



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI



Building Act Emergency Management Proposals

Consultation Document

Building Act Emergency Management proposals

Consultation document

Minister's Foreword



The scale of loss of life and injuries caused by building failures in the Canterbury Earthquakes in February 2011 changed forever how we think about and deal with risks from buildings damaged by natural disasters.

The Canterbury Earthquakes Royal Commission rightly praised the huge effort put in by building professionals and emergency services dealing with the huge numbers of effected buildings immediately following the earthquakes.

I fully support that praise and also agree with the Royal Commission's recommendations that changes need to be made to ensure that we can learn from those tragic events and make improvements to ensure a more effective and efficient response in the future.

In particular the Royal Commission recommended that an enhanced system be established to manage buildings after an event to better assess any risk they may pose to the community and how we deal with those buildings.

An example of this is the shift away from the 'traffic light' system of red, yellow and green placards to indicate the condition of a building. The colours that will instead be used are red, yellow and white. Red means entry to the building is prohibited, yellow means restricted access and white means light or no damage.

The Canterbury earthquakes showed that people assumed a green placard meant the building had no issues and was good to go. In reality, it meant that on visual inspection the building could be used, but should have had a further detailed evaluation. The new white

placard will indicate that the building is poses low risk, but it does not necessary mean it is safe.

Last year I launched field guides for a new system for managing buildings in the event of a disaster. These field guides provide support to building assessors who will undertake the initial building assessments to quickly establish risks posed by buildings. The building assessors are drawn from a trained pool of around 400 building professionals based around the country that can be called upon to respond to any emergency.

This new system and the field guides will ensure a nationally consistent approach which will mean a more effective and efficient response after future disasters.

The proposals in this document outline amendments (referred to as Building Act emergency management powers) to the Building Act in order to give legislative support to the new system.

The proposals aim to protect people from life-safety and injury risks from buildings after a disaster. They also mean that owners and users of buildings will have more certainty about the process they should follow after disasters. Where expert assessors give buildings red or yellow placards, owners will have a clear process for fully assessing the risks of their buildings and for taking action where risks are likely to cause injury or death. It enables public services in the meantime to focus on areas of critical need in the period immediately following a disaster.

The proposals avoid the confusion and risk to life that could occur in the absence of clear powers and processes, and puts an end to the unenviable situation we currently face where placards cease to have effect when states of emergency are terminated. The proposals create certainty for building owners, balancing their rights as property owners with the responsibility to act when their building endangers life.

Life-safety will be protected without unnecessary loss of heritage – the proposals create a process to consider heritage in situations where urgent action is needed on a building that is posing risks to life.

This is a great opportunity to develop a system that will ensure New Zealand is better placed to respond to events that can have such significant impact on our communities.

I value your views and input into these proposals.

Table of Contents

<u>Minister’s Foreword</u>	2
<u>Purpose</u>	5
<u>How to have your say</u>	5
<u>Publication of Submissions, the Official Information Act 1982 and the Privacy Act 1993</u>	6
<u>What Happens Next</u>	6
<u>Contacts</u>	6
<u>Section 1: Background</u>	7
1.1 Current system to manage potentially unsafe buildings	7
1.2 Issues with the current post-disaster legislative framework	9
1.3 The Canterbury Earthquakes Royal Commission	10
<u>Section 2: Proposed system to manage buildings and life safety risks after a state of emergency</u>	12
2.1 Overall view of the proposed system	12
2.2 Using the building emergency management powers	14
2.3 Powers to assess buildings and restrict access	17
2.4 Removing immediate dangers.....	21
2.5 Removing dangers causing significant disruption	25
2.6 Removing danger in other situations.....	28
<u>Section 3: Other provisions that support the proposals</u>	30
3.1 Appeals	30
3.2 Liability.....	31
3.3 Costs	32
3.4 Compensation.....	33
3.5 Offences	34
<u>Appendix: Canterbury Earthquakes Royal Commission recommendations on post-disaster building management</u>	35

Purpose

The Ministry of Business, Innovation and Employment (MBIE) is seeking comments on a set of proposals to manage unsafe buildings and life-safety risks during and after a state of emergency. The proposals are referred to as the Building Act emergency management powers.

