

4 August 2023

Ministry of Business, Innovation and Employment
Consultation: Review of the Building Consent System
Building System Performance
Building, Resources and Markets
Ministry of Business, Innovation and Employment
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New Zealand

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Building consent system review: options paper consultation (2023)

We appreciate the opportunity to provide feedback to the building consent system review: options paper consultation (2023).

Council supports MBIE's focus on the whole of building consent system and supports the breadth of the review.

Background

Western Bay of Plenty District Council is a territorial local authority covering approximately 195,000 hectares. The population of the district is currently around 58,000. Towns in the District include Te Puke Ōmokoroa, Katikati, Waihi Beach, Maketu and Pukehina.

We are a fast-growing district, and our population is expected to exceed 70,000 by 2041. We are classified as a 'Tier one' Council in terms of the Nation Policy Statement on Urban Development. We are currently progressing the Medium Density Residential Standards (MDRS) plan change which will enable more medium density developments and we expect this will impact building consent numbers and complexity.

The resource consents for Stage 1 of the Rangiuuru Business Park (35 hectares) have now been granted, and we are expecting multiple industrial and commercial applications for building consent to follow. The Business Park will eventually be a total of 148 hectares.

In the year to June 2023, we processed 992 building consents. The Western Bay of Plenty sub-region is one of the fastest growing areas in New Zealand. The need to deliver growth and providing efficient and effective building control services is well understood by Council.

Submission points

Our submission points are set out below, in response to the questions posed by the consultation.

We are more than happy to discuss any matters for clarification or to expand further.

Yours sincerely,



James Denyer

Mayor

Western Bay of Plenty District Council

Promoting competition in the building regulatory system

Questions about promoting competition in the building regulatory system		
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?	<p>It is difficult to see how the role of promoting competition among the building system is a role for building consent authorities.</p> <p>It is important for Councils to maintain a sense of neutrality across the building consent process and any promotion of competition may be perceived as Council not meeting this duty and favouring a particular supplier.</p>
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	<p>Currently, the assessment of products used in consent applications is onerous. It requires a risk-based assessment by the building consent authority and with the introduction of multiple new products (with no consenting history) every year and the inability to rely on warranties the need to get it right is paramount.</p> <p>The creation of a national product certification system and/or register by MBIE would provide significant use to building consent authorities and enable quicker decision making.</p> <p>In addition to this, it is suggested that the process around the supply of statements of conformity to the Building Code could be improved. It is recommended that this process is reviewed in order to make it more independent.</p>
3	What other options or potential combinations would work together to give effect to competition	See answer to question 1 above.

	as an objective in the building regulatory system?	
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? Please explain your views.	The promotion of competition is ultimately the role of the Commerce Commission and the introduction of it as a regulatory principle and producing guidance around it does not change this.

Removing impediments to product substitution and variations

Questions about removing impediments to product substitutions and variations		
5	<p>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? Please explain your views.</p>	<p>While we support the creation of greater efficiencies across the building consent system however have identified some risks around the proposed options.</p> <p>Compatibility of products</p> <p>There appears to be no consideration of how products work together and how this can be considered when a product is substituted for another. The risk of product clashes needs to be considered in this context. It should be noted that some products work as a 'system' and part of the system cannot be a simple substitution.</p> <p>Zones</p> <p>As above there appears to be no consideration of a particular products suitability for the durability zone in which it is being used.</p> <p>The above matters need to be addressed before any type of product substitution is progressed.</p>
6	<p>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?</p>	<p>The definitions of 'minor variation' and 'deviate significantly' need to be made clearer. Would these apply to specific situations or a specific product?</p> <p>The scope of this change needs to be narrowed while ensuring that any liability to Building Control Authorities is reduced as much as possible.</p>
7	<p>What impacts will the options regarding MultiProof have? What</p>	<p>Council supports the use of the MultiProof system and encourages greater use of it across the sector. It is recommended that</p>

	<p>are the risks with these options and how should these be managed?</p>	<p>MBIE promote the system more and look at ways it can be made more accessible with an easier pathway for 'sign up'.</p> <p>We are generally supportive of options 1 and 2 and suggest that this may encourage more developers to use the MultiProof system.</p>
<p>8</p>	<p>Are there any other options to improve the system and make product substitutions and variations to consents, and MultiProof, more effective and efficient?</p>	<p>The creation of a national product certification system and/or register by MBIE would provide significant use to building consent authorities and enable quicker decision making.</p>

