

In Confidence

Office of the Minister for Building and Housing

Chair, Cabinet Economic Growth and Infrastructure Committee

Managing buildings after an emergency event

Proposal

- 1 This paper seeks decisions on proposals to improve the system for managing buildings after an emergency event. These proposals confirm and implement decisions made by Cabinet in 2013 that regulations are required to address post-disaster building management [CAB Min (13) 10/6 refers].

Executive summary

- 2 I propose amending the Building Act 2004 to give civil defence emergency management group controllers, recovery managers and territorial authorities new powers to manage buildings after an emergency event. These amendments will manage the risk:
 - to life posed by damaged buildings after an emergency event;
 - to a building and its users posed by the surrounding land, even though the building itself may be usable; and
 - of potential damage to other property and disruption to neighbouring buildings or public thoroughfares posed by buildings damaged in an emergency.
- 3 These proposals confirm Cabinet's 2013 decisions and implement them by amending the Building Act 2004 to manage buildings after an emergency event [CAB Min (13) 10/6 refers]. The proposed powers are detailed in Appendix 1 to this Cabinet paper.
- 4 The proposed powers are required because the existing powers in the Building Act 2004 to manage dangerous and insanitary buildings are not wide enough. The Canterbury earthquakes highlighted gaps in the current legislation that had to be addressed by special legislation, for example, the Canterbury Earthquake Recovery Act 2011. Most buildings damaged in an emergency event will not meet the high threshold to be a 'dangerous building' under section 121 of the Building Act 2004. These gaps could result in buildings or the surrounding land damaged in an emergency event posing a risk to life safety or of damage to other property.
- 5 The Civil Defence Emergency Management Act 2002 does not address the issues that these proposals target. That legislation is general legislation that is only used to facilitate the management of an emergency event when territorial authorities are unable to do so

using normal, business-as-usual processes. This legislation does not limit or substitute for more specific powers under another Act. By contrast, the Building Act 2004 specifically manages buildings over much longer periods. The proposals will enable all damaged buildings to be remediated over the necessary timeframe.

- 6 These proposed powers would be available regardless of whether a state of emergency has been declared under the Civil Defence Emergency Management Act 2002. I am proposing checks and balances to ensure that these proposed powers are used appropriately, including a set of criteria governing the use of the powers.
- 7 These proposed changes seek to address risks to life safety from buildings damaged in an emergency, while ensuring a proportionate response that appropriately recognises property rights and moves towards normal, business-as-usual arrangements.
- 8 In May 2015, the Government released a consultation document on proposals for a new system for managing buildings after an emergency event. Submitters raised concerns about the protection of heritage buildings and about potential impacts on property rights. The proposals in this paper address these two concerns by:
 - making special provision for heritage buildings;
 - setting out criteria governing when and how these powers should be used; and
 - ensuring that relevant parties are adequately consulted before a decision to undertake works (including demolition) on a building is made and they have good access to appeal processes.

Background

- 9 The Royal Commission of Inquiry into the Building Failure Caused by the Canterbury Earthquakes (the Canterbury Earthquakes Royal Commission) highlighted gaps and barriers in current legislation for managing buildings after an emergency event.
- 10 In April 2013, Cabinet agreed that regulation is required to address post-disaster building management [EGI Min (13) 6/11 refers]. The proposals in this Cabinet paper confirm and implement this decision.

There are gaps and barriers in the current legislation

- 11 The Canterbury Earthquakes Royal Commission identified several gaps and barriers in the current legislation for managing buildings after an emergency event, including:
 - the lack of clear legislative mandate for the system for managing buildings after an emergency event, resulting in unclear roles and responsibilities;
 - the lack of smooth transition between civil defence emergency management powers and normal, business-as-usual powers under the Building Act 2004; and

- that powers are needed to manage buildings damaged in an emergency event where a building is not deemed dangerous under section 121 or earthquake-prone under section 122 of the Building Act 2004.
- 12 There is a need for a smoother transition from the powers available under civil defence emergency management legislation to those in the Building Act 2004. Protective measures undertaken during a state of emergency, such as notices (placards) that prohibit access, lose legal force when the state of emergency ends. To remain in force, the placards and other measures need to be transitioned to notices issued under section 124 of the Building Act 2004. This is because some buildings may still pose a risk to life safety that needs to be managed after a state of emergency. Note that only buildings that are dangerous or insanitary can be managed using these provisions. Following the September 2010 Canterbury earthquake, the Government managed this transition by a special Order in Council.
- 13 The powers in the Building Act 2004 to manage dangerous and insanitary buildings are not wide enough and the definition explicitly excludes earthquakes as a situation that causes a building to be dangerous. The Building Act 2004 defines a ‘dangerous building’ as one that, in the ordinary course of events (excluding the occurrence of an earthquake), is likely to cause injury or death to persons in the building or on other property, or damage to other property. This is a high threshold and most buildings damaged in an emergency event will not meet it. By contrast, these proposals address the risks posed by the damage to a building’s structure or fabric, or the surrounding land, caused by an emergency event. In Christchurch, these issues were addressed through a special Order in Council that amended the definition of a dangerous building to lower the threshold, by removing the need for the risk to be in the ordinary course of events, and to account for aftershocks.
- 14 The following new powers are needed:
- powers to evacuate buildings before restricting access to them;
 - powers to enable territorial authorities to follow up on rapid building assessments; and
 - powers to require the repair or demolition of damaged buildings.

