

# Consultation submission form

REVIEW OF THE BUILDING CONSENT SYSTEM: OPTIONS PAPER

June 2023



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## How to make a submission

The Government is undertaking 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

MBIE seeks written submissions on this options paper by 7 August 2023.

**Your submission may respond to any or all of the questions in this options paper.** Please provide comments and reasons explaining your choices. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Your feedback will help to inform decisions on options that should be progressed in the next phase of the review, the detailed design of those options, and valuable feedback on options that require further consideration.

You can submit this form by 5pm, Monday 7<sup>th</sup> August 2023 by:

- Sending your submission as a **Microsoft Word document** to [building@mbie.govt.nz](mailto: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

Please include your contact details in the cover letter or e-mail accompanying your submission.

*Alternatively, you can respond to the questions by using this [online survey form](#).*

Please direct any questions that you have in relation to the submissions process to [building@mbie.govt.nz](mailto:building@mbie.govt.nz).

## 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.

### Release of submissions on MBIE website

MBIE may upload copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz).

MBIE will consider you to have consented to uploading your submission unless you **clearly specify** otherwise in question E, below.

If there are *specific* pieces of information within your submission that you do not wish us to publish for privacy or commercial reasons, please **clearly mark** this in your submission.

### Release of information under the Official Information Act

The *Official Information Act 1982* 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.

In addition to the instructions above on releasing submissions on the MBIE website, please explain clearly in question E which parts you consider should be withheld from official information act requests, and your reasons (for example, privacy or commercial sensitivity).

MBIE will take your reasons into account 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 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

Please 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: Malcolm Fleming

Organisation and role (if submitting on behalf of a company or organisation) New Zealand Certified Builders Association (NZCB)

Email address: malcolm@nzcb.nz

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

Yes  No

**C.** Please clearly indicate if you are making this submission as an individual, or on behalf of a company or organisation.

Individual  Company/Organisation

**D.** The best way to describe you or your organisation is:

- Designer/ Architect  Builder
- Sub-contractor  Engineer
- Building Consent Officer/Authority  Developer
- Homeowner  Business (please specify industry below)
- Industry organisation (please specify below)
- Other (please specify below)

## Consultation questions

### E. Privacy and official information:

The *Privacy Act 2020* and the *Official Information Act 1982* apply to all submissions received by MBIE. Please note that submissions from public sector organisations cannot be treated as private 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 or release under the *Official Information Act 1982*.
- MBIE may publish or release your submission on MBIE's website or through an Official Information Act request. If you do **not** want your submission or specific parts of your submission to be released, please tick the box and provide an explanation below of which parts of your submission should be withheld from release:

Insert reasoning here and indicate which parts of your submission should be withheld:

*[E.g. I do not wish for part/all of my submission to be release because of privacy or commercial sensitivity]*

## Consultation questions

### Chapter 2 – Promoting competition in the building regulatory system

The Commerce Commission recommends that promoting competition be included as an objective in the building regulatory system, to be evaluated alongside safety, health and durability—without compromising those essential objectives.

Chapter 2 presents potential regulatory and non-regulatory options that would promote and give competition more prominence in the building regulatory system.

MBIE's preferred option is to progress options 2 (**introduce competition as a regulatory principle**) and 4 (**issue guidance on promoting competition**) together as a package.

### **Questions about promoting competition:**

**1.** What options are more likely to promote and give competition more prominence in the building regulatory system and its decision-making, given the costs and risks?

NZCB agrees that more competition should be encouraged, though does not support the proposal to use the regulatory process to promote competition, as neither the MBIE Building Systems Performance team or Building Consent Authorities have competence in competitive structures and practices. There is a risk that in doing so, MBIE and the BCAs will be diverted from their core function of administering New Zealand's performance-based Building Code

# Consultation questions

2. Are there other regulatory and non-regulatory options that would promote and give competition more prominence in the building regulatory system and its decision-making?

NZCB supports non-regulatory approaches that make it easier for products that are proven in international markets (and that can be adapted to NZ's unique conditions such as UV levels) to be specified in NZ. Having a broader range of 'like' products that designers and builders can choose from, and which provide appropriate confidence via third-party accreditation, will drive increased competition. The proposal to incorporate competition into the regulatory process is not supported.

