



Department of
Building and Housing
Te Tari Kaupapa Whare

Department of Building and Housing submission to the Royal Commission for the Canterbury Earthquakes on the management of earthquake risk by Canterbury Regional Council and Christchurch City Council

Purpose

1. The purpose of this submission is to:
 - a. comment on the report titled “Management of Earthquake Risk by Canterbury Regional Council and Christchurch City Council: Obligations and Responses under the RMA” by Enfocus Ltd, November 2011 (the Report)
 - b. provide information on managing earthquake risk under the Building Act 2004 (the Building Act); and
 - c. advise the Royal Commission of work underway related to the above matters.

Context

2. The Report focuses on obligations under the Resource Management Act 1991 (the RMA), but notes that the Building Act also contains provisions relating to natural hazards.
3. The provisions in the Building Act dealing with natural hazards (sections 71 to 74) do not apply to earthquakes because these provisions deal with the effects of a possible events (such as slippage), not the type of event (for example, earthquakes, tsunamis). In contrast the RMA definition of natural hazards expressly includes earthquakes.
4. Although the natural hazard provisions of the Building Act do not directly apply to earthquakes, the Building Act does have provisions intended to manage earthquake risk, these are:
 - The provisions relating to earthquake-prone buildings in sections 122-132 of the Building Act; and
 - The provisions requiring all building work to comply with the Building Code (section 17), supported by the regulations setting the Building Code.

Summary

5. The Department considers that issues of land use management should primarily be dealt with at the zoning and subdivision stages, and the Building Act should only be relied on for the building related aspects of managing earthquake risk and to ensure that building work does not cause the land to become a natural hazard (as defined in the Building Act).

General comments on the Report

6. The Department considers the Report to be a fair and accurate depiction of how the Canterbury Regional Council (Environment Canterbury) and Christchurch City Council have managed earthquake risk with the planning tools available to them.

Specific comments on the Report

7. The Department notes in particular the following points in the Report:

- That the Christchurch City Plan seemed to emphasise the use the Building Act as the primary means of managing earthquake risk (see page 12 of the Report);
- That once land is zoned for a specific use it is very difficult for a council to refuse a subdivision and that there is a presumption that land zoned will be suitable (see page 12 of the Report);
- The fact that there is no evidence of section 106 of the RMA being used to refuse a subdivision consent (see page 12 of the Report); and
- The ingrained public expectations about the right to develop suitably zoned land (see page 15 of the Report).

8. The Departments also concurs with the Report's comment the management of natural hazards on land between the RMA and Building Act can be 'difficult to disentangle'. This suggests that there is not complete alignment between the two Acts.

9. The Department considers that issues of land use management should primarily be dealt with at the zoning and subdivision stages, and the Building Act should only be relied on for the building related aspects of managing earthquake risk and to ensure that building work does not cause the land to become a natural hazard (as defined in the Building Act).

10. The Department supports the suggestions made in the Report that:

- the problems faced by the Councils may be addressed in part by the Minister for the Environment's review of sections 6 and 7 of the RMA;
- improvements in planning practice could be introduced in addition to the Minister for the Environment's review; and
- greater central government guidance for local authorities on planning for earthquake risk may be warranted.

Role of the Building Act in management earthquake risk

11. The Report does not comment in detail about the use of the Building Act as a means of managing risk, as this was outside their brief. The Department would like to take this opportunity to provide comments on the role of the Building Act.

12. The Building Act focuses on the construction, safety and integrity of buildings, including footings and foundations. Land use management primarily comes under the planning tools of the RMA.

13. The Building Act manages earthquake risk in respect to buildings through:

- The provisions relating to earthquake-prone buildings in sections 122-132 of the Building Act; and

- The provisions requiring all building work to comply with the Building Code (section 17), supported by the regulations setting the Building Code.
14. The earthquake-prone building provisions of the Building Act allow territorial authorities to require the most at risk buildings to be strengthened. As the Commission is aware the Department is currently reviewing these provisions.
 15. The Building Code sets out the functional requirements and performance criteria buildings must comply with for their intended use and specifies the performance criteria a building must meet
 16. The natural hazards provisions of the Building Act also provide some indirect mitigation of the potential effects of an earthquake, but do not directly address earthquake risk. This is because natural hazards in the Building Act are defined by their effect, not their type. For the purposes of the natural hazard provisions of the Building Act natural hazards are erosion, falling debris, subsidence, inundation and slippage. Liquefaction is not a natural hazard under these provisions and the Department provided advice on this to the Canterbury councils, a copy of this advice is attached as Appendix 1.
 17. If the Commission would like further information on the relationship between legislation providing for land use management the Commission may wish to consider the following article:

Glavovic, B. C., Saunders, W. S. A., & Becker, J. S. (2010). Land-use planning for natural hazards in New Zealand: the setting, barriers, 'burning issues' and priority actions. *Natural Hazards*, 54(3), 679-706.

