

Consultation submission form

REVIEW OF THE BUILDING CONSENT SYSTEM: OPTIONS PAPER

June 2023



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How to make a submission

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

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

How to make a submission

MBIE seeks written submissions on this options paper by 7 August 2023.

Your submission may respond to any or all of the questions in this options paper. Please provide comments and reasons explaining your choices. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Your feedback will help to inform decisions on options that should be progressed in the next phase of the review, the detailed design of those options, and valuable feedback on options that require further consideration.

You can submit this form by 5pm, Monday 7th August 2023 by:

- Sending your submission as a **Microsoft Word document** to building@mbie.govt.nz
- Mailing your submission to:

Consultation: Review of the Building Consent System
Building System Performance
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473

Wellington 6140
New Zealand

Please include your contact details in the cover letter or e-mail accompanying your submission.

Alternatively, you can respond to the questions by using this [online survey form](#).

Please direct any questions that you have in relation to the submissions process to building@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process and will inform advice to Ministers on the review of the building consent system. We may contact submitters directly if we require clarification of any matters in submissions.

Release of submissions on MBIE website

MBIE may upload copies of submissions received to MBIE's website at www.mbie.govt.nz.

MBIE will consider you to have consented to uploading your submission unless you **clearly specify** otherwise in question E, below.

If there are *specific* pieces of information within your submission that you do not wish us to publish for privacy or commercial reasons, please **clearly mark** this in your submission.

Release of information under the Official Information Act

The *Official Information Act 1982* specifies that information is to be made available upon request unless there are sufficient grounds for withholding it. If we receive a request, we cannot guarantee that feedback you provide us will not be made public. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.

In addition to the instructions above on releasing submissions on the MBIE website, please explain clearly in question E which parts you consider should be withheld from official information act requests, and your reasons (for example, privacy or commercial sensitivity).

MBIE will take your reasons into account when responding to requests under the *Official Information Act 1982*.

Private information

The *Privacy Act 2020* establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Submitter information

Please provide some information about yourself. If you choose to provide information in the “About you” section below it will be used to help MBIE understand the impact of our proposals on different occupational groups. Any information you provide will be stored securely.

A. About you

Name: Claire Falck

Organisation and role (if submitting on behalf of a company or organisation) Chief Executive, BRANZ – Building Research Association of New Zealand

Email address: claire.falck@branz.co.nz

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

Yes No

C. Please clearly indicate if you are making this submission as an individual, or on behalf of a company or organisation.

Individual Company/Organisation

D. The best way to describe you or your organisation is:

- Designer/ Architect Builder
 Sub-contractor Engineer
 Building Consent Officer/Authority Developer
 Homeowner Business (please specify industry below)
 Industry organisation (please specify below)
 Other (please specify below)

Independent research organisation.

Submitter information

E. Privacy and official information:

The *Privacy Act 2020* and the *Official Information Act 1982* apply to all submissions received by MBIE. Please note that submissions from public sector organisations cannot be treated as private submissions.

- Please tick the box if you do **not** wish your name or other personal information to be included in any information about submissions that MBIE may publish or release under the *Official Information Act 1982*.
- MBIE may publish or release your submission on MBIE's website or through an Official Information Act request. If you do **not** want your submission or specific parts of your submission to be released, please tick the box and provide an explanation below of which parts of your submission should be withheld from release:

Insert reasoning here and indicate which parts of your submission should be withheld:

[E.g. I do not wish for part/all of my submission to be release because of privacy or commercial sensitivity]

1.1 PREFACE

The Building Research Association of New Zealand (BRANZ) welcomes the opportunity to provide input and our perspective on the Ministry of Business, Innovation and Employment (MBIE)'s Options Paper (Paper) on the Review of the Building Consent System¹. We commend MBIE for the work done so far in presenting some options to improve the building consent system and respond to the Commerce Commission's Market Study into Residential Building Supplies.

In this submission we will:

- provide background on BRANZ and our role and highlight the perspectives and lens we bring to this work;
- provide references and/or key findings of recent and relevant work we have done or commissioned;
- provide our thoughts at the high-level on issues we think need to be addressed as MBIE develops its work programme arising from the Paper; and
- respond, at the high level, to the areas identified in each chapter of the Paper.

