

## Part 1: Efficacy of building regulatory framework

### Part 3.1: Efficacy of building regulatory framework

**1. 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?**

We believe the existing regulatory framework is adequate for the construction of new buildings. Christchurch evidenced the structural adequacy of the loading codes – buildings typically failed to collapse, allowing people to escape (with the exception of the CTV and PyneGould buildings, where the shaking was simply too much – we cannot make buildings earthquake-proof, and some failure in an event as powerful as February may be inevitable).

The insurance industry however, may consider stronger loading codes preferable, to avoid the building claims quantum. It may be necessary to remember that the Christchurch events were extreme in a world-wide historical context, and to be wary of over-reaction through uneconomic engineering upgrades.

The powers to require a detailed assessment are already available through the earthquake-prone buildings policy, and through the dangerous and insanitary buildings policy. Any structural assessment can lead to a further assessment if it is recommended.

**2. What potential solutions might address the issues (e.g. a ‘national policy statement’) and how might these work in practice? What would the benefits be? What might the disadvantages be?**

We are unsure of just what a national policy statement is or what it may say. The Building Act Purposes and Principles may be superseded by a National Policy statement. If it was to address the underlying construction industry diversity of interests by collating them into a pan-stakeholder body that can oversee the varied and often conflicting interests of parties such as NZIA, IPENZ, Master Build etc, BCITO, Councils, large companies (Fletchers etc), product suppliers (Placemakers etc), insurers, etc, then we can see a valuable gain.

Maybe, consideration could be given to a Building or Construction Court (as we have an Environment Court) to address the issue of the legal system not clearly understanding the building industry. Practitioners are often mystified by court rulings on construction matters (those outside of the CCA) which ostensibly demonstrate a lack of awareness of the working realities.

**3. What are your views on the model proposed by IPENZ?**

The IPENZ proposal offers an opportunity to collate the spectrum of interests, but just what its form would be has not yet been mooted. We agree with their suggestion to fund NZS through a/the building levy.

**4. Has the Building Amendment Act 2012 gone far enough? If not, what changes are still needed and why?**

We believe the LBP scheme will take some time to embed and work through the range of issues that its introduction generates. The residential restriction by which the scheme currently applies is a good proving ground, which when largely resolved will inform any proposals for extension of the scheme into lesser risk projects such as the commercial examples given above. Case history has those lesser risk proposals not causing significant liability issues for councils. The duty of care principle has been tested and (by ruling) does not apply to commercial works whereby losses to individuals are not commensurate with the types of financial and personal losses suffered by homeowners. We believe the best place for those matters is through the small claims tribunal or similar conflict resolution channels. Practitioner accountability is always a reality, but where that accountability plays out needs to be appropriate to the particular case.

We don't believe that the disclosure requirements for building contractors (in the No 4 Amendment Bill) should be any different from the disclosure requirements for other trades or professions (e.g. plumbers, lawyers, accountants etc). Why should a builder disclose that he has had a dispute before? This is onerous and unfair as it may prejudice someone who has a dispute (who hasn't has a dispute?) that was resolved without blemish.

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

We believe that TAs/BCAs understand the regulatory better than other stakeholders, generally. Frustrations arising from this reality increase the risk of non-compliance and thereby the risk of significant issues in the structure and/or the safety of buildings.

Also, a general *light* understanding of the regulatory framework among workplace practitioners feeds into the *us and them* culture that is persistent in the construction community. Effective construction outcomes for building owners and occupants would be greatly enhanced through the development of a collaborative provider (all parties supplying services to the building owner and occupant) culture, facilitated by a pro-active oversight body.

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

The establishment of the aforementioned oversight body would help, perhaps funded by levy.

**7. 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?**

RMA and BA04 typically cover different grounds with different interests. We believe that simple in-house operational processes can and should be more interactive (this will vary across councils), but one activity deals with existing land and resources and the other deals with the proposed built structure. An attempt to 'fuse' the two interests might only rediscover that immiscibility.

The RMA appears at times to be onerous and unwieldy, but so does the Building Act. The beholder will likely view this difficulty in light of his proposal only. The reviews of the acts may well go some way to responding to the run of acknowledged inefficiencies.

