

# Regulatory Impact Statement: Removing impediments to product substitution and variations

## Coversheet

Purpose of Document	
Decision sought:	<i>Final Cabinet decisions</i>
Advising agencies:	<i>Ministry of Business, Innovation and Employment</i>
Proposing Ministers:	<i>Minister for Building and Construction</i>
Date finalised:	<i>14 March 2024</i>
Problem definition	
<p>The current process for seeking a minor variation after a building consent has been granted can be difficult and add unnecessary cost to a build. In addition, the process for making minor changes to pre-approved National Multiple-Use Approval (MultiProof) designs lacks flexibility and can lead to unnecessary cost.</p> <p>There is an opportunity to improve the flexibility of the building consent process under the <i>Building Act 2004</i> and encourage competition for building products by making it clearer what a minor variation to consented plans is. This will avoid amendments to building consents for negligible product or design changes.</p> <p>There is also an opportunity to improve the flexibility of the MultiProof scheme to support applicants and building consent authorities and ensure applicants can still rely on a MultiProof approval when they make a minor change to the approved MultiProof designs. This will support a more efficient building consent process, help to support competition and reduce costs.</p>	
Executive Summary	
<p>The Government is committed to streamlining building consent processes and reducing compliance costs.</p> <p>The National Party’s Better Building and Construction manifesto made a commitment to "streamline the building consent system" and "define 'minor variation' in the <i>Building Act 2004</i> to avoid requiring consents for negligible product or design changes".</p> <p>The Government has also committed to widening “the National Multi-Use Approval (MultiProof) process for new product solutions and building methods”.</p> <p><i>Designs, plans and specifications are crucial to ensuring buildings are healthy, safe and durable</i></p> <p>Good plans, and any drawings or specifications, are key to ensuring the quality of a building project. They are a key part of the building consent application.</p>	

Building consent applications demonstrate to a building consent authority how the proposed building work will comply with the requirements of the Building Code. Building consent authorities grant building consents if they are satisfied on reasonable grounds that the proposed building work will meet the requirements of the Building Code. The builder builds to the plans, and everyone who works on the build should also follow the plans and specifications.

The building consent authority checks that the building work has been done to the consented plans. The plans provide a record of the completed building work for the consent applicant and any future owners of the building.

*The process for making variations after a building consent has been granted could be improved*

Once a building consent has been granted, the applicant may decide to make a variation to the plans and specifications, for example by substituting comparable products due to a shortage of supply, or availability of a lower cost product. There is a process under the Building Act that allows for 'minor variations' to be made without requiring a formal amendment to the building consent. If the variation to the plans and specifications is considered a "minor variation", the variation is simply recorded by the building consent authority in writing. If the change is not considered a minor variation, the applicant is required to apply for an amendment to the building consent (which triggers additional fees).

A minor variation is defined as "a minor modification, addition, or variation to a building consent that does not deviate significantly from the plans and specifications to which the building consent relates" (section 3 of the *Building (Minor Variations) Regulations 2009*). The Regulations include some examples.

The Ministry of Business, Innovation and Employment (MBIE) has issued updated guidance on the wider building consent process and minor variation process, including product substitution. However, the definition of 'minor variation' in the regulations lacks sufficient clarity.

*The process for making changes incorporating a MultiProof design before a building consent has been granted could also be improved*

A MultiProof is a statement by MBIE that a set of plans and specifications comply with the Building Code.

MultiProof helps to fast-track the building consent process through standardised designs pre-approved by MBIE as complying with the Building Code. These approvals can be used multiple times, nationwide.

A customer may request some changes to an approved MultiProof design before a building consent application is made incorporating that MultiProof design. Under section 49 of the Building Act, building consent authorities must assess any 'minor customisation' to ensure Building Code compliance. There is currently no definition of 'minor customisation'. So, any last-minute changes to approved designs outside the MultiProof approval, such as changing a window for a door, should technically require assessment by the building consent authority of the plans under the standard, not fast-tracked building consent process.

Section 7 of the Building Act defines a minor customisation as a “minor modification, addition, or variation to those plans and specifications that is permitted by regulations made under section 402(1)(kc)”.

However, the regulation-making powers (under section 402(1)(kc) in the Building Act) have not yet been used by MBIE to define a minor customisation.

#### *Options to improve variations to building consents and MultiProof*

To remove barriers around product substitution and variations, the following four options (in addition to the counterfactual) have been identified:

- Counterfactual: the initiatives already in progress or recently completed.

#### Minor variations

- Option 1.1: Amend the *Building (Forms) Regulations 2004* to expressly include on the building consent forms a section where applicants can choose to specify suitable alternative products from those they may have listed in the plans and specifications attached to their consent application.
- Option 1.2: Amend section 3 of the *Building (Minor Variations) Regulations 2009* to incorporate aspects of MBIE’s product substitution guidance to clarify what constitutes a minor variation.

#### MultiProof

- Option 2.1: Issue updated MBIE guidance and education material on the MultiProof scheme.
- Option 2.2: Use regulations-making powers under section 402(1)(kc) of the Building Act to define ‘minor customisation’.

#### Combination of the four options as a package

- The combination of all four options provides more clarity and flexibility, promotes competition, improves consumer choice and housing affordability by reducing building costs.

MBIE prefers to progress all four options as a package because it uses a combination of mutually reinforcing or supporting measures to promote competition in, as well as efficiency and flexibility of, the building consent system and building supply market. MBIE’s preferred approach also addresses a recommendation from the 2022 Commerce Commission market study into residential building supplies.

### **Limitations and Constraints on Analysis**

This work was developed in response to the 2022 Commerce Commission market study. It was incorporated into the [review of the building consent system](#) in 2023.

Elements of the analysis that were considered out of scope included:

- building consent authority powers and accreditation (scheme and regulations)
- ending the national multiple-use approvals (MultiProof) or banning product substitution and variations
- determinations
- building product warnings and bans

- Building Code and Building Code System Updates.

The work will not specifically consider matters that have or will be considered by the review of the building consent system or other phases of the Building System Reforms but may identify dependencies or recommend issues for further consideration.

This work has been progressed at pace in response to the Government’s commitment to streamline the building consent system. There was not enough data to estimate the impact of the proposals on housing affordability or the cost of building supplies.

