

Submission of the Society of Local Government Managers regarding the

Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill



What is SOLGM?

The New Zealand Society of Local Government Managers (SOLGM) thanks the Environment Committee (the Committee) for the opportunity to submit on the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill (the Bill).

SOLGM is a professional society of approximately 880 members made up of local government Chief Executives, senior managers, and council staff.¹ We are an apolitical organisation that can provide a wealth of knowledge about the local government sector and in particular knowledge of the technical, practical and managerial implications of legislation and policy.

Our vision is:

To enhance professional local government management, leading staff and enabling communities to shape their future.

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, and other important support activities such as election management and the collection of rates.

¹ As at 22 June 2020.

Part One: General Comments

The Building (Building Products and Methods, Modular Components, and Other Matters) Bill proposes wide-ranging changes to the Building Act. One of the purposes of local government is to promote community well-being in our society and delivering fit for purpose services, including construction of buildings and the usage of building materials within a quality assurance framework.

The Bill's objective is for transformative change for building materials suppliers, product certification bodies and suppliers of prefabricated buildings. SOLGM supports having efficient systems which result in high-quality buildings and a system which champions fairer outcomes when things go wrong.

This submission focuses upon matters that SOLGM believes will assist the Committee address issues that would help achieve the overall objectives of improving trust and confidence in the building sector and its regulatory system whilst streamlining construction in New Zealand.

The aim for local government is to have a high performing building sector that operates with integrity and provides warm, safe and durable housing stock and supports enduring communities. Building Consent Authorities (BCAs) deliver their regulatory roles to make sure houses are built properly for their prospective occupants now and in the future. Our submission supports some parts of the Bill but does not support other parts. SOLGM also proposes ways to lift the quality and performance on the construction sector in its usage of modular systems which will in turn increase confidence and optimism for future use.

In this submission we support the proposals to have mandatory information on building products, strengthening the product certification scheme, increasing offences and penalties, and public notice requirements.

We support the proposal to widen the use of the building levy and propose widening it even further for two matters. Firstly to include helping the tertiary education sector with their teaching programmes for matters of concern in the construction sector, such as weathertightness and passive fire design. This would improve the competence across the entire sector in the medium to long-term. Secondly, that the levy be used for having nationally consistent forms which would improve efficiencies.

We do, however, believe that the proposed scheme for modular components is too one dimensional to be appropriately rigorous for complex modular designs which incorporate numerous modular components in medium rise constructions or higher which are more commonly seen in larger metro areas. In essence the certification is only appropriate for a particular usage and application at the very simple end of the spectrum. We support the scheme for single storey houses on flat sections where services already exist to the site. However we

stress that the complexities and risks for multi-storey units are not addressed under this Bill and outline some possible options and changes to the scheme in order to mitigate against these potential problems.

Lastly, we take this opportunity to support our communities to transition to 21st century living. Our submission supports our communities to transition to low emissions and low waste by recommending that product information include climate and sustainability related information in accordance with the purpose of Act. Data needs to cover sustainability over the lifetime of the product as well as immediate effects, such as heavy metal pollution of copper and zinc into waterways every time it rains.

Part Two: Specific Matters

In this section we provide comments on specific provisions in the Bill and other issues (such as matters that may have been omitted from the Bill). We also note that our comments in this section are subordinate to our general comments.

Minimum requirements for information on building products

BCAs in New Zealand have long canvassed for a National Product Register as the gold standard which, if existed, would speed up the consenting process. In the absence of this robust out-come, strengthening information requirements is an interim measure.

We fully support and welcome the proposal to have information requirements for all building products. We further welcome the inclusion of substantial offences for misrepresentation of product information.

BCAs receive building designs that include either non-compliant or indeterminate product use. In such cases, councils have two courses of action to resolve the non-compliant or indeterminate elements. They can request the applicant to provide more information on how it complies or process it as an "*alternative solution*". Both of these courses of action cause delays to the consenting process.

We ask that the following data be provided on product information to speed up the consenting and regulatory processes:

- information on how it complies with the building code, and
- a gap analysis which shows the technical information that a product and its components need in order to comply with an acceptable standard under the NZ Building code.

Demand is growing for environmentally sustainable products and the information would empower sustainable choices for communities to transition to 21st century living of low emissions and low waste. Sustainability information should include data for the whole life of the product. There are also immediate effects which should be stated in the information. For example, water soluble heavy metals are released from unpainted copper cladding and zinc roofing every time it rains. The metals are delivered into the waterways creating direct environmental pollution. We need a whole of government approach towards sustainability to improve our environment because councils cannot regulate waterways in a silo.

One of the purposes of the Act under section 3 is that "*buildings are designed, constructed, and able to be used in ways that promote sustainable development*". Provision of sustainability data would empower designers and the construction sector to make sustainable choices for New Zealand Inc.