These proposals confirm and implement Cabinet decisions made in 2013

- 15 On 2 April 2013, Cabinet agreed that regulation is required to address post-disaster building management. Cabinet agreed in whole or in principle with the recommendations of the Canterbury Earthquakes Royal Commission regarding managing buildings after an emergency event. These recommendations include that the Ministry of Business, Innovation and Employment should progress proposals to incorporate emergency risk management provisions into the Building Act 2004, subject to further work on the required policy and legislative changes [CAB Min (13) 10/6 refers].

- 16 The Ministry of Business, Innovation and Employment has completed work on the detail of the required policy and legislative changes. The proposals set out in Appendix 1 to this Cabinet paper will implement Cabinet's decisions.
- 17 The following paragraphs provide detail of significant proposals. They also identify and explain those proposals that differ from the recommendations of the Canterbury Earthquakes Royal Commission.

Relationship with the civil defence emergency management framework

- 18 To manage the response to an emergency, civil defence emergency management groups can declare a state of emergency and access wide ranging powers. When this occurs, section 4 of the Civil Defence Emergency Management Act 2002 defines an 'emergency' as a situation that:
- as a result of any happening, whether natural or otherwise;
 - causes, or may cause, loss of life, injury, illness or distress, or in any way endangers the safety of the public or property in New Zealand;
 - and cannot be dealt with by emergency services, or otherwise requires a significant and coordinated response under the Civil Defence Emergency Management Act 2002.
- 19 Not all emergency events will need to be managed as an emergency under the Civil Defence Emergency Management Act 2002. When an event occurs, but no state of emergency is declared, an emergency event can have the common meaning of 'a serious, unexpected and often dangerous situation requiring immediate action.'
- 20 The proposals set out in Appendix 1 are a complete and separate framework for managing buildings after an emergency event. This framework will run parallel with the powers available if there is a state of emergency under the Civil Defence Emergency Management Act 2002, or a transition period under the Civil Defence Emergency Management Amendment Bill. The following figure describes the management of buildings from response to recovery using standalone powers in the Building Act 2004.

