

9 August 2023

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 options paper

1. The Dunedin City Council (DCC) appreciates the opportunity to submit on the building consent system review options paper
2. Please find attached the completed building consent system review options paper (the 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 and that buildings are healthy, safe and durable”.
4. The DCC supports MBIE taking a more proactive role as a regulatory steward to help achieve the review’s desired outcomes.
5. The submission provides substantive feedback in the review submission form. The DCC also highlights the following key messages:
 - In Dunedin the building consent system generally works well in a timely and affordable manner to ensure buildings are healthy, durable and safe.
 - A broader consideration of the role of The Treaty of Waitangi in the building system is required.
 - The government is currently progressing simultaneous reforms. These could impact on territorial authorities through compounding effects of cost, staff workload and retention, service capability and capacity.
 - It is unclear in a risk-based system who picks up the risk and liability.
 - An agile system needs balance between greater consistency and the discretion and flexibility required.

- Any proposed change needs appropriate resourcing and planning.

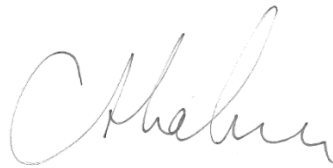
Conclusion

6. The DCC is committed to ensuring buildings are healthy, safe and durable 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,



Jules Radich
MAYOR OF DUNEDIN



Carmen Houlahan
COUNCILLOR
CHAIR OF CUSTOMER AND REGULATORY COMMITTEE

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: Councillor Carmen Houlahan

Organisation and role (if submitting on behalf of a company or organisation) Dunedin City Council. Chair of Customer and Regulatory Committee.

Email address: If you have any questions or follow up: paul.henderson@dcc.govt.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)

Territorial Authority

Submitter information

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]

Consultation questions

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?

The Dunedin City Council (DCC) supports options 4 and 5 where prominence is clearly given to competition in the building supplies and services market.

The DCC supports competition for materials, services and building supplies; assuming competition drives down costs and does not compromise the safety of building systems.

The DCC does not support the adoption of competition in the building regulatory framework. There is a lack of clarity in the options paper to distinguish between competition in the market and competition between actors in the regulatory system.

The DCC is concerned about the development of competition between actors in the building regulatory system. The DCC warns against competition in the building regulatory system. The Building Certifier scheme of the 1991 Building Act is a good example of the failure of competition between actors in the building regulatory system. The DCC notes that competition between actors in the regulatory system poses too great of a risk to the integrity of the system.

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?

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

Consultation questions

The DCC supports a combination of Options 4 and 5. However the DCC submits that a clear distinction should be made between competition in the building supplies and services market and competition between actors in the building regulatory framework.

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.

The DCC does not support option 2. A distinction should be made between competition in the building supplies and services markets and competition in the building regulatory framework.

Building Consenting Authorities (BCA) make better decisions and produce better outcomes when free from a profit motive.

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

Consultation questions

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 DCC submits the BCA accreditation process has driven BCAs to ensure all materials and components required for a project are specified in a building consent application. The accreditation process is clear that having a performance-based specification or requirement to provide information after a building consent has been granted is not acceptable. The DCC supports a reversion to pre-accreditation times where products were not required to be closely specified and a generic specification allowed greater flexibility for product substitution. The DCC notes the BCA accreditation system will need to be modified to allow for this flexibility.

The DCC notes the recent difficulties substituting products appear to be because applicants do not provide sufficient information to support their application.

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 DCC submits providing additional guidance on products and substitutions will provide some improvements. Amendments to the BCA accreditation scheme and Building Act 2004 will enable easier product substitution.

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

The DCC supports option 2.

The DCC supports the MultiProof scheme. However, BCAs will process building consent applications containing MultiProofs as required by regulation.

The DCC submits flexibility should be incorporated into a Multiproof if flexibility of product substitution is desired. Producing additional guidance may assist although the the BCA will need to ensure alignment with regulations.

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

Chapter 4 – Strengthening roles and responsibilities

Consultation questions

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 DCC supports option 2. The DCC supports a requirement for designers to submit a declaration of design compliance with the NZBC when submitting for a building consent.

The DCC does not agree that additional guidance (option 1) will improve compliance. The DCC's experience is that designers often produce inadequate documentation. Approximately 70 percent of applications the DCC receives are incomplete and/or require a request for further information. Anecdotally, designers have told the DCC that they "don't bother to check documents as the BCA will check it for me".

The DCC notes the options paper is silent about the existing homeowner exemption. The DCC requests MBIE clarify whether the existing homeowner exemption mechanism will remain available to property owners doing their own design and building work under option 2.

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.

