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Submission to Canterbury Earthquake Royal Commission Aug 2012

The Building Officials Institute of New Zealand ("BOINZ" or "The Institute") appreciates the opportunity to make a submission to the Canterbury Earthquake Royal Commission (CERC) on the adequacy of and the roles and responsibilities within New Zealand's building control and regulatory system.

The Institute represents approximately 1200 Building Control Officials (BCO's) nationally. We work closely with the regulator, local government, Standards New Zealand and the wider built community to achieve quality building outcomes. The Institute is dedicated to professionalism within the Building Control sector and has established the Training Academy to support the educational and skill needs of the BCO sector, which in turn adds value to Building Control Authorities and the public.

Our investment in the education of BCO's is not insignificant and we believe the training we provide around building control has a wider appeal.

The Institute in partnership with Otago Polytechnic recently launched the Diploma(s) in Building Control Surveying ensuring the sector has an appropriate vocational qualification enabling consistent knowledge and skills that meet the requirement of Regulation 18 of the Building (Accreditation of Building Consent Authorities) Regulations 2006 (see comment below) .

The Institute is also a member of the Construction Industry Council (CIC) and the views expressed in parts of this submission may likely mirror those of the CIC.

CERC QUESTIONS	BOINZ RESPONSES
Efficacy of the 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?	<p>The Institute believes the building regulatory framework was not a significant factor to the issues and outcomes identified as a result of the Canterbury Earthquakes.</p> <p>Our view is that catastrophic event projections require Government direction and support in terms of minimal building resilience requirements (noting territorial authorities are not able to force building owners to upgrade their buildings).</p>
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?	<p>The Institute supports a National Policy Statement concept as a means of creating an explicit time based pathway ensuring sensible investment methodology and clear participative inputs from all stakeholders in the built environment. It would realistically be expected that the National Policy Statement would evolve on the time based cycle of updates</p> <p>We accept that this may be distinct from RMA policy objectives.</p>
3. What are your views on the model proposed by IPENZ?	<p>The Institute is very supportive of the IPENZ model, in that it establishes much needed clarity around ownership and development of protocols.</p> <p>The Institute is also very supportive of Standards documents</p>

	supporting mandated policy being funded through the Building Levy, effectively enhancing development and giving user access and widening “awareness” to these integral policy requirements. ENG BOINZ 0001.2
4. Has the Building Amendment Act 2012 gone far enough? If not, what changes are still needed and why?	<p>The Institutes view is that the risk based intent of the Act is noble, but requires moderation to ensure builders and designers deliver on work that complies with the code.</p> <p>It is the experience of Institute members that adequate knowledge of the building code and its regulations is limited to a select sector of highly skilled individuals in the design and construction area. There has been for too long a reliance on BCA’s to provide the “backstop” to getting “It Right”</p>
5. What problems are there, if any, with the level of understanding of the building regulatory framework held by participants in the building sector?	Our view is there is a significant percentage of builders who see NZS3604 (Timber Framed Buildings) as the code. This is not anecdotal, as we screen employees for BCO roles through our HR Division. Education is the key. The need to up-skill builders and those in the design professions is essential and it should be a mandatory requirement within structured CPD programmes.
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?	<p>The framework needs enhancement to deliver at an optimal level. The Institute aligns with the CIC position in that the regulatory framework is “not broken”.</p> <p>A National Policy Statement would set time bound realistic and agreed industry direction.</p> <p>The clear definition of roles within the regulatory hierarchy and a more transparent stakeholder partnership approach would allow the system and its participants to deliver better performance outcomes.</p> <p>A funding model that uses the Building Levy in a clear and transparent way to optimise the sectors needs.</p> <p>A clear feedback system (close the loop) that identifies sector issues in a timely manner</p> <p>The LBP scheme framework has the ability to deliver a mandatory education and competency assessed requirement to address agreed industry weaknesses to drive industry betterment around areas of the code and regulations.</p>
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?	<p>The two acts don’t align with the Building Act implemented by the Building Code and the RMA implemented many District Plans.</p> <p>It is very clear BCA’s are uncomfortable with the removal of the Project Information Memorandum (PIM) as it has removed the process for reviewing building consents applications against the District plans or for assessing the need for a resource consent against the RMA</p>

