

SUBMISSION TO THE ROYAL COMMISSION OF INQUIRY INTO BUILDING FAILURE CAUSED BY CANTERBURY EARTHQUAKES

15 DECEMBER 2011

BACKGROUND TO THE NEW ZEALAND CONSTRUCTION INDUSTRY COUNCIL

The New Zealand Construction Industry Council (CIC) is a non-governmental organisation promoting the interests of the broader building and construction industry. Thirty organisations are members of CIC. These organisations are listed in Appendix 1 of this submission.

Development of this submission was led by a subcommittee of interested member organisations of the CIC, and then circulated to all members for review – so this submission can be read as representing the views of the CIC's member organisations.

This submission is partly based on a report by Don Hunn which was prepared for and approved by the CIC, and more fully based on a CIC-developed "model" for a future Building Act/regulatory framework. A copy of these documents are attached as Appendices 2 and 3 respectively.

EXECUTIVE SUMMARY

The CIC supports continuation of the current performance-based regulatory system but believes a clearer hierarchy of building and construction policy and compliance documents is needed. Such a hierarchy should include a policy statement and ensure clarity around how the Building Act 2004, NZ Standards, Building Code and guidance documents relate to one another. We also believe the respective roles and responsibilities of the Department of Building and Housing, Standards New Zealand and BRANZ need better clarifying.

The CIC believes the Building Code must be supported by an up-to-date suite of National Standards. The present suite of over 650 building and construction Standards referenced in the Building Code and other regulatory documents are well overdue for review. In addition many Building Code clauses do not have adequate means of compliance. This results in many Alternative Solutions and as a consequence additional cost required to demonstrate compliance. We encourage the Government to make a clear commitment to Standards New Zealand as the prime source of standards development expertise and capability. Standards New Zealand needs adequate and secure funding to ensure Standards are developed and reviewed appropriately so the integrity of the Building Code is maintained. We also encourage the Department of Building and Housing to develop a specification for "Standards with regulatory suitability" so National Standards can be incorporated into regulations in a timely fashion.

We note there are other aspects of the regulatory framework besides the legislative framework and regulatory action. We thus recommend the Department of Building and Housing give consideration to policy instruments other than regulation as a means of achieving policy objectives.

We suggest New Zealand move to having a single national regulatory body for handling building consents, with that regulatory body having regional representation. This model would ensure smooth interfacing with the RMA consenting process while also ensuring national consistency. It would also enable regulators to have the expertise and robust systems necessary to operate an efficient and effective regulatory regime.

We believe that Government-funded research and development funding is currently focussed disproportionately on seismicity and geotechnical considerations. While this is informative and partially necessary, we suggest New Zealand should also be undertaking more future-focussed research to develop damage avoidance technology to protect human life and the value of assets.

Finally, there has already been some public and industry debate on whether the Building Code and accompanying Standards should focus solely on saving/protecting lives, or whether they should also provide for building durability. We encourage this debate. Historically the decision as to the level of protection to be accorded has been left to Standards committees, whereas the CIC considers this to be a broader and higher policy decision that need to be made by the Government as a whole on behalf of the New Zealand public.

THIS SUBMISSION

This submission provides comments on the current regulatory system and notes the need for a clear hierarchy of policy and compliance documents and better definition of the roles and responsibilities of the Department of Building and Housing, Standards New Zealand and BRANZ. The submission also comments on the need for a single means of obtaining regulatory approval for building work, the local government application of the regulatory framework, the need for skilled personnel to be employed by regulators and the need for improved funding for research into damage avoidance technology.

THE CURRENT REGULATORY SYSTEM

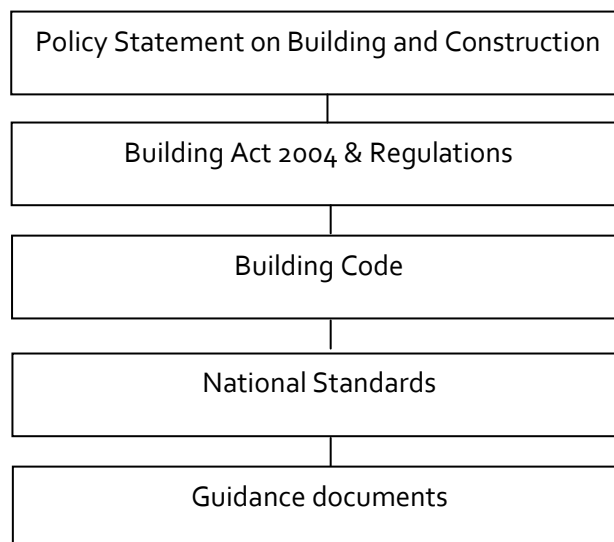
The CIC believes the current performance-based system should continue. However, we believe New Zealand should more fully adopt the latest model for building regulation as designed by the Inter-Jurisdictional Regulatory Collaboration (of which the Department of Building and Housing is a member). The latest model focuses on defining and quantifying levels of tolerable performance and incorporation of some of these measures into regulations. We believe New Zealand needs to determine the higher level objectives it is asking the building and construction sector to achieve. In particular an assessment of the adequacy of the current life protection requirement is required. We believe the regulatory framework needs increased emphasis on public safety, serviceability of structure and reparability of structure. In addition the cost (risk)/benefit trade-off New Zealanders are willing to accept needs to be determined – or at least made more overt for building owners and users to make more informed decisions.

