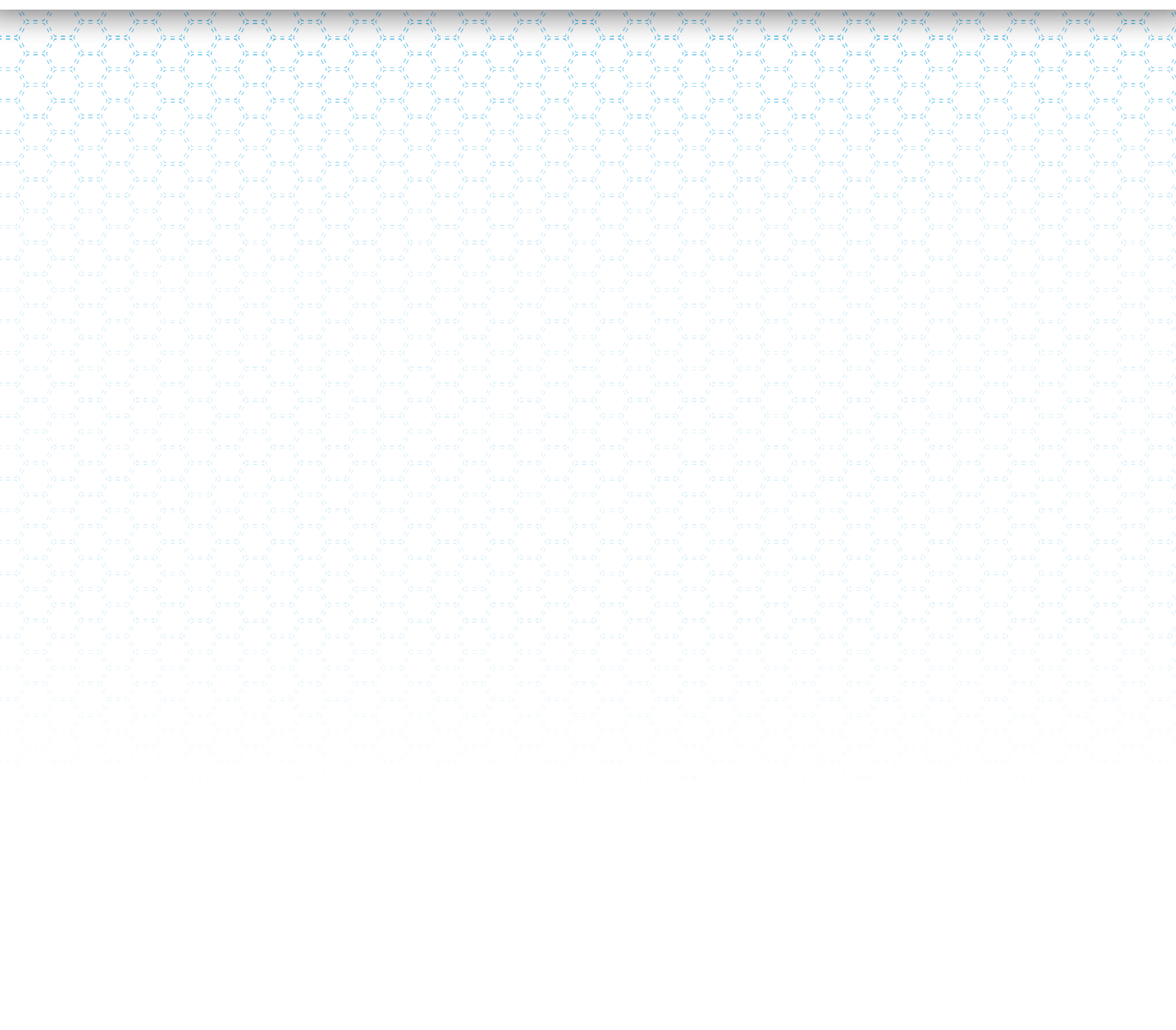




**Local Government  
New Zealand**  
*te pūtahi matakōkiri*



Submission to the Canterbury Earthquakes Royal  
Commission

In the matter of Discussion Paper: Roles and Responsibilities

August 2012

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## Introduction

1. *Local Government New Zealand* (LGNZ) thanks Royal Commission for the opportunity to make this submission in relation to the Canterbury earthquakes.
2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

In addition, some councils will also choose to make individual submissions. The *Local Government New Zealand* submission in no way derogates from these individual submissions.

