

Consultation on increasing the use of remote inspections in the building consent process

A submission to the Ministry of Business, Innovation & Employment (MBIE)

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Taituarā

Local Government Professionals Aotearoa

Submission of Taituarā – Local Government Professionals Aotearoa (Taituarā) on: Consultation on increasing the use of remote inspections in the building consent process

This is a submission to the Ministry of Business, Innovation & Employment (MBIE) on its consultation seeking feedback on a range of options to increase the uptake of remote inspections and improve efficiency and productivity in the building inspection process.

Taituarā thanks MBIE for the opportunity to submit on the consultation on the proposal to mandate virtual building inspections with the objective of making it faster, cheaper and easier for Kiwi families to build healthy, safe and durable homes.

What is Taituarā?

Taituarā is an incorporated society of approximately 1000 members drawn from the local government sector (the sector). Our members include chief executives, senior managers, and council officials with significant policy or operational responsibilities. Taituarā is an apolitical organisation, with a wealth of knowledge about the sector and the technical, practical, and managerial implications of local government legislation and regulations.

The purpose of Taituarā is: To promote and support professional management for all staff working in local government.

We are committed to the ongoing development of local government capability to enhance service delivery to local communities throughout Aotearoa New Zealand. Our focus is on providing professional leadership development, and the promotion of innovation and excellence in regulatory and management practice.

We have an interest in all aspects of the management of local authorities from the provision of advice from regulation to the planning and delivery of services, infrastructure and climate resilience and mitigation. Providing building regulatory and risk advice is part of the sector's purpose and their broader role in providing for and supporting the sustainable environmental, economic, and social wellbeing of their communities.

The Problem

Do council building inspection processes significantly add costs and delay building times?

There is no evidential data that building delays stem from the inspection process. However, there is data showing that delays in the consenting process are due to applicants (Licensed Building Practitioners (LBPs), architects and engineers), taking over a month to send in missing application data¹. The BRANZ report on consenting behaviour states:

“Data can ‘myth bust’ much of the anecdotal misinformation which is influencing political behaviour.”

Building projects can be delayed for many reasons, i.e. delays sending requests for information, design issues, building product availability, lack of product substitutes, builder’s availability, coordination of sub-services, weather, finance. Without data on time divisions, the proposed changes may not be targeted to the right area of the process to affect meaningful time improvements.

1. Recommendation on the problem:

That MBIE obtain data about building inspection times to ensure the problem is properly identified.

Outcomes

The outcomes in the consultation are narrowly constrained to the method of building inspection and not to wider building outcomes. The outcomes in the consultation are:

- System is efficient
- Roles and responsibilities are clear
- Requirements and decisions are robust
- System is responsive to change

However, building outcomes should be necessarily included in this list. Altering the inspection process without addressing the bigger picture is short-sighted and we recommend including “buildings that are safe and durable”.

Inspections are a pivotal part of the compliance process. During inspections, Building Consent Officers (BCOs) routinely correct quality and safety issues that could otherwise harm people or cause the building to become a liability instead of an asset. Further, they provide

¹ <https://www.branz.co.nz/pubs/research-reports/transforming-building-consenting-behaviour/>

valuable upskilling of the building industry when they are on-site by answering questions around process and technical matters.

We consider that any remote inspection benefits such as reduced travel, greater convenience, and reduced emissions are generally outweighed by the downsides and risks, which we discuss in the next section. Despite this, we seek to provide information from the sector perspective that will enable meaningful change that delivers on the Government's outcomes.

2. Recommendation on the outcomes:

That the following be added to the outcomes, that:

- buildings that are safe and durable

Key barriers and risks of remote inspections

We agree with the risks listed by MBIE:

- Building safety and performance
- Dishonest practices
- Liability concerns
- Trust in build quality

There is evidence that inspection failure rates decrease when done remotely, 9% in person reducing to 4% remotely². The reasons for the difference needs more investigation, however, suffice to say that few inspections fail remotely. We hold concerns that the sector will not know of deficiencies in compliance until safety and quality problems are revealed to homeowners, perhaps a few years from now.

We would expect councils to experience higher litigation rates given the low failure rate of remote inspections, and the legalities of joint and several liability that councils work under. Councils sign off the Code Compliance Certificate which makes them a party to any liabilities. The decision to conduct a remote inspection should not be made by Central Government when it faces little or no consequence in the event of failure.

