

21 August 2023

Via Email: [building@mbie.govt.nz](mailto:building@mbie.govt.nz)

## SUBMISSION TO MBIE ON THE BUILDING CONSENT SYSTEMS REVIEW: OPTIONS PAPER CONSULTATION

Thank you for the opportunity to present this submission on the building consent systems review.

The Queenstown Lakes District Council (QLDC) is supportive of the review in theory, but submits that risk, liability and insurance is a significant part of the building consent system and for the review to be meaningful, must be included. Reform that fails to address the current joint and several liability approach will result in councils shifting towards more cautious and time-consuming regulation that will have the opposite of the intended effects.

There are two components to this submission:

- **Risk, liability and insurance in the building sector.** QLDC urges MBIE to include risk, liability and insurance in the scope of this review. By definition, a first principles review of the building consent system involves scrutiny of the allocation of the risk in the building system.
- **Consultation submission form.** QLDC has provided answers in the consultation submission form template.

The points in QLDC's 2022 submission to the building consent system review remain important and are attached.

QLDC would like to be heard at any hearings that result from this consultation process. It should be noted that due to the timeline of the process, this submission will be ratified by full council retrospectively at the next council meeting.

Thank you again for the opportunity to comment.

Yours sincerely,



Glyn Lewers  
Mayor



Mike Theelen  
Chief Executive

## SUBMISSION TO MBIE ON THE BUILDING CONSENT SYSTEM REVIEW: OPTIONS PAPER CONSULTATION

### 1.0 Background

- 1.1 The Queenstown Lakes District (the district) is one of the fastest growing areas in Aotearoa New Zealand. It is considered a growth district and has a resident population of 50,160 and a peak daily population of 102,648. This is projected to grow to 61,350 residents and a peak daily population of 152,910 by 2031.<sup>1</sup>
- 1.2 For the 2022-2023 financial year, 92% of building consents were processed within the statutory timeframe. The 100% target was not achieved due to a rush of applications prior to the new H1 requirements resulting in staff resourcing issues combined with ongoing COVID-19 related leave.
- 1.3 Council continues to experience an increase in the number and quantum of claims against it by property owners relating to weather tightness and other building defects and a material increase in the operational expenditure by Council to defend and resolve such claims. Council's overriding objective is to resolve such claims in a way that minimises the financial impact on ratepayers now and in the future.
- 1.4 The settlement of large defective building claims has led to higher borrowing and interest costs for QLDC. The annual cost of borrowing required to fund the settlements made in the past two years is \$5.3M and the increase in interest costs for 2023-24 is \$4.4M, which has a rates effect of 4.03% for the year. The legal and financial challenges facing councils from these claims are ongoing and more costs can be anticipated in the future; it is not an issue that is diminishing.
- 1.5 QLDC maintains its position that if the joint and several approach to liability remains, BCA liability should be capped. Liability for a BCA should be capped at 20%, proportionate to its role under the Building Act 2004 and underpinned by warranties and insurance (with government underwrite if necessary) for residential properties and significant alterations.

### 2.0 Organisation of this submission

- 2.1 The information provided by MBIE for the current stage of the review of the building consent system includes an options paper, as well as a policy position statement regarding risk, liability and insurance in the building sector (policy position statement), dated June 2023. QLDC has provided answers in the consultation submission form at **Attachment A** to this submission, that provides feedback to specific discussion questions.
- 2.2 In line with QLDC's 2022 submission on this review, whilst MBIE has stated that risk, liability and insurance is not within the scope of this review, it is Council's view that consideration of this issue is integral to the success of any reform of the building sector in Aotearoa New Zealand. The first part of the submission explains the reasoning behind this position. The information and intent in QLDC's 2022 submission has not changed, and is at **Attachment B**.

### 3.0 The role of risk and liability

- 3.1 Local authorities carry out administrative functions for the Building Act 2004 under delegation from the Crown. The existing joint and several liability rule places the risk of insolvency or lack of insurance of one party onto other parties, arbitrarily increasing the liability of remaining parties (defendants) above their proportionate responsibility.

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<sup>1</sup> <https://www.qldc.govt.nz/community/population-and-demand>

- 3.2 Currently, ratepayers bear a disproportionate liability burden, with Building Consent Authorities (BCAs) often being the only party left to compensate homeowners when building defects arise, known as the ‘last party standing’.

#### **4.0 Risk and liability is within the scope of a review of the building consent system**

- 4.1 QLDC strongly refutes the basis for the policy position taken by MBIE that the current joint and several liability system is the most equitable. By definition, a first principles review of the building consent system involves scrutiny of the allocation of the risk in the building consent system. Unless risk and liability is addressed, councils will continue to take an increasingly cautious approach, paradoxically away from the streamlining and efficiency that is being sought through the review.
- 4.2 The increased risk liability causes QLDC’s BCA function to be more cautious and more demanding. This has a negative impact on performance of the BCA and also creates higher compliance costs for the building sector. The excessive liability that councils are exposed to also reduces BCA willingness to consider non-standard solutions which potentially have a higher chance of failure. This negatively affects market performance.