Recommendation:

1. That the Select Committee insert a provision requiring that product information includes:

- a. information on how the product complies with the building code; and
- b. a gap analysis which shows the technical information that a product and its components need in order to comply with an acceptable standard under the NZ building code; and
- c. information on climate and sustainability effects over the life of a product and immediate effects, eg water soluble heavy metals. (Note: promotion of sustainable development is one of the purposes of the Act.)

Creation of specialist framework for modular components

We support the creation of a specialist framework for prefab building consenting and agree that such a system would simplify and speed up construction. We support the premise that prefabricators be able to get one approval for their factory constructed module and not require a separate consent for each one they produce. The proposal will eliminate the current problem of requiring two consents, one from the sending council and one from the receiving council. Our understanding of the proposal is that there will be no need for the sending council to be involved at all because a building consent will not be required where they are produced.

We do have some concerns about: module suppliers being able to produce consistently high quality; consenting complexities for multi-storey modules; and liability responsibilities for the receiving council.

Whole building modules (as opposed to modules that are parts of buildings)

Some prefabs currently being built are complete single storey houses. We would describe this as a whole building module. These are designed to go on a flat section.

We agree with the Bill that a BCA would be able to issue a consent in 10 days if:

- the module was for a whole building module and not a part of a building;

- the land is flat;
- the documentation clearly identifies the code requirements;
- the module is built to the right specifications for the site wind loads, snow and corrosion zones; and
- all services are already provided to the site.

We agree that 10 working days for a building consent is sufficient if the above conditions have been met. However, we note that councils will need to develop an additional 10-day reporting system. For some councils, resourcing the new process will be onerous and there needs to be some thought given as to what a reasonable timeframe is for implementation.

However, when land zoning permits medium-high density housing, the land often requires additional services, boundary adjustments and more complex processes. BCAs will need more consenting time than the proposed 10 working days and our next section is about this issue.

Multi-storey buildings and complex sites

Some prefabricators are producing module components for medium-rise residential construction in dense urban areas. Designs and compilation of modules differs due to site and planning constraints. Therefore, bespoke architectural design is required to achieve compliance with characteristics such as zoning, daylight recession planes, site shape and ground characteristics. The elements of consenting required from the receiving council are a lot more complex and numerous than those required for a stand-alone house.

On-site consenting will be needed for multi-storey foundations, connection of floors, weathertightness of external envelope, wind tunnelling, medium-rise residential fire protection both internal and external, stair and lift-well design, ducting between floors, and multi-storey plumbing. Medium-rise buildings are outside the Acceptable Solutions, therefore, they will require a principles-based compliance path. The receiving council will be responsible for consenting these bespoke design elements. BCAs are required to process all building consents within the legislative time periods or face sanctions. Therefore, the timeframe needs to be functionally achievable and not one that sets unreasonably difficult logistical issues for councils to resolve. We submit that the proposed 10 working days is too short for a BCA to issue a building consent and that 20 working days are required.

We ask the Committee that there be a focus on providing certified 'systems' for connecting certified modular components together to assist BCAs in the approval process and truly realise the benefits of the modular component framework.

We also ask that to streamline the consenting process, that the information on the building consent application include a list of all certified modular components and a gap analysis of what parts are not certified. This would provide clarity and ensure that consenting responsibility for all parts of the construction are clearly identified.

Quality control: modular construction needs to be a consistently high standard

We are aware that housing units and modular units are currently being made and shipped around the country. There are a range of different kinds of modules being produced from complete houses to parts of multi-storey units. Recent BCA experiences of the prefab industry are that some of the Quality Management Systems (QMS) are not rigorous enough to produce a consistently high product. (QMS systems monitor quality and record the testing process.)

The proposals recommend that the Modular Component Manufacturer (MCM) be registered after the Certification Body (MCMCB) approves them. Once approved, the MCMs are audited once a year or more frequently if required by the regulations.

As stated above, some prefabricators produce variability from poor construction to high quality construction all from the same factory. Therefore, we submit that the risk of substandard module components going on the market needs greater mitigation. We recommend that MCMs be inspected monthly for the first 12 months to ensure consistently high standards and that QMS controls are operating correctly. Once assured of consistent product quality, an annual audit should be sufficient.

On-site minor variations or construction amendments

We note that on-site minor variations or construction amendments to a modular component will be problematic for the MCM process. Any alterations make the module a different product to that which was certified, therefore, voiding the certificate. We propose that modular components be exempt from the ability to make on-site minor variations or construction amendments.

Liability

We support the requirement that MCMs may only be registered if they have adequate means to cover any civil liabilities that may arise in relation to their manufacture and design. We note that BCAs are liable for 10 years and submit that MCMs should have run-off insurance for 10 years if they are to be fully liable for their modules. We note that the proposals are silent about whether overseas pre-fabricators can apply to be MCMs. Pursuing damages from overseas companies is very expensive and very difficult to achieve or enforce compensation. Therefore, we propose that overseas companies be excluded from being MCMs.