**Responsible Manager(s)**

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*Building System Performance*  
*Building, Resources and Markets*  
*Ministry of Business, Innovation and Employment*

*14/03/2024*

**Quality Assurance**

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	<p>An internal quality assurance panel convened by MBIE has reviewed the Regulatory Impact Assessment and considers that the information and analysis summarised in the Regulatory Impact Assessment partially meets the Quality Assurance criteria.</p> <p>While the panel considered that the majority of the paper met the requirements, we note that the Regulatory Impact Assessment noted a possibility that greater flexibility may create risks around product quality and some submitters raised concerns that lower quality products may lead to building failures. The Regulatory Impact Assessment noted that these risks would need to be adequately addressed, and this would be done via the consenting process and a robust legal framework. However, the panel considered there was insufficient detail in the analysis for the panel to be assured that these risks could be appropriately mitigated.</p> <p>13 March 2024</p>

## Section 1: Diagnosing the policy problem

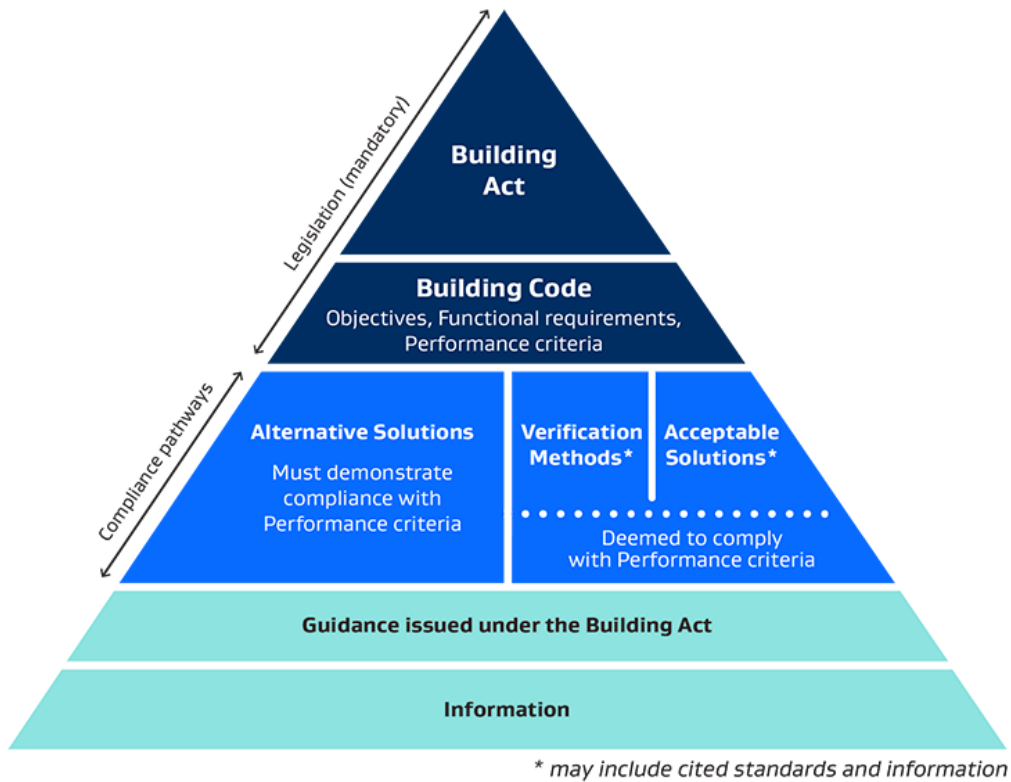
### What is the context behind the policy problem and how is the status quo expected to develop?

1. The current policy settings make it challenging to make minor changes to designs and plans. This leads to increased building consent processing times and cost.

#### Overview of New Zealand's building regulatory system

2. The regulation of all building work in New Zealand sits under a framework consisting of:
  - the *Building Act 2004*
  - Building Regulations (other than the Building Code)
  - the Building Code (also a Building Regulation).
3. The Building Act provides for the regulation of buildings, building work and various occupational groups in the building industry, and the setting of requirements and standards that are intended to ensure good building performance. A key focus of the Building Act is the health and safety of people using buildings.
4. The purpose of the Building Act is to ensure:
  - people can use buildings safely and without endangering their health
  - buildings have elements that contribute appropriately to the health, physical independence and wellbeing of the people who use them
  - people can escape from a building if it is on fire
  - buildings are designed, constructed and used in ways that promote sustainable development.
5. The Building Act stipulates:
  - clear expectations of the standards buildings should meet (Building Code)
  - guidance on how to meet those standards
  - more certainty that specialists and experts design, construct and inspect buildings
  - scrutiny of the building consent and inspection process
  - protection for homeowners through mandatory warranties.
6. The key elements of the building regulatory system for the purposes of this statement also include:
  - the non-mandatory means of demonstrating compliance with the Building Code which are determined by MBIE, being Acceptable Solutions and Verification Methods
  - the standards made by Standards New Zealand or other accredited bodies, some of which are cited by MBIE in Acceptable Solutions and Verification Methods
  - the other means of demonstrating compliance with the Building Code including MultiProof, product certification (CodeMark) and Alternative Solutions
  - the consenting system which includes the building consent processes that are run by building consent authorities.

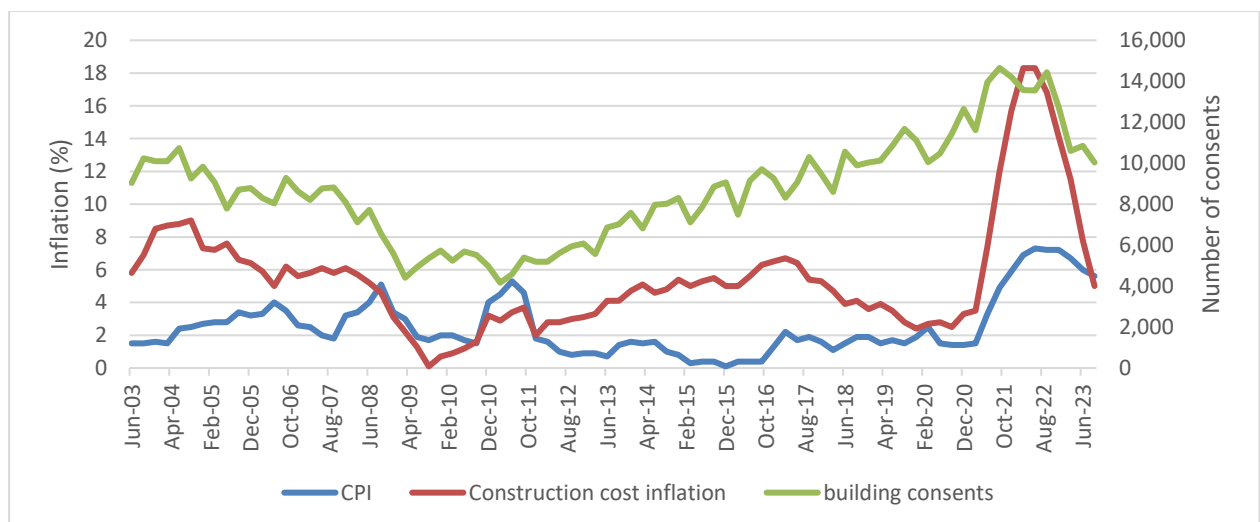
**Figure 1: Building Act/Code regulatory framework**



