



COVERSHEET

Minister	Hon Chris Penk	Portfolio	Minister for Building and Construction
Title of Cabinet paper	Building Consent Authority Structural Reform	Date to be published	24 October 2024

List of documents that have been proactively released		
Date	Title	Author
September 2024	Building Consent Authority Structural Reform	Office of the Minister for Building and Construction
11 September 2024	Building Consent Authority Structural Reform ECO-24-MIN-0192 Minute	Cabinet Office

Information redacted

YES / NO

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Some information has been withheld for the reasons of confidential advice to government and free and frank opinions.

[In Confidence]

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

Building Consent Authority structural reform

Proposal

- 1 This paper seeks agreement to investigate options to reform New Zealand's 67 Building Consent Authorities (BCAs) to improve consistency, certainty and efficiency in the building consent process.

Relation to government priorities

- 2 This proposal supports the Government's plan to Rebuild the Economy and Going for Housing Growth.

Executive Summary

- 3 New Zealand has 67 BCAs enforcing a single national building code. This means there can be up to 67 different approaches to assessing building consents.¹ This structure leads to confusion and frustration in the construction sector, as well as inefficiency and delays.
- 4 Structural reform is justified to address the issues with the building consent system and improve economies of scale to allow more efficient use of resources and infrastructure.
- 5 This paper seeks agreement to investigate BCA structural reform to drive consistency, certainty, and efficiency, and make it easier for people to build. Any changes will also support the outcomes of the legislative purpose of the building regulatory system that buildings are healthy, safe, and durable.
- 6 Before publicly consulting on this proposal, this paper proposes a round of policy work, including targeted engagement with stakeholders, to design the details of the system. Following this design work, I intend to come back to Cabinet to seek agreement to consult on concrete proposals for a new BCA structure, and how we get there. Targeted engagement may surface alternate options, and these will be considered in future papers.

¹ While councils may take similar approaches to assessing compliance, the fragmentation means that in practice each BCA sets its own risk appetite, inspection schedules, fee structures and independently approves novel, unfamiliar or uncommon building products and practices.

Background

- 7 Before construction, applicants must be granted a building consent – certifying that their plans will result in a building that complies with the New Zealand Building Code. The Building Code is a national, performance-based set of rules which sets out how buildings must perform. There are few regional differences in the Building Code. The building is inspected at multiple points during construction to confirm it matches the approved plans, before being granted a Code Compliance Certificate on completion.
- 8 The Building Act 2004 delegates the power to approve building consents to Building Consent Authorities (BCAs). There are 67 BCAs: 66 city, district and regional councils (Territorial Authorities, TAs) and Consentium (a division of Kāinga Ora). A BCA must be satisfied on reasonable grounds that a proposed building will comply with the performance requirements of the Building Code before issuing a building consent.

The structure of the building consent system is causing issues

- 9 Construction sector representatives have frequently told me that the structure of our building consent system is making it harder to build in New Zealand. The difficulty of building in New Zealand leads to poor productivity, harming the economy and the government's efforts to address the housing crisis. In the 2023 Building Consent Review consultation, the building and construction sector strongly supported improving consistency of consent services at a national level.
- 10 Each of the 67 BCAs has its own interpretation of what is required to prove compliance, because New Zealand's performance-based Building Code means there are few hard and fast rules. The performance-based regulatory system is meant to allow innovation and competition, but in practice its fragmentation and inconsistent interpretation has created uncertainty and inefficiency.
- 11 There is a high level of inconsistency and uncertainty about what building solutions will be accepted and what evidence is required, and from whom, to prove that they comply. This leads to an inefficient, expensive and frustrating back-and-forward between applicants and BCAs. Every request for more information adds cost, delays and complication which makes it harder to build.

