



**COUNTRY  
COMPARATIVE  
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# **The Legal 500 Country Comparative Guides**

## **New Zealand CONSTRUCTION**

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This country-specific Q&A provides an overview of construction laws and regulations applicable in New Zealand.

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## NEW ZEALAND CONSTRUCTION



### 1. Is your jurisdiction a common law or civil law jurisdiction?

New Zealand is a common law jurisdiction.

### 2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

Key statutes governing construction are the Building Act 2004, the Construction Contracts Act 2002 (**CCA**), and the Health and Safety at Work Act 2015 (**HSWA**).

The Building Act provides for a Building Code, which prescribes functional requirements for buildings and sets out the performance criteria with which buildings must comply. The Act sets out the obligations and powers of building consent authorities and territorial authorities in relation to applications for building consents. It also regulates building practitioners, and sets out consumers' rights and remedies in relation to residential building work.

The CCA addresses payment claims and schedules, sets out a retentions regime, and establishes a method for adjudication of construction disputes.

The HSWA sets out the duties of PCBUs (persons conducting a business or undertaking) with regard to the health and safety of their workers (including both employees and non-employee workers, such as contractors) at work. It identifies offences relating to PCBUs' failure to fulfil their duties, sets out requirements for worker engagement practices concerning health and safety, and establishes an enforcement regime.

### 3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.

a) health and safety;

- The HSWA covers anyone working, or doing business in the construction industry. It is not lawful to contract out of the HSWA, or to indemnify against fines or infringement fees imposed as a result of a breach of the HSWA.
- The purpose of HSWA is to encourage people in business to take responsibility for management of health and safety at work. The primary duty falls on a PCBU (person conducting a business or undertaking) to ensure, so far as reasonably practicable, that the health and safety of its workers and any other person are not put at risk by the work. A PCBU includes: (a) a company; (b) partnership; (c) other entity; or (d) an individual, regardless of whether the PCBU acts for profit or not.
- The HSWA also imposes duties on "Officers" of a PCBU (including directors, partners or those who occupy a position which allows them to exercise significant influence over the management of the PCBU). An Officer is obliged to use due diligence to ensure the PCBU complies with its duties under the HSWA.
- These duties include providing and maintaining, so far as is reasonably practicable, a safe work environment without risks to health and safety, safe systems of work, safe use of substances, and the provision of training, instruction and supervision that is necessary to protect all persons from risks to their health and safety arising from their work. PCBUs must also consult, cooperate and coordinate with other PCBUs that have a duty in respect of the same work or workplace. PCBUs have a general obligation to engage with workers on health and safety matters, and to allow opportunities for worker participation in improving work health and safety. Further, workers have duties under the HSWA, including an

obligation to follow the PCBU's reasonable instructions, and to take reasonable care that their actions do not harm themselves or anyone else.

- Penalties for breaches of the HSWA include fines, reparations and imprisonment. These penalties can be awarded against the PCBU and/or its Officers, depending on what duty has been breached.

b) environmental issues;

- The parties must comply with the requirements of the Resource Management Act 1991 (**RMA**). Part 6 of this Act regulates the process of applying for resource consent, which may be needed before construction can commence. Parties typically lodge their applications for resource consent with the relevant regional council.
- Part 3 of the RMA also forbids people to use certain parts of the environment in a manner which contravenes a national environmental standard or regional or district rules, unless that use is allowed by a resource consent or otherwise permitted. Prohibitions under Part 3 include those in relation to land, the coastal marine area, rivers and lake beds, other water, discharge of contaminants, noise, and other adverse effects.
- The RMA is likely to be replaced in 2023 with three new pieces of legislation addressing regional and national environmental and planning issues and climate adaptation. There will be a lengthy transition period for implementation of the new legislation.

c) planning;

- The RMA establishes a regime for regional plans to assist regional councils in carrying out their functions to achieve the purposes of the Act. These plans may restrict the type of construction work that can be done in certain areas. For example, high-density housing may only be constructed in some areas in a city. Part of the process of applying for resource consent includes ensuring that the proposed works comply with the relevant regional plan.

d) employment; and

- Employment law in New Zealand is governed by a mix of statutory, contractual, and common law obligations.
- The Employment Relations Act 2000 governs many aspects of the employment relationship,

including provision for a duty of good faith, obligations around employment agreements, transfer of undertakings, hours of work, union representation, collective bargaining, termination, and personal grievances. Other minimum code legislation includes the Holidays Act 2003 (governing minimum entitlements to annual holidays, public holidays, sick and bereavement leave, and family violence leave), Minimum Wage Act 1983, Wages Protection Act 1983, Human Rights Act 1993, and Privacy Act 2020.

