

Consultation submission form

Review of the Building Consent System



Contents

- Contents2
- How to make a submission3
- Submitter information5
- Section 1: Introduction and strategic context7
- Section 2: Desirable outcomes9
- Section 3: Issues with the current system.....11
- General questions.....21

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: Grant Price

Email address: gp@heatwave.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~~ NZ Specialist Trades Contractors Federation

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.

Specialist Trade Contractors Federation

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 consenting system is to ensure that buildings meet the performance requirements of the Building Code. The consenting process must be nationally consistent and follow a risk based approach.

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?

Government must ensure:

- Regulations are up to date and fit for purpose.
- MBIE ensures the consenting system operates as it is intended.
- Ensure the consenting system directs risk to the parties best able to manage it.
- Ensure the consenting system is agile and supports innovation.

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.

Design, building and specialist trade practitioners should be able to self-certify parts or all of their work following robust risk based systems.

Third party experts such as engineers and other qualified professionals should be used to certify some specialised design and other work.

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.

We agree with these outcomes, however we are concerned that "innovation" or "value engineering" is often confused with cutting corners.

New products or systems must be backed by appropriate research and certification and suppliers must have the resources or insurance to remedy any issues resulting from product or 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.

Section 2: Desirable outcomes

National consistency of decision making and implementation of the Building Code is essential. The consenting system needs to be adaptable, agile and ready to meet future needs such as the changes needed to implement “Building for Climate Change.”

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.

The consenting system is inefficient and inconsistent. Risk is managed poorly and falls largely on BCAs, however the Joint and Several settings also affect specialist trade contractors who may have liability in excess of their ability to manage the underlying risk.

Specialist trade contractors are also often committed to outcomes that they have no influence over, through the tiered “tendering” system of procurement whereby they are directed by main Contractors and specifiers, but required to sign off work to facilitate speedy achievement of “Practical Completion”

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

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.

There is a lack of collaboration across the building system with various organisations and businesses such as designers, BCAs, and builders each blaming the other for faults 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.

Joint and Several Liability pushes risk on the BCA as they are often the "last man standing" when there is a significant problem.

All businesses involved with Restricted Building Work should be licenced and able to provide appropriate quality assurance and warranties.

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

A licencing system would provide better risk management across the system and improve surety for clients.

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.

No, the current settings push risk on to BCAs, with some businesses taking measures to avoid risk altogether.

The system encourages minimum levels of compliance and therefore quality assurance. A risk based consenting system could streamline processes and reduce fees for licenced businesses with robust quality assurance systems.

BCAs are not accountable for failing to meet statutory timeframes and the resulting costs to applicants.

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 6, 8 and 9

If yes, what would the risks and mitigations be?

A risk based system would ensure self-certification and streamlined consenting is only available to businesses with robust audited quality assurance systems.

Licencing of businesses is a practicable way of managing this process..

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

Please explain your views.

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

Regulated industries such as Electricians, Plumbers Gasfitters and Drainlayers already self-certify to varying extents.

Good businesses already have robust processes and internal quality management systems and 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.

Most BCAs have shortfalls in both capacity and capability exacerbated by high staff turnover. Smaller BCAs generally do not have the technical capability to consent complex building projects.

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?

Constraints lead to delays in completing applications and inspections. They also lead to poor internal and external communication, inconsistent and poor decision making and advice, and inconsistent processes.

13. How significant are sector workforce 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.

Section 3: Issues with the current system

Issue 2: Capacity and capability

Skill shortages across the system lead 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 at design stage slows the consenting process, exacerbated by lack of capacity and capability at BCAs.

Inspections are often delayed by unsatisfactory work needing further inspections causing further delays and stress. Self-certification pilots have anecdotally been hindered by lack of digital expertise on the part of businesses.

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

Consistent systems across and within BCAs would improve efficiency.

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

Reducing the number of BCAs or moving to a central consenting system would improve efficiency and allow greater economies of scale.

Licensing of businesses involved with restricted building work will reduce risk and workload for BCAs and provide confidence for clients.

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 system which places all the risk on BCAs and therefore risk averse behaviour on their part does not incentivise businesses to implement internal quality assurance systems.

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.

The current system is inflexible and does not consider different risk profiles associated with projects and businesses. Simple consents and minor changes are unnecessarily 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 does not encourage investment in innovation as processes must align with the traditional processes of BCAs.

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

A risk based approach based on evidence and data is essential for an agile and efficient consenting system.

Consistent consenting systems and a reduced number of BCAs, or a centralised consenting system is needed.

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.

We do not have an opinion on this issue

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.

We do not have an opinion on this issue

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?

We do not have an opinion on this issue

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 have stronger control of the consenting system.

The consenting system should be subject to a nationally consistent set of performance and reporting metrics.

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

Data relating to the total time taken for approvals and inspections.

Data recording the number and type of inspection failures would improve performance of businesses.

A consistent method of collecting anecdotal data from users of the consenting system would build a clear picture of the strengths and weaknesses of the system..

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

Yes

No

Not sure

Please explain your views.

Data is not gathered or reported consistently across the system.

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.

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

Businesses using the consenting system can give anecdotal 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?

MBIE should enforce implementation of consistent systems and performance across all BCAs.

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?

BCAs have inconsistent approaches to issues, often do not have the internal resource to manage peak demand and smaller BCAs struggle with complex projects.

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

Staff at BCAs have a good knowledge of local businesses and local conditions; however, this is not consistent within or across BCAs.

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

Inconsistency across and within BCAs reduces efficiency and adds cost.

Replication of requirements for systems and processes is wasteful and counterproductive.

Lack of scale inhibits investment in innovation.

Lack of accountability does not incentivise BCAs to improve their performance.

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

The current system reduces efficiency and increases cost.

General questions

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

BCAs need to be consolidated or centralised. Systems need to be nationally consistent.

A move to self-certification for licenced businesses and improved use of digital technology would improve efficiency across the system.

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.

Resource and Building consenting should be treated as one continuous process.

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

Integrating the resource and building consenting processes will remove duplication and improve efficiency.

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

General questions

33. Do you have any other comments?

STCF believes consolidation of BCAs or centralisation of systems, processes and technology is essential for an improved system.

A risk based consenting system will improve efficiency and encourage businesses to develop internal quality assurance systems.

Businesses involved with restricted building work should be licenced and required to have appropriate quality assurance systems and warranties. Licencing of businesses will provide better management of risk and liability across the building system.

General questions