

# Outcome of consultation

## **Building Code operating protocols**

Decisions for referencing standards and  
a tier framework to support standards  
in the Building Code system

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29 NOVEMBER 2021



## Foreword from the Manager Building Performance and Engineering

The concept of developing “Operating Protocols” seeks to provide increased transparency and certainty about the activities MBIE undertakes as stewards of the Building Code.

I would like to thank you all for your feedback as we trialled this concept with a focus on the important topic of the use and upkeep of standards within the Building Code system.

We were very pleased to receive submissions across a wide range of interests, including some very considered and detailed comments.

I appreciate that some submitters felt that the protocols did not address the key issues for the maintenance of standards and that there is more work to do in this area. I agree that there is more work to do, but consider the revised protocols to be a useful step along the way to discussing and working through the issues and challenges.

We look forward to more discussion with the sector and Standards New Zealand.



**Jenni Tipler**  
*Manager, Building Performance and Engineering*

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## Summary of the consultation

# Summary of the consultation

## Consultation process

Between 6 April and 28 May 2021, MBIE sought feedback on proposals for two operating protocols:

- › Referencing standards in the Building Code system
- › Tier framework to support standards in the Building Code system

MBIE asked the following questions on the operating protocols:

1. Do you agree with the proposed criteria for referencing a standard in the Building Code system?
2. Do you agree with the proposed criteria for deciding the tier status of standards (level of risk, contribution to the Building Code and design focus)?
3. Which standard(s) and their proposed tier status particularly impact you and why?
4. Is there anything else you would like to tell us about these protocols for the use of standards in the Building Code system?

## Submissions received

A total of 142 submissions were received in response to the draft protocols. The submitters included a range of individuals and organisations that identified with the categories below.

Occupation	Number of submissions	Percent of submissions
Architects	12	8%
Designers or engineers	25	17%
Builders or tradespersons	10	7%
Building Consent Authorities	20	14%
Building product manufacturer or suppliers	21	15%
Building owners, occupants or renters	29	20%
Other submitters including those who did not specify their occupation	25	17%
<b>Total</b>	<b>142</b>	

Approximately half of the submitters provided comments to explain their response and the standards of interest to them, and to comment on other aspects of the protocols.

## Summary of decisions

MBIE has decided to publish both protocols with some significant amendments from the original proposal.

Overall, the feedback emphasised the importance that standards have in the building system and the desire for strategies to be in place across all building-related standards to ensure their upkeep. Some submitters were concerned by the tone of the draft protocols and the suggestion that MBIE was going to limit its role or support. These submitters worried that standards that did not have MBIE's focus would become overlooked and outdated given the costs associated with setting up an update process. In the case of joint Australia/ New Zealand standards, submitters raised concerns that the standards may (and have) become "de-jointed" without MBIE's support, leaving New Zealand in need of an alternative.

MBIE has considered these comments carefully and appreciate the concerns. We are committed to working with the sector and Standards New Zealand to address these issues in a strategic way and to ensure we have plans in place across the range of standards referenced in the Building Code.

## Summary of the consultation

In the meantime, MBIE has modified the proposed tier framework protocol, removing the concept of default levels of support for each tier. The three tiers of standards have been retained (with some adjustments), but will be considered alongside a list of contextual factors to support decisions on upcoming projects to support. The contextual factors have been derived from points in the draft protocol as well as points raised in submissions. Overall, this will provide less certainty than the initial proposal, but provides a good interim approach.

In regard to the referencing criteria, concerns largely centred around the impact that the criteria could have on content in existing standards. MBIE has adjusted the protocol to better recognise that there are likely to be some conflicts, and make clear we will work through them individually within the context of that standard as each reference comes up for decision.

Further details regarding feedback and changes to the protocols are detailed in this document.

### Next steps

In addition to working with Standards New Zealand and the sector on long-term strategies and plans for standards referenced in the Building Code MBIE will working closely with Standards New Zealand to address other concerns about the standards process raised through this consultation.

Overall, MBIE considers that the process of developing and consulting on operating protocols has been useful to help generate discussion, increase transparency and identify key issues that need further work and attention. We plan to release another set of draft protocols for input next year.

## Summary of the consultation

# Background

## Operating Protocols

These “operating protocols” are intended as the first of a series. Each protocol in the series will provide information about an aspect of Building Code-related work, and rules and/or principles that will help guide that work. The overall objective is to provide increased transparency and consistency in MBIE’s approach. We hope that the development of the protocols will also promote discussion about how things should be done, and as has been the case here, prompt further, more strategic discussions.

## Standards in the Building Code system

The operating protocols in this document relate to standards.

