

**Local councils
playing a role in
building our
communities.**



Residential Construction Sector Market Study Options Paper

Local Government New Zealand Submission to Ministry of Business, Innovation & Employment

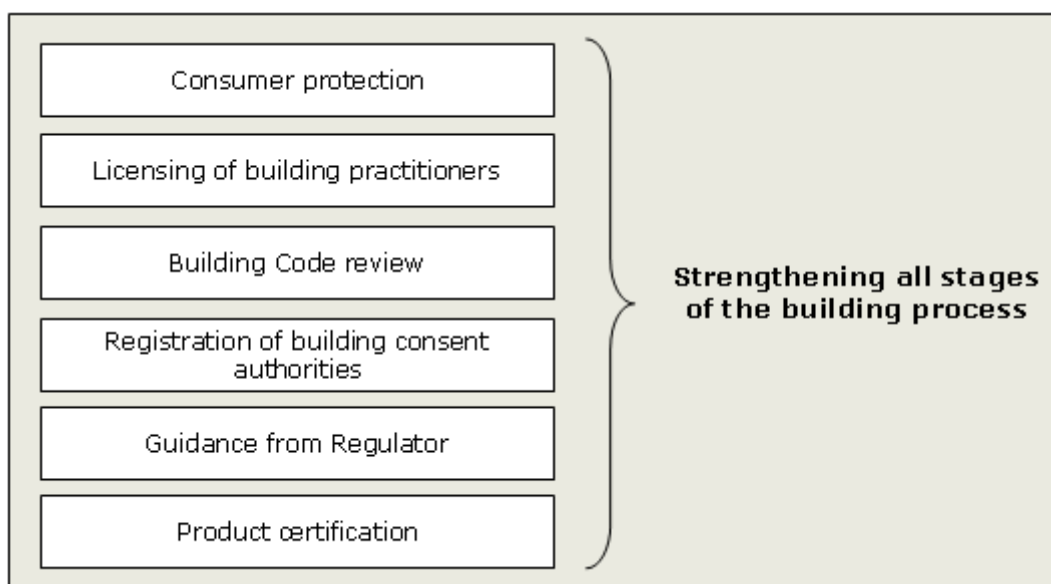
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Introduction

Housing affordability is an important issue for the country and councils welcome tools to minimise the cost of housing. Market level barriers as discussed in this options paper can contribute significantly to the supply cost of housing all over the country. As outlined in the Options Paper, the total costs (and relative proportion of a typical project costs) include building materials (50%), labour (33%), profits (12%), design, legal, council fees and levies (5%). While council activity is only a portion of the 5%, councils want to work with central government to ensure compliance with building regulation is delivered as effectively as possible.

Chapter 3: The regulatory framework

1. In 2009 Government agreed the terms of reference to review the Building Act 2004. The review found that there was an undue reliance on building consent authorities and Government identified several changes to the system in order to make it more efficient and cost effective. At the core of Government's decisions was the need to develop clearer accountabilities for owners, designers, builders and building consent authorities (BCAs).
2. The intention of the 2004 Act was to improve control of, and encourage better practices in, building design and construction. This means¹:
 - a) more clarity on the standards buildings should meet
 - b) more guidance on how those standards can be met
 - c) more certainty that capable people are undertaking building design, construction and inspection
 - d) more scrutiny in the building consent and inspection process
 - e) better protection for homeowners through the introduction of mandatory warranties.



3. In line with this, we now need to move the focus from the building consent authority role in approving materials, and make this the responsibility of the designer, builder and manufacturers. Clearer accountability for manufacturers, designers and building owners is vital.
4. Emphasising the manufacturer's responsibility to demonstrate performance would enable consumers to make informed decisions on products that are being proposed for use in their build and could reduce the

¹ <http://www.dbh.govt.nz/ba-about-the-building-act>

potential for trade incentive schemes skewing the market. Designers can be reluctant to provide statements that a design and products are code compliant however and mitigate their risk by using brands that are trusted by specifying “no substitutes” on a consent.

5. To be effective this should be reinforced through recognition of manufacturer warranties and liability in the consenting process. After nine years of incremental improvement in the building system it is clear that only a move to enforcing accountability where it lies will ensure quality materials and workmanship at every step of the process.
6. The Building Act (2004) requires a building to comply with a building consent rather than the building code. This has resulted in even small changes to a build having to be documented, even though they are clearly code compliant, to ensure that they comply with the building consent. IANZ and the courts interpret (duty of care) the legislation as the BCAs being responsible for ensuring plans show in detail, what is going to be built.

Consumer education is also important. Building owners have an expectation that the BCA will ensure that products are not substituted. There is a continuing trend towards the owner approaching the BCA in the first instance, rather than the designer or builder, when there is a problem.

7. Product certification is supported. This may take time and increase costs in the short term but as noted in the options paper housing is the single biggest expenditure undertaken by most households so getting it right is important. Trying to get BCAs to do product certification through the consent process within 20 working days does not provide sufficient rigour to ensure quality homes and avoid situations such as the leaky buildings. There is also the need for a national register of approved building products rather than leaving this to each BCA which creates duplication and inefficiencies.
8. A more proactive role by both BRANZ and MBIE regarding products and systems would be helpful. BRANZ appraisals perform an important function and help BCAs to approve building consents.
9. The recognition of manufacturer warranties in liability and consenting will support efficiencies in building consenting if the BCA is then not held liable when the manufacturer is not able to honour the warranties. It will also be important to understand what level of checking of warranties is required for compliance taking into account how the courts will interpret this role if something goes wrong.
10. Owners and the courts look for someone to be responsible and at present the BCAs are being held responsible. It is therefore important to ensure accountability lies where the fault lies as BCAs, designers and builders will want some assurance that they will not be liable where suppliers of a product go out of business.
11. Further efficiencies could be made with the introduction of risk based consenting. This could speed up the consenting process, require less detail on plans and require fewer inspections. Some councils are of the view that this is already an option for larger building companies who can provide the necessary level of assurance to ensure ongoing quality workmanship.
12. The BCA will have less liability as this will be taken by the consented party. Should problems arise owners will need to sort this out directly with the designers or builders.

Conclusion

13. Councils are willing to work with central government to reduce compliance costs for building consents, noting however that some compliance costs are a result of building regulations e.g. building officials qualifications, and the joint and several liability regime.
14. LGNZ is supportive of the changes discussed in this submission and thank the Ministry of Business Innovation and Employment for the opportunity to comment on a well written options paper.