

Consultation submission form

Review of the Building Consent System



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How to make a submission

The Government has commenced a substantive review of the building consent system. A better building consent system is a key priority of the Government and is necessary to support transformation of our housing market to unlock productivity growth and make houses more affordable.

The aim of the review of the building consent system is to modernise the system to provide assurance to building owners and users that building work will be done right the first time, thereby ensuring that buildings are well-made, healthy, durable and safe.

How to make a submission

The Ministry of Business, Innovation and Employment (MBIE) is seeking your feedback on:

- what role you think the government should have in providing assurance that buildings are healthy, durable and safe
- the desirable outcomes from the building consent system
- an initial assessment of the key issues that are barriers to achieving those outcomes.

When completing this submission form, please provide comments and reasons explaining your choices. Your feedback provides valuable information and informs decisions about the proposals.

You can submit this form by 5pm, Sunday 4 September 2022 by:

- Sending your submission as a Microsoft Word document to **building@mbie.govt.nz**
- Mailing your submission to:

Consultation: Review of the Building Consent system
Building System Performance
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473

Wellington 6140
New Zealand

Use of information

The information provided in submissions will be used to inform MBIE's policy development process and will inform advice to Ministers on the review of the building consent system. We may contact submitters directly if we require clarification of any matters in submissions.

How to make a submission

Release of information

MBIE may upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to requests under the *Official Information Act 1982*. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the *Official Information Act 1982*.

Private information

The *Privacy Act 2020* establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Submitter information

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

A. About you

Name: New Zealand Institute of Architects Incorporated

Email address: thalepennington@nzia.co.nz

B. Are you happy for MBIE to contact you if we have questions about your submission?

Yes No

C. Are you making this submission on behalf of a business or organisation?

Yes No

If yes, please tell us the title of your company/organisation.

Te Kāhui Whaihanga New Zealand Institute of Architects

D. The best way to describe your role is:

- Building Consent Authority Industry organisation (please specify below)
 Business Individual
 Other (please specify below)

Please specify here.

Professional body supporting architects, a high-quality built environment and New Zealand architecture

E. If you represent a Business the best way to describe it is:

- Designer/ Architect Builder
 Sub-contractor Engineer
 Developer Other (please specify below)

Submitter information

F. If you are an individual the best way to describe you is:

- | | |
|---|---|
| <input type="checkbox"/> Designer/ Architect | <input type="checkbox"/> Builder |
| <input type="checkbox"/> Sub-contractor | <input type="checkbox"/> Engineer |
| <input type="checkbox"/> Building Consent Officer | <input type="checkbox"/> Developer |
| <input type="checkbox"/> Homeowner | <input type="checkbox"/> Other (please specify below) |

G. Privacy information

- The *Privacy Act 2020* applies to submissions. Please tick the box if you do **not** wish your name or other personal information to be included in any information about submissions that MBIE may publish.
- MBIE may upload submissions or a summary of submissions received to MBIE's website at www.mbie.govt.nz. If you do **not** want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below:

H. Confidential information

- 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.

If you have ticked this box, please tell us what parts of your submission are to be kept confidential.

Section 1: Introduction and strategic context

Building consent systems aim to provide assurance that buildings are healthy, durable and safe. Government intervention is typically directed at addressing the following problems that can occur in the building market:

Information gaps: many building owners and other users of buildings have insufficient knowledge or skill to assess the quality of building design or building work, or properly identify and manage risk.

Risk of harm: protecting building owners and other users from the risk of serious harm that could arise from poor design or building work.

Cost of defects: building defects can be very expensive to repair once work is completed. Buildings have a long life and defects may show up long after construction. It can be difficult for an owner to determine who is at fault and obtain redress.

Questions for the consultation

1. What do you think the primary focus of the building consent system should be?

Te Kāhui Whaihanga New Zealand Institute of Architects (**Institute**) thinks the primary focus of the building consent system should be the granting of a building consent and a code of compliance certificate. The granting of a building consent confirms to the building owner that the proposed building work meets the minimum requirements of the New Zealand Building Code (**Building Code**) and when the building work is completed, the granting of the code of compliance certificate confirms the work that has been built, meets the Building Code. This process should continue to be operated and overseen by the government to maintain its independence regardless of whether any proposed changes involve a greater use of third parties.