We have chosen to not answer the individual questions in the Paper. This is because there are others, notably those sitting within the Building Consent Authorities (BCAs) themselves and those directly using their services, that are better placed to provide detailed feedback on the likely impacts on the building process of the options presented by MBIE.

We welcome further engagement with MBIE on any feedback we have provided in this submission and as the policy work progresses to further design and implementation.

1.2 ABOUT BRANZ

BRANZ² is a multi-faceted, independent science-led organisation. We use independent research, systems knowledge and our broad networks to identify practical solutions that improve Aotearoa New Zealand's building system performance. BRANZ is driven by the knowledge that to thrive as a society, New Zealanders need a built environment that is safe, healthy and performs well.

The BRANZ vision is to *Challenge Aotearoa New Zealand to create a building system that delivers better outcomes for all.*

To do this, BRANZ cultivates strong relationships with industry, government and building users through collaboration and facilitating the sharing of insights, opportunities and ideas. These relationships underpin the range and depth of BRANZ's knowledge and ability to understand the linkages and interactions that influence the building system. This uniquely broad perspective not only influences BRANZ's research, but also our commercial services.

BRANZ undertakes and commissions research, funded by the Building Research Levy, which is both practical and drives positive building and construction system change. This work helps improve industry practices around the performance of buildings and how we use them, through to informing policy and legislation and all points in between. As an independent research organisation we are a key centre of research capability and drivers of impact from research. We have a unique place sitting independent of both government and the industry. We take a long-term strategic view and investment in research and capability because of that independence sitting at the interface between research, the private sector and government.

¹ See: <https://www.mbie.govt.nz/dmsdocument/26799-options-paper-review-of-the-building-consent-system>

² See: <https://www.branz.co.nz/>

BRANZ also contributes to practical improvements in Aotearoa New Zealand's built environment through independent product testing, assurance and consultancy services. Evidence-based advice is available at all phases of the product life cycle from preliminary R&D and standards compliance, through to verifying end-use product performance. A BRANZ assessment is universally trusted, providing assurance that the products should do what the manufacturer says they will do. BRANZ is a Product Certification Body (or PCB) under MBIE's CodeMark Scheme. For more detail on the services we provide, please refer to our website³.

Our systems perspective

BRANZ has a strong history of system thinking in our work and this capability now underpins our organisational strategy to deliver on our vision. In 2022, BRANZ established a system transformation team as part of our organisational structure, to leverage systems thinking to re-frame and challenge the common narratives which define New Zealand's building system.

We view opportunities and problems for building and construction through that systems lens, which is underpinned by knowledge and insight gained through the research and testing work we do. Our systems perspective has been used to inform this submission, as well as work that we have also provided through relevant recent submissions, notably:

- Submission on Commerce Commission Residential Building Supplies Market Study Draft Report⁴,
- Submission on Review of the Building Consent System to MBIE⁵,
- Post stakeholder conference submission on Commerce Commission Building Supplies Market Study Draft⁶.

In these submissions we have concluded that the complex regulatory system is causing uncertainty, in part because it has not been fully implemented as originally intended. This in turn creates risk adverse behaviours and leads to the path of least resistance for regulatory approval and drives the use of tried and tested products and methodologies, which was a key finding of the Commerce Commission's work.

Following our work on the above submissions, we carried out a proof of value study to test an approach to exploring challenges across the building system with a systems thinking lens and develop new insights. In this work, we asked the question "*How does New Zealand's performance-based building regulations affect the configuration of and behaviour within the system?*"

While this question was used primarily as a proof of value for establishing capability within BRANZ, some of our initial conversations with leaders in both Aotearoa New Zealand and internationally have provided some insights about the building consent system.