#### **5.0 The review and the policy position paper on risk and liability has not responded to the effects of joint and several liability on BCAs.**

- 5.1 The review of the building consent system is being carried out by MBIE in three stages. The first was the July 2022 discussion document, the second is the current stage of an options paper, and the third is the advice to MBIE on what items should be progressed as a priority<sup>2</sup>.
- 5.2 For both this 2023 options paper stage and the 2022 discussion paper, MBIE released a policy position paper on risk and liability in the building sector. The policy position papers are dated 2022 and 2023 respectively, but there are nominal differences between them.
- 5.3 One change that has been identified in the 2023 policy position paper, aside from the layout and some graphics, is the removal of the phased approach to the review. Phase 1 of the reform programme was to focus on “building products, building methods and putting systems and processes in place to speed up consenting for new and innovative ways of building.”<sup>3</sup> Phase 2 had a focus on “the professionals in the sector.” Phase 3 states, “investigate options to address risk allocation in the building and construction sector and the lack of a building warranty insurance market.” This phased approach has been removed from the 2023 document, with no reasoning provided behind why MBIE consider that risk and liability is outside the scope of a review of the building consent system.
- 5.4 Council views that it is somewhat disingenuous for MBIE to release effectively the same policy position statement, without any acknowledgement or consideration of the submissions received to the 2022 discussion paper, or through other forums.

#### **6.0 The joint and several liability approach is having far reaching detrimental impacts.**

- 6.1 QLDC is not the only entity affected by this inequity and advocating for a change to the current joint and several liability system. Following resounding support from the 12 metro sector councils<sup>4</sup>, Local Government

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<sup>2</sup> Building consent system review: options paper consultation | Ministry of Business, Innovation & Employment ([mbie.govt.nz](http://mbie.govt.nz)) (date accessed: 26 June 2023).

<sup>3</sup> 2022 Risk, liability and insurance in the building sector, at page 22.

<sup>4</sup> Member authorities are: Auckland Council Christchurch City Council, Dunedin City Council, Hamilton City Council, Hutt City Council, Palmerston North City Council, Porirua City Council, Queenstown Lakes District Council, Tauranga City Council, Upper Hutt City Council, Wellington City Council and Whangarei District Council.

New Zealand (LGNZ) recently approved the allocation of risk and liability in the building sector as a remit item. The issue was supported by 93% of members at the LGNZ annual general meeting.

6.2 LGNZ now has the specific mandate to engage directly with the Minister for Building and Construction to advocate for a change to the current joint and several liability framework, including examination of the MBIE policy position statement, and make the case for alternatives and changes to joint and several liability through updating policy advice and engaging with industry groups.

6.3 In the context of the myriad of funding constraints facing local government, recently highlighted in the Future for Local Government panel's final report<sup>5</sup>, review of this issue alone would have a material impact on ratepayers, by more equitably sharing the liability in defective building claims.

## 7.0 Key points from QLDC's 2022 submission

7.1 **Defective building claims are ongoing:** QLDC disagrees that the peak of leaky homes negligence cases was 2008-2018, and that cases have been declining since 2012, as claimed in the policy position paper. The QLDC experience is that leaky building claims are increasing. Even if the policy position paper were correct, this is not a sound basis for continuing the current inequity and will have severe fiscal ramifications for ratepayers across our community.

7.2 **The impact of joint and several liability on ratepayers is acute.** As stated above, the rates effect for 2023-2024 of borrowing to fund defective building settlements for is 4.03% for the year. It is Council's position that requiring ratepayers to pay compensation where defendants are missing is unjust. If Council is having to borrow money to pay for significant "leaky" claims to cover the failures of a raft of other parties, that is money that is not going into infrastructure, housing or economic growth. QLDC is not unsympathetic to the need for losses to be recovered. Risk management is a shared responsibility. It is important that all participants in the system have clear accountabilities and not be able to escape their share of responsibility by ceasing to operate/liquidating.

7.3 **Proportionate liability is the recommended framework.** This would reflect the roles and responsibilities of the parties involved and encourage those best placed to manage the risk (building practitioners) to actively manage it. This should be accompanied by a system of compulsory home warranty guarantee (that is effective) and/or insurance products. The homeowner interest would then be protected and there would no longer be an impediment to moving to proportional liability.

7.4 **If the joint and several liability approach remains, BCA liability should be capped.** In the alternative, if the joint and several approach to liability remains, Council recommends that there should be a cap on BCA liability. A limit of 20% would be proportionate to the supervisory role BCAs perform under the Building Act 2004 and current apportionments underpinned by meaningful warranties and insurance (with a government underwrite if necessary) for residential properties and significant alterations.

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<sup>5</sup> <https://www.futureforlocalgovernment.govt.nz/reports/> (date accessed: 10 July 2023).

