



New Zealand's Looming Construction Boom

Written by [Nick Gillies](#) on 21 October 2014

It is now widely recognised that New Zealand is on the brink of the largest construction boom in 40 years. 'Unprecedented growth'¹ is expected over the next decade.

This note outlines the main reasons for the increase in demand, puts some figures against the expected growth and outlines the relevant legal issues and current responses.

What is driving the boom?

Despite being consistently one of the largest sectors of New Zealand's economy, building activity has traditionally been sporadic and low by international standards. This is set to change over the coming years due to a coincidence of factors. Those factors, which will drive the boom, include:

- (a) The end of the GFC and relative performance of the economy. New Zealand weathered the financial crisis with less public debt and stronger macroeconomic fundamentals than most other OECD nations;
- (b) A backlog of infrastructure/public sector projects. There has been an under-investment in infrastructure over the past 10 years or more;
- (c) The \$40-50b Canterbury rebuild following the 2010/2011 earthquakes;
- (d) Record net inward migration, which is expected to continue;²
- (e) A clutch of new commercial developments, especially in Auckland where there is a long-term shortfall in retail and office space. This follows several years of minimal private sector development and increased foreign investment;
- (f) The seismic upgrading of 'earthquake-prone' buildings;
- (g) Repairs to leaky buildings in the wake of the home weather-tightness crisis;
- (h) A chronic shortage of housing, particularly in Auckland, Wellington and Christchurch; and
- (i) Business-as-usual building activity.

¹ Steven Joyce, Minister for Business Innovation and Enterprise, Press Release, 20 November 2013

² Statistics New Zealand, *International Travel and Migration: August 2014*

How big will the boom be?

The construction sector currently contributes approximately 6.3% of GDP and employs 7.6% of New Zealand's workforce (or over 170,000 people).³ A joint industry/government study⁴ was commissioned in 2013 to quantify the pipeline of work, and has forecast that:

- (a) Annual construction activity will peak at **\$32b in 2016**. This is 23% higher than the last peak in 2007 (\$26b) and 44% higher than in 2012 (\$22.3b); and
- (b) Construction will grow by more than **10% pa** for around **3½ years** – 18 months longer than previous booms.

The signs are already evident. Statistics New Zealand's Q1 figures⁵ (before the impact of the election cycle) show quarterly increases of 16% and 17% in value and volume respectively, with a rising trend over the previous ten quarters.

Auckland and Christchurch (New Zealand's largest cities) are driving much of the demand:

- (a) Auckland accounts for one third of New Zealand's construction activity, even with the Canterbury rebuild. Auckland's construction activity is forecast to grow by **68%** in the five years to 2018. Residential building makes up a surprisingly significant portion of this and is expected to more than double from \$2.9b pa in 2012 to \$7.3b pa in 2017. On top of this, over \$10b is to be spent on infrastructure, education, transport, office, hotel and retail projects over the coming decade.
- (b) In Canterbury, total construction will increase from \$4.3b in 2012 to **\$8.2b** in 2015. Much of the early work is on repairing damaged homes and building new dwellings. Non-residential activity is projected to peak later at \$4.7b in 2017 (a 122% increase from 2012). Approximately 1,100 commercial buildings were lost in Christchurch, leaving an awful lot of space to be replaced. Meanwhile, numerous public sector projects are planned or underway: a list of these and their expected timeframes can be found [here](#). Only about 10% of the rebuild has been completed so far.

Visually, Auckland's skyline is becoming increasingly dotted with tower cranes and Cantabrians have been surrounded by construction sites for some time now. If cranes are a proxy for growth, Christchurch experienced a 41% increase in the past six months (to 31), followed by Auckland (26), Hamilton (7) and Wellington (6).

The boom is not confined to Auckland and Canterbury. Wellington's predisposition to a major earthquake means that many of its building stock (particularly older commercial buildings and converted apartment blocks) have been classified as earthquake prone and must be strengthened or demolished within the next 15 years. The 2013 Seddon earthquakes caused only minor damage but highlighted the risks of affected property owners. Many other regional centres around New Zealand face similar issues. In addition, Wellington has several infrastructure and private CBD projects underway or in the planning stage.

Hamilton is also experiencing positive growth. Housing consents have increased significantly and several multi-million-dollar commercial developments are in the planning stage.

