

**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**

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**RESPONSE BY THE CHRISTCHURCH CITY COUNCIL TO ENFOCUS  
REPORT "MANAGEMENT OF EARTHQUAKE RISK BY CANTERBURY  
REGIONAL COUNCIL AND CHRISTCHURCH CITY COUNCIL"**

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## 1. Introduction

- 1.1 The Christchurch City Council appreciates the opportunity to comment on the report for the Canterbury Earthquakes Royal Commission titled "*Management of Earthquake Risk by Canterbury Regional Council and Christchurch City Council: Obligations and Responses Under the RMA*", by Enfocus Ltd, dated November 2011.
- 1.2 The Christchurch City Council welcomes this report. It provides a useful description of the statutory and planning context of management of earthquake risk in Canterbury.
- 1.3 City Council officers assisted the authors during the preparation of the report, by way of discussions with the authors and by a letter from the City Council dated 10 November 2011. Accordingly, the Council generally agrees with the description in the report of historic planning approaches and information regarding earthquake risks.
- 1.4 The Report appropriately highlights the overlapping statutory duties for the Council between the Resource Management Act and the Building Act, and the process difficulties that can arise from those overlaps.
- 1.5 The City Council welcomes the current review of the Resource Management Act. Statutory change that would clarify the functions of the regional council and the territorial authorities in relation to natural hazards, and which increases the focus on these issues in Part II of the Resource Management Act, is supported by the Council. The Council also considers that a review of section 106 of the Act is also warranted, due to uncertainties regarding assessment of whether an earthquake hazard is "likely". The Council agrees with the report's conclusion that greater central government guidance for local authorities on planning for earthquake risk is warranted.
- 1.6 The Council does not wish to take issue with any matters of detail in the report. This response by the Council will instead describe the Council's current actions and practices in relation to some of the broad conclusions of the Report.

## **2. Imperfect knowledge of risk**

- 2.1 The City Council agrees with the report's findings regarding the imperfect information available to the Council and the implications of this. It notes that there is now more information available to the Council, but recognises that there will never be "perfect" knowledge of earthquake risk.
- 2.2 The Council agrees that much of urban Christchurch was zoned for urban use before there was sufficiently reliable information available to the Council on liquefaction risks which could reasonably be taken into account for planning decisions (part 7.1.2 of the report).
- 2.3 It is also agreed that there were limitations to that liquefaction risk information available to the Council, including the GNS letter of 14 July 2003 referred to in the report. The information that was available suggested that there was relatively low risk of damage from liquefaction.
- 2.4 Knowledge about the level and locations of ground damage resulting from liquefaction has obviously hugely improved as a result of the Canterbury earthquakes of 2010 and 2011. Council practices under both the Resource Management Act and the Building Act are using that improved knowledge at various stages of the development process. This is further described below.

## **3. Changing zoning to remove development rights**

- 3.1 It is agreed that it is, and would have been, highly problematic for a Council to attempt to "downzone" land to remove development potential as a result of new information (part 7.1.2 of the report). Further to the issues described in the report, the City Council also notes that section 85 of the Resource Management Act would be a substantial hurdle to that change of zoning. Provisions in proposed plans can be legally challenged by people with an interest in land who consider that the plan change renders their land incapable of reasonable use. The Environment Court does not have the ability to order the Council to pay compensation for that burden, but does have the power to direct the local authority to modify, delete or replace the plan change.

#### **4. Post-earthquake response to private plan change requests**

- 4.1 The Council's consideration of plan change requests has changed as a result of the new information available following the earthquakes. Council officers are using the detailed information regarding possible risk areas to commission, or require, geotechnical assessment for plan change requests.
- 4.2 It will now be an invariable practice to require these assessments as part of the information provided in support of a plan change request.
- 4.3 Plan Change 45 is an example of that changed Council practice. Appendix 7 of the Report notes that a geotechnical investigation of earthquake risk was not required by the Council as part of the application, and was not addressed in the Council decision on the plan change. The Council's decision on the plan change was appealed to the Environment Court. Following the earthquake of September 2010, the Council engaged geotechnical consultants to prepare expert evidence to assist the Court in relation to the potential earthquake risks which might affect the proposed development at the site.