The proposals in this document result from recommendations of the Canterbury Earthquakes Royal Commission (Final Report – Part Two, Volume 4 and Part Three, Volume 7) and Ministry analysis on post-disaster building management.

The proposals are intended to:

- Minimise injury or death caused by buildings after states of emergency.
- Provide a more orderly transition from states of emergency where the scale of building damage and building risks is significant.
- Manage unsafe buildings in situations when resources may be strained and there may be significant risk of subsequent extraordinary events.
- Minimise cost of disruption to the services delivered by buildings posing danger, and nearby properties.
- Provide greater clarity in the process of managing unusable buildings after a state of emergency.

The proposals are part of wider work streams to address the recommendations of the Canterbury Earthquakes Royal Commission (the Royal Commission). These workstreams include the management of earthquake-prone buildings and the consideration of occupational regulation for engineers.

How to have your say

Please make your submission online if possible, either using the online survey tool or by email to this address: buildingactemergencymanagement@mbie.govt.nz

Paper submissions will also be accepted. Please use the feedback form downloaded from MBIE's website at: <http://www.mbie.govt.nz/about-us/consultation/building-act-emergency-management>.

Submissions on some or all of the questions are welcome.

The consultation process runs until 5pm Friday 24 July 2015.

Publication of submissions, the Official Information Act and the Privacy Act

MBIE intends to publish a summary of submissions on its website. MBIE will not publish the content of your submission.

However, your submission will be subject to the Official Information Act 1982 and may therefore be released in part or full, if requested. The Privacy Act 1993 also applies. When making your submission, please state if you have any objections to the release of any information contained in your submission. If so, please identify which parts of your submission you request to be withheld and the grounds under the Official Information Act for doing so (e.g. that it would be likely to unfairly prejudice the commercial position of the person providing the information).

For guidance on the Official Information Act, refer to

www.ombudsman.parliament.nz/resources-and-publications/guides/official-information-legislation-guides

What happens next

After the consultation period finishes, MBIE will analyse feedback and submissions and report back to the Government. The Government will then make decisions on policy proposals for a building emergency management system.

If adopted, the proposals will require legislative change to the Building Act 2004, This would provide further opportunity for public input through the select committee process. Depending on other legislative priorities, changes could be introduced in 2015 or 2016.

Contacts

For further information please email buildingactemergencymanagement@mbie.govt.nz

Section 1: Background

1.1 Current system to manage potentially unsafe buildings

The Civil Defence Emergency Management Act 2002 (CDEM Act) provides broad powers to manage buildings during declared states of emergency. Under these powers, buildings are rapidly assessed, and access is restricted where buildings are assessed as unusable. For some unusable buildings, further assessment is recommended to clarify the risk. The CDEM Act also provides powers to undertake building work (including demolition). All powers to manage buildings under the CDEM Act cease to have effect when states of emergency end.

The Building Act 2004 (the Building Act) provides powers to manage buildings which are deemed dangerous or insanitary. A dangerous building is defined (in part) in the Building Act if:

“in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause—

- (i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or*
- (ii) damage to other property”.*¹

Territorial authorities have powers to manage dangerous buildings and can carry out or require work to be done on these buildings.

