

UNDER

THE COMMISSIONS OF INQUIRY ACT 1908

IN THE MATTER OF

**ROYAL COMMISSION OF INQUIRY INTO BUILDING
FAILURE CAUSED BY CANTERBURY EARTHQUAKES**

**KOMIHANA A TE KARAUNA HEI TIROTIRO I NGĀ
WHARE I HORO I NGĀ RŪWHENUA O WAITAHA**

SUBMISSIONS ON THE DISCUSSION PAPER: ROLES AND RESPONSIBILITIES

DUE DATE: 13 AUGUST 2012

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1. Introduction

- 1.1. These submissions are made by the Christchurch City Council (**the Council**) on the discussion paper "Roles and Responsibilities" (**the discussion paper**), and should be read in conjunction with earlier related submissions made by the Council.
- 1.2. The Commission has indicated that what it seeks in submissions in response to the paper is consideration of:
 - i. how much of a problem an issue is or was in practice.
 - ii. evidence and analysis underpinning the issue/problem, rather than hearsay or anecdotal views alone.
 - iii. the pros and cons of the options to address the problem.
- 1.3. The Council's previous submissions and reports generally provide information on how much of a problem an issue is or was in practice, and there is some evidence provided, or still to be given, about various issues/problems. This submission provides a general comment first and then submits on some of the specific questions and issues raised in the discussion paper, but not all of the issues.
- 1.4. Not all of the questions appear to be immediately relevant to the Council. There has been insufficient time to conduct a workshop with Councillors on certain issues (such as the questions around Standards), so the Council has not commented on those matters.

2. General Comments on the Discussion Paper

- 2.1. At section 2.3 of the discussion paper, it states that the Building Code "is currently focussed on life safety". The Council submits that this statement, without any qualification, is not correct. The provisions of the Building Code need to be considered in the correct light.
- 2.2. While the Building Code has provisions that clearly relate to life safety, there are other provisions related to other matters. While life safety focussed provisions contribute to the Act's purposes in section 3(a)(i) and (iii) (that those using buildings can do so safely and without endangering their health, and can

escape from a building in the event of a fire), there are also Building Code provisions that relate to and support other purposes, that are not about “life” safety. The other purposes in section 3(a) require that buildings contribute to health, well-being and physical independence, and promote sustainable development. Without going into detail, almost all of clause E (Moisture) and clause G (Services and Facilities), and all of clause H (Energy Efficiency) of the Building Code support aims other than life safety.

3. Council comments on various questions

3.1. In this section of the submission, the Council refers to the following previous submissions, as follows:

- Additional Christchurch City Council submissions on legal requirements for earthquake-prone buildings and related matters (issues 3(b) to 3(d)) (**the Additional URM Buildings submission**)
- Submissions on the Process of and Authority For Building Assessment After Earthquakes (Stickering/Placarding) (Issue 3(e)) and related issues (**the BAAE submission**).

Efficacy of Building Regulatory framework

Q1: Are there problems with the existing building regulatory framework, identified through the experience of the Canterbury earthquakes? If so, what is the effect of these problems and are they sufficiently significant to require regulatory action?

3.2. The Council highlights the following paragraphs of the Additional URM Buildings submission and the BAAE submission:

Additional URM Buildings submission

- 3.2.1. Paragraphs 2.1 – 2.18 – Which buildings should be treated as earthquake-prone under section 122 of the Building Act 2004 and what standard should they be strengthened to and over what period?
- 3.2.2. Paragraphs 3.1 – 3.7 – Whether, to what extent, and over what period should buildings that are not earthquake-prone be required to meet current requirements.

- 3.2.3. Paragraphs 5.1 - 5.6 – Respective Roles of Central and Local Government.

BAAE Submission

Processes during state of emergency

- 3.2.4. Paragraphs 3.18 - 3.20 - Identification of buildings.

