

Ashburton District Council

Submission on Building System Legislation Reform

Discussion Document

16 June 2019

To Ministry of Business, Innovation & Employment

Introduction

1. The Ashburton District Council welcomes the opportunity to comment on the Building System Legislative Reform. We acknowledge these proposed changes to the Building Act 2004 are significant and necessary to elevate the building and construction industry for the purpose of achieving a more relevant and efficient regulatory environment.
2. This feedback is provided by the Ashburton District Council, 5 Baring Square West, Ashburton. The contact person is Michael Wong, Building Services Manager. I can be contacted at Ashburton District Council, michael.wong@adc.govt.nz, phone (03) 307 7700, or PO Box 94, Ashburton 7740.

Building Products and Methods

Widen the purpose of the *Building Act*:

- 2.1 It is our view that expanding the purpose of the Building Act to include the regulation of building products and methods is appropriate.

Proposed definition of a '*building product*' and '*building method*':

- 2.2 We agree with the proposed definition of a 'building product'.

"A 'building product' is any component or system that could be reasonably expected to be incorporated into building work. A system is a set of at least two components supplied and intended to be used together to be incorporated into building work."

- 2.3 Council agrees with the proposed definition of a "building method", with the exception of the term "system".

Suggested definition: "A "building method" is a specific way of using a product in building work".

Council believes that the use of the term “system” is unnecessary and may provide confusion as the proposed definition of a “product” states that a product is “any component or system”.

2.4 We believe that the proposed definitions do allow for future proofing.

Set minimum standards for information about building products and require manufacturers and suppliers to supply that information:

2.5 We support the proposal to require manufacturers and suppliers to supply information about building products.

2.6 Council believes that the requirement for a minimum level of information about building products to be made available will achieve consistency and efficiency in the consenting process.

2.7 We have no comment at this time.

2.8 We have no comment at this time.

2.9 We have no comment at this time.

2.10 We have no comment at this time.

Clarify the responsibilities of manufacturers, suppliers, designers and builders for building products and building methods:

2.11 We support this proposal.

2.12 This council believes that the current threshold and process for variations is appropriate.

Note: While “builder” is defined in section 14E of the Building Act 2004 with regard to responsibilities of builders as “any person who carries out building work, whether in trade or not”, we believe this is potentially too restrictive. The term “*Subcontractor*” should also be considered as builders are not the only people that substitute products and therefore need to have their responsibilities defined as well.

Give MBIE the power to compel information to support an investigation:

2.13 Council supports the proposal to clarify roles and responsibilities for manufacturers, supplies, designers and builders.

2.14 We believe that the sharing of relevant information is an important part of breaking down silos and will aid in the consistency for decisions of BCAs.

How these proposed changes measure up to the five assessment criteria:

We believe that these proposals meet the criteria set out within the discussion paper.

Potential impacts of proposed changes:

2.15 We believe that the changes will be generally received positively.

2.16 It is our view that the proposed changes will enable a more robust consenting process.

The key to limiting the impact on the sector as a whole, in our opinion, will be MBIE's commitment to providing and/or supporting education to designers, builders, owners and BCAs of these changes which in turn will ensure a smooth transition.

A two-year transition period for product information, six months for other proposed changes:

2.17 A two year transition period for product information will be sufficient.

2.18 A transition period of six months for the changes in responsibilities will be sufficient.

2.19 While the above transition periods would be sufficient in each instance, we believe the impact of introducing these changes at different stages will increase the confusion for stakeholders, and will result in difficulty for BCAs managing these changes.

Strengthen MBIE's role as the product certification owner and regulator:

2.20 The proposed framework for product certification is a very good step in the right direction. Unlike the "Multiproof" system, to get the most benefit out of any proposal it is essential to ensure that the certification process is efficient, effective and attractive for manufacturers to engage with.

2.21 We have no comment at this time.

2.22 As a BCA, we believe that changes to the product certification scheme's settings will provide confidence in a certification process and will need to be robust so that it will stand up on its own when challenged.