The DCC submits that the construction industry would benefit from a requirement to have an appropriate person manage building work on site for large or complex projects. This role has traditionally been carried out by the main contractor. However current worksite practices indicate that in many cases there is no main contractor; the property owner or their agent is employing the various trades separately.

Consultation questions

The DCC submits that the 'site licence' contained in the 2004 Building Act would be an appropriate mechanism to achieve this requirement.

The DCC cautions MBIE progressing option 3 without comprehensive risk analysis. There are workforce implications that must be worked through to ensure that the market can deliver competent, experienced people with site licenses.

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

The DCC notes two risks where a 'site license' is required to manage sitework:

- An insufficient number of licensed professionals will be available to meet demand.
- Increased costs as the licence holder will attempt to recover the costs associated with gaining and maintaining the licence.

The DCC submits that these risks would need to be carefully managed to prevent construction delays. One mitigation could be having a long lead-in period prior to introducing the requirement. An additional mitigation may be a minimum number of licenced professionals around the country.

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 DCC submits a declaration of design compliance should only be accepted when issued by a professional that has satisfied prescribed requirements and can prove they are participating in continuing professional development. The DCC views this as the best way to improve outcomes and strengthen roles and responsibilities in the building regulatory system. The DCC notes that any design compliance system including competency assessments and complaints and disciplinary processes must be administered by central government

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?

The DCC submits that Form 2A is insufficient. Form 2A is limited to restricted building work only. The DCC notes that a declaration of design compliance should include all NZBC clauses relevant to the design work the professional has submitted. The professional must take responsibility for the elements of their design.

The DCC notes anecdotally, that designers are currently not taking responsibility for several NZBC clauses including F4 safety for falling, D1 access routes, G6 airborne and impact sound.

Consultation questions

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.

The DCC submits it is appropriate to have one certificate from each designer. Requiring a single certificate which includes all relevant information should simplify the process

15. When might a design coordination statement be required? What should be the responsibilities and accountabilities of the person providing the design coordination statement?

The DCC submits that a design coordination statement should be provided where more than one designer is required to provide a certificate of design work.

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?

The DCC submits on-site coordination is a vital role within the construction process. Having an appropriately qualified person coordinate is important.

The DCC submits a site licence is an appropriate prerequisite of the role. This assumes the ability to gain the necessary qualification is appropriately administered by MBIE and comes with an appeal / complaints process.

The DCC notes that any restriction on who can carry out on-site sequencing and coordination should be risk and cost appropriate. The DCC supports a scheme where higher risk, larger commercial contracts with a main contractor, are differentiated from lower risk domestic contracts where a property owner may be able to sequence and coordinate the job themselves.

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

The DCC supports an educational approach in the first instance. Thereafter DCC encourages MBIE to take a strong approach with disciplinary issues. A licensed building practitioner (LBP) must be held accountable for their actions or inactions with appropriate penalties.

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.

The DCC supports option 3. Producer statements (PS) are an integral part of Building Consent documentation and are relied on by the consenting system. The Building Act 2004 should prescribe all aspects of PS. Producer statements should be given an increased recognition and specifically mentioned in the Building Act.

The DCC supports options 1 and 2 as interim measures.

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

The DCC submits that producer statements are an integral part of Building Consent documentation and are relied on by the consenting system. The DCC notes that significant weight is given to them and should be given to them by the consenting system.

The DCC notes that PS are used extensively by the construction industry to provide assurance that work has been carried out in accordance with certain requirements. Examples of their use include design, peer review and construction.

The DCC submits incorporation of the PS and those professionals providing it into legislation will improve the efficiency of the design and consenting process.

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

☐ Yes ☐ No ☒ Not sure

Please explain your views.

The DCC submits there should be a formal register of professionals (or the types of professionals) that are recognised as able to issue a PS. Examples of these professionals include architects, architectural designers, engineers, HVAC designers, fire engineers, facade designers and plumbers. These classes of professionals are already registered / licenced under separate legislation. The register should be maintained by central government.

The DCC are also of the view that a BCA should be able to accept a PS from anyone recognised as able to issue a PS. This class of person may not be registered or licenced under other legislation.

An example of this class of person includes a person that did tanking and tiling and provides a PS for construction of a wet area shower. The DCC believe that these types of people must be able to provide a PS to cover the work that they did and need to be part of a national register. BCA's must still be responsible making the decision to accept or reject the PS on an individual basis.

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

The DCC submits that a national register should be kept by MBIE and should address criteria such as appropriate qualifications, experience, insurance, continuing professional development and membership of organisations. Having a national register will provide the greatest national consistency and remove the need for a PS author to make applications to be admitted to multiple BCA registers.

