

Consultation submission form

REVIEW OF THE BUILDING CONSENT SYSTEM: OPTIONS PAPER

June 2023



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How to make a submission

The Government is undertaking a substantive review of the building consent system. A better building consent system is a key priority of the Government and is necessary to support transformation of our housing market to unlock productivity growth and make houses more affordable.

The aim of the review of the building consent system is to modernise the system to provide assurance to building owners and users that building work will be done right the first time, thereby ensuring that buildings are well-made, healthy, durable and safe.

How to make a submission

MBIE seeks written submissions on this options paper by 7 August 2023.

Your submission may respond to any or all of the questions in this options paper. Please provide comments and reasons explaining your choices. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Your feedback will help to inform decisions on options that should be progressed in the next phase of the review, the detailed design of those options, and valuable feedback on options that require further consideration.

You can submit this form by 5pm, Monday 7th August 2023 by:

- Sending your submission as a **Microsoft Word document** to building@mbie.govt.nz
- Mailing your submission to:

Consultation: Review of the Building Consent System
Building System Performance
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473

Wellington 6140
New Zealand

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

Alternatively, you can respond to the questions by using this [online survey form](#).

Please direct any questions that you have in relation to the submissions process to 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 submissions on MBIE website

MBIE may upload copies of submissions received to MBIE's website at www.mbie.govt.nz.

MBIE will consider you to have consented to uploading your submission unless you **clearly specify** otherwise in question E, below.

If there are *specific* pieces of information within your submission that you do not wish us to publish for privacy or commercial reasons, please **clearly mark** this in your submission.

Release of information under the Official Information Act

The *Official Information Act 1982* specifies that information is to be made available upon request unless there are sufficient grounds for withholding it. If we receive a request, we cannot guarantee that feedback you provide us will not be made public. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.

In addition to the instructions above on releasing submissions on the MBIE website, please explain clearly in question E which parts you consider should be withheld from official information act requests, and your reasons (for example, privacy or commercial sensitivity).

MBIE will take your reasons into account when responding to requests under the *Official Information Act 1982*.

Private information

The *Privacy Act 2020* establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Submitter information

Please provide some information about yourself. If you choose to provide information in the “About you” section below it will be used to help MBIE understand the impact of our proposals on different occupational groups. Any information you provide will be stored securely.

A. About you

Name: Nicholas W. Hill

Organisation and role (if submitting on behalf of a company or organisation) The Building Officials Institute of New Zealand, Chief Executive

Email address: nickhill@boinz.org.nz

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

Yes No

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

Individual Company/Organisation

D. The best way to describe you or your organisation is:

- Designer/ Architect Builder
 Sub-contractor Engineer
 Building Consent Officer/Authority Developer
 Homeowner Business (please specify industry below)
 Industry organisation (please specify below)
 Other (please specify below)

Submitter information

Peak body Not for Profit charitable organisation representing building surveyors, including Building Consent Officers working in Local Government.

E. Privacy and official information:

The *Privacy Act 2020* and the *Official Information Act 1982* apply to all submissions received by MBIE. Please note that submissions from public sector organisations cannot be treated as private submissions.

- Please tick the box if you do **not** wish your name or other personal information to be included in any information about submissions that MBIE may publish or release under the *Official Information Act 1982*.
- MBIE may publish or release your submission on MBIE's website or through an Official Information Act request. If you do **not** want your submission or specific parts of your submission to be released, please tick the box and provide an explanation below of which parts of your submission should be withheld from release:

Insert reasoning here and indicate which parts of your submission should be withheld:

[E.g. I do not wish for part/all of my submission to be release because of privacy or commercial sensitivity]

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Chapter 2 – Promoting competition in the building regulatory system

The Commerce Commission recommends that promoting competition be included as an objective in the building regulatory system, to be evaluated alongside safety, health and durability—without compromising those essential objectives.

Chapter 2 presents potential regulatory and non-regulatory options that would promote and give competition more prominence in the building regulatory system.

MBIE's preferred option is to progress options 2 (**introduce competition as a regulatory principle**) and 4 (**issue guidance on promoting competition**) together as a package.

Questions about promoting competition:

1. What options are more likely to promote and give competition more prominence in the building regulatory system and its decision-making, given the costs and risks?

We do not see any cohabitation between the objects of the building regulatory pathway and competition - whether it be product or any other areas within the building system.

The responsibility for product determination is the designer and happens before the regulatory consent and build process. The design community should be responsible for advising the building owner/client on the available product options and associated design choices. As such, searching for more than one product should be at the design level. The work provided under the new product information regulations will assist significantly, providing the building owner to make an informed decision.

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

The Building Officials Institute's position fundamentally supports the core purpose of building work is to ensure buildings are safe, durable and healthy. We believe the current Act and Regulations deliver on this outcome.

While the Institute supports competition per se, introducing competition into building work via the regulatory process potentially dilutes that core purpose. We note the Commerce Commission's report on Building Market Supplies has a primary focus on product supply. The concern the Institute has is that MBIE are stretching this unique focus and implying that it is a function of the building consent pathway.

With respect to competition with BCA's, we draw your attention to the concerns that now exist with the Australian Certifier model that is largely made up of independent certifiers, many of whom are operating on a race to the bottom approach to secure business. A further issue exists

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where certifiers in Australia are identified as captured by their employer with respect to certifying decisions.

The options proposed to promote competition are fundamentally flawed in introducing it into what is a regulatory process. The Building Consent Process is a regulatory compliance process not a process to introduce competition to the building market per se.

The Options proposed reflect concern and we believe are light on detail. Risk analysis is absent.

The Commerce Commission in its recommendation to give competition more prominence in the consenting systems fails to acknowledge that the New Zealand Building Code is a performance-based code.

In respect of product, substitution (without specification analysis), undermines the basis of a performance-based Building Code.

The consultation paper advises the Building Consent System is not broken but acknowledges there is room for improvement. However, none of the proposed competitive recommendations will provide improved building performance and economies. Rather they create uncertainty and confusion and will divert (MBIE and BCA's) attention from the principles and purpose of the Building Act.

Furthermore, there is a potential risk that an initial focus on competition could potentially drive players out of the market who have quality products at the expense of cheaper, less durable materials. We could foresee examples of low-quality products being included in New Zealand Buildings supplied by short term entrants without the necessary research and development and financial backing to support consumers.

It would appear that the Commerce Commission is seeking greater competition in building supplies market, expecting that this will reduce prices, enhance supply chain resilience, increase product quality levels and more innovation, but there is little concern or analysis for the risks in this oversupplied market with little quality control.

In our opinion, a regulatory process focused on delivering safe, healthy and durable buildings is not the instrument to bring about increased competition and lower prices. This is a market function.