The building sector faces challenges which has an impact on housing affordability

7. Figure 2 below shows recent trends in construction cost inflation and consent data.

**Figure 2: Rate of inflation (CPI), construction cost inflation, and number of building consent applications, by quarter**



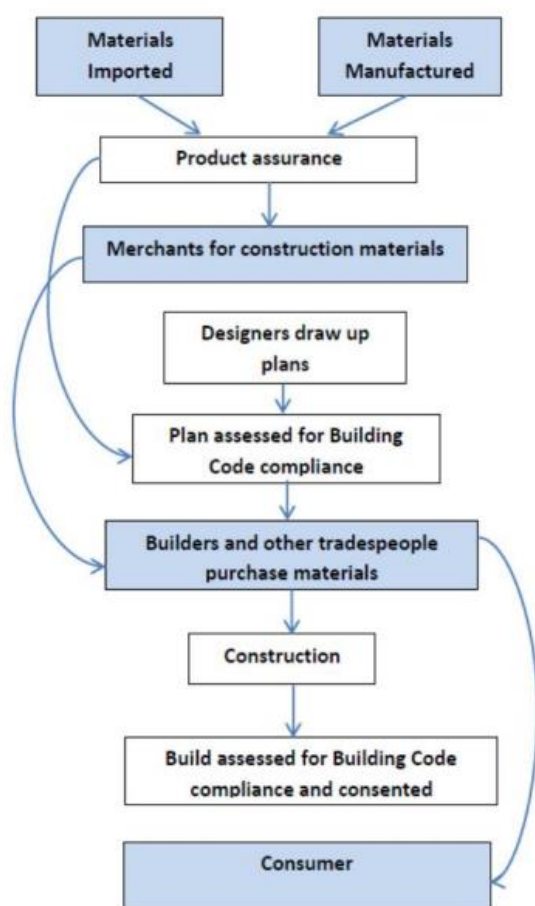
8. Any improvements to the building consent system that increase efficiency and competition, remove time delays, and ensure that building materials are affordable, will help support housing affordability and contribute to an increase in residential building construction.

## Building consents and variations

### *The building consent process*

9. Building consent authorities grant building consents if they are satisfied on reasonable grounds that the proposed building work will meet the minimum requirements of the Building Code. Building consent applications must be in the prescribed form according to the *Building (Forms) Regulations 2004*. Plans and specifications must be attached to the application and must meet minimum requirements set out in regulations or as required by the building consent authority. Figure 3 provides an overview of the construction process.
10. The building consent authority must process a building consent application within 20 working days (this timeframe does not include requests for information if the application is lacking evidence of Code compliance, for example). The authority can then grant a building consent, so the building work can start, or reject the application.

**Figure 3: High-level summary of the construction process**



### *Changes to plans after a building consent has been issued by a building consent authority*

11. Once a building consent has been granted, there is a process under the Building Act that allows for 'minor variations' to plans and specifications that does not require a formal amendment to the building consent. This process balances the need to ensure



consenting efficiency and robust decision making to ensure the resulting building will be safe and durable.

12. Section 3 of the *Building (Minor Variations) Regulations 2009* defines a minor variation as “a minor modification, addition, or variation to a building consent that does not deviate significantly from the plans and specifications to which the building consent relates”. Some examples of minor variations are included in the regulations, such as substituting comparable products.
13. However, the definition and examples lack sufficient clarity for applicants and building consent authorities.
14. In late 2021, MBIE issued updated [guidance on product substitution](#) which provided designers, contractors and building owners with some key points to consider when thinking about using building products different from those originally requested and specified. Specific guidance on [plasterboard product substitution](#) was issued in 2022. MBIE also issued updated guidance on the wider [building consent process](#) in 2022.

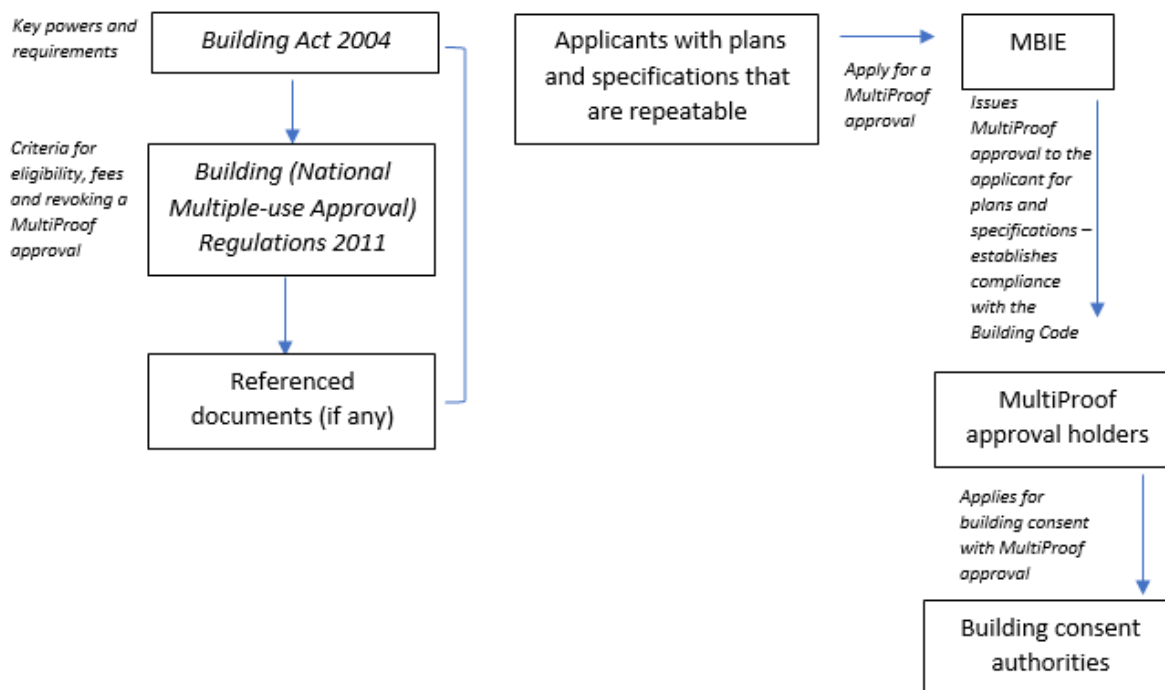
#### *Changes to plans before applying for a building consent that incorporate a MultiProof approval issued by MBIE*

