**Consultation submission form**

Review of the Building Consent System: Options paper

June 2023

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| 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. |

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# 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 7th August 2023 by:

* Sending your submission as a **Microsoft Word document** to [**building@mbie.govt.nz**](mailto:building@mbie.govt.nz?subject=Building%20Consenting%20System%20Review)
* 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.***](https://www.research.net/r/TYT2LMY)

Please direct any questions that you have in relation to the submissions process to [building@mbie.govt.nz.](mailto:building@mbie.govt.nz?subject=Building%20Consenting%20System%20review)

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# 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.

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# Submitter information

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| 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. |

1. About you

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| --- | --- |
| Name: |  |
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| Organisation and role (if submitting on behalf of a company or organisation) |  |

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| Email address: |  |

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

Yes  No

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

Individual  Company/Organisation

1. 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)

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1. 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.

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|  | 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:

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| *[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

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| 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?

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**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?

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

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**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.

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

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| 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.  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. |

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## *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.

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**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?

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

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

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## Chapter 4 – Strengthening roles and responsibilities

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| 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.

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**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.

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

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**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.

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**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?

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**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.

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

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**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?

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

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## *Questions about producer statements*

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| 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.

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

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

Yes  No  Not sure

Please explain your views.

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

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**22.** What other risks need to be managed?

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## Chapter 5 – New assurance pathways

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| 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?

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***Questions about self-certification***

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

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**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.

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**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?

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***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?

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**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

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**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.

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

Yes  Somewhat  No  Not sure

Please explain your views

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**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.

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## *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

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## Chapter 6 – Better delivery of building consent services

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| 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*

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| 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

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

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

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## *Questions about boosting capacity and capability*

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| 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

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

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

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## *Questions about achieving greater economies of scale*

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| 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?

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**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

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

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

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## Chapter 7 – Better performance monitoring and system stewardship

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| 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.

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

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

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

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| 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.

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

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

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

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**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?

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

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

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| 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?

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# General comments

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

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