

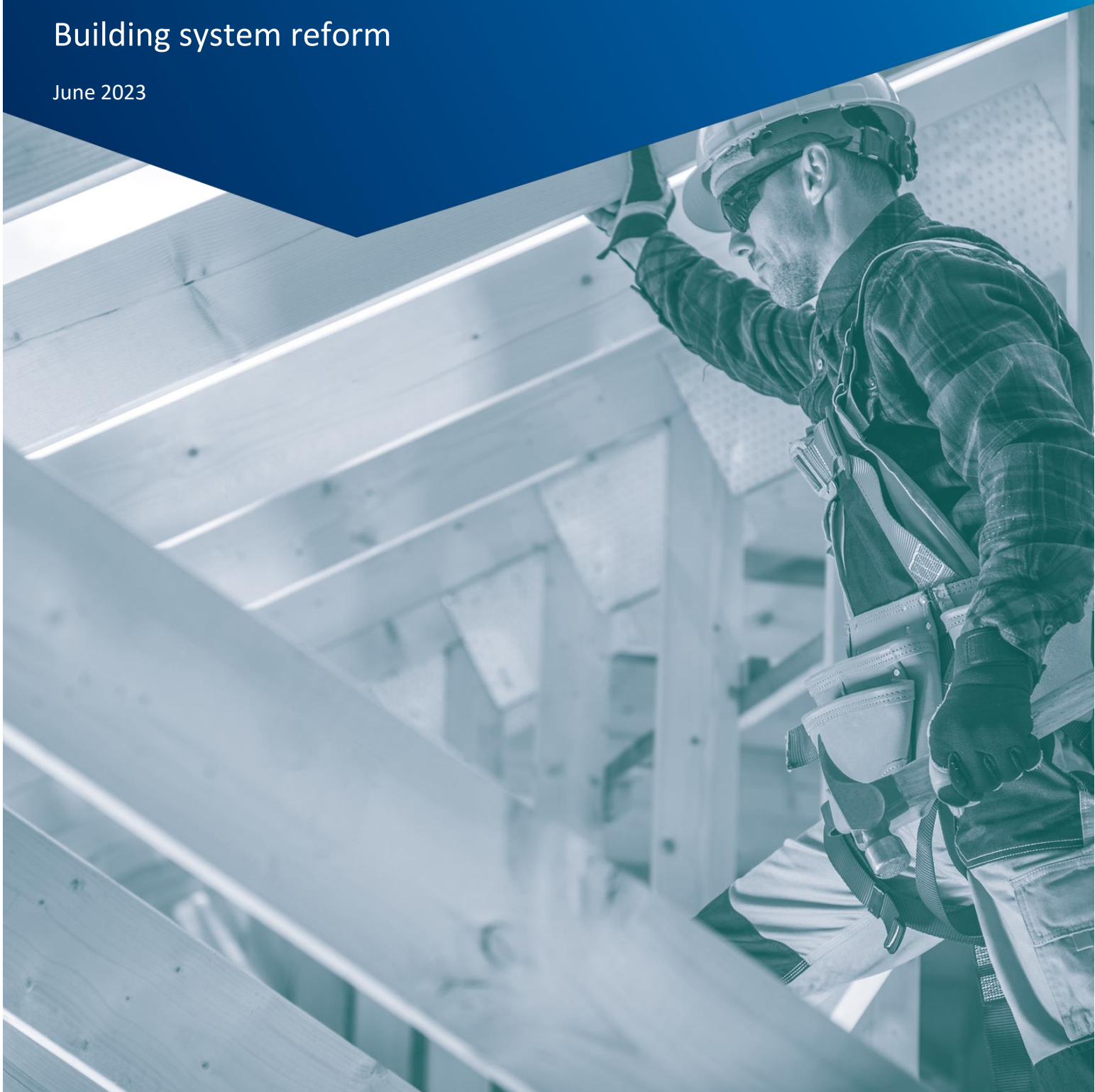
**BUILDING  
PERFORMANCE**

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# Options Paper: Review of the Building Consent System

Building system reform

June 2023



MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT  
HIKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa  
New Zealand Government



## **Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful**

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

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# How to have your say

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## Submissions process

MBIE seeks written submissions on this discussion 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.

Please respond to the questions by using this [online survey form](#) or by using the submission form provided at [MBIE's Have Your Say page](#). This will help us to collate submissions and ensure that your views are fully considered.

You can submit the form by 5pm, Monday 7<sup>th</sup> August 2023 by:

- Sending your submission as a **Microsoft Word document** to [building@mbie.govt.nz](mailto: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.

Please direct any questions that you have in relation to the submissions process to [building@mbie.govt.nz](mailto: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 information on MBIE website

MBIE intends to upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://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 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.

Please indicate 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.

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## Minister's Foreword

### Minister for Building and Construction, Hon Dr Megan Woods



The Government knows how important safe, healthy and affordable housing is for the wellbeing of New Zealanders.

This is why the Government committed to a review of the building consent system in 2020. A more efficient and effective building consent system is necessary to unlock productivity growth in the sector, support the transformation of our housing market, and make houses more affordable.

In July 2022, we released an issues discussion document for public consultation to seek feedback on the key issues and desirable outcomes for the building consent system. The outcomes we seek are: efficiency, clear roles and responsibilities, continuous improvement, and clear regulatory requirements and robust decisions.

We have heard that, while the overall building consent system is broadly working well, there are aspects that are inefficient and frustrating, and substantial opportunities to improve the system.

A broad range of high-level options and initiatives have now been developed to address the issues we have identified. Preferred options have also been identified where there is broad support and policy work is sufficiently advanced, which can then be prioritised for system change.

I encourage you to have your say so that we get the reforms right, resulting in a modernised building consent system that provides assurance to building owners and users that building work will be done right the first time.

Your feedback is important to ensure that any policy changes we make will support the desirable outcomes in the building consent system, and that the building consent system delivers for all New Zealanders.

# Chapter 1 – Introduction

## Purpose and context of the review

The Government is undertaking a substantive review to modernise the building consent system to better reflect how we build today. The objective is for a system that gets building work right first time to produce buildings that are well-made, healthy, durable and safe. This review, and the wider [Building System Reforms](#), supports the key economic shifts sought through the [Government’s Economic Plan](#), particularly the shift to transform our housing market to unlock productivity growth and make houses more affordable.

The review is an end-to-end review from the building design phase through to the issuing of a code compliance certificate. The review is considering how compliance with the Building Code is verified, but will not consider changes to the Building Code itself.

Released alongside this options paper is a final policy position statement on risk, liability and insurance in the building sector. This confirms that the liability rule for damages in civil proceedings in the building and construction industry (joint and several liability) is out of scope for this review. The final policy position statement sets out the underlying rationale for this decision.

As part of the Government response to the Commerce Commission’s market study into competition for residential building supplies, the review of the building consent system will help address some of the Commerce Commission’s final recommendations.<sup>1</sup>

## Progress to date and next steps

MBIE released an issues discussion document in July 2022, alongside a policy position statement on risk, liability and insurance in the building sector, to better understand the desirable outcomes for the system, and the barriers to achieving those outcomes. This draws on general industry feedback, international comparisons, previous reviews and an evaluation report MBIE released in June 2022. We received 264 submissions on the issues discussion document and published a summary of those submissions in December 2022.

Consultation on the issues paper found there were unnecessary costs in the system that directly and indirectly impact on the cost of building. This included delays and duplication of work, inconsistent processes and decision-making, poor incentives and accountability to get building work right first time. The cumulative effect of these inefficiencies means build costs are more than they need to be. This review aims to address these issues, both directly and indirectly.

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<sup>1</sup> The Government’s full response to the Commerce Commission’s report was released December 2022, see: <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-residential-building-supplies>





This options paper contains high-level options that respond to the feedback we received on the issues discussion document. Your feedback on this paper will be used by MBIE to provide advice to Ministers on what options should be progressed as a priority, and to inform the design of those options the Government chooses to progress, as well as what options need further consideration.

All the above MBIE documents are available at <https://www.mbie.govt.nz/have-your-say/building-consent-system-review/>.

### The building consent system is one part of the wider building control system

The building control system encompasses a number of critical elements (see figure 1). These elements work together and support each other in achieving the regulatory objectives to ensure building work is done right the first time and buildings are healthy, safe and durable.

The review of the building consent system sits alongside, and supports, other changes being progressed via Building System Reforms, including a review of occupational regulation of building and construction professions and a review of consumer protection settings.

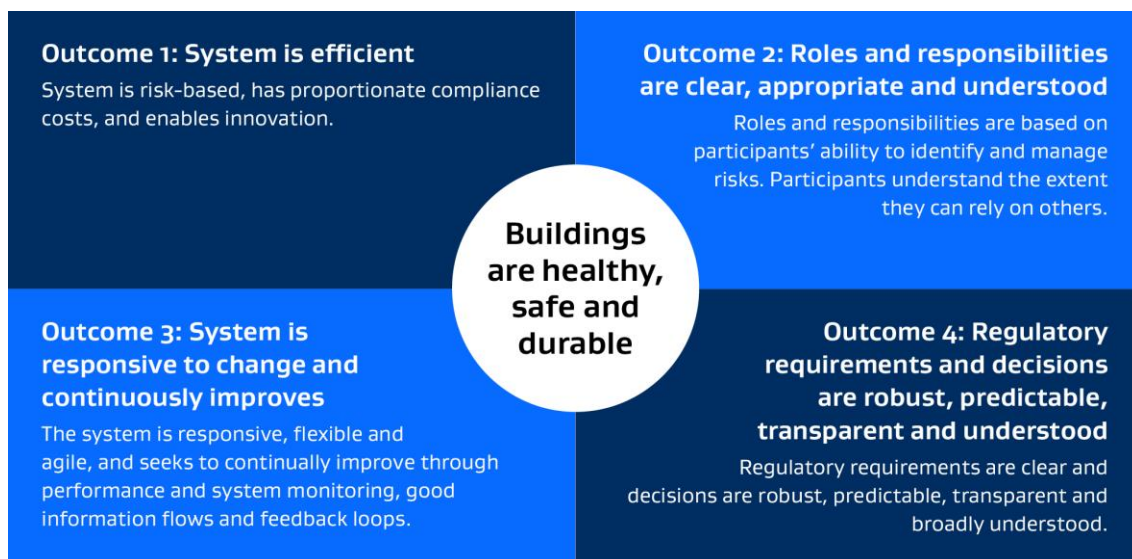


Figure 1: The building consent system is part of the wider building control system



## Desirable outcomes for the building consent system

The primary focus of the system is ensuring buildings are healthy, safe and durable. To do this, the building consent system should seek to achieve the four outcomes described in the diagram below. MBIE tested these outcomes in the issues discussion document. There was broad support from submitters that these should be the priority outcomes for the building consent system.



An important outcome for the building consent system is that it is efficient and enables innovation. The Commerce Commission and submissions on the issues discussion document identified barriers to innovation across the system. Options in this paper therefore support and collectively enable innovation, making the system more agile.

## The identified issues are complex and require a comprehensive package of solutions

Submissions on the issues discussion document confirmed MBIE's preliminary view that the building consent system is delivering on its core purpose by ensuring buildings are safe, durable and healthy. Most submitters broadly agreed that the current building consent system is not fundamentally broken, but there are substantial opportunities for improvement.

There is no single underlying factor causing the problems with the building consent system. Rather, a complex set of interlinked factors drive behaviour and outcomes that impacts on the performance of the system. The diagram below summarises the key issues constraining the achievement of the desirable outcomes.



The options in this paper draw on insights from submissions on the issues discussion document, as well as evaluation and research on sector trends, how building work is regulated in other jurisdictions, and findings from previous reviews of the building regulatory control system.

The options for system reform are presented in eight thematic chapters, which together address the issues constraining the achievement of the desirable outcomes. This includes options to address the following recommendations from the Commerce Commission market study into residential building supplies:

- **recommendation one:** introducing competition as an objective to be promoted in the building regulatory system (discussed in chapter 2)
- **recommendation four:** removing impediments to product substitution and variation (discussed in chapter 3).

The Commerce Commission also recommended that MBIE create more compliance pathways for a broader range of products (recommendation 3). In addition to this review, MBIE will consider options to prioritise the use of generic conformance criteria in the Building Code acceptable solutions and verification methods, review and incorporate international standards, publish guidance information to encourage the use of alternative solutions, and evaluate and certify products from overseas bodies.

There are linkages between the different options both within and between the thematic chapters. This means that changes to individual elements of the building consent system will have implications for other parts of the system.

A menu of potential options is identified and the benefits, cost and risks of each is examined. Where policy work is sufficiently advanced, we have identified a preferred option, or a preferred package of options. We seek your views on these options, and other suggestions you may have, to help inform the detailed design phase of the building consent review, including the benefits and costs. The preferred options in this paper could be prioritised for system change, while some other options may require further policy design and consultation.

The options as a whole aim to make the building consent system more efficient and ensure compliance costs are proportionate, which all contribute to the goals of greater productivity and housing affordability.

## Chapter 2 – Promoting competition in the building regulatory system

*Giving competition a more prominent position in the building regulatory system and its decision-making supports the policy objective of safe, healthy and durable buildings.*

In its market study on residential building supplies the Commerce Commission found that competition for the supply and acquisition of key building supplies is not working as well as it could.<sup>2</sup> The Commission recommends that promoting competition be included as another objective of the building regulatory system, to be evaluated alongside safety, health and durability—without compromising those essential objectives.<sup>3</sup>

The Commission notes that, in general, greater competition in key buildings supplies will tend to reduce prices and enhance supply chain resilience, product quality, service levels and innovation. The point is made that competition, and the effective operation of the building supplies market, will better support and deliver the policy objective of safe, healthy, and durable buildings.

The Commission acknowledges that promoting competition as an express objective in the building regulatory system, on its own, would not deliver improvements to competition. However, it would ensure that the competition implications for decision-making are taken into account across a range of regulatory tools already available.

Moreover, the pursuit of competition as an objective would also support implementation of its other recommendations aimed at reducing complexity, increasing compliance pathways, reducing barriers to certification and appraisal of building products and addressing decision-making behaviours.

The Commission’s recommendation is not unique. Other jurisdictions have included competition as an objective in their building regulatory systems. For example, in Victoria, the Building Act 1993 specifies one of its objectives is “to aid the achievement of an efficient and competitive building and plumbing industry” (s4(1)(g)), and “that in the administration of [the] Act regard should be had to the objectives” (s4(2)).

### Submitters had mixed views

Submitters to the Commerce Commission’s draft report expressed a range of views about the merit and role of competition as an objective in the building regulatory system and the extent legislative change is needed. While some submitters supported introducing competition as an

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<sup>2</sup> Commerce Commission (2022). *Residential Building supplies market study*. Commerce Commission: Wellington. <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-residential-building-supplies> at page 2

<sup>3</sup> Commerce Commission (2022). *Residential Building supplies market study*. Commerce Commission: Wellington. <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-residential-building-supplies> at page 17

objective to be promoted in the building regulatory system, other submitters disagreed with this recommendation and advised caution. The following concerns were expressed:

- Concern that introducing competition as an objective in the building regulatory system would negatively impact and undermine the overriding objective of the system to ensure buildings are safe, healthy, and durable.
- MBIE’s regulatory focus should be directed at the overriding objective of the regulatory system to ensure buildings are safe, healthy, and durable and does not have the capability nor expertise to regulate competition.

Despite these concerns, there was some support for the Commerce Commission recommendation to the extent that competition works to support the delivery of safe, healthy durable and affordable housing for New Zealanders. Therefore, the core objectives of the regulatory system are still paramount. So, rather than promoting competition as a standalone objective, the impact on competition would be a “consideration” whenever MBIE is reforming the regulatory system.

### **How best to give effect to competition as an objective in the building regulatory system?**

The Government agrees that competition is important for a well-functioning building supplies market and that this is necessary to support and deliver safe, healthy and durable buildings. The Government also agrees in-principle that competition could take a more prominent position in the building regulatory system and its decision-making as it relates to products, methods and designs. The policy question is how best to give effect to this.

The following table provides a high-level assessment of potential regulatory and non-regulatory options that would promote and give competition more prominence in the building regulatory system. These options are not mutually exclusive and some potentially support each other or could be combined. We are interested in views on these options and potential combinations that would effectively work together to give effect to competition as an objective in the building regulatory system, without compromising the core objective of delivering safe, healthy and durable buildings.