Review of the natural hazard provisions

18. In 2011, the Department completed an internal review of the natural hazard provisions in the Building Act. That review found that there is currently no case for change to these provisions.
19. Concurrently, the Ministry for the Environment initiated an investigation into the option of including natural hazards in sections 6 and 7 of the Resource Management Act (RMA). A technical advisory group is due to report back to the Ministry for the Environment on options at the end of February 2012.
20. The Department has been working with the Ministry for the Environment and when the technical advisory group provides recommendations to the Ministry on the management of natural hazards the Department will consider whether any changes to the Building Act may be desirable. The Department will provide its analysis to the Commission (once completed).

Appendix 1: Letter to Christchurch City Council, Waimakariri District Council and Selwyn District Council



Department of
Building and Housing
Te Tari Kaupapa Whare

Level 6, 86 Customhouse Quay
PO Box 10 729, Wellington
Tel +64 4 494 0260
Fax +64 4 494 0290
www.dbh.govt.nz

24 September 2010

Steve McCarthy,
Environmental Policy & Approvals Manager
Christchurch City Council
PO Box 237
Christchurch

Warren Taylor
Building Control Manager
Waimakariri District Council
Private Bag 1005
Rangiora

Ian Butler
Building Control Manager
Selwyn District Council
PO Box 90
Rolleston 7643

Dear Steve, Warren & Ian,

Building Act 2004: Land subject to natural hazards

The Department of Building and Housing has received a number of requests for guidance about how sections 71 to 74 of the Building Act 2004 (*land subject to natural hazards*) might apply following the occurrence of liquefaction during the recent Canterbury earthquake. For ease of reference, the text of sections 71 to 74 of the Building Act 2004 is appended to this letter.

Set out below is the Department's position, which I hope will be helpful for your council and building officials as you continue to manage the earthquake recovery and rebuilding works.

Background

Soil liquefaction was a feature of the earthquake in certain, largely residential, areas of Canterbury. As you are aware some buildings in those areas suffered severe structural damage. It is currently estimated that this is a rare event and is unlikely to recur for a long period.

Some councils have indicated that, when repairs and rebuilding occurs in areas affected by liquefaction, they may consider placing notices warning of natural hazard risk on the relevant properties. Councils recognise that such notices could affect the property owners' access to insurance and/or result in reduced property values.

Department views on limitations and restrictions on building consents for land subject to natural hazards

Firstly, it is the Department's view that liquefaction is not a natural hazard for the purposes of the Building Act 2004. There may have been slips or subsidence associated with the liquefaction caused by the earthquake. However, unless the

shifting of the land during the liquefaction means that the land is now subject to, or likely to be subject to, further slips or subsidence, the land is not now subject to a natural hazard for the purposes of sections 71-74.

Even if liquefaction was to be considered a natural hazard, or if as a result of the liquefaction land is now subject to a natural hazard, this alone does not mean that a council can place a notice on the title.

Secondly, the following conditions need to be satisfied before a council can place a natural hazard notice on the title of a property:

- the land must be subject to a natural hazard;
- an owner must have applied for a building consent to construct a new building or to make major alterations (which includes major repairs) to a building on the land;
- the owner must have failed to make adequate provision to protect the land, building/building work and other property from the natural hazard or restore damage to the land or property as a result of the building work;
- the council must consider that the proposed building work will not accelerate, worsen or result in a natural hazard on the land or other property; and
- the council must have decided to issue the building consent.

Finally, it is important to note that there are implications for councils of improperly placing a natural hazard notice on the title of a property. In the instance of an improper notice, the council is potentially liable for losses suffered by the land owner as a result of the placement of that notice (eg, losses arising from any reduction in land value or consequent insurance difficulties).

