

31 August 2022

Via Email: 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 2031.¹
- 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'.

¹ <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.

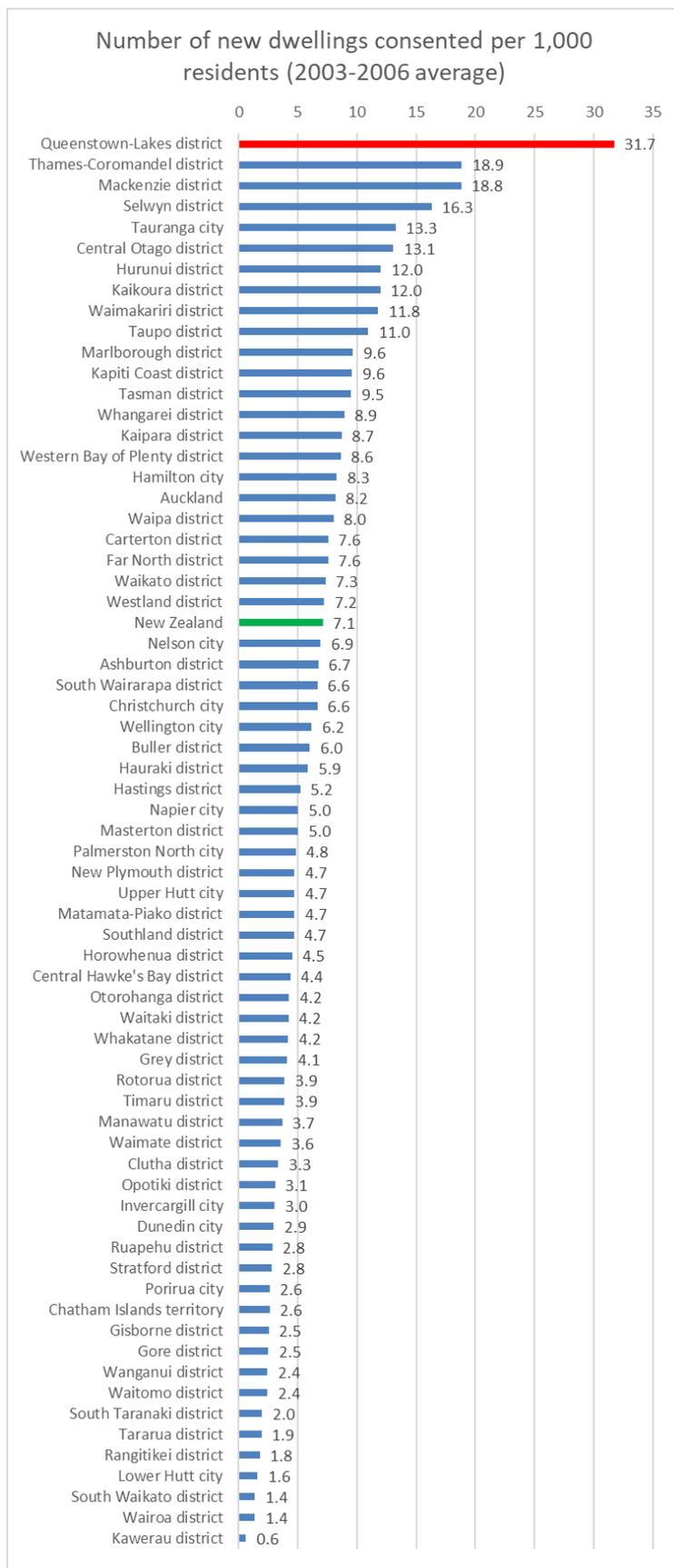


Table 1: Number of new dwellings consented per 1,000 residents (2003-2006 average)
 (References: Infometrics and Statistics NZ)

6.0 The impact of joing 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.

Consultation submission form

Review of the Building Consent System

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How to make a submission

The Government has commenced 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

The Ministry of Business, Innovation and Employment (MBIE) is seeking your feedback on:

- what role you think the government should have in providing assurance that buildings are healthy, durable and safe
- the desirable outcomes from the building consent system
- an initial assessment of the key issues that are barriers to achieving those outcomes.