### **Assessment of options: Promoting competition in the building regulatory system**

Option	How it addresses the issue	Risks/costs/disadvantages
<b>Option 1: (Regulatory) Competition included as a purpose in the Building Act (section 3)</b>	<p>Gives competition a high level of status and prominence in the building regulatory system.</p> <p>Embeds focus on promoting competition as a purpose of the Building Act and the building regulatory system.</p> <p>Sends strong signal that competition is a core objective</p>	<p>Unclear how competition purpose statement interacts with the existing core purposes of Building Act.</p> <p>May compromise or undermine existing purposes of the Building Act.</p> <p>Risk and uncertainty in how competition is implemented in practice.</p>

Option	How it addresses the issue	Risks/costs/disadvantages
	and consideration in building regulatory system.	<p>Legislative change required. Cost and time to implement.</p> <p>Extent MBIE has sufficient capability and expertise to regulate competition.</p> <p>Implementation costs for local and central government.</p>
<p><b>Option 2: (Regulatory)</b>  <b>Competition included as a principle to be applied in performing functions or duties, or exercising powers, under the Building Act (section 4)</b>  <i>(Preferred)</i></p>	<p>Gives competition a high level of status and prominence in the building regulatory system.</p> <p>Embeds focus on promoting competition as a principle to be taken into account in the building regulatory system.</p> <p>Sends strong signal that competition it is an important consideration in the building regulatory system.</p> <p>Ensures explicit consideration of any policy trade-offs between the promotion of competition, on the one hand, and the core purpose of ensuring homes and buildings are safe, health, and durable, on the other.</p> <p>Ensures explicit consideration of any policy trade-offs between the promotion of competition and other principles to be taken into account in achieving purpose of Building Act.</p>	<p>Risk and uncertainty how competition principle is implemented in practice.</p> <p>Legislative change required. Cost and time to implement.</p> <p>Implementation costs for local and central government.</p> <p>Unclear how competition principle interacts with other principles to be taken into account in achieving purpose of Building Act.</p>
<p><b>Option 3: (Regulatory)</b>  <b>Competition included as a procedural requirement for acceptable solutions, verification methods, warnings, and bans (section 29)</b></p>	<p>Embeds the promotion of competition as a consideration to be taken into account in issuing, amending and revoking acceptable solutions and verification methods.</p> <p>Sends signal that competition is an important consideration in building regulatory system.</p> <p>Competition considerations a statutory procedural requirement and therefore has level of formality, authority and prominence.</p>	<p>Narrow focus. Just relates to competition issues as they apply to Acceptable Solutions and Verification methods.</p> <p>Legislative change required.</p> <p>Risk and uncertainty how competition procedural requirement will be implemented in practice.</p>
<p><b>Option 4: (Non-regulatory)</b>  <b>MBIE issues guidance to territorial authorities on promoting competition in</b></p>	<p>Raises prominence of competition issues in regulatory system and decision-making.</p>	<p>Less prominence in the building regulatory system than a statutory objective or consideration.</p>

Option	How it addresses the issue	Risks/costs/disadvantages
<p><b>the building regulatory system and decision-making.</b></p> <p><i>(Preferred)</i></p>	<p>Lifts capability of territorial authorities and building consent authorities in considering competition issues in building regulatory system. Issuing guidance easier and quicker to implement than regulatory options.</p>	<p>Guidance may not be sufficient to raise prominence and promote competition in regulatory decision-making.</p>
<p><b>Option 5: (Non-regulatory)</b></p> <p><b>The promotion of competition is specifically incorporated into MBIE's regulatory stewardship framework for the building system</b></p> <p>Competition implications for regulatory decision-making are taken into account across all aspects of building regulatory system. As part of understanding the performance of the regulatory system, obtaining information on competition issues and acting on that information in addressing specific or generic competition issues.</p>	<p>Focuses MBIE's regulatory stewardship efforts on promoting competition in building regulatory system.</p> <p>Proactively raises prominence of competition in building regulatory system.</p> <p>Able to be implemented immediately.</p> <p>Relatively low cost to initiate and implement.</p> <p>Lifts capability of territorial authorities and building consent authorities in considering competition issues in building regulatory system.</p>	<p>Impact may be relatively small.</p> <p>MBIE may not have sufficient capability to promote competition across building regulatory system.</p> <p>Need to develop systems and processes to collect relevant information and identify competition issues.</p>

MBIE's preferred approach is to progress options 2 and 4 as a package. Option 2 ensures that competition is given a high level of status and prominence in the building regulatory system and that the impact on competition is an explicit consideration in the building regulatory system, its reform and decision-making. At the same time, embedding competition as a statutory principle would have a strong signalling effect as to its importance in the building regulatory system. This would help ensure that there is an explicit consideration of how competition can support the delivery of safe, healthy and durable buildings.

Questions about promoting competition in the building regulatory system
1. What options are more likely to promote and give competition more prominence in the building regulatory system and its decision-making, given the costs and risks?
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?
4. Do you agree with MBIE's preferred approach to progress options 2 (introduce competition as a regulatory principle) and 4 (issue guidance on promoting competition) as a package? Please explain your views.



## Chapter 3 – Removing impediments to product substitution and variations

*Making the process for product substitutions and variations to consented building work more effective and efficient supports competition in building products, can help to reduce the time, cost and complexity to build, and supports the achievement of the desirable outcomes for the building consent system.*

### **The Commerce Commission recommended making product substitution easier**

The Commerce Commission considered that making product substitution easier would promote competition by allowing more changes to products after consent had been granted. The Commission considered that the key impediment to product substitution is requiring approval from the building consent authority for the proposed alternative product. The Commission considered that reducing the need to obtain approval for substitutes could be achieved by amending the way plans in building consent applications are able to specify brands, or providing additional direction about what constitutes a minor variation.

The Commerce Commission recommended (recommendation 4):

- Exploring ways to reduce specification by brand, and
- Increasing flexibility in the MultiProof scheme.

### **Building applications often specify building products by brand and the process to vary a consent is perceived as cumbersome**

Building consent authorities grant building consents if they are satisfied on reasonable grounds that the proposed work will meet the minimum requirements of the Building Code. Building consent applications must be in the prescribed form according to the [Building \(Forms\) Regulations 2004](#). Plans and specifications must be attached that meet minimum requirements set out in regulations or required by the building consent authority.

Once a building consent has been granted, there is a process under the Building Act that allows for ‘minor variations’ to be made that do not require a formal amendment to a building consent. This process balances the need to ensure robust decision making and consenting efficiency. Minor variations that are granted by the building consent authority must be recorded in writing. A minor variation is defined under section three of the [Building \(Minor Variations\) Regulations 2009](#) as “a minor modification, addition or variation to a building consent that does not deviate significantly from the plans and specifications”. Some examples of minor variations are included in the regulations, for example, substituting comparable products.

In late 2021 MBIE issued updated guidance on [product substitution](#) which provided designers, contractors and building owners with some key points to consider when thinking about using building products different from those originally requested and specified. Specific guidance on

[plasterboard product substitution](#) was issued in 2022. MBIE also issued updated guidance on the wider [building consent process](#) in 2022.

The Commerce Commission found that, where building supplies are specified by brand in plans and consent applications, the process for seeking substitutions can add time, cost and complexity to a build and designers and builders tend to avoid them for this reason. The Commission recommended through regulations and guidance:

- expressly allowing product substitution options to be included when plans and specifications are lodged with building consent applications (eg through an amendment to the *Building (Forms) Regulations 2004*), and/or
- giving stronger direction about what constitutes a minor variation to a building consent (eg through an amendment to the *Building (Minor Variations) Regulations 2009*).

The Commission also noted that prohibiting specification by brand could unduly restrict design choice.

A key theme from submissions on the building consent system review issues discussion document is that the process for getting changes approved after consent has been granted, including product substitutions, is perceived to be cumbersome.

### **The MultiProof scheme could be more flexible**

The National Multiple-Use Approval Scheme in the Building Act (MultiProof) streamlines the building consent process for certain types of consent applications. A MultiProof is a statement by MBIE that a set of plans and specifications for a building complies with the Building Code. When a building consent application includes a MultiProof, the building consent authority must grant or refuse it within 10 working days instead of the usual 20. Under the Act, building consent authorities must accept a current MultiProof as establishing compliance with the Building Code (if every relevant condition in the MultiProof is met).

To be eligible for a MultiProof, an applicant must have the intention and the ability to build an approved design at least 10 times over two years. The MultiProof scheme went live in 2010. There are 557 MultiProofs on the [MultiProof register](#) (as at 18 April 2023).

To support flexibility, MBIE [guidance](#) encourages applicants to include any alternatives they may wish to use (eg. Material alternatives) as part of their [application](#) for a MultiProof. These alternatives are listed as permitted variations and conditions on the MultiProof certificate.

MBIE has also issued [guidance](#) on managing departures from MultiProof at both the building consent stage and after a building consent has been granted. MBIE's guidance at the building consent stage encourages building consenting authorities to take a reasonable approach to assessing proposed designs that depart from the MultiProof for Building Code Compliance.

Under the Act, there is also an ability to make regulations defining 'minor customisations' that may be made to plans and specifications in relation to which a MultiProof has been issued when incorporating those plans and specifications into a building consent. No regulations defining minor customisations have been made thus far.

The Commerce Commission considered that the success of schemes such as MultiProof and BuiltReady are important to support innovation, enable building and manufacturing businesses to grow scale, and realise the efficiency benefits of more standardisation. The Commission expected this to assist in promoting competition for key building supplies. To support this, the Commission considered that there may be opportunities to amend the scheme so that designers can make small changes without ‘voiding’ the MultiProof.

In engagements with sector stakeholders as part of the first phase of building system reforms, stakeholders also raised the issue of improving the flexibility of the MultiProof scheme.

### Options to make the process for product substitutions and variations more efficient

While current processes help to ensure robust outcomes (including helping to prevent inappropriate product substitutions) there is scope for improvement. The options below aim to make the process for product substitutions and variations to consented building work more effective and efficient to support the desirable outcomes for the consent system. These options could be implemented in a stand-alone way or together as a package.

#### Assessment of options: Product substitution and variations to consents

Option	How it addresses the issue	Risks/costs/disadvantages
<p><b>Option 1: (Non-regulatory) Monitor and if warranted, update or add to MBIE guidance on product substitution and the building consent process</b></p> <p><i>(Preferred)</i></p>	<p>Lifts capability of building consent authorities and applicants to make better use of the current legislative framework thereby addressing some of the issues raised regarding product substitution and variations.</p> <p>This guidance has recently been updated. MBIE has received feedback that the product substitution guidance has generally been well received but will evaluate and update and amend if warranted.</p>	<p>Guidance alone may not be sufficient to address all the issues raised regarding product substitution and variations after a consent is granted.</p>
<p><b>Option 2: (Regulatory) Modify building consent forms under the <i>Building (Forms) Regulations 2004</i>, expressly including a section where applicants can choose to include suitable alternative brands/product options from those they may have listed in the plans and specifications attached to their consent application.</b></p> <p><i>(Preferred)</i></p>	<p>Makes product substitution easier by reducing the need for amendments to building consents where products are substituted after a building consent is granted.</p> <p>Helps to support competition in building products and more efficient consent processes, which can save time and cost.</p> <p>Adds more weight than guidance alone for designers to consider product considerations when preparing plans and specifications for building consent.</p>	<p>Changing regulations is not a quick process, so would not address any immediate issues.</p> <p>Where applicants choose to use this option, there could be additional upfront costs for applicants and building consent authorities associated with building consent (eg additional research and paperwork costs).</p>

Option	How it addresses the issue	Risks/costs/disadvantages
	Because the option is voluntary, applicants who do not wish to specify suitable alternatives do not incur additional costs.	
<b>Option 3: (Regulatory)</b> <b>Modify the definition of a minor variation under the Building (Minor Variations) Regulations 2009 to codify aspects of MBIE's product substitution guidance, such as clarifying when a variation does not 'deviate significantly' from the plans and specifications to which the building consent relates</b> <i>(Preferred)</i>	<p>Makes product substitution easier by reducing the need for amendments to building consents where products are substituted after a building consent is granted.</p> <p>Helps to support competition in building products and more efficient consent processes, which can save time and cost.</p> <p>Provides more certainty than guidance alone and supports improved consistency of approaches adopted by building consent authorities.</p>	Changing regulations is not a quick process, so would not address any immediate issues.

#### Assessment of options: MultiProof

Option	How it addresses the issue	Risks/costs/disadvantages
<b>Option 1: (Non-regulatory) MBIE issues updated guidance/education on the MultiProof scheme</b> <i>(Preferred)</i>	Lifts capability of building consent authorities and applicants to make better use of the current legislative framework thereby addressing some of the issues raised regarding the flexibility of MultiProof.	Guidance alone may not be sufficient to address all the issues raised regarding the flexibility of the MultiProof scheme.
<b>Option 2: (Regulatory)</b> <b>Make new regulations to define 'minor customisation' for MultiProof, using the definition of 'minor variation' to a building consent as a starting point for discussion</b> <i>(Preferred)</i>	<p>Makes product substitution and minor changes easier where plans are modified under a MultiProof certificate before applying for a building consent. Provides certainty that 'minor customisations' permitted by the regulations will not 'void' or invalidate the MultiProof.</p> <p>Supports the uptake of MultiProof and innovation in building products and methods.</p> <p>Helps to support competition in building products and more efficient consent processes, which can save time and cost.</p>	<p>Changing regulations is not a quick process, so would not address any immediate issues.</p> <p>Greater flexibility in the scheme may potentially create risks around quality and these risks would need to be adequately mitigated.</p> <p>The MultiProof scheme seeks to facilitate standardised designs. If customisation is extended too far, there is a risk that this intent could be undermined.</p>

MBIE's preferred approach is to progress all of the options identified to improve product substitutions and variations (including for MultiProof) together as a package. The combination of options will provide for both short-term and long-term measures to address the issues raised by the Commerce Commission. These options are also supported by new minimum building product information requirements that commence in December 2023. MBIE is seeking your views to inform the detailed design of these options and the composition of the preferred package to provide advice to the Government.

#### Questions about removing impediments to product substitutions and variations

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

*Improving participants' understanding of their roles and responsibilities, addressing regulatory gaps and clarifying the role of producer statements, will help ensure risks are appropriately identified and managed, thereby ensuring work is done right first time.*

Submissions on the issues discussion document highlighted that roles and responsibilities across the system are not well understood. Building consent authorities hold too much responsibility for providing assurance of compliance with the Building Code and there are weak incentives on other system participants to get building work right first time.

Submitters were also of the view that the concentration of responsibility on building consent authorities is contributing to excessive requests for further information and documentation, and increased costs and delays within the sector.

The majority of submitters agreed that the building consent system should allocate responsibility to more closely fits with participants' expertise, control and ability to influence outcomes.

In addition to these issues, a number of submitters raised the issue that producer statements are extensively used but have no legal status under the *Building Act 2004*.

### **There are gaps in the allocation of regulatory responsibilities, which affects role clarity and poses challenges for holding practitioners to account**

The responsibility of different participants for a building project will typically be set out in the contract for services.

Section 14A-G of the *Building Act 2004* also outlines the participants' regulatory responsibilities. While MBIE considers that this appropriately reflects the expertise, control and ability to influence the outcome of the different participants, MBIE has identified two gaps in the allocation of specific responsibilities or duties. MBIE considers these regulatory gaps are contributing to a poor understanding of roles and responsibilities across the system, challenges in holding practitioners to account for their work, and a concentration of responsibility on building consent authorities.

### **Not all designers are required to ensure the plans and specifications are of sufficient quality**

Section 14D of the Act states that designers are responsible for ensuring that the plans and specifications are sufficient to result in the building work complying with the building code. However, only those designers undertaking design work that is restricted building work<sup>4</sup> are required to provide a Certificate of Design Work stating that the design work complies with the

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<sup>4</sup> Restricted building work is defined by the *Building (Definition of Restricted Building Work) Order 2011*. It excludes work that is not to a house or small to medium sized apartment.

building code. There is no regulatory requirement for designers carrying out other work, including more complex design work, to provide a similar assurance.

