

2 July 2020

Environment Select Committee
Parliament Buildings
Wellington

Email: environment@parliament.govt.nz

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

1. Recommendations

1.1 Property Council New Zealand (“Property Council”) recommends the following:

- The proposed Order in Council which declares a building product or method aligns with the International Building Code.
- Ministry of Business, Innovation and Employment (“MBIE”) develop a standardised building product information requirement form that can be adopted by local government to ensure a consistent national approach is taken and mitigate the risk of increased consenting costs.
- Introducing a liability cap of 20 per cent for local government for building products outside of the modern methods of construction (“MMC”) model to ensure a fairer allocation of risk and responsibility is introduced across the sector.
- MBIE incorporate internationally recognised products when looking to strengthen New Zealand product certification scheme.
- The building levy surplus be spent on the following; a national products register, skill shortages and training of apprentices, insurance policies, innovation and other future focused projects, training of local government inspectors to standardise approach across New Zealand, and improving the quality of consenting applications.
- Amending section 378 of the Building Act to have a provision which allows for MBIE to apply for an extension to the court (rather than extending the current investigation period from six to 12 months which may not be required due to MBIE’s new proposed investigatory powers and MBIE no longer relying on voluntary compliance).

2. Introduction

2.1 Property Council’s purpose is “Together, shaping cities where communities thrive”. We believe in the creation and retention of well-designed, functional and sustainable built environments which contribute to New Zealand’s overall prosperity. We support legislation that provides a framework to enhance economic growth, development, liveability and growing communities.

NATIONAL OFFICE

Foyer Level
51 Shortland Street
PO Box 1033
Auckland 1140

P +64 9 373 3086
F +64 9 379 0781
E enquiries@propertynz.co.nz
propertynz.co.nz

Corporate Sponsors



McCONNELL PROPERTY





- 2.2 New Zealand is having a ‘housing crisis’, with continual media articles and research emphasising low housing supply, the need for emergency housing, and the flow on effects of intergenerational equity.
- 2.3 Property is currently New Zealand’s largest industry with a direct contribution to GDP of \$29.8 billion (13 per cent). The property sector is a foundation of New Zealand’s economy and caters for growth by developing, building and owning all types of property.
- 2.4 Property Council is the leading not-for-profit advocate for New Zealand’s largest industry - property. Connecting people from throughout the country and across all property disciplines is what makes our organisation unique. We connect over 10,000 property professionals, championing the interests of over 560 member companies who have a collective \$50 billion investment in New Zealand property. Our membership is broad and includes companies that undertake large-scale residential and commercial development projects, including large commercial buildings, industrial parks and retail precincts where people live, work, shop and play across New Zealand.
- 2.5 This submission responds to the [Building \(Products and Methods, Modular Components, and Other Matters\) Amendment Bill](#). Comments are provided on the Bill that are relevant to Property Council and its members.

3. Bill objective

- 3.1 The Bill’s explanatory note states that the Bill’s objective is to “support transformative change for builder sector.” However, we wish to express our disappointment that the Bill focuses on only half of MBIE’s Building System Legislative Reform work.
- 3.2 Over the last couple of years Property Council and our members have highlighted the issues with the current risk and liability settings. Last year [our submission](#) supported MBIE’s proposal of capping council liability at 20 per cent which would likely incentivise more consents (something that is particularly important in today’s economic environment). The proposal to cap council liability was also supported by local authorities throughout New Zealand. We urge the Government to prioritise risk and liability setting in future legislative work.

4. Definition for ‘building product’ and ‘building method’

- 4.1 The Bill introduces a definition for ‘building product’ and ‘building method’.
- 4.2 We are pleased to see the Government has listened to Property Council’s advice and amended MBIE’s proposed definition of a building product from “intended to be used” towards “could reasonably be expected to be used.” Further clarification on what is reasonably expected to be used is within section 9A(3) which better clarifies the definition of a building product and will assist in limiting legal discussions down the track.
- 4.3 The international building code defines each product and method type. We recommend that the proposed Order in Council to declare a product or method aligns with the International Building Code. Particularly given that an Order in Council is a legislative instrument that is generated by the Executive Council and Governor-in-Council and is not discussed by

Parliament as a whole. Alignment with the International Building Code would make great sense to the industry and be easy to implement.

5. Minimum requirements for information on building products

- 5.1 The Bill seeks to introduce minimum requirements for information on building products (i.e. sections 362VA to 362VF). We support these amendments as they will provide a level of certainty for developers. However, further work should be done in this space.
- 5.2 Many of our members already provide this type of information with their consents. For example, Auckland Council currently relies on manufacturing information for their consents. However, we are wary that asking all councils (particularly those who currently do not require this type of information) to receive this information as part of a certification process may result in increased consenting costs. Increased consenting costs at a time of economic recession is concerning.
- 5.3 Our members plan and develop residential and commercial buildings across New Zealand, having to engage with several different council plans and policies. Variation between council plans creates difficulty for applicants. Variations are time-consuming, costly and cause significant flow-on impacts for applicants and developers. We recommend MBIE develop a standardised national form to building product information requirements that can be adopted by local government. This would ensure a consistent national approach is taken and may mitigate our concerns regarding consenting cost increases if the general template is developed at a national level.