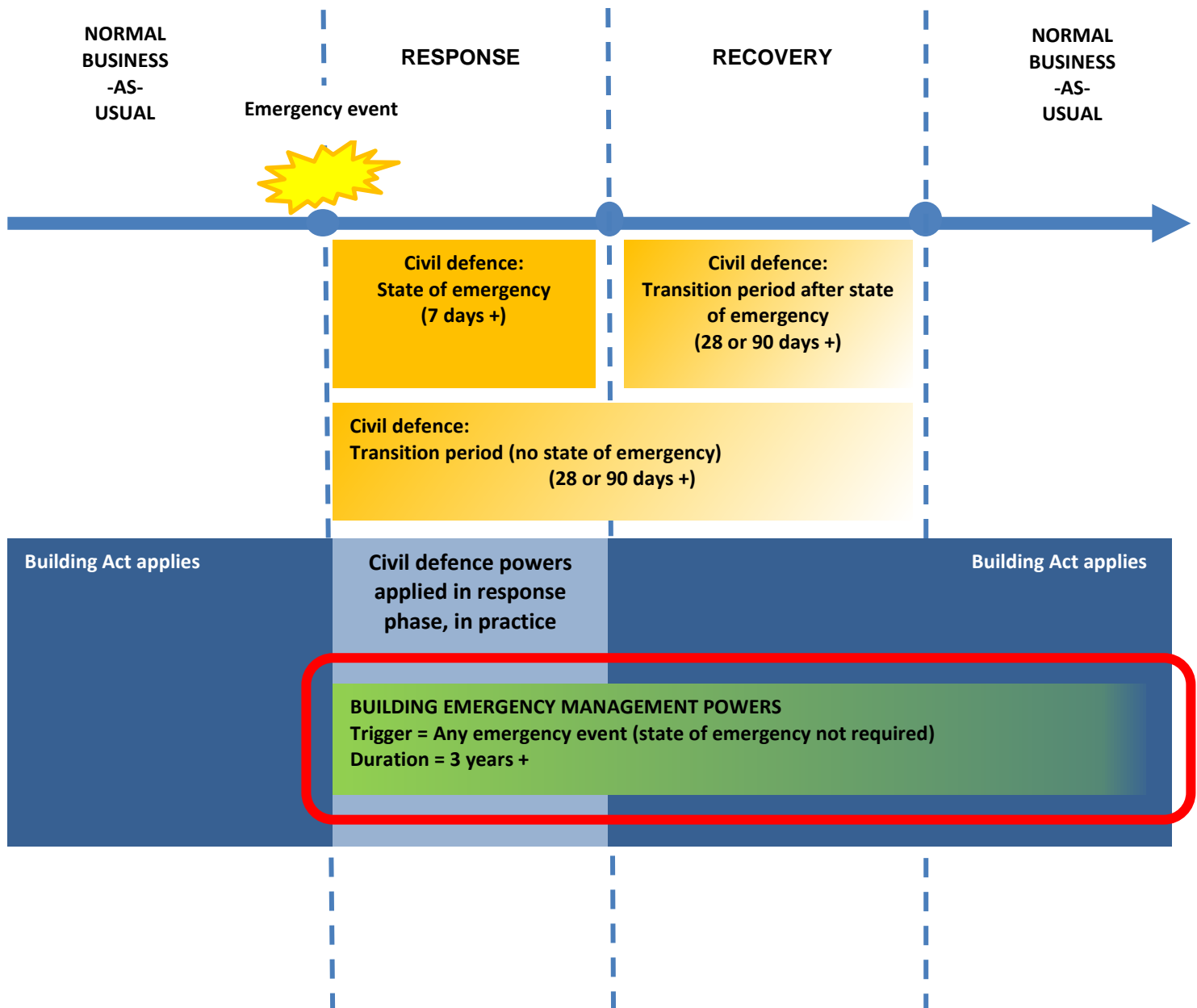


Figure 1: Managing buildings from response to recovery after an emergency event

- 21 Civil defence emergency management group controllers, recovery managers and territorial authorities all need to be able to use the building emergency management powers. However, the relevant civil defence emergency management person would be responsible for building emergency management decisions during states of emergency and transition periods. The building assessment manager would work to this person. Territorial authorities would be responsible for such decisions made under the Building Act 2004 when no state of emergency or transition period has been declared.
- 22 A standalone framework in the Building Act 2004 is necessary for several reasons. The Civil Defence Emergency Management Act 2002 is general legislation. It facilitates the management of an emergency event when territorial authorities are unable to do so using normal, business-as-usual processes. This may include managing buildings. Section 6 of the Civil Defence Emergency Management Act 2002 provides that this legislation does not limit or substitute for more specific powers under another Act. In

contrast, the Building Act 2004 specifically manages buildings over much longer timeframes. The proposals will enable all damaged buildings to be remediated within the necessary timeframes. It is unlikely that a state of emergency or transition period will be in place long enough to adequately manage all buildings damaged in an emergency event. Figure 1 demonstrates the management of buildings from response to recovery after an emergency event using standalone powers in the Building Act 2004.

Powers to manage buildings that could potentially damage other property or are a disruption to neighbouring buildings or public thoroughfares

- 23 The proposals set out in Appendix 1 seek to manage some buildings that are not an immediate danger to life safety but still pose a risk to building users, neighbouring property and the public. This situation needs to be addressed because these buildings may be damaged enough to require protective measures. The Canterbury Earthquakes Royal Commission did not specifically address how to manage this issue.
- 24 I propose new powers to specifically manage buildings that could potentially damage other property or disrupt neighbouring buildings or public thoroughfares. This is because, due to their location, it may be difficult to barricade or undertake other protective measures to manage the risk posed by these buildings without disrupting neighbouring homes and businesses. Cordoning roads and closing the central business district after the Canterbury earthquakes had a significant impact on economic activity.

Powers to require information

- 25 The Canterbury Earthquakes Royal Commission recommended a prescriptive system for following up each rapid building assessment with a detailed engineering assessment. The level of assessment required was to be based on the age and construction type of the building.
- 26 I am not proposing that all rapid building assessments are to be followed up with detailed engineering or other technical assessments. This is because I consider it important that the system is flexible and proportionate. However, the Ministry of Business, Innovation and Employment will provide guidance on undertaking detailed engineering assessments. The recommendations of the Canterbury Earthquakes Royal Commission will inform this guidance.

Powers to manage heritage buildings

- 27 I consider it appropriate to allow for the demolition of heritage buildings because they can pose a risk to life safety and to other property that still needs to be managed. However, submitters on the 2015 consultation document expressed concerns about the protection of heritage following an emergency event.
- 28 I propose making the partial or full demolition of Category 1 listed historic places and those on the National Historic Landmarks List a decision for the Minister for Building and Housing, in consultation with the Minister for Arts, Culture and Heritage. This recognises

the significance of these buildings. For an immediate danger, the advice of Heritage New Zealand should be sought 24 hours prior to the partial or full demolition of all historic places on the New Zealand Heritage List, heritage buildings listed in district plans and buildings that are subject to a heritage order or covenant. This is to ensure that demolition is a last resort but that immediate dangers to life safety are quickly addressed. The Ministry for Culture and Heritage advises that this timing is feasible, as demonstrated after the Canterbury earthquakes. No other parties are to be consulted. This is because the building poses an immediate risk to life safety that should be quickly addressed.