This can lead to problems such as poor-quality plans and specifications, and challenges holding those designers to account if they are not registered or licensed. It weakens incentives to get building work done right the first time and increases the risks of building defects and disputes. As a result, building consent authorities tend to take on more responsibility for identifying errors or omissions and providing assurance to building owners and users that the buildings are well-made, healthy, durable and safe.

### **There is no person responsible and accountable for the sequencing and coordination of building work on site**

The procurement and building process has become more complex and there is increasing specialisation on site. Residential building work that was once carried out by a builder under contract to the homeowner is now commonly split across a number of sub-trades. This makes good site management critical, due to the high number of faults caused at the junction of different systems, materials, and trades<sup>5</sup>.

All builders have a general responsibility for ensuring the building work they carry out complies with the relevant consent and licensed building practitioners can be held to account for the work they carry out or supervise.<sup>6</sup>

While responsibility for site management may be specified in contract, there is no one person responsible and accountable under the Building Act for the sequencing and coordination of building work, to ensure overall compliance with the building consent. This can make it difficult to hold individual practitioners to account where the fault stems from poor coordination and sequencing of work, and reduces the incentive to invest to get work right first time. This, in turn, can lead to an over-reliance on building consent authorities to manage risk, provide assurance and identify defects, which in turn leads to excessive scrutiny by building consent authorities, and increased costs and delays for the sector.

### **Options to improve clarity of roles and responsibilities and strengthen accountability**

Options in this chapter seek 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.

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<sup>5</sup> Ministry of Business, Innovation and Employment (2021). *Licensed Building Practitioners Regime: Supervision, licence classes and minimum standards of competence*. Ministry of Business, Innovation and Employment. <https://www.mbie.govt.nz/dmsdocument/14129-lbp-scheme-supervision-licence-classes-and-minimum-standards-for-competence>.

<sup>6</sup> Through complaints to the Board about conduct in accordance with the *Building Practitioners (Complaints and Disciplinary Procedures Regulations 2008)* and the Building Act.



### **Option 1 (non-regulatory): Publish further guidance to address identified gaps in participants' understanding of their responsibilities**

MBIE already publishes a range of information on the [buildng.govt.nz](http://buildng.govt.nz) website to help system participants understand their responsibilities and what they need to do to comply with their regulatory obligations.

MBIE is aware that the current information on our website is not sufficient for system participants to adequately understand their responsibilities, and is committed to providing increased direction, education, and guidance. This will include information and education as part of the occupational regulation reforms and consumer protection review.

This option would be an extension of MBIE's planned work programme and would involve targeted information, education and guidance, to address recurring issues or misunderstandings that are identified through MBIE's improved performance monitoring of the building consent system<sup>7</sup>. This could include, for example, guidance on how to demonstrate compliance with the performance criteria of specific Building Code clauses, or the responsibilities of designers and builders when the owner wants to change the use of a building.

### **Option 2 (regulatory): Require all designers to provide a declaration of design compliance with the application for a building consent**

This option would amend the requirements for an application for building consent so that a declaration of design compliance is required from all designers carrying out or supervising the design of building work. This would be an extension of the existing requirement for plans and specifications that include restricted building work to be accompanied by a Certificate of Design Work and would make it clear that all designers have an obligation to ensure the plans and specifications are sufficient to result in the building work complying with the Building Code.

This option would also ensure that designers submitting poor or incomplete plans and specifications are identified and can be held to account. MBIE's initial view is that the declaration of design compliance would need to be submitted by a person who is subject to competency assessments and disciplinary process (eg a design licensed building practitioner, registered architect or chartered professional engineer). MBIE notes that most designers will already be either licensed or registered.

We seek your views on what should be included in the declaration of design compliance and whether the detail and type of information required in Form 2A: Memorandum from licensed building practitioner (certificate of design work) in Schedule 2 of the *Building (Forms) Regulations 2004* would be sufficient (but covering all relevant building code clauses)<sup>8</sup>. We also

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<sup>7</sup> MBIE's vision to become a better informed and proactive regulatory steward is discussed in Chapter 7.

<sup>8</sup> The Certificate of Design Work only covers certain design work relating to the primary structure, external moisture management system or fire-safety system.

seek your views on whether the declaration should replace the requirement for a Certificate of Design work for restricted building work.

We also heard that there can be design cohesion issues where multiple designers are needed to prepare designs for a building, and no one takes responsibility for the design as a whole. A further option for improving the confidence in design work would be to require a coordination statement where multiple designers are involved in preparing the designs. This would create responsibility for a designer to ensure that the designs for the building as a whole reflect the requirements of the individual designers and could be particularly useful where designers from different specialist disciplines are involved in preparing the design.

We also seek your views on the types of scenarios where a design coordination statement may be required, what information this statement should include and what responsibilities and accountabilities the person responsible for providing the design coordination statement should have.

### **Option 3 (regulatory): On-site coordination and sequencing of building work**

This option would require an application for a building consent to include the name of the person who will be responsible for managing the building work on site. This person would be primarily responsible and accountable for the sequencing and coordination of the building work, in accordance with the consented plans and specifications. While an owner may choose to engage a Clerk of works<sup>9</sup> to oversee the building project, our initial view is that individual builders and subtrades would still be responsible for the quality and compliance of the work they carry out or supervise.

MBIE's initial view is that the responsibility for on-site sequencing or coordination should be restricted to those practitioners who can demonstrate the necessary competencies for this role and are subject to disciplinary process if they fail to carry out their responsibilities with reasonable care.

The licensed building practitioner site licence was envisaged as a way of overseeing the various practitioners involved in a project to ensure their individual pieces of work fit together correctly and safely. It was intended that the site licence would be used "to certify that the building work as a whole complies with the consent". However, the licence currently operates as a voluntary mark of competence only. There are no requirements for any building site to have a site licence holder.

The role could be restricted those practitioners with a site licence, or it could be extended to any regulated practitioner who can demonstrate they have the necessary skills or competence to carry out this role (eg a registered architect or chartered professional engineer). It could be possible for a company to take responsibility for the sequencing and coordination (eg the lead contractor); however, this would likely require an accreditation or registration process to

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<sup>9</sup> A Clerk of Works is an agent of the owner who provides independent oversight of the quality of building work on site.

determine whether the company has the systems and process in place to manage risk, and a process to hold firms to account if they do not perform this role with reasonable care.

We seek views on what would be a reasonable lead-in time for this requirement to take effect.

### Assessment of options: Roles and responsibilities

The table below summarises the above options to improve clarity of roles and responsibilities and strengthen accountability.

Option	How it addresses the issue	Risks/costs/disadvantages
<p><b>Option 1: Publish further guidance to address identified gaps in participants understanding of their responsibilities</b> <i>(Preferred)</i></p>	<p>This option will be effective where issues are driven by a lack of understanding of the regulatory requirements or how to comply.</p> <p>Comparatively quick to publish guidance as would not require legislative changes.</p> <p>Responsive and can be tailored to specific issues, sectors or areas of concern.</p> <p>Better information could also empower consumers to manage risks.</p>	<p>Requires supporting actions from other parties to be effective (for example, professional bodies disseminating guidance, practitioners choosing to read and follow the guidance).</p> <p>Does not address gaps in responsibilities we've identified</p> <p>Would have limited impact if it is the only option pursued.</p>
<p><b>Option 2: Require all designers to provide a declaration of design compliance with the application for a building consent</b> <i>(Preferred)</i></p>	<p>Makes the responsibilities of designers more explicit and would be supported by existing accountability mechanisms so should therefore encourage more attention on quality assurance to get building work right first time.</p> <p>Fewer requests for information will reduce building consent authority time and effort in assessing applications and therefore increase capacity. Can focus their effort on higher risk applications.</p> <p>The requirement that design declarations need to be submitted by a person who is subject competency assessment and disciplinary process would use existing mechanisms to hold people to account.</p>	<p>The effectiveness relies on having consequences for those that do not take reasonable care in preparing plans. This requires enforcement to be in place and is dependent on an effective and efficient complaints and disciplinary process.</p> <p>Would require additional upfront time and cost to prepare designs, particularly where quality assurance is not currently a focus. We expect that this will lead to better applications requiring fewer requests for information which may reduce overall costs.</p>
<p><b>Option 3: On-site coordination and sequencing of building work</b></p>	<p>This would ensure that responsibility for sequencing and coordination is clearly allocated. This creates clear accountability, ensuring that sequencing and coordination is managed on-site, rather than by building consent authorities.</p> <p>It should lead to fewer inspections failures and notices to fix as issues sequencing and coordination will be</p>	<p>There is a risk is that people are unwilling to take on the role due to misperception that they would be responsible for the work of others. This could be mitigated by clearly defining the scope of responsibility (ie providing assurance that the work has been coordinated and sequenced in accordance with the consent, but not to oversee or supervise the quality of the</p>

Option	How it addresses the issue	Risks/costs/disadvantages
	<p>better managed. Fewer re-inspections will free up building inspector time and capacity.</p> <p>Emphasises current best practice so should not come at a cost in many cases.</p>	<p>work carried out by individual builders or sub-trades).</p> <p>If sequencing and coordination is not being managed, there will be additional cost to employing someone to take on this role. However, this should lead to less construction delays.</p> <p>Risk that sufficiently qualified people are not available. Lead in times would need to account for this.</p>

MBIE’s preferred approach is to progress options 1 and 2 together.

Guidance (option 1) can be published relatively quickly and can be tailored to specific issues, sectors or areas of concern. Guidance is an effective tool for helping parties to meet their regulatory requirements – such as in this case, where MBIE has determined the regulatory responsibilities (set out in section 14A-G of the Act) of most parties is clear.

Requiring all designers to provide a declaration of design compliance with a building consent application (option 2) will make the responsibilities of designers explicit and provide greater consistency across design professionals. The compliance costs will be minimal for those designers that already have good quality systems and processes in place.

Option 3 requires further detailed design work before we can assess whether the Government should progress it. We seek your views on the benefits, costs, and risks to inform further advice on this option.

### Questions about options to clarify roles and responsibilities and strengthen accountability

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

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

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

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

**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?

**14.** Should the declaration of design compliance replace the certificate of design work (for restricted building work)? Please explain your views.

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

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?

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

### **There are issues with the use of producer statements**

This section discusses producer statements, which are professional opinions based on sound judgment and specialist expertise. We use the term ‘producer statement’ as it is widely understood, but note that a different term could be used in future to more accurately reflect the status of such statements.

The predecessor to the *Building Act 2004* defined producer statements and explicitly stated that building consent authorities could, at their discretion, accept a producer statement as establishing compliance with the Building Code. A producer statement could supplement, or be a substitute for, the building consent authority reviewing specific plan aspects itself, or conducting inspections under section 90 of the *Building Act 2004*. This reference was not carried over to the current Act due to concerns that councils had become over-reliant on such statements, sometimes accepting them without scrutinising their robustness and suitability.

The Act’s silence on producer statements places them in the same category as other information building consent authorities consider to determine whether the “reasonable grounds” test is met<sup>10</sup>. It also means that information on their scope, use and status is scattered across websites, policy documents and templates that are maintained by MBIE, building consent authorities, and professional bodies. Additional information is also contained in court judgments and MBIE determinations. This creates the following issues:

- There is no certainty, clarity or consistency about the purpose of producer statements, who should be able to provide them and how they should be used. Building consent authorities determine for themselves what they will and will not accept, sometimes through blanket policies such as requiring authors to be registered or have indemnity insurance.
- Information is not easily accessible: This is inefficient, reduces transparency and contributes to the uncertain nature of producer statements.
- Those providing producer statements may narrowly limit the content, scope, and conditionality of their statement because there are no central requirements or guidance to adhere to. This has implications for the quality and reliability of such statements.
- There is uncertainty within building consent authorities about the extent to which they can rely on producer statements. This can lead to unnecessary duplication, if the

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<sup>10</sup> The *Building Act 2004* allows building consent authorities to issue building consents and code compliance certificates if they are satisfied on reasonable grounds that the work meets the code.

building consent authority also requires a third party review of the design or construction.

### Options to clarify the role of producer statements

MBIE agrees there is a need to provide the sector and building consent authorities with more clarity, certainty and consistency around producer statements. We have identified three high-level options that could do this. Two of these options would result in producer statements being brought back into the regulatory framework. These options are set out in Figure 2 below. MBIE seeks views on which of the three high-level options would best address the issues identified above.

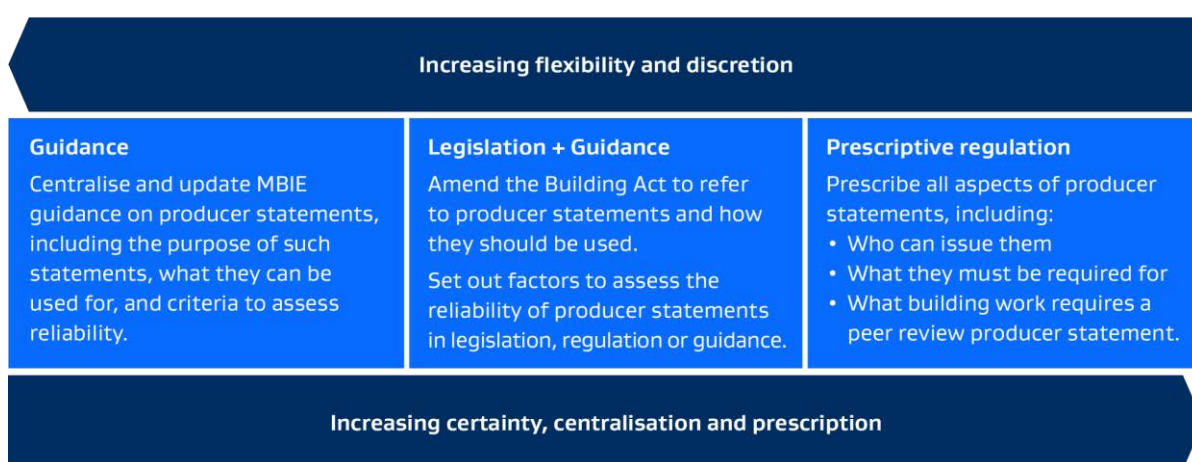


Figure 2: Options to clarify the role of producer statements

### Assessment of options: Producer Statements

The table below assesses the options to provide the sector with more certainty and consistency around producer statements.

Option	How it addresses the issues	Risks/costs/disadvantages
<b>Option 1: Guidance alone</b>  Centralise and update MBIE guidance on producer statements including the purpose of such statements, what they can be used for, and criteria to assess reliability	Should drive consistency across building consent authorities by providing a single, authoritative source of information about the purpose and use of producer statements.  Information more easily accessible to those who need it.  Relatively easy to implement.	Inconsistencies and uncertainty may remain, as building consent authorities will need to continue to assess the reliability producer statements on a case-by-case basis.  May not provide the legal certainty that building consent authorities are seeking.  May have limited impact on the quality and reliability of producer statements, and therefore the willingness of building consent authorities to rely on them.  Building consent authorities may continue to duplicate reviews carried out by other professionals if guidance does not provide them with sufficient confidence.

Option	How it addresses the issues	Risks/costs/disadvantages
<p><b>Option 2: Non-prescriptive legislation and guidance</b></p> <p>Amend Building Act to refer to producer statements and how they should be used, set factors to assess the reliability of producer statements in non-prescriptive legislation, regulation, and guidance</p> <p><i>(Preferred)</i></p>	<p>Should drive greater consistency about the purpose and how they should be used, over and above guidance alone.</p>	<p>May have limited impact on the quality and reliability of producer statements.</p> <p>Inconsistencies and uncertainty may remain, as building consent authorities will need to assess the reliability of producer statements on a case-by-case basis.</p> <p>Less flexibility when compared with option 1.</p>
<p><b>Option 3: Prescriptive regulation</b></p> <p>Prescribe all aspects of producer statements including</p> <ul style="list-style-type: none"> <li>-who issues them</li> <li>-what they must be required for</li> <li>-what building work requires peer review producer statements</li> </ul>	<p>Provides the most legal certainty for owners, practitioners and building consent authorities.</p> <p>Should improve the quality and reliability of producer statements and ensure consistency of process across building consent authorities.</p> <p>Should enable building consent authorities to confidently rely on the information provided, removing the need to review design or building work that has already been reviewed by a professional engaged by the owner.</p>	<p>Less flexible than the other options and will take time to establish and implement or amend if required.</p> <p>Depending on the design of the regime, could result in additional time and cost incurred by professionals, which would be passed on to the building owner.</p> <p>Some professionals may be reluctant to issue producer statements, due to a perception it could increase their exposure to liability if things go wrong.</p> <p>Effectiveness of this option relies on having adequate compliance and enforcement measures for those practitioners who do not take reasonable care eg through occupational regulation.</p>

MBIE’s preferred approach is to progress option 2 (non-prescriptive legislation and guidance). This option strikes a balance between providing the sector and building consent authorities with more clarity, certainty and consistency around producer statements, while still enabling some flexibility and discretion for building consent authorities.