# BUILDING PERFORMANCE

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Attachment A:

# Consultation submission form

REVIEW OF THE BUILDING CONSENT SYSTEM: OPTIONS PAPER

June 2023

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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 7<sup>th</sup> August 2023 by:

- Sending your submission as a **Microsoft Word document** to [building@mbie.govt.nz](mailto: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](mailto: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](http://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

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: Matthew Bridle

Organisation and role (if submitting on behalf of a company or organisation)  
Queenstown Lakes District Council  
Principal Building Advisor

Email address: Matthew.bridle@qldc.govt.nz

#### 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)

## Submitter information

### E. 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.

- 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]*

## 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?

Ease of product substitution for a building consent as considered in Chapter 3 of this submission.

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?

No comment.

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

No comment.

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.

Option 2 - Including competition as a principle in the Building Act will align with other principles in section 4 such as (2)(e) the costs of a building (including maintenance) over the whole of its life, and (2)(g) the importance of allowing for continuing innovation in building products, building methods, and building designs.

Option 4 – Quality and concise guidance is essential. It would be preferred if guidance promoting competition was also available to designers and owners.

### 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.

### *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.

Product Substitution and Variations to Consents. Options 1 & 3 – agreed.

Option 2 – disagree.

There will be implications for other aspects of the design, for example, different products can require differing substrate or framing requirements or may not be compatible with other specified products, leading to the Building Control Officer processing the building consent application having to check technical specifications of multiple products and potentially needing to issue additional Requests for Further Information for incorrectly specified products that are not then used in the project.

QLDC's experience is that product substitution is generally driven by the builder, assuming the owner has had input into the designer's original specification, and it is probable that the substitution suggested by the builder will not be one of the multiple products specified in the building consent and would still require a minor variation application.

This option seems counterproductive in terms of achieving efficiency in the building consent system. QLDC opposes any option that may affect its future liability risk under the joint and several liability approach.

Multiproof – options 1 & 2 agree.

**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?**

In addition to the above comments for Product Substitution and Variations to Consents. Option 2 there is risk of 'product mixing and matching' where multiple systems have been consented, and the installer interprets this as an ability to use potentially non compatible components from differing systems. QLDC opposes any option that may affect its future liability risk under the joint and several liability approach.

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

No comment.

**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 comment.

### 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.

QLDC agrees with the reasoning stated in the Option Paper. More information is required in terms of what 'consequences' will be and how this would be implemented.

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.

From a BCA perspective, having one point of contact who is responsible for ensuring consent conditions are met is ideal, but this would require a significant change in how the building industry operates. Project management is already available but can add significant cost to a project and is rarely seen in one-off residential projects.

Currently the builder generally manages the works for these types of projects and as there may not be one engaged at the consenting stage, they could have their name added at later stage.

## Consultation questions

Ideally, it should be the designer's responsibility, as they would be most familiar with the plans, specifications, consenting process and have established contact with the owner, the BCA and other design consultants involved.

Foreseeably, it would likely be the owners name put forward to manage work on site, possibly the least qualified person to undertake this role, as they presumably would be exempt from any restrictions proposed, similar to the current restricted building requirements.

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

The risk is that with the current LPB scheme a lot of effort and expense across the industry results in little actual benefit in protecting owners or in aiding BCAs being satisfied that the provisions of the building code are being met. A more robust system of auditing licenced designers work is needed to remove incompetent practitioners and increase the value of the licence.

In addition, without a change to the joint and several liability approach, there will be no material improvements realised.

### 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.

If effectively implemented this could achieve the improved professionalism in the design sector of the industry that the LPB scheme has so far failed to deliver.

### 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?

Yes, Form 2A would be sufficient with the addition that the designer record relevant Building Code clauses and the pathway to compliance used, similar to an Engineers PS1, which would show the BCA whether the designer understands compliance documents, standards and alternative solutions. FORM 2 may also require updating to avoid doubling up this information.

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

## Consultation questions

Yes

No

Not sure

Please explain your views.

There is no point in doubling up on the declaration and in this case a one form for all solution is preferable to having to check and decide if the correct form or forms have been submitted.

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

Required when multiple specialist designers are involved, a design coordination statement showing that all involved have checked and confirmed that the latest/final plans and specifications align with their design would help ensure that that alignment of designs has been considered by the principal designer prior to consent application.

All parties that sign off on the statement would be responsible for ensuring their design is reviewed, updated if required and that the coordinator is advised of any design conflicts. Signing the declaration would also be an understanding that they are accountable if this is proven otherwise.

**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?

Yes, it should be restricted, and a site licence would fulfil this function if the holder has been subject to sufficient competency assessments or holds relevant qualifications.

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

Robust disciplinary actions both financial and professional would certainly clarify the responsibility of a practitioner to work within their competency and motivate them to produce quality applications, designs and workmanship.

Increased ease for BCAs who identify practitioners with a history of issues to inform organizations such as LBP or EngNZ so that they can undertake an investigation without a specific complaint being lodged.



### 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.

Option 2 will give more value to producer statements in respect to how they are currently used to establish compliance.