The building consent system should ensure:

- Value for money – process, roles, responsibilities
- Consistency in systems used and decisions made
- The ‘right people are doing the right work’
- Clear accountability and responsibilities for all parties – client, BCA, designer, manufacturers, regulator, independent reviews/assurance, builder/contractor
- Delivering and operating a performance-based system

The role of government in the building process varies around the world:

- Some countries delegate specific roles to private third parties, such as the review of plans, conducting risk assessments of projects or carrying out inspections during construction.
- Australia allows private building surveyors to directly oversee building design and inspection.
- Nearly all countries surveyed by the World Bank Doing Business report allow private third-party inspections. However, the task of issuing the final permit (the equivalent of the code compliance certificate) remains largely the responsibility of local authorities.

Section 1: Introduction and strategic context

2. What role should government have in providing assurance that buildings are healthy, safe and durable?

The role of the government in providing assurance that buildings are healthy, safe and durable is to protect consumers by ensuring:

- The building code and material certifications meet a minimum standard and are of sufficient quality to protect the health and safety of the homeowner and public and be implemented through the building consenting process.
- A single and consistent digital portal for the consenting system.
- The minimum performance standards of the building code deliver healthy, safe and durable buildings.
- The professionalism and minimum credentials of roles and accountabilities within the consenting system are robustly set, maintained and overseen, including prompt action, including communication and engagement with industry where risks or system failures are identified.
- Having regulatory responsibility to ensure that buildings are constructed in accordance with the approved building consent documentation. This may only be tenable for councils (and consultants) where there is proportionate liability as the councils and other parties should not take the burden of client choice (e.g., low bid tenders and subsequent cost cutting, inappropriate substitutions, poor workmanship, or insolvency of construction companies).

3. Are there any building consent functions that could be delegated to or provided by another party?

Yes

No

Not sure

If so, please explain your response.

Various building consent functions could be delegated to or provided by other parties; however, this was shown to be unsuccessful with independent certifiers. It is not viable for others to provide services where joint and several liability may attach to their services, which in effect, requires them to insure against the negligent performance of third parties or companies who deliberately choose to structure their business to minimise any liability beyond the completion of the project.

Section 2: Desirable outcomes

MBIE has identified four critical outcomes that the building consent system should primarily seek to achieve.

Outcome 1: Efficiency. The building consent system is efficient in providing assurance to building owners and users. It is risk-based, has proportionate compliance costs, and allows for innovation.

Outcome 2: Roles and responsibilities. Roles and responsibilities are clear and based on participants’ respective ability to identify and manage risks. All participants across the system have a good understanding of their own responsibilities and the extent they can rely on others for assurance.

Outcome 3: Continuous improvement. The system is responsive, flexible and agile, and seeks to continually improve through performance and system monitoring, good information flows and feedback loops.

Outcome 4: Regulatory requirements and decisions. Regulatory requirements are clear, and decisions are robust, predictable, transparent and broadly understood.

Questions for the consultation

4. Do you agree these four critical outcomes are necessary to ensure the building consent system provides high levels of assurance to the public that buildings are healthy, safe and durable?

Yes Somewhat No Not sure

Please explain your views.

The Institute agrees that the building consent system must be efficient (offer value for money), have clear roles and responsibilities, be under continuous improvement and have robust and predictable regulatory decisions. The review should also ensure outcomes that are:

- Digitally supported and enabled
- Efficiency **AND** Value for money
- Culture and behaviours in support of a performance-based system (design and operation)
- Alignment with procurement practices and modern methods of construction

Many of these outcomes are difficult to achieve in the current and any future building consent system given the current joint and several liability regime. For example:

- Various parties may have proportionate compliance costs, but it does not have proportionate liability, so certain parties who have deep pockets or longevity and insurance policies may be required to take on unfair and untenable risks. This also discourages innovation in design or construction, unless allowed for within product certification and code compliance. Consultants will not be encouraged to use innovative methods or materials, nor the council to consent to them as this increases the risk of defects by inexperienced builders for nonstandard

Section 2: Desirable outcomes

construction implementation, and disproportionate risk where failure under the joint and several liability regime.

- Again, while roles and responsibilities may be allocated and shared, the risks are disproportionately allocated under the joint and several liability regime. Allocation of roles and responsibilities should be reflected in likewise proportionate liability for performing those roles and taking on the proportionate responsibility.
- There is no incentive for improvement where liability is not proportionate, as the damages for defective work are not necessarily attributed to the responsible party under the joint and several liability regime.