When completing this submission form, please provide comments and reasons explaining your choices. Your feedback provides valuable information and informs decisions about the proposals.

You can submit this form by 5pm, Sunday 4 September 2022 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

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.

How to make a submission

Release of information

MBIE may upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to requests under the *Official Information Act 1982*. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters 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 in the cover letter or e-mail accompanying your submission 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

MBIE would appreciate if you would 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: Queenstown Lakes District Council

Email address: carrie.williams@qldc.govt.nz

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

Yes No

C. Are you making this submission on behalf of a business or organisation?

Yes No

If yes, please tell us the title of your company/organisation.

Queenstown Lakes District Council

D. The best way to describe your role is:

Building Consent Authority Industry organisation (please specify below)

Business Individual

Other (please specify below)

Please specify here.

E. If you represent a Business the best way to describe it is:

Designer/ Architect Builder

Sub-contractor Engineer

Developer Other (please specify below)

F. If you are an individual the best way to describe you is:

Submitter information

- | | |
|---|---|
| <input type="checkbox"/> Designer/ Architect | <input type="checkbox"/> Builder |
| <input type="checkbox"/> Sub-contractor | <input type="checkbox"/> Engineer |
| <input type="checkbox"/> Building Consent Officer | <input type="checkbox"/> Developer |
| <input type="checkbox"/> Homeowner | <input type="checkbox"/> Other (please specify below) |

G. Privacy information

- The *Privacy Act 2020* applies to 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.
- MBIE may upload submissions or a summary of submissions received to MBIE's website at www.mbie.govt.nz. If you do **not** want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below:

I do not want my submission placed on MBIE's website because... [insert reasoning here]

H. Confidential information

- I would like my submission (or identifiable parts of my submission) to be kept confidential and **have stated** my reasons and ground under section 9 of the Official Information Act that I believe apply, for consideration by MBIE.

If you have ticked this box, please tell us what parts of your submission are to be kept confidential.

Section 1: Introduction and strategic context

Building consent systems aim to provide assurance that buildings are healthy, durable and safe. Government intervention is typically directed at addressing the following problems that can occur in the building market:

Information gaps: many building owners and other users of buildings have insufficient knowledge or skill to assess the quality of building design or building work, or properly identify and manage risk.

Risk of harm: protecting building owners and other users from the risk of serious harm that could arise from poor design or building work.

Cost of defects: building defects can be very expensive to repair once work is completed. Buildings have a long life and defects may show up long after construction. It can be difficult for an owner to determine who is at fault and obtain redress.

Questions for the consultation

1. What do you think the primary focus of the building consent system should be?

Queenstown Lakes District Council (QLDC) agrees that the building consenting system's primary focus should be to ensure the construction of healthy, safe and durable buildings.

The role of government in the building process varies around the world:

- Some countries delegate specific roles to private third parties, such as the review of plans, conducting risk assessments of projects or carrying out inspections during construction.
- Australia allows private building surveyors to directly oversee building design and inspection.
- Nearly all countries surveyed by the World Bank Doing Business report allow private third-party inspections. However, the task of issuing the final permit (the equivalent of the code compliance certificate) remains largely the responsibility of local authorities.

2. What role should government have in providing assurance that buildings are healthy, safe and durable?

Government should provide a regulatory framework which ensures buildings are healthy, safe and durable.

Section 1: Introduction and strategic context

3. Are there any building consent functions that could be delegated to or provided by another party?

Yes

No

Not sure

If so, please explain your response.

QLDC is aware that other countries allow private certifying businesses to receive, process and issue building consents, undertake inspections and issue compliance documentation. Council is amenable to this occurring in New Zealand, with the prerequisite that any private certifying businesses obtain satisfactory insurance for defective work for which they may be liable.

Section 2: Desirable outcomes

MBIE has identified four critical outcomes that the building consent system should primarily seek to achieve.

