



## COVERSHEET

<b>Minister</b>	Hon Chris Penk	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	Removing barriers to overseas building products	<b>Date to be published</b>	9 May 2024

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
19 March 2024	Removing barriers to overseas building products	Office of Minister for Building and Construction
19 March 2024	Appendix One: Removing barriers to overseas building products infographics	Office of Minister for Building and Construction
19 March 2024	Regulatory Impact Statement: Mandating approval of overseas building products	Ministry of Business, Innovation and Employment
19 March 2024	Regulatory Impact Statement: Removing impediments to product substitution and variations	Ministry of Business, Innovation and Employment
19 March 2024	EXP-24-MIN-0008 Minute	Cabinet Office

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of Confidential advice to Government.

**IN CONFIDENCE**

Office of the Minister for Building and Construction  
Cabinet Economic Policy Committee

**Removing barriers to overseas building products**

**Proposal**

- 1 This paper seeks agreement to amend the Building Act 2004 to remove barriers in the building consent system and improve competition for building materials.
- 2 The proposed amendments are to:
  - 2.1 Make it easier to use products from recognised overseas jurisdictions;
  - 2.2 Streamline recognition of international standards;
  - 2.3 Mandate acceptance of certain overseas building products
  - 2.4 Remove barriers to minor changes to an existing building consent.
- 3 These proposals will dramatically increase the availability of high-quality affordable building products from around the world. For example, the approval of one Australian scheme, WaterMark, will immediately provide access to 200,000 products.

**Relation to government priorities**

- 4 The proposal relates to the Government's commitment to increase housing supply by reducing barriers, improving competition in the building system, and lowering costs.
- 5 Specifically, this paper relates to the Government's commitments for the Building and Construction Portfolio to:
  - 5.1 Require building materials and product systems that meet international standards equivalent or better to that of New Zealand's to be approved here;
  - 5.2 define 'minor variation' in the Building Act 2004 to avoid consents for negligible product or design changes;
  - 5.3 widen the National Multiple-Use Approval (MultiProof) process for new product solutions and building methods.

**Executive Summary**

- 6 New Zealand is a small trading nation. To ensure consumers pay the lowest prices possible for building materials, competition needs to be strengthened by removing barriers to high-quality products entering the New Zealand market. This will lower prices and provide greater resilience to supply disruptions.
- 7 When building products are used in building work, that work must comply with the New Zealand Building Code. Where building supplies are specified by brand in

applications, the process for seeking substitutions can add time and cost. Designers and builders tend to avoid substituting products, preferring to stick with known brands that have been proven to receive approval.

- 8 I am proposing a package of changes to reduce barriers to high-quality building products being used to improve competition and reduce the price of building. Implementing these changes will address some of the recommendations of the Commerce Commission's market study into residential building supplies related to product compliance pathways, and impediments to product substitution and variations.
- 9 This proposal will also mean New Zealand suppliers and manufacturers will be able to compete equally in a new dynamic market environment. New Zealand suppliers may also choose to test their products against widely accepted overseas standards (instead of New Zealand based standards), facilitating easier access to overseas markets.

## **Background**

### **Government commitments to mandate approval of overseas building products and systems in building work**

- 10 The Government wants to lower the cost of building materials and streamline building the consent system. To achieve this the Government has committed to:
  - 10.1 Requiring building materials and product systems that meet international standards equivalent to that of New Zealand's to be approved here;
  - 10.2 Define 'minor variation' in the Building Act 2004 to avoid consents for negligible product or design changes;
  - 10.3 Widen the National Multiple-Use Approval (MultiProof) process for new product solutions and building methods.

### **Current compliance pathways for building products are creating barriers to the use of products**

- 11 Overseas manufacturers and suppliers can face barriers when having their products used in New Zealand. Designers, builders, owners and building consent authorities all face regulatory barriers to responding flexibly to changing markets. Furthermore, it can be time consuming and costly for a builder to get approval to substitute products that have been specified in the approved design.

#### *Standards vary across jurisdictions*

- 12 A key barrier to using new products or products from overseas are the various standards used overseas. Standards have various names, terminology, requirements, and are documented and specified in different languages so it hard to establish equivalency. For example, there are at least 15 different terms used to describe a 'cladding system' in the various Canadian, American, British, and Australian building codes.

- 13 Standards are created by a variety of bodies with some, including Standards New Zealand and other international standards organisations, following set rules. Other groups may publish their own technical documents but may not be internationally recognised.

*Compliance pathways incentivise industry to choose familiar products*

- 14 When applying for building consent, designers need to demonstrate how the proposed building work (as a whole) will comply with the building code. There are several pathways to do this, including:
- 14.1 **acceptable solutions and verification methods:** designs that comply with the acceptable solutions and verification methods must be accepted by building consent authorities as complying with the Building Code;
  - 14.2 specifying **CodeMark** certified products: must be accepted by building consent authorities as meeting the requirements of the Building Code if every relevant condition on the certificate is met by the proposed design;
  - 14.3 National Multiple-Use Approval (**MultiProof**): this is a statement by MBIE that a building complies with the Building Code. Building consent authorities must accept a MultiProof.
- 15 If the designer elects not to follow a pre-approved pathway, the obligation falls on the designer to provide sufficient evidence to demonstrate compliance (commonly referred to as alternative solutions).
- 16 People making decisions on which products to use (including owners, designers and builders) tend to go with products they know and take the less risky and more cost effective path by following the acceptable solutions and verification methods.
- 17 The Commerce Commission market study report pointed to these regulatory and behavioural impediments to new and innovative building products becoming entrenched and accepted for general use in New Zealand. The Commerce Commission recommended updating and developing more acceptable solutions and verification methods (including greater alignment with, and referencing of, international standards) and to expand the range of product certification schemes that can issue product certificates deemed building code compliant.

*MultiProof and minor variations in building consents*

- 18 Once a building consent has been granted, the Building Act 2004 allows for ‘minor variations’ to be made, however the current definition is not specific enough which can lead to amendment applications for small changes that could easily be approved on site as a minor variation.
- 19 When a MultiProof approval holder applies for a consent, they may request some changes to the approved designs. Building consent authorities are required to assess any ‘minor customisation’ to ensure Building Code compliance. There is currently no definition of ‘minor customisation’. This means that any last-minute changes outside the MultiProof issued by MBIE (such as substituting comparable products or

changing a window for a door) should technically require assessment by the building consent authority of the plans under a standard (not fast-tracked) building consent process.

### **Legislative change is needed to remove regulatory barriers to overseas building products being used in New Zealand**

- 20 I am proposing a package of changes to the Building Act 2004 and associated regulations that:
- 20.1 Make it easier to use products from recognised overseas jurisdictions;
  - 20.2 Streamline recognition of international standards;
  - 20.3 Mandate acceptance of certain overseas building products;
  - 20.4 Remove barriers to minor changes to an existing building consent.
- 21 More detail is provided on these proposals in this paper and in Appendix 1.
- 22 These changes will target each level of the system (standards, certification schemes, and compliance pathways) and deliver the greatest benefit to improve competition, and lower the cost of building.
- 23 These proposals are the first step of my work programme to liberalise the building regulatory system and make it easier to build affordable homes. (CAB-24-MIN-0069 refers). More work will be done, including:
- 23.1 Quicker and more efficient consent pathways for low-risk building activity;
  - 23.2 Improving consistency of building consent authority functions;
  - 23.3 Leveraging the role of private insurance in the building regulatory system.
- 24 The package of legislative changes will be supported by guidance through information and education to key affected stakeholders on the products and schemes covered by these changes, subject to decisions being made.

### **Making it easier to use products that meet standards from jurisdictions**

- 25 I propose to amend the Building Act 2004 to enable the Minister for Building and Construction to recognise groups of **standards** from overseas standards organisations and **standards certification schemes**. This will be done by Gazette notice. A regulation making power will also be required to create regulations to specify the criteria for recognising a standards organisation or standards certification scheme.
- 26 This proposal will immediately make it easy for any building product that has met an appropriate standard from a recognised jurisdiction to be specified in a building design. It will remove the need for designers, builders, building owners and building consent authorities to verify the adequacy of a standard or the robustness of a standards certification schemes, and allow them to rely on what has been certified.

Proposed building work will still need to be assessed for compliance with the Building Code and to ensure that products are being used for their stated purpose.

- 27 Under this proposal, building consent authorities would not be able to be held liable for relying in good faith on information that must be disclosed under the Building (Building Product Information Requirements) Regulations 2022. This will provide more consenting confidence to building consent authorities and reduce risk aversion to acceptance of new products.
- 28 This proposal provides the following benefits:
- 28.1 overseas suppliers would have more confidence that their products will be recognised for use in New Zealand without requiring additional tests;
  - 28.2 manufacturers and suppliers could reference recognised standards and certification scheme when making claims required under the Building (Building Product Information Requirements) Regulations 2022;
  - 28.3 owners, designers and builders would have more confidence when specifying or using unfamiliar building products.
  - 28.4 New Zealand suppliers may choose to test their products against widely accepted overseas standards, facilitating easier access to overseas markets.
- 29 There is a risk that building consent authorities may seek further information from designers, to establish that the proposed building work will comply with the Building Code. While building consent authorities will be protected from liability when relying in good faith on claims made by suppliers, they still need to be satisfied on 'reasonable grounds' that the proposed work will comply with the Building Code.
- 30 This risk will be mitigated over time through streamlining the recognition of international standards in the acceptable solutions and verification methods.

### **Streamline recognition of international standards**

- 31 I propose to amend the Building Act 2004 to enable a new regulatory instrument (building product equivalency specification) to be published that contains all the **specifications and standards** that must be considered as equivalent to demonstrate compliance with the Building Code. This will help designers, product manufacturers, and building consent authorities determine the equivalency of overseas standards.
- 32 Under the proposal, product manufacturing and testing standards would be moved from the acceptable solutions and verification methods to the proposed building product equivalency specification. This will remove reliance on familiar products for the design of the building. As long as a product (no matter where it is from) complies with an equivalent standard for its specific purpose, the building can comply with the acceptable solutions and verification methods and the building must be accepted. This is intended to fast-track the consenting processes and reduces the burden for designers and building consent authorities using new products.
- 33 The new building product equivalence specification has several benefits, including:

- 33.1 reducing red tape by cutting out multiple time-consuming stages, required by statute, under the current process to update acceptable solutions and verification methods to recognise overseas building product standards or specifications, reducing the process from at least 2 years to 3-8 months;
  - 33.2 making the regulatory system more agile and responsive when accepting new products – supporting both domestic and international suppliers to get their products to market in New Zealand and requiring building consent authorities to accept them automatically in a similar fashion as the current acceptable solutions and verification methods;
  - 33.3 increase the number of international and overseas product standards or specifications referenced by acceptable solutions and verification methods that must be recognised by building consent authorities.
- 34 It is my intention that MBIE will focus its work initially on identifying equivalent standards for primary building elements, where the main costs of construction are concentrated. This includes standards relating to products such as internal linings, external cladding, windows, plumbing products, and insulation. This will ensure MBIE will focus its resources on the standards that designers, owners and building consent authorities are less likely to have the appetite to deviate from.

#### **Mandating acceptance of products certified overseas**

- 35 Section 262 of the Building Act 2004 enables the Chief Executive of MBIE to specify certifications of building products or building methods provided by persons outside New Zealand that are to be treated as product certifications in New Zealand (CodeMark). This is done by way of a Gazette notice.
- 36 This power has never been used. Currently the Chief Executive of MBIE cannot act proactively, and cannot recognise entire schemes, or classes or groups of products. Building Consent Authorities are also not required to accept these overseas certifications as evidence of compliance with the Building Code.
- 37 I propose the following amendments to the Building Act 2004 to increase flexibility and enable effective implementation of this existing provision:
- 37.1 enable the Chief Executive of MBIE to be able to recognise entire schemes, or classes or groups of products;
  - 37.2 remove existing requirements for certification and add a regulation making-power to set criteria for the recognition of **certified products** by regulations
  - 37.3 require building consent authorities to accept recognised overseas products as establishing compliance with the Building code.
- 38 Making these changes would increase the range of products that can be used in New Zealand. For example, if the chief executive was able to recognise products certified

under the Australian WaterMark certification scheme, this would open up the New Zealand market to more plumbing products approved for use in Australia.<sup>1</sup>

### **Enable substitution of building products in approved designs**

#### *Amend regulations to avoid building consents for negligible product or design changes*

- 39 To avoid requiring building consents for negligible product or design changes, I propose to clarify the existing definition of minor variation. This change has strong support from the sector and will provide more certainty and reduce delays and building cost.
- 40 To support the flexibility of the building consent system, I also propose to amend the building consent forms regulations to clarify that building consent applicants may specify suitable comparable building product options, should they choose to do so.

#### *Defining Minor Customisation will support a more efficient consent system*

- 41 I propose defining ‘minor customisation’ to allow for minor changes to an approved MultiProof design at the consent application stage. This will use the regulation making power of section 402(1)(c) of the Building Act 2004.
- 42 This amendment will provide flexibility to ensure that a minor change to an approved design when applying for a consent will not render a MultiProof approval inapplicable for that consent application.

### **Liability**

- 43 Section 390 of the Building Act 2004 provides broad protection from liability for the parties listed in the section. This includes protecting the chief executive and any employee or agent of the chief executive from all civil proceedings for any act done or omitted to be done under the Building Act in good faith.
- 44 I propose section 390 is amended to include persons who provide advice in support of a decision related to:
- 44.1 a *Gazette* notice issued under section 262(2);
- 44.2 a building product equivalency specification.
- 45 Section 392(1) states that no civil proceedings may be brought against a building consent authority for anything done or omitted to be done in good faith in reliance on any of the listed documents.
- 46 I propose section 392 is amended to include the following documents:
- 46.1 a *Gazette* notice issued under section 262(2);

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<sup>1</sup> As of 4 March 2024, there are over 205,000 products on the WaterMark Australia register.



- 46.2 a building product equivalency specification;
- 46.3 information disclosed under building product information requirements (referenced in paragraphs 24-29).

### **Risks and mitigations**

- 47 A key risk identified in the development of my proposals is the potential of widespread building failure due to inappropriate or poor-quality building products that may be enabled through this change (similar to the ‘leaky homes crises’). A discussion on the mitigations contained in the proposals is below:
  - 47.1 The proposal to make it easier to use products from recognised overseas jurisdictions (discussed in more detail in paragraphs 24-29) will not otherwise limit the building consent authority’s role in the consent process. Building Consent Authorities will still need to be satisfied that building products with overseas certifications are incorporated into the building work as per the manufacturers’ instructions and be satisfied that the building work will comply with the Building Code;
  - 47.2 The proposal to streamline recognition of international building standards (discussed in more detail in paragraphs 30-33) will recognise standards and specifications that are equivalent to or better than standards and specifications currently referenced in acceptable solutions and verification methods. This will result in similar building outcomes;
  - 47.3 Any quality risks posed by the proposal to mandate acceptance of products certified overseas (discussed in more detail in paragraphs 34-37) will be mitigated by criteria that will ensure products that are mandated have been certified by schemes that are equally or more rigorous than CodeMark New Zealand. Legislation will also enable carve-outs if there were quality issues with certain products or product certification bodies.
- 48 I expect MBIE to have processes that will ensure robust decision-making regarding the proposed legislative instruments. I have been advised MBIE will put in place operational mechanisms to ensure robust decisions are made. MBIE would need to keep apprised of any developments or emerging risks that could impact whether a building product equivalence specification, Order in Council or *Gazette* notice would need to be revoked or amended.
- 49 Other risks identified include:
  - 49.1 The current New Zealand product certification scheme could become less attractive;
  - 49.2 The proposals do not, by themselves, guarantee increased competition due to non-regulatory barriers to entry to the New Zealand market;
  - 49.3 Potential financial impact to Standards New Zealand over time due to reduced demand under their current user-pays funding model.

50 Overall, the risks identified are manageable and can be mitigated further by rigorous legislative design and implementation. It is necessary to consult publicly on the proposals during the Select Committee process to ensure the rigor of my proposals.

**Consistency with international treaties and agreements**

51 As a member of the World Trade Organisation (WTO), New Zealand has an obligation to ensure that its regulations and standards do not create barriers to trade or discriminate unfairly between trading partners. For example, this includes developing processes that may advantage certain countries by recognising their building products over comparable products from other countries.

52 I have directed my officials to ensure that the legislative changes do not interfere with New Zealand’s obligations under international agreements or treaties. Any regulations or notices made under the proposals in this paper must also consider obligations under international agreements or treaties.

**Cost-of-living Implications**

53 These proposals will improve competition for building products and reduce delays in the building consent system. This will reduce the cost of living.

**Financial Implications**

54 The proposals in this paper have financial implications for MBIE. MBIE expects to fund the implementation of these proposals from baseline budget, and to scale to the funding available.

**Legislative Implications**

55 Proposals in this paper will require amendments to the Building Act 2004.

56 I will be seeking to include these amendments to the Building Act 2004 through the Building (Product Certification) Amendment Bill.

57 Confidential advice to Government  
[Redacted]

58 Regulatory proposals (referenced in paragraphs 38-41) will make amendments to the Building (Minor Variations) Regulations 2009, Building (Forms) Regulations 2004, and will establish new regulations as enabled under section 402(1)(c) of the Building Act 2004.