However, Option 3 should be further explored and more information provided for consultation on how they could be effectively prescribed. Legal certainty and the confidence to be able to rely upon producer statements would certainly assist BCAs in helping address efficiency and consistency issues.

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

Producer statements should be issued by a suitably qualified design professional as a means of demonstrating reasonable grounds for a BCA to issue a building consent where design is outside of the acceptable solutions and therefore outside of typical BCOs competence to assess compliance.

They should also be a means of demonstrating reasonable grounds to issue a CCC where a proprietary system is installed, by a suitably qualified contractor, which without being on site during installation is impractical to inspect at a level where reasonable grounds can be established and for complex designs where the designer is better placed to monitor construction and be available to assess any on site changes and provide technical advice to the installer.

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

Yes                       No                       Not sure

Please explain your views.

Appropriate qualification should be required along with a commitment to ongoing competency assessment, they must have a clear understanding that authors are responsible for providing quality compliant work and that they may be subject to an auditing or investigation process.

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

Authors who can demonstrate that they have the technical competency to design, construct or install building elements either through qualification or third-party assessment should be accepted onto a national register which informs owners, BCAs and project leads of the authors qualification and competency limitations.

### **22.** What other risks need to be managed?

Progressing option 3 should effectively manage associated risks, the other options although helpful will leave risk at current levels and confusion will remain about the purpose of producer statements.

However, without a change to the joint and several liability approach that leaves BCAs as the 'last party standing', there will be no material improvements realised.

### 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?

Entirely dependent upon the quality and practicability of the guidance provided.

Under the current liability framework, individual BCAs will have to continue balancing efficiency and performance against acceptable financial risk to ratepayers whilst ensuring the private sector deliver buildings that are healthy, safe and durable.

#### *Questions about self-certification*

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

Self-certification would align well with the goal of a simplified more efficient path to obtaining and completing building consents. However, current private sector skill levels would significantly increase risk for owners and BCAs unless the path to becoming self-certifying is particularly robust.

## 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.

QLDC agrees with the three proposed outcomes. A robust accreditation system would be needed to ensure there is not an increased risk of failures. Sector skills would hopefully improve through the requirements of the accreditation and auditing process supported by a need to demonstrate continuous improvement.

**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?

There are many risks associated with self-certification when self interest in maintaining or maximising profit often conflicts with a responsibility for the works being safe, healthy and compliant. Management of this risk would be the main role of an accreditation body tasked with ensuring that self-certifiers are competent, provide an acceptable standard of compliant work and are held accountable for their failures. As the joint and several liability approach leaves BCAs as the last party standing, QLDC does not view that accountability would be equitably shared.

### ***Questions about commercial consent***

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

Risks would remain largely the same as it will be the same professionals working under a different system (Currently using Producer Statements).

**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

If the BCA is not responsible for ensuring the changes are compliant and are only auditing the documentation and recording it this removes a significant step from the process. It is

## Consultation questions

assumed that designers would ensure compliance is still met when changes are made as part of their quality assurance process.

**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.

Individual BCAs should be able to determine which applications should use the commercial pathway based upon their own assessment of a projects risk and the ability of their BCOs to process or inspect the works.

Consideration should be given to having two types of consent, simple or complex, the commercial or complex pathway could be extended to residential development also.

The complexity of a project or the extent a project's compliance pathway is outside of the acceptable solutions being the benchmark to whether a BCA processes and monitors a consent or if the BCAs role is limited to ensuring the correct documentation is provided and recorded for a project.

Simple projects largely designed within the acceptable solutions are more likely to be undertaken by designers and contractors who have less experience and require closer monitoring or are dealing with projects with budget constraints that do not allow for the professional input that more complex projects require.

The more complex projects should be designed and constructed by practitioners that can demonstrate their qualification to undertake such projects. These types of professionals are more likely to achieve accreditation under a self-certifying scheme or producer statement author.

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

Yes                       Somewhat                       No                       Not sure

Please explain your views

QLDC agrees with the reasoning stated in the Option Paper.

**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.

## Consultation questions

Profit vs responsibility, client interests vs professionals' responsibility and professionals working outside their competency are all risks for this pathway. Robust third party random audits during a project may be one way of managing these risks.

Self-certification accreditation could be a path to entry for the entity that would have overall responsibility for the quality assurance system. Producer statements could be part of the quality assurance system. The lead architect is best placed to assume the quality assurance role and be responsible for, or delegation of, site coordination.

No special protections should be required for the owners outside of a framework for disputes.

### ***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

QLDC agrees with the reasoning stated in the Option Paper.

### 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

QLDC agrees with the reasoning stated in the Option Paper for the three options checked above.

The cost and implementation of nationwide consenting technology is prohibitive as a solution to applicants not being able to manage differing logins for differing BCAs. Nationally consistent requirements for applications would address the main issue of applicants having to meet variable application requirements across different BCAs.

