Building Act Emergency Management Proposals

Proposals and Questions Feedback Form

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Are you responding as an individual or on behalf of an organisation (please circle one)	b) This response is made on behalf of the CHRISTCHURCH CITY COUNCIL
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Using the Building Act emergency management powers

(Consultation document pages 14 to 16)

Proposal 1 – A Civil Defence Controller may decide whether to use Building Act emergency management powers.
During a state of emergency declared under the CDEM Act, a controller appointed under that Act may decide whether to use Building Act emergency management powers.

The controller must give consideration to the following factors:

a) significance of the scale of the damaging events
b) reasonably foreseeable likelihood of further related damaging events which could pose risks to life-safety
c) distance and direction of the damaging event or hazard, or possible events or hazards, and impacts in relation to buildings in built-up areas
d) observed scale of structural damage to buildings
e) information available about building and ground conditions
f) need for shelter in residential buildings
g) likely scale of structural damage to buildings
h) likely scale and risk to life-safety from buildings
i) advice and information from relevant territorial authorities, suitably qualified persons, and relevant government agencies
j) credible discoveries or disclosures about risks from buildings
k) the territorial authority's ability to manage risks adequately without building emergency management powers.

The building emergency powers are divided into those that can be renewed for up to one year and those that are available for up to three years after the state of emergency has ended. Every 28 days after the end of the state of emergency, the territorial authority must decide whether to continue using those powers that can be renewed for up to one year.

To help ensure your feedback is understood, when answering the questions please provide evidence and/or examples for your response where possible.

1. Are the considerations that must be taken into account appropriate? Why / Why not?

   Response

   Yes, the factors for consideration generally appear satisfactory to determine the extent and duration of the building emergency management powers required. However, the Council suggests that an additional factor be added (or factor (f) amended) to include other needs such as public services, food, hospitals etc.

   It would also be helpful to clarify whether the factors are equal or whether it is intended more weight should be given to one factor over another. We recommend they be considered equally.

Additional Comment
Under Proposal 1 it refers to a controller appointed under the CDEM Act deciding whether to use the Building Act emergency management powers.

The footnote to this statement defines the Controller as the person who is the National Controller or a Group Controller. Local Controllers, appointed under section 27 of the CDEM Act, should also have authority to decide to use the Building Act emergency powers independently, instead of only relying on the Civil Defence Emergency Management Group to direct the Local Controller to carry out any of the functions and duties of the Group Controller The Local Controller is the person who may have to make urgent decisions about buildings in a local emergency.

2. Is 1 year an adequate length of time for the powers that enable territorial authorities to make initial building assessments and take action to reduce or remove more immediate risk? If not, what length of time would be more appropriate and why?

Response
Possibly, although it will depend on the nature and scale of the emergency event. Clarification is required when the 1 year period begins; is it from the end of the state of emergency or from the declaration of the state of emergency? And what happens if there is a series of events (whether related or not) such as occurred with the Canterbury Earthquakes? We recommend the 1 year period begins from the end of the state of emergency. It should also be made clear whether time starts again after a subsequent state of emergency, or what would happen if the powers are not exercised after a first event, but might be needed after a second event. A mechanism included in the Act for the relevant Minister to extend the 1 year timeframe further on the request of the territorial authority may be appropriate.

3. Is 3 years an adequate length of time for the remaining powers to stay in force? If not, what length of time would be more appropriate and why?

Response
Yes, in most cases, although it depends on the nature and scale of the emergency event. The example from the Canterbury Earthquakes, is that the Canterbury Earthquake Recovery Authority is still using/requiring powers currently in the Canterbury Earthquake Recovery Act 2011 to deal with dangerous buildings 5 years after the earthquakes (and probably beyond). As suggested above, a mechanism in the Act for the relevant Minister to extend the 3 year timeframe further on the request of the territorial authority, may also be appropriate in relation to this proposal.

4. Is the requirement to review the proposed 1 year powers every 28 days appropriate? Why / Why not?

Response
No. We recommend that that the first review/renewal decision be 3 months after the end of the state of emergency, and then every 28 days. It is also recommended that powers be included to allow the Territorial Authority to terminate the powers earlier, should the 3 months not be needed.