Transition from State of Emergency to Business as Usual

- 3.2.5. Paragraphs 4.7 – 4.10 – Effect of civil defence placards after a state of emergency ends.
- 3.2.6. Paragraphs 4.11 – 4.16 – Detailed engineering evaluations and engineer certified work on buildings.
- 3.2.7. Paragraphs 4.17 - 4.23 - Greater power to take action on damaged buildings.
- 3.2.8. Paragraphs 4.24 - 4.27 - Cordons for unsafe buildings/blocks of buildings.

Technical/Information Management

- 3.2.9. Paragraphs 4.28 - 4.31.

- 3.3. These are matters on which the Council has already submitted and which, in its view, should result in amendments to the Building Act. Council believes these matters are sufficiently significant that reform of the building regulatory framework is required.
- 3.4. In addition, the Council has also recently made submissions on the Building Amendment Bill No. 4 (**No. 4 Bill**), which recommends changes to the regulatory framework proposed in the No. 4 Bill to address problems identified with the regulatory framework following the earthquakes. A copy of the submission to the Local Government and Environment Select Committee is attached to this submission.

Q2: What potential solutions might address the issues (eg a national policy statement)) and how might these work in practice? What would the benefits be? What might the disadvantages be?

And

Q3: What are the Council's views on the model proposed by IPENZ?

- 3.5. The Council does not have a specific view on the IPENZ model (which raises the idea of a national policy statement), but notes that in the Additional URM submission, it recommended that certain standards of provisions in the Act should be set at a national level rather than for individual councils to prescribe their own standards (see paragraphs 5.1 and 5.2). The Council also submitted at paragraph 4.26 of the BAAE submission that a national standard should be introduced, setting requirements for cordons around buildings.
- 3.6. These submissions are different than the IPENZ suggestion of a national policy statement, but Council submits that a national approach must be taken in determining certain matters in the Building Act.

Q4: Has the Building Amendment Act 2012 gone far enough? If not what changes are still needed and why?

- 3.7. The Council attaches its submissions made on both the Building Amendment Bill No. 3 (**No. 3 Bill**) and the No. 4 Bill. While some of the Council's submissions on the No. 3 Bill were taken into account by the Select Committee, and changes made, many of the submissions did not lead to changes in the Act. The Council submits that those matters still need to be addressed, particularly in relation to the new consenting system. Council notes that further amendments would be possible since the regime is not yet in force.
- 3.8. Other issues of particular concern for the Council include the continued existence of the joint and several liability scheme in the Act, and the fact that a building surety or guarantee system has still not been proposed. These matters are discussed in the No. 4 Bill submission.
- 3.9. 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.

- 3.10. Other submissions in the No. 4 Bill make reference to submissions already made to the Commission. The Council wishes to highlight a key matter already made in both submissions that should be addressed. 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. It is a matter on which it has received many insurance related enquiries and it appears to be a factor that is holding up the rebuilding process for some businesses.

Q5: What problems are there, if any, with the level of understanding of the building regulatory framework held by participants in the building sector?

- 3.11. The Council is aware there is a variety of understanding of the regulatory framework within the sector. Members of professional bodies, such as chartered professional engineers and registered architects, generally have a good understanding of the regulatory framework, but the level of understanding has not been as good in non-professional parts of the sector. This was a matter that was highlighted by the Council in paragraph 7 of its submission on the No. 3 Bill.
- 3.12. The Licensed Building Practitioner Scheme (**LBP Scheme**) should improve the level of understanding of regulatory requirements. Training and/or education of participants in the sector is required and must be maintained under the LBP Scheme.

Q6: What would help improve understanding of the building regulatory framework (if needed), and how should this be done? How would any costs be funded?

- 3.13. As noted above, the LBP Scheme should improve understanding among tradespeople, but there needs to be regular re-training and updating of LBPs. This should be paid for by the LBPs as part of maintaining their qualification.
- 3.14. The Council also submitted in paragraphs 5.1 - 5.3 of the BAAE submission that clear guidance is needed from Central Government on how councils handle transitional issues arising following a state of emergency, and that the legislation enacted for CERA can provide guidance. The Council submitted that

the responsibilities of councils, building owners and other agencies needs to be clearly defined. The relevant Department/ Central Government (taxpayers) should be responsible for the cost of providing guidance to Councils and the public.