The structure of the consenting system is inhibiting innovation

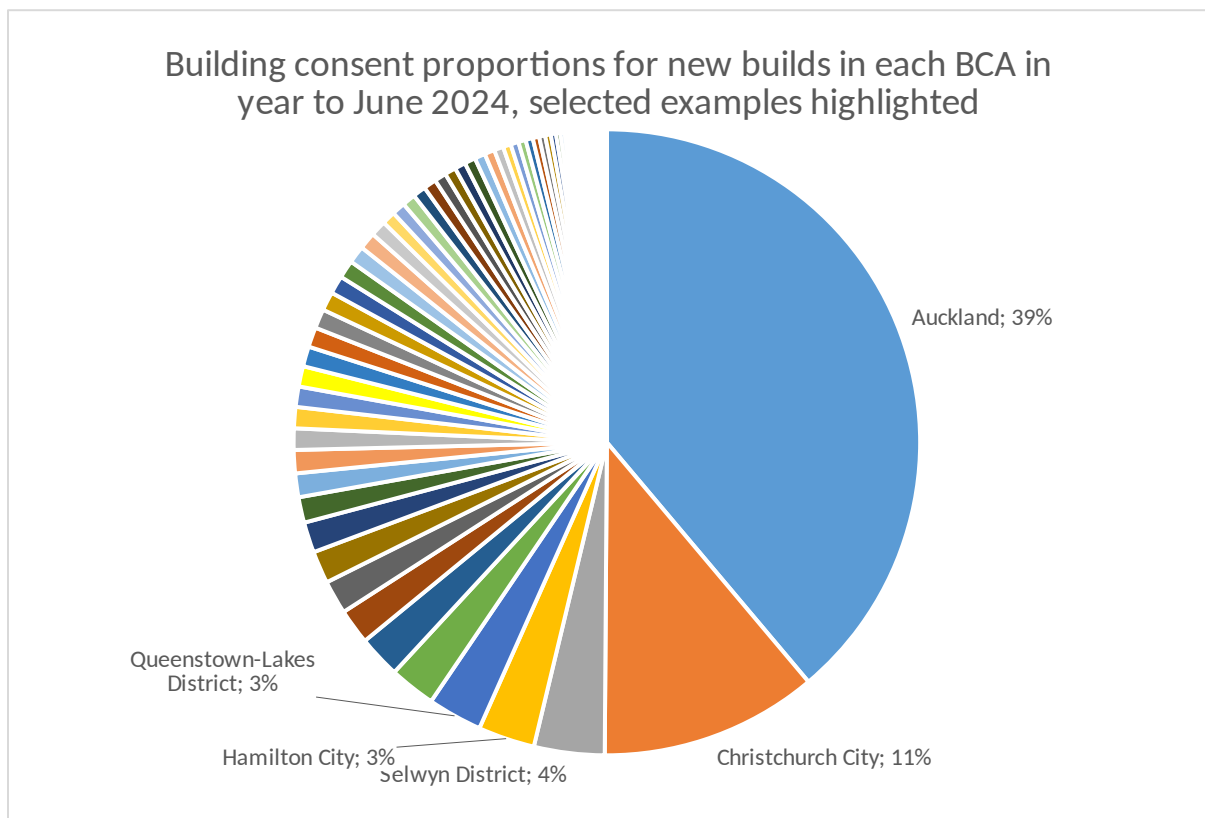
- 12 This is particularly bad for novel materials and construction techniques, where there is great uncertainty about what will be accepted, which stifles innovation. Some BCAs have a very high burden of proof (such as requiring independent testing or engineering peer-review) before they will accept that a novel design complies. This is made worse because innovative solutions must be approved by each BCA independently.
- 13 Despite a performance-based Building Code, the industry relies on prescriptive deemed-to-comply solutions such as CodeMark, Acceptable Solutions, BuiltReady and MultiProof. These pathways, while not the most efficient, are attractive because there is certainty that they will be accepted by BCAs.

14 I have heard that councils and builders also feel prevented from adopting an appropriate risk appetite by current settings. They tend to rely overwhelmingly on existing familiar products and compliance pathways, which further stifles innovation and can prevent new products from being widely adopted.

Many BCAs are too small to efficiently and effectively deliver their functions

15 The structure of the building consent system is also contributing to longstanding capacity and capability issues. Capacity and capability, particularly for increasingly common complex builds, is spread thinly across the 67 BCAs and this is affecting the performance of the consent system and outcomes. In the 2023 Consent Review consultation there was strong support for boosting capacity and capability with more coordination and joined-up service delivery.

16 Building consents are highly unequally distributed between BCAs. In the year to June 2024 the largest BCA (Auckland) processed 14,412 consents for new buildings and the smallest (Kawarau district) processed two. The five largest BCAs make up approximately 60 per cent of new building consents and the smallest half make up just 8.5 per cent. In the year to June 2024, most BCAs processed fewer than one consent for a new building each business day.



17 International Accreditation New Zealand (IANZ), which accredits BCAs, has raised concerns that many do not have the scale and critical mass to achieve sustainable funding models and deliver their functions long-term. Smaller Councils have reported relying on ad hoc expensive external specialists to deliver core business tasks, like engineering advice.