The DCC notes that most BCAs have their own register or belong to a cluster register, where a professional can apply for membership and be accepted as an appropriate person to issue a PS for specified work. The DCC is part of the 11 BCA 'Southern Buildings Controls Group'. PS authors may be admitted to a register if they can prove they are fit and proper persons to be authoring a PS. It is still incumbent on a BCA to critically examine a PS to ensure that it is fit for its purpose.

22. What other risks need to be managed?

The DCC submits the greatest risk to formally recognising PS as a means of NZBC compliance is over-reliance on PS without rigorous review by BCAs. A BCA must critically examine every PS to ensure it is compliant for the work for which the PS was issued.

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?

The DCC submits that MBIE guidance will be useful in some situations. The decision to undertake a risk-based approach must lie with the BCA given the current joint and several liability regime (which is outside of the scope of this consultation process).

Questions about self-certification

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

The DCC reminds MBIE of the high risk and serious issues private 'Building Certifiers' posed to the integrity of the consenting system. The DCC notes the issuing of building consents, site inspections and code compliance certificates should be carried out by BCAs with no profit motive.

The DCC urges caution when introducing classes of self-certification without first ensuring that appropriate training, insurance, and oversight are in place.

The DCC notes however that self-certification of some classes of designers and contractors may be desirable. This system is already in place for some energy work.

Consultation questions

The DCC notes:

- homeowners often want the assurance of Council sign off
- removing BCAs from the compliance process will also remove BCAs ability to educate.
- BCAs should not be held liable for any elements self-certified.

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.

The DCC agrees that the three identified outcomes are important. The DCC highlights the following issues for MBIE to consider:

- The availability of adequate training being made available for the proposed classes of work.
- The availability and adequacy of insurance to cover the proposed classes of work.
- The unsustainable and inadequate insurance cover available to BCAs.
- The outcome for customers or building owners where careless or incompetent work is certified. The DCC notes the possibility of liable companies being wound up.

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?

The DCC submits that there is a risk that a self-certifier that has done incompetent or careless work may not have the desire or financial ability to remedy work or could wind up their company, could be deceased or made insolvent. A self-certifier responsible for incompetent or careless work may be able to avoid liability. Making adequate insurance mandatory may reduce this risk.

The DCC strongly suggests self-certification not be allowed where public safety is involved. It would not be appropriate for BCAs to be liability for work which has been self-certified.

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?

The DCC submits the proposed commercial consent process for complex commercial buildings should only be permissible if the project is designed and constructed using appropriate persons for each specialist discipline.

Consultation questions

When processing complex commercial consents BCAs often rely on Producer Statements from design teams. However, a BCA remains independent and rigorously ensures the compliance for the consent.

Commercial designers can be influenced by their profit-driven clients which can result in cutting corners where the BCA is not reviewing compliance. This has the potential to undermine the integrity of the building consent system, and may fail to ensure that buildings are safe, healthy, and durable for everyone that may use them.

If a commercial consent is granted with the BCA having to rely on certification from design and construction professionals, then the BCA must be able to avoid any liability if it is not going to get the opportunity to process the BC application fully.

The DCC believes that PS must be formally recognised so that a BCA can consistently rely on them as a means of compliance with the NZBC. The author of a PS must be accountable and liable for their actions.

The DCC notes BCAs review the whole consent and can identify contradictory or missing information/elements when multiple actors are working on the consent. Removing BCAs from parts of the consent, will remove this consistency check.

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

If a commercial consent is not reliant on a BCA granting an amendment, it is likely that changes to the building consent will be able to be processed more quickly.

The DCC submits against this approach. The DCC's experience with Building Certifiers and other self-certifiers is that they often allow work to proceed without properly documenting the process.

29. What should be the scope of the commercial pathway? Should it be mandatory for Commercial 3 buildings and voluntary for Commercial 1 and 2 buildings?

Please explain your views.

The DCC does not support a simple description for the commercial pathway. The DCC suggests a combination of factors be considered including:

- the current Commercial 1,2 and 3 classifications
- the skill level, experience and qualifications of the professionals
- the use of the building
- who will own the building and their ability to produce and follow a quality assurance process.

Consultation questions

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

☐ Yes

☒ Somewhat

☐ No

☐ Not sure

Please explain your views

The DCC supports a commercial consent process where risk and liability are clearly outlined. A commercial consent process where BCAs are liable for work where they did not assess compliance is untenable. It is not acceptable to hold a BCA accountable for non-complying work if it was not given the opportunity to review that work.

