

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

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: Graham Burke

Email address: graham@nzctic.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.

New Zealand Construction Industry Council

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.

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:

I do not want my submission placed on MBIE's website because... [insert reasoning here]

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?

The primary focus of the building consent system should be ensuring that buildings are designed and constructed to meet the performance requirements of the Building Code.

A risk based approach must be implemented to achieve the required outcomes efficiently.

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.

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

To achieve the required outcomes of the consenting system, the regulator should:

- Ensure regulations and instruments are up to date and fit for purpose.
- Have sufficient oversight of the consenting system to ensure it operates as it is intended.
- Encourage innovation and the appropriate apportioning of risk.

Section 1: Introduction and strategic context

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.

A risk based consenting system should allow practitioners with appropriate quality management systems to self-certify building work.

Some assurance processes can be outsourced to third party experts not utilised in the current system. While BCAs often require reports from engineers or other qualified professionals they seldom outsource inspection work, even when the third party has superior capability and capacity.

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.

Outcome 1. We agree with this outcome but are concerned that "innovation" is not used as a cover for cutting corners and that new products or systems are backed by appropriate research and certification and that suppliers have the resources to remedy any issues resulting from product/system failure.

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 further critical outcome is consistent interpretation and application of the Building Code across and within BCAs. Nationally consistent or centralised consenting is essential to improve efficiency.

Section 2: Desirable outcomes

The consenting system needs to be adaptable to meet future needs such as the implementation of embodied and operational carbon budgets.

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

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

Please explain your views.

Whilst the quality of completed structures is generally at the standard required for the Building Code the current system is inefficient with a lack of consistency across and within BCAs and risk largely falling on BCAs.

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

Please explain your views.

Roles within the system are generally understood, however there is a lack of collaboration with system actors such as designers, BCAs, and builders each blaming the other for inefficiencies in the system.

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.

The current system of Joint and Several risk allocation inadvertently pushes risk on the BCA as they are often the “last man standing” when there is a significant problem with a completed building.

NZCIC believes all businesses providing services (Including design) affecting the weathertightness, structural integrity, fire performance or durability of a completed structure which falls within the

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

category of Restricted Building Work should be licenced with a requirement to provide appropriate quality assurance and warranties.

Such a licencing system would ensure only those businesses who are capable of managing the risks associated with their work are able to provide those services.

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.

As per previous question, the current risk and liability settings push the risk on to the BCAs, with some businesses in the sector using Limited Liability Companies and other commercial structures to manage their risk and liability.

There are few incentives under the current system to provide more than minimum levels of documentation and quality assurance. A risk based consenting system could streamline processes and reduce fees for certified businesses with robust quality assurance systems.

Many designers could have a more robust approach to managing projects beyond the consenting stage. Designers can add significant value on bespoke projects resolving tensions between BCAs, building practitioners and clients.

BCAs are not held accountable for failing to meet statutory timeframes or for provision of inaccurate or incorrect information / advice when consequential costs to applicants can be significant.

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.

As per Answers 8 and 9

If yes, what would the risks and mitigations be?

Self-certification and streamlined consenting should only be available to certified businesses with robust audited quality assurance systems, and possibly a requirement for warranties or insurance which would survive the business becoming insolvent.

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

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

Yes

No

Not sure

Please explain your views.

Chartered Professional Engineers and qualified professionals can contribute effectively to inspections, particularly where council itself does not have the expertise internally to assure to a higher standard.

Parts of the industry are already partly self-certifying, such as electrical and others such as plumbing are trialling self-certification.

Businesses with robust processes and internal quality management systems are more likely to be ready for self-certification and assurance.

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 checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

There is a shortfall in capability and capacity across BCAs in general with some BCAs having greater shortages than others. High staff turnover is also a major problem at some BCAs.
Some BCAs do not have the technical capability to consent complex building projects within their district, highlighting the importance of either consolidating or centralising BCAs to make better use of the talent pool.

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?

Capability / capacity issues and high staff turnover lead to poor communication internally, poor coordination, conflicting or incorrect advice, changes in requirements and approach over the course of a project. Project risk mitigations such as open and early consultation, pre-application meetings, and appointing case managers are ineffective due to lack of continuity (Staff involved in early consultation leave) and poor record keeping.
Failure to process consents within statutory timeframes pushes risk onto the applicant. Delays are expensive, and often projects have to be fast-tracked to maintain momentum. Fast-tracking leads to consent issues restricting the critical path for the project. There is currently no accountability for BCAs failure to perform.

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

Please explain your views.

There is a shortfall in capability and capacity across the building system leading to delays, rework and added expense.

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.

Incomplete documentation slows the consenting process.

Delays and unsatisfactory work lead to added inspections causing further delays and stress. Self-certification pilots have been hindered by lack of experience with digital technology by practitioners.

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

Consistent systems across all BCAs would allow for better sharing of workload.

Clear expectations for documentation will lead to fewer RFIs and delays.

Improved internal systems for record keeping and handovers between individuals and departments within BCAs would greatly improve efficiency.

Reduction in the number or amalgamation of BCAs would improve efficiency and allow greater economies of scale.

Better uptake of digital innovation and a risk based system for appropriate self-certification/inspection of building work would reduce the workload of BCAs.

Certification of businesses in the sector and incentivising businesses to implement internal quality assurance systems will reduce the workload and risk on BCAs and improve quality for consumers.

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.

The current qualification system for BCA personnel creates barriers to entry and disincentivises transition from building and specialist trades into BCAs.

