

Submission to the Ministry of Business, Innovation and Employment. (Hikina Whakatutuki)

Building Performance- Options Paper: Review of the Building Consent System.



7 August 2023

Introduction

The Timaru District Council (TDC) thanks the Ministry of Business, Innovation and Employment (MBIE) for the opportunity to submit on the Review of the Building Consent System.

This submission is made by the Timaru District Council, 2 King George Place, Timaru. The submission has been endorsed by The Mayor and Chair and Dept Chair of the Environmental Services Committee. The contact person for Council is Nigel Bowen, Mayor of the Timaru District, who can be contacted at Timaru District Council, phone (03) 687 7200 or PO Box 522, Timaru 7940.

The contact person regarding the submission content is Jayson Ellis, who can be contacted via Jayson.Ellis@timdc.govt.nz. We do not wish to speak to this submission.

Building Consent in Timaru District

1. The Timaru District Council is a local authority in the South Island serving over 48,000 people in South Canterbury. The main settlement is Timaru, with other smaller settlements of Geraldine, Pleasant Point and Temuka.
2. TDC is a medium-sized Building Consent Authority (BCA) of 29 staff, we process approximately 1280 building consents per year. We consent an average of 94% within 20 working days. We are a member of the Southern Building Controls Group comprised of 11 BCAs from Timaru to Invercargill. We also manage the South Island Independent Qualified Person (IQP) register. Within the District, we see a range of building work across the categories of Residential 1 to Commercial 3.
3. For a number of years, we have been working closely with local businesses that manufacture dwellings within a factory environment and later transport them to their final destination within our district or to another location throughout the South Island. This working relationship has resulted in both parties overcoming many obstacles including the regulatory environment, establishing

an effective business model and systems, and partnerships with both the Timaru BCA and many other BCAs throughout the South Island.

General comments

4. TDC supports changes that provide objective, functional requirement and performance measures including verification methods and acceptable solutions that give consistency across the board.
5. TDC like all BCAs have a continuous improvement process, which is required by the accreditation regulations. These are “Improvement Opportunities” (IO’s), which occur as a result of findings from either internal monthly audit, peer reviews and or any internal improvements. The IO process includes registering the idea/issue, approval of the idea and actions and monitoring the implementation of them.
6. TDC faces the same housing challenges as other councils across New Zealand. The ability to streamline the building consent system will support the ability for TDC to ensure that residents can have housing, but this system change cannot come at the risk of buildings that are not safe, healthy or durable.

Chapter 2-Promoting competition in the building regulatory system.

7. TDC understands and agrees with the intent of creating competition as a more prominent position and the benefits that will come from that. The concern held by making this an objective within the Building Act (the Act); Sections 3, 4 or 29, is that it will just end up as another layer of complexity within the consenting considerations. Without clear guidelines as to the weighting of each limb; ie purpose of the Act and the competition purposes statement, it may lead to decisions that override the primary objective of the regulatory framework.
8. Wording such as the “being satisfied on reasonable grounds” test is at best ambiguous in an area that relies on compliance as a measure of certainty to ensure the safety of the end product. These types of phrasing often lead to legal interpretation through the court system, once again slowing the consenting process as well as creating additional, unnecessary costs. It is only when the phrase is constructed into one accepted meaning can it be implemented consistently across all BCA’s.
9. TDC wishes for more information to understand how the BCA will be held to account via the accreditation regulations and the auditing of this objective.
10. It is unclear from the Options Paper if the Building Control Officer would need to request further information from the applicant which requires them to provide details of how the designer or owner has demonstrated that the products, they have referenced within their application have come from a variety of manufacturers. The additional requests for further information are inconsistent with the aim of the review of the consent process.

11. Considering the options provided within the Options Paper; option 2, refers to “trade-offs” between competition and the other purposes and principles of the Act. TDC considers that this could be perceived as a “robbing Paul to pay Peter” scenario and not achieving the desired outcome.
12. MBIE guidance (option 4) will not be sufficient to ensure the success of promoting competition within the consenting system. Competition within the economic environment is based on consumer-driven desires and embedding competition within a legislative framework, will not solely drive the market demand.
13. TDC believes that the creation of a new building code clause with its objective, functional requirement and performance measures including verification methods and acceptable solutions, would be the only way to ensure this objective could be implemented effectively and consistently across the board.
14. TDC considers that there could be legislation, other than the Act, that may be more appropriately positioned to support competition eg Consumer Guarantees Act.
15. There is a lack of clarity around the situation of “what if the consent application does not sufficiently demonstrate that competition has been considered”, does the BCA refuse to grant the consent and what would the reason be for the refusal? TDC considers this approach as stymying the consent process.
16. TDC considers that the “How” solutions to these issues are not considered at this stage, will be no better off and will be just another part of the Act that provides little value.
17. Adding to the principles of the Act alone, will not have any tangible effect on the consenting system, as this is too simplified an approach to a complex issue.

