



23 August 2023

Review of the Building Consent System
Building System Performance
Building, Resources and Markets
Ministry of Business Innovation and Employment
Wellington

Attention:

Email: building@mbie.govt.nz

Tēnā koutou,

**RE: NEW ZEALAND INSTITUTE OF ARCHITECTS TE KĀHUI WHAIHANGA SUBMISSION
– OPTIONS PAPER: REVIEW OF THE BUILDING CONSENT SYSTEM**

About Te Kāhui Whaihanga New Zealand Institute of Architects

The New Zealand Institute of Architects (NZIA) Te Kāhui Whaihanga is a global professional membership body driving excellence in architecture. We serve our members and society in delivering quality buildings and places, stronger communities and a sustainable environment. Being inclusive, ethical, environmentally aware and collaborative underpins all that we do.

The Institute has been in existence since 1905 and is the professional body representing more than 90 per cent of New Zealand's Registered Architects and many recent graduates entering the profession. In total, the Institute represents more than 4600 members. The Institute is active not only in advocating in the interests of members, but also in providing education, promoting practices and industry-wide cooperation that will improve the quality and sustainability of New Zealand's built environment.

The Institute welcomes the opportunity to respond to the Ministry of Business, Innovation and Employment's (MBIE) call for submissions to the Options Paper: Review of the Building Consent System.

Building consent system essential to Aotearoa New Zealand

1. The building consent system is an essential part of the building and construction industry. It influences economic and industry productivity, public safety, trust and confidence, professional knowledge and competence and risk management.
2. Our members regularly engage with the building consent system due to their project collaboration, coordination and detailed design and specification roles. The perspectives of our members are invaluable as they operate across all types of building work, from alterations and additions to complex and staged commercial, health, education, public and infrastructure projects. A unique perspective they offer is both as the technical professional and the applicant's representative.
3. Over many years, the Institute and its members have advocated for improvements to the building consent system – across the various roles and responsibilities, processes and documentation, system culture and behaviours, costs of compliance, professional risks, quality of available information and decision-making. For example, our [Building Consenting Trilemma series in 2020](#) saw more than 500 members participate and engage in this important professional conversation about how to ensure greater certainty, consistency and affordability in the building consent system.
4. MBIE's first principles review is welcomed by the Institute and our members. It signals a positive opportunity to improve and strengthen the role, purpose and outcomes of the building consent system. We would encourage MBIE to be courageous in the exploration of issues, opportunities for change and engagement with industry to ensure that the future building consent system positively contributes to the wellbeing of Aotearoa New Zealand and the building and construction industry.

Understanding the influence and importance of risk

5. The exclusion of joint and several liability from the scope of the review is disappointing for the Institute and its members. The understanding of risk, the parties to risk, transfer and management of risk, availability of risk mitigations (e.g. insurance) and the obligations and timeframes associated with risk have significantly influenced the operation, culture, behaviours and the design of amendments to the Act since its inception. The exclusion of joint and several liability from the review and potential options analysis unnecessarily limits the review and may lead to unintended consequences.
6. By way of example, it has taken almost a decade to see the introduction of a regulated minimum standard for product technical statement information supplied by manufacturers to the market. The *Building (Building Product Information Requirements) Regulations 2022*, which becomes operative later this year, is welcomed by the Institute and its members. This regulation addresses some joint and several liability risks for members. For example, the quality of technical product information, product building code performance compliance pathway and supporting testing and analysis of products for New Zealand conditions must now meet a minimum standard.
7. We acknowledge that building consent authorities (BCAs) play a vital role in the consenting system and carry considerable risk. The issue of joint and several liability in the future design and operation of the building consent system is equally relevant to BCAs. Given the influence of joint and several liability on the BCA role and on our members, contractors and manufacturers, it seems imperative that a 'first principles' review actively considers it.

System Regulator role vital

8. Section 7 of the Options Paper considers MBIE's role as system Regulator and the role of system monitoring and continuous improvements. The Institute supports a refreshed Regulator role, where the emphasis is on national consistency of processes and decision-making, easy and cost-effective processes, regular and timely evidenced-based reviews and updates, timely responses to system 'blockages', clear guidance and assurances on roles and responsibilities, and continuous oversight on risks and risk management.

Supporting digital data improvements

9. The Institute strongly believes that digital data infrastructure must be considered as part of the review. Digital data and technology infrastructure offers a myriad of benefits to the various roles in the building consent ecosystem:
 - MBIE as system Regulator – e.g. ability to capture nation-wide real-time application information and decisions;
 - BCAs – e.g. ability to receive, process and report with consistency and efficiency, and in a cost-effective way; and
 - Architects and clients – e.g. ability to efficiently engage with system requirements and decision making in a consistent and cost-effective way.
10. Digital data and technology infrastructure provides the necessary evidence to support timely improvements to the building consent system. It will however be essential for the system Regulator, MBIE to ensure that digital data and technology infrastructure is implemented and managed in accordance with minimum standards, through strong relationships across the system and by providing all users with guidance and education. While many BCAs across the country are adopting digital data and infrastructure, the benefits of this investment are often diminished because these elements (e.g. standards, education) are non-existent and/or operating inconsistently.
11. Given the size of Aotearoa New Zealand and the volume of building consents, this review must seek to investigate options for single operating systems. The Institute understands that there are overseas jurisdictions with considerably larger populations that successfully operate a single lodgment portal. The Institute strongly encourages MBIE to undertake further review and analysis of these systems and the costs/benefits of a single operating portal.
12. Our members are routinely required to maintain a working knowledge of differing online digital portals and BCA operational policy requirements reinterpreting the Building Act 2004. Clearly, this review offers BCAs, the public/ratepayers, project owners/clients and our members significant opportunity for productivity gains and investment efficiencies through technology, standardisation and shared systems, processes and capability.