Strengthening roles and responsibilities

Questions about options to clarify roles and responsibilities and strengthen accountability		
9	Do you agree with MBIE's preferred approach to progress options 1 (guidance) and 2 (declaration of design compliance requirement) as a package? Please explain your views.	<p>Yes, while certain roles and responsibilities are already made clear in the Act, additional guidance would provide the necessary information to fill any gaps.</p> <p>Building consent authorities are only part of the approach to provide assurance. Assurance begins with good quality design, followed by quality workmanship.</p>
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)? Please explain your views.	<p>A person to manage the sequencing and coordination of building work on site would be beneficial and mean that building inspectors would have someone specific to talk to.</p> <p>It is suggested that the existing site licence provisions could be utilised for this purpose.</p>
11	What are the risks with these options and how should these be managed	<p>There is a risk that one person being responsible for the sequencing of events may become solely liable for everything and viewed as potential 'scapegoat'. Provisions need to be put in place to safeguard the role and that on person to ensure that liability sits across the wider build and building companies are still held accountable.</p>
12	Do you agree the declaration of design compliance should be submitted by a person subject to competency assessments and complaints and disciplinary processes? Please explain your views.	<p>Yes, competency of designers is a key area where improvements could be made.</p> <p>Currently, there is no requirement around what level of building a designer can undertake work on. This is resulting in the building consent authority having to manage any anomalies through the consent process.</p>

		This is not the role of the building consent authority, and the onus should be on the designer to provide the requisite evidence in line with the building code.
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?	<p>A declaration of design compliance should state how the design is complying with the Building Code. Currently, compliance with the building code appears to be seen as an individual rather than a shared responsibility. Requiring more parties to state how their work applies to the code will help lift the standard.</p> <p>Form2A is currently very generic and does not provide enough detail for the building consent authority to rely on. The declaration of design compliance could help improve this.</p>
14	Should the declaration of design compliance replace the certificate of design work (for restricted building work)? Please explain your views.	Potentially yes, as per above answers.
15	When might a design coordination statement be required? What should be the responsibilities and accountabilities of the person providing the design coordination statement?	The design coordination statement should provide tangible evidence of a person's qualifications to undertake design at the level aligned with what is proposed in the application.
16	Should there be restrictions on who can carry out the on-site sequencing and	The person carrying out the on-site sequencing should be suitably qualified. The site licence provisions could be expanded to include different categories

	coordination role? Would the site licence be sufficient to fulfil this function?	<p>of building NCA levels in order to meet this.</p> <p>Any competency relating to a site licence needs to be independently assessed not self nominated or declared.</p>
17	What other options should be considered to clarify responsibilities and strengthen accountability?	<p>There is currently the expectation that the building consent authority is responsible for picking up every issue and problem. The building consent is seen as a guarantee that absolutely everything is complied with and is free of defects. This over reliance on building consent authorities' leads to a disproportionate amount of responsibility on them, which should not be the case.</p> <p>We continue to support a change to the current liability settings. Liability and responsibility are critical as ensure that everyone is on the same path. As it stands, it appears that parts of the industry are aware of their ability to opt out of their responsibility.</p>

Producer statements

Questions about producer statements		
18	Do you agree with MBIE's preferred approach to progress option 2 (non-prescriptive legislation and guidance)? Please explain your views.	We support the provision of guidance around this topic. Guidance is a powerful tool and coupled with a degree of prescription helps avoid ambiguity.
19	What should be the purpose of producer statements and what weight should be given	Producer statements should be able to be relied upon and provide building consent authorities with the appropriate level of assurance.

	to them?	It is recommended that incorporating producer statements back into the Building Act should be considered.
20	Should there be restrictions on who can provide a producer statement? Please explain your views.	Producer statements should be provided by those who are suitably qualified. Evidence of this could be included as part of the statement. However, it should not be the role of the building consent authority to assess an individual's qualifications. What is required should be prescribed and managed by MBIE.
21	What is the appropriate criteria to assess the reliability of producer statements?	<p>The qualification and level of insurance/indemnity of those making the producer statements should be included as part of the criteria.</p> <p>The level of cover set out in a producer statement should be appropriate for the scale of the job being undertaken. It would be helpful for this this to be something that could be considered by the building consent authority when assessing producer statements as this shows that they are placed to undertake the type of work set out in the statement and therefore providing further assurance.</p> <p>It would be helpful for a central register to be created. Those on the register should meet the prescribed competency and hold the appropriate level of insurance cover.</p>
22	What other risks need to be managed?	There doesn't appear to be consideration for how problematic producer statement authors can be managed. There needs to be a system in place to manage poor performance and a mechanism for where Council can raise concerns about a particular producer statement author with

		avenues for investigation and/or independent review.
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New assurance pathways

