

BUILDING PERFORMANCE

Proposals for CodeMark scheme rules

CONSULTATION SUBMISSION FORM

Proposed rules for certifying building
methods and building products



How to submit this form

This submission form can be used to provide your feedback on the Ministry of Business, Innovation and Employment's (MBIE's) consultation on proposed rules for CodeMark product certification. It supports the consultation document 'Proposals for CodeMark scheme rules', which is available at www.mbie.govt.nz/have-your-say. If you prefer to complete an online survey instead of this submission form, a link to the survey is also available at www.mbie.govt.nz/have-your-say.

When completing this submission form, please provide comments and reasons explaining your choices. Your feedback provides valuable information and informs decisions about the proposed scheme rules. We appreciate your time and effort in responding.

Please send us your completed form by **5pm on 25 May 2022**:

- by email to building@mbie.govt.nz with the subject line '**CodeMark consultation 2022**', or
- by post to:

CodeMark consultation 2022
Building System Performance
Building Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473, Wellington 6140
New Zealand

If you have any questions about the submissions process please email building@mbie.govt.nz.

Use and release of information

The information provided in submissions will contribute to MBIE's development of the CodeMark scheme rules. We may contact submitters directly if we require clarification of any matters in submissions.

Your submission will also become official information, which means it may be requested under the Official Information Act 1982 (OIA). The OIA specifies that information is to be made available upon request unless there are sufficient grounds for withholding it. If we receive a request, we cannot guarantee that feedback you provide us will not be made public. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.

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Submitter information

MBIE would appreciate if you would provide some information about yourself in the section below. If you choose to do so, this information will be used to help MBIE understand the impact of our proposals on different occupational groups. Any information you provide will be stored securely.

Your name, email address, phone number and organisation

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- I would like my submission (or identifiable parts of my submission) to be kept confidential, and **have stated** my reasons and ground under section 9 of the Official Information Act that I believe apply, for consideration by MBIE.

Background

BRANZ welcomes the opportunity to provide a submission on the proposals by MBIE to changes to the CodeMark scheme rules. In this submission we will first provide some background which describes our role generally in the building and construction system. We will also describe our role as providing a range of independent product testing, assurance and consultancy services, including CodeMark. This will provide the contextual lens through which we have responded to the more detailed questions asked in this submission form.

We also highlight three broad areas where we think there is an opportunity to provide more clarity in the rules to improve the operation of the CodeMark Scheme, based on our role in it and our interactions with those seeking CodeMark certification of their products. These are:

1. Adding an additional pathway to certify products that are manufactured, which involves a post manufacture quality approach.
2. The need for more clarity about the responsibilities of a “Responsible PCB” and how this relates to the responsibilities of a “Registered PCB” that issued the certificate, where these differ; and
3. Clarity that certification does not involve testing.

We discuss these points in more detail below.

We are committed to working with MBIE to ensure CodeMark is as optimally designed as possible for all those who use it across the building and construction system. We welcome engagement with MBIE on any aspects of the scheme as the rules are finalised, or on any questions you have in relation to this submission.

Our role

BRANZ is a multi-faceted, independent science-led organisation. We use independent research, systems knowledge and our broad networks to identify practical solutions that improve Aotearoa New Zealand’s building system performance. BRANZ is driven by the knowledge that to thrive as a society, New Zealanders need a built environment that is safe, healthy and performs well.

The BRANZ vision is to *Challenge Aotearoa New Zealand to create a building system that delivers better outcomes for all.*

To do this, BRANZ has strong relationships with industry, government and building users through collaboration and facilitating the sharing of insights, opportunities and ideas. These relationships underpin the range and depth of BRANZ’s knowledge and ability to understand the linkages and interactions that influence the building system. This uniquely broad perspective not only influences BRANZ’s research, but also our commercial services.

BRANZ undertakes and commissions research, funded by the Building Research Levy, which is both practical and drives positive building and construction system change. This work helps improve industry practices around the performance of buildings and how we use them, through to informing policy and legislation and all points in between.

BRANZ also contributes to practical improvements in Aotearoa New Zealand’s built environment through a suite of independent product testing, assurance and consultancy services. Evidence-based advice is available at all phases of the product life cycle from preliminary R&D and standards compliance, through to verifying end-use product performance. A BRANZ assessment is universally trusted, providing assurance that the products should do what the manufacturer says they will do. We hold the responsibility to ensure our work is of the highest standard at the core of what we do.