- 18 This is exacerbated by the high cost of BCA accreditation. It is not appropriate to continue to require small rural councils to maintain the capacity to consent large, complex, once-in-a-generation buildings like stadiums, hospitals, and airports. The 2021 review of building consent authority accreditation found that most two-yearly accreditation assessments cost between \$20,000-\$40,000.

Structural reform to the building consenting system is required to address these issues and improve economies of scale to allow more efficient use of resources and infrastructure.

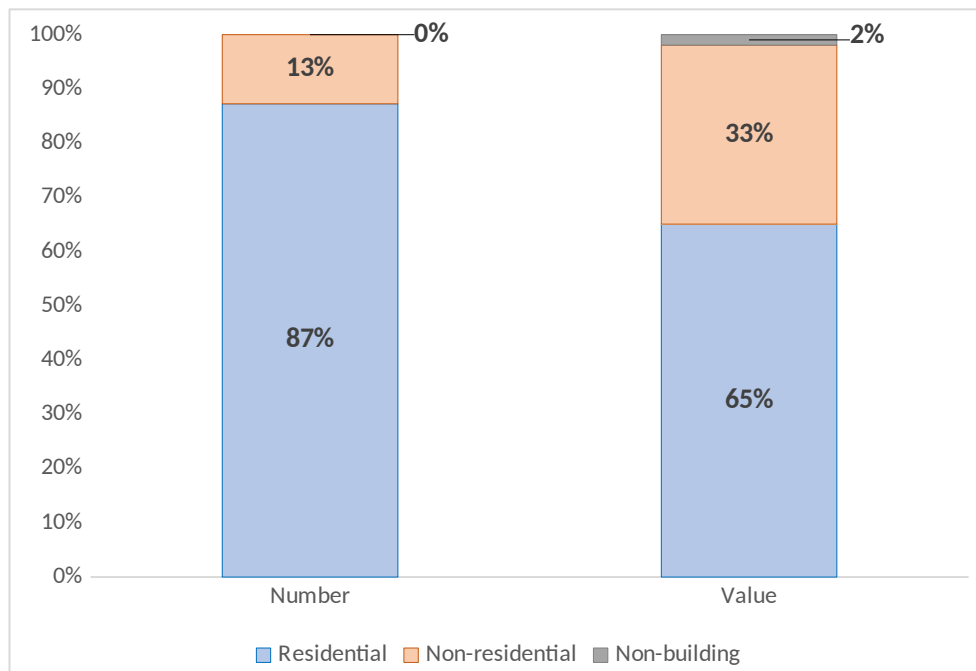
- 19 BCA consolidation will drive consistency in how building consents are processed and assessed and generate economies of scale which will result in increased efficiency for homeowners, builders and designers. Making consistent decisions about whether a building complies with the Building Code will give designers and builders certainty to explore innovative products and solutions. A single, national BCA will also be more responsive to Government direction and adopt a more appropriate risk appetite.
- 20 When officials last investigated BCA structural reform in 2014, they also recommended structural reform was justified. The business case done at that time investigated a number of proposals, including a single, national BCA, regional models and separate specialised centres of excellence.

I propose investigating three options for structural reform

- 21 This paper seeks agreement to investigate options to consolidate New Zealand's 67 BCAs. Options will include a single national BCA, facilitating voluntary consolidation and amalgamation into regional consenting authorities.
- 22 A single national BCA would deliver the highest level of consistency and certainty for the construction sector but require the most change to implement. It could have regional hubs or centres of excellence, and would ensure the same standards apply to building consents nationwide. If the single BCA was a Crown entity, the Crown entity accountability framework would give the responsible Minister increased ability to drive improved outcomes.
- 23 Voluntary consolidation would focus on removing barriers to TAs transferring their powers – in whole or in part – to non-TA third parties, Confidential advice to Government, or private consenting services providers. This approach is similar to the Government's Local Water Done Well by allowing councils to group together and pool resources, skills and expertise. However, because these voluntary clusters will still be making independent decisions and may not necessarily be made up of adjacent councils, it may still lead to inconsistent implementation and outcomes.
- 24 A regional model would involve driving the consolidation of the current 67 BCAs into larger entities with the critical mass to drive economies of scale. The outcomes of a regional model will be influenced by how many regions there are, and whether the regional entities are owned by Councils or the Crown. It would not achieve the consistency and certainty of a single national BCA, but may improve the situation for designers, developers and builders that currently work across multiple BCAs.

