

# **BUILDING PERFORMANCE**

## Issues Discussion Document Review of the Building Consent System

**BUILDING SYSTEM REFORM**

JULY 2022



MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT  
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa  
New Zealand Government



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

## **Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful**

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

**ONLINE: ISSN 978-1-99-104103-6**

**JULY 2022**

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# How to have your say

## Submissions process

MBIE seeks written submissions on this discussion paper by 4 September 2022.

Your submission may respond to any or all of the elements of this issues discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at [MBIEs Have Your Say page](#).

This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

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

You can have your say through the following methods:

- Completing a survey online via [MBIEs Have Your Say page](#)
- Filling out the feedback template attached and sending your submission to the e-mail or mailing details below.
- By sending your submission as a Microsoft Word document to [building@mbie.govt.nz](mailto:building@mbie.govt.nz)
- By 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  
  
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New Zealand

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 information

MBIE may upload PDF 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 publishing 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*.

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*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.

# Table of Contents

How to have your say .....	3
Submissions process.....	3
Use of information.....	3
Release of information .....	3
Private information.....	4
Minister’s Foreword .....	7
SECTION ONE OF THREE: .....	8
Introduction.....	9
We are seeking your feedback .....	9
Next steps.....	9
Why now?.....	10
The building consent system is under pressure to meet increasing demand.....	10
The way in which we design and build is changing ... ..	10
... as are expectations of the building system .....	10
Wider government reform aimed at transforming the housing market.....	11
The role of local government is changing.....	11
The review of the building consent system will build on previous reforms.....	11
How the building consent system currently works.....	12
The building consent process provides assurance.....	12
Some building work is exempt from requiring a building consent .....	12
Scope of the review .....	13
The building consent system is one part of a wider building control system .....	13
We are examining the institutions, practice, and system management elements of the building consent system .....	14
Building consent system review—risk, liability and insurance in the building sector .....	15
The role of government in providing assurance that buildings are safe, healthy and durable ....	17
SECTION TWO OF THREE: .....	19
Desirable outcomes at a glance.....	20
Outcome 1: Efficiency.....	21
Why this is important .....	21
How is the system performing? .....	21
Outcome 2: Roles and responsibilities.....	22
Why this is important .....	22
How is the system performing? .....	22

Outcome 3: Continuous improvement .....	23
Why this is important .....	23
How is the system performing? .....	23
Outcome 4: Regulatory requirements and decisions .....	24
Why this outcome is important .....	24
How is the system performing? .....	24
SECTION THREE OF THREE:.....	26
Issues at a glance .....	27
Issue 1: Roles, responsibilities and accountability .....	28
Issue 2: Capacity and capability .....	31
Building consent authorities face capacity and capability constraints .....	31
The sector workforce is also facing capacity and capability constraints.....	32
Issue 3: System agility .....	34
The system can be one-size-fits-all ... ..	34
... and the process can be too rigid .....	34
The system does not always deal well with new or innovative designs and methods .....	35
Providing for a Māori perspective on building and construction.....	36
Issue 4: Performance monitoring and system oversight .....	38
It is difficult to assess whether the system is delivering on its intended outcomes .....	38
Evidence gaps make it difficult to identify and address specific issues .....	38
Stewardship of the consent system.....	38
Issue 5: Fragmented implementation.....	40
Implementation can be inconsistent, leading to variable outcomes .....	40
Systems and processes are duplicated across New Zealand .....	41
Changes have attempted to reduce fragmentation and variation, but issues remain .....	42
Building Act 2004 and Resource Management Act 1991 requirements can overlap .....	42
Annex One: Building consents by Territorial Authority.....	44
Annex Two: Summary of questions .....	45

## Minister's Foreword



### Minister for Building and Construction, Hon Dr Megan Woods

The Government knows how important safe, healthy and affordable housing is for the wellbeing of New Zealanders. We also understand the importance of a productive building and construction sector that will help us to achieve our wellbeing and economic goals.

Our building consent system is key to meeting these goals, which is why the Government committed to its review back in 2020.

The building and construction sector is going through a period of strong growth, which is putting pressure on the building consent system. The latest figures from Statistics NZ show that non-residential building consented in the year to March 2022 will add \$8.5 billion directly to our economy, while a record 50,858 new homes were consented over the same timeframe. And for the first time the number of consents issued for multi-unit homes, like townhouses, has exceeded the number of consents for traditional stand-alone houses.

The scale and pace at which New Zealanders want to build means that now is a good time to take a fresh look at what we want the building consent system to look like and how we want it to perform.

We all want a building consent system that is efficient, has clear requirements and produces consistent decisions. I want a system that will continue to meet expectations and high levels of demand for building and construction.

I also want an agile system that will respond to changes in the way New Zealanders build while also avoiding defects that can be stressful and costly to address. Everyone needs to play their part in delivering good quality buildings.

This discussion document sets out a range of desirable outcomes from the system and identifies the key issues currently standing in the way of achieving those outcomes. Your feedback will help shape the Government's view on the changes we need to make to ensure the building consent system delivers for all New Zealanders.

For those interested in risk and liability, I encourage you to read the companion policy position statement on *Risk, liability and insurance in the building sector*. This statement sets out a recent history of, and the Government's position on, the risk, liability and insurance settings for the sector.

To achieve the goals that I have set out and to make the building consent system as efficient as possible, we need your input and feedback.

I encourage you to participate in this consultation process to ensure we get this reform process right.

# SECTION ONE OF THREE:

Introduction and strategic  
context



## Introduction

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.

### We are seeking your feedback

This issues discussion document seeks feedback on the role of government in the building consent system, the desirable outcomes from the system, and an initial assessment of the key issues that are barriers to achieving those outcomes.

The document seeks to build a shared understanding of system-wide issues as a basis for considering future system change. The initial assessment draws on general industry feedback, international comparisons and previous reviews dating back to the establishment of the *Building Act 1991*.

The document includes questions for feedback. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

### Next steps

Your feedback on this document will be collated and analysed alongside other responses. Following consideration of the submissions, MBIE will develop potential options for improvements to the building consent system.

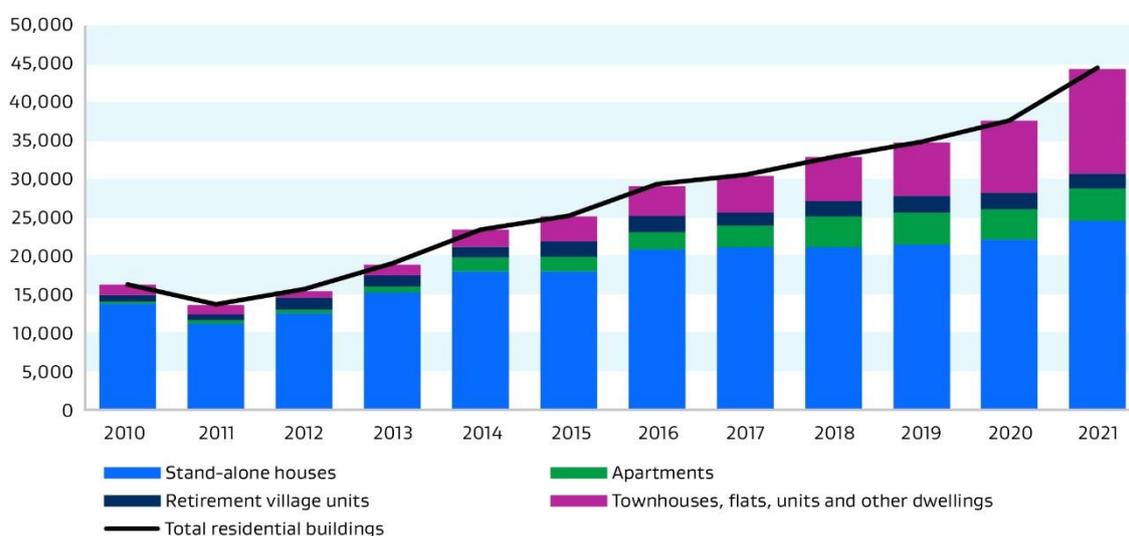
MBIE will seek feedback on these potential options for change through a further round of public consultation.

