

Property Council New Zealand

Submission on MBIE's Review of the Building Consent System: Issues discussion document and Policy position statement

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For more information and further queries, please contact

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1. Summary

1.1 Property Council New Zealand (“Property Council”) welcomes the opportunity to provide feedback on MBIE’s Review of the Building Consent System: Issues discussion document and Policy position statement.

2. Recommendations

2.1 At a high level, we recommend that MBIE:

- Review current risk, liability and insurance settings in order to ease the burden placed on BCAs;
- Introduce a publicly provided insurance scheme;
- Create a National Building Consent Authority to alleviate pressure on Local Councils; and
- Establish an independent regulator to provide alternative appeal avenues for consent applicants.

3. Introduction

3.1. Property Council is the leading not-for-profit advocate for New Zealand’s most significant industry, property. Our organisational purpose is, “Together, shaping cities where communities thrive”.

3.2. The property sector shapes New Zealand’s social, economic and environmental fabric. Property Council advocates for the creation and retention of a well-designed, functional and sustainable built environment, in order to contribute to the overall prosperity and well-being of New Zealand. We aim to unlock opportunities for growth and urban development that meets New Zealand’s social, economic and environmental needs.

3.3. Property Council is the collective voice of the property industry. We connect over 10,000 property professionals and represent the interests of over 500 members organisations across the private, public and charitable sectors.

3.4. This document provides Property Council’s feedback on MBIE’s [Review of the Building Consent System: Issues discussion document and Policy position statement](#). Comments and recommendations are provided on issues relevant to Property Council’s members.

4. General Comments

4.1. We would like to thank MBIE for meeting with our members earlier in the year to discuss this work programme. We agree with the issues raised in issues discussion document and support most of the desired outcomes outlined. However, in order to achieve efficiency in the building consent system, this cannot be done without reviewing current risk, liability and insurance settings. This is discussed further in 5.1. We are disappointed to see that our verbal recommendations to widen the building consent scope have been rejected by way of the Government policy statement excluding any immediate review into risk and liability settings.

5. Risk, liability and insurance settings

- 5.1. We agree that the current system does not deal well with new innovative practices or the design-and-build approach.
- 5.2. However, without changing the current risk, liability and insurance settings, the building consent system will continue to hinder innovation. We are extremely disappointed to see that the Government has overtly ruled out reviewing such settings. Current liability settings result in overcautious and slow decision making in issuing consents and limits innovation within the sector. Without changing the current system, BCAs will continue to favour tried and tested building products and methods over new and competing products/methods.
- 5.3. Over the past five or so years, we have strongly advocated that BCAs should not be the 'last man standing' and that capping their liability and placing more onus on the industry would be a more fair and equitable approach. We continue to recommend that Council liability be capped at 20 per cent and introduce a fairer allocation of risk and responsibility across the sector.
- 5.4. We are also disappointed to see that a publicly provided insurance scheme is currently not justified. Such a scheme will not only reduce consent timeframes but will also help encourage innovation within the sector.
- 5.5. Time and time again, the private sector has voiced their willingness to hold a fair and proportionate risk when manufacturing, designing, or developing their products and buildings. There are a number of ways in which this could be implemented, and many were looked at as part of MBIE's Building System Legislative Reform Programme in 2019. There are also several international examples of how this works with insurance providers being involved and seeking compensation from at fault parties while capping local authorities' liability to 20 per cent.

6. Resource and building consents

- 6.1. It is clear that the building consent system cannot keep up with demand for consents. We are seeing issues throughout the process with delays occurring at the resource consent stage as well as the building consent stage. This is because most applications are put on hold while BCAs request further information to support their decision.
- 6.2. We have serious concerns around the requirement to commit to specific products at the time of consent lodging. This has created a number of issues for the sector. Firstly, a builder/developer may not know what building supplies are available at the time the consent is lodged, especially when it is 18 months to two years out from the completion of the project and supply shortages are at an all-time high.
- 6.3. Secondly, it reinforces the entrenched designer/supplier relationship in our current system. By limiting builders and developers time to select what building supplies are needed, they will continue to approach the same suppliers/designers and favour tried and tested building products in order to fasten the consent process. In a market with limited staffing resources and high demand, this has the effect of stifling innovation.
- 6.4. Consequently, this may result in suppliers having greater leverage to impose higher costs and deter competitive pricing. Although large volume clients may be able to bear these costs, smaller clients may not. We believe that these issues can be avoided if BCAs are more flexible in when they need information from builders and developers.

- 6.5. There is also difficulty in altering a building consent once it has been issued. There is little room to fix mistakes or change building materials down the line if required. Amendments that are filed for revisions are paid at a premium in cost, time, and client risk. We see this issue exemplified with the current Jib shortage in New Zealand. Although consent may be granted on Jib early in the development process, the supply/demand issue means that alternative material may need to be sourced instead which increases costs significantly. We are glad to see that the Commerce Commission is looking to remove barriers in relation to variations to consents.
- 6.6. We recommend that Government establish a National Building Consent Authority for consent applications. This will not only make the process more streamlined and less time consuming but will shift the burden off Council's to those who have the appropriate expertise to deal with the complexities of consenting decisions. For example, Kāinga Ora created the first national accredited BCA earlier this year. It stands outside of local authorities with the aim of speeding up the development of much needed public housing.
- 6.7. We recommend that resource and building consent applicants should have alternative appeal avenues than solely relying on the judicial system. Smaller developers may not have the resource for litigation and often choose to accept the decisions made by Councils. We would like Government to establish an independent regulator to provide alternative appeal avenues for consent applicants. This would not only save time, but the independent regulator could also ensure that local authorities are continuing to follow the recommendations of Government, Councils and the Independent Hearings Panel (if applicable).

7. Conclusion

- 7.1. There is definitely an appetite for change as the current building consent system is not working. Not only does a poor consenting process delay development, but it also hinders innovation in the building and construction sector. An improved system will enable opportunities to build sustainable and resilient communities which are capable of meeting future needs. We look forward to seeing what MBIE presents as improvements to the building consent system in the next step of the review.
- 7.2. Property Council would like to thank MBIE for the opportunity to provide feedback on the Review of the Building Consent System: Issues discussion document and Policy position statement.
- 7.3. Any further enquires do not hesitate to contact Sandamali Gunawardena, Advocacy Advisor, via email: sandamali@propertynz.co.nz or cell: 021 045 9871.

Yours Sincerely,



Leonie Freeman
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Property Council New Zealand