



21 August 2023

Consultation: Review of the Building Consent System
Building System Performance
Ministry of Business, Innovation and Employment

Email: building@mbie.govt.nz

Tēnā koutou

RE: REVIEW OF THE BUILDING CONSENT SYSTEM

Thank you for the opportunity to provide feedback on the Ministry of Business, Innovation, and Employment's (MBIE)'s consultation document on the review of the building consent system.

Engineering New Zealand (formerly IPENZ) is New Zealand's professional home for engineers. We are New Zealand's strongest and most influential voice on engineering issues, with more than 23,000 members who want to help shape the public policy agenda and engineer better lives for New Zealanders.

Some of our collaborating technical societies have submitted to MBIE on this review. We support these submissions, notably the New Zealand Geotechnical Society and the Structural Engineering Society New Zealand (Inc).

Attached to this letter is our completed MBIE submission form. While we support, in principle, many of the proposals outlined by MBIE in its consultation document, we have significant concerns about the trajectory of the reform, the lack of cost/benefit analysis outlined in the consultation document and the absence of clarity on the implementation pathway ahead. Engineering New Zealand was part of the 'Sector Reference Group' supporting this work, but we were surprised by the consultation document and the proposals outlined.

MBIE has consulted on the building consent system many times. Responses to these proposals take considerable resource and we are yet to see substantive change. As highlighted in our responses in Chapter 7 (Better performance management and system stewardship), we believe MBIE must step up and lead the system better. To do this MBIE must engage more effectively with industry. We support closer collaboration and open dialogue and are available to support this going forward. We welcome an opportunity for further discussion.

Ngā mihi

Dr Richard Templer
Chief Executive

Consultation submission form

REVIEW OF THE BUILDING CONSENT SYSTEM: OPTIONS PAPER

June 2023

Contents

- [Contents](#) 3
- [How to make a submission](#) 4
- [Use of information](#) 5
- [Submitter information](#) 6
- [Consultation questions](#) 8
- [General comments](#) 3

How to make a submission

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

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

How to make a submission

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

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

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

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

- Sending your submission as a **Microsoft Word document** to building@mbie.govt.nz
- Mailing your submission to:
Consultation: Review of the Building Consent System
Building System Performance
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473

Wellington 6140
New Zealand

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

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

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

Use of information

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

Release of submissions on MBIE website

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

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

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

Release of information under the Official Information Act

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

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

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

Private information

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

Submitter information

Submitter information

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

A. About you

Name:

Richard Templer (Chief Executive)

Organisation and role (if submitting on behalf of a company or organisation)

Engineering New Zealand

Email address:

Richard.Templer@engineeringnz.org

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

Yes

No

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

Individual

Company/Organisation

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

Designer/ Architect

Builder

Sub-contractor

Engineer

Building Consent Officer/Authority

Developer

Homeowner

Business (please specify industry below)

Industry organisation (please specify below)

Other (please specify below)

Engineering New Zealand

Privacy and official information:

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

Submitter information

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

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

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

DRAFT

Consultation questions

Chapter 2 – Promoting competition in the building regulatory system

The Commerce Commission recommends that promoting competition be included as an objective in the building regulatory system, to be evaluated alongside safety, health and durability—without compromising those essential objectives.

Chapter 2 presents potential regulatory and non-regulatory options that would promote and give competition more prominence in the building regulatory system.

MBIE's preferred option is to progress options 2 (**introduce competition as a regulatory principle**) and 4 (**issue guidance on promoting competition**) together as a package.

Questions about promoting competition:

1. What options are more likely to promote and give competition more prominence in the building regulatory system and its decision-making, given the costs and risks?

We do not support Government giving competition more prominence in the building regulatory system. It is our view that this will take away from the objectives of the system (safe, healthy and durable buildings). The 'race to the bottom' is well evidenced to lead to poor quality outcomes.

The Commerce Commission's review related to competition for residential building supplies. It did not relate to competition for services. The Commission was very clear that professional services were out of scope. The Commission's recommendations should not be applied to services such as engineering.

Our submission to MBIE in 2022 focused on the need for quality outcomes to be central to the building system. Our position has not changed.

It is worth noting that previous attempts to increase competition in the building regulatory system did not end well. Private BCAs were created in the past and they competed with Council BCAs. When the leaky homes crisis began, the private BCAs folded leaving local and central government to carry the costs.

Limited liability companies should never be BCAs.