Chapter 3-Removing Impediments to product substitutions and variations

18. Product substitution is problematic as many of the commonly used products have been tested for specific uses and situations, hence why the applicant may specify a particular product by name or brand. This is of particular importance for the future-proofing of buildings against the effects of climate change and natural disasters.
19. It is important to note BCAs need to have a better understanding of these changes (via amendments or minor variations) because some contractors do not understand how a substituted product will meet the performance requirements needed. An example of this is in the 1990s when the disconnect between the construction industry and the regulatory process created the leaky homes crisis.
20. As the building code is performance-based, products specified must meet relevant performance measures, therefore manufacturers must step up to ensure their product specifications clearly state the correct use and any limitations of their product/s.

21. Appropriate regulatory oversight (amendments or minor variations) is still the best way to ensure compliance is achieved.
22. With Option 2, the reality of this will open the door for designers to submit a vast range of products, which will require more time to assess and approve causing confusion at the inspection stage, as to which product is being used and in what situation. This option will not provide the desired outcome as proposed.
23. TDC agrees that additional MBIE guidance and support will be required for both BCA's and the construction industry, to better understand how product substitutions can be made that ensure the purpose of the Act.
24. TDC believes the multi-proof scheme provides little value to the overall consenting system. TDC's BCA has only dealt with 2-3 since the scheme came into place. The ones we received were problematic due to limited understanding from the applicant and the variations they were trying to make. In addition, the support received from MBIE relating to these applications was simplistic and not fully beneficial.

Chapter 4- Strengthening Roles and Responsibilities

25. TDC agrees that designers (in general) have a limited understanding of the compliance concept and rely on the BCA to guide them in the right direction. This why BCA have a more conservative approach to risk.
26. The Licensed Building Practitioners (LBP) Scheme needs to be more stringent in terms of the value that is intended. The Building Act must be amended to ensure memorandum of design and records of work are prerequisites for granting consents and issuing code compliance certificates.
27. The system to gain and maintain an LBP licence must be significantly strengthened to align or at least have relative parity with the accreditation regulations that BCAs are subjected to.
28. TDC recommends strongly that the design and construction of building work other than restricted building work (eg commercial & industrial), must be officially recognised as significant due to the potential safety systems that are required within these buildings.
29. Specific design and construction licence classes, like the LBP classes, should be created to ensure this work is designed and built by professionals within the industry. Historically, most people designing and constructing these types of buildings, predominately operate in the residential market.
30. To gain and maintain a licence in the design or construction of commercial or industrial buildings, should go through a specific and stringent assessment process to ensure the relevant compliance considerations are made including the safety systems that protect the lives of the occupants.

31. TDC believes that compliance with these building types is even more important to get right the first time compared to a standalone residential building.
32. TDC considers that extending the LBP scheme to include commercial and industrial licence classes, creating greater liability on the personnel providing the certification (ie declarations), will ensure greater accountability for the roles and responsibilities of those involved in the consenting process other than BCAs.
33. Recently TDC have introduced “Milestones” to the construction phase of a consent. As mentioned in option 3, coordination and sequencing of work, our methodology of the milestone approach is a simple way of identifying the critical stages of a build and ensuring that all work up to that stage (milestone) has been completed and passed before work continues on.

Issues with the Use of Producer Statements

34. TDC agrees with the purpose of Producer Statements (PS) as detailed by MBIE determinations and the need to provide the sector and building consent authorities with more clarity, certainty and consistency around these statements.
35. TDC believes that only suitably qualified persons should be able to issue a PS. A suitably qualified person is one who belongs to a professional entity or organisation that undertakes an appropriate assessment of an individual’s qualifications or has undergone an approval process that establishes an appropriate level of competency relevant to their field of expertise.
36. TDC believes that a PS should be considered as “extra weight” when considering compliance with the Building Code and/or Building Consent. However, this consideration is subject to the individual situations and the BCA had a robust discussion with the PS author to ensure compliance.
37. TDC holds grave concerns that limiting indelible liability from the Author of the PS to the BCA on the current standard Engineering NZ PS templates. For clarity, no discussion, let alone an agreement has been entered into.
38. TDC recommends the statement¹ should be completely removed as it is irrelevant to the consideration of compliance and is inconstant with the statement's primary purpose. The BCA has no control over liability, and this is not a consideration for any other party to the consenting process.**Chapter 5- New Assurance Pathways.**
39. TDC stresses that guidance on how to assess applications relating to a risk-based approach, will not be enough to achieve a consistent outcome. The guidance provides too much scope for discretion, and the owner/applicants will