## Why now?

### The building consent system is under pressure to meet increasing demand

The building and construction sector is undergoing a period of strong growth. While the building consent system is processing a record volume of consents, it is under significant strain. There is also increasing demand to build at scale and at pace. Complaints from the sector about delays in the processing of building consents and wait times for inspections have been increasing. The demand for faster consenting creates a tension with the need for robust assurance systems to prevent building defects.

**FIGURE 1: Annual new residential dwellings consented (Year ended June 2010-2021)<sup>1</sup>**



<sup>1</sup> Statistics New Zealand. *Building Consents*.

### The way in which we design and build is changing ...

The building and construction sector has evolved since the building consent system was established in 1991. Back then, new homes were mainly detached, single-storey, timber-framed dwellings. Product choice was limited and there was a closer relationship between the building owner, designer and builder.

Today, the design, procurement and building process is more complex. There is increasing specialisation, both in design and in the building trades. Many building owners do not have a direct relationship with the designer or builders on-site. In addition, numerous products, materials, technologies and processes are being developed and used in buildings.

### ... as are expectations of the building system

Other challenges and opportunities facing the government and the sector will place greater expectations and demands on the building consent system. This includes the need to reduce

emissions, adapt to the impacts of climate change, use resources more sustainably and ensure buildings are resilient to natural hazards.

The building and construction sector is adopting new innovations and technologies that are changing how we build, what we build and how buildings perform. Greater adoption of technology by building consent authorities will be needed to support this transformation. This will lead to quicker and smarter processing, while creating a rich set of information that can be used by all parties to analyse productivity, and the quality and performance of buildings.

## **Wider government reform aimed at transforming the housing market**

The review of the building consent system sits within a wider Government reform programme aimed at transforming our housing market to unlock productivity growth, stimulate urban development where it is needed, and make houses more affordable. These reforms will have a direct impact on work needing a building consent, for example by removing overly restrictive planning rules that can make it more difficult to build homes.

A modernised building consent system will support these wider reforms by helping to speed up the scale and pace of building and construction while also ensuring that work is done right the first time. In turn, wider housing market and urban development reform will necessarily impact on the building consent system. This review of the building consent system therefore provides an opportunity to think about ways of coordinating overlaps and connections between different reform programmes such as resource management reform, climate change adaptation and local government reform.

Other work progressing in the building sector is the Commerce Commission market study into residential building supplies. This is investigating whether competition for residential building supplies in New Zealand is working well and, if not, what can be done to improve it. While the market study has a separate focus, the building consent system review will be mindful of the outcomes of the study and any recommendations for change to the building consent system.

## **The role of local government is changing**

The roles and functions of local government are in the process of changing. Work underway to reform three waters services and the resource management system are foremost among a suite of reform programmes that will reshape our system of local government.

Alongside these reforms, an independent review *Future for Local Government* is considering how the system of local democracy and governance needs to evolve over the next 30 years, to improve the wellbeing of New Zealand communities and the environment, and actively embody Te Tiriti o Waitangi.

## **The review of the building consent system will build on previous reforms**

A key theme behind the *Building Act 2004* was to “design and build it right first time”. Reforms, including the establishment of the licensed building practitioners scheme and

accreditation of building consent authorities, focussed on improving building controls and providing greater levels of assurance to the owners and users of buildings.

Past reforms have provided a strong base to deliver bigger and better system improvements. There is also a readiness across the sector to do more to lift the performance of the whole building system to deliver better outcomes for building owners.

## How the building consent system currently works

### The building consent process provides assurance

A building consent is generally required before carrying out building work.<sup>1</sup> The building consent process helps to ensure that the risks to people and property associated with non-compliance with the Building Code are managed. The building consent process can be divided into four distinct stages:

- i. the owner (or their agent) plans the building work and lodges an application for a building consent
- ii. the building consent authority processes the application and grants consent if satisfied that the proposed work will meet the minimum requirements of the Building Code
- iii. the building consent authority carries out inspections during construction, to check work is being carried out in accordance with the consent
- iv. the building consent authority issues a code compliance certificate if satisfied that the completed work complies with the building consent.

Building consent authorities must maintain accreditation and be registered. All territorial authorities must perform the functions of a building consent authority for their district. Other entities may be registered by MBIE to perform the functions of a building consent authority and are commonly referred to as private building consent authorities. Consentium (a division of Kāinga Ora) is currently the only registered private building consent authority. A few other privately-run firms contract their services to other building consent authorities.

Some design and building work that is critical to make a home structurally sound and weathertight can only be carried out or supervised by a licensed building practitioner.

### Some building work is exempt from requiring a building consent

The *Building Act 2004* contains a list of building work that does not require a building consent. The list of exempt building work includes conditions to manage risk, and exempt building work must still comply with the Building Code. Some exempt work requires that an authorised professional carry out, supervise, design, or review the design of the proposed work. Territorial and regional authorities also have some discretion to exempt other building work.

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<sup>1</sup> Building work is defined to include the construction, alteration, demolition or removal of a building.

# Scope of the review

## The building consent system is one part of a wider building control system

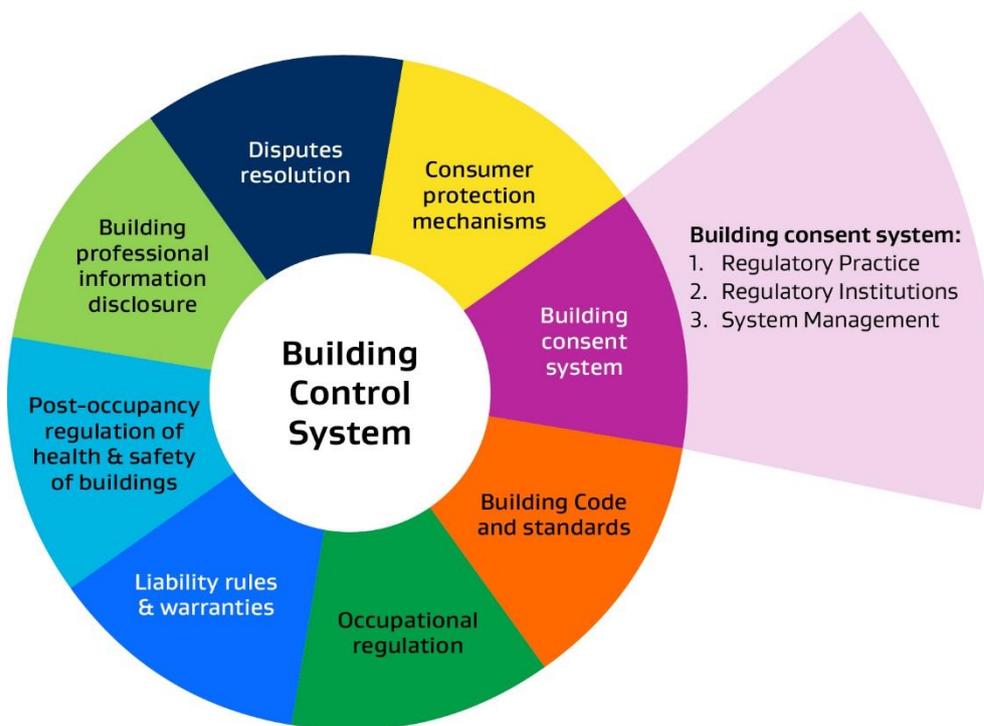
The building control system is the regulatory regime for building in New Zealand. The purpose of the building control system is to provide assurance to building owners and users that buildings are well-made, safe, durable and healthy.

