

2 September 2022

Building System Performance
Building Resources and Markets
Ministry of Business, Innovation and Employment
Wellington

By email: building@mbie.govt.nz

Tēnā koutou

DUNEDIN CITY COUNCIL SUBMISSION: Building consent system review

1. The Dunedin City Council (DCC) appreciates the opportunity to submit on the building consent system review (the review).
2. Please find attached the completed review submission form for responses to questions raised.

Submission

3. The DCC supports the aim of the review to modernise the building consent 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.
4. The DCC provides substantive feedback in the review submission form.
5. Key messages are as follows.
 - In Dunedin the building consent system (incorporating the Building Act 2004 and the Building Code) generally work well, in a timely and affordable manner, to ensure buildings are healthy, durable and safe.
 - The system has been under unprecedented pressure recently due to record demand, work force shortages, resourcing and supply chain issues, and increasing costs.
 - A broader consideration of the role of the Treaty of Waitangi in the building system is required. However there has been insufficient time in this consultation for a thorough Treaty analysis or exploration of the impacts of the building consent system on Māori.
 - Roles, responsibilities and accountabilities across the system are not well understood by building owners.
 - Balance is needed between greater consistency and the discretion and flexibility required for an agile building consent system.

- Any proposed change needs appropriate resourcing and planning.
- Cohesive change is important in progressing multiple reform programmes that impact local government. For example, mitigating risks relating to workforce attraction and staff retention, system capability and compatibilities while delivering existing obligations and limiting unintended consequences.
- Other issues not covered in the review documents are important to consider. For example: the economic impact of change on the housing and construction sectors, risk and liability and the impact of climate change.

Conclusion

6. The DCC is committed to ensuring buildings are healthy, durable and safe in Ōtepoti through our trusted, timely and fit-for-purpose regulatory services.
7. The DCC thanks you for the opportunity to submit on the building consent system review.

Kā mihi,

A handwritten signature in black ink, appearing to read 'Aaron Hawkins', with a stylized flourish at the end.

Aaron Hawkins
MAYOR OF DUNEDIN

Consultation submission form

Review of the Building Consent System



Contents

Contents	2
How to make a submission	3
Submitter information	5
Section 1: Introduction and strategic context	7
Section 2: Desirable outcomes	10
Section 3: Issues with the current system	13
General questions.....	27

How to make a submission

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

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

How to make a submission

The Ministry of Business, Innovation and Employment (MBIE) is seeking your feedback on:

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

When completing this submission form, please provide comments and reasons explaining your choices. Your feedback provides valuable information and informs decisions about the proposals.

You can submit this form by 5pm, Sunday 4 September 2022 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

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.

How to make a submission

Release of information

MBIE may upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to requests under the *Official Information Act 1982*. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the *Official Information Act 1982*.

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 in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Submitter information

MBIE would appreciate if you would 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: Aaron Hawkins

Email address: mayor@dcc.govt.nz

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

☒ Yes

☐ No

C. Are you making this submission on behalf of a business or organisation?

☒ Yes

☐ No

If yes, please tell us the title of your company/organisation.

Dunedin City Council – Kaunihera a-rohe o Ōtepoti

D. The best way to describe your role is:

☒ Building Consent Authority

☐ Industry organisation (please specify below)

☐ Business

☐ Individual

☒ Other (please specify below)

Please specify here.

Territorial Authority.

E. If you represent a Business the best way to describe it is:

☐ Designer/ Architect

☐ Builder

☐ Sub-contractor

☐ Engineer

☐ Developer

☐ Other (please specify below)

Submitter information

F. If you are an individual the best way to describe you is:

- | | |
|---|---|
| <input type="checkbox"/> Designer/ Architect | <input type="checkbox"/> Builder |
| <input type="checkbox"/> Sub-contractor | <input type="checkbox"/> Engineer |
| <input type="checkbox"/> Building Consent Officer | <input type="checkbox"/> Developer |
| <input type="checkbox"/> Homeowner | <input type="checkbox"/> Other (please specify below) |

G. Privacy information

- ☐ The *Privacy Act 2020* applies to 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.
- ☐ MBIE may upload submissions or a summary of submissions received to MBIE's website at www.mbie.govt.nz. If you do **not** want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below:

H. Confidential information

- ☐ I would like my submission (or identifiable parts of my submission) to be kept confidential and **have stated** my reasons and ground under section 9 of the Official Information Act that I believe apply, for consideration by MBIE.