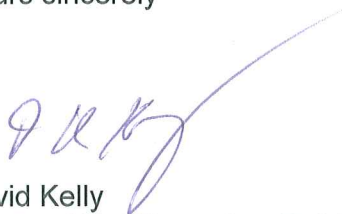
I trust the Department's views are of assistance and encourage you to consult with your own legal, insurance and/or specialist advisors (eg, geotechnical engineers) if you have doubts about how to apply the relevant provisions of the Building Act 2004 to any specific building consent application or land within your council's district.

The Department is considering whether further investigation into the liquefaction is desirable to help inform building controls in the future.

Please do not hesitate to contact me if you have any questions.

We look forward to supporting you with further guidance and advice as you proceed over coming weeks and months.

Yours sincerely



David Kelly
Deputy Chief Executive, Building Quality

Copies to: Paul Davy CE, John Christensen ESM, Selwyn District Council
Tony Marryat CE, Peter Mitchell GM, Christchurch City Council
Jim Palmer CE, Nick Harrison ESM Waimakariri District Council

APPENDIX: SECTIONS 71 TO 74 OF THE BUILDING ACT 2004

71 Building on land subject to natural hazards

- (1) A building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, if—
 - (a) the land on which the building work is to be carried out is subject or is likely to be subject to 1 or more natural hazards; or
 - (b) the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
- (2) Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to—
 - (a) protect the land, building work, or other property referred to in that subsection from the natural hazard or hazards; or
 - (b) restore any damage to that land or other property as a result of the building work.
- (3) In this section and [sections 72 to 74](#), **natural hazard** means any of the following:
 - (a) erosion (including coastal erosion, bank erosion, and sheet erosion):
 - (b) falling debris (including soil, rock, snow, and ice):
 - (c) subsidence:
 - (d) inundation (including flooding, overland flow, storm surge, tidal effects, and ponding):
 - (e) slippage.

72 Building consent for building on land subject to natural hazards must be granted in certain cases

- Despite [section 71](#), a building consent authority that is a territorial authority must grant a building consent if the building consent authority considers that—
- (a) the building work to which an application for a building consent relates will not accelerate, worsen, or result in a natural hazard on the land on which the building work is to be carried out or any other property; and
 - (b) the land is subject or is likely to be subject to 1 or more natural hazards; and
 - (c) it is reasonable to grant a waiver or modification of the building code in respect of the natural hazard concerned.

73 Conditions on building consents granted under section 72

- (1) A building consent authority that is a territorial authority that grants a building consent under [section 72](#) must include, as a condition of the consent, that the building consent authority will, on issuing the consent, notify the consent to,—
 - (a) in the case of an application made by, or on behalf of, the Crown, the appropriate Minister and the Surveyor-General; and
 - (b) in the case of an application made by, or on behalf of, the owners of Māori land, the Registrar of the Maori Land Court; and
 - (c) in any other case, the Registrar-General of Land.
- (2) The notification under subsection (1)(a) or (b) must be accompanied by a copy of any project information memorandum that has been issued and that relates to the building consent in question.
- (3) The notification under subsection (1)(c) must identify the natural hazard concerned.

74 Steps after notification

- (1) On receiving a notification under [section 73](#),—
 - (a) the Surveyor-General or the Registrar of the Maori Land Court, as the case may be, must enter in his or her records the particulars of the notification together with a copy of any project information memorandum that accompanied the notification;
 - (b) the Registrar-General of Land must record, as an entry on the certificate of title to the land on which the building work is carried out,—
 - (i) that a building consent has been granted under [section 72](#); and
 - (ii) particulars that identify the natural hazard concerned.
- (2) If an entry has been recorded on a duplicate of the certificate of title referred to in subsection (1)(b) under [section 641A](#) of the Local Government Act 1974 or section 36 of the former Act, the Registrar-General of Land does not need to record another entry on the duplicate.
- (3) Subsection (4) applies if a building consent authority determines that any of the following entries is no longer required:
 - (a) an entry referred to in subsection (1)(b);
 - (b) an entry under [section 641A](#) of the Local Government Act 1974;
 - (c) an entry under section 36 of the former Act.
- (4) The building consent authority must notify the Surveyor-General, the Registrar of the Maori Land Court, or the Registrar-General of Land, as the case may be, who must amend his or her records or remove the entry from the certificate of title.