15. The *Building Amendment Act 2009* introduced amendments to the Building Act, including the MultiProof scheme. This received royal assent on 31 July 2009 and came into effect on 31 January 2010. Sections 30A to 30H of the Building Act apply to MultiProof and MBIE’s role as the administrator of approvals. Other sections, such as section 45B, cover changes to plans and specifications that have MultiProof approval.
16. There are separate regulations that govern both MultiProof and minor variations. MBIE’s powers as the administrator of MultiProof fall under the *Building (National Multiple-use Approval) Regulations 2011*.
17. Minor variations span beyond variations to MultiProof – they can apply to all building consents – and fall under *Building (Minor Variations) Regulations 2009*.
18. When MultiProof was first introduced in 2009, approvals were only available for standalone outbuildings (garages, sheds, farm buildings) and standalone or semi-detached houses of up to two storeys. However, the regulations were changed in May 2011, and there are no longer any restrictions on building type or use.
19. A National Multiple-Use Approval (MultiProof) is a statement by MBIE that a set of plans and specifications for a building complies with the Building Code. To be eligible, an applicant must have the intention and the ability to build an approved design at least ten times over two years.
20. Under the Building Act, MBIE has 40 working days to assess and issue a MultiProof approval which can be used multiple times in any or all building consent authority areas. Building consent authorities must accept a MultiProof approval under section 19(1) of the Building Act. Each consent must be granted individually to ensure compliance.
21. Building consent authorities are then required to process a consent application relying on a MultiProof approval within ten working days, instead of the usual 20. As MBIE has already issued a MultiProof approval for the designs, building consent authorities will only need to assess consent applications relying on that approval, following a shorter



processing timeframe, which creates efficiencies over time. Figure 4 provides an overview of how MultiProof works.

**Figure 4: The system for managing MultiProof approvals**



22. MultiProof – like CodeMark (the product certification scheme) and BuiltReady (the modular component manufacturer scheme) – is a voluntary deemed-to-comply pathway for whole building designs.
23. Some variations to the design, such as product substitution, are assessed by MBIE to ensure code compliance and are listed within the MultiProof approval as “permitted variations”. Once MBIE has issued an approval, the MultiProof approval can be included in an application for a building consent.
24. Approval holders can only rely on a MultiProof if they build the design that MBIE has approved, including any design alternatives shown on the approval.
25. A customer may request some changes to an approved MultiProof designs before a building consent application is made incorporating that MultiProof design. Under section 49 of the Building Act, building consent authorities must assess any ‘minor customisation’ to ensure Building Code compliance. There is currently no definition of ‘minor customisation’. Therefore, any last-minute changes to approved MultiProof designs outside of the permitted variations listed under the MultiProof approval, such as putting a window where a door was initially planned, should technically require assessment by the building consent authority of the plans under the standard 20

working day consent process (which would result in higher cost for both applicants and building consent authorities).

26. Section 7 of the Building Act defines a minor customisation as a minor modification, addition, or variation to those plans and specifications that is permitted by regulations made under section 402(1)(kc).
27. MBIE has not yet used the regulations-making powers under section 402(1)(kc) of the Building Act to define 'minor customisation'.
28. As of 15 January 2024, there were 565 approvals on the MultiProof register.

#### **Commerce Commission market study into residential building supplies**

29. On 22 November 2021, the previous Government asked the Commerce Commission to carry out a year-long study into whether competition is working well for the residential building supplies sector in New Zealand, and if not, what can be done to improve it.
30. The Commerce Commission published its findings about competition for residential building supplies on 6 December 2022.
31. The Commerce Commission's final report found that competition for residential building supplies was not working as well as it could and made nine recommendations to improve competition for building supplies. Four of these recommendations relate to enhancing the regulatory system, three recommendations relate to supporting sound decision-making, and the final two recommendations relate to strategic business conduct.

#### **Current initiatives to support more efficient consenting**

32. Several ongoing or recently completed initiatives can support more efficient consenting and promote competition and innovation, including in response to the Commerce Commission's market study recommendations. These initiatives include:
  - strengthening CodeMark under the Building Act to increase confidence and provide greater oversight
  - convening a Critical Materials Taskforce to advise on key issues with construction materials and provide more responsive intelligence
  - introducing the BuiltReady scheme, which streamlines the consenting process for offsite manufacturing for certified modular component manufacturers. BuiltReady is a deemed to comply pathway
  - introducing Building Product Information Requirements, which commenced on 11 December 2023 and will provide a consistent level of minimum product information, including on how building products can be used to contribute to compliance with the Building Code
  - publishing product substitution guidance to support designers, specifiers, and building consent authorities. This includes guidance on suitable alternative plasterboard products when there were issues with supply of the primary brand
  - increasing reference to international standards in Acceptable Solutions and Verification Methods, which must be accepted by building consent authorities as evidence of compliance with the Building Code

- streamlining the building consent system, including looking at whether competition should be included as an objective of the building consent system, better delivery of building consent services, and alternative consenting and assurance pathways
  - better recognising overseas approvals of building products.
33. In addition, MBIE is also exploring ways to support greater uptake of voluntary product certification (CodeMark). These initiatives will continue unchanged under the counterfactual.
  34. 2022 product substitution research<sup>1</sup> provides a valuable set of quantitative and qualitative data that will enable building consent authorities to be better informed about the way their services are provided. It will also help with MBIE's ability to understand the sector and assist with the delivery of legislative changes, such as the new Building Product Information Requirements that came into effect in December 2023.
  35. Data on how many product substitutions and variations occurred has not been shared by building consent authorities with MBIE. However, the 2022 product substitution research indicates that the key elements that are substituted most often are cladding, interior linings and wall wraps, but also include decking, window joinery, heating and kitchen joinery. These are decisions that often come down to customer's choice.

#### **MBIE is currently reviewing the building consent system**

36. In 2022, MBIE consulted the building sector on the review of the building consent system. The review is still ongoing. The objective of the review is for a system that gets building work right first time to produce buildings that are well-made, healthy, durable and safe. This review, and the wider Building System Reforms, supports the Government's commitments to streamline the building consent system and reduce compliance cost.
37. Public consultation on the Building Consent System Review Options Paper began on 22 June 2023, with submissions open for just over eight weeks, until 21 August 2023. A total of 270 submissions were received from a range of submitters across the building and construction sector. The consultation paper included options to remove impediments to product substitution and variations.

#### **What is the policy problem or opportunity?**

38. Current building consent and MultiProof processes help to ensure robust outcomes, including helping to prevent inappropriate product substitutions. However, making minor changes to building designs and plans can be unnecessarily difficult, which can add time and cost.

