SUBMISSION PANEL
AGENDA

FRIDAY 1 JUNE 2010

AT 10 AM

IN COMMITTEE ROOM 1, SECOND FLOOR, CIVIC OFFICES, 53 HEREFORD STREET

Panel: Councillor Sue Wells (Chairperson).
Councillor Tim Carter.

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SUBMISSION PANEL 1. 6. 2012

1. APOLOGIES

2. SUBMISSION ON THE BUILDING AMENDMENT BILL (NO 4)

General Manager responsible:	General Manager Regulation and Democracy Services, DDI: 941-8462
Officer responsible:	Resource Consents and Building Policy Manager
Authors:	Steve McCarthy and Judith Cheyne

PURPOSE OF REPORT

1. This report is to advise the Panel about the Building Amendment Bill (No 4) ("the Bill") and for a submission to be approved on the Bill.

EXECUTIVE SUMMARY

2. The Bill is the second of two Bills introduced by the Government to implement a number of policy decisions arising from the review of the Building Act 2004 in 2009/2010. The Building Amendment Bill (No 3) was enacted on 12 March 2012, although many of the provisions are still to be brought into force by a future Order in Council, including the new building consents system.

3. Submissions on the Bill are due on 11 June 2012, with a final report due from the Local Government and Environment Committee in September 2012.

4. The Bill primarily deals with consumer protection issues, arising from the relationship of owners and the building practitioners who build or repair their houses. Those amendments are not something that directly affect the Council, although it is relevant to the potential liability of various parties in the event of later claims related to a building. There are also a number of other matters the Bill addresses that are relevant to Council and on which it should make a submission.

5. The Bills Digest (prepared for Parliament to assist it in its consideration of the Bill) is **attached** (**Attachment 1**) to this report, and provides an overview of the Bill. The following are the main amendments (as described in the explanatory note to the Bill), and some brief commentary as to the relevance to the Council.

6. The whole Bill, including its explanatory note, can be found at:

   http://www.legislation.co.nz/bill/government/2011/0322/latest/DLM3957236.html

7. The Bill introduces **enhanced and more comprehensive consumer protection measures**, including mandatory written contracts for work valued over a prescribed amount, mandatory disclosure of certain information by building contractors, and new offences for breaches of these requirements.

   Comments on relevance to Council:

   The Council could make a submission in support of better consumer protection measures, but these amendments are not something that directly affect the Council. It could also repeat its submission about the need for better liability protection for territorial authorities, made in relation to the No 3 Bill (the No 3 Bill submission is **attached** (**Attachment 2**)to this report).

   In its submission on the No 3 Bill the Council's submission stated: "*The Council fully supports the concept of Licensed Building Practitioners (LBPs) taking a greater responsibility in relation to the building works they carry out. ….Council submits that other parties involved in a building project should no longer have a joint and several liability regime to "fall back" on. The Council is concerned that the Bill does not propose a move to a proportionate liability system and strongly urges the Committee to provide for this in the Bill. Alternatively, if the joint and several liability regime is to remain the same ...* [should] *introduce a requirement on builders to have a warranty or guarantee system in relation to major building projects or work over a certain value*."

2 Cont'd

The consumer protection amendments proposed in the Bill stop short of requiring builders to have a warranty or guarantee system. The draft LGNZ submission (**attached – Attachment 3**) on the Bill comments on a Queensland government-backed home warranty insurance system and urges the Select Committee to introduce something similar for New Zealand. The Council could support the LGNZ submission in this regard.

Council staff also support the new offence in section 362S but suggest it should be widened so it is an offence for anyone (not just a commercial on-seller) to sell any building (not just a household unit) where there is no code compliance certificate or certificate of acceptance for building work that required a consent and has been undertaken since the Building Act 2004 came into force. If this offence provision is widened it may provide a greater incentive for building owners to promptly obtain code compliance certificates for their work (or certificates of acceptance if work has been done without consent).

8. The Bill **clarifies the exemptions from the building consent requirements** in Schedule 1 of the Act by rewriting and reformatting the schedule, and adds some new exemptions, including removing the word "damaged" from the exemption for demolition of outbuildings because the risks posed by the work are no different for "damaged" or "undamaged" outbuildings. The Bill also amends a section introduced by the No 3 Bill (that is not yet in force) and introduces a new section – both of which are relevant to the exemptions in Schedule 1.

Comments on relevance to Council:

The revised Schedule 1 does not raise any major issues, except that staff recommend the exemption for awnings and verandahs be clarified so there is no exemption for building work on cantilevered awnings or verandahs. The evidence in Canterbury following the earthquakes is that awnings and verandahs on buildings create a structural loading that many buildings do not have the capacity to sustain. This exception has the potential to cause structural weaknesses in buildings leading to them more easily collapsing in an earthquake or other event.

Council may also want to make a submission regarding the new proposed section 42A. It provides conditions that exempt building work are still required to meet. One of these provisions is that once the building work is finished, if the whole building did not comply with the building code "*immediately before the building work began*", it must continue to comply to at least the same extent as it did then comply.

This could give rise to an issue in the following example. In Christchurch following the earthquakes, or it could also arise where there has been a fire, the building may be badly damaged but not be so bad that the building can be classed as a dangerous or insanitary building. If minimal repairs are to be carried out, without consent, the result could be that a below code part of the building that is not being repaired, will only be compliant to the same extent as it was following the fire or earthquake. It would be preferable for the building to be compliant to the same extent as it was before the building was damaged by the earthquake or fire. This is the standard to which most insurers would have to repair a building, so would not be an issue in most "damage" cases, but it could lead to problems where a building is not insured.

The Council should also consider whether it wants to repeat the submission made on the No 3 Bill that exempt building work carried out that relates to the demolition of buildings and any other work that might have a potential effect on any of Council's public utility services, such as water supply, drainage systems etc should be notified to the Council.

9. The Bill adds **a new power for territorial authorities** to deal with buildings that are at risk because they are near or adjacent to dangerous buildings.

2 Cont'd

Comments on relevance to Council:

Affected building

The main proposal with these amendments concerns a new category of building called an affected building: "*A building is an affected building for the purposes of this Act if it is adjacentto, adjoining, or nearby a dangerous building as defined in section 121*". Council could usefully make a submission here, as this power is similar to one of the new provisions added by the Building Act (Canterbury Earthquakes) Order in Council. This definition will apply in a Manchester Courts type of situation but could not be used were the adjacent hazard is a land hazard.

In addition the definition of "affected building" does not require that the dangerous building that is adjacent to, adjoining, or nearby another building must pose a risk to that building, such that there is a risk, or it is likely, that injury or death would be caused to someone in the affected building and does not address adjacent, adjoining, or nearby public or private land where there is no building, but the land is at risk from a dangerous building. These two matters can be addressed by further amendments. The first issue, that there be a risk can be addressed within the new definition of affected building. The second issue by clarifying Council's existing powers to erect a hoarding or fence under section 124.

In relation to land hazards, although existing section 121(1)(a) of the Building Act will cover land hazard risks in some situations, section 121(1)(a) could be made more clear (or proposed new section 121A made wider). In particular the wording stating that "the building is likely to cause" injury or death may need revision (as it could be the falling rock hitting the building and then hitting the person inside which may not be the same thing as the building causing the injury. The other matter to be addressed is when the potential trigger for the hazard occurring is an earthquake, as this is currently excluded by section 121(1)(a). Alternatively, land issues are possibly more appropriately addressed via amendments to the Resource Management Act 1991. The submission can identify this alternative.

Restricted entry notice wording

The wording for the new restricted entry notice is the same as the Order in Council wording. Staff believe this wording could be improved upon. It should clearly provide the ability to restrict entry to part of a building but allow the use of another part, by adding the following wording to the section: "or preventing entry to part of the building but allowing entry and use of other parts of the building".

No time period for the restricted entry notice

New section 125 (clause 22 of the Bill) sets out the requirements for the various section 124 notices. In particular, the new "restricted entry" notice may be issued for a maximum period of 30 days and may be reissued once only for a further maximum period of 30 days. For some buildings, a maximum of 60 days will not be enough time to get the unsafe building attended to.

The Councils experience with the Manchester Courts building following the 4 September earthquake, demonstrates that owners of affected buildings may need to be kept out of their buildings for much longer than a maximum of 60 days.

Suggested amendment to section 124 notice for earthquake-prone buildings

The Council has also recently made submissions to the Royal Commission regarding dangerous and earthquake-prone buildings. The Council can provide the relevant parts of those submissions (insofar as they are relevant to the context of the Bill) directly to the Select Committee.

In respect of a section 124(1)(c) notice issued for an earthquake-prone building, the wording in the section about taking action to "reduce or remove the danger" needs to be made more specific. It needs to be clear that a Council can require an earthquake-prone building to be strengthened to the level the Council has specified in its policy required under section 131.

2 Cont'd

10. The Bill i**ncreases the maximum penalty** for the offence of doing building work without a building consent from $100,000 to $200,000.

    Comments on relevance to Council:

    The Council can make a submission in support of clause 13 which amends s40(3) and increases the penalty. It could make the additional submission that the infringement fees regulations also be amended so that the infringement fee for this offence is also increased from $750 to $1000. If that amendment is made the infringement fee would then be the same amount as the fee for failing to comply with a dangerous building notice or a notice to fix (for which the maximum fine is otherwise also $200,000).

11. The Bill **clarifies the powers of the Chief Executive of the Department of Building and Housing**, including power to review the performance of territorial authorities, regional authorities, and building consent authorities under the Act, and power to issue infringement notices.

    Comments on relevance to Council:

    The changes to the powers to review the various authorities do not appear to be significant. Clause 38 proposes an amendment to section 200 of the Building Act which currently requires the Chief Executive to, as soon as practicable, inform a building consent authority of a complaint and to decide whether to accept or decline the complaint.

    Under the proposed amendment a building consent authority is not entitled to proffer any information or submission at this stage. LGNZ is suggesting that local authorities should oppose this amendment, on the basis that an entitlement to provide information before a decision is made on whether to accept or decline a complaint is a simple mechanism to reduce inefficiencies and reduce the risk of the Chief Executive having to act on vexatious complaints. However, Council staff can see there is also a benefit in not having staff time tied up by being involved in a complaint or providing information to the Chief Executive at this early stage (it will still be involved if a complaint is actually accepted).

    Council could support the amendments related to the ability for the CE to issue infringement notices, particularly if it means the Department is going to take a greater role in enforcement of the Act, and where these things are difficult for Council to enforce (for example the new infringement notice powers for the consumer protections breaches).

12. The Bill introduces the concept of a "classifiable dam" and a "referable dam" for the purposes of the **Dam Safety Scheme**, gives regional authorities the discretion to investigate and refer a "referable dam" for classification, and improves the administrative efficiency of the Dam Safety Scheme.

    Comments on relevance to Council:

    No submissions needed from Council, as these are Regional Council responsibilities.

13. The Council could also reaffirm a submission made on the No 3 Bill, regarding the Council's power to collect development contributions when an application for a certificate of acceptance is made, and that the Council can refuse to issue a certificate of acceptance, until any development contribution is paid.

14. The Building Act and sections 198 and 208 of the Local Government Act 2002 need to be amended as currently the only trigger point at which a Council can require development contributions related to building work (where there is no resource consent or service connection also required) is a building consent. As a building consent cannot be applied for retrospectively, this provides a technical loophole by which a developer can avoid paying a development contribution.

2 Cont'd

15. If this is not amended there is a risk of building work being done without consent simply so the owner/developer can avoid paying a development contribution. In some situations this may be a significant incentive to do work illegally. Several court cases have identified that a development contribution is akin to a tax and the legal requirements should be strictly construed. This means there is a real risk that a Council will not be able to recover a development contribution, if it was challenged, in the situation where work is done illegally without a consent.

