



# Registered Master Builders Association of New Zealand Incorporated

Submission on the Review of the Building Consent  
System

July 2023

## **The Registered Master Builders Association submission on the Review of the Building Consent System**

The Registered Master Builders Association (RMBA) welcomes the opportunity to submit to the Ministry of Business, Innovation & Employment (MBIE) on the *Review of the Building Consent System*.

### **About RMBA**

The RMBA represents over 3,000 commercial and residential builders and are the leading sector advocates on the built environment. Our sector is a key contributor to the New Zealand economy, with every \$1 million spent on house building supporting \$2.6 million across the wider economy. We are working hard to lead the change our sector needs. Ensuring we have the regulatory systems and processes which will enable us to build faster and better. We are supporting our members to grow their capability and business acumen to ensure a strong and healthy sector; to innovate and make the most of new technologies so we meet the climate change challenge; and to attract, train and retain skilled talent. We are proud to be New Zealand's best builders.

At Master Builders we are committed to transforming the sector and rebuilding our economy. We are focused on building better homes, communities and workplaces, and ultimately better lives for all New Zealanders. We want to ensure that the houses that we build now are accessible, affordable, and appropriate to the needs of our ever-changing society. We are building a better New Zealand.

### **1. Summary of the Review of the Building Consent System**

- 1.1. The Government is undertaking a review to modernise the building consent system to better reflect how we build today. The objective is for a system that gets building work right, and produces buildings that are well-made, consistent across all BCA's, healthy, durable, and safe.
- 1.2. MBIE released an issues discussion document in July 2022, alongside a policy position statement on risk, liability, and insurance in the building sector, to better understand the desirable outcomes for the system, and the barriers to achieving those outcomes.
- 1.3. RMBA submitted a consultation in September 2022 outlining several issues in the building consent system including:
  - inconsistent and differing processes within the 67 building consent authorities,
  - excessive timelines for obtaining consents and inspections,
  - building consent authorities' risk averse approach to limit liability, and
  - building consent authorities' use of out-of-date consent processing technologies.
- 1.4. Consultation on the issues paper found there were unnecessary costs in the system that directly, and indirectly impact on the cost of building. This included delays and duplication of work, inconsistent processes and decision-making, poor incentives, and accountability to get building work right first time. The effects of these inefficiencies mean building costs are more than they need to be. This review aims to address these issues, both directly and indirectly.

## 2. Promoting competition in the building regulatory system

2.1. The Commerce Commission, in its market study on residential building supplies, found that competition for the supply and acquisition of key building supplies is not working as well as it could. The Commission recommends that promoting competition be included as another objective of the building regulatory system, to be evaluated alongside safety, health, and durability.

2.2. The Government agrees that competition is important for a well-functioning building supplies market and that this is necessary to support and deliver safe, healthy, and durable buildings. The Government also agrees that competition could take a more prominent position in the building regulatory system and its decision-making as it relates to products, methods, and designs.

2.3. MBIE's preferred approach is to progress with the below options as a package:

- **Preferred option:** *Competition to be included as a principle to be applied in performing functions or duties, or exercising powers, under the Building Act.*
- **Preferred option:** *MBIE issues guidance to territorial authorities on promoting competition in the building regulatory system and decision-making.*

2.4. MBIE believes these options will ensure competition is given a high level of status and prominence in the building regulatory system, and that the impact on competition is an explicit consideration in the building regulatory system, its reform, and decision-making. At the same time, embedding competition as a statutory principle would have a strong effect as to its importance in the building regulatory system. This would help ensure that there is an explicit consideration of how competition can support the delivery of safe, healthy, and durable buildings.

### ➤ Questions about promoting competition in the building regulatory system

2.5. Do you agree with MBIE's preferred approach to progress options 2 (introduce competition as a regulatory principle) and 4 (issue guidance on promoting competition) as a package? Please explain your views.

We don't agree with MBIE's preferred approach to progress option 2 (introduce competition as a regulatory principle).

We believe competition should remain with the Commerce Commission, who have specialist knowledge of competition issues, but with more resources dedicated to promoting oversight and enforcement.

RMBA believes more competition in materials, a more flexible regime, and a more active regulator can better promote competition, through sector productivity and innovation. We

believe that a new regulatory principle overseen by MBIE will not be able to achieve this in the appropriate way.