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?

The Institute suggests that MBIE could consider the following as detailed in the headings.

MBIE to signal the future trajectory of reform

MBIE as the regulator needs to signal the future trajectory of regulatory minimums with respect to draft Acceptable Solutions. This provides certainty for product manufacturers (and importers) of impending performance expectations and designers are aware of their role in delivering to future performance.

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A good example is the Building for Climate Change work programme (refer <https://www.building.govt.nz/assets/Uploads/getting-started/building-for-climate-change/work-programme-building-for-climate-change.pdf>)

For example

- 2024 Building Code Compliance pathways consulted upon
- 2025 reporting requirements for emissions
- 2026 - 2029 phased lowering of caps

MBIE to robustly evaluate cost benefits

Major regulatory change is supported by cost benefit analysis. Much could be learnt with respect to proposed regulatory changes by going back and evaluating if the stated benefits from previous reforms were delivered, which were more successful and why. Failure to do so means we are not actively learning from changes made and incrementally improving.

Substitution as a potential pathway to increase competition

There are mechanisms that currently exist to facilitate a relatively risk-free substitution pathway, namely elements within CodeMark, Multiuse, and Modern Methods of Construction, which allow standardised design. The Institute would encourage further investigation in respect of options in this area, rather than a blanket guidance document on product substitution which inherently is likely to carry interpretation risks.

We would support a robust risk analysis as to what building products can be substituted without impacting on the purpose and principles of the Act.

Holding manufacturers and suppliers of materials to account on claims made about their products

MBIE is taking on responsibility to ensure claims made about product performance are reliable under the BPIR regulations. We would encourage a proactive monitoring regime in this area that ensures those manufacturers that are wanting to supply in a like for like environment, are able to substantiate their claims.

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

The Institute, for reasons stated in Question 1, does not support MBIE introducing competition as an objective in the building regulatory process.

4. Do you agree with MBIE's preferred approach to progress options 2 (introduce competition as a regulatory principle) and 4 (issue guidance on promoting competition) as a package?

Yes Somewhat No Not sure

Please explain your views.

No. None of options are supported.

Chapter 3 – Removing impediments to product substitution and variations

The Commerce Commission considered that making product substitution easier would promote competition by allowing more changes to products after consent had been granted.

Chapter 3 presents options to help make the process for product substitutions and variations to consented building work more effective and efficient, and to increase flexibility in the MultiProof scheme.

MBIE's preferred approach is to progress all of the following options:

Product Substitution:

- Update **guidance** on product substitution.
- Modify the **building consent forms** to expressly allow alternative brands or products.
- Modify the **definition of minor variations** under regulations.

MultiProof scheme:

- Issue **guidance** and/or educational material.
- Make new regulations to **define 'minor customisation'** for MultiProof.

Questions about product substitutions, variations and MultiProof

5. Do you agree with MBIE's preferred approach to progress all the options to improve product substitutions and variations (including for MultiProof) together as a package?

Yes Somewhat No Not sure

Please explain your views.

The Commerce Commission considered that making product substitution easier would promote competition by allowing more changes to products after consent had been granted. This consideration needs to be subjected to a robust risk analysis before progressing further.

The Institute would encourage the promotion of a dual specification option to designers as a possible competitive pathway in environments where product supply chain issues exist. There would however, need to be an awareness in respect of consenting cost implications, and a continuing need for compliance, such that BCAs are satisfied on reasonable grounds. We fully

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understand this option is available under the current process but probably has little promotion in terms of awareness.

We would support a level of generic guidance that alerted designers and others to alternate pathways but highlighted risks with each. Form 2 would be the only form requiring modification, and currently Form 2 is building code based rather than product or element based. However, it is the experience of BCAs that Form 2 in relation to the compliance section is often incorrectly completed and BCAs instead rely more on the plans and specifications supplied with the application.

Commercial warranties will always be a barrier to substitution unless alternate pathways such as dual specification are considered. MBIE need to consider the implications of warranties under Section 362i of the Building Act, where there is a requirement that the building work will be carried out in accordance with the plans and specifications submitted, and in accordance with the relevant Building Consent.

Notwithstanding, MBIE's input into product substitutions guidance to date (such as that relating to plasterboard), the Institute believes that more specific guidance in respect of minor variations would be an appropriate next step.

Creating a more accessible environment of product substitution, particularly on site, has the potential for unintended risks if the appropriate checks and balances for a minor variation have not been undertaken. Recent media articles have described product substitution and subsequent failure where the product had not gone through a minor variation or amendment process.

The Institute would encourage guidance in respect of substitution sign off/approval prior to the work being undertaken (as required by law). To achieve this and to ensure confidence to building owners and occupiers, the guidance should cover specific checks that reach all audiences in the building chain. BCAs are often not told about the substitution and consequent problems, so the guidance also needs to be clear about the roles and responsibilities of the designers, builders and building owners for substitution compliance.

Substitution proposals which are usually undertaken by the builder on-site, and when they depart from the detailed documents (approved plans and specifications) is contra to the responsibilities of the builder under Section 14E of the Building Act, provided that the work is covered by a Building Consent (refer to Section 14.E.2.a.). We make this point as a builder needs to understand they potentially depart from their responsibility if they become a designer specifying products. This leads to ongoing problems and avoidable and unnecessary disputes.

In the fullness of time, with the potential introduction of caps on embodied and operational carbon, the substituting of products will create even more uncertainty regarding ability to deliver on the stated carbon caps - another potential complication.

Option 1 – Guidance is useful for all parties, but we encourage well researched solutions that will minimise potential ambiguity and improve consistency throughout BCAs and the industry.

The Institute is more than happy to provide its knowledge and wealth of experience of its members to assist MBIE in developing this guidance.

We would be advising that the regulator not short-circuit the research of evidential information requirements in bringing this guidance to bear.

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[Option 2](#) – See our earlier point above regarding Form 2.

We believe Form 2 particularly the compliance section is of little use to designers and BCAs. It is often incorrect or incomplete. BCAs instead place more reliance on the plans and specifications.

MBIE needs to understand that the builder frequently does not see the Consent Form 2.

To demonstrate compliance product detail needs to be recorded in the specification. This also ensures the builder knows what they are building.

[Option 3](#) – We support the changes for clarity in principle, but cannot comment further until the detail draft has been produced.

6. What impacts will the options regarding product substitution and variations to consents have? What are the risks with these options and how should these be managed?

The risks are significant. We foresee buildings potentially being noncompliant, warranties invalidated, and potential claims to BCAs. These would further add to risk averseness and capacity issues, not to mention the additional cost to the rate payer.