16. The Bill also makes other minor technical amendments which staff have considered, and reached the view that they do not require submissions from the Council. The matters highlighted above are included in the **attached** (**Attachment 4**) draft submission.

FINANCIAL IMPLICATIONS

17. If an oral submission is to be made by the Council then there may be financial implications if the Council representative(s) need to travel to Wellington for the Select Committee hearing.

LEGAL CONSIDERATIONS

18. No legal considerations involved in making a submission on a Bill.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

19. Not applicable.

ALIGNMENT WITH STRATEGIES

20. Not applicable.

CONSULTATION FULFILMENT

21. The Council would not need to consult with any member of the public in relation to its submission on the Bill, because any member of the public can also make their own submission. Staff from the Environmental and Policy Approvals Unit and the Legal Services Unit have worked on the report and draft submission.

STAFF RECOMMENDATION:

That the Panel resolve to:

(a) Approve the draft submission on the Building Amendment Bill (No 4)

(b) Determine whether the Council should make an oral submission on the Bill and, if so, appoint a Councillor or Councillors to represent the Council at the Select Committee Hearing.

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BILLS DIGEST

Digest No. 1944

Building Amendment Bill (No 4) 2011

Date of Introduction:	06 September 2011
Portfolio:	Building and Construction
Select Committee:	As at 08 February, 1st Reading not held.

Published: 08 February 2012

by

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Purpose

This Bill is the second of two Bills to implement *the Building Act Review* policy decisions. The first Bill was the Building Amendment Bill (No 3) 2010 which is still before the House. (That Bill as introduced is described in *Bills Digest 1827* and changes to it recommended by the Select Committee are described in *Bills Digest 1890*).

"This Bill:

- "introduces enhanced and more comprehensive consumer protection measures, including mandatory written contracts for work valued over a prescribed amount, mandatory disclosure of certain information by building contractors, and new offences for breaches of these requirements;
- "clarifies the exemptions from building consent requirements in Schedule 1 of the Act by rewriting and reformatting the whole schedule and adds some new exemptions, including removing the word "damaged" from the exemption for demolition of outbuildings because the risks posed by the work are no different for "damaged" or "undamaged" outbuildings;

- "adds a new power for territorial authorities to deal with buildings that are at risk because they are near or adjacent to dangerous buildings;
- "increases the maximum penalty for the offence of doing building work without a building consent from $100,000 to $200,000;
- "clarifies the powers of the Chief Executive of the Department of Building and Housing to review the performance of territorial authorities, regional authorities, and building consent authorities under the Act;
- "introduces the concept of a "classifiable dam" and a "referable dam" for the purposes of the Dam Safety Scheme;
- "gives regional authorities the discretion to investigate and refer a "referable dam" for classification;
- "improves the administrative efficiency of the Dam Safety Scheme;
- makes a number of other minor and technical amendments"[1].

Background

Need for the Bill

"In 2009 the Government undertook a Building Act Review, which found there remains a heavy reliance on building consent authorities for building quality, and there are concerns about costs, complexity, and delays in building consent processes. Change is needed to provide incentives for building professionals and trades people to take responsibility for the quality of their work and to stand behind it. Legislative change is required to address these issues"[2].

Regulatory impact statement

The following regulatory impact statements for the Bill were produced in August 2010, February 2011, and April 2011:

- http://www.dbh.govt.nz/ris-bar-consumer-protection
- http://www.dbh.govt.nz/ris-building-act-review
- http://www.dbh.govt.nz/ris-dam-safety-scheme
- http://www.treasury.govt.nz/publications/informationreleases/ris

[1] Building Amendment Bill (No 4), 2011 No 322-1, Explanatory note, General policy statement, pp. 1 and 2..

[2] Ibid.

Main Provisions

Term "acceptable solution" replaces term "compliance document"

The Bill replaces the use of a "compliance document" for establishing compliance with the building code with the use of "acceptable solutions" and verification methods which the chief executive may issue by notice in the *Gazette (Part 1, Clause 9, substituting Sections 22-25A of the Act; Clause 4, amending Section 7 of the Act by substituting the definitions of "acceptable solution" and "verification method" and repealing the definition of "compliance document").*

New category of building: "affected building"

The Bill introduces a fourth category of building in addition to the existing categories which are: dangerous, earthquake-prone, and insanitary buildings. The new category is "affected buildings". "An affected building is affected "if it is adjacent to, adjoining, or nearby a dangerous building ...". The Bill gives territorial authorities a new power to issue a notice restricting entry buildings. This applies to all categories of building including affected buildings. A territorial authority, in its policy on dangerous, earthquake-prone, and insanitary buildings, is required to take into account affected buildings (Part 1, Clauses 19-27).

Dams

The Bill distinguishes, for safety purposes, between a classifiable dam and a referable dam. The owner of a dam must classify a referable dam if the regional authority has reasonable grounds for believing that the dam should be classified as a high or medium potential impact dam. The terms "classifiable dam;" and "referable dam" have the meaning given to them by regulations *(Part 1, Clauses 29-37).*

Consumer rights and remedies in relation to residential building work

The Bill sets out consumer rights and remedies in relation to residential building work including, pre-contract information to be provided to clients by building contractors, the minimum provisions to be included in a residential building contract, implied warranties and the remedies available for breaches of those warranties. The Bill provides that nothing in this context limits or derogates from the provisions of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993. In general terms, the Bill provides the following rights and remedies (which are provided for in great detail in the Bill):

What is a "residential building contract"?

The Bill defines the term "residential building contract" as "a contract under which one person (the building contractor) agrees with another person (the client) to do building work for the client in relation to a household unit *(Part 1, Clause 44, inserting New Part 4A into the Act, New Section 326B).*

Pre-contract information

The Bill provides that a building contractor must not enter into a residential building contract unless the building contractor has first provided to the client (or each client if there is more than one) the prescribed information (if any); and a prescribed checklist (if any) (prescribed in regulations) and any

person who contravenes this commits an infringement offence and is liable to a fine not exceeding $2,000. Any person who in any communication or document required to be made knowingly makes a statement that is false or misleading in a material particular or knowingly makes a material omission commits an offence liable to a fine not exceeding $20,*000 (Part 1, Clause 44, inserting New Part 4A into the Act, New Section 326D).*

Minimum requirements for residential building contract over a certain value.

The Bill provides that a residential building contract where the price for the building work is not less than the prescribed minimum price calculated in accordance with the prescribed methodology must be in writing and must contain as a minimum the prescribed information, content, terms, and conditions. A building contractor must not enter into such a residential building contract unless these requirements have been complied with. Contravention is an infringement offence carrying, on conviction, a fine not exceeding $2,000 *(Part 1, Clause 44, inserting New Part 4A into the Act, New Section 326E).*

Implied warranties

The bill provides extensively and in detail for implied warranties. In relation to household units, in residential building contracts, contract for the sale of one or more household units by, or on behalf of, an on-seller and despite any provision to the contrary in any agreement or contract, the following warranties about building work to be carried out under the contract are implied, are taken to form part of the contract, and have effect despite any provision to the contrary in any contract or agreement, and despite any provision of any other enactment or rule of law:

- that the building work will be carried out: in a proper and competent manner; in accordance with the plans and specifications set out in the contract; and in accordance with the relevant building consent;

- that all materials to be supplied for use in the building work will be suitable for the purpose for which they will be used and, unless otherwise stated in the contract, will be new;

- that the building work will be carried out in accordance with, and will comply with, all laws and legal requirements, including, without limitation, the Act and the regulations;

- that the building work will be carried out with reasonable care and skill and be completed by the date (or within the period) specified in the contract or, if no date or period is specified, within a reasonable time;

- that the household unit, if it is to be occupied on completion of building work, will be suitable for occupation on completion of that building work;

- if the contract states the particular purpose for which the building work is required, or the result that the owner wishes the building work to achieve, so as to show that the owner relies on the skill and judgement of the other party to the contract, that the building work and any materials used in carrying out the building work will be reasonably fit for that purpose or be of such a nature and quality that they might reasonably be expected to achieve that result.

The Bill provides for proceedings for breach of warranties may be taken by an owner of the building or land in respect of which building work was carried out under such a contract, whether or not that person was a party to the contract, including: adjudication under the Construction Contracts Act 2002; a claim under the Weathertight Homes Resolution Services Act 2006; and arbitration under the Arbitration Act 1996. A person may not give away the benefit of these warranties. The Bill provides for the enforcement by the client of a warranty. The client may require the building contractor to remedy the breach (including repairing or replacing defective materials supplied by the building contractor) within a reasonable time or may cancel the contract. If the building contractor, after being required to remedy the breach, refuses or neglects to do so, or does not succeed in doing so within a reasonable time, the client may have the breach remedied by someone else and recover from the building contractor all reasonable costs incurred in having the breach remedied. In addition to these remedies, the client may obtain from the building contractor damages for any loss or damage to the client resulting from the breach (other than loss or damage through reduction in the value of the product of the building work) that was reasonably foreseeable as liable to result from the breach.

If the breach of warranty cannot be remedied or breach is substantial (which term is defined by the Bill), the client may obtain from the building contractor damages in compensation for any reduction in value of the product of the building work below the price paid or payable by the client for that work; or cancel the contract. In addition, the client may obtain from the building contractor damages for any loss or damage to the client resulting from the breach (other than loss or damage through reduction in the value of the product of the building work) that was reasonably foreseeable as liable to result from the breach. Rules applying to the cancellation of contracts are set out *(Part 1, Clause 44, inserting New Part 4A into the Act, New Sections 326G-362S).*

Infringement notices

The provisions of the Act relating to infringement notices are redrafted in the Bill. In addition to authorisation by a territorial authority as currently provided, the chief executive will be able to authorise a person as an enforcement officer with the power to issue infringement notices, and payment of an infringement fee must be paid to the relevant territorial authority or the chief executive, depending upon who issued the infringement notice in question *(Part 1, Clause 51,inserting New Sections 371A-371D into the Act; Clause 52, substituting Section 374 of the Act).*

31 March 2011

To: Secretariat
Local Government and Environment Committee
Parliament House
Wellington

Submission of the Christchurch City Council on the Building Amendment Bill (No 3)

Introduction

1. The Christchurch City Council would like to thank the Committee for the opportunity to make submissions on the Building Amendment Bill (No 3) (the Bill). This submission was approved by the Council at its meeting on 31 March 2011.

2. The Council wishes to appear in support of its submission.

Submission

3. The Council has three key points it wishes to make on the Bill. These are discussed below and then submissions providing more detail and supporting the key points, as well as other submissions and suggestions for minor amendments are included in the following section.

Key point: Council seeks better liability protection for territorial authorities through the introduction of a proportionate liability system, or a warranty system for builders carrying out major building work

4. The Council supports the development of effective building controls for New Zealand and in principle it supports the direction of the proposed changes. Council recognises and strongly supports that one focus of the proposed reforms is to reduce reliance on building consent authorities (BCAs), who are generally Councils, and to promote the accountability of all participants in building design and construction. However, simply promoting accountability does not do enough to change the liability and legal risks currently faced by Councils.

5. The Council notes that this Bill is the first of 2 Bills to implement the Building Act Review policy decisions and that it follows from the Department of Building and Housing (DBH) review of the Building Act and its discussion document on the Building Act review – "Cost-effective quality: next generation building control in New Zealand", on which the Council made a submission in April 2010. However, the Council believes more is needed in this Bill, and should not wait until a second Bill, to improve the potential liability position for Councils.