Objectives such as safety, durability, affordability, and buildability are measurable and tangible outcomes for actual buildings. Competition is a way of operating within market pressures. It seems unlikely that MBIE will have the right knowledge and expertise to promote competition across BCAs appropriately.

It is also not clear that a regulatory principle would result in faster or lower cost approvals, given the sheer number of building consent authorities (BCAs) involved in interpreting consent system objectives/rules, and the mixed outcomes our members already experience between BCA jurisdictions. Unless regulatory consistency is prioritised and adequately enforced, including competition as a regulatory principle, this will only complicate existing systems and dilute MBIE's regulatory focus.

We support the option of issuing guidance to BCAs on promoting competition. However, the guidance will need to be clear and present a standardised template (including minimum supporting engineering and design certificates) to reduce the occurrence of different interpretations from different BCAs. This will limit inconsistencies across different councils and BCAs.

### **3. Removing impediments to product substitution and variations**

3.1. Making the process for product substitutions and variations to consented building work more effective and efficient supports competition in building products, which can help to reduce the time, cost, and complexity to build, and supports the achievement of the desirable outcomes for the building consent system.

3.2. The Commerce Commission considered that making product substitution easier would promote competition by allowing more changes to products after consent had been granted.

3.3. The Commission considered that the key impediment to product substitution is requiring approval from the building consent authority for the proposed alternative product.

3.4. The Commission considered that reducing the need to obtain approval for substitutes could be achieved by amending the way plans in building consent applications are able to specify brands, or providing additional direction about what constitutes a minor variation.

3.5. MBIE's preferred approach is to progress with the below options:

- **Preferred option:** *Monitor and if warranted, update or add to MBIE guidance on product substitution and the building consent process.*
- **Preferred option:** *Modify building consent forms under the Building (Forms) Regulations 2004, expressly including a section where applicants can choose to include*

*suitable alternative brands/product options from those they may have listed in the plans and specifications attached to their consent application.*

- **Preferred option:** *Modify the definition of a minor variation under the Building (Minor Variations) Regulations 2009 to codify aspects of MBIE's product substitution guidance, such as clarifying when a variation does not 'deviate significantly' from the plans and specifications to which the building consent relates.*
- **Preferred option:** *MBIE to issue updated guidance/education on the MultiProof scheme.*
- **Preferred option:** *Making new regulations to define 'minor customisation' for MultiProof, using the definition of 'minor variation' to a building consent as a starting point for discussion.*

3.6. MBIE's preferred approach is to progress all the options identified to improve product substitutions and variations (including for MultiProof) together as a package. The combination of options will provide for both short-term and long-term measures to address the issues raised by the Commission.

➤ **Questions about removing impediments to product substitutions and variations**

3.7. Do you agree with MBIE's preferred approach to progress all the options to improve product substitutions and variations (including for MultiProof) together as a package? Please explain your views.

Yes, we agree with MBIE's preferred approach to progress all the options to improve product substitutions and variations.

All certifications should be based on technical specifications and not brands, with enforcement overseen by MBIE as regulator of BCAs. RMBA would also like to see a full review of the MultiProof scheme, which was intended to be developed over time, but in practice has seen limited use. If this is a potential solution, a better understanding of its benefits and how to scale the scheme is necessary. We are willing to participate and contribute insights to a review.

RMBA also believes that guidance alone may not be sufficient to address all the issues raised regarding product substitution and variations after a consent is granted, and the flexibility of the MultiProof scheme.

3.8. What impacts will the options regarding product substitution and variations to consents have? What are the risks with these options and how should these be managed?

We believe repetition and standardisation processes will be the right approach to drive prices down.

3.9. What impacts will the options regarding MultiProof have? What are the risks with these options and how should these be managed?

We believe issues with inspection documentation need to be considered but these can be addressed by using available tools such as geolocation, and remote inspections.

#### **4. Strengthening roles and responsibilities**

4.1. Improving participants' understanding of their roles and responsibilities, addressing regulatory gaps, and clarifying the role of producer statements, will help ensure risks are appropriately identified and managed, thereby ensuring work is done right first time.

4.2. Submissions on the issues discussion document highlighted that roles and responsibilities across the system are not well understood. BCA's hold too much responsibility for providing assurance of compliance with the Building Code and there are weak incentives on other system participants to get building work right first time.

4.3. Submitters were also of the view that the concentration of responsibility on building consent authorities is contributing to excessive requests for further information and documentation, and increased costs and delays within the sector.