3. What other options or potential combinations would work together to give effect to competition as an objective in the building regulatory system?

The central aim should be to develop a broad range of products or systems that designers and builders can specify or propose in confidence that the BCA's will accept them. It is suggested that MBIE reference product standards in the Acceptable Solution as this will provide for product homogeneity and gives manufacturers and importers clear technical guidelines for the product/system to meet. If the product/system meets the Product Standard and carries certification via CodeMark or other MBIE recognised certifiers, then it should be able to be specified or be proposed for substitution.

4. Do you agree with MBIE's preferred approach to progress options 2 (introduce competition as a regulatory principle) and 4 (issue guidance on promoting competition) as a package?

- Yes                       Somewhat                       No                       Not sure

Please explain your views.

No, introducing competition (as proposed in the options) undermines the purpose and principles of the Building Act and is not supported. NZCB agrees that the range of products and systems that can be specified in NZ needs to be expanded, to address the very real issue of building becoming increasingly unaffordable. It is suggested that the regulator's role is to ensure that alternative product, which meet strict third-party accreditation that reflects NZ conditions (we do not favour NZ becoming a dumping ground for low quality product or product

## Chapter 3 – Removing impediments to product substitution and variations

The Commerce Commission considered that making product substitution easier would promote competition by allowing more changes to products after consent had been granted.

Chapter 3 presents options to help make the process for product substitutions and variations to consented building work more effective and efficient, and to increase flexibility in the MultiProof scheme.

## Consultation questions

MBIE's preferred approach is to progress all of the following options:

### Product Substitution:

- Update **guidance** on product substitution.
- Modify the **building consent forms** to expressly allow alternative brands or products.
- Modify the **definition of minor variations** under regulations.

### MultiProof scheme:

- Issue **guidance** and/or educational material.
- Make new regulations to **define 'minor customisation'** for MultiProof.

### *Questions about product substitutions, variations and MultiProof*

5. Do you agree with MBIE's preferred approach to progress all the options to improve product substitutions and variations (including for MultiProof) together as a package?

Yes                       Somewhat                       No                       Not sure

Please explain your views.

Option 3 (modifying the definition of a minor variation) represents changing the regulations and is the preferred approach. It provides clarity to designers, builders, suppliers/manufacturers, while reducing risk to BCAS, who are understandably, very risk adverse.

For builders specifically, builders who substitute products without a regulatory framework in place would run the risk of picking-up Designer liability, which NZCB would not wish to see. Option 1's Guidance (Option 1) sits outside of the role of the Regulator, while providing for substitution by changing the Building Consent Form (Option 2) isn't logical, the appropriate place for place for detailing product is on the plans and specifications.

6. What impacts will the options regarding product substitution and variations to consents have? What are the risks with these options and how should these be managed?

To avoid the risk associated when it transpires that a substituted product doesn't perform as the specified product would have (and the unintended consequences and costs that creates), NZCB holds the view that any substitution be signed off by client/designer/builder and that substituted products hold third-party certification that confirms that the product will perform in the NZ environment to the same extent as the specified product would have. There is also a risk that substitution undermines implied warranties.



## Consultation questions

7. What impacts will the options regarding MultiProof have? What are the risks with these options and how should these be managed?

Option 1 (Guidance) is unlikely to be impactful, while a Regulatory approach (Option 2) that proposes to allow for minor customisation, would make MultiProof more appealing to the NZ Market where clients typically make amendments to standard designs offered by Group Home Builders. Too much flexibility provided for MultiProof, would shift the risk back onto the BCA, therefore a standard consent would be the appropriate approach.

Regulatory approach preferred noting previous caveats about certified products via CodeMark (or similar) and ability to cope with NZ conditions.

8. Are there any other options to improve the system and make product substitutions and variations to consents, and MultiProof, more effective and efficient?

Dual specification is an alternative approach for MBIE to explore if it provides a pathway to compliance. This would preserve implied warranties (as they relate to each option specified), while providing the builder with two defined product pathways, both of which do not carry risk to them or, the designer, the client, or the BCA.