The building control system encompasses a number of critical elements that, together, aim to ensure building work is done right the first time (see figure 2). This includes quality building standards that are effectively monitored and enforced, a skilled and competent building workforce, and informed and empowered consumers, as well as the building consent regime.

These elements work together and can support each other in achieving a specific regulatory outcome. For example, the liability rules, disputes resolution, building professional information disclosure and warranties all work together to improve consumer protection outcomes.

The review of the building consent system sits alongside, and supports, other key building system reforms, including a review of occupational regulation of building and construction professions and a review of consumer protection settings.

**FIGURE 2: The building consent system is one part of a wider building control system**



## We are examining the institutions, practice, and system management elements of the building consent system

The building consent system starts from the point at which buildings are designed through to the granting of a code compliance certificate after the work has been completed. The review will examine all elements of the building consent regulatory regime—regulatory institutions, regulatory practice, and system management (see Table 1).<sup>2</sup> Importantly, all of these elements must be present and working well in order for the consenting system to be successful.

The review will focus on how compliance with the Building Code is verified, but will not consider changes to the Building Code itself.

**Table 1: Scope of the review of the building consent system**

What is in scope	What this includes	Some examples
<b>Institutions</b> <i>How the regulatory regime is structured</i>	<ul style="list-style-type: none"> <li>• Roles, responsibilities and accountabilities</li> <li>• Regulator form and function</li> <li>• Governance and decision making</li> <li>• Funding for regulators</li> <li>• Mechanisms for reviewing regulatory decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Role of building consent authorities, trade practitioners, designers and other parties</li> <li>• Decision-making processes including how code compliance is verified</li> <li>• Level of discretion for regulators</li> <li>• Centralised vs. devolved structure for building consent authorities</li> <li>• How MBIE and building consent authorities are funded</li> </ul>
<b>Practice</b> <i>How regulation is implemented</i>	<ul style="list-style-type: none"> <li>• Approaches to the regulation of risk in the system</li> <li>• Capability and capacity</li> <li>• Information flows and management</li> <li>• Compliance and enforcement</li> <li>• Leadership and culture</li> <li>• Te Tiriti o Waitangi and Māori-Crown relationship</li> <li>• Communication and engagement</li> </ul>	<ul style="list-style-type: none"> <li>• What the consent process looks like</li> <li>• Extent that consenting is risk-based, or based on the compliance of parties</li> <li>• Capability and capacity of building consent authorities; skills, knowledge, systems and processes</li> <li>• Extent that Māori perspectives are provided for</li> <li>• How regulators interact with sector participants</li> </ul>
<b>System Management</b> <i>How the regulatory system is managed</i>	<ul style="list-style-type: none"> <li>• Keeping regulation up to date</li> <li>• Regulatory stewardship</li> <li>• Performance monitoring and oversight</li> </ul>	<ul style="list-style-type: none"> <li>• Extent to which the <i>Building Act 2004</i> and regulations are agile and responsive</li> <li>• MBIE’s data collection</li> <li>• MBIE tools to intervene when things go wrong</li> <li>• Performance information and feedback loops</li> </ul>

<sup>2</sup> This approach is based on the Productivity Commission’s framework for reviewing regulatory systems from the final report on its inquiry into Regulatory institutions and practices.

## **Building consent system review—risk, liability and insurance in the building sector**

Issues associated with the current risk and liability settings within the wider building control system have been raised by some stakeholders as an important part of the building consent system review. This is in the context of calls for the building control system to:

- be clearer about the roles and responsibilities of system participants - how risk is allocated
- have stronger accountability and assurance by those who design, build and regulate buildings - how risk is managed, and by whom.

A clear message from stakeholders is that where assurance and accountability is weak, then trust and confidence in the consenting system is seriously diminished. These issues form part of this review of the building consent system.

The liability rule for allocating liability for damages in civil matters in the building and construction industry (joint and several liability) is out of scope for this review.

Alongside this issues discussion document, the Government has released a policy position statement on risk, liability and insurance in the building sector. This statement sets out the Government's position and underlying rationale for retaining the joint and several liability rule in allocating liability for damages in civil matters. It shows a weak case for establishing a publicly provided insurance scheme for building defects, after considering the costs, risks and potential benefits.

MBIE is taking a whole-of-system approach to issues related to risk and liability in the building sector. A whole-of-system approach takes into account the many elements of the building control system, with the aim of getting building work right first time (see figure 2 above). The performance of building consent system is a key component of this approach.

Good risk management in the building system focuses on ensuring all of the inputs into the building process are high quality, rather than focusing on liability and culpability when things go wrong.

The focus of this review is on the roles and responsibilities of industry participants, the incidence of risk and how this risk is managed. This should mean fewer building defects. The liability rule is only relevant in cases where building defects are found and there are damages incurred. If the incidence of defects decreases through better risk management, the liability rule becomes less of an issue.

### Consideration of building warranty insurance

MBIE is also carrying out an evaluation of the consumer protection measures in the *Building Act 2004*. This evaluation will determine how effective these measures are, if they are still fit for purpose and whether any changes would improve outcomes for consumers.

Depending on the findings of this evaluation, there may be a case for establishing a publicly provided insurance scheme for building defects. The case for this will be considered alongside this review.

# The role of government in providing assurance that buildings are safe, healthy and durable

We seek your feedback on what role you think the government should have in providing assurance that buildings are healthy, durable and safe.

There is a well-established rationale in New Zealand and overseas for building consent systems<sup>3</sup> 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:** poor design or building work can result in building failure, causing significant harm to the health and safety of building users, and those in the vicinity of buildings. Many building users have no influence over the quality of design or construction.
- **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.

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.

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<sup>3</sup> Also referred to as permit systems.

### Questions on the role of government

1. What do you think the primary focus of the building consent system should be?
2. What role should government have in providing assurance that buildings are healthy, safe and durable?
3. Are there any building consent functions that could be delegated to or provided by another party? If so, please explain your response.

# SECTION TWO OF THREE:

Desirable outcomes



# Desirable outcomes at a glance

## What and why

MBIE has identified four critical outcomes that the building consent system should primarily seek to achieve. Collectively, these outcomes will work together to provide building owners and users with assurance that building work will be 'done right the first time', thereby ensuring that buildings are well-made, healthy, durable and safe.

We welcome your feedback on these outcomes. In particular, are these the right outcomes? What other outcomes are important? We are also interested in your views on the extent to which these outcomes are currently being met.