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<sup>1</sup> Product Substitution Research 2022, EBOSS, MBIE, BRANZ, published online: <https://www.eboss.co.nz/product-substitution-research/latest-research>

### **The process for making variations after a building consent has been granted could be improved**

39. Submitters on both the Commerce Commission's market study and MBIE's Building Consent System Review Options Paper raised concerns with the current policy settings, including:
  - the difficulty and cost related to applying for a minor variation to a building consent
  - the uncertainty and risk related to product substitution when the sector and building consent authorities may not be familiar with the alternative product.
40. The Commerce Commission found that the way the building regulatory system is applied in practice strongly favours familiar products and makes the introduction or expansion of competing products, and the consequent entry or expansion of competing suppliers, difficult. In particular, the regulatory system does not enable timely response to changing markets and innovations in building products and continues to incentivise applicants and building consent authorities to favour familiar building products over new or competing products.
41. Where building supplies are specified by brand in plans and consent applications, the process for seeking substitutions can add time, cost and complexity to a build and designers and builders tend to avoid substituting products, sticking with known brands that have been proven to get approval.
42. According to the findings of the market study, the behaviours of designers, builders and building consent authorities appear strongly mutually reinforcing. Designers and builders generally choose the path of least resistance (from building consent authorities) when specifying and purchasing key building supplies, given the significant time and additional costs associated with delays in the consenting process. The need to complete jobs on time and with least delay and additional cost, generally prevails over any desire to use new or innovative products. This leads building consent applicants to anticipate products for which building consent authorities might take the shortest time to consider code compliant.
43. There is an opportunity to improve the flexibility of the building consent process under the Building Act and encourage competition for building products by making it clearer what a minor variation to consented plans is to avoid amendments to building consents for negligible product or design changes.

### **The process for making variations incorporating a MultiProof design before a building consent has been granted could also be improved**

44. Submitters on MBIE's Building Consent System Review Options Paper raised concerns about the flexibility of the MultiProof scheme.
45. The MultiProof scheme provides a fast-tracked pathway for builders of standardised designs, including those utilising modern manufacturing methods, to save time and cost on building consent process. The scheme enables MultiProof approval holders to use standardised building designs multiple times, nationwide. However, it does not account for last minute changes or customer preferences, which are often known closer to the time a building consent application needs to be lodged to start the building work.
46. It is unlikely that the MultiProof approval holder knows in advance all the preferences of the final customer. Therefore, MultiProof enable designers and building companies to

get most of the plans and specifications pre-approved by MBIE, but they are likely to need specific design changes to meet what the customer wants. The customisation can therefore consist of a variation to the design, plans and specifications that can go beyond product substitution. For example, a mirror image of a room's layout due to the specific surrounding landscape or to maximise sunlight.

47. Under section 45B of the Building Act, changes may be made to the plans and specifications that rely on a MultiProof approval, if they are permitted variations, or the changes are minor customisations permitted by regulations made under section 402(1)(kc).
48. There is also an opportunity to improve the flexibility of the MultiProof scheme to support applicants and building consent authorities and ensure applicants can still rely on a MultiProof approval when they make a minor change to the approved MultiProof designs. This will support a more efficient building consent process, help to support competition, and reduce costs.
49. The Commerce Commission consider that ensuring the success of schemes, such as MultiProof, will be important to support innovation, enabling building and manufacturing businesses to grow scale and realising the efficiency benefits of more standardisation. They expect this to assist in promoting competition for key building supplies.

#### **The status quo represents a lost opportunity to get significant efficiency gains in consenting**

50. If no action is taken, it is harder than necessary for competing suppliers to obtain the efficiency benefits that can accrue from operating at scale and increasing productive capacity. It also reinforces the market position of established building supplies and methods and existing suppliers of these products.
51. It remains difficult, time consuming and costly to make minor changes to a building consent or approved MultiProof designs, which results in higher building costs.

#### **What objectives are sought in relation to the policy problem?**

52. The primary objective sought in relation to the policy problem is to remove barriers to product substitution and variations when these are minor or negligible changes. Removing these barriers will:
  - promote competition in the building supplies market
  - improve flexibility of the building consent system
  - improve efficiency of the building consent process
  - ensure robust outcomes, including preventing inappropriate product substitutions and design changes to make sure buildings are healthy, safe and durable.
53. These criteria are in line with feedback from submissions MBIE received on the Building Consent System Options Paper.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

54. The criteria used to compare options with the status quo are:
- Clarity: improve clarity of the rules
  - Flexibility: improve flexibility of substituting building products
  - Efficiency: reduce building consent processing compliance costs
  - Effectiveness: reduce building consent processing time.
55. The assessment criteria are generally complementary, but there may be some trade-offs required. For example, high clarity of the rules may come at the cost of greater flexibility (i.e., the rule is too prescriptive). The assessment criteria are weighted equally.
56. These criteria are in line with feedback from the submissions that MBIE received on the Building Consent System Options Paper.

Criteria:	Description of Criteria:
Clarity	The regulatory framework has clear rules and responsibilities around variations to plans and specifications for designers, builders and suppliers (including manufacturers, importers, distributors, and retailers) and regulatory bodies (including MBIE and building consent authorities).
Flexibility	It is easy and quick to make changes to plans and specifications, such as using an alternative building product or making minor changes to the plans consented, while ensuring robust Code compliance and minimise the risk of building failure.
Efficiency	The cost, time, and effort to make minor changes to plans and specifications are not overly burdensome. The initial and ongoing financial and resourcing costs for MBIE associated with the proposal are manageable.
Effectiveness	Addresses barriers to making minor changes to plans and specifications while maintaining quality, that will promote: <ul style="list-style-type: none"> <li>• Competition and innovation: The market for building products in New Zealand enables competition between suppliers and new, innovative, and high-quality products that enters New Zealand.</li> <li>• Lower cost and increase choice: The cost of making minor variations to designs and prices of building products are as low as sustainably possible, with the view of reducing the cost of construction, and enabling more consumer choice.</li> <li>• Resilience to supply chain disruptions: The consenting process can rely on the building products market to maintain supply in case of shortages.</li> </ul>

## What scope will options be considered within?

57. The review of the building consent system is an end-to-end review, to better reflect how we build today. It looks at the system from the building design phase through to the issuing of a code compliance certificate.
58. However, while the review is considering how compliance with the Building Code is verified, it does not consider changes to the Building Code itself.
59. The Commerce Commission considered it was not appropriate to prevent brand specification in consent applications as some products will have distinctive performance that is desirable. MBIE agrees with this view. It was also considered inappropriate to terminate the MultiProof scheme. These options were therefore discarded early on.
60. Finally, MBIE proposed to clarify the definition of 'minor variation' in the regulations, by including some of the principles emerging from the product substitution guidance. However, the intention was not to modify the definition of 'minor variation' itself, rather to modify the current Regulations to clarify when changes to the plans and specifications become too significant to still fall within the realm of 'minor variation'.