A standard is a consensus-based specification document that sets a benchmark for how to do something. This type of process has been used in both New Zealand and internationally for decades to inform a number of aspects of building design. Standards New Zealand is a business unit within MBIE responsible for managing the development of, and providing access to standards in New Zealand. They operate in an independent manner under the Standards and Accreditation Act 2015.

In our separate role as the central regulator for building work, MBIE draws on standards alongside other sources of information to develop materials that support the Building Code, and can incorporate a standard directly into an acceptable solution or verification method by reference.<sup>1</sup>

There are approximately 350 standards referenced in acceptable solutions and verification methods currently. Of these, approximately 25% are New Zealand standards, 25% are joint New Zealand/Australian standards, and the remaining 50% are other international standards.

Ensuring that the set of standards that are referenced in the Building Code system remain fit-for-purpose is a significant programme of work, and ranges from staying up-to-date with international standards, through to MBIE, as the building and construction regulator, being directly involved in development of New Zealand standards.

The purposes of developing the attached operating protocols are listed below.

Document	Operating Protocol – Referencing standards in the Building Code system	Operating Protocol - Tier framework to support standards in the Building Code system
<b>Purpose</b>	To provide a list of qualities that should be common to standards referenced in the Building Code to: <ul style="list-style-type: none"> <li>› support decisions to reference standards; and</li> <li>› be taken into account in the development of New Zealand standards.</li> </ul>	To guide decisions about where the building and construction regulator’s resources will be targeted, to support planning and programming of development of New Zealand standards.

<sup>1</sup> There are also two standards referenced in the Building Code and one standard referenced in the Building Act.

## Referencing standards in the Building Code system

# 1. Referencing standards in the Building Code system

## 1.1. What we proposed

We proposed a list of criteria that would be used to help guide MBIE's decisions about whether to incorporate content from standards into acceptable solutions and verification methods. These included:

- › Alignment to the Building Code
- › In scope
- › Clear
- › Specific
- › Implementable in New Zealand. The standard is able to be complied with in New Zealand
- › Available

The draft protocol noted that, in our role as the building and construction regulator, MBIE considers that any standard that is incorporated into an acceptable solution or verification method is subject to certain provisions under the Building Act 2005 including section 25. Building Act 2004 section 25(2) specifies that:

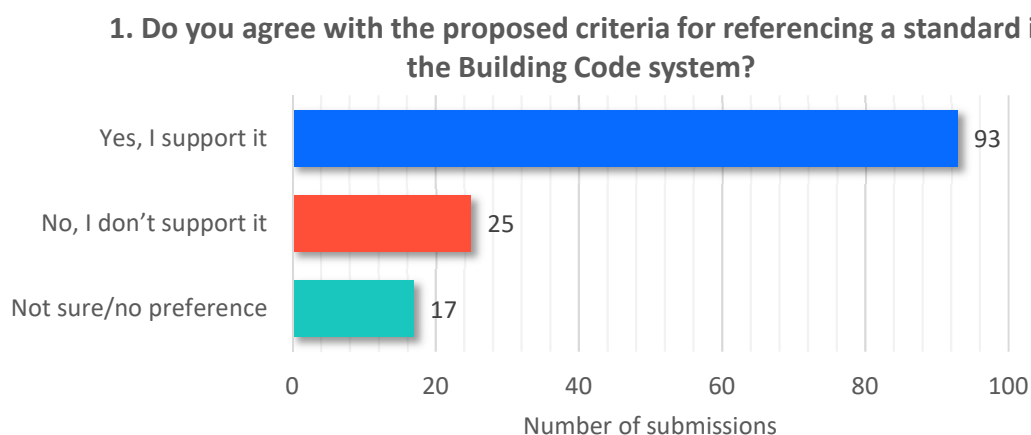
- An acceptable solution or a verification method must not contain a provision that—
- (a) relates to contractual or commercial requirements; or
  - (b) relates to regulatory approvals, dispensations, or waivers; or
  - (c) is inconsistent with the Act or regulations.

Therefore, standards referenced in acceptable solutions and verification methods should also meet these tests.

## 1.2. What we heard

We received a high level of support for the proposed criteria with 93 submissions agreeing to the proposed criteria ([Figure 1.1](#)).

**FIGURE 1.1: Response from submitters on referencing standards in the Building Code system**



Approximately one-third of the submissions provided comments on this proposal. There were several submissions that identified a particular interest in fire safety and fire testing standards. These submissions provided detailed comments on why the criteria could be problematic for the current version of these standards that play key roles in ensuring life safety.

## Referencing standards in the Building Code system

There were also a number of submissions that provided overarching concerns about standards processes (either specific or generally) and the tier system protocols, alongside their response on the referencing criteria. These comments were out of scope for this consultation but indicate a general concern that more work is needed to identify and address other key issues with standards.