We further set out below our view on changes needed to the current regulatory system.

NEED FOR CLEAR HIERARCHY OF BUILDING AND CONSTRUCTION POLICY AND COMPLIANCE DOCUMENTS

We believe there is a lack of clarity and understanding as to how the Building Act 2004, Building Code, NZ Standards and guidance documents relate to one another. We are concerned that the Building Act 2004 and the Building Code are not adequately underpinned by documents with sufficient specificity as to the standards of building performance expected. That is there are too many Building Code clauses that have no effective means of compliance (Verification Methods or Acceptable Solutions) and thus rely on expensive bespoke testing or solely on professional opinion. We also believe there is inconsistency and confusion between information contained at differing levels in the existing documents, as well as a strong industry preference to making all the requisite documents more readily accessible. Action is urgently required to sort out the connection between building and construction policy documents to give the sector the consistency and certainty it needs.

We believe a clear hierarchy would help provide the consistency, certainty and clarity needed and the CIC recommends the hierarchy below be adopted.



This hierarchy would see a policy statement setting out the fundamental expectations and objectives of building and construction. The policy statement would be supported by the Building Act 2004 and Regulations. The Building Act and Regulations would themselves be supported by the Act and Regulations-derived Building Code. New Zealand Standards would sit below the Building Code as approved means of compliance documents, with industry standards, guidance documents and practice notes sitting further down the hierarchy.

While proposing this hierarchy we also note the importance of the balance between regulator-developed compliance documents and consensus-based industry standards, guidelines and practice notes. A risk-based framework for product and systems assurance should align the standards development methodology and level of specification with the level of risk associated with the use of the product or process.

The individual components of the hierarchy are discussed below, along with discussion of changes needed to improve the components.

Policy Statement on Building and Construction

The CIC believes an important and currently absent part of the policy hierarchy is a relevant national policy statement. Creation of a policy statement would help provide a succinct explanation of what the nation expects of its building and construction. The CIC believes the policy statement must clearly and succinctly set out what is expected of the built environment – and accordingly of the building and construction industry – in New Zealand.

This statement should include setting the appropriate level of tolerable building performance in terms of life safety, resilience, health of occupants, acceptable risk, affordability and sustainability. It is also important the policy statement is able to adapt to emerging societal expectations of sustainability, urban intensification and aging population. While it is acknowledged that some aspects of the discussion in developing such a statement might be uncomfortable CIC believes it is important for it to become more overt and in the public domain.

Building Act 2004 and Regulations

The Building Act 2004 must complement and be consistent with all other parts of the regulatory framework. CIC has worked to develop a “model” for a future Building Act/regulatory framework. The proposed model is attached in appendix 3.

Building Code

We believe the Building Code needs to be supported by an effective system of product certification and an effective system for declaring proficient workmanship, such as constructors’ producer statements. An effective system for validating alternative solutions is also needed and alternative solutions must be required to be proposed by professional designers and peer reviewed for quality assurance.

We support the need for an importance and complexity matrix for all projects. Projects receiving a high score should automatically require a design peer review. All but the simplest projects should require construction monitoring/observation by the designers.

National Standards

The CIC believes it important that the Building Code be supported by an up-to-date suite of national Standards, comprising an appropriate mix of international, trans-Tasman and NZ-own Standards. The present suite of over 650 building and construction Standards referenced in the Building Code and other regulatory documents are well overdue for review. We understand this situation has eventuated as a result of Standards New Zealand not being able to secure sufficient secure funding for renewal and replacement of the Standards within the building and construction portfolio.

Standards New Zealand has been in existence for 80 years as the operating arm of the Standards Council, a Crown entity with the specific purpose of developing, promoting and encouraging and facilitating the use of standards in New Zealand. Despite this long established entity, the Government has not articulated a clear commitment to Standards New Zealand. The Government has also not ensured Standards New Zealand has adequate and secure funding to maintain its expertise and capability. This needs to be addressed urgently, as a review of the suite of building and construction Standards is critical to ensure the integrity of the Building Code.

The CIC recommends Standards New Zealand be jointly funded by the Government and industry to ensure funding certainty. One industry-funding model is that each licensed building practitioner should pay a modest fee (\$75 to \$100) as part of their annual licence, with this being the industry contribution. These funds should be matched by funds from the Building Levy (received by the Department of Building and Housing under the Building Act 2004), with this representing the public or consumer contribution. The resulting pool of funds should then be used for the ongoing development and maintenance of building-related Standards and should pay for free online access for those licensed building practitioners and others opting to pay into the scheme.

Together with acknowledgement of essential in-kind contributions from industry players, this funding model will ensure Standards committees have broader representation, rather than merely having members who can afford to be on the committee. This will help ensure continued industry involvement towards the development of interventions to deliver public goods.