³ Ministry of Business Innovation and Enterprise, *Construction Sector Report* (2013)

⁴ NZ Building and Construction Productivity Partnership, *National Construction Pipeline Report* (November 2013)

⁵ Statistics New Zealand, *Value of Building Work Put in Place: March 2014 Quarter*, released 4 June 2014

Construction was recently identified in a Council report as one of three sectors leading that city's economic rebound.

At the end of this note we have listed some examples of the more significant projects that are planned or underway throughout New Zealand.

What are the legal issues and current responses?

While growth is obviously welcomed, there is concern about a lack of scale and capacity among local firms. Approximately 87% of all construction-sector businesses employ less than ten workers and many are 'one-man-bands'. In Canterbury alone, CERA has acknowledged that there are not enough skilled workers and machinery to work on all recovery tasks at the same time. In addition, the sector has been characterised as fragmented, risk averse and suffering from a lack of competition. Meanwhile the widening of tort law in New Zealand has encouraged scatter-gun claims.

For a sector that is already prone to disputation, these characteristics combined with unprecedented demand are a recipe for an increase in disputes.

Some steps have already been taken to improve the legal landscape in order to generate efficiencies and reduce the number of claims as construction activity rises. We discuss these and other ideas below.

New standard form contracts

It might seem obvious, but having appropriate and carefully prepared contracts in place from the outset of a project goes a long way towards ensuring its success. Unfortunately construction contracts are often ill-considered, poorly prepared and sometimes never concluded, which creates ambiguity and leaves the parties more prone to falling out.

Standard forms are commonplace in construction and, until recently, the most common of these in New Zealand was NZS 3910:2003. With good timing, NZS 3910:2003 has been superseded by three new building and civil engineering contracts: NZS 3910:2013 (Construction), NZS 3916:2013 (Design & Construct) and NZS 3917:2013 (Fixed Term). These provide more tailored provisions for the different types of procurement arrangements and draw on lessons learned from NZS 3910:2003. Please click [here](#) for our detailed note on these new contracts.

Alliancing

There is an emerging trend towards the use of alliancing to procure infrastructure projects. Alliancing is an alternative approach to contracting that is currently favoured by the New Zealand Transport Agency for its larger and more complex projects.

Alliancing was first developed for North Sea oil drilling and has been widely used by the public sector in Australia for several years. It aims to create a collaborative 'win together/lose together' project culture, which is a significant departure from the traditional contractual approach to procuring construction works. In general terms, an alliancing contract will typically provide that:

- (a) Uninsurable risk is shared between the participants in agreed portions. In its purest form, such risk would be shared equally regardless of fault.

- (b) Participants are paid on a pre-determined 'gain share/pain share' basis.
- (c) The project is governed by a project alliance board made up of representatives from each project participant, who are required to make decisions unanimously.
- (d) Participants will act in good faith and adopt a 'no blame culture'. This is reflected in a prohibition on commencing proceedings against one another except in limited circumstances (eg non-payment, wilful default, fraud, etc).

Alliancing requires a different mind-set and contractual framework to achieve the necessary ethos and outcomes. Principals are attracted to alliancing because, if it works properly, it should encourage collaboration and problem-solving (rather than blame attribution) and avoid claims. However, it is usually only suitable for larger, complex projects involving multiple parties.

Construction Contracts Act 2002 (CCA)

Various amendments to the CCA are currently before parliament and are awaiting their third reading. At this stage the amendments are unlikely to be passed until 2015. Progress has been delayed by the election and several Supplementary Order Papers moving amendments to the Bill.

The main changes are likely to include:

- (a) Extending the right of adjudication to design, engineering and quantity surveying work.
- (b) Largely removing the existing distinction between residential and commercial construction contracts.
- (c) Updating and clarifying the adjudication procedure (eg by including an express entitlement to a right of reply by claimants).
- (d) Extending and speeding up enforcement of adjudication decisions. Among other things, all adjudication determinations will become enforceable, compared with the current position where only those about payment are enforceable. In addition, the time for opposing the registration of a determination as a judgment will be reduced.

During the election campaign the National-led government announced that it would require retention monies to be kept on trust as a further amendment to the CCA. The new requirement will not extend to holding the funds in a separate account; instead they will simply be deemed to be held on trust. This has been criticised for not going far enough. However, the light regulatory approach probably provides the best available balance and is generally supported by the industry. Default interest will be applied to the late payment of retention monies.