Managing the risk to a building and its users posed by the surrounding land, even though the building itself may be usable

- 29 Rapid building assessors will identify damage to the land even though the building on the property may be useable. This occurred in the Port Hills after the Canterbury earthquakes, when access to useable buildings was restricted because of the risk of rock fall, boulder roll or cliff collapse originating from another property. The experiences in the Port Hills demonstrate how risks posed by the land surrounding a building cannot be adequately managed under the Building Act 2004 in the long-term. This is because decisions may need to be made about managing the surrounding land using normal business-as-usual processes under the Resource Management Act 1991. The Building Act 2004 can only manage individual properties. For these reasons, the proposals set out in Appendix 1 do not manage any future risks posed by damaged land.
- 30 The Ministry for the Environment is looking into the management of natural hazard risks as part of its work for scoping a National Policy Statement for natural hazards, including where there are existing use rights. This includes situations where there has been an emergency event and there is damage to land that needs to be managed in the long term.

Addressing potential impacts on property rights

- 31 The proposed powers set out in Appendix 1 will have significant impacts on property rights. This is because an owner's ability to enjoy their property will be restricted or removed. For this reason, it is important to justify the use of the strong legislative powers proposed and to have a framework for decision making that provides appropriate protection for property rights. There is a high level of public concern about the impacts of low probability/high impact risks like natural hazard events that justifies taking a precautionary approach and the use of strong legislative powers to manage these risks.
- 32 This paper provides a framework that ensures the use of these proposed powers is appropriate and proportionate. The system for managing buildings after emergencies will now include:
- criteria that inform deciding when and how to use the suite of powers for managing buildings after an emergency event;

- situation-specific criteria that are taken into account when managing individual buildings;
- expanded pre-decision checks that require a wider group of interested parties to be consulted before works (including demolition) can be carried out on buildings that pose a risk of damage to other property and disruption to neighbouring buildings or public thoroughfares; and
- more accessible appeal processes that shorten the current determinations process to three weeks.

33 Taken together, these changes will ensure that property rights are adequately recognised throughout the system for managing buildings after an emergency event.

34 Providing for the possibility of compensation is another key way to recognise impacts on property rights. After an emergency event, the proposals could result in the demolition of buildings that are not an immediate risk to life safety. This could result in significant losses to building owners. This is because insurers do not pay out for decisions made by civil authorities. Not providing for compensation could subject these proposals in this paper to legal challenge from building owners or others.

35 However, my view is that it is appropriate that the relevant territorial authority or Cabinet make decisions about compensation in relation to the specific circumstances of the emergency event and the building, for those buildings that are not an immediate risk to life safety. Territorial authorities and Cabinet would be guided by the policy and principles on financial support and compensation in relation to emergency events generally.

36 I propose that any future compensation considerations follow the financial support and compensation principles in the Civil Defence and Emergency Management Act 2002 and its regulations. The civil defence emergency management legislation (as amended by the Bill currently before the House) provides for compensation for damage and loss caused by civil defence officials during states of emergency and transition periods. It allows recovery of losses from private insurers, and local authorities (civil defence emergency management groups) or the Crown. Liability would continue to rest with insurers in the first instance. Territorial authorities or Cabinet would then be able to consider compensation for disproportionate losses. This is net of insurance and any private benefit gained from the actions taken.

37 In addition, I do not propose that there will be any compensation payable to demolish a building that poses an immediate risk to life safety. This is consistent with other legislation, for example, the Greater Christchurch Regeneration Act 2016.

Making the powers available when no state of emergency has been declared

- 38 A key issue is whether the powers for managing buildings after an emergency event should be available when no state of emergency has been declared. I propose that a territorial authority would be able to use the proposed powers when there has been an emergency event but no state of emergency has been declared. This decision would be subject to the approval of the Minister for Building and Housing. The ability to access these powers with ministerial approval where no state of emergency has been declared is consistent with the Civil Defence Emergency Management Amendment Bill currently before Parliament. Before granting approval, the Minister for Building and Housing should be satisfied that this is in the public interest and it is necessary and desirable, having regard to the circumstances in the affected area and the risks to life safety and property. The Minister for Building and Housing should also consult with the relevant civil defence emergency management group and the mayor of the territorial authority before making this decision.
- 39 The Canterbury Earthquakes Royal Commission recommended that powers for managing buildings should only be available after a state of emergency. This is because of their potential impact on property rights.
- 40 Some submitters on the 2015 consultation document support making the proposed powers available when no state of emergency has been declared. This is to ensure a state of emergency is only declared when appropriate, not solely for authorities to access any new powers in the Building Act 2004. Declaring a state of emergency depends on the capability of territorial authorities to manage the event under normal circumstances. Sometimes an emergency event of sufficient scale and impact will occur that warrants using the proposed powers. However, no state of emergency will be declared because the emergency event can otherwise be managed. This occurred in Wellington after the 2013 Seddon earthquake.