3. This final submission was endorsed under delegated authority by:
  - Lawrence Yule, President, National Council
4. *Local Government New Zealand* wishes to be heard by the Royal Commission to clarify the points made by this written submission as necessary.

## Local Government New Zealand policy principles

5. In developing a view for the Canterbury Earthquake Royal Commission inquiry we have drawn on the following high level principles that have been endorsed by the National Council of *Local Government New Zealand*: We would like Royal Commission to take these into account when reading this submission.
  - **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.
  - **Accountability to local communities:** councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities.
  - **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances

and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.

- **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by Government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.
- **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.
- **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

## Comments

### Review of the current regulatory framework

6. We would like to begin by acknowledging the quality of the response to the Canterbury earthquakes by Christchurch City Council, Canterbury CDEM group, local authorities and central government. It was clear that much has been learnt from previous earthquake and flood events that informed the local and national response to the Canterbury earthquake sequence. Undoubtedly there will continue to be improvements to the way we respond to natural disasters but overall the integration with central government agencies, national control, Department of Building and Housing, Ministry for Environment, went very well in extraordinary circumstances. This proved that even under severe stress the regulatory framework still operated.
7. *Local Government New Zealand* note that the following comment on page 8 of the discussion document states that “Overall there seems to be some confusion about the Building Regulatory framework and how it is to be followed in practice. This appears to be a communication issue rather than a systemic issue with the framework.”

*Local Government New Zealand* supports Ministry of Business, Innovation and Employment (MBIE) taking greater leadership in the form of improved guidance and practice. It is useful to note that the Australian Productivity Commission identified a lack of central government guidance as a key issue in the implementation of regulations in Australia.

8. The primary focus of this submission is the Building Act (2004). Local government (territorial authorities) plays a key role in regulating building activity under the Act with BCA's processing consent applications and checking and enforcing compliance. Their role is vital in the Building Regulatory Framework and LGNZ would want to see a principle based framework being set which ensures consideration of local expertise and knowledge being applied at the correct level.
9. Local authorities are creatures of statute and simply put, can only implement established regulation. The challenge is to provide sufficient national direction to enable beneficial outcomes without impeding the ability of local authorities who can factor local risk into their decision making, alongside a conversation with their community about local circumstances.
10. The efficacy of the current regulatory framework would be assisted by greater involvement between the local government sector and MBIE to ensure that the technical implications of implementation of the Act are fully considered in the design of guidance and support to develop a building regulatory framework which is more user-friendly and has clarity and consistency in its directives.
11. *Local Government New Zealand* agrees that improving the variability in how the regulatory framework is applied in practice all too often results in local authorities bearing risks which should be borne by other parties. The current amendments to the Building Act should continue to strengthen the framework and place accountability appropriately.
12. *Local Government New Zealand* notes that, as the Royal Commission has identified, there is an ongoing review of the building regulatory framework which should, over time, lead to a regulatory system that is more efficient and produces buildings that are better quality. These changes include amendment to the legislation.
13. *Local Government New Zealand* also agrees that guidance documents should be developed using expert professional communities and technical support from the local government sector which can be co-owned and endorsed as advisory documents by MBIE.
14. *Local Government New Zealand* would question whether there are major conflicts between the RMA and the Building Act. At its simplest the Building Act ensures a built structure is safe whilst the RMA ensures the building is built in a safe place taking account of natural hazards. There is no inefficiency in the definition of purpose. We would contend that the two legislative powers seek to address different requirements. The clarity of their intent is clear.

However, LGNZ strongly advocates the inclusion of natural hazard information in the process. The insurance industry also supports this

view and we would recommend a stronger legislative framework for natural hazards being picked up in the review of sections 6 & 7 of the RMA.

In addition any changes should look to ensure consistency of, and appropriate “risk definition including consequence so that there is commonality of hazards definition in the regulatory framework.

15. *Local Government New Zealand* does recognise that there may be issues for a “small” consent process. For example, the process can result in resource consent for a design not complying with the Building Act, which then requires a redesign. Better integrated resource consent and building consent processes would be desirable. LGNZ would also note that the building consent process provides a vital trigger for checking RMA compliance and that this trigger is removed every time more building work is made exempt from requiring a building consent.