6. The Council fully supports the concept of Licensed Building Practitioners (LBPs) taking a greater responsibility in relation to the building works they carry out. Many of the streamlined proposals are reliant on competent building professionals and the proposal is that they accept greater accountability and liability for their work at the design and construction stages.

7. However the Council does not believe there are currently sufficient practitioners with the necessary skills and knowledge who are prepared to take on the responsibility of managing their own work without third party review. There are presently only 601 LBPs in Christchurch (497 that are licensed for carpentry only and 104 who have a site licence and can also supervise and monitor other builders). It is clear that the industry will take some time to respond to this challenge. The Council encourages a gradual and staged approach to the reforms proposed, but not at the expense of territorial authorities remaining liable for a builder's shoddy work.

8. The Council submits that other parties involved in a building project should no longer have a joint and several liability regime to "fall back" on. The Council is concerned that the Bill does not propose a move to a proportionate liability system and strongly urges the Committee to provide for this in the Bill.

9. Alternatively, if the joint and several liability regime is to remain the same outcome (ensuring that Councils bear only their appropriate share of liability) would be to introduce a requirement on builders to have a warranty or guarantee system in relation to major building projects or work over a certain value.

10. Despite this being a major discussion point in the Review, and the Council making clear submissions in favour of such a system, this has not been proposed in the Bill. It is Council's view that, in particular, the warranty system (and surety backstop) are critical to other changes in the Bill and must be mandatory for new homes and major alterations, at least. Providing for such a system will ensure that in the event of any defective building claims being made Councils will not be "the last man standing".

11. In Christchurch there are many Group Housing Companies that, in the Council's view, would willingly accept this responsibility when building "simple houses", and who already have warranties that they offer, in which the Council has faith. Overall, however, the Council considers that many other builders will be unwilling to accept liability and this is a potential weakness in the proposals in the Bill. We also note that a large number of these potential licensed building practitioners currently do not understand building code requirements and as such rely heavily on the building consent authorities (BCAs) to ensure code compliance. This is why it is necessary to require more from such builders through provisions in this Bill.

12. The Council also believes that it is important to ensure the proposals are developed as a package. Each of the interdependent processes rely on the other processes to deliver their part and the adoption of discrete parts will not deliver the intended benefits.

Key Point: Bill does not include sufficient detail to allow Council to make a full submission – territorial authorities must be protected from any further potential liability and must be consulted on the regulations

13. The Council is extremely concerned that so much of the Bill leaves much of the detail around the types of consent, etc, to be made by regulations. Neither the Council, nor the Select Committee can be fully informed about the finer details of how some of the new provisions will work, and what this means for the Council and other territorial authorities, because of this missing information.

14. For example, the Bill does not detail what type of building work will be low-risk building work, and does not have any detail about commercial building work, their consents and the associated risk profiles and quality assurance systems the Bill states that the Council will now be responsible for approving. These provisions could leave the Council open to additional/new liability and protection must be provided in the Bill for this new role being placed upon Councils. An alternative would be for the approval of the risk profile and quality assurance to be carried out through a peer review process, arranged by the applicant and external to the Council. This would also ensure no additional liability on councils, if they are then simply required to accept the documentation, and issue consents and certificates on the basis of the third party reviewer information.

15. For these reasons it is also imperative that the Council has input into the regulation-making process. Councils did not have a chance to provide input on the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005, and the "change of use" provisions do not work as effectively as they should. They provide sufficiently for changes of use of buildings that may present issues in relation to the Building Code clauses pertaining to means of escape from fire but do not sufficiently address compliance with other code clauses. For example a change from an art gallery to a day-care centre is not a change of use under the Regulations despite the significantly more onerous Building Code requirements in respect of sanitary fixtures for day care

centres. (The Council also submits that these Regulations should be reviewed and amendments made to when the change in use of a building will amount to a change of use for the purposes of the Act.)

Key point: the low risk building consent process needs further clarification

16. As currently drafted the provisions in the Bill around low risk building work and consents is unclear in relation to the BCAs responsibilities. While it appears the BCA is not required to consider the code compliance of plans and specifications, it is also required to refuse a consent if it considers that the building work may endanger persons or be subject to significant failure.

17. These two requirements seem inconsistent. If BCAs do not consider whether or not the building work may endanger persons etc then that could lead to a possible imposition of liability. In turn that would mean the provision indicating BCAs do not have to look at plans and specifications would become ineffective. This situation needs to be addressed, through the removal or amendment of the provision or by the addition of a "protection from liability" provision.

Submissions on specific clauses of the Bill

18. Unless specific comment is made below the Council generally supports a clause of the Bill that is not mentioned.

Clause 6 - Interpretation

19. The Council supports the change in wording from a "code compliance certificate" to a "consent completion certificate", as it may assist in changing perceptions about the role of councils/BCAs.

Clause 13 – development contribution notice

20. This clause amends section 36 of the Act by substituting a new subsection 2 that refers to a consent completion certificate instead of a code compliance certificate. Section 36 (or another part of the Building Act) as well as sections 198 and 208 of the Local Government Act 2002, should also be amended to refer to a territorial authority being able to require a development contribution and/or issue a development contribution notice on an application for a certificate of acceptance and/or before the issue of a certificate of acceptance, not just a consent completion certificate.

21. A certificate of acceptance might need to be issued instead of a consent completion certificate where building work is done that normally requires a building consent and a consent is not obtained. Just as a consent completion certificate can be withheld until a development contribution is paid, so should a certificate of acceptance trigger the requirement for payment of any development contribution not yet paid.

Clause 15 – new section 47

22. This section describes which type of building consent is required for which type of work. There are two types of commercial building work – work for which a commercial building consent is required and work for which a commercial building consent is **not** required. Section 47(2)(c) uses the word "must" apply for a certain consent in relation to commercial building work for which a commercial building consent is not required. The Council submits the "must" should be a "may", if that word is also being used in sections 47(2)(a) and (b). Section 47(2)(d) appropriately uses the word "must" for commercial building work for which a commercial building consent **is** required.

Clause 15 – new section 50

23. The Council queries whether 10 working days in which the Fire Service is to provide a memorandum is too long, given the desire for building consent applications to be dealt with

more quickly, and the reduced time limits for some types of consent for building consent authorities. The Council recommends that consideration be given to reducing the time to 5 or 7 working days.

Clause 15 – new section 51

24. The Council will not be able to process low risk building consents and simple residential building consents within 5 working days. This must be increased to 10 working days, the same as for a national multi-use approval consent.

25. Even if the Council is not required to check the plans for a low risk consent (which is not clear, as is submitted below in relation to section 52H), or only check part of the plans for a simple residential consent, there are still a wide range of matters the Council is required to consider and check for every building consent, in addition to the administration processes for every consent, that requires more than 5 working days. For example, all building work, no matter what its "risk" level, may be work that requires consideration in relation to the Council's District Plan and whether a section 37 certificate is required. A development contribution notice may also be required. A very simple farm building may give rise to boundary and height issues under the District Plan and may also trigger the Council's development contributions policy.

26. The Council also needs to consider whether it must notify the Historic Places Trust in relation to any consent. The risk level of the work may be relevant as to whether or not the Fire Service needs to be involved in the consent, but at this stage that is not entirely clear. However, a consent application, no matter what its risk level, may also require that the Council consider whether the "building on land subject to a natural hazard" provisions are triggered, or the "construction on 2 or more allotments" provisions.

27. If a consent application raises all, or even some of, these matters, it will not be possible for the Council to check them all and carry out the usual administrative steps within 5 working days. It will also be more straightforward for the Council to have 2 administrative processes of 10 working days and 20 working days in relation to building consents, than be required to have a third administrative stream.

Clause 15 – new section 52F

28. There appears to be an error in section 52F(2)(b) where reference is made to a "licensed building contractor". It appears this should read "licensed building practitioner".

29. Greater clarity around section 52F(3) is also desirable regarding the potential reason for issuing a notice to fix following the re-designation of a consent. Whether the Council could issue a notice to fix in this situation would appear to depend on whether the reason for redesignation comes within s52F(2)(a) or (b), as redesignation under s52F(2)(c) does not mean there has been any non-compliance with the Act. This should be made clear rather than any question remaining as to whether or not a notice to fix could be issued in a section 52F(2)(c) situation.

Clause 15 – new section 52H

30. This section provides that for a low risk building consent application a BCA is "*not required to consider*" whether the building work in all aspects of the plans and specifications will comply with the code, but "*may refuse to grant the consent if it considers that the building work may endanger the safety of a person or result in a significant building quality failure*". The Council submits the BCA "must" refuse the consent in the situation described, where the safety of people or significant building failure may result from work being carried out under a consent if granted.

31. However, the Council also questions, if section 52H(2)(a) specifies it is not required to consider the code compliance of plans and specifications, how it could ever be expected to "consider" that building work may endanger persons or fail for the purposes of section 52H(2)(b). It is possible that because of the requirement in section 52H(2)(b), and the fear

that liability would be imposed on the BCA because of that requirement, section 52H(2)(a) will in fact become a nullity and BCAs will still check the plans and specifications for low risk building consents anyway. This situation needs to be addressed, either by the removal of section 52H(2)(b), or through the addition of a "protection from liability" provision similar to that in section 52I(1)(b).

32. The Council also notes that section 52H does not address the situation if, despite the lack of requirement on the BCA under s52H(2)(a) (assuming it is effective), the processing officer for the consent becomes aware that something in the plans and specifications will result in a non-compliance with the code, but not to the extent that it meets section 52H(2)(b). It is not clear whether or not the BCA is entitled to refuse the consent in this situation or whether its only option is to require, under section 51(3), further information that will mean the non-compliance is corrected. If the intention is that the BCA cannot refuse the consent but only seek further information then this should be clarified in the section.

Clause 15 – new section 52L

33. This section raises the same concerns identified for section 52F.

34. In addition, section 52L(2)(a) needs amendment, as it is clear from section 52L(1)(b)(ii) that the BCA **is** required to consider the compliance with the code of building work in the aspects of the plans and specifications that concern "prescribed aspects".

Clause 15 – new sections 52P, etc – commercial building consent

35. The Council is extremely concerned that it does not have a complete picture as to what will be required of it in relation to commercial building consents. It is therefore very limited as to what submissions it can make. The Council understood that the original proposals outlined in the Review was for qualified and experienced third parties to approve all the building work in a complex building project, so it is not clear why the BCA suddenly appears to have a new role, and potential new liability, in relation to approving risk profiles and quality assurance systems.

36. While it accepts that in its submission on the Review it acknowledged that for complex building work the proposal would lead to its statutory role being reduced to confirming the existence of quality assurance processes, it did not accept that such a role should provide for any greater liability for the Council. It stated that for any additional role it would be "unlikely that the Council would be found to owe a duty of care to commercial building owners or occupiers sufficient to ground an action in negligence". Therefore, one of the Council's primary concerns with the new commercial building work provisions in the Bill is that they do not lead to any extra liability inadvertently being placed on Councils/BCAs. At present it cannot fully assess whether what is proposed will lead to any new liability for the Council. To ensure it will not, a liability protection provision should be added to the Bill in relation to its new role arising out of the approval of the risk profiles and quality assurance systems.

37. An alternative would be for the approval of the risk profile and quality assurance system to be carried out as a peer review process. If it was part of the consent process that had to be arranged by the applicant and was external to the Council, then this would also ensure no additional liability on councils. The Council would become the holder of the information for the property files, and its only role would be to check whether or not all the required information was supplied, rather than any physical inspections, testing or sampling etc. It would simply accept the documentation, and issue consents and certificates on the basis of the third party reviewer information. Also see the Council's submission on section 94C below which is applicable to the submissions on the proposed commercial building work consent regime.

