also contract these services out. Standards of performance are set out in the Building Act. These are currently assessed by International Accreditation New Zealand (IANZ) on behalf of MBIE.

3.4 Building professionals and tradespeople

Building professionals – such as designers, architects and engineers – are responsible for ensuring building plans and proposals conform to the Building Code.

Building professionals and tradespeople ensure the building is built to any consented plans (including any subsequently approved variations). They are also responsible for ensuring that building work (whether a consent is required or not) will meet the requirements of the Building Code.

Where it is reasonable to do so, builders also have a responsibility to identify that any consented plans do not meet the Building Code and take steps to ensure that this is addressed before proceeding with building work.

3.5 Product manufacturers and suppliers

Building product manufacturers or suppliers are responsible for making sure their products are fit for their purpose and for use in the New Zealand market.

3.6 Building users and building owners

The ultimate customer is the building user, who may also be the building owner. Building users – that is, the general public of New Zealand – have an expectation that buildings are safe to use. The building regulatory system is ultimately aimed at ensuring buildings are safe, healthy and durable, so that New Zealanders can have confidence in their performance.

Building owners have a crucial role. They use the system and provide information on their experience. They generally pay the costs associated with producing and processing applications for building consents, and the costs associated with the inspection process and achieving a Code Compliance Certificate.

Building owners also choose the building professionals and companies who carry out building work for them.

Owners have an indirect influence on the performance of the BCAs, through submission of the consent application. They can influence the behaviour of those who submit applications for building consents as they are often the ones who bear the costs of delays, changes and rework.

Building owners are responsible for the ongoing maintenance to protect the building, their investment in it, and the appropriate safety for the people who live and work in those buildings.

4. Oversight, checks and balances

The system is designed with checks and balances and a process for ensuring performance. That is, there is someone who is responsible for checking and verifying what has been done and helping ensure the various functions are delivered at an appropriate standard.

Who or what	How oversight is provided
Minister	Parliament / New Zealanders / Courts (judicial review)
MBIE	Minister MBIE (as the policy agency responsible for the stewardship of the building regulatory system, including MBIE's own specific regulatory role)
Councils / TAs / BCAs	IANZ accredits BCA processes to ensure they conform to the expectations defined by MBIE as the regulator. IANZ monitors and assesses BCA performance. MBIE supervises IANZ as IANZ is MBIE's agent, and MBIE registers BCAs after accreditation is given. MBIE undertakes technical reviews of TA functions under the Building Act Ratepayers oversee Council and TA processes and outcomes If there is a dispute about a BCA decision, those affected can seek a 'determination' from MBIE
Building professionals (Builders, architects, engineers, etc)	MBIE is responsible for the policy and operation of the Licensed Building Practitioner scheme Other professional bodies (who are responsible for licensing, standards, registration or accreditation) supervise many other building professions Councils review applications and inspect work carried out under a building consent
Products & processes	Suppliers / manufacturers produce (or get others to produce) a statement to attest to product performance, correct installation and maintenance requirements Standards NZ, BRANZ, CodeMark providers and others provide attestation of performance / quality assurance / compliance A large number of organisations provide research services (on products, processes, services) Note: It is not the role of a BCA to review products and processes other than in association with a specific building consent.

Annex 1: MBE's duties, powers and functions set out in the Building Act 2004

MBIE's Role	Meaning
Must appoint the Building Advisory Panel and provide information about the Panel	Must appoint a Building Advisory Panel and include information about the panel in the Ministry's annual report.
Must take all necessary steps to ensure implementation and administration of the Act and review Act as necessary	A broad obligation to ensure the Act is implemented. Requires a review of the Act 'when necessary'.
Carries out any other functions and duties specified in the Act	This is a 'catch all provision' and captures functions and duties listed in the Act, but not in section 11.
Carries out any functions that are incidental and related to, or consequential upon, the functions set out	This provision captures functions not specifically listed in the Act but are inferred. It is a 'catch all provision' that provides practical flexibility without broadening the CE's functions.
Issues Acceptable Solutions or Verification Methods and reviews those documents	An Acceptable Solution or a Verification Method is issued by the CE for use in establishing compliance with the Building Code.
Warns against or bans the use of particular building methods or products	A warning or a ban can be issued if the CE considers on reasonable grounds that the use of a building method or product has resulted or is likely to result in a building or a building work failing to comply with the Building Code.
Determines applications for national multiple-use approvals	A national multiple use approval establishes that the plans and specifications to which it relates comply with the Building Code. This is the MultiProof system.
Specifies the kinds of applications for a building consent that must be provided to the Fire Service Commission under section 46	Allows the CE to determine the types of building consent applications that should be referred to the Fire Service Commission.
Must monitor and report to Minister on current and emerging trends in building design.	Monitoring and reporting function on 'emerging trends in building design, building technologies, and other factors' that may affect the Building Code, Acceptable Solutions and Verification Methods, warnings and bans, guidance and other functions and powers. Requires an annual report.
Publishes guidance information on the requirements of the Act and the Building Code	Publishing guidance on the requirements of the Act and the Building Code provides information to the sector about what the requirements are and how to comply with the requirements. Guidance can be prepared more rapidly and be more specific to a situation than an Acceptable Solution or a Verification Method.
Registers BCAs that have been accredited to allow them to perform functions under Parts 2 and 3	Registering a person (including a Council) as a BCA.