### Part 3.1.4: Standards development

#### **1. What, if any, are the weaknesses, (e.g. omissions, failures, impediments) in the current building regulatory framework in relation to the process for developing requirements for design and performance of buildings for or in earthquakes?**

We believe the nation needs to have a conversation of what level of risk we are prepared to tolerate and where we will tolerate that risk. Economic and occupancy factors must be considered when deciding the degree of NBS compliance to be applied to existing structures (s112 & s115).

Guidance from MBIE to TAs on this matter is overdue (especially in light of the Christchurch events, and their local interpretations).

Section 115, Change of Use, should be reviewed, as should the definition of change of use. We believe the current definition allows for significant indiscretion and inconsistency on the part of individual TAs. For example, the change of use from a retail to cafe can provoke an improbable upgrade without change the occupancy. A risk matrix describing threshold levels of NBS upgrade may help as guidance.

#### **2. What is the best way to provide compliance guidance (for example, should New Zealand Standards be the main or only method of compliance)? Why?**

We consider the best form of compliance guidance is the professionalism of the compliance assessors (BCA officers). With a standard educational achievement (the proposed 2013 suitable qualification for all BCA officers), there should be less tendency to make decisions based on personality and a greater reliance on a common knowledge basis, supported by compliance industry communication and publication. NZ Standards offer excellent guidance, and unless cited in the code clause, are not a mandatory compliance method. This should remain so.

One hundred per cent code compliance is more the exception than the rule and the nature of construction makes this inevitable. Practitioner awareness and professional experience is critical to achieving the building act's purposes and principles (sections

3 and 4).

We believe that the problem with decision making regarding adherence to building code compliance stems largely from an incomplete understanding of the risks associated with any particular proposal. If the assessor has a strong understanding of situational factors and the intention of the code requirements, he can then make a better informed decision when weighing risks and variations.

We believe a better consistency and professionalism can be encouraged by a base qualification, a centralised consenting system, and more collegial interplay within the compliance community supported by guidance literature and events from, say, the Building & Housing Group.

**3. What guidance could or should be given on the compliance methods so that these methods are efficiently and effectively incorporated into the Building Code? Who would or should undertake this work?**

Noted above.

## Part 4.2: Responsibilities

**1. 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?**

We believe the key players in the earthquake regulatory framework should be:

- IPENZ and their associated body NZSEE
- MBIE, to oversee the economic implications of achieving building performance
- LGNZ to liaise between these groups
- Standards NZ, as a venue for the evolution and creation of building methods
- BRANZ, as a contributor to research and development

These parties are considered appropriate because of their collective expertise and capacity for professional and practicable solution. They are authorities and they represent the national bodies that the public would expect to be involved.

We are not aware of any current impediments to achieving this.

**2. 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?**

Central government through the Building and Housing Group should lead the process to inform the public of the risk matrices relating to earthquake events throughout the country. The Group would be informed by the material from the regulatory framework parties, but because of the direct linking to communities the territorial authorities should be brought into the equation. Consideration for the communities and their economic viability needs working through in the light of an informed and consulted public.

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## Part 4.3: Capability

**1. 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.**

Any issues of competency within BCAs are being addressed by the Building Regulations 2006. Since the beginning of the accreditation process for BCAs, competency and consistency levels have risen substantially. With the minimum qualification requirement (Reg 18) being enabled in Dec 2013, the competency levels will continue to rise. Comments from earlier paragraphs (Pt 3.1.4) response refer to the current situation.

BCAs would all broadly agree that competency issues reside mainly in the practitioner community. In respect of what practitioners do (design, calculate, construct, install) competencies vary immensely. This is amply evidenced during the consent processing and inspection activities.

If that process is let out to LBPs (to self certify), the shifting of responsibilities may well assist the ethic of targeted liability, but we expect it also to increase the safety risks and litigation incidence substantially. Self certification for work that is widely complex and variable carries considerable risks that may take decades to unfold. In our experience, most professionals prefer the third-party oversight offered by the current regime.

The proposed regime, perhaps, shifts the compliance assessment responsibility from the relatively economic and stable public sector to the profit-driven and volatile private sector.

The Building Warrant of Fitness regime, if audited for installer and IQP compliance would, we believe, shock the nation. That is because it is largely market led with maintenance and installations not having regard for the attendant compliance requirements (e.g. firewall compromises resulting from the installation of non-consented systems and amenities)

The proposed regime of self certification will require insurance industry buy-in, and that participation to be sustainable. In that case, a reduced scope of BCA activities may well be successful, but without a sustainable insurance component or government warranty (themselves expensive to building owners), that success is hard to imagine.