- Employees can be employed either as individuals (on an individual employment agreement between the employer and employee) or, if they are members of a union, may be covered by a Collective Agreement between the employer and the union. Employment can be permanent or on a fixed term basis, but there are restrictions on when an employee can be employed on a fixed term employment agreement. Similarly, casual employment agreements (where an employee is employed on an 'as and when required' basis) are possible, but restricted. Some employees in the construction industry are engaged through Labour Hire companies in what is often termed a triangular employment relationship.
- Independent contracting relationships are also quite common within the construction sector. The line between an independent contractor and an employee can sometimes be a fine one, but there are significant consequences of the different status, including minimum entitlements for employees (e.g. minimum wage, holidays, and personal grievances) and tax consequences. A court considering the status of a worker will look at the "real nature of the relationship" to establish whether the person is, at law, a contractor or an employee. The contract between the parties will be relevant but not determinative.
- Termination of employment must be for good reason, and follow a fair process. Any termination will be subject to the statutory test for justification which considers whether the action the employer took (e.g. dismissal) and how the employer acted (i.e. the process followed) were what a fair and reasonable employer could have done in all the circumstances. Any termination for redundancy, poor performance, incapacity, or misconduct must be preceded by a process in which the circumstances are investigated, relevant information put to the employee, and

the employee's feedback sought and considered, before a decision is made.

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e) anti-corruption and bribery.

- There is no specific regulation for anti-corruption and bribery targeted at the construction sector. However, the provisions of the Serious Fraud Office Act 1990 and Secret Commissions Act 1910 apply.

#### 4. What permits/licences and other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?

There is a consent process which the principal needs to go through before any work can begin on the project (with very limited exceptions where lower value work does not require a building consent). This may involve applying to the Building Consent Authority (**BCA**) (usually a city council) for resource consent, which is a formal approval for things like the use or subdivision of land, the taking of water, the discharge of contaminants in water, soil or air, or the use of coastal space. Next, the principal must apply to the Building Consent Authority for building consent, which allows them to carry out building work. This consent is issued only when the BCA is satisfied that the proposed work will comply with the Building Code. During the building process, building inspections must be carried out to ensure ongoing compliance with the building consent. Finally, the principal must obtain a code compliance certificate to show the building complies with the requirements of the Building Act. The Building Act sets out various offences and penalties for breaches of the Building Act and Code.

#### 5. Is tort law or a law of extra contractual obligations recognised in your jurisdiction?

Tort law is recognised in New Zealand. As it applies to construction work, it covers economic loss, but not physical personal injury. Physical personal injury is covered by the no-fault Accident Compensation Corporation (**ACC**) scheme.

## 6. Who are the typical parties to a construction and engineering project?

The typical parties involved in a construction and engineering project are:

- The principal;
- The head contractor;
- Various subcontractors;
- Consultants, such as the project engineer and the architect.

## 7. What are the most popular methods of procurement?

- Build only: in which the principal retains the consultants directly, and employs the contractor only to carry out the building work. All the subcontractors are employed by the main contractor. The most common contract used for this is NZS 3910.
- Design and build: in which the main contractor takes on the responsibility for both the design and construction. Again, all the subcontractors (including any consultants the main contractor requires for fulfilling its design responsibility) are employed by the main contractor, and NZS 3916 is commonly used for this scenario.
- PPP/public private partnership, in which the Government contracts with private enterprise (usually a consortium of several companies) to conduct the building work. Note, because of the Government's involvement, this option is subject to rigorous procurement procedures to ensure there is no conflict of interest or appearance of financial irregularity.
- Alliancing, in which the parties may work together with the principal for collaborative project delivery. A Project Alliance Agreement (PAA) is signed by all participant parties to commence the alliance. The PAA generally prohibits claims between the parties (save perhaps in very limited cases like fraud or gross negligence). All participants share in the success (gain) or failure (pain) of the project, and there is an open and collaborative approach to risk, performance and project decisions.

