

**Registered Master Builders Association
of New Zealand Incorporated**

Submission

**on the Review of the Building Consent
System**

September 2022

The Registered Master Builders Association (RMBA) submission on the Review of the Building Consent System

RMBA welcomes the Review of the Building Consent System, a vital opportunity to fix New Zealand's broken consenting system. We represent over 3,000 commercial and residential builders and are the leading voice for the building and construction sector.

New Zealand's consenting system is broken

The consenting system is plagued by several issues that result in significant delays and inexcusable inefficiencies, escalating development costs to homeowners and the sector.

These issues are not BCA-specific. Some BCAs work effectively with our members. But these experiences are inconsistent, and the system is inefficient and is a barrier to improvements. The current fragmentation across 67 consenting authorities is an impediment to efficient investment in technology and people.

With changes to focus on efficiency, consistency, risk-based approaches, and innovation and competition, the consenting system can become an enabler of delivery and innovation rather than a barrier.

Our membership has five main concerns:

- 1. BCA processes are inconsistent within BCAs.** Our members find the consent process depends on the officer you get. The best relationships are with pro-active staff who engage in the sector: but this isn't a hiring requirement, or a capability managed under BCA's KPIs. Some of our members have found contractors less reliable than in-council officers, failing to adhere to statutory timelines.
- 2. BCA processes are inconsistent across BCAs. 67 authorities and differing processes are too many.** Our members can work across multiple BCAs and struggle with navigating different processes, paperwork requirements, and standards for the projects they are involved in. Authorities' rationale can be frustrating and hard to reconcile, especially for builders who have completed similar projects in other areas without issue.
- 3. Timelines for consent and inspections are excessive.** Wait times for inspection appointments can take seven weeks. BCA's priorities are not proportionate to job size, build risk, or volume. BCAs game statutory timeframes by asking for extra paperwork to delay inspections or by outsourcing processing to contractors, who aren't bound by the same timeframes. Our members don't have a choice if contractors or BCA authorities pick up their application: timelines are random and inspectors' luck of the draw.
- 4. BCAs often take a risk averse approach to limit liability.** This can manifest as excessive paperwork, but BCAs have also been slow to accept alternative materials during recent supply challenges. An openness to adopt alternative products, rationalise BCA processes to reflect build risk, recognise builders with demonstrated records of quality developments, and use accredited professionals in the inspection process could considerably improve outcomes. Innovation will be especially important as construction's embodied emissions come under greater scrutiny with climate change legislation.

- 5. BCA's consent processing technologies are out of date.** We do not see much evidence of BCA's investing in solutions to improve processing times. Only a few BCAs have undertaken trials of new technologies for processing consents. Improvements are hampered by high rates of staff turnover at BCAs.

Inefficiencies reflect poorly aligned incentives in the consenting system.

We agree with the Review authors that considerable work needs to be done. BCA's do not pursue or report on objectives we might expect: internal and external consistency, timeliness, competition/innovation, resourcing adequacy, and risk sharing/rationalisation.

As a result, we often hear about BCAs making incoherent decisions that affect our members, such as one BCA rejecting a consent for an issue already accepted by four other BCAs, or an inspector refusing to undertake a remote inspection using the Artisan app for a roof inspection for health and safety reasons, despite scaffolding meeting WorkSafe standards for the professional roofing team on site. Note: the BCA inspector would not even have needed to visit the site.