### **1.3. What we are doing**

We have decided to publish this operating protocol on our website with minor revisions to the proposed text. To address concerns that the protocols might be applied to existing standards in a generic or blanket way, changes have been made to the start of the protocol to make clear that it is to be applied to new or updated standards as they are considered for incorporation by reference in the Building Code system in the future.

Further changes have also been made to the wording of the protocol to better reflect that the criteria will be considered within the context of a specific standard, and to reflect that the protocol will be seeking to avoid certain types of content but will consider each standard on a case by case basis.

Going forward, MBIE will seek to work with submitters who provided detailed comments on certain standards within the applicable Building Code update process. MBIE will also work with Standards New Zealand to address broader concerns raised through this process as well as to support standards committees to understand this protocol.



## Tier framework to support standards in the Building Code system

## 2. Tier framework to support standards in the Building Code system

### 2.1. What we proposed

We proposed a framework for supporting standards in the Building Code system. This framework included four parts:

- › Criteria to support the grouping of standards into tiers
- › Proposals for how those criteria would be applied to current standards
- › Proposals for which standards would sit in which tier
- › Proposals for the level of involvement from MBIE, as the building regulator, as summarised in [Table 1.1](#).

**Table 1.1: Proposed level of the building and construction regulator involvement in standards**

Criteria	Tier 1	Tier 2	Tier 3
<b>Type of standard</b>	NZS or AS/NZS <sup>(1)</sup>	NZS or AS/NZS <sup>(1)</sup>	Any (NZS, AS/NZS, ISO etc)
<b>Approximate no. of standards in Tier</b>	10	30	All other primary references (~300)
<b>Level of funding by regulator</b>	Full <sup>(2)</sup>	Partial	None
<b>Regulator Committee representation</b>	Yes	As required	No
<b>Regulator Committee voting</b>	Yes	As required	No
<b>Sponsored for free public access (where possible)</b>	Yes	Yes	As required

The protocol also noted that to achieve a reasonable maximum period between reviews, Tier 1 would be limited to 10 standards, and Tier 2 limited to approximately 30 standards. These numbers would be tested in practice and could be reviewed in future.

Other factors that will be considered by the regulator when planning our forward work programme to determine which Tier 1 and Tier 2 standards to put forward for review included:

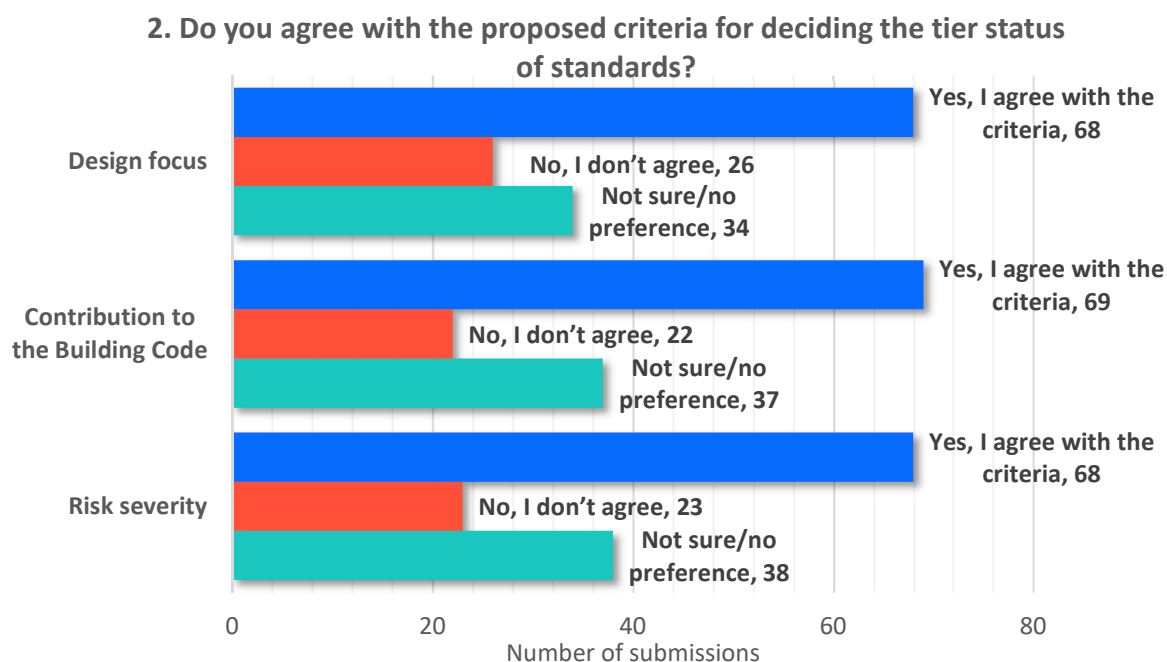
- › **Strategic Alignment** – whether there is a Government directive or strategic initiative that relies on updating or development of a standard.
- › **Currency** – the extent to which technology or practices have changed since the standard was developed.