CERC QUESTIONS	BOINZ RESPONSES
Standards Development	<p>The Institutes position for questions in this section is that as a member of CIC it aligns and is supportive of the comments within CIC Briefing to the Minister (BIM) March 2012 and comments within the CIC submission to the CERC.</p> <p>The Institute has been concerned for some time the responsibility lines in relation to standards development have been blurred by the regulator.</p>

	<p style="text-align: right;">ENG-BOINZ-0001.3</p> <p>We would advocate clearly articulated roles for MBIE and Standards New Zealand that has MBIE providing the overarching regulatory picture via a National Policy Statement and NZ Standards controlling and co-ordinating the suite of standards.</p>
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CERC QUESTIONS	BOINZ RESPONSES
Responsibilities	As noted previously a National Policy Statement is necessary and should encompass the main participants and their roles and a clearly articulated vision over a prescribed timeframe that delivers guidance to legislators, regulators and standards developers.
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?	Refer CIC submission position
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?	Refer CIC submission position

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Capability	<p>The Building (Accreditation of Building Consent Authorities) Regulations 2006 introduced the criteria and standards for accreditation as a Building Consent Authority through a series of regulations (#'s 5 to 18) and deadlines (timeframes) for which these regulations are to be met. The Industry has always agreed on the need for suitably qualified and competent people working within the sector and the newly legislated BCA sector, under <i>Regulation 10: Establishing and assessing competence of employees; Regulation 11 Training Employees and Regulation 18: Requiring Technical Qualifications</i>, had delivered a legislative pathway to achieve this.</p> <p>The timeframes around meeting the regulations were 1st December 2010 for the Regulations 5-17 and the 1st December 2013 for Regulation 18 <i>Requiring Technical Qualifications</i>. It would be fair to state there has been significant support for a sector qualification by all those operationally involved. The same cannot necessarily always be said for TA management, which is surprising given the Building Controls sector is likely to be their area of biggest risk. Getting it right is all about having a consistent competency in both the Consent Processing and Inspection areas. The Institute believes a qualification will deliver efficiencies and flexibility within the BCA environment, significantly contribute to consistency of output, create a platform for</p>

	<p>sector betterment, provide an enhanced level of public confidence, and create a platform for uniform industry betterment. ENG BOINZ.0001.4</p> <p>As recently as July 2012 some BCA's were taking adverse or possibly financially sensitive positions in relation to Regulation 18, despite legislative requirements and Industry already having establishing a vocational Diploma based qualification (The Diplomas in Building Control Surveying—Small and Large Buildings).</p> <p>Traditionally employees in the Building Controls sector come into the role from varied disciplines (construction, design engineering etc) Very few commence work with a solid understanding of the Act, Code or Regulations and until recently a cohesive training programme for TA/BCA's and their individual employees was not seen as imperative despite the responsibility and risk.</p> <p>The Diplomas are registered on the NZQA framework and unit standards based. They were established towards the end of the last decade, but due to political manoeuvrings and consequential levels of uncertainty didn't enter the development phase until 2011. The key stakeholders in the Diploma's development are Otago Polytechnic and the Building Officials Institute of New Zealand. Access to the diploma is through an Approved Prior Learning (APL) process for those who have 5-7 years BCO sector experience and a cadetship for newly entering employees. The APL process allows for evidential delivery of competence and demands the collection of evidence and the undertaking of an assessment prior to granting the qualification. In many cases the initial gap analysis requirement will result in applicants having to complete some study and practical experience in areas they may be weak in.</p> <p>The introduction of the qualification requirements under Regulation 18, necessarily mean there will be a need for guidance as to what is an acceptable qualification, and an acceptable interpretation of the "in training" period to achieve the qualification. There is also the issue of whether it is appropriate to economically "grandfather" employees of a certain age. The Institute is in discussions with Building and Housing Group within MBIE as to how best to advise on guidance in this area. The Institute and Otago Polytechnic (as the preferred industry educational centre of excellence) have delivered the qualification programme at minimal cost understanding the current financial pressures on BCAs.</p> <p>The former Department of Building and Housing also introduced a National Competency Assessment System in 2010 to meet the requirements of <i>Regulation 9 Allocating Work to Competent Employees and Contractors; Regulation 10 Establishing and Assessing Competence of Employees; and Regulation 11 Training Employees</i> which aimed to set explicit performance indicators around a skills matrix. The sector sees the <i>National Competency Assessment System</i> as the mechanism that allows for a future proofing of the qualification skill sets of an individual as legislation, technology and skills advance.</p>
<p>1. What examples or evidence are there of issues of competency within BCA's? 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.</p>	<p>As a generalisation the Institute is supportive of national and regional consistency within the BCA process (where this can logically be achieved).</p> <p>The introduction of the Building (Accreditation of Building Consent Authorities) Regulations 2006 has created the initial platform to achieve consistent outcomes across the sector.</p> <p>Regulation 18 addresses's the requirement for a much needed</p>