If you have ticked this box, please tell us what parts of your submission are to be kept confidential.

Section 1: Introduction and strategic context

Building consent systems aim to provide assurance that buildings are healthy, durable and safe. Government intervention is typically directed at addressing the following problems that can occur in the building market:

Information gaps: many building owners and other users of buildings have insufficient knowledge or skill to assess the quality of building design or building work, or properly identify and manage risk.

Risk of harm: protecting building owners and other users from the risk of serious harm that could arise from poor design or building work.

Cost of defects: building defects can be very expensive to repair once work is completed. Buildings have a long life and defects may show up long after construction. It can be difficult for an owner to determine who is at fault and obtain redress.

Questions for the consultation

1. What do you think the primary focus of the building consent system should be?

The primary focus of the building consent system should be to ensure compliance with the New Zealand Building Code (NZBC) (that buildings are healthy, safe and durable for everyone that may use them).

The DCC notes that the purpose and principles of the Act do not include the Government's commitments under the Treaty of Waitangi or the climate crisis. The purposes and principles do have gaps and are outdated.

The role of government in the building process varies around the world:

- Some countries delegate specific roles to private third parties, such as the review of plans, conducting risk assessments of projects or carrying out inspections during construction.
- Australia allows private building surveyors to directly oversee building design and inspection.
- Nearly all countries surveyed by the World Bank Doing Business report allow private third-party inspections. However, the task of issuing the final permit (the equivalent of the code compliance certificate) remains largely the responsibility of local authorities.

2. What role should government have in providing assurance that buildings are healthy, safe and durable?

Section 1: Introduction and strategic context

MBIE should play a stronger role as administrator of the Act. The DCC believes that MBIE must provide and maintain regulation, guidance, and dispute resolution. As system steward, MBIE should resource stronger education, monitoring and enforcement roles to ensure that all actors in the building system understand and comply with their legislated roles and responsibilities.

The Act, Building Code and associated regulations are complex and unwieldy. This, combined with an absence of clear guidance, impacts upon the efficiency and responsiveness of the system.

The DCC submits that MBIE should consider providing a centralised product register and a centralised producer statement authors' register.

The DCC submits it is appropriate for the core enforcement role to be delegated to Territorial Authorities (TA) through Building Consent Authorities (BCA).

Section 1: Introduction and strategic context

3. Are there any building consent functions that could be delegated to or provided by another party?

☐ Yes

☒ No

☐ Not sure

If so, please explain your response.

DCC does not recommend delegating building consent functions to third parties. The DCC notes that the building certifier regime under the 1991 Act failed. The DCC cites this failure as a caution in delegating BCA functions to third parties.

Delegation of BCA functions to third parties is likely to widen liability and risk issues. BCAs currently face liability exposure and costs in the hundreds of millions. Private providers can evade liability through dissolution of liable companies. Any delegation of BCA functions must carefully and fairly distribute liability and risk.

The establishment of private BCAs and Consentium has hindered the functioning of BCAs. Private BCAs and Consentium are in a position to pay higher salaries and outcompete BCAs for skilled workforce. This undermines BCAs' ability to respond to the increasing number and complexity of consents.

Private BCAs have a profit incentive whereas Territorial Authority BCAs have a duty to ensure the well-being of their community. The privatisation of BCAs' functions risks severely compromising the not-for-profit, community well-being focus of regulatory services under the Act.

Section 2: Desirable outcomes

MBIE has identified four critical outcomes that the building consent system should primarily seek to achieve.

Outcome 1: Efficiency. The building consent system is efficient in providing assurance to building owners and users. It is risk-based, has proportionate compliance costs, and allows for innovation.

Outcome 2: Roles and responsibilities. Roles and responsibilities are clear and based on participants' respective ability to identify and manage risks. All participants across the system have a good understanding of their own responsibilities and the extent they can rely on others for assurance.

Outcome 3: Continuous improvement. The system is responsive, flexible and agile, and seeks to continually improve through performance and system monitoring, good information flows and feedback loops.

Outcome 4: Regulatory requirements and decisions. Regulatory requirements are clear, and decisions are robust, predictable, transparent and broadly understood.