The CIC believes that even with joint funding Standards New Zealand should continue to be able to charge users for access to Standards. However, as indicated above, the CIC firmly believes that Standards cited in the Building Code and associated documents should be available at minimal or no cost, in electronic form where possible. We believe that ultimately there could be a web portal through which licensed building practitioners and others paying into the scheme could log on and access the Building Code, compliance documents, Standards, advisory notes, BRANZ appraisals and other documents.

We note a process is needed for prioritising which Standards are developed, reviewed and amended. We believe the Government needs to be more involved in this process. The CIC believes it would be beneficial for the Department of Building and Housing to lead this process, in consultation with a Building Advisory Panel consisting of industry players. The Department could recommend to the Panel the type of document (standard, guidelines or other document) needed, the best way for that document to be developed (e.g. whether it should be developed by the Department of Building and Housing, Standards New Zealand or industry) and the most appropriate development process. Using this process would provide certainty to those involved in document development and ensure clearer lines of responsibility for documents being developed. The process would also enable BRANZ to ensure its research programme aligned with the development programme.

In relation to the particular content of National Standards we believe they should provide means of compliance through a mix of acceptable solutions and verification methods for all clauses of the Code. In addition there should be clear performance objectives for alternative solutions to be reviewed against

We believe it important that the national Standards be suitable for regulatory incorporation, and draw on best international practice. We therefore recommend the Department of Building and Housing be asked to develop as a matter of urgency a specification for “Standards with regulatory suitability”. Such a specification would ensure Standards developed met the requirements of the Department of Building and Housing (for citing in the Building Code) and the Standards Act 1988 (for Standards Council approval as a National Standard). Introduction of this specification would greatly enhance the rate at which national Standards are cited.

Guidance documents

The CIC believes the regulatory regime must be seen as more than just the legislative framework and regulatory action in response to it. We recommend the Department of Building and Housing give consideration to policy instruments other than regulation as a means of achieving policy objectives. We acknowledge the Department already makes available advisory guidance to the industry, but we believe the Department could increase its provision of information and guidance to consumers and homeowners as a way of further contributing to the regulatory regime.

NEED FOR CLEAR ROLES, RESPONSIBILITIES OF DBH, STANDARDS NZ & BRANZ

Associated with the need for clearer specification of the relationship between documents is the need for clearer specification of the respective roles and responsibilities of the Department of Building and Housing, Standards New Zealand and BRANZ. It is imperative the roles and responsibilities be clearly articulated, along with clearer explanation of the processes of investigation, specification and promulgation of Standards.

NEED FOR CLEAR MEANS OF OBTAINING REGULATORY APPROVAL FOR BUILDING WORK

The CIC believes there needs to be clear means of obtaining regulatory approval for building work, without duplication of steps or stages. Under such a process:

- Designers would provide sufficient documentation of designs to owners so those owners can submit those documents in the knowledge they are likely to demonstrate there are reasonable grounds for the relevant regulator to decide designs comply with the Building Code.
- Builders would decide how to construct the designed building, manage the construction process, and at its conclusion provide sufficient evidence so the owners can submit that evidence in the knowledge it is likely (taken in conjunction with evidence collected directly by the regulator) to demonstrate there are grounds for the regulator to issue a code compliance/consent checking certificate.
- Where appropriate (for example, where alternative designs that might be considered difficult to construct) the role of designers observing construction to confirm correct implementation by the builder is recognised and specifically included in the regulatory approval process.
- There is a system to cope with situations where, for legitimate purposes, building work might be carried out in advance of issue of a modified building consent.

- Any registrant on a relevant national statutory register is entitled to present a producer statement, either in support of an alternative design, or to declare the quality of building work undertaken. Other lists of authors are only used where no national register exists.
- The statutory-backed national registration system comprises three occupational groups, each separately administered as a multi-competence level system – engineers, architecture/design and construction. In addition there should be a multi-part register for those undertaking work in regard to certification of specified systems but who could not reasonably be expected to be on the other registers.
- Producer statements and memoranda for restricted building work are consolidated into two nationally-consistent documentation systems, one based on proof of workmanship, the other on providing a standardised means for providing evidence towards alternative solution acceptance.
- Information from the consenting process on the quality of work submitted by individuals is consistently provided to occupational registration authorities to assist those authorities to run educational and complaints processes to support consistent competence standards.
- Use of written contracts is required so disputes and liabilities are almost invariably decided in contract, and not through claims in tort.
- Clear disclosures of limitations are required of parties involved in the design or construction process, and the building owner is adequately informed on the ongoing maintenance that might reasonably be required.
- Clear information for building owners is provided from a single central source.

