

23 April 2010

Building Act Review Team
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To whom it may concern

Christchurch City Council submission on the 'Cost-effective quality: next generation building controls in New Zealand' consultation document

Please find attached the Christchurch City Council's submission in response to the Department of Building and Housing's request for submissions on the 'Cost-effective quality next generation building controls in New Zealand' consultation document.

Christchurch City Council supports the development of cost effective building controls for New Zealand – and supports that an additional focus of the proposed reforms is to seek to reduce reliance on Building Consent Authorities and the liability and legal risks currently faced by councils.

We also believe that in the meantime the Government could review the regulations for accreditation to more closely align with the risk based approach which would allow BCA's to streamline their building consent approval process. The current interpretation of the regulations drives a detailed risk averse approach for every consent type. A risk based approach would enable a quick implementation of a reduction in both cost and time for the industry.

We would seek to emphasise that property files maintained by Councils are relied on by the community. This is particularly so when property sales are being undertaken. It is common for purchasers to compare the records kept by the Christchurch City Council with what is actually on site and if there is a discrepancy to require the vendor to rectify it, either by building consent or Certificate of Acceptance. Also our current rating system depends on the quality of information regarding improvements to the value of a property.

Should the proposed exemptions to Schedule One be introduced it will be a very short period of time before the Council records become out of date and redundant. We would propose a notification process 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 for Council. If information is not provided to the council, its ability to maintain and plan its public utilities will be compromised. Without building data which reflects all the building work that has been done, the resulting statistics about the national economic situation would not be accurate. While it is not proposed to move to proportionate liability in law the proposals seek to achieve the same outcome through a refocus on contracts, warranties, and associated law. The proposals will only achieve this shift if they are advanced in combination. Otherwise they will fail and will not deliver any benefits to the consumer or the industry. In particular, the warranty system (and surety backstop) are critical to any other changes and must be mandatory for new homes and major alterations.

We believe 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.

We fully support the concept of Licensed Building Practitioners who would take a greater responsibility for building works that they are responsible for. 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

Any timeframe for change should recognise that it will take between 5 – 10 years for the industry to develop their capability and competency. It has to be recognised that the development of qualifications can take a considerable time. The key players in the industry will need to demonstrate their capability and

become more skilled in their understanding of the Act and Building code. Presently, Licensed Building Practitioners, in our experience, have little understanding of the code. Although most will have an understanding of the commonly used compliance documents and have an understanding of good trade practice, they do not relate them to the objectives of the code. Accordingly we would propose that a staged implementation of any new provisions in the Building Act recognize these limitations and take a realistic approach to their implementation.

While Christchurch City Council is keen to see liability for building work sit with those who are best placed to manage the risk, we do 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. The industry will take some time to respond to this challenge and we would encourage a gradual and staged approach to the reforms proposed.

Notwithstanding that, in Christchurch we have many Group Housing Companies that we consider would willingly accept this responsibility when building “simple houses” and we would have faith in warranties that they offer. Overall however we consider that many other builders will be unwilling to accept the liability and this is a potential weakness in the proposals. 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.

Accordingly we suggest that implementation of finalised proposals should be managed cautiously, and before allowing too much reliance on licensed building practitioners that there is an appropriate bedding in process developed to allow for graduated increase in accountability over time. In the meantime the alternative approach to review the accreditation regulations should be used.

Part 1: Clarifying the purpose and principles of the Building Act 2004 and the requirements of the Building Code

The Christchurch City Council supports the move to clarify the purposes and principles of the Building Act. We also believe the review should consider clarification of the roles and responsibilities for those involved in implementing, monitoring and participating in the building process. The Act needs to clarify liability and responsibility for all roles (designers, constructors, BCAs, TAs, manufacturers, suppliers, DBH). This will make the intention of the streamlined process clear in terms of assigning responsibility.

Part 2: Moving to a more balanced approach to building regulatory control

We support the exempting of more of the lowest risk work from consenting requirements, especially where it is undertaken or overseen by LBP's. We also support the streamlining process for both low risk (simple residential) buildings and complex commercial sector work where work is undertaken or overseen by LBP's. We note that both of these initiatives will significantly reduce the number of consents and site inspections required to be completed by a BCA.

Expanding the range of exempt works outlined in Table B is not fully supported. We believe the risks of exempting significant alterations to habitable buildings of up to 20 square metres and solid fuel heaters is too much of a potential risk to health and safety of occupants. There is also a concern at this time that the overall capability and competence of LBP's is not known which increases the risk of their making technically incorrect decisions. If these are included we would recommend a staged approach to expanding the range of exempt works to include significant alterations and solid fuel heater. .

Retaining the current building consent system for more complex and less conventional residential buildings and some commercial buildings is supported as is simplifying other processes including fire safety review of plans and maintaining essential systems through building warrants of fitness and compliance schedules. It is considered that it is essential that the current building warrant of fitness regime is retained as this is the only way that public safety can be ensured.

The Council sees a number of benefits which could be gained by greater cooperation between BCAs. Exploring options for more cost effective administration of the building regulatory control system is supported, however it is vital to recognise that combining a number of BCA's is not necessarily more cost effective than having a number of individual BCA's. This is particularly significant when carrying out site inspections.

Part 3: Building Consumer confidence

The initiatives in this proposal to increase consumer awareness, improve contracting practices and provide financial surety for building works on property are all supported.

The current situation where the local authority provides the financial surety in the event of a building failure is no longer sustainable. Allowing the consumer to choose to use a building professional with access to a surety will spread the cost of repairing a building in the event that it fails.

Part 4: The Impacts of Improving Building Control in New Zealand

The proposal that building professionals and tradesmen take more responsibility for getting it “right first time” and back this up with warranties is supported. We believe that surety backing should be mandatory, which might require this to be supported by a Government levy on the building consent. This would require the Crown to negotiate insurance cover or temporarily underwrite a fidelity fund.

The mandatory provision of surety would also require regulation with associated costs to administer that regulation. It is expected that this proposal will result in a reduction in the number of both building consents and site inspections.

The proposal that BCA's target their attention to higher risk areas and rely more on building professionals and trades people is partially supported providing the level of industry knowledge is raised to a level where customers can have confidence in the ability of these building professionals.

Tried and true building designs and practices going through a streamlined process is supported. It is expected that this proposal will result in a reduction in the number of both building consents and site inspections.

The proposal that residential consumers can confidently make informed decisions when selecting and contracting with building professionals and trades people is supported. There is a need to back up contracts, warranties and dispute resolution processes in writing. We believe however that warranties should have a mandatory surety back-up.

Streamlining and aligning the processes for approving resource consents and building consents is supported.

Our submission is comprised of both general and specific comments which align with the format of the feedback form.

Thank you for the opportunity to provide feedback on the proposals. Should you require any further information, please contact Steve McCarthy at (03) 941 8651 or steve.mccarthy@ccc.govt.nz.

Yours faithfully

A J Marryatt,
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Part 1.1: Clarifying the purpose and principles of the Building Act

General comments

Christchurch City Council considers that the purposes and principles of the Building Act should be clarified. This would be best achieved by outlining the roles and responsibilities for all involved in implementing, monitoring and participating in the building process.

We consider that a move to clarify the content and scope of these fundamental provisions is desirable. In general terms, increased certainty as to the operation of the Act is likely to reduce risks to local authorities.

