

// **SUBMISSION**



FEEDBACK ON THE BUILDING CONSENT SYSTEM ISSUES DISCUSSION DOCUMENT

// Local Government New Zealand's submission on the Review of the Building Consent System

// AUGUST 2022





Ko Tātou LGNZ.

Local Government New Zealand (LGNZ) provides the vision and voice for local democracy in Aotearoa, in pursuit of the most active and inclusive local democracy in the world. We support and advocate for our member councils across New Zealand, ensuring the needs and priorities of their communities are heard at the highest levels of central government. We also promote the good governance of councils and communities, as well as providing business support, advice, and training to our members.

LGNZ has a broad remit and takes a national, whole of sector, and non-partisan perspective. Given their role as Building Consent Authorities (BCAs), our members are keenly interested in this review and want to see councils have the capacity and capability to ensure that buildings are well-made and safe. We also have broader interests in the role that local government plays as leaders in placemaking and community wellbeing outcomes, and are actively engaged in a number of other reform programmes that affect local government and are relevant to this reform.

Key Points

Local Government New Zealand (LGNZ) welcomes the opportunity to submit on the Ministry of Business, Innovation and Employment's (MBIE's) Building Consent System Review Issues Discussion Document.

// We welcome MBIE's whole-of-system approach to the Review. For the building consent system to deliver buildings that are well-made, healthy, durable and safe it is necessary to look at all parts of the system, from procurement through to on-site construction.

// It's crucial that changes to the building consent system are considered relative to other Government reforms and work programmes – particularly the Resource Management Reform, the National Adaptation Plan, Emissions Reduction Plan and the Review into the Future for Local Government. We agree that greater integration across these programmes is needed, and encourage MBIE to work closely with both central government agencies as well as local government to test the implications of any changes to the building consent system in the broader context of these other reforms.

// While we understand the scope of the Review is focused on the building consent process, councils have consistently told us that their role as building consent authorities (BCAs) cannot be separated from their other roles in the building control system, such as administering the Building Act and Building Code, and their role in accountability and liability. It's disappointing that liability is out of scope in this Review, particularly given the significance of liability issues for councils. We urge MBIE to consider the impact of the current joint and several liability framework on councils' roles and responsibilities within the building consent system and consider how accountability and liability can be more fairly distributed across the system.

// The risk of being left as the 'last man standing' under the current system is leading a number of councils to adopt a more conservative approach to managing risk in the consenting process. Borrowing money to pay significant claims on behalf of other parties' failures not only prevents councils from investing more in areas such as infrastructure, housing and economic growth - it also does not promote or incentivise continuous improvement across the building consent system.

// Given their delegation as BCAs, we urge MBIE to work closely with councils throughout the Review to test any changes to the consenting system and consider how these changes might impact other areas of the broader building system.

Introduction

LGNZ supports the Review's aim to ensure that buildings are well-made, healthy, durable and safe. A whole-of-system approach that considers all roles and responsibilities will be required to make this aspiration a reality.

There is general consensus from many councils around some of the key areas where change is needed in the current building consent system. These include stronger assurance and accountability across all participants, incentives to improve performance, a greater understanding of rights and responsibilities by all parties in the system, and measures to help increase capability and workforce.

The key point for the next stage of the building consent review is how these aspirations will be delivered and implemented. Councils need stronger system stewardship from MBIE to develop a range of options to deliver the desired outcomes that have been identified and that are supported.

Our submission provides feedback on the three areas requested by MBIE:

- what role government should have in providing assurance that buildings are healthy, durable and safe
- desirable outcomes from the building consent system
- an initial assessment of the key issues that are barriers to achieving those outcomes.

Government's role

1. For the building consent system to deliver assurance that buildings are healthy, safe and durable, there are some key areas where central government can provide leadership - particularly policy advice, standard-setting, capability building and the provision of information.
2. We'd also like to see central government consider how it might manage risk across the system more effectively to ensure that buildings are safe and durable, and the system is efficient. If one party within the system is accountable for risk that is disproportionately greater than the role they're responsible for, it negatively impacts the efficiency of the system as whole. Since councils are often left as the 'last man standing' on building defect claims, many have told us they're more likely to take a conservative approach to managing risk in the consenting process to avoid being left with large claims that ultimately impact their ratepayers. Better management of risk across the system as a whole would positively impact system efficiency.
3. We'd also like to see the Government take a much greater role in educating all parties in the building consent system on their roles, responsibilities and rights, as well as promoting

compliance and good practice, and responding to non-compliance. There needs to be consistent regulation to make sure all parties are delivering on their responsibilities.

4. To bridge the gap between the consenting system's current performance and the Review's aspirations, significant capability building is needed. Delivering tools and support for key parties, including BCAs, will be crucial to ensure each part of the system can not only comply with but improve performance across the building consent process.

Desirable Outcomes

5. We agree in principle with the four critical outcomes identified by MBIE. Efficiency, clear roles and responsibilities, continuous improvement and regulatory requirements and decisions articulate well the key areas where we want to see change in the building consent system.
6. While there's general consensus about the types of outcomes councils wants to see delivered through the building consent system, the key consideration is how these outcomes will be delivered and implemented. For example, some parts of the system, including councils as BCAs, are acutely aware of their roles and responsibilities, while others, such as building owners, have very little understanding. These gaps and inconsistencies prevent robust decision-making and continuous improvement and should be a key consideration as MBIE moves into the next stage of the Review.