- 25 All three options for consolidation will encourage standardisation of procedures, standards and policies. This will drive consistency, certainty and efficiency in building consent process. It will also mean applicants will face increasingly similar experiences when submitting applications. They will help BCAs achieve critical mass to achieve sustainable funding models, and greater economies of scale.
- 26 Alongside consolidation, officials will investigate opportunities for BCAs to be able to contract out consenting services to private consenting services providers. Consenting services could include:
 - 26.1 assessing applications
 - 26.2 inspections
 - 26.3 specialist engineering advice, such as structural and fire engineering services.
- 27 Specialist consenting services providers will also be able to respond to commercial consents. While non-residential consents make up 13 per cent of the total number of consents by, they make up approximately a third by value².

Building consents by number and value in the year to May 2024



- 28 Both councils and private entities could decide to become consenting service providers. By increasing competition into consenting services, I expect the consenting system to become more efficient with faster processing times and lower prices.
- 29 On 25 June 2024 Housing Ministers backed this proposal. They supported bringing a paper to Cabinet seeking agreement to further investigate BCA structural reform.

² 'Non-building' are works that require building consents but are not buildings, such as retaining walls and swimming pools. Many civil engineering works, such as roads, require resource consents but not building consents, so are excluded from this data.

BCA structural reform will involve reconsidering liability

- 30 Currently, all parties involved in the building and consenting process (e.g., property developers, designers, engineers and BCAs) can be liable to pay damages if they are negligent in performing their functions, and their negligence causes building defects and consequential loss to owners.
- 31 The sector has concerns that some liable parties may avoid accountability for defective building work (e.g., through insolvency), leaving BCAs liable for more than their share of responsibility and cost when they are found liable for building failure. I have heard concerns that this creates problems including:
- 31.1 Ratepayers footing the bill for faulty construction methods, materials, or other negligence when other defendants are absent.
- 31.2 BCAs adopting an extremely conservative approach to managing risk in the consenting process due to the risk of being left as the ‘last man standing’.
- 32 BCA structural reform is likely to result in a substantial shift in liability away from councils, which is expected to help address these issues.
- 33 Reforms are already underway to reduce the amount of decision making and checking BCAs need to do, which will reduce its liability and that of consenting services providers. These reforms include increased deemed-to-comply options, recognising overseas product standards and certifications, self-certification, changes to producer statements, and risk-based consenting (including potentially removing the need for consenting entirely for Granny Flats and other similar structures up to 60 m²). These reforms will shift liability away from BCAs and are expected to work well with consolidated models.
- 34 The Government could also consider changes to the liability settings as part of the BCA structural reform. While this has been considered several times previously – with each review recommending that “joint and several liability” be retained, as it provides the best protection for building owners – this is the obvious point to consider such related reform. If a single national BCA model is adopted, for example, the extent of liability for the entity commissioned to undertake the work could be clearly set out.
- 35 It may be that the net effect of reforming the BCA structure and liability settings will be that less liability is borne by local or central government than the full amount under the current “joint and several liability” reality. If so, greater responsibility and onus would rest on building practitioners, backed as necessary by other risk allocation mechanisms. I intend to bring a paper to Cabinet next week that seeks agreement to undertake work to ensure that occupational regulation and consumer protection measures are fit for purpose to support future change in the consenting system, including changes to institutional arrangements.

More work needs to be done on the role of territorial authorities

- 36 As well as being BCAs, councils are also territorial authorities (TAs). The Building Act 2004 (and other Acts such as the Health Act 1956 and the Local Government Act 2002) directly give TAs building control powers separate to their BCA powers. Powers currently delegated directly to TAs rather than BCAs include:
- 36.1 issuing certificate of acceptance, building consents subject to waivers or modifications of the building code, and discretionary building code exemptions
 - 36.2 enforcing notices to fix where a responsible authority³ has identified noncompliant building work
 - 36.3 managing building safety after construction is complete including the building warrants of fitness scheme, authorising changes of use, pool barrier enforcement and responding to dangerous, insanitary, or earthquake-prone buildings
 - 36.4 requirements to maintain and keep available any information required to administer the Building Act, including plans, details of the land, approvals and certificates as well as details of any complaints alleging breaches of the Act.
- 37 More work needs to be done to determine which powers should stay with councils and which powers should be moved to new BCA entities. There may also be an option for all powers to be centralised to new BCA entities and then contracted out to consenting services providers, including councils.
- 38 Officials will also consider wider impacts on local government. This will include local government financing. Currently, councils rely on the power to withhold final code compliance certificated to compel people to pay development contributions that cover the infrastructure needed by new buildings. On the other hand, reducing the degree of liability for potentially defective building works that is currently borne by councils (as BCAs) should improve their financial position to that extent.