That said, we acknowledge that careful attention will need to be paid to the language of draft legislation that arises from the proposals. Conceptually, the purpose and principles provisions exist to provide context and guidance for the interpretation of other provisions within the Act. They are also frequently referred to where confusion arises as to the performance requirements described in the building code or compliance documents.

<p>1: Does the reference to sustainable development in the purpose statement (Building Act 2004 Section 3(d)) provide clear and appropriate guidance to those administering the Act? If not, why not?</p>
<p>Sustainable has become a generalized term that means a multitude of different things to different people. Its meaning varies greatly depending on where it is used and who is using it. It can cover all, some or none of the following applications:</p> <ul style="list-style-type: none"> • Use, re-use and disposal of materials used in construction • Immediate and long term impact on environment and economy • Planning for a possible future scenario which may or may not eventuate • Cost of construction and use of a building • Cost of construction vs cost of using building • Impact on environment – short and long term • Sourcing materials – local vs remote • Cost and impact of supply chain • The “greening” of buildings • Efficiency and cost effectiveness (leading to on-going viability of business) <p>The issue is not whether sustainable development is important or desirable; it is more that any reference must give clear guidance to those who administer the Act.</p>
<p>2: Should suitability for purpose be referred to in the purpose statement? If so, how should this be worded?</p>
<p>No! The use of such a qualitative statement without clear definition would not be helpful. Councils do not wish to get too involved with determining the exact nature of the use of a building during the building consent phase. However, if this is defined it is important that it relates to impacts of the physical construction and should not duplicate, overlap or conflict with considerations or decisions made under the Resource Management Act.</p>
<p>3: Should other changes be made to the purpose statement? If so, what are they?</p>
<p>The purpose statement currently defines the responsibilities of a number of the different parties in the building process – the Chief Executive and department, building consent authority (BCA), territorial authority (TA). We believe the licensed building practitioner (LBP), product manufacturer and supplier, owner and consumer should also be defined.</p> <p>Clear definition will help all parties to understand where their accountability and liability lies.</p>
<p>4: Do you agree that all of the 16 existing principles (Building Act 2004 Section 4) are necessary to guide those administering the Act? If not, which principles do you consider fundamental?</p>
<p>Different groups of people will have different areas of focus and the importance of individual principles will therefore vary accordingly. It is our view that the purposes need to be kept to a simple set of principles so that all users can understand. The proposed changes mean many new LBPs and building owners will be expected to understand these principles.</p>

5: Should other matters be referred to in the principles? If so, what are they?
Refer above.
6: Do you agree that the purpose and principles should apply to local authorities in their administration of all, not just some, of their building control functions? If not, in which circumstances should they be able to make decisions without regard to the purpose and principles?
<p>The Chief Executive and DBH considers the purposes and principles when designing/developing the Building Code. BCAs should not have to reconsider them when assessing compliance with the code. The purposes and principles should apply to the BCA/TA functions, as long as there is clear guidance setting out their responsibilities. The proposed shift of responsibility to the LBP means that a BCA/TA may have only peripheral involvement in many building projects.</p> <p>BCAs/TAs should consider the purposes and principles when carrying out specific functions under the Act such as assessments under s71 – 74 Hazards, S75 – 77 Building over two or more allotments, s96 – 99 certificates of acceptance, s 362 – 364 public use buildings and when using discretionary powers under s112 alterations, s115 change the use, s67 waivers & modifications, and when assessing “as near as reasonably practicable”.</p>
7: Do you have any other comments on the Building Act’s purpose and principles?
The review proposes significant changes to BCAs functions – effectively assigning their responsibility to LBPs through exempt work and streamlined processes. This should be made clear in the purpose of the Act.

Part 1.2: Clearer requirements in, and improved access to, the Building Code and supporting information

General comments:

Christchurch City Council supports a performance based code but considers the code needs to be balanced with some minimum standards and expectations. As an example we support the development of minimum standards for room and apartment sizes.

8: Do you agree that some Code performance requirements are ambiguous or unclear?
<p>Many of the objectives and functional requirements are open to interpretation which leads to conflict between designers, BCAs and builders.</p> <p>Also, there are instances where the Building Act, the objectives and functional requirements of the building code and acceptable solutions do not support the same outcome. Examples of this are:</p> <ul style="list-style-type: none"> • The Fencing of Swimming Pools Act is cited in the Building Act as the means of compliance for pool fencing. However, there are contradictions between code clause F4 Safety from falling and the Fencing of Swimming Pools Act. • The acceptable solution of Code Clause F2 Hazardous building materials cites NZS 4332 for Glazing. However, the compliance document and the standard do not align.
9: If so, what is the impact of this for you?
The lack of clarity in some areas of the code results in conflict between BCAs, designers and builders. This adds cost and results in negotiation to determine the solution. The end result is extended delays and time overruns for the owner/consumer and in some cases the need for rework and additional costs.
10: Which Code performance requirements do you think need to be clarified and which would you make top priority for clarification? (Note that work is under way on requirements related to visibility in escape routes and fire safety).
Clauses B2- Durability, E2 External Moisture, and E3 Internal Moisture should be a priority for clarification as these are critical code requirements which are overdue for review.

<p>11: Do you believe that Code performance requirements are well known to those who need to know them? If not, how could they be made better known?</p>
<p>We believe that it is only BCA's staff who have a good knowledge of building code requirements. The design industry professionals (architects, engineers, draughts people) tend to have an understanding, although often limited.</p> <p>Overall understanding amongst trades people and LPB's is low and is focused on compliance documents that they use often rather than code eg builders use NZS3604 and a plumber may have a good knowledge of AS/NZS3500.</p> <p>They advise that there is a heavy reliance on consent documents and plans combined with their own industry knowledge.</p> <p>It is suggested that there needs to be an ongoing industry awareness programme developed as part of the proposals discussed in this consultation document. Council believes consumers and participants have inadequate knowledge about the Building Act and that Building Code and the education program needs to be substantially enhanced. Given the proposed changes there still will be a number of new users who will not be familiar with the code, how it works and what is expected. A robust education program needs to be considered, with consideration given to linking knowledge/understanding of the code to the LBP scheme.</p>
<p>12: Do you have any problems accessing Code performance requirements and supporting information (including compliance documents and Standards)? If so, what are the problems and what could be done about them?</p>
<p>The building code and compliance documents (except standards) are freely available on DBH website. There is no problem accessing this information.</p> <p>We believe that it is essential that critical building standards cited in the code should be freely available to LBP's and other participants in the building process. This might be via the DBH website or directly from Standards NZ who would require government financial assistance to cover the cost. It would be necessary to provide guidance to new users on how the documents are used.</p>
<p>13: Do you agree that the label 'compliance document' creates an expectation that it must be used? If so, can you suggest a better label for this type of document?</p>
<p>The term "compliance document" and particularly the term "acceptable solution" cause confusion for those with limited understanding of the building code, as they infer that they are THE means of complying. In reality any proposal can be "acceptable" if there is sufficient evidence provided that it will comply with the objectives and functional requirements of the code.</p> <p>We suggest that the department should develop a set of "building code guidelines" or "design guides" as examples of ways to comply with the code. These would be similar to the current compliance documents in that if building work is designed and built in accordance with the guide it would be deemed to comply with the code.</p> <p>We suggest that these should be backed up by better guidance around alternative solutions and how compliance can be demonstrated.</p>
<p>14: Do you have any other comments on clarifying Code requirements or improving access to the Code requirements and supporting information?</p>
<p>We have no further comments.</p>

Part 2.1: Lowest risk building work exempt from consent requirements

General Comments

Christchurch City Council supports the proposal to exempt building work from the requirement to get a building consent where the risk and consequence of failure is low. However there are wider implications that may arise from having more exempt building work, including:

Property records - The Building Act requires TAs to keep records about buildings. The importance of these records cannot be understated. We strongly support the suggestion of a notification process where TA's are advised when exempt work is carried out. – otherwise where there is no building consent there will be no centrally held record of the work. This notification would form part of the record for the property without setting the expectation that the BCA/TA has checked for compliance with the code. These records would then be used in preparing Land Information Memoranda often sought by prospective purchasers and provide a community record of the state of a building.

