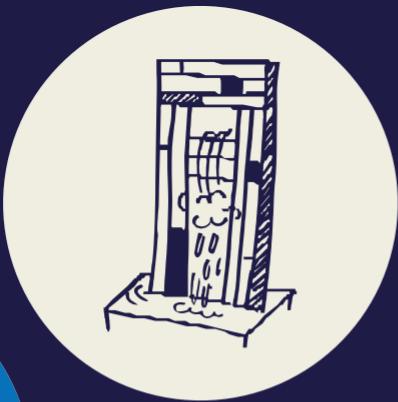


# HAMILTON CITY COUNCIL - STAFF SUBMISSION

## Review of the Building Consent System - July 2022 Issues Discussion Document

Ministry of Business, Innovation and Employment



9 September 2022

# Improving the Wellbeing of Hamiltonians

Hamilton City Council is focused on improving the wellbeing of Hamiltonians through delivering to our five priorities of shaping:

- **A city that's easy to live in**
- **A city where our people thrive**
- **A central city where our people love to be**
- **A fun city with lots to do**
- **A green city**

The topic of this submission is aligned to the priority '**A city where our people thrive**'.

## Council Approval and Reference

This submission was approved by Hamilton City Council's Chief Executive on 9 September 2022.

Hamilton City Council Reference D-4380209 - Submission # 703.

It should be noted that the following submission is from staff at Hamilton City Council and does not necessarily represent the views of the Council itself.

## Introduction

1. Hamilton City Council staff would like to thank the Ministry of Business, Innovation and Employment for the opportunity to make a submission to the **Review of the Building Consent System - July 2022 Issues Discussion Document**.
2. The response/feedback from Hamilton City Council staff is outlined in the Ministry of Business, Innovation and Employment's official consultation submission form - copy attached.

## Further Information and Opportunity to Discuss Our Submission

3. Should the Ministry of Business, Innovation and Employment require clarification of the submission from Hamilton City Council staff, or additional information, please contact **Alister Arcus** (Principal Building Advisor - Building Control) on 07 838 6881 or email [alister.arcus@hcc.govt.nz](mailto:alister.arcus@hcc.govt.nz) in the first instance.
4. **Hamilton City Council staff would welcome the opportunity to discuss the content of this submission in more detail with the Ministry of Business, Innovation and Employment.**

Yours faithfully



Lance Vervoort  
**CHIEF EXECUTIVE**

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# Consultation submission form

## Review of the Building Consent System

## Contents

Contents .....	2
How to make a submission .....	3
Submitter information.....	5
Section 1: Introduction and strategic context.....	7
Section 2: Desirable outcomes.....	9
Section 3: Issues with the current system.....	12
General questions .....	23

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](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

### 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](http://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

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: Alister Arcus

Email address: alister.arcus@hcc.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.

Hamilton City 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:

Designer/ Architect  Builder

## Submitter information

<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](http://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?

Safe and healthy buildings: A quality-built environment which is sustainable and has low emissions.

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?

##### Central Government

- Holder of the legislation and codes, manage continual improvement.
- Educator: Guidance documents.
- Mediator: Determinations.
- Quality assurance reviewer: Industry wide.
- Licencing trades and industry professionals.

##### Local Government

- Certifier of the built environment through the consenting process and signing off completed work.
- Ensuring their staff have the necessary training/competency to carry out the functions above.

## Section 1: Introduction and strategic context

- Being part of the construction process rather than sitting above or remote from the process: “being part of the team”.
- Carry out enforcement duties.
- Administer Earthquake Prone Buildings.
- Audit existing building Compliance Schedules and specified systems.
- Carry out compliance inspections including safe and sanitary buildings, complaints and pool fencing audits.
- Provide guidance and advice where requested.

**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.

Smaller Building Consent Authorities (BCAs) should be able to transfer some/all functions to larger BCAs more easily e.g., processing. This isn't easy under the current framework.