System culture and behaviours

13. The last major review of the legislation occurred in response to the leaky-homes crisis. Consequently, the culture and behaviours of many parties in the system have been affected. For example, BCAs have adopted conservative and risk-averse behaviours in response to sizeable insurance claims and settlements.

14. A conservative approach is understandable. Risk is an inherent feature of the building and construction industry. Buildings are becoming more complex in their performance and operating requirements. Environmental conditions, available evidence and forecast data is rapidly changing. Insurance terms, conditions and exclusions are escalating and subject to annual changes.
15. The Institute takes the view that culture and behaviours have detrimentally impacted the efficiency, speed and productivity of the building consenting system. Efficiency, productivity and speed are further compromised across the country because – apart from some regional cluster groups – the remaining BCA's carry out their delegated duties according to locally created practices.
16. Without a thorough examination of risk and opportunities for change, the building consent system will continue to be influenced by the culture and operating behaviours of parties in the system. This must be addressed in the review and will require the Regulator and steward of the system, MBIE, to look at interrelationships with other regulatory functions. For example, what should the role and relationship be between the building consenting system and occupational regulation?

Consistency is paramount

17. Institute members frequently comment on the lack of consistency during building consent processing, and this is apparent across individual BCO's and from one BCA to another. BCA administrators frequently cite the difficulty in staff recruitment and retention. While acknowledging these concerns, as a 'user-pays' function of local government, there is scope to redesign and deliver more collaborative, expertise-based BCA services nationwide. Continuing inconsistency and variability in decision making impacts all parts of the construction industry and the country's economic prosperity. Projects can become unfeasible due to unnecessary lodgment costs and escalating costs through process/delays.
18. The size, and by extension the capability, of BCAs varies across the country. Auckland processes 50% (22,000-25,000) of the building consents annually, while the smallest deal with just 50. The system and its operation must allow for the necessary resources to be distributed across the system rather than individual BCAs competing for a scarcity of talent.

Competition is not the problem

19. The Options Paper expresses a view that market competition and a lack of competition across building materials and systems is an inherent problem. The Institute would advocate that this is an inaccurate assessment of the evidence and the current operating model. As a performance-based building consent system, it is inherently designed to support and encourage competition. The operation of Acceptable and Alternative Solutions and compliance pathways and verification methods allows for competition.

Rethinking the system elements

20. The Institute would advocate that the building consent system must exist to ensure a healthy, safe and durable built environment. The MBIE review and Options Paper should establish clear parameters and expectations of a performance-based consenting system. For example, to ensure:
 - consistency
 - efficiency
 - responsiveness
 - fair and reasonable risk allocation

21. Achieving a healthy, safe and durable built environment will require the building consent system review to consider such issues as:

- risks – information requirements, decision-making, available information, roles and responsibilities
- role of the Regulator, MBIE
- role of occupational regulation
- relationship between building work and occupational licensing
- roles, responsibilities and documentation requirements
- alignment between documentation and approvals
- project approvals and documentation versus project construction documentation and compliance approvals
- ensuring relevant/necessary information is available at the appropriate time. Opportunities to align building consenting and contractual phases of work

Te Tiriti o Waitangi Obligations

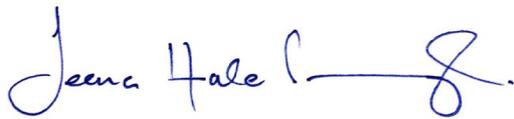
22. Responding to the needs of Māori is an emerging and evolving area in the construction sector. Iwi are involved in buildings that service traditional marae functions as well as stand-alone and medium-density housing. In the future, it is inevitable there will be other building types, including high-rise, high-density housing, commercial and healthcare projects.
23. The current model generally involves agencies appointed to provide traditional professional services in relation to design documentation and delivery. In those cases, the needs reflect all other applicants who seek a healthy, safe and durable built environment. This approach is easily understood as an appropriate means to securing finance, insurance and fulfilling building owners' obligations to health and safety legislation and other life-safety requirements.
24. The Institute supports building an enhanced capability within BCA's that are familiar with tikanga to further their organisation's ability to engage with Māori to navigate the consenting system in a culturally responsive way. This would follow the Options Paper navigator role.
25. There are exceptions to the traditional procurement model and they occur in circumstances where innovation and cultural needs should be satisfied. For projects to progress that fulfil central and local government Te Tiriti o Waitangi obligations, both MBIE and BCA's need to build capability to assess application documents using the most appropriate consenting pathway, including alternative solutions and verification methods.

As noted in our submission and the Options Paper, the consenting system needs to be agile and prepared to accept emerging technology and newly proposed, culturally relevant solutions and methods of construction. This would enable our built environment to receive the benefits of technology and respond to the changing cultural landscape.

Te Kāhui Whaihanga would welcome the opportunity to engage with officials and other industry professions on the issues raised in our submission. It will be important that any potential regulatory change is co-designed between industry and government to ensure that the changes are practical and pragmatic.

Thank you for the opportunity to provide feedback on the Options Paper: Review of the Building Consent System. Should you have any questions about this submission, please contact Te Kāhui Whaihanga's Chief Executive Teena Hale Pennington on thalepennington@nzia.co.nz.

Ngā mihi,



Teena Hale Pennington
Chief Executive