NEED FOR SINGLE NATIONAL REGULATORY BODY TO PROCESS BUILDING CONSENTS

The CIC believes New Zealand needs a single national regulatory body to process building consents, with that body having regional representation. This model would ensure smooth interfacing with the RMA consenting process, and allow for improved national consistency. We believe the model also needs the following:

- Risk-based consenting applied to work involving alternative solutions, with clear protocols to define the requirements for evidence at different levels of risk.
- Clear and unambiguous information to allow applications involving only acceptable solutions and applications involving multi-use consents to proceed rapidly.
- The regulatory body delivering services locally as well as centrally, applying modern technology to its processes to ensure high quality service is perceived by applicants.
- Consistent national education and training of building officials.
- The national regulatory body taking responsibility for rapidly identifying emerging issues and ensuring these are addressed.

REGULATORS MUST HAVE SKILLED PERSONNEL

The CIC notes the importance of regulators having sufficiently skilled personnel. We encourage local and central government to ensure regulators in the building and construction sector have the people and systems necessary to operate an efficient and effective regulatory regime.

FUNDING OF R&D FOR DAMAGE AVOIDANCE TECHNOLOGY

The CIC notes that government funded research and development funding is currently focussed on seismicity and geotechnical considerations. We believe future-focussed research is also needed to develop damage avoidance technologies (such as base isolation, PRESS, as well as other steel and timber systems) which would protect both human life and the assets as well, thus reducing the economic burden of rebuilding following an earthquake.

In addition to R&D requirement above the CIC strongly supports Recommendation 15 of the Interim Royal Commission report regarding the enabling documentation requirements to facilitate the use of these new technologies, across a full range of materials.

CONCLUSION

The Construction Industry Council appreciates the opportunity to make this submission and is able to provide further clarification if required.

For more information please contact:

Pieter Burghout
CIC Chairman































(contact details are known to the Royal Commission)

Appendix 1: Members of the New Zealand Construction Industry Council

Member organisations of the CIC are shown below.

NZ CONSTRUCTION INDUSTRY COUNCIL CIC

MEMBERSHIP

 ACENZ Association of Consulting Engineers NZ	 ADNZ architectural designers nz	 BCITO BUILDING AND CONSTRUCTION ITO We're Building People Building & Construction ITO	 New Zealand BUILDING INDUSTRY FEDERATION	 Certified Builders Association of NZ
 CCANZ concrete answers	 The Designers Institute.	 FPA NEW ZEALAND Fire Protection Association NZ	 HERA Innovation in Metals Heavy Engineering Research Assn	 IPENZ ENGINEERS NEW ZEALAND Institution of Professional Engineers NZ
 NASH NATIONAL ASSOCIATION OF STEEL-FRAMED BUILDINGS INC.	 CF New Zealand Contractors' Federation	 NZBC NEW ZEALAND BUILDING COUNCIL	 NEW ZEALAND INSTITUTE OF ARCHITECTS INCORPORATED	 NEW ZEALAND INSTITUTE OF BUILDING ENGINEERS
 NZIA NZ Institute of Landscape Architects	 New Zealand Institute of Building	 NZIQS	 Property Council New Zealand	 PROPERTY INSTITUTE PROPERTY INSTITUTE OF NEW ZEALAND INC.
 mb Registered Master Builders Registered Master Builders Federation	 SITE SAFE	 Specialist Trade Contractors Federation	 WPA WOOD PROCESSORS Association of New Zealand	
ASSOCIATE MEMBERS				
 BRANZ	 InfraTrain New Zealand			
OBSERVER MEMBERS				
 Department of Building and Housing Te Tari Kaupapa Whare	 Building Officials Institute of NZ	 NZBTU NZ Building Trades Union	 STANDARDS NEW ZEALAND PĀREWA AOTEAROA	

Appendix 2: Report prepared by Don Hunn for the CIC

DRAFT

NZCIC POSITION PAPER ON IMPROVING THE INTEGRATION AND PRESENTATION OF, AND ACCESS TO, INFORMATION SUPPORTING THE BUILDING CODE, INCLUDING NEW ZEALAND STANDARDS

Regulatory Reform

1. Prior to the 2008 General Election the National Party's manifesto on building and construction set out a comprehensive plan to improve building regulations including a commitment "to use building levy funds to update, improve, and make New Zealand building standards more accessible". Since assuming office the Government has embarked on an ambitious programme of regulatory reform under the overall direction of the Minister for Regulatory Reform. As a result much new thinking has been applied to appropriate regulatory policies and systems, based on best international practice. In the case of building and housing, public consultation indicated that this sector should be accorded the highest priority for examination under the reform programme. Accordingly, in February 2010 Cabinet directed the Department of Building and Housing (DBH) to undertake consultation with industry stakeholders and the public on "a package of options to clarify and simplify building regulatory requirements", leading to "a more targeted, risk-based approach to their administration".

