

1 September 2022

Building System Performance
Building Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473
WELLINGTON 6140

Dear Ministry of Business, Innovation and Employment,

SUBMISSION ON THE REVIEW OF THE BUILDING CONSENT SYSTEM

Thank you for the opportunity to submit on the review of the building consent system. Kāpiti Coast District Council acknowledges that there are issues with the current system and is supportive of the need for a review.

1. This Council is committed to tackling issues around housing affordability, planning for quality growth, and providing high quality infrastructure and facilities. We want Kāpiti Coast residents to have access to suitable safe, healthy, warm shelter (including houses, apartments, units, townhouses, and other domestic dwellings) to meet their needs, enable them to live and thrive where they choose, and how they choose.

Current review and reforms

2. We agree that our regulatory tools need to be fit for purpose, so that we are more active in supporting suitable building supply, and that the district has access to the right strategic assets for the future. We therefore support the intent of the review.
3. Having said that, the Council strongly believes that the review into the Future of Local Government should be completed before any further reforms or reviews of legislation or regulatory systems, that could impact on local government, continues.
4. The Council considers it essential that any review of the building system is integrated into the wider reform work currently underway in resource management, climate change and infrastructure space. There is an opportunity to consolidate legislation or at the very least introduce a workable hierarchy of legislation. The ability to better align regulatory processes that support quality building in New Zealand should not be missed because of siloed government Ministries.

5. The building consent system is only one small portion of the wider regulatory settings. The Council believes that a whole-of-system review should be undertaken by the Ministry, rather than the current piecemeal approach of reviewing individual portions of the system. System stewardship requires an integrated review process end to end, not a stand-alone, segmented, siloed approach as proposed. We do not want a repeat of the iterative and disconnected Resource Management Act reviews of the past 30 years.

Performance under the current system

6. The Kāpiti Coast District Council is an IANZ accredited Building Consent Authority (BCA). The building consent system is administered through our Building Team in the Regulatory Services Group. This team provides for people's health, safety, security, and quality of life/enjoyment by establishing and ensuring compliance with the Building Act, Standards and Code.
7. The Council's Building team performs well under the current system settings. Our most recent audit results confirm that we have good quality systems in place at the Kāpiti Coast District Council. The auditor commented that the team was cohesive and is led by a supportive manager. The team's statutory timeframes for Building Consents and Code Compliance Certificates were seen to be significantly compliant, both averaging around 97%.
8. The building team also performs exceptionally well in meeting the statutory timeframes for issuing building consents. Over the past 12 months, the team has averaged an 11 working day processing time for building consents, which is almost half of the 20 working days legislative requirement.

Role of government

9. At times, government acts as the designer, educator, and regulator of the system. We agree that the regulatory system needs to become more responsive to issues such as climate change, increasing natural hazards, housing affordability, and changing typology, supply disruptions, labour market shifts, alongside increasing environmental regulation.
10. Our experience has been that there is a disconnect between the role of central government and local government in the building consent system. In recent years, the Ministry of Business and Innovation (MBIE) have introduced changes within the system through Building Code changes with a lack of quality guidance to support consistent interpretation or efficient application. By default, the role of local government is often then to be an educator to the public and building professionals when these changes are introduced. Local government is not resourced to do this, and it can lead to a potential regulatory conflict of interest. Implementation of regulatory changes is an area that central government needs to have greater and more active involvement in.
11. On the whole, local government works well at ensuring compliance with the Building Act and Building Code as a building consent authority in the current system settings. Auditing and Accreditation processes have ensured a good standard of practice, although the amount of

information and detail involved requires a significant level of resourcing and time commitment from building consent authorities.

12. Local government is well placed, at the moment, to administer/ensure compliance with the system and has the ability to work alongside Council's resource management planners and infrastructure experts to ensure good integrated outcomes through the building consent system. Local government experts with local knowledge about local conditions creates efficiencies in the current regulatory system. Current wider government reforms indicate that some infrastructure and planning functions will move to a regional model, and there is a risk that that this will lead to disjointed and inefficient consenting experiences that could lead to poorer outcomes. This risk is greater for any smaller councils in a specific region where the larger council(s) will tie up the focus and resources of any regional authorities.