For MultiProof specifically, allow for the same design to be mirrored (to relate to a site for which the usual layout doesn't work) or a change in roofing type (gable to skillion or vice versa).

## Chapter 4 – Strengthening roles and responsibilities

Chapter 4 presents options to improve participants' understanding of their roles and responsibilities, address regulatory gaps and ensure participants can be held to account, and clarify the role of producer statements. Together, these options will help ensure risks are appropriately identified and managed and that building work is done right first time.

MBIE's preferred approach is to progress the following options:

- Publish **guidance** to improve system participants' understanding of their roles and responsibilities.
- Require all designers to provide a **declaration of design compliance** to strengthen responsibilities of designers.

### *Questions about strengthening roles and responsibilities*

9. Do you agree with MBIE's preferred approach to progress options 1 (guidance) and 2 (declaration of design compliance requirement) as a package?

Yes

Somewhat

No

Not sure

Please explain your views.

Option 2 (Regulatory) that requires designers to provide a declaration of design compliance is supported, and a suggestion that to be an LBP Designer needs to hold stipulated levels of qualifications/training to be able to sign design declarations.

## Consultation questions

As a support to the Regulatory option, the Guidance proposal (Option 1) is also supported.

**10.** Should there be a requirement for a person to be responsible for managing the sequencing and coordination of building work on site (option 3)?

Yes  No  Not sure

Please explain your views.

Yes, agreement to have an entity (entity vs. an individual to avoid unreasonable personal liability being applied) be responsible for managing the sequencing and coordination of building work on site, and that the responsibly sits with the main contractor (building company), with those who demonstrate high levels of capability, being incentivised (as a company) via a preferential consenting and/or inspection process.

The person undertaking the supervision on behalf of the entity, would need to hold an agreed level of competency. NZCB notes that such a level of competency exists within the LBP framework, Site Licence. That this existing LBP Class is inoperative has led to some disappointment being expressed by those who hold it, perhaps the proposed Option 3 provides the opportunity to activate Site Licence.

**11.** What are the risks with these options and how should these be managed?

There would be a risk that there are not enough suitably qualified people (LBP Site Licence suggested) for companies to employ to undertake the required site supervision and sequencing work. This could be mitigated by a staged introduction to allow time for people to obtain the required qualification and to ensure that the qualification/benchmark required recognises trade qualified carpenters with appropriate site/project experience, as LBP Site Licence\* does. Building up this level of experience on all building sites is seen as being very positive.

\*Is it envisaged by MBIE that a Site Licence is required to run a single site, or to run multiple sites?

**12.** Do you agree the declaration of design compliance should be submitted by a person subject to competency assessments and complaints and disciplinary processes?

Yes  Somewhat  No  Not sure

Please explain your views.

Yes, NZCB supports proposal that design compliance should be submitted by a person subject to competency assessments and complaints and disciplinary processes, noting that design compliance needs to be underpinned by product compliance, for which the designer is responsible to obtain, though not for the product's performance.

## Consultation questions

**13.** What information should be provided in a declaration of design compliance? Would the detail and type of information required in Form2A (Certificate of design work) be sufficient?

The information provided in the Form 2A (Certificate of Design Work) provides a good starting point, though will need to be expanded upon to allow for the requirements of Building for Climate Change and other industry focuses/government imperatives as they emerge.

**14.** Should the declaration of design compliance replace the certificate of design work (for restricted building work)?

Yes

No

Not sure

Please explain your views.

NZCB supports less forms vs. more forms. Our interpretation of MBIEs questioning is that it is proposed that a new 'Declaration of Design Compliance' form incorporates the key elements of the existing 'Certificate of Design Work' form, with the detail and level of information provided in the existing form being carried over to the new form. That being the case (i.e., we don't end up with two forms), NZCB is supportive. The current Certificate of Design Work form has a good deal of alignment with the LBP scheme and disciplinary process, MBIE will need to ensure that this alignment is retained.

**15.** When might a design coordination statement be required? What should be the responsibilities and accountabilities of the person providing the design coordination statement?

Our reading is that the production of a 'Design Coordination Statement' aligns with Questions 10 and 11 and would be issued by the Main Contractor running a commercial construction site. That being the case, it is the Main Contractor (Builder) who would provide the statement, and that the statement is issued at the completion of the build, and that such an approach would apply to commercial projects, not residential. The statement would be provided the same time as a CCC is requested.