Two important schemes as part of our assurance services offering, are CodeMark and BRANZ Appraisals. BRANZ is one of four accredited product certification bodies (PCBs) in New Zealand who can assess, evaluate and CodeMark certify a building product. We have been accredited since 2018. We are also an accredited PCB to the Australian CodeMark scheme since 2018.

Further rationale for the three areas we would like to see further thought given to in the rules is given below.

1. Developing a post-manufacture quality approach as an additional pathway to certification

We believe there is a barrier to uptake of CodeMark as a mechanism for demonstrating compliance with the New Zealand Building code through having manufacturing audits as the only pathway to demonstrating product quality. As a result, this may be restricting applications for CodeMark Certifications from suppliers who are not manufacturers.

We consider the CodeMark scheme would be improved if quality management could also be managed through quality management processes undertaken by a certificate holder who is not the manufacturer. This could become a post-manufacture quality mechanism.

Our experience has shown that proprietors may struggle to meet the requirements for entry into the CodeMark scheme due to not being able to get the necessary information about the product from manufacturers in New Zealand and overseas. It can be a challenge to get evidence of the manufacturers quality management system as this may be their intellectual property. In addition, manufacturers might consider it a barrier to be tied into a particular version of their quality system for one of their potentially numerous clients.

Having the flexibility of both a manufacturing quality and a post manufacturing quality audit process would greatly enhance the functioning of the CodeMark scheme. It would also make the New Zealand scheme more aligned to the Australian scheme and support more streamlined certification across both markets.

2. Responsible PCBs

We recognise that there needs to be a way in which CodeMark certificates can be transferred from one PCB to another, in the event of a PCB having their accreditation removed for any number of reasons. BRANZ is challenged by a process by which we simply 'take over' the certificates (and become a Responsible PCB), on the assumption that the certification process carried out by another PCB is at the same standard as that done by BRANZ. We would need to undertake an assessment to ensure we could be confident about the ability of the product to comply with the Building Code and the surveillance approach is appropriate prior to 'taking over' the certificate.

We are concerned about the lack of clarity about the roles and responsibilities of a Registered PCB versus a Responsible PCB. If another PCB became the 'responsible PCB for the certificate' for a Certificate that BRANZ has issued which carries the BRANZ logo and signatures, who has liability for this Certificate? If there is a legal issue will both the Registered and Responsible PCB be liable? Without the issue of a new Certificate by the newly responsible PCB we do not believe the responsibility will be clear. Similarly, if a PCB becomes the Responsible PCB are they required to follow the surveillance process set out by the Registered PCB or are they able to set their own surveillance process? This could create a perverse situation where one PCB is seen as 'hard' versus others being 'soft' and certificate holders looking for an 'easy' route to maintain their certificate.

We propose that a registered PCB must issue a new certificate to become the responsible PCB. This will avoid compounding liability in the scheme and its flow on effect on cost of insurance for PCB's to cover certificates they have issues and those they are responsible for through surveillance..

We recommend that this is clearly termed a transfer of certification as it was in the old scheme rules to avoid confusion around responsibility.

3. Certification does not involve, nor does it need to involve, testing

Throughout the rules there is an underlying assumption that PCBs test products as part of the certification process. While BRANZ generally has testing experience and expertise as part of our organisation, product testing experience to be a PCB is not necessary. The role of a PCB is to assess all relevant document information provided by an applicant (which may have contracted testing as part of its documented evidence). A PCB does not therefore need to have testing capability or capacity as part of its suite of capacities. As per rule 3.2.15 test reports should come from testing facilities that are accredited for that purpose.

Questions

Part 1: Preliminary provisions

Part 1 of the scheme rules sets out preliminary provisions, including relevant definitions.

1. Do you have any comments on the definitions in Part 1: Preliminary provisions?

We make the following comments on the Preliminary Provisions, 1.2 Interpretation.

Batch testing

We consider that Sample testing or Verification testing might be a more accurate terms to use instead of Batch testing. The testing may be either on a batch basis or set out to other criteria in the product quality plan or certification surveillance requirements.

Evaluation Plan

We recommend that Evaluation Plan – (c) is changed from:

“the timing and method of the audits and inspections to be carried out...”

To:

“the timing and method of the surveillance activities to be carried out...”.

We recommend this change, because the terms ‘audits’ and ‘inspections’ are used differently in different, but relevant documents, which have slightly different meanings and could lead to misinterpretation.

For example, ISO 17065 uses the term ‘surveillance’ for the activities of the certification body¹, whereas the term ‘audit’ refers to internal audits² completed by the PCB on its own operations.