4.4. Most submitters agreed that the building consent system should allocate responsibility to more closely fits with participants' expertise, control, and ability to influence outcomes.

4.5. MBIE's preferred approach is to progress with the below options:

- **Preferred option 1:** *Publish further guidance to address identified gaps in participants understanding of their responsibilities.*
- **Preferred option 2:** *Require all designers to provide a declaration of design compliance with the application for a building consent.*

4.6. According to MBIE, guidance (option 1) can be published relatively quickly and can be tailored to specific issues, sectors, or areas of concern. Guidance can be an effective tool for helping parties to meet their regulatory requirements.

4.7. According to MBIE, requiring all designers to provide a declaration of design compliance with a building consent application (option 2) will make the responsibilities of designers explicit and provide greater consistency across design professionals. The compliance costs will be minimal for those designers that already have good quality systems and processes in place.

#### **➤ Questions about options to clarify roles and responsibilities and strengthen accountability**

4.8. Do you agree with MBIE's preferred approach to progress options 1 (guidance) and 2 (declaration of design compliance requirement) as a package? Please explain your views.

We agree with MBIE's preferred approach.

RMBA believes option 1 can deliver positive outcomes, but the published guidance will need to be effectively promoted across the sector to ensure sector's participants are kept informed, and aware of their roles and responsibilities.

RMBA believes option 2 will make the responsibilities of designers more explicit and would be supported by existing accountability mechanisms, encouraging more attention on quality assurance to improve building work processes. We recommend providing pre-audit checklists for designers to complete to improve the standardisation of the vetting process. We also believe the reinforcement of these responsibilities will need to be appropriately linked to the proposed assurance pathways. This process will be critical to allow the assurance pathways to perform in the most efficient way.

RMBA supports option 3 and believes the option will ensure that responsibility for sequencing and coordination is clearly allocated and managed onsite, rather than by building consent authorities.

4.9. Should there be a requirement for a person to be responsible for managing the sequencing and coordination of building work on site (option 3)? Please explain your views.

Yes.

4.10. What are the risks with these options and how should these be managed?

We believe guidance on roles and responsibilities should be regularly updated to meet the sector's trends, and demand. There are multiple software products in New Zealand that could support this process.

4.11. Do you agree the declaration of design compliance should be submitted by a person subject to competency assessments and complaints and disciplinary processes? Please explain your views.

Yes, existing software products are available to support this process.

4.12. What information should be provided in a declaration of design compliance? Would the detail and type of information required in Form 2A (Certificate of design work) be sufficient?

Yes, we believe risk assessments and engineering information submitted via MiTek software is sufficient.

4.13. When might a design coordination statement be required? What should be the responsibilities and accountabilities of the person providing the design coordination statement?

We believe this process has already been done by consent processing organisations, and controlled by software like Alpha One when documentation is uploaded.

4.14. Should there be restrictions on who can carry out the on-site sequencing and coordination role? Would the site licence be sufficient to fulfil this function?

We believe site license is sufficient to fulfil this function.

4.15. What other options should be considered to clarify responsibilities and strengthen accountability?

We recommend promoting ongoing training for the sector to promote knowledge of responsibilities and strengthen accountability.

## 5. New assurance pathways

5.1. A consent system that more closely calibrates cost and effort to the level of risk would be more efficient and effective. Assurance roles should be done by those with the requisite specialist expertise and who are best placed to manage risk.

5.2. Submissions on the issues discussion document indicated strong support for the consent system to more appropriately take risk into account. MBIE believes there are both formal and informal ways to achieve this: from better central guidance to assist building consent authorities to think about risk, through to formal legislative pathways that legally shift accountability from the building consent authority to elsewhere in the sector.

5.3. MBIE's preferred approach is to progress with the below options:

- **Preferred option 1:** *MBIE to provide guidance for building consent authorities to take a more risk-based approach under current regulatory settings.*

5.4. According to MBIE guidance can be published relatively quickly and will support building consent authorities take a better risk-based approach when making decisions on issuing building consents, and code compliance certificates.

➤ **Question about taking a more risk-based approach under current settings**

5.5. To what extent would MBIE's guidance assist building consent authorities to better take a risk-based approach under existing regulatory settings?

RMBA believes that including risk-based approaches and guidance to assist BCAs will be beneficial, and lead to more efficient outcomes. Risk and liability have significant impacts on innovation and productivity in the building and construction sector. We believe taking a more risk-based approach for different types of projects providers and devolving assurance to technical experts could improve outcomes significantly within the existing system.