Offence provisions

- 41 I consider the offence provisions set out in Appendix 1 necessary to deter people from interfering with access restrictions or not complying with directions. This is because people will be put at risk of harm if they use a building in breach of these requirements.
- 42 The proposed \$200,000 fine is the same amount as for similar offences in the Building Act 2004. The \$5,000 fine for individuals and \$50,000 fine for body corporates are the same amounts as for similar offences in the Civil Defence Emergency Management Act 2002.

Overall implications of the proposals

- 43 Overall, the proposals set out in Appendix 1 address the legislative gaps in the current system to adequately manage risks to life safety from buildings after an emergency event when an extraordinary situation still exists. The proposals also ensure a proportionate response that appropriately recognises property rights and moves towards normal, business-as-usual arrangements.
- 44 There are small economic benefits associated with the proposals compared to the current system. Modelling was undertaken using three stylised scenarios based on the 2007 Gisborne, 2010 Darfield and 2011 Christchurch earthquakes. This modelling shows a net benefit for of \$0.768 million for the high-impact scenario and \$3.002 million for the very high-impact scenario. By contrast, the low-impact scenario has a small net cost of -\$0.043 million, albeit fairly close to the breakeven point of zero.
- 45 These results do not include the potential for fatalities or injuries to be avoided as a result of the proposals because of the high level of uncertainty involved. Both the costs and benefits will not be realised until an emergency event occurs and it is difficult to accurately predict the effects of any event.
- 46 However, the small net economic costs in the low impact scenario are outweighed if the value of one life saved is added into the analysis. This is because the value of an avoided fatality, of \$4.088 million, is large relative to the costs in a low impact scenario. The net benefit ranges from \$4.045 million (low impact scenario) to \$7.090 million (very high impact scenario) when the cost of one avoided fatality is added into the analysis.
- 47 It should be noted that the likelihood of a low impact earthquake is much higher than that of a higher impact earthquake. This implies a greater weight should be placed on the results for the low impact scenario.

Consultation

- 48 The following agencies have been consulted on this paper: the Treasury, Ministry of Civil Defence and Emergency Management, Ministry for the Environment, Ministry of Justice, Ministry for Culture and Heritage, and the Department of Internal Affairs. The Office for Treaty Settlements was consulted. The Department of Prime Minister and Cabinet have been informed.
- 49 In May 2015, Cabinet agreed to release a consultation document on proposed changes to the system for managing buildings after an emergency and invited the Minister of Building and Housing to report back to the Cabinet Economic Growth and Infrastructure Committee on a new legislative framework for managing buildings after a state of emergency, taking into account the outcome of proposed consultation [CAB Min (15) 14/3 refers]. This included specifically seeking stakeholder input on whether the proposed powers should be used when no state of emergency has been declared.

- 50 The Ministry of Business, Innovation and Employment received 35 submissions on the consultation document released in May 2015 outlining proposals to manage buildings after an emergency event. Submitters were mainly territorial authorities, engineers and participants in the building and construction sector.
- 51 Most of the 14 proposals in the consultation document were generally supported by submitters. However, there was disagreement about whether the proposed powers should be available when no state of emergency has been declared. Concerns were also expressed about possible impacts on property rights and the protection of heritage.
- 52 In addition to the submissions on the consultation document, the proposals in this paper were informed by:
- the evidence submitters provided to the Canterbury Earthquakes Royal Commission, and Volume 7 of the Royal Commission's Final Report;
 - analysis of approaches adopted in other jurisdictions, including parts of the United States of America, Japan, Taiwan, Italy, Canada, the United Kingdom and Australia;
 - a sector reference group and officials reference group; and
 - advice from international risk experts and a review of the international risk literature.

Financial Implications

- 53 Any cost implications for the Ministry of Business, Innovation and Employment and the administration of the new legislation would be met from future operating baselines of Vote Building and Housing. The operational implementation of the system for managing buildings after an emergency will be met using Building Levy funding.

Human Rights

- 54 The proposals in this paper are considered to be consistent with the rights and freedoms in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final determination about the consistency of the proposals with the New Zealand Bill of Rights Act 1990 will be undertaken by the Ministry of Justice once legislation is drafted. The proposed powers set out in Appendix 1 potentially have strong impacts on property rights. The framework described in paragraph 32 has been designed to ensure that any interference with property rights is justified and no more than is necessary to ensure life safety and to minimise the risk of damage and disruption to other property.

Legislative Implications

- 55 A bill is required to implement the proposals. A Building Amendment Bill has been given a priority 3 rating on the 2016 legislation programme (to be passed if possible in the year) to give effect to the proposals.

56 The proposed Act will bind the Crown.

Regulatory Impact Analysis

57 The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

58 The Ministry for Business, Innovation and Employment's independent RIS review panel has reviewed the RIS, and considers the information and analysis summarised in the RIS meets the quality assurance criteria.