Questions for the consultation

4. Do you agree these four critical outcomes are necessary to ensure the building consent system provides high levels of assurance to the public that buildings are healthy, safe and durable?

☐ Yes ☒ Somewhat ☐ No ☐ Not sure

Please explain your views.

DCC agrees that the proposed four outcomes could be critical to the effective functioning of the building consenting system (Currently these are not being met).

However, the system will not be strengthened by focusing upon these four outcomes in isolation. They will need to be aligned with the broader intent of the Building Code (to ensure healthy, safe and durable buildings) making sure that other regulatory settings in the consenting process also function in parallel. This includes the Building Code and Standards, professional registration, building warrants of fitness, compliance schedules and BCA audits.

5. Are there any other outcomes that are critical to ensure buildings are healthy, safe and durable?

☒ Yes ☐ No ☐ Not sure

Please explain your views.

Section 2: Desirable outcomes

DCC highlights the below as gaps in the “critical outcomes”:

- Honouring the Treaty
- Sustainability and the climate emergency
- Social outcomes
- Well trained and educated workforce
- Fair and proportionate allocation of risk and liability
- Regulatory settings and process alignment

6. How well is the system currently performing against the four identified outcomes? Please explain your views.

	Poor	Fair	Good	Very Good	Excellent
Efficiency	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roles and responsibilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Continuous improvement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regulatory requirements and decisions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

In general, the building consent system creates a NZBC compliant product that can be relied on by building users.

The DCC considers that BCAs are forced to be risk averse due to the current dynamics of New Zealand’s civil liability system. Private providers can liquidate liable companies and BCAs are often ‘the last man standing’ in civil liability cases taken before the courts. The risk aversion of some BCAs could undermine intended outcomes.

Efficiency:

The building consent system efficiently provides assurance to building owners that buildings are healthy, safe and durable.

Generally, the system provides assurance within the prescribed statutory timeframe. However, efficient and timely provision of consents can be impacted by the quality or incompleteness of applications. Dunedin agrees with MBIE that approximately 70% consents are incomplete and require at least one RFI. It can also be affected by workforce and operational resourcing pressures, as well as unpredictable surges in demand due to market and sector pressures such as supply chain issues affecting the availability of materials.

Roles and Responsibilities:

The Act outlines the roles and responsibilities in the building consent system.

Section 2: Desirable outcomes

The DCC submits that the building consent system's different roles and responsibilities are fairly well understood except by building owners. The DCC notes the below.

- BCAs are required to provide quality assurance and abide by the processing requirements set by the legislation and by audit requirements. They are the administrators not the rule makers.
- Currently there is limited onus upon building professionals to provide complete and accurate consent applications. BCAs are required to "stop the clock" in order to obtain prescribed information. This can lead to the public perception that BCAs are the party hindering the efficient progress of the consent. There are misunderstandings held by building owners in relation to the function and role of BCAs.
- The current enforcement functions of the License Building Practitioners (LBP) Board appear to be an insufficient deterrent for LBPs submitting non-compliant or incomplete consent applications.
- MBIE does not fulfill its education function. The lack of understanding by building owners about roles and responsibilities, undermines the desired outcomes listed above. In order to address the current lack of understanding of roles and responsibilities, DCC recommends that MBIE's education function should work on helping building owners to understand the role of BCAs as delegated administrator not rule maker
- The DCC has established an education and liaison function which provides public education, support and assistance, to improve the understanding of requirements, roles and responsibilities across the building system in Ōtepoti.

Continuous improvement:

BCAs are continuously improving. However, other areas of the building sector are not.

International Accreditation New Zealand (IANZ) through their strict interpretation of the Act, impose stringent requirements on BCAs to maintain accreditation. This frequently has downstream effects upon the agility of the consenting process. No other sector participants are accredited and monitored in this way.

DCC notes that the LBP scheme's costs have increased, but continuous improvement processes are not clear to us. We would also question whether LBPs are actively supported to understand changes in the sector. LBPs face frequent changes to the building code and guidance but don't appear to be able to keep up.

Regulatory requirements and decisions:

If New Zealand was to continue with a performance-based building code, there will always need to be a balance between consistency and professional judgement. Individual building consent officers (BCO) make technical decisions applying legislative requirements, professional experience and knowledge. The DCC submits that inconsistency may be improved by MBIE providing a stronger guidance and education function across the building consent system.