We would also like to note that there are many project management and scheduling/sequencing software products currently on the market which also create a detailed record of works and quality assurance processes. These should be added to remote inspections to improve the level of quality assurance, and detailed documentation at the end of the build process. This process would drive insurance costs down and clarify where liability sits for a specific trade.

- **Preferred option 2: *Self-certification by accredited companies and approved professionals.***

5.6. This option would allow accredited companies and approved professionals to certify work they have carried out. The two sub-options would be profession and work neutral (i.e.: the regulatory framework would set out criteria for a company or approved professional to self-certify) rather than regulation explicitly listing qualifying professions or types of building work.

5.7. MBIE seeks views on whether some building work should never be self-certified because the increased risk to building safety, and quality cannot be sufficiently mitigated. This recognises that the person carrying out the work may, even exercising due diligence and using best efforts, make mistakes or miss something due to their proximity to the work. Other reasons may be that the work is so complex it should always be reviewed by an independent third party, or there may be business or client pressures to cut corners.

- **Option 2a: Accredited companies**

This option would allow companies to certify work the company carries out. Examples include:

- a group home builder could self-certify the design and construction of homes; or
- a bespoke design company could self-certify its designs.

- **Option 2b: Approved professionals**

This option would allow approved members of regulated professions, such as plumbers, and licensed building practitioners, to certify their own work. This would require some form of regulatory body to implement an approval regime and assess and approve a sub-set of eligible professionals to self-certify. Approved professionals would be subject to a proactive audit regime, and complaints, and disciplinary processes.

5.8. Under this new pathway, **accredited companies and approved professionals would be responsible for compliance.** The building consent authority's role would be similar to that under BuiltReady, to check the relevant certificate has been validly issued by an accredited company or approved professional and is within the scope of what the accredited company or approved professional is authorised to self-certify. The building consent authority would be required to accept the certificate as demonstrating compliance under s19 of the Building Act 2004.

5.9. This means that the approved professional or accredited company doing the work certifies that it complies with the Building Code. According to the new pathway, building consent authorities would not conduct inspections (or, in the case of self-certified design work, review the design) to check the work complies with the Building Code or the issued consent, and would therefore not be liable if it is non-compliant.

5.10. MBIE seeks views on whether the BuiltReady “adequate means” test would be appropriate to apply to companies seeking accreditation to self-certify. This requires a company to have “adequate means” to cover civil liabilities. It examines an applicant company’s balance sheet strength, working capital position, asset quality, insurance policies, and risk management procedures and systems.

5.11. A common way to make sure professionals can recompense a consumer for non-compliant work is to require the professional to be insured. According to MBIE, options could include requiring approved professionals to hold warranty insurance, either on their own account or through a professional membership body (such as Master Plumbers, RMBA etc). Insurance requirements will require relevant insurance products to be available. MBIE seeks views on whether there are other options, such as assessing a professional’s financial stability, or recognising a professional membership body’s guarantee or warranty scheme for approved professionals that is not backed by insurance, would be sufficient to protect the consumer.

➤ **Questions about options for self-certification**

5.12. To what extent would self-certification align assurance with risk levels and sector skills?

RMBA supports the proposed self-certification option, however we believe it should not apply to everybody.

We encourage industry bodies working with MBIE and BCAs to achieve outcomes that deliver capability, competency, consistency, and the right level of information for BCAs to deliver code compliance certificates, along with strong penalties for self-certification failures where responsibilities have been neglected.

We would also like to note that members of our Residential Working Group (including group home builders and residential builders) are open to be involved in piloting the self-certification assurance pathway alongside local councils to promote and drive practical and effective change to the building consent system process.

5.13. MBIE has identified three desired outcomes for certification (high confidence that work complies with the Building Code, remedy for non-compliant work, and that careless or incompetent certifiers are identified and held to account). Do you agree with the three proposed outcomes and the means to meet these outcomes? Please explain your views.

RMBA is pleased to see MBIE promoting performance monitoring, skills development, and proactive auditing as an important part of the new accredited pathway.

## **We recommend introducing a triage approach to disciplinary actions**

We believe that there should be a triage approach in place to handle disciplinary actions, deliver repercussions for minor infringements, and establish a higher level of investigation for more complex issues. The disciplinary response for failures will need to act as a deterrent to fraudulent practices and deliver a meaningful remedy to consumers. Consideration will need to be given to how offenders are held to account, and the time and cost involved. We need to carefully manage this change and there needs to be a very considered and trialled approach involved in the process.

