

12 August 2012

Canterbury Earthquakes Royal Commission
PO Box 14053
Christchurch Mail Centre 8544

Dear Sir/Madam

SUBMISSION TO THE COMMISSION'S DISCUSSION PAPER ON ROLES AND RESPONSIBILITIES

1.0 INTRODUCTION

- 1.1. Hamilton City Council welcomes the opportunity to make a submission to the Canterbury Earthquakes Royal Commission's July 2012 Discussion Paper on Roles and Responsibilities.
- 1.2. The following responses are provided to various questions in the Discussion Paper that we feel are of key priority and need to be addressed as a matter of urgency.

2.0 KEY POINTS

2.1. Questions - Efficacy of Building Regulatory Framework (page 12)

- 2.1.1. **Question 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?*
- 2.1.2. **Response:** A considerable number of buildings failed as a result of the two main Canterbury earthquakes of 4 September 2010 and 22 February 2011, with the latter earthquake accounting for 185 deaths. The failure of these buildings to withstand a catastrophic event is now apparent. In our view, the regulatory framework was not at fault, just the fact that the buildings were not resilient enough to stay intact. The regulatory action required will stem around how high Government is prepared to 'set the bar' in terms of making buildings resilient to events such as those that occurred in Canterbury.
- 2.1.3. **Question 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?*
- 2.1.4. **Response:** We support the development of a National Policy Statement (NPS). This is required to provide clear direction from Central Government with clear objectives and policies for the construction sector.
- 2.1.5. As seismic risk varies considerably throughout the country, the objectives and policies of a NPS should not default to the area of highest seismic risk, such as Christchurch i.e. the NPS should not be driven by the 'worst case scenario'.

- 2.1.6. It is important that the NPS is established in consultation with representatives from across the sector, including both the Elected Member and business delivery arms of local government.
- 2.1.7. Ownership of the NPS needs to sit with the Ministry of Business, Innovation and Employment (MBIE) to ensure that local policies for dealing with risks are based on a common set of rules at the highest level. For example, the common approach historically for many councils has been to develop a policy that takes a passive approach, or in effect delivers no increase in the safety of buildings because the timeframes for compliance are too long. It is critical that an active or action policy is mandated for all that must demonstrate clear building improvements.
- 2.1.8. **Question 3:** *What are your views on the model proposed by IPENZ?*
- 2.1.9. **Response:** We support the IPENZ model, and particularly the funding of New Zealand Standards and guidance documents through the Building Levy. We also support the idea of technical matter experts and professional communities developing advisory documents (providing that a cross-section of industry is involved in the development and production and that this is not just left to one sector of the professional community).
- 2.1.10. **Question 4:** *Has the Building Amendment Act 2012 gone far enough? If not, what changes are still needed and why?*
- 2.1.11. **Response:** We do not agree that the Act adequately addresses the purpose intended. The current Act provides for the following purposes:

Purposes

This Act has the following purposes:

“(a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—

- *“(i) people who use buildings can do so safely and without endangering their health; and*
- *“(ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
- *“(iii) people who use a building can escape from the building if it is on fire; and*
- *“(iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- *“(b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.”*

- 2.1.12. In our view, the Act provides for some measures that will contribute to the above purposes. However, it does not go far enough. In particular, the regulation of building work through the licensing of building practitioners and the reliance on these licensed builders to construct a building that meets the safe and healthy building test is yet to be proved.
- 2.1.13. Although the original application and approval requirements for Licensed Building Practitioners (LBP's) provided for a very high standard to be met by applicants, the uptake in LBP's was negligible. This is because the present level of skills in the industry is low and has remained so through a lack of adequate training. The industry itself recognises and understands that.
- 2.1.14. The objectives of the LBP scheme are based on reliance of highly skilled people to do the job right first time and every time. Unfortunately, there are not enough of these highly skilled people in the industry. The test to become a LBP has therefore been set at the lowest level to

enable the numbers needed to launch the scheme. However, this changes little in terms of quality of built product. The same poorly skilled people are delivering the same product with reliance on BCA's looking over their shoulder to ensure that they 'get it right'. The future appears problematic if there is no emphasis placed on up-skilling our key people who construct buildings.

- 2.1.15. In our view, the accountability for builders and developers has not changed. A twelve month requirement to fix any mistakes by a builder simply does not provide surety of product quality and will not address the present issues.
- 2.1.16. Builders, including LBP's, are not required to warranty or guarantee their work or be accountable for poor workmanship in the longer term. The need for mandatory warranties is apparent, and while the whole industry understands that, the Act unfortunately does not address this fundamental requirement. Builders and building companies can simply escape litigation by changing the name of their company.
- 2.1.17. The test is high for BCA's who must prove competency of staff and are regularly measured against rigorous quality regulations every two years. This is not the cases for builders who actually construct the product.
- 2.1.18. **Question 5:** *What problems are there, if any, with the level of understanding of the building regulatory framework held by participants in the building sector?*
- 2.1.19. **Response:** The level of understanding is very poor throughout the sector and a large number of builders don't even understand the basics. For example, many builders still think that the building code is NZS 3604. The need for up-skilling of builders has never been more apparent and we submit that this is where the emphasis moving forward should be placed.
- 2.1.20. **Question 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?*
- 2.1.21. **Response:** Offering courses for all LBP's on the regulatory framework would provide a good platform going forward, in tandem with some regulations that actually 'raise the bar' in terms of testing competency. The Building Officials Institute of New Zealand (BOINZ) has offered to partner with MBIE to assist in developing courses for LBP's. This would go a long way to lifting the standard and competency. Such courses would be in line with requirements of the New Zealand Qualifications Authority.
- 2.1.22. **Question 6:** *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?*
- 2.1.23. **Response:** No, currently the two Acts do not align very well. The decision to remove the mandatory Project Information Memorandum (PIM) means there is no due process for reviewing building consent application for compliance with District Plans or for assessing the need for resource consent against the RMA. The mandatory PIM should be reintroduced to deal with this issue.