5. Are there any other outcomes that are critical to ensure buildings are healthy, safe and durable?

Yes

No

Not sure

Please explain your views.

A council can only assess a building consent against the current legislation, and it is not the role of the council to create its own criteria outside of this legislation on what it thinks is required to ensure a building is healthier, safer, and more durable. The drafting of legislation to achieve a healthier, safer, and more durable buildings is the role of parliament, however parliament has been unable to keep pace with knowledge, research and improvements needed by the New Zealand system.

For example, despite the overwhelming health benefits of improving a home's thermal performance and indoor air quality is continually ignored. A BRANZ survey in 2015 found 40 percent of homes in New Zealand were considered damp and mouldy and in 2017 the OECD found New Zealand's homes are poorly constructed and heated, and our standards are considered less stringent than those of comparable OECD countries. The latest BRANZ research released in May 2021 has found that 60 percent of the 2000 children surveyed who were living in homes that had poor air quality or where it was either too cold or too humid, experienced poor health.

Despite this, a 6-month delay of the date when the new 5th edition of the Acceptable Solution H1/AS1 and Verification Method H1/VM1 takes over from the 4th edition has been agreed. This delay continues to allow the use of lower levels of thermal insulation in housing until the 1st of May 2023. This position is difficult to understand when Kāinga Ora, the government's public housing, asset owner, developer and programme delivery agent has agreed to implement the improved H1/VM1 standards as per the original November 2022. The Institute strongly believes that the government must independently of any changes to the building consent process, look at improving the building code such that New Zealanders do have access to healthier, safer and more durable buildings.

As noted in the response to question 4, the apportionment of roles and responsibilities by all parties in the construction process should be reflected in proportionate liability for fault to ensure that each party remains responsible and liable for their part in providing safe, robust and durable buildings that are healthy, safe and durable.

6. How well is the system currently performing against the four identified outcomes? Please explain your views.

Section 2: Desirable outcomes

	Poor	Fair	Good	Very Good	Excellent
Efficiency	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roles and responsibilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Continuous improvement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regulatory requirements and decisions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

Some of the supporting reasons for the Institute’s views are:

- consenting timeframes are often incredibly long across many BCAs, despite it being a user-pays system.
- the BCA accreditation requirements and operation are no longer fit for purpose.
- there is limited consistency in system requirements, expectations, documentation, response timeframes and interpretation of provisions (e.g., minor amendment v variation, ‘as reasonably practicable’, drawing scales, sets and requirements, RFI – rationale for request and consistent terminology).
- mismatch/inconsistent expectations of designers in consenting system design and administration – licensed building practitioners (design) and registered architects regarding professionalism, initial and ongoing competence, continuing professional development and disciplinary processes.
- risk and complexity of building work is not aligned to minimum design professional requirements. For example, all commercial buildings should be undertaken by a registered architect.
- lack of specialist skills and knowledge nation-wide for complex, high-risk buildings.
- significant costs transferred to clients due to decisions of individuals/BCAs and/or new requirements of individuals/BCAs (e.g., fire facade engineering reports, peer reviewed, shop-drawings of building envelopes).
- MBIE ‘determinations’ are expensive, slow and offer ad hoc project responses – rather than system-wide improvements.

Section 3: Issues with the current system

MBIE has identified five issues that are constraining the ability of the system to achieve the desirable outcomes expected of this system. In turn, this compromises the ability of the building consent system to provide assurance that building work will be ‘done right the first time’, thereby ensuring that buildings are well-made, healthy, durable and safe.

Many of these issues are complex and long-standing. While these issues are presented separately, they are intrinsically related and collectively affect the performance of the overall system.

We welcome your feedback on these issues and other any other issues. In particular, what is the cause of these issues, what are their impacts, how could a better consent system address these, and what would that system look like?

Issue 1: Roles, responsibilities and accountability

Roles and responsibilities across the system are not always well understood, accepted, applied or consistently enforced. There is sometimes an over-reliance on building consent authorities to provide assurance of compliance with the Building Code.

Questions for the consultation

7. How well understood are roles and responsibilities across the sector?

Very poorly understood	Somewhat understood	Understood	Well understood	Very well understood
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your views.

The role of the building consent authority (BCA) is set out in the Building Code (s12) and its roles and responsibility are well understood by those operating within the construction industry.