## Desirable outcomes

### 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.

## 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.

### Why this is important

An efficient building consent system ensures that building work complies with the Building Code and *Building Act 2004* in a cost-effective and timely manner. Regulatory effort and compliance costs for applicants are proportionate to the risks and complexity of building work, and fairly allocated to those who benefit. An efficient system also incentivises and removes barriers to innovation while managing the risks of innovative designs and methods. This reduces costs and increases performance across the system – increasing efficiency over time.

### How is the system performing?

The evaluation of the building consent system found general agreement among building consent authorities and sector participants that the system is ensuring that building work complies with the Building Code. New Zealand consistently performs well when compared with overseas regimes. For several years in a row, New Zealand has ranked number one in the world for ease of doing business (World Bank, Doing Business Report 2020) and, while there are variations, New Zealand tends to perform well when ranked against other economies on the ease of dealing with construction permits. However, most stakeholders consider the system is under pressure, no longer fit-for-purpose for modern ways of procuring, designing and constructing buildings, and not sufficiently enabling of innovation.

Most building consent authorities have implemented fully electronic consenting systems, allowing consents to be lodged online and processed electronically. This has enabled consents to be processed more efficiently. Some building consent authorities have provided the option of remote inspections. This has helped building consent authorities to manage workloads and may have the potential to reduce inspection timeframes.

A MBIE survey covering the period March-September 2021 found it took on average across all building consent authorities 14 working days to process building consents.<sup>4</sup> However, performance varies significantly across building consent authorities. While the majority of building consent authorities are managing to meet statutory requirements for processing consents most of the time, some are struggling. MBIE estimates around one-quarter are substantially falling far short of compliance with the requirement to process consents within 20 working days.

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<sup>4</sup>The actual time it takes to process a consent will largely depend on the quality of the application, and complexity of the proposed building work. The total elapsed time from the receipt of application to issuing a consent may be longer than reported processing times, as the processing time excludes time the application may be put on hold while the building consent authority waits for further information from the applicant.

## 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.

### Why this is important

Clear roles and responsibilities help participants to 'design and build right the first time'. It ensures all know what is expected of them and what they can expect from others. It also ensures all participants understand what risks they are responsible for managing and are held to account for their role.

When roles and responsibilities are not clear, it can lead to misplaced reliance on others to manage risk, provide assurance, and identify and address defects in the design or building work. It makes it difficult to hold people to account for poor performance, which weakens the incentives to get it right the first time. Together, these can lead to an increased risk of building defects and disputes.

### How is the system performing?

Previous reviews of the system found that roles and responsibilities were not sufficiently clear, and that some participants did not understand the extent to which they can rely on others for assurance. However, some stakeholders suggest many participants understand their responsibilities, and that perceptions of risk and poor incentives affect how participants carry out their role.

There is also some anecdotal evidence that system participants do not always manage their risks in the building process well, and some may lack knowledge of the options available for managing their risks. For example, recent research commissioned by MBIE found that homeowners place disproportionate trust in builders and have a limited understanding of the consumer protection measures provided in the *Building Act 2004*.

These issues are leading to an over-reliance on building consent authorities to identify errors or omissions in the design or building work, and provide assurance to building owners and users that the buildings are well-made, healthy, durable and safe.

## 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.

### Why this is important

A continuously improving building consent system is well-placed to adapt to an ever-changing environment. Good information flows and feedback loops are essential to support active monitoring of the system and, in turn, identify opportunities for continuous improvement. A good regulatory system is agile and able to respond quickly to new information, new technologies or changes in the market. Strong performance and system monitoring support this agility and responsiveness, while also reducing the risk of system failure over time.

### How is the system performing?

Gaps in nationally consistent performance indicators make it difficult to assess whether the system is performing well against its objective – that is, whether the system is providing assurance that building work will be ‘done right the first time’. These gaps also make it difficult to assess how efficient and consistent the system is.

At the national level, the regulatory system has been slow to respond to shocks or disruptions, such as the systemic weathertightness building failures of the late 1990s and early 2000s.

There have been a number of substantive reviews going back to 1990, including in response to weathertightness issues, with substantial reforms to building regulation in 1991 and 2004. Other amendments have been incorporated into legislation over time. These changes include the licensing of building practitioners, the accreditation of building consent authorities, CodeMark, MultiProof and, most recently, the modular component manufacturing scheme due to commence in 2022. While these initiatives have been positive, they have been implemented in response to specific reviews, rather than a process of continuous improvement. Stakeholders continue to indicate that the system is not sufficiently responsive, flexible and agile to meet the changes and increasing challenges within the building sector.

## Outcome 4: Regulatory requirements and decisions

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

### Why this outcome is important

Clear regulatory requirements help all parties understand what is required of them to fulfil their regulatory obligations and their part in providing assurance that building work will be done right the first time. This helps ensure buildings are well-made, healthy, durable and safe. Clear requirements also makes it clear what assurance is actually being provided by building consent authorities and what is not.

Robust, predictable and transparent decisions that are broadly understood:

- support higher rates of compliance with the Building Code
- enable owners, developers and builders to invest with confidence
- build trust and confidence in the performance of building consent authorities
- provide owners, other building users and those affected by buildings with the confidence that the system is working to ensure buildings are healthy, durable and safe.

### How is the system performing?

Users of the building consent system commonly claim that the regulatory requirements are not sufficiently clear. MBIE has heard from building owners, designers and builders that they often do not understand what they need to provide to support their building consent application. Requirements for what must be provided can vary significantly between building consent authorities, as does the format in which the information must be provided. Homeowners are often unaware of how the processing of their application is progressing, including the reasons for any delays. This can undermine confidence in their local building consent authority, as well as the building consent system more broadly.

Designers, developers and builders also frequently raise what they perceive to be inconsistencies between and within building consent authorities. They have difficulty understanding, for example, why a set of plans in one district may elicit more requests for further information than the same set of plans lodged in a neighbouring district. They comment on the high level of variability between how individual officers process applications and undertake inspections. This can result in unpredictable and inconsistent decisions and outcomes.

#### Questions about desirable outcomes

4. Do you agree these four critical outcomes are necessary to ensure the system provides high levels of assurance to the public that buildings are healthy, safe and durable?
5. Are there any other outcomes that are critical to ensure buildings are healthy, safe and durable?
6. How well is the system currently performing against the four identified outcomes?  
Please explain your views.

# SECTION THREE OF THREE:

Issues with the current system



# Issues at a glance

## What and why

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. These issues also necessarily consider features identified in the desirable outcome discussion (see section 2 above).

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

## Issues

### 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.

### Issue 2: Capability and capacity

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.

### 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.

### 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.

### 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.

## 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.

A consistent theme coming through previous reviews is that many people across the system do not understand their roles and responsibilities. For example, consultation on a 2010 review of the *Building Act 2004* found that designers, builders, consumers and building consent authorities were not always clear on who is accountable for meeting Building Code requirements. This included the extent to which they could rely on others. It found that:

- many designers believed they should be able to rely on builders to construct their designs to meet Building Code requirements without the designer needing to specify all of the necessary detail
- many builders do not believe they need to know relevant Building Code clauses
- both designers and builders believed they could rely on building consent authorities to identify and correct inadequacies in their work.