Interface with other legislation - The building consent process provides a vital trigger for checking compliance with the TAs District Plan and therefore the requirements of the Resource Management Act. Without that trigger we anticipate higher levels of complaints and District Plan non-compliance.

15: Do you agree the items or areas of work listed in Attachment 1 are low risk?

Table A: proposed additions to schedule 1

- (A) Agree with this proposal and suggest that a notification process could be used to notify the Council that the work will proceed. We do not support the installation of plumbing as the potential is too great for the development of substandard buildings that people will live in. Poor provision of storm water control can lead to stability issues in some areas.
- (B) We do not support this proposal as additions to existing dwellings are often complex as the impact on the existing building needs to be considered. If this proposal was to proceed then the work should be designed and built by LBPs. There is also the possibility that over time multiple additions or alternations will end up rebuilding the whole house and the risk of failure increases substantially. We submit that a notification process must be used to notify the Council that the work will proceed.
- (C) Agree with this proposal and suggest that a notification process could be used to notify the Council that the work will proceed. This would then form part of the council record for the property and allow sufficient time for checking of hazards, RMA issues, etc, if any.
- (D) Agree with this proposal and suggest that a notification process could be used to notify the Council that the work is proceeding. We agree that it should be limited to fire hazard category 1.
- (E) Agree with the proposal but RMA provisions related to heritage buildings would need to be addressed.
- (F) Agree with the proposal.
- (G) Agree with the proposal.
- (H) Agree with the proposal. We believe all types of framing ie steel, could be included.
- (I) Agree with the proposal.
- (J) Agree with the proposal.
- (K) Agree with the proposal.
- (L) Agree with the proposal.
- (M) Agree with the proposal.
- (N) Agree with the proposal.
- (O) Agree with the proposal.
- (P) Agree with this proposal and suggest that a notification process could be used to notify the Council that the work will proceed in order to address RMA matters.
- (Q) Agree with the proposal with some limitations on height and area suggest no higher than 3 metres or larger than 20m² and a safety inspection before occupation. Suggest that a notification process could be used to notify the Council that the work will proceed in order to address RMA matters.
- (R) Agree with the proposal with some limitations on height and area suggest no higher than 3 metres or larger than 20m² and a safety inspection before occupation. Suggest that a notification process could be used to notify the Council that the work will proceed in order to address RMA matters.
- (S) Agree with this proposal.

Table B: further potential exceptions for discussion

- (1) We agree with this proposal. Suggest that a notification process could be used to notify the Council that the work will proceed.
- (2) We agree with this proposal. Suggest that a notification process could be used to notify the Council that the work will proceed.
- (3) . We have concerns if the building work adds a second kitchen as this increases the risk of creating other household units. If the proposal was to proceed a notification process must be used to notify the Council so it can properly undertake its planning and maintenance functions for its network utilities.
- (4) Agree with this proposal for equipment being installed in a publicly accessible place including a school or play centre and constructed in accordance the NZS5828.
- (5) Agree with this proposal if constructed in accordance with NZS5828.
- (6) Do not agree with this proposal as the risk and consequences of failure are too high. There have been a number of cases of fires or near misses where fuel heaters are not correctly installed. If this proposal proceeds then a notification process is essential to maintain records and facilitate clean air measures in Christchurch City.
- (7) Agree with this proposal. We suggest that a code of practice should be developed and before occupation, or the issue of a liquor license, a safety inspection should be carried out by the TA. This process is in line with our current practice.
- (8) Agree with this proposal. We suggest that a code of practice should be developed and before use

<p>by the public a safety inspection is carried out by the council.</p> <p>(9) Agree with this proposal. We suggest that a code of practice should be developed and before use by the public a safety inspection is carried out by the council.</p> <p>(10) Agree with this proposal.</p>
<p>16: Are there any items or areas of work listed in Attachment 1 that should not be exempt from building consent requirements? If so, which ones (please use identification number/letter when commenting) and why should they be subject to building consent requirements? Are there any limitations or conditions that would address your concerns?</p>
<p>Please see our detailed response to question 15.</p>
<p>17: What other items or areas of work do you think should be added to Schedule 1 of the Act? Why are these low-risk?</p>
<ul style="list-style-type: none"> • Demolition or removal of any single storey building that is not connected to public utilities and not containing any hazardous substances or materials. There is low likelihood of danger to the public so long as clear guidelines are first developed. Suggest that a notification process could be used to notify the Council that the work will proceed.
<p>18: Is there any essential or useful information that is currently gathered through building consent applications that would be unavailable under this proposal?</p>
<p>There is a range of essential information that would not be gathered if council was not able to gather records such as:</p> <ul style="list-style-type: none"> • use of building, size and location, • surface water connections, • people involved such as LBPs • confirmation of owner's knowledge/approval, • assessment of District Plan compliance • compliance with site specific conditions, consideration and compliance with Building Act requirements (e.g. S71 – 74, S75 – 77). <p>Assessment of the District plan compliance is very important to ensure that the applicant receives comprehensive advice on all regulatory requirements so that projects are not started without full knowledge of what is involved</p> <p>Experience shows that a lack of record of this type of work is likely to cause problems if/when the property owner wishes to sell the property. We would like to suggest that a notification process could be used to notify the Council that the work will proceed.</p> <p>The notification application should also include the reason the applicant thinks the work is exempt and the owner's agreement that they believe the work can be done without consent.</p> <p>The notification would create a record of the proposed work but would not create the expectation that the BCA has checked the proposal for building code compliance (and therefore should not create liability for the BCA if that expectation is set in legislation).</p>
<p>19: Do you have any other comments on exemptions for lowest risk building work?</p>
<p>Rather than continually extending the list of exempt works we suggest that it would be more appropriate and provide more clarity if the definitions of what is and what is not a building (Building Act S8 & S9) and the definition of building work (section 7) were reviewed.</p>

Part 2.2: A more streamlined process for low-risk residential building work

General Comments

Christchurch City Council supports the development of streamlined processes for low-risk work provided the responsibilities and liability of those carrying out the work are clearly defined.

Our concern is that the 4 inspections that the BCA carries out are defined as "critical". By implication this means the liability remains for BCA's despite having a more limited involvement in the process.