While option 2 is preferred at this stage, we are interested in your views on whether more prescription is required (option 3), as well as the design of any preferred option, which is covered in the next section below.

### **Design considerations for any changes to clarify the role of producer statements**

Should the Government decide to progress any of the options to bring producer statements back into the regulatory framework, there would be a number of detailed design issues to work through. These are set out below.



## What should be the purpose of producer statements?

MBIE considers that building consent authorities are, and should remain, responsible for deciding whether the reasonable grounds test for issuing a consent or code compliance certificate is met. Producer statements are one tool that can help building consent authorities make these decisions. This can make the system more efficient if building consent authorities do not duplicate design or construction checking that has been done by others and better assigns responsibilities where building consent authorities do not have in-house expertise regarding specialist or technical aspects.

## Who should be able to issue a producer statement?

There are no regulatory limits as to who can provide a producer statement and they can relate to a broad range of building work, from structural and geotechnical engineering, through to hydraulic services and solar panel installation. Some building consent authorities have imposed their own bespoke requirements, including maintaining registers of authors they will accept producer statements from.

We seek views on whether there should be limits to who can issue a producer statement (eg a specific qualification or mark such as being a Chartered Professional Engineer) or whether it should remain open to anyone with building consent authorities assessing the individual reliability of each statement. If who can issue a producer statement is limited, we seek views as to whether there needs to be some other form of documentation for trades and subject matter experts that are not regulated or are not subject to a registration system.

Whether authors of producer statements should be subject to consumer protection requirements (such as compulsory professional indemnity insurance) is a separate matter considered below.

## How should producer statements be used?

We heard in submissions that producer statements can be over-relied on (taken at face value without assessing reliability) and under-relied on (building consent authorities requesting additional peer review on top of what has already been commissioned). The degree to which legislation, regulation or guidance directs how much weight building consent authorities should place on statements sits on a spectrum:

No weight (ie: building consent authority does not take producer statement into account)	Minimal weight (ie: building consent authority may consider statement but must still conduct inspections for building work covered by specific producer statement)	Discretionary weight (ie: assess weight based on relevant factors)	Extra weight (ie: more significant than other information, but not determinative)	Full weight (ie: sole reliance on statement without assessing other factors)
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“Full weight” is a form of self-certification. This is covered in the Assurance Pathways chapter under “Certification by accredited companies and approved professionals”.

Under “discretionary weight”, building consent authorities would determine what weight to place on a specific producer statement in the context of the project’s risks and the competency

of the author. This will inform the building consent authority's decision as to whether it needs other information (such as an additional third-party review) for it to be "satisfied on reasonable grounds" that the building work will be/is compliant.

Under "extra weight", producer statements would have an elevated status compared to other information (other than deemed to comply solutions) building consent authorities may consider and will be more influential in building consent authority decision-making. However, building consent authorities would still need to consider if there is other information that may demonstrate a producer statement cannot be relied upon.

These two options are more flexible as to the weight accorded to producer statements based on the project's risks and the author's competency. While this has the advantage of being more risk-based, it also means less certainty and consistency as to how it would be applied.

Your views of whether to limit who can provide producer statements may affect your views on what weight building consent authorities should place on them.

### **What are appropriate criteria to assess reliability of producer statements?**

The criteria to assess the reliability of producer statements is contained in court cases, determinations, building consent authority policies and professional guidance (for example, Engineering New Zealand's Practice Note). We have identified the following common elements and seek views as to whether these are appropriate:

- **The nature and complexity of the project risks:** the likely consequences of non-compliance; quality assurance systems on the project such as onsite monitoring and peer review; and whether concerns have been raised about the quality of the work. Risk influences the weight given to statements.
- **Content of the producer statement:** the completeness of the statement including assumptions and limitations; associated information such as drawings, calculations, plans, investigation and test results; the author's or applicable regulatory or membership body's relevant quality assurance systems; and specific site/building information.
- **Competency of the person preparing the producer statement (the author):** the author's qualifications; professional affiliations such as memberships and registrations (including whether the author is subject to a Code of Conduct and disciplinary processes); experience, including any complaints against the author; and the author's scope of skills and expertise.
- **Independence:** whether the author has any financial or other interest in the project.

*Should authors of producer statements be required to hold professional indemnity insurance?*

Many building consent authorities consider an author's indemnity insurance cover to decide whether to accept their producer statements. This can be on a case-by-case basis or as part of a decision to place the author on a register. Strictly speaking, whether an author has adequate indemnity insurance is irrelevant to whether their producer statement is sufficiently accurate

and reliable to inform a decision about compliance. However, we also heard from submitters that building consent authorities take on too much responsibility for assurance and can be overly risk averse.

MBIE seeks views on whether the level of indemnity insurance cover held by the producer statement author should be a relevant criterion when assessing the reliability of a producer statement. Requiring indemnity insurance policies for producer statement authors would manage building consent authorities' level of exposure under the joint and several liability rule (provided insurance products are available). It also has the benefit of providing an additional layer of consumer protection for any non-compliant building work.

### Questions about producer statements

18. Do you agree with MBIE's preferred approach to progress option 2 (non-prescriptive legislation and guidance)? Please explain your views.
19. What should be the purpose of producer statements and what weight should be given to them?
20. Should there be restrictions on who can provide a producer statement? Please explain your views.
21. What is the appropriate criteria to assess the reliability of producer statements?
22. What other risks need to be managed?

## Chapter 5 – New assurance pathways

*A consent system that more closely calibrates cost and effort to the level of risk would be more efficient and effective. Assurance roles should be done by those with the requisite specialist expertise and who are best placed to manage risk.*

Submissions on the issues discussion document indicated strong support for the consent system to more appropriately take risk into account. There are both formal and informal ways to achieve this: from better central guidance to assist building consent authorities to think about risk, through to formal legislative pathways that legally shift accountability from the building consent authority to elsewhere in the sector.

Currently, individual building consent authorities have their own frameworks and policies for dealing with risk to make decisions on issuing building consents and code compliance certificates. For example, some building consent authorities have established partnership programmes that provide a streamlined service for partners with demonstrated quality assurance systems (QA systems) and compliance track records.

This chapter identifies three 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: Allowing accredited companies or approved professionals to self-certify building work so that building consent authorities do not need to review plans and/or inspect work.
- Commercial consent: Basing the consent on a project-specific risk profile and quality assurance process agreed by the applicant and a building consent authority.

Any options that redistribute responsibility in the building consent system will depend on others being prepared and able to take on that responsibility. Options will also need to carefully consider how consumer protection is maintained. For example, if the option to allow self-certification reduces oversight by a building consent authority, the design of the option will need to include appropriate eligibility criteria, accountability mechanisms and financial redress measures if things go wrong.

### **Building Amendment Act 2012**

The *Building Amendment Act 2012* introduced three new consent types to sit alongside the standard consent.

MBIE stopped implementation work in 2017 amid concerns about workforce capability and whether the regime's benefits outweighed its compliance costs. Since then, the 2012 regime has sat on the statute book and has not come into force.

MBIE has re-examined the regime and proposes to start afresh with the new assurance pathways outlined in this chapter, incorporating the commercial consent contained in the 2012 regime. This allows MBIE to develop pathways that achieve the intended benefits of the 2012 regime, while taking into account the changes that have occurred in the sector and fixing the issues with the 2012 regime.

The creation of new assurance pathways, while not directed at building supplies, may also help address some of the underlying problems the Commerce Commission identified in its market study report on residential building supplies.

The proposed self-certification pathway follows on from MBIE’s statutory review of the *Plumbers, Gasfitters and Drainlayers Act 2006 (Ministry of Business, Innovation and Employment, pp25-30)*<sup>11</sup> which recommended that self-certification for construction trades as a whole be considered as part of the consent review.

The proposed pathways are not mutually exclusive and could be implemented in a stand-alone way or together as a package. MBIE’s preferred approach is to progress the options as a package, by issuing guidance for building consent authorities (option 1), progressing policy work on the detailed design of the two new assurance pathways (options 2 and 3), and repealing the inactive risk-based consenting provisions in the Building Amendment Act 2012.

MBIE seeks views to assess each option, and to inform the detailed design of those options the government chooses to progress.

### **Option 1: Taking a more risk-based approach under current regulatory settings**

There is scope for building consent authorities to take a more risk-based approach to building consents within current regulatory settings, without creating new formal assurance pathways and we are aware many building consent authorities already do this.

We are interested in any barriers to building consent authorities taking a more risk-based approach. One option is for MBIE to issue guidance on how building consent authorities should think about and manage risk (for instance, on virtual inspections).

#### **Assessment of option**

The table below assesses the option to develop guidance.

<b>Option</b>	<b>How it addresses the issue</b>	<b>Risks/costs/disadvantages</b>
<b>Guidance (Preferred)</b>	<p>Guidance can be published relatively quickly and will support building consent authorities take a better risk-based approach when making decisions on issuing building consents and code compliance certificates.</p> <p>Lifts capability of building consent authorities to make better use of the current legislative framework.</p>	Guidance alone may not be sufficient to address consistency issues across building consent authorities.

<sup>11</sup> Ministry of Business, Innovation and Employment (2021). *Statutory Review Report of the Plumbers, Gasfitters, and Drainlayers Act 2006*. Ministry of Business, Innovation and Employment. <https://www.mbie.govt.nz/dmsdocument/13715-statutory-review-report-of-plumbers-gasfitters-and-drainlayers-act-2006>

Option	How it addresses the issue	Risks/costs/disadvantages
	This would align with the Commerce Commission’s suggestion that a new building consent authority education and mentoring function could provide a risk framework for assessing non-compliant risk.	

### Question about taking a more risk-based approach under current settings

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

#### Option 2: Certification by accredited companies and approved professionals

This option would allow accredited companies and approved professionals to certify work they have carried out. The two sub-options would be profession and work neutral (ie: the regulatory framework would set out criteria for a company or approved professional to self-certify) rather than regulation explicitly listing qualifying professions or types of building work.

We seek views on whether some building work should never be self-certified because the increased risk to building safety and quality cannot be sufficiently mitigated. This recognises that the person carrying out the work may, even exercising due diligence and using best efforts, make mistakes or miss something due to their proximity to the work. Other reasons may be that the work is so complex it should always be reviewed by an independent third party, or there may be business or client pressures to cut corners.

##### Option 2a: Accredited companies

This option would allow companies to certify work the company carries out. Examples include:

- a group home builder could self-certify the design and construction of homes; or
- a bespoke design company could self-certify its designs.

##### Option 2b: Approved professionals

This option would allow approved members of regulated professions, such as plumbers and licensed building practitioners, to certify their own work. This would require some form of regulatory body to implement an approval regime and assess and approve a sub-set of eligible professionals to self-certify. Approved professionals would be subject to a proactive audit regime, and complaints and disciplinary processes.

The diagram below outlines the two non-exclusive options for self-certification.

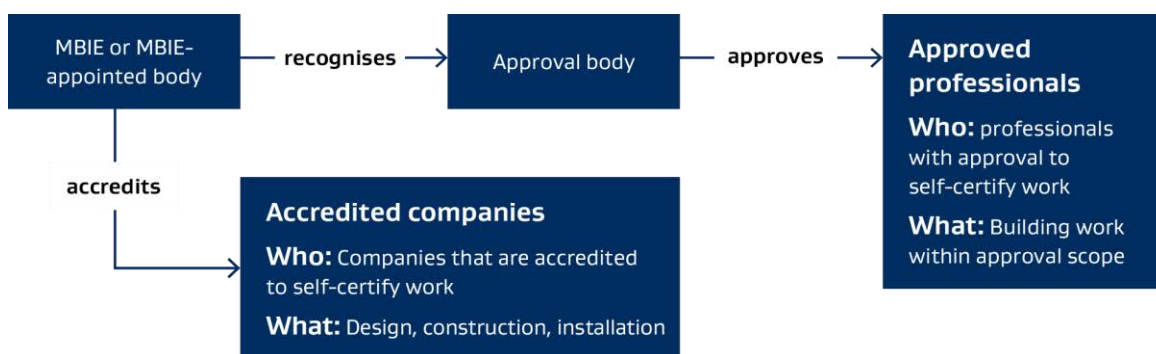


Figure 3: Self-certification options

### Accredited companies and approved professionals would be responsible for compliance

The building consent authority's role would be similar to that under BuiltReady, namely to check the relevant certificate has been validly issued by an accredited company or approved professional and is within the scope of what the accredited company or approved professional is authorised to self-certify. The building consent authority would be required to accept the certificate as demonstrating compliance under s19 of the *Building Act 2004*.

This means that the approved professional or accredited company actually doing the work certifies that it complies with the Building Code. Building consent authorities would not conduct inspections (or, in the case of self-certified design work, review the design) to check the work complies with the Building Code or the issued consent, and would therefore not be liable if it is non-compliant.

### Eligibility criteria and requirements for professional and company certification

The current regime for gasfitters provides a potential blueprint for self-certification. However, the statutory review of the Plumbers, Gasfitters and Drainlayers Act and the *Sapere* report<sup>12</sup> (commissioned as part of the statutory review) found that limited data and auditing meant it was not possible to accurately assess how the regime is working. Rolling this regime out to other trade professionals increases the risk that any current weaknesses would permeate the sector and not become apparent until they are acute and widespread. The *Sapere* report identified four key conditions for a self-certification regime:

- Clear rules setting out responsibilities of tradespeople, that are understood by consumers (and potential consumers)
- A training and registration regime that ensures tradespeople are competent and up to date with current practices and regulations and that certifiers have the requisite skills to certify
- A credible auditing regime

<sup>12</sup> Sapere (2020). *Self-certification in construction industry trades: Report to Ministry of Business Innovation and Employment*. Sapere. <https://www.mbie.govt.nz/dmsdocument/13712-sapere-report-self-certification-in-construction-industry-trades>.



- An enforceable obligation on the certifier to remediate over a suitable period.

We have therefore developed proposed outcomes and design elements on a first principles basis, drawing on principles contained in the *Sapere* report and the BuiltReady scheme. We seek views as to whether these are the right outcomes for a possible self-certification regime.

We are, at this point, simply seeking views on the feasibility of self-certification options and are not seeking views on the current gasfitters regime. We anticipate further consultation with industry if options are developed that impact the gasfitters regime.

Desired outcome	Means to achieve outcome	
	Accredited company route	Approved professional route
High confidence that self-certified work complies with the Building Code	Company / approved professional has appropriate quality assurance systems.	
	There are processes and requirements in place to ensure self-certifiers: <ul style="list-style-type: none"> <li>• are competent in certification;</li> <li>• have a good current understanding of Building Code requirements;</li> <li>• are subject to ongoing performance monitoring and continued training/experience requirements; and</li> <li>• keep robust records to enable effective audit.</li> </ul>	
	There is a proactive audit regime (formal audits and spot checks) to monitor compliance.	
Consumers have a remedy for non-compliant work	There are appropriate disputes and complaints processes.	
	Company has adequate means to cover civil liabilities for non-compliant work.	Consumer has access to a remedy for non-compliant work.
Careless or incompetent self-certifiers are identified and subject to disciplinary action	Entry criteria: “fit and proper person” requirements	
	Company has appropriate: <ul style="list-style-type: none"> <li>• complaints processes</li> <li>• human resources processes</li> </ul>	There are appropriate: <ul style="list-style-type: none"> <li>• complaints processes</li> <li>• disciplinary processes</li> </ul>
	Company has policy and processes to identify and manage conflicts of interest.	There is an enforceable code of ethics to deal with poor behaviour, including conflicts of interest.