This latest amendment will give further protection to contractors and sub-contractors in relation to retentions. However, it will not stop principals and head contractors from seeking to avoid paying retention monies – typically by raising a claim, asserting set-off and offering the 'carrot' of future contracts.

The right of adjudication has gone some way to deter this practice but it still happens. One way to mitigate this could be to require disputed retention funds to be paid into an escrow account until the dispute is resolved, in a similar way to residential tenancy bonds. However, there does not seem to be any legislative appetite for this so far.

We will provide a detailed note on the changes to the CCA once they are finalised.

Dispute Resolution Boards

We have for some time been advocating greater use of Dispute Resolution Boards (or DRBs)⁶ as an alternative dispute resolution method. DRBs have enjoyed success around the world by helping to avoid and resolve disputes during the course of a project. With the number of medium-to-large projects coming on stream, the time has never been better to give this method greater consideration. For appropriate smaller-scale projects, single-person DRBs (rather than the usual three-person board) can be employed to keep costs down.

Christchurch, in particular, is arguably crying out for a ready-made dispute resolution solution given the scale of the rebuild and the simultaneous demands on resources. An off-the-shelf DRB scheme has the potential to more effectively manage problems during the rebuild and minimise the number of claims.

Please click [here](#) for a detailed explanation of DRBs and how they might be employed effectively in New Zealand.

For more information, or to discuss any aspect of construction law, please contact:

Nick Gillies – nick.gillies@heskethenry.co.nz or +64 9 375 8767

Christina Bryant – christina.bryant@heskethenry.co.nz or +64 9 375 8789

Helen MacFarlane – helen.macfarlane@heskethenry.co.nz or +64 9 375 8711

21 October 2014

⁶ By DRBs, we are referring to the US-led method of a board of independent persons who are actively engaged throughout the project, rather than the hands-off Dispute Adjudication Boards (or DABs) employed under FIDIC contracts.

**Significant New Zealand construction projects
that are planned or already underway**

No.	Project Name	Region	Type	Value	Est. Completion
1.	City Rail Link	Auckland	Rail	\$2.4b	2021
2.	Auckland Airport's 30-year growth plan	Auckland	Transport / Retail	\$2.4b	2044
3.	Waterview Motorway Connection	Auckland	Roading	\$1.4b	2016
4.	Auckland University works programme	Auckland	Education	\$1b	2024
5.	Westgate Urban Development	Auckland	Housing / Retail	\$1b	2016
6.	Puhoi to Wellsford motorway extension	Auckland	Roading	\$760m	2025
7.	Ryman growth plan	Auckland	Aged Care	\$710m	2017
8.	International Convention Centre	Auckland	Conference	\$400m	2017
9.	NDG Tower	Auckland	Office / Hotel	\$350m	2020
10.	Kohuora Prison, Wiri	Auckland	Prison	\$300m	2015
11.	Precinct Downtown development	Auckland	Office / Retail	\$300m	2019
12.	Wynyard Quarter development	Auckland	Housing / Retail	\$200m	2017
13.	Fonterra's new headquarters	Auckland	Office	\$100m	2016
14.	SH16 Causeway Upgrade	Auckland	Roading	\$100m	2017
15.	Waikato Expressway	Waikato	Roading	\$2.1b	2019
16.	Pukete Treatment Plant renewal	Waikato	Wastewater	\$24m	2019
17.	Transmission Gully	Wellington	Roading	\$1.3b	2020
18.	Wellington Airport runway extension	Wellington	Transport	\$300m	2021
19.	Ngauranga to Aotea Quay upgrade	Wellington	Roading	\$100m	2016
20.	Lyttelton Port Company repair/expansion	Canterbury	Sea port	\$1.1b	2020
21.	Ministry of Education (various)	Canterbury	Education	\$1.1b	2020
22.	Canterbury University repairs/expansion	Canterbury	Education	\$575m	2020
23.	New Christchurch stadium	Canterbury	Sport	\$500m	2019
24.	Justice and Emergency Services Precinct	Canterbury	Public	\$325m	2017
25.	Metro Sports Facility	Canterbury	Sport	\$250m	2018
26.	Christchurch Convention Centre	Canterbury	Retail	\$200m	2017
27.	Central Art Gallery	Canterbury	Public	\$100m	2015
28.	Bus Interchange	Canterbury	Transport	\$100m	2015
29.	Town Hall	Canterbury	Public	\$100m	2017
30.	Otago University works programme	Otago	Education	\$650m	2029