## 8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

The most popular standard forms of contracts are:

- NZS3910:2013 – construction only;
- NZS3916:2013 – design / build; and
- The Standard Form Public Private Partnership (PPP) Project Agreement.

## 9. Are there any restrictions or legislative regimes affecting procurement?

There are no restrictions or legislative regimes affecting procurement in the private sector. However, governmental procurement is subject to strict rules set out in the Government Procurement Rules (generally) and, for construction in particular, the Construction Procurement Guidelines, which establish specific standards of good practice for government procurement processes. In addition, in 2019 the Government signed up to the Construction Sector Accord, which sets out fair procurement practices for the industry and strict rules regarding transparency and conflicts. In 2020, the Government and industry leaders embarked on the 3-year Construction Sector Transformation Plan, aiming to implement Accord objectives.

## 10. Do parties typically engage consultants? What forms are used?

Yes, consultants are regularly engaged by parties. The contracts commonly used are:

- The Short Form Agreement (SFA) published by Engineering New Zealand and the Association of Consulting Engineers New Zealand (ACENZ);
- The Conditions of Contract for Consultancy Services (CCCS) developed by various consultant and client groups, including Engineering New Zealand;
- The full or short form Agreement for Architects Services published by Te Kāhui Whaihanga / New Zealand Institute of Architects (NZIA).

## 11. Is subcontracting permitted?

Subcontracting is both permitted and common. However, most construction contracts do not permit a contractor to subcontract out the whole project. Note that the contractor must normally identify at least the key subcontractors and obtain the principal's approval.

## 12. How are projects typically financed?

Projects in the private sector are typically financed either by the principal itself, or with the assistance of an

external financier. Funders may have their own specific requirements for inclusion in the construction contract, or a separate tripartite agreement with the principal and main contractor, to ensure their own protection. Protections included in the construction contract may include permitting the funder and its quantity surveyor to access the site; requiring the contractor to provide requested information to the funder and/or its quantity surveyor; and requiring confirmation the contractor has paid its own subcontractors and suppliers. Protections included in a separate tripartite agreement tend to be more expansive than those included in the construction contract may include, for example, the protections outlined above, as well as: advance notice to the funder before exercising suspension or termination rights under the construction contract; rights for the funder to remedy breaches by the principal under the construction contract to prevent legal action; step in rights (including novation); indemnities in favour of the funder; specific warranties or undertakings in favour of the funder; restrictions regarding ordering or granting variations above a certain value; and the right to call or attend meetings.

In the public sector, the Government may have earmarked funds for certain projects. Otherwise, it is not unusual for larger projects to be driven by public-private partnerships. See further information on procurement in question 7.

### **13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?**

Principals often require bonds, which are usually around 5-10% of the total contract price, and given by a bank, surety company, or insurer. A performance bond is the most usual type of bond, and is held until practical completion. Less common, but not out of the ordinary, is the requirement for a guarantee from a parent company or suitable third party. See question 16 for a discussion of retentions.

### **14. Is there any specific legislation relating to payment in the industry?**

The CCA governs payments under construction contracts. It prohibits conditional payment provisions, but otherwise recognises that parties are free to agree express terms for payments in their contracts. Where the contract is silent, the CCA will fill the gap (e.g. the default in the CCA is for payment within 20 working days

after service of a payment claim).

### **15. Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?**

Section 13 of the CCA prohibits these clauses (making them of no legal effect).

### **16. Do your contracts contain retention provisions and, if so, how do they operate?**

Yes. Most of the standard form contracts contain general conditions governing retentions coupled with special conditions in which the parties can populate the relevant details, such as the percentage of payments to be held back as retentions, how much money is to be released at practical completion and final completion, and so on.

Retentions must be held in trust, although not necessarily in a trust account. Retentions may be used only to remedy defects in the sub/contractor's performance which become evident after the sub/contractor has completed their work. It is usual to keep as retentions 10% of the first \$200K payable, with decreasing percentages for payment thresholds following. Commonly, half of the retention money is to be paid out on practical completion, while the remainder is held back until the end of the defects liability period (generally lasting anywhere from 3 to 12 months after practical completion).