Product substitution should not be a risk. It is a fact of construction, particularly in a small, constrained industry. Therefore, everyone in the chain needs to fully comprehend their roles, responsibilities, and liabilities. It is the process that needs to be looked at, and the competence of the individuals involved in the process.

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

Given the low level of uptake of MultiProof it is unlikely to have significant impact with respect to substitution or competition. However, we are concerned the impact on a minor variation may fall on the BCAs. With MultiProof applications, the majority of the technical documentation and decisions are not provided to BCAs. Introducing minor variation will therefore be difficult for BCAs to apply when they do not know what the basis of compliance was. We would suggest that minor variations be incorporated into the original approval process via MBIE.

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

See above.

Chapter 4 – Strengthening roles and responsibilities

Chapter 4 presents options to improve participants' understanding of their roles and responsibilities, address regulatory gaps and ensure participants can be held to account, and clarify the role of producer statements. Together, these options will help ensure risks are appropriately identified and managed and that building work is done right first time.

MBIE's preferred approach is to progress the following options:

- Publish **guidance** to improve system participants' understanding of their roles and responsibilities.
- Require all designers to provide a **declaration of design compliance** to strengthen responsibilities of designers.

Questions about strengthening roles and responsibilities

9. Do you agree with MBIE's preferred approach to progress options 1 (guidance) and 2 (declaration of design compliance requirement) as a package?

Yes Somewhat No Not sure

Please explain your views.

The Institute and its members recognise that owners have the least understanding of their roles and responsibilities in respect of the Building Act, the Building Code and the Building work. Furthermore, they are largely ignorant of the options available to them in terms of product selection and maintenance obligations. A first step in strengthening the roles and responsibility outcomes would be significantly improved guidance from MBIE, particularly in respect of owners, but across other participants within the industry. The design considerations should always occur in advance of building code compliance demonstrations.

We would want to be assured that the declaration of design compliance does not become just another form with little value.

10. Should there be a requirement for a person to be responsible for managing the sequencing and coordination of building work on site (option 3)?

Yes No Not sure

Please explain your views.

This is definitely an ideal, especially for more complex jobs. It would off-set the trend for lack of ownership in this area. It would be particularly useful to have robust boundaries in respect of ownership of specific liabilities (in term of different trades).

We support the objective, though it needs time for guidance research, implementation, system design, and industry support. While we support a holder of the LBP Site Licence class who holds

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the appropriate qualifications, we would arguably say that there needs to be a breakdown of responsibility in respect of subtrades (i.e., the right person holds the responsibility for their area of expertise). We would encourage MBIE to work with industry to make this happen, for the good of the sector.

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

Minimal risks attached to Options 1 and 2. For Option 3, a transparent approach ensures appropriate apportionment of responsibility and risk in terms of technical expertise.

Having someone supervising works as laid out in Option 3 is an ideal objective, and we encourage a work programme to achieve this, with risk mitigation for the supervisor being a focus.

12. Do you agree the declaration of design compliance should be submitted by a person subject to competency assessments and complaints and disciplinary processes?

Yes Somewhat No Not sure

Please explain your views.

The Institute is supportive.

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?

Yes, the detail and type of information provided in Form 2A is appropriate, though it would need to be expanded to include code clauses and future building for climate change requirements. We encourage development of such a form and would like to see examples.

14. Should the declaration of design compliance replace the certificate of design work (for restricted building work)?

Yes No Not sure

Please explain your views.

Yes, if the information provided on a declaration also contains the information currently contained within the certificate and expanded to include Code Clauses as per Question 13's 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?

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We see design coordination as critical to the build outcome. However, what is contained within a design coordination statement and how and when the statement is brought together and by whom, is critical. We would like to see detailed proposals in respect of this.

We respectfully suggest MBIE needs to provide more information regarding the content and types of scenarios that this coordination statement would be used for before we can fully answer this question.

16. Should there be restrictions on who can carry out the on-site sequencing and coordination role? Would the site licence be sufficient to fulfil this function?

Yes, refer to our response to Question 10. We are unclear on whether this question refers to all building work, or just residential. This should be clarified.

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

The current roles and responsibilities within Section 14 of the Building Act, are good at a high level. They do however lack specific detail and do not include any penalties for non-compliance or any redress for building owners. As such, they are effectively toothless. We would support further clarity and guidance for these sections.

Furthermore, we would strongly encourage MBIE to consider the licensing of construction companies. NZ's construction industry is mostly made up of small businesses (1-5 people). The LBP system exacerbates this, as each individual LBP is licensed. If construction company's licencing is introduced, this would also hold those companies responsible, and also influence the size of construction companies in NZ. It would also create a level playing field in respect of accountability in the subcontracting area. A licensing class for commercial companies would ideally emphasise the importance of the proper sequencing of work.

We expand on roles, responsibilities and accountabilities in our response to Q30, where we point to successful examples of these in the British Columbia Assurance Framework.

Questions about producer statements

MBIE's preferred approach is to progress the following option:

- Clarify the use of **producer statements** through non-prescriptive legislation and guidance.

18. Do you agree with MBIE's preferred approach to progress option 2 (non-prescriptive legislation and guidance)?

Yes Somewhat No Not sure

Please explain your views.

BOINZ strongly believes that Producer Statements should be elevated back into legislation.

BOINZ believe that there is more work to do about defining who an appropriate person is, given the current use of Producer Statements, particularly PS3s by the industry and BCAs.

It is important for MBIE and the industry to also acknowledge and understand the future use of Producer Statements that are generated by design software, e.g., trusses, beams, glass balustrades, etc.

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

They should provide reasonable grounds and for making the system more efficient and consistent.

We would also make the point that these documents when legislated should emphasise responsibilities around the ownership and management of templates submitted. This is important given the current issues relating to recent fraudulent use of producer statements. The introduction of Producer Statements would ideally be an opportunity to achieve Producer Statement design consistency.

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

Yes No Not sure

Please explain your views.

See our response to Question 18.

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

The person issuing a Producer Statement needs to possess appropriate qualifications, training and experience, as well as ongoing competency, and be appropriately authorised by their company for

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issuing of Producer Statements that relate to products or systems. Monitoring of complex design elements should be inspected by the designer or technical specialist, for example, an engineer.

Authentication of a Producer Statement authorisation is now more critical than ever, and a system should be developed for this process. BOINZ understands that there is variability in what is provided in support of a Producer Statement. We recommend that clear guidance be provided to Producer Statement authors, e.g., calculations, documentation, construction monitoring.

22. What other risks need to be managed?

The risk is that if MBIE elevates Producer Statements to legislation and they become a means of determining reasonable grounds, then MBIE will require traceability for Producer Statements. This could be similar to how energy work certificates are managed.