Enable a regulatory framework for modern methods of construction (MMC), including off-site manufacture:

2.23 We believe that there is a need for an appropriate framework to manage MMC and that these proposals are a step in the right direction.

2.24 Council believes that the impact of these proposals will be subject to the robustness of the third party accredited auditing process and the assurance of the liability for all parties concerned.

2.25 It is our view that the impact of off-site manufacturing will require an increased level of the third party accredited auditing process as the ability to manage this off-shore (in another country) will be very challenging.

2.26 To ensure the manufacturer certification scheme fits the needs of the regulatory system it is essential the BCAs are consulted over the scheme design.

- 2.27 We believe that our current systems will accommodate this change and we do not perceive there will be any major issues.

Occupational Regulation

A broader definition of Restricted Building Work (RBW) will help manage risk

3.1.1 Expanding the scope of RBW is appropriate.

3.1.2 Council does not agree with the proposed RBW definition.

Suggested Definition: All building work relating to the primary structure, weathertightness and fire safety of a residential, mixed use residential/commercial and commercial buildings.

3.1.3 We have no comment at this time.

3.1.4 We seek clarification on whether the proposed definition “all residential building work” will affect the current homeowner exemption?

3.1.5 Council believes that while the intent of MBIE is to make a positive change to the Licensed Building Practitioners (LBP) scheme, a majority of LBPs will not initially share the same view. Please remember that the building and construction industry does not deal with, or manage change, very well, therefore MBIE need to ensure this risk is well mitigated.

3.1.6 We foresee that the changes will be difficult to manage initially due to resistance to change, and the need for more education, greater knowledge and training. These initial challenges will all incur additional costs which will be passed onto the building owner. However in time (5-6 years), with regular consultation, updates and fine tuning, we believe the scheme will be successful.

Higher competence requirements will increase confidence in the LBP scheme

3.1.7 Council agrees with increasing the competency of the LBP scheme, however we have concerns that some, or even many builders, may not renew their licence or not want to take the step up to the proposed Tier 2 class.

3.1.8 We believe that further increased costs would be a potential risk and these costs will be associated with continual education, training, insurance and salaries. To be clear, as a BCA, we see the continual training and education that provides value is a good thing.

3.1.9 We have no comment at this time.

3.1.10 We have no comment at this time.

3.1.11 We have no comment at this time.

- 3.1.12 We have no comment at this time.
- 3.1.13 It is our view that the “fit and proper person” test, has good intent, however the success of this test will be reliant on the consistent application of the test and the success of the whole scheme.
- 3.1.14 We consider the proposed timeframes and transitional process for the LBP scheme to be appropriate.
- 3.1.15 We would like MBIE to consider what would happen if an LBP, on renewal of their licence, does not meet the new threshold, thus potentially reducing the number of LBP’s. Also consideration must be given to how the apprenticeship scheme (qualification) fits into the LBP scheme (licencing).

A new voluntary certification scheme for all engineers

- 3.2.1 Council generally agrees there is a need for a statutory mark for engineers as proposed.
- 3.2.2 The term “CPEng” is too generic and does not provide certainty as to its meaning. The fact that an engineer can (currently) work outside their field of expertise is very confusing for a BCA to know when it is appropriate to accept a producer statement from an engineer.
- 3.2.3 We have no specific view on what their title should be, other than to ensure that the new title is clearly understood by the industry.
- 3.2.4 Council agrees with this proposal providing the process for certification is robust and provides value.

Restrictions on medium to high complexity engineering work in the building sector will help reduce life safety risks.

- 3.2.5 Council agrees that life safety should be the priority focus determining what engineering work is restricted.
- 3.2.6 We agree that building size, building use and ground conditions should all be used to determine what engineering work is restricted. The ability to add other factors at later stages will be important.

Licensing would regulate who can do restricted engineering work.

- 3.2.7 Council agrees with this proposal and does not believe there is a need to include any further specialities at this stage.
- 3.2.8 We generally agree with this proposal.
- 3.2.9 We are concerned that there may not be sufficient technical competence within the engineering fraternity to meet the demands should these proposals be implemented.