2. Are there other regulatory and non-regulatory options that would promote and give competition more prominence in the building regulatory system and its decision-making?

If MBIE considers it must promote competition, we support only non-regulatory options (i.e., issuing guidance on the promotion of competition).

Consultation questions

3. What other options or potential combinations would work together to give effect to competition as an objective in the building regulatory system?

As above, we do not support MBIE's work to increase competition in the building regulatory system.

4. 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?

Yes Somewhat No Not sure

Please explain your views.

No, as above, we are against giving competition a more prominent place in the building regulatory system. We only support non-regulatory means of informing the sector. We do not support any options except 4 and 5 on pages 14 and 15 of the consultation document.

Chapter 3 – Removing impediments to product substitution and variations

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

Chapter 3 presents options to help make the process for product substitutions and variations to consented building work more effective and efficient, and to increase flexibility in the MultiProof scheme.

MBIE's preferred approach is to progress all of the following options:

Product Substitution:

- Update guidance on product substitution.
- Modify the building consent forms to expressly allow alternative brands or products.
- Modify the definition of minor variations under regulations.

MultiProof scheme:

- Issue **guidance** and/or educational material.
- Make new regulations to **define 'minor customisation'** for MultiProof.

Consultation questions

Questions about product substitutions, variations and MultiProof

5. 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?

Yes Somewhat No Not sure

Please explain your views.

Please see the New Zealand Construction Industry Council's submission. We support the NZCIC's view that future investigation into feasibility and risks is required before supporting these proposals.

6. 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?

As above. It is our view that the proposals would have either minimal or negative impact. The proposals will create uncertainty, leading to BCAs and other stakeholders spending more time researching and understanding a given substitution. Product quality, safety and local considerations (climate, seismicity, etc) will all need to be considered. Further work is needed.

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

Our understanding is that there has been limited uptake of MultiProof. As such, changes are unlikely to have significant impact.

8. Are there any other options to improve the system and make product substitutions and variations to consents, and MultiProof, more effective and efficient?

No.

Chapter 4 – Strengthening roles and responsibilities

Chapter 4 presents options to improve participants' understanding of their roles and responsibilities, address regulatory gaps and ensure participants can be held to account, and clarify the role of producer statements. Together, these options will help ensure risks are appropriately identified and managed and that building work is done right first time.

MBIE's preferred approach is to progress the following options:

- Publish **guidance** to improve system participants' understanding of their roles and responsibilities.
- Require all designers to provide a **declaration of design compliance** to strengthen responsibilities of designers.

Questions about strengthening roles and responsibilities

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

Yes Somewhat No Not sure

Please explain your views.

We support MBIE's preferred approach to progress options 1 (guidance) and 2 (declaration of design compliance requirements).

Options presented will only be successful with appropriate education and training.

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

Yes No Not sure

Please explain your views.

It is our view that assigning responsibility for complex projects supports greater accountability and efficiency in building projects and the building system. Engineering New Zealand welcomes an opportunity to work with MBIE to scope the position (including competencies and accreditation), practice areas, roles, and responsibilities and where a Declaration of Design Compliance should be required.

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

As noted in the New Zealand Geotechnical Society's submission, with any work in the building system, there is a risk of inappropriate engineering discipline sign-off (ie, structural engineers signing off declarations of compliance for fire safety elements or retaining walls). For this reason,

Consultation questions

professionals undertaking this work must be registered and able to be held to account if/when they practice outside their area of competence.

As noted by the Structural Engineering Society New Zealand, any future design certificates must be consulted extensively with industry. Producer Statements have been developed over a period of years to ensure commercial viability.

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

Yes Somewhat No Not sure

Please explain your views.

Engineering New Zealand strongly supports this proposal and agrees that individuals signing design compliance declarations should be subject to competency assessment and complaints/disciplinary processes (i.e., CPEng).

13. What information should be provided in a declaration of design compliance? Would the detail and type of information required in Form2A (Certificate of design work) be sufficient?

Design compliance pathways need to be discussed for risks to be allocated to a project.

The current certificate of design work does not meet the needs of engineers.

A gap analysis needs to be undertaken between producer statements and the certificate of design work. If a gap is found (and this is likely) – the gap will need to be addressed.

14. Should the declaration of design compliance replace the certificate of design work (for restricted building work)?

Yes No Not sure

Please explain your views.

Further information is needed to understand the value in replacing status quo. See answer to question 13 above.

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

There are many instances where design coordination statements are required (for example in the coordination of fire safety elements). Persons taking responsibility for the project (i.e., lead consultant) are responsible for the components of the document.