The Construction Contracts (Retention Money) Amendment Bill, intended to strengthen and clarify the retentions regime in the Construction Contracts Act 2002, is currently working its way through the latter stages of the Parliamentary process. As of 28 March 2023, a motion to accord urgency was agreed to for the amendment bill's passing through of the remaining stages. Amongst other small changes and clarifications, the amendment bill once in effect will require retentions to be held in a specific bank account used solely for the purpose of holding retentions, and will require the party holding the retentions to proactively report on the money held.

### **17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?**

Contracts commonly contain liquidated delay damages

provisions (**LD provisions**), and these are regularly upheld by the courts. An LD provision fixes the sum payable as damages for the failure of a provision of the construction contract, normally the contractor's obligation to achieve practical completion by a specified date, and acts as a liability cap. Liquidated damages (**LDs**) are typically used as a binding and exhaustive remedy for delay, and general damages cannot be claimed in addition or as an alternative.

LDs are generally enforceable unless they constitute a penalty. Generally, if a LD provision is held to be an unenforceable penalty, the principal is left to claim general damages and prove its actual loss. Courts in New Zealand have moved away from the long-established "genuine pre-estimate of loss" test for whether LDs are valid towards a wider "legitimate interest" test. Under this test, a clause is considered to be a penalty (and thus will not be enforced) where the detriment to the contract breaker is out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation. Under this new test it is less likely LDs will be found to be a penalty.

### 18. Are the parties able to exclude or limit liability?

Generally parties may exclude or limit liability.

Consultancy agreements typically have a liability cap and exclude liability for consequential, indirect and special loss, and frequently loss of profits. The standard forms of construction contract (i.e. for the building work itself) most commonly used in New Zealand do not have limits and exclusions on liability, but a liability cap is frequently sought in negotiations where the contractor is professionally advised. The NZS 3910 revision committee has released recommended Special Conditions which include liability cap wording for use with NZS 3910. A liability cap is also being considered for the next version of NZS 3910 currently scheduled for publication in October 2023. It is anticipated that changes to NZS 3910 will be reflected in other NZS suite contracts shortly thereafter.

There are exceptions to the power to limit liability, typically directed at consumer protection. The Building Act 2004 implies warranties into residential building contracts and provides remedies for their breach. Provisions contracting out of these will be ineffective. Similarly, the Consumer Guarantees Act 1993 (**CGA**) and Fair Trading Act 1986 (**FTA**) provide certain minimum protections for consumers which cannot be circumvented. Where both parties are acting in trade they can contract out of these provisions; however, the provisions will apply to many residential construction

contracts.

### 19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?

The parties may set out grounds for termination in their contract. These grounds typically include breaches which have not been remedied within a certain timeframe, insolvency events, and abandonment of the contract. Termination for convenience is not a term in the most common standard forms of construction contract used in New Zealand, but the parties may agree to include that right. Aside from any contractual rights of termination, a party may cancel a contract pursuant to the Contract and Commercial Law Act 2017 where the other party has repudiated the contract (i.e. has made it clear they do not intend to perform), or in certain specific cases of misrepresentation and/or actual or anticipatory breach. That said, if the contract expressly provides for a remedy for repudiation, misrepresentation or breach, the Act has effect subject to the contractual terms.

The most common standard form construction contracts, the NZS suite, do not include express force majeure clauses; however, they do provide for termination upon frustration. Certain force majeure events may also excuse contractor responsibility for maintenance of the site or entitle a contractor to an extension of time. It is not uncommon for contracts to contain express negotiated force majeure clauses. The NZS revision committee is considering including a force majeure clause (or provisions to similar effect) in the upcoming revision of NZS 3910. If this change is made to NZS 3910, it is anticipated that similar changes will be reflected in other NZS suite contracts shortly thereafter.

Absent a frustration clause effective in a force majeure event, the parties may rely on common law principles to establish that their contract has been frustrated. Under Part 2 subpart 4 of the Contract and Commercial Law Act 2017 a Court may make orders for money to be paid or property to be transferred where it is just to do so. There are limits to the recoverable sum, so it is preferable to include a clear force majeure clause in the contract.

### 20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?

Rights may be granted to third parties under the contractual privity sections of the Contract and Commercial Act 2017 – where the construction contract (to which they are not a party) purports to confer a

benefit on the third party, the third party may enforce the construction contract as if they were a party.