### 2.2. What we heard

Just over half of the submissions that responded to the survey questions agreed with the proposed criteria for deciding the tier status of standards ([Figure 2.1](#)) with about a quarter stating not sure/no preference.

## Tier framework to support standards in the Building Code system

FIGURE 2.1: Response from submitters on deciding the tier status of standards



Key themes within comments included:

- › Concern that the proposal did not include MBIE funding of all referenced standards and that could result in standards becoming outdated or withdrawn.
- › The need for a greater sense of how the framework would operate over time as new standards were developed and/or priorities changed.
- › Desire for a climate change lens be used to set priorities.
- › Funding should not be a determinant of how many standards are in each tier.
- › The industry does not have mechanisms to equitably share costs for self-funding standards.
- › There is potential to rationalise or consolidate standards to make the suite of standards more manageable as an alternative to the tier system.
- › More consideration of how standards fit together and how oversight is managed across different topics/connections.
- › Lack of acknowledgement that industry contributes through involvement in committees.
- › Concerns that the relationship between criteria scores and tier allocation is not transparent (ie, examples of similar scores in different tiers).
- › More detail sought on what MBIE resourcing would include for each tier.
- › More certainty needed for frequency and timing of updates to standards.
- › Suggestions were put forward for grouping certain standards together and/or changing ratings or tiers.
- › The potential for industry capture if MBIE is not involved in standards committees. However, one submitter also raised concerns about “regulator capture” if MBIE is too involved.
- › The volunteer model used for standards committees is unsustainable for some participants and risks losing their input.
- › Lack of notice provided for update to joint Australian/New Zealand Standards, and the risk of permanent de-jointing if funding cannot be organised.

## Tier framework to support standards in the Building Code system

### 2.3. What we are doing

MBIE are publishing the tier framework operating protocol with revisions to the proposed text. The criteria will still include the risk severity, contribution to the Building Code and design focus. These will be used to identify a core set of standards, considered of high importance to the building code. The core set will continue to be divided into “Tier 1” and “Tier 2”, with Tier 1 likely to receive the highest levels of support from MBIE if an update project is needed.

However, when determining upcoming MBIE standards projects, all standards (Tier 1, 2 & 3) can be considered, taking into account other contextual factors (note, this list builds on comments in the text of the draft protocol as well as taking into account some of the points raised in consultation):

- › New information/ technology that suggests a standard needs to be developed or updated.
- › Whether the standard is linked and/or required to support planned updates to the building code.
- › Whether the standard will contribute to other strategic priorities.
- › Updates that are initiated and co-funded by another party (including joint AS/NZS standards).
- › The likely cost of the update relative to the potential benefit and/or synergies with other projects.

While the combination of “tier status” + “contextual factors” provides less certainty than the tier system on its own, MBIE considers this to be a good step toward more transparency.

Other changes to the protocol include:

- › Revising to the application of the protocol and signalling that it will be further refined.
- › Adding the following standards to Tier 1:
  - AS/NZS 2327 Composite Steel – Concrete Construction in Buildings
  - NZS 4229 Concrete masonry buildings not requiring specific engineering design
  - NZS 4230 Design of reinforced concrete masonry buildings
  - NZS 4510 Fire hydrant systems for buildings
  - NZS 4514 Interconnected smoke alarms for houses
  - AS/NZS 1547 On-site domestic wastewater management
- › Adding the following standards to Tier 2:
  - SNZ TS 3404 Durability requirements for steel structures and components
  - NZS 4223.2 – 4 Glazing in buildings series (Insulating glass units; Human impact safety requirements, Design actions)
- › Revising the “contribution to the Building Code” criteria rating of AS 1668.1&.2 (see Tier 2) from “VH” to “H”
- › Revising the “design focus” criteria rating of NZS 4223.2 - 4 (see Tier 2) from “M” to “H”

The revisions to tier status or criteria rating were made in response to concerns about inconsistencies in the way criteria had been applied or used to determine groupings. MBIE has considered comments on other standards raised through the consultation process and, while they have not resulted in changes to tier status, they have influenced the other decisions in this document (ie to provide more flexibility to consider contextual factors when determining upcoming projects). Overall, the number of standards/ standards series in “Tier 1” has increased from 10 to 16. Several submitters said that putting a number limit on each tier was less important than trying to group similar standards together.

In addition to this protocol, MBIE will work on the development of long-term strategies for supporting content in Building Code documents, including how to optimise the use of New Zealand, joint and international standards and working with the sector and Standards New Zealand to develop plans across the suite of referenced standards.

MBIE will also be working closely with Standards New Zealand to address other concerns about the standards process raised through this consultation.

# BUILDING PERFORMANCE

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