The reason for proposing an initial 3 month period is that time and resources are still under significant pressure immediately after the end of the state of emergency. Renewals every 28 days in that initial period would simply create an additional administration step. After the Canterbury Earthquakes, section 85 of the Canterbury Earthquake Recovery Act 2011 provided for the continuation of emergency management measures "for 12 weeks after the commencement of this Act, but the Minister or the chief executive may amend or cancel any of them during that period."

We note there is no proposal for a review/renewal of the 3 year powers and agree that is appropriate for those powers.

5. Is it appropriate to link the building emergency powers to a state of emergency? Why /Why not?

Response

Yes, as identified, there is a need for transitional powers between the Civil Defence Emergency Management Act and the Building Act as the current system does not provide the clarity required.

6. Are there situations when a state of emergency has not been declared when the building emergency management powers should be made available? Please provide examples.

Response

Yes, in situations when an event occurs that did not warrant the declaration of a state of emergency (for example a localized tornado or landslip, explosion in a building or buildings, or an earthquake that is small in size or in respect of its effect on buildings), a significant number of buildings may still need assessment to determine their level of safety, and work carried out on buildings, or access restrictions required. The "normal" Building Act powers may not allow action to be taken sufficiently quickly for both individual and community recovery, as not all buildings may be in a state that they are an "immediate danger" allowing urgent action to be taken under a chief executive's warrant. Also, where the concern is further earthquakes affecting buildings following a small earthquake the dangerous building definition cannot be applied.

Powers to assess buildings and restrict access

(Consultation document pages 17 to 20)

Proposal 2: Territorial authorities have powers to do assessments and place placards.

Territorial authorities have powers to do, or authorise, assessments during a state of emergency and up to one year after the state of emergency has ended. The power is reviewed every 28 days for up to 1 year after the state of emergency has been terminated.

Territorial authorities may place placards as a result of the assessment which will state the restrictions and requirements imposed on the buildings. Placards will be valid for three years after the state of emergency has been terminated.

Proposal 3: power to assess further and change placards.

Territorial authorities may require further assessments and change placards placed as a result of any previous assessments. Territorial authorities may undertake these assessments if necessary. The power is available for up to 3 years after the state of emergency has terminated.

Proposal 4: Territorial authorities have powers to restrict access including placing cordons and other protective measures (up to 3 years).

Territorial authorities can restrict access based on assessments up to three years after the state of emergency has been lifted. The placards placed on the building will state the restrictions and requirements imposed.

7. Should territorial authorities have the powers to continue to assess buildings and place placards for up to one year after the state of emergency has ended? Why / Why not?

   <u>Response</u>
   Yes, powers are needed to continue to identify and manage buildings immediately after the state of emergency ends. However, this should be a power to do assessments not an obligation on the territorial authority. The comments made above about the 1 year period are also relevant.

   <u>Additional comment</u>
   New legislation also needs to make clear the process for removal of placards within the 3 year timeframe. Robust evidence of work done or a subsequent assessment provided by a property owner, from a suitably qualified engineer, should be a requirement before a territorial authority can removes a placard.

8. Should territorial authorities be able to restrict access to buildings on the basis of an assessment? Why / Why not?

Response

Yes, territorial authorities require the power to restrict access to buildings on the basis of an initial assessment. The Territorial Authority should not need to be fully satisfied about the risks posed by a building before restricting access. However, there should be clear guidelines on when and in what situations building owners/occupiers are able to access their buildings. There is a need to provide a balance between the risks that owners/occupiers are willing to accept for themselves in accessing a building, against the wider public interest in emergency personnel not being put unnecessarily at risk.