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

Costs to BCAs associated with centralised training of BCOs would have to be carefully managed so that the cost of training a new employee does not become a barrier to filling an available position or to increasing staff numbers when needed.

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

Reviewing and updating compliance documents to align terminology and provide more concise definitions.

Identifying common areas of ambiguity within compliance documents and clarifying these with guidance.

Guidance for applicants to help them understand the expected quality of the plans, specifications and supporting documents provided with an application.

## ***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:



## Consultation questions

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

Please explain your views

QLDC agrees with the reasoning stated in the Option Paper for the two options checked above.

A centralised resource of specialist expertise could simply compromise of a register of experts, both private consultants and BCA employees who are available.

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

No comment.

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

Proposed new assurance pathways and/or improved certainty around producer statements.

### ***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?

No comment.

## Consultation questions

**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

No comment.

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

No comment.

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

No comment.

### 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.

Yes, collecting and assessing information is key in identifying and resolving industry wide issues.

**44.** What initiatives should be prioritised and why?

The three initiatives proposed will have to work together to be effective and it is difficult to see how one could be prioritised.

However, one aspect of 'Providing quality information to the sector' which is updating guidance and compliance documents should be given priority, as some issues are already well documented and should be reasonably easy to address, such as aligning terminology throughout compliance documents and providing more concise definitions.

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

## Consultation questions

Collate information and statistics from BCAs and from IANZ audits, make them available to BCAs to aid them to identify trends, areas where improvements are possible and where to seek advice (and potentially resource sharing) from other BCAs.

### 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.

A combination of the best aspects of the current options should certainly help address these issues.

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

Option 2. A national Centre of Excellence would seem the most effective in the long term with Option 3. Guidance, Provided by MBIE being effective in the short term. The Centre of Excellence should then assist with updating and expanding guidance in the long term.

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

No comment.

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

A Navigator role should sit within individual BCAs. This should be a voluntary role for BCAs if volumes of these types of consent applications justify the expense and training obligations.

A Navigator should be available to advise and guide Māori applicants throughout the resource and building consent application process.

Once consents are granted the Navigator should also be available to help the consent holder understand their obligations in relation to complying with consent conditions, variations, amendments, CCC application and ongoing any ongoing Building Warrant of Fitness requirements.

So far as the Navigator assisting with finding funding this would be up individual BCAs as this is not within normal BCA functions and would require a specialised skill set.

**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?

A National Centre of Excellence could...

- Assist MBIE to create and provide guidance documents for BCAs, Māori applicants, designers and consultants to ensure that consenting systems and issues arising for Māori are understood by all parties.
- Provide training for BCA Navigators.
- Assist with determining the outcome of relevant Determinations.
- Provide clear guidance for BCAs around issuing waivers and when they may be appropriate.

It would be expected that Māori in the workforce would have a significant level of participation bringing knowledge of traditional techniques, cultural aspects of the intended use of a building and a greater understanding of the challenges Māori face in the building consent system.

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

Rewording or adding to these existing Principles in the Building Act...

(d) the importance of recognising any *special* traditional and cultural aspects of the intended use of a building.

## Consultation questions

'Special' is undefined and ambiguous.

(I) the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value

This could extend to preserving/maintaining traditional methods of construction.

### 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?

Improve guidance and learning for owners and designers.

The current MBIE Building Consent Guidance does not specifically address the need for applicants to check planning restrictions, the possibility that a Resource Consent may be required or the risk that a Building Consent granted under Section 37 of the Building Act may require amendments due to the outcome of a Resource Consent application.

### General comments

**53.** Do you have any other comments?

A BCAs role is already aligned with the main objective of this review, for a system that gets building work right first time to produce buildings that are well-made, healthy, durable and safe.

QLDC welcomes any additional guidance, training options and clarifications around the current compliance documents and legislation as these can only help to increase efficiency, reduce risk and improve consistency.

There appears to be significant similarities or potential overlap with assurance, risk and the management of several of the proposals. Producer Statements, Self-certification and Commercial (or complex) consents would probably work well together as a complete



system to achieve efficiency in the system and motivate the private sector to improve their technical skills and take responsibility for delivering well-made, healthy, durable and safe buildings from which they profit. The added effect of reducing workloads on BCAs, which struggle to employ qualified staff, would further add to efficiencies in the system.

It is unclear how these proposals would achieve the objective of ensuring that this building work was done right the first time as that goal would be almost entirely dependent on the private sector improving upon the current quality of work and improved understanding of their responsibilities under the building act.

For these options to be effectively implemented by BCAs there needs to be corresponding assurance that where a BCA is effectively only auditing documentation which is expected to be reasonable grounds to issue a building consent or CCC, because the authors have been through a robust accreditation process, that the BCA would be excluded from any liability for defective designs or workmanship which the BCA did not review or monitor perhaps by addition of these schemes to section 392 (Building consent authority not liable ) of the Building Act.