<p>20: Do you agree that building consent authority oversight and control of a building or building work should be in proportion to the risk and consequences of failure? If not, why not?</p>
<p>Yes, we agree with a risk based approach for building control and that BCAs should not have to spend as much time on low risk proposals as they do with ones that have a higher risk of failure. Further direction from the DBH, will encourage BCA's to develop and implement risk based processes in the meantime. We note that changes in expectation in this area need to be reflected in the purposes and principles of the Act.</p>
<p>21: Do you agree that licensed building practitioners should be able to be relied on to design and construct simple buildings that meet Building Code requirements without the level of third-party oversight currently applied? If not, why not?</p>
<p>In Christchurch there are very good examples of Group Housing companies effectively designing and constructing simple buildings. To some degree they still depend on the BCA to verify compliance and their customers also seek this assurance. These companies are very low risk and we have confidence that they can meet building code requirements. Our concern is that some other parties who might attain LBP status will not be able to meet these standards.</p> <p>We suggest that a transition period of at least five years may be needed to allow some LBPs to develop the necessary knowledge and skills before we could confidently rely on their competence. It is our understanding that Australian and Canadian systems for LPB's included a staged approach at their inception.</p> <p>In our experience most non group housing applications for houses do not comply with the code in 1 or more critical aspects. The reasons for this include:</p> <ul style="list-style-type: none"> • Failing to consider an aspect of compliance. • Supplying insufficient information or non-complying details. • Failing to consider site specific conditions or features. <p>There is currently an undue reliance on BCA's to provide oversight in these situations. We anticipate some resistance from Designers and Builders (LPB's) required to certify "simple buildings" compliance with the code.</p>
<p>22: Do you agree that the proposed streamlined process is adequate to ensure simple buildings are Code compliant? If not, why not?</p>
<p>We do not wish to return to a system that has previously failed. Our concern is that the process places considerable weight on getting a building compliant during the construction phase. This is contrary to the findings of the Hunn report and resulting changes in legislation which identified that getting the design right is key to a quality end product. It also pointed out the problems with on-site changes (eg changes to products, systems and construction details) which were a contributing factor to building failure.</p> <p>This proposal appears to be advocating a return to a similar process based on a Design LBP sign off backed up by a Site LBP sign off with minimal third party checking. The concern is that this proposal will undermine changes made in the BA04 to ensure that compliance with code is assessed at the design/consent stage. Under the proposal compliance will be assessed at construction stage.</p>
<p>23: Do you have any comment on the indicative steps in Table 1, including the notes to the table?</p>
<p>In Christchurch 450 consents issued between July 2009 and January 2010 would have fitted the "simple house" criteria. On this basis this proposal will simplify the process for a significant number of such applications.</p> <p>We have concerns about the lack of detail in the table 1 proposal. There appears to be a lot of important information that has either not been considered or has been omitted from the proposal. For example it does not make provision for consideration of Building Act requirements (hazards and building over two or more allotments) and site specific features like wind zone. We suggest that a PIM should be compulsory for all streamlined applications to ensure that designers have all the information they need to design the house.</p> <p>Step 1 – The application needs to include details of the LBPs who will be involved in the construction. Under the proposed process, satisfaction that the proposed work will comply is based on the competence of the people who will do the construction. Without this information the BCA and the owner do not have the assurance that the project will be completed by competent people. This requires a significant change to how the industry operates. It is common now for the design of a</p>

project to be completed before the builder or other trades have been selected. Having to nominate LBPs up front will add to the owners comfort about competence of contractors. It will add surety for contractors to forward plan work, engage and employ competent labour, manage finances and manage procurement.

The construction LBPs could sign off on the design to confirm they believe they can construct the building, as designed, to comply. This will minimise the likelihood of significant oversights or errors on the part of the designer which could otherwise add significant cost to the owner (not to mention additional dispute management) especially if the errors are not identified until materials have been bought and the work partly constructed.

Designers should also have to have contracts and warranties in place covering their work so that owners are covered if the designer does make mistakes.

There does not appear to be any consideration in any part of the process that there could be a change of LBP during the project.

Step 2 – Many Councils see similarities between this proposal and the building certifier regime under the Building Act 1991. In spite of assurances from the BIA that Councils only needed to check a proposal was within the scope of the certifiers approval, Councils are still being pulled into ex-certifier claims purely because certifiers no longer exist.

Unless the Act clarifies liability and responsibility for all roles (designers, constructors, BCAs, TAs, manufacturers, suppliers, DBH) then it does not matter what the intention of the streamlined process is in terms of assigning responsibility – the courts will still hold Councils liable.

A process that relies on LBPs signing off on their part of the process will only work if there is a robust and effective LBP complaints and disciplinary process. Although a complaint/disciplinary process has been set up it has not yet been tested.

Step 3 – Given that BCAs will not have reviewed the plans prior to construction (see step 2) we foresee a higher chance of conflict between BCAs and construction LBPs about whether compliance with the code has been achieved. If anything the proposal seems to be promoting conflict where the BCA and builder do not agree with the design LBP's interpretation of code at the time of construction. This difficult situation will be exacerbated by the fact that at the time any non-compliance is identified the work will be partly or fully constructed and the cost of rectification will be higher than if the potential non-compliance was identified at the design phase.

There does not seem to be any consideration that a change during construction could mean the dwelling would move out of the simple category into complex (for example a change to an untried or unproven cladding product).

Step 4 – We comment again that significant on-site changes during construction were identified in the Hunn report as being a contributor to failure. There is no indication in table 1 that a design LBP must sign off on changes during construction as complying with code.

The proposal does not consider the New Zealand do-it-yourself attitude where owners will undertake to complete certain parts of the work to minimise costs. The most common of these would be interior painting including wet areas (bathrooms, kitchens, laundries) but it may also include laying or arranging flooring (bathrooms, laundries, kitchens), external painting or completing landscaping (barriers). Although this would impact even more in additions and alterations to an existing dwelling, it can also apply to new builds.

LBPs will face a conflict in these situations. Their part of the contract will be completed but they would be unable to produce a memorandum saying all the work complies. Owners may withhold payments pending the issue of a memorandum but the builders may not be in the position to influence the speed at which the work is completed.

It needs to be made clear that the BCA has no liability for the constructed works and responsibility rests with the LPB to confirm work complies with the code.

24: Are there any other steps that should be part of a streamlined process for simple, low-risk residential building work?

We have no further comments.

25: Do you agree that the foundations, framing and insulation, plumbing, drainage, claddings and flashings are critical elements that would still need to be inspected by building consent authorities in a streamlined process? If not, what elements do you think would still need to be inspected?
We agree with the suggested inspections types.
26: Do you agree with the criteria for buildings to be covered by the proposed streamlined process for simple, low-risk residential building work? If not, which criteria would you change and why?
We agree with the criteria.
27: Should the proposed streamlined process apply to buildings covered by a MultiProof approval?
We note that Multiproof approvals already have their own streamlined building consent process. They could also be assessed as streamlined under our suggested risk assessment process.
28: Should the proposed streamlined process apply to any other low-risk buildings or building work? If so, how would you define which buildings or building work?
Refer answer to question 26.
29: Does the proposed process align appropriately with the rules on restricted building work? If not, why not?
We have no further comments.
30: Do you have any other comments on the proposed streamlined process for simple, low-risk residential building work?
<p>We have concerns about whether the industry is ready to accept the liability created by this approach.</p> <p>We note that acceptance of the concepts in this discussion document by the national level of organisations like Certified Builders or Master Builders does not automatically lead to understanding or acceptance at the practitioner level.</p> <p>It is our understanding that while many designers and builders express a desire to have less BCA input into their projects they have also expressed concern about taking on more liability for their work as a result. Concerns about builder liability were expressed by many potential LBPs during consultation sessions.</p>

Part 2.3: A more streamlined process for complex commercial building work

General Comments

Christchurch City Council supports the development of streamlined processes for complex commercial work provided the responsibilities and liability of those carrying out the work are clearly defined.

This is on the basis that the Council does not currently owe a duty of care in respect of commercial building work, with regard to its functions under the Act as commercial building developers/owners/occupiers are generally better placed to protect themselves contractually and thus are not 'vulnerable' in the same sense as their residential counterparts.