### Ensuring consumers have a remedy: adequate means and insurance

We seek views on whether the BuiltReady “adequate means” test would be appropriate to apply to companies seeking accreditation to self-certify. This requires a company to have “adequate means” to cover civil liabilities.<sup>13</sup> It examines an applicant company’s balance sheet strength, working capital position, asset quality, insurance policies, and risk management procedures and systems.

A common way to make sure professionals are in a position to recompense a consumer for non-compliant work is to require the professional to be insured. Options could include requiring approved professionals to hold warranty insurance, either on their own account or

<sup>13</sup> Parliamentary Counsel Office. (2022). *Building (Modular Component Manufacturer Scheme) Regulations 2022*. Parliamentary Counsel Office.  
<https://www.legislation.govt.nz/regulation/public/2022/0171/latest/LMS697974.html>

through a professional membership body (such as Master Plumbers, Master Builders etc). We are conscious that insurance requirements will require relevant insurance products to actually be available. We seek views on whether there are other options, such as assessing a professional’s financial stability, or recognising a professional membership body’s guarantee or warranty scheme for approved professionals that is **not** backed by insurance, would be sufficient to protect the consumer.

### Assessment of option: Self-certification

The table below assesses the self-certification options.

Option	How it addresses the issue	Risks/costs/disadvantages
<b>Self-certification</b> <i>(Preferred)</i>	<p>Responsibility is placed on those who are doing the work, and who may be in a better position to manage risks arising from it.</p> <p>Better calibrates cost and effort to risk, recognising that participants with good quality assurance systems and compliance records present lower risks. Provides an incentive for participants to improve in order to benefit from self-certification.</p> <p>Makes self-certifiers accountable for their work which could improve quality.</p> <p>More efficient. Reduces costs and delays, particularly from awaiting building consent authority inspections.</p>	<p>Implementation would take time and involve establishment costs to set up regimes. Likely to take some years to implement.</p> <p>Could exacerbate challenges of coordination and sequencing on building sites including the interface with work carried out by different trade disciplines if it encourages professionals and companies to take a narrow view of their responsibilities rather than recognising shared responsibility for the building.</p>

### Questions about options for self-certification

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

### Option 3: Commercial consent

Commercial projects are currently subject to the same building consent process as residential homes. In practice, many of these projects are commissioned by well-informed clients, and are designed, built, supervised and peer reviewed by experienced, contractually accountable professionals. Some building consent authorities may lack the in-house technical expertise to carry out detailed design checks and inspections, and instead rely heavily on third-party review of design and specifications, as documented in producer statements.

This option would provide an alternative regulated consent process for some commercial projects. A client (or their agent) could potentially choose to use this process instead of the standard consenting pathway, or it could be mandatory for more complex projects. The potential scope of this option is discussed in more detail below.

### **The commercial consent would be based on a project-specific risk profile and quality assurance system**

This process would be based on a project-specific risk profile and quality assurance system developed by (or on behalf of) the client and approved by a building consent authority. This means project risks are considered early in the design process, with quality assurance systems developed that are proportionate to the agreed risk levels. The building consent authority would rely on design professionals to verify compliance, supported by third party review. This drives more efficient outcomes and reduces scope for duplication where building consent authorities undertake or contract their own reviews on top of the applicant's own third-party review. It also places responsibilities for assurance on the specialists who are best placed to provide it, such as technical engineers.

The building consent authority would issue a certificate upon completion based on whether the agreed quality assurance system has been followed, and compliance documentation is complete. The existing powers of territorial authorities would be maintained, for example to issue notices to fix, carry out inspections or intervene in the case of dangerous and insanitary buildings.

#### *Risk profile*

The risk profile would identify the nature and level of risk for a building project and the likelihood and potential consequences of non-compliance. Relevant factors would include the complexity of the building, the proposed and potential uses of the building, the level and frequency of human occupation, the skill level and compliance history of the practitioners involved in the project, and public safety risks, such as fire safety and the safety of fire fighters.

#### *Quality assurance system*

The quality assurance system would be tailored to the risk profile to ensure cost and effort is proportionate to the assessed risk, and would be agreed between the building consent authority and the applicant. The quality assurance system would include:

- Clear and unambiguous roles, responsibilities, and accountabilities for all participants.
- The procurement model and how it will ensure inputs meet both contract and Building Code specifications.
- The control procedures that ensure specified functions are done by those technically competent to do so (eg qualified façade engineers certify façade installation).
- The carrying out of all critical third party reviews and requirements for those reviews (eg level of experience and independence).

- System controls for product design and development, with review, approval, verification and monitoring requirements.
- Systems to ensure that all design changes (during the design stage and during construction) are validated, managed and documented.

As evidenced by the last bullet point, this process requires the building consent authority and applicant to pre-agree a system to allow for design changes as construction progresses. This recognises that design changes are inevitable on large projects, and better reflects modern procurement whereby design of specialist elements is often completed after sub-contractors are hired, sometimes long after a consent has been issued. A validation requirement may, for instance, include third party review and/or lead designer sign-off.

### Questions about the option of a new commercial consent process

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

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

### Design considerations for a new commercial consent process

Should the Government decide to progress development of a new commercial consent process, there would be a number of detailed design issues to work through. These are set out below.

#### Scope of commercial consent

This process would be most suitable for complex construction projects with multiple technical experts. MBIE is exploring current commercial building definitions (used to determine national competency of building control officers) to set out a mixed mandatory/voluntary scope as per the table below.

<b>Mandatory</b>	<b>Commercial 3:</b> All uses of buildings that are over four storeys high, or contain over 500 occupants or sleeping care or sleeping detention facilities greater than single storey.
<b>Voluntary</b>	<b>Commercial 2:</b> Commercial, industrial, communal residential and communal non-residential buildings equal to or less than four storeys and an occupancy load of equal to or less than 500 people or that are single storey.
	<b>Commercial 1:</b> Commercial, industrial and communal non-residential buildings and their associated outbuildings and ancillary buildings equal to or less than two storeys and an occupancy load of equal to or less than 100 people or residential buildings up to two storeys and with horizontal fire separation.

We considered other options to determine scope, such as the classified uses and building importance levels in clauses A1 and A3 of the Building Code, or a more open definition of risk. Our preliminary view is that the national competency definitions would be preferable as they are simple, well-understood, already used by building consent authorities, and a useful proxy

for complexity. While the definitions will not always perfectly align with risk (eg a commercial 3 building may be less complex than a commercial 1 building because of ground conditions), they have the benefit of being clear as to what buildings are in or out of the proposed scheme.

Making the proposed process voluntary for commercial 1 and 2 buildings would assist with transition, as companies will be able to develop quality assurance systems in a staggered way to reduce the risk of supply issues. It would also allow time for the cultural shift towards greater practitioner accountability. Initial implementation for a narrow range of buildings would give MBIE time to assess how the process is working, before any potential future decisions to extend it to a larger building cohort. We also note that transitional arrangements would need to be carefully designed and discussed with industry to avoid supply issues, particularly for any buildings for which the process would be mandatory.

We seek views on whether the process could be optional for single residential builds that have a high level of complexity due to unique or elaborate design elements.

## **Roles, accountabilities and responsibilities under the commercial consent**

### *Design and construction professionals*

Professionals would have primary responsibility for verifying compliance with the Building Code through design and construction monitoring. Professionals would sign declarations that the building consent authorities can audit to verify that the agreed quality assurance system, including requirements for third party review, is being followed. These compliance documents would explicitly provide assurance that the building work complies with the Building Code.

### *Owner*

The owner would have expanded responsibilities from that currently in the Building Act. They would be responsible for providing the building consent authority with all supporting compliance declarations required by the quality assurance system and ensuring these are signed by appropriately qualified people.

### *Building Consent Authorities*

The building consent authorities' role would focus on process compliance (conducting audits to ensure the agreed quality assurance system is followed) rather than design and build compliance. The building consent authority's issuance of a certificate after a project is completed would be based on whether the agreed quality assurance system has been followed and the compliance documentation is complete.

We seek views on what responsibilities a building consent authority should have under this potential process, over and above auditing compliance with the quality assurance system and its ordinary powers as a territorial authority (issuing notices to fix and powers in relation to dangerous or insanitary buildings). In particular, what requirements or powers would be required for a building consent authority to fulfil its auditing role, and any additional powers to ensure building safety if the building consent authority has concerns about compliance.

### *Project/site coordination and overall responsibility*

The proposed self-certification process relies upon the agreed quality assurance system being followed. Our preliminary view is that someone on the construction project team must own the agreed quality assurance system and have the power to enforce it. Options for this include: the owner, a head contractor, or a Coordinating Responsible Person (appointed by the owner).

We also seek feedback on whether entry requirements are desirable to ensure only those who are truly ready and capable of creating, following and enforcing a quality assurance system can use the proposed process. This mitigates the risk of unsuitable participants trying to use the process and building consent authorities having to overstep their role to fill the capability gap. We are interested in how entry requirements would impact competition and supply, including from overseas companies.

### **Assessment of option: Commercial consent**

The table below assesses the commercial consent option.

Option	How it addresses the issue	Risks/costs/disadvantages
<b>Commercial consent</b>  <i>(Preferred)</i>	<p>Distinguishes between commercial and residential projects, recognising that such projects are different in nature with different risks. Provides a different process to deal with such risks.</p> <p>Places assurance in experts who are best placed to identify and manage risks (eg geotechnical risks are managed by geotechnical engineers).</p> <p>Recognises commercial projects have technical and specialist aspects for which building consent authorities may not have the required in-house expertise.</p> <p>More agile, providing an agreed process to deal with project changes. This better reflects modern procurement practices where specialist design elements are completed after sub-contractors are hired, often after a consent is issued.</p>	<p>Building consent authorities that process commercial consents would need to invest in additional capability to validate design and construction quality assurance systems and audit adherence to the agreed quality assurance system.</p> <p>The proposed approach likely builds on existing quality assurance systems and informal arrangements with building consent authorities for large operators. There are likely additional costs for smaller scale commercial builders and developers that use project specific building companies.</p> <p>Project-specific nature of proposed process may exacerbate challenges of inconsistent and unpredictable application within and between building consent authorities.</p>

### **Third party review**

Third party review is routinely used in construction to ensure compliance as well as identify design improvements and/or savings. It is a key component of the quality assurance system to ensure compliance. To a large extent, this may simply formalise existing practice whereby building consent authorities will request third party review, in the form of producer statements from technical experts, to assess compliance.

We seek views on whether the type and nature of third-party review should be determined on a project specific basis (through the agreed quality assurance system) or whether some features should be mandatory. This could include, for instance, making third party review mandatory for specified critical building elements (eg fire safety design) or through the setting of conditions (eg requiring reviews of structural elements by a Chartered Professional Engineer with a certain level of experience).

### **What protections are necessary for commercial owners?**

Commercial projects are subject to contracts with clauses, among other things, setting out obligations and processes for disputes, remediation and insurance. Commercial owners are almost always more well-informed and better able to protect their interests through negotiated contracts than residential owners. Commercial owners are also better placed to pursue a remedy through the courts when things go wrong. Our preliminary view is that commercial owners can be relied upon to protect their own interests and do not require regulatory protection (for instance, in the form of mandatory professional indemnity insurance requirements).

#### **Questions about the design considerations for the commercial consent process**

- |  |
|--|
| <p><b>29.</b> What should be the scope of the commercial pathway? Should it be mandatory for Commercial 3 buildings and voluntary for Commercial 1 and 2 buildings? Please explain your views.</p>   |
| <p><b>30.</b> Do you agree with the proposed roles, responsibilities and accountabilities? Please explain your views.</p>  |
| <p><b>31.</b> What would be the risks with the commercial consent pathway and how should they be managed? Please comment on entry requirements, site coordination, overall responsibility for the quality assurance system, third party review and what (if any) protections would be needed for owners of commercial buildings.</p> |

### **Building Amendment Act 2012 consent regime**

The *Building Amendment Act 2012* contains a new risk-based consenting regime that has been enacted but not implemented. MBIE recommends repealing this regime to allow the new assurance pathways outlined in this chapter to be developed from the ground up.

#### **What is it?**

The *Building Amendment Act 2012* created a new consent regime with four consent types:

- 1.1. Low-risk consent
- 1.2. Simple residential consent
- 1.3. Commercial consent
- 1.4. Standard consent (this consent process would continue).

## Why hasn't it been implemented?

The risk-based consenting regime has sat on the statute book without being brought into force, for the following reasons:

- The previous Government set a range of pre-conditions that had to be met for the risk-based consenting provisions to come into force, including: greater awareness of the Building Code; competent building practitioners; enhanced consumer protection measures; and an effective monitoring regime. Not all pre-conditions have been sufficiently met.
- There were concerns about workforce capability, whether the new consents appropriately manage risk, and whether the regime's benefits would outweigh its compliance costs.

Consultation on regulations to support implementation of the regime revealed problems with the new consent types. This pointed to the need for a more systemic approach to support the shift in accountabilities without compromising building quality.

The sector and the *Building Act 2004* have evolved significantly since 2012. The current review provides an opportunity to consider the *Building Amendment Act 2012* consent regime afresh in light of significant changes in the sector that have occurred since 2012:

- The *Building (Exempt Building Work) Order 2020* significantly expanded the categories of building work that does not require a consent, including for some work completed by licensed building practitioners. It is not clear that there is sufficient low-risk building work outside of Schedule 1 to justify implementing it.
- The sector has evolved its thinking as to how companies are placed to provide assurance, with schemes such as BuiltReady allowing certified companies to certify their modular components.
- Submitters on the issues paper demonstrated an appetite for assurance pathways that are not limited to licensed building practitioners.

MBIE proposes that the *Building Amendment Act 2012* consent regime be repealed and that the review start afresh with consideration of the proposed new assurance pathways outlined earlier in this chapter.

### Question about options for 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? Please explain your views.



## Chapter 6 – Better delivery of building consent services

*The delivery of building consent services should be as consistent as possible, with the system set up to achieve economies of scale and reduce duplication and unnecessary costs.*

The national performance-based Building Code came into force in 1992. It was intended to bring about more consistency in building requirements. However, control provisions were also designed to be “flexible in application, to accommodate differences in culture and geography”, as territorial authorities would continue to administer building consents.

Today, this means different people – with varying experience and tolerance for risk – interpret the Building Code and use different processes, contributing to its fragmented implementation.

There are also significant capacity and capability constraints in the sector. Building consent authorities report it is increasingly difficult to attract and retain appropriately qualified building control staff due to skill shortages, competition with the private sector, and the accreditation scheme’s emphasis on policies, procedures and systems.

Some sector participants proposed that a smaller number of building consent authorities would improve the consistency, efficiency and effectiveness of the building consent system. However, mandating this would involve a high level of risk and further disruption to local government, which is currently facing significant challenges and reform. In any case, most submitters broadly agreed that the current building consent system is not fundamentally broken, but there was consensus that there is substantial opportunity for improvement.

Many submitters considered that the focus should be on ensuring greater consistency across the system, regardless of the institutional structure. The options in this section therefore consider how to support building consent authorities to achieve greater consistency, reduce duplication and unnecessary costs, and achieve economies of scale in delivering consenting services. The options are set out under three categories:

- *Category A: Providing greater national direction and consistency within the current structure:* These options seek to increase the consistency, transparency and predictability of the process for applicants across Aotearoa New Zealand.
- *Category B: Boosting capacity and capability across all building consent authorities:* These options seek to increase building consent authorities’ capacity to address demand and build greater collective capability across the system.
- *Category C: Supporting building consent authorities to achieve greater economies of scale:* These options seek to reduce duplication and achieve greater economies of scale and reduce costs for individual building consent authorities.

Many of the options will require greater system stewardship by MBIE, through supporting building consent authorities to achieve these outcomes and objectives.

We are not proposing any preferred options in this chapter at this stage. Further policy work and consultation is required to identify the options that will have the greatest positive impact on the delivery of building consent services.

## Category A options: Providing greater national direction and consistency

Each building consent authority determines its own process and requirements to fulfil its duty to be satisfied on reasonable grounds that building work meets the requirements of the Building Code. The *Building (Accreditation of Building Consent Authority) Regulations 2006* sought to support greater national consistency. While these have been somewhat successful in achieving this outcome, some variation remains. This is particularly frustrating for designers and builders working across multiple territorial authorities.

These options are not a package nor are they mutually exclusive. We seek your views on which options would best improve consistency. We also seek views on any other ideas as to how processes and requirements could improve consistency and predictability.