The example below captures many of our sector's frustrations. It also indicates costs that can snowball in an inefficient consenting system. More examples from our members are included in our submission:

*"We had a challenging build on a steep site that required quite rigorous construction monitoring from a Geotech and structural engineer. A couple of months back we drilled foundation holes 4.0m deep. We had to get road closures, traffic management, and cranes to lift in reinforcing cages. It was quite the process to get all of this in place while battling some terrible weather. **Engineers signed it off but council lead times for inspections was at 5 weeks. During this time the excavated holes filled up with water, so we had to pay a specialist contractor another \$3k to come and pump the water out.***

*The most infuriating part was that when the council inspector finally turned up **he didn't even really look at anything** - he just asked if we had the engineers site notes from his visit."*

Solutions are known but need to be mandated and applied consistently

We recommend decision makers:

- 1. Consolidate the number of BCAs and reduce their number significantly.** 67 unique processes do not make sense when the building code applies nationwide. Nationalising the system will improve the technical expertise of staff and provide better career pathways to retain staff, an ongoing challenge for BCAs.
- 2. Set objectives for consistency of decision making within and across BCAs.** The sector should be able to flag inconsistent outcomes by BCA with MBIE. BCAs should have strict KPIs and stronger incentives and penalties in their procurement processes for contractors to improve this.
- 3. Merge consenting processes based on volume and development size.** Subdivision, resource, and building consent for small developments currently requires three separate applications, teams, and processes. Most of the information submitted is the same. A merged process can reduce duplication.
- 4. Streamline consents based on complexity, with a separate stream for alterations.** Separate processes can free up technical expertise to focus on higher risk developments. Lower-risk

alterations should have a faster processing time. A regularly updated list of accepted solutions to common problems could also reduce confusion for applicants.

5. **Recognise builder's capability and volume in consenting standards.** There is currently no recognition of good players or relatively simple-volume builds. All consents are subject to the same level of scrutiny. Allowing for less intensive standards for those with proven capability is allowed for in the Act but is not being utilised by MBIE or BCAs.
6. **Direct MBIE to deploy regulatory powers.** MBIE does not use regulatory powers enough or with confidence. MBIE should in some situations be providing formal guidance and directives to BCAs on how they can or must interpret the regulations. This should focus on limiting BCAs scope for discretion and result in MBIE applying sanctions such as removing BCA accreditation where required.
7. **Strengthen the operational policy team at MBIE with strong technical capability.** In our view there is a lack of an adequately resourced and technically able operational policy team at MBIE, which is negatively impacting the sector. The cost of establishing such a team is far outweighed by the benefit it would have on streamlining the processes and improving consistency of behaviours from BCAs. This in turn will have significant cost savings to both homeowners and businesses. We are undertaking work to quantify these costs.
8. **Require BCAs to use technology and rely on qualified professionals where appropriate.** The use of technology for online applications and virtual inspections can lower the number of staff required across the consenting system. BCAs also need to allow qualified engineers to inspect work to reduce double-handling. It is common to have a building inspector on site inspecting engineer work when it is not their area of expertise.
9. **Include risk-based approaches in this review.** Risk and liability have significant impact on innovation in the building and construction sector. There is no simple solution but taking a more risk-based approach for different types of projects (alterations, tested and simple solutions vs unique and complex), providers (track record, audited processes, etc.) and devolving assurance to technical experts could improve outcomes considerably even within the existing system.

We hope this review leads to a consenting system that allows for less compliance hurdles for quality operators and simpler structure builds, supported by quality applications, good audit processes, and building guarantees. Auckland, which has responsibility for about a third of New Zealand's consents, is starting to see some real benefits from its BCA's new consenting approaches. Unfortunately, this is not commonly applied across other BCAs and under the current model will not be consistently delivered unless there are requirements to do so.

A less risk averse and fragmented consenting system is essential to meet New Zealand's construction supply pressures. Delays and inefficient consenting carry exceptional costs and delay the resolution of the housing crisis. We are undertaking work with our members to quantify the economic cost of delays.

We know that first principles full reviews done properly take time. We are supportive of this review and do not want to see it rushed or hurried. This does not preclude the government from quick wins and implementing obvious solutions. New Zealanders cannot wait three years for urgent changes to a system that has been broken for decades. Many of the above recommendations can be implemented without delay.

Our responses to the specific questions asked in the consultation document are set out below.

We welcome the opportunity to speak to our submission with the consenting review team.