6. Creation of specialist framework for modular components

- 6.1 The Bill seeks to improve the building consent process for modern methods of construction (“MMC”) by establishing a voluntary certification scheme that enables registered modular component manufacturers (“MCM”) to be certified to produce modular building components. The modular building components will be deemed to comply with the building code for consenting purposes.
- 6.2 We support the proposal to require a certified and registered MCM to be liable for the performance of the modular components they produce. In practice, this will limit local government liability to the aspects of a building that they are required to inspect (which exclude modular components beyond how they interact with the design). This will allow for risks to more appropriately lie where they fall. We believe this will help encourage MMC into the market – as the typical barriers of local government consents are reduced as the risk and liability shifts towards the manufacturers rather than local government.
- 6.3 There is an industry-wide issue with risk and liability, as local government becomes the ‘last man standing’. Although we are supportive of the Bill’s proposal to address this issue with MMC, it does not address this issue with the wider building system. As a result, local government will continue to be risk adverse as if all parties fall over, they will continue to hold a significant portion of risk. We recommend introducing a liability cap of 20 per cent for local government for building products outside of the MMC model to ensure a fairer allocation of risk and responsibility is introduced across the sector.

7. Strengthening product certification scheme

- 7.1 The Bill seeks to improve the existing product certification scheme (known as CodeMark) by enabling MBIE to administer registers of product certification bodies (“PCBs”) and product certificates. MBIE will have the power to audit PCBs and suspend or revoke registrations. MBIE will also have power to make rules for the product certification scheme which will provide clarity for PCBs across New Zealand.
- 7.2 Over the last few years, our members have been reporting that local government are not accepting CodeMark approved products during the consenting process, using District Plans and other regulatory tools to get around this. We support the Bill’s intention of ensuring a consistent standards framework across New Zealand as this will help remedy this issue.
- 7.3 Currently in New Zealand, the range of building products and suppliers of products are limited. Using a consistent standards framework across New Zealand whilst accepting internationally recognised products is hugely important to expand the New Zealand building products market. We support wider variation of products being permitted into New Zealand. This will better promote competition and encourage innovation of products. We recommend MBIE incorporate internationally recognised products when looking to strengthen our product certification scheme.

8. Use of building levy

- 8.1 The Bill extends the current scope of the building levy to include: “the performance of functions and activities that relate to monitoring, overseeing or improving the performance of the building sector or any party of the building sector, or regulatory systems under other relevant Acts.”¹
- 8.2 As per our 2019 submission to MBIE, we recommend the current levy surplus be spent on:
- National products register
 - Skill shortages and training of apprentices
 - Insurance policies
 - Innovation and other future focused projects
 - Training of local government inspectors to standardise approach across NZ, and
 - Improve quality consenting applications.

The above suggestions will help our industry by; streamlining the consenting process, resolving skill gaps, help to address the issues around risk and liability, and raise the standards of property inspectors to be consistent across New Zealand.

9. Regulations, offences and penalties

- 9.1 We support the Bill ensuring the Chief Executive of MBIE can require information for the purpose of determining whether to issue a warning or ban. We also support the adjustment of penalties and fines to better reflect the seriousness of the offences.

¹Explanatory note <http://legislation.govt.nz/bill/government/2020/0234/latest/whole.html#LMS308050>



9.2 The Bill seeks to extend the current six-month time frame to investigate an offence to 12 months. However, we question whether 12 months to lay a charge is required given MBIE has the power to compel information to support an investigation. As the Bill seeks to no longer rely on voluntary compliance, six months may be an adequate time period to lay a charge under the Building Act.

9.3 We recommend not extending the time period to 12 months but amending section 378 of the Building Act to have a provision which allows for MBIE to apply for an extension to the court. Extensions may be granted if companies or individuals delay providing MBIE with the information they require to lay a charge. This would provide good-faith individuals or organisations with some certainty as 12 months is a long time to have a potential charge sitting with a person or organisation.

10. Public notifications

10.1 We are supportive of this proposal. We agree that newspaper notifications are an out-dated mode of notification.

11. Conclusion

11.1 Property Council supports the overall intent of the Building (Products and Methods, Modular Components, and Other Matters) Amendment Bill, as it is the first step towards the Government's programme of reforms to lift the quality of building work and provide fairer outcomes if things go wrong. .

11.2 While we support its purpose, there is a need to work through the detail of legislation to ensure it delivers on the objectives the Government has set for it. We recommend the following:

- Order in Council aligns with the International Building Code where practicable;
- MBIE develop a standardised building product information form for local government;
- Legislation should cap local government liability to 20 per cent for building products outside of the MMC model;
- MBIE incorporate internationally recognised products in the product certification scheme;
- The levy surplus to be spent on things such as a national products register which could help our system run more smoothly; and
- Amend section 378 to allow MBIE to apply for an extension to the Court should an investigation take longer than six months.

11.3 Thank you for the opportunity to submit to this consultation. Any further queries do not hesitate to contact Katherine Wilson, Senior Advocacy Advisor, email: katherine@propertynz.co.nz or cell: 027 8708 150.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Leonie Freeman', written over a horizontal line.

Leonie Freeman
CEO Property Council New Zealand