### **Review of the current roles and responsibilities across the sector that underpin the building and construction industry**

16. Regarding defining the key players in the development of the building regulatory framework, in the context of building performance in an earthquake, LGNZ believes the primary impediment which currently exists relates to capacity in terms of resources and funding.
17. A consortium approach involving MBIE, BRANZ Group with technical input from engineers and Building Consent Authority (BCA) would be one approach. Funding models would need to be explored.
18. In general, the solution must be a framework which is as simple as possible and fit for purpose in a New Zealand context. The international comparisons, whilst useful, may not provide a relevant solution for New Zealand.
19. *Local Government New Zealand* has concerns in terms of capacity at a central level. As part of a BCA’s accreditation, it must demonstrate they have adequate expertise to carry out their functions; this includes ensuring they have the capacity and capability to deliver. LGNZ agrees that this quality control is necessary.
20. However, LGNZ has a concern that the regulator role of MBIE has only one Chief Engineer on its staff to provide advice to the Building and Housing Group. We would wish to see capacity built at each level of the regulatory framework to ensure quality of delivery.
21. We would endorse the views of IPENZ Engineers NZ (IPENZ) and New Zealand Construction Industry Council (NZCIC) to ensure central government regulators in the building and construction sector have the

people and systems necessary to operate an efficient and effective regulatory regime.

22. A national approach to setting standards needs to be explored, and the model needs to be administered and funded in such a way that it does not replicate resources that are available.
23. There is a vital need to have up-to-date standards which can be used in the design and construction of seismically-resistant buildings and this should be the primary driver of a streamlined solution, and the matter should not be hindered by a plethora of competing organisational objectives.
24. *Local Government New Zealand* believes there is also a need to ensure national consistency in the education and training of building officials.
25. *Local Government New Zealand* believes the primary goal should be providing compliance methodologies based on high quality information which is readily available to practitioners in the field.
26. On the matter of building consents, LGNZ endorses a risk-based consenting approach being applied, with clear policies on evidence requirements at each level of risk.
27. It is important that some flexibility is maintained to enable territorial authorities to develop locally appropriate responses which recognise local risk and priorities.
28. There is a need to have clear guidance information on acceptable solutions being allowed to proceed rapidly. LGNZ does not wish to see this used as a shortcut approach without clarity of information and consistency in determination being applied.
29. Whilst LGNZ also endorses that the national regulatory body taking responsibility for identifying emerging issues, we would wish to stress the success of this approach can only be achieved if the capacity requirements in MBIE are addressed.
30. *Local Government New Zealand* does not see there being major issues regarding the intersection of roles between territorial authorities and BCA's. This is because most territorial authorities (TA) have been involved in determining the delivery models for their areas. LGNZ believes that the move towards clustering and shared services will also ensure that the capacity and capability issues relating to BCA accreditation will help to develop models which are fit for purpose and avoid duplication and cost inefficiencies in a geographical area.
31. Many local authorities and BCA's are already developing their risk assessment processes based on identification of natural hazards



information. This needs to be linked to the Building Amendment Act (4) to ensure this approach becomes more consistent.

32. *Local Government New Zealand* believe the proposed model for regulatory approval by NZCIC is not a lot different to how the current model should work, including a risk based consent model in the latest Building Act Amendment.
33. *Local Government New Zealand* believes this NZCIC approach needs to be tested on a range of projects, including alterations, before fully endorsing this model. It is paramount that there is certainty about any changes that will be required of BCAs.
34. There should be no assumption made that designers and builders will always submit sufficient information so that owners can be confident the regulator can issue a code of compliance certificate. BCAs and building owners should not be left with the liability if things go wrong and the Building Act Amendment (4) needs to be strengthened to ensure this does not happen.
35. We strongly support the use of producer statements as we believe these would promote accountability within the system. However, there needs to be national standards on definitions of competence of persons who can provide producer statements.
36. *Local Government New Zealand* suggests that a mandatory peer review would take place based upon a risk assessment. The matter would have a high level of technical complexity, should also apply to any alternative solution proposal (fire safety, structure, or weathertightness) or the ultimate test would be risk to life. This should be required by legislation /regulation and should be developed with MBIE and industry.
37. *Local Government New Zealand* support a quality assurance model which promotes accountability and transparency. The move towards proportional liability makes this approach even more important.
38. *Local Government New Zealand* believes that there is a critical need to ensure that the warranty system has a surety backstop. LGNZ also supports proportionate liability to ensure effective accountability. If local authorities continue to carry a duty of care as under the current law, there is insufficient incentive for other parties to be more accountable.
39. *Local Government New Zealand* supports the Licensed Building Practitioner scheme and believes this will improve the quality of building industry practitioner work. However, some will still not be able to be licensed under the scheme and have no mechanism to have their work recognised as compliant. We believe that solutions to building quality (effectiveness) and efficiency have to be delivered

