

Major projects and construction in New Zealand

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— Construction, *Chambers and Partners Asia-Pacific*, 2025

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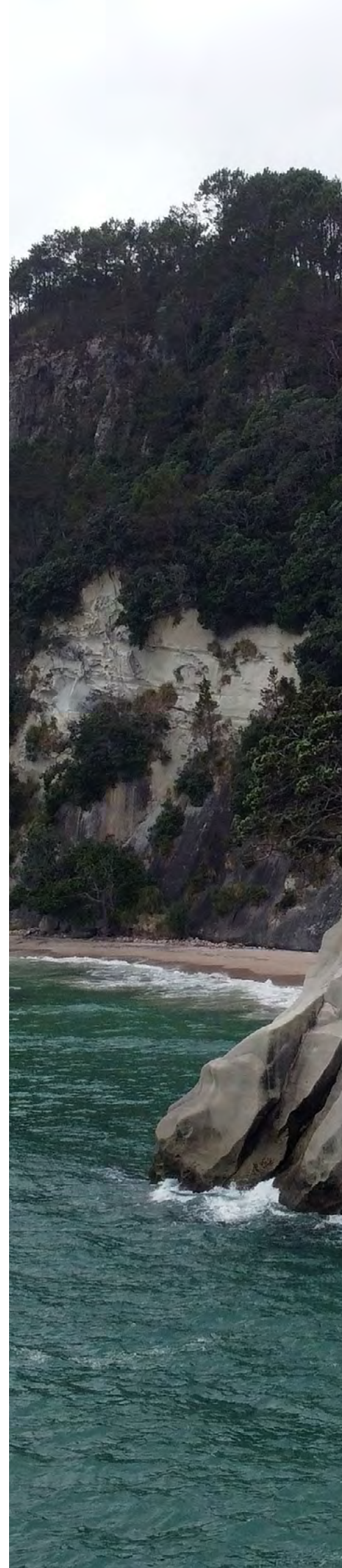
Transport infrastructure

Water and waste infrastructure

Key points about construction law in New Zealand



Building and construction projects are almost always carried out in New Zealand under a negotiated contractual arrangement, the form of which will be determined by the type, size and complexity of the particular project. Building and construction contracts are governed by the general law of contract subject to specific legislative controls, primarily under the Resource Management Act 1991, Health and Safety at Work Act 2015 (both dealt with in other sections of this guide), Building Act 2004 and the Construction Contracts Act 2002.



The detail

Procurement

Tender processes are commonly used by principals (particularly public agencies) and head contractors to create a competitive bid environment, but more relationship based models are also used (e.g. panel arrangements). Traditional contracting models still prevail in the market, although large-scale infrastructure projects will increasingly be procured under a public private partnership (PPP) structure (or on the basis of other alliancing models), representing an increased focus on private sector involvement in public infrastructure development in New Zealand under the current Government. Early contractor involvement (ECI) is also used.

Standard Form Contracts

The New Zealand Standard (NZS) suite of contracts are the most commonly used construction contracts in the market, primarily: NZS 3910 (traditional 'build only'); NZS 3916 (design and build); and NZS 3917 (fixed-term or maintenance). These are often tailored to specific projects through the inclusion of special conditions. NZS 3910 has been significantly updated with the new version released in December 2023 and NZS 3016 and 3917 will be updated in 2025. There are also other standard forms including:

- **New Zealand:** The NZIA's SCC1 2018 contract; Registered Master Builders Subcontract Agreement (SA 2017); and a Registered Master Builders contract.
- **Australia:** Australian Standards (AS): AS4300-1995 (commercial construction); AS4000-1987 (comprehensive general construction); AS2124-1992 (basic general construction); and AS4902 (large/complex construction).
- **UK/International:** Joint Contracts Tribunal (JCT); FIDIC; and New Engineering Contract (NEC) 3 and 4.