Consultation questions

While we support enhanced coordination, should a design coordination statement be required, a natural fit to the role within a particular profession would not always be obvious. As SESOC point out in their submission, it is most likely that if this were required, individual professionals would be reluctant to take on the role due to concerns about downstream liability.

16. 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?

Uncertain. From the consultation document, we are unclear as to whether this refers to residential work or all building work. Further work is required.

For complex projects, it is our view that a suitably qualified engineer or project/design manager should be required. These individuals should be subject to competency assessments and complaints/disciplinary processes.

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

Progressing the new occupational regulation regime for engineers would clarify responsibilities and strengthen accountability.

It is also our view that design firms should be able to demonstrate internal quality assurance processes and peer reviews to BCAs. This will avoid duplication through the consent process. As highlighted in NZGS's submission, there needs to be a degree of separation between the designer and the internal peer reviewer.

Consultation questions

Questions about producer statements

MBIE's preferred approach is to progress the following option:

- Clarify the use of **producer statements** through non-prescriptive legislation and guidance.

18. Do you agree with MBIE's preferred approach to progress option 2 (non-prescriptive legislation and guidance)?

Yes Somewhat No Not sure

Please explain your views.

We support this option, but highlight that clear expectations and guidance for industry is needed. Clarification on the role of Producer Statements and Declarations of Design Compliance is also required.

Producer statements relating to engineering should only be signed by CPEng. Clear requirements around PS2s are also needed. Engineering New Zealand is available to support this work should it progress.

19. What should be the purpose of producer statements and what weight should be given to them?

Producer statements provide assurance to industry that the engineering aspects of the design and build comply with the Building Code. PS1s and PS4s should be compulsory for all builds. Clear guidance on PS2s must be given to support the profession and industry.

Any weight given to producer statement, must reflect that they are just a part of the building control system. See our comments above with regard to the Declaration of Design Compliance.

20. Should there be restrictions on who can provide a producer statement?

Yes No Not sure

Please explain your views.

PS1, PS2 and PS4s should only be signed by registered engineers (i.e., CPEng). These individuals must be able to be held to account should things go wrong. In the case of CPEng, these engineers have also passed a competency assessment.

Re indemnity insurance, the checking and enforcement of this is difficult for the professional regulator. This should be a matter for BCAs to manage in their interactions with engineers. Engineering New Zealand notes that its template producer statement requires the signatory to declare whether or not they hold insurance up to a specified value.

21. What is the appropriate criteria to assess the reliability of producer statements?

Consultation questions

Different designs have different risk profiles. Evaluating the reliability of producer statements is complex and BCAs need to consider not only the comprehensiveness/completeness of the producer statement, but also the information provided and the qualifications and competency of the author of the producer statement.

We strongly encourage the use of PS2s to provide a level of assurance that designs have been independently peer reviewed. Engineering New Zealand has guidance on peer reviews, and we continue to work with the profession on peer review requirements. We also encourage BCAs to engage with engineers to review producer statements.

22. What other risks need to be managed?

We identify the following risks:

- People working outside their bounds of competence
- Fraudulent individuals
- Competent individuals that undertake poor work without appropriate quality assurance processes in place
- Poor peer review processes (compliance rather than quality assurance)
- Confusion regarding documentation requirements (Certificates of Works, Declaration of Design Compliance and Producers Statements).
- Individuals who aren't qualified but are competent.

We encourage MBIE to work with Engineering New Zealand and BCAs to develop a risk matrix and guidance that supports BCAs in their management of design consenting processes. This risk matrix would assign a risk profile to buildings and support BCAs to understand design review requirements. This would standardise processes across New Zealand and lead to better quality outcomes and increased efficiency.

Chapter 5 – New assurance pathways

Chapter 5 identifies options that would assist building consent authorities to take a more risk-based approach. This includes two formal assurance pathways that would shift some of the building consent authority assurance role to other participants with the required expertise to manage risk appropriately: self-certification and commercial consent.

MBIE's preferred approach is to progress all of the following options:

- Provide guidance to building consent authorities to take a more **risk-based approach** under current regulatory settings.
- Create two new assurance pathways: certification by accredited companies or by **approved professionals**.
- **New commercial building consent** to provide an alternative regulated consent process for some commercial projects.
- **Repeal the Building Amendment Act 2012** consent regime to consider these new pathways.