¹ [PS1 document](#) Producer Statement- PS1 Design, see note in footnote which states “This statement has been prepared solely for the Building Consent Authority named above and shall not be relied upon by any other person or entity. Any liability in relation to this statement accrues to the Design Firm only. As a condition of reliance on this statement, the Building Consent Authority accepts that the total maximum amount of liability of any kind arising from this statement and all other statements provided to the Building Consent Authority in relation to this building work, whether in tort or otherwise, is limited to the sum of \$xxx”.

always have a different view on how the BCA should use their discretion. This also affects councils as every council has differing appetites for risk.

40. Guidance does not “lift capability”, it will increase confusion and inconsistency for all involved. Regulators require clear regulations that are effective, efficient and consistent.
41. TDC is not opposed to self-certification and agrees that the legal liability for this process will need to be changed to accurately reflect all parties involved. Clarification will be needed as to whether insurance companies would be prepared to take on the risk of insuring companies, given the building industry’s history of failure.
42. Independent Qualified Persons (IQP) need to be regulated to ensure the inspection, reporting and maintenance program (life-saving system) are consistent across the country and including a robust application and approval process as well as disciplinary process/actions as required.
43. TDC believes that further consultation with regard to Self-Certification is required to better understand the many challenges this scheme will face. Potentially a separate working group should be set up, tasked with investigating this further and reporting back to MBIE with their findings. The feedback we have received from local contractors is they are very happy for the council to continue taking responsibility for approving designs and building work.
44. TDC does not agree with the preferred option (commercial consent) as the use of third-party expertise already exists and generally works well. The risk identified is that BCA would have to “invest” in the capability to verify design is incorrect as the BCA already has a process to manage third-party design either in-house or ensuring the design has appropriate documentation that verified the design (eg PS2). TDC wishes more investigation to identify the issues that the options are seeking to resolve.
45. The BCA to understand how to verify a contractor’s approved quality assurance system is currently outside the scope of their qualifications and competency. This proposal will add to the ever-increasing “verification process” and the level of scrutiny BCAs are subjected to and disproportional to others in the consenting process. For example, when the BCA has verified the contractor’s quality assurance system is fit for the project and then there is a problem with the job.
46. TDC considers the development of the commercial consent pathway should be considered with more simplicity rather than more complexity as identified within MBIE’s suggestions. Returning to basics and allowing the BCA to have more time (working days) to process a commercial consent application will result in a greater level of compliance as the BCO will have the time necessary for the important technical aspects of the project.
47. We support a mandatory component for third-party review on certain projects including Res 3 dwellings, Com2 and 3 buildings. If made mandatory this takes

the confusion out of the process whilst adding consistency. This will also assist in the design phase of these projects rather than requiring the BCA to request a review at the technical checking (processing) stage.

48. TDC does not support MBIE's suggestion to simply provide guidance on Risk-Based Consent in terms of the Building Amendment Act 2012. Risk-based consenting should be repealed. For risk-based consenting to be of benefit or provide value to the industry, it must be regulated. A new fresh and relevant assessment of what "Risk Based Consenting" actually means and how it can be adopted effectively. TDC recommends undertaking further consultation before re-introducing it into the amendment act.

Chapter 6 - Better Delivery of building consent services

Option 1

49. TDC considers the greatest impact on consent efficiency is the level of compliance provided by the applicant, generally the designer.
50. Guidance from MBIE to BCAs, is not the biggest issue. The main consent applications are designers who may not have industry knowledge of compliant buildings or building works. This is demonstrated by the 74% of consent applications requiring further information (RFIs).

Option 2

51. TDC does not support a nationwide consenting system as the best option. A clearer approach is for BCAs to collaborate together. The technology that allows BCAs to work together (collaborate) already exists and is working effectively or be it on a small scale. This consenting technology allows BCAs to set up partnerships with whomever they choose, therefore making this approach a "quick win" for creating consistency between BCAs. One significant advantage of this approach is that BCAs do not need to lose their identity and are able to maintain specific anonymity to consents in their district, whilst allowing BCOs from another district to gain additional experience and competency. TDC is not opposed to reducing the overall BCA numbers, and this collaborative approach is a positive step forward. Endorsement from MBIE would provide surety to BCA when establishing their partnerships with other BCAs.

Option 3

54. We support the use of technology to conduct remote-specific inspections and needs to be regulated to include rules around the extent, type, location, and date to ensure BCA approval is provided before the contractor carries out a remote inspection or provides photos of certain work as certain criteria must be met.

