

Office of the Minister for Building and Construction

Cabinet Economic Growth and Infrastructure Committee

Earthquake-prone buildings policy review: terms of reference

Proposal

- 1 To inform you of the Department of Building and Housing's review of earthquake-prone building policy and provide you with the terms of reference for noting.

Background

- 2 The Canterbury earthquakes highlighted the life safety and other risks posed by existing buildings in earthquakes. The amount of property damage and loss of life resulting from the very severe Canterbury earthquakes have called into question:
 - the regulatory framework in relation to earthquake-prone buildings and whether or not it is adequate and is working as intended
 - the level of performance expected of existing buildings
 - what is an appropriate balance between life safety, cost and economic, heritage and other considerations when deciding what standards existing buildings must be upgraded to and over what period of time.
- 3 The Canterbury Earthquakes Royal Commission is considering these matters as part of a wider investigation, and is expected to make recommendations on changes that it considers necessary to existing legislative and regulatory requirements when it reports at the end of June 2012.
- 4 In addition, the report of the Expert Panel on the technical investigations resulted in recommendations to review the earthquake-prone building provisions in the Building Act.
- 5 Many councils are already upgrading their policies and committing funding to deal with their earthquake-prone building stock. The market is also responding with building occupants seeking information about the earthquake-prone status of the buildings they occupy. Building owners are looking for certainty and guidance as to what is required of them and are concerned with the potential implications.
- 6 Therefore, I consider it timely and appropriate to undertake a comprehensive review of the current earthquake-prone building policy settings. This will enable the government to respond quickly to the recommendations of the Royal Commission and provide certainty to building owners. Officials at the Department of Building and Housing have commenced this work.
- 7 This paper sets out the key elements of the review and provides you with the terms of reference for your information.

The review

- 8 The review is being undertaken by the Department of Building and Housing, with support from the Ministry of Culture and Heritage (MCH). It will:
- collect information on the current building stock as a basis for assessing and recommending changes to current policy settings
 - identify any issues in relation to current policy settings and their implementation and recommend any necessary changes within a broader risk framework
 - advise on regulations, information and guidance and other matters needed for effective implementation, including the relative roles of central and local government agencies
 - provide effective and timely communications and stakeholder engagement to interested parties and the wider public.
- 9 The main deliverables of the review are:
- a stocktake of information on the earthquake-prone status of New Zealand's building stock: **June 2012 + ongoing refinements.**
 - a comparative study of international approaches dealing with earthquake-prone buildings: **February 2012 (completed).**
 - a model to assess the costs and benefits of changes to the minimum threshold that determines whether a building is earthquake-prone or not (currently set at 33% NBS): **June 2012 + ongoing refinements.**
 - Cabinet paper(s) detailing the results of the review, including responding to the Royal Commission's recommendations concerning earthquake-prone buildings: **July-September 2012. Aiming for a Building Amendment Bill with the regulatory changes to be passed May 2013.**
- 10 A workstream, led by MCH, will consider the issues relating to remediating heritage buildings. The work will include a stocktake of the affected heritage buildings, a review of policy settings as they relate to heritage buildings, and consideration of any technical or other support needed to implement policy changes.
- 11 The review will position the Government to respond in a timely and effective manner to the Canterbury Earthquakes Royal Commission recommendations. It is expected that these recommendations will largely be contained in the Commission's June report.
- 12 A timely response to these recommendations will provide needed certainty to building owners anticipating repairs or renovations to their buildings but are currently uncertain as to what standard of earthquake strengthening will be required.

Consultation

- 13 The review will engage stakeholders via two main channels:
- sector reference group – comprised of local authority, property owner (private and government), heritage, earthquake engineering, insurance and other significant interests. The intent is that discussions on the relative trade-offs and effects of

different policy settings would be internalised and considered at meetings of this group.

- officials reference group – comprised of officials from agencies with a policy interest in earthquake-prone buildings.

14 Because the Canterbury Earthquakes Royal Commission is a public process and because any changes to the law and regulations will involve select committee consideration, public consultation is not proposed for the review.

15 The Treasury, Department of the Prime Minister and Cabinet, Department of Internal Affairs, Ministry for the Environment, Ministry of Culture and Heritage and Ministry of Social Development (Property Management Centre of Excellence) were consulted. They support the terms of reference for the review.