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Questions on the role of government

1. What do you think the primary focus of the building consent system should be?

The building consent system needs to deliver quality homes for New Zealand. The consent system needs to be efficient and focussed on the areas where it needs to be – those builds that represent the most risk.

Building consent authorities need to rationalise low risk builds and offer alternative fast-tracked solutions for higher-volume, straightforward builds. Timeliness, resourcing, consistency (internal and external), competition/innovation, and suitable risk allocation are appropriate objectives for the consenting system.

2. What role should government have in providing assurance that buildings are healthy, safe and durable?

The government has a responsibility to ensure buildings are healthy, safe, and durable. Regulators should:

- ensure legislative regulations such as the Building Act, are up to date
- oversee the consenting system to make sure it is operating as intended
- encourage sector innovation, competition, appropriate risk sharing, and efficiency
- step in and resolve issues where required.

3. Are there any building consent functions that could be delegated to or provided by another party? If so, please explain your response

It is not sensible to have 67 different approaches to applying nationwide building code.

The use of technology for applications and virtual inspections can be provided by third parties to reduce duplication and process inconsistencies. We are aware this is happening in some building council authorities (BCAs) already, but as commissioning is devolved to BCAs councils use competing programmes. Coordination and cohesion of systems are required.

We strongly recommend BCAs use one system nationally so parties who work between BCAs only need to navigate and understand one platform.

Assurance can be outsourced to a greater extent than under the current system. Council inspectors are often asking for reports from engineers or other qualified professionals but won't outsource inspection work even when they do not have the technical expertise or capacity to do these assessments.

Questions about desirable outcomes

4. Do you agree these four critical outcomes are necessary to ensure the system provides high levels of assurance to the public that buildings are healthy, safe and durable?

Yes, we agree with the four critical outcomes identified in this discussion document.

5. Are there any other outcomes that are critical to ensure buildings are healthy, safe and durable?

Some intermediate objectives contribute to the identified outcomes. We want to see:

- Greater transparency of processing metrics (contributing to efficiency, e.g., measures of timeliness, consistency across BCAs, and resourcing adequacy)

- Adequate attention on risk sharing and risk rationalisation (contributing to a culture of continuous improvement and process efficiency)
- Consideration of future proofing and coordination with other policy areas. Changes to embodied emissions regulation will have significant impacts on consent complexity. This Review needs to consider the need for construction sector innovation to greatly reduce emissions in the building sector by 2050 and respond accordingly.

6. How well is the system currently performing against the four identified outcomes? Please explain your views.

Efficiency

The current system is inefficient.

Increased demand and staff shortages mean timelines for consent approvals and inspections are excessive. Some of our members wait seven weeks between booking an inspection and getting an appointment. BCAs often ask applicants for additional and unnecessary paperwork, such as reports on common building materials to prove their ability to meet the Building Code.

There is little stratification of projects by risk, volume, size, demonstrated capability, or urgency.

Often BCA logic is not clear:

“Bathroom remodels and deck extensions still take at least 3 weeks. These are normally just a minor plumbing consent but still take the same time.”

“Why does a resource consent need to cost nearly \$5k?... if you want to change 1 window on your home which falls into a character overlay area you will need a resource consent and a building consent, which is fine, but it still costs \$5k if you’re completely remodelling a villa or just changing a window. It’s ridiculous and needs to be valued against the work being done”

Members feel getting a ‘good’ inspector is a lottery, both across and within BCAs:

“When we apply, we don’t have an option to opt out of outsourcing. So, if your project gets sent to a council contracted planner or engineer then promised turnaround times don’t apply as councils can’t control contactor time frames. This is a massive contributor to the delay in consents.”

Inefficiency undermines confidence in the system, especially for those consumers who interact with the system rarely and compounds build costs. Because materials are not ordered until a consent is approved, the cost of materials can increase between the original application date and consent. Some struggle to source additional finance, threatening project viability.

Delays also affect business cashflow. Builders may need to put tools down if they are waiting for an alteration approval by council. This can be a major factor in the liquidation of construction companies, particularly in a ‘bust’ construction cycle.