The proposed changes to the consent process for complex commercial building work appear to reflect the Courts' view of the capability of commercial parties, although recognition is also given to the independent technical advice usually provided for complex building projects. The Council's statutory role is consequently reduced to confirming the existence of quality assurance processes. While a statutory duty will exist in relation to this function, we consider it 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.

31: Do you agree that people commissioning complex commercial buildings and building work are generally better informed and better equipped to hold contractors to account than consumers of residential building work? If not, why not?
We agree that in many cases these consumers are better informed and protected by robust contracts, but

not in all cases.
<p>32: Do you agree that chartered professional engineers, registered architects and other licensed or certified professionals should be able to be relied on to design and supervise complex building projects that comply with the Building Code, without the current level of building consent authority review? If not, why not?</p>
<p>We agree, although even the best professionals can and do benefit from third party review. It is important to note however, that not every complex commercial new building which is designed and built by professionals achieves the same standards. Many large commercial projects are built where the budgets or timetables are very tight and decisions are sometimes made on the basis of cost/time rather than compliance or safety.</p>
<p>We suggest that these projects should be subject to some level of BCA monitoring with inspections similar to the proposed simple house process plus a safety inspection prior to public occupation.</p>
<p>33: Do you agree that the proposed streamlined process for complex building work is adequate to ensure buildings are Code compliant? If not, why not?</p>
<p>This proposal relates only to complex new commercial buildings. New buildings of this scope represented less than 1% of building consents issued in Christchurch in 2009. As the proposal will streamline the process for a very small proportion of all building consents we do not believe the proposal will result in a significant improvement for the industry as a whole.</p>
<p>The proposal does not consider other complex commercial work that makes up the bulk of commercial building consents in Christchurch or the decisions TAs must make when approving consents such as:</p> <ul style="list-style-type: none"> • alterations or change of use to existing commercial buildings and triggers for upgrade of accessibility, fire, means of escape, structure • natural hazards (s71 – 74 BA04) • building work over two or more allotments (s75 – 78 BA04) • occupation of buildings intended for public use.
<p>These are the decisions that often create conflict between designers, owners, engineers and the Council. Designers/owners tend to approach these decisions from a cost perspective (money and time), while the Council must, in its role as a TA, make other considerations such as safety and amenity for users and the need in some cases for existing building stock to be upgraded.</p>
<p>The complex commercial streamlined process is silent on how the staging of a complex commercial project is often handled. Typically a new large commercial project will include the construction of commercial spaces for letting to tenants (cafes, shops) and these spaces will be subject to consents to fit out the space according to its intended use. Often at the time the building as a whole is designed and constructed it is not known who will take on the leases and what the use of the space will be.</p>
<p>34: Do you have any comment on the indicative steps in Table 2 including the notes to the table?</p>
<p>Table 2 does not make provision for consideration of Building Act requirements (hazards and building over two or more allotments) and site specific features (wind zone, seismicity).</p>
<p>Step 5 – We suggest that an occupation inspection should be carried out by the BCA. There is no indication of how compliance with the public use requirements of the Act would be met.</p>
<p>In the commercial sector a contract will often not finish until a year or longer after agreed completion. This means that occupation of the building may take place long before the LBP is able to issue their certificates of compliance.</p>
<p>35: Are there other building projects with the necessary quality assurance systems in place that could also be subject to the proposed streamlined process for complex commercial buildings?</p>
<p>We consider that all building projects would benefit from robust QA processes particularly weathertightness remediation.</p>
<p>36: Do you have any other comments on the proposed streamlined process for complex commercial building work?</p>
<p>We note that not all new complex commercial buildings are designed or built by building industry professionals. We also consider that the definition of “complex” needs to be carefully defined.</p>
<p>We are also concerned that the proposal is not in tune with the current industry practice of all professionals. For example, very few architects will provide statements of compliance or site supervision.</p>

We do not believe the industry is ready for this proposal and suggest an implementation period of at least 5 years may be needed.

Part 2.4: Public infrastructure works

37: Do you agree that the building control system provides an appropriate means of ensuring the safety and quality of all public infrastructure works? If not, why not?

Christchurch City Council does not believe that the current building control system adds value to public infrastructure works.

Public safety and quality of outputs is assured through robust contract management, procurement rules, codes of practice, QA processes, the asset management plan process and public accountability. Decisions about spending on public infrastructure projects face more robust review than private projects.

However, we consider clear guidance is required about where public infrastructure must provide for minimum requirements for public safety (e.g. bridges, tunnels, etc).

38: Are there some categories of public infrastructure work where other arrangements may more efficiently and effectively ensure safety and quality? If so, what types of works and what sort of arrangements?

There are overseas models for inter-agency agreements which should be investigated.

Road Transport projects involving Transit New Zealand already have comprehensive audit processes in place.

Part 2.5: Streamlined process for reviewing fire safety of building plans

General Comments

Christchurch City Council supports the proposed streamlined process for reviewing fire safety of building plans.

39: At what point in building design and construction is Fire Service Commission involvement most useful? Please explain why.

We believe that early involvement with the FSC will reduce rework and redesign, however the FSC needs to become more dynamic in its decision making especially in relation to existing buildings. For new buildings the FSC needs to be prepared to participate proactively in the international fire engineering guidelines. They also need to ensure national consistency through all levels of the fire service not only through the FSC Design Review Unit (DRU) interface.

40: What weight should be given to Fire Service Commission's advice – for example, should it be treated as consultative input, should following the advice be mandatory, or should the weight given depend on the circumstances? Please explain why

NZFS's focus seems to be on trying to get designers to design only to the acceptable solutions. As such their advice should be treated as consultative input only.

Where a designer has not incorporated DRU advice into the design they should have to provide an explanation of why and how they have mitigated any risk. The acceptance of the explanation would then be at the discretion of the BCA and could still be subject to determination by the Chief Executive if any party does not agree.

41: Do you have any other comments on fire safety review of building plans?

The FSC's ability to comment on proposals is restricted in regulation (although does not stop them commenting wider than their mandate). Consideration should be given to whether their powers to comment should be wider.

There appears to have been no consideration given to the interface between the DRU (Design Review Unit) and complex commercial projects under the streamlined process.

Part 2.6: Improved process for building warrants of fitness

42: Do you agree that the administration of the building warrant of fitness and compliance schedule requirements is more complex or costly than necessary? If so, what issues does

this cause for you?
<p>The CCC administers the receipt of 3500 BWOFF's annually. The present system ensures that "Building Systems" in Christchurch are maintained appropriately and we have very few BWOFF's that are not renewed on time. Accordingly we believe the present system for the administration of BWOFF's ensures maintenance of critical systems in a building.</p> <p>We agree that the process could be streamlined and do consider the requirement to issue annual BWOFF's overly rigorous in respect of some systems. For example mechanical opening doors. For these we would encourage either no controls or a 2 yearly BWOFF system.</p>
43: Do you agree that there is a lack of clarity about building warrants of fitness and compliance schedules? If so, what is unclear and what issues does this cause for you?
<p>We do not agree there is a lack of clarity.</p>
44: What changes should be made to the requirements to simplify administration while still ensuring critical systems are maintained and inspected? You may want to comment on the description of specified systems in the regulation, the definition of 'independent qualified person', or any other issues.
<p>We believe a national IQP system to be more appropriate and less costly option. In the Building Act 2004, it is envisaged that IQP's become LPB's and the register could then be administered by a LBP Board. Presently the IQP process falls on TA's to administer and they have consolidated this responsibility at a regional level.</p>
45: Do you have any other comments on the building warrant of fitness and compliance schedule requirements?
<p>We would seek to have cooling towers included as "specified systems", subject to BWOFF 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 BWOFF processes.</p>