In addition, clear guidelines are required regarding the provision and use of cordons. In the Council's submission to the Royal Commission, we made the following submissions with respect to cordoning of unsafe buildings/blocks of buildings:

> "….There should be provisions that automatically continue any cordons in place once the state of emergency ends, so there is no doubt as to the legality of any continued existence of cordons.
>
> In particular, clarity is needed on the powers that can be exercised to place and/or retain cordons around larger areas (as opposed to specific buildings) after a state of emergency has ceased. This is particularly relevant to areas where there are a significant number of URM buildings. Section 124(1)(a) of the Building Act 2004 is relatively clear that individual dangerous buildings can be cordoned, but it is not clear whether the same power can be used to cordon a wider area.
>
> It would also be useful for Councils, building owners, and the general public, if there was a clear standard that could be applied in relation to the cordoning of a building. If a standard was in place, although some judgement would still need to be exercised by engineers, there would be greater certainty. If a Council was required to apply a cordoning "standard" and in any situation that meant a certain area had to be closed off, there would be less pressure to reduce the cordoned area compared to where there is a discretion involved. Any such standard could also deal with how to prioritise the cordoning of buildings…."

9. Do you agree with the Royal Commission prioritisation of further assessments as outlined in Figure 4 (on page 19) of the Consultation document? Do you consider an alternative model could be used, and if so what is it?

Response

Yes, in principal figure 4 appears robust except for the treatment for Group 3 and 4 buildings. It is not clear why group 3 buildings do not have an interim use evaluation when there is no significant damage? Group 4 Unreinforced masonry buildings would be a higher risk even if there is no significant damage.

We recommend that the treatment for Group 3 and 4 buildings be the same. The consultation document does not clarify what priority there would be between residential and non-residential, which may be an issue when resources are stretched. Although all residential buildings had some assessment after the February 2011 earthquake, the initial priority was on cordoning off the most dangerous areas. But once that was done more time could be taken in relation to the cordoned buildings and it was important to ensure residents were living safely.

Removing immediate dangers

(Consultation document pages 21 to24)

Proposal 5: Resource or building consents will not be required to remove significant or immediate dangers.

A territorial authority will not require resource consent or building consent where urgent work is required to reduce or remove significant and immediate dangers for up to one year after the state of emergency has ended.
After issuing a warrant to remove significant and immediate dangers, Territorial Authorities may begin, or require work to begin, immediately.

Proposal 6: Heritage values will be taken into account where possible when removing significant or immediate dangers.

Territorial authorities should seek to preserve heritage values where possible.
Before issuing a warrant to undertake work to remove significant and urgent dangers, a territorial authority must:

- Obtain the approval of the Minister for Building and Housing, in consultation with the Minister for Arts, Culture and Heritage, for any buildings listed in district plans that are National Historic Landmarks, or Category 1 Historic Places.

- Give at least 24 hours' notice (where possible) to Heritage New Zealand Pouhere Taonga, and have particular regard to its advice in respect of heritage buildings individually listed in district plans, and buildings that are subject to a heritage order or covenant.

10. Should territorial authorities be able to do building work to remove immediate life-safety risks without the requirement for a resource or building consent? Why / Why not?

<u>Response</u>
Yes, the risk to life should outweigh the need to obtain building and/or resource consents. However, emphasis should be placed on seeking alternatives to demolition, including fencing, propping and partial demolition before permission is granted for full demolition.

Additional Comment

A clear definition is needed of what constitutes "immediate life-safety risks", and it should not be as restrictive as "immediate danger" in the current definition in s129. Any "immediate" powers should remain a chief executive power rather than a territorial authority power, because of the need for urgency.

If a chief executive warrant (as currently provided for in s129) is to be used, then it would be appropriate to formally recognise in legislation that the warrant can be put into effect by allowing the owner to carry out the work. That was the situation in Christchurch, following the September 2010 earthquake, in relation to the demolition of the Manchester Courts building. The owner agreed the building had to be demolished and instead of the territorial authority carrying out the work and recovering the costs from the owner, the owner made the arrangements for the demolition. However, if the territorial authority has to do the work there should be no need to apply to the Court following the issue of a warrant as currently required by s130. This was recognized as no appropriate to be included as a requirement in the Building Act Orders in Council following the September 2010 and February 2011 Canterbury earthquakes. If some mechanism for retrospective oversight of the issue of a warrant was needed or when there was a dispute over costs the determination regime already in the Building Act would be timelier and less expensive than a District Court application.