An amendment to the *Building Act 2004* in 2012 sought to clarify roles and responsibilities, through the addition of an outline of responsibilities (s14A-G). However, MBIE continues to hear from stakeholders that many building owners and practitioners have a poor understanding of their responsibilities.

Others argue that responsibilities are sufficiently clear, but that perceptions of risk are driving how people carry out their role. Stakeholder groups across the sector commonly raised concerns from their members about being held responsible for the errors and omissions of other parties in the building process. Some practitioners may be deliberately taking a narrow view of their role to try to limit what they can be held accountable or liable for later if things go wrong. For example, MBIE has heard that some designers consider their responsibilities for the building work ends once the building consent has been granted, while builders feel they currently shoulder too much responsibility for things outside of their control.

Compliance with the Building Code appears to be seen as an individual, rather than shared responsibility. However, these attitudes and behaviours increase the risk of things going wrong, place greater pressure on building consent authorities to identify issues, and increase the risk of defects requiring rework.

The incentives on practitioners to get it right the first time may also be insufficient. A consistent theme coming from previous reviews is that the drive to build at pace and within budget creates an incentive for some practitioners to do the minimum they need to get the project 'over the line'. At the same time, there are very few tools to hold practitioners to account for their performance, with the building owner bearing the costs associated with any delays in obtaining a consent or failed inspections.

Stakeholders across the sector suggest there needs to be a stronger focus on quality assurance at all stages of the building process. They point out that building consent authorities are the only party required to have documented quality assurance systems and have their systems and processes subject to independent review. Building consent authorities feel that the building consent authority accreditation scheme places too much emphasis on the role of building consent authorities. On the other hand, some practitioners point out the consent system does not recognise or reward those designers or builders that have good systems and processes in place for assurance, with all consents subject to the same basic process.

Some stakeholders have questioned whether roles and responsibilities are fairly allocated. For example, groups representing homeowners consider too much responsibility is placed on homeowners under the current system.

The *Building Act 1991* established the building owner as the person with primary responsibility for complying with the Building Code. The underlying presumption was that the building owner would make their own arrangements for quality assurance of the work carried out by the practitioners they contract with. This role was carried through into the *Building Act 2004*, with the addition in 2013 of consumer protection measures in relation to residential building work.

The reality is that the ability of building owners to identify and manage risks can vary significantly. Recent research commissioned by MBIE found that homeowners place disproportionate trust in builders and have a limited understanding of the consumer protection measures provided in the *Building Act 2004*.

Many homeowners also have a limited understanding of the actual role of the building consent authorities and the basis on which they are required to make their decisions. There is a common perception that a code compliance certificate is evidence that the building work is free of defects. Few homeowners appear to understand that building consent authorities are only required to check that the building work complies with the building consent, or that building consent authorities only need to be satisfied on 'reasonable grounds' that it does so. This may lead to a poor appreciation or understanding of the actual risks they face, and not taking appropriate action to protect themselves.

Collectively, these issues lead to an over-reliance on building consent authorities to identify errors and omissions by those responsible for the work. Building consent authorities are expected to provide building owners and users with a level of assurance that goes beyond their responsibilities in the *Building Act 2004*.

Combined with the requirements of accreditation regulations, perceptions about wider sector capability, and their duty of care and obligations to their local communities, building consent authorities can respond to these expectations with a cautious approach to carrying out their functions, with homeowners ultimately bearing the costs.

Practitioners continue to raise issues relating to:

- excessive requests for documentation
- delays in the processing of consents and requests for further information
- the number of inspections during construction, and wait times
- a perceived reluctance by building consent authorities to approve new or novel building designs, products or processes.

### Questions about roles, responsibilities and accountability

**7.** How well understood are roles and responsibilities across the sector? Please explain your views.

**8.** Does the consenting system allocate responsibility appropriately, to those best able to identify and manage the associated risks? Please explain your views.

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

**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?

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

## 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.

### Building consent authorities face capacity and capability constraints

Record demand for building consents has placed building consent authorities under pressure to process applications and make quality decisions in a timely and efficient manner. At the same time, the increased complexity of building work, including a shift towards higher-density housing, means the expertise and time required to assess consent applications is greater.

Most building consent authorities are reporting challenges in attracting and retaining suitably qualified and competent staff. Building consent authorities are required to ensure that all employees and contractors performing technical roles have an appropriate New Zealand qualification. Skill shortages across the building sector means that building consent authorities are having to compete with the private sector to fill these roles but are often constrained in what they can offer.

While many building consent authorities are seeking to work together and share resources, capacity constraints limit opportunities for other building consent authorities to take on additional work. Differences in priorities, risk profiles and tolerance for risk between territorial authorities, and issues around how to apportion any liability, makes it challenging for building consent authorities to collaborate across territorial authority boundaries.

Many building consent authorities are contracting work out to private organisations. However, MBIE has heard from building consent authorities that this creates further challenges in ensuring that those contracted are complying with the policies and procedures of the building consent authority. This can also result in different experiences and outcomes for those interacting with building consent authorities. In some instances, those private organisations do not have capacity to assist building consent authorities.

Despite these challenges, most building consent authorities are continuing to meet statutory timeframes most of the time. However, a number are struggling. Complaints from developers and builders about the wait times for inspections have also been increasing. The most recent building consent authority accreditation report noted that many building consent authorities are struggling with the processing of applications that include specified systems.<sup>5</sup> MBIE has also observed that some building consents requiring review by a structural engineer are being delayed because of scarcity of engineering resource and increased reluctance of engineers to carry out this work due to concerns about the risk of liability.

<sup>5</sup> MBIE (2021). Biennial BCA Accreditation Report Round Seven. December 2021.

Capacity and capability constraints may also be affecting the quality of decisions. While MBIE does not currently have information on the outcomes, building consent authority accreditation assessments by International Accreditation New Zealand found that staff turnover and a focus on trying to process, inspect and certify building work as quickly as possible, meant that some building consent authorities did not always follow documented policies and processes. This, in turn, could lead to a risk of poor-quality decisions, and an increased risk of defects requiring rework at a later date.

Some stakeholders have questioned whether all building consent authorities have the necessary expertise to assess more complex work. As a result, some building consent officers may seek further information or documentation to satisfy themselves that the proposed work will comply with the Building Code. These stakeholders see this issue as a contributing factor to delays in processing applications and a barrier to the uptake of more innovative designs or building methods.

On the other hand, some building consent authorities consider the system does not sufficiently enable them to place reasonable reliance on assurance provided by other parties. A recent judgement in the High Court of New Zealand in relation to the Bella Vista development has raised questions about the ability of territorial authorities to hold people to account for providing false or misleading information in a producer statement.<sup>6</sup>

Capacity and capability constraints may also be a contributing factor in inconsistent decisions between and within building consent authorities. Building consent authorities have reported challenges in finding the time to provide training and support to new staff. Informal feedback from some sector stakeholders noted that less experienced staff may take a more cautious approach to processing applications and inspecting work, while they build their knowledge and skills. This means they may ask for more information or evidence than a more experienced building consent officer.

## **The building sector workforce is also facing capacity and capability constraints**

The building sector is facing significant workforce challenges to keep pace with record building demand and expectations to deliver to deadline and within budget. According to Statistics New Zealand's Business Operations Survey 2021, around 90 per cent of construction businesses reported that they experienced moderate to severe difficulty when recruiting tradespersons.