**Impact Analysis**

**Regulatory Impact Statement**

59 Two Regulatory Impact Statements (RIS) have been completed and are attached. They relate to

- 59.1 the proposals to amend the Building Act 2004 to reduce regulatory barriers and improve competition;
- 59.2 regulatory amendments related to minor variations and customisations.
- 60 The Regulatory Impact Analysis Review Panel at The Ministry of Business, Innovation and Employment (MBIE) has reviewed the Regulatory Impact Assessment Mandating approval of overseas building products and associated supporting material, and we have determined that the paper Partially Meets the criteria. The panel has given the RIS a Partially Meets due to the following:
- 60.1 The proposals have been informed by consultation by the Commerce Commission on the high-level competition issues, but in the time available MBIE has not been able to consult with sector participants on the specific proposed solutions.
- 60.2 The Panel considers the proposed Select Committee process will be critical to ensuring further public input into the proposals and mitigating risks and impacts.
- 61 An internal quality assurance panel convened by MBIE has reviewed the Regulatory Impact Assessment and considers that the information and analysis summarised in the Regulatory Impact Assessment partially meets the Quality Assurance criteria.
- 62 While the panel considered that the majority of the paper met the requirements we note that the Regulatory Impact Assessment noted a possibility that greater flexibility may create risks around product quality and some submitters raised concerns that lower quality products may lead to building failures. The Regulatory Impact Assessment noted that these risks would need to be adequately addressed, and this would be done via the consenting process and a robust legal framework. However, the panel considered there was insufficient detail in the analysis about how these risks would be mitigated.

#### **Climate Implications of Policy Assessment**

- 63 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do not apply to this proposal as it not expected to result in any significant, direct emissions impacts.

#### **Population Implications**

- 64 The proposals in this paper do not have any implications for specific populations as they aim to reduce barriers to the substitution of building materials and product systems in the building consent system.

#### **Human Rights**

- 65 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

#### **Use of external Resources**

- 66 Findings from the Product Substitution Research 2022 report have been used as part of the context for the development of the proposals in this paper. This research was funded by MBIE and the Building Research Association New Zealand, funded by the Building Research Levy.

### Consultation

- 67 The following Government agencies and bodies have also been consulted on this paper: Ministry of Foreign Affairs and Trade, Ministry for the Environment, Ministry of Housing and Urban Development, Department of Internal Affairs, Kāinga Ora, Te Puni Kōkiri, the Treasury, Ministry of Transport, Ministry of Education, Ministry of Social Development, Commerce Commission, Department of Conservation, Department of the Prime Minister and Cabinet, Ministry for Primary Industries, Ministry for Culture and Heritage, and Standards New Zealand.

### Communications

- 68 I propose to issue a press release following Cabinet's decisions and MBIE will advise key affected stakeholders once policy decisions have been made.

### Proactive Release

- 69 I propose to proactively release this Cabinet paper package and associated Cabinet minute within 30 business days.

### Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** the Government's commitments for the Building and Construction Portfolio included a proposal to *mandate approval of building materials and product systems meeting international standards equivalent to New Zealand's* and *Define 'minor variation' in the Building Act to avoid consents for negligible product or design changes;*
- 2 **note** that removing barriers to high-quality products entering the New Zealand market and being used in building work can help improve competition, lower the cost of building products and provide greater resilience to supply disruptions;
- 3 **note** that removing barriers to responding flexibly to minor variations to building consents and approved MultiProof designs can speed up consenting processes and reduce costs;

*Changes to the Building Act 2004 required to recognise certification of building products from overseas jurisdictions;*

- 4 **agree** to amend the Building Act 2004 to enable regulations to be made by Order in Council specifying criteria that must be satisfied before a standards organisation or certification scheme is recognised;
- 5 **agree** to amend the Building Act 2004 to enable the Minister for Building and Construction to recognise groups of standards from standards organisation (as defined

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in the Standards and Accreditation Act 2015) and standards certification schemes by *Gazette* notice;

*Changes to the Building Act 2004 required to create a building product equivalence specification regulatory instrument to streamline Acceptable Solutions and Verification Methods*

- 6 **note** that recognising more international standards that can be used with acceptable solutions and verification methods will provide a clear compliance pathway for a broader range of products and increase competition in the building products market;
- 7 **agree** to amend the Building Act to enable the chief executive, by notice in the *Gazette*, to specify the building product specifications including international standards that can be used in relation to building products or building methods deemed to comply with the requirements cited in acceptable solutions and verification methods;

*Changes to the Building Act 2004 to mandate acceptance of products certified overseas*

- 8 **note** that section 262(2) of the Building Act 2004 allows for the Chief Executive of the Ministry of Business, Innovation and Employment to recognise overseas certification of building products, however changes to the Act are needed to facilitate its use;
- 9 **agree** to amend section 19(1) of the Building Act 2004 so that any overseas certifications recognised by the chief executive of the Ministry of Business, Innovation and Employment under section 262(2) of the Act must be accepted by building consent authorities as contributing to Building Code compliance;
- 10 **agree** to amend the Building Act 2004 so that section 262(2) applies to a class or classes of products, and schemes, as well as individual products;
- 11 **agree** to amend s262(3) so that subsection (2) applies only if the chief executive is satisfied that the building products or building methods concerned meet the prescribed criteria and standards for recognition of overseas certification schemes;
- 12 **agree** to amend the Building Act 2004 to enable regulations to be made by Order in Council prescribing the criteria and standards for recognition of overseas certification schemes;

*Defining Minor Customisations and Variations*

- 13 **agree** to amend the Building (Minor Variations) Regulations 2009 to clarify the definition of minor variation by incorporating key considerations such as equivalence of building product performance or flow-on impacts on the building system designed;
- 14 **agree** to amend the building consent forms regulations to clarify that building consent applicants may specify suitable comparable building product options, should they choose to do so;
- 15 **agree** to use the regulation making power under section 402(1)(c) of the Building Act 2004 to make regulations to define 'minor customisation', to ensure that a minor

change to a Multiproof approved design and plans at the consent application stage does not render the MultiProof approval inapplicable to that building consent application;

*Liability*

- 16 **agree** to amend section 390 of the Building Act 2004 to provide protection to persons providing advice to the Chief Executive of MBIE to support any of the following, as exists for some other functions and powers carried out by the Chief Executive of MBIE:
- 16.1 a section 262(2) decision; and
  - 16.2 building product equivalency specification decision;
- 17 **agree** to amend section 392 of the Building Act 2004 to ensure that building consent authorities are not liable for anything done or omitted to be done in good faith in reliance on any of the following, which they would be mandated to accept under section 19(1):
- 17.1 *Gazette* notice issued under section 262(2); and
  - 17.2 a building product equivalency specification;
- 18 **agree** to amend section 392 of the Building Act 2004 to ensure that building consent authorities are not liable for anything done or omitted to be done in good faith in reliance on a claim by a manufacturer under the Building (Building Product Information Requirements) Regulations 2022 that describes the performance of the building product if the product has been certified under an approved certification scheme to a standard set by a recognised standards organisation;

*Next steps*

- 19 **authorise** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to Cabinet decisions in this paper;
- 20 **authorise** the Minister for Building and Construction to make decisions and further clarify matters consistent with the proposals in these recommendations, on any issues which may arise during the drafting process;
- 21 **note** that other amendments consistent with Cabinet decisions in this paper are likely to be needed, this may include amendments in relation to the function to publish by gazette and provisions to provide information and education on building products and substitution consistent with the current responsibilities;
- 22 **note** that the Minister for Building and Construction has submitted a legislative bid for the Building (Product Certification) Amendment Bill in the 2024 Legislation Programme with a priority of Category 4 (to be passed by the end of 2024 if possible);
- 23 **agree** to include amendments to the Building Act 2004 (referenced in recommendations 4-12 and 16-18) in the Building (Product Certification) Amendment Bill.

**IN CONFIDENCE**

Authorised for Lodgement

Hon Chris Penk

Minister for Building and Construction

**IN CONFIDENCE**

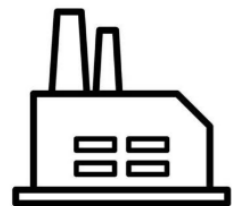
# Current state

## Barriers and issues to using more overseas building standards and building products

### Products



Recognised standards organisations publish specifications for building products.



Manufacturers make building products. These products are tested in accordance with relevant standards.

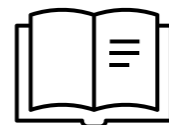


**Laboratories test products to confirm the physical characteristics** ie. Strength  
Weathertightness  
Fire resistance.



**Building product information regulations (BPIR)** require that certain products sold in New Zealand need to have information available to show how they comply with the Building Code. Supporting evidence of compliance can include laboratory tests.

### Building Code



The Building Code sets the minimum requirements of performance for building work. All building work needs to comply with the Building Code. Products on their own are not necessarily 'building work' but become part of the building work at the design stage.



MBIE publishes Acceptable Solutions and Verification Methods documents which show ways to comply with the Building Code. These documents contain standards detailing how a product must perform and be tested. These are deemed to comply solutions and are not mandatory.

*Time-consuming procedures for updating requiring public consultation on including new or amended standards.*



**CodeMark Building product certificates** on building products which confirms the quality of their manufacturing, their test results, and use in the Building Code.

This is a deemed to comply solution and is not mandatory.

*Certified products still have to be incorporated into building designs by designers.*



**Alternative solutions can be used** to show compliance with the Building Code. Such as overseas standards, or certifications, in service history, product appraisals etc. This is a case-by-case assessment.

This is not a deemed to comply solution.

**Building products certified overseas** for their manufacturing and test results will usually only have limited information on how they comply with the Building Code.

### Designers specify, BCAs check compliance



Designers select products to meet specific purposes in a design, such as to keep the weather out, to contribute to the structure of the building or its means of escape if there is a fire.

The building owners through their designers, need to show how every aspect of their building complies with the Building Code.

Building consent authorities check that the building work complies with the Building Code.

Building Consent Authorities are only required to grant consent if they are satisfied on 'reasonable grounds' that the work will comply with the Building Code if built in accordance with the plans and specifications.

In general BCAs do not make detailed examinations of building products and rely on information provided to them.

Inspectors check that the building work complies with the building consent, this includes checking that the building products specified are the same as those specified in the building consent.



# Strengthening competition

Complementary solutions for building products

**Strengthening competition**  
Removing barriers to using building products from overseas and making it easier to substitute building products

1

## Entire standard systems

### Recognise international standard organisations and certification schemes from certain countries

Quality building products that have shown to meet standards or certification schemes from certain countries means that the building consent authority can rely on the certification process and **must be satisfied** that the product will perform to the standard(s) it has been certified to.

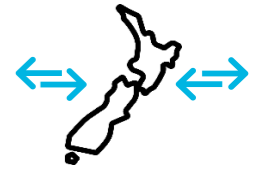
The building consent authority will still need to check that those building products with overseas certifications are incorporated into the building work as per the manufacturer's instructions and be satisfied that the building work will comply with the Building Code.

Criteria for recognising overseas jurisdictions will be set in regulation. Recognition of overseas standards organisations and standard certification schemes will be via gazette notice.

**Examples:** Standards Australia, British Standards Institute (BSI), International Organisation for Standardisation (ISO), American Society for Testing and Materials (ASTM).



Reduce uncertainty and make it easier for overseas standards from certain countries to be accepted



Increase competition for building products

**Amount of products**

Most

**Certainty of acceptance**

Possible

2

## Key individual standards

### Recognise certain international standards streamlining the recognition of international standards through building product equivalency specifications

To help understand which overseas building standards are equivalent to those that would result in buildings that are compliant with the New Zealand Building Code, a new regulatory instrument will contain all of the overseas and New Zealand standards that can be used to demonstrate compliance with the Building Code, which the **building consent authority must accept**.

The building consent authority will still need to check that those building products that comply with overseas standards are incorporated into the building work as per the manufacturer's instructions and be satisfied that the building work will comply with the Building Code.

**What this will look like** - the cited standards in the Building Code and its Acceptable Solutions and Verification Methods will be removed over time and added to this document, which will result in a single source of all the building Standards that must be accepted.



Make design and consenting more efficient



Shift liabilities away from councils



Cut red tape by streamlining processes in the Building Act



Make the regulatory system more agile for new products

**Amount of products**

Less

**Certainty of acceptance**

Probable

3

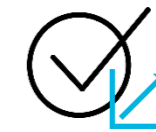
## Products and certification schemes

### Recognise certain Product Certification Schemes and automatic acceptance of appropriately certified products

Using and modifying the current unacted provisions in the Building Act 2004 related to CodeMark which would result in a greater flexibility to recognise schemes from other countries in the same way that CodeMark is accepted.

The Building Consent Authority will still need to check that those building products that have CodeMark certification or another similar overseas certification are incorporated into the building work as per the manufacturer's instructions and be satisfied that the building work will comply with the Building Code.

**Examples:** Codemark Australia and Watermark (Australia). This encompasses a lower volume of products, but is still substantial - schemes like Watermark will provide access for 200,000 products



Increase the number of certified building products



Lower costs of building products and construction

**Amount of products**

Least

**Certainty of acceptance**

Almost Certain

4

## Enable easier substitution of building products in approved designs

Providing more clarity on what a minor variation for small changes to building work after a building consent has been issued.

Allowing for changes to proposed building work that has a Multiproof approval at the building consent stage.



Reduce delays and speed up construction



Allow for innovation and changes

# Regulatory Impact Statement: Mandating approval of overseas building products

## Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions on the drafting of changes to the Building Act 2004 to implement mandating approval of overseas building products
Advising agencies:	Ministry of Business, Innovation and Employment
Proposing Ministers:	Minister of Building and Construction
Date finalised:	14 March 2024
Opportunity Definition	
<p>There is an opportunity to remove barriers to high-quality building products entering the New Zealand market and being used in building work. This can help ensure consumers pay the lowest prices possible for building products and can support greater resilience to supply disruptions.</p> <p>This opportunity can be realised by making our regulatory system place greater weight on international and overseas systems for recognition of overseas products where these are equivalent to New Zealand requirements and reducing the extent to which New Zealand certification is also required.</p>	
Executive Summary	
<p>New Zealand has high building costs. The costs of building have risen 41.3 per cent<sup>1</sup> since 2019 and it is about 50 per cent more expensive per square metre to build a standalone house in New Zealand than in Australia.<sup>2</sup></p> <p>New Zealand also imports about 90 per cent of all building products (or components) sold in the country, which provides choice but also makes the sector vulnerable to price changes and supply chain disruption. Product shortages caused by disruptions to supply chains in 2022 have largely been resolved, and significant price increases for building products (45 per cent over the past two years, as of December 2023) now look to be stabilising.</p> <p>There are barriers to high-quality products and materials entering the New Zealand market and being used. The Commerce Commission's market study<sup>3</sup> into residential building supplies found that competition for the supply and acquisition of key building supplies is not working as well as it could. These barriers lead to high prices and a lack of choice of building products, and low confidence in the performance of products that are in use.</p> <p>To address these barriers to competition, the Commerce Commission recommended that the building regulatory system needed to create clear compliance pathways for more key</p>	

<sup>1</sup> The 41.3% represents the cumulative increase since the fourth quarter of 2019. This mostly occurred in 2021 and 2022.

<sup>2</sup> Noting that standalone houses in Australia tend to be bigger than in New Zealand, and it is typical for the price per square metre to reduce as size increases. The average cost to build in New Zealand includes demolition costs and 15% GST, whereas the Australian figure excludes demolition costs and includes 10% GST.

<sup>3</sup> [Commerce Commission - Market study into residential building supplies \(comcom.govt.nz\)](https://www.comcom.govt.nz/commerce-commission-market-study-into-residential-building-supplies)

building supplies and make it easier for designers and market participants to use new or competing building supplies.

The Government has committed to “*strengthen competition for building materials with automatic approval for appropriately certified building materials from the US, Europe, the UK and Australia*” through legislative change.

There is significant flexibility in the building regulatory system to use a range of building products in building work. This is because the Building Code is performance based – any product can be used so long as the designer can provide evidence to a building consent authority that the building work will comply with the performance requirements of the Building Code, if built in line with the plans and specifications that accompany the consent application. Designers specify the building products that will be used.

There are several pathways to provide assurance about the performance of building products and that when used in building work they will lead to code-compliant work. Of those pathways, some must be accepted by a building consent authority as establishing compliance with the Building Code. These include CodeMark certification or compliance with an Acceptable Solution or Verification Method.

There are also initiatives in progress or recently completed that can promote competition and innovation in the building products market (e.g., new building product information requirements). These are detailed in paragraphs 19-22.

Despite this flexibility in the regulatory system and taking into account the recommendations of the Commerce Commission’s market study, the Ministry of Business, Innovation and Employment (MBIE) considers that more needs to be done to remove barriers to high-quality building products entering the New Zealand market and being used in building work, therefore increasing competition, lowering prices, and supporting greater supply resilience.

To remove barriers to high-quality building products entering the New Zealand market and meet secondary objectives, the following five options (in addition to the counterfactual) have been identified:

- Counterfactual: The initiatives already in progress or recently completed.
- Option 1: More resourcing for Acceptable Solutions and Verification Methods to fast-track existing processes. An enhanced counterfactual, with dedicated resourcing to update and develop more Acceptable Solutions and Verification Methods, including better reflecting international standards.
- Option 2: Recognise overseas standards and certification schemes. The Minister would recognise standards organisations and certification schemes, proposed building work would still be assessed for compliance, and there would be no need for building consent authorities to verify adequacy of the standard or certification schemes.
- Option 3: Create a new regulatory instrument under the Building Act, the Building Product Equivalency Specifications. This would specify what international standards or specifications must be considered as equivalent to those used in New Zealand and contain cited standards or specifications from the Acceptable Solutions and Verification Methods.
- Option 4: Amend the Building Act to make the section 262(2) function more flexible and effective. This would certify products for design by mandating that building

consent authorities must accept products that have been approved through product certification schemes and tested to building codes or regulations from overseas.

- Option 5: Combine Options 2, 3, and 4. A combined approach to target different levels of the product assurance system, recognising more standards and certification schemes and providing further compliance pathways.

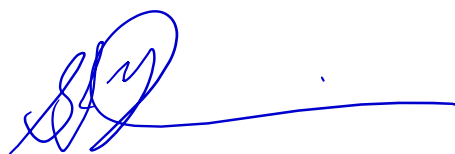
MBIE prefers Option 5 because it uses a combination of measures to strengthen competition and allows for more sources of building materials that can lead to better prices for consumers and provide greater resilience to supply disruptions. This option will also provide clarity to the sector in selecting products and give confidence in overseas products that can be accepted and used.