11. Is it appropriate to have Ministerial approval before undertaking work on any buildings listed in district plans that are National Historic Landmarks, or Category 1 Historic Places? Why / Why not?

Response

Yes, these are buildings of national significance and therefore Ministerial approval should be required before demolition is approved. This does not need to be a lengthy approval process.

Also, we suggest extending the buildings considered in this proposal from just those that are National Historic Landmarks and HNZ Category 1 Historic Places. Territorial Authorities have tiered groupings of significant heritage buildings and as a minimum the highest group listings should be included for the requirement for Ministerial approval before demolition. In the case of the Replacement District Plan for Christchurch City this would be the 'Group 1 Highly Significant Items'.

We would suggest that a multi-disciplinary panel be set up to provide advice for decisions on demolition approval so that they are not just based on structural engineering advice. There are significant architecture and larger town planning implications of demolitions of heritage buildings. Heritage buildings are frequently key landmark features which give an environment its sense of place and are important for tourism as well as for local and regional identity. Heritage buildings can assist with recovery following an event by providing an anchor with which new projects can relate to in terms of facilities, access, promotion and identity. The Arts Centre of Christchurch is a clear example of this anchor effect.

The Arts Centre is a landmark piece of urban form which provides continuity through an event such as an earthquake where there is the loss of many physical landmarks in a city. Removal of all landmark structures such as heritage buildings may undermine building owner confidence and create a momentum for demolition which may well hinder recovery in the longer term.
A multi-disciplinary panel would need to ensure a quick turn around on decisions and they would need clear timeframes. Ideally this would be more than the 24 hours Christchurch heritage staff were having to work with in the aftermath of the February 22 earthquake; 3 - 5 days would be more suitable.

12. Is it appropriate for territorial authorities to give at least 24 hours' notice (where possible) to Heritage New Zealand Pouhere Taonga (HNZPT), and have particular regard to its advice when considering actions on heritage buildings that are listed on district plans and/or subject to a heritage order or covenant? Why / Why not?

Response
Yes, but it is also important to advise and liaise with the Territorial Authority for the reasons outlined above as well as: building knowledge; financial interest via previous grant funding or the possibility of new grant funding; legal covenants; the ability to create and to undertake a retrieval strategy of significant items within or integrated on the building.

Removing dangers causing significant disruption

(Consultation document pages 25 to 27)

Proposal 7: Resource or building consents will not be required to remove dangers causing significant economic disruption.

Territorial authorities will not require resource or building consents when reducing or removing dangers causing significant economic disruption for up to 1 year.
Before issuing a warrant to undertake or require work to remove dangers causing significant economic disruption:

- The territorial authority must take reasonable steps to give notice to owners and tenants of the building, and owners and tenants of properties whose access is affected by the building.
- The parties will have the right to apply to the chief executive of MBIE for a determination where they dispute the issuing of the warrant.
- After issuing the warrant, the territorial authority must not commence the work for 48 hours (providing further opportunity for parties that dispute the warrant to seek a determination).

Proposal 8: Heritage values will be taken into account where possible when removing danger causing significant economic disruption

Territorial authorities should seek to preserve heritage values where possible.
Before issuing a warrant to undertake work to remove significant and urgent dangers, a territorial authority must:

- Obtain the approval of the Minister for Building and Housing, in consultation with the Minister for Arts, Culture and Heritage, for any buildings listed in district plans that are National Historic Landmarks, or Category 1 Historic Places.

- Have particular regard to advice from Heritage New Zealand Pouhere Taonga (HNZPT) for any other heritage buildings listed in district plans, and buildings that are subject to a heritage order or covenant. HNZPT will be allowed at least two weeks to provide their advice.

13. Should territorial authorities be able to remove dangers causing significant economic disruption without requiring resource or building consents? Why /Why not?

Response

Yes, however, clear definition will be required of what constitutes 'significant economic disruption' to properly justify action being taken without the usual controls under the

Resource Management and Building Acts. There may be a greater need for heritage matters to be considered for these buildings, compared to immediate life-safety risk buildings (see below). In addition emphasis should still be placed on seeking alternatives to demolition, including fencing, propping and partial demolition before permission is granted for full demolition (see the answer to question 10 above).