The insights from this work are many, but some of relevance that might be useful for MBIE to reflect on in terms of Aotearoa New Zealand's regulatory system when compared with others internationally include:

³ See: <https://www.branz.co.nz/assurance-services/>

⁴ See: <https://d39d3mj7qio96p.cloudfront.net/media/documents/BRANZ-Submission-on-residential-building-supplies-market-study-draft-report-1- Ao7qgeJ.pdf>

⁵ See: https://d39d3mj7qio96p.cloudfront.net/media/documents/BRANZ_Submission_on_Review_of_Consent_System.docx.pdf

⁶ See: https://comcom.govt.nz/_data/assets/pdf_file/0025/295900/BRANZ-Cross-submission-on-residential-building-supplies-market-study-draft-report-13-October-2022.pdf

- New Zealand's performance-based regulatory approach is more mature than the system it operates within. This results in consumer preferences, building typology and suppliers emphasising a focus on speed and cost over performance.
- While our performance-based regulations allow for risk-based approaches, compliance is enforced most heavily at the end of the building pipeline, which is driving a low-risk, QA-based approach across regional and local government.
- The consumer influence and understanding of the building system is limited, with little understanding of what 'good' looks like.
- The volume of information captured across Aotearoa New Zealand provides a comprehensive view of defects and overall performance relative to other jurisdictions, which will support the regulator having good insight on the results and shifts from policy changes.

We welcome a discussion with MBIE to provide deeper insight on these preliminary findings and our work in this area.

Overarching themes for consideration by MBIE

We commend MBIE on the work done so far in presenting some options to improve the building consent system and respond to the Commerce Commission's findings.

However, our underpinning hypotheses outlined pieces of work we have completed (outlined above) still remains. That is, that the complexity of the regulatory system is driving uncertainty in its implementation, which in turn leads to risk adverse behaviour.

We have concerns that, given its scope⁷, the changes suggested in the Paper do not:

- Take account of the full implementation and bedding in of regulatory system changes in the system, as well as recent initiatives, notably the licenced building practitioners scheme;
- Adequately present analysis of what will be different to the system as a whole (including a cost benefit analysis) and as a result how these changes will be measured to ensure they are delivering on their intent;
- Consider the full implications of a major shift proposed which is to have the regulatory system deal with the complexity of competition and how a building consent system, with an already highly challenging operating environment, can add this on to the current work which is a deviation away from its purpose;
- Take account of some of the contextual changes that are likely to impact on the building consent system should some of the shifts suggested in the Review into the future for Local Government be adopted;
- Focus enough on ensuring positive outcomes beyond the building code and move the focus towards greater assurance of health and quality of the built environment. This rebalance would be a shift from a predominant focus on process and its compliance;
- Focus enough on behaviour shifts in the system and how they can be incentivised. There are a number of places where MBIE is recommending further guidance, which we consider is a weak lever to ensure real system change.

We recommend that MBIE gives consideration to a smaller number of higher impact changes that will shift the dial towards delivering on the desired outcomes. We also recommend that MBIE, as it starts to develop the more detailed policy programme in this area, develops a clear and timelined roadmap of changes, signalled well in advance, to allow for the system to prepare. This creates certainty for the system.

⁷ The scope of the paper does not consider changes to the code itself or risk and liability.

We welcome engagement with MBIE on whether there are any knowledge gaps that BRANZ can support further research through the Building Research Levy investment process.

Historically, BRANZ has done a lot of research which provides perspectives on the building consent process, from the quality of consent documentation, to quality issues to the economic impact of defects. Some work of relevance to the options paper that BRANZ has funded, includes:

Bealing, M. and de Morel, L. L. (2020) *The economic cost of defects in new residential buildings in New Zealand*⁸. This work found that defects arising from the construction process was estimated to be in the vicinity of \$2.5 billion NZD per year. It found that the defects are many and varied, but that if reduced/eliminated there would be a wide range of benefits across the sector and ultimately enhancing the wellbeing of the construction industry, consumers and society. While these defects are not always directly resulting from the role of the building consent system, this has relevance for the impact on building consent authorities, the government and ultimately tax and ratepayers, and home owners.

Schmidt, T, Askey, P, Griffin, S., McCarthy R. and Fox, K. (2020) *Connecting consenting systems and third party technology tools to improve performance and productivity*⁹. This work looked at the uptake of new technology systems to support consenting, and found that there is a fair way to go on digital consenting adoption by BCAs. It found nearly a third of BCAs have advanced consenting systems (covering nearly 60% of consents), but there is a range of systems with varying capabilities. This range presents a number of issues for connecting with third party technology providers from increased number of connection points increasing the complexity and cost to link, and a lack of standardisation which limits sharing across different systems. Nearly all systems, at the time of the research, were based on PDF submission, limiting design information that can be extracted. It found that BCAs lag behind the rest of the construction system in technology uptake which could act as a drag on the system overall.