### Limitations and Constraints on Analysis

This analysis is constrained by the limited time available to consult on the policy proposals and develop costings for their implementation. This risk is mitigated because potential options have been informed by the Commerce Commission market study into residential building supplies, which conducted consultation with sector participants. The policy proposals in this analysis were also campaigned on as part of the 2023 election manifestos of the National Party and Act Party.

Analysis on the impact of intervention is further constrained by non-regulatory factors, such as the cost of importation, out of scope products with no certification in overseas markets, the level of assurance required, skills needed to use the building product, and the suitability of products for use in New Zealand. These are discussed further in Section 2 of this analysis.

### Responsible Manager(s) (completed by relevant manager)



14./03/2024

Suzannah Toulmin

Manager, Building Policy

Building System Performance

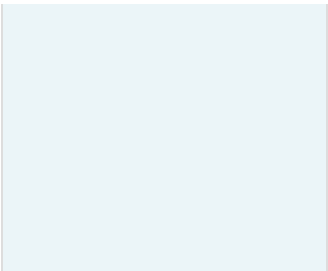
Ministry of Business, Innovation and Employment

### Quality Assurance (completed by QA panel)

Reviewing Agency: MBIE

Panel Assessment & Comment: The Regulatory Impact Analysis Review Panel at The Ministry of Business, Innovation and Employment (MBIE) has reviewed the Regulatory Impact Assessment Mandating approval of overseas building products and associated supporting material, and we have determined that the paper Partially Meets the criteria. The panel has given the RIS a partially meets due to the following:

- The proposals have been informed by consultation by the Commerce Commission on the high-level



competition issues, but in the time available MBIE has not been able to consult with sector participants on the specific proposed solutions.

- The Panel considers the proposed Select Committee process will be critical to ensuring further public input into the proposals and mitigating risks and impacts.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

1. Currently, there are a range of compliance pathways for building products entering the New Zealand market and being used in building work. However, the Commerce Commission's market study found despite flexibility to use new and innovative products, it is too slow, costly, and uncertain to get them accepted for general use.

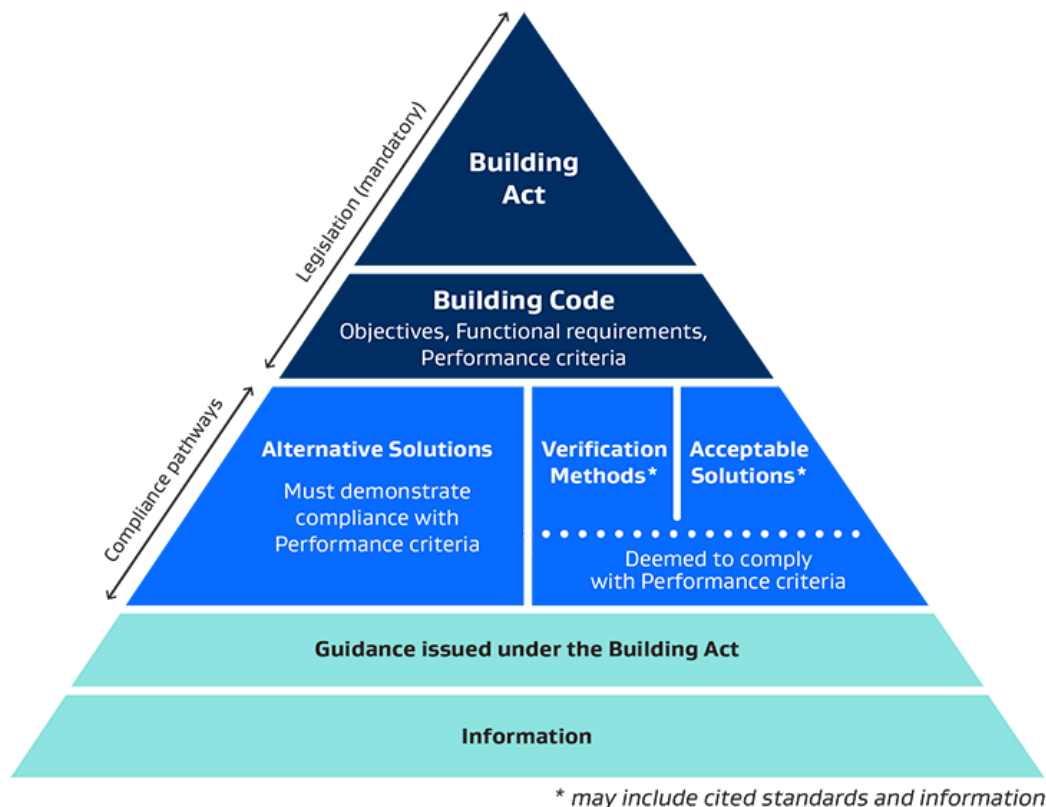
### Current compliance pathways for building products entering the New Zealand market and being used in building work

2. When building products are used in building work, that work must comply with the Building Code. As the Building Code is performance-based, it allows for innovative building solutions to be developed and used, provided they meet its performance requirements. Any product from any country can be used so long as the designer can provide evidence to show that the building work will be code compliant if built in accordance with the plans and specifications.
3. The Building Code regulates the performance of the building as a whole. Compliance with the Building Code is achieved through the use the building products along with methods of design and construction. Each building product is used for a specific purpose to design a building. The design of the building dictates what the building product must do.
4. There are no mandatory requirements for how building products are certified. Manufacturers may choose voluntary ways to demonstrate that their products are suitable for use in buildings.
5. Manufacturers and suppliers may use a range of mechanisms, including seeking product appraisals (e.g., from the Building Research Association of New Zealand (BRANZ) or other providers) or providing appropriate technical information.
6. For building consent applications, building consent authorities check the plans and specifications to ensure the building work complies with the Building Code. This includes products specified in the plans, as they need to be confident that the use of the product will achieve code compliance. They will also check that the products are detailed in line with manufacturer information.
7. Compliance with the Building Code is supported by standards cited in Acceptable Solutions and Verification Methods. This is the method most residential designers use to comply with the Code.
8. Acceptable Solutions and Verification Methods set criteria for when and how products can be used, but the performance of specific products is set within cited standards themselves. For example, the standards set out what a product is, and the acceptable

solution shows how a product is joined to other products to become a building system, such as proprietary weatherboard attached to timber framing.

9. There are several pathways manufacturers, suppliers, and designers can use to provide assurance about the performance of building products and that when used in building work they will lead to code-compliant work.
10. The pathways that must be accepted by a building consent authority as establishing compliance with the Building Code are set out in Section 19(1) of the Building Act. These include but are not limited to:
  - (a) compliance with regulations referred to in section 20 (which may specify there is only one means of complying with the Building Code)
  - (b) compliance with an acceptable solution
  - (ba) compliance with a verification method
  - (c) a determination to that effect made by the chief executive under subpart 1 of Part 3
    - (ca) a current national multiple-use approval issued under section 30F, if every relevant condition in that national multiple-use approval is met (MultiProof)
    - (d) a current registered product certificate, if every relevant condition in that product certificate is met (CodeMark).
11. These pathways provide a high level of assurance of building code compliance. More detail on Acceptable Solutions and Verification Methods, MultiProof, and CodeMark is attached at Annex 1.

Figure 1: Building Code regulatory framework



12. On 11 December 2023, new Building Product Information Requirements (BPIR) came into force requiring a consistent level of minimum product information from

manufacturers and suppliers to be publicly available. These requirements include how building products can be used to contribute to compliance with the Building Code to support better decision-making by building consent authorities and product specifiers and users.

13. Manufacturers and suppliers can include reference to standards, both international and domestic. A minimum level of consistent information will make it easier for building consent authorities to check if building work using the building products will comply with the relevant Building Code clauses and make the consent process more efficient by reducing the number of requests for further information.
14. However, Building Product Information Requirements are not registered or checked by a central body for accuracy and rely on the manufacturers to make accurate claims about Building Code compliance. Minimum information may also not be sufficient to support a design, meaning building consent authorities have grounds to ask for further information. False or misleading claims can be investigated by MBIE.

### **The Commerce Commission market study into residential building supplies**

15. The Commerce Commission's market study into residential building supplies<sup>4</sup> found that competition for the supply and acquisition of key building supplies is not working as well as it could if it was easier for building products to be introduced and for competing suppliers to expand their businesses. The study found despite flexibility to use new and innovative products, it is too slow, costly, and uncertain to get them accepted for general use.
16. The study also found that the supply of many key building supplies is often highly concentrated. Some categories of key building supplies, for example plasterboard and fibre cement, have only one or two main suppliers. However, concentration in supply of some key products has fallen in recent years (i.e., the number of suppliers has grown).
17. The Commerce Commission's report made nine recommendations to improve competition for building supplies. Recommendation 3 was to: "*create more clear compliance pathways for a broader range of key building supplies*" and included several possible approaches:
  - updating and developing more Acceptable Solutions and Verification Methods, including to better reflect international standards
  - expanding the range of product certification schemes that can issue product certificates deemed compliant with the Building Code
  - investigating reducing further barriers to certification and appraisal, for example introducing streamlined certification process for low-risk products
  - developing guidance that, for key buildings, identifies the appropriate Building Code clauses and the possible means of proving compliance with those clauses.
18. MBIE has a range of work underway in response to these recommendations, including policy work on streamlining the building consent system.

### **Other ongoing initiatives**

19. The sector has changed since the publication of the Commerce Commission's market study with the resolution of the plasterboard shortage and the lifting of COVID-19 supply chain restrictions. Building consent applications have slowed from record levels

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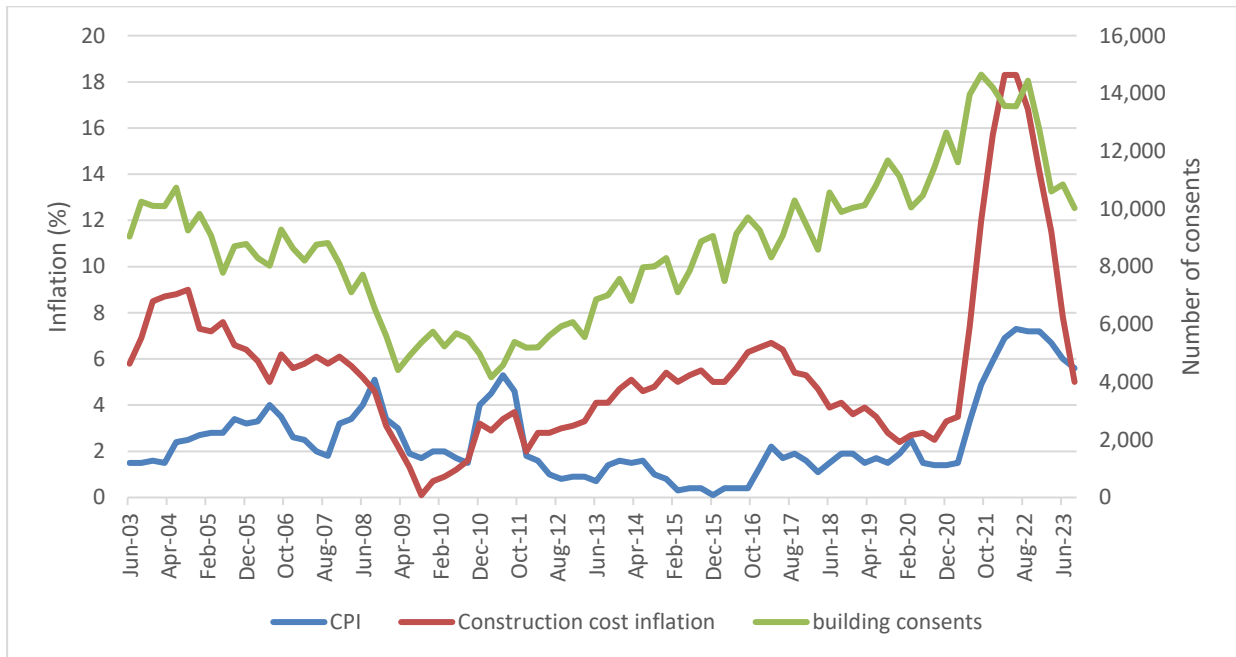
<sup>4</sup> [Commerce Commission - Market study into residential building supplies \(comcom.govt.nz\)](https://www.comcom.govt.nz/Market-study-into-residential-building-supplies)



and construction price increases have declined sharply below the rate of inflation (Figure 2).

20. Any improvements to the building consent system that increase efficiency and competition, remove time delays, and ensure that building materials are affordable will help address the housing crisis and facilitate an increase in residential building. However, as the Commerce Commission noted, the building regulatory system is not working as well as it could if it was easier for building products to be introduced and for competing suppliers to expand their businesses.

Figure 2: Rate of inflation (CPI), construction cost inflation, and number of building consent applications, by quarter



21. Several ongoing or recently completed initiatives can support more efficient consenting and promote competition and innovation, including in response to the Commerce Commission’s market study recommendations. These initiatives include:

- **Strengthening CodeMark** under the Building Act to increase confidence and provide greater oversight.
- Convening a **Critical Materials Taskforce** to advise on key issues with construction materials and provide more responsive intelligence.
- Introducing the **BuiltReady scheme**, which streamlines the consenting process for offsite manufacturing for certified modular component manufacturers. BuiltReady is a deemed to comply pathway.
- Introducing **Building Product Information Requirements**, which commenced on 11 December 2023 and will provide a consistent level of minimum product information, including on how building products can be used to contribute to compliance with the Building Code.
- Publishing **product substitution guidance** to support designers, specifiers, and building consent authorities. This includes guidance on suitable alternative plasterboard products when there were issues with supply of the primary brand.

- Increasing **reference to international standards in Acceptable Solutions and Verification Methods**, which must be accepted by building consent authorities as evidence of compliance with the Building Code.
  - **Streamlining the building consent system**, including looking at whether competition should be included as an objective of the building consent system, removing barriers to product substitution and variations (including improving the flexibility of MultiProof), better delivery of building consent services, and alternative consenting and assurance pathways.
22. In addition, MBIE is also exploring ways to support greater uptake of voluntary product certification (CodeMark). These initiatives will continue unchanged under the counterfactual scenario.

## Government commitments

23. MBIE understands that the Government wants to lower the cost of building materials by removing barriers to high-quality products entering the New Zealand market and being used in building work. Strengthening competition and allowing for more sources of building materials can lead to better prices for consumers and provide greater resilience to supply disruptions. This is particularly critical to support the Government's *Going for Growth* housing policy, led by the Minister for Housing (Hon Chris Bishop).
24. As part of its 100-point economic plan, the Government has committed to: *“strengthen competition for building materials with automatic approval for appropriately certified building materials from the US, Europe, the UK and Australia.”* The National Party's Better Building and Construction Policy expands on this commitment:
- *“Require building materials and product systems that meet international standards equivalent to those of New Zealand to be approved here*
    - *American, European, British and Australian standards will be automatically approved for use in New Zealand.*
    - *MBIE must be notified of all newly imported building materials for approval.”*
25. Work is also underway on the Government commitments to shift the context within which products are certificated, notably work on options to enable more consistent processes and decision-making across building consent authorities, self-certification, building defects insurance, and reducing potential council liability for building performance.

## What is the policy opportunity or problem?

26. Despite ongoing and recently completed initiatives, there are still barriers in the building regulatory system to high-quality products and materials entering the New Zealand market and being used. For instance, New Zealand's performance-based system enables a greater degree of flexibility and innovation than a prescriptive system, but builders and building consent authorities are often looking to manage risks and their own liability and they need certainty to do this. Building consent authorities can, but are not required to, accept overseas certifications of products as evidence of compliance with the Building Code.
27. As a result, it can be too slow, costly, and uncertain to get some building products accepted for general use, which leads to high prices and a lack of choice of building products, and low confidence in the performance of products that are in use. These

barriers also mean that competition for the supply of key building supplies is not working as well as it could, as found by the Commerce Commission's market study.

*Standards cited in Acceptable Solutions and Verification Methods are a barrier to competition*

28. The Commerce Commission highlighted the standards cited in the Acceptable Solutions and Verification Methods as another barrier to competition, as designers, builders, and building consent authorities rely on familiar products tested to those standards. Two products may perform similarly but could be tested to different standards. This means that building consent authorities must assess equivalency for each individual product and consent application, resulting in duplication of efforts.
29. The current process required under section 29 of the Building Act for updating the standards (including incorporation of products certified overseas) in the Acceptable Solutions and Verification Methods documents is lengthy and resource intensive, including development of options, cost-benefit analysis, public consultation, and submission analysis. This process can take two to four years from start to finish and all stages are required under section 29 of the Building Act.
30. Standards across other jurisdictions are published with various names, numbers, terminology, requirements, and in different languages so it is often hard for designers, manufacturers, and building consent authorities to establish equivalency.

*CodeMark is robust but expensive*

31. CodeMark is a voluntary product certification scheme that provides an easy and robust way to show a building product or building method meets the requirements of the Building Code. A CodeMark certificate must be accepted by building consent authorities to show that building products and systems will meet the requirements of the Building Code.
32. However, there are several reasons why it is not a complete solution on its own:
  - the use of CodeMark is not mandatory and it can be expensive
  - the New Zealand market is too small for some international products to go through a CodeMark exercise when they have already achieved certification overseas or been tested against an equivalent standard
  - there are other compliance pathways that manufacturers, suppliers, and designers can use to provide evidence to building consent authorities that when those products are used, that work will comply with the Building Code
  - incorporating a CodeMark into a design may require additional evidence that the building as a whole complies with the Building Code
  - BRANZ testing is perceived as being the gold standard in New Zealand, when there are overseas tests that perform equally well.

*Familiarity bias and liability settings mean sector participants rely on what they know will be granted consent*

33. Familiarity bias – people choosing products they have confidence will perform and will be accepted by building consent authorities – plays an important role. Submitters on the Commerce Commission's study generally agreed that specifiers (architects,

engineers, designers) and builders have familiarity bias, which makes entry and expansion of new building supplies difficult.