8. Does the building consent system allocate responsibility appropriately to those best able to identify and manage the associated risks?

Yes Somewhat No Not sure

Please explain your views.

Even where tasks are allocated responsibly to those best able to identify and manage associated risks, this methodology is fundamentally flawed where responsibility and liability is not also allocated in a proportionate manner. If parties may not be deemed liable for the quality of their role or work, there is no incentive to manage risks and perform accordingly.

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

9. Does the building consent system provide sufficient incentives for each party to meet their responsibilities and 'get it right the first time'?

Yes Somewhat No Not sure

Please explain your views.

The current building consent system does not provide sufficient incentives for each party to meet their responsibilities, because where a party may not be held liable for their work due to the joint and several liability regime, there is little incentive to "get it right the first time". Uninsured or potentially insolvent parties are of little interest to a party/lawyer pursuing a claim. Unless proportionate liability is the default position there is no incentive for parties to take out insurance were not required nor to maintain sufficient assets to fund any future defective work.

10. Should other parts of the sector (outside of building consent authorities) have a greater role in providing assurance that buildings are safe, durable and healthy? If yes, what would the risks and mitigations be?

Yes No Not sure

Please explain your views.

Other parties within the construction sector should have a greater role in providing assurance that buildings are safe, durable, and healthy, however the current system is unlikely to change where these other parties may be held responsible for defective work for example, that they have not caused because of joint and several liability. It would simply be unviable for these parties as already, consultants (e.g., architects, structural and mechanical engineers) already bear a significant and disproportionate risk in providing their services.

It is unfortunate that the risk, liability, and insurance paper provided as part of the consultation makes several conclusions based on the analysis of legal cases only, which are few. Given the expense involved in court cases and the high percentage of claims that are settled by insurers a true understanding of the magnitude of claims, issues and matters of professional indemnity is not appropriately acknowledged or reflected in the paper and analysis. Overseas experiences (e.g., availability, limits, exclusions and costs) of professional indemnity insurance should be more thoroughly considered in the review and the expectations of safe, durable and healthy buildings.

If yes, what would the risks and mitigations be?

Introduction of proportionate liability under the Building Act for construction services. Without proportionate liability there is no level playing field.

11. Are some parts of the sector more prepared than others to take on more of the responsibility for providing assurance?

Yes No Not sure

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

Please explain your views.

Yes, there are, but not when there is joint and several liability which requires only some parties to the procurement process to have insurance or security e.g., ratepayers to underwrite damages due to defects by other parties. Further individuals are often required to sign consenting submissions e.g., RBW, where in fact the design is not done by one party but a team of designers. Professional Indemnity Insurance is taken out for a practice, as it is with the practice the risk sits for the project. The consent should be signed by this practice (or for and on behalf off by an employee) so the services provided on the project remain a practice responsibility – not that of an individual who may not remain insured under the practice insurance where no longer an employee or played only a minor role in the practice team.

Section 3: Issues with the current system

Issue 2: Capacity and capability

Section 3: Issues with the current system

Issue 2: Capacity and capability

Building consent authorities face capacity and capability constraints in dealing with an increased volume and complexity of building work. Sector workforce capacity and capability constraints can also undermine the performance of the system.

Questions for the consultation

12.How significant are building consent authority capacity and capability constraints on the performance of the system?

Not significant at all	Somewhat significant	Significant	Quite Significant	Very significant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your views.

Under s48(1A)(b) of the Building Act, the BCA must grant the building consent application within 20 working days after receipt of the building consent application. This 20-day timeframe establishes an unrealistic expectation for all project types and complexities, and subsequently incentivises behaviours which seek delay. The volume of building consent applications ebbs and flows and the target set by government (20 working days) is unrealistic as it is not possible to increase (or decrease) the number of building consent officers in sufficient time to respond to demand. A potential solution could be a tiered model whereby the BCA must grant a project of 'x' value within 20 working days, a project of 'y' value within 40 working days and a project of 'z' value within 60 working days, etc.

What are the most significant impacts of building consent authority capability and capacity constraints on the performance of the building consent system? Please explain your views?

The current system cannot respond to the demand, and this is evidenced by the continued inability of the building consent authorities across the country to achieve the 20-day timeframe set out in the Building Act. For example, in Christchurch this year, it has been taking 60 working days for the BCA to accept a building consent application and this is before the building consent is passed to a building consent officer for review which is likely to add another 20 to 30 working days. The impact is clients, consultants and contractors do not know when construction can commence on site which is likely to impact upon the client by incurring holding costs on a project that has been stopped by the BCA.

