



20 February, 2014

Hugo Kristinsson
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Dear Mr Kristinsson,

RE: Request for information responses

This letter responds to questions raised in your letter dated 22 November 2013, requesting information about the Canterbury rebuild and the Ministry of Business Innovation & Employment's (MBIE's) Canterbury rebuild guidance. Your letter was received by the Minister for Canterbury Earthquake Recovery Honourable Gerry Brownlee and forwarded to the relevant government departments and personnel. MBIE has addressed your questions and responses are provided below. This letter of response is structured according to the questions listed in your letter dated 22 November, 2013.

Why is the New Zealand government:

1. Introducing MBIE Guides and PMO Guides that degrade the standard of repairs?

The MBIE guidance is not about degrading standards of repair. The principal objective of the guidance is to provide building repair and reconstruction solutions and options that are appropriate to the level of land and building damage and that account for likely future ground performance, meet Building Act and Building Code requirements and are acceptable to insurers and property owners. The guidance was introduced to provide a consistent approach to repair and rebuilding that minimizes the individual investigation and design effort required for each property. It takes a prudent approach that is mindful of costs and risks, providing solutions and construction methods that aim to meet the requirements of the Building Act and Building Code and satisfy relevant insurance requirements.

2. Encouraging the unsustainable practice of jack and pack in a seismically active area?

The practice of jack and pack is a practical, cost-effective re-levelling repair method that has been extensively used and has proved a practical solution for many residential properties. The practice of jack and pack repairs has been tested and is utilized widely both in NZ and internationally. For residential properties where jack and pack repair methods have been practical to carry out, this method has been a sustainable solution as it allows re-levelling without the cost of rebuilding. The limitations on the heights for which jack and pack is suitable are understood and applied resulting in a sustainable solution.





MBIE is currently developing short video clips for Canterbury builders demonstrating best practice in packing a pile for strip foundation. The first clip (packing a pile) is due to be released on YouTube in February along with accompanying sector training.

3. *Changing legislation so that insurance companies are not bound by the Fair Trading Act and the Consumer Guarantees Act?*

The Building Amendment Act 2013 specifically covers consumer rights and remedies in relation to residential building work in Part 4A of the Act. Part 4A contains a clause that states that nothing in Part 4A limits or derogates from the provisions of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993.

4. *Removing most liability from the Building Act?*

The legislative reforms are not about removing liability or eroding consumer protection. The reforms seek to streamline regulatory processes and reduce the compliance burden for some lower-risk building work. The legislative reforms are simply a pragmatic way of recognizing that not all building work needs to go through the same building consenting process in order to ensure a quality outcome is achieved. The Building Amendment Act 2013 also updates the provisions of the Act that set out the implied warranties for contracts for building work on residential units. Such warranties include the building work being 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.

5. *Excluding all consumer guarantees from the building act and leaving them to be passed as law at parliament's discretion?*

The Building Amendment Act 2013 does not seek to erode or ignore any existing consumer protection legislation (i.e. the Consumer Guarantees Act or the Fair Trading Act). A key focus of the Building Amendment Act 2013 is to bolster consumer protection mechanisms. Examples of the consumer protection measures include:

- mandatory written contracts for work valued over a prescribed amount;
- strengthening the implied warranties provisions of the Building Act;
- requiring mandatory disclosure of certain information by building contractors (e.g. their previous complaints history);
- new offences for breaching such requirements;
- changes requiring building contractors to fix any defects in their work that are reported within 12 months of completion;
- bolstering some of the accountability mechanisms for licensed building practitioners (for example, not bring the LPB scheme into disrepute).

6. *Devaluing insurance so that in the future "replace as previous condition" will apply instead of "replace as when new"?*

The Government has not made any policy decision to devalue insurance, rather the Government's zoning process and Government agencies' significant ongoing work with the insurance industry has ensured that the majority of New Zealand property owners continue to have the ability to insure their homes against further natural disasters.

Further inquiries regarding insurance should be referred to the Insurance Council (ICNZ) and, or the Earthquake Commission (EQC).



7. *Widening the definition of Good Ground (Standard)?*

The Building Code B1/AS1 Acceptable Solution for Structure was amended in May 2011 with the definition of 'good ground' changed for the Canterbury earthquake region to exclude land where liquefaction and/or lateral spread could occur (NZS3604:2011). The referencing of NZS 3604:2011 with modifications as an Acceptable Solution applies to all regions in New Zealand. The modification to the definition of good ground made for the Canterbury Earthquake Region (to exclude ground subject to liquefaction or lateral spread) still applies, but only to that region. It is clear that the issue of amending the definition of good ground to include consideration of potential loss of structural support due to liquefaction or lateral spread is both complex and not sufficiently well defined to incorporate in the B1 Compliance Document for the whole country at this point in time. Research is being undertaken to develop proposals that would provide robust and effective support for an amended definition of good ground in locations other than the Canterbury Earthquake region.

MBIE guidance information regarding good ground and building can be found at <http://www.dbh.govt.nz/liquefaction-construction-on-ground-guidance>.

8. *Ignoring the Port Hills Fault Line in regard to building regulations? ("Why is it not a designated hazard?")*

Questions regarding building regulations in the Port Hills should be directed to Christchurch City Council.