Outcome 1: Efficiency. The building consent system is efficient in providing assurance to building owners and users. It is risk-based, has proportionate compliance costs, and allows for innovation.

Outcome 2: Roles and responsibilities. Roles and responsibilities are clear and based on participants' respective ability to identify and manage risks. All participants across the system have a good understanding of their own responsibilities and the extent they can rely on others for assurance.

Outcome 3: Continuous improvement. The system is responsive, flexible and agile, and seeks to continually improve through performance and system monitoring, good information flows and feedback loops.

Outcome 4: Regulatory requirements and decisions. Regulatory requirements are clear, and decisions are robust, predictable, transparent and broadly understood.

Questions for the consultation

4. Do you agree these four critical outcomes are necessary to ensure the building consent system provides high levels of assurance to the public that buildings are healthy, safe and durable?

Yes Somewhat No Not sure

Please explain your views.

The four critical outcomes identified encapsulate the primary areas affecting and influencing the current building consent system.

Council notes that there is a risk that continuous improvement fails to properly recognise and respond to innovation. A lot of international developers find the New Zealand system lacking in awareness and support for well proven international technology and approaches. The system should certainly focus on improvement, but it should also enable faster innovation.

5. Are there any other outcomes that are critical to ensure buildings are healthy, safe and durable?

Yes No Not sure

Please explain your views.

Section 2: Desirable outcomes

The four areas of focus cover the main items that most often affect the building consent system.

6. How well is the system currently performing against the four identified outcomes? Please explain your views.

	Poor	Fair	Good	Very Good	Excellent
Efficiency	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roles and responsibilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Continuous improvement	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regulatory requirements and decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

Outcome 1: Efficiency

The number of councils and the different systems each use to carry out their functions under the Building Act results in inefficiencies. This is due to differing technology, processes and information requested. Nationwide there is a shortage of skilled and experienced staff, and local knowledge is imperative to carry out functions as this allows for efficiencies. Increased sharing of resources and knowledge between Building Consent Authorities (BCAs) would relieve some of this pressure. A centralised system would enable this to work most effectively.

The current of joint and several approach to liability for leaky buildings also impacts negatively on efficiency. Examples include longer processing times, additional inspections and a more cautious approach to issuing building consent approvals. It may make inspections and approvers less open to change and innovation and place an overt reliance on exiting systems forms and materials. Where the cost risk is high, BCAs will invariably act more cautiously and this negatively affects the efficiency of the system.

Outcome 2: Roles and responsibilities

BCAs have a good understanding of their responsibilities under the Building Act 2004 when carrying out their BCA and territorial authority functions. However, there is a general lack of knowledge in other areas of the industry, particularly among Licensed Building Practitioners, builders and homeowners, of their roles and responsibilities. Significant reliance is placed on BCAs from these parties. Designers and architects typically have a reasonable understanding of their roles and responsibilities, although there is at times confusion and they often expect builders or the BCA to either correct or alter plans on-site or check their designs. Details are frequently disregarded by contractors on-site and changed without the knowledge of the designer.

Outcome 3: Continuous Improvement

There has been an improvement over the last five years as a result of MBIE engaging with BCAs more regularly and updating information, providing guidance and resources through

Section 2: Desirable outcomes

email newsletters, updates and webinars. However, there is still room for improvement to keep up with the building industry and technology. Changes sometimes are not made quick enough to reflect current products and industry practices. It has been Council's experience that when changes are made, good information and resources are provided by MBIE. However, as a BCA, Council has also been left unsupported with respect to compliance documents if it is seeking further information or understanding.

The Licenced Building Practitioners (LBP) scheme appears to have improved defective buildings knowledge and skill within the industry, although this was too slow to be reviewed. Setting up more regular reviews when changes are implemented will ensure systems such as the LBP scheme are still relevant and addressing their intended outcomes.

Outcome 4: Regulatory requirements and decisions

Unless there is a standard set by MBIE for all BCAs, there will remain differences between the way BCAs approach and apply the consenting process. The current system allows for information to differ between BCAs as it is performance based. These differences often come about through past issues or local conditions which can be appropriately addressed by BCAs requesting information.