The Bella Vista Case 2022 – [the Court of Appeal is to decide whether issuing a Producer Statement can be an offence - Lexology](#). This is being decided by the Courts under the current legislation where Producer Statements are not mentioned. Putting Producer Statements into legislation, will clearly make the roles and responsibilities of PS authors clear to the Courts. This will enable appropriate placing of liability.

Chapter 5 – New assurance pathways

Chapter 5 identifies options that would assist building consent authorities to take a more risk-based approach. This includes two formal assurance pathways that would shift some of the building consent authority assurance role to other participants with the required expertise to manage risk appropriately: self-certification and commercial consent.

MBIE's preferred approach is to progress all of the following options:

- Provide guidance to building consent authorities to take a more **risk-based approach** under current regulatory settings.
- Create two new assurance pathways: certification by **accredited companies** or by **approved professionals**.
- **New commercial building consent** to provide an alternative regulated consent process for some commercial projects.
- **Repeal the Building Amendment Act 2012** consent regime to consider these new pathways.

Question about taking a more risk-based approach

23. To what extent would MBIE guidance assist building consent authorities to better take a risk-based approach under existing regulatory settings?

If MBIE is going to deliver guidance, this needs to be clearly very robust and consistent with other areas of risk-based management within MBIE's regulatory structure.

However, the Institute feedback clearly tells us the construction industry is not mature enough for risk-based consenting. BCA members are willing to provide examples and evidence of non-compliance in both design and construction stages, as well as examples of where projects have run well, the latter being in the minority. **We believe the collection of this data is essential for a full understanding prior to progressing this initiative any further.**

Notwithstanding the above, any advancement in this area would need to deliver a fundamental objective of good quality systems to deliver compliant buildings and lift the capability across both the design and construction sectors. **We would not accept anything less.**

The Institute's members believe that there is an industry push for timing outcomes over quality and compliance outcomes. We would therefore encourage MBIE to ensure any moves forward in this area are evidence based.

We would encourage MBIE to look at BCA accreditation requirements in respect of qualifications, competencies, training, and policies and procedures. The BCA environment is the only part of the industry that is required to meet these parameters and we believe it is time for this to be extended

to other parts of the industry. Our case is premised by earlier, and former comments, with regards to the poor inputs into the consenting process.

Questions about self-certification

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

Under current capability, assurance alignment between skills and risk means that risk is currently high. The first point we would make in any progression in this area is that self-certification needs to be earned and supported by an ongoing audit regime.

Therefore, self-certification should not apply to everybody, or to all organisations. Nor, where consequence is extreme, particularly life safety, e.g. fire.

In respect of the costs involved around self-certification, these need to be understood and certainly not underestimated in respect of applications to proceed down this pathway. What all in the community need to understand is that such a move in this direction fundamentally means a reallocation in costs in respect of certification from the BCA to individuals or organisations providing that service. **In this regard, the risks of cost avoidance are greater outside the BCA environment than within.**

BOINZ cannot support a self-certification programme without fully understanding the detail. We therefore encourage MBIE to develop a robust strawman for future consultation.

We are very concerned that this proposal may not deliver the right outcomes for consumers.

25. MBIE has identified three desired outcomes for certification (high confidence that work complies with the Building Code, remedy for non-compliant work and that careless or incompetent certifiers are identified and held to account), Do you agree with the three proposed outcomes and the means to meet these outcomes?

Yes Somewhat No Not sure

Please explain your views.

We agree that the desired outcomes would be ideal; however, the pathway to achieving them is fraught with risk.

Without a clear detailed description and process, we don't believe we can support this approach at this point in time. The current joint and several liability framework would imply the risk for non-compliant work would still fall on BCAs and the ability to hold to account poor workmanship is far from clear in this proposal. We are extremely critical that this pathway has not allowed for customer protection should services be non-compliant or below quality.

Awareness of the Building Code is far from adequate in the design professions and across the construction sector. Until this issue is remedied, there is no place for quick legislative proposals without the underpinning understanding of building principles. The Institute is not in a position to

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provide a level of confidence to MBIE to proceed with these assurance programmes, until adequate groundwork, in respect of knowledge and skills, is in place.

This is evidenced by the nature of the complaints received by the Building Practitioners Board. If nothing changes, the volume and magnitude of complaints will only increase. Additionally, the number of RFIs required by BCAs would indicate progressing these pathways at this time, would be a negligent exercise on behalf of the regulator.

So, in conclusion to this question, we support the outcomes once there are clear indicators of improved competence in the industry.

Triage approach to disciplinary actions

Competence will evolve with behavioural change. To expedite this quickly, we would encourage MBIE to look at a triage approach to expediting complaints, such that minor complaints were dealt with quickly and efficiently but left the defendant in no doubt that the behaviour needs to change and that their record of deficient behaviour was being monitored. At the other end of the scale, the level of investigation would be more protracted and involved with penalties considerably higher. This approach would encourage complaints given the system would be easier and more effective in terms of response than the existing process.

26. What are the potential risks for self-certification and how should these be managed? Is there any type of work that should not be able to be self-certified?

A potential risk of self-certification is whether liability falls where it should. A further risk is that the costs involved in moving an assurance programme from a BCA to a professional or company are yet to be established. In respect of these costs, there needs to be work undertaken around investigative processes across multiple individuals and organisations involved, compared to costs associated with BCA accreditation. We suspect that costs to consumers will increase dramatically, until the design and construction sectors understand the regulatory environment.

Questions about commercial consent

27. To what extent would the commercial consent process align assurance with risk levels, the respective skills of sector professionals and building consent authorities?

As mentioned previously, BOINZ believes that self-certification is not appropriate where a failure would result in catastrophic consequences, particularly with regards of areas of life safety.

Other risks include:

- Risk of operating outside competency
There is a risk of practitioners designing/adapting/building/installing something that has not been designed and specified and/or moves outside of their area of competency.
- Risk of capture

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A practitioner could be 'captured' by an owner or developer, so we think that it is appropriate that owners/developers are excluded from instructing or making technical decisions (unless the owner/developer is suitably qualified).

- Design complexity creates risk

We also draw your attention to the difference between manufacturing, where product certification is about delivering a consistent product, as opposed to self-certification in the design, design-build, and build situation, where examples are often very different, and inputs are many and variable.

The system needs to be very clear that self-certifying designers need to be made aware that they will be held accountable for specifying non-complying product. **Any work in this area by MBIE needs to describe how this will be achieved.**

Collaboration across BCA network

This proposal has BCAs linked to the quality assurance system of commercial operations, when their day-to-day skills sets are verifying inputs and outputs of the consenting process, not the commercial quality process in between. Binding a BCA into this proposed system will require BCAs to acquire a level of quality assurance expertise in respect of risk and liability, where BCAs still have a culture of risk aversion. The proposal requires a co-agreement of a quality management system, specific to each project which still carries liability for consequences of noncompliance or building quality outcomes. It still would appear to be a time-consuming process upfront, without possibly making efficiencies.