We recommend that the decision to conduct a remote inspection be made by the council who is responsible at law for the conduct of the inspection and carries the liability.

Assessment of building construction usually contains complex information during the inspection. In-person meetings have been shown to be better for dealing with complicated information than virtual meetings. BCOs may need to spend more time familiarising

² One data set from Auckland Council, although a 9% failure overall failure rate we believe would be low for most councils.

themselves with the proposed building works prior to a remote inspection so they can interpret the video data. Architects are seldom contracted to run full supervision of a construction job through to completion so the complexities of builder's variations are the norm during construction.

Remote inspections are a new technology and bring with them on-site logistical and operator competency risks, as follows:

- The building or site has a high level of complexity and compliance with legislation and safety cannot be assured
- Technical equipment being inadequate or substandard, eg, scratched lenses or low quality cameras, not having a second device to read the consent plans during the inspection
- Poor internet connectivity in some areas of New Zealand, in rural areas and areas of new development taking place across more difficult ground (hills and valleys)
- Builders untrained in using the technical equipment, eg, limited field of view, lack of panorama images, no location meta data, inability to provide precise building measurements on video, inability to provide testing with specialised devices, inability to check whether measurement devices are properly calibrated, eg moisture metres
- language barriers where the onsite people cannot understand English and which prevents the inspector from accessing the data they need
- A council booking system for remote inspections will need to run to schedule. If a builder is not ready or running late for the appointment they will have to rebook costing them time. On the contrary, a BCO can start an on-site inspection even if the builder is running late.

We recommend that that the person who will operate the technology on site has the remote inspections technical training required for the nature of the inspection being conducted. We contend that some inspection types are too high risk to ever be done remotely³.

Equally, if not more important are the policy risks:

- Lack of a robust policy, regulatory and governance framework
- Inconsistent remote inspection practices across the motu
- Builders being dishonest in what they present on video to the BCO. The builder controls the camera during the inspection and if they abide by a subculture with poor values, they could omit filming substandard work. This would enable them to maximise their short-term profit by doing less than the building code requires. BCOs will know who some of the good operators are and the poor operators, but do not have full information about the values of those in the middle which make up most businesses. Optimism that they all subscribe to high values is a naïve position for a

³ Evaluation of emerging technologies for remote inspections of building work, Building 4.0 CRC, pp 66-68 <https://research.monash.edu/en/publications/evaluation-of-emerging-technologies-for-remote-inspections-of-bui>

regulator to take, therefore requires controls to manage the risks. We recommend the Government as regulator does not take this view.

- The level of qualification of the person in charge of the on-site building works at the inspection. Do they need to be the LBP or is their apprentice sufficient? Who is taking the responsibility for the inspection?
- BCO operator competency
- Costs to councils – software, hardware, training, policy development, risk management, guidance documents
- Safe transition to new processes

We recommend that remote inspections have a robust policy, regulatory and governance framework which covers off the above risks. It should also provide structure nationally for BCAs deciding when remote inspections should be conducted, who makes the decision to go remote, the technology to be used, and who can use the technology. It could go further in setting out specific instructions to be given to the on-site builder to reduce inconsistencies across the motu. The policy should also address the process for the BCO when they are not satisfied they have collected the data they need.

BCOs gather more data when visiting a site in-person. They view the site in its entirety including the builders' attitudes and site hygiene. Virtual meetings are not as engaging as in-person meetings and regulators are less likely to pick up on subtle cues, such as when a builder says they agree with a decision but whose body language signals otherwise.

Builders have an interest in maximising their profit on every job, and virtual building inspections offer an easy opportunity for them to hide work from the building inspector by not revealing it on video. They have a conflict between complying with the building code and short-term financial advantage, or a gamekeeper poacher conflict.

From experience, councils will know of some builders whom they would never offer a virtual inspection over an in-person inspection due to past dealings and known dishonesty.

We recommend that councils have a register of approved builders for remote inspections, and further recommend there be criteria set by MBIE on how the register is set up, run, and paid for.

Our preference would be to have builders carrying their own liability via self-certification over having default remote inspections.

We reiterate from our submission on building consent review in 2023, self-certification for builders might be considered where there are sufficiently robust occupational regulations in place (that demonstrate knowledge of the regulations) , monitoring and audit, and legal accountability is apportioned to cover liability (e.g. insurance cover, an ability to demonstrate long-term financial viability, letters of assurance, personal liability so that businesses cannot be structured to avoid it) should things go wrong.