Financial implications

16 This paper has no financial implications.

Legislative implications

17 This paper has no legislative implications.

Regulatory impact analysis

18 The Regulatory Impact Analysis regime does not apply to the proposal in this paper.

Consistency with Government Statement on Regulation

19 Consideration of consistency is not applicable to this paper.

Publicity

20 No Ministerial press statement announcing the review has been made.

21 The recently published Wellington City Council report (*Council Responses to earthquake Prone Buildings – Update Report*) discusses the review, which means that knowledge of it is now in the public domain. Discussions have also begun with key stakeholders about the review.

22 Because of this awareness, the Department of Building and Housing's website now notes that preliminary work has begun on the review and that the terms of reference will be announced in due course.

23 Once this paper is noted, I propose announcing the review through a media release. The terms of reference will also be publicised on the Department's website and made available to the Canterbury Earthquakes Royal Commission. In addition, the Department is preparing a communications plan setting out how stakeholders will be engaged and informed over the course of the review.

Recommendations

24 I recommend that the Cabinet Economic Growth and Infrastructure Committee:

- 1 note the Department of Building and Housing has begun a review of earthquake-prone buildings policy

- 2 note the terms of the reference for the review (attached)
- 3 note that a workstream, led by the Ministry of Culture and Heritage, will consider issues relating to remediating heritage buildings
- 4 note the Department of Building and Housing will input into the Government's response to any recommendations on earthquake-prone buildings made by the Canterbury Earthquakes Royal Commission in their June report
- 5 note that I will be reporting the findings of the review back to Cabinet after the Canterbury Earthquakes Royal Commission release their June report.



Hon Maurice Williamson

Minister for Building and Construction

8 / 3 / 2012

Consultation on Cabinet and Cabinet Committee Submissions

Certification by Department:

Guidance on consultation requirements for Cabinet/Cabinet committee papers is provided in the CabGuide (see Procedures: Consultation): <http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation>

Departments/agencies consulted: The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission:
The Treasury, Department of the Prime Minister and Cabinet, Department of Internal Affairs, Ministry for the Environment, Ministry of Culture and Heritage and Ministry of Social Development (Property Management Centre of Excellence)

Departments/agencies informed: In addition to those listed above, the following departments/agencies have an interest in the submission and have been informed:

Others consulted: Other interested groups have been consulted as follows:
Local Government New Zealand

Name, Title, Department: Adrian Regnault, Manager, Regulatory Policy

Date:

5 / 2 / 2012

Signature



Certification by Minister:

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee.

The attached proposal:

Consultation at Ministerial level

- has been consulted with the Minister of Finance
[required for all submissions seeking new funding]
- has been consulted with the following portfolio Ministers:
- did not need consultation with other Ministers

Discussion with National caucus

- has been or will be discussed with the government caucus
- does not need discussion with the government caucus

Discussion with other parties

- has been discussed with the following other parties represented in Parliament:
 Act Party Maori Party United Future Party
 Other [specify]
- will be discussed with the following other parties represented in Parliament:
 Act Party Maori Party United Future Party
 Other [specify]
- does not need discussion with other parties represented in Parliament

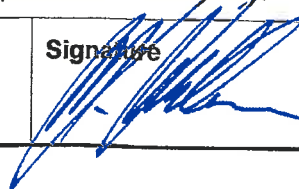
Portfolio

Building + Construction

Date

8 / 3 / 2012

Signature





Department of
Building and Housing
Te Tari Kaupapa Whare

Earthquake Prone Building Policy Review Terms of Reference

March 2012

Context

The Canterbury earthquakes of September 2010 and February 2011 and the resulting Royal Commission have resulted in public scrutiny of the:

- adequacy of current policy settings and regulations for addressing earthquake-prone buildings
- effectiveness of their implementation and administration.

The Building Act 2004 provides a legal framework to protect building occupants and the public from harm in the event of an earthquake. It:

- provides for Building Code performance requirements that new buildings must be built to
- provides a threshold to define whether an existing building is earthquake-prone - currently one third of the new build standard (NBS) requirements
- provides local authorities with duties and powers to inspect existing buildings to determine whether they are earthquake-prone and dangerous
- provides local authorities with powers to prevent earthquake-prone and dangerous buildings being occupied and to require owners to strengthen or demolish them, or for the local authority to directly undertake strengthening or demolition work
- requires local authorities to develop policies in consultation with their communities on how they will exercise these duties and powers.

Buildings at the earthquake-prone building threshold (one-third of the new building requirement) are at least 10 times more likely to structurally fail in an earthquake than a new building. Buildings below the threshold are at even greater risk. With local policies due for their first five-yearly review, and the Canterbury earthquakes highlighting the significant life and safety risk from existing buildings, it is timely to review the current earthquake-prone building policy settings.