34. This bias is often driven by concerns that new products may not be accepted by building consent authorities due to concerns about liability if the product or building work does not perform, and that decisions can vary between different building consent authorities. In the case of builders, they may not be able to claim against product warranties when products fail, and suppliers have exited.
35. Submitters to the Commerce Commission also agreed that building consent authorities have a similar familiarity bias towards trusted products because this simplifies consent evaluation and reduces liability risk.
36. While a product certified to a standard referenced in the Acceptable Solutions and Verification Methods must be accepted as code compliant, if an alternative solution is used, building consent authorities may seek further assurance or one authority may accept it, but another may not.

*The Building Act allows for overseas certification of building products to be accepted in New Zealand, but this power has never been used*

37. In addition to the compliance pathways set out in section 19(1) of the Building Act, section 262(2) allows for the Chief Executive of MBIE to recognise overseas certification of building products as if they were product certifications under the Building Act (specifying certifications by way of *Gazette* notice). However, this power has never been used.
38. Before using this power, section 262(3) of the Act requires that MBIE's Chief Executive must determine equivalency with the New Zealand system, that is, they must be satisfied that the building method or product meets the prescribed criteria and standards for certification. These are set in regulations and scheme rules under the CodeMark scheme and include compliance with provisions of the Building Code that are relevant to the intended use of the product. As these are specific to the New Zealand Building Code, they effectively mean a certificate holder must apply to the Chief Executive, limiting the ability to proactively recognise schemes.
39. The Chief Executive cannot act proactively and cannot recognise entire schemes, or classes or groups of products.
40. MBIE carried out some initial investigations of this power as part of the plasterboard shortage in 2022. It found that third-party certification of typical plasterboard products was not common overseas and viable products that complied with the Building Code were identified. That issue was able to be effectively managed through MBIE guidance.
41. The intention of the section 262(2) power was to allow for recognition of overseas-certified products that meet the standards of New Zealand-certified products.

*The section 262(2) power cannot be used under the status quo*

42. MBIE is not currently aware of any product certification schemes that could be recognised under the current section 262(2) criteria for certification. Section 262(2) cannot realistically be used now without legislative change because:
  - *Gazette* notices issued under section 262(2) are not listed in section 19(1) as matters a building consent authority must accept as establishing compliance with the Building Code.

- Section 262(2) does not currently allow for a class or classes of products certified by overseas certification bodies (or schemes) as well as individual products, which limits its flexibility.
- To approve certification of a product under section 262(2), MBIE's Chief Executive may need to seek external advice from building material experts. Under section 390, protections for persons providing advice to MBIE to support its determinations function and its building failure investigation function are included to support the provision of these services (sections 390(1)(c) and (ca) of the Act). However, no equivalent protections exist regarding s262(2) advice.
- Section 392(1) states that no civil proceedings may be brought against a building consent authority for anything done or omitted to be done in good faith in reliance on any of the listed documents, including things they must accept under section 19(1). This list does not include *Gazette* notices issued under section 262(2).

### What objectives are sought in relation to the policy problem?

43. The primary objective sought in relation to the policy problem is to remove barriers to high-quality building products entering the New Zealand market. Removing these barriers will:
- lower the cost of building products
  - strengthen competition in the building products market
  - strengthen resilience to supply disruptions
  - increase flexibility and efficiency in the building consent system
  - improve the supply of affordable housing.

# Section 2: Deciding upon an option to address the policy problem

## Assessment Criteria

44. MBIE has considered the assessment criteria in Table 1 below when developing the policy proposals contained in this analysis.

Table 1: Assessment criteria for policy proposals

Criteria:	Description of Criteria:
Effectiveness	<p>Addresses barriers to overseas products entering New Zealand and delivers on the Government’s objectives, including:</p> <ul style="list-style-type: none"> <li>• Competition and innovation: The market for building products in New Zealand enables competition between suppliers and new high-quality products being brought to market and used.</li> <li>• Prices of products: The prices of building products are as low as sustainably possible, with the view of reducing the cost of construction in New Zealand.</li> <li>• Resilience to supply chain disruptions: The market for building products can maintain supply during disruptions to supply chains.</li> </ul>
Confidence	<p>Building system participants (including product users, manufacturers, and building consent authorities) have confidence in building products and how they will perform once installed.</p> <p>System participants are confident in MBIE’s oversight of the system, including its ability to make improvements where necessary and respond to faults.</p>
Certainty, clarity, and consistency	<p>The regulatory framework has clear roles and responsibilities for suppliers (including manufacturers, importers, distributors, and retailers) and regulatory bodies (including MBIE and territorial authorities).</p> <p>The regulatory framework facilitates consistent decision making by regulatory bodies (including MBIE and building consent authorities).</p>
Efficiency	<p>The cost, time, and effort to comply with regulatory requirements for system participants (manufacturers, suppliers, building consent authorities) are not overly burdensome.</p> <p>The initial and ongoing financial and resourcing costs for MBIE (e.g., to determine equivalent overseas standards) associated with the initiative are manageable.</p>
Agility and flexibility	<p>It is easy and quick to make changes based on new or emerging information about the risks of a product or classes of products, or robustness of a certification scheme, to minimise the risk of widespread building failure and respond if something does go wrong.</p>

45. The assessment criteria are generally complementary, but there may be some trade-offs required. For example, high confidence may come at the cost of greater flexibility. The assessment criteria are weighted equally.
46. These criteria have been selected for the following reasons:
- **Effectiveness:** Strengthening competition and lowering prices of building materials is a priority for the Government. There is a need to ensure the path for product approvals is smoothed as soon as possible in support of the Government's goals for the *Going for Growth* housing policy.
  - **Confidence:** A key symptom of a lack of high-quality building products and low competition is that confidence among builders and building consent authorities of the performance of new building materials is often low.
  - **Certainty, clarity, and consistency:** A key aim of the Government's commitments is to speed up consents and reduce the number of requests for information from building consent authorities to homeowners. This criterion seeks to measure whether the options address this issue and improve consistency in decision-making.
  - **Efficiency:** We need to understand how much each option will cost MBIE, building consent authorities, suppliers, and other sector participants in terms of implementation and operational expenditure, including resourcing implications. Sector participants (manufacturers/suppliers, building consent authorities, builders, and others) should be easily able to comply with any new regulatory requirements.
  - **Agility and flexibility:** There needs to be a quick way to act on new or emerging information about the risks of a product or classes of products, or robustness of a certification scheme, to minimise the risk of widespread building failure.

### What scope will options be considered within?

47. Regulatory and non-regulatory options are considered within scope of this analysis. Options that complement ongoing initiatives to achieve the objectives identified (paragraph 43) are also within scope.
48. Continuing with ongoing initiatives without any further change is captured as the counterfactual. A discussion of these ongoing initiatives can be found in paragraphs 19-22.

### What options are being considered?

#### The counterfactual

49. MBIE recognises that the building consent system needs to be more efficient and flexible. The initiatives described above (paragraphs 19-22) aim to support more efficient consenting and promote competition and innovation, including in response to the Commerce Commission's market study.
50. Nevertheless, The Commerce Commission's market study identified some limitations with current compliance pathways that act as barriers to overseas products entering the market, including:
- Where a building product fits within an Acceptable Solution or Verification Method and cited standard, those products appear to be more readily specified and used

in residential building designs compared to competing products that do not fit within a similarly clear compliance pathway. Familiar products are much more likely to have clear compliance pathways.

- Competing products are less likely to be readily used without a clear compliance pathway.

51. As outlined earlier, the Commerce Commission highlighted the standards cited in the Acceptable Solutions and Verification Methods as a barrier to competition. Designers, builders, and building consent authorities rely on familiar products tested to those standards.

#### **Option 1 – More resourcing for Acceptable Solutions and Verification Methods to fast-track existing processes**

52. This option is essentially an enhanced counterfactual. MBIE could dedicate more resourcing to existing Acceptable Solutions and Verification Methods processes to make those processes faster. This aims to ensure new or innovative products and systems can be better introduced to the standard method of building in New Zealand.

53. This option links to the Commerce Commission’s recommendation to “*create more clear compliance pathways for a broader range of key building supplies*”, by updating and developing more Acceptable Solutions and Verification Methods, including to better reflect international standards.

#### **Option 2 – Recognise overseas standards and certification schemes**

54. This option would fast-track overseas certified products, removing uncertainty and making it easier for overseas standards from trusted jurisdictions to be incorporated into building designs. It creates an easier pathway for the largest number of products to be used in building designs in New Zealand, while retaining confidence that the final building design will be code compliant.

55. The key elements of this option are:

- The Minister would recognise groups of standards from overseas standards organisations and certification schemes by *Gazette* notice. Regulations would specify the criteria for recognising a standards organisation or certification scheme. The Minister could also amend or revoke such notices by *Gazette* notice if there were issues with a scheme.
- The proposed building work would still be assessed for compliance with the Building Code. Designers could choose the compliance pathway and would need to show how the product will be used with other products and methods.
- It removes the need to verify the adequacy of the standard or certification schemes, allowing designers, builders, and building consent authorities to be confident that unfamiliar products have been tested to a reputable standard from trusted jurisdictions.



56. Manufacturers and suppliers could choose to reference recognised standards and certification schemes when making claims required under the Building (Building Product Information Requirements) Regulations 2022.
57. If designers do not follow a pre-approved design (Acceptable Solution or Verification Method, or MultiProof) they would need to show how the building work, including specified products, will comply with the Building Code.
58. Building consent authorities would still need to check designs as an alternative solution, but this process should be easier because:
  - they can have more confidence that the product does what is claimed. They can rely on the robustness of the certification process and will not need to determine whether certification was by a reliable body or against a reliable standard.
  - they will not be held liable for relying in good faith on information that must be disclosed under the Building (Building Product Information Requirements) Regulations 2022.

### **Option 3 – Create a new regulatory instrument under the Building Act, the *Building Product Equivalency Specifications***

59. Option 3 proposes to create a new regulatory instrument in the Building Act (the *Building Product Equivalency Specifications*). It would:
  - specify what international building product standards or specifications must be considered as equivalent to those used in New Zealand
  - contain the cited building product standards or specifications from the Acceptable Solutions and Verification Methods.
60. If any product complies with an equivalent standard for its specific purpose, the building can comply with the Acceptable Solutions and Verification Methods and the building must be accepted. This is intended to streamline recognition of equivalent or better international standards, fast-track the consent processes, and reduce the burden for designers and building consent authorities using new products.
61. The new instrument would contain all standards and specifications and sit alongside the existing Acceptable Solutions and Verification Methods, which would then refer to the published list of building product standards or specifications deemed equivalent.
62. The Acceptable Solutions and Verification Methods documents would specify the performance of the buildings and when certain product types are to be used, and the building product equivalency specifications would contain the details for the equivalent standards or specifications for each product type.
63. This will help designers, product manufacturers, and building consent authorities determine the equivalency of overseas standards and reduce reliance on familiar products.
64. The *Building Product Equivalency Specifications* would be issued by the Chief Executive of MBIE by *Gazette* notice. This option combines regulatory and non-regulatory changes, as it requires legislative change and changes to Acceptable Solutions and Verification Methods.
65. This approach would:
  - increase the number of overseas product standards and specifications that must be accepted, enabling more products to be used confidently

- address risk averse behaviour of designers who may otherwise not choose to specify standards from overseas or not cited in Acceptable Solutions and Verification Methods, as MBIE would do the work to establish equivalency
- align with overseas product certification, enabling MBIE to recognise products certified under international certification schemes that are unlikely to have major negative impacts
- make the regulatory system more agile and responsive when accepting new products, support both domestic and international suppliers to get their products to market in New Zealand
- maintain MBIE's ability to respond to issues
- make the current process to update Acceptable Solutions and Verification Methods to recognise overseas building product standards or specifications easier, especially to reference overseas standards and save time on consultation (reducing the process from at least two years to three to eight months)
- be functionally the same as existing requirements in the Acceptable Solutions and Verification Methods (i.e. requiring building consent authorities to accept them).

#### **Option 4 – Amend the Building Act to make the section 262(2) function more flexible and effective**

66. This option is about certifying products for design by mandating that building consent authorities must automatically accept products that have been approved through product certification schemes and tested to building codes or regulations from overseas (equivalent to New Zealand's).
67. This option would increase flexibility and enable effective implementation, by enabling the Chief Executive of MBIE to proactively recognise overseas certification schemes, as well as groups or classes of products (via *Gazette* notice). Building consent authorities would be mandated to accept all product certifications covered by the *Gazette* notice as evidence of compliance with the Building Code.
68. Regulations would prescribe the criteria and standards for recognition of overseas certification schemes, which would be less restrictive than the current prescribed criteria and standards for certification.
69. This would enable the Chief Executive to mandate that building consent authorities must accept products certified by schemes like New Zealand's product certification scheme, such as WaterMark Australia. This would open the New Zealand market to more of the plumbing products approved for use in Australia<sup>5</sup>, increasing the range of products available and driving down prices.
70. Where Option 2 enables recognition of more standards and certification schemes, this option provides for another compliance pathway.
71. There is a risk that this option could negatively affect the viability of the CodeMark scheme, and its product certification bodies, as well as the existing compliance

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<sup>5</sup> Ongoing access to more than 200,000 products approved through WaterMark.

pathways available to domestic producers. Additionally, some building owners may have to litigate with the overseas product certifiers if a product fails.

#### **Option 5 – Combine Options 2, 3, and 4**

72. This option combines recognising overseas standards and certification schemes (Option 2), the new regulatory instrument, the *Building Product Equivalency Specifications* (Option 3), and amending the Building Act to make the section 262(2) power more flexible and effective (Option 4).
73. These changes aim to complement each other by reducing regulatory barriers to building products from overseas jurisdictions being accepted by building consent authorities, while mitigating risks posed to consumers from substandard building work. The risk of building failure is low as the obligation is still on designers to show that the product is fit for purpose in its intended use and complies with the Building Code.
74. A combined approach targets each level of the product assurance system. Option 2 enables recognition of more standards and certification schemes, Option 3 provides a compliance pathway for designs relying on those overseas standards, and Option 4 provides another compliance pathway.
75. Recognising overseas certification schemes, as well as groups or classes of products, will provide confidence in building products. The Building Product Equivalency Specifications will provide confidence that products will comply with the New Zealand Building Code.
76. All three options will encourage designers to better consider how the product they are specifying performs and how it contributes to complying with the Building Code. Introducing all options together gives designers a choice of options depending on their level of risk of the product not being accepted as complying.
77. The combined option will also mean that New Zealand suppliers and manufacturers are able to compete equally in the new market environment and to test their products against widely accepted overseas standards (instead of New Zealand based standards), facilitating easier access to overseas markets.
78. [Placeholder] While progressing multiple options simultaneously may be complex for MBIE to implement, and potentially for sector participants to understand the benefits and limitations, each option would be implemented within different timeframes and have co-benefits.
79. This option provides different tools and enables MBIE to use them. As part of implementation, MBIE will need to make decisions about how and when it uses these tools, considering the relative benefits and costs of each.
80. Section 3 provides more detail on how the combined option will be implemented through the same legislative vehicle, and how MBIE will support the sector to understand the options, what they mean for them, and how to apply them.

## How do the options compare to the counterfactual?

Table 2: Comparison of options

	<b>Counterfactual</b>	<b>Option 1 – More resourcing for Acceptable Solutions and Verification Methods to fast-track existing processes</b>	<b>Option 2 – Recognise overseas standards and certification schemes</b>	<b>Option 3 – New regulatory instrument (<i>Building Product Equivalency Specifications</i>)</b>	<b>Option 4 – Amend the Building Act to make the section 262(2) function more flexible and effective</b>	<b>Option 5 – Combine options 2, 3, and 4</b>
<b>Effectiveness</b>	0  Work underway will help address barriers to competition and innovation, improve resilience to supply disruptions, and lower prices (through increased competition).	+	+	++	+	++
		Same benefits as work underway, but faster.  Dependent on other factors discussed in paragraph 85.	Creates easier path for the greatest number of overseas products to be used in designs.  Identifies widest range of products that can be specified in NZ.	Increases the number of international product standards or specifications referenced by AS/VMs that BCAs must recognise.  Supports domestic and international suppliers.	BCAs must accept products from recognised schemes, but criteria limit the number of schemes recognised.  Dependent on other factors discussed in paragraph 85.	2, 3, and 4 combined.  Most effective as it targets different levels of product approvals.
<b>Confidence</b>	0  Building sector confidence in overseas building products expected to increase over time.	+	+	+	+	++
		More overseas standards cited in AS/VMs and faster processes.	Designers, builders, and BCAs can rely on unfamiliar products that have been tested to a reputable standard	Aligns with overseas product certification – confidence that unfamiliar products will be accepted by BCAs if they follow AS/VM pathway.	More confidence that overseas building products will meet Code requirements.	2, 3, and 4 combined.  Confidence in products themselves and that products will comply with Code.

			from trusted jurisdictions.		Recommended by Commerce Commission.	
<b>Certainty, clarity, and consistency</b>	0 No new obligations on sector. BuiltReady and CodeMark certified products must be accepted by BCAs. Building Product Information Requirements came into effect 11 December 2023. Other guidance on overseas certifications is not mandatory.	++ Aligns with how products are certified overseas.  Incorporating international standards into AS/VMs and processing faster.	+ Unfamiliar products from certain jurisdictions certified known to meet standards, but BCAs still need to assess code compliance.  BCAs not liable for relying in good faith on information disclosed under BPIR regulations	++ Same as Option 2.  BCAs not liable for relying in good faith on information disclosed under BPIR regulations.	++ BCAs mandated to accept all product certifications covered by <i>Gazette</i> notice as evidence of code compliance.	++ 2, 3, and 4 combined.  Clarity for sector in selecting products.
<b>Efficiency</b>	0 No additional costs to MBIE.  No additional compliance costs or regulatory burden relating to the approval of overseas products.	0/+ Extra MBIE resource required.  No additional compliance costs or regulatory burden.	0 Significant upfront costs to MBIE to implement changes.  Time savings for BCAs and no extra compliance costs for designers.	+/> Upfront cost to MBIE to implement changes (resourcing, expert advice, purchasing standards).  Lower ongoing costs for BCAs to evaluate and identify equivalent standards.	+ Upfront and ongoing cost to MBIE.  Less restrictive than current criteria and standards – easier to comply.	++ 2, 3, and 4 combined.  Complex to implement all options.  Easier for BCAs to process consents, lower burden for designers using new products.
<b>Agility and flexibility</b>	0	0	+	+	+	+

	Work underway aims to make the building consent system more flexible.	MBIE slightly more agile with greater resourcing dedicated to publishing AS/VMs.	Flexibility to mandate, suspend, or revoke through <i>Gazette</i> notice.	MBIE able to respond to new products or issues, but time consuming to evaluate individual standards compared to jurisdictions.  Easier to update AS/VMs than current or Option 1.	Flexibility to respond to new product certification bodies or to remove bodies through <i>Gazette</i> notice.	2, 3, and 4 combined.  MBIE can proactively identify standards.
<b>Overall assessment against desired outcomes</b>	0  Will help to streamline building consents, strengthen competition for building products, and lead to better prices and greater resilience to supply disruptions.	+	+	++	+	++
		Similar impact to counterfactual, but slightly faster.  Fewer risks than other options but impact not as direct or quick.	Enables recognition of greatest range of standards.  Gives confidence that products meet tested standard but plans still need to be assessed for code compliance.	Direct compliance pathway for greater range of products.  Creates reliance on an ongoing function.	Direct compliance pathway, but limited scope of schemes recognised.  Potential risk to CodeMark and overseas litigation.	Complementary approach targeting different levels likely to yield most benefit.