Government projects (MOE, DHB etc) fully carried out by their own BCAs like Consentium.

There should be a mechanism to allow a single consent for building work carried out over two jurisdictions e.g., modular construction, allowance for remote inspections or as above inspections by another BCA in a transfer arrangement.

Concerns with using private certifiers as per overseas experiences, with conflicts of interest (the applicant engaging the certifier, so has the power of financial pressure). There is evidence from overseas jurisdictions (Australia) of corruption and poor inspection/certification, resulting in very bad outcomes - refer <https://www.smh.com.au/national/nsw/state-s-most-fined-certifier-behind-building-standards-reforms-20190809-p52f1t.html>

The assumption that the private enterprise is superior to the local authority can be unfounded and there needs to be a separation between the applicant and the certifier. There should be clear expectations and a reduction of “red tape” to allow BCAs to be more flexible and customer-centric without being hamstrung by onerous audit requirements e.g., expanding into other Council activities as part of the building consent process: vehicle crossings - refer question 33 below.

# 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.

**i Efficiency:** We do not agree with the term. A better term is “Effectiveness”. “Risk based” is also problematic and should be reworded to “Risk Informed” so that this can be seen that it is based on knowledge and understanding and taking an informed action.

**ii Roles and Responsibilities:** How can participants rely on others for assurance when there is such a separation between trades? How does the water proofer check the substrate fixing on non-visible structures? All parties need to own the whole system.

**iii Continuous Improvement:** Continuous Improvement is not usually an outcome; it should be included in the process that an outcome will be achieved/maintained through. It is an important part of the system but would be part of a standard process for the other outcomes.

**iv Regulatory Requirements and Decisions:** This is such a negative outcome. Consider “Clarity and Transparency”. The whole outcome seems to be negatively geared against the BCAs with language such as “building trust”. Trust is eroded by the red tape and overly onerous audit requirements, which results in unhappy customers.

## Section 2: Desirable outcomes

### 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.

Better communication and a lack of feedback from MBIE over outcomes of reviews between various stakeholders e.g., IANZ, means we are “in the dark” with regard to changes and latest interpretations.

Lack of cooperation, collaboration and communication between industry groups means we work in our silos - training/communications across industry groups on aspects that impact on all is not carried out.

Industry-wide professional licencing and more robust qualifications and continual professional development to ensure all parties have the requisite skills needs to be a priority.

Nationwide requirements mandated such as national framework for Building Control Officer (BCO) competencies instead of being optional.

National licencing/chartership of BCOs such as engineers and other industries.

### 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Continuous improvement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regulatory requirements and decisions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

Patchy outcomes. We (and our customers) are weighed down in bureaucracy; every time we are required to “improve” or show compliance, which make things more complex and difficult for our customers to get through the “maze” e.g., IANZ audits and requirements, Compliance Schedule Exemplar.

Roles and responsibilities are not understood/appreciated by significant participants of the construction industry: contractors that “do their part” then move on, and often don’t look back to ensure the work done before they start is correct e.g., a water proofer checking the substrate, the cladding person checking integrity of building wrap when the plumber has been and installed external hose fixtures.

Owners generally have a limited knowledge of their roles and responsibilities with regards to construction and the ongoing maintenance of their assets.

## Section 2: Desirable outcomes

Large commercial contractors are normally well versed with knowledge on roles and responsibilities at the operational level and have excellent QA systems to assist them in this.

Little trust or consideration of the BCAs role in the construction space: anecdotal evidence suggests some are distrustful of councils, that they have a “blacklist” of uncooperative operators.

Owners/contractors hide work, do illegal work. Contractors’ advice to owners that building consents are not required when they are etc.

Lack of knowledge as to the important roles of all participants across the industry at large with few exceptions (refer commercial builders above).

Acceptable solutions are normally the “go to” as the alternative solutions are often too difficult to get approval for. This is because there is a risk appetite that will not allow innovation easily without expensive certification and peer reviews.