Objectives and Outcomes

The current earthquake-prone building policy framework was established by the Building Act 2004 with the intent of reducing death and injury in a major earthquake. Policy settings are directed at existing buildings that fall short of the strength required for a new building and are at risk of serious damage or collapse in a major earthquake. The Act devolves policy administration to local authorities in order for them to take account their area's particular seismic, economic and social conditions.

In light of recent experience of the Canterbury earthquakes, the Review aims to ensure that:

- **Policy settings and standards adequately balance life and safety considerations against economic, heritage and other considerations** – by determining whether current policy settings and regulations provide an adequate level of safety when balanced against other considerations and, if not, what changes are required to achieve the desired level of safety and create certainty for property owners and tenants.
- **Policies and standards are effectively implemented and administered** – by determining whether there is sufficient oversight, technical support, capacity and guidance for those administering the policies and regulations, and whether policy is being effectively and consistently administered across New Zealand.

By taking a robust and transparent approach to addressing each of the above objectives, the review aims to increase public confidence in the Government's policies on earthquake-prone buildings and the effectiveness of their implementation.

Scope

Within scope of the review are:

- Government policies relating to earthquake-prone buildings
- Legislative and regulatory settings
- Related performance requirements and thresholds, compliance documents and guidance materials
- Implementation and administration.

Specific factors to be considered by the review include the following:-

Policy framework

- The adequacy of the policy framework provided in the Building Act 2004
- Whether different classes and uses of buildings should be treated similarly or differently (e.g. commercial, multi-unit residential, heritage, schools and other public buildings)
- Whether current regulatory requirements are adequate (i.e. the one-third NBP definition of an earthquake-prone building)
- Whether there should be regulations to specify the level or levels of upgrade required of earthquake-prone buildings
- The process through which regulations are made
- The respective roles of central and local government and the relationship between the two in developing, implementing and administering earthquake-prone building policies and regulatory requirements
- Application of the policies and regulations to Crown owned properties.

Implementation

- The roles of central and local government, including consideration of funding, incentives, information availability, and resourcing
- The level of support and guidance provided to agencies implementing and administering policy and regulatory requirements
- The development of technical regulations and associated guidance material, including consideration of verification methods
- The transition to future safety requirements (if changes are made), including timeframes and support measures (including issues for heritage buildings)
- Capability and capacity of the sector to administer and comply with policies and regulatory requirements
- The adequacy of guidance and support to building owners

- The adequacy of information to building occupants and users.

Out of scope

The areas outside the scope of this review include:

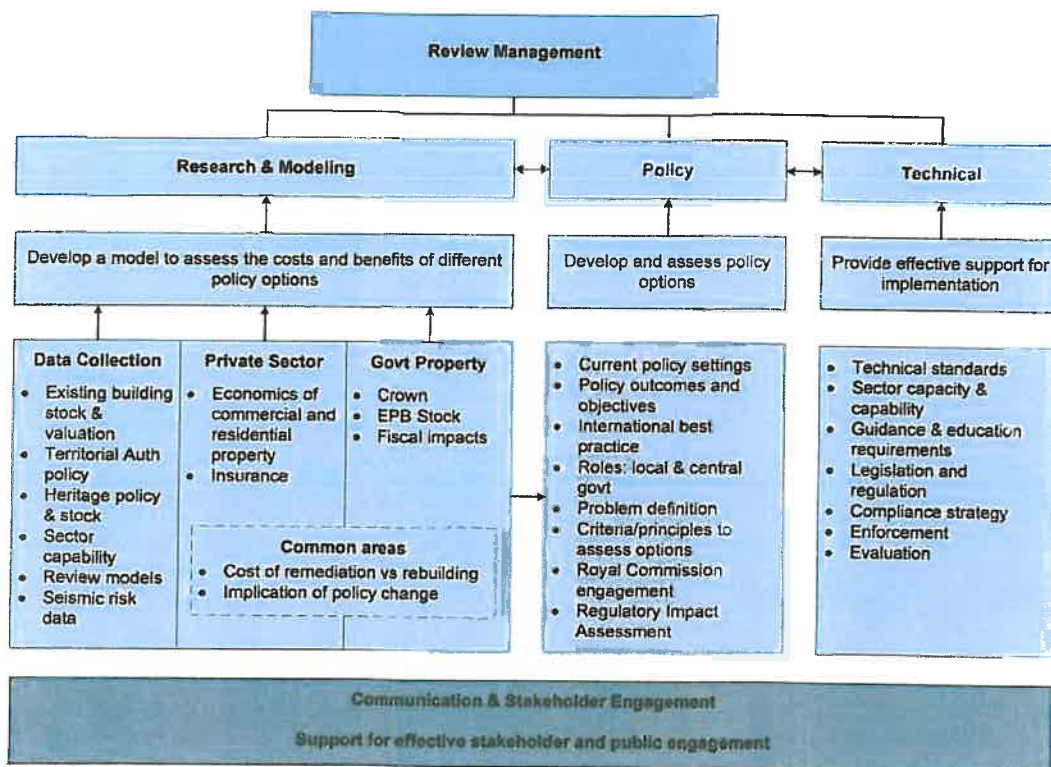
- The Building Code, because changes to the Code are being considered separately. This review will need to take account of any proposed changes to the Code requirements for new buildings
- Residential properties (unless they are two or more storeys and contain three or more households), because they are generally considered to have performed relatively well in the Canterbury earthquakes and are not subject to the earthquake-prone provisions of the Building Act.