DBH Review of the Building Act

2. As a result DBH initiated a review of the Building Act 2004, in order to identify ways to reform the Act so that quality homes and buildings would be produced through "a business enabling and efficient regulatory framework". It was anticipated that one of the principal ways of achieving this would be to improve "the alignment of the Building Code and NZ standards". The scope of the review was to examine the design of the Act and "the role and design of supporting regulation (such as Building Codes and Standards)" with particular reference, among other things, to "the roles and responsibilities of the parties within the building sector".
3. NZCIC was one of 381 parties to make submissions to the review and expressed the view that "we are in the unfortunate position that, since the announcement of the review of the BC in 2003/2004, there has been no real progress in sorting out the agreed relationship between the Code and Standards, and no real progress in reviewing the 600 or so directly and indirectly cited Standards. This "limbo" phase has continued for far too long and some concrete decisions need to be taken with urgency to properly sort out the BC/Standards connection(s), so that industry can get the required consistency and certainty from having a clear "BC and associated standards/documents" framework and methodology".

4. In the course of the review DBH commissioned a report on section 363 of the Act from a consultancy "Risk Solutions". This report, which was presented in May 2010, commented on the question of building controls that "it is also relevant to note in the matrix of controls, the significance of the Standards Act 1988. That is because many of the details of the prescriptive method of complying with the Building Code (i.e. via the "Acceptable Solutions" option) are provided in cited New Zealand Standards".
5. It went on, "the the quality of the process for standards development overseen by the Standards Council is thus of considerable importance. Some concern was expressed that there had been insufficient coordination between Standards New Zealand and the Department of Building and Housing and that this could adversely affect the adequacy and efficiency of the development of standards that are to be cited. Although it is understood that appropriate consultation is now occurring as part of the present Review of the Building Act, a recommendation is made to consider a statutory imperative to ensure ongoing consultation and coordination ...in future".
6. In fact the recommendation stated "there should be either statutory encouragement or a statutory imperative to ensure there is ongoing cooperation and coordination between the 'ministry' and the Standards Council in relation to the development and publication of NZ standards in support of the building controls regime".

Cabinet Decisions of August 2010

7. The Building Act Review was reported back to Cabinet in August 2010. Cabinet noted that the review had "concluded that change to the Building Act and its administration are required in order to support other government and industry initiatives to improve the productivity, efficiency, and accountability of the building and construction sector ". One of the principal aims of the change would be to "improve the overall effectiveness and efficiency of how the regulatory system is administered". Cabinet also noted that the Minister for Building and Construction had instructed DBH to "develop proposals for improving the integration and presentation of, and access to, information supporting the Building Code, including New Zealand Standards".
8. One of the outcomes of this Cabinet meeting was agreement to proceed with an amendment to the Building Act. The Building Act Amendment Bill (no 3) was duly tabled in the House and is currently going through its Select Committee stages. NZCIC has made a written submission to the Bill and expects to follow that up with an oral submission. As the Bill does not deal with the issue of "supporting information", it is not covered in this paper. A second amendment bill is expected to be tabled later this year and it may be that "supporting information" will be included in its provisions.

DBH Review of the Building Code, including Supporting Information

9. In order to assist it to reach a position on the issue of "supporting information" and other Building Code matters, DBH commissioned a consultancy report. The "Request for Proposal for the Building Code system review" was issued in January 2011, a consultant

was retained (Sapere Research Group) and the report was completed earlier this month.

10. In the context of this NZCIC position paper the RFP for the Sapere consultancy is an important element as it sets out the DBH view of what the issues are and how they are to be approached. DBH sees the objective of the Building Code system as including:

- *" setting building performance requirements (the Building Code)*
- *developing or approving means of complying with the Building Code (Verification Methods and Acceptable Solutions) which reflect current knowledge and are appropriate to materials and building technologies being used, including New Zealand Standards*
- *developing or recognising other information intended to assist complying with the Building Code (guidance issued by the Department and industry-developed information)*
- *commissioning and using research and evidence to underpin building performance criteria and means of complying*
- *delivering the information contained in and associated with the Building Code in a way that supports users to understand and meet their accountabilities for building performance."*

11. The RFP then describes the roles of the three main parties in developing this supporting information as being: *"The Department is responsible for the Building Code. Standards New Zealand is responsible for developing standards and promoting, encouraging and facilitating the use of standards in New Zealand (including specifications other than standards). BRANZ provides a significant input into the research basis for the Building Code related to building performance."*

The consultants were asked to comment on these roles.

12. DBH stipulated that among the things the consultant had to do to fulfil the task was "become familiar with the operation of the current Building Code system, including its purpose, legislative requirements and underpinnings and context in the building and construction sector in New Zealand; the responsibilities of the Department; and the roles of Standards New Zealand and BRANZ".

11. The RFP also said recommendations could cover:

- *access to information (including technology)*
funding for research and the evidence base for the Building Code
- *the process for standardisation and standards development (including New Zealand standards etc)*
- *training and education needs for Code users*
- *organising information to match user needs and user competence (including clarity and relevance)*
- *maintaining the currency of and future proofing the Building Code system*
- *the potential of the Building Code system to support innovation.*

13. At the same time DBH specifically excluded from the scope of the review, the administration of the New Zealand standards system, the building levy and the building research levy. It is difficult to see how the consultants could cover the above issues satisfactorily without reference to these three major aspects of the current system.
14. The Sapere report will provide the principal analytical tool for DBH to fulfil the Minister's direction that it should develop proposals to improve the integration and presentation of, and access to, information supporting the Building Code, including New Zealand Standards. NZCIC is a member of the DBH Sectoral Advisory Group which is examining the Sapere report but it considers it should also conduct its own analysis of the issues. This analysis and the proposals flowing from it are contained in the following paragraphs.