## What options are being considered?

61. MBIE's preferred approach is to progress all the options identified to improve product substitutions and variations (including for MultiProof) together as a package. The combination of options will provide for both short-term and long-term measures to address the issues raised by the Commerce Commission in its final report and submitters to the building consent system review.
62. The total package of initiatives is expected to promote flexibility and competition in the building consent system and building supply market. The combination of mutually reinforcing or supporting options would also be expected to improve the overall efficiency of the building consent system.
63. MBIE's preferred approach addresses recommendation 4 of the 2022 Commerce Commission market study into residential building supplies. The recommendation covered a range of issues, including to:
  - remove impediments to product substitution and reducing the need for consent variations for minor changes to building design
  - explore ways to reduce specification by brand, albeit recognising there may be a need to continue allowing for the possibility that products might be specified by brand
  - expressly allow product substitution options to be included when plans and specifications are lodged with building consent applications (particularly when proprietary systems or products are being specified in designs, such as through amendment to the *Building (Forms) Regulations 2004*)
  - giving stronger direction about what constitutes a 'minor variation' to a building consent (for example, through amendment to *the Building (Minor Variations) Regulations 2009*)
  - increasing flexibility in the MultiProof scheme, by identifying opportunities to amend the MultiProof scheme so that designers can make small changes to designs without 'voiding' the MultiProof approval.



64. Building and construction sector views on MBIE's preferred approach are discussed later in this RIS.

### ***Counterfactual***

65. There is evidence that the regulatory system disincentivises product substitution and variations, which constitutes a barrier to competition and innovation. The status quo is not proposing to progress any option. A review of the efficiency of MBIE's product substitution guidance was completed recently and showed it was successful in supporting the building sector to better understand product substitutions.
66. The *Building (Building Product Information Requirements) Regulations 2022* now require New Zealand-based importers, manufacturers, wholesalers, retailers, and distributors to provide building product users with information about how building products contribute to compliance with the Building Code.
67. Other initiatives, such as mandating product approvals, are likely to improve flexibility of and promote competition in the building consent system.
68. Despite other initiatives, the Commerce Commission's market study clearly identified the limitations of the status quo, as the rules governing product substitution and variations would remain challenging, adding time and cost to applicants and building consent authorities, without realising process efficiencies from schemes like MultiProof.

### **Minor variations to a building consent**

#### ***Option 1.1: Modify building consent forms under the Building (Forms) Regulations 2004 (preferred)***

69. Expressly including a section where building consent applicants can choose to include suitable alternative brands/product options from those they may have listed in the plans and specifications attached to their consent application. Since the option is voluntary, applicants who do not wish to specify alternatives would not incur additional costs (related to researching suitable alternative products).
70. This option would:
- make product substitution easier by reducing the need for amendments to building consents where products are substituted after a building consent is granted
  - help to support competition in building products and more efficient consent processes, which can save time and cost
  - add more weight than guidance alone for designers to consider product considerations when preparing plans and specifications for building consent.

#### ***Option 1.2: Clarify the definition of 'minor variation' under the Building (Minor Variations) Regulations 2009 (preferred)***

71. Modify the definition of a minor variation under the Building (Minor Variations) Regulations to codify aspects of MBIE's product substitution guidance.
72. The clarification would include key elements of MBIE's product substitution guidance, which will help both building consent applicants and building consent authorities to better understand what constitutes a minor variation.
73. This option would:
- make product substitution easier by reducing the need for amendments to building consents where products are substituted after a building consent is granted

- help to support competition in building products and more efficient consent processes, which can save time and cost
- provide more certainty than guidance alone and supports improved consistency of approaches adopted by building consent authorities.

### **Minor customisation for MultiProof**

#### ***Option 2.1: Updated guidance on the MultiProof scheme***

74. MBIE would issue updated guidance and education material on the MultiProof scheme.
75. This would lift capability of building consent authorities and applicants to make better use of the current legislative framework thereby addressing some of the issues raised regarding the flexibility of MultiProof.
76. Updated guidance would help the sector, applicants and building consent authorities to get a better understanding of the MultiProof scheme, how to get an approval, and how to use an approval to apply for a building consent. It would also clarify the roles of MBIE (who administers the scheme), MultiProof approval holders applying for a consent, and building consent authorities that grant building consent.

#### ***Option 2.2: Make new regulations to define 'minor customisation' for MultiProof***

77. New regulations would make product substitution and minor changes easier where plans are modified under a MultiProof approval before applying for a building consent.
78. This would provide certainty that MultiProof approval holders will still benefit from a fast-tracked consenting process when they make 'minor customisations' permitted by the new regulations to approved MultiProof designs.
79. The regulations would clearly define what changes in designs (outside permitted variations listed in the approval) are considered minor customisation, which means the applicant will still benefit from a fast-tracked consenting process.
80. The definition of minor customisation would go beyond that of product substitution to include other changes to the design, but within a robust legal framework that ensures Building Code compliance.
81. This would support the uptake of MultiProof and innovation in building products and methods. It would also support competition in building products and enable more efficient (fast-tracked process) consenting processes.

### **Preferred option**

82. MBIE's preferred approach is to progress the combination of all options as a package: Options 1.1, 1.2, 2.1 and 2.2.

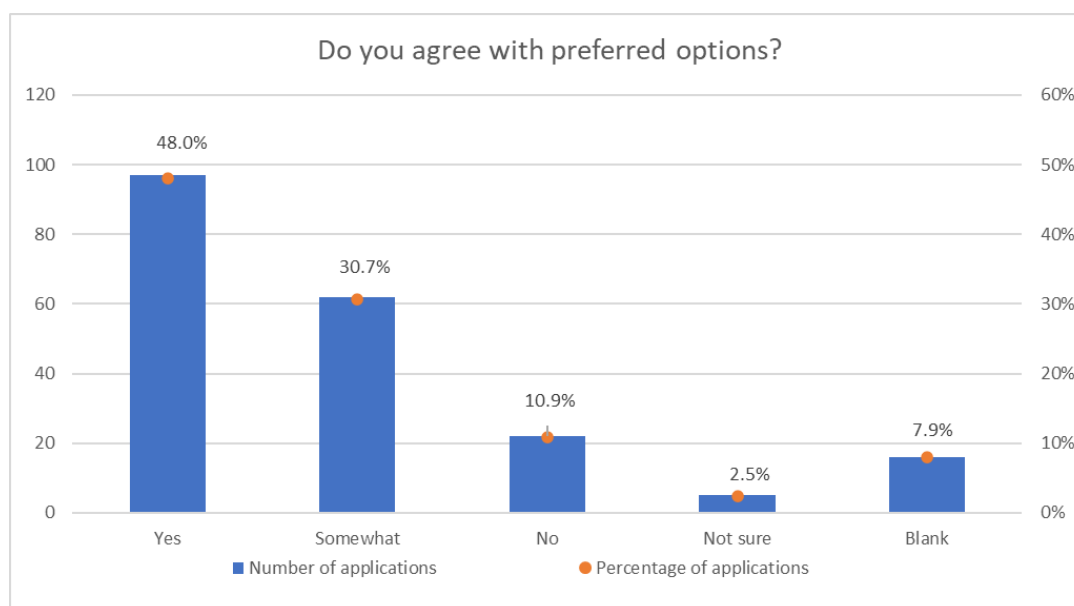
### **Feedback from consultation**

#### **Submitters largely supported MBIE's preferred approach on its consultation on the building consent system review**

83. Public consultation on the Building Consent System Review Options Paper ran for just over eight weeks, until 21 August 2023. A total of 270 submissions were received.
84. Chapter 3 of the options paper covered the issue of removing impediments to product substitution and variations. MBIE received 202 submissions on this chapter from a

range of stakeholders, with good representation across the building and construction sector.