## **Focus should be on monitoring ongoing performance**

We believe MBIE will need to introduce ongoing monitoring of the performance of desired outcomes for the self-certification pathway. This approach will inform industry bodies and the regulator on training and upskilling needs and requirements and will deliver regular and consistent professional development to practitioners.

### 5.14. *What are the potential risks for self-certification and how should these be managed? Is there any type of work that should not be able to be self-certified?*

We believe the success of the self-certification pathway will require initial education for the sector, ongoing monitoring, and creating awareness of the implications of failure or mismanagement.

We believe the design of the assurance pathways needs to carefully take into account expectations at a business level, rather than strictly focusing on expectations at an individual level and acknowledge the different conditions and standards the two pathways will require (for example, approved professionals' pathway vs accredited companies' pathway).

We believe the assurance pathways should initially be trialled using low-risk projects/construction companies before the pathways become available to the entire sector. These low-risk projects should also be carefully identified using a set benchmark specifying requirements for defining *low-risk* and *existing acceptable solutions*. This would allow for both MBIE and the sector to adjust to the new changes and learn and manage the requirements of the assurance pathways as we go.

- **Preferred option 3: *Commercial consent.***

5.15. Commercial projects are currently subject to the same building consent process as residential homes. In practice, many of these projects are commissioned by well-informed clients, and are designed, built, supervised, and peer reviewed by experienced, contractually accountable professionals. Some building consent authorities may lack the technical expertise to carry out detailed design checks and inspections, and instead rely on third-party reviews of design and specifications.

5.16. The commercial consent option would provide an alternative regulated consent process for some commercial projects. A client could potentially choose to use this process instead of the standard consenting pathway, or it could be mandatory for more complex projects.

5.17. **The commercial consent would be based on a project-specific risk profile and quality assurance system.** This process would be based on a project-specific risk profile and quality assurance system developed by the client and approved by a building consent authority. This means project risks are considered early in the design process, with quality assurance systems developed that are proportionate to the agreed risk levels.

5.18. The building consent authority would rely on design professionals to verify compliance, supported by third party review. This drives more efficient outcomes and reduces scope for duplication where building consent authorities undertake or contract their own reviews on top of the applicant's own third-party review. It also places responsibilities for assurance on the specialists who are best placed to provide it, such as technical engineers.

5.19. The building consent authority would issue a certificate upon completion based on whether the agreed quality assurance system has been followed, and compliance documentation is complete. The existing powers of territorial authorities would be maintained, for example to issue notices to fix, carry out inspections or intervene in the case of dangerous and insanitary buildings.

➤ **Questions about the option of a new commercial consent process**

5.20. To what extent would the commercial consent process align assurance with risk levels, the respective skills of sector professionals and building consent authorities?

The commercial construction sector has been running quality control systems (management and production) in the design and build area for many years. This has been particularly evident in the areas where BCAs work closely with larger vertical construction companies, based on their quality system awareness, auditing, and a history of good building outcomes.

The critical issue that needs to be addressed in commercial construction arises when there are well-informed and prepared clients happy to manage risk that are unable to benefit from an efficient consenting process. The process should support clients' ability to manage risk and provide a streamlined and efficient consenting process.

**RMBA believes collaboration across BCA networks needs to be improved**

We believe BCA networks will need to be improved for the commercial consent to achieve best results. BCA networks contribute to filling in technical expertise gaps through the utilisation of skill sets across BCAs, and where projects require specific unique specialist skills to deliver consent assurance by engaging outside expertise. This expertise knowledge will need to be shared across different BCAs to create a more consistent pathway across different regions.

**Supporting further BCA investment in audit programme**

MBIE has identified the need to mitigate risks in the design and construction quality assurance systems and the need for a strong audit programme implementation by BCAs. We support this process and encourage further BCA investment to deliver appropriate outcomes.

5.21. Would it enable a more agile and responsive approach to dealing with design changes as construction progresses? Please explain your views.

**We believe risk should be managed by specific work type rather than category of building**

We believe the type of work and its risk level should be the important factor as opposed to the category of building. This aspect of consideration could apply to the staging of elements being required to demonstrate Building Code compliance across the duration of the build process.