These challenges are exacerbating long-standing concerns about skill deficits and the quality of supervision and performance across the system and may increase the risk of defects. Respondents to a 2021 evaluation of the building consent system commented that inexperienced architects, engineers, builders and project managers were undertaking work above their skill level and experience.

Building consent authorities frequently raise concerns about the poor quality of consent applications and building work. A recent review of the building consent process for houses

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<sup>6</sup> Producer statements are a common form of assurance used across the building sector. They may be issued by people responsible for the work, as well as those providing an independent review. While they have no legal status under the Building Act 2004, they are commonly relied on by building consent authorities as a method of establishing compliance.

commissioned by Kāinga Ora found that the applications were unreasonably large and included information that was not applicable or necessary.<sup>7</sup> Many building consent authorities feel that poor building work is often the result of supervisors being spread too thinly across building sites and not providing appropriate levels of oversight for their workers. Building consent authorities suggest that problems with poor quality consent applications and poor-quality building work stem, at least in part, from an insufficient understanding of the Building Code. There appears to be broad agreement across the sector that there needs to be more industry training focused on the Building Code and engaging with the regulatory system.

Collectively, these sector workforce issues are putting more pressure on building consent authorities and may be contributing to a more cautious approach. Building consent authorities frequently complain they are having to spend more time reviewing applications and are often sending out requests for information to resolve fundamental concerns with documentation.

Conversely, some designers and builders complain that a small number of poor performers is resulting in building consent authorities taking an overly cautious approach to all consent applications. A common complaint is that building consent authorities are reviewing work that has already been signed off by specialists, causing unnecessary delays.

#### Questions about capacity and capability

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

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

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

**15.** Are there any barriers to a more efficient use of technical expertise across the system? If so, what?

<sup>7</sup> Independent Expert Panel commissioned by MBIE (2021). Monitoring the efficiency of building consent processes for new Kāinga Ora public housing. Unpublished report.

## 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.

### The system can be one-size-fits-all ...

The building consent system was intended to be administered efficiently for different building types and varying levels of complexity in the design and building work. It is flexible and allows building consent authorities to exercise discretion in granting a building consent.

The *Building Act 2004* and related reforms strengthened the level of independent scrutiny of plans and building work through the building consent and inspection process. Reforms such as CodeMark, MultiProof and the modular component manufacture scheme have enabled the consent system to be more efficient.

While the system was intended to be agile, some stakeholders claim that the system effectively operates as a one-size-fits-all system and that the level of consenting effort is not always proportionate to risk. These stakeholders point out, for example, that an application to install a wood burner goes through essentially the same process as an application for a multi-storey apartment complex. They feel disproportionate levels of scrutiny are being applied to some consents, adding unnecessary delays and costs.

Building consent authorities must also process most applications for consent within 20 working days, irrespective of the complexity of the work. This can be insufficient for complex building work, such as a new hospital, and appears generous for a simpler consent application. Some stakeholders have suggested the statutory timeframes may also be creating some perverse incentives on building consent authorities to manage that hard deadline, such as issuing requests for further information to 'buy more time'.

### ... and the process can be too rigid

It is common for plans and specifications to change after the building consent has been granted. This may be in response to a request from the owner, suggestions from the builder, new information about the ground conditions, or the unavailability of a specified product.

Industry participants frequently complain that the process for dealing with variations to building consent applications is too rigid and slow. Substantial variations can affect compliance with the Building Code and therefore require a formal amendment to the building consent.<sup>8</sup> This can cause delays on site, but is also an important mechanism for ensuring the building work complies with the Building Code.

<sup>8</sup> Approval processes for minor variations, which do not need to go through the full consent process, were introduced in 2009 to improve the way the consent process responds to minor changes on site. In addition, MBIE recently updated its guidance on product substitution and variations to reflect the recent product shortage.

Applications for amendments to building consents are made and processed in the same way as applications for new building consents. This process adds to the existing pressures on building consent authorities, who are struggling to keep pace with the record volume of new consents. Builders complain of having to put work on hold while amendments are processed. Some building consent authorities have reported instances of builders making unapproved product substitutions, which can significantly affect the performance of a building and result in significant rework costs to the building owner.

Further detailed design that could affect the performance of the building may take place after a building consent is issued. This is more common for builds involving specified systems or constructed under a design-and-build contract, where the main contractor takes on the responsibility for both design and construction and documentation is produced and developed throughout the project. While the design-and-build approach allows for innovation and flexibility, and avoids the need to amend design documentation as decisions are made during the project, it does not align well with the current consent process, which assumes the detailed design has been completed before the application for consent has been submitted.

MBIE has heard from sector groups that the way building consent authorities deal with work under 'design-and-build' contracts varies between building consent authorities. In some cases, some building consent authorities require some aspects of detailed designs, such as cladding and fire safety systems, to be submitted with the consent, well before the design specialists have been appointed. This increases the likelihood that the consent will need to be formally amended at later stages of the project which, in turn, could hold up work while the amendment is assessed.

In other cases, MBIE has heard that building consent authorities accepting applications including performance specifications without the plans showing how that specification will be achieved. Detailed construction documentation may be prepared by others, who may lack the skills or experience to understand the implications for the building's performance. This in turn, increases the risk of serious defects that could affect the performance of the building, requiring rework to make the building healthy and safe.

The option to stage consents – for example by consenting work on the foundations first, and then the superstructure later – is intended to accommodate work that is meant to be carried out in stages. However, we are hearing from some developers and builders that they are choosing not to stage consents because it may not be practical to do so or because lenders prefer to see full approvals provided upfront.

## **The system does not always deal well with new or innovative designs and methods**

The Building Code is performance-based. It states how a building must perform in its intended use rather than describing how the building must be designed and constructed. This is intended to allow for innovative building solutions to be developed and used, provided they meet the performance requirements of the Building Code.

To facilitate compliance with the Building Code, *the Building Act 2004* allows for the publication of documents that specify design and construction methods that are ‘deemed to comply’. These publications include Acceptable Solutions and Verification Methods. Building consent authorities must accept these as establishing compliance with the Building Code.

While these ‘deemed to comply’ methods are known to work, stakeholders tell us the system is not sufficiently enabling of other design and construction methods that could deliver similar or better building outcomes for the owners and users of buildings. They feel the system over-incentivises the use of the “tried and true” designs and methods, which are used as there are fewer compliance costs and more certainty on the consenting outcomes. In contrast, some stakeholders tell us that innovative designs and methods can be subject to an unreasonable level of scrutiny in some cases, and result in significant additional costs to the building owner to gather sufficient evidence to satisfy the building consent authority.

While acceptable solutions and verification methods may be seen as providing pathways that disincentivise innovation (and create an overreliance on checklists) they can also be ideal measures that manufacturers of innovative products can use to prove their products and methods are equivalent without having to go back to first principles.

### **Providing for a Māori perspective on building and construction**

An important aspect to system agility is the capacity and flexibility of the building consent system to acknowledge and respond to the needs and aspirations of Māori. For Māori, the building consent process can be inflexible and difficult to navigate. There can be issues with using Māori traditional methods of construction, or building materials that support sustainable design, and compliance with the Building Code. There can also be issues in the current building consent process and building on Māori owned land.<sup>9</sup>

The building consent system review will investigate the issues facing Māori, understand where the system does not work for Māori building, and identify opportunities for the building consent system to be responsive to meet needs of Māori. The building consent system should not be a barrier to Māori determining and fulfilling their own social, cultural and economic aspirations, particularly in relation to the construction of papakāinga, buildings for communal use and buildings that are purpose-built to the natural environment.