Section 3: Issues with the current system

MBIE has identified five issues that are constraining the ability of the system to achieve the desirable outcomes expected of this system. In turn, this compromises the ability of the building consent system to provide assurance that building work will be 'done right the first time', thereby ensuring that buildings are well-made, healthy, durable and safe.

Many of these issues are complex and long-standing. While these issues are presented separately, they are intrinsically related and collectively affect the performance of the overall system.

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

Issue 1: Roles, responsibilities and accountability

Roles and responsibilities across the system are not always well understood, accepted, applied or consistently enforced. There is sometimes an over-reliance on building consent authorities to provide assurance of compliance with the Building Code.

Questions for the consultation

7. How well understood are roles and responsibilities across the sector?

Very poorly understood	Somewhat understood	Understood	Well understood	Very well understood
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

The DCC submits that roles and responsibilities are somewhat understood by most participants in the building system, except building owners. Notably:

- BCAs are required to provide quality assurance
- Currently there is limited onus upon building professionals to provide complete and accurate consent applications
- There are many misunderstandings held by building owners in relation to the function of BCAs
- MBIE does not fulfill its education function. The lack of education is impinging on outcomes of the consenting system.

8. Does the building consent system allocate responsibility appropriately to those best able to identify and manage the associated risks?

☐ Yes ☐ Somewhat ☒ No ☐ Not sure

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

Please explain your views.

The DCC submits that the behavior of different building consent system participants indicate that some are not taking responsibility to manage risks. Risk and liability are disproportionately borne by BCAs.

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

☐ Yes ☐ Somewhat ☒ No ☐ Not

sure Please explain your views.

The DCC submits that there is little accountability or incentive for building professionals to take responsibility for their work or improvement in quality of work. This is especially the case with building consent applications.

The DCC often receives noncompliant or incomplete applications for building consents. Approximately 70 percent of applications the DCC receives are incomplete and/or require a request for further information (RFI). Anecdotally, designers have told us that they "don't bother to check documents as the BCA will check it for me".

BCAs are forced to take responsibility and do quality assurance, as they are potentially liable for any mistakes. It is contrary to a BCA's customer centric approach to refuse to process incomplete applications. BCAs issuing RFIs for incomplete or noncompliant applications slows the whole consenting process, as there is no obligation for building professionals to reply or clarify in a timely manner. However, the DCC notes that most of our consents still proceed within the statutory timeframe. To ensure we meet statutory timeframes the DCC has increased resources, improved training and salary scales to help retain staff, established an education role, and implemented other retention and wellbeing initiatives.

The DCC submits that the LBP scheme does not raise the quality of building work or hold LBPs accountable. It is time consuming and laborious for BCAs to make complaints to the LBP board when an LBP is not performing satisfactorily.

DCC submits that an LBP can liquidate a liable company to evade responsibility, leaving the BCA the easiest and most accessible target in a liability case before the Courts.

A building owner can easily become frustrated with a BCA if the BCA is forced to make multiple RFIs for an incomplete or noncompliant consent application. This frustration is exacerbated by a lack of understanding of roles in the building industry.

IANZ's audit process enforces a strict and rigid interpretation of legislation which limits the professional discretion of BCOs. This can prevent efficient decision making and can prevent parties from 'getting it right the first time'.

MBIE should provide a greater role in educating providers in the building sector.

10. Should other parts of the sector (outside of building consent authorities) have a greater role in providing assurance that buildings are safe, durable and healthy? If yes, what would the risks and mitigations be?

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

☒ Yes

☐ No

☐ Not sure

Please explain your views.

The DCC submits there is a possibility, as the LBP scheme matures, for a license class to be created for those capable of more assurance or self-certification.

The DCC suggests that engineers may be a profession that are able to provide assurance that buildings are safe, durable and healthy.

If yes, what would the risks and mitigations be?

Whilst liability is considered outside the scope of this submission, DCC submits that self-certification and assurance raises additional issues of liability and risk. Private providers can liquidate liable companies and BCAs are often 'the last man standing' in civil liability cases taken before the courts. If professionals were to take a greater role in assurance, they must also take a greater role in the assumption of risk and liability.