Question about taking a more risk-based approach

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

Although we strongly support the issuing of further guidance for BCAs, we agree with MBIE that guidance alone is not sufficient to address consistency issues across BCAs. MBIE must address structural issues within the building system (including the numbers of BCAs), as well as the risk posed by joint and several liability. MBIE must also strengthen its own regulatory role to lead wider change.

As above (question 22), it is our view that guidance on engineering design reviews would be extremely helpful to BCAs. We are available to support this work.

Questions about self-certification

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

See answers below. We have significant concerns with self-certification.

In the event of self-certification, robust financial mechanisms must be in place to cover the 10-year liability period. Given the considerable risks associated with self-certification, it is essential to implement substantial public protection measures that effectively prevent the recurrence of the leaky homes crisis. MBIE must ensure that there are strong financial instruments available to the public beyond the entity's existence.

Consultation questions

25. 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?

Yes Somewhat No Not sure

Please explain your views.

While we agree with the proposed outcomes, we do not see a self-certification pathway for designers and design firms. Please see ACE New Zealand's submission.

Should this proposal proceed, the accreditation body that undertakes this will need significant protection from liability. Additionally, we query who will undertake the auditing for certification?

We are already seeing local government prioritising the auditing of processes rather than individual assessments. There will need to be a greater degree of checking/auditing involved with this scheme to prevent the recurrence of the leaky homes crisis or a similar crisis.

26. 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?

Refer to answers for questions 24 and 25.

Strong financial instruments that survive beyond the entities are needed for public protection.

We advise against allowing self-certification for complex buildings. One example of possible harm caused is the consent of apartment buildings. In the event of a building failure resulting from self-certification, the process of seeking funds for repairs through body corporates would be both expensive and lengthy, leading to a long legal process. For a current example of this, note the issues with earthquake strengthening apartments.

We note that the risk associated with self-certification lies not with the property developer itself, but rather in the aftermath once the properties have been purchased. To this end, we support SESOC's view that structural engineering specific designs should not be able to be self-certified, with the exception of works exempt from the need for a building consent and importance level IL1 buildings (very low risk profile). We note that NZGS supports the view that only low risk buildings should be included in any self-certification system.

Questions about commercial consent

Consultation questions

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

We support MBIE's consideration of quality assurance in commercial builds and agree that developing a commercial consent pathway is appropriate. If this work were to progress, MBIE will need to provide assurance that public safety is the central outcome of the work.

28. Would it enable a more agile and responsive approach to dealing with design changes as construction progresses?

Yes Somewhat No Not sure

Please explain your views

It is our view that a commercial consenting process could improve the system's agility and efficiency to deal with design changes. We are supportive of this work in principle but will be carefully monitoring it, should it progress. We recommend a pilot before wider rollout. Quality must be central to this work.

29. 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.

While the recommendation is reasonable, it is hard to quantify the risk of poor engineering based on the size of buildings. Some single-story buildings can be complex. For a starter, we consider MBIE's proposal has some merits, but we would like to work with MBIE should this proposal advance.

30. Do you agree with the proposed roles, responsibilities and accountabilities?

Yes Somewhat No Not sure

Please explain your views

Not enough clarity has been provided, further information is needed. Engineering New Zealand and the New Zealand Registered Architects Board must be involved in the development of this work, particularly the definitions of roles and responsibilities.

Consultation questions

31. 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.

The following are key risks:

- Shell companies being established to sign off buildings that then fold, with little protection to the public.
- Increased compliance costs for firms (and therefore clients). A consequence of increased compliance costs may be that small and medium-size firms are pushed out of the market.
- Quality assurance becomes a compliance exercise, dictated by the regulator, rather than firm-led.

As above, we consider further work is needed on this proposal. It is our view that there are a series of risks of unintended consequence that need to be worked through.

Question about new pathways to provide assurance

32. Do you agree with MBIE's preferred approach to progress policy work on the detailed design of the two new assurance pathways, repeal the inactive risk-based consenting provisions in the Building Amendment Act 2012 and issue guidance for building consent authorities?

Yes Somewhat No Not sure

Please explain your views

We are uncertain what MBIE is seeking to achieve and why this can't be achieved by using current provisions. Overall, we do not support this proposal.

Chapter 6 – Better delivery of building consent services

Submissions on the issues discussion document indicated that stakeholders would like greater consistency across the country to promote economies of scale and reduce duplication and cost. There are also significant capacity and capability constraints in the sector.