13. How significant are sector workforce capacity and capability constraints on the performance of the system?

Section 3: Issues with the current system

Issue 2: Capacity and capability

Not significant at all	Somewhat significant	Significant	Quite Significant	Very significant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your views.

Refer to the response provided in Question 12.

What are the most significant impacts of sector workforce capability and capacity constraints on the performance of the building consent system? Please explain your views.

Refer to the response provided in Question 12.

14. How could the impacts of capacity and capability constraints be mitigated?

The capacity and capability constraints are likely caused by a lack of building consent officers, and this could be mitigated by increasing the number of building consent officers who are trained each year. While it will be impossible to match supply with demand any building consent officers who are not required in one BCA could be outsourced to another BCA to help meet their demand.

Another would be to create nation-wide teams of expertise and experience in key building types – multi-unit residential, complex public buildings – hospitals, galleries, corrections, etc.

15. Are there any barriers to a more efficient use of technical expertise across the system?

Yes No Not sure

Please tell us what these barriers might be.

There are some very competent building consent officers who have significant expertise in their field and while this knowledge may be shared with their peers internally, it is unlikely their expertise is shared with other building consent authorities due to the independence of each BCA within the national system. Some of the other barriers include:

- limited feedback and continuous improvement opportunities in the system design – BCA, client, professional services, builders
- differing BCA technology systems and platforms
- differing cultures and behaviours of BCAs
- differing fees scales across BCAs

Section 3: Issues with the current system

Issue 3: System agility

Section 3: Issues with the current system

Issue 3: System agility

All consents go through the same basic process, which is not always responsive to the level of risk, complexity of the building work, or type of project. The current system does not always deal well with new or innovative practices or products or the design-and-build approach. Nor is it sufficiently responsive to the building needs and aspirations of Māori.

Questions for the consultation

16. Do you agree that the consent system is not sufficiently agile for the way in which we design, procure and build today and in the future?

Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

- System is often operated as a prescriptive – ‘acceptable solutions’ rather than performance
- Lack of alignment between procurement practices and modern methods of construction

If you agree, how does rigidity in the building consent system impact consenting outcomes and productivity in the building sector?

- Acceptable solutions often unduly preferred and prioritised
- ‘Novel’ barriers are often introduced – new reports, certificates or documentation required

17. What changes would you suggest to the building consent system to make it more agile?

The following changes would help to make the building consent system more agile:

- If proportionate liability was introduced in the construction sector, designers and consultants might be more innovative in use of design and materials, mitigating issues re supply chains.
- Regular communication between BCAs and the architectural community on common RFI issues, commonly failed areas of inspection and/or upcoming changes that will affect building consent applications (e.g., floodplain mapping, new water supply connections, public drainage permits and drawings, etc.)

Section 3: Issues with the current system

Issue 3: System agility

- Accessibility of BCAs. Many people expressed frustration at not having direct contacts identified on RFIs nor the opportunity to engage 'briefly' and directly with BCAs on projects pre-lodgement and in response to RFIs.
- Requests for Information (RFIs). This is a common pain point in the process (e.g., issuing draft RFIs, BCAs available to discuss draft RFIs prior to issue, periodic release of RFIs rather than day-19, regular/ standard wording for RFIs, etc).
- Consistent nationwide online lodgement requirements. A variety of online portals exist, each with different requirements, levels of transparency and user experiences. A single portal would offer a sustainable investment opportunity for local government, and would require an ongoing commitment to development, user experience, robust data, efficiency, and productivity.
- Relevance of amendment vs minor variations. Given the narrow definition of 'minor variations', is there merit in having 'amendments only' to simplify the issues for all parties and reduce delays.
- BCA accreditation process and value of IANZ accreditation. Due to differing interpretations of the BCA role, and internal policies, procedures and metrics, there is a widening gap in consistency, certainty, and affordability in the system, and in operating processes and practices.
- Culture and behaviour are hugely influential, across all parties, impacts on the on the building consenting experience, quality of applications and assessments, and the outcomes delivered (RFIs, issued responses, inspections, documentation and compliance pathway, practical and pragmatic solutions, etc).
- Access and availability of resources, recognition that there is a competitive market for skills and talent which will only intensify with additional consenting authorities being established (e.g., Kāinga Ora). Need to incentivise sharing and collaborative frameworks of technical resources matched to complexity of project compliance pathways.
- 20-day timeframe establishes an unrealistic expectation for all project types and complexities, and subsequently incentivises behaviours which seek 'delay'. There should be defined set of reasons on what can trigger 'stopping the clock'.
- Potential client pathways, an opportunity to develop and provide 'user pays' pathways for clients in a hurry for economic reasons (e.g., availability of piling rig).
- Consistency of consenting documentation. Each of the participating BCAs has their own checklist, rather than have a checklist for each BCA, a single nationwide checklist for residential and commercial projects should exist