85. Ninety-seven submitters agreed and 62 somewhat agreed with the preferred approach (Options 1.1, 1.2, 2.1 and 2.2). There were 22 submitters that did not agree.



### Key themes raised by submitters

86. One hundred and twelve submitters – regardless of whether they agree with the preferred approach – commented on the importance of carefully considering the performance of a product when substituting building products.
87. A large number of submissions also raised the importance of having clear guidance alongside clear rules to ensure there is consistency across applicants and building consent authorities as to what constitutes a suitable alternative to a building product.
88. Submitters commented on the key role that clear guidance (79 submissions) plays in clarifying what the rules mean (i.e., legislation and regulations), and how they should be applied by both applicants and building consent authorities (48 submissions asked for clear rules). This includes MultiProof, for which submitters asked for clear guidance and education to raise awareness and understanding of the scheme across the industry and building consent authorities, and for MBIE to create a definition of 'minor customisation' (53 submissions supported both proposed MultiProof options).
89. The themes were similar among submissions that did not agree with options 1.1 and 1.2. These submitters challenged whether the preferred approach would enable building consent authorities to confidently approve a substitution as code compliant and considered that more time was needed to investigate the issues further. They also considered the options were potentially going too far, which could result in cheaper but technically poorer products being substituted and incorporated into New Zealand buildings, which could lead to building failures.
90. Submissions that did not support the preferred options 2.1 and 2.2 also mentioned that the low uptake of MultiProof meant that the proposed options were unlikely to make a difference.

## Feedback from further targeted consultation in early 2024

91. MBIE consulted with key stakeholders between 13 and 23 February 2024 to test the refined regulatory options.
92. The stakeholders included organisations and industry bodies, and some of the larger building consent authorities who are expected to deal with the most complex applications. The consultation asked submitters for their feedback on whether they agreed with the proposals, whether the guidance for minor variations was suitable to refine the definition, and what examples they considered could be included as minor customisations for MultiProof.
93. MBIE received 12 responses. Overall, there was broad support for the proposals.
94. Submitters highlighted the need for clear information and guidance for building consent authorities in handling minor variations and customisations, to ensure accurate and consistent handling across the country. Submitters suggested this could be done by creating guidance for building consent authorities to use, as well as making sure both definitions were clearly defined to aid the application process.
95. Other themes that were raised included:
  - looking wider than just product substitutions in the definitions, with mirror imaging of building designs being used as one example
  - considering potential flow-on effects of allowing certain variations and customisations, such as the effect a minor customisation could have on the drainage in a building.
96. There were a couple of submitters who said that the guidance MBIE has previously published was not wholly suitable to be used to clarify minor variations and that it needed to be modified. However, these submissions tended to reflect the main theme of better guidance being needed for building consent authorities and the sector. One submitter said that there was no need for the amendments and that, for minor variations, not enough time had passed to really know how useful the current process was.

## How do the options compare to the status quo/counterfactual?

<i>Options</i>	<i>Status Quo / Counterfactual</i>	Variation to a building consent		Customisation of MultiProof designs		Preferred approach – Options 1.1, 1.2, 2.1 and 2.2 (Minor variation / MultiProof)
		Option 1.1 – Modify the building consent forms	Option 1.2 – Clarify the definition of minor variation	Option 2.1 – Update the existing MultiProof guidance	Option 2.2 – Define minor customisation in new regulations	
<i>Criteria</i>						
<b>Clarity</b>	0	+ Makes explicit the use of alternative products in consent applications	++ Clearer definition of minor variation	+ Clarifies how the scheme works, how to obtain an approval and apply for a consent	++ Provides a clear definition of design changes that are deemed minor customisation	++ / ++ Clarifies the definition of minor variation and clearly defines what a minor customisation is
<b>Flexibility</b>	0	++ Supports applicants to specify suitable alternative products	++ Makes it easier to identify alternative material that applicants want to use	0	++ Makes it easier for builders to customise the designs, going beyond product substitution	++ / ++ Makes it easier to make variations to consented plans and customise MultiProof designs
<b>Efficiency</b>	0	+ Some efficiency gains	++ Avoids consent applications for negligible or minor changes which reduces costs	+ Leads to the building sector having a greater understanding, some gains via improved quality of applications and reduced compliance cost	++ Fast-tracked consenting process	++ / ++ High-quality applications by applicants that understand the rules and processes, combined with a fast-tracked consenting

<b>Effectiveness</b>	0	<p style="text-align: center;">+</p> <p>Moderate gains, possible decrease in brand specification in consent application</p>	<p style="text-align: center;">++</p> <p>Promotes competition, innovation and consumer choice, resilient system that still ensures builds are safe and durable</p>	<p style="text-align: center;">+</p> <p>Raises awareness and attractiveness of the scheme</p>	<p style="text-align: center;">++</p> <p>Resilient process that encourages competition and innovation, and adapts to market supply fluctuations</p>	<p style="text-align: center;">++ / ++</p> <p>Resilient process that promotes competition and innovation, and adapts to market supply fluctuations, while still making sure buildings are safe and durable</p>
<b>Overall assessment</b>	0	<p style="text-align: center;">+</p> <p>The option provides more flexibility and promotes competition by encouraging inclusion of alternative brands or products. However, the rules would remain unclear around what a minor variation is</p>	<p style="text-align: center;">++</p> <p>Promotes competition and innovation, and supports an efficient building consent system that enables applicants to make minor changes to consented plans, while ensuring robust outcomes</p>	<p style="text-align: center;">+</p> <p>Moderate gains from updating the existing guidance and advertising the new one</p>	<p style="text-align: center;">++</p> <p>MultiProof approval holders have been asking for a definition, to enable them to finalise the design to meet their customer's preferences and the market's available supply</p>	<p style="text-align: center;">++ / ++</p> <p>The combination of the options provides more clarity, flexibility, promotes competition, improves consumer choice and housing affordability and reduces building costs</p>