Part 2.7: More efficient building control administration

46: Do you agree that the number of building consent authorities and the variation in size is causing issues as outlined in section 2.7? If not, why not?
<p>The delivery of building control services in some smaller BCA's becomes an issue where there is not sufficient critical mass to deliver a consistent level of service. In these cases a clustering or regional delivery of service would be preferable for the whole industry. This would also address the issue of ongoing financial sustainability for some following any changes to the 1st schedule exemptions.</p> <p>Perceived inconsistencies will frequently occur for reasons that customers and builders do not necessarily appreciate. Frequently there is an issue of different solutions being necessary because of different risks in a geographic area. For example the very flat land in Christchurch makes surface water controls very important compared to some other areas in the region.</p> <p>We would suggest that the Department and IANZ, through their technical review, determinations and accreditation processes, have a much greater influence on individual BCA practices than any "local accountability to ratepayers".</p> <p>In terms of inconsistency, the Christchurch Regional Cluster Group worked hard to develop and implement common processes. The accreditation of Building Consent Authorities has added a little in support of this, but in some cases work required to satisfy IANZ has forced BCAs away from previously established shared regional processes.</p> <p>Councils are being given mixed messages from the Department and IANZ. The most recent example occurred during the recent accreditation round when the well-established industry practice (which had been in place many years) of conditions on consents was deemed to be unacceptable to the Department and IANZ. The implementation of the requirement to not use conditions on consents to address relatively minor issues has added unnecessary bureaucracy to the consent process and resulted in significant adverse response from our customers. BCAs yet to go through the second round of accreditation may still be allowing for conditions on their consents, leading to inconsistency in the sector. Customers do not</p>

realise that this requirement has been imposed upon us and generally blame the Council for this added bureaucracy.

We suggest that if the DBH and IANZ were to develop better working relationships with the current BCAs and to do further work on developing nationally accepted common processes then a lot of the perceived inconsistency and bureaucracy could easily be resolved.

47: Are there any other issues or problems resulting from the current administrative arrangements that have not been identified in this document?

We consider that many practitioners have very little understanding of building code requirements and play the blame game if they get “caught out” by a BCA. This relates closely to our earlier comments that many designers will submit the minimum to see what they can get away with.

To a large extent it has been left to BCAs to educate the industry using resources developed by each BCA individually and by managing practitioner behaviours through rejection of applications – which incidentally leads to further complaints about BCA inconsistency and performance.

We acknowledge that recently there has been more published guidance material from the Department which has been helpful.

We also consider that a large number of customer issues relating to the regulatory process arise from the customers lack of understanding of the different legislation involved and the lack of consideration of related legislative processes. For example, building practitioners often complain about the process of obtaining building consent and delays in being able to start work. However investigation often reveals that the delays have been caused by a lack of consideration of RMA issues or delays in the resource consent process.

We acknowledge that further work is being done to more closely align Building Act and Resource Management Act requirements and processes.

48: Do you see benefits in greater cooperation between building consent authorities, or clustering or consolidation of building control functions? What would be the main benefits?

The Council sees a number of benefits which could be gained by greater cooperation between BCAs:

- consistency, particularly in code interpretation
- increased efficiencies
- reduced costs
- more skilled work force
- better customer service
- improved opportunity for staff training
- ability to provide a career path for staff

While, there may be benefits for customers through increased consistency of process and decision making, a similar result could also be achieved through the proposed national online consenting project and better guidance and education for building practitioners.

49: Do you see costs and risks associated with greater cooperation between building consent authorities, or clustering or consolidation of building control functions? What would be the main costs and risks?

Some of the proposals in the discussion document, if enacted, will make the BCA function difficult to manage efficiently for some smaller BCAs. Proposals such as making more building work exempt and a streamlined process for simple housing will result in a drop in income and smaller BCAs will lack critical mass of technical expertise within their organisations. Therefore, as a result of the proposals there would be benefits for BCAs in clustering, consolidating or contracting.

However, consolidating or clustering BCAs is not a simple matter of establishing an office and transferring staff from neighbouring BCAs to it. Initial set up costs for establishing regional groups would be significant, as are the consultation and approval processes that Councils must go through. Another significant risk would be the loss of the local touch. There could be a risk of becoming a faceless entity to key stakeholders and the loss of local interaction has the potential to increase non-compliance.

The transfer of building control functions amongst territorial and regional authorities has the potential to generate costs and liabilities for services rendered beyond the Council’s jurisdictional boundaries. We assume that these matters will be the subject of careful analysis in the course of the project identified in

the discussion document.

Larger Councils who currently run satellite offices will already know the challenges of achieving consistency when officers do not work together. Smaller BCAs with large territories will know the challenges of travel and isolation for their officers.

50: What, if any, role should the private sector have in the administration of building controls?

We use private BCAs for overload assessment of consents. We find this role useful and consider this the appropriate level of involvement of private BCAs.

51: Which elements of building control require local input and why?

The Council believes that a number of building control elements would benefit from local input including:

- Building compliance matters – inspections
- Building Act complaints
- Local knowledge of building use and changes
- Site conditions (soil conditions, seismicity, wind, snow loadings, coastal erosion, etc)
- Hazard identification
- District Plan compliance (which impacts on building design)
- Heritage buildings
- Earthquake prone building policies (due to proximity to faults)
- Local building practitioners (whether LBPs or not)

52: Which elements of building control would most benefit from a national approach?

The Council suggests that building consent processing would most benefit from a national approach, probably through regional hubs, and supported by a nationally funded online electronic consent system (as this will help ensure national consistency).

The challenges of geography would make a national inspecting and enforcement approach difficult.

53: Do you have any other comments on options for more efficient building control administration?

Education and proactive advice to the industry would be helpful.

Other areas that the Council believes could lead to more efficient building control include:

- the Department providing more national solutions to building categories, competency levels, IQP and other professionals or contractors performance and competence.
- a more active participation by the Department to enhance the “product certification” process.

Part 3.1: Well-informed consumers

54: Do you agree the Government should do more to inform consumers about their responsibilities and rights in relation to residential building projects? If so, why?

Yes. We agree that consumers need more consistent messages and the DBH can help in this area. Messages from the DBH can be seen to have independence rather than sounding like TAs pushing their favourite messages or being risk averse.

Typically consumers only hear a message when it has special meaning or relevance for them. For the majority of building consent applicants, this is only when they need a building consent, which is generally not often. For this reason information about consumer rights and responsibilities in relation to building work needs to be available through lawyers, mortgage lenders and real estate agents to help ensure consumers make an informed decisions.

55: What further information do consumers need?
Our experience in this area is that consumers, in this context, are difficult to reach. We suggest that there are some targeted generalised advertising campaigns (accepting that this will only reach a small percentage of consumers). There also needs to be a programme of “just in time” information that consumers can access when they need it. For this reason information should be available through hardware stores, building product suppliers, LBPs, trades, industry organisation, lenders, and online from the DBH and other major industry players.
We also suggest that making it a requirement that consumers confirm they have seen the information as part of the standard contract process would be helpful.
56: Should the government publish information on acceptable standards of workmanship for residential building work?
We agree this would be helpful information for customers and LPBs.
57: Are there other steps that would help consumers commission residential building work knowledgeable and with confidence? If so, what are they?
Good, free, publicly available information and contracts so that consumers make informed choices.
58: Do you have any other comments about consumer knowledge and behaviour in relation to residential building work?
Current knowledge is that consumers often make their decisions solely on price. They do not have sufficient knowledge and are often not prepared to pay for professional advice until it is too late.