**16.** Should there be restrictions on who can carry out the on-site sequencing and coordination role? Would the site licence be sufficient to fulfil this function?

Restricted to an agreed LBP Licence Class, which NZCB believes already exists with LBP Site Licence, though the overall responsibility for the project lies with the company that employs the person with the LBP Site Licence. i.e., both the final Design Coordination Statement (Q15) would be signed by the Company and the LBP Site Licence holder.

## Consultation questions

**17.** What other options should be considered to clarify responsibilities and strengthen accountability?

NZCB advocates that the existing LBP Licence class be the qualification that is required for the person nominated by the main contractor to undertake on-site sequencing and coordination and that every construction/building company has an LBP Licence holder running each of their projects. In addition, it is proposed that building companies be licenced also i.e., LBP Company, so as to provide greater levels of consumer confidence and that the bar set for an LBP Company be higher than a LBP Practitioner (which in our view is set is too low).

### **Questions about producer statements**

MBIE's preferred approach is to progress the following option:

- Clarify the use of **producer statements** through non-prescriptive legislation and guidance.

**18.** Do you agree with MBIE's preferred approach to progress option 2 (non-prescriptive legislation and guidance)?

Yes                       Somewhat                       No                       Not sure

Please explain your views.

Agree with greater use of Producer Statements, with Option 3 (prescriptive regulation) preferred, as clarity around who can issue them and under what circumstances, will be essential. Regulations cover this, not Guidelines. Greater use of Producer Statements by manufacturers/suppliers and sub-trades will lead to greater site productivity via less waiting around for an engineer or building inspector to visit the site. Option 2 in combination with Option 3 would be supported.

**19.** What should be the purpose of producer statements and what weight should be given to them?

BCAs should not have to inspect every part of a project under construction, it is causing undue delay in the build process. The purpose of Producer Statements is to allow for an installer/manufacture to certify that the product that they take responsibility for has been installed in accordance with the specification and drawings that the BCA has consented. Liability for the Producer Statements sits with the company/individual that signs them and should carry considerable weight and liability.

## Consultation questions

20. Should there be restrictions on who can provide a producer statement?

Yes                       No                       Not sure

Please explain your views.

As it applies to trades, yes, restrictions to who can issue a Producer Statement should apply i.e., the person signing a Producer Statement must be trade qualified and suitably experienced or hold an appropriate tertiary qualification and be suitably experienced.

Manufacturers/suppliers less so when it involves a product or system, their nominated 'certifier' would have the authority to certify the product/system on behalf of the company.

21. What is the appropriate criteria to assess the reliability of producer statements?

The person issuing a Producer Statement needs to possess appropriate training and experience for workmanship, or to be appropriately authorised by their company for issuing of Producer Statements that relate to products or systems. Monitoring of complex design elements should be inspected by the designer, most typically an engineer.

22. What other risks need to be managed?

For BCAs to rely on Producer Statements requires the Courts to hold the issuer of a Producer Statement to account, which has not always been the case to date, notably with the 2022 Bella Vista case. If BCAs do not believe that issuers of Producer Statements are in fact liable for their work/product, they will be reluctant to accept them.

## Chapter 5 – New assurance pathways

Chapter 5 identifies options that would assist building consent authorities to take a more risk-based approach. This includes two formal assurance pathways that would shift some of the building consent authority assurance role to other participants with the required expertise to manage risk appropriately: self-certification and commercial consent.

MBIE's preferred approach is to progress all of the following options:

- Provide guidance to building consent authorities to take a more **risk-based approach** under current regulatory settings.
- Create two new assurance pathways: certification by **accredited companies** or by **approved professionals**.

- **New commercial building consent** to provide an alternative regulated consent process for some commercial projects.
- **Repeal the Building Amendment Act 2012** consent regime to consider these new pathways.

### ***Question about taking a more risk-based approach***

**23.** To what extent would MBIE guidance assist building consent authorities to better take a risk-based approach under existing regulatory settings?

