



12 August 2012

Canterbury Earthquakes Royal Commission  
 PO Box 14053  
 Christchurch Mail Centre 8544  
 New Zealand

Customer Services  
 P. 03 353 9007 or 0800 324 636

PO Box 345  
 Christchurch 8140

P. 03 365 3828  
 F. 03 365 3194  
 E. [ecinfo@ecan.govt.nz](mailto:ecinfo@ecan.govt.nz)

[www.ecan.govt.nz](http://www.ecan.govt.nz)

**Re: Discussion Paper: Roles and Responsibilities (July 2012, Gen.Cerc.0005.1)**

Environment Canterbury wishes to thank the Royal Commission for the opportunity to submit on the Discussion Paper. Our submission will draw on our experience as a result of the Canterbury earthquakes, and that our role as the lead manager of natural hazards for the region has given us a unique insight into the planning framework.

We will limit our comments on the Building Act to the efficacy of the regulatory framework. Our submission will address the adequacy of legal and best-practice requirements for the building, design and construction process as they apply to managing risks of building failure caused by earthquakes. We focus on two key questions highlighted in the discussion paper as they relate to the role of a Regional Council.

**Questions - 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?*

The discussion paper identifies that there may be a lack of understanding as to how the Building Act 2004, Building Code, New Zealand Standards and guidance documents relate to one another. The discussion paper suggests that there is confusion about the building regulatory framework and how it is to be followed in practice and that this appears to be a communication issue rather than a systemic issue with the framework.

We see that the current approach to dealing with Buildings under the Building Act, and relying on the consenting process to trigger natural hazards information (and as noted in our previous submission to the Royal Commission dated February 9<sup>th</sup> 2012) is a weakness, seeing as the bulk of sub-division and residential housing consents do not trigger the Building Act requirements for the management of natural hazards, including earthquakes.

The Resource Management Act (RMA), Local Government Official Information Management Act (LGOIMA) and the Civil Defence and Emergency Management Act (CDEMA) are equally key components of the regulatory framework that (should) drive and inform the building and construction sector as they apply to managing risks of building failure caused by natural hazards, including earthquakes. Without

Our ref:  
 Your ref:  
 Contact:

the results of such Act's (delivery of natural hazard information into property level packages) the current Building Act requirements for the management of natural hazards falls short.

As a result, we see the way in which the discussion paper has portrayed the Building Regulatory framework as being too narrow and should also include the RMA, LGOIMA and CDEMA to provide a practical and full picture of the regulatory framework.

- 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?*

The discussion paper identifies that conflicts between the RMA and the Building Act exist, and recognises that the combined requirements of the Building Act and the RMA have produced inefficiencies in the building consent process. Some consider that this imposes costs and delay that impede building activity across the country.

We note and agree that timeliness and efficiency are one measure and that this should be an area for further streamlining. However, we also note that adequate and appropriate information and adequate and appropriate triggers to require information on natural hazards through the building consent process are equally important. There are obvious gaps between the Building Act and the RMA as the example below highlights with the definition of hazards to be avoided from the Building Act;

#### **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.

What we see in the Building Act relating to Hazards management is;

1. The Act only dealing with definite hazards and likelihoods but not risk. There is no consequence factor.
2. Hazards don't line up with those in RMA. We notice that earthquake, liquefaction, and lateral spreading (all witnessed in Christchurch) are not in the list of natural hazards that consenting authorities are required to consider.

Therefore, we believe that any changes to either the Building Act, or other related Acts such as the LGOIMA and CDEMA, should look to ensure consistency of, and appropriate, "risk" definition including consequence.

Furthermore, that there is a commonality of hazards definition in the regulatory framework which matches that within the other Acts.

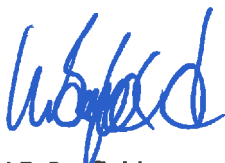
This matter was also included in the recent Technical Advisory Group (TAG) report on Phase II of the RMA review in relation to the limitations within s106 RMA that provides for declining subdivision consent approval where natural hazards are known, but there is no similar equivalent for land use applications. In summary, TAG considered the existing provisions in the RMA were not strong enough to prohibit development on hazard prone land.

Subdivision and land use processes are good processes to impose conditions on development (e.g. specifying building platforms, requiring geotechnical reports). However, where existing development is already in place, or a hazard is not known or there is no land use required, it is difficult to impose conditions on building consents.

It may prove helpful for a review of the TAG report to be included in the scope of this analysis on roles and responsibilities.

We wish to acknowledge the work of the Royal Commission to date and offer any further assistance or clarification to the points raised in this submission. We wish to speak to this submission if the opportunity arises.

Yours Sincerely,



W.E. Bayfield  
Chief Executive