Part 3.2: Improved contracting practices

The proposals for improved contractual arrangements will not directly affect the Council in its role as a BCA, as it will not be a party to those contracts.

59: Do you agree that contracting arrangements between consumers and principal building contractors for residential building projects need to be strengthened? If so, why?
Yes as consumers generally have little knowledge of the building process or what quality is necessary to ensure the building work does not fail.
60: Do you agree that all contracts between consumers and principal building contractors for residential building work should have to be in writing and signed by both/all parties? If not, in what circumstances, or for what type of building projects, should written contracts not be required?
We agree that written contracts are desirable and should be in place for all building works whether exempt or not. We believe that they should also provide for mandatory warranties as a matter of course.
61: Do you have any comments on the proposed minimum terms for contracts as set out in Part 3.2? Please indicate what, if any, information you would like to see added to or removed from the proposed list.
We agree with the proposal except believe strongly that warranties should be mandatory. .
62: Do you have any comments on the proposed required disclosures for residential building projects? Please indicate whether there is any information you would like to see added to or removed from the proposed list of required disclosures.
We have no specific comments.
63: How should information required to be disclosed be provided?
We have no specific comments.
64: Are there other steps the government could take to improve contracting practices for residential building projects? If so, please indicate what additional measures should be taken.
We have no specific comments.
65: Do you have any other comments about contracting practices for residential building work?
We have no specific comments.

Part 3.3: Develop more effective warranties

Amended statutory warranties

The existence of a warranty, or any other form of contractual remedy for faulty building work, does not prevent an owner from simultaneously pursuing a claim based in tort (i.e. without the need for a contractual relationship). This is often seen in leaky building litigation, where owners pursue the builder or other tradesmen on the basis of a contractual relationship, while also claiming against other persons with whom there is no contractual relationship (such as territorial authorities) via the tort of negligence.

66: Do you agree there should be a mandatory warranty for residential building work? Please give reasons.
Yes! We support the proposal of mandatory warranties as this will help ensure buildings remain fit for purpose and stops developers structuring a deal to avoid giving a warranty
67: Which of the options for warranty listed in section 2.3 should do you prefer? Which do you disagree with? Please comment on: <ul style="list-style-type: none">• Length• Cap• Coverage• Loss of deposit and non-completion• Circumstances where the warranty service obligation could be voided• Projects covered
<ul style="list-style-type: none">• Length needs to align with the ongoing liability for those involved in the building work including the Councils.• Cap should align with the value of the building work and any damages, capped at the original build price• Coverage needs to cover compliance with legal requirements and terms of a standard contract which could be developed similar to those used by real estate agents.• Loss of deposit and non-completion needs to be covered so as partially completed work can be completed.• Circumstances where the warranty service obligation could be voided. This needs careful consideration and ongoing maintenance needs to be covered as is with a new car.• Projects covered - residential dwellings including apartments
68: Should the building owner be able to renounce the offer of a warranty by a building contractor by signing a notice revoking the warranty?
No. We believe that the present owner and future owners deserve the protection that warranties provide. There is also a degree of protection in mandatory warranties for other participants in the building process. Even if an owner builder undertakes work themselves, this should be on the express proviso that if they sell the property within 2 years, that they purchase 3rd party warranty.
69: Should developers be required by law to provide third-party warranty cover?
Yes, as this helps assure consumer protection.
70: Should owner-builders, or those who renounce the offer of a warranty, be obliged to: <ul style="list-style-type: none">• disclose that no warranty is offered• purchase a third-party warranty on sale of the building?
Owner builders should be required to purchase third-party warranty cover if they sell within 2 years of completing building work.
71: Should building contractors upon retiring or winding up their company be required to transfer warranty service obligations to another party: <ul style="list-style-type: none">• with prior notice to affected building owners• with prior consent of building owners?
Warranties when offered should be on the basis of a fully funded warranty as builders will just close up one company and start another to avoid their responsibilities.
72: Do you have any other comments on warranties?
In our view, the mandatory provision of surety in respect of statutory warranties would significantly increase the benefit of such warranties to homeowners.

Part 3.4: Surety as a financial backstop for warranties

We support the mandatory provision of surety in respect of statutory warranties as the only way to ensure the protection of homeowners. The present system where Councils find themselves being in the position of being the de facto part insurers for the building industry does not work for either the Councils or the homeowner. For the reasons discussed in the warranties section, we consider that surety backstops for warranties would also indirectly benefit councils, which in turn enables councils to take a more appropriate risk based approach in their work.

Our only concern is that there is a potential risk to the Council arising from independent insurance providers pursuing litigation against the other persons involved in a building project (such as the Council). In this regard, we note the comment in the discussion document that (at page 38):

The council strongly recommends that central government consults with the Insurance Council as part of the process of developing the warranty and surety requirements. The possibility of homes being built without an adequate warranty, backed up by surety insurance is likely to lead to problems for the homeowner.

If surety were to be mandatory, consideration would also be required as to whether or not surety providers would be allowed to pursue other negligent parties such as building consent authorities.

<p>73: Do you agree that building contractors should have to disclose whether they have surety backing? If not, why not?</p>
<p>We believe all LBP's should have surety backing. However, if this were not the case we agree with this proposal as this ensures that consumers are able to make fully informed decisions about the long term quality of the warranty being offered by the building contractor.</p>
<p>74: Do you agree that building contractors should be obliged by law to have surety backing? If not, why not?</p>
<p>We agree with this proposal as the mandatory provision of surety in respect of statutory warranties would significantly increase the benefit of such warranties to homeowners.</p>
<p>75: What do you see as the benefits and/or costs of mandatory surety? What is your view on when the benefits would outweigh the costs?</p>
<p>The mandatory provision of surety in respect of statutory warranties would significantly increase the benefit of such warranties to homeowners. We have seen with the leaky building issue that the cost of fixing poor quality homes can be billions of dollars. The benefits from providing surety must easily outweigh the potential cost of not having surety if it avoids a repeat of the weathertightness issue.</p>
<p>76: Do you agree with the proposed list of required disclosures about surety? Is there is any information that should be added to or removed?</p>
<p>We agree with the proposed list of required disclosures and in addition, suggest the value of the cover is made explicit.</p>
<p>77: If surety were to be mandatory, should surety providers be restricted in their ability to pursue other negligent parties such as building consent authorities?</p>
<p>Yes, otherwise surety providers would likely pursue other parties and this would place councils back in a similar position they are now.</p> <p>However, there is a risk if the risk turns out to be significantly different than anticipated, the surety fee structure may not be sufficient to cover the risks on an ongoing basis. If this occurs, then it is unlikely that they would continue providing surety after a number of large claims are paid. In this regard, they would be similar to the insurance companies who have recently deemed it too risky (ie unprofitable) to continue to provide weathertightness cover.</p>
<p>78: Do you have any other comments on surety?</p>
<p>The costs associated with warranties and sureties are likely to be high relative to the cost of a residential dwelling and also likely to be passed on to consumers.</p> <p>We believe the Government should add the costs of the surety to the existing levies collected by BCAs, which are collected as part of the consent. This may be particularly useful if private surety providers come forth and the Department is serious about moving the liability and responsibility away from TAs to the people doing the work.</p>

In addition, we have raise concerns about the readiness of LBPs to take on the additional responsibility outlined in these proposals. As a longer term strategy, the Government could underwrite councils/practitioners during the transition period.