Approach

For purposes of management, the review is grouped into four main components:

- Research and modelling
- Policy review
- Technical support and implementation
- Communications and stakeholder engagement.

The following diagram shows the components and how they relate:



Over its course, the review will:

1 Describe current policy settings

Describe current policy settings and their implementation, as well as the relative roles and responsibilities of the Department of Building and Housing, other central government agencies and local authorities. The review will review existing DBH and local authority policy guidelines and policy documents and data collected from territorial authorities.

2 Collect baseline information

Pull together baseline information to assess current policy settings and the implications of possible changes to current policy settings, and to develop and model these changes in order to assess the costs and benefits of different policy approaches. This will include information on:

- Seismic risk and how to consider related life safety, economic and other risks in a building policy context
- The size and characteristics of the existing building stock, including a breakdown of buildings that are earthquake-prone and information on their use, ownership (public or private), capital value, heritage status and location)
- Local authority earthquake-prone building policies
- Lessons from the Christchurch earthquakes (technical and other information on the performance of buildings and the adequacy of existing policies)
- Business drivers associated with property ownership and management
- Practicalities and costs of carrying out earthquake strengthening work on earthquake-prone buildings
- Insurance approaches to earthquake-prone buildings
- Implications of earthquake resilience in the valuation of commercial property
- Capacity and capability of the sector to apply policy settings
- Heritage policy and outcomes
- Costs of earthquake events.

3 Develop a model to assess the costs and benefits of different policy options

Based on the information and data collected in (2), a model will be developed and used to assess the costs and benefits of different policy approaches. This will involve reviewing existing models for assessing the costs and benefits of changes to earthquake standards and either refining an existing model or developing a new model for the purposes of this review.

4 Identify and examine different policy approaches

Examine policy approaches in other relevant jurisdictions for approaches and lessons that could be applied to inform policy development in New Zealand. Particular jurisdictions of interest include North America (Los Angeles and San Francisco), Hawaii, Chile, Japan and the Mediterranean.

5 Identify problems with current policy settings

Use information collected in phases (1) and (2) to identify issues with current policy settings and their implementation and administration.

6 Develop and assess policy alternatives

Consider:

- Principles to guide the development of policy options, and criteria to assess these options against
- Outcome versus prescriptive approaches to policy and its administration
- Central versus devolved responsibility for policy implementation and administration
- Linkages between decision-makers and risk-takers
- Balancing economic resilience objectives with life and safety objectives
- Trigger standards and requirements to upgrade buildings
- Balancing culture and heritage values with safety and cost factors in maintaining those buildings to an appropriate standard
- Market responses
- Approaches adopted in other jurisdictions
- Transitional issues.

The analysis would look at the impact on:

- Building owners
- Life and safety of building owners
- Heritage
- Community viability
- Local government
- The Crown.

7 Scope and advise on the support needed for effective policy implementation and administration

Consider technical and other support needed to successfully implement policy, including:

- Technical information and associated guidance material
- Policy guidance and support for local government
- Drafting amendments to legislation and regulations
- Compliance strategy
- Capacity to implement and administer
- Appropriate enforcement measures
- An evaluation framework for future assessment of the policy settings.