- 3.2.10 It is our view that the impact on the cost for engaging a licenced engineer would be minor.
- 3.2.11 We see that this proposal will help to reduce risks and provide more assurance for BCA's throughout the consenting process.
- 3.2.12 Other than our concerns about the technical capacity as a whole within the engineering fraternity, we agree that should these proposals be adopted, we would feel confident that an engaged engineer would have the necessary technical competence to do the work.
- 3.2.13 We are in general agreement with this proposal.
- 3.2.14 We have no further comment at this time.
- 3.2.15 Council would like to see all engineers be transitioned to "Certified" in the first instance and then look at the licensing of the restricted work. It is important to ensure frequent and genuine communication with all stakeholders throughout the transitional period.
- 3.2.16 Council has no comment at this time.

Repeal specific sanitary plumbing exemptions for householders in specified areas and for rural districts.

- 3.3.1 As a BCA we have encountered many situations of sanitary plumbing being carried out by un-licenced people.
- 3.3.2 We are unsure of the numbers at this time, however any noncompliance found or discovered via building consent inspections or any other means is managed by our Building Services team.
- 3.3.3 Council agrees that a person should be qualified to do sanitary plumbing work.

Repeal the exemptions for restricted sanitary plumbing, gasfitting and drainlaying work under supervision.

- 3.3.4 In our experience the risk of noncompliance is greater when work is carried out under an exemption as the supervision component is not carried out to an appropriate level.
- 3.3.5 We believe the benefits of regulations reduce the risk of noncompliance.
- 3.3.6 Council does not perceive any major issues with this proposal.
- 3.3.7 We believe that there will be only minor impacts however the level of compliant work will increase.
- 3.3.8 Council believes that anyone carrying out sanitary plumbing, gasfitting and drainlaying should be licenced to do so.

3.3.9 We see that additional training, education and support for the purpose of, and throughout the transitional period is critical.

Risk and Liability

Require guarantee and insurance products and BCA liability

4.1 - 4.17

Due to the level of complexities and limited knowledge relating to guarantees and insurance for the purpose of the Building Act, we will await the release of further detail on guarantees and insurance product requirements and how this will impact BCA liability. However, we do believe that it should not be the responsibility of the BCA to ensure guarantees and insurance have been included with consents of that work, or if they have been opted out of.

Building Levy

Reduce the rate of the building levy

- 5.1 We do not agree with the reduction in the rate of the building levy.
- 5.2 We foresee little impact on BCA's as a result of this proposal. The reduction of income would be miniscule.
- 5.3 Even though there is a current surplus, if we are to mandate MBIE to provide stewardship, reducing the levy rate would inhibit or limit the scope of works that MBIE could invest in, such as training not only for Councils but other construction industry stakeholders as well.
- 5.4 If implemented, a six month transition period will be sufficient.

Standardise the threshold for the building levy

- 5.5 We believe that standardising the threshold will provide clarity and simplify the process for BCAs.
- 5.6 We are in general agreement with this proposal. We believe that the levy should have a proportion assigned to education and training in order for each person involved in the industry to understand the whole building regulatory system which currently is broad and complex involving a number of different laws and regulations, institutions and practices.
- 5.7 The proposed start date of 1 July 2020 provides is sufficient time for the transition.

Offences, Penalties and Public Notification

Increase the maximum financial penalties

- 6.1 This council does not believe that the current penalty amounts in the Building Act are appropriate.
- 6.2 We support the proposal to increase maximum penalties as they will be consistent with other legislation.
- 6.3 We also support the introduction of higher penalties for organisations.
- 6.4 Council believes that this proposal will aid in a greater level of compliance with the Building Act and building code. In other words, will make tradespeople think twice about taking shortcuts.

Extend the time period for charges to be laid

- 6.5 12 months is an appropriate time period for enforcement agencies to lay a charge.

Modify the definition of 'publicly notify' in the Building Act.

- 6.6 We agree that public notification under the Building Act should no longer be required in newspapers.
- 6.7 Publication on the internet and the New Zealand Gazette is sufficient for Building Act public notifications.