38. In addition to the above concerns the Council notes that it is not clear whether risk profiles and quality assurance systems are to be specific to one building/one consent, or whether, if not the same risk profile, then the same approved quality assurance system can be used

for several consents? It should be made clear that a new risk profile and quality assurance system is required for every new commercial building consent.

Clause 15 - new Section 52X

39. Refer to our submission in relation to inspections under a commercial building consent on clause 31/section 94C below

Clause 18 – new section 84F

40. It is not clear why this provision is included in this part of the Bill as an offence rather than be included in, and drafted in a similar style to, section 52J, or vice versa – e.g. delete section 52J and include a new offence provision after proposed section 84B.

Clause 20 – amendments to section 86

41. Proposed new section 86(1B) provides that an offence is not committed in relation to restricted building work if an unpaid friend or family member is engaged to assist an owner-builder carry out the restricted building work. The Council suggests that the reference to owner-builder be made clear that this is an owner-builder doing work under an owner-builder exemption.

42. It should also be made clear what "unpaid" means, in both this proposed provision and the other sections in which there is a reference to unpaid friends and family. Is it intended to capture only monetary payments or is it also intended to capture other arrangements such as the owner-builder giving the "assister" an item in return for assisting with the work. Presumably it is not intended to capture food and refreshments that might be provided during the day while the work is being done, but should "payment" capture food, drinks or other larger value items that the "assister" takes away with them after the work is completed?

Clause 23 – amendments to section 88

43. The Council submits that the current section 88(1)(b), requiring a licensed building practitioner (LBP) to give a certificate, if applicable, stating that any specified systems in the building to which the restricted building work relates are capable of performing to the performance standards set out in the building consent, should remain. This will assist the owner of the building to meet their obligations in relation to specified systems (for example see the requirement in section 105), at least when the system is first built. Leaving this requirement for a certificate in relation to specified systems in section 88 will also assist the Council in expediting its processes to issue consent completion certificates. If there is to be no change to this provision then some of the Schedules relating to consent completion certificates will need to be amended to require that information about the performance of specified systems be provided to the BCA, as part of the required consent completion certificate information (this should be included anyway in relation to specific systems that are not related to restricted building work).

44. In addition, the memorandum to be provided under section 88 should go further than simply stating what restricted building work has been carried out. The LBP should also affirm that the work they carried out or supervised complies with the building code. Any work carried out by the LBP must comply with the building code anyway (unless a waiver has been granted) so there should be no problem with stating so in a memorandum, particularly in light of the wording in section 88(4).

Clause 25 – new Subpart 4A

45. The Council accepts the concept of an owner-builder doing building work and restricted building work, when if anyone else was going to do the same work it could only be a LBP. The owner-builder doing the work would have to do it under a standard consent (they can't use a low risk consent or simple residential consent) so there is essentially no change from what the Council is currently dealing with.

46. However, it is more administrative work for council - they will have to keep very good records on the owner-builder exemptions, by name of owner-builder not just property, so they can work out if someone has carried out restricted building work within the last 3 years. We submit that the Act should provide for a separate fee for an owner-builder exemption, in addition to their building consent or consent compliance certificate fees – to recognise that the TA will have to keep this as a separate record in its system and not just as part of its property file. Eg amendment to section 95: "on payment of any charge fixed by the building consent authority, [including any charge the building consent authority may make for the purposes of keeping a record of any statutory declarations by an owner-builder in accordance with section 216(2)(b)(xii)]".

Clause 31 – new section 94A

47. It is imperative that the Council and other territorial authorities be consulted in respect of any proposed "prescribed inspections" it will be required to carry out in relation to simple residential building consents.

48. Irrespective of the above, it is not clear why a reference to inspections is made in this section when the primary purpose of any inspection where a consent has been issued is to check the work is proceeding in accordance with the consent. Inspections will also be required in relation to a standard building consent but are not, in the current Act, mentioned in section 94, and nor are they mentioned in section 94B. the Council submits that proposed section 94A(1)(c) be deleted.

Clause 31 – new section 94C

49. Proposed section 52X, and new section 90(4), seem to suggest that it is not mandatory for a BCA to inspect under section 90, and carry out any sampling, testing, auditing and observation for a commercial building consent. However, section 94C(1)(b) appears to mean it will be mandatory for a BCA to have carried out sampling, testing and inspection so it can be satisfied on reasonable grounds that the requirements of the quality assurance system it has approved, have been complied with.

50. The Council cannot assess whether or not this is a reasonable imposition on it or not, because there is no information of what will be required in a quality assurance system, let alone what might be required of the Council in relation to sampling, testing and inspection (and it is not clear what auditing is required which is mentioned in section 52X but not section 94C?)

51. It also has no idea what the safety systems are, referred to in section 94(1)(c), because this is to be defined in regulations. Again, it has no way to assess the reasonableness of this proposed requirement on the Council, or the requirements in section 94C(1)(d) and (e).

52. It is unacceptable for the Council to be submitting on a Bill for which the requirements that will be placed upon it are unknown. It is imperative that the Council be fully consulted and have the opportunity to make submissions on regulations that will provide the detail on these and other matters. Ideally this detail should also be before the Select Committee otherwise it is viewing these sections in a vacuum, just as the Council is, and the "package" is incomplete.

53. The Council is concerned that instead of leading to less liability for territorial authorities in relation to commercial building work it may end up with the same, if not more, liability than under the current regime. If it is required to approve such systems and then check whether others carrying out roles under that system are performing as required it may become a de facto clerk of works; something which up until now the Courts have stated the Council will not be, simply from issuing a building consent and carrying out inspections.

54. As noted above in the submission on Clause 15 (new sections 52P, etc – commercial building consent) territorial authorities should have protection from any potential new

liability for this new role under a commercial building consent. The Council submits that a new provision, perhaps similar to that in proposed section 52M(1)(b) (that a BCA incurs no liability to any person by reason only of not making certain inspections), **must** be included in section 94C, or as a standalone provision in the Bill. Alternatively, it should not carry out this role at all and a "peer review" system be provided by the building consent applicant for the approval of the risk profiles and quality assurance systems.

Clause 44 – amendment to "meaning of dangerous building" in s121

55. The Council agrees with the proposed amendment of this provision but also submits that a further category of dangerous building is required, as a result of its recent experience in the Canterbury earthquake.

56. A building that is not of itself a dangerous building but that could be a danger to people in it or around it because of the risk from another building (which is a dangerous building) or object (eg dislodged rocks or trees) falling on it, or otherwise affecting it cannot currently be classed as a dangerous building. That means steps that could be taken under sections 124(1)(a) and (b) (putting up a hoarding or fence to prevent people from approaching the building nearer than is safe and/or attaching in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building), to prevent people from being injured or killed by using that building cannot be taken.

57. Although steps would be taken to address the property or object causing the problem under the Building Act or other legislation there may be no simple way under other legislation to get people out of or away from an at risk building.

58. This problem was addressed in section 7 of the Canterbury Earthquake (Building Act) Order 2010, by the addition of the following wording to section 121: "there is a risk that other property could collapse or otherwise cause injury or death to any person in the building", and with an appropriate limitation on what powers in section 124 could be used for this type of dangerous building (included in clause 7(3)), and the length of time for which any notices keeping people out of buildings could be issued.

59. The Council submits that provisions to the same effect (but query whether "other property" would be wide enough to include rockfall situations and the like) should be included as a permanent addition to section 121. The potential problem as presented above clearly goes beyond the risk of an earthquake damaged building falling on another building.

Clause 50 – amendments to section 216(2)

60. There is no reference to the information that must be kept by territorial authorities as including certificates of acceptance, and plans and specifications relating to certificates of acceptance and also public use certificates

Clause 54 – amendment to section 282A

61. Instead of "the appropriate building consent" being referred to in the amendment it appears this amendment should refer to both a low risk building consent and simple residential building consent.

62. From our reading of other relevant provisions in the Bill, it seems these types of work could also be done under a standard building consent. If so, then it seems that under a standard building consent a LBP is not the only person who can carry that work out. The "appropriate building consent" wording could therefore also, incorrectly, refer to a standard building consent.

63. However, the Council is not entirely sure whether this submission is correct because of the lack of any definition for low risk building work and simple residential work that it can refer to because these terms are still to be defined in regulations.

Clause 57 – new sections 314A and 314B

64. The Council strongly supports these provisions, and in particular the introduction of a code of ethics for LBPs. The Council also supports a breach of the code and misrepresentation of competence being given effect as a ground for discipline under section 317 of the Act.

Clause 78 – Consequential and other amendments

65. As noted above, in the submission on clause 13, section 208 of the Local Government Act 2002 (and section 198) should also be amended to provide that a development contribution can also be required when an application for a certificate of acceptance is made and that the Council can refuse to issue a certificate of acceptance, until any development contribution is paid.

Schedules

66. Schedule 1C(2)(c) is missing the word "by"

67. The Schedules relating to consent completion certificates (1E to 1H) need to be amended to require that information about the performance of any specified systems, where work on specified systems has been part of the building work under the consent, must be provided to the BCA as part of the consent completion certificate information. This will assist the BCA in making an assessment under proposed sections 94 – 94B that the systems are capable of performing to the performance standards set out in the consent.

Other submissions

68. There are several matters not addresses in this Bill about which the Council made a submission on through the Building Act review process. Although these may be matters that are proposed for inclusion in the second Bill to arise from the review, the Council recommends that the following points be considered and addressed by the Select Committee in relation to this Bill:

    - Continued easy and free access to the building code is critical for LPB's (Licensed Building Practitioners) and for the owner-builders. The Council recommends that free access also be extended to the critical NZ Standards that are referenced in the building code.

    - The proposals around extending the building work that would be exempt from obtaining consent under Schedule 1 was also submitted on by the Council in the review, and the Council notes that further exemption have already been included in Schedule 1 (in force on 23 December 2010). With more work becoming exempt from requiring consent there is less information available to the Council in relation to maintenance and planning work for its public utilities, and on property files it maintains that are relied on by the community. The Council proposed that a notification process should be included where any "exempt" works being undertaken are required to be notified to the Territorial Authority to be added to the property file, without any liability attached.

      However, the Council recognises that this could be a potentially onerous requirement and suggests a refinement to this submission. It does not seek that all work carried out without consent under an exemption in Schedule 1 be notified to the Council, just exempt building work that relates to the demolition of buildings and any other work that might have a potential effect on any of Council's public utility services, such as water supply, drainage systems etc

    - The Council also noted that the building consent process provides a vital trigger for checking compliance with District Plans and therefore the requirements of the Resource Management Act 1991. With less building work requiring consent, the Council anticipated in its submission that this would trigger higher levels of

complaints and District Plan non-compliance. That means that although the amount of work for the Council is decreased in the Building Act area it will be increased in another area. Further consideration is needed to correct this imbalance. The notification of certain exempt work would be one way to ensure this occurs. It is also submitted that with a low-risk building consent regime in place there should be no need to add further work to being included in Schedule 1.

- The Council agreed that the Building warrant of fitness regime process could be streamlined. Although it supports the proposed changes to this regime in the Bill it endorses its previous submission that the requirement to issue annual BWOF's is overly rigorous in respect of some systems. The example was given of mechanical opening doors. For those systems the Council suggested that there either be no controls or a 2 yearly BWOF system. It may also be appropriate to move to a 2 yearly warrant of fitness for other systems as well. The Council recommends that further consideration be given to whether some systems could be moved from the annual regime.

- The Council also submitted that cooling towers be included as "specified systems", and be subject to the compliance schedule and BWOF processes. In 2005 Christchurch experienced the deaths of 3 people and hospitalisation of many others. The cause was legionella which was linked in the Coroners report to the inadequate maintenance of cooling towers. At the time the Department of Health and DBH undertook to include cooling towers as "specified systems", subject to BWOF processes. It appears this may have been sufficiently addressed through the amendments to the definition of specified system in combination with the fact "air conditioning systems appears in the list of specified systems in the regulations. However, it would preferable if it was clarified through regulations amending the list of specified systems, that cooling towers are included.