**Key for qualitative judgements:**

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

- 97. While current processes help to ensure robust outcomes, including helping to prevent inappropriate product substitutions, there is scope for improvement.
- 98. MBIE’s preferred approach is to progress the combination of all options as a package: Options 1.1, 1.2, 2.1 and 2.2
- 99. The package would make the process for product substitutions and variations to consented building work and approved MultiProof designs more effective and efficient to support the desired outcomes for the building consent system.
- 100. There was strong support for the preferred approach from the building sector, during consultation:
  - Building Consent System Review Options Paper: over 75 per cent of submitters agreed or somewhat agreed with the preferred approach.
  - Targeted consultation: MBIE received 12 responses, which indicated broad support for the preferred approach.
- 101. Changing regulations is not a quick process, so options 1.1, 1.2 and 2.2 would not address immediate issues.
- 102. Where applicants choose to use option 1.1, there could be additional upfront costs for applicants and building consent authorities processing the building consent (e.g., additional research and paperwork costs).
- 103. Guidance alone (option 2.1) may not be sufficient to address all the issues raised regarding the flexibility of the MultiProof scheme. But changing regulations (2.2) is not a quick process, so would not address any immediate issues.
- 104. Greater flexibility (options 1.2 and 2.2) may potentially create risks around quality and these risks would need to be adequately addressed (via the consenting process, ensuring robust outcomes for buildings to be safe and durable).
- 105. The MultiProof scheme seeks to facilitate standardised designs. If minor customisation (option 2.2) is extended too far, there is a risk that this intent could be undermined.

**What are the marginal costs and benefits of the option?**

**Figure 5: Impact of the preferred approach**

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (egg, compliance rates), risks.</i>	<b>Impact</b> <i>high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	Ongoing. It is expected limited additional compliance cost will be put on the building and construction sector.	Low	<i>Medium to High</i> Positive feedback on MBIE’s product substitution guidance and strong support from the consultation on the Building Consent System Options Paper
Regulators	Ongoing. No additional resources needed	Low	<i>High</i> MBIE was already working on progressing the options as part of the response to the



			Commerce Commission's market study and the review of the building consent system.
Others (consumers)	Housing cost	<i>Low</i>	<i>Medium to High</i> Strong support from the consultation on the Building Consent System Options Paper
<b>Total monetised costs</b>		-	
<b>Non-monetised costs</b>		<i>Low</i>	
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	Applicants and building consent authorities expected to identify minor variations and substitute products more easily	<i>High</i>	<i>Medium-High</i> More clarity of the rules around minor variation and minor customisation will provide more certainty to both builders, designers and specifiers, and building consent authorities
Regulators	We may see less determinations related to product substitution and variations. The changes could make the MultiProof scheme more attractive, which would lead to MBIE having to assess more MultiProof applications.	<i>Medium</i>	<i>Medium</i> It is not possible to estimate the impact of the proposal on uptake for the MultiProof scheme and trend in determinations.
Others (consumers)	Consumers likely to see reduced costs as more affordable, compliant products can be substituted more easily. New building material suppliers more likely to enter the New Zealand market and grow, while smaller existing suppliers more likely to expand their business.	<i>High</i>	<i>Medium</i> Refer to the problem definition and the Commerce Commission's comments regarding regulatory barriers and behavioural challenges. These changes are likely to influence applicants and building consent authorities' behaviours and make it easier to substitute similar building products.
<b>Total monetised benefits</b>		-	
<b>Non-monetised benefits</b>		<i>High</i>	

## Section 3: Delivering an option

### How will the new arrangements be implemented?

106. Updated MBIE guidance for MultiProof is expected to be published by end of the first quarter of 2024.
107. New guidance is expected to be published alongside the proposed regulations.
108. The *Building (Forms) Regulations 2004* have not been changed for some time. It is likely that different ways will be explored to expressly specify in the forms suitable alternative building products. Other changes to update the forms may also be needed to ensure they are fit-for-purpose.
109. At this stage, progress on the regulatory changes to clarify the existing definition of minor variation and to define minor customisation has been prioritised. MBIE will be looking at building consent forms once policy decisions have been made on other proposals. Clarification of the definition of ‘minor variation’ and definition of ‘minor customisation’ will be for builders, designers, specifiers – through their building applications and applications for a minor variation – and building consent authorities – through their assessment and processing of the building consent applications – to implement.
110. Under section 45A of the Building Act, a builder, designer, or specifier must apply for a minor variation to a building consent. It is not necessary to comply with the prescribed forms of the consent application under section 45, but it must comply with some of the other applicable requirements under section 45 of the Building Act. If granted, the building consent authority must record the minor variation in writing but does not need to amend the building consent itself.
111. Under section 49 of the Building Act, a building consent authority needs to assess whether the change is a minor customisation. Under section 45(1)(ba) of the Building Act, if a national multiple-use approval has been issued in relation to some or all the plans and specifications required, the application for a building consent must be accompanied by a copy of that national multiple-use approval and details of any proposed minor customisations.
112. Previous product substitution guidance has been helpful to both building consent applicants and building consent authorities. These new regulations will similarly be supported by guidance and educational material published by MBIE. This material will support greater understanding of what constitutes a minor variation, and what constitutes a minor customisation.
113. MBIE is likely to see some cases of product substitution as part of its determinations function. However, implementation is largely going to rest with building consent authorities.
114. To support the proposal, MBIE will issue new guidance to help applicants and building consent officers understand how the changes will work in practice. MBIE will launch a campaign once the changes are announced, which is likely to include webinars and website content to inform the sector on what the changes mean.

### How will the new arrangements be monitored, evaluated, and reviewed?

115. Timeframes for building consent and/or code compliance certificate approval provide one indicator for the performance of the building consent system. MBIE understands

that building consent authorities and the building sector have concerns about delays associated with requests for information (and waiting for a response) and wait times for inspections.

116. MBIE currently does not have good information on the reasons for these and notes that it is difficult to draw conclusions about how these issues relate to:
  - the maturity of the sector (e.g., poorly prepared applications or non-compliant work at time of inspection)
  - issues within building consent authorities (e.g., risk adverse consenting staff).
117. MBIE is aware of these issues and is actively considering opportunities to better monitor and understand them.
118. The Building Consent System Review identified that better performance monitoring and information would enable MBIE to show stronger system stewardship by using system insights to proactively respond to changes and address problems as they emerge.
119. MBIE is currently identifying how to best act on these findings.
120. Establishing a more regular way of recording and publishing consenting data is an important first step in the Government program of streamlining the building consent system. Reporting consistent data ensures greater transparency and allows the Government, building consent authorities, and the wider building sector to see where there is greater need in the system and adapt accordingly.
121. MBIE has initiated a building consent authority data pilot with a small group of building consent authorities. This has revealed the complexity of collecting data on building consent authorities' activity especially for those that have less advanced software solutions.
122. This increase in performance monitoring will be funded by the building levy.
123. The Minister for Building and Construction has sought Cabinet approval for MBIE to instruct building consent authorities to report some key information and to develop a plan to improve building consent authorities' monitoring.