Desired Outcome 1 – Efficiency

13. The Council supports an efficient outcome for the building consent system. The current system is a performance-based system that allows for flexibility in methods as long as set standards are met. In our experience, the construction industry tends to put forward standard materials and construction methods for consenting purposes. The ability to innovate and trial new materials doesn't seem to be well-understood or utilised by the end users of the system, being the designers, builders and building owners. Our view is that the current system works reasonably well but would suggest that it is not being used to its full potential. We would recommend MBIE consider what steps it can take to improve that understanding and uptake of our performance-based Building Code.
14. A further example of inefficiencies across the current sector is when a change to the Building Code occurs and is open to interpretation. Different building consent authorities may interpret requirements differently or may have to apply changes to varying local conditions. Kāpiti Coast has a number of natural hazards and challenging soil types, and recent changes around liquefaction requirements has had a significant impact on the consenting requirements in our district when compared to other parts of the country. The building sector has received little guidance or assistance from central government to assist in managing the impact of this significant change in our district which has meant our BCA team has needed to intervene and help fill this gap. The Ministry has an opportunity to better educate the building sector on the regulatory system and utilise new technologies to improve communication and support innovation that will help address changes that are brought on by updates to the Building Code and supporting standards.
15. Efficiency in the current system could also be improved through central government providing a more active role on 'getting it right first time'. This means proactively educating the building sector, clearly interpreting standards, providing more guidance and potentially investment in a nationally consistent online 'lodgement portal' for electronic building consent applications, along with nationally consistent template documents. Doing so would remove the iterative amendments to plans which cause huge frustration to all.

Desired Outcome 2 – Clear roles and responsibilities

16. The Council agrees that currently, as a building consent authority, there is a perception in the sector and wider community the largest share of responsibility and liability for new building work falls at our feet. This is a part of the system that requires change. This misunderstanding is reinforced by the fact the Building Act is clear a building consent authority only needs to be satisfied on reasonable grounds the proposed work will comply with the Building Code. Whereas the public's expectation is that we will take responsibility for the entire project and every detail. Effectively a council becomes the building owner's Clerk of Works. We strongly believe this responsibility sits with the people who have designed, built, and supervised the work and any review of roles and responsibilities should take this point into account.
17. The Council agrees with the Law Commission's recommendation that building consent authority's liability should be capped and is disappointed that MBIE has not reached the same conclusion in their recently released policy position. The Council strongly agrees that in a shared liability model, any shortfall in financial costs for liability should be paid for by the responsible party and not the homeowner. In cases where builders/construction companies no longer exist or become absent, that share should not also be covered by the building consent authority. A third of ratepayers in the Kāpiti district are on fixed incomes and the Council does not feel that it is fair for ratepayers to cover a missing share of costs, when it is the construction sector that has failed to build to the required standards. This is a role for central government to fill, essentially funded by taxpayers or a levy funded public insurance scheme such as the EQC model.
18. A number of parties place a significant amount of trust in the building consent system to ensure a quality building/structure. The responsibility of the Building Consent Authority does not align with that level of trust. Consent is granted if, on reasonable grounds, the design of a building/structure is deemed to comply with the NZ Building Code – which is only a minimum standard. If quality buildings that are durable are sought, then the Ministry should incentivise building designers to build to a higher standard than the Code minimums. Homeowners do not have the awareness to ask for designs that exceed the Building Code minimums and could better meet their needs.
19. Insurance companies, real estate agents and homeowners also place a large amount of trust in a Code of Compliance Certificate issued by a Building Consent Authority. Again, this certificate only provides assurance that the building/structure complies with the minimum building standards of the Building Code. It does not mean that the building has been constructed to a high-quality standard. More work from central government is required in this area, either to raise the building standards to achieve higher quality builds or else to better educate parties on how they can ensure that they achieve a quality build above the minimum standards.

Desired Outcome 3 – Continuous Improvement

20. The Council agrees the building consent system has been slow to respond to recognise that people's needs and social values are changing. Ideally, we think homes should meet a whole of life requirement and be fit-for-purpose for all ages, rather than needing to buy and sell as we grow older. The way that we build and how we build needs to shift (e.g., moving to

higher density builds, providing for tiny homes, and increasing demand for papakāinga developments). Changes in demand means that the building sector needs an agile Building Code. The Building Code needs to be updated quickly, standards need to be current and shorter implementation/transition timeframes are necessary to respond to the ever increasing rate of change.