A mitigation to risks presented by self-certification and assurance may be the provision of comprehensive indemnity insurance. The DCC understands that private providers will provide a cap on indemnity insurance for engineers. However, engineers may be unwilling to assure large projects where their indemnity insurance is insufficient.

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

☐ Yes

☒ No

☐ Not sure

Please explain your views.

The provision of assurance must carry with it liability for malpractice. Currently no part of the sector wants to carry the risk or liability. If the Act were to allow other parties to provide assurance, liability and risk must be carefully and fairly distributed.

BCAs provide a community focused not-for-profit regulatory service. Profit-driven entities do not have the same incentives to deliver a community-focused outcome. The DCC submits that any privatisation of regulatory services must carefully consider incentives, risks, and impact to ensure positive community outcomes.

Section 3: Issues with the current system

Issue 2: Capacity and capability

Section 3: Issues with the current system

Issue 2: Capacity and capability

Building consent authorities face capacity and capability constraints in dealing with an increased volume and complexity of building work. Sector workforce capacity and capability constraints can also undermine the performance of the system.

Questions for the consultation

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

Not significant at all	Somewhat significant	Significant	Quite Significant	Very significant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

BCA capacity and capability can be a constraint on the building consent system.

BCAs are usually resourced to a specified service level. Where workloads are above that service level or there is difficulty recruiting appropriate technical staff, often a BCA will struggle to achieve the statutory time frames. DCC notes the majority of BCAs meet the 20 working day statutory requirement for granting building consents. Slow replies to RFIs and poor application quality add time to the consenting process.

Consentium and private provider workforce recruitment practices often compromise the capability and capacity of BCAs to respond to the increasing number and complexity of consents. There is a national shortage of skilled Building Consent Officers (BCOs) – and these are listed on the Essential Skills Visa List. BCAs train BCOs up to the requirements of Regulation 18 of the Building (Accreditation of Building Consent Authorities) Regulations 2006 but struggle to retain them because private providers pay more. It can take over three years to fully train a BCO.

The importance of skill development and education needs to be recognised by the building system. The lack of trained and educated professionals in the industry requires long term investment to remedy.

What are the most significant impacts of building consent authority capability and capacity constraints on the performance of the building consent system? Please explain your views?

The ability of BCAs to recruit, train and retain resourcing can impact most significantly on the timeliness of consents. However the DCC submits BCA capacity constraints often contribute a small amount of time to a project.

Section 3: Issues with the current system

Issue 2: Capacity and capability

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

Not significant at all	Somewhat significant	Significant	Quite Significant	Very significant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

The DCC submits that Dunedin's BCA is well placed with the capacity and capability to meet building consent demand and the statutory timeframes. The DCC has invested in skills, training and recruitment to ensure we are well placed to serve our community without reliance on private providers. The DCC has increased resources, improved training and salary scales to help retain staff, established an education role, and implemented other retention and wellbeing initiatives.

There are significant resource challenges in the construction industry. BCOs and inspectors are in high demand across the sector. Private BCAs and Consentium will generally hire trained BCOs and reduce the capacity of BCAs.

Designers are stretched and not able to meet demand, often resulting in poor quality or incomplete applications.

Industry more broadly is currently struggling to meet demand due to a number of factors:

- Many designers and contractors have a waiting list of several months to take on a new project.
- Many suppliers are having difficulty sourcing stock.
- Everyone has difficulty recruiting the staff they need.
- Covid and sickness are limiting staff productivity.

What are the most significant impacts of sector workforce capability and capacity constraints on the performance of the building consent system? Please explain your views.

The ability for the sector to hire workers with the skills and education required is placing constraints on the performance of the building consent system. The impact of the lack of skilled workers is exacerbated by large demand for services.

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

The importance of skill development and education needs to be recognised by the building system. The lack of trained professionals in the industry requires long term investment to remedy.

The DCC suggests that all BCAs (including private BCAs and Consentium) should have an obligation to train new staff. This could prevent reliance on outsourcing consents to private BCAs and should reduce non-compliance with the statutory timeframe.

Section 3: Issues with the current system

Issue 2: Capacity and capability

Capacity and capability constraints are affecting the broader construction industry and are not isolated to BCAs.

15. Are there any barriers to a more efficient use of technical expertise across the system?

☒ Yes

☐ No

☐ Not sure

Please tell us what these barriers might be.