There may well be a case for lesser BCAs, but on a regional basis (as in Regional Councils). Local knowledge of conditions and practitioners serves as a considerable mitigation of risk, and we believe this model serves the community well, with room for improvement.

The proposal for a centralised consent system is a significant improvement, providing it does not introduce unnecessary complexity (e.g. universal BIM requirement for building consent applications) and cost.

A significant shortfall in the NZ construction industry is the lack of competent site supervision, which is commonly understood as an unnecessary overhead. The

diminishment of the Clerk of Works role and the low incidence of qualified professional construction review presents arbitrary risks. There can be too much reliance on the builder to get it right when constructing specific design, bearing in mind the snapshot quality of the building inspection process by BCAs.

**2. What skills are needed in the private building sector to ensure seismically resistant buildings?**

We believe superior and readily available geological mapping would substantially improve the design capability.

Competent engineering skills are already available and the integration of technical information with workplace practice will boost the already successful outcomes.

**3. 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?**

MBIE should have more than one engineer on its staff. Issues around structure are primarily engineering matters, not architectural. Therefore we do not believe it necessary that MBIE also has architectural staff, though there may be an effective counter argument to that.

## Part 4.4: Resourcing Standards development

### 1. What should the role of Standards New Zealand be and how should it be funded?

The current role of Standards NZ is to provide new and updated methodologies for a range of activities. This is in the hands of and funded by private interests. That model allows for the development of standards that propose excessive requirements (e.g. many NZS 3604 stipulations are clearly excessive). Many of these requirements derive from other standards (NZS 3604 from AS/NZS 1170) that seem to *grow* with every iteration, though not defended by response to experience.

Funding the standards from end-user levies could mitigate interested industry input if managed well, and would provide greater accessibility to the industry.

### 2. What are the advantages, disadvantages and risks of relying on Standards for the majority of building and construction methodologies?

Although Standards NZ has high credibility, the funding and reliance on industry advice in their development, compromises that credibility by allowing commercial interests to drive the content.

Standards themselves are a very successful touchstone for methodological guidance and should be maintained in principle.

### 3. Should primary reliance continue to be made on volunteers?

No. But volunteers are a critical element.

### 4. In the event that Standards New Zealand is unable to source volunteers, what other means of funding might be available?

End-user levies, and/or the current system with contributions from the levy.

### 5. Should there be more use or less use of mechanisms other than Standards to develop and provide methodologies for compliance; why or why not? Who would or should do this work and how should it be funded?

Standards currently do not have mandatory compliance status, and we believe this should remain. Other means of establishing compliance such as manufacturer technical data that has been reviewed and certified (by testing, as is currently done by BRANZ, and other certifying bodies), and a consensual BCA acknowledgement of product adequacy (such as currently listed by Auckland) for untested minor risk items.





## Part 4.5: Obtaining regulatory approval for building work

### 1. How well do you think the current consenting system works and why?

We believe the current system has considerable integrity and provides a robust and efficient process and records for the building owner and subsequent owners. The current system provides a fairly comprehensive assessment for code compliance, but the process varies across councils.

We believe that the average 1-1.5 percent of the value of the project cost of code compliance does represent excellent value for money for a reasonable level of quality assurance. We believe that transferring this responsibility to private interests will introduce risks and higher costs that are not currently in place.

However, there is room for continual improvements and updating of processes with the changing environment. This should be understood as good business practice rather than a revolution in culture.

We believe that the proposals for a centralised consent processing system (as described in National Online Consenting) seek to address the inconsistencies and timeframe issues that the broad applicant community reports. This proposal should be followed in principle at least, but should also be mindful of not increasing costs and timeframes by applying blanket processes.

We believe the simplified risk based consenting proposal in the Building Amendment 4 presents some risks and should not be entered into in haste.

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

TA and BCA roles are intertwined and the typical interactions provided for by the fact that both entities share the same operating space is an efficiency that would need to be reinvented were it to be separated.

Reducing the number of BCAs without a commensurate reduction in the number of TAs would need to be carefully planned in respect of the relevant communications between the entities.

Improvements within TA/BCAs in respect of shared responsibilities are internal business operating procedures and the current requirements of the BCA accreditation schedule serve to provide continual improvements.

We believe that the acknowledged good business improvements that the accreditation process has engendered since 2006, continue to improve both BCA operations and culture. This process should continue.