The DCC notes design professionals and contractors are not familiar with the proposed level of responsibility. It will take several years to upskill the construction sector. Furthermore, if the BCA is to become an auditor for this process, then it will also take several years for the BCA to develop people with the appropriate skill set and qualifications. Resources are required to enable change and support BCAs to enact change. An appropriate change management system is required to ensure that risks are mitigated. The DCC are reluctant to comment further until a fully developed scheme is available for review.

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.

Site Coordination is a vital component of the scheme and is inextricably linked to the 'site licence' proposal.

The DCC submits that responsibility for the quality assurance (QA) system must rest with the owner of the property. The owner should be responsible and liable for employing appropriately qualified and experienced people to produce the QA system, follow the QA system, design, and build the project. The DCC understands that a BCA's role will be to ensure that an appropriate QA system is in place and that it is being followed. Liability for work done, must be clearly outlined under the proposed scheme.

The DCC submits that third party review is an established part of the construction process with PS for design and construction review used extensively. The DCC suggests third party review should be mandatory for all phases of a project. If New Zealand is going to rely on industry professionals to produce a NZBC compliant design and construct it in accordance with that design. This requirement must be set out in the QA system for the project.

The DCC submits the building owner must take ownership of risk and liability and therefore have limited protections under a commercial consent pathway. A commercial building owner is responsible for employing appropriate people; this differentiates a commercial owner from a domestic dwelling owner.

The DCC suggests that it is for the commercial owner to decide what protection they may require. It is important for the owner to understand that if they choose to go down the 'commercial

Consultation questions

consent pathway' the BCA will not be involved in the consenting process and accordingly cannot be held liable.

The DCC asserts independent BCAs have no profit motive and will be best positioned to ensure decisions and outcomes fully align to the purposes of the Building Act 2004.

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

The DCC does not believe that guidance alone will adequately resolve this issue but may be useful as a short-term solution. The DCC notes legislative change is required to progress the commercial consenting pathway.

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

Consultation questions

The DCC agrees there are opportunities for greater national direction and consistency. MBIE has a key role in achieving this.

The DCC supports the options listed.

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

Cost and risk considerations include:

- timing of wider reform programmes – Including the Resource Management Act reform, the response to the Future for Local Government review, 3 Waters reform programme and Building for Climate Change.
- resourcing - both central and local and impacts on workforce, costs and supply chain
- appropriate phasing of change
- practicalities such as the need for site inspections in more remote areas if there is amalgamation of some roles
- clear communication and guidance for any change in roles, responsibilities and functions
- insurance implications.
- Technology changes
- Training costs
- Travel costs (for training unless all remote)
- Potential lost opportunity costs for staff undertaking centralised training.

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

Further opportunities towards improved national direction and consistency include:

- developing a long-term data plan providing consistent, standardised data to the sector
- providing data and trends on the use and cause of RFIs
- creating a forum for discussing, collaborating on and sharing best practice
- investing in best practice and standardised systems e.g. consistent forms, checklists, templates and software
- boosting the capacity and capability of BCAs noting that the DCC consider the best model for the provision of healthy, safe and durable buildings is for local BCAs to provide local regulatory services
- reviewing the BCA accreditation scheme
- sharing insights developed from the IANZ audit process including best practice and sector trends
- providing education and information to ensure clarity of roles and responsibilities
- maintaining close and regular communication with the BCAs on all initiatives
- providing centralised training for Building Control Officers
- ensuring that any proposed changes and its impacts are costed and the costs for change are met by Government.

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.

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

The DCC agree there are opportunities to alleviate capacity and capability constraints and that MBIE has a key role in achieving this.

The unprecedented building consent volumes seen late 2020-2021 have returned to former levels. This has resulted in workloads for DCC being managed within statutory timeframes. This has enabled increased training of technical staff.

To alleviate future capacity and capability constraints, the following needs to be considered:

- timing of wider reform programmes – Including the Resource Management Act reform, the response to the Future for Local Government review, 3 Waters reform programme and Building for Climate Change
- resourcing, both central and local, and impacts on workforce, costs and information technology
- greater use and support by MBIE of the Metro BCA group which in turn can support BCA cluster groups
- greater emphasis on IANZ reporting to senior TA Executives where capacity is seen as an issue
- staff resourcing when BCAs currently compete with private providers and Consentium for trained, qualified people
- geographical practicalities such as the need for site inspections in more remote areas if there is amalgamation of some roles
- clear communication and guidance for any change in roles, responsibilities and functions
- appropriate phasing of change

Consultation questions

- insurance implications.

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

The DCC notes establishing centres of excellence could risk eroding the expertise of BCAs. The option of remote working could help to mitigate this.

Costs associated with training and technology changes.