3. Recommendations on managing key barriers and risks:

- a. That the decision to conduct a remote inspection be made by the council who is responsible at law for the conduct of the inspection and carries liability under joint and several liability at law
- b. That that the builder who will operate the technology on site has the remote inspections technical training required for the nature of the inspection being conducted
- c. That remote inspections have a robust policy, regulatory and governance framework which covers the risks of:
 - i. The level of complexity of the building or site and whether compliance with legislation and safety can be assured
 - ii. Inconsistent remote inspection practices across the motu
 - iii. LBPs being dishonest in what they present on video to the BCO
 - iv. The level of qualification of the person in charge of the on-site building works at the inspection
 - v. BCO operator competency
 - vi. Costs to councils – software, hardware, training, policy development, risk management, guidance documents
 - vii. Safe transition to new processes
- d. That councils have a register of approved builders for remote inspections
- e. That there be criteria set by MBIE on how the register is set up, run, and paid for
- f. That self-certifying builders carrying their own liability is preferable over having default remote inspections

Default remote inspections

We note that the benefits of remote inspections are stated in the consultation as:

- reducing the need for inspectors to travel long distances to building sites
- greater convenience, flexibility and timeliness
- the ability for inspectors to carry out inspections in other districts
- reduced emissions
- support of good record keeping practices

We consider that the third bullet point above, inspectors carrying out inspections in other districts, has the same benefit as reducing travel time in bullet one. We note that Building Consent Authorities (BCAs) already work together in some jurisdictions to carry out inspections for other councils and large areas doing so. During civil defence emergencies, BCAs also respond across jurisdictions. BCA cluster groups are council BCAs that work together within a geographical region. Formalising these arrangements setting out liability and clear guidelines could establish structures to provide uniformity across larger areas and

greater cooperation to mitigate risks around knowledge of District Plan requirements, for example.

In most circumstances the risks will outweigh the benefits, but the times where the benefits are likely to outweigh the risks are:

1. In low risk inspections post-line inspections.
2. Re-inspections where the scope of inspection is narrowed to the reason for the inspection failure, especially if there would be a long drive to inspect it. In these circumstances a BCO has previously been on-site, gathered non-verbal information about how well the site is run, and developed a relationship using eye contact, body language, questions and answers, discussion of the job, and freely assessing all aspects of the work. A remote inspection would be sufficient in these circumstances to reassess building work.
3. Builders or companies that have a proven track record, high standards of building practice, and known by councils to run their business with honesty and integrity.

4. Recommendations on default remote inspections:

That the risks will generally outweigh the benefits and building inspections should be in-person by default, with the onus placed on the use of virtual inspection technologies to prove themselves to be more effective, efficient and safe before they become the default process.

That remote inspections could become the default process in the following three circumstances:

- Low risk post-line inspections
- Minor re-inspections for a follow-up to a previously failed inspection, especially if there is a long drive to the site
- With builders or companies that have a proven track record, high standards of building practice, and known by councils to run their business with honesty and integrity

Offences and penalties

We support the proposal to make deceptive behaviour an offence during a remote inspection and the proposed maximum fines of \$50,000 for an individual and \$150,000 for a body corporate or business.

Local authorities find courts reluctant to give the maximum fines to small businesses, so we recommend a high lower limit as a deterrent, say \$40,000 for an individual and \$100,000 for a body corporate or business.

It costs councils a lot of money to take someone to court and there needs to be compelling penalties to do so. We recommend that all costs should be awarded to councils so that they can recoup their costs instead of using ratepayer funds without recompense.

We also recommend there be an infringement penalty for the lesser offence of being obstructive during the remote building inspection, of say, \$5,000 for an individual, and \$10,000 for a body corporate or business. A warning system could be in place prior to the infringement being issued.

A fine by itself does not create a good building outcome. We recommend the penalty also include remedial measures for the homeowner, and occupational sanctions placed on the licensed building practitioner, which will go some way to achieving good building outcomes.