14. Is it appropriate to have Ministerial approval before undertaking work to remove dangers causing significant economic disruption on any buildings listed in district plans that are National Historic Landmarks, or Category 1 Historic Places? Why / Why not?

Response

Yes, these are buildings of national significance and therefore approval should definitely be required before demolition is approved, because this concerns significant economic disruption rather than life safety risk. Also see the answer to question 11 above.

15. Is it appropriate for Heritage New Zealand Pouhere Taonga (HNZPT) to have at least two weeks to provide advice to territorial authorities on removing dangers causing significant economic disruption on any other heritage buildings listed in district plans and/or subject to a heritage order or covenant Why / Why not?

Response

Yes, but it is also important to advise and liaise with the Territorial Authority for the same reasons outlined above in questions 11 and 12.

16. Should territorial authorities have particular regard to the advice of HNZPT? Why / Why not?

Response

Yes. Christchurch City Council already does this; there are benefits in sharing resources from experienced staff and ideas may be generated that are not at first obvious.

Examples

Case studies of buildings lost following the earthquakes that Council heritage team staff believe did not need to be demolished

The Majestic Theatre and the Christchurch Technical College Memorial Hall were demolished well over a year after the earthquake. However the proposal being put forward would be better than the current situation applying under the Canterbury Earthquake Recovery Authority where for example, the Memorial Hall decision was made over 3 years after the earthquakes (2/7/2014):

250 Moorhouse Ave - known as the 'Armson Woolstore Building'

This building was considered to be in reasonable condition considering earthquakes - mostly due to the structural upgrade which Council supported with grants that had been undertaken prior to the earthquakes. Disagreement between engineers occurred with the peer reviewer disagreeing with the owner's engineer that the building needed to be demolished; that it would be uneconomic to repair (there were no costings provided to back up that statement by the owner's engineer); or that there was risk of further collapse onto Kiwirail land. This did not appear to be a high risk as suggested by the owner's engineer.

Report from heritage staff (including a CPEng engineer) stated that based on the damage to the building being assessed as moderate, the team did not consider it needed to be demolished and suggested that it be made safe and repaired as suggested in the engineering report.

The buildings was signed off for demolition under Section 38 of the CER Act.

34A Hansons Lane - Nydfa

Again, the engineering peer review of the building suggested damage was moderate and the building could be reasonably repaired and strengthened. Heritage noted that consideration had not been given to options to repair and retain by the owner. The owner did not appear to want to keep the building and it was demolished under a Section 38.

122 Manchester Street - The Majestic Theatre

Engineers did not consider the building required full demolition - it was damaged enough to require partial demolition and stabilisation, but given it was the only remaining intact heritage theatre in the city, it had high heritage and landmark significance. The owners considered it would be too difficult and costly to retain. The Heritage Team were of the opinion that repair and retention would be cheaper than full demolition and a replacement building. The building was demolished under Section 38 in part due to proposed widening of Manchester Street.

120 Madras Street - CPIT Memorial Hall (originally the Christchurch Technical College Memorial Hall)
The building suffered only moderate damage from the earthquakes - there was a shortfall in funds between insurance and the cost to repair and strengthen, but one which Council pointed out could be met through Heritage Incentive or Landmark Heritage Grant Funding. CERA initially refused to sign the building off as dangerous following an engineering report on the extent of damage. The building was eventually signed off under Section 38 for recovery reasons, to enable CPIT to implement their master-plan in a timely manner and make way for a new purpose built facility. This was not due to structural or engineering reasons or due to the building being dangerous - in fact it was specifically stated that it was not due to the building being dangerous.

Removing danger in other situations

(Consultation document pages 28 to 29)

Proposal 9: Power to remove danger in other situations

Territorial authorities can undertake or require work to reduce or remove dangers in situations where danger to people is being managed temporarily (e.g. by cordons) and is not significantly disrupting other properties, for up to three years after the state of emergency has ended.

This power requires territorial authorities to use the normal resource and building consent processes under the Resource Management Act 1991 and the Building Act 2004.