**We believe more research is required**

RMBA recommends that it is important that before these changes are considered and implemented, MBIE undertakes appropriate research to identify where the commercial sector is affected by design work being done post consent. We believe MBIE needs to continue to engage with the sector, inform and educate the commercial construction sector to achieve outcomes that will be efficient, buildable, and practical.

**Scope of commercial consent**

5.22. This process would be most suitable for complex construction projects with multiple technical experts. MBIE is exploring current commercial building definitions (used to determine national competency of building control officers) to set out a mixed mandatory/voluntary scope as per the table below.

<b>Mandatory</b>	<b>Commercial 3:</b> All uses of buildings that are over four storeys high, or contain over 500 occupants or sleeping care or sleeping detention facilities greater than single storey.
<b>Voluntary</b>	<b>Commercial 2:</b> Commercial, industrial, communal residential and communal non-residential buildings equal to or less than four storeys and an occupancy load of equal to or less than 500 people or that are single storey.
	<b>Commercial 1:</b> Commercial, industrial and communal non-residential buildings and their associated outbuildings and ancillary buildings equal to or less than two storeys and an occupancy load of equal to or less than 100 people or residential buildings up to two storeys and with horizontal fire separation.

5.23. MBIE seeks views on whether the process could be optional for single residential builds that have a high level of complexity due to unique or elaborate design elements.

5.24. MBIE seeks views on what responsibilities a building consent authority should have under this potential process, over and above auditing compliance with the quality assurance system and its ordinary powers as a territorial authority (issuing notices to fix and powers in relation to dangerous or insanitary buildings). In particular, **what requirements or powers would be required for a building consent authority to fulfil its auditing role**, and any additional powers to ensure building safety if the building consent authority has concerns about compliance.

5.25. MBIE's preliminary view is that someone on **the construction project team must own the agreed quality assurance system** and have the power to enforce it. Options for this include: the owner, a head contractor, or a Coordinating Responsible Person (appointed by the owner).

➤ **Questions about the design considerations for the commercial consent process**

5.26. What should be the scope of the commercial pathway? Should it be mandatory for Commercial 3 buildings and voluntary for Commercial 1 and 2 buildings? Please explain your views.

#### **Restricting commercial consent**

We believe that a commercial consent system based around project specific risk profile and quality assurance systems, being made available on a voluntary basis, may risk extending choice to companies that are not considered competent or equipped to deliver efficiently in the commercial consent pathway, along with meeting its requirements and standards.

We recommend establishing a very tight entry pathway to the commercial consent. We believe risk should be managed by specific build type rather than category of building.

We would initially propose voluntary trialling for Commercial 1 and Commercial 2 buildings, but with tight entry requirements for a select number of practitioners.

We believe there needs to be a good understanding of who can work within such a process, and the parameters that will define it. Pilots must be undertaken and analysed, and MBIE and BCAs should monitor performance delivery before wider voluntary access is considered.

#### **Trialling pathways with commercial construction companies**

We recommend trialling the proposed commercial consent pathway with a select few commercial construction companies and BCAs in a pilot environment in the first instance, before any decisions are made in respect of a voluntary pathway.

We would also like to note that members of our Commercial Working Group are open to being involved in piloting the commercial consent assurance pathway alongside BCAs, to promote and drive practical, and effective change to the building consent system process.

5.27. Do you agree with the proposed roles, responsibilities, and accountabilities? Please explain your views.

#### **We believe existing roles and responsibilities require further clarification**

We believe the responsibilities outlined in this consultation need further clarification, and rigid consequences for those failing to conform to their roles. Furthermore, this document does not detail adequately the transition from existing roles and responsibilities. We also believe that Engineering NZ and NZ Institute of Architects should be heavily involved in developing the level of detail to clarify roles and responsibilities in this space.

5.28. What would be the risks with the commercial consent pathway and how should they be managed? Please comment on entry requirements, site coordination, overall responsibility for the quality assurance system, third party review and what (if any) protections would be needed for owners of commercial buildings.

#### **Need to improve coordination**

We believe final designs in the current system require further coordination. Currently there is not a careful sharing of finalised design details across all the professionals providing design input components. Practitioners are often all working on different versions of design documents, without appropriate coordination or version control. This situation could be exacerbated by a poorly designed self-certification or commercial consent system. We believe coordination statements and robust quality assurance processes are needed to avoid/mitigate these risks.