¹ Section 121, Building Act 2004

Figure 1: Current system to manage unsafe buildings

	Civil Defence Emergency Management Act 2002	Building Act 2004
When it can be used	During a declared state of emergency under sections 66 or 68 of the Civil Defence Emergency Management Act 2002.	Any time
Provisions to manage unusable buildings	<p>Section 85</p> <p>A Civil Defence Group, or delegated authority such as a Controller, have the powers to carry out or require to be carried out works; or removing or disposing of, or securing or otherwise making safe, dangerous structures and materials wherever they may be.</p> <p>Section 86</p> <p>A Controller may evacuate and exclude persons from any premises or place.</p> <p>Section 91</p> <p>A Controller, police officer, or person under authority of a Controller may direct any person to stop an activity or request any action to prevent or limit the extent of the emergency (this may include the owner or occupier of a building).</p> <p>Section 92</p> <p>Civil Defence Controllers may examine, secure or destroy any property in order to prevent or limit the extent of the emergency.</p>	<p>Sections 121 – 129</p> <p>Territorial authorities have powers to manage dangerous, affected, earthquake-prone and insanitary buildings as defined in the Act. Territorial authorities can require work to be done, or carry out work themselves.</p>

1.2 Issues with the current post-disaster legislative framework

The powers under the CDEM Act that are available during the state of emergency to manage buildings cease at the end of that state of emergency. This includes the powers to inspect buildings, restrict access and undertake building work. It is unlikely that all building issues identified during the state of emergency will have been resolved under the state of emergency.

The Building Act provides insufficient powers to continue to manage all buildings that were managed under the broad powers in the CDEM Act, because immediately after a state of emergency there could still be:

- urgency and strained resources: rapid assessments made in uncertain conditions may be insufficient evidence for using Building Act powers
- extraordinary events: there could be a high risk of subsequent extraordinary events or earthquakes but Building Act powers to manage dangers do not apply to such events.

There is a need for transitional powers between the CDEM Act and the Building Act functions. The current system does not provide clarity and smooth management of unusable buildings after a state of emergency is lifted.

After the Canterbury Earthquakes in 2010 and 2011, this gap in powers was addressed by Orders in Council made under special legislation. Issues with restrictions on removing or deconstructing buildings also led to uncertainty and delays in managing unsafe buildings after the Canterbury Earthquakes.

Following the Gisborne earthquake in 2007, the post-disaster management system required local authorities to place placards during the two day long state of emergency, then re-assign placarded buildings with dangerous building notices under section 124 of the Building Act once the state of emergency had ended – a duplication of effort during a time when resources were stretched and would likely be in any future event.

1.3 The Canterbury Earthquakes Royal Commission

The Royal Commission of Inquiry into Building Failure caused by the Canterbury Earthquakes (the Royal Commission) was established in 2011 to inquire into building failures as a result of the Canterbury Earthquakes.

The Royal Commission's Final Report was delivered during late 2012. The Royal Commission found existing legislation does not provide a transition mechanism or ongoing risk management powers for buildings that are unusable after states of emergency end, but which do not fall under the classification of a 'dangerous building' under section 124 of the Building Act.

The Royal Commission identified deficiencies and barriers in legislation and in the interpretation and implementation of the law that applied to the management of building risks following the Canterbury Earthquakes. The Royal Commission's concerns fell into four main areas:

1. basis to judge risks and to direct owner responses is inadequate
2. powers to transition from states of emergency to ongoing building risk management are incomplete; this includes building safety placards, interventions and follow ups
3. directives, roles and responsibilities for managing building risk are unclear and lack certainty
4. management of buildings posing actual or likely life-safety risks was incomplete; including a lack of sufficient powers in some instances.

The Royal Commission made 15 recommendations on managing buildings during and following emergencies. The principal recommendation in this area was that:

'Life safety should be the overarching objective of building management after earthquakes as communities respond to and recover from disaster'.

The Royal Commission's recommendations to manage future events include:²

1. clearer powers to manage building risks during state of emergency timeframes
2. an enhanced risk-based building safety evaluation regime, to commence in states of emergency and continue after states of emergency
3. increased clarity and certainty on who, when and where risk-based building safety placarding and protective measures (e.g. fall-zones) are established during states of

² See Appendix for a full list of the Royal Commission recommendations on post-disaster building management.

emergency as well as provision for keeping these in place until the risks are fully followed-up

4. transition mechanisms from states of emergency to post-states of emergency situations, including the continuation of building safety placards and protective measures
5. stronger powers, after states of emergency end, for pre-emptive management of likely building life-safety risks, including the demolition or deconstruction of heritage buildings, and damaged buildings creating off-site risks, without requiring normal authorisations.