We are also cognisant that BCAs carry legal liability from their responsibilities to undertake on-site inspections and issue of the Code Compliance Certificate (CCC).

Building site inspections are done on the ground away from the factory and are a separate process to the MCM build. There are specific on-site challenges for 6-7 storey buildings. Responsibilities and liabilities arise from issues that occur on-site and the proposals do not provide a demarcation about this aspect of construction. A CCC has to be for the entire consented works. BCAs cannot, at present, issue a CCC for parts of a building, e.g. the foundations, fire walls, module connections, lift shafts and so on.

Any liability decisions are ultimately made by the courts. We ask that the legislation be made clear that the intentions of parliament, (vis-à-vis MCM liability and BCA's joint and several liability,) is that MCMs hold the liability for their modular component and connection systems.

Liability in transit

A modular component will have certification when it leaves the factory, however, damage to the module could arise during transit. We propose that the certification process have final completion and check off that it has arrived on-site in the same condition that it left the factory.

Leveraging of central government and local government resources

Some councils have already developed robust modular/prefabrication processes and some of these appear more streamlined than the proposed and somewhat complicated and administratively heavy process in the Bill. The Auckland Council Guidance booklet² is an example of what is already working well, and it has acquired positive feedback from a number of modular manufacturers to Auckland Council and the Ministry of Business, Innovation and Employment. Guidance such as this could be leveraged by the Government for national application.

² Manufactured Modular Component Guidance, Auckland Council

<https://www.aucklandcouncil.govt.nz/building-and-consents/Documents/ac1829-manufactured-modular-component-guidance.pdf>

Recommendation:

1. That the Select Committee insert a provision requiring that the modular component framework includes:

- a. a building consent be issued in 10 working days if all of the following are met:
 - the module is for a whole building module and not a part of a building;
 - the land is flat;
 - the documentation clearly identifies the code requirements;
 - the module is built to the right specifications for the site wind loads, snow and corrosion zones;
 - all services are already provided to the site; and
- b. that where the matters in point a. above are not met, there be 20 working days for the receiving council's consenting process;
- c. requires all modular components to be listed in the building consent application;
- d. includes certified 'systems' for connecting certified modular components together;
- e. requires that MCMs be inspected monthly for the first 12 months to ensure consistently high standards and that controls are firmly in place. Once assured of consistent product quality, an annual audit should be sufficient;
- f. specifies the entire build, which parts are certified, and a gap analysis of what parts are not certified;
- g. excludes on-site minor variations or construction amendments;
- h. excludes overseas companies from becoming MCMs;
- i. requires MCMs to have final certification upon delivery to the site; and
- j. has clarity for the courts so that they understand the intent of the legislation is that MCMs hold the liability for their registered modular component and connection systems.

Strengthening the product certification scheme

We support the improvements to the Product Certification system and agree that the proposed changes would enhance consumer choice, simplify construction, speed it up and improve confidence in the quality of building product certification. The additional controls to allow audits, suspensions, revocation of product certifications, and making it an offence to misrepresent a product are welcomed by the local authority sector.

Insurance companies now insert exclusion clauses for product defects and counterfeits in council insurance policies. This has occurred as a follow-on effect from the Shadowclad cladding failures. Therefore, the Product Certification proposals would give increased assurance to the quality of products being used and give confidence to the insurance sector and importantly, give important clarity on any limitation in the application of the certified products or systems.

A current challenge for BCAs are instances where a product is, for example, certified for a two storey building but used in an eight storey building. For example, a cladding may be strong enough to withstand wind pressures at up to three floors, but not higher. Councils adhere to the specifications of a product unless an alternative solution can be demonstrated. However, clients become upset over technical issues about product application. The proposed Product Certification scheme should provide limitations of a product's use, exclusions of use, and enough clarity for agreement in a situation like the aforementioned cladding scenario.

We ask that the following data be provided on product certificates to speed up the consenting and regulatory processes:

- information on how it complies with the building code;
- include information on exclusions of its use, and limitations of its use.

Finally, we ask that there be consistent product information between the manufacturer and the Product Certificate. Under the current Codemark scheme, the sector experiences contradictions between the product specifications provided by the manufacturer and the product information provided by Codemark. The product information needs to be aligned and be able to be relied upon by all parties.

Recommendation:

2. That the Select Committee insert a provision requiring that product certifications include:

- a. information on how a product complies with the building code;
- b. information on exclusions of use and limitations of use; and
- c. a requirement that there be consistent and aligned product information between the manufacturer's specifications and the Product Certificate, which can be relied upon by all parties.