### Option 1: Ensure nationally consistent processes and requirements

To increase consistency in application requirements, the way the consent process is carried out, and decision making, MBIE could:

- prescribe or establish best practice processes for building consent applications and assessments
- develop a model quality manual for building consent authorities that identifies best practice
- issue guidance for building consent authorities on interpreting or implementing key regulatory requirements or duties.

Measures to establish more consistent processes across the 67 building consent authorities would likely be more effective if they were prescribed and mandatory. However, this would see a move away from the current approach where individual building consent authorities have the autonomy to establish and maintain the processes that best suit their local needs and interactions with wider council systems and processes.

In December 2022, MBIE published a [standard order of documents checklist](#)<sup>14</sup> for residential building consent applications. The checklist supports applicants to submit well-organised and clearly set out plans, which in turn should reduce processing time and the likelihood of requests for information. We expect it will also result in greater consistency across building consent authorities in their expectations of how applications should be structured.

We seek your views on what else MBIE could consider to ensure nationally consistent processes and requirements.

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<sup>14</sup> Ministry of Business, Innovation and Employment. (2022). *Standard Order of Documents Checklist*. Ministry of Business, Innovation and Employment. <https://www.building.govt.nz/projects-and-consents/apply-for-building-consent/support-your-consent-application/standard-order-of-documents-checklist>

## **Option 2: Review building consent application and processing systems to identify nationwide technology approaches**

Technology can increase productivity and improve consistency by ensuring application processes are similar across the country, and that building control staff follow the same procedures and record decisions in the same way.

The adoption of digital systems over the last decade or so has led to two types of systems emerging – specialist systems that focus on consenting only and systems that exist as a component of a wider council IT system. Either type of system has required significant financial and administrative commitment from building consent authorities to the platform of choice.

### **Greater consistency and accessibility of consenting systems is needed**

Stakeholders have raised frustration with managing login details for different systems and the inefficiencies that arise from having to meet variable application requirements across different territorial areas. To address these issues, some submitters suggested establishing a single login portal for all consent applications and/or a national IT system for all consent applications and processing.

MBIE supported the initial phases of Simpli, an online login portal that can link to council IT or third-party systems. This has gone some way toward promoting consistency and accessibility for applicants, with nearly half of all building consent authorities using Simpli.

### **Technology options to improve productivity, consistency and accessibility**

Technology options to improve productivity, consistency and accessibility are extremely complex and costly, and need to be progressed with caution and a clear understanding of the existing barriers and constraints to technology alignment. MBIE therefore proposes a review of current consenting technology systems to:

- better understand barriers to aligning current systems
- identify potential pathways toward greater interoperability<sup>15</sup>
- understand the capacity of stakeholders to modify their existing systems.

Based on the findings of the review, MBIE would develop detailed options to improve alignment between systems. This could include greater adoption of existing systems, or the establishment of a national IT system that replaces (in full or part) current systems.

Key priorities and outcomes of a review would include:

- a more consistent and accessible user-experience for applicants
- increased interoperability between systems
- greater consistency of building consent processes across building consent authorities
- access to more standardised and consistently formatted data from across the country.

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<sup>15</sup> The ability of computer systems or software to exchange and make use of information.

To help shape the scope and approach of any review we are seeking feedback on:

- the degree of impact that different electronic building consent application and processing systems have on efficiency, consistency and accessibility for building consent applicants
- the technical, financial, and political barriers to aligning electronic consenting systems
- the capacity and willingness of the sector to move toward greater alignment of systems.

### **Option 3: Supporting uptake of remote inspection technology**

Remote building inspections can streamline the inspection process, reduce costs and increase efficiency. There has been some uptake of remote inspection technology, which enables building control officers to undertake inspections using video calling and photographic evidence submitted by the building professional onsite. This technology is not yet used widely or consistently across building consent authorities.

MBIE recognises the potential productivity gains of remote inspection technology and is currently progressing some initiatives, including:

- research and case studies to better understand the benefits and barriers of remote inspections
- investigating whether creating a building related standard for remote inspections would help reduce barriers to compliance with the Building Code
- undertaking a pilot to test the reliability of remote inspections for plumbing and drain laying work.

### **Options to support uptake of remote inspection technology**

Alongside current initiatives, MBIE could develop guidance to support the uptake of remote inspections, covering areas such as:

- when remote inspections are suitable
- processes for undertaking inspections and signing off work
- managing issues that arise in the process
- what to look for when selecting a remote inspection system.

MBIE acknowledges that while remote inspections can provide cost savings and productivity gains, there are barriers to uptake. It is unclear whether (and to what degree) barriers are risk-based, cost-based, due to real or perceived regulatory barriers, or because of technology capability issues.

We are seeking feedback on the key barriers faced by building consent authorities in adopting remote inspection technologies and processes, and what else MBIE could do to support uptake.

#### Option 4: Centralise training for building control officers

Stakeholders have reported that there are sometimes inconsistencies within a single building consent authority. The building consent system has hundreds of building control officers with varying qualifications and experience, so some variability is inevitable. Nonetheless, it is desirable to reduce these inconsistencies to avoid situations where applicants receive substantially different requests for information, or even different decisions, when making applications to the same authority.

New building control officers need to undertake considerable on the job training to become competent inspectors (Litmus, 2020).<sup>16</sup> This training can be variable, depending on the level of expertise available in-house and the availability of experienced building control officers in the context of significant resourcing pressure.

One way to improve consistency across new building control recruits could be for MBIE or an appropriate industry body to lead the development of a centralised training program for all new building control officers. This would provide a consistent baseline for introducing new building control officers to the system. There could also be scope in future to extend the initial training with supplementary modules to support further upskilling and specialisation.

#### Assessment of options: Category A

Option	How this addresses the issues	Risks/costs/disadvantages
<b>Option 1: Ensure nationally consistent processes and requirements through regulation, guidance or best practice</b>	<p>Increases the transparency and predictability of processes for applicants and the sector.</p> <p>Supports better and complete applications, potentially reducing delays and requests for information.</p>	<p>Costs and time taken to implement would likely be low for guidance but would increase for mandatory options.</p> <p>May not allow for flexibility where it is desirable.</p>
<b>Option 2: Review current systems and identify nationwide technology approaches to improve consenting consistency and accessibility</b>	<p>Supports a more consistent and accessible user-experience for applicants.</p> <p>Supports increased interoperability between systems.</p> <p>Supports consistency of building consent processing and decision-making by building consent authorities, leading to greater certainty for applicants.</p> <p>Reduces inefficiencies and compliance costs when lodging applications, particularly for</p>	<p>Beyond the initial review, the implementation timeframe for any solutions would be considerable.</p> <p>Significant implementation and technical challenges to integrate different platforms.</p> <p>Some options are likely to have high cost which could be a significant obstacle to BCAs and councils.</p> <p>Requires buy-in from all building consent authorities for full benefits to be gained.</p>

<sup>16</sup> Litmus. (2020). *Evaluation of the Building Consent Authority Accreditation Scheme*. Litmus. <https://www.building.govt.nz/assets/Uploads/building-officials/bca-accreditation/bca-accreditation-scheme-evaluation-report.pdf>

Option	How this addresses the issues	Risks/costs/disadvantages
	<p>applicants that work across different territorial areas.</p> <p>Improved performance monitoring through access to more standardised and consistently formatted data from across the country.</p>	<p>Disruption to building consent authorities, particularly for a national IT system.</p>
<b>Option 3: Better enable remote inspection technology</b>	<p>Increases efficiency by reducing delays from waiting for inspection slots, reducing costs.</p> <p>Helps capacity constraints by freeing up more building control officer time.</p>	<p>Risks in relying on photo evidence to make decisions about compliance (although remote inspections could also be live-streamed).</p> <p>Relies on good internet connectivity for live-streamed options.</p> <p>Will require system controls (eg location data) to be confident about compliance.</p>
<b>Option 4: Centralise training for building control officers</b>	<p>Greater consistency among building control officers.</p> <p>May reduce the need for on-the-job training and reduce capacity constraints.</p>	<p>Could involve high establishment costs.</p>

### Questions about providing greater national direction and consistency

**33.** Which options would best support consistency and predictability given costs, risks and implementation timeframes? Please explain your views.

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

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

### Category B options: Boosting capacity and capability across the system

The building consent system is under pressure to approve work quickly. The wider building and construction sector is also under pressure to deliver building work quickly. Capacity and capability constraints are a key issue as demand exceeds supply.

Building consent authorities report that it is increasingly difficult to employ and retain building control officers. There is a range of contributing factors, including attracting staff to smaller regional locations, higher remuneration in the private sector, and the shallow career pathways available (eg smaller building consent authorities may only have a few processing and inspection staff and one manager).

Many building consent authorities work together through cluster groups and professional relationships within their regions to share information, trends, identify common problems and even share staff, sometimes via formal contracting arrangements. Where these arrangements are in place, these can be difficult to maintain while the entire system is under pressure to

meet high demand and there is a systemic lack of building control officers. Some authorities manage capacity issues by outsourcing to private processing entities.

The options in this section seek to alleviate these capacity and capability constraints. While these options could be pursued in isolation, they could also complement other options within this document.

### **Option 1: Establish centres of excellence or other central advisory function**

Establishing one or more centres of excellence could address both capability and capacity constraints, as well as increase consistency and provide greater national support and leadership. Centres of excellence could be conducted virtually, drawing on expertise across the country. Such centres could:

- Monitor emerging trends and provide information, guidance or advice on these (for example, on new building methods, technology or innovative products) so that building consent authorities can collectively look to a trusted source for information.
- Advise on specific issues or initiatives, such as complex commercial construction, climate-related matters, or Māori-led building and construction projects (refer to the section on *Better responding to the needs and aspirations of Māori* for more detail).
- Advise on risk and variable consenting timeframes for different types of building work.
- Process consents for particularly unique or complex building work.
- Undertake case studies, create tools or develop other expertise to demonstrate or support best practice.
- Support professional development through seminars or webinars and other education-related activities.

### **Option 2: Identify opportunities for shared workflows or shared service arrangements between building consent authorities**

Consent workflows are variable and unpredictable. A more agile system could assist building consent authorities to share resources or provide support to building consent authorities facing spikes in demand.

Many building consent authorities do try and work regionally to share resources (whether on a contractual or less formal basis) when capacity allows. However, there are barriers to transferring work or resources:

- The difficulty of managing multiple contracts with different authorities, which are influenced by different legal and procurement approaches. Arriving at shared legal agreements may involve considerable time and cost, including how to apportion any liability.
- Differences in processes, systems and manuals used for processing and inspections. This can be an issue even where councils use the same software provider due to different versions or customisations.

Greater flexibility to ensure resources are directed to where they are most needed could be achieved by:

- implementing systems – either national or regionally based – that monitor workflows and allocate any available resources to where they are needed in a more agile way. If regionally based, this could be via a formal agreement between two building consent authorities
- supporting shared services in regional groups, so that the systems, quality assurance and other variables are more closely aligned.

These options would require careful consideration as to where liability would sit.

### **Option 3: Centralised resource of specialist expertise or building control officers to fill capability gaps**

Complex building consent applications (eg commercial projects or building work in a complex location) may require technical expertise that building consent authorities do not have in-house, particularly in small authorities. This means specialist expertise is contracted in, with increased costs and delay. A central pool of resources – either nationally or regionally based – could help fill these gaps in building consent authority resource.

#### **Assessment of options: Category B**

<b>Option</b>	<b>How this addresses the issues</b>	<b>Risks/costs/disadvantages</b>
<b>Option 1: Centres of excellence or central advisory function</b>	<p>Facilitates more effective use of resources by building consent authorities.</p> <p>Could accelerate development and use of new information and technology, promoting innovation.</p> <p>Central consenting function could provide consistency for a particular consent type.</p> <p>Focus on national emerging and complex issues would free up building consent authorities to focus on business-as-usual consenting.</p> <p>Could provide more central direction/leadership to increase consistency in consenting.</p>	<p>Likely high costs and time to establish (both would be lower if the centre did not have a consenting function).</p> <p>May not be as effective as other options to address core capacity and capability across wider system.</p> <p>Could add to the difficulties building consent authorities face in attracting and retaining building control staff.</p> <p>Would need clear parameters of operation, taking into account MBIE, BRANZ and building consent authority functions.</p>
<b>Option 2: Identify opportunities for shared workflows or shared service arrangements</b>	<p>Increases flexibility of system to deploy resources where required.</p> <p>Helps smooth out demand and supply across building consent authorities, potentially reducing wait times.</p>	<p>Centralised national or regional systems are likely to have high establishment costs.</p> <p>Significant implementation lead-in time to negotiate agreements, including liability arrangements.</p> <p>May be challenges to achieve full council buy-in.</p>



Option	How this addresses the issues	Risks/costs/disadvantages
		May be difficult to establish centralised system that interfaces with different back-end processes.
<b>Option 3: Centralised resource of consultants or building control officers</b>	<p>Increases efficiency and effectiveness by providing capability that might not otherwise be available in-house.</p> <p>Could be a more cost-effective form of procurement (salaried vs contractor).</p> <p>Could improve consistency in how complex consents are managed.</p> <p>Reduces need for individual authorities to retain specialist resource.</p>	<p>Could divert resource away from building consent authorities.</p> <p>Could involve significant disruption to building consent authorities.</p> <p>Would be costly and lengthy to implement, requiring negotiations for cost-sharing and cost-recovery.</p>

Questions about boosting capacity and capability
36. Which options would most alleviate capacity and capability constraints given costs, risks and implementation timeframes? Please explain your views.
37. What other costs and risks need to be considered?
38. Are there any other options that would alleviate capacity and capability constraints?

### Category C options: Supporting building consent authorities to achieve greater economies of scale

Each territorial authority is required to maintain a registered and accredited building consent authority. Maintaining accreditation is onerous for smaller territorial authorities, with the costs for regular auditing being proportionally higher (on a per consent basis) than for larger territorial authorities. The workload of building consent authorities varies greatly, with some processing thousands of consents each year, while almost half (30) process fewer than 200.<sup>17</sup>

Lack of scale also means that, even on a cost-recovery basis, smaller building consent authorities are not able to draw sufficient income from building consent fees to attract and maintain a building control workforce that has varied skills and experience, for example specialist engineering or plumbing and drainage expertise, unless this is cross-subsidised from their territorial authority's rates income.

Many building consent authorities use accredited private processing entities<sup>18</sup> to undertake some or all of their building consent processing. Some also look to their counterparts within

<sup>17</sup> StatsNZ. (2023). *Building Consents Issued: January 2023*. StatsNZ.

<https://www.stats.govt.nz/information-releases/building-consents-issued-january-2023>

<sup>18</sup> Private organisations can be accredited under the *Building (Accreditation of Building Consent Authorities) Regulations 2006* to process building consent applications on behalf of building consent authorities, but cannot grant building consents – the final decision remains the responsibility of the registered building consent authority to which the building consent application was made. These private organisations are often referred to as Accredited Organisations (Building), or AOBs.

their building consent authority cluster for support to consent buildings works outside their scope of expertise.

### **Current legislative provisions**

Section 213 of the *Building Act 2004* enables territorial authorities to make arrangements for other building consent authorities (including private building consent authorities) to perform that territorial authority's building consent functions on its behalf. This appears broad and flexible and is used from time to time. However, the territorial authority that contracts out its functions remains liable for "the acts and omissions of the other building consent authority" (section 214) and must also maintain accreditation and registration as a building consent authority (section 215).

Section 233 of the *Building Act 2004* enables territorial authorities to "transfer 1 or more of its functions, duties, or powers under this Act to another territorial authority", subject to a process that includes undertaking the special public consultative procedure outlined in section 83 of the *Local Government Act 2002*. In the case of a full transfer of functions, duties or powers, the transferring territorial authority is not required to maintain accreditation and registration. To date, only the Chatham Islands has utilised this opportunity, having transferred its building consent authority functions to Wellington City Council.<sup>19</sup>

### **Option 1: Identify and address barriers to voluntary consolidation and transfer**

MBIE could examine barriers to voluntary consolidation of building consent functions to consider whether reform or other action is needed to enable the consolidation or transfer of building consent functions between two or more territorial authorities. Voluntary consolidation and transfer can ensure more effective use of resources across building consent authorities. The *Biennial BCA Accreditation Report Round Seven (Ministry of Business, Innovation and Employment, 2021)*<sup>20</sup> identified that some authorities are struggling with a lack of resources, increasing the number of non-compliances during IANZ assessments and placing their accreditation at risk.