The proposals in this document contribute to delivering the Government's response to the Canterbury Earthquakes Royal Commission along with the Building (Earthquake-Prone Buildings) Amendment Bill and measures to improve the occupational regulation of professional engineers.

The proposals reflect existing best international practice for responding to emergency events that result in building risks.

Section 2: Proposed system to manage buildings and life-safety risks after a state of emergency (the building emergency management proposals)

MBIE is proposing amendments to the Building Act to provide a more orderly transition from a state of emergency declared under the CDEM Act where the scale of building damage and risk is significant.

These amendments are referred to as the building emergency management powers and are intended to be used after any type of event, including earthquake, flooding, wind events or volcanic eruption, that have resulted in a state of emergency.

The key objectives of the powers are to protect people from life-safety and injury risks from buildings after an emergency while minimising disruption of the services provided by buildings.

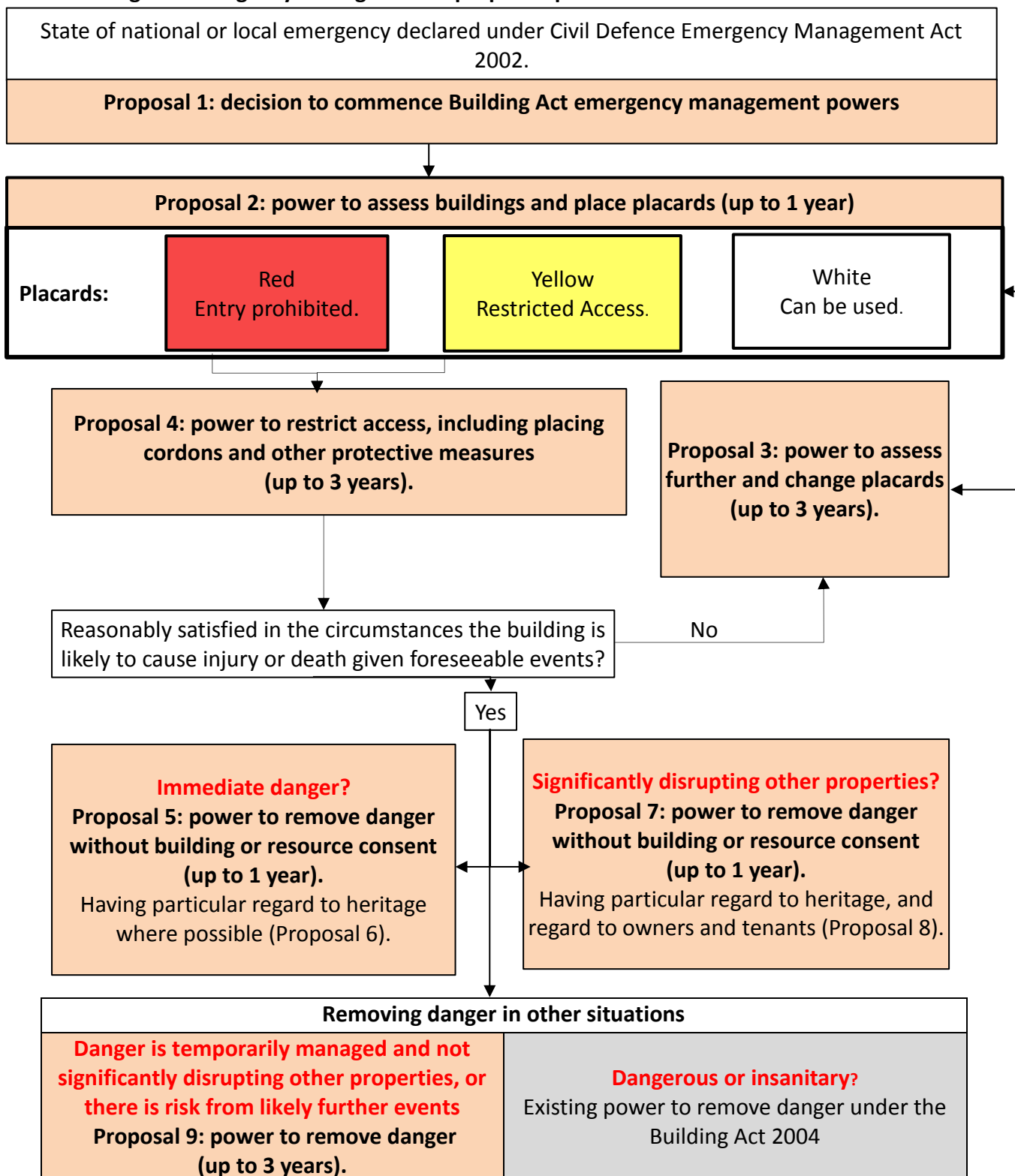
The powers will, in some circumstances, override processes contained in the Resource Management Act 1991 and the Building Act. They do not override provisions of any other current legislation.