Section 3: Issues with the current system

Issue 3: System agility

18. Does the current building consent process constrain or limit the use of traditional Māori methods of construction?

- Yes Somewhat No Not sure

Please explain your views.

This is important kōrero that should be undertaken with knowledgeable practitioners.

19. Does the current building consent process add constraints to the development of Māori-owned land that other landowners don't face?

- Yes Somewhat No Not sure

Please explain your views.

This is important kōrero that should be undertaken with knowledgeable practitioners.

20. What Māori perspective or set of values do building consent authorities need to take into account when considering and processing consent applications for iwi/hapū/Māori-led building and construction projects?

This is important kōrero that should be undertaken with knowledgeable practitioners.

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

The performance of the system is insufficiently monitored, and information flows are poor. MBIE is not yet the strong central regulator that was contemplated in the original system design.

Questions for the consultation

21. What can be done to improve monitoring of the building consent system?

Centralised consistent quality assurance processes, standardisation of information requests, and levels of certification of expertise of consenting authority personnel related to different levels of complexity of buildings, not unlike the LBP model.

22. What information or data relating to the consenting system performance would you find useful?

The following performance information would be useful:

- Real time data for each territorial authority on the process time for consents, including lodgement person – owner, builder, designer, architect.
- The types of questions (RFI's) that are being asked regularly for each building type (residential, light industrial, commercial etc.) and reasons by building consents declined.
- The costs of the consent applications by building type
- The average number of days the clock is stopped for various building types and for what specified reason
- The percentage of consents approved – built and number of days consent and build inspection
- Substitution performance decisions
- Inspection failures by building type

23. Are you aware of any barriers to collecting and sharing information across the sector?

Yes

No

Not sure

Please explain your views.

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

24. Are you aware of additional data and information sources that we could be using to inform our understanding of the system performance?

Yes

No

Please explain your views.

Regular engagement with professional bodies – is essential to understand the real-time issues and impacts on projects and the system.

25. Is there anything else MBIE could do to better meet its system oversight and stewardship responsibilities?

Listen to the feedback and proactively engage with the construction industry on any future changes.

An opportunity for MBIE is to rethink the review approach – would it be preferable to approach this review from a design thinking perspective rather than a traditional policy first principles review.

Section 3: Issues with the current system

Issue 5: Fragmented implementation

The processing of building consent applications is devolved to territorial authorities who are building consent authorities, which has led to variability and unpredictability in the consent process and its outcomes. This fragmentation adds to the overall costs of the system due to duplication and variable processes, tools and functions being implemented across building consent authorities, and difficulties maintaining a professional workforce.

Questions for the consultation

26. Building consent processing is devolved and carried out by individual territorial authorities under the current system. How does this structure affect the consenting performance and building outcomes?

The devolved system does not treat the same building consent application uniformly. For example, the same application in one territorial authority may attract very few RFI's and in another territorial authority, the application may attract a significant number of RFI's. In Christchurch over the past year, the time from when the application (residential housing) has been submitted and before a building consent officer has been assigned to the project often reaches sixty working days, yet in another territory authority, the consent has been accepted, assessed, and granted in less than forty working days.

27. What aspects of the current consenting system structure work well?

The BCA in Christchurch has a system whereby a case manager is assigned to an individual project (typically the larger commercial projects). The case manager acts as a conduit between the various building consent officers and the owner/owner's representative (typically the architect). The process facilitated a more efficient RFI process, whereby the questions from each building consent officer were sent to the architect as soon as they were asked, rather than the council waiting for all the building consent officers to ask their questions and one consolidated RFI list issued. This process allows a greater degree of communication to occur which in turn fosters a more collaborative approach. This case manager is charged out on an hourly basis.

