

Building Consent System Review – MBIE’s Options Consultation Jun/Aug 2023

	<b>Issue</b>	<b>Proposed options/solutions</b>	<b>KCDC Comments</b>
1	Competition	<p>Include competition in Purpose section of Building Act</p> <hr/> <p>Include competition as a Principle in the Building Act</p> <hr/> <p>Competition as a requirement of acceptable solutions, verification methods, warnings and bans</p> <hr/> <p>MBIE issues guidance promoting competition</p> <hr/> <p>Competition is incorporated into MBIE’s regulatory stewardship framework – so taking into account in all decisions.</p>	<p><b>Support in part- Incorporating into MBIE’s stewardship framework.</b></p> <p>The notion of including ‘competition’ as a purpose, principle or requirement under the Building Act won’t lead to more competitive activity because Building Consent Authorities (BCAs) simply can’t require it through a building consent process. The building consent process assesses compliance – it does not incentivise market conditions.</p> <p>More guidance on how to achieve compliance using different types of products could help building owners with options and better use of their purchasing power.</p> <p>Achieving competition in the building market should be a continued Commerce Commission focus, e.g. avoiding establishment of monopolies and sole importers of overseas building products.</p> <p>Any attempt to incentivise trade competition needs to be done at national level rather than relying on 60 plus BCAs to make a difference. This will tackle the issue by using a consistent approach for all building owners in NZ.</p>
2	Allow for product substitutions & variations	MBIE issues more guidance	<p><b>Support in part</b></p> <p>We can see a case for better guidance on assessing variations and clearer advice on substitutes to be provided by MBIE. This would need to be supported through training to BCA’s &amp; also building designers.</p> <p>This will help the sector but it won’t necessarily drive efficiency in the process. Issues will still arise where specific design is required and substitutions can be high risk when it comes to cladding (weather tightness) and changes with a structural component.</p> <p>If the variation of a consent is used more, the BCA will still need to record the change in the building consent documentation. Currently, the cost of this time is not recoverable – however, we do recover the cost and assessment required through the formal building consent amendment process.</p>

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			<p>An increase in variations could potentially leave the BCA with increased administration costs that may not be cost recoverable.</p>
		<p>Modify application form to allow applicant to nominate alternative brands/options</p>	<p><b>Do not support</b></p> <p>This option is too ambiguous and would fall foul of the basic approach that BCAs approve a design that will comply with the minimum requirements of the Building Code. It is also counter to the current requirement for building work to align with the approved building consent. By allowing a consent to have a suite of options runs the risk of undermining the principles put in place in 2004 when the current Act was introduced as a result of the leaky building crisis.</p> <p>This would require BCAs to assess multiple options in one consent and some options may not be compatible if combined with another product.</p> <p>Assessing multiple options, combinations of products and compatibility will increase time spent on applications and thereby increase costs of the building consent process.</p>
		<p>Change definition of 'minor variation' in the regulations – to allow for variation that doesn't 'deviate significantly' from approved plans.</p>	<p><b>Do not support</b></p> <p>There is an increased risk to BCAs if the use of alternative systems is automatically accepted as a variation, especially if the varied design fails. Not all similar looking products perform to the same standard and we consider that changes need to be reassessed to minimise the risk of failure.</p> <p>This change will also need to be resolved for accreditation purposes where one product and one design needs to be clearly identifiable.</p> <p>There is a need to know exactly what and how a building has been constructed, especially if there is a future problem with the build.</p>
3	MultiProof scheme	MBIE issues guidance/education on scheme	<p><b>Support</b></p> <p>MBIE's current guidance advised that any changes to floor plans would cause issues with the MultiProof status. MBIE can reconsider this guidance and allow</p>

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			more scope for changes, however this will also mean introducing more risk to the current scheme.
		New regulations to define 'minor customisation' for MultiProof (based on definition of 'minor variation')	<b>Support</b> This will also be necessary if changes and further risk management of the scheme are to be embedded.
4	Strengthened roles & responsibilities – too much responsibility on BCA	MBIE to provide guidance on regulatory requirements and how to comply	<b>Support in part</b> In our view guidance will not achieve the required change. MBIE could instead strengthen obligations under the current licensing regimes that makes it clear where roles and responsibilities lie between all participants in the system.
Require designers to declare design compliance within the building consent application.		<b>Support in part</b> There is currently a requirement for means of compliance to be stated on building consent applications – it is often ticked as compliant but this is not always correct.  For this to work, there would need to be some meaningful consequences if incorrect declarations are made.	
Person named in application who is accountable for sequencing and co-ordination on-site (e.g. licensed building practitioner – site licence holder)		<b>Do not support</b> Licensed Building Practitioners are already stated within the building consent material. A Memorandum from the owner is also required by the Building Act to be given to the BCA notifying names of all tradespeople before they go on site.  We don't monitor the provision of this or the accuracy of the information as MBIE have previously advised that it is not our role to monitor but rather the owner's responsibility to ensure the information is correct.  Experience shows us that the names of tradespeople working on a site can often change and alter throughout the build. It would be a similar situation should a named contact person be provided as a 'site-coordinator'. The responsibility normally falls back to the owner – and we often copy owners into all correspondence for this reason.	