This will be a substantial reform

- 39 The overall costs and benefits of this proposal need to be considered carefully, including through engagement. While there are clear potential benefits to a more centralised model, good design will be necessary to ensure those benefits are maximised.

³ A BCA, TA, or regional authority

40 Changing the BCA structural model requires substantial legislative and implementation changes and is likely to be disruptive to the regulatory system and local government. Previous advice on this issue has recommended a phased approach to rolling out any significant structural change to the consent system. Confidential advice to Government

[Redacted]

41 Officials will ensure that policy changes to deliver BCA structural reform leverage the wider programme of consenting system improvements already underway. The wider improvements that will help to pave the way for any longer-term direction include:

41.1 Work underway to increase the uptake of remote visual inspections which will allow for more consenting to be done outside of the building locality, opening the door to specialised consenting service providers.

41.2 Building consent exemptions for granny flats, self-certification, producer statements, and mandating approval for international products which will each establish single, nationally consistent ways of approaching specific areas where BCA inconsistency is particularly challenging and reducing the number of decisions needed by BCAs.

42 **Confidential advice to Government**

[Redacted]

Implementation

43 This paper seeks agreement to commence targeted engagement with key stakeholders, including with councils, to develop the details of the options for new BCA structures. This engagement will also discuss how best to phase the introduction of any new structure to minimise disruption.

44 Targeted engagement will focus on how to design a successful system, including liability and risks for the Crown, impacts on consumers, costs and regulatory alignment. It will help officials weigh up competing options, including what role private insurance can play, to ensure it is the best way to deliver consenting services in New Zealand.

45 I intend to bring a paper to Cabinet in early 2025 seeking agreement to consult formally on proposals for BCA structural reform.

Cost-of-living Implications

46 There are no direct cost-of-living implications arising from this paper.

Financial Implications

47 There are no direct financial implications arising from this paper.

48 The financial implications of BCA structural reform, including changes to liability held by the Crown, will be considered and outlined in future Cabinet papers.

Legislative Implications

49 There are no direct legislative implications arising from this paper.

50 Delivering BCA structural reform will likely require legislative change. It may also require authorising legislation if a new entity needs to be established. Legislative implications will be considered and outlined in future Cabinet papers.

Impact Analysis

Regulatory Impact Statement

51 A Regulatory Impact Statement is not required at this stage.

Climate Implications of Policy Assessment

52 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

53 There are no population implications arising from this paper.

Human Rights

54 There are no Human Rights implications arising from this paper.

Use of external resources

55 No external resources were used in the preparation of this paper.

56 MBIE consulted with its Building Advisory Panel to contribute to this paper. The Building Advisory Panel is a statutory board required by the Building Act 2004 that provides independent strategic advice on building policy. It is made up of representatives from local government and the construction sector.

57  Free and frank opinions

Consultation

58 This paper involved consultation with the Ministry for Regulations, Treasury, National Emergency Management Agency, Ministry of Health, Department of Internal Affairs, New Zealand Infrastructure Commission, and the Ministry for Housing and Urban Development.

Communications

- 59 With Cabinet's agreement it is my intention to begin targeted engagement with key stakeholders and sector representatives to refine options.
- 60 I will issue a media statement prior to targeted engagement commencing, setting out the Government's vision for the future of building consent authorities.
- 61 Once detailed policy work is complete, I will seek Cabinet's agreement to release a discussion document on the proposals for BCA structural reform for public consultation in early 2025.

Proactive Release

- 62 I intend to release this Cabinet paper proactively, subject to redaction as appropriate under the *Official Information Act 1982*.

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **Note** that New Zealand's current fragmented building consent system is leading to inconsistency, uncertainty and inefficiency, which makes it harder to build
- 2 **Note** that I consider structural reform is justified to address these longstanding issues
- 3 **Agree** that I investigate options to reform BCA structure to drive consistency, certainty and efficiency in the building consenting system
- 4 **Agree** that I commence targeted engagement on how to deliver consistency, certainty and efficiency in the building consenting system through structural reform
- 5 **Note** that such proposed building system reforms will affect the way in which liability for building defects is apportioned and it will be appropriate to consider questions of liability as a related area of possible reform
- 6 **Agree** that I report back to Cabinet in early 2025 to seek agreement to consult publicly on detailed policy proposals for building consent authority structural reform
- 7 **Note** that transitioning to a new structure for the building consent system will involve at least some disruption and costs, and that officials will provide more advice on this when reporting back to Cabinet.

Authorised for lodgement.

Hon Chris Penk

Minister for Building and Construction