If MBIE are going to be deliver guidance, the guidance needs to be consistent with other areas of risk-based management within MBIE's regulatory structure. More useful would be a speedy determinations system and up to date case studies that set precedence that BCAs can reply on (to the point made in our response to Q 22).

### ***Questions about self-certification***

**24.** To what extent would self-certification align assurance with risk levels and sector skills?

NZCB is supportive of a robust self-certification being implemented, which is available to those who process the appropriate training and experience only and supported by the issuer being able to point to a t quality assurance system and furnishing insurances and/or guarantees as may be required.

It will be left to the BCAs to have comfort in the self-certifier's credentials. To provide that surety, it is suggested that a national register would provide BCAs with the means to check the credentials of self-certifiers who do not regularly design or construct projects in a BCA's region.

**25.** MBIE has identified three desired outcomes for certification (high confidence that work complies with the Building Code, remedy for non-compliant work and that careless or incompetent certifiers are identified and held to account), Do you agree with the three proposed outcomes and the means to meet these outcomes?

Yes                       Somewhat                       No                       Not sure

Please explain your views.

Supportive of the outcomes sought. Commentary under each:

[High Confidence that works comply with the Building Code](#)

## Consultation questions

NZCB suggests that good designers and builders who have demonstrated that they perform at the 'high confidence' level should be incentivised via reduced consent application timeframes, less building inspections etc.

### Remedy for non-compliant

As per our response to Q22 this is critical.

### Careless or Incompetent self-certifiers

Delivering swift repercussions/responses for minor infringements and move towards a higher level of investigation for more complex issues. The disciplinary reaction for failure needs to act as a deterrent to fraudulent and/or naïve practices.

**26.** What are the potential risks for self-certification and how should these be managed? Is there any type of work that should not be able to be self-certified?

The success of a self-certification programme is in the initial education, ongoing monitoring, and creating awareness of the implications of failure or miss-management. Incorporating third-party accreditation would significantly reduce the risks for self-certification issues and provide regulatory and public confidence in the process.

The responsibility of the build ultimately lies with the BCAs and so they need to manage the self-certification process for building projects in their areas. Their buy-in to self-accreditation is critical.

## ***Questions about commercial consent***

**27.** To what extent would the commercial consent process align assurance with risk levels, the respective skills of sector professionals and building consent authorities?

NZCB agrees that due to their engagement of multiple technical experts (Engineers, QS, Architect, PM), an educated client, and the experience/qualifications that the Main Contractor's construction manager processes, there is greater oversight of large commercial projects than what there is for the typical residential project.

As per our response to Q 25, broad ability for Main Contractors to self-certify large commercial projects is something that should be earned via a track record of delivering 'high confidence', it should not be a given. Furthermore, the commitment to a commercial pathway option should be left to BCAs to assess or audit, but only after very clear and consistent guidelines are in place, including penalties for failure.

**28.** Would it enable a more agile and responsive approach to dealing with design changes as construction progresses?

Yes                       Somewhat                       No                       Not sure

Please explain your views

Yes, if the appropriate skills are in place via the Project Control Group (PCG) and that their individual member and/or collective track records passes the 'high confidence' test by the BCAs.,

## Consultation questions

what is proposed will lead to a more agile and responsive approach to dealing with design changes.

Third-party accreditation of products proposed via design changes will be critical for this approach to be successful, as those changes can be accommodated in a timely manner via the Main Contractor's Q & A system.

**29.** What should be the scope of the commercial pathway? Should it be mandatory for Commercial 3 buildings and voluntary for Commercial 1 and 2 buildings?

Please explain your views.

Notwithstanding our Q 27 comments that larger commercial projects engage multiple technical experts, and that aspect provides surety in combination with an educated client and experience/qualified Main Contractor rep; it is not always the case that the bigger project has the higher performing teams.

NZCB supports the proposed commercial consent pathway in principle, though suggests that all commercial building types (1, 2, and 3) be voluntary initially, to enable individual BCAs to pilot this approach with a select number of projects, then expand as both BCAs and the projects PCGs adapt, learn, and refine via the trials.