Gender Implications

59 No gender implications have been identified in the preparation of this paper.

Disability Perspective

60 No disability implications have been identified in the preparation of this paper.

Publicity

61 A communications strategy is being developed to support the announcement of decisions on proposals for change. As part of this strategy, a press statement from the Minister for Building and Housing will be made once decisions on proposals for a new system for managing buildings after an emergency event have been taken.

62 I propose that this Cabinet paper also be published as part of the communications strategy. The Ministry of Business, Innovation and Employment intends to publish a summary of submissions received on the consultation document on its website once Cabinet decisions have been taken.

Recommendations

63 The Minister for Building and Housing recommends that the Committee:

1 note that the Royal Commission of Inquiry into the Building Failure Caused by the Canterbury Earthquakes (the Canterbury Earthquakes Royal Commission) highlighted gaps and barriers in current legislation for managing buildings after an emergency event that led to the risk of life from damaged buildings being inadequately managed, including:

1.1 the lack of clear legislative mandate for the system for managing buildings after an emergency event, resulting in unclear and uncertain roles and responsibilities;

1.2 the lack of smooth transition between civil defence emergency management powers and normal, business-as-usual powers under the Building Act 2004;

- 1.3 that powers are needed to manage buildings damaged in an emergency event where a building is not deemed dangerous under section 121 or earthquake-prone under section 122 of the Building Act 2004;
- 2 note that on 2 April 2013 Cabinet agreed that regulation is required to address post-disaster building management, subject to more work on the required policy and legislative changes [CAB Min (13) 10/6 refers];
- 3 note that the proposals in this Cabinet paper confirm these decisions and implement them by amending the Building Act 2004 to introduce a new system for managing buildings after an emergency event;

Outcome of consultation

- 4 note that on 4 May 2015 Cabinet agreed to release a consultation document that sought the public's view on proposals to create powers to transition from states of emergency under the Civil Defence Emergency Management Act 2002 to business-as-usual powers under the Building Act 2004 and invited the Minister for Building and Housing to report back to the Cabinet Economic Growth and Infrastructure Committee on proposals for a new legislative framework by the end of October 2015 [CAB Min (15) 14/3 refers];
- 5 note that this report back was subsequently deferred until October 2016;
- 6 note that the 35 submissions on the consultation document were generally supportive of the proposed powers and their scope, but that there was disagreement about whether the powers should be available when no state of emergency is declared and concerns expressed about the protection of heritage and about impacts on property rights;

Powers for managing buildings after an emergency event

- 7 agree to amend the Building Act 2004 to introduce a system for managing buildings after an emergency event, as set out in the proposals in Appendix 1 to this Cabinet paper;
- 8 agree to provide civil defence emergency management group controllers, recovery managers and territorial authorities powers to manage buildings after an emergency event;

Powers can be available when no state of emergency has been declared (consistent with the Civil Defence Emergency Management Amendment Bill currently before Parliament)

- 9 agree to amend the Building Act 2004 to provide that civil defence emergency management group controllers, recovery managers and territorial authorities may decide whether to use the powers:
 - 9.1 after a state of emergency has been declared under the Civil Defence Emergency Management Act 2002;
 - 9.2 following the end of a state of emergency; or
 - 9.3 on the approval of the Minister for Building and Housing when the Minister is satisfied:
 - 9.3.1 that this is in the public interest;
 - 9.3.2 that it is necessary and desirable, having regard to the circumstances in the affected area and the risks to life safety and property; and
 - 9.3.3 after consultation with the civil defence emergency management group and the mayor of the territorial authority;

Relationship with the civil defence framework and legislation

- 10 note it is intended that buildings that have been damaged in an emergency event will primarily be managed in the Building Act 2004 because the civil defence emergency management legislation is general legislation that is only used to facilitate the management of an emergency event when territorial authorities are unable to do so using normal, business-as-usual processes;
- 11 agree that the building emergency management provisions in the Building Act 2004 will be used in preference to the Civil Defence Emergency Management Act 2002 to specifically manage buildings after an emergency event;
- 12 agree that the relevant civil defence emergency management person would be responsible for building emergency management decisions during states of emergency and transition periods, and that building assessment manager would work to this person;
- 13 agree that territorial authorities would be responsible for such decisions made under the Building Act 2004 when no state of emergency or transition period has been declared;

- 14 agree that building assessment managers will work to the relevant civil defence emergency management person during states of emergency and transition periods;
- 15 note that any future Cabinet decision making about compensation would apply the principles for financial support and compensation in the Civil Defence and Emergency Management Act 2002;

Managing risk to a building and its users posed by the surrounding land, even though the building itself may be useable

- 16 note that the new system for managing buildings after an emergency event seeks to identify in a rapid building assessment the risk to a building and its users posed by the surrounding land, even though the building itself may be usable;
- 17 note that the Ministry for the Environment is looking into the management of natural hazard risks, including where there are existing use rights, as part of its work for scoping a National Policy Statement for natural hazards;

Drafting instructions

- 18 note that a Building (Emergency Management) Bill has a category 3 priority on the 2016 legislative programme;
- 19 invite the Minister for Building and Housing to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations in this Cabinet paper;
- 20 authorise the Minister for Building and Housing to approve changes consistent with the policy proposals in this paper, on any issues that arise during the drafting process;

Communications strategy

- 21 agree to publish this Cabinet paper as part of the material to be released to support the announcement of decisions on proposals for change.