Roles and responsibilities

Most professionals in the consenting system understand their role and responsibilities. However, liability arrangements shape outcomes in practice:

- Builders often take on more responsibility than they need to, as consumers trust builders to take a lead role in a project. However, they are not always responsible for issues that need to be rectified.

- Designers could take on more responsibility. Designers can step out of the system once consent is issued, meaning they are absent in inspections and alterations where items may be questioned that are the designer's responsibility. Other parties then take on additional responsibility to continue projects.
- Assurance can be outsourced to a greater extent than under the current system. Council inspectors are often asking for reports from engineers or other qualified professionals but won't outsource inspection work even when they do not have the technical expertise or capacity to do these assessments.

Reducing instances such as these is an important part of MBIE's role in ensuring the system operates as intended.

Continuous Improvement

The current system does not adapt well to new challenges such as recent supply shortages. There has been slow uptake of BCAs in accepting alternative materials. Balancing risk with innovation is important: BCAs should not be anti-competitive, especially where materials are regulated in other OECD jurisdictions with similar conditions.

Although new technology for processing is increasingly available, there is little evidence BCAs are experimenting, or successful pilots are scaled across the system. Improvements are not widespread or cohesively pursued. Investment in a national consenting system and coordination is required.

"Tauranga city council has an awesome lodging process. We can lodge an application in half the time. Their website is an example of how other BCAs could make improvements."

We are concerned that policies to support construction sector innovation (such as those proposed in the Emissions Reduction Plan and the NZ Infrastructure Strategy) are not being coordinated with Reviews like this. Uncoordinated policy direction will needlessly stifle sector innovation.

Regulatory requirements and decisions

Consistent application of the rules across BCAs is one of the system's biggest barriers.

Many of our members work across multiple BCAs, and constantly struggle with navigating different processes and paperwork requirements. Decision making can be opaque and hard to understand.

One member recounts:

"We deal with four councils. We build homes that are considered low risk on the building matrix. We are a volume builder and keep the same specs and designer for every house we build in New Zealand. But when we send plans to the councils, we have a huge variation on RFI across the 4 councils. Sometimes it's no requests for further information, other times it's up to 35 requests and our consent is in the system for 3-4 months while we respond."

We find when the BCA work is completed in house, we will average low numbers of RFI but contractors have multiple requests for RFI.

This is very frustrating as the designer is saying the information is not required and challenges the BCA. The BCA is saying that is their requirement for the local authority."

Internal consistency of decisions is also an issue. One member told us about a situation where:

"A corner site was sold, plan designed, and consented, with client contracts signed off. But the council's transport division pulled back last minute and decided the setbacks on a corner

site needed to be larger. The plan needed full redesign. It occurred because council was not clear in the consenting stage what was required, so builders assumed setbacks would operate the same as other corner sites in the development.

This could have been avoided with a standard QA template. In this case council have some fault and are hiding behind the transport team. They have openly stated that resource consent won't be issued. Conflict between departments is very common."

Questions about roles, responsibilities, and accountability

7. How well understood are roles and responsibilities across the sector? Please explain your views.

See question 6 (roles and responsibilities).

8. Does the consenting system allocate responsibility appropriately, to those best able to identify and manage the associated risks? Please explain your views.

Responsibility in the consenting system is disproportionate for builders and BCAs. Builders often act as the bridge between consumers and the consenting system. Builders are not always the cause of the issues they are asked to resolve. However, as builders have high liability and costs in a project, they are forced to step in to limit their own risk in the long term.

BCAs also often take a risk averse approach to limit liability. Some of this risk could be reallocated by stratifying consenting processes, with new options for low-risk or simple volume builds and should be considered throughout the Review.

9. Does the building consent system provide sufficient incentives for each party to meet their responsibilities and 'get it right the first time'? Please explain your views.