Question about taking a more risk-based approach under current settings		
23	What extent would MBIE guidance assist building consent authorities to better take a risk-based approach under existing regulatory settings?	<p>A risk-based approach is already adopted by most building consent authorities however the currently liability settings remain a major barrier and without a change to these the management of risk remains disproportionately with building consent authorities. Guidance from MBIE assisting building consent authorities to better take a risk-based approach would be helpful.</p> <p>Currently, there is a limited evidence base which building consent authorities can rely on to support decisions made in relation to risk-based assessments. For example, IANZ assessors can sometimes take a narrow view of risk-based assessments so being able to rely on guidance from MBIE on this would be useful. It is recommended that any promotion of a risk-based approach needs to be across the sector.</p>

Question about options for self-certification		
24	To what extent would self-certification align assurance with risk levels and sector skills?	<p>While there is merit in the idea of self certification, an appropriate system needs to be put in place and managed by MBIE. The creation of a register of who can provide self certification and details of their insurance would help provide the</p>

		<p>assurance needed.</p> <p>Building consent authorities need to be assured that they won't be held responsible or liable for errors and misconduct beyond their control.</p>
25	<p>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? Please explain your views.</p>	<p>We are supportive of the three outcomes however suggest that mechanisms need to be put in place for building consent authorities to be able to raise complaints and concerns about incompetent certifiers.</p> <p>It is suggested that Section 19 of the Building Act needs to include reference to self-certification.</p>
26	<p>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?</p>	<p>Insurance remains a risk and self certification may start to be recognised as a risk. Consideration of a central liability fund through levy of members or insurance underwritten by central government may wish to be considered.</p>

Commercial consent

Questions about the option of a new commercial consent process		
27	To what extent would the commercial consent process align assurance with risk levels, the respective skills of sector professionals and building consent authorities?	<p>The commercial sector is best placed to manage its own risk. However, building consent authorities still provide value in this space and should maintain involvement in an audit capacity.</p> <p>It is recommended that the installation of passive fire systems and any other specialised sub-trades needs to be regulated and managed.</p>
28	Would it enable a more agile and responsive approach to dealing with design changes as construction progresses? Please explain your views.	As above.

Questions about the design considerations for the commercial consent process		
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.	<p>Commercial 3 and potentially Residential 3 consents could potentially be delegated to a more appropriate taskforce, rather than left the existing in building consent authorities.</p> <p>Building consent authorities continue to add value to Commercial 1 and 2 building consent processes.</p>
30	Do you agree with the proposed roles, responsibilities and	If these pathways were to progress the liability of the building consent authority needs to remain clear throughout.

	<p>accountabilities? Please explain your views.</p>	
31	<p>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.</p>	<p>There is a risk that this change will shift a significant amount of risk to the private sector without considering changes to liability settings first.</p>

Question about options for new pathways to provide assurance

32	<p>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? Please explain your views.</p>	<p>This option covers a significant change that requires further consideration.</p> <p>Workshops with MBIE and Council representatives may be helpful to help facilitate this</p>
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Better delivery of building consent services

Questions about providing greater national direction and consistency		
33	Which options would best support consistency and predictability given costs, risks and implementation timeframes? Please explain your views	<p>There are benefits to all of the options outlined however barriers to overcome, these are outlined below:</p> <p>Option 1 – Councils currently set their own processes and get audited on these. While nationally consistent processes and requirements would benefit the wider consenting process there is a risk that a monopoly could be created. To reduce this it is recommend hat the process is overseen by MBIE.</p> <p>It should be noted that to some extent option 1 is already happening with some organisations in the private sector and clusters of building control authorities joining together to create greater efficiencies.</p> <p>Option 2 – we welcome a review of the building consent application and processing systems currently in use in order to identify a national approach. Again, a monopoly in this space has already been created and as a result costs have risen considerably. We encourage the leadership of MBIE to consider the use of systems and technology as there is a need for greater consistency around this.</p> <p>Option 3 – Remote inspection technology is okay in theory for a low-level inspection however it has not saved time and does result in reduced quality. In addition, it is limited by mobile coverage which given</p>