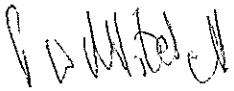
Conclusion

69. The Council is generally supportive of this Bill but believes further changes must be made to enhance the new processes provided for in the Bill and to improve the standard and quality of buildings and building work in New Zealand. Such further amendments will provide better consumer protection as well as ensuring that if anything goes wrong, all parties involved will bear an appropriate share of the liability.

70. If you require clarification of the points raised in this submission, or any additional information, please contact Steve McCarthy (Environmental and Policy Approvals Manager, ph 03 941-8651, emails: Steve.McCarthy@ccc.govt.nz or Judith Cheyne, (Solicitor, Legal Services Unit, ph 03 941-8649, email: judith.cheyne@ccc.govt.nz).

71. The Council looks forward to presenting its submission to the Select Committee, and will be represented by Councillor Sue Wells.

Yours faithfully



Peter Mitchell
General Manager Regulation and Democracy Services
CHRISTCHURCH CITY COUNCIL

Local Government
New Zealand
te pūtahi matakōkiri

LGNZ Building Amendment Bill No 4 Draft Submission

May 2012

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Introduction

1. *Local Government New Zealand* thanks Local Government and Environment Committee for the opportunity to make this submission in relation to Building Amendment Bill (No 4).

2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

   It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

   In addition, some councils will also choose to make individual submissions. The *Local Government New Zealand* submission in no way derogates from these individual submissions.

3. *Local Government New Zealand* prepared this submission following:

   - an analysis of the Building Amendment Bill (No 4)
   - analysis of all feedback from councils

4. This final submission was endorsed under delegated authority by:

   - [Name], President, National Council
   - [Name], Vice-president, National Council
   - [Name], [name of portfolio] spokesperson, National Council

5. *Local Government New Zealand* wishes to be heard by the Local Government and Environment Committee to clarify the points made by this written submission as necessary.

6. *Local Government New Zealand* requests the opportunity to review the draft [name of document] before it is finalised.

Recommendations

[IF SUBMISSION IS SHORT: PUT RECOMMENDATIONS HERE. IF SUBMISSION IS LONG: PUT AFTER CONCLUSION]

7. *Local Government New Zealand* makes the following recommendations:

   - [recommendations - if full sentences begin each bullet point with an uppercase letter and end with a full stop. If bullet points go over multiple lines add a one-line space between each]

Local Government New Zealand policy principles

8. In developing a view on the provisions in this Building Amendment Bill (No 4) we have drawn on the following high level principles that have been endorsed by the National Council of *Local Government New Zealand*: We would like Local Government and Environment Committee to take these into account when reading this submission.

- **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.

- **Accountability to local communities:** councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities.

- **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.

- **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by Government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.

- **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.

- **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

Comments

1. Local authorities carry out administrative functions for the Building Act 2004 (the Act) under delegation from the Crown. Day to day administration of the Act occurs, with only a few exceptions, under national policy and national building code / standards, not local policy.

2. In general local authorities agree that reform of the building system is necessary but emphasise that this cannot happen by tinkering with current law or changing the whole basis of the regime overnight. It is critical that all parties keep an eye on the strategic long term objectives i.e. a building regulatory system that will result in cost effective, quality buildings that:

    - are designed and built by skilled, capable people who stand behind their work
    - meet or exceed minimum requirements that are clear and widely known
    - are constructed according to clear, upfront, contracted agreements between all parties about what is going to be built, how any faults will be fixed and how arguments will be resolved
    - are appropriately maintained by well informed owners.

3. Proposals will only achieve these objectives if they are progressed in combination. In particular, the warranty system with surety backstop and proportional liability are critical. It is our strong preference to amend the

law to proportionate liability to effectively achieve a rebalancing of accountability. If local authorities continue to carry the duty of care as under current law, there is insufficient incentive for other parties to be more accountable.

4. Reflecting local authorities' commitment to getting this right we are currently working with the Department of Building and Housing to identify an appropriate approach to the delivery of nationally consistent and efficient building administration.

CONSUMER RIGHTS AND REMEDIES IN RELATION TO RESIDENTIAL BUILDING WORK

5. The provisions in the Bill fall short of providing meaningful protection for consumers. Local authorities have consistently expressed the need for a warranty system with surety back-up. The proposed consumer protection measures do little to remove the risk that local authorities will be left to pick up more than their share of the bill for any defective building claims.

6. For many the decision to build or buy a new home is the biggest financial commitment they will make. Implying warranties into residential building consents may be a pragmatic solution to address consumer protection but does not provide sufficient guarantee should anything go wrong.

7. Consumer NZ are also of the view that a government-backed home warranty insurance system, like that available in Queensland, should be introduced in New Zealand[1]. It would provide better consumer protection than private guarantees. The Queensland system of home-warranty insurance acts much like a private building guarantee. It covers loss of deposit, defects and non-completion of work. In Queensland, builders – not consumers – are required to obtain warranty insurance from the Building Services Authority (BSA) for residential building work worth more than $3300.

8. Private building guarantees are designed to plug this gap in consumer protection. According to Consumer NZ the Certified Builders Association of New Zealand and the Registered Master Builders Federation provide the main guarantees although some independent companies, such as Signature Homes, also offer guarantees to cover their own work. While the details of the guarantees vary, generally they include terms around defects, (non-structural / structural) of $100,000 for periods of 2/10 years. Local authorities think that the provision for defective work in Clause 362P should, at a minimum, reflect what appears to be industry best practice

9. Amendment of Clause 362P to 10 years after completion of the building work would better represent a timeframe in which a new homeowner might expect to be able to determine if the service they were provided was "performed with reasonable care" and that the goods are "safe and durable"[2]. A 10 year timeframe would also align with the existing limitation period in the Act (Section 393 Building Act 2004).

[1] http://www.consumer.org.nz/reports/building-guarantees/our-view. Last updated May 2012.
[2] http://www.consumer.org.nz/reports/consumer-guarantees-act/the-guarantees

10. Of course as stated previously, it is our strong preference to amend the law to proportionate liability. While local authorities continue to carry the duty of care as under current law, there is insufficient incentive for other parties to be more accountable.

FINES AND INFRINGEMENT FEES

11. Local authorities are supportive of the increase in the penalty for building work (construction, alteration, demolition or removal) done without consent from $100,000 to $200,000 as outlined in Clause 13 – Amendment to section 40(3). Fines and infringements are an important mechanism to incentivise "getting the job right the first time".

12. Fines and infringements fees in Part 4 A are insufficient to motivate anyone who might contemplate contravening these clauses. These include:

    - Clause 362D (2) requirements for a building contractor to provide prescribed information (an infringement offence fine not exceeding $2,000, or on conviction a fine not exceeding $20,000)
    - Clause 362E (4) - minimum requirements for residential building contract over certain value (a fine on conviction not exceeding $2,000),
    - Clause 362R requirements for a building contractor to provide prescribed information and documentation on completion of residential building work (infringement fee fine not exceeding $2,000).

    We note that nothing in Part 4 A limits or derogates from the provisions of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993 (Clause 362C). Viewed in conjunction with Consumer NZs opinion on the need for a more robust process to enforce warranties for shoddy building work and improved legal protections to guarantee that any building work on houses is "fit for purpose" it is hard to see what real difference this regime will make.

13. Clause 134C Offence of failing to classify a dam (a fine not exceeding $20,000) is also inadequate.

14. The offence in new section 362S should be widened so it is an offence for anyone (not just a commercial on-seller) to sell any building (not just a household unit) where there is no consent completion certificate or certificate of acceptance for building work that required a consent and has been undertaken since the Building Act 2004 came into force. If this offence provision is widened it may provide a greater incentive for building owners to promptly obtain consent completion certificate for their work. We support the proposed fine (not exceeding $200,000) for offences under this section.

AT RISK BUILDINGS CLAUSES 121A – 132A

Question! The definition of "affected building" proposed in Building Amendment Bill No 4 does not capture the amendments required to address risk in the Canterbury earthquakes. Do you think they should?

The Bill proposes a new category of building called an affected building i.e. a building is an affected building if it is adjacent to, adjoining, or nearby a dangerous building as defined in section 121 of the Building Act (2004). This definition is similar to one of the new definitions added by clause 7 of the Canterbury Earthquake (Building Act) Order 2011which states:

Modification of meaning of dangerous building and extent to which territorial authority can apply modified provision

Section 121(1) of the Act is modified by adding "; or" and also by adding the following paragraphs:

- *"(c) there is a risk that the building could collapse or otherwise cause injury or death to any person in the building as a result of an earthquake that generates shaking that is less than a moderate earthquake; or*
- *"(d) there is a risk that adjacent, adjoining, or nearby buildings or land could collapse (including collapse by way of rock fall, landslip, cliff collapse, or subsidence) or otherwise cause injury or death to any person in the building; or*
- *"(e) a territorial authority has not been able to undertake an inspection to determine whether the building is dangerous under paragraph (a) or (d)."*

Christchurch City Council staff think that Section 121A of the Building Act should be clarified to include land hazard risks. In particular the wording in section 121(1)(a) stating that "*the building is likely to cause*" injury or death should be revised, as it could be the falling rock hitting the building and then hitting the person inside that causes the injury or death. That is not the same thing as the building causing the injury.

Alternatively, the risk presented by land hazards to buildings could be addressed through amendments to the Resource Management Act 1991.

What do you think?

15. A number of other amendments to the Bill reflecting the experience of Christchurch City Council, are recommended. These include:

- The power in section 124(1)(a) should be clarified to allow the local authority to put up a hoarding or fencing on other land adjoining or nearby the dangerous building, not just the land on which the dangerous building is located (or public road and footpaths over which a Council can already exercise powers).

- Cordons around dangerous buildings should be the responsibility of the building owner once they are aware their building is dangerous. If a cordon has to be erected by a local authority the cost should clearly be recoverable from the building owner. Currently the cost of any work required following the issue of a section 124(1)(c) notice can be recovered but it is not as clear whether the costs related to the exercise of powers under section 124(1)(a) can be recovered.

- Clause 22 of the Bill sets out the new requirements for Section 124 notices. The new "restricted entry" notice (which can be used for all categories of building, including the new "affected building") may be issued for a maximum period of 30 days and may be reissued once only for a further maximum period of 30 days i.e. a maximum of 60 for restricting entry to dangerous buildings. Local authorities believe it is unrealistic to expect all issues related to a dangerous building (that may require restriction of entry as opposed to prohibition of entry) to be addressed in a maximum of 60 days. Christchurch City Councils experience demonstrates that owners of both affected or dangerous buildings requiring a restricted entry notice, may need to be kept out of their buildings for much longer than the proposed maximum of 60 days. The provision under Clause 22 (1A)(e) should be deleted with the period of restriction established on a risk basis for the local authority to determine.

- In respect of a section 124(1)(c) notice issued for an earthquake-prone building, the wording in the section about taking action to "reduce or remove the danger" needs to be clarified to ensure that a local authority can require an earthquake-prone building to be strengthened to the level specified in its policy (required under section 131).

COMPLAINTS ABOUT BUILDING CONSENT AUTHORITIES

16. Clause 38 proposes an amendment to Section 200 of the Building Act which currently requires the Chief Executive of the Ministry to, as soon as practicable, inform a building consent authority of a complaint and to decide whether to accept or decline the complaint. Under the proposed amendment a building consent authority is not entitled to proffer any information or submission at this stage. Local authorities oppose this amendment. An entitlement to provide information before a decision is made on whether to accept or decline a complaint is a simple mechanism to reduce inefficiencies and reduce the risk of the Chief Executive having to act on vexatious complaints.