The IANZ audit process enforces a strict and rigid interpretation of legislation that limits the professional discretion of BCOs. A more flexible interpretation may provide more efficient use of technical expertise across the system. A change in approach to certain issues could provide efficiency gains.

The DCC suggests giving producer statements (PS) a legal status that a BCA could rely on. Where a structural engineer is supervising the construction of a foundation then a PS should be taken as verification that the foundation is built in accordance with the granted building consent.

The DCC suggests there should be more flexibility around the use of minor variations. A minor variation should be able to be used at the end of construction in the case of slight variation to the given consent. It is needlessly bureaucratic and rigid to require a certificate of acceptance when there have been slight deviations from the given consent at the final inspection.

Section 3: Issues with the current system

Issue 3: System agility

All consents go through the same basic process, which is not always responsive to the level of risk, complexity of the building work, or type of project. The current system does not always deal well with new or innovative practices or products or the design-and-build approach. Nor is it sufficiently responsive to the building needs and aspirations of Māori.

Questions for the consultation

16. Do you agree that the consent system is not sufficiently agile for the way in which we design, procure and build today and in the future?

Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

The intended roles and responsibilities under the Act facilitate some agility in the system. . However, IANZ’s audit process enforces a strict and rigid interpretation of legislation that limits BCOs applying their professional discretion or pragmatism.

A balance between consistency of standards and BCO professional discretion is needed. The current situation does not enable sufficient agility. Neither does the statutory timeframe allow for flexibility. It requires building consents to be processed in twenty working days, regardless of complexity or size.

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

N/A

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

Section 3: Issues with the current system

Issue 3: System agility

IANZ could take a more pragmatic and flexible approach to statutory interpretation, while still maintaining the intended goal of requiring healthy, safe and durable buildings. This is likely to make greater use of available technical expertise across the system.

The DCC suggests giving producer statements (PS) a legal status that a BCA could rely on. For example, where a structural engineer supervises a construction of a foundation then a PS must be taken as verification that the foundation is built in accordance with the granted building consent.

The DCC suggests there should be more flexibility around the use of minor variations. A minor variation should be able to be used at the end of construction in the case of slight variation to the building consent. It is needlessly bureaucratic and rigid to require a certificate of acceptance when there have been slight deviations from the building consent at the final inspection.

A barrier to agility across the sector may be the lack of understanding of roles and responsibilities. MBIE should resource a stronger education role to ensure that all participants and providers in the building system understand their roles and responsibilities.

The DCC submits that the statutory timeframe currently set under section 48 of the Act should be set by regulation. Regulation could allow for the statutory timeframe to adjust for different classifications of consents. Most consents relating to the installation of a residential solid fuel burner can be processed in five working days. Complex building consents for large buildings such as hospitals may require more than 20 working days.

The DCC recommends that MBIE develop and maintain a centralised product register and a centralised producer statement authors register.

To enable greater choice and agility the DCC recommends MBIE:

- increase the number of acceptable solutions
- increase the use and funding towards codemarked products and systems.

To ensure system flexibility, BCAs have invested significant time and resource into online technologies. In some cases, BCAs are exploring remote inspections.

The DCC notes the introduction of product specification requirements through the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 will improve agility.

Section 3: Issues with the current system

Issue 3: System agility

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

☒ Yes

☐ Somewhat

☐ No

☐ Not sure

Please explain your views.

The current building consent process generally constrains the use of traditional Māori methods of construction. Traditional Māori methods of construction will be viewed as alternative solutions, as such, a burden is placed on designers to provide adequate proof of compliance.

The DCC submits that the building system may not be sufficiently responsive to the building needs of Māori. However, it is unclear what the system would look like if it was to be responsive to the needs of Māori.

A broader consideration of the role of the Treaty in the building system is required. No decision makers in the building consent system are required to consider the Treaty of Waitangi.

The DCC submits that the time and scope provided in this consultation does not allow for a thorough Treaty analysis or exploration of the impacts of the building system on Māori.

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

☒ Yes

☐ Somewhat

☐ No

☐ Not sure

Please explain your views.

The DCC has experienced difficulties when consenting building work on Māori land because it can be difficult for the applicant to get all owners to agree to a building consent application.