The powers are discussed in the following six parts:

- 2.1 Overall view of the proposed system
- 2.2 Using the Building Act emergency management powers
- 2.3 Powers to assess buildings and restrict access
- 2.4 Removing immediate dangers
- 2.5 Removing dangers causing significant disruption
- 2.6 Removing danger in other situations

2.1 Overall view of the proposed system

Figure 2: Building Act emergency management – proposed powers



2.2 Using the Building Act emergency management powers

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 controller³ 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.

Consideration of the factors above will help determine the extent and duration of building emergency management powers that are required.

³ Controller: the person who is the National Controller in accordance with section 10, or a Group Controller appointed under section 26 of the Civil Defence Emergency Management Act 2002.

Duration of the Powers

The powers that can be renewed for up to one year are those that enable territorial authorities to make initial building assessments and take action to reduce or remove more immediate risk. The powers are stronger than those under existing legislation. The requirement to review the need to use the proposed powers every 28 days prevents excessive or unnecessary use.

The remaining powers enable further assessments and work to take place on individual buildings to address the risks identified in the assessments. These powers are similar to those in existing legislation and will be required until the process for each building is completed. A three year timeframe is considered long enough for the powers to remain in force to allow assessments and work to occur, even subsequent to a large event.

Linking the powers to a state of emergency

The Royal Commission recommended that building emergency management interventions should not commence unless a state of emergency has first been declared. The Royal Commission said '*... removing the rights of property owners outside of a state of emergency is not appropriate.*' And '*...if the impact of an event warrants carrying out a building safety evaluation operation, then it is likely to be significant enough to warrant a declaration.*'⁴

MBIE considers that the proposed building emergency management framework should have a high threshold for when the proposed powers can be used due to possible impacts upon property rights and heritage considerations. Linking the use of the powers to a declaration of state of emergency provides such a threshold and creates safeguards for building owners and reflects the recommendation of the Royal Commission.

The building emergency framework would be used during and after the state of emergency to provide a transition from powers used under the state of emergency to the normal powers of the Building Act. Examples could be where the scale of damage or life risk posed by buildings following an event has overwhelmed the resources of a territorial authority, resulting in a state of emergency.

MBIE considers that existing Building Act powers are adequate for situations resulting in building risk, where a state of emergency has not been declared. However it has been suggested that there may be some instances where building emergency measures are warranted outside of a state of emergency. For example, in some situations where no state

⁴ Canterbury Earthquakes Royal Commission Final Report, Volume 7, pages 16 and 17.

of emergency is declared a significant number of buildings may need assessment to determine if they pose a risk.

Key Questions

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

- 1 Are the considerations that must be taken into account appropriate? Why / Why not?
- 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?
- 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?
- 4 Is the requirement to review the proposed 1 year powers every 28 days appropriate? Why / Why not?
- 5 Is it appropriate to link the building emergency powers to a state of emergency? Why /Why not?
- 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.