Q7: Do the Building Act and the Resource Management Act work effectively together to ensure an efficient consenting process, while balancing any appropriate competing objectives? If not, how can this be improved?

3.15. There are potential conflicts between the RMA and the Building Act, and not just in relation to consenting processes. The Council has identified in the Additional URM Buildings submission (paragraphs 5.4 - 5.6), the issue arising from the immediate danger provisions in the Building Act and possible demolition of heritage or other buildings that would normally require a resource consent to be demolished. Although this issue was partly addressed through a transitional Order in Council, it remains an ongoing issue in the event of emergencies in other centres.

3.16. The immediate action on falling hazards from an earthquake-prone building, as recommended by the Royal Commission, may also be less than "immediate" where a resource consent is required (in addition to a building consent), particularly if there are challenges to the grant of the resource consent. The need for a resource consent may in fact be the only legislative barrier to carrying out that work immediately, if the work is such that a building consent is not required.

3.17. The Council also noted in its submission on the No. 3 Bill (see paragraph 68, third bullet point) 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.

Standards Development – Questions 1-3

No submissions.

Responsibilities

Q1: In the context of building performance in an earthquake, who should the key players in the development of the building regulatory framework be and why, and what should their roles and responsibilities be? What impediments currently exist to achieving this?

3.18. The Council's general approach in all of its submissions to date is that it would retain its current roles (relating to consenting buildings – as proposed to be amended by the No. 3 Bill - and inspection of buildings), but that more direction from central government (through MBIE) is required in relation to the performance of the Council's role, particularly in relation to dealing with earthquake-prone buildings.

3.19. Additional legislative intervention is also sought to add to a Council's role and responsibilities, to provide Councils with the power to require detailed engineering assessments of certain buildings after an event (see paragraph 4.11 - 4.16 of the BAAE submission), and for the introduction of a structural building warrant of fitness and/or Quake-star rating system for buildings (see paragraphs 3.3 – 3.7 of the Additional URM Buildings submission).

3.20. The Council's submissions also seek that owners be required to take greater responsibility for the safety of their own buildings, and that their responsibilities be made clear to them (see paragraph 2.7 of the Additional URM Buildings submission, and paragraphs 2.18 (points 1-4) and 5.1 of the BAAE submission).

Q2: If a work programme is needed for the development of building related Standards to ensure performance in an earthquake, (as discussed above in section 3), who should lead this, what are the priority areas, and how should this be funded?

3.21. No submissions.

Capability

Q1: What examples or evidence are there of issues of competency within BCAs? What options are there to address these competency issues, if there are any? Give consideration to the different size and scope of territorial authorities across the country, and different mechanisms for acquiring expertise.

3.22. With the introduction of the system of accreditation of BCAs, introduced by the Building Act 2004, there is now greater regulation around BCA functions.

3.23. The Building (Accreditation of Building Consent Authorities) Regulations 2006 set the standards and criteria that a BCA must meet to be successfully accredited. Important criteria include that a BCA must have appropriate policies, systems and procedures in writing, and must record how it ensures that it implements these effectively. It must also record the key decisions that it makes, the reasons for them, and the outcomes and actions of the decisions. BCAs must also ensure that building control function work is allocated only to those who are competent to do the work.

3.24. If a BCA is not performing well, their accreditation can be revoked. In addition, the DBH (MBIE) has the power to review territorial authorities (most BCAs are also territorial authorities). The DBH regularly reviews territorial authorities and the reviews are published. Issues of competency may be picked up during such reviews.

3.25. There are also "cluster" groups of Councils set up to focus on various functions. These have been set up voluntarily by the various Councils involved as a way of sharing both expertise and resources.

Q2: What skills are needed in the private building sector to ensure seismically resistant buildings?

3.26. No submissions.

Q3: MBIE has a Chief Engineer on its staff. What is or should be the purpose of this position? Should MBIE also have a Chief Architect and/or Chief Designer? Why or why not?