SCHEDULE 1 AMENDMENTS

17. Local authorities support the rewriting and reformatting of Schedule 1 to aid clarity.

18. However proposed Schedule 1 (1)(ae)currently includes an exemption for the "installation, replacement, or removal in any existing building of a window (including a roof window) or an exterior door if:
    - (i) compliance with the provisions of the building code relating to structural stability is not reduced.
    - (ii) in the case of a replacement, the window or doorway being replaced satisfied the provisions of the building code for durability.

New Schedule 1 (8) addresses windows and exterior doorways in existing buildings. While the provision on durability has been maintained, requirement 8(b) simply states "if the building work modifies or affects any specified system". This does not appear to capture structural stability and should be amended.

19. Proposed Schedule 1, 30 Demolition of damaged building. Any work that has the potential to effect local authorities public utility services, such as water supply, drainage systems etc should be notified to the relevant local authority ahead of the general notification it might receive through a change in the rating status for the land. We also note that the word 'damaged' will be removed from Clause 7 of proposed Schedule 1. In line with the need to ensure local authorities have sufficient notification of demolition activity we would oppose any suggestion that the word 'damaged' be removed from Clause 30.

DAM SAFETY SCHEME

20. ***This part of the submissions is being developed in conjunction with regional authorities who have responsibilities for the Dam Safety Scheme under the Building Act. If you are interested in seeing the draft submission when it is completed please contact me at frances.sullivan@lgnz.co.nz and I will forward it to you.***

Conclusion

1. *Local Government New Zealand* is generally [supportive/not supportive] of the changes proposed.

2. *Local Government New Zealand* thanks [Name of organisation] for the opportunity to comment on this [Name of submission].

Recommendations

[IF SUBMISSION IS LONG PUT RECOMMENDATIONS HERE]

3. *Local Government New Zealand* makes the following recommendations:

    - [recommendations]

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June 2012

To: Secretariat
Local Government and Environment Committee
Parliament House
Wellington

Submission of the Christchurch City Council on the Building Amendment Bill (No 4)

Introduction

1. The Christchurch City Council would like to thank the Committee for the opportunity to make submissions on the Building Amendment Bill (No 4) (the Bill). [This submission was approved by the Council at its meeting on xxx].

2. The Council [*wishes/does not wish*] to appear in support of its submission.

Submission

3. The Council has three key points it wishes to make on the Bill. These are discussed below and then other submissions and suggestions for minor amendments are included in the following section.

Key point: Council supports enhanced consumer protection measures but seeks better liability protection for territorial authorities through a full 10 year guarantee system

4. The Council notes that this Bill is the second of 2 Bills to implement the Building Act Review policy decisions and that it follows from the Department of Building and Housing (DBH) review of the Building Act and its discussion document on the Building Act review – "Cost-effective quality: next generation building control in New Zealand", on which the Council made a submission.

5. The first bill (Building Amendment Bill (No 3) ("**No 3 Bill**")) did not improve the potential liability position for Councils, and this Bill also does not make the changes sought by the Council in its submission on the No 3 Bill.

6. The Council fully supports the concept of Licensed Building Practitioners (LBPs) taking a greater responsibility in relation to the building works they carry out. However, the Council submitted on the No 3 Bill that other parties involved in a building project should no longer have a joint and several liability regime to "fall back" on. The Council urged a move to a proportionate liability system in its submission.

7. Alternatively, it submitted that the Government should introduce a requirement on builders to have a warranty or guarantee system in relation to major building projects or work over a certain value. It repeats this submission and urges the Committee to give it further consideration.

8. The concept of a guarantee system was a major discussion point in the Building Act review document, and the Council made clear submissions in favour of such a system. The current Bill only provides a limited 1 year defective building work provision for household unit owners (see clause 362P) .

9. It is Council's view that a guarantee system (and surety backstop) should be mandatory for new homes and major alterations at least, and be effective for 10 years (the same as the limitation period in the Act). Providing for such a system will ensure that in the event of any defective building claims being made Councils will not be "the last man standing".

10. The enhanced consumer protection measures, while of some benefit to consumers, do little to remove the chance that Councils will be left to pick up more than its potential share

of the bill for any defective building claims. The Council also recognises that smaller commercial building owners have limited ability to protect themselves, and can be no different from residential building owners in this respect. The extension of a warranty to these building owners should also be considered.

11. The Government is keen to see Councils reduce costs and provide a more cost effective environment for ratepayers through its Better Local Government reforms. In accord with those aims the Government should ensure that Councils are not left to pay the share of every builder or developer that has disappeared by the time a defective building claim surfaces. It can do this by requiring builders or developers to have a full guarantee scheme. Reputable builders would have no difficulty in providing for such a system.

12. In this regard, the Council supports the submission by Local Government New Zealand, which identifies the Queensland government-backed home warranty insurance system as a model that could be adopted in New Zealand.

Key point: clause 121A- 132A amendments: the new "affected building" category

Definition of affected building

13. The Bill proposes a new category of building called an affected building: "*A building is an affected building for the purposes of this Act if it is adjacent to, adjoining, or nearby a dangerous building as defined in section 121*".

14. This definition is similar to one of the new definitions added by clause 7 of the Canterbury Earthquake (Building Act) Order 2011. New section 121(1)(d) states a building is dangerous if: "*there is a risk that adjacent, adjoining, or nearby buildings or land could collapse (including collapse by way of rock fall, landslip, cliff collapse, or subsidence) or otherwise cause injury or death to any person in the building*".

15. The definition of "affected building" does not:

    - require that the dangerous building that is adjacent to, adjoining, or nearby another building must pose a risk to that building, such that there is a risk, or it is likely, that injury or death would be caused to someone in the affected building;

    - address the issue where the external/adjacent danger is a land hazard;

    - address adjacent, adjoining, or nearby public or private land where there is no building, but the land is at risk from a dangerous building.

16. The first issue above can be dealt with by amending the definition to include wording similar to that suggested in the bullet point and as found in section 121(1)(d), as amended by the Canterbury Earthquake (Building Act) Order 2011.

17. In relation to the land hazards issue, in Councils submission on the No 3 Bill the Council pointed out the need to amend section 121 to provide for both other building and land based hazards that might affect a non-dangerous building. The submission noted that the "*potential problem … clearly goes beyond the risk of an earthquake damaged building falling on another building*".

18. It is acknowledged that existing section 121(1)(a) of the Building Act will cover land hazard risks in some situations but section 121(1)(a) could be made more clear (or proposed new section 121A made wider).

19. In particular the wording in section 121(1)(a) stating that "*the building is likely to cause*" injury or death may need revision, as it could be the falling rock hitting the building and then hitting the person inside that causes the injury or death. That is not the same thing as the building causing the injury.

20. The other matter to be addressed is when the potential trigger for the hazard occurring is an earthquake, as this is currently excluded by section 121(1)(a).

21. Alternatively, the risk presented by land hazards to buildings could be addressed through amendments to the Resource Management Act 1991, but the Council urges the Select Committee to consider this issue seriously.

22. Regarding the danger to land, this could potentially be addressed by an amendment to section 124 rather than amending section 121A. The power in section 124(1)(a) could be made more clear, to allow the Council to put up a hoarding or fencing on other land adjoining or nearby the dangerous building, and not just the land on which the dangerous building is located (or public road and footpaths over which the Council can already exercise powers).

23. The Royal Commission in its inquiry into the Canterbury earthquakes has been investigating the issue of cordons around dangerous buildings. The Council has made submissions to the Royal Commission on this issue and other matters related to dangerous and earthquake-prone buildings that will require amendments to the Building Act 2004. Attached to this submission are extracts from the Council's submissions to the Royal Commission that are relevant to the matters being considered in this Bill.

24. In relation to cordons around dangerous buildings the Council submits that the responsibility for these should be with the building owner, once they are aware their building is dangerous. If a cordon has to be erected by the Council the cost should clearly be recoverable from the building owner (as noted in the submission to the Royal Commission). Although the cost of work done, if required, following the issue of a section 124(1)(c) notice can be recovered it is not as clear whether the costs related to the exercise of powers under section 124(1)(a) can be recovered.

Restricted entry notice wording

25. The wording for the new restricted entry notice is the same as in the Canterbury Earthquake (Building Act) Order 2011, but the wording could be improved upon to clarify the extent of the notice. It should clearly provide the ability to restrict entry to part of a building but allow the use of another part.

26. The Council suggests adding to the new subsection 124(1)(d) wording such as: "or preventing entry to part of the building but allowing entry and use of other parts of the building".

No time period for a restricted entry notice

27. New section 125 (clause 22 if the Bill) sets out the requirements for the various section 124 notices. In particular, the new "restricted entry" notice (which can be used for all categories of building, including the new "affected building) may be issued for a maximum period of 30 days and may be reissued once only for a further maximum period of 30 days.

28. The Council submits there should be no time period for a restricted entry notice. There is no expiry time for a section 124(1)(b) notice, and it is unrealistic to expect all issues related to a dangerous building (that may require restriction of entry as opposed to prohibition of entry) to be addressed in a maximum of 60 days.

29. The situation could also be particularly difficult in relation to an affected building that is given a restricted entry notice relating to part of the building. If only part of the building must not be entered because it is at risk from a nearby dangerous building but the remainder of the building can be safely used, the restriction should not be removed after 60 days if the Council has not been able to get the dangerous building demolished or otherwise addressed in that timeframe.

30. Councils experience with the Manchester Courts building following the 4 September earthquake, demonstrates that owners of affected or dangerous buildings that only require a restricted entry notice may need to be kept out of their buildings or parts of their buildings for much longer than a maximum of 60 days.

31. Even though the Manchester Courts situation was an “immediate danger” situation the demolition itself took much longer than 60 days. If an adjacent dangerous building is one where Council has issued a notice requiring work on the building or demolition, which the owner has ignored, and the Council has to apply to the Court before it can do the work itself on the building, then the restricted entry notice should be in place until the Court process is finished and Council has done the work.

32. If the Council’s approach is considered unreasonable in any situation then the decision to issue the restricted entry notice can be challenged by way of a determination.

Suggested amendment to the section 124 notice for earthquake-prone buildings and for amendments to section 129 and earthquake-prone building policies

33. In respect of a section 124(1)(c) notice issued for an earthquake-prone building, the wording in the section about taking action to "reduce or remove the danger" needs to be made more specific. It needs to be clear that a Council can require an earthquake-prone building to be strengthened to the level the Council has specified in its policy required under section 131.

34. As noted above, the Council has made submissions to the Royal Commission regarding dangerous and earthquake-prone buildings. Extracts from those submissions are attached to this submission and include discussion on the provision of powers to require detailed engineering evaluations for potentially dangerous buildings, the need to clarify section 129, and on the provisions relating to earthquake-prone buildings policies.

Key Point: Amendments relating to the Schedule 1 exemptions need further clarification

35. Proposed section 42A sets out conditions that exempt building work must still meet in order to be carried out without a consent. One of these conditions is that once the building work is finished, if the whole building did not comply with the building code “immediately before the building work began”, it must continue to comply to at least the same extent as it did then comply. This wording is different but similar to the wording in section 112, but the same problem identified below may also arise when applying section 112 (if a narrow interpretation is taken to that section).

36. The wording “immediately before the building work begins” could give rise to a potential issue if the need for building work has arisen because the building was recently badly damaged. In Christchurch that is a common situation following the earthquakes, but it could also arise where there has been a fire. The whole building may not be so bad that the building can be classed as a dangerous or insanitary building. If minimal repairs are to be carried out, without consent, the result could be that a below code part of the building that is not being repaired, will only be compliant to the same extent as following the fire or earthquake.