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### 3. 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?

We believe a national consenting model that operates from a central system with a single consent application and consent database could be a significant improvement.

**4. 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?**

Risk will always be borne by someone. Shifting the risk to the appropriate parties by proportionate liabilities is viewed as a positive step.

The LBP introduction is a step in the right direction and can be tweaked and adapted as it settles in. Confidence in the system will accrue if it is managed well. This confidence will be tested by the acceptance of the insurance industry in respect of cover for practitioner accountability.

The proposals for surety and/or warranty being offered by the practitioner are supported.

## Part 4.6: – Quality Assurance

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

We believe the NZCIC model develops the current system away from the gate-keeping role of BCAs by placing responsibilities more squarely on the practitioners.

We support this in principle, but note that it suggests that builders decide how to construct a designed building. Ten builders will likely make ten different decisions on how to construct. We believe that may lead to such variability that design details and specifications could become almost optional, which could result in a different building than the design. This was a feature of the 80s and 90s when typically amendments and variations were conducted on-site and the records differ, in some cases, substantially from the actual finished building.

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

Producer statements currently contribute to a BCA's decision making process. In some instances, a BCA will use a producer statement to fully inform a decision, but that should be within procedural guidelines. The BCA in that case is prepared to support the decision made based on the acceptance of the producer statement. This may be by the fact of the provider's qualification/s and professional status, or as a reflection of the risk involved.

As a producer statement does not have legal standing, we believe the process described above is appropriate.

A producer statement content must be appropriate to the claim it makes. If, for example, a producer statement is given for the installation of say, a ground floor waterproof membrane for wet area, the document need not provide the details of legalise that a producer statement for the design of the specific structure and durability of a three storey apartment building.

Current policy and process adheres to this description, and thereby provides evidence, alongside officer compliance assessment and other records, to support the decision made for the BCA.

### 3. What standing, if any, should producer statements have?

We believe producer statements should only have full compliance status if legislation provides for that. Currently the acceptance of a producer statement is a risk based decision. If, as in the proposed category for Commercial buildings, a producer statement is accepted as substantial evidence of compliance, it should be supported by constructor quality assurance documentation (as is currently done for large commercial projects in many BCAs).

If producer statements are given legal standing sufficient to absorb all liability, BCAs cannot argue with that.

<p><b>4. When should a mandatory peer review take place (ie. type of building, complexity level)? Who should the costs of a peer review fall upon?</b></p>
<p>Peer reviews should be mandatory for all significant alternative solutions to structure, fire safety, and weathertightness. The term <i>significant</i> should be defined (at least in part) as including high complexity and high risk.</p> <p>If an applicant has a design that requires peer review, then the applicant should present that independent peer review with the application. The peer reviewer should be accepted as suitable by the regulator prior to commission, or the regulator could require evidence of independence and competency of the peer reviewer.</p> <p>Costs to be borne by the applicant.</p>
<p><b>5. 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?</b></p>
<p>Peer review requirement would be better if in regulation. Then a matrix may be used to inform when required. This could be developed by expert industry consultation and approved by MBIE.</p>
<p><b>6. Who should conduct peer reviews? Should there be any specific requirements (for example, independence) and why or why not?</b></p>
<p>Peer reviews should be conducted by independent and suitably qualified entities. It may be necessary, particularly in highly complex or high risk proposals for the regulator to commission a peer reviewer (ordained by statute, such as the Fire Design Review Unit currently being used).</p>
<p><b>7. Do peer reviews need to be audited and if so by whom?</b></p>
<p>The regulator may audit the peer review process or commission a technical audit of the peer review if considered appropriate (possible reasons are many), or by guidelines provided by MBIE.</p>

## Part 5: Information about building performance

**1. 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?**

We believe the country needs to have the conversation on acceptable risks weighed against the economic impacts of improving buildings' performance in earthquakes.

We are interested in the oft cited Californian approach to informing building users of the structural risk posed by any building, with prominently displayed star-rating.

**2. 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?**

We believe the BWOF system is onerous enough for building owners, and has the advantage of relating to safety systems.

In respect of structural deterioration of public-use buildings, perhaps the aforementioned star-rating system could be applied to buildings with, say, a five yearly review cycle.

This would be simple in principle and the public would easily understand it. Similar in effect to a building warrant of fitness, but a separate process with specific regulation, with responsibility to update placed on the building owner.

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