**Attachment B:**

31 August 2022

Via Email: [building@mbie.govt.nz](mailto:building@mbie.govt.nz)

To whom it may concern

**FEEDBACK TO THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT INTO THE REVIEW OF THE BUILDING CONSENT SYSTEM (DISCUSSION DOCUMENT)**

Thank you for the opportunity to present our submission on the review of the building consent system discussion document.

The Queenstown Lakes District Council (QLDC) supports work by the Ministry of Business, Innovation and Employment (MBIE) on building system reform. There are two components to this submission:

- **Risk, liability and insurance in the building sector.** QLDC urges MBIE to include risk, liability and insurance in the scope of this review. By definition, a first principles review of the building consent system involves scrutiny of the allocation of the risk in the building system. Accordingly, Council's recommendations in this regard are set out below.
- **Review of the building consent system discussion document.** QLDC has provided answers in the consultation submission form template, that covers the strategic context, desirable outcomes and issues with the current systems.

Please note that this submission reflects the position of officers and has not been ratified by full Council.

Thank you again for the opportunity to comment.

Yours sincerely,



Jim Boulton  
Mayor



Mike Theelen  
Chief Executive

## FEEDBACK TO THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT INTO THE REVIEW OF THE BUILDING CONSENT SYSTEM (DISCUSSION DOCUMENT)

### 1.0 Background

- 1.1 The Queenstown Lakes District (the district) is one of the fastest growing areas in Aotearoa New Zealand. It is considered a growth district and has a resident population of 48,300 and a peak daily population is 99,220. This is projected to grow to 61,350 residents and a peak daily population of 152,910 by 2031.<sup>6</sup>
- 1.2 For the 2021-2022 financial year, 96.8% of building consents were processed within the statutory timeframe. The 100% target was not achieved due to Covid related resource issues with staff and external contractors. This result places QLDC in the top one third of building consent authorities in New Zealand for statutory timeframe compliance.
- 1.3 Council has experienced an increase in the number and quantum of claims against it by property owners relating to weather tightness and other building defects and a material increase in the operational expenditure by Council to defend and resolve such claims. Council's overriding objective is to resolve such claims in a way that minimises the financial impact on ratepayers now and in the future.
- 1.4 The aggregate of all expenditure in the 2021-2022 year to defend and/or resolve claims (including costs) was approximately \$40M. This was largely funded by an increase in Council debt. The servicing and repayment of this debt increase results in an annual rates increase of approximately 1.6% for the 2022-2023 year and beyond.

### 2.0 Organisation of this submission

- 2.1 The information provided by MBIE for its review of the building consent system includes an issues discussion document, as well as a policy position statement regarding risk, liability and insurance in the building sector (policy position statement).
- 2.2 QLDC has provided answers in the consultation submission form attached to this submission, that covers the strategic context, desirable outcomes and issues with the current systems.
- 2.3 Whilst MBIE has stated that the policy position statement is not within the scope of this review, it is Council's position that consideration of feedback on this will be integral to the success of any reform of the building sector in Aotearoa. By definition, a first principles review of the building consent system involves scrutiny of the allocation of risk in the building system. Accordingly, Council's feedback and recommendations in response to the policy position statement are set out below, and focus in particular on the inequities and impacts of the current system on the district.

### 3.0 Risk shifting and fairness

- 3.1 Local authorities carry out administrative functions for the Building Act 2004 under delegation from the Crown. The existing joint and several liability rule places the risk of insolvency or lack of insurance of one party onto other parties, arbitrarily increasing the liability of remaining parties (defendants) above their proportionate responsibility.
- 3.2 Currently, ratepayers bear a disproportionate liability burden, with Building Consent Authorities (BCAs) often being the only party left to compensate homeowners when building defects arise, known as the 'last party standing'.

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<sup>6</sup> <https://www.qldc.govt.nz/community/population-and-demand>