**Key:**

- ++ much better than counterfactual
- + better than counterfactual
- 0 about the same as counterfactual
- worse than counterfactual
- much worse than counterfactual

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

81. MBIE's preferred approach is Option 5 – combining options 2, 3, and 4. That is, recognise overseas standards and certification schemes (2), create a new regulatory instrument, the *Building Product Equivalency Specifications* (3), and amend the Building Act to make the section 262(2) power more flexible and effective (4).
82. This option best meets the criteria outlined in Table 1 and compared in Table 2.
83. Combining the options as a package in this way would produce greater benefits than the individual options would achieve alone, as it would target each level of the product assurance system (standards, certification schemes, and compliance pathways). A combined approach would make it easier for building consent authorities to process consents, give MBIE the flexibility to proactively identify standards, and provide clarity for the sector in selecting products.

### Limitations on analysis

84. The analysis of a preferred option is constrained by non-regulatory factors that will influence the achievement of objectives (paragraph 43) and performance against the criteria identified in Table 1.
85. These non-regulatory factors impact the decisions of importers or overseas building product manufacturers to pursue a compliance pathway or bring a product into the New Zealand market, as follows:
  - The ability to access a retail network for a building product: This will impact a decision to bring a product into the New Zealand market. The proposed regulatory change will not impact accessibility to a retail network.
  - Cost of importation: New Zealand is a small geographically isolated market. The reduction of regulatory barriers by the preferred option may not impact the economics of importing building products.
  - Increased competition with no reduction in cost of building products: The preferred option aims to increase competition for high-quality building products and reduce regulatory barriers to these entering the market. However, this may not reduce the cost of building products. Increased competition may lead to increased consumer choice and increased availability of high-quality building products.
  - Some products do not have certification in overseas markets and therefore will not be in scope of the preferred option.
  - Some importers and overseas manufacturers will not require the level of assurance that the preferred option provides. This will impact how widely used the preferred option is used by importers and overseas manufacturers.
  - Local knowledge of designers and builders to use the building product: Some products may require specialist skills, trades, or training that may not be available in New Zealand.
  - The suitability or compatibility of products for use in New Zealand construction practice: While the options aim to enable more products to be used, if they do not

fit with how we build in New Zealand, or meet certain requirements (e.g., seismic), they may still not be used.

86. The preferred option will provide another avenue of product assurance and will perform positively against the criteria. However, the limitations identified above may impact the certainty and extent of how positively the preferred option will perform against the criteria.
87. One of the objectives is to increase the supply of affordable housing. There are limitations on the options achieving this that are outside the scope of this analysis, for example local government infrastructure challenges and zoning changes.

#### *Limitations on consultation*

88. MBIE has also not been able to consult with sector participants and key stakeholders to understand how the preferred option may impact them. This is due to the urgency with which the Government's commitment is being progressed. However, some of the policy proposals in this analysis were campaigned on as part of the 2023 election manifestos of the National Party and Act Party.
89. As outlined earlier, the options have also been informed by the Commerce Commission's market study into residential building supplies and the submissions made on that study. The Commission engaged with a range of industry stakeholders and interested parties, including building supplies merchants, manufacturers, and importers, building industry representatives, government agencies, industry bodies, and Māori partners.
90. The Commission sought responses on several papers, including a preliminary issues paper, a scoping paper, and the draft report. It also conducted a consultation conference and asked interested parties to complete surveys.
91. The main limitation of the Commerce Commission's consultation for this analysis was that it focused on understanding the high-level problem with competition, rather than specific solutions. However, it did seek feedback on its recommendations, which have informed the development of the options in this analysis.



## What are the marginal costs and benefits of the option?

Table 3: Impact of the preferred option

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Importers and overseas manufacturers of building products	Importers already required to supply information about products by Building (Building Product Information Requirements) Regulations 2022 (e.g., technical specifications).  May choose to reference recognised standards and certification schemes.  Evidence certainty limited by no consultation.	Low	Medium
Central Government (Ministry of Business, Innovation and Employment)	MBIE expects to fund implementation from baseline budget and to scale to the funding available.  Will need to re-prioritise resources to recognise standards.	Low	Medium
Building Consent Authorities	May require internal guidance and/or training. Still need to check the product complies with the Building Code.  Evidence certainty limited by no consultation.	Low	Low
Product certification bodies (Under CodeMark and JASANZ)	May impact CodeMark and willingness to work on the scheme.  Evidence certainty limited by no consultation.	Medium	Low

Overseas product certification bodies	No additional regulatory burden.	Nil	High
Homeowners, consumers, builders, users of building products	Cost to understand new scheme and requirements.  Low risk of building failure, obligation still on designers to prove compliance.  Evidence certainty limited by no consultation.	Low	Medium
<b>Total monetised costs</b>		-	-
<b>Non-monetised costs</b>	Cost to the Crown initially anticipated to be met through MBIE baselines and to scale to the funding available.	Medium	Medium. The Commerce Commission provides evidence of costs but there are other non-regulatory factors.
<b>Additional benefits of the preferred option compared to taking no action</b>			
Importers and overseas manufacturers of building products	Ongoing benefit – faster consenting, more certainty, and reduced regulatory barriers, making it easier to bring products to New Zealand.  Does not address non-regulatory factors.  Evidence certainty limited by no consultation.	Medium	Low
Central Government (Ministry of Business, Innovation and Employment)	Reduced frequency of updating AS/VMs.	Nil	High
Building Consent Authorities	Reduced scope of role consenting building work when an approved product is used, improved confidence in overseas products, consistent decision-making, reduced risk of liability.	Medium	Low

	Evidence certainty limited by no consultation.		
Product certification bodies (Under CodeMark and JASANZ)		Nil	High
Overseas product certification bodies	May increase attractiveness of overseas certificates, as products recognised under section 262(2) of the Building Act have a direct pathway to compliance.	Low	High
Homeowners, consumers, builders, users of building products	Ongoing, improved access to high quality building products. Lower cost of building products. Easier path through building consent process.  Dependant on non-regulatory factors.  Evidence certainty limited by no consultation.	Medium	Low
<b>Non-monetised benefits</b>		Medium	Medium. The Commerce Commission provides evidence of benefits but there are non-regulatory factors.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

92. If the preferred option is pursued (Option 5), the proposed amendments to the *Building Act 2004* will be drafted and given effect through the Building (Product Certification) Amendment Bill. This will be introduced to the House of Representatives in mid to late 2024.
93. Confidential advice to Government [REDACTED]  
[REDACTED] The Bill may go through a slightly shorter Select Committee process (6-8 weeks) but will still allow time for public submissions.
94. While each element of Option 5 will commence around the same time, the lead time for each will differ. MBIE will develop suitable resources to help ensure the transition into these options is as smooth as possible and it can react quickly to the sector's needs if gaps in understanding are identified at any stage.
95. The changes to legislation will be communicated through public communications (e.g., Ministerial press release) and targeted communications to key stakeholders. MBIE is also in regular contact with building consent authorities and will be available to actively respond to any queries regarding the change.
96. Technical expertise will be required to consider what countries, standards organisations, and certification schemes can be recognised. MBIE will also be responsible for identifying, evaluating, and purchasing equivalent international standards. This will include proactively identifying standards that can be specified in the Building Product Equivalency Specifications. This will operate similarly to, and work with, Acceptable Solutions and Verification Methods.
97. Recognition of groups of standards from overseas standards organisations and standards certification schemes by *Gazette* notice will be the power of the Minister for Building and Construction. A regulation making power will set criteria for how this power should be used.
98. The function to recognise entire schemes, or classes or groups of products will be the responsibility of the Chief Executive of MBIE. This will be supported by a regulation making power to set criteria for how this responsibility should be used.
99. MBIE will be developing an implementation plan for each element of Option 5 that will detail what work is required to support decision-makers using the powers outlined above. For example, MBIE can identify international standards that may meet the performance criteria in the Building Code, but these will need to be reviewed to confirm they are compatible with New Zealand conditions.
100. [Placeholder] Relatedly, MBIE needs to understand how it will prioritise the different tools offered by each element of Option 5 and whether this requires any resource reallocation.

### Non-regulatory work

101. Ongoing work is outlined in paragraphs 19-22. In particular, MBIE is increasing reference to international standards in Acceptable Solutions and Verification Methods, which must be accepted by building consent authorities as evidence of compliance with

the Building Code. It is also exploring ways to support greater uptake of voluntary product certification (CodeMark).

102. MBIE is responsible for developing and monitoring Acceptable Solutions and Verification Methods. Any changes to Acceptable Solutions and Verification Methods must follow the procedures and minimum timeframes set out in sections 29 and 409 of the Building Act. This includes a requirement to consult.

### **How will the new arrangements be monitored, evaluated, and reviewed?**

103. This proposal, if agreed to, will be integrated into the existing regulatory system. One of MBIE's key roles as the system steward and central regulator is to monitor the performance of the building regulatory system.
104. The Government is looking at ways to improve monitoring and get better performance data. Cabinet has agreed for the Minister of Building and Construction to instruct building consent authorities to report information already held for Q1 2024 and develop a plan to improve the monitoring of the building consent system and report back with complete data later in 2024. MBIE will use these findings and future data to evaluate the ongoing impact of the implemented option(s).

## Annex 1: Acceptable Solutions and Verification Methods, MultiProof, and CodeMark

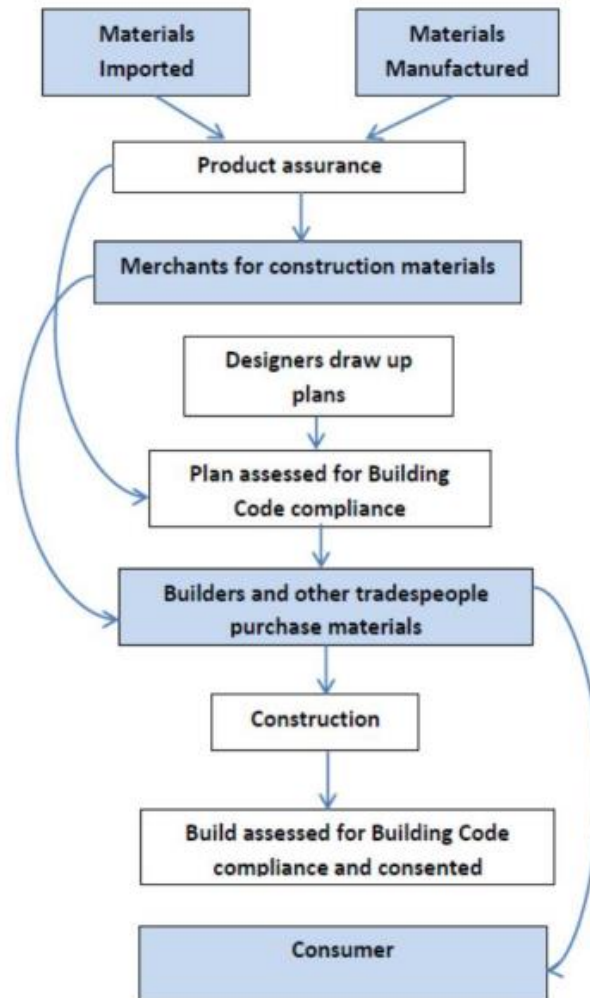
### What are Acceptable Solutions and Verification Methods?

105. Designs that comply with Acceptable Solutions and Verification Methods must be accepted by building consent authorities as complying with the Building Code (under section 19(1)(b) and (ba) of the Building Act). Building Code clauses generally have one or more Acceptable Solution and may also have more than one Verification Method.
106. Acceptable Solutions give specific construction details, often for commonly used building materials, systems, and methods. Verification Methods are tests or calculation methods that prescribe one means of compliance.
107. Standards are one of the sources of information that MBIE cites when developing Acceptable Solutions and Verification Methods. The use of these documents, and the standards cited by them, is not mandatory.
108. Standards are used in building design and construction in several ways:
  - manufacturing specifications to make products meet a specific purpose (e.g., chemical composition, density, and weight)
  - testing products to different measurements (e.g., strength, weathertightness, fire resistance)
  - designing systems and buildings (e.g., design approaches, engineering calculations, connection details)
  - installation of products (e.g., fixings and fasteners, wiring details, pipe layouts, and fittings).
109. The standards process has been used both in New Zealand and internationally for decades. Standards are used to support building design, product manufacturing, and product testing. There are approximately 450 standards referenced in Acceptable Solutions and Verification Methods currently. Of these, approximately 25 per cent are

New Zealand standards, 35 per cent are Australian or joint New Zealand-Australian standards, and the remaining 40 per cent are other international standards.

110. While Acceptable Solutions and Verification Methods support the use of certain building methods, they are not typically building product specific.

Figure 2: High level summary of the construction process



### What is an Alternative Solution?

111. Not all building work is provided for in the Acceptable Solutions and Verification Methods. An alternative solution is all or part of a building design that demonstrates compliance with the Building Code but differs completely or partially from the Acceptable Solutions or Verification Methods.
112. If a designer chooses not to follow a pre-approved pathway, the obligation falls on the designer to provide sufficient evidence to demonstrate compliance. This could include products certified to overseas standards, but which do not have information how they comply with the New Zealand Building Code.
113. Demonstrating compliance directly with the clause(s) of the Building Code is, by definition, an alternative solution.

### What is MultiProof?

114. A National Multiple-Use Approval (MultiProof) is a statement by MBIE that a set of plans and specifications for a building complies with the Building Code. To be eligible,

an applicant must have the intention and the ability to build an approved design at least 10 times over two years.

115. Under the Building Act, only MBIE can issue MultiProof certificates. Building consent authorities must accept a MultiProof certificate under section 19(1) of the Building Act, however, each consent must be granted individually and include site-specific information. As at 28 February 2024, there were 566 certificates on the MultiProof register.
116. Building consent applications that contain MultiProof approvals have a longer initial processing timeframe (one-off 40 working days for MBIE's MultiProof assessment plus 10 working days for the building consent authority consent) than a typical building consent processed by a building consent authority (20 working days). However, the one-off processing time for MultiProof approval creates efficiencies with multiple use. Once the MultiProof approval is obtained, it can be used as many times as needed, with the shorter 10 working day building consent authority consenting timeframe.

### **What is CodeMark and how does it work?**

117. CodeMark is a voluntary product certification scheme that provides an easily understood and robust way to show a building product or building method meets the requirements of the Building Code. In New Zealand, a CodeMark certificate must be accepted by building consent authorities to show that building products and systems will meet the requirements of the Building Code.
118. CodeMark was developed in 2008 by the Australian Building Codes Board (ABCB), in consultation with the former Department of Building and Housing in New Zealand, Australian State and Territory governments, industry groups and certification bodies. The scheme was developed in response to the increasing integration of the building products market between Australia and New Zealand.
119. Under CodeMark, product certification is carried out by product certification bodies that are accredited by the Joint Accreditation System of Australia and New Zealand (JASANZ). International standards are used as part of the requirements to be accredited as a product certification body under CodeMark.<sup>6</sup>
120. In New Zealand, product certification bodies are also registered with MBIE and the criteria and standards for product certification are set out in regulations and scheme rules under the Building Act (see Regulation 12 of the Building (Product Certification) Regulations 2022).
121. Four private entities currently provide certification services under CodeMark in New Zealand – Bureau Veritas, SAI Global, Global-Mark and BRANZ. The first three of these product certification bodies are based in Australia. All four also operate under CodeMark Australia.

### *Current uptake of CodeMark*

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<sup>6</sup> ISO/IEC 17065: 2012(AU) / 2013(NZ) *Conformity assessment – requirements for bodies certifying products, processes and services.*



122. There are 169 active products on the CodeMark register<sup>7</sup> in New Zealand, and 220 products on the CodeMark Australia register (as at 28 February 2024).
123. There are several reasons why manufacturers of overseas-certified products may choose to use, or not use, CodeMark:
- the use of CodeMark is not mandatory and it can be expensive
  - there are other compliance pathways that manufacturers and suppliers and designers can use to provide evidence to building consent authorities that when those products are used, that work will comply with the Building Code
  - incorporating a CodeMark into a design may require additional evidence that the building as a whole complies with the Building Code.
124. CodeMark is suitable for any building product or method but is particularly beneficial to manufacturers and suppliers of products that are innovative, new to the market, or would have serious consequences if they failed. In the past this has included, for example, membrane roofing and exterior cladding products. However, this level of assurance is not typically required for some common or well-established products that have a good track record and proven in-service performance.
125. Building products with CodeMark certificates are excluded from the recently commenced building product information requirements, which may potentially lead to an increase in CodeMark applications as implementation of these requirements proceeds.