3.27. No submissions.

Resourcing Standards development – questions 1-5

3.28. No submissions.

Obtaining regulatory approval for building work

Q1: How well do you think the current consenting system works and why?

3.29. Please see the Council's submissions on the No. 3 Bill and the No. 4 Bill (attached) for the provisions in the Act (some that are enacted but not yet in force and some that are not yet enacted) that need to be improved.

Q2: Are there any issues with the intersection of roles between territorial authorities and building consent authorities; why or why not?

3.30. No submissions.

Q3: Do you consider the status quo (local control by BCAs), a national model as described above, or an alternative option, would provide the most effective and efficient consenting process for complex building work?

3.31. No submissions.

Q4: Where do you think the focus should be within the consenting system in terms of risk? Are there any changes needed, taking into account those already introduced in the Building Amendment Act 2012? Why or why not?

3.32. Please see the Council's submissions on the No. 3 Bill and the No. 4 Bill (attached).

Quality assurance

Q1: Comment on the proposed model for regulatory approval by NZCIC – what aspects of this model should or should not be adopted and why?

3.33. No submissions.

Q2: When might producer statements be used and why; what benefits do they provide? What, if any, standard should such statements be required to meet?

3.34. Producer statements are an important, if not essential, part of the building control process, although they do not have express regulation under the Building Act 2004. They provide a degree of assurance that design and construction has been carried out in accordance with the relevant standards and building consents. The Council does not see any necessity to legislate for a particular standard to be achieved.

Q3: What standing, if any, should producer statements have?

3.35. The Council supports the re-introduction of a provision similar to section 33(5) of the Building Act 1991.

Q4: When should a mandatory peer review take place (ie. type of building, complexity level)? Who should the costs of a peer review fall upon?

3.36. The Council suggested in the No. 3 Bill submission that the approval of the risk profile and quality assurance system that is proposed for commercial building consents should be the subject of a peer review process. Please see paragraphs 14 and 37 of that submission.

Q5: What guidance (and level of guidance) should there be on the use of peer review (for example, a matrix guiding peer review requirements) and who would or should be responsible for developing and providing and enforcing (if reviews are mandatory) this?

3.37. The Council would support the establishment of guidance for peer review, but does not consider that there is a need for such guidance to be given statutory force.

Q6: Who should conduct peer reviews? Should there be any specific requirements (for example, independence) and why or why not?

3.38. It seems clear from the nature of a peer review that it should be conducted independently of the original designer. However it does not consider that there is a need to regulate for this requirement. It is properly a matter that can be left to building consent authorities which will normally have a list of preferred peer reviewers.

Q7: Do peer reviews need to be audited and if so by whom?

3.39. It is anticipated that peer reviews would be reviewed by building consent authorities. The Council does not consider that this needs to be legislated for.

Information about building performance

Q1. Comment on whether there are any gaps, weaknesses or omissions in the information available on the performance of buildings in an earthquake such that affected parties can make informed decisions. How might these be addressed?

3.40. Paragraphs 3.18 – 3.20 and 4.28 – 4.31 of the BAAE submission discuss issues arising from the information held by Council relating to the identification of buildings during the state of emergency and also provides suggestions related to information management processes of Councils, relating to building information.

3.41. In addition, the Council has submitted (see paragraphs 3.4 – 3.7 of the Additional URM Buildings submission) that the use of a star rating system for the structural performance of buildings would provide building users, owners, and the general public, with better information on how a building might perform in an earthquake.

Q2. What benefits might the implementation of a building warrant of fitness, to check for building deterioration, provide? What costs or disadvantages might this lead to?

3.42. The Council submits that a "check for building deterioration" does not get to the heart of the issue on which the Council has previously submitted - that regular structural surveys of buildings should be completed. The Council submitted at paragraph 3.3 of the Additional URM Buildings submission that such surveys should be completed for all commercial buildings (and residential buildings comprising 2 or more storeys and 3 or more household units) every 20 years for the first 20 years after construction and then every 10 years, once a building was 40 years of age. That would align with the 50 year minimum life for a building.

3.43. 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.



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