28. What aspects of the current consenting system structure do not work well?

The following aspects of the current building consent system structure do not work well:

- Delays in processing consents (it is extremely rare to be granted a building consent within the statutory timeframe (20 working days). In Christchurch this year, applications were taking 60 working days to be accepted (the first step of the consenting process).

General questions

- The constant need to chase the building consent officers for an update on the building consent when the statutory timeframe has expired.
- The building consent officers appear to be very quick at requesting information (RFI) to stop the consent being granted within the statutory time (20 working days).
- Documents in the consent applications not being read properly.
- Excessive requests for information.
- Little to no consistency between consenting officers when the applications are identical (the same residential house, but on different site). This comment also applies to similar consent applications, but with different territorial authorities.
- Some territorial authorities will only accept their interpretation of a code for example, even when this runs contrary to advice received from the consultant team and peer reviewed.
- The assessment of the building consents is often outsourced, and it is not uncommon for questions to be asked (RFI) that are not relevant to the project being consented.
- The culture and behaviours of BCAs often contrary to a performance-based approach.
- Some consenting officers do not like some of the Acceptable Solutions in E2 and will not grant a consent until the acceptable solution has been amended.
- The consenting system does not mirror the procurement process. For example, shop drawings for the façade or for the seismic restraint of services needs to be submitted with the building consent application, however, the shop drawings cannot be prepared until the principal has engaged a contractor and the contractor engaged a subcontractor to carry out the works. The procurement process particularly for the procurement of subtrades, rarely occurs before the building consent application is submitted for consent. This then means proforma drawings are prepared for the building consent (which cannot be built from) which are then replaced with the actual shop drawings produced several months later.

29. How does the current devolved consenting system structure impact consent applicants and building owners?

The current devolved consenting system impacts on consent applications and building owners because very little consistency exists between the territorial authorities that span the length of the country. The differences begin when the consent is applied for with some councils requiring the application to be made online (electronically) or in person with a hardcopy application. The timeframe for granting the application varies significantly as does the quality of the consenting officers. Some building consents are outsourced to third party companies with most assessed internally which impacts on the uniformity of the assessment process, for example, the same RFI response to the same question can be rejected in one region and accepted in another.

30. What improvements or changes are required to the current consenting system structure to reduce fragmentation in implementation and deliver better consenting outcomes?

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Some improvements or changes to the current consenting system that would reduce the fragmentation and help implement better consenting outcomes include:

- A nationwide online lodgement system. At present a variety of online portals exist, each with different requirements, levels of transparency and user experiences.
- A building consent checklist for both residential and commercial projects which is uniform across the various building consent authorities. At present, each BCA has their own building consent checklist, and they are all different. Some building consent authorities' checklists are freely available, and others are not made available at all.
- Cultures and behaviours to operate a performance-based system.
- Regular engagement with professional bodies and industry
- New/additional requirements need to be approved by an independent panel – rather than each BCA developing bespoke information requirements.

31. Is there any duplication or overlap between the building consent and resource consent processes, or any other legislation?

- Yes No Not sure

Please explain your views, including any impacts.

32. How could the relationship between the building consent and resource management systems be improved?

If a project requires a resource consent, any conditions that are required to be discharged before work commences on site should be checked where applicable by the building consent officer prior to the building consent being granted.

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33. Do you have any other comments?

It is unclear how crown agencies such as Kāinga Ora, who have set up parallel consenting authorities such as Consentium which may not operate in perpetuity, will be responsible where their decisions or services have been defective. Does the liability fall back on local consenting authorities and the private sector or is it indemnified by the government? This is of major concern under a joint and several liability regime whether the government consenting authority that is no longer in existence will shed liability on other planning authorities or any other parties still in

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existence i.e., “last man standing”. It seems iniquitous that the private consulting or construction sector should underwrite liability of the default of a government department authority, no longer in existence, where its consenting services have been defective.

The review questions have focused on ‘tweaks’ to the existing system. Other questions that need to be considered are:

- Is there a need for a Built Environment Commissioner?
- How can the system be made more productive and offer greater value for money?
- Where are the emerging risks for the construction sector and how will they be addressed in any future system?
- What are the costs and benefits of change? Who bears the cost of change? Are the change costs reasonable and affordable?
- Where should building consent fees be invested?
- Is there enough separation in the regulator’s roles and responsibilities?
- How does a future system remain current and operated as designed?