BRANZ distinguishes this difference in terminology with certificate holders. We undertake surveillance of their activities whereas they undertake their own internal audits.

Remote Audit

As above we have a preference for the use of the term ‘surveillance’ instead of ‘audit’. This is to ensure certificate holders understand that they must undertake their own quality audits, whereas surveillance is carried out by a registered PCB for their certification.

Part 2: Accreditation body requirements

Part 2 of the scheme rules contains requirements for the product certification accreditation body, which is responsible for accrediting product certification bodies and checking they continue to meet the accreditation requirements.

¹ Refer ISO 17065 Clause 7.9 Surveillance

² Refer ISO 17065 Clause 8.6

2. Do you agree that the rule with respect to surveillance will provide appropriate oversight over any change in the product certification body responsible for a particular product certificate?

Yes, I agree No, I disagree Not sure/no preference

Please refer to the points we raise in the Background section of this submission.

3. Do you have any other comments on the rules in Part 2: Accreditation body requirements?

No.

Part 3: Product certification body requirements

Part 3 of the scheme rules contains requirements for the product certification bodies, which are responsible for evaluating building products and building methods for CodeMark certification. It includes: general requirements; detailed rules for evaluation and surveillance; rules relating to product certificates and certificate numbers; and rules relating to changes in certificate holder.

3.1 General requirements

4. Do you agree that the specified technical competencies are clear and workable?

Yes, I agree No, I disagree Not sure/no preference

Please refer to the points we raise in the Background section of this submission, relating to testing competency.

5. Do you have any other comments on the rules in 3.1 General requirements?

In relation to 3.1.4 (i) Please refer to the points we raise in the Background section relating to testing competency.

3.2 Evaluation

Pre-evaluation and risk assessments

6. Do you agree that the definitions of likelihood and consequence (in Table 1) are appropriate for use in the risk assessment?

Yes, I agree No, I disagree Not sure/no preference

Consistent with our concerns outlined in the Background section relating to developing a post-manufacture quality approach as an additional pathway to certification, we consider that Step 4 requires more clarity. It is unclear how this step can be done when there is a product which contains more than one individually manufactured component with different associated risks.

7. Are there any other factors you think we should add to Table 1 (steps 2 and 6) or any you don't think should be there?

No.

8. The proposed rules for minimum audit and inspection requirements allow for some discretion by product certification bodies, recognising that individual practice varies. Do you agree that the proposed rules provide an appropriate baseline?

Yes, I agree No, I disagree Not sure/no preference

BRANZ would not certify a product where we consider the quality controls of the certificate holder are 'likely' or 'very likely' to result in failure. Our assessment could only ever result in a score of 1. We recommend consideration is given to the complexity of manufacturing and the variability of the manufactured product to also be factors in non-compliance. These are more appropriate factors for a risk rating.

We recommend that 3.2.6 (a) is amended from:

"...intended use(s) as described..."

To:

"...to intended use(s) as agreed...."

Having this 'as agreed' would ensure that the final agreed scope is accommodated (as opposed to that outlined in the initial application) where these may be different.

Preparing the evaluation plan

9. Do you agree with the proposal for developing an evaluation methodology (rule 3.2.8)?

Yes, I agree No, I disagree Not sure/no preference

Rule 3.2.8 could potentially affect some existing certifications and also potentially BRANZ's ability as a PCB to certify more innovative products. This is because it is not clear the extent of consultation that will be required with 'interested parties' and who is required to validate the testing method. Clarity is also needed to ensure that an approach is undertaken that is fair to the CodeMark applicant, i.e., that the process cannot be slowed by a competitor to create a barrier to market. Similarly, the process needs to consider the costs of undertaking such a process and who bears these costs. If the PCB bears the cost, then PCBs may not be willing to take on innovative products. If the applicant bears the cost, it could become a further barrier to bringing innovative products to market. We believe further clarity around the expectations of PCBs here is required.

Evaluating the building product or building method

10. Do you agree that the proposed rules for accepting test reports provide a good baseline for product certification bodies?

Yes, I agree No, I disagree Not sure/no preference

3.2.14

As signalled in the Background section, PCBs do not test, so we can't accept test reports with applications when we 'must test or arrange testing'. We therefore consider the word "must" should be replaced with 'may' in this rule.

It is our view that a certification body does not undertake testing. Testing is done by testing facilities not certification bodies as per rule 3.2.15.