28. Would it enable a more agile and responsive approach to dealing with design changes as construction progresses?

Yes Somewhat No Not sure

Please explain your views

We refer to our comments above and would assert that the design and construction sector needs to lift its awareness and capability in respect of the building code and the responsibilities required to get it right first time. This approach would need a commitment to ongoing education before a commercial consent pathway could be activated with any certainty.

The Institute would, therefore, state that processes that deliver compliant and quality build outcomes are more important than agility and responsiveness.

Third party accreditation critical for robust outputs

A critical aspect of this is accreditation of the Quality Assurance systems and this would not be the role of a BCA. They play a part in determining risk but not assessing or approving a quality assurance process. Quality Assurance processes rely on the technical capability and competency of the people using them and as stated above, if those people leave the organisation, often the Quality Assurance systems fail. The Institute believes the key to this is:

- a third party approval of the Quality Assurance system,
- appropriate technical capability within a Quality Assurance system and

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- early engagement by the organisation with the BCA.

We suggest that more consideration is given to the parts of building work within a project which may be covered by the Producer Statement regime that is proposed to be brought back into legislation.

Develop guidance

BOINZ recommends that it is important that before any changes are considered and possibly implemented, MBIE undertakes work to develop industry guidance. This must be backed by previous research and learnings from the trials previously undertaken.

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.

We support the proposed process with conditions

We support Commercial 3 buildings being required to go through the risk based consenting process, and being voluntary for Commercial buildings 1 and 2. As we've mentioned above however, there is going to need to be further research and guidance when implementing this process. The Institute is aware of several projects that would be of benefit for MBIE to look at. One being the Waikeria Prison, and the other being the Scott Base redevelopment. There are also other examples from our members that we can put you on to.

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

Yes Somewhat No Not sure

Please explain your views

Existing roles / responsibilities require clarification

As outlined above, we support clear roles and responsibilities, but also support the inclusion of roles and responsibilities for all in the design build pathway including developers. The latter seem to be an omission in respect of this consultation document.

There are existing roles and responsibilities defined under the Building Act, for example in section 14. These responsibilities would benefit from further clarification, and penalty consequences for not those not undertaking these roles in a diligent manner.

This document also does not detail adequately the transition from existing roles and responsibilities.

In respect of design and construction professionals, there are not sufficient details to provide support. We would however, encourage consideration through the trials that both Designers and Builders be part of the construction monitoring process. This would ensure that any submitted declarations received by a BCA clearly share the responsibilities and accountabilities across both

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the professional roles in the build process, thereby assuring that their joint involvement potentially delivers a better outcome.

However, Quality Control is always going to be a risk in large commercial builds, as articulated above, and we would advocate a key role for the benefit of the completed building would be a 'Clerk of Works' type role. This is someone who acts on behalf of the building owner to ensure the contractual duties are performed by all parties, and any design deviations are properly agreed, documented and adhered to.

British Columbia

We draw MBIE's attention to the regulatory system based on an 'Assurance Framework' within the legislation in British Columbia. This system is regulated at building act level to require identification of roles and responsibilities at the application stage through formal letters of assurance. They have had this system in place for approximately 30 years and it delivers a vastly improved sharing of responsibility, with improved building quality outcomes. This system provides a good balance of recognising participants skills, robust quality assurance processes, and the role of third-party attestations (such as the considerations around re-introduction of 'Producer Statements' as covered in the consultation document).

We are uncertain whether an owner in the true sense of the word would always have the skills to be responsible for the requirements, documents and declarations required. As such, we recommend binding in the professionals undertaking the work in the quality pathway.

Just focusing on Quality Assurance compliance is unlikely to nullify claims for poor build outcomes under Joint and Several liability. In such scenarios, BCA's must retain the ability to monitor design and build compliance before issuance of a certificate.

31. What would be the risks with the commercial consent pathway and how should they be managed? Please comment on entry requirements, site coordination, overall responsibility for the quality assurance system, third party review and what (if any) protections would be needed for owners of commercial buildings.

This commercial consenting pathway will require a shift of responsibilities, forcing BCAs to develop skill sets in areas they not naturally experienced in, particularly Construction Quality Assurance, and Processes. This will put pressure on an already scarce expertise in terms of capability.

Therefore, the risks are extensive in terms of alignment of skill sets across commercial and BCA environments, until there is capacity within the sector. The potential risk is that building activity is slowed down. For commercial 3 type projects, there are already known capacity issues in the areas of structure, fire, and façade systems. Taking into account those available design experts, and apportioning them across the BCA and commercial sectors, therefore, becomes problematic in terms of delivering capability to each sector. This could compromise independent review of designs.

Clarity is required re responsibility and risk - the current system is inadequate

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There needs to be a clear system which allocates responsibility and liability to enable the appropriate risk balance to occur. The current Joint and Several Liability regime is not fit for purpose as it still sheets home overall liability to the last man standing, being BCAs in most cases. Therefore, while we are aware Joint and Several Liability is out of the scope in this consultation, we would draw your attention to the fact that MBIE could look at a comprehensive insurance type arrangement offering protection to end users and owners for Commercial 3 projects.

Question about new pathways to provide assurance

32. Do you agree with MBIE’s preferred approach to progress policy work on the detailed design of the two new assurance pathways, repeal the inactive risk-based consenting provisions in the Building Amendment Act 2012 and issue guidance for building consent authorities?

- Yes Somewhat No Not sure

Please explain your views

We will be interested in further discussions around the detailed work that MBIE may be bringing to the table, and considerations to the points that we have made above.

Chapter 6 – Better delivery of building consent services

Submissions on the issues discussion document indicated that stakeholders would like greater consistency across the country to promote economies of scale and reduce duplication and cost. There are also significant capacity and capability constraints in the sector.

Chapter 6 considers options to address inconsistency across the building consent system and capacity and capability issues, under the following themes:

- providing greater **national direction and consistency** to increase predictability and transparency for applicants across the country
- **boosting capacity and capability** across building consent authorities and building greater collective capability across the country
- supporting building consent authorities to **achieve economies of scale** by reducing duplication and costs for individual building consent authorities.