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

The DCC submits reviewing and improving the BCA accreditation scheme could alleviate capacity and capability constraints. The DCC notes the accreditation process has improved performance. However, more recently its strict and rigid interpretation of legislation has added unnecessary cost and rigid procedure to the building consent process.

The DCC notes capacity and capability constraints are easing as consent volumes are reducing. For DCC current building consent volumes have already alleviated capacity and capability constraints.

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?

The DCC submits the following need to be addressed before furthering voluntary consolidation:

- distribution of liability where voluntary consolidation and transfer takes place
- change and risk management aligned with other reforms of local government, such as three waters reform, future for local government and resource management reform
- insurance implications
- potential loss of roles, experience, and skills within a BCAs boundaries
- BCA functions less easily consolidated such as site inspections
- the matters and considerations raised in question 36

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:

Consultation questions

- ☐ 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

The DCC believes the options and considerations captured in question 36 would provide better opportunities to achieve greater economies of scale.

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

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

The DCC notes another option that could support BCAs to achieve greater economies of scale is to review and improve the BCA accreditation scheme. Generally, we agree the accreditation process has improved performance. However, more recently its strict and rigid interpretation of legislation has added unnecessary cost and rigid procedure to the building consent process.

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.

The DCC supports MBIE to take a more proactive role as central regulator and regulatory steward to help achieve the four desirable outcomes.

44. What initiatives should be prioritised and why?

The DCC agrees with MBIE focusing on the three specified initiatives.

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

The DCC notes the following opportunities for MBIE to take more proactive role:

- developing a long-term data plan providing consistent, standardised data to the sector
- providing data and trends on the use and cause of RFIs
- creating a forum for discussing, collaborating on and sharing best practice
- investing in best practice and standardised systems for example consistent forms, checklists, templates and software
- boosting capacity and capability of BCAs noting that we consider the best model for the provision of healthy, safe and durable buildings is for local BCAs to provide local regulatory services

Consultation questions

- investigating how greater economies of scale may be achieved (with reference to the considerations specified in our responses to those questions)
- reviewing the BCA accreditation scheme
- sharing insights developed from the IANZ audit process including best practice and sector trends
- providing education and information to ensure clarity of roles and responsibilities
- maintaining close and regular communication with the BCAs on all initiatives
- providing centralised training for Building Control Officers
- ensuring that any proposed changes and consequent impacts are costed and the costs for change are met by Government.

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 DCC notes the need for MBIE to partner and consult with Māori to adequately address the issues Māori may face in the building consent system.

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.

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

The DCC notes the need for MBIE to partner and consult with Māori to adequately address the issues Māori may face in the building consent system.

Consultation questions

The DCC notes that the options would not address the role of the Treaty of Waitangi in the building system. Furthermore, the options would not address any difficulties experienced by Māori when doing building work on collectively owned Māori land.

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

The DCC notes there may be risks to the Treaty partnership with the Crown if the role of the Treaty of Waitangi in the building system is not resolved.

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

The DCC notes BCAs are required to have provision for assisting customers when navigating the building consent process, this assistance is provided with the overarching objective of achieving compliance with the Building Act 2004 and NZBC.

In offering support, actors in the building consent system may need to consider Māori values and mātauranga Māori particularly to understand 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 Building Act 2004, BCAs must be satisfied that 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.

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

The DCC notes the need for MBIE to partner and consult with Māori to adequately address the issues the Māori may face in the building consent system.

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

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.

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?

The DCC acknowledges the confusion between the building consent and resource consent processes, in particular confusion relating to the role of project information memoranda (PIM).

The DCC agrees that better promotion of the use of PIMs would help consent applicants navigate the two consent processes.

The DCC suggests a return to mandatory PIMs for certain classes of work such as large commercial/industrial building work would simplify the building consent process.

The DCC encourages MBIE to assess the impacts of the ongoing RMA reforms on the building consent system.

General comments

53. Do you have any other comments?

The DCC supports MBIE taking a greater lead in the building consent system as a system steward.

The DCC makes the following general comments:

- In Dunedin, the building consent system (incorporating the Building Act 2004 and the Building Code) generally works well, in a timely and affordable manner, to ensure buildings are healthy, durable and safe.
- A broader consideration of the role of Te Tiriti of Waitangi in the building system is required.

Consultation questions

- Balance is needed between greater consistency and the discretion and flexibility required for an agile system.
- Any proposed change needs appropriate resourcing and planning.
- Cohesive change is important in progressing simultaneous reforms that impact on Territorial Authorities with careful consideration of the compounding effects – cost, staff workload and retention, service capability and capacity.
- 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.
- There is a need for MBIE to review the impact of the IANZ accreditation system.