Experience, knowledge, training of staff, the size of a BCA and the type of building work that occurs within a district all impact the magnitude of the discrepancies between BCAs.

Section 3: Issues with the current system

MBIE has identified five issues that are constraining the ability of the system to achieve the desirable outcomes expected of this system. In turn, this compromises the ability of the building consent system to provide assurance that building work will be ‘done right the first time’, thereby ensuring that buildings are well-made, healthy, durable and safe.

Many of these issues are complex and long-standing. While these issues are presented separately, they are intrinsically related and collectively affect the performance of the overall system.

We welcome your feedback on these issues and other any other issues. In particular, what is the cause of these issues, what are their impacts, how could a better consent system address these, and what would that system look like?

Issue 1: Roles, responsibilities and accountability

Roles and responsibilities across the system are not always well understood, accepted, applied or consistently enforced. There is sometimes an over-reliance on building consent authorities to provide assurance of compliance with the Building Code.

Questions for the consultation

7. How well understood are roles and responsibilities across the sector?

Very poorly understood	Somewhat understood	Understood	Well understood	Very well understood
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

There is a reliance on BCAs to check and provide assurance for all parties (builders, designers and homeowners). These parties often rely heavily on the BCA consent processing and inspections to identify any issues, rather than their own roles and responsibilities in the process. Building consent applications are often incomplete and rely on the processing of the application to identify further information or details required. Similarly, the BCAs role with inspections is often seen as a quality check throughout the build.

There is also a disconnect between the design and build stage, especially with residential construction. Where previously a designer or architect would continue to have some involvement throughout the build, it is a current trend that their contract ends once the building consent is issued.

8. Does the building consent system allocate responsibility appropriately to those best able to identify and manage the associated risks?

Yes Somewhat No Not sure

Section 3: Issues with the current system

Issue 1: Roles, responsibilities and accountabilities

Please explain your views.

Territorial Authorities bear a disproportionate amount of responsibility when it comes to the cost of remediating defective (weathertight, structural and passive fire) buildings.

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 Territorial Authority.

9. Does the building consent system provide sufficient incentives for each party to meet their responsibilities and 'get it right the first time'?

Yes Somewhat No Not sure

Please explain your views.

In some cases, there is a lack of incentive for designers and architects and builders to 'get it right first time'. BCAs are used as a 'quality assurance' backstop to identify gaps and mistakes in poorly drafted building consent applications and building inspections. There is a disproportionate weight on BCAs as they are generally the last party standing if something does not go well. This creates a risk gap between designers, builders and councils. In turn, this adds costs to the system, leads to time delays as well as a lack of continuous improvement due to BCA cautiousness.

10. Should other parts of the sector (outside of building consent authorities) have a greater role in providing assurance that buildings are safe, durable and healthy? If yes, what would the risks and mitigations be?

Yes No Not sure

Please explain your views.

BCAs are the appropriate regulatory entity to ensure buildings are safe, durable and healthy. BCAs have the data, knowledge and expertise and are assessed every two years by IANZ to ensure they are meeting the standards required.

If yes, what would the risks and mitigations be?

N/A

11. Are some parts of the sector more prepared than others to take on more of the responsibility for providing assurance?

Yes No Not sure

Please explain your views.

QLDC cannot speculate on other sectors preparedness to take on more responsibility for providing assurance, other than to say that with more responsibility there is more liability and risk.

Section 3: Issues with the current system

Issue 2: Capacity and capability

Building consent authorities face capacity and capability constraints in dealing with an increased volume and complexity of building work. Sector workforce capacity and capability constraints can also undermine the performance of the system.

Questions for the consultation

12.How significant are building consent authority capacity and capability constraints on the performance of the system?

Not significant at all	Somewhat significant	Significant	Quite Significant	Very significant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

Delays due to BCA capacity appear to lead to designers and architects rushing replies for further information once a building consent application is submitted. This often leading to further correspondence and inefficiencies in the processing of a building consent. In turn, this places pressure on the BCA, designer and often the homeowner and builder to get the consent issued so that building can start. Often these delays can lead to building work being rushed, inspections not being called, or inspectors called directly, in an attempt to speed up progress.