A building project often touches on many parts of Council such as Planning (RMA), transportation (roading and vehicle crossings), 3 Waters (water, stormwater and sewer connections), Communities (parks, schools, recreational activities), but there is often a disconnect forced on the BCA by legislation and audit. This is outlined in Q33 below.

## Section 3: Issues with the current system

### Issue 1: Roles, responsibilities and accountabilities

## 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.

BCAs generally have a good understanding of their roles driven by the regular audits that are carried out by IANZ.

Commercial operators generally have an excellent knowledge of their roles and responsibilities.

Other parts of the industry have a patchy understanding of their roles. The issue is the lack of appreciation/coordination between different industry groups on the construction continuum. The boundary between the industry groups is where the issues arise - who is responsible for what?

Trades often only "do what they have always done" rather than thinking about the project and what works and what doesn't or following plans. Often caught out by building inspections but Building Inspectors can only visit the site infrequently e.g., for a commercial building that has a three month build timeframe, the Building Inspectors may potentially only be onsite for a total of 10 hours over the whole build period.

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

## Section 3: Issues with the current system

### Issue 1: Roles, responsibilities and accountabilities

Yes

Somewhat

No

Not sure

Please explain your views.

Generally, but there are some glaring holes such as the lack of accountability when things turn legal e.g., Courts ruling on producer statements not being considered building work. What are reasonable grounds to accept work carried out when you are not there 24/7? Again, the courts seem to think that councils should be all seeing and all knowing. There is a perverse outcome that BCAs may carry out fewer inspections so as to protect themselves from potential liability.

BCAs are often the last man standing when trades “Phoenix” themselves into a new entity, which has the perverse outcome of making them extremely risk-averse, particularly as there is no insurance to back them up.

#### 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.

Generally, no: from the regulatory system. There are often disincentives e.g., lowest common denominator - the best participants and worst are generally treated the same - the Licensed Building Practitioner (LBP) system seems “lightweight” and only limited to residential.

There is little incentive to get it right, apart from financial penalties (owner payments, infringements).

Owners have an incentive to obtain a Code Compliance Certificate as a completion certificate and for final payments etc, but often these are issued in pressure situations with time constraints and arguments with the BCA as to timing and what constitutes compliance e.g., ground levels. The owner may be the developer who only wants to on-sell, and the new owner is unaware of any potential issues arising from unidentified non-compliances.

Difficulties in reporting bad performers: accusations of removing people’s livelihoods, bias and Council holding lists of bad performers (which we don’t) and the like as well as this taking lots of time and effort means there is little incentive/appetite to report any except the worst performers. Also, a reluctance for the professional operators (e.g., engineers) to report their own to their industry bodies. They seem to want to rely on the BCAs to do this.

BCAs also have the additional challenge of political pressure/interference. As members of the local community and advocating for their constituents, the community will often engage their local Councillor/MP to push their agenda.

Often BCAs will create their own incentive schemes to improve quality, such as partnership programmes where pre-approved designs, appropriate quality assurance systems and using the right contractors can allow for quicker turnaround times, and reduced inspection requirements.

#### 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.

## Section 3: Issues with the current system

### Issue 1: Roles, responsibilities and accountabilities

Third party assessors such as Codemark (deemed to comply), BRANZ appraisals, MCM (when implemented) and peer reviews are good mechanisms that are relied on by parties and recognised as experts. These assurances should be legally liable within the scope of the certification.

Contractors who carry out BCA functions on behalf of the BCAs should have the same risks and mitigations as if they are directly employed as a BCA.

Records of work by LBPs should certify their work but are often poorly written and hold little weight from a regulatory and legal position.

Producer Statements that are outside some legal definitions of building work and not enforceable.

We recommend that Producer Statements be incorporated into legislation, so the BCAs can rely on these and the authors can be considered to have carried out building work, in accordance with the Act.