5. Recommendations on offences and penalties:

That deceptive behaviour be an offence with the penalties as follows:

- a. Individuals: \$40,000 minimum to \$50,000 maximum fine
- b. Body corporates or businesses: \$100,000 minimum to \$150,000 maximum fine
- c. That all costs should be awarded to councils so that they can recoup their costs instead of using ratepayer funds without recompense
- d. That there be an infringement penalty for the lesser offence of being obstructive during the remote building inspection, of say, \$5,000 for an individual, and \$10,000 for a body corporate or business. A warning system could be in place prior to the infringement being issued
- e. Remedial work for the homeowner
- f. Occupational sanctions placed on the licensed building practitioner

Increasing inspection capacity through the use of accredited organisations

Should property owners be able to directly engage Accredited Organisations (Building).

The question that needs to be resolved is:

“Does the Accredited Organisation (Building) have a conflict of interest if they are engaged directly by the property owner?”

Our view is that they have a financial conflict of interest. They are being paid by the property owner, therefore they have an interest in keeping them satisfied with their service so that payment is forthcoming. This is in direct tension to their regulator role of ensuring the building complies with the building code, which if it doesn't comply, may cost the owner time and money.

The position of a regulator employed by their Council is that of an impartial building inspector with the goals of the Government’s building code firmly in view. In contrast, they are paid by their Council and do not have a financial conflict of interest.

The next question is:

“Is the conflict of interest manageable?”

MBIE’s discussion document does not set out any mitigations for this conflict of interest. The most obvious mitigation is that the Accredited Organisation (Building) not be engaged directly by the property owner. We therefore recommend that property owners not be able to directly engage Accredited Organisations (Building).

Councils increasing their use of Accredited Organisations (Building)

The proposal in the consultation is for councils to increase their use of Accredited Organisations (Building) (AOBs). There are liability risks to councils and the discussion sets out mitigations as follows:

Table 2: Potential mitigations to enable owners to contract Accredited Organisations (Building) to carry out inspections	
Issue	Mitigation
Building consent authorities may not be confident to issue code compliance certificates on the basis of third-party inspections	Building consent authorities would need to be able to rely on the inspection reports provided by Accredited Organisations (Building). The form and content of these reports would likely need to be prescribed.
Building consent authorities may be concerned about being held liable due to the negligence of another party	The building consent authority could be protected from liability if it relied on third party inspection reports in good faith. Accredited Organisations (Building) would need to pass an adequate means assessment to ensure they can cover any civil liabilities that arise in relation to inspections undertaken. This requirement would likely increase costs to the Accredited Organisation (Building), which would likely be passed on to the consumer.
Third-party inspectors may not report on issues that are not directly relevant to the scheduled inspection	Mandatory disclosure requirements could be placed on Accredited Organisations (Building) to inform building consent authorities of any concerns or compliance issues they notice during an inspection.
Oversight of the build may be reduced if inspections are carried out by multiple entities	Limits could be placed on the number of inspectors or Accredited Organisations (Building) that can be engaged during a project to ensure continuity and consistency across the inspection schedule.

We support the mitigations above, but our concern for councils is that under joint and several liability, councils will remain liable regardless of whether the AOB has an adequate means assessment or is still in operation. If there turns out to be a problem with the quality of work by the AOB, and buildings they have approved, the council will be liable. If a council is found to be liable, it can only recoup costs from a contractor by taking them to court via a second hearing.

We recommend that the Government review the current joint and several liability law for building and construction works.

Our view is that AOBs carry their own liability risks for the costs of remedial building work. We recommend that there be a requirement for AOBs to have public liability insurance, and that the insurance protect the owner for a meaningful period of time.

Lastly, AOBs will increase the demand for qualified building surveyors. The private sector will recruit council staff leaving councils with a shortage and potentially creating long wait times for building regulation. The private sector do not spend money training BCOs, it is councils that take on the responsibility and invest in the sector. We recommend there be an analysis of the BCO workforce, projection of the demand, and a recruitment and training plan so there are sufficient staff for the scheme to succeed.

6. Recommendations on the use of Accredited Organisations (Building):

- a. That owners not be able to directly engage Accredited Organisations (Building) to regulate due to there being a financial conflict of interest
- b. Although we support the mitigations proposed for councils to increase their use of Accredited Organisations (Building), the bigger issue is the joint and liability law that councils work under, and that a review and fairer liability system would assist councils' uptake of contractors
- c. That there be a requirement for Accredited Organisations (Building) to have public liability insurance, and that the insurance protect the owner for a meaningful period of time
- d. That there be an analysis of the BCO workforce, projection of the demand, and a recruitment and training plan so there are sufficient staff for the scheme to succeed, so that councils are not left too short staffed to perform their regulatory functions



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