Key Issues of Concern to the NZCIC

15. The key issues of concern to the NZCIC in relation to the regulation of the building and construction sector, particularly those relating to the intersection between National Standards, industry standards and the Building Code, are:
- Ministers intend to make existing regulation more effective, easier to access and understand, and easier and less costly to comply with. Improving the building regulatory framework and its associated processes will be essential to achieving this objective and should be a key priority for both Government and the industry. This will require all the parties affected to work closely together and for there to be much greater sector involvement in the future management of the regulatory system.
 - The Building Act 2004 and the Building Code are not adequately underpinned by documents with sufficient specificity as to the standards of building performance expected. There is some inconsistency and confusion between information contained at differing levels in the existing documents and some of these cannot be accessed easily.
 - The 650 plus building and construction standards which are referenced in the Building Code and other core regulatory documents are critical to its effectiveness and are well overdue for review. Standards New Zealand (SNZ) has not been able to secure funding for the stocktake, followed by a programme of renewal and replacement, which is needed to ensure the integrity of the Code.
 - Even though it has been in existence for 80 years as an independent Government agency precisely for this purpose, Government has not articulated a clear commitment to SNZ as its prime source of standards development expertise and capability. Nor does Government ensure adequate and secure funding of that expertise and capability.
 - The issue of access to, and payment for, National Standards cited in the Building Code and associated documents needs to be resolved. Preferably access should be on-line. Payment for standards from various sources should be on a level playing field and, in order to encourage their use, at minimal cost to the user.
 - The roles and responsibilities of the three organisations principally involved in the development of standards - DBH, SNZ and BRANZ - should be articulated more

clearly and the process of investigation, specification and promulgation of standards should be more transparent.

- There is a need to maintain a correct balance between regulator-developed compliance documents and consensus-based industry standards, guidelines and practice notes. A risk-based framework for product and systems assurance should align the standards development methodology and level of specification with the level of risk associated with use of the product or process.

NZCIC position

16. The NZCIC has formulated its position on a range of matters as follows.

Building Regulatory Framework

15. NZCIC would want to see the continuation of the current performance-based system, with the Building Act and Regulations and the Building Code derived from them, expressed in terms of desired outcomes.

16. The Building Code should be supported by:

- i. an up-dated suite of National Standards which:
 - represent an appropriate mix of international and national standards, together with joint Australian/New Zealand Standards
 - provide greater detail in compliance documents at the next level (in conformance with the Government's preferred "stepped-approach" from regulation down to supporting documents at the next level).
 - are, as at present, a mix of acceptable solutions, verification methods and alternative solutions, but with greater scope for the last of these
 - are suitable for regulatory incorporation, drawing on best international practice for standards development
 - are cited in a timely and accessible manner;
- ii. guidelines, good practice documents and a range of similar documents developed by, or on behalf of, the industry;
- iii. an effective system of product certification;
- iv. an effective system for declaring proficient workmanship (i.e. constructors' producer statements);
- v. an effective system for validating alternative solutions, proposed by professional designers and quality assured by peer review (i.e. producer statements).

17. It is essential that the regulatory regime is seen to be more than just the legislative framework and regulatory action in response to it. It is suggested that DBH should give further consideration to policy instruments other than formal regulation to achieve policy objectives, particularly the provision of information and guidance to consumers and home owners as well as greater sectoral involvement in the management of the system (including self- regulation and co-regulation).

Requirements of a revised regulatory framework

18. In the low skill environment of much of the building and construction sector, implementation of a performance-based regulatory regime requires prescriptive compliance documents which are well articulated and easily understood (with emphasis on drawings and diagrams). In those parts of the sector where skill levels are

highly developed, compliance documents can be less prescriptive and greater reliance placed on good judgment and the higher levels of accountability to be enshrined in the legislation.

19. To ensure it keeps up with best international practice New Zealand should adopt the latest model for building regulation as designed by the Inter-jurisdictional Regulatory Collaboration Panel (of which DBH is a member) which now focuses more on defining and quantifying levels of tolerable building performance and incorporation of some of these measures into regulations.
20. The Standards and Conformance Review 2007 made a number of useful recommendations which have not been fully implemented. NZCIC suggests the Government should reconsider the proposals that:-
 - the regulatory agencies make significantly better use of the Government's own standards and conformance infrastructure in order to achieve sound regulatory outcomes and to support the adoption of higher quality regulations
 - a Regulatory Forum be established to support this (perhaps linked with the Building Advisory Panel already set up under the Building Act)
 - good standards are in the public interest and some public funding should be allocated to their development.