		<p>the nature of remote inspections is problematic.</p> <p>Remote inspections should not be mandatory. Remote accessibility is restricted in a lot of places across New Zealand, and it should ultimately be up to the Building control authority to use this function as a choice.</p> <p>Option 4 – Training costs for building control authorities have risen considerably recently and while Council has instigated a Cadet programme to stop gap the shortage of natural resource a centralised training may be the solution.</p> <p>It is difficult for building control authorities to find the appropriate resource for suitable staff to train and manage these types of programmes. It could be better managed by Central Government and would contribute significantly to the consistency of training across building control authorities.</p> <p>Monopolisation of training is a risk to council. Current providers including BOINZ charge exorbitant fees for training which is prohibitive to councils to use to train the appropriate number of staff.</p>
34	What other costs and risks need to be considered?	The risk of monopolisation of certain aspects of the building consent system needs to be considered in addition to the to building consent authorities.
35	Are there any other options that would support consistency and predictability?	It is recommended that to ensure consistency and reduce the risk of monopolisation, these systems are managed by MBIE.

		It is also recommended that competency assessments for building control officers are also centralised and managed by MBIE.
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Questions about boosting capacity and capability		
36	Which options would most alleviate capacity and capability constraints given costs, risks and implementation timeframes? Please explain your views.	<p>Sector workforce capacity and capability constraints are significant. There is a significant skill shortage across the building industry, and we support initiative to help boost capacity and capability. Given this, Option 3 is the best option to alleviate these constraints.</p> <p>Some Councils already work alongside each other to share information and resource however option 3 would ensure a more consistent approach is taken nationally.</p> <p>We support the idea of specialist expertise being available for Councils to utilise when looking for help on a particular subject.</p> <p>It should be noted that timeframes are not just the responsibility of building consent authorities alone and the wider industry needs to be held accountable to meet their respective timeframes too. The use of technology could help this.</p>
37	What other costs and risks need to be considered?	<p>The lack of streamlined technology across the building consent process remains a barrier and needs to be seriously considered to create efficiencies and alleviate the above constraints.</p> <p>The new applicant portal utilised by many</p>

		Councils is an example of the way technology can benefit the wider consent system as it has created greater transparency for owners to see the status of their application and where there may be any delays in the system.
38	Are there any other options that would alleviate capacity and capability constraints?	Option 3 + streamlined technology.

Questions about achieving greater economies of scale		
39	What are the biggest barriers to voluntary consolidation? How could these be overcome?	<p>The major barriers to voluntary consolidation are as follows:</p> <ul style="list-style-type: none"> • Public perception – applicants like to know that inspections are being carried out by local people with local knowledge and expertise. • Geography: The location of offices and the time it takes to travel to sites is a barrier. • Resource – the capacity for building control authorities to manage a voluntary consolidation is a barrier. • Systems – different councils have different systems and there will be a significant cost to amalgamate these in the event of a voluntary consolidation.
40	Which options would best support building consent authorities to achieve greater economies of scale given costs, risks and implementation timeframes? Please explain your views.	Option 2 – The creation of a national body to undertake large scale consents relating to central government infrastructure projects, packhouses, factories etc would significantly support a building consent authorities' ability to achieve greater economies of scale.

41	What other costs and risks need to be considered?	The creation of a national building consent authority carries the risk of resource being diverted away from existing building consent authorities.
42	Are there any other options that would support building consent authorities to achieve greater economies of scale?	<p>The submission points outlined above set out several options that would support building consent authorities to achieve greater economies of scale. A summary of these is set out below:</p> <ul style="list-style-type: none"> • Self certification • Commercial consents pathways • Creation of a product register • The creation of a national body to undertake large scale consents relating to central government infrastructure projects, packhouses, factories etc would significantly support a building consent authorities' ability to achieve greater economies of scale. <p>It is also recommended that a centralised alternative solution register is explored. This would help building consent authorities with decision making and the processing of consents and should also include information about products and systems that are not working. Further support of information sharing across building consent authorities is set out below.</p>

Better performance monitoring and system stewardship

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.	<p>Yes.</p> <p>The primary focus of the building consent system should be to provide assurance that good quality, safe, healthy, and resilient buildings are built. It is Central Government's responsibility is to provide this assurance through monitoring Building Control Authorities, builders, and product performance; evaluation; performance reporting' policy advice; policy and operation design'; legislative design; information provision; standard setting and capability building.</p> <p>Central Government should continue to lead the regulation and certification of products and should provide compliance that are clear for modern methods of construction.</p>
44	What initiatives should be prioritised and why?	See question 42
45	What else does MBIE need to do to become a better steward and central regulator?	<p>There is a general desire from Building Consent Authorities for MBIE to take greater ownership across the consenting landscape. This includes but is not limited to the provision of guidance, training, templates, and the development of acceptable solutions. Some further specific examples are set out below:</p> <p>Product register As outlined above the creation of a product register would hugely benefit building control authorities.</p> <p>Systems/technology</p>