Under the Building Act 2004, a purchaser of a residential property will have the benefit of the statutory warranties implied in the original residential construction contract (see question 18) and, subject to applicable limitation periods, may bring proceedings for breach of warranty, notwithstanding they were not a party to that original contract. Aspects of the Building Act are currently under review, with some reforms including statutory disclosure requirements in relation to product information and duties of care for builders, product manufacturers and suppliers having come into effect from September 2022. Future aspects for review (and possible reform) include occupational regulation, the lack of a building warranty insurance market and risk allocation in the sector.

More generally, New Zealand law recognises an extra-contractual duty of care to subsequent purchasers of both residential and non-residential property on the part of developers, contractors, subcontractors, suppliers, and consultants to ensure the design, materials and works comply with the New Zealand Building Code including weathertightness requirements.

Separately, funders may have their own specific requirements for inclusion in the construction contract, e.g.: permitting the funder and its quantity surveyor site access; requiring the contractor to provide requested information; and requiring confirmation the contractor has paid its own subcontractors and suppliers. Funders may also require a separate tripartite agreement, which may include protections that are more expansive, for example, the protections outlined above, as well as: advance notice to the funder before exercising suspension or termination rights under the construction contract; rights for the funder to remedy breaches by the principal under the construction contract to prevent legal action; step in rights (including novation); indemnities in favour of the funder; specific warranties or undertakings in favour of the funder; restrictions regarding ordering or granting variations above a certain value; and the right to call or attend meetings.

## **21. Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?**

The NZS suite of construction contracts most commonly used in New Zealand contain timely notification provisions, but these do not act as conditions precedent.

For example, if the contractor does not give timely notice seeking an extension of time, the Engineer is nevertheless obliged to consider an extension to which the contractor is fairly entitled. Many notification provisions in the NZS suite require notice to be given within a reasonable time or as soon as practicable rather than within a specific time frame. A commonly used form of subcontract (SA-2017) in parallel is stricter, requiring extension of time claims to have been brought within 5 working days, otherwise the subcontractor has no entitlement.

It is not unusual for principals to modify terms – or use bespoke contracts – to include strict provisions governing notification of claims for additional time and money. If agreed, these will be recognised as conditions precedent.

## **22. What insurances are the parties required to hold? And how long for?**

- Construction (also called 'contract works'). This must cover loss/damage up to the time of practical completion, or until the principal takes occupancy, or while the contractor is doing things to comply with its obligations after practical completion or the principal's occupancy;
- Plant. The NZS contracts do not specify a time period for this, but it must cover the period up to the issue of the defects liability certificate for the contract works;
- Public liability (including motor vehicle). This must be held until the final completion certificate is issued; and
- Professional indemnity. Because these are typically claims-made policies, for vertical projects insurance should be held for ten years to cover the longstop limitation period under the Building Act (albeit NZS 3910 requires such insurance to be maintained for six years following practical completion, or, in the design and build version, NZS 3916, for five years following final completion). For horizontal projects, it is prudent to hold insurance for 15 years to cover the longstop provision under the Limitation Act.

## **23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?**

Most construction and engineering disputes between contractors and principals are conducted by adjudication under the CCA. Disputes involving certain consultants can also be conducted by CCA adjudication. Arbitration is used, although adjudication is more common particularly for payment claims and extension of time (EOT) disputes. Litigation is normally reserved for larger or more complex disputes involving third parties. Alternatives include mediation and bespoke conciliation procedures.

#### **24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?**

New Zealand courts are robust in enforcing arbitration agreements (save that as against consumers arbitration agreements are only enforceable if the consumer agrees to be bound by it after the dispute has arisen). Under the Arbitration Act 1996 the court is required to grant a stay of the court proceeding unless the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed, or if it is immediately demonstrable either that the plaintiff has not acted bona fide in asserting that there is a dispute or that there is, in reality, no dispute. A party has six years to bring an enforcement process in relation to an arbitral award. However the time it typically takes to enforce an award depends on the court in which the enforcement proceeding has been brought, and is difficult to estimate.

#### **25. Are there any limitation periods for commencing disputes in your jurisdiction?**

Yes: the Limitation Act 2010 establishes a limitation period of six years for commencing money claims from the date of the act or omission on which the claim is based although there is a late knowledge exception permitting a plaintiff to sue within three years after the date on which the plaintiff had knowledge of the claim, subject to a 15 year long-stop. The Limitation Act 2010 also includes other specific limitations for other specific types of claim. The Building Act has a longstop limitation period of 10 years after the building work was undertaken. For construction work that is not covered by the Building Act, the 15 year longstop provision of the Limitation Act will apply. Claims for contribution may have a separate limitation period.