20. What Māori perspective or set of values do building consent authorities need to take into account when considering and processing consent applications for iwi/hapū/Māori-led building and construction projects?

BCAs may need to consider Māori values and mātauranga Māori particularly as understanding how the outcome of building projects for Māori, relates to aspects of Māori wellbeing, such as whānau health, the care of whenua and the environment, the ability to provide sustenance and hospitality for themselves and their communities, and many aspects of wellbeing that are unique to Māori culture.

However, under the Act, BCAs must be satisfied that the building work will meet the NZBC. Government may need to consider amending the Act or regulations to enable BCAs to consider the application of Māori values and mātauranga Māori.

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

The performance of the system is insufficiently monitored, and information flows are poor. MBIE is not yet the strong central regulator that was contemplated in the original system design.

Questions for the consultation

21. What can be done to improve monitoring of the building consent system?

This is a function of MBIE to resolve. BCA's will provide data to MBIE at their request.

The DCC recommends that MBIE develop a long-term data plan, to ensure that consistent and standardised data is provided to the sector about the whole building system over time. It will also need to take into account systems compatibility, variability and capacity. BCAs are transparent with their data, however other areas of the sector may be more opaque.

22. What information or data relating to the consenting system performance would you find useful?

The DCC recommends that skills and workforce capability be a focus of MBIE data and insights development. Data and trends on the use and cause of RFIs would provide valuable insights on areas for skills development and educational needs for the sector.

Insights developed from IANZ's audit process, including any best practice standard or sector trends should be shared with all BCAs.

23. Are you aware of any barriers to collecting and sharing information across the sector?

☒ Yes

☐ No

☐ Not sure

Please explain your views.

The lack of clarity from MBIE about data requirements is creating a barrier to BCAs collecting and sharing data.

The variation of IT systems and platforms that TAs use may also be a barrier to BCAs easily collecting and sharing consistent information and data.

TAs are subject to the Local Government Official Information and Meetings Act 1987 and are required to release official information with the bounds of this Act as well as manage information within the parameters of a range of other legislation. The sharing and management of information would also be subject to these requirements.

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

24. Are you aware of additional data and information sources that we could be using to inform our understanding of the system performance?

☒ Yes

☐ No

Please explain your views.

Qualitative feedback from BCAs and representative groups may be an additional source of data and information.

25. Is there anything else MBIE could do to better meet its system oversight and stewardship responsibilities?

The DCC suggest that MBIE:

- consider taking a lead role in creating a forum for the discussion, collaboration and spread of best or innovative practice among BCAs
- be a more active communicator and educator across the system to ensure that building owners understand roles and responsibility.
- review the coherency and alignment of skills development across the building consent system to ensure that all building professionals understand their roles
- strengthen the oversight of the LBP register and skills development of LBPs
- invest in, and speed up the determinations process
- invest in best practice and standardised systems
- ensure that any proposed changes and consequent impacts are costed and the costs for change met by Government. (Currently the system is funded by a mix of fee-for-service and rate-payer subsidy. A lack of proper consideration to funding and costing risks imposing greater costs onto the public, BCAs and the building sector who are already under considerable financial strain.)

Section 3: Issues with the current system

Issue 5: Fragmented implementation

The processing of building consent applications is devolved to territorial authorities who are building consent authorities, which has led to variability and unpredictability in the consent process and its outcomes. This fragmentation adds to the overall costs of the system due to duplication and variable processes, tools and functions being implemented across building consent authorities, and difficulties maintaining a professional workforce.

Questions for the consultation

26. Building consent processing is devolved and carried out by individual territorial authorities under the current system. How does this structure affect the consenting performance and building outcomes?

Sixty-seven BCAs administering a performance-based building code using their respective territorial authorities' IT systems may lead to inconsistencies.

The DCC notes that individual BCA approaches will vary, due to localised issues and previous experience of liability claims and BCOs level of training and experience

The DCC considers that there is an opportunity for BCAs to work collaboratively where possible to share best practice and support each other. This will allow BCAs to share experience, knowledge, and experience.

The DCC submits that local BCAs providing localised regulatory services to their community is the best model for provision of healthy, safe and durable buildings.

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

In Dunedin the building consent system (incorporating the Building Act 2004 and the Building Code) generally work well, in a timely and affordable manner, to ensure buildings are healthy, durable and safe.