	<p>standardised skill set within the sector and creates a career pathway into the BCA sector. The Diplomas in Building Control Surveying underpins this legislative requirement.</p> <p>The Institute through its Training Academy continually reviews the Diploma course content to ensure current relevance and provides a range of best practice CPD courses to its members often linking with other industry stakeholders in course development and delivery.</p>
2. What skills are needed in the private building sector to ensure seismically resistant buildings?	Continual Professional Development that includes both voluntary and mandatory commitment is critical. Mandatory course involvement should address critical industry needs and be coordinated through the LBP process with consultation with key stakeholder organisations that have the ability to table and identify potential issues.
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?	It may be appropriate to engage that the regulator seeks to engage expert skill sets, in an area of expertise to test the robustness of a particular issue in terms of consultative policy and certainty of outcome. The position could be sourced locally or internationally depending on the skill sets required.

CERC QUESTIONS	BOINZ RESPONSES
Resourcing Standards Development	<p>The Institute accepts that the Standards New Zealand provides a significant range of Standards across many industry sectors. It draws on relationships with other international standards setting bodies to achieve appropriate standards for New Zealand.</p> <p>Within the catalogue of Building Standards approximately 80% are linked with Australian Standards. However there is a uniqueness within the New Zealand environment (as there is with other countries) that necessitates uniquely New Zealand Standards for New Zealand (ie for the overall good of “NZ Inc”).</p> <p>The Institute again strongly reinforces the need for clear boundaries around the roles of the regulator and Standards New Zealand in the development of Standards and that the use of the Building Levy is transparent and supportive of up-to-date Standards development and access. In the case of the Building sector the standards are a public good, the ultimate beneficiary being the consumer/ building inhabitants. A failure to recognise this is an endorsement of the status quo in terms of building quality and productivity (dated standards and limited accessibility, the enduring legacy being an ongoing unnecessary cost to the NZ Inc at the expense of other economic opportunity.</p> <p>Again the Institute is aligned with and supportive of the comments within CIC Briefing to the Minister (BIM) March 2012 and comments within the CIC submission to the CERC</p>

CERC QUESTIONS	BOINZ RESPONSES
Obtaining Regulatory Approval for Building Work	The Institute is supportive of a pathway that delivers a more unified and consistent consenting system nationally that encompasses technology and skill sets appropriate for the roles—this includes all in the building chain—consenting officers, engineers, designers and builders.
1. How well do you think the current consenting system works and why?	The BCA requirements under the regulation are driving improvements. The auditing process fine tunes these with corrective actions. The implementation requirement of Regulation 18 will add value to the