Use of building levy

We support widening the use of the building levy for monitoring, overseeing, or improving the performance of the building sector or any part of the building sector, or regulatory systems under other relevant Acts that relate to the building sector, including occupational regulation.

We are aware that not all architecture, drafting, building or plumbing students are taught the *principles* of weathertight design.³ The building code embodies the principles but does not explicitly state what they are for bespoke details. We ask that the levy be further widened to include oversight of the education sector to include principles based weather-tightness teaching for the architecture, drafting, building and plumbing areas.

Another area of concern for BCAs is the level of knowledge in the industry about passive fire design. For example, a current concern is about penetrations that are made through fire walls to allow pipes and wires through and the penetrations are not being fire protected properly. However, the concerns run wider than just penetrations through fire walls. We have heard the fire design part of the building code described as the "*dark arts*" of building, because passive fire design only appears to be accessible by fire designers and not the wider industry.

Passive fire design is particularly important in low-medium rise multiuse dwellings containing horizontal and vertical fire separation because these buildings do not have sprinkler systems, or other active fire design systems.

³ External moisture – An introduction to weathertightness design principles (to be read in conjunction with Acceptable Solution E2/AS1), Department of Building and Housing NZ.

<https://www.building.govt.nz/assets/Uploads/building-code-compliance/e-moisture/e2-external-moisture/weathertight-design-principles/external-moisture-an-introduction.pdf>

Giving emphasis to principles-based teaching for such matters as weathertightness and passive fire design in the education sector would lift the level of expertise across the sector in the medium to long term. It would also assist with shared understanding between occupations, raise the standard of building details, and assist the professionalism of the building sector when faced with the onsite challenges of new technologies.

We ask that the building levy be widened further to include helping the tertiary education sector with their teaching programmes for matters of concern in construction sector, such as weathertightness and passive fire design.

Finally, efficiency gains could be made by having standardised electronic systems and forms which would also provide consistency across the country. Councils accept and process consents electronically. Many of the paper forms are no longer fit for purpose and cause barriers for use. Therefore, we also ask that the building levy be used to standardise systems and forms.

Recommendation:

3. That the Select Committee inserts the following provisions that the building levy be widened to include:

- a.* helping the tertiary education sector with their teaching programmes for matters of concern in construction sector, e.g. weathertightness and passive fire design;
- b.* standardisation of electronic systems and forms to support and improve the efficiency and consistency within the sector.

Offences and penalties

We support the proposals to significantly increase the fines for breaches of the Building Act. We do note however, that some courts are loathe to impose the current fines (which are low) upon people for breaches. The lack of application of penalty fines is of concern to local authorities with some courts setting the fine to what the defendant can afford. Most operators in the construction industry operate with integrity. However, when operators are investigated for offences and prosecuted, councils need the courts to show they understand the seriousness of the harms, and impose deterrent fines. Councils use considerable resources of time, effort and money to take a case to court and they need to be confident that it is worthwhile taking people to task for breaches. On this note, we ask that there be an increase in infringement fines under the Act.

Recommendation:**4. That the Select Committee recommends that:**

- a.* when operators are investigated for offences and prosecuted, that courts understand the intent of the legislation is to impose deterrent fines; and
- b.* there be an increase of infringement fines.

Public notification requirements

We support the requirement that public notice would no longer have to be published in daily newspapers. Public notice will still have to be given the Gazette and on the Internet and this change is consistent with recent changes to public notice in other acts such as the Legislation Act 2019.

Recommendation:**5. That the Select Committee notes that SOLGM supports the changes to public notice to remove the requirement for publication in daily newspapers.****Other matters for consideration***Direct payment of building levy by Kainga Ora*

Kainga Ora currently pays its MBIE building levy via territorial authorities and there is no value added in the process. This is an unnecessary double handling of payment and should be streamlined to reduce council costs and improve efficiencies. We ask that the Select Committee make a technical change in this regard.

Resilient buildings in the aftermath of an earthquake

The purposes of the Act are very clear about ensuring that people are not harmed by buildings and structural earthquake design is implemented well in New Zealand, in that our buildings do, almost always, stay up. However, non-structural design is not a requirement under the Act, neither is a requirement that buildings are resilient in a quake and useable in the aftermath.

There is work being done to improve building resilience in the structural engineering profession to try and tidy up this area with a code of practice for the design, installation and performance on non-structural elements. A purpose of the Act requires that buildings be designed, constructed and able to be used in ways that promote sustainable development, and we ask that this includes building functionality post-quake.

Recommendation:

6. That the Select Committee:

- a.* requires that each Building Consent Authority that is not a territorial authority pays its building levy directly to the Chief Executive; and
- b.* expands the sustainability purpose of the Act under section 3(a)(iv) to promote resilience post-earthquake event.



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