17. Should territorial authorities be able to remove danger using building emergency management powers in situations when it is not posing an immediate life-safety risk or a significant economic disruption? Why / Why not?

Response
Yes, this would provide the opportunity to manage, in particular, earthquake damaged buildings in a similar manner to dangerous or insanitary buildings currently provided for in the Building Act. Specifically, it closes the "legislative gap" identified by the Royal Commission and it also allows the territorial authority to focus on managing issues identified during the placard process.

18. Should resource and building consent processes be followed in these situations? Why / Why not?

Response
Yes, it is appropriate in these non-urgent situations to follow usual processes.

19. Is three years after a state of emergency an appropriate timeframe for these powers? If not, what would you suggest is an appropriate timeframe?

Response

No, in our experience a 3 year period (subsequent to a large event) is not adequate as building evaluation may not be completed, mainly due to resources. We recommend a 5 year period from the end of the state of emergency

Appeals

(Consultation document page 30)

Proposal 10: Appeals

Appeals to the Chief Executive of MBIE about territorial authorities' building actions or omissions will be available in most situations.

Building owners will be able to apply for a determination against territorial authorities under section 177 of the Building Act regarding the use of building emergency management powers in most situations.

20. The appeal rights are intended to protect people from life-safety risks, by allowing territorial authorities to manage unusable buildings whilst not interfering with private property rights more than is absolutely necessary. Do the appeal rights have the correct balance between life-safety risks and private property rights? Why / why not?

Response

Yes, as the appeal process will be the same process currently available for decisions under the Building Act (determination application to MBIE).

Liability

(Consultation document page 31)

Proposal 11: Liability

Territorial authorities and assessors authorised by the territorial authority, will be under no liability arising from any action that they take in good faith under building emergency management powers.

21. Is it appropriate that territorial authorities and assessors are not liable for any action under the building emergency management powers for actions taken in good faith? Why / Why not?

Response

Yes, it is essential to remove liability from territorial authorities and assessors, not only to allow them to focus on the life-safety risk aspects but also to ensure there are adequate resources available. Unless this is available there will be a reluctance of many private assessors (e.g. engineers, inspectors etc) to assist the territorial authority with assessments. Liability protection should also be available if the legislation is extended to situations where the emergency management powers are used even if a state of emergency is not declared,

Costs

(Consultation document page 32)

Proposal 12: Costs

Owners will be liable for most costs associated with the building emergency management powers. Territorial authorities have the power to recover costs from owners for any work done.

Territorial authorities are responsible for the costs of the initial rapid building assessments and for cordons and restrictive measures for up to three months after the state of emergency has been lifted.

22. Is it appropriate for building owners to be liable for costs associated with the building emergency powers? Why / Why not?

Response

Yes. The territorial authority is already liable for the cost associated with the rapid assessment and for cordons (for a three month period). The liability on the owner for protective measures, detailed building assessment and repair or removal are consistent with the current provisions in the Building Act for dangerous buildings.

Compensation

(Consultation document page 33)

Proposal 13: Compensation
Owners will be liable for most costs associated with the building emergency management powers, but can seek compensation for actions where the action caused disproportionately more harm than good.

23. Are the compensation proposals appropriate? Why / Why not?

Response

Yes, on the basis that the compensations provisions are consistent with principles already existing in legislation. The new legislation should clearly define the nature and degree of disproportionality required to be shown to establish a right to compensation.

Offences

(Consultation document page 34)

Proposal 14: Offences
It will be an offence, with a fine of up to $5,000 for an individual and $50,000 for a body corporate, to interfere or not comply with protective measures and placards. It will be an offence, with a fine of up to $200,000, not to comply with a notice to remove danger, or to use a building in breach of the directions on a placard.

24. Where there is interference or non-compliance with protective measures and placards, is a fine of up to $5000 for an individual and up to $50,000 for a body corporate appropriate? Why / Why not?

Response

Yes, the penalty is commensurate with current offence provisions contained in the Building Act.

25. Is a fine of up to $200,000 appropriate for not complying with a notice to remove danger, or using a building in breach of the directions on the placard? Why / Why not?

Response

Yes, the penalty is commensurate with current offence provisions contained in the Building Act.