

## Submission of BCTRAG Agenda Items

Submitted by:  On behalf of:	Karen Holland  <b>Mainland Cluster Group of Building Consent Authorities (BCAs), known as the Mainland Group, comprising the following 14 Council BCAs:</b>  Ashburton District Council, Buller District Council, Christchurch City Council, ECan, Grey District Council, Hurunui District Council, Kaikoura District Council, Marlborough District Council, Nelson City Council, Selwyn District Council, Tasman District Council, Timaru District Council, Waimakariri District Council and Westland District Council	Submitted on:	15/05/2019 to <b>BCTRAG</b>  08/04/2019 to <b>Minister</b>
Risk Title:  What is the risk	<b>Circumventing Building Consents</b>  Inefficient and inconsistent regulation of buildings occurs as consent requirements are circumvented	Confidential data:  Check if communication is to be limited to permanent BCTRAG members	<input type="checkbox"/>
Building Code Clause impacted:  If known	<p><b>Building Act 2004 application is impacted – intended and/or perceived exemption from the need for a Building Consent means that any Building Code clause is potentially impacted</b></p> <p><b>Structures of particular concern</b></p> <p>Attempts to circumvent building consents are of particular concern, but not limited to, circumstances where structures are built off-site then moved to a site and intended for occupation by people. The Mainland Group BCAs’ concerns in this respect are currently focussed on the following types of structures:</p> <ul style="list-style-type: none"> <li>• purpose built structures that are designed, and often marketed, as suitable for placing on a site and occupying without requiring a building consent or any other BCA or Council approval;</li> <li>• shipping and other containers;</li> <li>• vehicles which may or may not be movable and/or registered with NZ Transport Agency, including trailers; and</li> <li>• structures of various other configurations which may not have the appearance of a building but are intended to be occupied without requiring approval.</li> </ul> <p>These structures are being used for a wide variety of purposes ranging from fully self-contained homes through to temporary workers accommodation, Air BnB accommodation and spaces for commercial use.</p>		
Potential impact or Harm arising from this Risk  Consider the impact this risk may cause if it occurred e.g: - Financial, - Innovation stifled, - Loss of life, - Building damage, - Environmental	<p><b>Deterioration of public wellbeing</b></p> <p>The current regulatory approach does not encourage speedy identification or resolution of this risk. The mostly reactive, resource and time consumptive way in which the circumvention of building consents for the above types of structures is currently dealt with increases both the likelihood and extent of impact that this risk can have on public physical and psychological wellbeing (e.g. through deterioration of health or increased exposure to hazards that may occur through occupation of sub-standard buildings) as</p>		

<p>- Productivity loss - Others....</p>	<p>well as environmental impacts (e.g. via the nature and manner of effluent discharge, detraction from amenity values, etc).</p> <p><b>Productivity loss, high human resourcing and financial costs</b></p> <p>When BCAs endeavour to regulate the design and construction of such structures a Determination from MBIE is frequently required to deal with their specific, and often unique, nature. If a Building Consent appears to be required but has not been obtained, individual prosecutions can be taken by the BCA. This is a highly human resource consumptive process for both the public and BCAs which can be protracted over considerable time, involve considerable expense for all parties and, by its very nature, involve uncertainty about the outcome.</p> <p>The absence of national guidance about such structures and their associated building consent requirements also means that solutions to regulatory issues are frequently developed on a one-off basis by BCAs and a consistent approach is not taken across the country.</p> <p>The costs and uncertainty associated with the current process are therefore amplified for BCAs, developers and marketers of such structures, as well as the wider public who are purchasing, using or are otherwise affected by their location and use, as each BCA develops and communicates their own approach.</p> <p>The productivity of all parties involved in this suite of regulatory processes is therefore negatively impacted.</p>
<p>How prevalent is this risk now and in the future</p> <p>Consider: - impacted population - will the risk grow over time with or without intervention</p>	<p>This issue is very prevalent – it regularly experienced (multiple times each month) by each of thirteen Mainland Group BCAs (i.e. all Mainland Group members except Can). Mainland Group BCAs are also aware of this issue being experienced by other BCAs throughout the country.</p> <p>As well as BCAs themselves, impacted populations include but are not limited to the following:</p> <ul style="list-style-type: none"> <li>• MBIE through the determinations process;</li> <li>• Vendors of various building “solutions” (e.g. containers, a range of modular homes, tiny houses, houses on wheels and various other structures) that are actively marketed and promotes as not requiring a building consent without establishing the correctness of this claim;</li> <li>• Purchasers of properties that already have unconsented buildings on them, where the purchaser is unaware that a building consent is required (these purchasers may have been actively advised by the vendor that a building consent is not required or may simply be unaware that one is needed);</li> <li>• Occupiers of unconsented structures, which includes a range of groups in addition to families, groups or individuals that may be renting a property, but notably seasonal workers requiring accommodation and Air B’nB customers;</li> <li>• Neighbours of unconsented properties who consider them to cause a range of nuisance effects (e.g. create environmental impacts via the nature and manner of effluent discharge, detraction from amenity values, etc);</li> <li>• Other local government and central government regulators that may be required to deal with the effects generated by unconsented buildings.</li> </ul> <p>This issue is expected to continue to grow as more people are seeking more affordable homes. In addition, more unconsented structures are being used for a range of commercial (e.g. offices) and income generating purposes (e.g. Air BnB).</p>
<p>Factors influencing magnitude of risk</p> <p>Consider:</p>	<p><b>Housing affordability</b></p> <p>As people are increasingly seeking more innovative ways to provide accommodation</p>

<p>- How urgent is addressing the risk to country or sector. - what is the opportunity cost of the risk materialising</p>	<p>that meets their various needs in an affordable way, BCAs are also being increasingly pushed, challenged and disrupted by issues associated with circumvention of building consents, especially where the above types of structures are being used for building purposes.</p> <p><b>Risk management is beyond scope of currently proposed changes to the Building Act</b></p> <p>It is understood that changes to the Building Act 2004 are currently being developed by MBIE to better deal with modern methods of construction, including prefabricated buildings and other off-site manufacturing approaches. However, the nature of the above structures, and associated efforts to circumvent building consent requirements, do not involve modern methods of construction and are perceived to be beyond the scope of changes that are currently being worked on by MBIE.</p>
<p>What caused the risk to come to your attention?</p>	<p>This issue has been brought to Mainland Group members' attention via the following:</p> <ul style="list-style-type: none"> <li>• Complaints received by Council BCAs from all impacted groups/ populations identified above;</li> <li>• Identification of the issue by BCA and other Council staff as they perform their roles;</li> <li>• Discussion item at cluster group meetings;</li> <li>• Media coverage of directly related prosecutions.</li> </ul>
<p>Supporting files attached</p> <p>- Journal papers - Research</p>	<ol style="list-style-type: none"> <li>1. Letter from Mainland Group to Minster;</li> <li>2. Minster's response; and</li> <li>3. Report to Environment Committee, Marlborough District Council on Container and Modular Buildings as Houses (includes discussion of issues, implications for Council and proposed compliance approach)</li> </ol> <p><b>Proposed solution</b></p> <p>In order to help ensure that public wellbeing can be assured through the provision of safe and healthy buildings as intended by the Building Act 2004 and associated regulations, in an efficient and consistent way, the Mainland Cluster Group of BCAs is therefore requesting from you provision of guidance on how structures of the type described here and associated circumventing of building consents should be regulated. It is also suggested than an associated education programme would be useful.</p>