Building Act Review

21. The Building Act Review has revealed a number of issues, not all of which have been, or are likely to be, addressed in the Building Amendment Bill (no 3) currently before the House or in the second amendment bill proposed for introduction this year. If the second bill does not contain any provisions to promote the greater use of National Standards and industry standards, the issues will have to be pursued through further discussion between the Government and sector stakeholders. It can be assumed they will be considered by the Royal Commission of Inquiry into Building Failure Caused by the Christchurch Earthquakes to which NZCIC would want to make a submission.
22. As proposed in its submission to the Select Committee considering the Building Amendment Bill (No3) NZCIC reiterates its recommendation that the regulatory framework should be reviewed to determine whether a focus on life safety is enough and whether there should be more emphasis on public safety, serviceability of structure (downtime) and reparability of structure (cost). Any proposals along these lines to add to the underlying principles of the Building Act should include funding to develop the associated standards.

Supporting documents

23. NZCIC requests that DBH should set up a work programme, in conjunction with the industry, to achieve greater alignment, and eliminate inconsistency and confusion, between the numerous documents referred to in the Building Code and required to achieve compliance.

Source of standards

24. It is essential the Government confirms its commitment to Standards New Zealand as a vital part of the country's regulatory machinery and its prime source of standards development expertise and capability - as the Standards Act 1988 intends. In particular the Government needs to assert SNZ's primacy in developing standards to ensure continuous improvement in the regulatory regime for the building and construction sector - which was the purpose of establishing SNZ originally, in 1931, following the Napier earthquake. There has been some suggestion that DBH considers that because of the sources of its funding SNZ cannot always be independent in its judgment: if that is the case the issue needs to be addressed and any perceived conflicts sorted out. The simplest and most effective way of doing so would be to fund public good standards work from public funds.

Roles and responsibilities

25. For some time the question of roles and responsibilities has been a constant theme in sectoral submissions on these issues. NZCIC urges all three organisations principally responsible for developing building regulations - DBH, SNZ and BRANZ - to reach agreement on their distinct roles and the processes to which they contribute. Such an agreement should make explicit the intervention logic which is the rationale for the allocation of their roles and should articulate their interaction with local government, the industry, consumer groups and the public in developing the standards and guidance documents which underpin the building regulatory framework.

Machinery and process

26. As a result of the Government's emphasis on regulatory reform in general, and building reform in particular, there are numerous Government and non- government agencies now involved in the consideration of the future shape and management of the building regulatory framework. In order to avoid confusion and to ensure accountability for the result, NZCIC would suggest there needs to be clarification of how this machinery is intended to work and of the processes to which they contribute. This is especially important in an environment which encourages public and stakeholder participation and more reliance on non-mandatory systems of peer review and voluntary compliance.

27. To give effect to the principle of stakeholder involvement in the formulation of the regulatory environment, it is suggested that DBH in consultation with the Building Advisory Panel decides the type of standard or guidance document required at any level of the framework ; then whether the standard is most suitably developed by DBH, SNZ or the industry ; and then the most appropriate standards development process eg:

- a DBH process, in consultation with the industry through the Building Advisory Panel, possibly facilitated by SNZ
- the statutory high consensus process for development of a document to be approved by the Standards Council as a National Standard

- a process initiated by an industry group or organisation which develops a best practice document, then passes it to SNZ to facilitate achievement of a sector consensus.

28. NZCIC would also like the Minister to ask DBH, working through the proposed Regulatory Forum, and with SNZ, to develop as a matter of urgency a specification for "standards with regulatory suitability". Such a specification would need to meet the requirements of both DBH (for citation in the Building Code) and the Standards Act 1988 (for Standards Council approval as a National Standard). This should assist with the fact that there is currently considerable delay in citation of revisions to National Standards. In view of the implications for the wider regulatory reform programme, it might be appropriate for the Treasury to be involved.

Forward work programme

29. NZCIC requests that DBH establish mechanisms for agreeing the forward work programme of building-related standards. Such mechanisms might include the use of the Building Advisory Panel set up under the building Act, to provide independent advice, as well as a working group comprising DBH, SNZ and BRANZ to ensure that the programme of building research is well integrated with the development and review of the Building Code and related standards and compliance documents.

30. NZCIC requests that DBH works with SNZ to identify options to deliver on the request (noted by Cabinet in August 2010) from the Minister of Building and Construction that DBH "develop proposals for improving the integration and presentation of and access to, information supporting the Building Code, including New Zealand Standards."

31. NZCIC requests that the Government:

- implements a clearer, more certain funding model for the development of standards underpinning the Building Code, greater clarity about the standards development methodology expected, more joint standards development with Australia, and more government resourcing for public good standards and the public good component of standards;
- acts on its pre-election commitment to "use building levy funds to update, improve and make New Zealand building standards more accessible", and immediately addresses the issue of aging standards that may no longer be fit-for-purpose.

SNZ action

32. It is the view of NZCIC that in order to assist with the formulation of a more flexible regulatory system, Standards New Zealand should make more explicit the range of standards development products and processes it can offer, including National Standards, interim standards, guidance documents, facilitation of industry standards, training and coaching, endorsement and branding. The various time frames, consensus requirements and funding arrangements for these processes should be made explicit so that they can be agreed among those groups deciding on the type of standard required, and the best method for developing the standard, at each level of the regulatory framework.