MBIE is not proposing to require territorial authorities to consolidate or amalgamate their building consent authorities or functions at this time. However, voluntary transfers or consolidation<sup>21</sup> would enable greater economies of scale to be achieved, reducing costs and improving consistency. Partial transfers of functions (for example, processing consents for complex commercial building work) could also be explored.

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<sup>19</sup> Regional authorities, which have responsibility for dam consenting under the *Building Act 2004*, have consolidated this function by transferring the relevant functions, duties and powers within the Act to either Environment Canterbury (South Island authorities) or Waikato Regional Council (North Island authorities).

<sup>20</sup> Ministry of Business, Innovation and Employment. (2021). *Biennial BCA Accreditation Report Round Seven*. Ministry of Business, Innovation and Employment.  
<https://www.building.govt.nz/assets/Uploads/building-officials/bca-accreditation/bca-accreditation-report-seven-july-2019-june-2021.pdf>

Some building consent authorities and cluster groups have already indicated to MBIE that they would like to consider consolidating their entities or services in some way. Some have already explored consolidation, but encountered the following barriers:

- Legislative requirements to formally transfer functions, such as consultation requirements under the *Local Government Act 2002*.
- The need to maintain registration and the full scope of accreditation when contracting out specific functions or consent types which significantly reduces the benefits.
- The impact on building-related territorial functions that would need to be maintained within the local council under the current *Building Act 2004* provisions (for example, issuing of project information memoranda (PIM), granting exemptions for building work that would normally require a building consent) and administering or enforcing building warrant of fitness requirements).
- The liability of a territorial authority seeking to transfer or contract out services for the acts or omissions of others that are outside its direct control.

We also heard that aspects of the *Building (Accreditation of Building Consent Authorities) Regulations 2006* limit some of the potential benefits of consolidation. For example, where the requirements are being met in substantively the same way across building consent authorities that are working in partnership but continue to be audited separately.

## **Option 2: Support a pilot to voluntarily consolidate or transfer building consent functions**

Greater central government support could help to overcome some of the barriers to consolidation outlined in option 1 above.

Under this option, MBIE would support territorial authorities that voluntarily express interest in consolidating or transferring building consent functions. The territorial authorities involved would need to be willing to lead the process, with MBIE supporting through information, guidance, and advice. For example, MBIE could provide advice on legislative provisions, lessons learned from previous attempts by other territorial authorities, and project management support.

By participating in such a pilot, MBIE could develop information, resources or guidance which could be used by other territorial authorities who are considering voluntarily transferring or consolidating building consent functions in future.

## **Option 3: Investigate the viability of establishing a national building consent authority to operate alongside local building consent authorities**

This option proposes to investigate establishing a national building consent authority to support territorial building consent authorities to manage capacity and capability constraints. MBIE could identify the potential forms and functions of a national building consent authority to develop feasible options, including indicative costs and benefits. MBIE is seeking some initial feedback on the ideas proposed below, along with any further ideas for this option.

The *Building Act 2004* allows for the establishment of ‘private’ building consent authorities. Consentium, an independent division of Kāinga Ora, is the only such building consent authority that has been established. While any private entity can apply to be accredited and registered as a building consent authority, it must meet a ‘fit and proper person’ test and have adequate means to cover any civil liability that may arise in performing consenting functions.

A national building consent authority could have a combination of purposes or functions:

- **Processing unique or very complex applications:** This would require the establishment of a specialised function with appropriately qualified staff. This could improve consistency for such applications and remove the need for this specialist expertise being retained by individual building consent authorities. Applications could be referred by territorial authorities on a voluntary or mandatory basis.
- **Provide overflow support or surge capacity to territorial authorities:** A national building consent authority could support territorial authorities during periods of surge demand (eg due to a natural disaster) by meeting some of the increased demand.
- **Provide an avenue for the transfer of all or some functions from territorial authorities:** This provides an alternative to voluntary transfer or consolidation between territorial authorities. It could greatly increase consistency in requirements and decision making. It could also enable building consent authorities to transfer more complex building work, while retaining less complex applications.

The potential form, functions and governance, as well as financial feasibility, of establishing a national building consent authority would require careful consideration before determining whether to proceed with this option. We seek initial views on this to inform a preliminary assessment as to whether this option is worth exploring further.

### Assessment of options: Category C

Option	How this addresses issues	Risks/costs/disadvantages
<b>Option 1: Identify and address barriers to voluntary consolidation and transfer</b>	<p>More efficient use of resources with economies of scale potentially reducing overall costs to the system.</p> <p>Could promote greater national and regional consistency.</p> <p>May provide greater opportunities for building control officers.</p>	<p>The barriers are complex and difficult to work through, impacting not just building consent authorities but broader council interests.</p> <p>Costs and time to implement depend on the findings of the types and extent of barriers. Legislative change would take more time.</p>
<b>Option 2: Support a pilot to voluntarily consolidate or transfer building consent functions</b>	<p>Greater central government support increases the potential to overcome the barriers faced by those who have considered or attempted a similar initiative themselves.</p> <p>More efficient use of resources with economies of scale potentially reducing overall costs to the system.</p>	<p>There would be transitional costs for the building consent authorities involved.</p> <p>The pilot may fail if it is not able to overcome one or more of the identified barriers.</p>

<p><b>Option 3: National building consent authority sitting alongside existing ones</b></p>	<p>Could improve consistency in processes.</p> <p>Provides more flexible deployment of resource in times of surge demand.</p>	<p>Considerable cost and resource to establish.</p> <p>Ongoing funding arrangements in the event of application fees not fully meeting costs need to be considered.</p> <p>Could divert consenting personnel away from territorial authorities exacerbating challenges of attracting candidates.</p> <p>Could decrease local autonomy to manage consenting function.</p>
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<b>Questions about achieving greater economies of scale</b>
<p><b>39.</b> What are the biggest barriers to voluntary consolidation? How could these be overcome?</p>
<p><b>40.</b> Which options would best support building consent authorities to achieve greater economies of scale given costs, risks and implementation timeframes? Please explain your views.</p>
<p><b>41.</b> What other costs and risks need to be considered?</p>
<p><b>42.</b> Are there any other options that would support building consent authorities to achieve greater economies of scale?</p>

## Chapter 7 – Better performance monitoring and system stewardship

*Better performance monitoring and information enables MBIE to be a stronger steward of the building consent regulatory system, using system insights to proactively respond to changes in the system and address problems as they emerge.*

The government requires regulatory agencies to act as stewards of the regulatory system(s) they are responsible for. This means taking a proactive and collaborative approach to monitoring and maintaining the regulatory system and keeping well informed of issues, risks and opportunities to ensure that:

- the different parts of the system work well together in pursuit of desired outcomes
- the system adapts to changing circumstances so that it remains fit-for-purpose and continues to deliver benefits over the long term.

As steward, MBIE needs to proactively monitor and respond to the needs of the building consent system. This requires MBIE to actively seek out information on emerging issues in the system, assess that information, make informed decisions, and take action in response to the issues and opportunities identified to ensure the system is efficient, responsive and fit for purpose.

This could mean identifying where there are capacity constraints, lack of clarity on roles and responsibilities, inconsistencies in the consent process, and the degree to which the system is delivering on its desired outcomes.

Poor stewardship can result in regulatory systems that are poorly designed, overly complex or expensive, and unable to keep up with technology and change, causing lack of clarity and frustration for participants. Weak stewardship and oversight can also result in compliance failures, or worse, significant regulatory failure, such as the leaky building crisis.

Building and construction has one of the more complex regulatory systems. There are a wide range of participants with different interests and frontline regulation is devolved to 67 building consent authorities. The sector is also changing. It is becoming more specialised, there is greater need for medium-high density buildings, and climate change will require adaptation and reduced embodied carbon and carbon emissions. Good stewardship practices are particularly important in this environment.

### **MBIE needs to take a stronger role as central regulator of the building consent system**

We heard through submissions that current monitoring is too narrowly focused on audits of building consent authority compliance, is input focused (rather than outcomes focused) and that more comprehensive monitoring is required to effectively respond to problem areas and opportunities.

We also heard that MBIE could engage more proactively with the sector to better understand problem areas and trends, and that this information could be used to develop targeted guidance and education.

## **We have a lot of tools to meet our regulatory stewardship responsibilities**

MBIE has a broad range of regulatory and non-regulatory tools to carry out its stewardship responsibilities. More broadly, the response to the systemic failure of the building regulatory system and the leaky homes crisis has seen substantial reforms implemented, underway and proposed that aim to ensure:

- building work is of acceptable quality
- an effective and efficient building consent system
- a skilled and competent building workforce
- informed and empowered consumers.

In regard to the building consent system, MBIE has the ability to gather data and information from building consent authorities, monitor trends, issue warnings and bans, and provide compliance and guidance documents.

The current building consent system review is a good example of MBIE, as regulatory steward, gathering information on system issues and problems that are impeding the achievement of desirable outcomes and responding to those issues. The outcome of this review may lead to regulatory and non-regulatory action.

MBIE has also developed a closer partnership with the sector through the Construction Sector Accord and has become more responsive to issues in the sector – such as guidance provided during the plasterboard shortage of 2022 and the establishment of a Critical Materials Taskforce to get ahead of supply chains risks. We have also increased our monitoring of global trends to better understand and respond to emerging risks and opportunities in the sector.

## **We want your feedback on our vision to become a better informed and proactive regulatory steward**

MBIE acknowledges that we need to take a more proactive role as central regulator and steward. This requires us to improve our own performance in a range of areas, as outlined below. As all of these activities are equally important, and interdependent, we are not presenting them as options, but as a set of interrelated initiatives to fulfil our responsibility as steward. We want your feedback on how we see our role and where we can improve.

Much of the feedback via submissions centred around how we obtain, act on, and provide information. In this light, we see our stewardship responsibilities as falling under the following areas:

<b>Stewardship initiatives:</b>	
<b>Obtaining better information about system issues</b>	<p>MBIE needs access to more information about the issues facing, and performance of, the building consent system.</p> <p>We need to develop better systems to collect information that will help us identify key issues, risks, and opportunities in the building consent system. This includes identifying information sources that can help us understand whether the system is delivering on its desired outcomes.</p>

Stewardship initiatives:	
<b>Acting on available information</b>	<p>On the basis of this information, MBIE needs to be more responsive to issues, risks, and opportunities. We need to improve our processes of:</p> <ul style="list-style-type: none"> <li>• evaluating and acting on problems, risks, and opportunities – using the full range of tools we have available as steward, including regulatory and non-regulatory tools</li> <li>• keeping building regulation and the building consent system up to date to ensure objectives are being achieved and unnecessary rules are removed.</li> </ul>
<b>Providing quality information to the sector</b>	<p>MBIE is committed to providing increased direction, education, and guidance, including:</p> <ul style="list-style-type: none"> <li>• providing more timely information on critical issues facing the sector, such as the guidance provided on plasterboard substitution in 2022</li> <li>• providing more information to support streamlined consent processing, such as recent guidance on the standard order of documents for a building consent application</li> <li>• improving our communication via digital channels to enable easier access to authoritative information</li> <li>• updating guidance and compliance documents to reflect changes to technology and construction methods, as reinforced by the 2022 Commerce Commission Market study recommendation that MBIE updates and develops more Acceptable Solutions and Verification Methods.</li> </ul> <p>We will continue to identify where further information is required by the sector and improve the quality and accessibility of that information.</p>

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.
44. What initiatives should be prioritised and why?
45. What else does MBIE need to do to become a better steward and central regulator?



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

*The building system should be more responsive to Māori building needs and aspirations. It should address the main challenges Māori face in the system, namely, capacity and capability and relationship issues.*

### Why is it important to take a specific Māori perspective in the building consent system?

The Māori perspective needs to be addressed as part of the Crown’s wider obligations under the Treaty of Waitangi (the Treaty). A key strategic priority for MBIE is to work more in partnership with tangata whenua to ensure that building regulation incorporates Māori perspectives and worldviews. This ensures that building regulation responds to Māori values and needs.

Māori are active participants across the building and construction sector. Their needs and priorities must be properly heard, understood and addressed in order to support them to achieve their aspirations within the sector.

### In what part of the wider building process do Māori face the most challenges?

The building consent process sits at the end of the wider building and construction process (see Figure 4 below).



Figure 4: The wider building and construction process

We have heard in public consultation and targeted engagements that most of the challenges that Māori face are in the earlier stages of the wider building process, particularly the financing and planning stages. For example, many commented that having district and regional plans that are enabling of papakāinga is essential for Māori to develop their land. Additionally, most of the issues relating to the multiple ownership of Māori land occur during the financing stage.

### The challenges Māori face in the building consent system

Despite the above, Māori also face challenges in the building consent system. For example, we heard that it may be difficult for Māori to introduce traditional Māori methods of construction due to issues in meeting and demonstrating Building Code compliance, as well as issues in building consent authorities’ assessment of Building Code compliance and the reluctance of some territorial authorities to issue waivers and modifications of the Building Code.

Public consultation and targeted engagements have indicated that the challenges that Māori face in the system derive from two key issues:

- **Capacity and capability issues:** There is a need to improve building consent authorities' Māori capabilities (understanding of Māori culture and practices). There is also a need to improve the capacity and capability of Māori, as some are unsure of how to navigate the building consent process.
- **Relationship issues:** Māori can find it difficult communicating with building consent authorities, as well as working with all the different agencies they must work with to develop their land. There is an ongoing process of building relationships and trust between Māori and councils.

The Commerce Commission similarly stated in its market study into residential building supplies that Māori face these issues in the building regulatory system.

### **A private building consent authority**

Some submitters in public consultation and participants in targeted engagements mentioned that a private building consent authority to deal with building consents for Māori-led building projects would help make the system more responsive to Māori needs and aspirations. There were discussions about the principle of independence and the idea that Māori should be empowered to do things for themselves.

Creating a private building consent authority is already possible in the current building consent system. In addition to territorial and regional authorities, private entities can be registered as building consent authorities providing they meet the criteria.<sup>22</sup>

### **Options to better serve Māori in the building consent system**

The options in this section aim 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.

At this stage, no preferred options are being indicated for this area of reform. Further engagement and policy work needs to be done to understand which options will have the greatest positive impact for Māori in the building consent system. Your views on each option will help shape their detailed design and inform advice on preferred options.

Note that these options can be implemented in a stand-alone way or together as a package. Additionally, changes to the Building Code (including acceptable solutions and verification methods) are out of scope for this review.

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<sup>22</sup> As under sections 191-192 of the *Building Act 2004*.

These options can be implemented in a stand-alone way or together as a package. We seek your views to assess each option, and to inform the detailed design of the options the Government chooses to progress.

**Option 1: Create a navigator role**

This option would create a navigator role within building consent authorities to guide Māori through the building consent process. Alternatively, it could sit within a centre of excellence (see option 2).

There are many different ways that a navigator role could function. The navigator role could be one of liaison, that is, the person who gets ‘all the right people in the room together.’ It could be a role that acts as the ‘middleperson’ or communicator between Māori and building consent authorities. Alternatively, it could be a role which accompanies Māori through the building consent process and provides them with advice and support.

The navigator role could sit beyond individual building consent authorities, for example, it could sit in building consent authority clusters or councils. Alternatively, it could sit in an independent, external organisation.

There is also a question of how broad the navigator role should be and what processes it could provide guidance for. As stated above, most of the challenges that Māori face in the wider building and construction process occur before the building consent process. In targeted Māori engagements, many participants stated that they would like the navigator role to assist Māori through the funding and planning stages of the wider building and construction process.

Detailed design issues will need to be worked through if this option were to be progressed, including funding, MBIE’s role, and whether the navigator role should be mandatory or voluntary for building consent authorities or territorial authorities.

**Assessment of option: Navigator role**

The table below summarises how the navigator role could address the issues that Māori face in the building consent system, as well as possible risks and disadvantages.