Capability constraints have similar effects. While staff are being trained there is less efficiency in the system as other staff are relied on to support training, often while they are already under pressure due to capacity.

There is evidence that the record level of building consents that has caused some BCAs to be unable to meet statutory timeframes, has peaked and is starting to decline due to weakening demand and material and labour costs escalations making building unaffordable for some. If this trend continues, capacity constraints may ease.

What are the most significant impacts of building consent authority capability and capacity constraints on the performance of the building consent system? Please explain your views?

Frustration throughout the industry between parties is the most significant impact of BCA capacity constraints on the performance of the building consent system. For example, designers, homeowner and builders frustrated with the BCA, and vice versa. This is usually due to perceived or actual delays that often stem from not allowing time for the building consent process as well as uncertainty around processing timing and inspection lead times.

Section 3: Issues with the current system

Issue 2: Capacity and capability

13. How significant are sector workforce capacity and capability constraints on the performance of the system?

Not significant at all Somewhat significant Significant Quite Significant Very significant

Please explain your views.

With record levels of building consent applications, constraints within the sector workforce place strain and stress on the process. This is because insufficient time is allowed or available for the consenting process. The BCA is perceived as the entity delaying the progress of building work, rather than providing sufficient consent processing time in the scheduling of a project. This sometimes comes from lack of transparency regarding the BCAs processing, consenting and inspection times.

There is little incentive on councils to collaborate with the building industry due to the disproportionate liability burden that they carry. BCAs need to protect their own reputation while other sectors of the building industry can simply liquidate their limited liability companies and face no financial consequences.

When the industry is under pressure, consent applications are often submitted to the BCA incomplete, with several variations submitted after a consent is issued. Inspections can be missed, or more failed inspections occur as inspections are called before work is complete or rework is required to pass. This leads to further delays and additional inspections from the BCA.

What are the most significant impacts of sector workforce capability and capacity constraints on the performance of the building consent system? Please explain your views.

Pressure is placed on the building consent system to process and inspect building work faster than often can occur. This pressure exacerbates the workload through multiple parties contacting BCAs with questions or requests regarding consents and inspections. This can lead to rushed rather than considered decisions being made.

14. How could the impacts of capacity and capability constraints be mitigated?

Transparency and communication among the building sector is vital. For example, if BCAs are struggling to meet statutory timeframes, this needs to be communicated to designers and builders so they can factor this into their schedules.

Sharing resources between BCAs would also mitigate the detrimental impacts of capacity and capability. Auckland City Council recently offered inspection resource to other BCAs. This initiative could be promoted and encouraged more widely.

15. Are there any barriers to a more efficient use of technical expertise across the system?

Yes No Not sure

Please tell us what these barriers might be.

Section 3: Issues with the current system

Issue 2: Capacity and capability

There is no centralised database or group of experts that can be utilised by all BCAs and access to expertise varies. Larger BCAs may have the scale to retain in-house technical expertise whilst smaller BCAs rely on external consultants. QLDC has limited access to technical expertise which are commonly in-house at larger BCAs such as structural engineers, fire engineers and plumbing and drainage experts.

Section 3: Issues with the current system

Issue 3: System agility

All consents go through the same basic process, which is not always responsive to the level of risk, complexity of the building work, or type of project. The current system does not always deal well with new or innovative practices or products or the design-and-build approach. Nor is it sufficiently responsive to the building needs and aspirations of Māori.

Questions for the consultation

16. Do you agree that the consent system is not sufficiently agile for the way in which we design, procure and build today and in the future?

Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

There is some allowance with the system for different levels of complexity, mainly through the National Competency matrix which means staff are allocated consents in relation to their competency. While the same processing system is used regardless of the type of building, this National Competency matrix means complex buildings are more efficiently processed by more experienced staff.