Chapter 6 considers options to address inconsistency across the building consent system and capacity and capability issues, under the following themes:

- providing greater **national direction and consistency** to increase predictability and transparency for applicants across the country
- **boosting capacity and capability** across building consent authorities and building greater collective capability across the country
- supporting building consent authorities to **achieve economies of scale** by reducing duplication and costs for individual building consent authorities.

Questions about providing greater national direction and consistency

The options in this section seek to increase the consistency, transparency and predictability of the process for applicants across Aotearoa New Zealand:

- Ensure **nationally consistent processes and requirements**
- **Review building consent application and processing systems** to identify nationwide technology approaches
- Support uptake of **remote inspection technology**
- **Centralise training for building control officers.**

33. Which options would best support consistency and predictability given costs, risks and implementation timeframes? Please select one or more of the following:

- Ensure nationally consistent processes and requirements
- Review building consent application and processing systems
- Support uptake of remote inspection technology
- Centralise training for building control officers

Please explain your views

In addition to the options presented by MBIE, a review of the number of BCAs is required. The disparity in the resources, capability and competency between very small BCAs and larger BCAs is dramatic and leads to inequality of outcomes. We are disappointed that Government work to date (either this work or the Review into the Future for Local Government) have not addressed this.

34. What other costs and risks need to be considered?

Consultation questions

Any costs associated with this work will result in operational savings. This is an area where investment will make a considerable difference.

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

As above, a review of the number of BCAs is needed as central direction will drive change in this area.

Questions about boosting capacity and capability

The options in this section seek to alleviate capacity and capability constraints across building consent authorities and build greater collective capability across the country:

- Establish **centres of excellence** or other central advisory function
- Identify opportunities for **shared workflows and services** between building consent authorities
- **Centralised resource of specialist expertise** or building consent officers to fill capability gaps.

36. Which options would most alleviate capacity and capability constraints given costs, risks and implementation timeframes? Please select one or more of the following:

- Establish centres of excellence
- Identify opportunities for shared workflows or services
- Centralised resource of specialist expertise

Please explain your views

Within a country the size of New Zealand, there needs to be more centralisation of the work. Wherever possible we encourage consolidation and centralisation.

37. What other costs and risks need to be considered?

It is our view that investment in this area will lead to considerable cost savings if managed effectively.

38. Are there any other options that would alleviate capacity and capability constraints?

See answer to question 33.

Consultation questions

Questions about achieving greater economies of scale

The options in this section support building consent authorities to **achieve economies of scale** by reducing duplication and costs:

- **Identify and address barriers to voluntary consolidation and transfer**
- Support a **voluntary pilot to consolidate or transfer** building consent authority functions
- Investigate the viability of establishing a **national body to operate alongside local building consent authorities.**

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

The biggest barrier to consolidation and centralisation is the Building Act's focus on territorial authorities having responsibility for builds within their district. Changes to regulatory pathways are required. However, for clarity, Engineering New Zealand does not support the limited liability companies being able to act as BCAs.

40. Which options would best support building consent authorities to achieve greater economies of scale given costs, risks and implementation timeframes? Please select one or more of the following:

- Identify and address barriers to voluntary consolidation and transfer
- Support a voluntary pilot
- Investigate the viability of establishing a national body

Please explain your views

As per question 39, MBIE needs to identify and address barriers to voluntary consolidation and transfer. We also consider there is a case for investigating the viability of a national body. As per our answer to question 33, we support consolidation and centralisation.

41. What other costs and risks need to be considered?

As evidenced in the water reform work, politics is often a barrier to consolidation and centralisation. Strong central leadership is required.

Additionally, as outlined by NZGS in its submission, geotechnical issues are often location-specific, as they are a function of the unique ground conditions of the area. There is significant risk associated with consents being processed by individuals who do not have strong local knowledge. Local input is essential.

42. Are there any other options that would support building consent authorities to achieve greater economies of scale?

No.

Consultation questions

Chapter 7 – Better performance monitoring and system stewardship

Chapter 7 presents a set of interrelated initiatives to fulfil our responsibility as steward of the building consent system.

MBIE acknowledges the need to take a more proactive role as central regulator and steward. This means taking a proactive and collaborative approach to monitoring and maintaining the regulatory system and keeping well informed of issues, risks and opportunities.

MBIE will focus on initiatives in the following areas:

- **Developing better systems to collect information** that will help to identify key issues, risks and opportunities.
- **Proactively responding to the issues, risks and opportunities** identified.
- Ensuring that **quality information, education and guidance** is provided to the sector.