Rules 3.2.14 and 3.2.15 should clarify a PCB 'may' rather than 'must' arrange testing.

11. Do you agree that the provision in rule 3.1.16(b) regarding costs being 'unduly onerous' is appropriate?

Yes, I agree

No, I disagree

Not sure/no preference

We presume that question 11 is in relation to rule 3.2.16 (b) and not 3.1.16 (b) as there is no such rule.

12. Do you agree that the proposed transitional provisions in rule 3.2.16 (c) with respect to testing are sufficiently clear and workable?

Yes, I agree

No, I disagree

Not sure/no preference

13. Do you have any suggestions with respect to the rule for considering technical opinions?

No.

Site audits and inspections

14. Do you consider the rule relating to remote audits is clear and workable?

Yes, I do

No, I don't

Not sure/no preference

In relation to rule 3.2.22, we note that this will allow for the first audit (that is the Certification audit) to be undertaken as a remote audit. Is this the intention?

15. Do you agree that the rule relating to installation demonstrations is clear and workable?

Yes, I agree

No, I disagree

Not sure/no preference

Evaluation report, review and certification decision

16. Do you have any other comments on the rules in 3.2 Evaluation?

No.

3.3 Product certificates and certificate numbers

17. Do you consider the rules for a standard format for certificate numbers are clear and workable?

- Yes, I do No, I don't Not sure/no preference

18. Do you have any other comments on the rules in 3.3 Product certificates and certificate numbers?

No.

3.4 Surveillance

19. Do you consider the rules relating to changes in the product certification body are appropriate in view of the provisions in the Building Act?

- Yes, I do No, I don't Not sure/no preference

Please refer to the points we raise in the Background section of this submission.

20. Do you consider the requirements for post-manufacture surveillance in certain circumstances are appropriate?

- Yes, I do No, I don't Not sure/no preference

21. Do you have any other comments on the rules in 3.4 Surveillance?

No.

3.5 Change in certificate holder

22. Do you consider that the new rules provide a reasonable framework for assessing how changes in the certificate holder should be assessed by the product certification body?

- Yes, I do No, I don't Not sure/no preference

Part 4: Certificate holder requirements

Part 4 of the scheme rules contains requirements for certificate holders including responsibilities for ensuring their building products or building methods are materially the same as those that were evaluated, rules relating to quality plans, and requirements for notifying the product certification body if things change.

23. Do you agree with the proposed rules for quality plans?

Yes, I agree

No, I disagree

Not sure/no preference

We consider rule 4.2 (f) to be vague and is only able to be fully understood through the explanation in the guidance. We recommend further clarity is given to 4.2 (f) in the rule rather than in the guidance, and suggest it is changed to: “minimises the risks to product quality throughout the supply chain”.

24. Do you have any other comments on the rules in Part 4: Certificate holder requirements?

In relation to rule 4.2 (d) we recommend removing the words “if any” as the certificate holder must have a quality management system as per Building (Product Certification) Regulations 2008, Regulation 11.

4.8 We recommend for clarity and the avoidance of doubt (b) could be amended from:

(b) unless the certificate holder holds another current product certificate, immediately cease making any reference to the CodeMark scheme including in advertising or other promotional material.

To:

(b) unless the certificate holder holds another current product certificate, immediately cease making any reference in advertising or promotional material to the product certificate that has been revoked and immediately cease making any reference to the CodeMark Scheme other than in relation to other product certificate(s).

Schedule 1: Use of the mark of conformity

Schedule 1 contains requirements for using the CodeMark mark of conformity, which is a registered trade mark.

25. Do you have any comments on Schedule 1?

No.

Further comments

26. Do you have any further comments on the proposals for CodeMark scheme rules that you would like to add?

Below are two further suggestions in relation to rules related to 3.2 Evaluation

3.2.7(g) Installation inspection plan.

We support the proposed rule that installation surveillance is not mandatory for all certifications. A simple product should not require any installation surveillance. For example, a product like a flashing tape, which has little difference to any other flashing tape, is applied by a Licensed Building Practitioner to an Acceptable Solution installation method and is inspected by a BCA.

We recommend guidance is provided that clarifies that installation audits be used when adequate justification can be recorded by the PCB, and when correct application of the product is required to ensure appropriate product performance.

We also recommend for clarity that 'Certificate Holders' are added to *Figure 1: The System for managing product certification*. Certificate Holders are different from 'Proprietors of building products'.

Under the title Certificate Holder, it could state 'maintains quality of the certified product'.

Thank you again for your time in responding to this consultation.