Correct design is crucial to 'getting it right the first time'. There is room for designers to take on greater responsibility for bespoke designs in consenting. Designers often step out of the system once a consent is issued and are dependent on the builder to execute their designs. Designers are not motivated to stay involved throughout the process and resolve tensions between agents and BCAs due to project design.

10. Should other parts of the sector (outside of building consent authorities) have a greater role in providing assurance that buildings are safe, durable and healthy? If yes, what would the risks and mitigations be?

See question 6 (roles and responsibilities).

11. Are some parts of the sector more prepared than others to take on more of the responsibility for providing assurance?

Assurance requires capacity and capability. BCAs at times struggle with both aspects. Engineers and qualified professionals can contribute effectively to inspections, particularly where council itself does not have the expertise internally to assure to a higher standard.

Questions about capacity and capability

12. How significant are building consent authority capacity and capability constraints on the performance of the system? What are the most significant impacts of building consent authority capability and capacity constraints on the performance of the building consent system? Please explain your views.

A record 50,736 new homes consents were issued the year ending June 2022. This was a great achievement, but many BCAs were not able to complete applications within statutory timeframes and flex to increased demand.

Poorly allocated resources, particularly technical expertise between BCAs, can be greatly improved (e.g., via a roving technical group and streamlining based on project complexity). Technical judgements do not need to be made by jurisdiction for high-risk projects.

13. How significant are sector workforce capacity and capability constraints on the performance of the system? What are the most significant impacts of sector workforce capability and capacity constraints on the performance of the building consent system? Please explain your views.

Workforce capacity and capability is a significant issue. Staff poaching across BCAs means local knowledge and relationships must be rebuilt. Shortages are passed around, rather than resolved.

14. How could the impacts of capacity and capability constraints be mitigated?

For capacity:

- greater automation of manual processes and outsourcing of assurance to qualified professionals can alleviate pressure at chokepoints
- inputs can be standardised. Online applications should be consistent across BCAs
- low risk and common issues can be streamlined with lists of accepted solutions.

A national system will allow BCAs to share workloads between councils in times of high demand. It will also improve the facilitation of technical expertise across BCAs and improve capability.

15. Are there any barriers to a more efficient use of technical expertise across the system? If so, what?

Technical expertise is limited in the sector. The sheer number of BCAs limits the development of this expertise, with too many roles to be filled by scarce resources.

Consideration of how technical expertise interacts with liability issues could be addressed by this review (e.g., liability shifting mechanisms)

Questions about system agility

16. Do you agree that the consent system is not sufficiently agile for the way in which we design, procure and build today and in the future? If you agree, how does rigidity in the building consent system impact consenting outcomes and productivity in the building sector?

The system is not agile. BCAs' Building Act responsibilities have contributed to a conservative culture and an avoidance of new building techniques or methods associated with heightened risk.

For instance, our sector is gaining experience in modular building. But BCAs are often hesitant to approve these builds, especially if they are new to the technical experts approving them.

Innovation in the construction sector is an explicit goal of the Emissions Reduction Plan and the New Zealand Infrastructure Strategy. Government needs to coordinate policies to ensure BCAs do not unduly block this innovation, instead encourage and foster it. More effective liability mechanisms need to be considered as part of this work.

17. What changes would you suggest to the building consent system to make it more agile?

See recommendations in executive summary.

18. Does the current building consent process constrain or limit the use of traditional Māori methods of construction?

All buildings need to meet the structural code. This is to ensure buildings are safe for people to use and will last a minimum of 50 years. If Māori construction methods meet the code, then there is no limitation on the use of traditional Māori methods. We do not expect Māori to live in and use substandard property, and the consenting system should not allow it.

19. Does the current building consent process add constraints to the development of Māori owned land that other landowners don't face?

We don't believe the current building consent process adds constraints to the development of Māori land.

20. What Māori perspective or set of values do building consent authorities need to take into account when considering and processing consent applications for iwi/hapū/Māori led building and construction projects?