### **Need further clarity around responsibility and risk**

We believe there needs to be further clarity within the legislation regarding allocated liability and responsibility of different professionals and practitioners involved in the commercial consent to enable the appropriate risk balance to occur.

## **6. Better delivery of building consent services**

- 6.1. The delivery of building consent services should be as consistent as possible, with the system set up to achieve economies of scale and reduce duplication and unnecessary costs.
- 6.2. Today different people – with varying experience and tolerance for risk – interpret the Building Code and use different processes, contributing to its fragmented implementation.
- 6.3. There are also significant capacity and capability constraints in the sector. Building consent authorities report it is increasingly difficult to attract and retain appropriately qualified building control staff.
- 6.4. RMBA, along with other sector participants, proposed that a smaller number of building consent authorities would improve the consistency, efficiency, and effectiveness of the building consent system. However, MBIE believes that mandating this would involve a high level of risk and further disruption to local government, which is currently facing significant challenges and reform.
- 6.5. MBIE's preferred approach is to progress with the below options:
  - **Option 1:** *Providing greater national direction and consistency within the current structure.* This option seeks to increase the consistency, transparency, and predictability of the process for applicants across Aotearoa New Zealand.
  - **Option 2:** *Boosting capacity and capability across all building consent authorities.* This option seeks to increase building consent authorities' capacity to address demand and build greater collective capability across the system.
  - **Option 3:** *Supporting building consent authorities to achieve greater economies of scale.* This option seeks to reduce duplication and achieve greater economies of scale and reduce costs for individual building consent authorities.

6.6. Many of the options will require greater system stewardship by MBIE, through supporting building consent authorities to achieve these outcomes and objectives.

➤ **Questions about providing greater national direction and consistency**

6.7. Which options would best support consistency and predictability given costs, risks, and implementation timeframes? Please explain your views.

**RMBA believes that consolidating the number of BCAs will still provide the best results.**

BCA processes are inconsistent across BCAs. We believe that 67 authorities with 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. BCAs' rationale can be frustrating and hard to reconcile, especially for builders who have completed similar projects in other areas without issue.

We continue recommending consolidating the number of BCAs and reducing their number significantly. 67 unique processes do not make sense when the Building Code applies nationwide.

**It was never envisaged under the Building Act 2004 that we would continue to retain this large number of BCAs. BCAs were expected to amalgamate over time (and not increase in numbers as we have witnessed with the establishment of Kāinga Ora), which to this day they have failed to do.** When reviewing BCAs' numbers and processes, MBIE should prioritise the views and submissions of those receiving the service, rather than those delivering it, to achieve a consenting system that is both efficient, and consistent.

Nationalising the system will improve the technical expertise of staff and provide better career pathways to retain staff, an ongoing challenge for BCAs.

We also believe MBIE should request more BCAs and councils to publish monthly housing update reports (e.g., Auckland Council's monthly housing update report) as part of monitoring and documenting BCA's performance.

6.8. Are there any other options that would support consistency and predictability?

We recommend setting objectives for consistency of decision making within and across BCAs. The sector should be able to flag inconsistent outcomes by BCAs with MBIE. We believe BCAs should have strict KPIs, and stronger incentives, and penalties in their procurement processes for contractors to improve this.

We recommend streamlining 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.

➤ **Questions about boosting capacity and capability**

6.9. Which options would most alleviate capacity and capability constraints given costs, risks, and implementation timeframes? Please explain your views.



We recommend requiring 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.

➤ **Questions about achieving greater economies of scale**

*6.10. What are the biggest barriers to voluntary consolidation? How could these be overcome?*

Over the last 20 years, BCAs have had the option of voluntary consolidation, yet have not shown any interest in it. We believe that for BCAs to effectively consider voluntary consolidation, MBIE will have to provide incentives, or enforce it as a requirement. Until consolidation is made a requirement, the sector will continue to struggle with an inconsistent, and inefficient system.

Barriers to voluntary consolidation would include transitional costs and time for the building consent authorities involved in the consolidation process. Voluntary consolidation may also be against certain councils' interests and may result in limited uptake by BCAs.

We also believe MBIE should focus on two areas for improvement:

- Allocating a **small number of BCAs** that specifically focuses on handling **complex commercial construction projects**.
- Group home builders should have the option to choose **one BCA** to handle **all their projects on a nation-wide basis**.