		<p>Establishing processes and creating greater consistency and control of systems and technology used across the consenting process would also hugely benefit building control authorities.</p> <p>Sharing of data</p> <p>It is recommended that MBIE make better use of determinations made. Determination numbers, timeframes and outcomes could provide useful information about where training is needed and where clarification or legislative change is required.</p> <p>In addition, we would appreciate analysis of request for information to identify areas for further education, training, guidance templates, or development of acceptable solutions.</p> <p>As stated in previous submissions, it would also be useful to see a record of the number of pass/fails and reasons for failure. This information would be useful for training purposes and to build confidence and trust in the system. Being able to see other building consent authorities reasoning and rationale for approval and exemptions would be valuable.</p> <p>Ultimately, the sharing of data, information and decisions will help lift the standard nationally.</p>
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Better responding to the needs and aspirations of Māori

Questions about options to better respond to the needs and aspirations of Māori		
46	Will these options help address the issues that Māori face in the building consent system? Please explain your views.	<p>The Building Consent process, in its current format, does not work for the development of Māori owned land.</p> <p>The Building Code process needs to be reviewed in relation to multiple owned land. Multiple owned land does not carry the same level of risk as Unit titled land, as it cannot be on sold in the same way.</p> <p>While there is merit in each option, they will not address the constraints that exist outside of the building consent process including lending for multiple owned land, landowner consent issues, Māori land Court processes, district planning requirements and building code requirements relating to fire safety and its application to Marae.</p>
47	Which of the three options identified would have the most impact for Māori? Please explain your views.	<p>Option 1 – A lot of Councils are already undertaking the role of navigator between building consent teams and Māori in the context of Māori land and Marae. These relationships are already established, and the navigator role may not be necessary.</p> <p>Option 2 – The main barrier for many council teams who have Te Ao Māori expertise is bridging the gap between this and the need for technical knowledge around Building Act requirements. The development of a new centre of excellence may help with reducing this barrier.</p> <p>Option 3 – Further guidance for building</p>

		control authorities is welcomed however it is suggested that it is also needed for applicants to provide a more rounded approach.
48	What are the risks with these options and how should they be managed?	There is a risk that the options will result in a 'one size fits all' approach which would not benefit Māori.
49	Where should the navigator role sit and what responsibilities should it have? Should it include assisting Māori through the wider building process?	As outlined above, this role is already being undertaken by a lot of Councils and may not be necessary.
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?	The centre of excellence should compliment existing processes and provide the technical knowledge around building consent processes.
51	What other options to improve the system and make it more responsive to Māori needs and aspirations should be considered?	As outlined above, it is recommended that an acceptable solution for fire safety design at Marae is created to provide greater efficiencies in this area. Life safety and IQP processes are currently a significant financial cost to Marae.

Addressing the interface between the building and resource consent systems

Question about addressing the interface between the building and resource consent processes		
52	<p>What other options to address the issues arising from overlaps between the building and resource consent processes should be considered?</p>	<p>As it currently stands there is a distinct disconnect between the building and resource consent processes.</p> <p>Natural hazards and climate change The different treatment of natural hazards between these two processes is particularly problematic. While the resource consent system bases its treatment of natural hazard on the District Planning maps the building consent process uses GIS mapping. In addition, it appears processes base decisions on different modelling scenarios with resource consents requiring 1 in 100 years and building consents requiring 1 in 50 years.</p> <p>Both of these factors can result in inconsistencies across applications and lead to poorer outcomes for applications and Councils alike.</p> <p>Terminology Aligning the terminology used between the two processes would help build understanding.</p> <p>Project information memorandums Project information memorandums (PIM) are undertaken by our Council regardless of whether they are requested by the applicant or not. They form the basis of all decision making throughout the building consent process.</p>

		<p>Better use of these documents may help bridge this disconnect through assisting applicants with better management of the sequencing of events throughout the course of application. In particular, the use of a PIM would ensure that if a resource consent is required, it is completed prior to a building consent application being lodged.</p> <p>Education</p> <p>Further education around these processes may also help bridge the disconnect. While a range of resources are already available to applicants including access to GIS systems and the opportunity for a pre-application meeting confusion around the purpose of the processes continues to exist.</p>
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General

General comments		
53	Do you have any other comments?	We are more than happy to discuss any matters for clarification or to expand further.