**30.** Do you agree with the proposed roles, responsibilities and accountabilities?

Yes                       Somewhat                       No                       Not sure

Please explain your views

NZCB is supportive in general of the roles outlined, noting that it would be highly desirable that the Client engages an independent manager to ensure that the Design Team and the Contractor are fulfilling their roles. It is typical with modern construction projects that Project Managers are engaged by Clients, so a case of beefing up their oversight responsibilities, including thorough documentation of design changes as agreed between the PCG, main Contractor, and client. An additional safeguard would be mandatory engagement of the architect for design coordination.

**31.** What would be the risks with the commercial consent pathway and how should they be managed? Please comment on entry requirements, site coordination, overall responsibility for the quality assurance system, third party review and what (if any) protections would be needed for owners of commercial buildings.

One of the most common risks that occurs on commercial construction projects is poor coordination between the design disciplines, one solution to which would be mandating the use of Building Information Modelling (BIM) for projects over a certain value/size.



## Consultation questions

Additional risk mitigation would be provided by mandating a Commercial Consent project to have the architect engaged for design coordination, and that the client also engages a project manager, who has ultimate project responsibility and who would be required to produce design co-ordination statements and run and report on a robust quality assurance programme.

### *Question about new pathways to provide assurance*

**32.** Do you agree with MBIE's preferred approach to progress policy work on the detailed design of the two new assurance pathways, repeal the inactive risk-based consenting provisions in the Building Amendment Act 2012 and issue guidance for building consent authorities?

Yes                       Somewhat                       No                       Not sure

Please explain your views

Agree to developing policy on the two new assurance pathways (Self Certification, and Commercial Consent), though further to our response to Q 29, we recommend that BCAs trial Commercial Consenting via a pilot programme prior to making it widely available as an option. Pilots will enable systems and processes (and their reporting) to be well tested and understood, prior to the launch of Commercial Consents as an option to the broader market.

## Chapter 6 – Better delivery of building consent services

Submissions on the issues discussion document indicated that stakeholders would like greater consistency across the country to promote economies of scale and reduce duplication and cost. There are also significant capacity and capability constraints in the sector.

Chapter 6 considers options to address inconsistency across the building consent system and capacity and capability issues, under the following themes:

- providing greater **national direction and consistency** to increase predictability and transparency for applicants across the country
- **boosting capacity and capability** across building consent authorities and building greater collective capability across the country
- supporting building consent authorities to **achieve economies of scale** by reducing duplication and costs for individual building consent authorities.

### *Questions about providing greater national direction and consistency*

The options in this section seek to **increase the consistency, transparency and predictability** of the process for applicants across Aotearoa New Zealand:

- Ensure **nationally consistent processes and requirements**
- **Review building consent application and processing systems** to identify nationwide technology approaches
- Support uptake of **remote inspection technology**
- **Centralise training for building control officers.**

**33.** Which options would best support consistency and predictability given costs, risks and implementation timeframes? Please select one or more of the following:

- Ensure nationally consistent processes and requirements
- Review building consent application and processing systems
- Support uptake of remote inspection technology
- Centralise training for building control officers

Please explain your views

All four proposals are worth pursuing. NZCB recommends that MBIE works with BCAs and industry to identify, quantify, and develop best practice approaches.

**34.** What other costs and risks need to be considered?

Better enabling of remote consenting and rationalisation of current consenting systems (ideally to one universally adopted system) are worthy proposals and ones that require investment of capital and time. The productivity gains that the construction sector will benefit from as a result, will provide operational gains that ultimately outweigh the short-term investment that will be required across the BCA network.

**35.** Are there any other options that would support consistency and predictability?

- Greater efficiencies with MBIE's Determination system; and
- Providing BCAs with better access to technical expertise, potentially via centralised resource or formalisation of the informal 'sharing' of resource that occurs currently between some BCAs.

## Consultation questions

- BCAs using forms that are consistent across the BCA network i.e., the same forms used across New Zealand.

### *Questions about boosting capacity and capability*

The options in this section seek to **alleviate capacity and capability constraints** across building consent authorities and build greater collective capability across the country:

- Establish **centres of excellence** or other central advisory function
- Identify opportunities for **shared workflows and services** between building consent authorities
- **Centralised resource of specialist expertise** or building consent officers to fill capability gaps.