Although more complex buildings often involve a range of consultants who are experts in their areas (i.e. hydraulic, fire, geotechnical, structural, electrical) and have greater knowledge and experience than BCA staff, therefore the process could be altered to allow for this. With more focus on complex residential/higher risk detached dwellings where often only a structural engineer and designer/architect are involved.

If you agree, how does rigidity in the building consent system impact consenting outcomes and productivity in the building sector?

Applying the same process to all building work often means more delays in the consenting processing for more complex buildings. There are often more requests for further information and as more consultants are involved, gathering and collating information to reply to the BCA can be time-consuming. This can lead to delay in processing the response due to the time between initially processing the consent and reviewing the reply, as staff need to familiarise themselves with the consent again. This delay inevitably adds cost to the building owner.

17. What changes would you suggest to the building consent system to make it more agile?

Section 3: Issues with the current system

Issue 3: System agility

Transparent, even and equitable sharing of risk and liability across the building sector would enable the different players across the market to engage and collaborate on outcomes resulting in greater agility. At present there is no incentive to councils to engage and collaborate and in fact there is a disincentive to do so out of genuine concerns for liability and cost

Document coordination with more complex building consents would also make the system more agile. Often consent documentation for more complex building consents doesn't align, due to consultants individually working in their area of design without the use of a Building Information Model (BIM), or someone to review the documentation before consent.

Section 3: Issues with the current system

Issue 3: System agility

18. Does the current building consent process constrain or limit the use of traditional Māori methods of construction?

- Yes Somewhat No Not sure

Please explain your views.

There are no specific provisions in the Building Code that allow for a building consent to be processed or issued using any methodology that does not comply with the Building Code. This may constrain or limit the use of traditional Māori methods of construction.

19. Does the current building consent process add constraints to the development of Māori-owned land that other landowners don't face?

- Yes Somewhat No Not sure

Please explain your views.

20. What Māori perspective or set of values do building consent authorities need to take into account when considering and processing consent applications for iwi/hapū/Māori-led building and construction projects?

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

The performance of the system is insufficiently monitored, and information flows are poor. MBIE is not yet the strong central regulator that was contemplated in the original system design.

Questions for the consultation

21. What can be done to improve monitoring of the building consent system?

Enabling MBIE to gather information to build an informed picture of how well the system is operating would improve monitoring of the building consent system overall. For example, a nation-wide database or system for processing consents would allow MBIE to have more comprehensive information on what is working and where change is required.

22. What information or data relating to the consenting system performance would you find useful?

It would be useful for QLDC to have data from all BCAs on the following:

- the number of building consents received, processed and issued
- the types of consents received (classified use or further break down of the types of buildings)
- processing days
- the types of inspections carried out
- any enforcement action or fines.

International Accreditation New Zealand (IANZ) assessment outcomes could be shared among all BCAs to learn from the recommendations and further develop best practice.

23. Are you aware of any barriers to collecting and sharing information across the sector?

Yes No Not sure

Please explain your views.

Currently IANZ BCA assessments are not available to other BCAs.

Section 3: Issues with the current system

Issue 4: Performance monitoring and system oversight

24. Are you aware of additional data and information sources that we could be using to inform our understanding of the system performance?

Yes No

Please explain your views.

BCAs and identified stakeholders hold the necessary data to inform MBIEs understanding of the system performance.

25. Is there anything else MBIE could do to better meet its system oversight and stewardship responsibilities?

Section 3: Issues with the current system

Issue 5: Fragmented implementation

The processing of building consent applications is devolved to territorial authorities who are building consent authorities, which has led to variability and unpredictability in the consent process and its outcomes. This fragmentation adds to the overall costs of the system due to duplication and variable processes, tools and functions being implemented across building consent authorities, and difficulties maintaining a professional workforce.

Questions for the consultation

26. Building consent processing is devolved and carried out by individual territorial authorities under the current system. How does this structure affect the consenting performance and building outcomes?