Authorised for lodgement

Hon Dr Nick Smith

Minister for Building and Housing

Appendix 1: Proposals for managing buildings after an emergency event

System feature	Proposal
<p>Legislative mandate in the Building Act 2004</p>	<p>New system for managing buildings after an emergency event introduced as a new part in the Building Act 2004</p> <p>Provide powers to civil defence emergency management group controllers, recovery managers and territorial authorities during and after an emergency event</p> <p>All powers for managing buildings after an emergency event will also be available to civil defence emergency management group controllers and recovery managers</p> <p>The relevant civil defence emergency management person would be responsible for building emergency management decisions during states of emergency and transition periods, and the building assessment manager would work to this person</p> <p>Territorial authorities would be responsible for such decisions made under the Building Act 2004 when no state of emergency or transition period has been declared</p>
<p>Trigger</p>	<p>Declaration of a state of emergency under the Civil Defence Emergency Management Act 2002</p> <p>Minister for Building and Housing approves making the powers available to territorial authorities when no state of emergency is declared, when the Minister is satisfied:</p> <ul style="list-style-type: none"> • that this is in the public interest; • that it is necessary and desirable, having regard to the circumstances in the affected area and the risks to life safety and property; and • after consultation with the civil defence emergency management group and the mayor of the territorial authority <p>Minister for Building and Housing may decide to:</p> <ul style="list-style-type: none"> • take direct action and make decisions to manage buildings, when warranted by the scale and impacts of an emergency event; and • direct territorial authorities to take or stop building emergency management actions
<p>Powers to respond to the emergency event</p>	<p>Powers to:</p> <ul style="list-style-type: none"> • carry out rapid building assessments; • place, change and remove placards that indicate the usability of the building; • evacuate buildings; • prohibit and restrict access using barricades and cordons; and • require other protective measures e.g. interim works to shore up the building <p>Building owners are responsible for the costs of barricades and cordons from three months after an emergency event</p> <p>Regulations set the form of the:</p> <ul style="list-style-type: none"> • rapid assessment forms; and • placards
<p>Powers to manage immediate risks to life safety</p>	<p>Carry out works or demolish a building that is an immediate risk to life safety</p>

	<p>The partial or full demolition of Category 1 listed historic places and those on the National Historic Landmarks List is a ministerial decision</p> <p>Heritage New Zealand to be consulted 24 hours prior to the proposed partial or full demolition of heritage buildings</p> <p>Recover the costs from the building owner, where the owner has failed to comply with a direction to reduce or remove the risk, as under the current system in the Building Act 2004</p>
<p>Powers to manage buildings that pose a risk of:</p> <ul style="list-style-type: none"> • damage to other property; • disruption to neighbouring buildings or public thoroughfares 	<p>Carry out works or demolish a building that poses a risk of:</p> <ul style="list-style-type: none"> • damage to other property; or • disruption to neighbouring buildings or public thoroughfares <p>Consult the following parties within 10 working days before these building works are carried out:</p> <ul style="list-style-type: none"> • Heritage New Zealand; • owners; • building occupiers; • people who have a specific interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; • people who claim a specific interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; • any statutory authority, if the land or building has been classified; and • owners and occupiers of neighbouring buildings that are at risk of damage or disruption by the damaged building <p>Can extend the 10 working days depending on the circumstances</p> <p>Need to consider:</p> <ul style="list-style-type: none"> • criteria governing the use of these powers; • whether any reasonable alternatives to demolition are available; and • the likely impact to neighbouring homes and businesses as a result of closure due to the risk posed by the damaged building, when compared to the costs of reducing or removing the risk posed by the damaged building
<p>Powers to require information</p>	<p>Can require further information before a damaged building or one at risk from the surrounding land can be re-occupied in the long-term</p> <p>Examples of further information that could be required are:</p> <ul style="list-style-type: none"> • a full structural assessment; • a detailed engineering assessment of the observed damage; and • other technical assessment
<p>Powers to follow up and remediate individual buildings, on a case-by-case basis</p>	<p>Powers to:</p> <ul style="list-style-type: none"> • record information on the property file of a residential building about the damage to it or the surrounding land, if the owner has not remediated the property by a specified timeframe; • require the remediation of damaged commercial or multi-storey/multi-unit residential building within a specified timeframe, on a case-by-case basis; • require the remediation of a multi-storey building that became earthquake-prone due to damage in an emergency event, before the required earthquake-prone building timeframe; • take action when building owners directed to remediate their damaged building fail to do so and recover the costs from the building owner; and