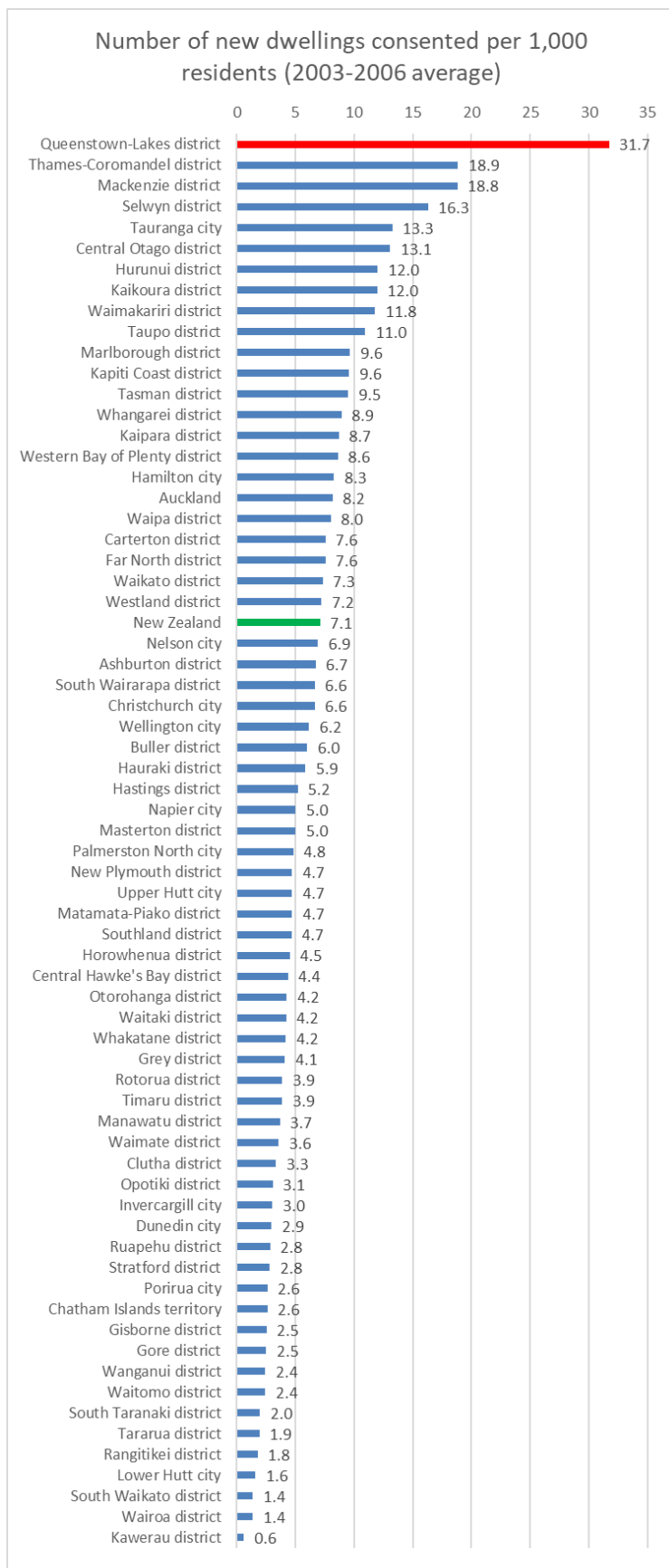
- 3.3 QLDC strongly refutes the basis for the policy position taken by MBIE that the current joint and several liability system is the most equitable. Council’s experience and position substantially differ from the policy position paper.

#### **4.0 The ongoing nature of defective building claims**

- 4.1 QLDC disagrees that the peak of leaky homes negligence cases was 2008-2018, and that cases have been declining since 2012. Council has a number of large claims that either have recently resolved, or are outstanding. The Oaks Shore claim, projected to be one of the largest single claims in New Zealand, is likely to be in excess of \$160M. Accordingly, it is not accurate to state that “the majority of leaky building cases may have worked their way through the system”, at the very least in terms of dollar value. To the contrary, the QLDC experience is that leaky building claims are increasing. Even if correct, that position is not a sound basis for continuing the current inequity and will have severe fiscal ramifications for ratepayers across our community.

#### **5.0 QLDC is disproportionately affected**

- 5.1 The Weathertight Homes Resolution Services Act 2006 came in to force on 1 May 2007. This Act changed the way in which leaky buildings claims are managed.
- 5.2 Leading up to this legislation change, QLDC was issuing significantly more consents on a per capita basis than any other district in the country. Combined with its small ratepayer base, this has left the district disproportionately exposed to claims.
- 5.3 Between 2003 and 2006, QLDC issued more consents per 1,000 residents than any other district in New Zealand. As the table below illustrates, this was almost double the next district, Thames-Coromandel, and over four times the national average.



**Table 1: Number of new dwellings consented per 1,000 residents (2003-2006 average)**  
 (References: Infometrics and Statistics NZ)

## 6.0 The impact of joint and several liability on ratepayers

- 6.1 The policy position paper states that, “where all parties present and solvent, the concerns with joint and several liability and claims of major injustice lessen, provided all parties can make the necessary financial contribution.” Having all parties present and solvent is invariably not the reality in these cases. Developers, designers and builders who are responsible for the design and construction of defective buildings can simply liquidate their limited liability companies and face no financial consequences, leaving the burden to ratepayers of a BCA as the ‘last party standing’.
- 6.2 The Oak Shores claim mentioned at 4.0 above provides an example of the potential impact of outstanding claims. The rates impact of a rate funding a claim of \$162.9M would be an additional \$9.56M of debt servicing per annum for 30 years. This would increase rates by an average of 9.6% and would cost \$305 per property every year for 30 years. The effects would also include a loss in borrowing capacity, that would inevitably mean the reduction of investment in community assets such as parks, libraries, performing arts and recreation facilities.
- 6.3 As a growth council, funding the significant investment required to infrastructure to keep up with the rate of resident and visitor growth is a key strategic focus. Collaboration with Central Government on solutions to ensure that Council can meet community needs is integral, where Council’s resourcing and financial capacity make this otherwise unattainable.
- 6.4 Alongside collaboration between central and local government on tools to address this issue, Council requests the MBIE consider funding support for QLDC, given how disproportionately the joint and several liability approach is impacting the district. Funding would assist to offset the long term adverse impacts on ratepayers and Council activities of Council being ‘last party standing’ in multiple, high value claims.
- 6.5 The joint and several liability approach is an example of local government/BCAs not having the mechanisms within its power to ameliorate the significant impact that leaky building claims are having on its ability to carry out core functions. Council submits that the policy paper is missing a paramount factor in failing to acknowledge these implications on ratepayers, and instead misplacing its focus on concluding that any cap on liability would not impact BCA behaviour, decision-making and efficiency.
- 6.6 It is Council’s position that requiring ratepayers to pay compensation where defendants are missing is unjust. QLDC is not unsympathetic to the need for losses to be recovered. Risk management is a shared responsibility. It is important that all participants in the system have clear accountabilities and not be able to escape their share of responsibility by ceasing to operate/liquidating.