The current devolved system means there can be significant variation between BCAs in relation to processing times. Factors contributing to this include staff resourcing, staff experience and the council's degree of focus on risk or past experiences. Larger BCAs tend to have more staff with more experience and can therefore more efficiently process and inspect the various types of building consents received. QLDC receives a vast variety of building consents with a small number of staff and limited expertise and experience. This puts pressure on Council staff and places reliance on external consultants.

As a BCA, QLDC accepts, processes and inspects consents electronically via a system and software that is specific to QLDC and differs from other BCAs. This creates a reliance on internal staff and IT support to maintain documentation (i.e. processing check sheets and inspection templates). This takes significant time and resources to develop and maintain. This occurs throughout New Zealand with multiple systems and data bases across BCAs

The differing systems, processes and information requirements between BCAs results in frustration among designers and builders who work in more than one district. This is especially the case for Group Home Builders.

27. What aspects of the current consenting system structure work well?

Maintaining information regarding properties and building consents locally means that local knowledge and expertise can be utilised.

It should be noted that QLDC's BCA is performing well within the current consenting system. Statutory timeframes are being met with 96% compliance and IANZ assessments have also been excellent.

28. What aspects of the current consenting system structure do not work well?

General questions

The limited support and interaction between BCAs and inconsistent processes, systems and information requirements among BCAs means that the system is not consistent or efficient.

29. How does the current devolved consenting system structure impact consent applicants and building owners?

The current devolved consenting system structure can cause confusion and frustration, due to the inconsistencies between BCAs when applicants are applying for consents as well as during building.

The current system also does not encourage BCAs to share resources with different systems and processes across New Zealand.

30. What improvements or changes are required to the current consenting system structure to reduce fragmentation in implementation and deliver better consenting outcomes?

A nationwide fully integrated electronic consent system would overcome the inconsistencies among BCAs, significantly improve efficiencies, create scale and also allow for greater use of shared resources between BCAs.

31. Is there any duplication or overlap between the building consent and resource consent processes, or any other legislation?

Yes

No

Not sure

Please explain your views, including any impacts.

Often there is confusion when both a building consent and resource consent are required and when they need to be applied for. When building consents and resource consents are applied for at the same time and the building consent is issued first there can be confusion as to whether the resource consent has been approved and whether work can start.

Inefficiency and repetition of work can occur when an applicant doesn't realise a resource consent is required for their proposed design at the outset. This could be addressed or mitigated with Project Information Memoranda (PIMs) being applied for prior to both applications being submitted. Currently it is up to the applicant whether this occurs prior to or with the application or at all.

Often the same reports (i.e. geotechnical report) are required for both building and resource consent applications, although if the resource consent is applied for first this report may be excluded from the building consent application. However, it should be provided to the building consent application to show what has been assessed and considered. QLDC endeavours to not re-review or assess information that may have already been assessed through the resource consent process and approved. This can be time consuming and inefficient to establish. It can be the case that some parts of the design have been approved in a resource consent application, while other parts of a design rely on the building consent application. For example: an onsite wastewater system may be approved and reviewed

General questions

through the resource consent, although the onsite stormwater system may just refer to the building consent for approval.

32. How could the relationship between the building consent and resource management systems be improved?

The relationship between the building consent and resource management systems could be improved with the provision of better guidance and information for applicants, designers and homeowners. This information should clearly demonstrate the differences between these systems and how they relate to each other.

The Building Act 2004 is applied uniformly throughout the country, whereas the RMA 1991 is applied at a local level. There is confusion between the two systems and what each are considering and approving.

Often resource consents or consent notices request designs or information in excess of the requirements of the Building Code where code clauses don't allow for this (i.e. not E1) and the BCA is expected to enforce or review this information. There seems to be misunderstanding and confusion around this overlap or disconnect between the two Acts and processes. This can cause confusion between applications/designer and homeowners. There can be mixed messages about whether something is required for building consent and who is approving that aspect of their design.

Information that has been reviewed and approved through the resource consent that would also meet the building consent requirement should be provided with the building consent application to show it complies for both processes. This would reduce the need to re-process parts of an application.

General questions

33. Do you have any other comments?

Please see covering letter and submission regarding risk, liability and insurance in the building sector.