#### **5. Change to the Christchurch City Plan**

- 5.1 The Enfocus Report comments on earthquake risk management through the provisions of the City Plan, and the implementation of methods to address earthquake risk when assessing resource consent applications. Objective 3 of Chapter 12A of the Regional Policy Statement, which was made operative in October 2011, includes to provide for and manage urban growth within Greater Christchurch while protecting people and property from unacceptable risk from natural hazards. The Council is undertaking an urgent review of its City Plan provisions so as to give effect to the Regional Policy Statement, and will be reviewing City Plan objectives, policies and rules regarding earthquake risks as part of a general review of the City Plan.

#### **6. Section 106 of the RMA**

- 6.1 The report correctly notes the need for a detailed risk assessment before applying section 106 of the RMA so as to

decline a subdivision consent application or impose conditions to address a hazard that is “likely”. The Council notes that ISO Standard 31000 provides a model for risk assessment which ought to be applied by applicants, officers and decision makers.

- 6.2 The Council has undertaken a new, detailed legal review of issues and practices in relation to section 106 of the Act. Council officers are now using the liquefaction maps of Christchurch available from CERA – which identify risk levels across various zones of Christchurch – as indicative of whether a hazard is “likely” for the purposes of section 106 of the RMA. The improved and detailed information available as a result of the earthquake is now enabling better informed and more refined application of section 106 of the RMA to subdivision proposals, as further detailed below.

## **7. Processing land use and subdivision consent applications**

- 7.1 With regard to land use consent applications, a new Practice Note has been developed to guide and assist the Council officers processing land use consent applications. Where the activity status of a proposal permits consideration of geotechnical issues, officers will be giving increased attention to whether a geotechnical investigation will be required as part of the application.
- 7.2 The Council has made extensive changes to its practice regarding subdivision consent applications since September 2010.
- 7.3 The Council’s Bulletin to practitioners in October 2010, updated in November 2011, identified that the Council would be requiring a geotechnical report with every application (but with specified exemptions) to enable assessment of matters under section 106 of the Act. The Bulletins specify the required content of the geotechnical report. It must be consistent with the Department of Building and Housing Guidelines for geotechnical investigation and assessment of subdivisions (11/2011).
- 7.4 Council officers are rigorously adhering to the process set out in that Bulletin. Subdivision consent applications for which the Council practice requires those geotechnical

investigations are not being processed unless they are provided.

- 7.5 For minor applications (such as infill in existing developed locations), the consent authority is imposing conditions, such as requiring specific foundation design.
- 7.6 For larger subdivision applications (greenfield proposals) a Design Report, Plans and Design Certificate for both infrastructure and site compaction are required to confirm compliance with Council's Infrastructure Design Standards and with new conditions being imposed regarding subsidence resulting from earthquakes.
- 7.7 In all cases, the decision maker on the subdivision consent application will have sufficient information to determine whether subdivision consent should be declined or conditions imposed under section 106 of the Act.
- 7.8 A new Practice Note regarding the assessment of section 106 matters is being developed, to adopt the detailed legal advice referred to earlier in this submission. Whilst this will be an internal document, it should result in a consistent approach in the Council's advice to applicants and in officers' recommendations on resource consent applications. The Council's Infrastructure Design Standards are also being amended to improve management of earthquake risks.

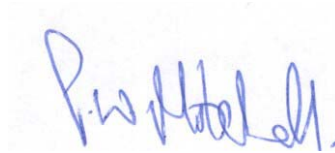
## **8. Rock fall, cliff collapse and landslide**

- 8.1 Earthquake risk examples concentrated on in the Enfocus report involved ground damage from liquefaction. However, Christchurch and Banks Peninsula also face significant risks from rock falls, cliff collapses and landslides caused by earthquakes. The Council is commissioning extensive geological investigations by GNS Science in these areas, and will be exploring possible changes to the City Plan or other regulatory intervention needed to address the risks.

## **9. Conclusion**

- 9.1 The Council appreciated the opportunity to comment on this very useful and comprehensive report. The Council expects that the changes described in this submission – to the information base available to the Council, to the Resource

Management Act, to the Christchurch City Plan, to the information requirements for plan changes and resource consent applications and to consideration of those applications – will, together with renewed attention to the issues by the Regional Council, result in improved management of earthquake risk under the Resource Management Act.



9 February 2012

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Peter Mitchell  
General Manager  
Regulation and Democracy Services  
Christchurch City Council

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Date