2.2. Questions - Standards Development (page 13)

- 2.2.1. **Question 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?*
- 2.2.2. **Response:** There are no standards (aside from the Engineering Code) for dealing with earthquakes. Guidance documents (such as those currently produced by the Building

Research Institute of New Zealand – BRANZ) need to be endorsed by MBIE and then tied into the National Building Standards – otherwise they have no legal standing.

- 2.2.3. **Question 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?*
- 2.2.4. **Response:** As above i.e. we support the IPENZ proposal (outlined on page 9 of the Discussion Document) subject to certain provisions. Standards in our view should also be funded through the Building Levy.
- 2.2.5. **Question 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?*
- 2.2.6. **Response:** As above i.e. we support the IPENZ proposal where guidance documents are developed by industry professionals and mandated documents are developed by New Zealand Standards.
- 2.3. Questions – Responsibilities (page 19)**
- 2.3.1. **Question 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?*
- 2.3.2. **Response:** If a work programme is needed for the development of building related Standards to ensure performance in an earthquake (as discussed above in section 2.2.6), who should lead this, what are the priority areas, and how should this be funded?
- 2.4. Questions – Resourcing Standards Development (page 22)**
- 2.4.1. **Question 1:** *What should the role of Standards New Zealand be and how should it be funded?*
- 2.4.2. **Response:** Developing standards that give effect to mandated policy funded through the Building Levy.
- 2.4.3. **Question 2:** *What are the advantages, disadvantages and risks of relying on Standards for the majority of building and construction methodologies?*
- 2.4.4. **Response:** There are no risks providing the Standards Association is equipped with adequate resources to produce quality documents that meet the requirements to produce a safe and healthy building.
- 2.4.5. **Question 3:** *Should primary reliance continue to be made on volunteers?*
- 2.4.6. **Response:** No - the professionals and subject matter experts need to be involved because reliance on volunteers does not ensure the most suitable people are on a committee. In addition, the Chief Executive of the Standards Association should be a member of the Building Research Advisory Council (BRAC).
- 2.4.7. **Question 4:** *In the event that Standards New Zealand is unable to source volunteers, what other means of funding might be available?*
- 2.4.8. **Response:** The Building or BRANZ Levies.
- 2.4.9. **Question 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?*
- 2.4.10. **Response:** Standards are an acceptable proven methodology where they are mandated.

2.5. Questions – Obtaining Regulatory Approval for Building Work (page 25)

- 2.5.1. **Question 1:** *How well do you think the current consenting system works and why?*
- 2.5.2. **Response:** There is too much reliance on a poorly skilled industry in terms of design and non-prescriptive building code. This, we suggest, needs to be tightened up in critical areas, particularly those prescribed as Restricted Building Work (RBW) by the introduction of prescribed mandatory methods to achieve compliance regarding building work.
- 2.5.3. **Question 2:** *Are there any issues with the intersection of roles between territorial authorities and building consent authorities; why or why not?*
- 2.5.4. **Response:** No - the two are so closely associated in terms of roles that we submit there should be no distinction in terms of law. Most BCA's are in fact TA's and carry out both roles in tandem. Otherwise there will be delays in the building process.
- 2.5.5. **Question 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?*
- 2.5.6. **Response:** Local control by BCA's is the only proven system that delivers healthy and safe buildings. Local BCA's are not private entities and are not driven by profit and have the interests of their community to consider.

3.0 FURTHER INFORMATION

- 3.1. Should the Canterbury Earthquakes Royal Commission require clarification of the points raised in this submission, or additional information, please contact Phil Saunders (Hamilton City Council's Building Control Manager), phone 07 838 6541, email phil.saunders@hcc.govt.nz

4.0 HEARINGS FOR SUBMISSIONS

- 4.1. Hamilton City Council **does wish to be heard** at the hearings of the Canterbury Earthquakes Royal Commission's July 2012 Discussion Paper on Roles and Responsibilities in support of this submission.
- 4.2. Please note that although this submission has been circulated to Hamilton City Council's Elected Members for consideration and feedback, it has not been formally adopted through the committee process.
- 4.3. Hamilton City Council's submission is to be considered and adopted retrospectively at the 25 September 2012 Strategy and Policy Committee meeting. We will advise you after this meeting if Council makes any changes to its submission.

Yours faithfully



Barry Harris
CHIEF EXECUTIVE