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<sup>7</sup> There are 170 products on the register, but one is suspended.

# Regulatory Impact Statement: Removing impediments to product substitution and variations

## Coversheet

Purpose of Document	
Decision sought:	<i>Final Cabinet decisions</i>
Advising agencies:	<i>Ministry of Business, Innovation and Employment</i>
Proposing Ministers:	<i>Minister for Building and Construction</i>
Date finalised:	<i>14 March 2024</i>
Problem definition	
<p>The current process for seeking a minor variation after a building consent has been granted can be difficult and add unnecessary cost to a build. In addition, the process for making minor changes to pre-approved National Multiple-Use Approval (MultiProof) designs lacks flexibility and can lead to unnecessary cost.</p> <p>There is an opportunity to improve the flexibility of the building consent process under the <i>Building Act 2004</i> and encourage competition for building products by making it clearer what a minor variation to consented plans is. This will avoid amendments to building consents for negligible product or design changes.</p> <p>There is also an opportunity to improve the flexibility of the MultiProof scheme to support applicants and building consent authorities and ensure applicants can still rely on a MultiProof approval when they make a minor change to the approved MultiProof designs. This will support a more efficient building consent process, help to support competition and reduce costs.</p>	
Executive Summary	
<p>The Government is committed to streamlining building consent processes and reducing compliance costs.</p> <p>The National Party’s Better Building and Construction manifesto made a commitment to "streamline the building consent system" and "define 'minor variation' in the <i>Building Act 2004</i> to avoid requiring consents for negligible product or design changes".</p> <p>The Government has also committed to widening “the National Multi-Use Approval (MultiProof) process for new product solutions and building methods”.</p> <p><i>Designs, plans and specifications are crucial to ensuring buildings are healthy, safe and durable</i></p> <p>Good plans, and any drawings or specifications, are key to ensuring the quality of a building project. They are a key part of the building consent application.</p>	

Building consent applications demonstrate to a building consent authority how the proposed building work will comply with the requirements of the Building Code. Building consent authorities grant building consents if they are satisfied on reasonable grounds that the proposed building work will meet the requirements of the Building Code. The builder builds to the plans, and everyone who works on the build should also follow the plans and specifications.

The building consent authority checks that the building work has been done to the consented plans. The plans provide a record of the completed building work for the consent applicant and any future owners of the building.

*The process for making variations after a building consent has been granted could be improved*

Once a building consent has been granted, the applicant may decide to make a variation to the plans and specifications, for example by substituting comparable products due to a shortage of supply, or availability of a lower cost product. There is a process under the Building Act that allows for 'minor variations' to be made without requiring a formal amendment to the building consent. If the variation to the plans and specifications is considered a "minor variation", the variation is simply recorded by the building consent authority in writing. If the change is not considered a minor variation, the applicant is required to apply for an amendment to the building consent (which triggers additional fees).

A minor variation is defined as "a minor modification, addition, or variation to a building consent that does not deviate significantly from the plans and specifications to which the building consent relates" (section 3 of the *Building (Minor Variations) Regulations 2009*). The Regulations include some examples.

The Ministry of Business, Innovation and Employment (MBIE) has issued updated guidance on the wider building consent process and minor variation process, including product substitution. However, the definition of 'minor variation' in the regulations lacks sufficient clarity.

*The process for making changes incorporating a MultiProof design before a building consent has been granted could also be improved*

A MultiProof is a statement by MBIE that a set of plans and specifications comply with the Building Code.

MultiProof helps to fast-track the building consent process through standardised designs pre-approved by MBIE as complying with the Building Code. These approvals can be used multiple times, nationwide.

A customer may request some changes to an approved MultiProof design before a building consent application is made incorporating that MultiProof design. Under section 49 of the Building Act, building consent authorities must assess any 'minor customisation' to ensure Building Code compliance. There is currently no definition of 'minor customisation'. So, any last-minute changes to approved designs outside the MultiProof approval, such as changing a window for a door, should technically require assessment by the building consent authority of the plans under the standard, not fast-tracked building consent process.

Section 7 of the Building Act defines a minor customisation as a “minor modification, addition, or variation to those plans and specifications that is permitted by regulations made under section 402(1)(kc)”.

However, the regulation-making powers (under section 402(1)(kc) in the Building Act) have not yet been used by MBIE to define a minor customisation.

#### *Options to improve variations to building consents and MultiProof*

To remove barriers around product substitution and variations, the following four options (in addition to the counterfactual) have been identified:

- Counterfactual: the initiatives already in progress or recently completed.

#### Minor variations

- Option 1.1: Amend the *Building (Forms) Regulations 2004* to expressly include on the building consent forms a section where applicants can choose to specify suitable alternative products from those they may have listed in the plans and specifications attached to their consent application.
- Option 1.2: Amend section 3 of the *Building (Minor Variations) Regulations 2009* to incorporate aspects of MBIE’s product substitution guidance to clarify what constitutes a minor variation.

#### MultiProof

- Option 2.1: Issue updated MBIE guidance and education material on the MultiProof scheme.
- Option 2.2: Use regulations-making powers under section 402(1)(kc) of the Building Act to define ‘minor customisation’.

#### Combination of the four options as a package

- The combination of all four options provides more clarity and flexibility, promotes competition, improves consumer choice and housing affordability by reducing building costs.

MBIE prefers to progress all four options as a package because it uses a combination of mutually reinforcing or supporting measures to promote competition in, as well as efficiency and flexibility of, the building consent system and building supply market. MBIE’s preferred approach also addresses a recommendation from the 2022 Commerce Commission market study into residential building supplies.

### **Limitations and Constraints on Analysis**

This work was developed in response to the 2022 Commerce Commission market study. It was incorporated into the [review of the building consent system](#) in 2023.

Elements of the analysis that were considered out of scope included:

- building consent authority powers and accreditation (scheme and regulations)
- ending the national multiple-use approvals (MultiProof) or banning product substitution and variations
- determinations
- building product warnings and bans

- Building Code and Building Code System Updates.

The work will not specifically consider matters that have or will be considered by the review of the building consent system or other phases of the Building System Reforms but may identify dependencies or recommend issues for further consideration.

This work has been progressed at pace in response to the Government’s commitment to streamline the building consent system. There was not enough data to estimate the impact of the proposals on housing affordability or the cost of building supplies.

**Responsible Manager(s)**

*Suzannah Toulmin*  
*Policy Manager, Building Policy*  
*Building System Performance*  
*Building, Resources and Markets*  
*Ministry of Business, Innovation and Employment*

*14/03/2024*

**Quality Assurance**

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	<p>An internal quality assurance panel convened by MBIE has reviewed the Regulatory Impact Assessment and considers that the information and analysis summarised in the Regulatory Impact Assessment partially meets the Quality Assurance criteria.</p> <p>While the panel considered that the majority of the paper met the requirements, we note that the Regulatory Impact Assessment noted a possibility that greater flexibility may create risks around product quality and some submitters raised concerns that lower quality products may lead to building failures. The Regulatory Impact Assessment noted that these risks would need to be adequately addressed, and this would be done via the consenting process and a robust legal framework. However, the panel considered there was insufficient detail in the analysis for the panel to be assured that these risks could be appropriately mitigated.</p> <p>13 March 2024</p>

## Section 1: Diagnosing the policy problem

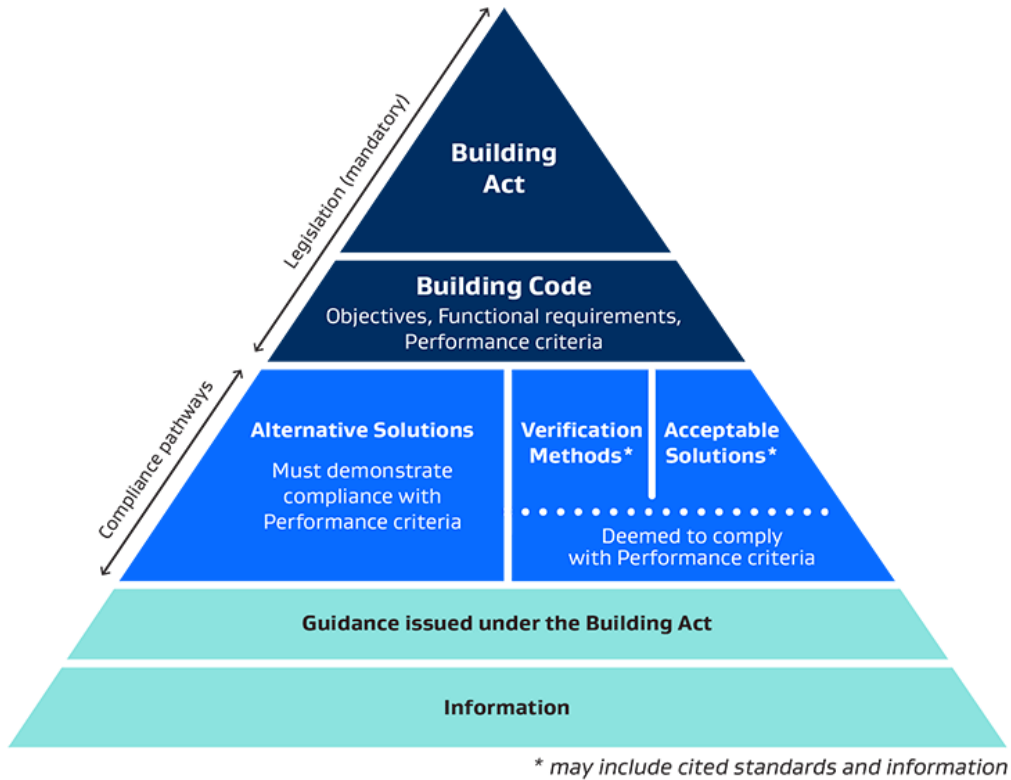
### What is the context behind the policy problem and how is the status quo expected to develop?

1. The current policy settings make it challenging to make minor changes to designs and plans. This leads to increased building consent processing times and cost.

#### Overview of New Zealand's building regulatory system

2. The regulation of all building work in New Zealand sits under a framework consisting of:
  - the *Building Act 2004*
  - Building Regulations (other than the Building Code)
  - the Building Code (also a Building Regulation).
3. The Building Act provides for the regulation of buildings, building work and various occupational groups in the building industry, and the setting of requirements and standards that are intended to ensure good building performance. A key focus of the Building Act is the health and safety of people using buildings.
4. The purpose of the Building Act is to ensure:
  - people can use buildings safely and without endangering their health
  - buildings have elements that contribute appropriately to the health, physical independence and wellbeing of the people who use them
  - people can escape from a building if it is on fire
  - buildings are designed, constructed and used in ways that promote sustainable development.
5. The Building Act stipulates:
  - clear expectations of the standards buildings should meet (Building Code)
  - guidance on how to meet those standards
  - more certainty that specialists and experts design, construct and inspect buildings
  - scrutiny of the building consent and inspection process
  - protection for homeowners through mandatory warranties.
6. The key elements of the building regulatory system for the purposes of this statement also include:
  - the non-mandatory means of demonstrating compliance with the Building Code which are determined by MBIE, being Acceptable Solutions and Verification Methods
  - the standards made by Standards New Zealand or other accredited bodies, some of which are cited by MBIE in Acceptable Solutions and Verification Methods
  - the other means of demonstrating compliance with the Building Code including MultiProof, product certification (CodeMark) and Alternative Solutions
  - the consenting system which includes the building consent processes that are run by building consent authorities.

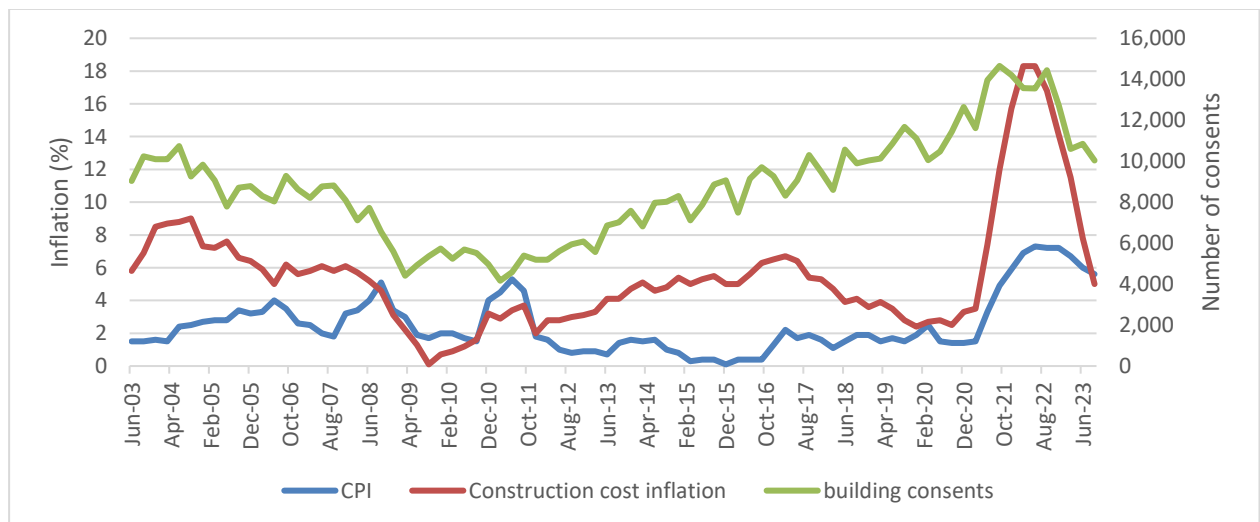
**Figure 1: Building Act/Code regulatory framework**



The building sector faces challenges which has an impact on housing affordability

7. Figure 2 below shows recent trends in construction cost inflation and consent data.

**Figure 2: Rate of inflation (CPI), construction cost inflation, and number of building consent applications, by quarter**



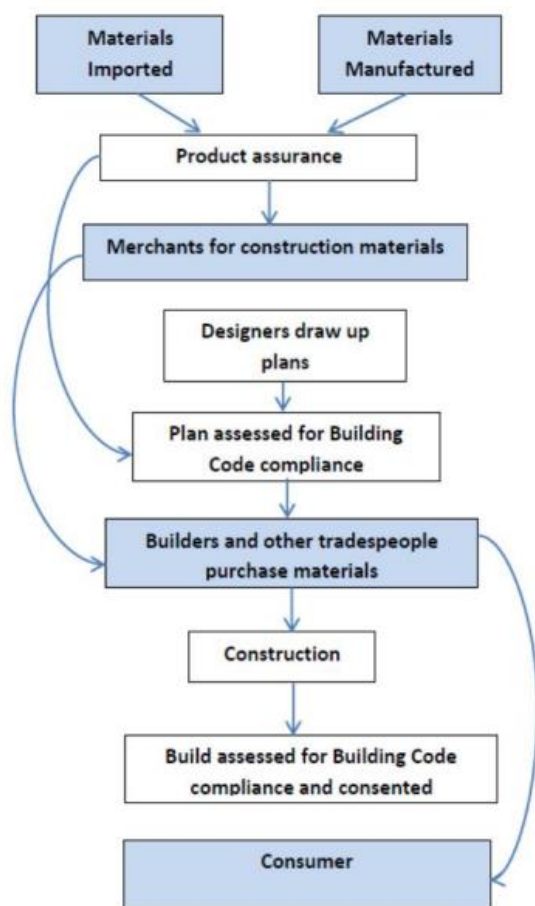
8. Any improvements to the building consent system that increase efficiency and competition, remove time delays, and ensure that building materials are affordable, will help support housing affordability and contribute to an increase in residential building construction.

## Building consents and variations

### *The building consent process*

9. Building consent authorities grant building consents if they are satisfied on reasonable grounds that the proposed building 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 to the application and must meet minimum requirements set out in regulations or as required by the building consent authority. Figure 3 provides an overview of the construction process.
10. The building consent authority must process a building consent application within 20 working days (this timeframe does not include requests for information if the application is lacking evidence of Code compliance, for example). The authority can then grant a building consent, so the building work can start, or reject the application.

**Figure 3: High-level summary of the construction process**



### *Changes to plans after a building consent has been issued by a building consent authority*

11. Once a building consent has been granted, there is a process under the Building Act that allows for 'minor variations' to plans and specifications that does not require a formal amendment to the building consent. This process balances the need to ensure



consenting efficiency and robust decision making to ensure the resulting building will be safe and durable.