37. It is preferable for the building to be compliant to the same extent as it was before the building was damaged by the earthquake or fire. This is the standard to which most insurers would have to repair a building, so would not be an issue in most “damage” cases, but it could lead to problems where a building is not insured.

38. The Council also wishes to repeat the submission it made on the No 3 Bill that exempt building work carried out that relates to the demolition of buildings, and any other work that might have a potential effect on any of Council’s public utility services, such as water supply, drainage systems etc should be notified to the Council. There is a more pressing need for the Council to be informed of such a demolition, and its effect on services, ahead of the general notification it might receive through a change in the rating status for the land

39. The Council notes that the word "damaged" will be removed from clause 7 of Schedule 1 (currently clause 1(m) of Schedule 1). If there is any submissions that the word "damaged" also be removed from clause 30 of Schedule 1 (currently clause 1(l), the Council opposes any such amendment, as there is a need to ensure building demolition is carried out appropriately and with sufficient notification to the Council.

40. The Council submits there should be an amendment to the exemption for awnings and verandahs in Schedule 1. There should be no exemption for building work on cantilevered awnings or verandahs. The evidence in Canterbury following the earthquakes is that awnings and verandahs on buildings create a structural loading that many buildings do not have the capacity to sustain. This exception has the potential to cause structural weaknesses in buildings leading to them more easily collapsing in an earthquake or other event.

41. The Council also notes that new clause 16 (awnings), new clause 17 (porches and verandahs) and new clause 18(carports) appear to alter the existing exemptions in Schedule 1. It is not clear that the construction of a new awning, porch/verandah, or carport onto a building is exempt, or whether it is only building work on an existing awning, porch/verandah, or carport that is exempt because of the use of the new wording "*is on or attached to"* in these clauses.

42. Construction of a new awning, porch/verandah, or carport is more clearly covered by the current exemptions because it is does not refer to building work in connection with the article that "***is*** *on*" any building, but just building work (construction, alteration, or removal of any awning etc) "*on*" any building.

Submissions on other clauses of the Bill

Clause 13 – Amendment to section 40(3)

43. The Council supports this amendment, increasing the penalty for building work done without consent from $100,000 to $200,000. It recommends that the infringement fee for this offence should also be increased from $750 to $1000 so it is the same amount as failing to comply with a dangerous building notice or a notice to fix (for which the maximum fine is otherwise also $200,000).

Clause 44 - new offence in section 362S

44. The offence in new section 362S should be widened so it is an offence for anyone (not just a commercial on-seller) to sell any building (not just a household unit) where there is no code compliance certificate or certificate of acceptance for building work that required a consent and has been undertaken since the Building Act 2004 came into force.

45. If this offence provision is widened it may provide a greater incentive for building owners to promptly obtain code compliance certificates for their work (or certificates of acceptance if work has been done without consent).

Clauses 5 and 51 - new powers of Chief Executive to issue infringement notices

46. The Council supports the amendments giving the Chief Executive of the Department of Building and Housing the ability to issue infringement notices, particularly if it means the Department is going to take a greater role in enforcement of the Act. It will be particularly useful where offences are difficult for the Council to enforce, for example, the new infringement notice powers for the consumer protections breaches.

Consequential and other amendments

47. As noted in the Council's submission on the No 3 Bill, the Council believes the Building Act and sections 198 and 208 of the Local Government Act 2002 should be amended to provide that a development contribution can also be required when an application for a

certificate of acceptance is made and that the Council can refuse to issue a certificate of acceptance, until any development contribution is paid.

48. If this is not amended there is a risk of building work being done without consent simply so the owner/developer can avoid paying a development contribution. In some situations this may be a significant incentive to do work illegally. At present the only trigger point at which a Council can require development contributions related to building work (where there is no resource consent or service connection also required) is a building consent. As a building consent cannot be applied for retrospectively, this provides a technical loophole by which a developer can avoid paying a development contribution.

49. Several court cases have identified that a development contribution is akin to a tax and the legal requirements should be strictly construed. This means there is a real risk that a Council will not be able to recover a development contribution in the situation where work is done illegally without a consent.

Conclusion

50. The Council is generally supportive of this Bill but believes further changes can be made to enhance the amendments provided for in the Bill and to improve the standard and quality of buildings and building work in New Zealand.

51. If you require clarification of the points raised in this submission, or any additional information, please contact Steve McCarthy (Resource Consents & Building Policy Manager, ph 03 941-8651, email: Steve.McCarthy@ccc.govt.nz or Judith Cheyne, (Solicitor, Legal Services Unit, ph 03 941-8649, email: judith.cheyne@ccc.govt.nz).

52. The Council looks forward to presenting its submission to the Select Committee, and will be represented by Councillor [?].

Yours faithfully

Peter Mitchell
General Manager Regulation and Democracy Services
CHRISTCHURCH CITY COUNCIL

Excerpts from the Council's submissions to the Royal Commission that are relevant to this submission

The following submissions were made in the Council's submission titled "Additional Submissions On The Legal Requirements For Earthquake Prone Buildings And Related Matters (Issues 3(B) to 3(D))" dated 20 February 2012, and are found in sections 2 to 5 of that submission

Which buildings should be treated as earthquake-prone under s122 of the Building Act 2004, and what standard should they be strengthened to and over what period (Issue 3(b))

The buildings that are, and those that should be, treated by the law as "earthquake prone"

A building that is earthquake-prone under s122 of the Building Act 2004 is currently one with a seismic performance strength that is less than 33% of the design standards (the one-third rule) for a new building that would be built on the same site. The current definition covers all buildings not just unreinforced masonry buildings. The buildings that can be considered earthquake-prone must also be commercial buildings or residential buildings of 2 storeys or more containing 3 or more household units.

The Council submits that this test should stay the same for the next 5 years while the Canterbury Earthquake Recovery Act 2011 is in force and the Canterbury Earthquake Recovery Authority (CERA) exercises powers under that Act.

In the Canterbury region the seismic loading factor changed in May 2011 and more buildings will now be classed as earthquake-prone without any change to the 33% test. For example a building that had a strength of 34% in 2009 that is undamaged and in exactly the same condition in 2012 as in 2009, is estimated to have a strength of 25% of the 2012 code requirements.

The involvement of CERA in relation to action being taken in respect of earthquake-prone buildings in the city is also relevant. Under their Act they have devised a process for requiring certain building owners to complete detailed engineering evaluations of buildings and where necessary any building with a strength under 33%, will need to have its strength brought above that level.

In the long term the Council submits the test should be increased. The Royal Commission is best placed to recommend an appropriate increase to the test once it has reviewed all the information presented to it on the performance of buildings, and having considered other relevant factors, including the economic, social and environmental impacts of any increase.

To what standard should earthquake-prone buildings be strengthened

As noted in the Council's earlier submission, there is a lack of clarity in the current legislation as to what level of strengthening a Council can require for a building and what level it can enforce when issuing a section 124(1)(c) notice. There is also no direct means for Councils to enforce their earthquake-prone buildings policies.

The Council submits that building owners should be directly required through legislation to strengthen their buildings and that Councils should simply have power to enforce any inaction by owners.

In relation to an appropriate strengthening level, the Royal Commission can note that the Council's Earthquake-prone Buildings Policy sets a target for owners of earthquake-prone buildings to strengthen their buildings to 67%. Council works at persuading owners to achieve this level. However, it has encountered significant resistance from insurers to pay for any strengthening of earthquake damaged buildings, other than that required to lift a building above 33%. Most building owners do not have sufficient funds themselves to pay to get the building to a higher level. In the future however, insurance might not even cover strengthening of buildings to any level.

If the level at which a building is considered earthquake-prone was to be increased to 67% of code then clearly any strengthening would need to bring a building above that level (unless a higher level for building strengthening was set).

However, if the 33% test remains then the Council submits the standard to which an earthquake-prone building should be strengthened is something that the Royal Commission is best placed to determine. When it has received all the information on the performance during the earthquakes of the various sample buildings it has selected it will be able to weigh up which strength buildings performed the best in terms of life safety (and also protection of the building).

It may be appropriate to set a different strengthening level for different parts of New Zealand, determined against the different earthquake hazard zones, which have already been set through the seismic loading standard.

The Royal Commission should also consider this issue holistically, taking into account the insurance issues, costs of strengthening different types of earthquake-prone building, and the environmental and amenity impact of any recommendations it makes. (For example, if the strengthening level is too high and, as a result, is too expensive for building owners there is a risk that a larger number of buildings will be demolished, including character and heritage buildings.)

What period should be allowed for the strengthening of earthquake-prone buildings

The report entitled "*The Performance of Unreinforced Masonry Buildings in the 2010-2011 Canterbury Earthquake Swarm*" by Associate Professor Jason Ingham and Professor Michael Griffith: ENG.ACA.001F (the URM Report) in section 7 (at page 114) states that "*recommendation 4 should be a national requirement*".

Recommendation 4 relates to the authors' proposal that all URM buildings should "*as soon as possible*" go through the first two stages set out in the report in relation to building improvements[1]. The URM Report does not make any recommendations regarding periods for compliance, except to the extent it suggests that stages 1 and 2 should be implemented "*as soon as possible for all URM buildings*".

The Council submits that having four stages is too complicated and these should be reduced to two stages. Further discussion of these issues is set out below in the Council's submission related to the desirability of immediate action.

The Council's earthquake-prone buildings policy currently provides timeframes of between 15-30 years, which will commence on 1 July 2012, within which earthquake-prone buildings must be strengthened. Other councils provide for different periods of compliance, and there is no set time frame by which all earthquake-prone buildings in New Zealand will be upgraded.

Councils are required to listen to submitters on their policy through the special consultative procedure. Building owners generally place pressure on Councils to provide long time frames for strengthening because they consider the compliance costs for them to strengthen buildings any sooner is unreasonable. The number of submitters who want buildings strengthened sooner (and/or to a higher level) are usually in the minority.

The Council submits that the decision on the appropriate maximum timeframes for strengthening of earthquake-prone buildings should be made by Central Government with provision made for Councils, in consultation with their communities, to be able to reduce those timeframes but not extend them. In addition there should be shorter timeframes that apply in respect of a building that, if it collapsed, could affect other buildings in its vicinity.

[1] The four stages are: 1: Eliminate falling hazards 2: Strengthen masonry walls to prevent out-of-plane failures 3: Ensure adequate connection between all structural elements of the building 4: Additional steps, if further capacity is required to survive earthquake loading.

Whether, to what extent and over what period should buildings that are not earthquake-prone be required to meet current requirements (Part of Issue 3(c))

As discussed in Council's earlier submission, there is no *general* legal requirement in the Building Act 2004, or elsewhere, for a building owner to upgrade a building to current building standards.[2] The situations when a Council can require some upgrading were also set out in that submission.

The Council submits that this matter should not be considered in isolation from other possible related reforms. It would be a significant additional cost for most residential building owners to be required to strengthen their buildings. In general, residential buildings tend to be lower risk buildings (as recognised by the proposed new consents provisions in the Building Amendment Bill no 3).

However, Council has reached the view that all non-residential buildings, and residential buildings that comprise 2 or more storeys and contain 3 or more household units, should be required to undergo a regular structural survey, every 20 years for the first 20 years after their construction and then every 10 years for a building older than 40 years. This would align with the minimum 50 year life for a building.

Linked to a requirement for structural surveys should be a "star rating" system for buildings. The New Zealand Society of Earthquake Engineering is promoting a "Quake Star" project, which is a concept under development in California. It would provide the public, users of a building, insurers, banks, and other interested parties with a better idea of how safe a building is in an earthquake. It is suggested that a "star" system for the earthquake strength of buildings would provide an additional incentive for owners to strengthen their buildings.

