



April 2007

**Building consent authority accreditation and registration:  
Options for contracting out or transferring building control functions**

The Building Act 2004 requires all territorial and regional authorities (councils) to be accredited and registered as building consent authorities (BCAs) by 30 November 2007. A council not wishing to undertake all or part of its statutory building control functions can either:

- *contract out* some or all of its functions to a third party (such as a registered BCA or a private individual or organisation). The council would still need to become an accredited and registered BCA.  
*or*
- *transfer* some or all of its functions to a council that is accredited and registered as a BCA. With a full transfer of functions, the transferring council would not need to be accredited and registered.

This table summarises the options as outlined in a Department of Building and Housing paper *Meeting Building Consent Authority Obligations: Contracting and Transfers*. The comments on transfers in the table relate only to transfers under the Building Act 2004. Transfers under the Local Government Act 2002 are considered in the full paper. The table should be read *only as a guide* to that paper.

<b>Question</b>	<b>Council contracting out building control functions</b>	<b>Council transferring building control functions</b>
Who decides whether to contract out or transfer building control services?	The council concerned.	The council concerned. If a council does not want to become accredited and registered, it needs to transfer all its building control functions to avoid being in breach of the Building Act 2004.
Does the council contracting out or transferring its building control functions have to be accredited and registered?	Yes, even if it is contracting out all its building control functions.	Yes, unless all building control functions are transferred. Partial transfer will reduce the scope of accreditation and registration needed.
Does the contractor or transferee council have to be accredited and registered?	No.	Yes, the accreditation and registration of the transferee is essential to a reduction in the scope of accreditation and registration needed by the transferring council.

<b>Question</b>	<b>Council contracting out building control functions</b>	<b>Council transferring building control functions</b>
Who is liable for building consent functions contracted out or transferred?	The council contracting out remains liable for all consents and code compliance certificates issued in its name. The council and contractor parties can apportion liability (for negligent acts and omissions by the contractor) by contract.	The transferring council and transferee share liability to the extent agreed in the transfer agreement.
What options are there in terms of the extent to which building control functions can be contracted out or transferred?	Partial contracting out (eg, to use specialist expertise or during periods of overload) or full contracting out.	Partial transfer or full transfer. Partial transfer requires accreditation for remaining functions.
Does the council contracting out or transferring its building control functions have to consult with its community?	Yes. The Local Government Act 2002 special consultative procedure must be followed if contracting out represents a change in delivery of a significant activity, unless the council's Long-term Council Community Plan (LTCCP) provides for its BCA functions to be contracted out.	Yes. This is mandatory under the Building Act 2004.
Does the contractor or transferee have to consult with its community?	This is at the discretion of the council contractor.	This is at the discretion of the transferee.
What effect does contracting out or transferring building control functions have on assessment for accreditation?	The use of contractors will be considered (ie, as part of demonstrating that the council has the capability and systems needed for accreditation). The extent to which it will be considered will depend on the extent of contracting out.	The transferring council is required to be accredited and registered for functions not transferred, but not for functions transferred.
What are the contractual requirements for contracting out or transferring building control functions?	The council and the contractor should agree terms, preferably in writing in order to provide certainty about each party's obligations.	The transferring council and the transferee should enter a written agreement recording the terms and conditions of the transfer.