Warranty statements by product/system suppliers, are often advertisements and written on glossy publications: some questions as to their relevance.

If yes, what would the risks and mitigations be?

Risks of poor documentation resulting in liability shifting to those who have drawn these.

Accepting third party certifications e.g., engineering.

Mitigations are legal recognition and guidance for accepting third party certifications.

National licencing of key industry professionals e.g., BCOs.

**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.

Stronger mechanisms for third party certifiers such as MCM, certification bodies and BRANZ.

The commercial sector has stronger mechanisms that allow them to be more proactive in this space.

## Section 3: Issues with the current system

### Issue 2: Capacity and capability

## 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your views.

There is a shortage of suitable workforce to call on. It is limited by requirements to be suitably qualified under Regulation 18 requirements.

Regulation 18 requirements are too constricted and mean that a potential pool of older, trade experienced staff are not willing to go through a 2-year part-time programme. There needs to be consideration of a recognition of prior learning/experience with training to plug gaps in knowledge.

Consider a limited licensing class for older trades recruited to BCA positions.

The workforce is aging rapidly.

Only the larger BCAs have the capacity to recruit trainees or graduates and train them.

Other agencies poaching staff with much more attractive remuneration packages that Council BCAs can't match.

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?

Extended timeframes for processing and inspections as staff resources allow.

Excessive workloads have impacts on health, staff turnover and quality of work completed.

Poor applications mean that the amount of time dealing with Requests for Information (RFIs) and resubmitted documentation within a strict timeframe can overload staff and result in potential burnout.

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

## Section 3: Issues with the current system

### Issue 2: Capacity and capability

Please explain your views.

There is a wide range of quality applications from excellent to poor - with some anecdotal evidence that some applicants throw in a basic application and get the BCA to sort out what is missing. This slows up the speed at which all applications are assessed from the lodgement staff who are generally non-technical, to the processing and inspection staff.

Staffing numbers continue to be a significant issue, with constant recruiting a normality. Employment of trainees and graduates is carried out by larger BCAs to address this, but their on-the-job training and requirement for competency sucks up a large amount of staff resource.

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.

As above.

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

Limited immigration of qualified trades.

Much more trade apprenticeships in all the trades, engineering and other specialist consultancies.

Align all sectors of the industry with a minimum competency framework to ensure all activities are aligned with appropriately experienced people.

#### 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.

Lack of insurance.

Risk appetite for nonstandard projects.

## Section 3: Issues with the current system

### Issue 3: System agility

## 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.

One consent type for all building projects. Makes for a more complicated process for simple projects.

The process is very rigid in terms of boundaries. BCAs are restricted by what they can do. Refer Q33 below.

Rigid timeframes for all projects take no consideration of complexity.

Inability of BCAs, by law, to accept concepts/letters of intent at building consent application rather than the rigid requirement to provide full documentation for trades that are under design and build type contracts results in applicants “guessing” their designs and then having to submit amendments at a later date for the actual installations.

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

Increased complexity for simple consent applications.

Too complex for the general public to understand.

Illegal work undertaken because the system is too complex.

Slow timeframes impact on timeliness of project delivery.

Massive document requirements - specifications supplied include huge document sizes.

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

Risk informed consenting system. Low risk consents assessed and inspected in a less complex manner.

Different timeframes for different types of consents could be considered.

## Section 3: Issues with the current system

### Issue 3: System agility

Cloud-based information repository for specifications and product information available for all parties to access rather than within the application.

**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.

We suggest MBIE engage directly with Whānau, Hapū, Iwi and Māori entities to establish their perspectives.

Traditional methods of construction are likely to be alternative solutions, and these are traditionally harder to get across the line.

Guidance documents should be created so Whanau can use these as a deemed to comply.

Minimum health and safety requirements still need to align so that all housing is warm and healthy within a Māori perspective.