Questions about system stewardship

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

MBIE is responsible for overseeing and managing the performance of the building system, as prescribed by the Building Act. As of late, MBIE's primary focus has been on enhancing efficiency within the building system. While we acknowledge the importance of an efficient system, it is our view that for MBIE to be a better steward, it must prioritise improving the overall quality of the system.

While we are pleased to observe the recognition of quality outcomes in these initiatives and agree that they will facilitate MBIE in enhancing its stewardship and central regulatory role, it is our view that there is room for further improvements to make MBIE a better steward.

We expand on this in our answers to questions 44 and 45.

44. What initiatives should be prioritised and why?

As per our opening letter, we do not have visibility of MBIE's wider work programme and how this will deliver change. We respectfully ask MBIE to engage with industry in open dialogue on priorities.

As far as initiatives –

1. Quality initiatives, including an enhancement of the management of Standards New Zealand. Standards should be accessible (not behind paywalls) and experts contributing to them should be remunerated for their work.

Consultation questions

2. Data – An audit programme for buildings across New Zealand to assess their compliance with the Building Code. This would support increased data on the performance of the system. Data drives better policy and outcomes.
3. Standardised processes for BCAs – As above, it is our view that investment in BCAs and their processes/procedures would improve outcomes.

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

MBIE should prioritise leadership by providing strong direction and effective management, establishing clear expectation and vision.

Greater investment is needed to enhance the building system. This can be achieved by allocating funds from the building levy specifically for quality improvement initiatives within the system. For instance, increased investment in Standards processes, investment in an audit programme of buildings, and more. Additionally, to support improved outcomes, MBIE should address its challenges of high staff turnover and limited institutional knowledge within the organisation.

MBIE should also improve consultation practices, enabling genuine public consultation to take place. It is essential to ensure that the public comprehends the purpose of the consultation and the proposed changes being sought. Enhancing public understanding encourages meaningful participation and strengthens the overall effectiveness of the consultation process. Lastly, MBIE should prioritise public communication and be prepared to speak publicly on building system issues. This would promote accountability, foster trust, and ensure the safety and wellbeing of communities.

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

Chapter 8 focuses on options to address the capacity and capability and relationship issues that Māori face in the building consent system. The options also link to recommendation two of the Commerce Commission’s market study into residential building supplies, which states that Māori should be better served through the building regulatory system.

The options being considered are:

- Establish a **navigator role** within building consent authorities to guide Māori through the building consent system.
- Create a **new centre of excellence** for Māori-led building and construction projects.
- **Guidance and advice** for building consent authorities regarding building consent applications from Māori.

Questions about responding to the needs and aspirations of Māori

46. Will these options help address the issues that Māori face in the building consent system?

Yes Somewhat No Not sure

Please explain your views.

Out of scope for Engineering New Zealand. We believe other entities and individuals are better placed to comment on these important issues.

47. Which of the three options identified would have the most impact for Māori? Please explain your views.

As above.

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

As above.

49. Where should the navigator role sit and what responsibilities should it have? Should it include assisting Māori through the wider building process?

As above.

50. What should be the scope, function and responsibilities of the centre of excellence? What participation should Māori in the workforce have in this centre of excellence?

Consultation questions

As above.

51. What other options to improve the system and make it more responsive to Māori needs and aspirations should be considered?

As above.

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

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. This sometimes causes confusion about which requirement falls under which consent process.

Chapter 9 outlines how current reforms will help reduce unnecessary overlaps between building and resource consent systems and how the use of project information memorandums can help consent applicants navigate the two consent processes. The question in this chapter seeks feedback on anything else that could address overlap issues.

Question about addressing the interface between the building and resource consent systems

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

MBIE should consider disconnects between the Building Act and the Building Code with regard to hazard-prone areas affected by climate change. The Building Act and Code currently dictate risk assessments for buildings and their impact on neighbouring properties in the absence of specific resource consent requirements for natural hazards and climate change.

Overall, there is a lack of consideration by some BCAs of climate change and sea-level rise in the building consent process. National direction and consistency in building design and approval would address future climate change impacts, such as floods, erosion, landslides and rising groundwater levels. Standardisation and training requirements for stress testing and considering possible impacts of climate change on builds would support better outcomes.

General comments

53. Do you have any other comments?

The existing resource management system and building consent system are ineffective. There is a possibility that the new resource management system may interact even more poorly with the building consent system, exacerbating existing issues and making it less effective than their predecessors.