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<sup>9</sup> See, for example, Ministry of Business Innovation and Employment, “Maori engagement and partnerships”, 2022 (MBIE: Wellington)

### Questions about system agility

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

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

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

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

**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?

## 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.

### It is difficult to assess whether the system is delivering on its intended outcomes

Some aspects of building consent authorities' operations have been monitored since 2006 through routine accreditation and auditing processes. However, empirical evidence on how well the broader system is performing is currently gathered on an ad hoc basis. Evidence from the evaluation of the building consent system showed MBIE is relying on some anecdotal evidence of issues. This, in turn, makes it difficult to know whether the objectives of the building consent system are being achieved.

### Evidence gaps make it difficult to identify and address specific issues

Building consent authorities hold data about buildings and building consents. However, the data is not collected in a consistent format due to the different way activities are recorded and different systems used by building consent authorities to collect and store information.

Inconsistencies in what information is recorded and how it is stored make it challenging for MBIE to collect, collate and analyse in a systemic way. As a result, it is difficult for MBIE to evaluate local or regional variations in system performance and identify common problems that could potentially be addressed through regulatory changes or sector guidance.

### Stewardship of the building consent system could be strengthened

MBIE is both the central regulator and system steward within the wider building regulatory system. System-wide oversight is particularly important in a performance-based regulatory system as, unlike in a prescriptive system, there is greater latitude for judgement about whether a particular product or design will achieve Building Code compliance. The 2003 *Inquiry into the Weathertightness of Buildings in New Zealand* found there was inadequate monitoring of the building control system.<sup>10</sup>

MBIE has since increased its regulatory oversight of the building system within its statutory functions, while the stewardship aspect of its role requires MBIE to look beyond its direct statutory responsibilities to the capability and resilience of the regulatory system over time. Existing *Building Act 2004* provisions enable MBIE to publish guidance, disseminate other information and provide educational programmes.<sup>11</sup>

<sup>10</sup> [https://www.parliament.nz/en/pb/sc/reports/document/47DBSCH\\_SCR2389\\_1/inquiry-into-the-weathertightness-of-buildings-in-new-zealand](https://www.parliament.nz/en/pb/sc/reports/document/47DBSCH_SCR2389_1/inquiry-into-the-weathertightness-of-buildings-in-new-zealand)

<sup>11</sup> Building Act 2004, sections 11(e) and 11(l)

However, stakeholders have indicated that they would like MBIE to take a greater leadership role, provide more information and education on how the building consent system should operate. They would also like MBIE to work with the sector to address systemic problems, so that similar issues are not being resolved many times over by individual building consent authorities, which further contributes to inefficiencies.

<b>Questions about performance monitoring and system oversight</b>
<b>21.</b> What can be done to improve monitoring of the building consent system?
<b>22.</b> What information or data relating to the consenting system performance would you find useful?
<b>23.</b> Are you aware of any barriers to collecting and sharing information across the sector?
<b>24.</b> Are you aware of additional data and information sources that we could be using to inform our understanding of the system performance?
<b>25.</b> Is there anything else MBIE could do to better meet its system oversight and stewardship responsibilities?

## 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.

New Zealand's 67 building consent authorities process anywhere from ten to tens-of-thousands of consent applications per year, alongside related functions such as inspections and issuing code compliance certificates.<sup>12</sup> Each building consent authority develops its own systems and processes and builds up the expertise required to deliver consenting services specific to their geographic areas, from small rural settings to large cities.

Stakeholders have reported inconsistencies between and within building consent authorities, and that duplication of effort across the system is creating inefficiencies across the sector. These issues are increasing building costs and undermining the purpose of having a single national Building Code. Concerns have also been raised that where projects require both building and resource consents, applicants face two processes that may both address similar matters, leading to duplication and additional costs.

### Implementation can be inconsistent, leading to variable outcomes

Differing requirements across building consent authorities for consent applications, variable approval timeframes, and different approaches to requests for information and inspections create uncertainty and increase costs for users of the building consent system that operate across the country.

The 2021 evaluation of the building consent system identified that sector professionals who interact with multiple building consent authorities experience frustration that there is no standard process or system for submitting applications. Stakeholders have told us that it is difficult to keep track of the different requirements for each building consent authority, and that there are multiple electronic systems in use, which means different systems to learn and navigate.

Stakeholders have also highlighted other issues with the devolved approach to building consents. For example, there are inconsistencies between building consent authorities when assessing similar consent applications, and even individual officers may treat applications differently than other officers within their building consent authority. In addition, building consent authorities are reported to be interpreting aspects of the Building Code and other *Building Act 2004* requirements differently.

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<sup>12</sup> Territorial authorities generally perform the functions of a building consent authority. Private entities are also able to apply to become a building consent authority. There are currently 66 territorial authority building consent authorities (excluding Chatham Islands) and one private building consent authority, Consentium, which provides services to Kāinga Ora.

Different outcomes in relation to Building Code compliance seem to, in part, come from the subjective nature of the ‘reasonable grounds’ test<sup>13</sup> for granting a consent. This leads to different levels of rigour being applied to applications and inspections. This may, in part, relate to a building consent authority’s appetite for risk or individual consent officers’ competency and experience.

## Systems and processes are duplicated across New Zealand

The volume of building consents processed within each territorial authority area varies substantially. For example, in 17 territorial authority areas less than 100 consents were processed in the year ending May 2022, while more than 21,000 were processed in the Auckland region (Figure 3). The devolved structure requires each building consent authority to develop their own systems and processes, provide guidance to potential applicants in their territorial area, interpret the requirements of the *Building Act 2004* and Building Code, recruit, train, and develop staff, and so on. This comes at a cost to each building consent authority, which are passed on to applicants as much as possible.

The devolved structure also limits the opportunities for efficiency gains, particularly for smaller building consent authorities, as they could not feasibly pass on the costs of efficiency initiatives to applicants and would likely not achieve gains substantial enough to offset the costs.

**Figure 3: Building consents by territorial authority area in the year to May 2022 (refer to Annex One to see data in table format)**



\*Note that data includes consents issued by both local building consent authorities and Consentium within each territorial authority area

Among the larger building consent authorities, initiatives that might improve local efficiency are often found to be duplicated around the country. For example, many building consent authorities procure and maintain their own information technology systems to manage consent applications and processing. However, the overall cost to the system, and applicants in turn, may be substantially higher than a common approach to information technology.

<sup>13</sup> Building Act 2004, s49(1).

## **Changes have attempted to reduce fragmentation and variation, but issues remain**

There have been some changes to address concerns about system fragmentation. In 2006, the building consent authority accreditation scheme was introduced, requiring building consent authorities to have documented policies, procedures, and systems in place, and to ensure they are consistently and effectively implemented.

The purpose of the accreditation scheme was to ensure good building outcomes. However, a 2020 evaluation<sup>14</sup> found that the scheme was not always delivering predictable and consistent outcomes.

There have also been some attempts in recent years to share information and promote the use of shared technologies to harmonise business processes among building consent authorities to create efficiency gains. For example, voluntary groups of councils, called 'clusters', aim to provide consistency in building control functions, processes, and documentation across areas (for example, consistency across a particular region). While participating building consent authorities find clusters valuable, especially smaller authorities, their capacity to participate in cluster group activities may be constrained by demand in their areas.