Option	How this addresses issues	Risks/costs/disadvantages
<b>Navigator role</b>	<p>Improves the relationship between Māori consent applicants and building consent authorities as it facilitates more direct, face-to-face engagement. Māori consent applicants may also feel more comfortable communicating with building consent authorities with a navigator acting as ‘middleperson’.</p> <p>Lifts building consent authorities’ Māori capabilities. By having more direct engagement with Māori consent applicants, building consent authorities will get a better understanding of Māori culture and practices – from understanding how to</p>	<p>Implementation costs for local or central government (depending on where the navigator role will sit) may be significant.</p> <p>May be difficult to find the appropriate mechanism to implement this role in building consent authorities, building consent authority clusters or councils.</p>

Option	How this addresses issues	Risks/costs/disadvantages
	<p>better communicate with Māori, to understanding better how traditional Māori methods of construction work and how they can meet the Building Code.</p> <p>Lifts the capability of Māori by guiding them through the building consent process, thereby increasing their understanding of how it works. This ensures Māori consent applicants have a better understanding of how to meet and demonstrate compliance with the Building Code.</p>	<p>May encounter difficulties in finding sufficient people who are able to do this role.</p>

We seek views on the extent to which this option would help address could address the issues that Māori face in the building consent system. We also seek views on what the responsibilities the navigator role should have, where it should sit and how broad it should be.

### **Option 2: Establish a centre of excellence for Māori-led building and construction projects**

This option would establish a centre of excellence for Māori-led building and construction projects.

A centre of excellence could provide a capability building and advisory role for building consent authorities. It could facilitate the sharing of best practice Māori engagement strategies between building consent authorities, as well as knowledge of traditional Māori methods of construction and how they can meet the requirements of the Building Code.

A centre of excellence could also allow building consent authorities to monitor emerging trends in Māori building, and provide them with the opportunity to propose, or develop best practices that could lead to, acceptable solutions or verification methods for traditional Māori methods of construction. It could also contain experts on Māori building and consenting issues that building consent authorities could go to for advice or, potentially, for training.

Alternatively or additionally, a centre of excellence could have a front-facing role, in which they deal directly with Māori building consent applicants and provide advice. A centre of excellence might also process building consent applications for Māori-led building and construction projects.

Detailed design issues will need to be worked through if this option were to be progressed, including MBIE's role, and concerns around Māori stewardship of data collection and use.

#### **Assessment of option: Centre of excellence**

The table below summarises how a centre of excellence could address the issues that Māori face in the building consent system, as well as possible risks and disadvantages.

Option	How this addresses issues	Risks/costs/disadvantages
<b>Centre of excellence</b>	<p>Lifts building consent authorities' Māori capabilities as it facilitates their sharing of knowledge about best practice Māori engagement strategies and traditional Māori methods of construction.</p> <p>Improves the relationship between Māori consent applicants and building consent authorities, as the sharing of best practice Māori engagement strategies will enable building consent authorities to have a better understanding of how to communicate with Māori consent applicants.</p>	<p>Implementation costs for local or central government (depending on how the centre of excellence is implemented) may be significant.</p> <p>May be difficult to find the appropriate mechanism to implement this role in building consent authorities, building consent authority clusters or councils.</p> <p>May not sufficiently address the capacity and capability issues of Māori as it focuses on building consent authorities.</p>

We seek views on the extent to which this option could address the issues that Māori face in the building consent system. We also seek views on what a centre of excellence for Māori-led building and construction projects should look like, and what role Māori in the building and construction workforce could or should have in it.

### Option 3: Publish guidance

This option would see MBIE having a stronger stewardship role by publishing guidance and advice for building consent authorities regarding building consent applications from Māori.

This guidance would be written in collaboration with Māori. It could promote and encourage a te ao Māori perspective by covering topics such as Māori engagement, and potentially, the use of waivers and modifications when assessing building consent applications.

This option could be more useful in conjunction with the other options outlined above.

#### Assessment of option: Publishing guidance

The table below summarises how publishing guidance would address the issues that Māori face in the building consent system, as well as possible risks and disadvantages.

Option	How this addresses issues	Risks/costs/disadvantages
<b>Publish guidance</b>	<p>Lifts building consent authorities' Māori capabilities as it facilitates a stronger understanding of how to engage with Māori as well as traditional Māori methods of construction.</p> <p>Improves the relationship between Māori consent applicants and building consent authorities as it provides guidance to building consent authorities on how to effectively engage with Māori.</p>	<p>May not sufficiently address the capacity and capability issues for Māori as it focuses on building consent authorities.</p>

## Questions about options to better respond to the needs and aspirations of Māori

46. Will these options help address the issues that Māori face in the building consent system? Please explain your views.
47. Which of the three options identified would have the most impact for Māori? Please explain your views.
48. What are the risks with these options and how should they be managed?
49. Where should the navigator role sit and what responsibilities should it have? Should it include assisting Māori through the wider building process?
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?
51. What other options to improve the system and make it more responsive to Māori needs and aspirations should be considered?

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

*Reforms currently underway will help reduce the occurrence of unnecessary overlaps between the building and resource consent systems.*

Many building projects are subject to a building consent under the *Building Act 2004* and a resource consent under the *Resource Management Act 1991*. The building consent process considers the performance of the building itself, and ensures building work complies with the Building Code, while the resource consent process assesses the environmental impacts of projects in accordance with district and regional plan provisions.

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.

As such, there can be confusion about which requirement falls under which consent process. This may lead to the misperception that the same reports, documentation and specialist input are required for both processes. In reality, reports and documents are requested by building control officers and planners for different reasons, usually at different stages of the project, and with varied requirements for detail.

### Issues arising from overlaps between the two consent systems

Public consultation and further targeted engagements have indicated that the following issues can arise from the overlaps between the two consent processes:

- **Applying for a building consent without first checking if a resource consent is required**

Public consultation indicated that many consent applicants do not identify for themselves whether their building work requires both a building and a resource consent. The extent of this issue can be seen in a 2010 report commissioned by the Ministry for the Environment,<sup>23</sup> which observed that 40 per cent of building consent applications are subsequently found to need a resource consent as well. This may necessitate the issuance of a form 4 certificate under section 37 of the *Building Act 2004*, which stops building work from proceeding until any necessary resource consent has been obtained. Alternatively, this may necessitate adjusting building plans to comply with the district plan while the building consent application is being processed.

- **Confusion due to overlap at the secondary legislation level (Building Code and district and regional plans)**

At the territorial authority level, there can be overlap and inconsistencies between the matters covered by the Building Code and district and regional plan rules, which

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<sup>23</sup> This report was commissioned as part of work under Phase II of the previous resource management reforms. See: <https://www.beehive.govt.nz/speech/next-phase-rma-reform> for more details.

creates confusion about which standard should be applied. It should be noted that changes to the Building Code are out of scope for this review.

### **Reforms occurring in the resource management space that should reduce the occurrence of unnecessary overlaps**

The resource management system is currently undergoing substantial reform. Some changes that will be made to the resource management system should help reduce the occurrence of unnecessary overlaps between the building and resource consent systems:

- **Enabling more activities without a resource consent**

The new resource consent system aims to provide more certainty and be more efficient to help reduce costs for users and decision makers. More activities will be enabled and will not need a resource consent, where they are appropriate and within environmental limits. This means that generally, there should be less overlap between the building and resource consent systems.

- **Consolidating regional policy statements and district and regional plans into around 14 natural and built environment (NBE) plans**

More than 100 regional policy statements and district and regional plans will be consolidated into around 14 NBE plans. This is intended to simplify and improve the integration of the resource management system. There will be a tighter scope around what can and cannot be covered under those plans, which should result in less local variance. This should reduce the overlap between matters covered by the Building Code and those covered by the resource management system.

- **The intention to better manage natural hazards at the planning stage**

One of the Government's objectives for the future resource management system is to better prepare for adapting to climate change and risks from natural hazards. A National Planning Framework will be introduced, which will provide a new national policy direction on matters of national significance, including climate change and natural hazards. This may address particular problems that people have had regarding natural hazards in both the building and resource consent processes.

The Ministry for Environment has work underway to support the transition to and implementation of the new resource management system. This includes publishing guidance to help people navigate the new resource management system.<sup>24</sup>

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<sup>24</sup> The Ministry for the Environment. (2022). *Te Pūnaha Whakahaere Rauemi o Anamata: Tirowhānui. Our Future Resource Management System: Overview*. The Ministry for the Environment. <https://environment.govt.nz/assets/publications/RM-reform/Our-future-resource-management-system-overview.pdf>.



## **Other reforms occurring that impact the interface between the building and resource consent processes**

MBIE understands that it is increasingly common for residential building developers to apply for building and resource consents concurrently. This can create some challenges for building consent authorities to determine whether the plans and specifications are sufficient to meet the provisions of the Building Code, particularly if the underlying infrastructure is not in place.

In addition to reforms occurring in the resource management system, work is also currently underway to reform local government and the water services, which will have significant implications for residential building developers.

MBIE will work with relevant agencies to ensure that the interface between these reform programmes takes into account any changes in the way residential buildings are developed.

## **Better promoting the use of project information memorandums**

Many submitters in public consultation highlighted the need for better alignment between the building and resource consent processes. These submitters suggested better communication and coordination between building control officers and planners in councils. However, this is primarily an operational issue for territorial authorities, and thus out of scope for this review.

Instead, we are of the view that the use of project information memorandums can help consent applicants navigate the two consent processes. A project information memorandum is a document that provides information about the land on which a building consent applicant plans to carry out building work, as well as any other land likely to affect or be affected by the building work. It highlights the type of consents and other approvals or information needed to pursue the building project, and thus facilitates a better understanding of when both building and resource consents are needed.

The *Building Act 2004* was amended in 2009 to make project information memorandums voluntary, as they were not always needed and sometimes delayed consent processes. While we believe that project information memorandums should remain optional, there may be a need to better promote their use where appropriate.

MBIE has recently updated guidance on applying for building consents, which shows how consent applications should be sequenced, and recommends the use of pre-application meetings and project information memorandums to help people understand the interactions between the building and resource consent systems:

<https://www.building.govt.nz/assets/Uploads/projects-and-consents/building-consent-guidance.pdf>

MBIE is also planning to release updated guidance on the natural hazard provisions under the *Building Act 2004* and how they work.

**Question about addressing the interface between the building and resource consent processes**

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

## Annex One: Summary of questions

<b>Questions about the potential reform opportunities</b>
<b>PROMOTING COMPETITION IN THE BUILDING REGULATORY SYSTEM</b>
<i>Questions about promoting competition in the building regulatory system</i>
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?
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?
4. Do you agree with MBIE's preferred approach to progress options 2 (introduce competition as a regulatory principle) and 4 (issue guidance on promoting competition) as a package? Please explain your views.
<b>REMOVING IMPEDIMENTS TO PRODUCT SUBSTITUTION AND VARIATIONS</b>
<i>Questions about removing impediments to product substitutions and variations</i>
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? Please explain your views.
6. What impacts will the options regarding product substitution and variations to consents have? What are the risks that need to be managed with these options and how should these be managed?
7. What impacts will the options regarding MultiProof have? What are the risks with these options and how should these be managed?
8. Are there any other options to improve the system and make product substitutions and variations to consents, and MultiProof, more effective and efficient?
<b>STRENGTHENING ROLES AND RESPONSIBILITIES</b>
<i>Questions about options to clarify roles and responsibilities and strengthen accountability</i>
9. Do you agree with MBIE's preferred approach to progress options 1 (guidance) and 2 (declaration of design compliance requirement) as a package? Please explain your views.
10. Should there be a requirement for a person to be responsible for managing the sequencing and coordination of building work on-site (option 3)? Please explain your views.
11. What are the risks with these options and how should these be managed?
12. Do you agree the declaration of design compliance should be submitted by a person subject to competency assessments and complaints and disciplinary processes? Please explain your views.
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?
14. Should the declaration of design compliance replace the certificate of design work (for restricted building work)? Please explain your views.
15. When might a design coordination statement be required? What should be the responsibilities and accountabilities of the person providing the design coordination statement?
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?
17. What other options should be considered to clarify responsibilities and strengthen accountability?
<i>Questions about producer statements</i>
18. Do you agree with MBIE's preferred approach to progress option 2 (non-prescriptive legislation and guidance)? Please explain your views.
19. What should be the purpose of producer statements and what weight should be given to them?
20. Should there be restrictions on who can provide a producer statement? Please explain your views.
21. What is the appropriate criteria to assess the reliability of producer statements?
22. What other risks need to be managed?
<b>NEW ASSURANCE PATHWAYS</b>
<i>Question about taking a more risk-based approach</i>

## DRAFT IN CONFIDENCE

<b>23.</b> To what extent would MBIE guidance assist building consent authorities to better take a risk-based approach under existing regulatory settings?
<b><i>Questions about options for self-certification</i></b>
<b>24.</b> To what extent would self-certification align assurance with risk levels and sector skills?
<b>25.</b> 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 the means to meet these outcomes? Please explain your views.
<b>26.</b> 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?
<b><i>Questions about the option of a new commercial consent process</i></b>
<b>27.</b> To what extent would the commercial consent align assurance with risk levels, the respective skills of sector professionals and building consent authorities?
<b>28.</b> Would it enable a more agile and responsive approach to dealing with design changes as construction progresses? Please explain your views.
<b><i>Questions about the design considerations for the new commercial consent process</i></b>
<b>29.</b> 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.
<b>30.</b> Do you agree with the proposed roles, responsibilities, and accountabilities? Please explain your views.
<b>31.</b> 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.
<b><i>Question about options for new pathways to provide assurance</i></b>
<b>32.</b> Do you agree with MBIE's preferred approach to progress policy work on the detailed design of the two new assurance pathways, repeal the inactive risk-based consenting provisions in the Building Amendment Act 2012 and issue guidance for building consent authorities? Please explain your views.
<b>BETTER DELIVERY OF BUILDING CONSENT SERVICES</b>
<b><i>Questions about providing greater national direction and consistency</i></b>
<b>33.</b> Which options would best support consistency and predictability given costs, risks and implementation timeframes? Please explain your views.
<b>34.</b> What other costs and risks need to be considered?
<b>35.</b> Are there any other options that would support consistency and predictability?
<b><i>Questions about boosting capacity and capability</i></b>
<b>36.</b> Which options would most alleviate capacity and capability constraints given costs, risks and implementation timeframes? Please explain your views.
<b>37.</b> What other costs and risks need to be considered?
<b>38.</b> Are there any other options that would alleviate capacity and capability constraints?
<b><i>Questions about achieving greater economies of scale</i></b>
<b>39.</b> What are the biggest barriers to voluntary consolidation? How could these be overcome?
<b>40.</b> Which options would best support building consent authorities to achieve greater economies of scale given costs, risks and implementation timeframes? Please explain your views.
<b>41.</b> What other costs and risks need to be considered?
<b>42.</b> Are there any other options that would support building consent authorities to achieve greater economies of scale?
<b>BETTER PERFORMANCE MONITORING AND SYSTEM STEWARDSHIP</b>
<b><i>Questions about system stewardship</i></b>
<b>43.</b> Will these initiatives enable MBIE to become a better steward and central regulator and help achieve the desirable outcomes? Please explain your views.
<b>44.</b> What initiatives should be prioritised and why?
<b>45.</b> What else does MBIE need to do to become a better steward and central regulator?
<b>BETTER RESPONDING TO THE NEEDS AND ASPIRATIONS OF MĀORI</b>

**DRAFT IN CONFIDENCE**

<b><i>Questions about options to better respond to the needs and aspirations of Maori</i></b>
<b>46.</b> Will these options help address the issues that Māori face in the building consent system? Please explain your views.
<b>47.</b> Which of the three options identified would have the most impact for Māori? Please explain your views.
<b>48.</b> What are the risks with these options and how should they be managed?
<b>49.</b> Where should the navigator role sit and what responsibilities should it have? Should it include assisting Māori through the wider building process?
<b>50.</b> 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?
<b>51.</b> What other options to improve the system and make it more responsive to Māori needs and aspirations should be considered?
<b>ADDRESSING THE INTERACE BETWEEN THE BUILDING AND RESOURCE CONSENT SYSTEMS</b>
<b><i>Question about addressing the interface between the building and resource consent processes</i></b>
<b>52.</b> What other options to address the issues arising from overlaps between the building and resource consent processes should be considered?
<b>GENERAL COMMENTS</b>
<b>53.</b> Do you have any other comments?