Gjerde, M., and Kiddle, R. (2019) *Understanding resource consent issues [associated with medium density housing]*¹⁰. While this research focussed on the issues associated with resource consenting process of medium density housing, there are some common themes applicable to the building consenting system. This work found that leadership, standardisation and consistency across council process was lacking. This was complemented with research by Beacon Pathway and the Property Council looking into the industry perceptions of medium-density consenting issues¹¹. This work also found the need for consistency in interpretation of rules, nationally, across council staff and within an application process; the need for clearer guidance and support, led by central government; the need for upskilling of both industry and consenting officers and the need for the right people involved in the process can make a huge difference.

⁸ See: <https://www.branz.co.nz/pubs/research-reports/er49/>

⁹ See: <https://www.branz.co.nz/pubs/research-reports/er54/>

¹⁰ See: <https://www.branz.co.nz/pubs/research-reports/er44/>

¹¹ See: <https://www.branz.co.nz/pubs/research-reports/er41/>

Below we respond in general to the issues covered in each of the chapters in the Paper.

Chapter 1: Introduction

We support the conclusion that the issues are complex and require a comprehensive package of solutions. Based on our research and other work described above, we do not agree with MBIE's preliminary view that the building consent system is delivering on its core purpose, particularly with respect to delivering and driving healthy outcomes for building users/consumers. BRANZ has over 25 years' experience of research on the condition and performance of our housing stock (for example, through the House Condition Survey¹² and Household Energy End-use Project¹³). In more recent decades, our *Warmer, drier and healthier buildings*¹⁴ programme and prior to that the *WAVE (Weathertightness, Air quality and Ventilation Engineering)*¹⁵ programme have focused research on understanding the issues, solutions and implementation pathways to ensure all New Zealanders can live affordably in a warm, dry healthy home. This research shows that our homes are far from healthy. We think there is a need to consider the role of the consent system in what is driving buildings that are not delivering healthy outcomes for New Zealanders.

Chapter 2: Promoting Competition

In our submission to the Commerce Commission's Draft Report of the Residential Building Supplies Market Study, we said we support their recommendation to add a competition objective into the regulatory system to the extent that it sits within the system in a way that ensures that competition works to support the delivery of safe, healthy, durable and affordable housing for New Zealanders. The core objectives however of the building regulatory system must not be compromised by adding a competition objective.

We also said that to ensure the core objectives and the new competition objective were both achieved, the regulatory system would require a first principles redesign. Given this has not been done, we consider adding a stand-alone objective that doesn't compromise the paramountcy of the regulatory system driving towards safe, healthy, durable buildings, would be very difficult to achieve.

We cannot see how any of the options, as they are currently framed, would achieve what the Commerce Commission is trying to achieve, while holding core the fundamental purpose of the building consent system. Without more specific detail on these options we do not feel we can provide feedback on the pros and cons of the different options as presented in the paper. We consider that more work is needed to achieve the goals the Commerce Commission was seeking, but outside of the building regulatory and consent systems. We also cannot see how competition sits in the framework of the four outcomes set out on page 9 of the Paper and how it can be incorporated into the regulatory process.

We do not think the building consent system in its current form can additionally be burdened with competition as a guiding principle and guidance is a weak lever to use with such a complex economy wide issue as competition. This can only be considered as part of a first principles review.

¹² See: <https://www.branz.co.nz/healthy-homes-research/hcs/>

¹³ See: <https://www.branz.co.nz/environment-zero-carbon-research/heap2/heap/>

¹⁴ See: <https://www.branz.co.nz/healthy-homes-research/warmer-drier-healthier-buildings/>

¹⁵ See: <https://www.branz.co.nz/healthy-homes-research/warmer-drier-healthier-buildings/wave/>

Chapter 3 – Removing impediments to product substitution and variations

We understand the issues identified in the Paper and the underlying recommendation by the Commerce Commission to support easier product substitutions which in turn will ultimately lead to greater competition. We also support MBIE facilitating ways in which product substitutions and variations can be implemented with ease, while ensuring that the substituted product performs in the ways that the original consent is designed. There are a number of complexities associated with this however particularly when considering how building products often sit within a broader product system. The resulting 'system' can perform in a different way, even though the constituent parts may seem similar, with potential for much wider system impacts.

