

Property Council New Zealand

Submission on MBIE's Options Paper: Review of the Building Consent System

10 August 2023

For more information and further queries, please contact

Sandamali Ambepitiya Sandamali@propertynz.co.nz 0210459871
--

Submission on MBIE's Options Paper: Review of the Building Consent System

1. Summary

1.1 Property Council New Zealand ("Property Council") welcomes the opportunity to provide feedback on MBIE's Options Paper: Review of the Building Consent System.

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 Building Consent Authorities ("BCAs");
- Introduce a publicly provided insurance scheme; 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 550 members organisations across the private, public and charitable sectors.

3.4. This document provides Property Council's feedback on [MBIE's Options Paper: Review of the Building Consent System](#). Comments and recommendations are provided on issues relevant to Property Council's members.

4. Chapter 3 – Removing impediments to product substitution and variations

4.1. In our [September 2022 submission](#), we noted the difficulty in altering a building consent once issued. The need to alter a building consent can be very common, especially with supply/demand issues of building materials. We are therefore pleased to see that MBIE acknowledged the need for improvement and has offered options to make the process for production substitutions and variations to consenting building work more effective and efficient.

4.2. It was also good to see this issue acknowledged by the Commerce Commission in its investigation into competition for residential building supplies.¹

¹ <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-residential-building-supplies>

- 4.3. Property Council agrees with MBIEs preferred approach to progress all options identified together, as a package. Overall, the combination of options will make product substitution easier, whilst reducing the need for amendments to building consents after it has been granted, saving applicants time and cost.

5. Chapter 5 – New assurance pathways

- 5.1. Property Council has long advocated shifting the risk and liability burden from Building Consenting Authorities (“BCAs”) onto the private sector. 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.
- 5.2. 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 BCA liability be capped at 20 per cent to introduce a fairer allocation of risk and responsibility across the sector. Subsequently, a publicly provided insurance scheme should be introduced. Capping BCA liability alongside the introduction of an insurance scheme will collectively reduce consent timeframes and encourage innovation within the sector.
- 5.3. MBIE states that “any options that redistribute responsibility in the building consent system will depend on others being prepared and able to take on that responsibility”. 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 MBIEs 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. Chapter 6 – Better delivery of building consent services

- 6.1. In the past, Property Council has recommended that the Government establish a National Building Consent Authority to process consent applications. This would not only make the process more streamlined and less time consuming but will shift the burden off BCAs to those who have the appropriate expertise to deal with the complexities of consenting decisions. We are therefore extremely pleased to see that options to achieve greater consistency nationally, have been considered part of this consultation.
- 6.2. In December last year, the Government released the Natural and Built Environment Bill and Spatial Planning Bill which plans to create 15 Regional Planning Committees, one for each region in the New Zealand. Following this legislation being passed (and Regional Planning Committees established), there could be an option to establish Regional Consenting Authorities alongside these.
- 6.3. Regional Consenting Authorities would allow for more consistent decision making across regions, greater innovation (by shifting the risk and liability onto the property sector) and will see a more planned approach to growth (as the Regional Consenting Authority will apply the Regional Spatial Plan through its consenting decisions). Property Council and its members are happy to test this idea with MBIE following this consultation.

6.4. Ultimately, Property Council supports establishing either a National Consenting Authority or Regional Consenting Authorities, given that this would ease the burden off local authorities, thereby creating a more efficient consent system.

7. Further options for MBIE to consider

Alternative avenues for appeal

7.1. 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 Council. As a solution to this, we recommend that Government establishes 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, Council and the Independent Hearings Panel (if applicable).

8. Conclusion

8.1. While we are pleased to see a number of options presented by MBIE to fix the current consenting system, Property Council believes that there are still concerns that need to be addressed. This includes capping BCA liability to 20 per cent to assist BCAs to take a more risk-based approach, the introduction of alternative appeal avenues for consent applications and a publicly provided insurance scheme.

8.2. Property Council would like to thank MBIE for the opportunity to provide feedback on the MBIE's Options Paper: Review of the Building Consent System.

8.3. 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,



Katherine Wilson
Head of Advocacy
Property Council New Zealand