Questions about providing greater national direction and consistency

The options in this section seek to **increase the consistency, transparency and predictability** of the process for applicants across Aotearoa New Zealand:

- Ensure **nationally consistent processes and requirements**
- **Review building consent application and processing systems** to identify nationwide technology approaches
- Support uptake of **remote inspection technology**
- **Centralise training for building control officers.**

33. Which options would best support consistency and predictability given costs, risks and implementation timeframes? Please select one or more of the following:

- Ensure nationally consistent processes and requirements
- Review building consent application and processing systems
- Support uptake of remote inspection technology
- Centralise training for building control officers

Please explain your views

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We support a programme of work being undertaken across all four of the proposals and financial support for all proposals. Further, that MBIE works with BCAs and the Building Officials Institute, along with industry to identify, quantify, and develop best practice approaches.

We note MBIE has financially supported technical processes or initiatives for consistency purposes, but they have not supported BCO training to any degree and have left this to the peak body, the Building Officials Institute of New Zealand. We have driven training for over 50 years and been instrumental in driving the qualification initiatives for the sector. This has been done without any financial support from the central regulator.

On the proposal to centralise training for building control officers, we fail to understand why MBIE has not more closely aligned itself with the Institute in a partnership to deliver appropriate levels of training over the years. This has meant the Institute has had to not only financially deliver resources to achieve competency consistency across its BCAs, but has felt over the years that it is the primary driver of education and training initiatives to the sector.

Other industry players have had commercial imperatives and often diluted the capacity and capability drive needed to achieve uniformity and consistency in respect of skills and knowledge. The Institute has a primary focus on skills and competencies at both the BCA and BCO levels. No other organisation has this operational focus at this scale, and no other organisation combines it with a total commitment to regulatory competence. As such, rather than centralised training for BCOs, we would encourage the regulator to be a closer partner of BOINZ as the peak professional body with a strong focus on building consent training and qualification pathways.

We would encourage the regulator to more closely align and understand the activities of the Institute, which has assisted MBIE's BSP predecessors over the last 50 years.

A review of the prescribed forms regulations would be welcomed and include forms currently not existing such as a compliance schedule. This would be a quick, easy win.

The development of a standardised QMS would be another win and bring efficiencies and cost savings to the IANZ audits, which would then flow through to the rate payer.

MBIE should do more to enable the sharing of resources, capability and capacity, by reviewing the 2006 accreditation regulations and perhaps establishing a standardised contract between BCAs. This, in particular, would add significant efficiencies in respect of BCA-to-BCA collaboration, limit uneconomic use of resources, and deliver efficient compliance outcomes where risk is appropriately managed. Another easy win if the regulator decided to invest.

So, as you can see from above, there are substantial gains to be made through minimal investments, which will deliver on consistency, collaboration and compliance outcomes, without redesigning a system that this document already describes as not broken.

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

Apart from the advice provided above in Question 33, technology support that delivered consistent platforms to underpin BCA operations would deliver cost efficiencies and reduce risks but importantly allow the sector to quickly respond uniformly to needed changes that the market may require. This support will effectively contribute to greater collaboration and better outcomes operationally at a BCA level, and reporting and monitoring at an MBIE level, and improve customer interface and satisfaction.

Investment in development costs in any of the above areas will be significantly offset by operational savings and efficiencies throughout the consenting pathway.

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

As a sector, we struggle with the continual problems associated with poor inputs into the building consents pathway. Decade after decade, the regulator has accepted this is an issue, but not driven a hard line in terms of accountability. While we accept the LBP Scheme has been a step in the right direction, the reality is behaviour largely has not changed in respect of building consent inputs. The fundamental problem remains a lack of building regulatory and building code knowledge. Until this changes, consumers and BCAs will continue to bear the brunt of costs associated with inefficient and negligent work.

We cannot stress more highly that the regulator needs to accept responsibility in directing improved outcomes in respect of the design and construction sector.

Industry is largely self-taught, but there is no monitoring process apart from in the BCA and areas of plumbing and drainage and electrical environments in respect of competency. The main component of building competency is largely unchallenged in both residential and commercial building fields. Our public are often left to pick up the pieces and costs as a result of poor work. This is a significant contributor to the poor productivity levels in the construction sector.

The quality of the Building Consent System is reliant on the quality of the building work, both the design and construction (inputs). That rests on the knowledge of those inputting into the system. To a large extent the BCAs have been the default educators via RFIs and failed inspections at the expense of their own effectiveness and efficiency.

The BCA/BCO community are frustrated and looking to the regulator to commit resources to improving inputs into the consent process. Instead, all too often there is an over-emphasis on the politically popular view that the consenting process itself is the problem, rather than those inputting into it.

Questions about boosting capacity and capability

The options in this section seek to **alleviate capacity and capability constraints** across building consent authorities and build greater collective capability across the country:

- Establish **centres of excellence** or other central advisory function
- Identify opportunities for **shared workflows and services** between building consent authorities
- **Centralised resource of specialist expertise** or building consent officers to fill capability gaps.

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36. Which options would most alleviate capacity and capability constraints given costs, risks and implementation timeframes? Please select one or more of the following:

- Establish centres of excellence
- Identify opportunities for shared workflows or services
- Centralised resource of specialist expertise

Please explain your views

As mentioned previously, we would like to work with MBIE in partnership on training but also see value in centralised specialist resource for expertise. It is important that training is consistent nationwide so that there is a common understanding of what the qualification or training accreditation relates to.

For example, take a major hospital, or a large corrections facility. A virtual centre of excellence could be formed drawing on the need/expertise. We would not envisage MBIE involvement in the coordination of this, other than providing some regulatory framework and potentially financial assistance.

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

As per question 36, we see BCA collaboration as being a cost-effective approach to delivering the skills and the experience required, and again make the point that regulations need to change to enable this outcome to be achieved more effectively.

We note there is some collaboration within cluster groups during events such as weather and earthquakes, but to enable a wider spectrum of BCA inclusiveness, work needs to be done to improve how this can happen.

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

Our previous comments to questions above support improved enabling legislation, sensible partnerships with peak bodies (such as BOINZ), appropriate funding, and consistent technology systems assistance.

While we see a future for risk-based consenting which could alleviate capacity and capability issues for BCAs, we refer to our earlier comments about the fundamental flaws in respect of inputs to the consenting system. It is too early to consider this option on volume without a robust accreditation system, coupled with appropriate liability accountability.

While there is plenty of evidence of BCA-to-BCA resource sharing, we would see an upside with the new BCA entrant, Kainga Ora/Consentium also working in a similar fashion.

