

# An awkward fit

Modern methods of construction may be the big new hope of our building industry, but they present problems when it comes to compliance with the current regulatory framework, as a recent court case shows.

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**AS THE** construction industry has tried to achieve greater efficiencies and productivity, technological advancements and automation have led to the rise of modern methods of construction (MMC) more akin to manufacturing processes than traditional construction.

## ***Inherent difficulties for MMC***

While MMC can be used to produce substantial parts of buildings on a large scale, the current regulatory framework is a major stumbling block in realising the greater efficiency and productivity it can offer in New Zealand.

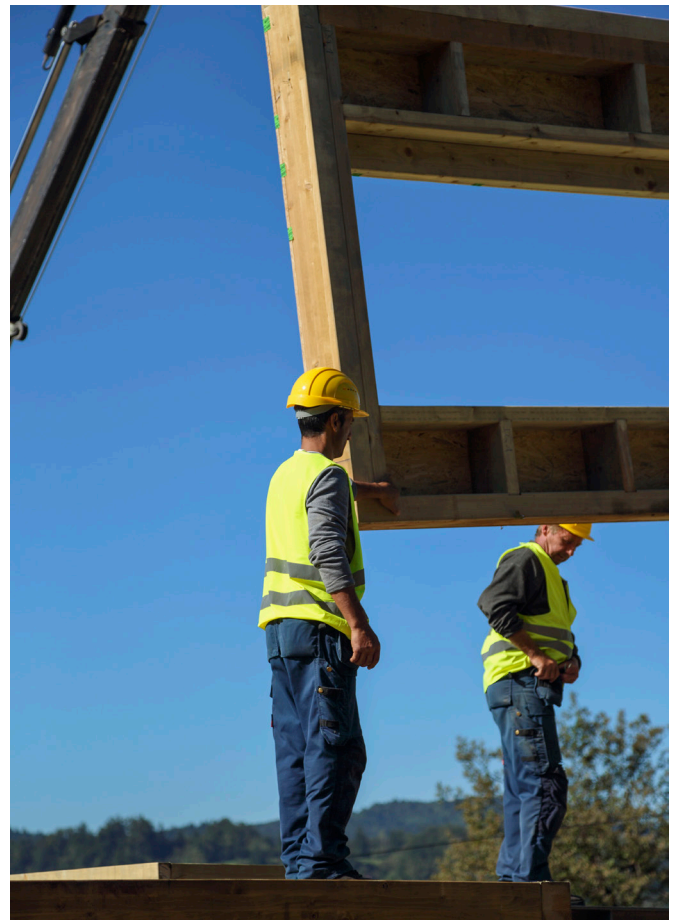
There are some inherent difficulties between MMC and the current inspection regime, which does not necessarily cover these forms of construction. This is one of the issues that will need to be resolved to support the use of MMC in New Zealand.

## ***Efficiency versus regulation***

MMC processes are likely to occur offshore. This makes it impractical for inspections to take place and, given the high level of automation, potentially impossible if the components are enclosed during the manufacturing process before inspection can take place.

## ***Inspection issue as completed offshore***

The inspection issue was considered in the relatively recent test case of *Auckland Council v Liaw* [2017] NZDC 13532. In *Liaw*, building consents were issued by Auckland Council for the construction of residential buildings where a substantial proportion of the buildings were to be prefabricated offshore. ➤



However, once it came to issuing the Code Compliance Certificates, Auckland Council could not be satisfied that the prefabricated components were completed in accordance with the plans and specifications given the prefabrication was completed offshore. As a result, Auckland Council did not consider it was able to issue the Code Compliance Certificates.

### **MultiProof but still need building consent**

As part of the application and consenting process, Auckland Council had relied on a national multiple-use approval - MultiProof - granted in respect of the prefabricated components. A MultiProof is a statement by the Ministry of Business, Innovation and Employment (MBIE) that certain plans and specifications comply with the Building Code and allows builders to obtain consent for approved standard designs to be used multiple times.

Notably, section 19(1)(ca) of the Building Act 2004 sets out that a building consent authority must accept that a MultiProof complies with the Building Code if the conditions of that MultiProof are met. (For more on MultiProof, see the article on pages 76-77.)

The purpose of a MultiProof is to make the building process more efficient. The MultiProof plans and specifications have already been approved so do not require the same screening by a building consent authority - a building consent application containing a MultiProof must be processed within 10 working days instead of the standard 20 working days.

However, a building consent still needs to be obtained for each build even though the plans and specifications have MultiProof status.

### **Court says similar processes must be followed**

Notwithstanding the MultiProof status, when it came to the inspection process, the Court in *Liaw* provided that there is no difference in approach whether a prefabricated component is made in New Zealand or offshore. It should still be subject to the same or similar inspection and certification processes.

'Inspection' is defined in section 90 of the Act as 'the taking of all reasonable steps to ensure that building work is being carried out in accordance with a building consent'. The Court in *Liaw* concluded that if the building consent applicant is not able to or not willing to comply with the inspection regimes, it will result in either the building consent or the Code Compliance Certificate not being issued.

In the end, Auckland Council subsequently undertook a full inspection of the buildings and was able to issue Code Compliance Certificates. This meant the Court did not need to consider grounds for refusing to issue a Code Compliance Certificate on the basis that

the prefabricated components were manufactured offshore with limited opportunity for inspection.

### **Offshore inspections should be considered**

This case highlighted the need for developers who wish to use MMC to thoroughly examine whether appropriate inspections can be made offshore to satisfy the Building Code once those parts are incorporated into a building in New Zealand. Councils should also consider whether those inspections and the component itself can achieve Code Compliance once incorporated into a building when issuing building consents.

The approach in *Liaw* highlights the awkward fit of the regulatory framework with MMC, which somewhat erodes the efficiency benefits that MMC has been developed to achieve. While quality and safety need to remain paramount, efficiencies of MMC cannot be fully taken advantage of where the regulatory framework lags behind the technological advancements. This is especially problematic given New Zealand's high demand for efficient and cost-effective construction in the social and affordable housing space.

### **Legislative reform under way**

The good news is that MBIE has recognised the issues between MMC and the regulatory framework and is looking to update it to hopefully enable the use of MMC to flourish in New Zealand. MBIE released a discussion paper in April outlining a proposal, among others, to future-proof the building regulatory framework for MMC. Key features of this proposal include:

- enabling a manufacturer certification scheme for repeatable manufacturing processes used to produce building work
- clarifying what the roles and responsibilities for industry participants will be when the new framework is in place
- minimising duplication in the consenting regime.

### **Regulations likely to change in 2-5 years**

The MMC proposal has received strong support from submitters in response to the April discussion paper, and we look forward to seeing the government's first policy decisions on the reform programme, which is expected later this year.

MIBE has indicated that an announcement will be made following Cabinet's decisions and that legislative changes are likely to be rolled out over the next 2-5 years with further opportunities for the sector to engage on the reforms throughout the process. ◀