21. Improvements to include a Māori perspective are also supported. The Building Act 2004 states that the 'importance of recognising any special traditional and cultural aspects of the intended use of a building' is a principle that must be taken into account within the building consent system. We support the principle but have not always seen this in practice as often a 'work around' to accommodate tikanga Māori is required that can lead to additional building costs. Any changes to the building consent system that means that the construction and use of buildings/structures will better reflect a te ao Māori lens and respect tikanga Māori practice and values is supported.
22. National monitoring of the building consent system is also lacking which leads to a limited understanding of how the system is performing as a whole. This which means that when external shocks occur (such as housing affordability, changing housing typology, supply disruptions, labour market shifts, and changing environmental regulation) the system struggles to respond quickly, and any necessary interventions are not able to effectively be implemented. Amendments to the Building Act 2004 may be required to give MBIE the ability to adjust the Act and Regulations to keep pace with changes in NZ society.

Desired Outcome 4 – Regulatory requirements and decisions

23. The Council agrees that clarity and transparency are important in this decision-making process. In our experience, designers, engineers, and builders all have a broad understanding of the information requirements and compliance requirements of the building consent process. However, the sector doesn't appear to fully understand or be willing to test the flexibility of design that comes with a performance-based system. Standard designs and materials are often included within building consent applications as they have been 'tried and tested' in the past and carry less risk. A risk averse building sector will not lead to innovative design or improved construction materials or methods.
24. The Council's Building Team works closely with designers, engineers, and builders throughout the building consent process, from pre-application to issuing of Code of Compliance Certificates. The standard of information contained within building consent applications varies and often the Building Consent Authority is used for quality assurance checks for builders/designers to bring their own applications up to standard.
25. Our Building Team ensures that any correspondence on arising issues or requests for further information in relation to the building consent are copied to the homeowner/client so that there is greater transparency to all parties involved in the process. This is important because we find that as the build moves through the end-to-end process, the designers, architects, and engineers tend to leave the project and often the builder or homeowner is left to work with the Council directly. If problems arise during the construction phase, then it is often the Building Control Authority who are expected to find solutions for the homeowner as often

their technical experts have left the project. This carries additional risk and liability for the Building Consent Authority.

26. We estimate that typically, building consent fees are around 1-2% of total project cost of a build. Architect/designer fees generally sit around 7% of total cost. There is currently an inequity in the responsibility and risk for different players involved in the building consent system.

Proposed Desired Outcome 5 – a low carbon future

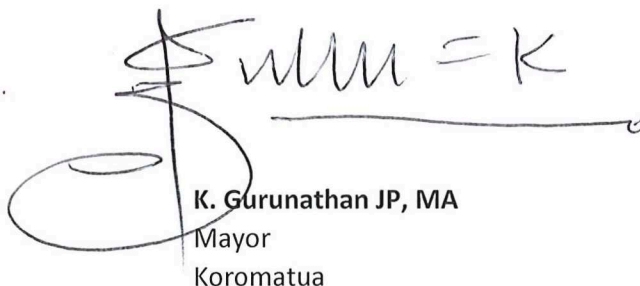
27. The Kāpiti Coast District Council is prioritising transitioning our district towards a low carbon future. The Council's District Growth Strategy (Te Tupu Pai) and our Climate Emergency Action Framework all reference the need to achieve this goal.
28. The Council believes that an additional desired outcome for the building consent system is to transition to a low carbon future. The building consent system should recognise the part it plays in determining building practice that should be consistent with a low carbon future. The building consent system could set new minimum standards, achievable targets, improve information, and incentivise or disincentivise various parts of the system to contribute to this outcome.
29. Climate change is our greatest challenge, and it is surprising that MBIE has not acknowledged their part in a whole of government response. The opportunity for the building consent system to incentivise and support low carbon solutions is immense. For example, we can see a future where a building regulatory system requires:
- solar panels to be installed on every new housing unit, or collectively on medium-high density developments (where it is workable and cost efficient);
 - every new building to accommodate on-site water tank collection and storage for water reuse;
 - electricity and plumbing to have the ability to accommodate thermal energy/heating when it becomes available;
 - a strategic space for on-site energy storage (e.g., battery and inverter cabinets);
 - upcycling/recycling of building materials.

We thank the Ministry of Business, Innovation and Employment for the opportunity to provide feedback as part of the building consent system review. We look forward to more engagement and participation in the future phases of the review.

Yours sincerely,



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Te Tumuaki Rangatira



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