We encourage MBIE to place more research and emphasis on the importance of inputs into the BCA consenting process to alleviate capacity and capability, so BCAs do not lose focus on the fact that BCAs are fundamental to the compliance and quality outcomes of New Zealand's built

environment. This would prevent the strain on BCAs in respect of their significant educational commitment which is disproportional to the sector investment provided by the design and construction areas. Around 70% of consent applications fail, and result in RFIs, and 50% of inspections fail. These significantly add to productivity issues and consumer costs. There is no doubt that if MBIE does not lead change in this area, nothing will change, as the BCA sector along with support from the Institute can effectively only achieve so much.

Questions about achieving greater economies of scale

The options in this section support building consent authorities to **achieve economies of scale** by reducing duplication and costs:

- **Identify and address barriers to voluntary consolidation and transfer**
- Support a **voluntary pilot to consolidate or transfer** building consent authority functions
- Investigate the viability of establishing a **national body to operate alongside local building consent authorities.**

39. What are the biggest barriers to voluntary consolidation? How could these be overcome?

Our opening statement is that consolidation is not always best in terms of the consumer or organisational delivery. That said, we are aware of alliances between BCAs for all the right reasons in respect of consenting outcomes and consistency. Unfortunately, the Local Government Act has responsibilities and functions that a territorial authority is required to undertake. The Building Act has territorial authorities enshrined throughout it, with specific functions and responsibilities outside of building consenting. E.g., Sec 133 Dangerous Buildings. Focussing just on building consents, inspections and certification and consolidating these functions will cause more complexity, because they will have territorial functions and they will duplicate process.

The barriers are numerous. It is the Institute's understanding that all territorial authorities set fees in slightly different ways due to different drivers, some political and some commercial. Most councils have a split between user pays supplemented by rates funding.

Ideally, the Institute supports an ability for voluntary consolidation but notes the obstacles traditionally have been with the Local Government Act and parochial politics. BCA accreditation and IANZ's application of it is also often a barrier. We draw your attention to the Palmerston North/Manawatu contract of shared services for building services. Other barriers include liability issues and variable technology systems.

The Institute has in the past and continues to also advocate for BCAs to be independent operations without political or commercial interference from the wider territorial authority. This would allow an efficient user pays model, which would support those that have good interfaces in terms of the process and apply appropriate costs to change behaviours of those who don't. Ultimately, the outcome would be a fair process for all.

The Institute supports a consolidation approach, and outcomes that improve efficiency and costs. Such an approach enables the delivery of an end-to-end construction continuum, including resource consenting, infrastructure elements, plan changes, development, etc. So, our advice is

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movement in this area, including delivery needs, must be well researched and considered to reflect excellence in outcome.

40. Which options would best support building consent authorities to achieve greater economies of scale given costs, risks and implementation timeframes? Please select one or more of the following:

- Identify and address barriers to voluntary consolidation and transfer
- Support a voluntary pilot
- Investigate the viability of establishing a national body

Please explain your views

We support the three areas above but in respect of careful consideration of the barriers mentioned in our commentaries above. We again make the statement that deliberation in this area needs to be well measured and exact in the way processes interface across various inputs.

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

The risks of consolidation shouldn't be political, they should be objectively analysed.

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

Councils currently are required to have processes in place to ensure they can process, inspect and certify any type of building work. We think there is opportunity to assess 90% of their building consent categories (R1-C3) inhouse and potentially assess contractor specialist input separately for the other 10%. This would be a council-by-council decision.

The practice of smaller or under resourced BCAs to contract building consent work to larger BCAs or contractors is widespread and effective; and furthermore, should continue to be encouraged.

Chapter 7 – Better performance monitoring and system stewardship

Chapter 7 presents a set of interrelated initiatives to fulfil our responsibility as steward of the building consent system.

MBIE acknowledges the need to take a more proactive role as central regulator and steward. This means taking a proactive and collaborative approach to monitoring and maintaining the regulatory system and keeping well informed of issues, risks and opportunities.

MBIE will focus on initiatives in the following areas:

- **Developing better systems to collect information** that will help to identify key issues, risks and opportunities.
- **Proactively responding to the issues, risks and opportunities** identified.
- Ensuring that **quality information, education and guidance** is provided to the sector.

Questions about system stewardship

43. Will these initiatives enable MBIE to become a better steward and central regulator and help achieve the desirable outcomes? Please explain your views.

We acknowledge the insight that MBIE is demonstrating in terms of its proposal to increase its level of building regulatory stewardship. We respectfully suggest central administration in important areas such as data collection will make a difference should MBIE be proactive in the potential initiatives that such information and subsequent discussions/consultations produce.

To achieve these outcomes, MBIE needs a better understanding of the industry and a more entrenched level of expertise. This would ensure a legacy of ongoing learning and understanding by the regulator.

Satisfaction of the owner and/or quality of the building once the CCC has been issued, is a significant gap in the regulator's information portfolio. The Institute strongly encourages the regulator to apply resources to this area to better understand the output of designers and build contractors to the system, as opposed to continually focusing on the building consent process, which within the wording of this document, is 'not broken'.

There is a large element of dissatisfaction in the design and construction sector that is hidden from the regulator. This needs to be uncovered in order for appropriate data to be apportioned in terms of improving inputs to the system. It might give an indication of the value of risk-based consenting. We finish our comments in respect of this question again with the statement that speed of consenting over quality of consenting produces perverse outcomes for building owners and occupiers. MBIE will be well advised to focus on outputs of those who seek to criticise the consenting system to hide their own issues.

44. What initiatives should be prioritised and why?

Firstly, MBIE should be ensuring that their people are engaged and working with the sector, to the point that they fully understand the issues and nuances.

Secondly, once informed, MBIE can more astutely prioritise across provision of information, direction, and guidance.

The Institute is fully supportive of closer collaboration being undertaken between MBIE and the input sector of the building consent process. The Institute is well positioned and willing to serve as a conduit for MBIE to engage in assisting this data uptake. Ultimately, we would be very willing to support with help to other sector associations in respect of building regulation and building code responsibility.

The Institute commends MBIE for their attendance at sector conferences over the past few years. This level of visibility has been noticed and appreciated.

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

Affordability is, and continues to be, a key issue across the built environment. A good outcome for MBIE as a regulator would be more flexible use of the building levy to benefit initiatives, training and technology, where expense in terms of starting up can be a barrier. Obviously, the outcome needs to be for the general good of the sector in the allocation of such funds. The Institute strongly recommends a review of the funding guidelines to enable better productivity for the sector through effective and efficient deliveries.

We go back to our earlier statement where we strongly support MBIE's involvement in output analysis of the design and build sectors, and a better understanding of what is delivered. This will hopefully deliver a pathway to better competencies in terms of inputs, reduced costs, and higher customer satisfaction.

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

Chapter 8 focuses on options to address the capacity and capability and relationship issues that Māori face in the building consent system. The options also link to recommendation two of the Commerce Commission's market study into residential building supplies, which states that Māori should be better served through the building regulatory system.