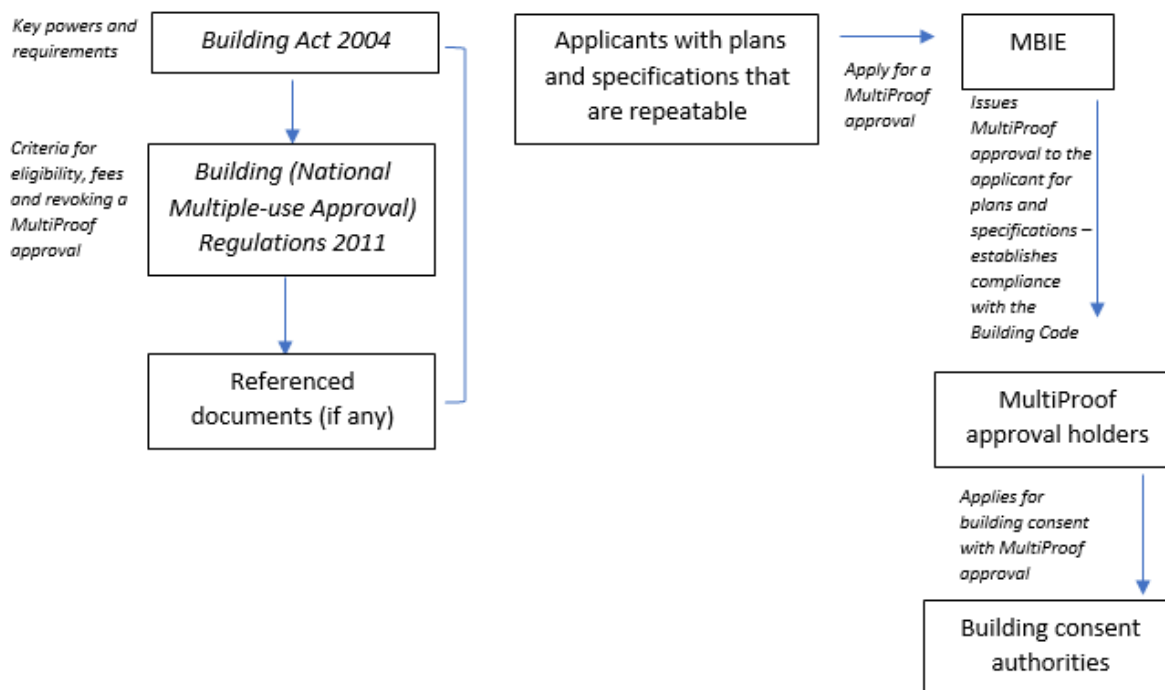
12. Section 3 of the *Building (Minor Variations) Regulations 2009* defines a minor variation as “a minor modification, addition, or variation to a building consent that does not deviate significantly from the plans and specifications to which the building consent relates”. Some examples of minor variations are included in the regulations, such as substituting comparable products.
13. However, the definition and examples lack sufficient clarity for applicants and building consent authorities.
14. 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.

#### *Changes to plans before applying for a building consent that incorporate a MultiProof approval issued by MBIE*

15. The *Building Amendment Act 2009* introduced amendments to the Building Act, including the MultiProof scheme. This received royal assent on 31 July 2009 and came into effect on 31 January 2010. Sections 30A to 30H of the Building Act apply to MultiProof and MBIE’s role as the administrator of approvals. Other sections, such as section 45B, cover changes to plans and specifications that have MultiProof approval.
16. There are separate regulations that govern both MultiProof and minor variations. MBIE’s powers as the administrator of MultiProof fall under the *Building (National Multiple-use Approval) Regulations 2011*.
17. Minor variations span beyond variations to MultiProof – they can apply to all building consents – and fall under *Building (Minor Variations) Regulations 2009*.
18. When MultiProof was first introduced in 2009, approvals were only available for standalone outbuildings (garages, sheds, farm buildings) and standalone or semi-detached houses of up to two storeys. However, the regulations were changed in May 2011, and there are no longer any restrictions on building type or use.
19. A National Multiple-Use Approval (MultiProof) is a statement by MBIE that a set of plans and specifications for a building complies with the Building Code. To be eligible, an applicant must have the intention and the ability to build an approved design at least ten times over two years.
20. Under the Building Act, MBIE has 40 working days to assess and issue a MultiProof approval which can be used multiple times in any or all building consent authority areas. Building consent authorities must accept a MultiProof approval under section 19(1) of the Building Act. Each consent must be granted individually to ensure compliance.
21. Building consent authorities are then required to process a consent application relying on a MultiProof approval within ten working days, instead of the usual 20. As MBIE has already issued a MultiProof approval for the designs, building consent authorities will only need to assess consent applications relying on that approval, following a shorter

processing timeframe, which creates efficiencies over time. Figure 4 provides an overview of how MultiProof works.

**Figure 4: The system for managing MultiProof approvals**



22. MultiProof – like CodeMark (the product certification scheme) and BuiltReady (the modular component manufacturer scheme) – is a voluntary deemed-to-comply pathway for whole building designs.
23. Some variations to the design, such as product substitution, are assessed by MBIE to ensure code compliance and are listed within the MultiProof approval as “permitted variations”. Once MBIE has issued an approval, the MultiProof approval can be included in an application for a building consent.
24. Approval holders can only rely on a MultiProof if they build the design that MBIE has approved, including any design alternatives shown on the approval.
25. A customer may request some changes to an approved MultiProof designs before a building consent application is made incorporating that MultiProof design. Under section 49 of the Building Act, building consent authorities must assess any ‘minor customisation’ to ensure Building Code compliance. There is currently no definition of ‘minor customisation’. Therefore, any last-minute changes to approved MultiProof designs outside of the permitted variations listed under the MultiProof approval, such as putting a window where a door was initially planned, should technically require assessment by the building consent authority of the plans under the standard 20

working day consent process (which would result in higher cost for both applicants and building consent authorities).

26. Section 7 of the Building Act defines a minor customisation as a minor modification, addition, or variation to those plans and specifications that is permitted by regulations made under section 402(1)(kc).
27. MBIE has not yet used the regulations-making powers under section 402(1)(kc) of the Building Act to define 'minor customisation'.
28. As of 15 January 2024, there were 565 approvals on the MultiProof register.

### **Commerce Commission market study into residential building supplies**

29. On 22 November 2021, the previous Government asked the Commerce Commission to carry out a year-long study into whether competition is working well for the residential building supplies sector in New Zealand, and if not, what can be done to improve it.
30. The Commerce Commission published its findings about competition for residential building supplies on 6 December 2022.
31. The Commerce Commission's final report found that competition for residential building supplies was not working as well as it could and made nine recommendations to improve competition for building supplies. Four of these recommendations relate to enhancing the regulatory system, three recommendations relate to supporting sound decision-making, and the final two recommendations relate to strategic business conduct.

### **Current initiatives to support more efficient consenting**

32. Several ongoing or recently completed initiatives can support more efficient consenting and promote competition and innovation, including in response to the Commerce Commission's market study recommendations. These initiatives include:
  - strengthening CodeMark under the Building Act to increase confidence and provide greater oversight
  - convening a Critical Materials Taskforce to advise on key issues with construction materials and provide more responsive intelligence
  - introducing the BuiltReady scheme, which streamlines the consenting process for offsite manufacturing for certified modular component manufacturers. BuiltReady is a deemed to comply pathway
  - introducing Building Product Information Requirements, which commenced on 11 December 2023 and will provide a consistent level of minimum product information, including on how building products can be used to contribute to compliance with the Building Code
  - publishing product substitution guidance to support designers, specifiers, and building consent authorities. This includes guidance on suitable alternative plasterboard products when there were issues with supply of the primary brand
  - increasing reference to international standards in Acceptable Solutions and Verification Methods, which must be accepted by building consent authorities as evidence of compliance with the Building Code

- streamlining the building consent system, including looking at whether competition should be included as an objective of the building consent system, better delivery of building consent services, and alternative consenting and assurance pathways
  - better recognising overseas approvals of building products.
33. In addition, MBIE is also exploring ways to support greater uptake of voluntary product certification (CodeMark). These initiatives will continue unchanged under the counterfactual.
  34. 2022 product substitution research<sup>1</sup> provides a valuable set of quantitative and qualitative data that will enable building consent authorities to be better informed about the way their services are provided. It will also help with MBIE's ability to understand the sector and assist with the delivery of legislative changes, such as the new Building Product Information Requirements that came into effect in December 2023.
  35. Data on how many product substitutions and variations occurred has not been shared by building consent authorities with MBIE. However, the 2022 product substitution research indicates that the key elements that are substituted most often are cladding, interior linings and wall wraps, but also include decking, window joinery, heating and kitchen joinery. These are decisions that often come down to customer's choice.

#### **MBIE is currently reviewing the building consent system**

36. In 2022, MBIE consulted the building sector on the review of the building consent system. The review is still ongoing. The objective of the review 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 Government's commitments to streamline the building consent system and reduce compliance cost.
37. Public consultation on the Building Consent System Review Options Paper began on 22 June 2023, with submissions open for just over eight weeks, until 21 August 2023. A total of 270 submissions were received from a range of submitters across the building and construction sector. The consultation paper included options to remove impediments to product substitution and variations.

#### **What is the policy problem or opportunity?**

38. Current building consent and MultiProof processes help to ensure robust outcomes, including helping to prevent inappropriate product substitutions. However, making minor changes to building designs and plans can be unnecessarily difficult, which can add time and cost.

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<sup>1</sup> Product Substitution Research 2022, EBOSS, MBIE, BRANZ, published online: <https://www.eboss.co.nz/product-substitution-research/latest-research>

### **The process for making variations after a building consent has been granted could be improved**

39. Submitters on both the Commerce Commission's market study and MBIE's Building Consent System Review Options Paper raised concerns with the current policy settings, including:
  - the difficulty and cost related to applying for a minor variation to a building consent
  - the uncertainty and risk related to product substitution when the sector and building consent authorities may not be familiar with the alternative product.
40. The Commerce Commission found that the way the building regulatory system is applied in practice strongly favours familiar products and makes the introduction or expansion of competing products, and the consequent entry or expansion of competing suppliers, difficult. In particular, the regulatory system does not enable timely response to changing markets and innovations in building products and continues to incentivise applicants and building consent authorities to favour familiar building products over new or competing products.
41. 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 substituting products, sticking with known brands that have been proven to get approval.
42. According to the findings of the market study, the behaviours of designers, builders and building consent authorities appear strongly mutually reinforcing. Designers and builders generally choose the path of least resistance (from building consent authorities) when specifying and purchasing key building supplies, given the significant time and additional costs associated with delays in the consenting process. The need to complete jobs on time and with least delay and additional cost, generally prevails over any desire to use new or innovative products. This leads building consent applicants to anticipate products for which building consent authorities might take the shortest time to consider code compliant.
43. There is an opportunity to improve the flexibility of the building consent process under the Building Act and encourage competition for building products by making it clearer what a minor variation to consented plans is to avoid amendments to building consents for negligible product or design changes.

### **The process for making variations incorporating a MultiProof design before a building consent has been granted could also be improved**

44. Submitters on MBIE's Building Consent System Review Options Paper raised concerns about the flexibility of the MultiProof scheme.
45. The MultiProof scheme provides a fast-tracked pathway for builders of standardised designs, including those utilising modern manufacturing methods, to save time and cost on building consent process. The scheme enables MultiProof approval holders to use standardised building designs multiple times, nationwide. However, it does not account for last minute changes or customer preferences, which are often known closer to the time a building consent application needs to be lodged to start the building work.
46. It is unlikely that the MultiProof approval holder knows in advance all the preferences of the final customer. Therefore, MultiProof enable designers and building companies to

get most of the plans and specifications pre-approved by MBIE, but they are likely to need specific design changes to meet what the customer wants. The customisation can therefore consist of a variation to the design, plans and specifications that can go beyond product substitution. For example, a mirror image of a room's layout due to the specific surrounding landscape or to maximise sunlight.

47. Under section 45B of the Building Act, changes may be made to the plans and specifications that rely on a MultiProof approval, if they are permitted variations, or the changes are minor customisations permitted by regulations made under section 402(1)(kc).
48. There is also an opportunity to improve the flexibility of the MultiProof scheme to support applicants and building consent authorities and ensure applicants can still rely on a MultiProof approval when they make a minor change to the approved MultiProof designs. This will support a more efficient building consent process, help to support competition, and reduce costs.
49. The Commerce Commission consider that ensuring the success of schemes, such as MultiProof, will be important to support innovation, enabling building and manufacturing businesses to grow scale and realising the efficiency benefits of more standardisation. They expect this to assist in promoting competition for key building supplies.

#### **The status quo represents a lost opportunity to get significant efficiency gains in consenting**

50. If no action is taken, it is harder than necessary for competing suppliers to obtain the efficiency benefits that can accrue from operating at scale and increasing productive capacity. It also reinforces the market position of established building supplies and methods and existing suppliers of these products.
51. It remains difficult, time consuming and costly to make minor changes to a building consent or approved MultiProof designs, which results in higher building costs.

#### **What objectives are sought in relation to the policy problem?**

52. The primary objective sought in relation to the policy problem is to remove barriers to product substitution and variations when these are minor or negligible changes. Removing these barriers will:
  - promote competition in the building supplies market
  - improve flexibility of the building consent system
  - improve efficiency of the building consent process
  - ensure robust outcomes, including preventing inappropriate product substitutions and design changes to make sure buildings are healthy, safe and durable.
53. These criteria are in line with feedback from submissions MBIE received on the Building Consent System Options Paper.

# Section 2: Deciding upon an option to address the policy problem

## What criteria will be used to compare options to the status quo?

- 54. The criteria used to compare options with the status quo are:
  - Clarity: improve clarity of the rules
  - Flexibility: improve flexibility of substituting building products
  - Efficiency: reduce building consent processing compliance costs
  - Effectiveness: reduce building consent processing time.
- 55. The assessment criteria are generally complementary, but there may be some trade-offs required. For example, high clarity of the rules may come at the cost of greater flexibility (i.e., the rule is too prescriptive). The assessment criteria are weighted equally.
- 56. These criteria are in line with feedback from the submissions that MBIE received on the Building Consent System Options Paper.

Criteria:	Description of Criteria:
Clarity	The regulatory framework has clear rules and responsibilities around variations to plans and specifications for designers, builders and suppliers (including manufacturers, importers, distributors, and retailers) and regulatory bodies (including MBIE and building consent authorities).
Flexibility	It is easy and quick to make changes to plans and specifications, such as using an alternative building product or making minor changes to the plans consented, while ensuring robust Code compliance and minimise the risk of building failure.
Efficiency	The cost, time, and effort to make minor changes to plans and specifications are not overly burdensome. The initial and ongoing financial and resourcing costs for MBIE associated with the proposal are manageable.
Effectiveness	Addresses barriers to making minor changes to plans and specifications while maintaining quality, that will promote: <ul style="list-style-type: none"> <li>• Competition and innovation: The market for building products in New Zealand enables competition between suppliers and new, innovative, and high-quality products that enters New Zealand.</li> <li>• Lower cost and increase choice: The cost of making minor variations to designs and prices of building products are as low as sustainably possible, with the view of reducing the cost of construction, and enabling more consumer choice.</li> <li>• Resilience to supply chain disruptions: The consenting process can rely on the building products market to maintain supply in case of shortages.</li> </ul>

## What scope will options be considered within?

57. The review of the building consent system is an end-to-end review, to better reflect how we build today. It looks at the system from the building design phase through to the issuing of a code compliance certificate.
58. However, while the review is considering how compliance with the Building Code is verified, it does not consider changes to the Building Code itself.
59. The Commerce Commission considered it was not appropriate to prevent brand specification in consent applications as some products will have distinctive performance that is desirable. MBIE agrees with this view. It was also considered inappropriate to terminate the MultiProof scheme. These options were therefore discarded early on.
60. Finally, MBIE proposed to clarify the definition of 'minor variation' in the regulations, by including some of the principles emerging from the product substitution guidance. However, the intention was not to modify the definition of 'minor variation' itself, rather to modify the current Regulations to clarify when changes to the plans and specifications become too significant to still fall within the realm of 'minor variation'.

## What options are being considered?

61. MBIE's preferred approach is to progress all 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 in its final report and submitters to the building consent system review.
62. The total package of initiatives is expected to promote flexibility and competition in the building consent system and building supply market. The combination of mutually reinforcing or supporting options would also be expected to improve the overall efficiency of the building consent system.
63. MBIE's preferred approach addresses recommendation 4 of the 2022 Commerce Commission market study into residential building supplies. The recommendation covered a range of issues, including to:
  - remove impediments to product substitution and reducing the need for consent variations for minor changes to building design
  - explore ways to reduce specification by brand, albeit recognising there may be a need to continue allowing for the possibility that products might be specified by brand
  - expressly allow product substitution options to be included when plans and specifications are lodged with building consent applications (particularly when proprietary systems or products are being specified in designs, such as through amendment to the *Building (Forms) Regulations 2004*)
  - giving stronger direction about what constitutes a 'minor variation' to a building consent (for example, through amendment to *the Building (Minor Variations) Regulations 2009*)
  - increasing flexibility in the MultiProof scheme, by identifying opportunities to amend the MultiProof scheme so that designers can make small changes to designs without 'voiding' the MultiProof approval.



64. Building and construction sector views on MBIE's preferred approach are discussed later in this RIS.

### ***Counterfactual***

65. There is evidence that the regulatory system disincentivises product substitution and variations, which constitutes a barrier to competition and innovation. The status quo is not proposing to progress any option. A review of the efficiency of MBIE's product substitution guidance was completed recently and showed it was successful in supporting the building sector to better understand product substitutions.
66. The *Building (Building Product Information Requirements) Regulations 2022* now require New Zealand-based importers, manufacturers, wholesalers, retailers, and distributors to provide building product users with information about how building products contribute to compliance with the Building Code.
67. Other initiatives, such as mandating product approvals, are likely to improve flexibility of and promote competition in the building consent system.
68. Despite other initiatives, the Commerce Commission's market study clearly identified the limitations of the status quo, as the rules governing product substitution and variations would remain challenging, adding time and cost to applicants and building consent authorities, without realising process efficiencies from schemes like MultiProof.

### **Minor variations to a building consent**

#### ***Option 1.1: Modify building consent forms under the Building (Forms) Regulations 2004 (preferred)***

69. Expressly including a section where building consent 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. Since the option is voluntary, applicants who do not wish to specify alternatives would not incur additional costs (related to researching suitable alternative products).
70. This option would:
- make product substitution easier by reducing the need for amendments to building consents where products are substituted after a building consent is granted
  - help to support competition in building products and more efficient consent processes, which can save time and cost
  - add more weight than guidance alone for designers to consider product considerations when preparing plans and specifications for building consent.