The DCC submits that the system works well when participants and providers know their roles. Through the Dunedin BCA, a good designer that produces a well-documented design has no difficulties attaining an affordable building consent within the statutory timeframe.

BCAs do have trained and professional BCOs who are assessed regularly for competency.

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

General questions

The DCC is of the view that there is no incentive structure for building professionals to submit complete and compliant consent applications. Building professionals rely on BCAs for quality assurance. The distribution of risk and liability centres on BCAs who are expected to provide quality assurance and depend upon requests for further information.

The reliance on RFIs to compensate for poor quality consent applications creates public frustration. This frustration is exacerbated by poor understanding of roles and responsibilities by building owners.

The strict interpretation of legislation imposed by the IANZ audit process also inhibits pragmatic and efficient BCA processes.

The DCC notes that demand for building work is outstripping the sector's labour supply. This places pressure on the system and can lead to delays in some areas. This pressure has also been exacerbated by the recent unprecedented demand for consents, supply issues and staff sickness.

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

The DCC notes that there may be applicants that apply for building consents across more than one BCA. Applicants may have to tailor their applications to the requirements and systems of respective BCAs. The DCC recommends further investigation of this issue.

The DCC notes that while consistency is important, a level of discretion and flexibility will enable system agility.

BCAs are able to provide community focused outcomes because they are staffed by local people with in-depth knowledge of their community and location.

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

There is no way to eliminate fragmentation in implementation under a performance-based building code.

Regionalisation of the BCA system may not be a solution for fragmentation. Individual BCOs informed by local issues and professional experience drive the consenting process.

If regionalisation of the building consent system were to be successfully implemented, MBIE must take into account the costs of change, business models, compatibility of technology, the management of change, maintenance of staff capacity and capability, risk and the issues of liability. Under current settings no one wants to take on the liability or indemnify a BCA.

The DCC is concerned about the costs resulting from change and how they will be distributed across the system. The DCC requests that if MBIE pushes for improvements or change to the system, that MBIE fund the change.

General questions

The DCC submits that standardised forms and systems may reduce fragmentation. The DCC suggests increased use and funding of codemark and an increasing the number of acceptable solutions.

31. Is there any duplication or overlap between the building consent and resource consent processes, or any other legislation?

☒ Yes

☐ No

☐ Not sure

Please explain your views, including any impacts.

Yes, please refer to sections 31-39 of the Building Act 2004 and the use of property information memorandum (PIM).

The DCC notes that the two regulatory frameworks do overlap. This is an issue because the two frameworks do not communicate in a consistent or efficient way

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

The DCC recommends that the language used across the two frameworks is more consistent. The alignment of standards of measure could improve clarity. For example, clause E1.3.2 of the building code refers to a 2% (1:50) probability, however most district plans refer to the 1:100 period for similar events. The variations in time periods can cause confusion for developers and owners.

The DCC suggests reintroducing the compulsory requirement to obtain a PIM before a building consent is lodged.

General questions

33. Do you have any other comments?

Please refer to our cover letter. The DCC raises the below with MBIE.

- In Dunedin the building consent system (incorporating the Building Act 2004 and the Building Code) generally work well, in a timely and affordable manner, to ensure buildings are healthy, durable and safe.
- The system has been under unprecedented pressure recently due to record demand, work force shortages, resourcing and supply chain issues, and increasing costs.

General questions

- A broader consideration of the role of the Treaty of Waitangi in the building system is required to be undertaken by the Review.
- There has been insufficient time in responding to this consultation for meaningful engagement with mana whenua. This means that we are unable to provide a Māori perspective that is contextualised to our local environment. The DCC is working in partnership with Kai Tahu mana whenua across a range of projects and the review of the building consent system intersects with many issues impacting local Māori communities in relation to housing and building.
- Roles, responsibilities and accountabilities across the system are not well understood by the general public.
- Balance is needed between greater consistency and the discretion and flexibility required for an agile system.
- Any proposed change needs appropriate resourcing and planning.
- The risk of progressing simultaneous reforms that impact on Territorial Authorities without careful consideration of the compounding effects – cost, staff workload and retention, service capability and capacity while also having to deliver on existing obligations.
- Other issues not covered in the review documents are important to consider. For example, the economic impact of change on the housing and construction sectors, risk and liability and the impact of climate change.