systematically and systemically. The sector has identified that whilst the system has generally worked well for builders this has not been the same for designers. Some in the sector say that giving the license and then weeding out the poor performers is less efficient than not having them on board in the first place.

40. In addition LGNZ believe that the Building Amendment Act has not gone far enough to ensure the use of Licensed Building Practitioners are applied to an increased range of buildings (eg two apartments over a shop). At the moment in the Building Act Amendment there are some buildings where Licensed Building Practitioners do not apply.
41. In general local authorities agree that reform of the building system is necessary but emphasise that this cannot happen by tinkering with current law or changing the basis of the regime overnight. It is critical that all parties keep an eye on the strategic long term objective, ie a building regulatory system that will result in cost effective, quality buildings that:
- are designed by skilled, capable people who would stand behind their work;
  - meet or exceed minimum requirements that are clear and widely known;
  - are constructed according to clear, upfront, contracted agreements between all parties about what is going to be built, how any faults will be fixed and how arguments will be resolved; and
  - are appropriately maintained by well informed owners.
42. Reflecting local authorities' commitment to getting this right LGNZ are currently working with the Department of Building and Housing to identify an appropriate approach to the delivery of nationally consistent and efficient building administration.

### Other issues

43. *Local Government New Zealand* believes that MBIE should provide clearer information about building performance. This will ensure that the public perception is more closely aligned to the technical considerations as witnessed in Christchurch when the engineers considered that the majority of the buildings had performed well whilst members of the public did not have the same view.
44. *Local Government New Zealand* and local authorities in general appear to support the concept of a Building Warranty of Fitness (BWOF). LGNZ submits that regular structural surveys of buildings should be completed and that such surveys should be completed for all commercial buildings (and residential buildings comprising two or more storeys and three or more household units), every 20 years for the first 20 years after construction and then every 10 years, after a building

reaches 40 years of age. That would align with the 50 year minimum life for a building.

45. Although this would lead to some cost for the building owner, it could be factored in as simply part of the general maintenance regime for the building. There would also be advantages for the building owner in being able to show that their building was safe for its occupiers.
46. Discussions with Christchurch City Council have highlighted a number of areas these include:
  - that a national approach should be taken to certain matters in the Building Act;
  - the liability system underpins the building regulatory framework and it is important that those responsible for defective building work are accountable and able to pay to correct any defective work. This principle is relevant to all types of building work, including structural work on buildings;
  - the level of strengthening for an earthquake-prone building that can be required and/or enforced needs to be made clear in the Building Act.

## Conclusion

47. *Local Government New Zealand* thanks the Royal Commission for the opportunity to submit to the Discussion Paper: Roles and Responsibilities.
48. In general, territorial authorities consider there is a case to review the current regulatory framework to achieve better alignment between central and local government and improvements in processes.
49. *Local Government New Zealand* strongly supports the development of a clear guidance and the need for clear performance objectives in the Building Code, against which alternative solutions can be reviewed.
50. *Local Government New Zealand* believes there is a need to ensure there is technical capacity built at all levels of the regulatory framework, including MBIE and DBH.
51. *Local Government New Zealand* believes that a simple fit for purpose solution to standards and guidance needs to be found which involves MBIE, BRANZ, Standards NZ, with technical input from BCA's and engineers and the professional bodies responsible for standard setting. There is a vital need to have up-to-date standards which can be used in the design and construction of seismically-resistant buildings and this should be the primary driver of a streamlined solution.

52. It is critical that all parties keep an eye on the strategic long term objective, ie a building regulatory system that will result in cost effective, quality buildings that:

- are designed by skilled, capable people who would stand behind their work;
- meet or exceed minimum requirements that are clear and widely known;
- are constructed according to clear, upfront, contracted agreements between all parties about what is going to be built, how any faults will be fixed and how arguments will be resolved; and
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