	<ul style="list-style-type: none"> ensure that any placard remain in force in the meantime
Powers to manage heritage buildings	<p>For heritage buildings that pose an immediate risk to life safety:</p> <ul style="list-style-type: none"> the Minister for Building and Housing to approve the partial or full demolition of Category 1 listed historic places and those on the National Historic Landmarks List, in consultation with the Minister for Arts, Culture and Heritage; Heritage New Zealand is consulted 24 hours prior to the proposed partial or full demolition of: <ul style="list-style-type: none"> all historic places listed on the New Zealand Heritage List; heritage buildings listed in district plans; and buildings subject to a heritage order or covenant <p>Heritage New Zealand is consulted within 10 working days for heritage buildings that pose a risk of damage to other property or disruption to neighbouring buildings (as above)</p>
Consenting requirements	<p>No resource or building consents required for:</p> <ul style="list-style-type: none"> barricades, cordons and other required protective works e.g. interim works to shore up the building; carrying out works or demolishing a building that is an immediate risk to life safety; and carrying out works or demolishing a building that poses a risk of damage to other property and disruption to neighbouring buildings or public thoroughfares
Duration of powers	<p>Long-stop date of three years that can be extended depending on the circumstances</p> <p>Territorial authorities must review whether the powers are still necessary every 90 days</p> <p>Some powers are only available for six months after an emergency event:</p> <ul style="list-style-type: none"> carry out rapid building assessments; place placards; evacuate buildings; carry out works to manage buildings that are an immediate risk to life safety; carry out works to manage buildings that pose a risk of damage to other property and disruption to neighbouring buildings or public thoroughfares; and revised determinations process
Criteria govern the powers	<p>Life safety is the paramount principle governing the use of the powers</p> <p>Criteria that recognise the impact of the powers on individuals must be taken into account when:</p> <ul style="list-style-type: none"> deciding to use the powers for managing buildings after an emergency event; deciding which powers should be used and how to use them; reviewing whether the powers are necessary, every 90 days; and deciding whether to extend the use of these powers beyond the three year long-stop date <p>Situation-specific criteria must also be taken into account when making decisions about continuing access restrictions and other decisions about managing individual buildings</p> <p>Examples of criteria that recognise impacts on individuals:</p> <ul style="list-style-type: none"> protection of life safety; need to recognise the impact of these powers on an individual's ability to live in and enjoy their property, and make decisions

	<p>about their own property;</p> <ul style="list-style-type: none"> • opportunities for voluntary compliance; • individuals should be informed about the nature of these powers and their implications for individuals, including the right of any individual to appeal against the exercise of these powers; • principle of proportionality; • preference should be given to the least restrictive alternative that will achieve the objectives of minimising the risk posed by buildings damaged in an emergency; • measures to apply no longer than necessary; • the significance of the scale and degree of the impact of the damaging event; • reasonably foreseeable likelihood of further related damaging events that could pose a risk to life safety; • need for shelter in residential buildings; and • ability of the territorial authority to manage risks adequately without the powers for managing buildings after an emergency event <p>Examples of situation-specific criteria:</p> <ul style="list-style-type: none"> • foreseeable likelihood of further related damaging events that could lead to the building or its surrounding land posing risks to life safety; • the distance and direction of the damaging event or hazard, or possible events or hazards, and impacts on the building if it is located in a built-up area; • the observed scale of structural damage to the building; • the observed scale of damage to the fabric of the building; • the likely scale of structural damage to the building and surrounding land; • the likely scale of damage to the fabric of the building; • the likely scale and risk to life safety posed by the building and its surrounding land; • information available about the building and ground conditions; • advice and information from relevant local authorities, suitably qualified persons (such as engineers), and relevant government agencies; and • credible discoveries or disclosures about the risk posed by the building or its surrounding land
Revised appeals process	<p>Revised determinations process of up to three weeks:</p> <ul style="list-style-type: none"> • can be extended depending on the circumstances; • not available for particularly complex cases and cases with wider consequences for affected individuals or the community; • on the same grounds as under the current system in the Building Act 2004 <p>Judicial review available, as under the current system</p>
No liability for building emergency actions e.g. carrying out rapid building assessments	<p>No cause of action against the Crown, civil defence emergency management group, territorial authority or authorised person to recover damages or loss that is due to undertaking the power for managing buildings after an emergency event</p> <p>Detailed engineering assessments and other technical reports that follow a rapid building assessment undertaken by commercial contract are subject to the usual liability arrangements</p>
Offence provisions	<p>It will be an offence to:</p> <ul style="list-style-type: none"> • intentionally not comply with a notice to reduce or remove the risk posed by a damaged building;

	<ul style="list-style-type: none">• to use a building in breach of a placard without permission or without reasonable excuse;• with a maximum fine of \$200,000 (for both an individual and for a body corporate) <p>It will be an offence to:</p> <ul style="list-style-type: none">• purposefully interfere with a placard;• deliberately interfere with access restrictions and other protective measures e.g. barricades;• use notices that imitate placards;• fail to provide requested information;• with a maximum fine of \$5,000 for an individual and \$50,000 for a body corporate
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