Lack of incentives for businesses to implement internal quality assurance systems encourages "doing the minimum".

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 type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your views.

Consenting is inflexible and forces methodology compromises and programme inefficiencies. On larger projects BCAs should have case managers who are able to engage with a preferred delivery strategy, rather than dictating strategy with a rigid approach.

The current system does not take adequate consideration of different risk profiles associated with buildings and practitioners. Rigid and conservative systems and processes can make simple consents and minor changes time consuming and expensive.

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

The current system is a barrier to investment in improved systems and innovation, which in turn is a barrier to improving productivity and drives up costs.

Project and programme efficiencies are unable to be realised because rigidity of consent processing can't support anything other than 'traditional'.

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

Section 3: Issues with the current system

Issue 3: System agility

The Consenting System should take a risk based approach based on evidence and data. The system should react to the level of risk involved with a particular project, method of construction and risk profile of those businesses engaged in the design and construction of the project.

Consistent digital consenting systems across BCAs, or a centralised consenting system would greatly improve efficiency and reduce cost across the building system.

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.

Traditional Māori methods of construction generally fall outside the Building Code and therefore do not fit standard consenting processes. It is important that all buildings meet the performance requirements of the Building Code, requiring them to be healthy, durable and safe.

Planning rules often restrain consenting of papakāinga.

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.

Issues associated with property title and non-standard requirements associated with papakāinga lead to problems with the planning and consenting system.

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?

A set of nationally consistent processes and protocols should be co-designed with Māori in order to facilitate Māori led construction projects.

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?

MBIE should play a stronger role in oversight of the consenting system.

BCAs should be operating under a nationally consistent set of performance and reporting metrics, or a centralised consenting system developed.

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

Reporting should be based on nationally consistent metrics to identify blockages and to enable MBIE to better manage the consenting system.

BCAs report on the number of working days to complete an application, but this does not include time stopped for requests for information. BCAs should have to report on the number, type and average duration associated with requests for information.

Statistics on the number of inspection failures and the reasons would be useful for improving performance of practitioners.

Systemic collection of subjective data from applicants could be used to assess performance of BCAs and to improve responsiveness, clarity, continuity and consistency, accuracy and completeness of information provided.

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

Yes

No

Not sure

Please explain your views.

Inconsistent operating and reporting systems across BCAs is a barrier to reliable data collection and inconsistent reporting.

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.

Data from a standardised or centralised consenting system could be used to improve performance across the system and to drive efficiencies.

Systemic surveying users of the consenting system can build a body of subjective evidence to identify the strengths and weaknesses in the system.

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

Enforcing a standardised or centralised consenting system would drive improvements in quality, efficiency and productivity across the system.

There is an opportunity with this review to work with the construction sector to co-design improvements to the consenting system. NZCIC can assist MBIE with engagement through our large network of industry associations across the construction industry.

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 current structure encourages an inconsistent approach across BCAs, replication of effort and reduces economies of scale. The current system is therefore a barrier to improving efficiency and productivity.

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

Individual BCAs have a good knowledge base of knowledge of local conditions and practitioners. It is noted that BCA personnel who pro-actively engage with the sector build strong and productive relationships with industry, however this is not a consistent approach within or across BCAs. The new consenting processes for modern methods of construction are a positive step forward.

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

Inconsistency across and within BCAs reduces efficiency and adds cost to the system. Replication of requirements for systems and processes is wasteful and counterproductive. Lack of scale inhibits investment in innovation. Lack of accountability (or recourse for applicants) does not incentives BCAs to improve their performance.

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

General questions

The current devolved system reduces efficiency and increases cost. Under the current system, 'best for project' strategies and effective risk management are impeded.

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

Consolidation of BCAs or centralisation of the consenting system would improve consistency and allow greater economies of scale.

Consistent systems across all BCAs would allow for better sharing of workload.

Better uptake of digital innovation and a risk based system for appropriate self-certification/inspection of building work would reduce the workload of BCAs.

BCAs should be accountable for poor performance measured against nationally consistent metrics.

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.

There is replication of processes between the resource consent and building consent.

BCAs are structured to treat resource and building consents separately, but they are actually phases in a continuous / iterative process for the project.

Resource and Building consenting should be treated as one process with continuity managed by case managers.

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

Single, phased consenting process as described in 31. will greatly improve efficiency and reduce cost.

Increased uptake of digital technology will reduce manual processes and improve efficiency.

Aligning rules of regional and local governments regarding infrastructure requirements will also reduce duplication and cost.

General questions

33. Do you have any other comments?

NZCIC believes a number of fundamental changes are needed to make the consenting system fit for purpose and future ready.

- Consolidation of BCAs into larger, stronger organisations and centralisation of systems, processes and technology.
- Stronger oversight is needed by MBIE to ensure consistent systems, processes and decision making across and within BCAs. BCAs should report on nationally consistent metrics and be accountable for poor performance.
- A risk based consenting system taking account of the risk profile of the project and the practitioner will improve efficiency and incentivise businesses to develop internal quality assurance systems.
- Greater use of third party certification by Engineers and other qualified professionals and self-certification by businesses with auditable quality assurance systems will reduce BCA workloads and improve efficiency.
- Businesses providing services (Including design) affecting the weathertightness, structural integrity, fire performance or durability of a completed structure which falls within the category of Restricted Building Work should be licenced with a requirement to provide appropriate quality assurance and warranties. Such a licencing system would ensure only those businesses that are capable of managing the risks associated with their work are able to provide those services and place risk where it is best able to be managed.