If a structural survey/star rating showed that a building had a reduced structural strength, then even if the reduced strength was not such that the building would be earthquake-prone, the Council submits that provisions should be included in the Building Act to allow the Council to require strengthening.

The Act should be amended so that immediately following a survey that shows a building has a strength below a certain level (to be determined by the Royal Commission), the owner is required to strengthen their building to an appropriate level (also to be determined by the Royal Commission). The owner must make an application for a building consent for the work to the relevant Council. Section 112 of the Building Act would also apply to any work on a building, resulting in upgrading of elements of the building related to means of escape from fire and disabled access and facilities.

[2] There is also no requirement on an owner to regularly maintain their buildings, unless there are specified systems in the building that require an annual building warrant of fitness (see sections 100-111 of the Building Act 2004) .

Additional Issue raised by Council

The Council submits that better public information is required in relation to the standards of buildings and the appropriate response for building users in an earthquake or other emergency in that building. Guidance should be provided by the Department of Building and Housing to ensure all building owners and tenants are made aware of their responsibilities. If a "Quake Star" system is introduced then this guidance material could be provided as part of that system.

The desirability of immediate action in respect of restraining parapets, chimneys, and other high-hazard elements (Royal Commission email: 8/9/11)

The Council agrees that immediate action should be taken regarding hazardous building elements, with the owner having the choice as to whether the elements will be removed or strengthened for both heritage and non-heritage buildings, but with a preference for strengthening of heritage building elements rather than their removal. An important factor for the Council, as noted in the earlier submission, is the potential impact of legislative changes in relation to the preservation of heritage and amenity.

However, in respect of gable ends the Council submits that they must be considered against the building as a whole and, if strengthened, this should be to the same strength as the building. There is no benefit in strengthening such elements to a higher standard than the remainder of the building, but there could be an increased cost in doing so. Council considers that the strengthening of other elements, however, should be to the highest standard that is reasonably practicable.

This "immediate action" work should begin as soon as possible but it must be recognised that there may be resourcing and other issues that mean this process, if carried out throughout New Zealand, would take some time. However, an "end" date for the process should be provided. There needs to be some prioritisation based on the risk profile and public safety issues presented by different buildings. There may also be a need to prioritise falling hazards on URM buildings ahead of other earthquake-prone buildings.

There will need to be clear legal powers for the Council (or another body) to be able to enforce this "immediate action" recommendation. This recommendation involves strengthening of parts of buildings. However, the current definition of "building" in the Building Act 2004 does not include "part" of a building (which is different than in the Building Act 1991). The Council is aware that the Department of Building and Housing is currently considering this issue, and amendments to the Building Act for the purposes of Council's using dangerous earthquake-

prone and insanitary powers in respect of part of a building may be made.

These amendments will need to be made carefully, as there could be a problem if in strengthening part of an earthquake-prone building, the whole building is brought above the earthquake-prone building threshold. For example, a building may be at 25% NBS and tying the diaphragms into the walls may bring the building up to 35% NBS. At that stage there would no longer be an earthquake-prone building and the Council may not be able to require/enforce further work. This issue has been brought to the attention of the Department of Building and Housing.

Respective roles of Central and Local Government (Issue 3(d) - in part)

The Council considers that much of the current earthquake-prone building policy provisions should be determined at a national level. There should be clear direction to building owners from central government, covering more than the steps to be taken regarding immediate action on buildings.

As previously noted, national direction should be given on the earthquake-prone building test, strengthening levels for earthquake-prone buildings (and non-earthquake prone buildings, following a structural survey), a clear ability to enforce strengthening of buildings (with a preference that this be a direct requirement on building owners), and the timeframes for strengthening of different buildings.

Some involvement of the Council and its community (local decision-making) should remain on issues related to earthquake-prone buildings, but more limited as to whether requirements set at a national level should be "exceeded" in the Council's district. For example, as noted in paragraph 2.16 above, a Council could consult with its community on whether maximum timeframes for strengthening set nationally should be reduced, as a result of seismic activity, or potential seismic activity, affecting that Council's district. In many communities there may now be an appetite for action to be taken more quickly.

In relation to whether the Building Act powers in relation to earthquake prone buildings should be made subject to the requirements of other legislation (ie the Resource Management Act 1991), the Council has two primary submissions.

The Orders in Council that were made following the September and February earthquakes, allowing the Council to issue warrants and demolish buildings that were an immediate danger without first obtaining a resource consent, should be included as a "standard" provision in the Building Act 2004, applicable to any emergency. It is a very high test to meet for a building to be classed as an "immediate danger" so this power could not be used lightly.

In addition, there is a need for a streamlined, non-notified, resource consent process for the demolition of dangerous buildings, in the months (or years) following an emergency event, that otherwise need resource consent before they can be demolished. There should be provision made for certain parties to make submissions where relevant on a demolition proposal (for example, the Historic Places Trust), but the process should not require notification.

The following submissions were made in the Council's submission titled "Submissions On The Process Of And Authority For Building Assessment After Earthquakes (Stickering/ Placarding) (Issue 3(E)) And Related Issues" dated 30 April 2012, and are found at paragraphs 4.7 – 4.27 of that submission

Effect of civil defence placards after a state of emergency ends

Transitional provisions of a permanent nature are required in legislation to deal with the effect of civil defence placards issued for buildings after a state of emergency ends. This was addressed by the Canterbury Earthquake (Building Act) Order 2010, but it will always be an issue following any large event.

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It would have been impossible for the Council to have carried out inspections under the Building Act dangerous building requirements in order to replace all the rapid assessment placards with Building Act notices before the end of the emergency (as the NZSEE rapid assessment guidelines contemplate). Similar provisions that were included in the Canterbury Earthquake (Building Act) Order 2010 need to be included in the Building Act, the CDEMA or some new transitional legislation.

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New legislation should also provide that the placards continue indefinitely as a transitional notice until the owner of a building provides the Council with information that the Council can be satisfied justifies the removal of the notice or a change of the placard.

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The Canterbury Earthquake (Building Act) Order 2010 provided for expiry dates of the placards and for the placards to be replaced with a Building Act notice where required. However, the Council submits that there should be no expiry date for the civil defence placards, and the onus should be on the owners of buildings to arrange for appropriate checks on, or work on their building to ensure the removal and/or change of the placard. Consideration is also needed on an appropriate process for the approval of entry to red placard/s124(1)(b) notice buildings for the purpose of the further assessment of those buildings.

Detailed engineering evaluations and engineer certified work on buildings

Related to the above submission is the need for a standard power in legislation, that Councils can use before or following a state of emergency ending, to require an owner to provide a

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detailed engineering report on a building (which could also allow a building status/placard to be changed if necessary for that building).

The Canterbury Earthquake Recovery Authority (CERA) has power under section 51 of the Canterbury Earthquake Recovery Act to require an owner to provide structural reports on their buildings, at the owner's cost. The Authority is exercising this power in a sensible way and allowing owners of some buildings (presumably those that on their face present less of a risk) to remain in their buildings while reports are done.

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A similar power should be provided for in future, so a Council (or other body) can compel owners/insurers to ensure that buildings are suitable for occupation. The Council recognises, however, that the power must also be workable. There may be a need to deal with large numbers of buildings and the whole of a city could not be shut down for years until every building was checked.

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This means there may need to be a system for Councils to apply that will prioritise risk balanced against other factors, and that may mean some buildings are investigated in more detail than other buildings. The prioritisation system must also be one that building owners will accept. There should also be clear, enforceable penalties imposed on building owners who do not obtain a detailed engineering evaluation when required.

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Linked to the better investigation of and prioritisation of damaged buildings, is the work to be required on a building and then certified by an engineer. The system for reviewing the status of a building and associated certification form (the "CPEng certificate") developed by the collaborative group following the September earthquake needs to be revised, and a formal procedure provided for in relation to the "sign off" of a building for occupation following an earthquake.

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The Royal Commission has heard from witnesses questioning the CPEng certification test that was developed. This test compared the state of a building after an earthquake (or after interim work was done) with its pre-earthquake strength. The question arises whether there should be a damage test or a strength test, but with recognition of the fact that science will take time to progress in relation to the prediction of the size and location of aftershocks. It is, however, clear that a broader approach to this issue is required, that also takes into account the different types of building being evaluated, rather than a standard approach for all buildings.

Greater power to take action on damaged buildings

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There is a need for additional and greater powers that would enable a Council to act quickly where no action is taken by an owner in respect of a damaged building and to recover the costs from the property owner.

Section 126 of the Building Act 2004 only allows a Council to do work on a building for which a section 124(1)(c) notice has issued, where the owner has defaulted, by making an application to the District Court. The Canterbury Earthquake (Building Act) Orders 2010 and 2011 provide a quicker process that the 3 Canterbury Councils could use in appropriate cases, but those powers are not applicable to other Councils, and once the Order in Council expires, will no longer be available to the 3 Councils.

CERA currently has clear authority to order the demolition of buildings, but if there is no CERA equivalent in a future emergency, or similar powers provided in legislation that a Council can use, then damaged buildings could remain in that state for some time.

There is also a lack of clarity around the application of the section 129 "immediate danger" process in the Building Act 2004. Issues about section 129 have also been raised in the Council's additional submission on the legal requirements for earthquake prone buildings and related matters.

Although there were amendments made by Orders in Council that meant this power could be exercised without the need for resource consents to be obtained first (in cases where they otherwise would have been required), that did not change the "test" that Councils/the Chief Executive should apply under section 129. The Chief Executive is required to reach a view on whether a building poses an "immediate" danger, as opposed to being a dangerous building in respect of which the section 124 powers can be used instead of section 129. This "test" should be made more simple for a Chief Executive to apply, particularly following a state of emergency. Consideration also needs to be given as to how to deal with heritage buildings in the context of "dangerous" and "immediately dangerous" buildings.

It is also not clear whether outside features of a building could be declared an immediate danger while the rest of a building is not. This matter was addressed by the Council in its previous submission.

Legislative powers are clearly required to address all of the issues above for future emergencies. The new (or amended) legislation should also make it clear that an owner is responsible for paying the costs of any work (repair or demolition) that a Council carries out on their behalf.

Cordons for unsafe buildings/blocks of buildings

A further related area of concern is the cordoning of unsafe buildings. There are wide powers in the CDEMA that apply during a state of emergency but what applies following the end of the state of emergency needs to be clarified. There should be provisions that automatically

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continue any cordons in place once the state of emergency ends, so there is no doubt as to the legality of any continued existence of cordons.

In particular, clarity is needed on the powers that can be exercised to place and/or retain cordons around larger areas (as opposed to specific buildings) after a state of emergency has ceased. This is particularly relevant to areas where there are a significant number of URM buildings. Section 124(1)(a) of the Building Act 2004 is relatively clear that individual dangerous buildings can be cordoned, but it is not clear whether the same power can be used to cordon a wider area.

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It would also be useful for Councils, building owners, and the general public, if there was a clear standard that could be applied in relation to the cordoning of a building. If a standard was in place, although some judgement would still need to be exercised by engineers, there would be greater certainty. If a Council was required to apply a cordoning "standard" and in any situation that meant a certain area had to be closed off, there would be less pressure to reduce the cordoned area compared to where there is a discretion involved. Any such standard could also deal with how to prioritise the cordoning of buildings.

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There also needs to be a clear power to recover the costs of providing a cordon around a building(s) from property owners whose buildings are causing the need for the cordon. Providing for a power to charge owners for cordons may encourage the owners to act more quickly in relation to their buildings.

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3. CONSIDERATION