#### **26. How common are multi-party disputes?**

#### **How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a “fair and reasonable” proportion of the innocent party’s losses), and are these commonly used?**

Multi-party disputes are common, especially in tort claims, for example the ongoing claims around leaky and other defective buildings. These often involve claims against the head contractor, property developer, project manager, design consultant, and the regional council or building consent authority.

New Zealand recognises joint and several liability in tort. This means that any one tortfeasor can be held liable to the plaintiff for the entirety of the loss to which the tortfeasor contributed, regardless of whether there were other parties more at fault.

Net contribution clauses are not prohibited but are not commonly used. To the extent these are viewed as limitation of liability clauses, consumer protections under the FTA and CGA may apply to render them unenforceable in contracts where one party is a consumer.

#### **27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?**

The effects of COVID-19 and the local and global response to the pandemic continue to challenge the sector. For example in 2020 and 2021, nationwide lockdowns and subsequent restrictions meant there were lengthy periods of time where either no activity at all could take place on the majority of sites, or site productivity was hampered. The effects of these lockdowns are still being felt on projects that were current during that time, and have caused knock-on effects to other projects in terms of constricting the supply of skilled workers and shortages of key materials. The lack of skilled workers and shortages of key materials has been exacerbated by global supply chain issues and the slower pace of re-opening after COVID-19.

Rising interest rates have further increased the pressure on construction projects, particularly where projects are taking longer due to the after-effects of COVID-19 and supply chain issues; principals and main contractors are having to fund projects for longer than originally planned. Further economic effects have been felt across the sector as the construction sector recorded the

highest number of liquidations in 2022 as at August 2022.

In August 2022 the Ministry of Business, Innovation and Employment released its National Construction Pipeline Report 2022 (**Report**). The Report predicted that non-residential activity would peak in 2023, with commercial buildings dominating this activity with 44% of the total value of non-residential building work. Generally, and in contrast to the 2021 report, construction activity is forecast to decrease steadily, which is driven by the residential sector where consents are predicted to fall from the record high number in previous years. Infrastructure activity is forecast to grow steadily. The report acknowledged that the construction sector is currently experiencing a period of significant uncertainty which was being demonstrated in the price inflation of materials, labour constraints, supply chain disruptions, credit constraints, and building code changes.

In 2020 the Government and industry launched the Construction Sector Transformation Plan, a three-year action plan to lift sector performance. This was followed by the Construction Sector Transformation Plan 2022-2025. The Plan is a three-year action plan for change focused on tackling the sector's systemic challenges whilst building resilience across the industry. Lessening the effect of supply chain disruption is one of the Plan's aims – the COVID-19 pandemic has contributed to material shortages and cost escalation, which tend to show themselves through greater delays and costs, affecting the industry's ability to provide the quality and quantity of construction that is needed to support the growing NZ population. Other challenges that the Plan seeks to address include fostering greater collaboration across the sector, the ageing workforce and scarcity of skilled labour (which was a focus of the previous iteration of the Plan), improving health and safety, improving business stability amidst economic boom-bust cycles, reducing environmental impact, and increasing the adoption of new technologies and methods to counter low productivity.

The widespread shortages of key materials remain in the spotlight. Research reports issued in 2021 concluded that supply issues were widespread, and that the majority in the industry were concerned about material shortages and significant inflation (in both material and wage costs) cutting into their margins, as well as project delays due to delays in material deliveries. In our experience, these difficulties continue.

With respect to opportunities, becoming a climate-resilient nation is a goal for the present Government, and the construction sector is a key focus of implementing and achieving this; see question 29. This

issue seems to have gained further impetus and public interest following recent climate-change events including Cyclone Gabrielle in early 2023.

The advent of the Construction Sector Accord in 2019 presented an agreement for a collaborative commitment between Government and the construction industry to address the major challenges in the sector – this opportunity remains afoot as the accord network continues to expand today. The Government is also providing encouragement to the sector with considerable investment in infrastructure projects; see question 28.