As the sector's leading regulator, MBIE should drive and support consistency and productivity across the consenting system. We believe the areas mentioned above are key drivers for changing building consent processes and improving efficiency and productivity, directly affecting consumers who are currently paying the consequences of the system's inefficiency which continues to deteriorate New Zealand's housing affordability.

*6.11. Which options would best support building consent authorities to achieve greater economies of scale given costs, risks, and implementation timeframes? Please explain your views.*

We believe there are various software products (eg. Simpli, Alpha One) currently available to achieve greater economies of scale.

*6.12. What other costs and risks need to be considered?*

Risks such as ongoing loss of people and competition for resources amongst BCAs will need to be considered.

## **7. Better performance monitoring and system stewardship**

7.1. Better performance monitoring and information enables MBIE to be a stronger steward of the building consent regulatory system, using system insights to proactively respond to changes in the system, and address problems as they emerge.

7.2. As steward, MBIE needs to proactively monitor and respond to the needs of the building consent system. This requires MBIE to actively seek out information on emerging issues in the

system, assess that information, make informed decisions, and take action in response to the issues and opportunities identified to ensure the system is efficient, responsive, and fit for purpose.

7.3. MBIE needs to take a stronger role as central regulator of the building consent system by progressing with the below initiatives:

- **Initiative 1:** *Obtaining better information about system issues.*
- **Initiative 2:** *Acting on available information.*
- **Initiative 3:** *Providing quality information to the sector.*

7.4. In regard to the building consent system, MBIE has the ability to gather data and information from building consent authorities, monitor trends, issue warnings and bans, and provide compliance and guidance documents.

7.5. MBIE acknowledges that they need to take a more proactive role as central regulator, and steward. This requires them to improve their own performance in a range of areas. As all of the activities mentioned above are equally important, and interdependent, MBIE is not presenting them as options, but as a set of interrelated initiatives to fulfil their responsibility as steward.

➤ **Questions about system stewardship**

7.6. Will these initiatives enable MBIE to become a better steward and central regulator and help achieve the desirable outcomes? Please explain your views.

We support the recommended initiatives; however, we believe further detail should be provided on how these initiatives are going to be carried out in practice to support the sector.

7.7. What initiatives should be prioritised and why?

Initiatives focused on informing, educating, and supporting the sector should be prioritised.

7.8. What else does MBIE need to do to become a better steward and central regulator?

We believe MBIE should continue strengthening and effectively deploying 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.

We recommend strengthening 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.

As mentioned above, we also believe MBIE should request more BCAs and councils to publish monthly housing update reports (e.g., Auckland Council's monthly housing update report) as part of monitoring and documenting BCA's performance.

## **8. Addressing the interface between the building and resource consent systems**

8.1. Many building projects are subject to a building consent under the Building Act 2004, and a resource consent under the Resource Management Act 1991. The building consent process considers the performance of the building itself, and ensures building work complies with the Building Code, while the resource consent process assesses the environmental impacts of projects in accordance with district and regional plan provisions.

8.2. While processes for assessing applications for building and resource consents consider different matters, there can be overlaps between the two consent processes due to the interface between buildings and land. As such, there can be confusion about which requirement falls under which consent process.

8.3. This may lead to the misperception that the same reports, documentation and specialist input are required for both processes. Reports and documents are requested by building control officers and planners for different reasons, usually at different stages of the project, and with varied requirements for detail.

8.4. Reforms occurring in the resource management space that should reduce the occurrence of unnecessary overlaps include:

- *Enabling more activities without a resource consent.*
- *Consolidating regional policy statements and district and regional plans into around 14 natural and built environment (NBE) plans.*
- *The intention to better manage natural hazards at the planning stage.*

### ➤ **Question about addressing the interface between the building and resource consent processes**

#### 8.5. *What other options to address the issues arising from overlaps between the building and resource consent processes should be considered?*

We support the intention of the above options. RMBA welcomes the need for resource reform and supports the action taken by Government. However, we believe the new RMA reforms lack detail on how the Bills will be implemented in practice, lack local voices and sector expertise within the planning and decision-making processes, and detail of how councils intend to implement the new planning regime and finance infrastructure in future plans.

When addressing issues arising from overlaps between the building and resource consent processes, we recommend merging 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 and overlapping between the building and resource consent processes. However, we do recognise that resource consents' requirements and processes vary depending on different regions. Further solutions will need to be developed to address this issue.

We thank you for the opportunity to make this submission.

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