**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.

Multiple ownership of land has issues for getting written authority to build - care needs to be taken to ensure that appropriate permissions are obtained without it being too onerous.

Papakāinaga requirements may not meet District Plan requirements e.g., number of dwellings permitted on a parcel of land and onerous land use requirements.

**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?**

A Māori perspective for land development and building needs to be implemented. There are examples of housing developments within Iwi. See Te Whanau a Apanui, where prefab homes have been delivered to multiple private sites on Māori titled land within the Council and local BCA requirements (consenting and land use). This was done by Māori for Māori and took away the complexity of the system from owners and by Māori professional consultants.

## Section 3: Issues with the current system

### Issue 4: Performance monitoring and system oversight

## 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?

Continual monitoring from front to back - not too difficult.

A range of information gathering from owner, designer, trade, BCA and end user, carried out on a regular basis to identify blockages, suggest improvements to inform Code, regulatory and guidance documents.

BCA audits need to be more collaborative and more about decision-making and risk management. More information should be disseminated to all so best practice can be adopted.

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

% of consents approved for lodgement without a Request for Information (RFI) and what were the main reasons for rejecting applications.

% failure rate at processing and reasons for this.

% failure rates of inspections and reasons for this.

This information needs to be provided to all industry participants to help with improving the system.

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

Yes

No

Not sure

Please explain your views.

There seems to be a reluctance to share information gathered such as IANZ. When audits are carried out there is a no ability to learn from other audit findings and best practice identified.

We suggest MBIE could take a more proactive role in sharing findings from BCA/TA assessments to enable wider learnings and passing of best practice.

Lack of industry sharing of information/best practice throughout the industry.

Differing systems used across BCAs challenges the consistency of information gathering.

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

### Section 3: Issues with the current system

#### Issue 4: Performance monitoring and system oversight

Yes

No

Please explain your views.

As per above questions.

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

More time to make submissions. These are invariably tight timeframes and we do not have enough time to fully consider our submissions.

More information about best practice outcomes and good ideas being used in the industry.

More cooperation between industries to gather information and ideas.

## 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?

Lack of guidance on some of the basic consenting processing outcomes leads to interpretations and differences between the different BCAs.

Current QA systems are bespoke to each BCA and lead to differences in performance outcomes.

Competencies of staff and allocation of work is supported by a national framework created by MBIE. This is not mandatory for BCAs to adopt leading to different outcomes.

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

Overall, the standard of buildings and compliance with the aspirations of the Building Act are improved under the current building consenting system. The oversight of BCAs ensures that the vast majority of buildings meet or exceed Building Code requirements.

Collaboration and standardisation are being undertaken at a local level with cluster arrangements.

BOINZ coordinates conferences/trainings and communications to Building Control and other members on a national level, to improve the expertise and CPD requirements of staff.

Localised relationships between the build community and the BCA - a sense of being part of the community e.g., inspections have a local flavour.

Some degree of flexibility with individualised BCAs being able to be agile in the way they work - leads to inconsistencies.

BCAs work to local idiosyncrasies and requirements e.g., coastal or geothermal areas.

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

## General questions

Lack of consistency amongst different BCAs that have a similar profile.

Minimal consultation between BCAs in some areas.

Contracting out services can lead to differences in processing methodology and a degree of rework. The current framework doesn't easily support work being undertaken by other BCAs.

Complex construction can be difficult to document and inspect. Use of alternative solutions is onerous because of potential liability issues.

Too much silo mentality within industry groups.

Lack of understanding from the general public of the role of the BCA. Often seen as "*a bunch of bureaucrats and broken-down ex-builders adding no value and costing a fortune in time and cost*".

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

Inconsistencies between BCAs: within the team members, between different BCAs and contractors.

Different technology platforms add confusion to applicants who lodge over different BCA territories.

Different costings for similar projects between BCAs: different funding models.

Timeframes.

Potential liability (last man standing) results in risk-averse decisions and over-reliance of documentation, adding cost and time.