We recommend that MBIE works with the Commerce Commission to further explore options to ascertain the most robust system intervention that is going to address this issue. We do not consider there is adequate evidence that if implemented these actions would achieve greater competition and innovation.

Chapter 4 – Strengthening roles and responsibilities

We endorse the view that roles and responsibilities could be better defined across the building consent system. We consider that the Paper needs to be clearer about responsibility and therefore the resultant accountability of the different system stakeholders throughout the build process. We also consider the balance of the consenting system needs to be more evenly weighted across the whole build process. Currently we see the focus is predominantly on getting the consent done and approved. We consider that if more work is done to address quality assurance processes there will be a greater likelihood of building work being done right the first time. We question whether guidance (or awareness raising) is enough to ensure the participant responsibilities are known and the resulting accountabilities are also known if they don't fully discharge their responsibilities.

In principle we support the elevation of the use of producer statements, but recommend that consideration is given to how the building process as a system of interlocking parts can be recognised rather than the individual professional or workflow silos. We consider more work is needed to define who is appropriately experienced or qualified to issue producer statements.

Chapter 5 – New assurance pathways

As per our comments elsewhere we think that MBIE is placing too much emphasis on guidance as a means for changing behaviours. We think a lens of ensuring that protection for consumers is maintained is very important when considering the range of actions proposed as well as better identification of the consequences arising from non-compliance.

Chapter 6 – Better delivery of building consent services

BRANZ supports the vision as stated at the start of the chapter that consent services should be as consistent as possible, with the system set up to achieve economies of scale and reduce duplication and unnecessary costs.

All of the options proposed will have a positive impact on the performance of the building consent process. We recommend, however that MBIE considers a smaller set of changes and measure their impact.

In considering technology options, we know that technology solutions have their use, however it is important to ensure that the problem is clearly defined, and that the technology is designed to address the problem or outcome. There is significant investigation required with the use of additional

consenting technology solutions to ensure that they support the achievement of the vision and do not cause unintended consequences.

BRANZ's view is that MBIE should consider incentivising the use of quality assurance tools such as Artisan¹⁶, to assist during the consenting process. These should be considered, instead of remote inspection technology. Inspection technologies do not address a core problem – that of build quality. They simply provide a different way to undertake an inspection. A quality assurance tool would support the lifting of build quality prior to BCA's inspections thereby easing the inspection process.

Chapter 7 – Better performance monitoring and system stewardship

We support the thrust of the Chapter and agree the recognised shifts MBIE needs to make to support the delivery of a better building regulatory system.

We recommend consideration is given to how the regulatory system can, in addition to the outcomes listed on page 59 of the Paper, consider its role to ensure the built environment is meeting the needs of New Zealanders, the ultimate users of the building process.

BRANZ strongly encourages MBIE to work with others in the system who currently collect data about the building and construction system. Understanding system issues is a whole of system responsibility of which regulatory issues is one aspect. Considering the data needs across the whole system is important, rather than supporting data for a specific aspect will only reinforce fragmentation and silos.

BRANZ has been working on a project to identify indicators of building system performance and health and would be pleased to work with MBIE and others to continue to explore this opportunity more with other system leaders.

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

BRANZ supports means by which the needs and aspirations of Māori can be better met. However, we will leave to others who are better placed to provide feedback on the relative merits of the options presented.

Chapter 9 – Addressing the interface between the building and resource consenting systems

BRANZ supports work to address the interface between the building and resource consenting systems. We also support a whole of system view of the impact of other policy, regulatory and legislative change to ensure the building system is well prepared and aware of their impact and to ensure there are no unintended consequences. There are some fairly profound and positive suggestions outlined in the Review for the Future of Local Government, regarding where services, including the roles currently carried out by BCAs could sit in the future. These will all need to be considered, alongside those policies of the Building for Climate Change Programme. We recommend that MBIE carries out a review of the impact on the construction system arising from all of this policy work to ensure complexity and uncertainty for the system as a whole will be reduced.

¹⁶ See: <https://www.branzartisan.nz/>. Artisan is a technology solution developed by BRANZ to support the inspection process and improve quality of the built process.