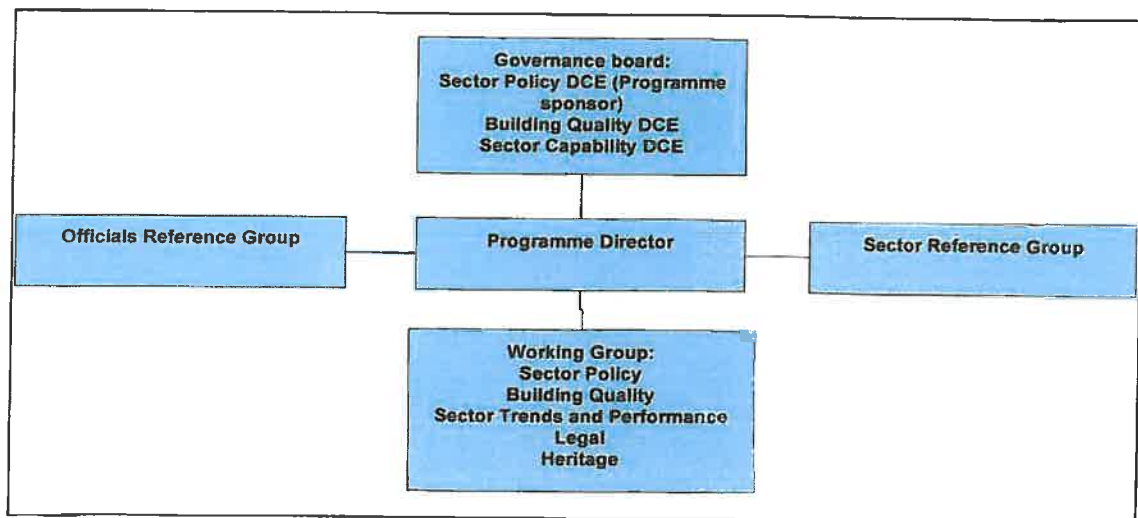
Linkages

The review is situated within the context of the Government's wider public sector reform and policy work programme, as well as its specific responses to the Christchurch earthquakes. The review will need to take into account and link with related work, including:

- The Canterbury Earthquakes Royal Commission – the review enables evaluation of the Commission's recommendations and forms the basis of the advice to Government on whether or not any Royal Commission recommendations for changes to earthquake-prone policy settings should be agreed to.
- The wider Building Act Reforms – the review will need to consider the implications of changes to the Building Code for earthquake-prone building policies and standards. It will also need to consider the implications of changes to the operation of the building consent system and the licensing and regulation of building practitioners and designers.
- Stock-take of Crown-owned earthquake-prone buildings – the Government Property Management Centre of Expertise (located in the Ministry of Social Development) is coordinating a stock-take of Crown-owned earthquake-prone buildings, including government responses to the management of these buildings.
- Review of sections 6 and 7 of the Resource Management Act 1991 to potentially include natural hazards as a matter of national importance.
- Review of post disaster evaluation of buildings and the relationship between Civil Defence Emergency Management Act and the Building Act.
- Public sector reform – the Government is committed to improving the focus, quality of services and efficiency of public sector service providers.
- Amendments to the Local Government Rating Act, to enable Councils apply targeted rates to those obtaining a loan to pay for earthquake strengthening.

Review management

The following diagram sets out the management for the review:



The review will be overseen by a small governance board, who will consider the initial work programme, sector engagement and other arrangements, and then periodically provide governance oversight (as opposed to management oversight) of the review at key points.

The review will require input from across the Department. It will involve technical inputs from Building Quality, research and data inputs from Sector Trends and Reporting, policy inputs from Sector Policy, and legal issues from the Legal team. Each of these inputs is managed by a team leader.

The Ministry for Culture and Heritage are providing direct input into the review relating to heritage buildings.

The Programme Director will be responsible for overseeing the work of the Working Group, engaging with relevant stakeholders and reporting progress to the Project Sponsor.

Stakeholder engagement will be through:

- Sector Reference Group – comprising senior and experienced individuals from areas such as local government, property ownership and management (private and government), heritage and other significant interests.
- Officials Reference Group – comprised of government agencies with a policy interest in earthquake-prone buildings.

The main outputs of the review will include:

- a stocktake of information on the earthquake-prone status of New Zealand's building stock **June 2012 + ongoing refinements.**
- a comparative study of international approaches dealing with earthquake-prone buildings **February 2012.**
- a model to assess the costs and benefits of changes to the minimum threshold that determines whether a building is earthquake-prone or not (currently set at 33% NBS) **June 2012 +ongoing refinements.**
- Cabinet paper(s) detailing the results of the review, including responding to the Royal Commission's recommendations concerning earthquake-prone buildings. **July-September 2012. Aiming for a Building Amendment Bill with the regulatory changes to be passed May 2013.**