Option 4

55. TDC supports a consistent approach to BCO training across the country. The Building Officials Institute NZ already provides specific and expert training to BCOs (members). We do not believe an additional training entity is required.
56. BOINZ has developed and implemented a new programme that identifies and develops new BCOs. TDC has had a positive experience with BOINZ upskilling officers.

Boosting capacity and capability across the system

57. TDC supports the option for MBIE to continue and encourage BCAs to work closer together rather than devising a number of other options that will only equate to increased complexity and would be unlikely to result in any better outcome.

Establish centres of excellence or other central advisory function

58. TDC does not support this option. The bigger issue is the other parties contributing to the consent process i.e. designers, contractors, and third-party professionals. In our experience, these entities do not fully comprehend their roles and responsibilities within the regulatory environment and have a working knowledge of building code compliance.
59. We do not believe the creation of a “centre of excellence” function would provide any more value than what BCAs currently provide.

Identify opportunities for shared workflows or shared service arrangements between building consent authorities.

60. We support shared service level agreements between BCAs, to create greater flexibility and resilience and allow increased opportunities for BCOs to either maintain or increase their competencies.
61. MBIE should endorse and promote this approach and provide the necessary tools to allow BCAs an easy and compliant pathway in establishing their agreements.
62. This approach will also help to address the economies of scale issue for BCAs without the need to engage in potentially complicated and logistically difficult sections of the Building Act.
63. TDC considers this will add beneficial consequences of the consolidation of functions between BCAs. A voluntary approach will be received more positively than that of a regulatory mandate.
64. TDC does not support the option of a National Building Consent Authority as increase levels of complexity and expense.

Chapter 7 – Better performance monitoring and system stewardship

- 65. TDC recommends MBIE's increasing involvement in their stewardship in all areas as this is the best it has been in 15 years.
- 66. TDC supports a review of the Accreditation Regulations 2006 to ensure it is providing ongoing value.
- 67. We would support a review of the determination process as this appears to be under significant pressure, thus losing its intended value to the customer and the BCA.
- 68. We would support a review of the Building Act 2004, specifically relating to the definition of "Building". This review is overdue and relevant to the current climate and also future focus.

Chapter 8 – Better Responding to the Needs and Aspirations of Māori

- 69. TDC supports further investigations into how the needs of Maori can be met and how these can be reflected within the Building Act and code.
- 70. TDC does not recommend the creation of a private building consent authority that only deals with Maori projects, as this will only create further complexity.

Chapter 9 – Addressing the interface between the building and resource consent systems.

- 71. TDC supports a greater alignment with both Building and Resource consenting systems, including how these consents can interact more effectively in terms of a regulatory and customer point of view.
- 72. We also support the promotion of Project Information Memorandums (PIM) as, the value a PIM can provide to a project when in the design phase, as effective way of scoping for issues.

Summary of Recommendations

- 73. TDC seeks recommendations that provide real and actual ability to better the current process. Things such as adding regulatory competition into the system, on its own will not achieve the desired outcome.
- 74. Extension of the LBP scheme into commercial and industrial licence classes, creating greater accountability for those involved in the consenting process will provide a greater benefit to the process.
- 75. TDC by using 'milestones' in the construction phase of a consent, supports a simple way of identifying the critical stages of a build. This is the type of methodology that could be adopted under this Review.

76. TDC supports the option for MBIE to continue and encourage BCAs to work closer together rather than devising a number of other options that will only equate to increased complexity and would be unlikely to result in any better outcome.

Conclusion

77. TDC supports the review of the building consent system to not only reflect the current practice of building but also to support sustainable, fit-for-purpose buildings for the future.
78. TDC is proactive within this space, as it has implemented (July 1) “Inspection Milestones”, this is to ensure that building work does not go past a particular stage (milestone) of the project until all outstanding inspection issues have been remedied and passed. This approach has been communicated to the local industry and has been well received. TDC has commenced cross-BCA communication with our Southern Cluster group (11 BCAs) to present this best practice to support the aims of the Act. MBIE may wish to value add to their review by considering a similar approach countrywide.
79. TDC BCA team is leading innovation with customer service as an idea in discussion at the moment is a new service that can be provided pertaining to customers that need support through the development/project: for a reasonable fee charged this would provide a “one-stop shop” and a single point of contact for a customer. TDC officers are collaborating with Christchurch City Council officers and preparing proposals for both Councils to consider. Again, MBIE could tap into local initiatives and reflect best practices in legislation aligning them with the aims of the Act.

Thank you again for the opportunity to submit on this Bill. Please do not hesitate to contact us via Jayson.ellis@timdc.govt.nz if you have any questions or wish to discuss aspects further.

Ngā mihi



Nigel Bowen
Mayor