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

Clear guidance/best practice to provide support to BCA decision-making.

Closer collaboration/amalgamation between similar rural BCAs.

Metro Councils are fortunate to have scale and be able to stand on their own from learning and development through to systems and technical expertise. Consideration should be given to aligning District Councils to a Metro Council from an operating and governance perspective with local service delivery.

### 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.

Building construction impacts on a number of Council business units such as Planning (RMA), 3 Waters (water quality, sewer and stormwater reticulation), contaminated land (health), Environmental Health. The legislation/bylaws/Council technical specifications that supports each Unit does not often align with the Building Act. Refer Q33 below for examples of duplication.

## General questions

The Natural Hazard provisions between the Building Act and RMA is an area of ongoing confusion and frustration for our customers. Clarity needs to be drawn between these two legislative areas to ensure a consistent and proactive approach is taken to protect the environment and our community.

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

Allow rationalisation of resources on site as per Q33 below.

Alignment around service delivery between the Building Act and RMA, e.g., clock management.

## General questions

### 33. Do you have any other comments?

Hamilton City Council staff wish to raise an issue relating to the roles and responsibilities of a BCA as it relates to other 'Council Units' (such as Transport, Waters, Development, Planning etc) and other entities. We would like to see the BCAs sitting within Territorial Authorities strengthened to allow for greater roles and responsibilities provided to them (should the BCA deem it to be appropriate).

The roles and responsibilities of a BCA are set out in Section 14F of the Building Act. The roles and responsibilities are specific in detail, only enabling a BCA to assess building work within the property in which the building work is located. In other words, the BCA is not able to look beyond the scope of the Building Code and may lose their licence as a BCA if they do so.

However, there are areas which could naturally fall under the responsibility of a BCA. Such areas include validating Three Waters service connections, onsite stormwater quality, quantity, treatment and reuse, vehicle crossings and fire code validation. As Building Consent Officers are required to undertake inspections for every building site subject to consent, there are efficiencies for our customers to be gained from Council's perspective to have a single officer undertaking this validation work (as opposed to three separate members of Council staff).

An example of where efficiencies could be gained, whilst addressing an emerging issue for Hamilton City Council, include the cross-connection of stormwater and wastewater service connections. Cross-connections have been highlighted as an emerging issue for Hamilton City Council, often occurring as a result of human error during design or construction of a development. A total of 46 cross-connection of stormwater and wastewater service connections were identified within the 2021/22 financial year alone.

Such examples of the 'human error' during this process includes:

- Mislabelling stormwater and wastewater services during design and consenting.
- Incorrect logging of wastewater and stormwater network during construction.
- Inability to easily identify the stormwater and wastewater network during a visual inspection.

Should the roles and responsibilities of the BCAs be broadened to enable inspection offsite, staff consider that some of these issues could be identified by Building Consent Officers prior to occupation by people (and therefore avoiding consequential impacts).

## General questions

Hamilton City Council staff also note that expanded roles and responsibilities is likely to result in greater Council oversight of developments and their impacts on Council's assets (notably, Waters and Transport). A BCA is not able to withhold a building consent where there is an impact on public assets, such as a build-overs of Waters infrastructure, or a vehicle crossing impacting an existing bus stop. These impacts are likely to occur more as a result of more permissive planning requirements relating to intensification (National Policy Statement for Urban Development; and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill).

In a situation where the roles and responsibilities of a BCA have been expanded, the powers to put an application on hold to seek Development Engineering signoff could be enabled (noting that Development Engineers generally have resource management planning, bylaw compliance and building consent visibility). Currently developers, their consultants and contractors are incurring significant costs, rework and delays with the fact that the approval regimes within the Building Act, Resource Management Act and Bylaws (created under the Local Government Act) don't necessarily make reference to each other. The suggested change will alleviate current issues, be more customer focused and will result in better outcomes for the public and Council.