#### ***Option 1.2: Clarify the definition of 'minor variation' under the Building (Minor Variations) Regulations 2009 (preferred)***

71. Modify the definition of a minor variation under the Building (Minor Variations) Regulations to codify aspects of MBIE's product substitution guidance.
72. The clarification would include key elements of MBIE's product substitution guidance, which will help both building consent applicants and building consent authorities to better understand what constitutes a minor variation.
73. This option would:
- make product substitution easier by reducing the need for amendments to building consents where products are substituted after a building consent is granted

- help to support competition in building products and more efficient consent processes, which can save time and cost
- provide more certainty than guidance alone and supports improved consistency of approaches adopted by building consent authorities.

### **Minor customisation for MultiProof**

#### ***Option 2.1: Updated guidance on the MultiProof scheme***

74. MBIE would issue updated guidance and education material on the MultiProof scheme.
75. This would lift 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.
76. Updated guidance would help the sector, applicants and building consent authorities to get a better understanding of the MultiProof scheme, how to get an approval, and how to use an approval to apply for a building consent. It would also clarify the roles of MBIE (who administers the scheme), MultiProof approval holders applying for a consent, and building consent authorities that grant building consent.

#### ***Option 2.2: Make new regulations to define ‘minor customisation’ for MultiProof***

77. New regulations would make product substitution and minor changes easier where plans are modified under a MultiProof approval before applying for a building consent.
78. This would provide certainty that MultiProof approval holders will still benefit from a fast-tracked consenting process when they make ‘minor customisations’ permitted by the new regulations to approved MultiProof designs.
79. The regulations would clearly define what changes in designs (outside permitted variations listed in the approval) are considered minor customisation, which means the applicant will still benefit from a fast-tracked consenting process.
80. The definition of minor customisation would go beyond that of product substitution to include other changes to the design, but within a robust legal framework that ensures Building Code compliance.
81. This would support the uptake of MultiProof and innovation in building products and methods. It would also support competition in building products and enable more efficient (fast-tracked process) consenting processes.

### **Preferred option**

82. MBIE’s preferred approach is to progress the combination of all options as a package: Options 1.1, 1.2, 2.1 and 2.2.

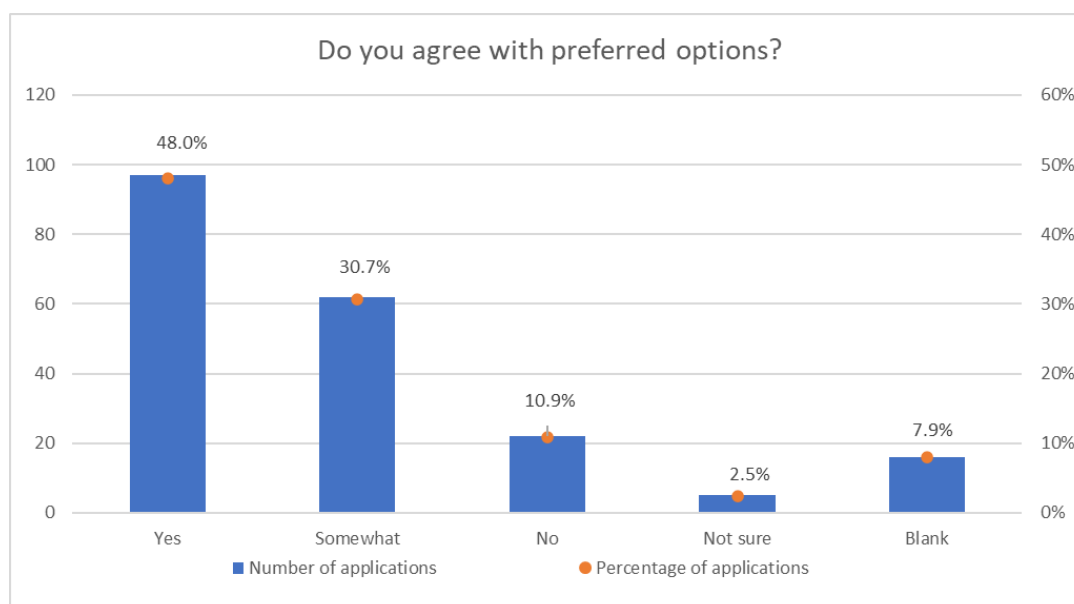
### **Feedback from consultation**

#### **Submitters largely supported MBIE’s preferred approach on its consultation on the building consent system review**

83. Public consultation on the Building Consent System Review Options Paper ran for just over eight weeks, until 21 August 2023. A total of 270 submissions were received.
84. Chapter 3 of the options paper covered the issue of removing impediments to product substitution and variations. MBIE received 202 submissions on this chapter from a

range of stakeholders, with good representation across the building and construction sector.

85. Ninety-seven submitters agreed and 62 somewhat agreed with the preferred approach (Options 1.1, 1.2, 2.1 and 2.2). There were 22 submitters that did not agree.



### Key themes raised by submitters

86. One hundred and twelve submitters – regardless of whether they agree with the preferred approach – commented on the importance of carefully considering the performance of a product when substituting building products.
87. A large number of submissions also raised the importance of having clear guidance alongside clear rules to ensure there is consistency across applicants and building consent authorities as to what constitutes a suitable alternative to a building product.
88. Submitters commented on the key role that clear guidance (79 submissions) plays in clarifying what the rules mean (i.e., legislation and regulations), and how they should be applied by both applicants and building consent authorities (48 submissions asked for clear rules). This includes MultiProof, for which submitters asked for clear guidance and education to raise awareness and understanding of the scheme across the industry and building consent authorities, and for MBIE to create a definition of 'minor customisation' (53 submissions supported both proposed MultiProof options).
89. The themes were similar among submissions that did not agree with options 1.1 and 1.2. These submitters challenged whether the preferred approach would enable building consent authorities to confidently approve a substitution as code compliant and considered that more time was needed to investigate the issues further. They also considered the options were potentially going too far, which could result in cheaper but technically poorer products being substituted and incorporated into New Zealand buildings, which could lead to building failures.
90. Submissions that did not support the preferred options 2.1 and 2.2 also mentioned that the low uptake of MultiProof meant that the proposed options were unlikely to make a difference.

## Feedback from further targeted consultation in early 2024

91. MBIE consulted with key stakeholders between 13 and 23 February 2024 to test the refined regulatory options.
92. The stakeholders included organisations and industry bodies, and some of the larger building consent authorities who are expected to deal with the most complex applications. The consultation asked submitters for their feedback on whether they agreed with the proposals, whether the guidance for minor variations was suitable to refine the definition, and what examples they considered could be included as minor customisations for MultiProof.
93. MBIE received 12 responses. Overall, there was broad support for the proposals.
94. Submitters highlighted the need for clear information and guidance for building consent authorities in handling minor variations and customisations, to ensure accurate and consistent handling across the country. Submitters suggested this could be done by creating guidance for building consent authorities to use, as well as making sure both definitions were clearly defined to aid the application process.
95. Other themes that were raised included:
  - looking wider than just product substitutions in the definitions, with mirror imaging of building designs being used as one example
  - considering potential flow-on effects of allowing certain variations and customisations, such as the effect a minor customisation could have on the drainage in a building.
96. There were a couple of submitters who said that the guidance MBIE has previously published was not wholly suitable to be used to clarify minor variations and that it needed to be modified. However, these submissions tended to reflect the main theme of better guidance being needed for building consent authorities and the sector. One submitter said that there was no need for the amendments and that, for minor variations, not enough time had passed to really know how useful the current process was.

## How do the options compare to the status quo/counterfactual?

Options	Status Quo / Counterfactual	Variation to a building consent		Customisation of MultiProof designs		Preferred approach – Options 1.1, 1.2, 2.1 and 2.2 (Minor variation / MultiProof)
		Option 1.1 – Modify the building consent forms	Option 1.2 – Clarify the definition of minor variation	Option 2.1 – Update the existing MultiProof guidance	Option 2.2 – Define minor customisation in new regulations	
<b>Clarity</b>	0	<p style="text-align: center;">+</p> <p>Makes explicit the use of alternative products in consent applications</p>	<p style="text-align: center;">++</p> <p>Clearer definition of minor variation</p>	<p style="text-align: center;">+</p> <p>Clarifies how the scheme works, how to obtain an approval and apply for a consent</p>	<p style="text-align: center;">++</p> <p>Provides a clear definition of design changes that are deemed minor customisation</p>	<p style="text-align: center;">++ / ++</p> <p>Clarifies the definition of minor variation and clearly defines what a minor customisation is</p>
<b>Flexibility</b>	0	<p style="text-align: center;">++</p> <p>Supports applicants to specify suitable alternative products</p>	<p style="text-align: center;">++</p> <p>Makes it easier to identify alternative material that applicants want to use</p>	<p style="text-align: center;">0</p>	<p style="text-align: center;">++</p> <p>Makes it easier for builders to customise the designs, going beyond product substitution</p>	<p style="text-align: center;">++ / ++</p> <p>Makes it easier to make variations to consented plans and customise MultiProof designs</p>
<b>Efficiency</b>	0	<p style="text-align: center;">+</p> <p>Some efficiency gains</p>	<p style="text-align: center;">++</p> <p>Avoids consent applications for negligible or minor changes which reduces costs</p>	<p style="text-align: center;">+</p> <p>Leads to the building sector having a greater understanding, some gains via improved quality of applications and reduced compliance cost</p>	<p style="text-align: center;">++</p> <p>Fast-tracked consenting process</p>	<p style="text-align: center;">++ / ++</p> <p>High-quality applications by applicants that understand the rules and processes, combined with a fast-tracked consenting</p>

<b>Effectiveness</b>	0	<p style="text-align: center;">+</p> <p>Moderate gains, possible decrease in brand specification in consent application</p>	<p style="text-align: center;">++</p> <p>Promotes competition, innovation and consumer choice, resilient system that still ensures builds are safe and durable</p>	<p style="text-align: center;">+</p> <p>Raises awareness and attractiveness of the scheme</p>	<p style="text-align: center;">++</p> <p>Resilient process that encourages competition and innovation, and adapts to market supply fluctuations</p>	<p style="text-align: center;">++ / ++</p> <p>Resilient process that promotes competition and innovation, and adapts to market supply fluctuations, while still making sure buildings are safe and durable</p>
<b>Overall assessment</b>	0	<p style="text-align: center;">+</p> <p>The option provides more flexibility and promotes competition by encouraging inclusion of alternative brands or products. However, the rules would remain unclear around what a minor variation is</p>	<p style="text-align: center;">++</p> <p>Promotes competition and innovation, and supports an efficient building consent system that enables applicants to make minor changes to consented plans, while ensuring robust outcomes</p>	<p style="text-align: center;">+</p> <p>Moderate gains from updating the existing guidance and advertising the new one</p>	<p style="text-align: center;">++</p> <p>MultiProof approval holders have been asking for a definition, to enable them to finalise the design to meet their customer's preferences and the market's available supply</p>	<p style="text-align: center;">++ / ++</p> <p>The combination of the options provides more clarity, flexibility, promotes competition, improves consumer choice and housing affordability and reduces building costs</p>

**Key for qualitative judgements:**

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

- 97. While current processes help to ensure robust outcomes, including helping to prevent inappropriate product substitutions, there is scope for improvement.
- 98. MBIE’s preferred approach is to progress the combination of all options as a package: Options 1.1, 1.2, 2.1 and 2.2
- 99. The package would make the process for product substitutions and variations to consented building work and approved MultiProof designs more effective and efficient to support the desired outcomes for the building consent system.
- 100. There was strong support for the preferred approach from the building sector, during consultation:
  - Building Consent System Review Options Paper: over 75 per cent of submitters agreed or somewhat agreed with the preferred approach.
  - Targeted consultation: MBIE received 12 responses, which indicated broad support for the preferred approach.
- 101. Changing regulations is not a quick process, so options 1.1, 1.2 and 2.2 would not address immediate issues.
- 102. Where applicants choose to use option 1.1, there could be additional upfront costs for applicants and building consent authorities processing the building consent (e.g., additional research and paperwork costs).
- 103. Guidance alone (option 2.1) may not be sufficient to address all the issues raised regarding the flexibility of the MultiProof scheme. But changing regulations (2.2) is not a quick process, so would not address any immediate issues.
- 104. Greater flexibility (options 1.2 and 2.2) may potentially create risks around quality and these risks would need to be adequately addressed (via the consenting process, ensuring robust outcomes for buildings to be safe and durable).
- 105. The MultiProof scheme seeks to facilitate standardised designs. If minor customisation (option 2.2) is extended too far, there is a risk that this intent could be undermined.

**What are the marginal costs and benefits of the option?**

**Figure 5: Impact of the preferred approach**

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (egg, compliance rates), risks.</i>	<b>Impact</b> <i>high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	Ongoing. It is expected limited additional compliance cost will be put on the building and construction sector.	Low	<i>Medium to High</i> Positive feedback on MBIE’s product substitution guidance and strong support from the consultation on the Building Consent System Options Paper
Regulators	Ongoing. No additional resources needed	Low	<i>High</i> MBIE was already working on progressing the options as part of the response to the

			Commerce Commission's market study and the review of the building consent system.
Others (consumers)	Housing cost	<i>Low</i>	<i>Medium to High</i> Strong support from the consultation on the Building Consent System Options Paper
<b>Total monetised costs</b>		-	
<b>Non-monetised costs</b>		<i>Low</i>	
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	Applicants and building consent authorities expected to identify minor variations and substitute products more easily	<i>High</i>	<i>Medium-High</i> More clarity of the rules around minor variation and minor customisation will provide more certainty to both builders, designers and specifiers, and building consent authorities
Regulators	We may see less determinations related to product substitution and variations. The changes could make the MultiProof scheme more attractive, which would lead to MBIE having to assess more MultiProof applications.	<i>Medium</i>	<i>Medium</i> It is not possible to estimate the impact of the proposal on uptake for the MultiProof scheme and trend in determinations.
Others (consumers)	Consumers likely to see reduced costs as more affordable, compliant products can be substituted more easily. New building material suppliers more likely to enter the New Zealand market and grow, while smaller existing suppliers more likely to expand their business.	<i>High</i>	<i>Medium</i> Refer to the problem definition and the Commerce Commission's comments regarding regulatory barriers and behavioural challenges. These changes are likely to influence applicants and building consent authorities' behaviours and make it easier to substitute similar building products.
<b>Total monetised benefits</b>		-	
<b>Non-monetised benefits</b>		<i>High</i>	



## Section 3: Delivering an option

### How will the new arrangements be implemented?

106. Updated MBIE guidance for MultiProof is expected to be published by end of the first quarter of 2024.
107. New guidance is expected to be published alongside the proposed regulations.
108. The *Building (Forms) Regulations 2004* have not been changed for some time. It is likely that different ways will be explored to expressly specify in the forms suitable alternative building products. Other changes to update the forms may also be needed to ensure they are fit-for-purpose.
109. At this stage, progress on the regulatory changes to clarify the existing definition of minor variation and to define minor customisation has been prioritised. MBIE will be looking at building consent forms once policy decisions have been made on other proposals. Clarification of the definition of ‘minor variation’ and definition of ‘minor customisation’ will be for builders, designers, specifiers – through their building applications and applications for a minor variation – and building consent authorities – through their assessment and processing of the building consent applications – to implement.
110. Under section 45A of the Building Act, a builder, designer, or specifier must apply for a minor variation to a building consent. It is not necessary to comply with the prescribed forms of the consent application under section 45, but it must comply with some of the other applicable requirements under section 45 of the Building Act. If granted, the building consent authority must record the minor variation in writing but does not need to amend the building consent itself.
111. Under section 49 of the Building Act, a building consent authority needs to assess whether the change is a minor customisation. Under section 45(1)(ba) of the Building Act, if a national multiple-use approval has been issued in relation to some or all the plans and specifications required, the application for a building consent must be accompanied by a copy of that national multiple-use approval and details of any proposed minor customisations.
112. Previous product substitution guidance has been helpful to both building consent applicants and building consent authorities. These new regulations will similarly be supported by guidance and educational material published by MBIE. This material will support greater understanding of what constitutes a minor variation, and what constitutes a minor customisation.
113. MBIE is likely to see some cases of product substitution as part of its determinations function. However, implementation is largely going to rest with building consent authorities.
114. To support the proposal, MBIE will issue new guidance to help applicants and building consent officers understand how the changes will work in practice. MBIE will launch a campaign once the changes are announced, which is likely to include webinars and website content to inform the sector on what the changes mean.

### How will the new arrangements be monitored, evaluated, and reviewed?

115. Timeframes for building consent and/or code compliance certificate approval provide one indicator for the performance of the building consent system. MBIE understands

that building consent authorities and the building sector have concerns about delays associated with requests for information (and waiting for a response) and wait times for inspections.

116. MBIE currently does not have good information on the reasons for these and notes that it is difficult to draw conclusions about how these issues relate to:
  - the maturity of the sector (e.g., poorly prepared applications or non-compliant work at time of inspection)
  - issues within building consent authorities (e.g., risk adverse consenting staff).
117. MBIE is aware of these issues and is actively considering opportunities to better monitor and understand them.
118. The Building Consent System Review identified that better performance monitoring and information would enable MBIE to show stronger system stewardship by using system insights to proactively respond to changes and address problems as they emerge.
119. MBIE is currently identifying how to best act on these findings.
120. Establishing a more regular way of recording and publishing consenting data is an important first step in the Government program of streamlining the building consent system. Reporting consistent data ensures greater transparency and allows the Government, building consent authorities, and the wider building sector to see where there is greater need in the system and adapt accordingly.
121. MBIE has initiated a building consent authority data pilot with a small group of building consent authorities. This has revealed the complexity of collecting data on building consent authorities' activity especially for those that have less advanced software solutions.
122. This increase in performance monitoring will be funded by the building levy.
123. The Minister for Building and Construction has sought Cabinet approval for MBIE to instruct building consent authorities to report some key information and to develop a plan to improve building consent authorities' monitoring.