**36.** Which options would most alleviate capacity and capability constraints given costs, risks and implementation timeframes? Please select one or more of the following:

- Establish centres of excellence
- Identify opportunities for shared workflows or services
- Centralised resource of specialist expertise

Please explain your views

- Option 1's establishment of Centres of Excellence either regionally or nationally has merit, with a regional adoption preferred.
- Option 2's shared workflows/service arrangements appeals, particularly given the success of the informal sharing of workflows that exists currently with some BCAs (Auckland noted as being a good exponent of sharing resource to others, as is the sharing that went on between BCAs in dealing with 2023 weather events).

A blend of Option 1 (Regional) and 2 is suggested, with inputs from Metro areas (outside of the region) as required for large commercial projects that occur on an occasional basis.

**37.** What other costs and risks need to be considered?

Under investment in the setting-up of the preferred approach, and/or poor selection of the approach to use in a centralised (National or Regional) model is a risk. The broadening of the existing sharing of resource framework presents a low-risk and low-cost option as it is already operational.

## Consultation questions

38. Are there any other options that would alleviate capacity and capability constraints?

MBIE has presented a good range of options to alleviate BCA capacity and capability constraints. Lack of interoperability between BCAs IT platforms is another inhibitor.

### *Questions about achieving greater economies of scale*

The options in this section support building consent authorities to **achieve economies of scale** by reducing duplication and costs:

- **Identify and address barriers to voluntary consolidation and transfer**
- Support a **voluntary pilot to consolidate or transfer** building consent authority functions
- Investigate the viability of establishing a **national body to operate alongside local building consent authorities.**

39. What are the biggest barriers to voluntary consolidation? How could these be overcome?

The biggest barrier to centralisation is that the Building Act has been written for Territorial Authorities to take singular responsibility. A recasting of this central premise would be needed.

An additional barrier is if BCAs that are brought together (regionally or nationally) in a form of centralisation or sharing, have different IT systems for their Building Consent applications and processing. Rationalisation of these systems to a small number (ideally one only) would mitigate this barrier.

40. Which options would best support building consent authorities to achieve greater economies of scale given costs, risks and implementation timeframes? Please select one or more of the following:

- Identify and address barriers to voluntary consolidation and transfer
- Support a voluntary pilot
- Investigate the viability of establishing a national body

Please explain your views

This option provides BCAs with a greater say and promotes buy-in. They have already demonstrated via weather events that they can undertake meaningful collaboration and share resource as required more generally.

### 41. What other costs and risks need to be considered?

To mitigate risk, ensure buy-in from the BCAs by asking them to assist in developing the options rather than it being a process of engaging consultants to develop a solution. There is value in having meaningful engagement with those at the BCA coalface.

### 42. Are there any other options that would support building consent authorities to achieve greater economies of scale?

Further to our response to Q41, engage with those at the BCA coalface, they may surprise you with their views on how the system could operate more effectively.

## Chapter 7 – Better performance monitoring and system stewardship

Chapter 7 presents a set of interrelated initiatives to fulfil our responsibility as steward of the building consent system.

MBIE acknowledges the need to take a more proactive role as central regulator and steward. This means taking a proactive and collaborative approach to monitoring and maintaining the regulatory system and keeping well informed of issues, risks and opportunities.

MBIE will focus on initiatives in the following areas:

- **Developing better systems to collect information** that will help to identify key issues, risks and opportunities.
- **Proactively responding to the issues, risks and opportunities** identified.
- Ensuring that **quality information, education and guidance** is provided to the sector.

### *Questions about system stewardship*

### 43. Will these initiatives enable MBIE to become a better steward and central regulator and help achieve the desirable outcomes? Please explain your views.

The expectation is that the proposed initiatives that we have supported, will enable MBIE to be a better steward and central regulator. Our members (residential builders) who regularly engage with BCAs, on questions of processes and problems that arise, often hear from BCA staff that the requirements imposed on them by MBIE act as an inhibitor to them processing building consents in a timelier manner i.e., the requirement for "ticking a box" comes up a lot. As per our responses to Qs 41 and 42, engage closely with those at the BCA coalface.

**Consultation questions**

## Consultation questions

### 44. What initiatives should be prioritised and why?

Once industry preferences are established, testing of those preferences with the BCA network.