Building Act 2004

All building work in New Zealand must comply with the Building Code ((the Code) contained in Schedule 2 to the Building Act). The Code prescribes minimum performance standards which a building must meet and methods by which a builder can establish compliance. The Code is constantly being updated. The Building Act also:

- Requires work affecting the structural integrity or weathertightness of a building to be carried out or supervised by a Licensed Building Practitioner.
- Implies warranties relating to the performance of contract works into all residential building contracts.

Payment Security

The Construction Contracts Act 2002 (CCA) is designed to assist contractors in securing their right to payment via:

- Statutory right to progress payments.
- Right to claim as a statutory debt due amounts owing.
- Right to obtain a charging order (or lien) over a construction site.
- Rendering invalid 'pay-if-paid' and 'pay-when-paid' clauses.
- Right to suspend work for unjustified non-payment.
- Right to refer disputes to adjudication.
- All retentions to be held on trust or via a financial instrument.

Tortious Liability

New Zealand recognises an extra-contractual duty of care on the part of contractors, subcontractors, suppliers and consultants (amongst others) to owners and subsequent purchasers with respect to building defects, including weathertightness requirements, and the parties responsible can be sued in tort for breaching this duty of care.

Duration of Liability

Legal proceedings must be commenced within the relevant statutory limitation period which, in short, requires a claim to be brought within six years from the date of the act or omission in question. However, if the claimant has 'late knowledge' of the damage, the claim can be brought outside the six year limitation period, provided it is lodged within three years of when the damage was reasonably discoverable.

In relation to 'building work' covered by the Building Act, this is subject to an overarching 10 year long-stop period; however, contribution claims can still be brought within two years after liability of the one bringing the contribution claim has been established (i.e., when an order/determination is made finding them liable). This has the effect of potentially extending liability (as a joint tortfeasor) for several years following the 10 year long-stop (depending on how long the trial establishing the liability of the one bringing the contribution claim takes).

Seismic activity

The Building (Earthquake-prone Buildings) Amendment Act 2016 (EPB Act) was passed in response to the numerous seismic events that have occurred in New Zealand since 2010. In short, it requires building owners to carry out strengthening work to commercial and apartment buildings identified by territorial authorities (and confirmed via an engineering assessment) as prone to collapse in a moderate earthquake.

The Ministry of Business Innovation and Employment has commissioned Standards New Zealand and Engineering New Zealand to develop a draft Technical Specification for incorporation into technical standard (NZS 1170.5) against which a building's performance is measured. This review comes after the release of the updated National Seismic Hazard Model in 2022, which highlighted the need to boost national seismic resilience. However, the current EPB rules require that buildings be assessed against the version of NZS 1170.5 which was applied at 1 July 2017. This means any update to NZS 1170.5 will not affect the assessment of earthquake prone buildings under the current EPB rules unless the relevant instruments are amended to reflect the updated understanding of seismic risk following the release of the National Seismic Hazard Model (2022).

Dispute resolution

Statutory adjudication of disputes under the CCA is by far the most popular mode of dispute resolution; however, construction contracts will usually provide for arbitration as the final step. Dispute Review Boards remain relatively uncommon in New Zealand, save on some larger public projects. New Zealand has no specialist construction law courts. Mediation also remains a popular mechanism for resolving disputes.

Nevertheless, court litigation is still often required, particularly in relation to interim injunctions and latent defects and negligence claims.

How we can help you

- Providing strategic advice and assisting with tendering/letting projects.
- Negotiating, advising on standard form documentation and drafting bespoke contracts of all procurement models to minimise client risk.
- Advising on residential and commercial building projects and a wide range of infrastructure projects, such as road and rail projects, schools, prisons, stadiums, civil and earthworks, and water and energy projects.
- Advising on large-scale joint venture projects and complex procurement processes, such as PPP's, project alliances and ECI arrangements.
- Providing strategic project delivery advice and contract administration support, including to secure the right to payment through contractual means and under the CCA.
- Preparing, defending and resolving commercial and residential claims brought by way of CCA adjudication, arbitration and in the Courts and through alternatively dispute resolution, such as expert determination, conciliation and mediation.

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