Regarding your query about the hazard status of the Port Hills Fault Line, Environment Canterbury Regional Council states that the Port Hills is not a designated hazard as the fault is not at ground level:

*"The movement on the Port Hills Fault during the February 2011 earthquake stopped somewhere around 1-2 km below the ground surface - it didn't break the ground surface. Because of this we are not commissioning a report like the Greendale Fault report to advise on managing fault rupture hazard at the ground surface."*¹

9. *Publishing misleading land information regarding subsidence and groundwater levels?*

The Government has not published any misleading land information regarding subsidence and groundwater levels. The EQC land reports were based on the best information available and these reports were peer reviewed by respected industry experts. The Government has commissioned a large amount of expert technical advice to inform the recovery and ensure that property owners, insurers, banks and the general public can make informed decisions.

Detailed and up-to-date Canterbury geotechnical information, including information pertaining to the Port Hills groundwater levels, is available to building professionals through the Canterbury Geotechnical Database.

¹ Environment Canterbury Regional Council website <http://ecan.govt.nz/advice/emergencies-and-hazard/earthquakes/pages/earthquake-fault-information.aspx> (accessed 23/12/13).



10. Enforcing Existing Use Rights that are voided when land suffers a landslide/lateral spreading?

Existing use rights are provided for under section 10 of the Resource Management Act 1991. Queries regarding existing use rights should be directed to the Ministry for the Environment.

11. Introducing practices that bypass the inspection process?

The Building Amendment Act 2013 has introduced legislation to streamline regulatory processes and reduce the compliance burden for some lower-risk building work. The Building Amendment Act 2013 is not about bypassing inspection processes. All exempt building works contained in Schedule 1 of the Building Amendment Act 2013 reflect lower risk work and the Act does require all building work to comply with the Building Code, even if building work does not require a building consent. The legislative reforms brought in by the Act are a pragmatic way of recognizing that not all building work needs to go through the same building consenting process in order to ensure a quality outcome is achieved.

New Zealand's building control legislation has for many years exempted certain low-risk building work from the requirement to obtain a building consent. Common examples of the types of earthquake repair building work that has been exempt from the requirement for a building consent, subject to certain conditions, include:

- installation of thermal insulation in internal wall framing cavities (there are some limitations on this);
- repair and replacement of a number of timber foundation piles;
- the re-levelling 'jack and packing' of part of a house's foundation;
- replacing a section of damaged ring foundation;
- repairing minor cracks in concrete foundations;
- demolishing a detached damaged building (there are some limitations on this).

MBIE's residential repair and rebuild guidance is not about bypassing inspection processes or cutting corners. The MBIE residential repair and rebuild guidance was developed through a robust process involving consultation with leading industry engineers and peer review by international experts. All Canterbury councils have advised that designs complying with the MBIE guidance will be consented.

In Canterbury, the MBIE residential rebuild guidance and technical categories were introduced to provide a guide to the level of site investigation required to assess the most appropriate foundation for repairing or rebuilding a home on land affected by the Canterbury earthquakes. The guidance and technical categories were designed to make it faster for around 80 percent of people to get on with their repairs and rebuilds without the need for deep geotechnical investigations and specific foundation design by engineers. This was so that limited engineering resources were applied where they were most needed. Designing foundations to suit ground conditions is not new. There are many other areas of the country where local authorities require specific engineering design for foundations. In Canterbury, the guidance has allowed for more economical and streamlined repairs and rebuilds and will lead to better designed foundations that will give homeowners and future users the confidence that their house will perform as well as any other in a future earthquake.



12. Introducing practices that transfer all risk and liability from the government and insurance companies to the residents?

Consumer protection is a key focus behind the Building Amendment Act 2013. The Act was amended to include as one of its key purposes: "to promote the accountability of owners, designers, builders and building consent authorities who have responsibilities for ensuring that building work complies with the code". The changes in the Building Amendment Act 2013 do not transfer liability for building work to subcontractors or homeowners. The new consumer protection provisions make it clear the main contractor is liable to the homeowner for any defective building work (including any work done by a subcontractor). A homeowner will only be liable to a future owner of the property if the homeowner carried out the work themselves.

13. Why is there not a risk matrix in place to evaluate how much risk can be passed on to Canterbury residents?

There is no specific matrix in place to evaluate how much risk is passed to Canterbury residents, but every policy decision considers risk. The risk level for Canterbury residents was a factor taken into account with the establishment of the new consumer protection provisions in the Building Amendment Act 2013.

14. Why has land damage not been considered for rezoning as a result of the 23 December, 2011 quake and following earthquakes?

Zoning decisions were based on the best available information. An independent review of all flat land zoning decisions was undertaken in July 2012 to confirm that the zoning criteria agreed by Cabinet had been consistently applied. The review panel considered all new information that was available and as a result, 101 properties were rezoned from green to red and three were rezoned from red to green.

15. Why are consumer guarantees the only exclusion in the latest law change and no time given for commencement?

Consumer protection is a key focus behind the Building Amendment Act 2013. The amendments allow for new consumer protection measures and come into effect in mid-2014. The aim of these amendments is to encourage a professional, transparent relationship between builders and homeowners and enable homeowners to make informed decisions about their building work. Information about the consumer protection methods coming into effect later this year can be found at <http://www.dbh.govt.nz/building-amendment-act-2013>.

MBIE hopes the information provided in this letter is helpful to you.

Yours sincerely,

Adrian Regnault
General Manager
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Ministry of Business, Innovation and Employment