Appendix 3: Building Act Model - CIC Position Paper



BUILDING ACT MODEL

CIC Position Paper

18 JULY 2011

BUILDING ACT/REGULATORY FRAMEWORK – PREFERRED MODEL

The NZCIC has recently spent some time discussing the New Zealand Building Act/regulatory framework, and recommends the following model:

1. The continuation of the current performance-based system, with the Building Act and Regulations and the Building Code derived from them, expressed in terms of desired outcomes, but with more quantitative specificity where appropriate/useful.
2. The Building Code should be supported by:
 - (i) an up-to-date suite of National Standards which:
 - represent an appropriate mix of international and national Standards, together with joint Australian/New Zealand Standards;
 - provide greater detail in compliance documents at the next level (in conformance with the Government's preferred "stepped-approach" from regulation down to supporting documents at the next level);
 - are, as at present, a mix of acceptable solutions, verification methods and alternative solutions, but with greater scope for the last of these;
 - are suitable for regulatory incorporation, drawing on best international practice for Standards development;
 - are cited in a timely and accessible manner.
 - (ii) guidelines, good practice documents and a range of similar documents developed by, or on behalf of, the industry;
 - (iii) an effective system for industry-developed good practice and guidance documents to be transferred wholly or in part into recognised compliance documents;
 - (iv) an effective system of product certification/assurance;
 - (v) an effective system for declaring proficient workmanship (ie constructor producer statements);
 - (vi) an effective system for validating alternative solutions, proposed by professional designers and quality assured using verification methods or by peer review (ie designer producer statements);
 - (vii) an effective system for prescribing requirements for certification on an ongoing basis of specified systems with clarity as to the competence requirements to perform certification;
 - (viii) assured free (electronic) access to all compliance documents cited by the Code.
3. There should be a single means of obtaining regulatory approval for building work, without duplication of steps or stages:
 - (i) Designers provide sufficient documentation of designs to owners so those owners can submit those documents in the knowledge they are likely to demonstrate there are reasonable grounds for the relevant regulator to decide designs comply with the Building Code.
 - (ii) Builders decide how to construct the designed building, manage the construction process, and at its conclusion provide sufficient evidence so the owners can submit that evidence in the knowledge it is likely (taken in

conjunction with evidence collected directly by the regulator) to demonstrate there are reasonable grounds for the relevant regulator to issue a code compliance/consent checking certificate.

- (iii) Where appropriate (eg alternative designs that might be considered difficult to construct) the role of designers observing construction so that they can provide evidence as to whether their designs have been correctly implemented by the builder is recognised and specifically included in the regulatory approval process.
 - (iv) As well as the process set out in 3(i) and (ii) there is a system to cope with those situations where, for legitimate purposes, building work might be carried out in advance of issue of a modified building consent (designed as built), and in this system the responsibilities of the designer and builder are clearly delineated.
 - (v) Any registrant on a relevant national occupational register is entitled to present a producer statement, either in support of an alternative design, or to declare the quality of building work undertaken. Other lists of authors are only used where no national register exists.
 - (vi) The statutory-backed national registration system comprises three occupational groups, each separately administered as a multi-competence level system – engineers (noting the wider application of this system beyond engineering and its international benchmarking), architecture/design (also with international benchmarking), and construction. In addition there should be a further multi-part register for those undertaking work in regard to certification of specified systems but who could not reasonably be expected to register in the other three systems.
 - (vii) Producer statements and memoranda for restricted building work are consolidated into two nationally-consistent documentation systems, one based on proof of workmanship, the other on providing a standardised means for providing evidence towards alternative solution acceptance.
4. There is a single national regulatory body, but using regional delivery of some services to ensure smooth interfacing with resource consenting. The liability of this body is clearly established (and indemnified by the Crown as required).
- (i) Risk-based consenting is applied to work involving alternative solutions, with clear protocols to define the requirements for evidence at different levels of risk.
 - (ii) There is clear and unambiguous information to allow applications involving only acceptable solutions and applications involving multi-use consents to proceed rapidly.
 - (iii) The regulatory body delivers services locally as well as centrally, and applies modern technology to its processes to ensure high quality service is perceived by applicants.
 - (iv) There is consistent national education and training of building officials.
 - (v) The national regulatory body is charged with taking responsibility for rapidly identifying emerging issues and ensuring these are addressed.
5. Information from the consenting and CCC processes on the quality of work submitted by individuals is consistently provided to occupational registration authorities to assist

those authorities run educational and complaints processes to support consistent competence standards.

6. Use of written contracts is the norm so disputes and liabilities are almost invariably decided in contract and not through claims in tort.
7. There is a requirement for clear disclosures of limitations by parties involved in the design or construction process, and the building owner is adequately informed on the ongoing maintenance that might reasonably be required.
8. Clear information for building owners is provided from a single central source.
9. There is a clear means for the industry and the main regulatory bodies to engage, foresight emerging issues, and develop approaches to address these.

NZ Construction Industry Council

18 July 2011