Makes determinations	A quasi-judicial function. Relates to whether a particular matter complies with the Building Code or the exercise or failure or refusal to exercise of a power of decision by an authority.
Reviews the operation of TAs, RAs and BCAs in relation to their functions under the Act	In relation to TAs the CE may review whether a TA is properly performing its functions and duties or powers under the Act.
Grants and revokes accreditation of BCAs or appoints a building consent accreditation body	CE must decide whether to grant or revoke accreditation of BCAs or appoint a person to be an accreditation body. Currently the CE has appointed IANZ to perform this role.
Grants and revokes accreditation of dam owners or appoints a dam owner accreditation body to do so	CE must decide whether to grant or revoke accreditation of dam owners or appoint a person to be an accreditation body.
Appoints a product certification accreditation body	CE may appoint a person as a product certification accreditation body
Disseminates information and provides educational programmes on matters relating to building control	Disseminating information and providing educational programmes
Takes enforcement action (including taking proceedings for offences under the Act) if the CE considers it desirable to do so	It is considered desirable to establish or clarify any matter of principle relating to building or the interpretation of the Act, if one or more TAs are unwilling or unable to take action or to enforce obligations under Part 4A (Consumer rights and remedies)
Establishes and maintains several information registers	The following registers must be established and maintained: <ul style="list-style-type: none"> - BCAs - Accredited dam owners - Accredited product certification bodies - Certified building methods or products
Appoints the Registrar	Must appoint under the State Sector Act 1988 a Registrar of Licensed Building Practitioners
Prepares proposed rules	Making rules relating to LBPs including competence standards.
Issues infringement notices and authorises persons to issue infringement notices	Issuing of infringement notices
May provide dispute resolution services	May provide services to assist in the resolution of any dispute arising under a residential building contract.

Annex 2: BCA and TA duties, powers and functions set out in the Building Act 2004

Role	Meaning
<i>Building Consent Authorities</i>	
Issues building consents, but not if a building consent is required to be subject to a waiver or modification of the Building Code	All current registered BCAs are also territorial authorities, so the restriction does not apply.
Inspects building work for which it has granted a building consent	
Issues notices to fix	A notice to fix can be issued by either a BCA or a TA
Issues Code Compliance Certificates	
Issues compliance schedules.	Compliance schedules are issued by a BCA in association with a Code Compliance Certificate
<i>Territorial authorities</i>	
Performs the functions of a building consent authority set out in subsection (1)(a) (including the issue of building consents subject to a waiver or modification of the building code) if—	
(i) the territorial authority is also a building consent authority	
(ii) an owner applies to the territorial authority for a building consent	
Issues project information memoranda	Project information memoranda are optional; however a majority of the same tasks must be undertaken by a territorial authority whether or not a project information memorandum is issued.
Grants exemptions under Schedule 1	These are exemptions under Schedule 1 (2) where the territorial authority has discretion on whether specified work requires building consent.
Grants waivers and modifications of the Building Code	Provisions of the Building Code may be waived or modified by a territorial authority, excluding any that apply to access & facilities for people for disabilities.
Issues certificates of acceptance	A certificate of acceptance may be issued where a territorial authority believes that the work complies with the Building Code, even though a building consent has not been obtained.
Issues and amends compliance schedules	The territorial authority issues or amends a compliance schedule where there is no associated building consent.
Administers annual building warrants of fitness	
Enforces the provisions relating to annual building warrants of fitness	
Decides the extent to which buildings must comply	This is for the purposes of sections 112, 115, 116 and

<p>with the building code when—</p> <p>(i) they are altered; or</p> <p>(ii) their use is changed; or</p> <p>(iii) their specified intended life changes;</p>	116A of the Act.
<p>Performs functions relating to dangerous, earthquake-prone, or insanitary buildings;</p>	
<p>Carries out any other functions and duties specified in this Act</p>	<p>This is a ‘catch all provision’ and captures functions and duties listed in the Act, but not in section 12. This can include for example, issue of a notice to fix for matters other than building consent related work.</p>
<p>Carries out any functions that are incidental and related to, or consequential upon, the functions set out in paragraphs (a) to (k).</p>	<p>This is a ‘catch all provision’ and captures functions and duties not specifically listed in the Act but are inferred.</p>

Note: Regional authorities also have duties functions and powers in relation to dams under the Building Act that are not listed in this document.