Key Issues

Issue 1: Roles, Responsibilities and Accountability

7. There is currently a disproportionate amount of responsibility, accountability and liability falling on councils. It is essential that these are spread more fairly across the building system as a whole if the consent system is to be sustainable in the long-term.
8. Many parties within the building consent system rely on BCAs to identify issues through the consenting and inspection process rather than fully delivering to their own roles and responsibilities. A high proportion of consents received by councils are incomplete and require additional follow ups or adjustments. This not only puts additional responsibility on BCAs to hold all parties accountable, but it also works against achieving efficiency outcomes.
9. The large proportion of consent applications put on hold to await further information is also evidence that the system currently lacks the incentives needed for all parties to fulfil their responsibilities rather than depending on other parties to hold them accountable.

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10. Councils also carry a disproportionate amount of responsibility for meeting the costs of defective buildings. Since builders, developers and designers have the ability to liquidate or stop trading to escape liability, councils are often left as ‘the last man standing’ to meet the costs. This results in the communities our councils serve taking responsibility for meeting these costs, which may have little or nothing to do with the council’s own performance in the system. For example an ongoing case in Queenstown, which is the largest leaky building claim on record in Aotearoa, is anticipated to result in a 9% increase in rates for Queenstown-Lakes District residents if successful.
 11. It is crucial that this review offers solutions that will hold each party to higher standards of accountability within the building consent system to prevent any one party being liable beyond the scope of their own role.
 12. In addition to accountability, the system needs to provide greater incentives for each party to meet their responsibilities. The current liability settings work directly against incentivising all parties to meet their responsibilities. What incentive is there for one party to fulfil their responsibility if they know the risk of not meeting it will be carried by another party? We’d encourage MBIE to explore an accountability policy that ensures parties cannot escape responsibility by ceasing to operate or liquidating, changes to contracts between parties, employer accreditation, and mandatory insurance for building contractors, which is practiced in a number of other countries.
 13. To deliver to the roles and responsibility outcome, it will be important to provide a way to access and enforce accountability and measure competency of all parties in the system. This could involve developing tools for evaluation, as well as providing greater legal accountability and liability within the legislative framework. This is a key area where MBIE can provide overarching system leadership.

Issue 2: Capacity and Capability

14. There are some strengths in the current capability of BCAs as well as some challenges. Having councils perform the role of BCAs means that applications are assessed with knowledge of the local environment, which contributes to risk based and efficient consenting, and more robust decision-making.
15. BCA capacity can be a constraint, however this could also be addressed, in part, through lifting the quality of applications. Incomplete applications delay consenting and slow down the efficiency of the overall system. Currently, much of the system’s capacity is being used in reworking applications and inspections. Lifting the standard of applications through training and clearer provision of roles and responsibilities would lessen the workload for BCAs processing these applications.

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16. Sector workforce constraints are also significant. This affects the quality of the work being done and the length of time it takes for the building consent process. MBIE may wish to consider developing a workforce strategy to respond to the highly competitive job market and increasing demand for skilled workers.
 17. Greater sharing of knowledge and data between BCAs could improve capacity and capability. Many smaller BCAs do not have access to the same in-house technical expertise that larger BCAs have, and a centralised group of experts for smaller BCAs to access could help to bridge this gap. Standardising aspects of the consenting process, such as the systems for processing applications, or the contracts used, could also allow for greater sharing of knowledge and expertise.

Issue 3: System Agility

18. We've consistently heard that the statutory timeframe for BCA assessment of building consents is a major constraint on system agility and no longer fit for purpose. There needs to be provision for assessing more complex buildings, and timeframes need to reflect the type of building and associated risks.
19. Due to the increasing number of complex buildings and larger developments, MBIE may also wish to consider staged consenting as a way to ensure the system is agile and able to more efficiently process applications without many delays, holds or modifications.
20. Given there is no incentive for councils to collaborate in the current system (in fact, there is disincentive due to their concerns about liability and cost), we would also encourage MBIE to consider how it might enable greater collaboration between parties to deliver shared outcomes, which would enhance the system's agility.

Issue 4: Performance Monitoring and System Oversight

21. Capturing data and information across the system more effectively will help MBIE to better fulfil its system stewardship role. This would also support BCAs. Areas where councils have indicated interest in data include:
 - a. The number and type of building consents received, processed and issued
 - b. Processing days
 - c. Types of inspections carried out
 - d. Enforcement action.
22. Performance monitoring could also have a positive impact on matters of accountability and liability. Having clear systems in place to address under-performance will be crucial for this to hold weight in the building sector and amongst BCAs. Any performance monitoring must consider how it will hold all parties to account.

Issue 5: Fragmented Implementation

23. While there are advantages to having territorial authorities act as BCAs, particularly given their knowledge of the local environment, the current consenting process is fragmented, and the duplication as well as variability can be difficult to navigate for parties working across multiple territorial authority boundaries. For example, each council has its own system, process and information requirements, which can cause frustration for designers and builders across districts.
24. Skilled and experienced inspectors and consenting staff are currently in high demand, and many councils do not have the expertise they need to respond to the volume of consents they are receiving. However, this could be addressed through greater investment in training or shared service arrangements. MBIE may wish to consider how it could incentivise shared service arrangements, particularly for smaller councils who do not have access to the same resources as larger councils.
25. We would like to see MBIE explore greater standardisation of forms and processes and how this might improve system performance and reduce inconsistencies. It would also be good to work with councils to develop a clear outline of what a complete application looks like that could be shared with other parties to reduce the number of requests for information or on hold applications in the system.

CONCLUSION

LGNZ thanks MBIE for the opportunity to contribute to the Building Consent System Review. We welcome the opportunity to work with the Government on the recommendations and issues raised in our submission. For further information or if we can be of any assistance, please contact charlotte.mckay@LGNZ.co.nz.