Part 3.5: Better access to dispute resolution

79: Do you agree that consumers currently face barriers or problems in resolving disputes with building contractors? If so, why?

The legal process usually requires solicitors and experts as homeowners otherwise are acting unformed and usually will not have sufficient knowledge to successfully pursue a claim. Unfortunately, we see many cases where these costs exceed the total amount of the successful claim. The problem for most home owners is that they will not understand this until considerable amounts of dollars have been spent or are persuaded by “experts” that their chances of success are higher than what they are in reality. Building disputes are seen by some as a cash cow and an industry has grown around this.

In addition, the ability of building contractors to establish and wind up companies related to specific development projects, makes it difficult for consumers to resolve disputes as the other party is no longer in existence.

80: Do you agree that consumers need more information about options for resolving disputes with building contractors? If so, how could this be provided?

The DBH could provide guidance documents.

In addition, if the surety provider option is enacted then those organisations could be instrumental in the dissemination of consumer information.

Other avenues include the BCAs, libraries, Citizens Advice Bureaus and law firms.

Information should be in hard copy and electronically available via the internet.

81: Do you think there are adequate services available to resolve disputes between consumers and building contractors? If not, what other dispute resolution services do you suggest?

Not for minor disputes which are over the value for the disputes tribunal but less than what is financially viable to take court action. As the amount of any claim can be large any alternative arrangements will need careful consideration including the need to ensure natural justice to all parties and ensuring any new system will be cost effective. There is the risk of setting up an alternative system such as a tribunal which is no quicker or cheaper than the current process through the courts.

82: What would be the characteristics of an appropriate dispute resolution service?

Independence,
Impartiality and fairness,
Credibility of the review process,
Timeliness
Accessible
Cost minimal
Plain English
Outcome rather than process driven

83: Do you have any other comments about disputes between homeowners and building contractors?

Any process developed will need to take account of existing dispute resolution mechanisms, including: the determination and complaint processes available under the Act, adjudication under the Construction Contracts Act 2002, reference of a dispute to the Disputes Tribunal, contractual provisions requiring the reference of a dispute to mediation or arbitration in the first instance.

Part 4: Impacts of improving building control

84: Is it realistic to assume residential consumers, building professionals and tradespeople and building control authorities would behave differently if this package of proposals was introduced? Please comment.

This package will only result in people behaving differently if implemented in its entirety. It is dependent on the people who do the work being held accountable for that work, including taking responsibility for any failures that may result.

These proposals place a significant amount of reliance on LBPs. Our experience with those who will potentially be LBPs is that they have varying degrees of skill level and are driven by the need to make a profit to stay in business many also see building as a way to make a quick dollar. The drive to stay in business leads to competition on price and this results in corner cutting, a reduction in profitability and little financial backup for when something goes wrong. Many have structured their business and personal affairs so as to avoid any liability as a result many are not ready to accept the liability that goes with less regulatory intervention.

While at a national level sectors of the industry are saying they are ready for the added accountability, our experience with designers and builders is that they are not ready. There is still a reliance on hiding behind a company structure with all their assets being held in a trust thus leaving their employees to take on the longer term liability, often unknowingly, as is the case now with some leaky building claims.

Consumers often make decisions based on advice from a designer or builder who tells the consumer what they want to hear rather than what is required. This is evidenced by the number of applications for certificates of acceptance where the owner was told by the builder they did not need a building consent or applications for CCC several years after the work has been completed (but now required by most buyers as the banks now require a CCC in order to obtain a mortgage).

85: Have the main benefits of the package of proposals been identified above and, if not, what is missing?

We support the proposals as a package although we have reservations about the lack of detail in many areas. We do have concerns regarding any self certification and believe this needs to be balanced by third party inspections at defined stages such as foundations, preline and occupation.

86: Which benefits do you expect to be most significant and why?

From a council viewpoint, the biggest benefits will come from the effective transfer of responsibility and accountability back to the building sector as presently the DBH/IANZ, adjudicators and the courts place too much reliance on BCAs inspections. If this is achieved, then Councils will be able to take a more appropriate risk based approach to building consents. However, as previously noted, the entire set of proposals must be implemented as a complete package for the proposals to work.

87: Have the main costs of the package of proposals been identified above? If not, what is missing?

We have heard that the building sector is concerned that the proposals will increase costs and that insurance will be costly or not available. There is concern that the proposals will reduce costs in one area only to add even more in others.

There needs to be education about responsibilities of all those involved in the building process and some cost as to the likely rise in building consent fees if councils were to continue to bear substantial cost of litigations because they are the last man standing. A reduction in the number of building consents will see these costs borne by a smaller number of applicants.

88: Which costs do you expect to be most significant and why?

Insurance costs for building practitioners as the risks are unknown. LBPs are new, have no proven track record and so insurance companies are likely to be very risk averse with this type of cover, if they provide it at all.

Councils are likely to incur greater cost in providing information for work that may not need a building consent and with enforcement action responding to complaints from neighbours for work that may or may not be done in accordance with the Building Act. An example of this is where an owner builds a building that may be exempt building work and their neighbour complains. We will need to investigate and if work is exempt from needing building a consent we will not be able to charge for our time. Additional costs will be borne if the work is exempt from building consent requirements but does not meet District Plan rules resulting in enforcement under the RMA.

There is likely to be elements of cost transference in the building control system as costs saved in the

building consent process are offset by increased costs of education, insurance/surety and upskilling of LBPs. Ultimately, these costs will be passed on to the consumer.

Additional Compliance Costs

The proposed changes, particularly to Schedule One have the potential to decrease BCA revenue and workload. Increasing the types of work that can be completed without building consent is expected to result in a high level of non complying work which will increase the compliance/regulatory workload for both Building Control and Planning.

The reduction in revenue and costs for the building approval process will be offset against the additional compliance/regulatory work which will need to be funded by rates. It is considered that the proposed additions to Schedule One will simply transfer the cost from a user pays consent based system to a rate payer funded compliance regime.

89: What are the main risks associated with the package of proposals?

We have a concern that the licensed practitioners scheme is very immature and not robust enough that the insurance sector will be willing or able to provide surety to cover their warranties.

We believe that the charges proposed need to be staged to allow the industry to adjust. We believe that 5-10 years is a realistic timeframe.

The workability of the warranty and surety scheme.

The ability of consumers to really understand the consequences of some of the decisions they have to make or accept.

Transference of costs from regulatory oversight to insurance/surety provision.

This proposal will undermine changes made in the BA04 to ensure that compliance with code is assessed at the design/consent stage. Under the proposal compliance will be assessed at construction stage which is significantly more costly than if identified at the earlier stage.

Lack of clear definition of accountabilities of all parties.

LBP understanding of all Code/Act requirements.

Homeowner/LBP lack of awareness of site specific hazards could impact on quality.

The building consent process provides a vital trigger for checking compliance with the TAs District Plan and therefore the requirements of the Resource Management Act. Without that trigger we anticipate higher levels of complaints and District Plan non-compliance and a resulting need for enforcement action against homeowners who may not have been made aware of their responsibilities. Similar issues arise with heritage buildings.

Proposals are silent on non new building work such as alterations and additions, change of use and old outstanding consents