The options being considered are:

- Establish a **navigator role** within building consent authorities to guide Māori through the building consent system.
- Create a new **centre of excellence** for Māori-led building and construction projects.
- **Guidance and advice** for building consent authorities regarding building consent applications from Māori.

Questions about responding to the needs and aspirations of Māori

46. Will these options help address the issues that Māori face in the building consent system?

Yes Somewhat No Not sure

Please explain your views.

The Institute agrees that it is important to understand the needs and aspirations of Māori. However, we would point out we believe one of the biggest barriers to responding to the needs and aspirations of Māori in the building environment more appropriately relates to planning rules under the RMA. We suggest that more liaison and research should be undertaken to understand and allow for the needs and priorities of Māori in this area, before any considerations are undertaken in respect of the building consent regulatory environment.

We acknowledge the design and use of buildings for Māori are often unique and outside the acceptable solutions, i.e. Mixed activity areas. The detail around this needs to be investigated, agreed, and shared in respect of consideration for a solution outcome. We know through our own contacts that Māori would not be satisfied with unsafe and non-compliant building structures that would compromise safety of building users and the durability of the building outcome.

We believe the regulator would enhance the outcomes for Māori in respect of building legislation by providing acceptable solutions for the issues that Māori find when applying for building consents. The Institute would appreciate some in-depth research in respect of the technical issues that cause concern, so that we can comment and add value.

Finally, we would comment that our feedback would indicate that some of the issues in respect of consenting for Māori applications involves complex land ownership, and fire spread issues with the materials (e.g., Tukutuku panels) relating to the cultural needs of Māori, and in group meeting locations (whareniui) as opposed to residential housing issues. There are also issues relating to

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district plan requirements of Territorial Authorities with respect to Papakainga (Māori multiple housing developments) on single lots or over multiple boundaries, which also affect building consent processes.

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

Creating a new Centre of Excellence for Māori to provide guidance and advice for Māori-led projects would be a healthy start. We believe it is important that such a facility allows for two-way education pathways, where both MBIE and the BCAs (the regulators) and client/client representatives have a better understanding of each other's requirements and perspectives, in respect of navigating the building consent process.

We prefer the Centre of Excellence approach over multiple navigator roles, ensuring a cost effective and consistent outcome for all involved on a national basis.

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

A risk with each of these options is that if they are not well researched and do not have buy-in, and as a result they carry the risk of failure.

Additionally, MBIE and BCAs run the risk of crossing the line in providing project-specific advice, and that approach sits outside of the roles and responsibilities as set out in the Building Act, and that will incur liability. Hence our suggestion in our response to Question 47.

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

We shouldn't be duplicating roles which councils already have.

Most councils have a Māori liaison officer to assist the understanding of local issues. We would anticipate elevation of any issues in respect of needed guidance to be to the centre of excellence as an appropriate pathway. The centre of excellence should be funded and facilitated by MBIE as a national resource and be the domain of consistency, as opposed to a fragmented navigator approach.

We would further add that a national resource would link building and resource consent issues. This would ensure cultural consistency across ministries.

We refer to our suggestion in Question 47, that the navigator(s) would have the most effective input through residing within the centre of excellence, supporting advice and information needs and connecting with Territorial Authorities on an issues basis.

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50. What should be the scope, function and responsibilities of the centre of excellence? What participation should Māori in the workforce have in this centre of excellence?

Expert advice firstly. A source of consistency secondly. Leading to a review of relevant building code acceptable solutions. It is essential that what is developed minimises unnecessary complexity and avoids duplication across the country. There should be one source of the truth – this would ensure transparency and visibility and also a confidence in being able to access solutions without significant costs and inefficiencies.

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

The Institute encourages the sharing of successful Māori-led building projects via case studies and exemplars.

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

While processes for assessing applications for building and resource consents consider different matters, there can be overlaps between the two consent processes due to the interface between buildings and land. This sometimes causes confusion about which requirement falls under which consent process.

Chapter 9 outlines how current reforms will help reduce unnecessary overlaps between building and resource consent systems and how the use of project information memorandums can help consent applicants navigate the two consent processes. The question in this chapter seeks feedback on anything else that could address overlap issues.

Question about addressing the interface between the building and resource consent systems

52. What other options to address the issues arising from overlaps between the building and resource consent processes should be considered?

Firstly, we would encourage a review of the consistency of natural hazards across both legislation, for example, return periods in relation to flooding. We would also note the definitions of natural hazards are different in both legislations.

The Building Act and Resource Management Act have been developed independently; and hence they don't integrate well. Greater integration of the regulatory frameworks that deal with building and resource consent overlaps, is recommended.

Acknowledging there are reforms taking place in the resource consent area, the Institute would see such reform activity hopefully and helpfully giving rise to a reduction in public confusion between what is a resource consent and what is a building consent. Fundamentally, the confusion arises from the use of the word "consent". The dual use of the word "consent" in both processes is open to misuse and misunderstanding at a general public level and within the media. Hence, resource consent issues are often perceived as building consent issues, creating unjustified angst in respect of the building consent process.

This "problematic issue" gives rise to an opportunity. The Institute advocates for a clear defining distinction between the Building Consent (design and technical consent process) and the Resource Consent (environment approval process). This could be considered with a change in the terminology for the Resource process.

Furthermore, we would also encourage MBIE to look at the UK model for overarching consent pathway in both resource and building areas whereby the processes are *step throughs* to deliver a final and combined approval outcome. Such a stepped process would make it very clear where there is a need for input by applicants (accepting that in many cases inputs will only be required

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where a council does not have appropriate information). This process would also support the much-needed pre-application interview model.

Regarding the voluntary nature of Project Information Memorandum (PIM), we advise this was a well-used and informative document historically, particularly for developments, but less so for one off residential and residential addition purposes. It is our understanding the reasoning behind the removal of a mandatory requirement for a PIM was largely a cost consideration. However, BCAs today still undertake this work in the form of a Property Information Check (PIC) which, where necessary, allows a BCA to inform customers of issues. BOINZ would advocate for the mandatory return of the PIM with some specific considered exemptions (such as residential additions).

In respect of the intent to manage natural hazards at the planning stage, BOINZ would support this sensible approach as it mitigates risks for current and future owners. This would ameliorate the incidence of different interpretations of natural hazard remediation being applied by adjacent BCAs.

General comments

53. Do you have any other comments?

One of our findings in respect of this consultation is a need for a significant amount of research to be undertaken on the majority of the initiatives proposed. An important part of this research should be that both robust risk analysis and cost-benefit analysis is undertaken, and this information provided prior to further consultation, regulation, and implementation.