## 28. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?

Infrastructure activity has grown, and been forecast to continue trending upwards in value. In particular, transport projects are attracting significant investment. In 2020 the Government announced a \$12b New Zealand Upgrade Programme which includes investments in road, rail, transport programmes, and funds to modernise land, air and sea assets. Its intention is not only to modernise infrastructure and prepare for climate change, but also to help promote economic recovery. Though the Programme was revamped and re-costed at \$8.7b, six projects that improve safety and traffic flows have been completed, with construction underway on four other major projects, and six state highway upgrades. Both the construction of new rail lines and the upgrading of existing rail lines rounds out further major infrastructure projects.

## 29. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?

There has been an increased focus on sustainability and climate change in recent years. As mentioned above, this is a focus of the Construction Sector Transformation Plan 2022-2025. The Government released the Emissions Reduction Plan (**ERP**) in May 2022. True to its initial intent, the ERP includes policies and strategies for specific sectors, including construction. The long-term goal of the ERP is to achieve “near zero” building-related emissions by 2050. .

In December 2019 the Government established the Climate Change Commission (**CCC**) to provide it with independent advice on the country's transition to a “climate-resilient and low emissions future.” The CCC

delivered its advice to the Government on its ERP in June 2021, which includes a drive towards the use of electric heavy vehicles, decarbonising the energy used for heating, hot water and cooking in buildings, improving buildings' thermal efficiency, reducing generated waste, and rapidly expanding the country's wind and solar power generation capacity and associated infrastructure.

The Productivity Commission (which also provides independent advice to the Government) has suggested developing building materials that have lower embodied emissions, employing different design and construction strategies, and using lower-emissions building practices. By way of example, the Commission refers to advances in technology which have widened the range of opportunities for the use of wood in construction as a sustainable alternative to concrete and steel.

The Ministry for the Environment has, in parallel, identified risks to buildings due to extreme weather events, droughts, increased fire weather and ongoing sea level rise as a research priority. The Ministry has observed that our current building stock is largely comprised of wooden and masonry houses which may have sensitivity to climate and natural hazards (like soil changes and movements such as liquefaction from the Christchurch earthquake sequence). It looks to technological developments in the construction and engineering industry to work to change this over time.

The strategy for the building and construction sector relies on the Building for Climate Change frameworks which encourage the design and construction of durable, energy-efficient buildings made of low-carbon recyclable materials and sets mandatory caps on operational emissions (energy and water use in buildings). Design and construction techniques which minimise emissions over the life cycle of the building will be encouraged. Desirable features include smaller, better-insulated spaces, and the use of sustainable and recyclable materials.

In 2022 the Ministry of Business, Innovation and Employment released the technical methodology for assessing whole of life embodied carbon in a building. Compliance is currently voluntary. Another methodology is currently being developed for operational efficiency in building (i.e. energy and water use).

Finally, there has recently been noticeable investment into automating and streamlining the payment claim / payment schedule process with a number of international technology companies bringing payment claim / payment schedule applications into the New Zealand market. There has also been an increase in interest in using and integrating construction data into predictive systems to, for example, identify and avoid disputes, maximise profitability and feed into Building Information Modelling (BIM). We expect to see these trends continue, and this sort technology become more established in the industry.

### **30. What do you anticipate to be the impact from the COVID-19 pandemic over the coming year?**

COVID-19 continues to contribute to global supply chain disruption and caused knock-on building material shortages, according to the Construction Sector Transformation Plan 2022-2025. This also drives price increases and draws out waiting times for products in high demand. As noted above in Question 27, these effects have been particularly pronounced due to high interest rates. These factors, along with a continuing lack of skilled workers, are likely to be the main impacts from COVID-19 over the coming year.

As the sector continues to recover from the effects of lockdowns, disputes with regards to delays and increased costs of projects are likely to become more commonplace. Whilst a collaborative and cooperative approach can go some way to ensuring a pragmatic outcome to these disputes, a secondary effect of the COVID-19 pandemic is likely to be an increase in dispute resolution (be it litigation, arbitration, mediation or adjudication).

As COVID-19 and the lockdowns weakened a number of industry participants, the persisting pressures (which are at least partially knock-on effects from COVID-19) may also lead to increases in insolvency in the construction sector, and associated insolvency-related litigation. On the transactional side, we anticipate principals, funders and main contractors will begin to include contractual mechanisms to guard against insolvency risk.

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