Building consent authorities may not pursue rationalisation or efficiency initiatives because they are constrained by the influence of local government, which is accountable to ratepayers, or face unique challenges, including funding constraints and other local priority issues.

Territorial authorities can transfer their functions, powers, or duties in relation to consenting and inspections. This has enabled rationalisation of consenting in relation to dams, whereby some building consent authorities are responsible for dam consent applications in other geographical areas. Despite the potential efficiencies of having a single authority responsible for larger areas, to date, only one territorial authority has used these provisions in their entirety (Chatham Islands).

Since 2006, a range of other system changes have been introduced, for example the introduction of MultiProof, CodeMark, and the new modular component manufacturing scheme that will commence in 2022. However, stakeholders have told us these initiatives do not address system-wide issues resulting from a fragmented system.

## **Building Act 2004 and Resource Management Act 1991 requirements can overlap**

Many building projects are subject to consents under both the *Building Act 2004* and the *Resource Management Act 1991*. The processing of resource and building consents are currently managed at the local and regional authority level. The resource consent process assesses the environmental impacts of projects in accordance with district and regional plan provisions. While the building consent process considers the performance of the building itself, and ensures building work complies with the building code.

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<sup>14</sup> <https://www.building.govt.nz/building-officials/bca-accreditation/bca-accreditation-scheme-evaluation/>

To determine any resource consent requirements, a project information memorandum can be sought from local councils, which will show the types of consents and other approvals or information needed to pursue a project. Despite their different purposes, similar information or reports may be required for both resource and building consent applications. For example, building on land subject to natural hazards can generate the need for similar engineering advice and technical reports. Having consecutive processes for projects where similar matters are considered under different regulatory regimes can affect the cost and timeliness of some projects.

The resource management system is currently undergoing substantial reform. The reviews of the resource management and building consent systems provides an opportunity to consider how the relationship between the two systems could be streamlined and improved.

### Questions about fragmented implementation

**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?

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

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

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

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

**31.** Is there any duplication or overlap between the building consent and resource consent processes, or any other legislation? Please explain your views, including any impacts.

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

### General questions

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

## Annex One: Building consents by territorial authority area

The table below provides the building consent data used in Figure 3 (page 41).

Number of consents by territorial authority area for the year to May 2022 (source: Statistics New Zealand)			
Territorial authority area	Number of consents	Territorial authority area	Number of consents
Auckland	21,688	Timaru	250
Christchurch	4,765	Manawatū	240
Selwyn	1,923	Masterton	230
Hamilton	1,609	Whanganui	226
Queenstown-Lakes	1,398	Hurunui	207
Tauranga	1,369	Hauraki	187
Lower Hutt	1,260	Gisborne	180
Waikato	1,197	South Wairarapa	178
Wellington	955	Southland	172
Waimakariri	873	Waitaki	156
Waipa	801	Whakatāne	133
Whangārei	770	Central Hawke's Bay	113
Dunedin	618	Buller	110
Tasman	575	South Taranaki	108
New Plymouth	574	South Waikato	103
Western Bay of Plenty	498	Mackenzie	101
Hastings	486	Clutha	91
Palmerston North	461	Carterton	86
Porirua	457	Grey	85
Far North	444	Rangitikei	76
Matamata-Piako	420	Stratford	71
Rotorua	405	Westland	63
Horowhenua	404	Ruapehu	62
Upper Hutt	402	Tararua	57
Thames-Coromandel	380	Ōtorohanga	52
Napier city	377	Kaikōura	46
Taupō	341	Ōpōtiki	39
Kāpiti Coast	331	Waitomo	39
Central Otago	309	Gore	36
Ashburton	299	Waimate	33
Invercargill	274	Kawerau	19
Nelson	271	Wairoa	12
Marlborough	263	Chatham Islands	3
Kaipara	254		

## Annex Two: Summary of questions

<b>SECTION ONE OF THREE: Introduction and strategic context</b>
<b>Role of Government</b>
1. What do you think the primary focus of the building consent system should be?
2. What role should government have in providing assurance that buildings are healthy, safe and durable?
3. Are there any building consent functions that could be delegated to or provided by another party? If so, please explain your response.
<b>SECTION TWO OF THREE: Desirable outcomes</b>
4. Do you agree these four critical outcomes are necessary to ensure the system provides high levels of assurance to the public that buildings are healthy, safe and durable?
5. Are there any other outcomes that are critical to ensure buildings are healthy, safe and durable?
6. How well is the system currently performing against the four identified outcomes? Please explain your views.
<b>SECTION THREE OF THREE: Issues with the current system</b>
<b>Issue 1: Roles, responsibilities and accountability</b>
7. How well understood are roles and responsibilities across the sector? Please explain your views.
8. Does the consenting system allocate responsibility appropriately, to those best able to identify and manage the associated risks? Please explain your views.
9. Does the building consent system provide sufficient incentives for each party to meet their responsibilities and 'get it right the first time'? Please explain your views.
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?
11. Are some parts of the sector more prepared than others to take on more of the responsibility for providing assurance?
<b>Issue 2: Capacity and capability</b>
12. How significant are building consent authority capacity and capability constraints on the performance of the system? 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.

<p><b>13.</b> How significant are sector workforce capacity and capability constraints on the performance of the system? 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.</p>
<p><b>14.</b> How could the impacts of capacity and capability constraints be mitigated?</p>
<p><b>15.</b> Are there any barriers to a more efficient use of technical expertise across the system? If so, what?</p>
<p><b>Issue 3: System agility</b></p>
<p><b>16.</b> 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? If you agree, how does rigidity in the building consent system impact consenting outcomes and productivity in the building sector?</p>
<p><b>17.</b> What changes would you suggest to the building consent system to make it more agile?</p>
<p><b>18.</b> Does the current building consent process constrain or limit the use of traditional Māori methods of construction?</p>
<p><b>19.</b> Does the current building consent process add constraints to the development of Māori-owned land that other landowners don't face?</p>
<p><b>20.</b> 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?</p>
<p><b>Issue 4: Performance monitoring and system oversight</b></p>
<p><b>21.</b> What can be done to improve monitoring of the building consent system?</p>
<p><b>22.</b> What information or data relating to the consenting system performance would you find useful?</p>
<p><b>23.</b> Are you aware of any barriers to collecting and sharing information across the sector?</p>
<p><b>24.</b> Are you aware of additional data and information sources that we could be using to inform our understanding of the system performance?</p>
<p><b>25.</b> Is there anything else MBIE could do to better meet its system oversight and stewardship responsibilities?</p>
<p><b>Issue 5: Fragmented implementation</b></p>
<p><b>26.</b> 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?</p>
<p><b>27.</b> What aspects of the current consenting system structure work well?</p>
<p><b>28.</b> What aspects of the current consenting system structure do not work well?</p>

<b>29.</b> How does the current devolved consenting system structure impact consent applicants and building owners?
<b>30.</b> What improvements or changes are required to the current consenting system structure to reduce fragmentation in implementation and deliver better consenting outcomes?
<b>31.</b> Is there any duplication or overlap between the building consent and resource consent processes, or any other legislation? Please explain your views, including any impacts.
<b>32.</b> How could the relationship between the building consent and resource management systems be improved?
<b>General questions</b>
<b>33.</b> Do you have any other comments?



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

**BRM 8226**