

BOINZ - Canterbury/Westland Branch Training  
and Networking Event  
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**‘satisfied on reasonable grounds’**

Three things a BCA must do when 'satisfied  
on reasonable grounds

**Section 49** A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

**Section 94** A building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds (a) that the building work complies with the building consent; and .....

**Section 102** A building consent authority must issue a compliance schedule if (a) the compliance schedule, or an amended compliance schedule, is required as a result of building work; and (b) the building consent authority is satisfied, on reasonable grounds, that the specified systems for the building are capable of performing to the performance standards for those systems.

What is a manufactured building solution?

Manufactured building solutions are building components or buildings made offsite: i.e. prefabricated away from the final building site. They can range in size and complexity from relatively straightforward components through to whole wall panels, modules and complete buildings. They can be fully assembled offsite or require onsite assembly

# Examples of manufactured building solutions (components)

- Pre-nailed frames
- Roof trusses
- Window and door assemblies
- Lifts
- Pre-cast concrete panels
- Shower mixer
- Ventilation fan
- Shower cubicle assemblies
- Bathroom pods
- Wall assemblies
- Shipping container
- Flat-pack building
- Modular building
- Prefabricated building
- A length of 90 x 45 pinus radiata PG SG8 H1.2

# When is it building work?

## Section 7

**building work**— (a) means work—(i) for, or in connection with, the construction, alteration, demolition, or removal of a building; and (ii) on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and

**construct**, in relation to a building, includes to design, build, erect, prefabricate, and relocate the building

# When is it building work?

A number of judicial decisions have decided that 'building work' must be associated with the construction or erection of a building on a particular site. If the work is generic for use in unspecified or unknown buildings and is not associated with a particular site where the building will be located, it will not be building work.



# When building work is involved

Manufacturing of building solutions involves building work if **all** the following apply:

- it involves an activity relating to a building's construction (as defined in the Building Act) **and**
- it involves manufacturing a specific building solution for a particular building at a particular location in NZ (i.e. it is made to order, there are plans and specifications for the construction or alteration of the building and the building work may or may not require a building consent), **and**
- the manufacturing takes place in NZ

# When building work is not involved

Manufacturing of building solutions does not involve building work if **any** of the following apply:

- the manufacturing is not an activity in connection with the construction of **a building or**
- it involves manufacturing a generic product for use in any building or structure (as building work is defined as 'work ...for, or in connection with ...a building' and must therefore relate to a particular building), **or**
- the manufacturing is for export, **or**
- manufacturing takes place overseas (the definition of building work relates to work done in NZ)

# Manufactured building solutions (evidence of complying with the building code)

- Manufactured building solutions are building components or buildings made offsite (away from the final building site).
- Whether the manufacture of these components is building work or not they must comply with the relevant performances of the building code when installed in the building
- The building consent application must include evidence of how the component will comply with the building code. The building consent application should include both the onsite building work and any offsite manufacturing.
- Manufacturers or suppliers might be able to demonstrate building code compliance by:
  - providing good technical evidence about their building components (for example, using a product technical statement),
  - membership of relevant industry schemes (for example, the Window Association of New Zealand, WANZ)
  - independent testing and assessments
  - appraisals
  - product certification.

# Manufactured building solutions (factors for sufficient evidence)

- A building consent authority will need to decide, whether the evidence is sufficient on reasonable grounds. A BCA will generally consider factors such as the building component's:
  - size and complexity
  - contribution to critical aspects of building performance (for example, structure or weathertightness)
  - previous use (commonly used or innovative)
  - manufacturer or supplier (established or unknown)
  - factory location (local or offshore).

# Manufactured building solutions (using inspections and quality assurance)

- BCAs carry out inspections during building work so they can be satisfied on reasonable grounds that the building work complies with the consent – this may include visiting the manufacturer to inspect the work carried out offsite
- Sometimes construction will take place in a different region to where the applicant is applying for consent (ie the area where the final building is located). In this situation councils may undertake inspections through a third party or by engaging council officers from the region where the construction is taking place.
- To minimise the need for inspections the manufacturer could provide the council with details of their quality assurance processes, as part of the consent application. The BCA might take this as additional assurance of building code compliance and manufacture to a consistent standard.
- Quality assurance process details could include:
  - factory processes
  - manufacturing controls
  - details of any installation or assembly requirements
  - controls to ensure building code compliance when incorporated into a particular building project
  - details of any transportation requirements or pre-installation protocols (to minimise the risk of damage in transit or of substandard components being accepted at the building site)
  - any independent or self-certification of the factory.

Good guidance for BCAs on this subject  
can be found in Determination 2016/039  
and 2016/040

# Related determinations

[2016/039](#) and [2016/040](#): Regarding the grant of a building consent for a modular house, and the use of modules designed locally but prefabricated offshore

## Summary

Note: The decisions in these determinations were confirmed on appeal to the District Court. See: Auckland Council v S Liaw (District Court, Auckland, 30 June 2017, CIV-2016-004-001575). [Appeal judgment](#) [PDF 188 KB]

These determinations considers whether the authority has exercised its powers correctly in granting a building consent for a house design that had a national multiple-use approval and consisted of modules that were manufactured offshore. The determination considers the extent to which the Building Act and its Regulations apply to the prefabricated modules, and discusses the range of information building consent authorities can seek to satisfy themselves that the construction of the prefabricated components will comply with the plans and specifications.