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			<p>To strengthen roles and responsibilities MBIE should focus on the lack of capability in the sector which results in heavy dependence on BCAs to provide a quality check to applications. There is room for MBIE to incentivise more capability in the sector by aiming to increase the number of competent licensed building practitioners in New Zealand. To do this MBIE would need to incentivise obtaining the Licensed Building Practitioner status e.g. require a Licensed Building Practitioner to cover all residential builds. The Limited Building Practitioner Scheme would benefit from a complete review and update e.g. to include the increase in modular housing.</p> <p>MBIE should also look at strengthening and upholding the standards expected of Licensed Building Practitioners to make them more accountable for their role within the system.</p>
5	Producer Statements	<p>Have MBIE guidance on role of producer statements and how they should be used.</p> <p>Amend Act to refer to use of producer statements and need to assess the reliability of them.</p> <p>Amend Act to prescribe – who, what and when peer review required.</p>	<p><b>Support in principle</b> Any change needs to be clear with what type of producer statements are to be relied upon. Amendment of the Building Act to provide better definition and clarify roles and responsibilities is supported.</p> <p>Currently, we find that the approach to producer statements is used in an ad hoc way. We agree that the answer isn't to go back to an over reliance on producer statements as it didn't improve the speed and/or quality of construction.</p> <p>There is a significant risk issue when BCAs rely on producer statements – especially if a build is found to be deficient. The authors of producer statements often have liability insurance up to a certain amount. With the shared liability model that we currently operate under, any financial cost over this amount is then sought from the BCA. The financial implications of this and the behaviours it is likely to introduce need to be factored into these options.</p>
6	Assurance pathways – more risk-based e.g. virtual inspections	MBIE issues guidance	<p><b>Support</b> Assurance pathways currently exist in the current system e.g. Licensed Building Practitioners. In practice, we do not see much accountability for them (compared</p>

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			to requirement on BCAs) and would recommend that the Licensed Building Practitioner’s Board do more work to hold practitioners to account. This would help to ensure greater quality assurance within the current system.
		Use of self-certification (MBIE approves people and companies).	<p><b>Support in part</b></p> <p>We are interested to hear more details on the accountability and monitoring that would need to occur to support an increase in self-certification. For example: would self-certifiers need to be audited to the same extent as BCAs? MBIE or IANZ would need to roll out additional auditing functions at a national scale to cover self-certifiers. Would the costs end up outweighing the benefits?</p>
		Commercial Consents – designed and run by professionals – should be low risk so could self-approve design changes as construction progresses.	<p><b>Support in part</b></p> <p>We accept that commercial builds are more likely to use professional and highly skilled practitioners as part of their build contract, However, this does not override the fact that if you don’t own the building then you can just walk away and move on to the next job.</p> <p>We support the four key conditions for a self-certification regime identified in the Sapere report:</p> <ul style="list-style-type: none"> <li>• Clear rules setting out responsibilities of tradespeople, that are understood by consumers (and potential consumers)</li> <li>• A training and registration regime that ensures tradespeople are competent and up to date with current practices and regulations and that certifiers have the requisite skills to certify</li> <li>• A credible auditing regime</li> <li>• An enforceable obligation on the certifier to remediate over a suitable period.</li> </ul> <p>We believe it is important to also be clear in this context that commercial building work does not include any form of residential building work such as hotels, motels, or apartments over commercial premises.</p>

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			<p>BCAs are unique in that they offer an independent quality assessment of any changes (e.g. with no financial interest in the build) and will provide quality record keeping of the detail design and construction inspections throughout the build.</p> <p>Any self-approval of design changes would need to continue to be recorded and justified to the BCA, potentially adding another administration layer to the building consent inspection process.</p> <p>Presumably, allowing for more self-approval of commercial builds would lessen the risk for BCAs if amendments to the original consent were self-approved. However, commercial builders would then need to secure construction insurance over a long-term period (possibly to cover the life of the build). We are doubtful that insurance companies would offer this level of support/type of insurance product in NZ.</p>
7	Consent regime – previously 4 categories: low risk/simple res/commercial/standard consent Never used.	MBIE to repeal provisions in the Act and start again.	<p><b>Support</b></p> <p>We support the intent of keeping building legislation and regulation current and workable. We have no issue if these consent regime provisions are repealed. We do request that any future deigned consent regime is adequately consulted on as this did not occur with the current provisions - that are now proposed to be repealed as they are unworkable.</p>
8	Consistency of building consent services	MBIE to provide best practice examples to guide practice	<p><b>Support</b></p> <p>Usable guidance focussed on improving the quality of information provided as part of a building consent is supported.</p>
		MBIE to work on system compatibility for consenting systems	<p><b>Support</b> single national online system for building consents is supported because it will help with consistency. Currently, we experience building consent application documents that contain 1000's of pages of information, often out of order and in differing file formats. Having one system that would control this would lead to a more efficient processing of consents through better information management.</p>