RMBA supports adopting a Te Ao Maori approach for this review, and in the consenting system, where appropriate. We also support ensuring there is adequate space for the Maori voice in the review, particularly for iwi/hapu/Maori led building and construction.

Questions about performance monitoring and system oversight

21. What can be done to improve monitoring of the building consent system?

MBIE need to have greater role in overseeing the consenting system.

Precise data is difficult to come by due to each BCA operating its own data systems and its own objectives. There is inconsistency in how open BCAs are to sharing information, such as delay times.

This should be transparent. MBIE need to access clear and concise data so it can fulfil basic regulatory duties. Anecdotal evidence is insufficient.

22. What information or data relating to the consenting system performance would you find useful?

MBIE should publicly report metrics such as:

- Average time between initial and permitting
- Conditions on consents
- Number of low complexity and high complexity consents, and alterations processed
- Cause of delays
- RFIs
- Inspections done
- Causes of rejections of inspections

Reporting these metrics by BCAs will 1) help all parties understand bottlenecks in the system and 2) enable MBIE to act as an effective regulator.

23. Are you aware of any barriers to collecting and sharing information across the sector?

There is currently no central source of data or reporting. Evidence is anecdotal and subjective.

24. Are you aware of additional data and information sources that we could be using to inform our understanding of the system performance?

Builders can provide valuable insights to how the consenting system is operating in practice. Systematic narrative reports can more effectively organise anecdotal evidence.

A technical policy unit at MBIE with relationships with the sector could lead this.

25. Is there anything else MBIE could do to better meet its system oversight and stewardship responsibilities?

MBIE can have better relationships with the sector.

Often it can feel as though government departments are telling the industry how to operate without sufficient consultation. Many of our members believe MBIE operates in a silo.

We encourage explicit efforts to improve this, such as technical working groups, opportunities for co-design, and the hiring of more experienced expertise at MBIE. Incentivising pro-active engagement by BCA officers on the front-line with the sector could also improve relationships.

Questions about fragmented implementation

26. Building consent processing is devolved and carried out by individual territorial authorities under the current system. How does this structure affect the consenting performance and building outcomes?

BCAs take very different approaches to the Building Act due to the amount of risk and liability they are willing to take on. BCA size can shape their risk appetite significantly. Size also shapes responsibilities within BCAs: inspectors may have more power in decision making in some areas than others. In smaller BCAs, political/power dynamic issues can occur, damaging relationships between stakeholders.

27. What aspects of the current consenting system structure work well?

BCAs in some areas have great relationships with their local builders and consumers. This underpins good communication at times of delays and results in less frustration and better outcomes overall.

We associate great relationships with proactive BCA staff, for instance those who attend member events and are willing to take questions directly on specific issues. Our membership particularly values those who front up and engage with the sector. This proactivity is person-specific, however, not a feature of BCA's monitoring via KPIs, etc.

28. What aspects of the current consenting system structure do not work well?

See above. BCA fragmentation exacerbates risk aversion, staff shortages, process inefficiency and stifles innovation. We prefer a nationalised and streamlined approach based on risk, volume, and capability.

29. How does the current devolved consenting system structure impact consent applicants and building owners?

Applicants find the system opaque and complex. Some of our members have 67 guides for applicants navigating the system. This duplication makes little sense considering the building code is applied nationwide.

30. What improvements or changes are required to the current consenting system structure to reduce fragmentation in implementation and deliver better consenting outcomes?

See recommendations. RMBA recommends BCAs merge to at least a regional level.

31. Is there any duplication or overlap between the building consent and resource consent processes, or any other legislation? Please explain your views, including any impacts.

Yes. Paperwork is often being duplicated. Members who are applying for subdivision consent, resource consent and building consent for small developments must submit separate applications to three different teams and processes. Most of the information needed to process each individual consent is the same.

32. How could the relationship between the building consent and resource management systems be improved?

Resource consents and building consents, when applied for together, need to be viewed as an entire application in context to avoid siloed decision making. We recommend an option is developed to stream new subdivisions/brownfield sites under one consent application.