## **6. The need for BCAs to check the compliance of components in a building consent**

6.1 I have included the following discussion for the benefit of all BCAs to assist them in their assessment of the compliance of components in a building consent where those components may be large, complex or involve offsite prefabrication.



6.2 At the time of granting a building consent, a BCA should carefully consider the nature of the proposed building work and prefabrication contained in a building consent application. For example, some of the factors that might change work that is "building work" to being not "building work" include where the prefabrication takes place (i.e. whether it is carried out in New Zealand or offshore), the reason for the prefabrication (whether it is for a particular building or as generic components for an unspecified use and its final destination (a site in New Zealand or a site overseas)).

6.3 The plans and specifications accompanying a building consent application may cover a wide range of prefabricated components: for example, door and window assemblies, to framing, to building systems, to modules or kitset elements. It is up to the BCA in each case to decide what level of information and assurance is required in respect of the building work and components in a building consent application.

6.4 When a BCA is considering a building consent application, it may be that some components are commonly used and have a sound track record of compliance with the provisions of the Building Code. In this case, a BCA may be happy to accept these components without further assurances of their compliance. However, other components may be novel or unknown to a BCA and it would therefore be prudent for them to examine the claimed performance of these components more carefully and seek further evidence of performance if necessary.

6.5 A BCA is entitled to impose conditions on building work and the use of components to assure itself that these will comply with the plans and specifications accompany a building consent application. If a BCA is not satisfied that prefabrication work will comply with the plans and specifications or that particular components will comply with the Building Code, it should seek further information or assurances from the building consent applicant. The information and assurances could concern controls on, third party oversight of, or assessments on completion of, the prefabrication work; e.g. in relation to the prefabricator's quality assurance plan, plant audits, project records, and LBP supervision. The information and assurances available are likely to depend on the degree of supervision and quality control of the prefabrication work. They could be sourced in New Zealand or overseas.

6.6 Assurances regarding completed prefabricated components could include independent assessments or appraisals, product technical statements, test results, product certificates, compliance with Acceptable Solutions or Verification Methods, or testing against relevant New Zealand or international Standards or industry codes of practice.

6.7 To conclude, at the time of granting the building consent it is the role of a BCA to decide what checks will be necessary to provide itself with satisfactory assurances that prefabricated components, when completed, will comply with the plans and specifications included in the building consent application. If satisfactory information and assurances regarding the checking of building work or components are not forthcoming, a BCA should consider refusing to grant the building consent. It is not for a BCA to take upon itself the risk that completed prefabricated components might not comply with the plans and specifications. A BCA has all the tools it needs to manage any potential liability arising from the risk that the completed prefabricated modules may not comply with a building consent

6.8 A BCA also has a number of powers under the Act to enforce compliance with any building consent conditions it imposes when granting a building consent. For example, when checking components a BCA is entitled to issue a notice to fix where that component is not in accordance with the plans and specifications or building consent conditions.

# One building, one building consent

A smart and efficient approach to consenting when building projects involve manufactured building solutions. Where there is one building, there is one building consent. The building consent should be granted by the BCA in the area where the building is to be finally located, not at the location of any offsite manufacture (e.g. a factory which may be in another BCA's region). The building consent will cover any manufactured building solutions and the onsite building work.



# One building, one building consent

## Conclusion on Christchurch City Council practice note

- Christchurch City Council recommends one building consent for a relocated building. This building consent is granted by the building consent authority where the building is finally located, not the building consent authority at the location of any offsite prefabrication.

# Product assurance

Doing due diligence to new or unknown building products or systems

Recent media attention on the lack of quality of some building products

# Tips for confirming the quality of the manufacturer or supplier's claims

- Check how long the product or system has been available and whether there are sufficient examples of successful use.
- Identify the specific building code clause(s) for which compliance is being claimed.
- Check for any product certification, testing or appraisals to meet the building code.
- Check the product or system use against the conditions or limitations for its use
- Check the qualification and independence of the organisation providing the supporting information
- Consider the potential impact of a failure of the product or system
- Internet search for potential issues around similar products or systems

# ‘satisfied on reasonable grounds’

Determination 2016/046

**6.3** “The requirement for a building consent authority to make an objective judgement that takes into account all the relevant circumstances means decisions will vary according to the circumstances and the evidence available. For example, a building consent authority will require stronger and more relevant evidence to support a decision involving the safety of occupants, while evidence that is not as strong or relevant may be sufficient for a decision about a building’s amenities. Less probative evidence will be required to support a decision where the evidence all points to the same conclusion, but more probative evidence will be required where there are inconsistencies in the evidence and assessments have to be made of the weight to be given to different pieces of evidence.”

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**6.4** “The reasonable grounds test allows a range of factors to be taken into account when considering the weight to be given to evidence, including:

- the classified use of a building and its importance level, whether the relevant building code obligations involve public safety or a building’s amenities
- the product’s in-service history, the credibility and independence of test data relating to the product
- whether the product is novel, is it similar to other systems in common use, does it involve complex interactions with other building elements
- the skills and experience of the designer or installer.”

# Questions

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