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		Use of remote inspection technology	<p><b>Support in part</b> Our existing practice is to accept photos and videos on a case-by-case basis for low risk work.</p> <p>We have found that this is not the panacea to address efficiency issues. It still relies on trusting people and the capability of the building industry does not seem ready for an increased reliance on virtual inspections, yet.</p> <p>Quality of builds and consistent adherence to standards needs to be improved before an increased use of virtual technology should be included as part of a high trust model.</p>
		Centralise all training – either MBIE or other training provider to provide training for all BCA’s	<p><b>Support</b> We agree that one national training provider will lead to more consistent decision-making.</p> <p>Training should not just be targeted to BCAs but should be available to all system participants, e.g. building designers.</p> <p>MBIE should also consider strengthening training under other schemes such as their Licensed Building Practitioner scheme and consider partnering with other training institutes to strengthen learning of the Building Act. An example would be that registered architects only undertake very limited training on the Building Act as part of their tertiary qualification and this could be improved.</p>
9	Capacity & Capability	Create a Centre of Excellence for all things building	<b>Support.</b>
		Enable Shared Services between BCA’s – supported by a national consent system (e.g. Simpli)	<b>Support.</b>

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		Have a central resource available to fill gaps.	<p><b>Support</b></p> <p>A centralised national Building Consent Authority will have its challenges operating in a country with the land area and population numbers of NZ. If this was to progress, there would be a need to maintain a “shop front” in local councils in regional areas where BCA officers would have access to local information and allow residents in the regions to maintain a connection to this national BCA.</p>
10	How to improve BCA’s - economies of scale	Introduce ability to transfer functions between BCA’s	<p><b>Support</b></p> <p>This occurs on an informal basis at the moment with BCA’s assisting each other in times of need, e.g. natural disasters.</p>
		Pilot a trial of transfer functions between BCA’s	<p><b>Support in principle</b></p> <p>There have been previous attempts (mid-2010s) to encourage shared services and/or transfer of functions. These have been voluntary with little to no interest from BCAs and appears to have been stifled by the current joint and several liability system that exists.</p>
		Introduce a National BCA to sit alongside local BCA’s (to assist with overflow work etc as required)	<p><b>Support in principle</b></p> <p>A centralised national Building Consent Authority will have its challenges operating in a country with the land area and population numbers of NZ.</p> <p>Any nationally available BCA resource would need to be able to quickly access the local BCA to share local knowledge and records.</p> <p>We do support the concept of an independent national BCA regulator and acknowledge that this has potential to offer better career and development opportunities for our building regulators.</p>
11	Better performance monitoring and system stewardship	MBIE to provide and require better information on performance	<p><b>Support</b></p> <p>A national consenting system will assist MBIE to better monitor the efficiency of the system.</p> <p>We support additional measures by MBIE to better understand the effectiveness of the system, however this should not lead to onerous reporting requirements on top of the already stringent auditing requirements for BCAs.</p>

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		Change the Act to require more stewardship	<p><b>Support</b> To support this, MBIE will need to increase and build capability and institutional knowledge of its staff. The stewardship function is important and needs to also be responsive.</p> <p>In terms of quality advice, we note that we have determinations sitting with MBIE for a couple of years that are still waiting for a decision or view from MBIE.</p>
		MBIE to provide quality advice/info	
12	Better provide for the needs of Māori in the building consent system	A private BCA could be set up to deal with Māori-led projects.	<p><b>Support in principle</b> We defer to our iwi partners to respond to the merits or otherwise of these options.</p> <p>We would like to see more examples and evidence to better understand the problem identification in this space as we consider the current performance-based Building Code is flexible enough to accommodate different construction methodologies, including traditional construction techniques.</p> <p>Our BCA currently works alongside iwi on Māori-led projects (such as whares and maraes) and we expect more larger iwi developments and papakāinga housing development to increase in our district in the future.</p> <p>It is important that we work together if these projects are to be successful.</p>
		Create a navigator role that can liaise between Māori and BCA.	
		Create a centre of excellence for Māori led projects – educate and advise on traditional construction techniques etc.	
		Create MBIE guidance	
13	Interface between building consent and resource consent system	PIMs are the answer – although noted they should still be optional – but strongly encouraged.	<p><b>Do not support</b> Asking BCAs to strongly encourage the use of PIM's will not achieve a stronger interface between the Building Act and the Resource Management Act.</p> <p>The most effective example we are aware of is to have a single piece of building and planning legislation. E.g.</p> <p><i>Building regulation and certification are important parts of the planning system in New South Wales.</i></p>
		Any other suggestions to improve this interface?	

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			<p><i>The planning system supports sustainable development and seeks to ensure that buildings are safe and that they meet the performance expectations of the community both at the time of their construction and throughout their effective lives.</i></p> <p><i>The Environmental Planning and Assessment Act 1979 (EP&amp;A Act) specifies the types of approvals that are required to undertake building work in NSW, and the matters that must be satisfied as part of those approvals.</i></p> <p><i>This includes that building work complies with the relevant requirements of the Building Code of Australia.</i></p>