	<p>process.</p> <p>The Institute is concerned there is still a reliance by poorly skilled practitioners in the building and design sectors using the building consenting system to underpin their lack of responsibility and adherence to regulatory obligations.</p>
2. Are there any issues with the intersection of roles between territorial authorities and building consent authorities; why or why not?	The Institute is not aware of any significant issues between the two.
3. Do you consider the status quo (local control by BCA's), a national model as described above, or an alternative option, would provide the most effective and efficient consenting process for complex building work?	<p>The decision around this question must be driven by building quality, health and safety outcomes.</p> <p>The Institute has a preference for local expertise being the prime driver around these outcomes.</p> <p>A local building control system that integrates with a regional support structure is a model that currently operates (BCA regional cluster groups) delivers levels of operational efficiency and consistency often sharing resource and expertise.</p> <p>The Institute can also foresee advantages of national standardisation with certain operating procedures and resource within the consenting process. However to achieve these the regulator must look to being more transparent and involve the sector at the earliest possible opportunity. This has not been the case in the past and has seen unnecessary cost duplications at local and central level in terms of research and development.</p> <p>The Institute would advocate a clearly articulated and agreed approach to any changes, and that any changes take a stepped approach ensuring sensible evolution that allows modification along the process to ensure appropriate outcomes.</p>
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?	<p>By its very nature risk based consenting as supported under the Building Act 2012 carries risks. The Institute has concerns in the following areas:-</p> <ul style="list-style-type: none"> • Lack of accountability and responsibility within the building and design sectors. The LBP scheme should support mandatory up-skilling and retraining • There is concern specialists trades are not included within the LBP scheme when the reality is there are certain sectors of the industry have a level of expertise that should not be attempted by untrained unqualified practitioners eg heating installation • The law is weak in terms of requirements around liability and a move to proportional liability from the current Joint and Several system would ensure a focus on responsibility and professionalism across the sector • Consideration should be given to the introduction of a mandatory warranty system reducing the assessment risk associated with new products and systems, taking the onus off local authorities and creating public confidence and assurance for new building owners.

CERC QUESTIONS	BOINZ RESPONSES
Quality Assurance	
1. Comment on the proposed model	The institute supports the CIC model

for regulatory approval by NZCIC – What aspects of this model should or should not be adopted and why?	ENG. BOINZ.0001.7
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?	<p>Producer statements ceased to have legal standing under the Building Act 2004.</p> <p>It would appear councils have continued to maintain the Producer Statement ethos as a mechanism to establish reasonable grounds of compliance and to minimise risk; that is the proof of an authors competency (and they must prove competency).</p> <p>Producer statements are only necessary where the building element or system is an alternative solution. A producer statement assists a council to consider the test of “reasonable grounds”. In fact without a producer statement a building owner will need to provide sufficient evidence to support the use of an alternative solution. There is no authority for a council to demand a producer statement however they are very effective as a means of reliance to some degree and keep the cost of compliance to a minimum for the building owner.</p> <p>Many councils now run a register ensuring the Individual/Company is competent, qualified, insured and in relevant cases, professionally affiliated. Checks of competency are carried out on application and of course where there is a need to challenge work.</p> <p>It appears Engineers understand the requirements around the need for Producer Statements. The challenge is in other building and design disciplines in accepting an element of proof is required. In terms of LBP’s (building and design) the focus will go on “getting it right first time” to ensure councils aren’t seen as a compliance backstop</p>
3. What standing, if any, should producer statements have?	Producer statement have a role, it would be useful if BCA’s adopted a similar approach to managing their producer Statement requirements regionally or nationally
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?	<p>Peer reviews have a place in a risk based consenting environment, to independently assess the robustness of systems and their authors.</p> <p>Our view is that low risk consents for buildings designed and built by LBPs should progress easily, the next category is optional depending on use and complexity (but generally by BCA officials) and 3rd tier should be peer reviewed externally.</p>
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?	The Institute would support the development of a guiding matrix around peer review subject to further discussion. A nationally coordinated approach would be sensible and to have this developed by the regulator (MBIE)
6. Who should conduct peer reviews? Should there be any specific requirements (for example, independence) and why or why not?	Peer reviews should be conducted by those with equal or greater qualifications dependant on the disciplines.
7. Do peer reviews need to be audited and if so, by whom?	

CERC QUESTIONS	BOINZ RESPONSES
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Information about Building Performance	<p>The Canterbury Earthquakes initial building evaluation response was around building safety. It was by necessity a quick performance based assessment. The Institute has yet to receive formal information and feedback on the success or otherwise of the process, however having been heavily involved in the resourcing logistics of getting some 220 BCOs in Christchurch to assist the building evaluation programme post February 22nd 2011 we are mindful there is a need to consider who we deploy (skill levels) and when. Given the Canterbury experiences are not a disaster in isolation, the Institute has been part of a group of other learned organisations looking to have a more prepared and skilled group of BCO's capable of operating in these environments to provide a robust and enduring building evaluation response.</p>
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Should attendance at the Commission be required the Institute nominates its President Mr Phil Saunders supported by the Chief Executive

Nicholas W Hill

Chief Executive