### 45. What else does MBIE need to do to become a better steward and central regulator?

MBIE's response to this submission provides an opportunity for MBIE to demonstrate that it is a good steward of the building consent system, by showing that as the regulator it: listens, will act collaboratively, and will invest if it will lead to a better performing Building Consent System.

More specifically, MBIE collecting more information from the BCAs on RFIs, and failed building inspections will identify regional trends, with the opportunity then to feed those observations back to the market to change poor behaviours.

## Chapter 8 – Better responding to the needs and aspirations of Māori

Chapter 8 focuses on options to address the capacity and capability and relationship issues that Māori face in the building consent system. The options also link to recommendation two of the Commerce Commission's market study into residential building supplies, which states that Māori should be better served through the building regulatory system.

The options being considered are:

- Establish a **navigator role** within building consent authorities to guide Māori through the building consent system.
- Create a new **centre of excellence** for Māori-led building and construction projects.
- **Guidance and advice** for building consent authorities regarding building consent applications from Māori.

### *Questions about responding to the needs and aspirations of Māori*

#### 46. Will these options help address the issues that Māori face in the building consent system?

Yes                       Somewhat                       No                       Not sure

Please explain your views.

All the options address the issues, Options 1 and 2 more effectively, though lack of suitably qualified people to fill Navigator roles across the BCA network presents a practical problem. Building Compliance is often the lessor of the impediments to successful building projects, it is

## Consultation questions

often Resource Consent restrictions that create issues for Māori who are embarking on building projects.

**47.** Which of the three options identified would have the most impact for Māori? Please explain your views.

Creating a new Centre of Excellence for Māori to provide guidance and advice for Māori-led projects is perceived to have the most impact. The Navigator within BCAs option is impractical as per our response to Q 46.

**48.** What are the risks with these options and how should they be managed?

MBIE and BCAs run the risk of crossing the line in providing project-specific advice, and that approach sits outside of the roles and responsibilities as set out in the Building Act, and that will incur liability.

**49.** Where should the navigator role sit and what responsibilities should it have? Should it include assisting Māori through the wider building process?

Further to our response to Q 46, on a pragmatic level it would be difficult for all BCAs to be able to each employ a suitably qualified and experienced Māori design practitioner, as is occurring within the design community currently, these people are rare and highly sought after. This observation leads to the view that navigators would sit within a centralised Centre of Excellence.

**50.** What should be the scope, function and responsibilities of the centre of excellence? What participation should Māori in the workforce have in this centre of excellence?

Provision of expert advice to those with building projects that include Māori design principles and/or traditional Māori design methods. It should be those well versed in this area that should be filling the roles.

**51.** What other options to improve the system and make it more responsive to Māori needs and aspirations should be considered?

NZCB encourages the sharing of successful Māori led building projects via case studies and exemplars.

Consideration could be given to creating an NZ Standard for traditional Māori building methods.



### Chapter 9 – Addressing the interface between the building and resource consent systems

While processes for assessing applications for building and resource consents consider different matters, there can be overlaps between the two consent processes due to the interface between buildings and land. This sometimes causes confusion about which requirement falls under which consent process.

Chapter 9 outlines how current reforms will help reduce unnecessary overlaps between building and resource consent systems and how the use of project information memorandums can help consent applicants navigate the two consent processes. The question in this chapter seeks feedback on anything else that could address overlap issues.

#### *Question about addressing the interface between the building and resource consent systems*

**52.** What other options to address the issues arising from overlaps between the building and resource consent processes should be considered?

Greater integration between the Resource Consent and Building Consent processes would mitigate incidences of projects getting too advanced with their Building Consent without first covering off the Resource Consent.

The UK has an overarching consent pathway model for both resource and building areas whereby the processes are step throughs to deliver a final and combined approval outcome. That programme may prove insightful to MBIE.

### General comments

**53.** Do you have any other comments?

NZCB reaffirms its view that the Building Consent Levy fund should be used for the funding of NZ Standards (May 2023 submission on Building Levy Proposals). In addition, using the Building Levy to expand and maintain Acceptable Solutions could be considered. Investment in both areas would support a more effective and efficient building regulatory system.