## 7.0 Proportionate liability

- 7.1 Council recommends that the liability framework should change to one of proportionate liability. This would reflect the roles and responsibilities of the parties involved and encourage those best placed to manage the risk (building practitioners) to actively manage it. This should be accompanied by a system of compulsory home warranty guarantee (that is effective) and/or insurance products. The homeowner interest would then be protected and there would no longer an impediment to moving to proportional liability.
- 7.2 Making the change to proportionate liability should be viewed as part of the suite of changes to improve accountabilities and responsibilities throughout the building and construction sector – including those of consumers, builders, sub-contractors,

developers, architects and designers, engineers, project managers, product managers and regulators – change behaviour, and increase competency.

## **8.0 If the joint and several liability approach remains, BCA liability should be capped**

- 8.1 In the alternative, if the joint and several approach to liability remains, Council recommends that there should be a cap on BCA liability. A limit of 20% would be proportionate to the supervisory role BCAs perform under the Building Act 2004 and current apportionments underpinned by meaningful warranties and insurance (with a government underwrite if necessary) for residential properties and significant alterations.
- 8.2 The recommendation from the Law Commission in 2014 is noted in this regard, that “further protection from excessive liability is justified” and that the Law Commission recommended a cap on BCA liability. The policy position paper concedes that this would provide certainty for BCAs, but dismisses further action, stating that there is insufficient evidence that a limitation of liability would result in BCAs acting in a less risk adverse way or changing their approach.
- 8.3 The increased risk liability does in fact cause QLDC’s BCA function to be more cautious and more demanding. This has a negative impact on performance of the BCA and also creates higher compliance costs for the building sector. The excessive liability that councils are exposed to also reduces BCA willingness to consider non-standard solutions which potentially have a higher chance of failure. This negatively affects market performance.
- 8.4 The impacts of exposure to excessive liability are also felt elsewhere. As pointed out at 6.3 above, carrying high levels of potential liability for building failure increases Council’s costs and reduces its capacity to invest elsewhere in the development of the district. This is acutely felt by QLDC as a growth district, as funds used to to pay for other parties contributory failures means that core infrastructure investment is tangibly put at risk. Put plainly, if Council is having to borrow money to pay for significant “leaky” claims to cover the failures of a raft of other parties, that is money that is not going into infrastructure, housing or economic growth.
- 8.5 The policy position paper effectively concludes that due to the complexity of any limitation of liability on BCAs and that a limitation of liability is unlikely to result in faster building consenting, that the status quo ‘last party standing’ should remain. Council submits that an equitable system that considers ratepayers ability to pay is as important a factor as faster consenting, and should not mean that no action is taken. There is a presumption in the current system that ratepayers are able to bear these costs. For QLDC, the direct impact on ratepayers is not tenable.

## **9.0 Warranties and insurance**

- 9.1 As with proportionate liability, changing to a cap with suitable warranties and insurance would provide protection for homeowners and provide an incentive for builders, designers and others in the process to produce high-quality building work. It could also enable more innovation, increase efficiency and improve certainty and would incentivise the industry to strive for high quality solutions.
- 9.2 The position paper dismisses the concept of government-provided warranty insurance, stating that whilst this may be a fairer option for ratepayers, that central government does not have the means to manage this risk, and that this could be seen as unfair for taxpayers. The logic invoked here is perverse, as nor do local government or ratepayers have any means to manage the risk involved under the current joint and several liability scheme.

- 9.3 QLDC has previously stated its support for a mandatory guarantee and Insurance product for residential builds and significant alterations, in its 2019 submission to the Building System Law Reform Programme. Council further stated that medium density housing (up to six floors) and high density housing (over six floors) should be specifically included in this requirement as these are scenarios where the risk of failure equates to more impact on the community.

#### **Recommendations**

The liability framework should change to one of proportionate liability that reflects the roles and responsibilities of the parties involved.

Request that funding support for QLDC be considered, given how disproportionately the joint and several liability approach has and will continue to impact the district.

If the joint and several approach to liability remains, there should be a cap on Council/Building Consent Authority liability.