2.3 Powers to assess buildings and restrict access

Under current CDEM Act powers during states of emergency, rapid assessments are done on buildings, followed by more detailed assessments where warranted. Access to buildings that assessors are of the opinion are unusable is restricted, and dangers can be removed.

Powers are needed to continue to identify and manage these buildings immediately after the state of emergency ends, while transitioning to a situation where normal powers are adequate for managing the risks.

Assessing buildings and placing placards

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.

These powers are available for up to one year after the state of emergency has ended, but are required to be reviewed by the territorial authority every 28 days to ensure they are not used unnecessarily.

No later than one year after the state of emergency has ended the proposed building emergency management powers to assess buildings and place placards will end.

While it is intended that by this time the most significant building risks will have been removed territorial authorities may still need to be able to resolve remaining risk or keep placards or protective measures in place. This is not currently provided for in the Building Act.

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.

The powers to assess further and change placards are available for up to three years after the state of emergency has ended, as needed. Placards will also expire after a maximum of three years. It is considered that this provides a sufficient amount of time for territorial authorities to assess any risk or danger.

Figure 3 – Placards that will be used under the proposed powers

Placard	
Red	A building will receive a red placard when an assessor is of the opinion the building is unusable and poses a danger for entry and occupation. The building will have sustained significant damage or be at risk from external factors such as adjacent buildings, ground failure or other environmental hazards. Access to buildings with red placards is totally prohibited. It is important to note that a red placard does not necessarily mean that a demolition is required .
Yellow	A building will receive a yellow placard if the assessor is of the opinion that the building requires restriction on its usage. Access to buildings with yellow placards will either be partially restricted (such as a single damaged room) or prohibited except for short term supervised entry for essential purposes.
White	A building will receive a white placard when no damage has been observed that increases the risk to public safety for use or occupancy of the building. The white placard means that occupancy and use is permitted with no restrictions. It does not guarantee that the building is safe. It is recommended that building owners should still undertake more thorough assessments as soon as they are able.

The Royal Commission recommended that further assessments should be prioritised based on four building categories, developed to allow for changes in design practice.⁵ This model is shown in Figure 4 below.

MBIE has based current operational guidelines around this model. We are seeking views on whether the Royal Commission’s prioritisation of further assessments is the most appropriate method. If there are potentially alternative models that could be used we are seeking information on those models and why they would be a better approach.

Figure 4: Evaluations required following Level 1 Rapid Assessments			
Group	Building Type	<i>No Significant Damage</i>	<i>Significant Damage</i>
1	Built after 1994 (meets modern steel and concrete standards) OR Unreinforced masonry (strengthened to 67% NBS or above)	Level 2 Rapid Assessment [Internal visual assessment]	Less significant = Interim Use Evaluation More significant = Detailed Evaluation
2	Built 1976 to mid-1990s AND Not in Group 1	Interim Use Evaluation [Plans Based Assessment]	Detailed Evaluation
3	Built pre-1976 AND Not in Group 1	Detailed Evaluation	
4	Unreinforced masonry	Interim Use Evaluation	Detailed Evaluation

Restricting access to buildings

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.

⁵ Recommendation 151, Volume 7, Canterbury Earthquakes Royal Commission Final Report

Cordons and other protective measures will be valid for up to three years after the state of emergency has been lifted.

Territorial authorities are responsible for maintaining any cordons that are in place at the end of a state of emergency until the public space or building they surround is made safe.

As outlined in proposal 12 territorial authorities will be able to recover the costs of maintaining individual building cordons from the building owner after they have been in place longer than three months.

A difference from existing Building Act powers for managing dangerous buildings will be that territorial authorities will not need to be fully satisfied about the risks posed by a building before restricting access. The best practice for building emergency operations is to restrict access based on initial assessments, and to follow up with further detailed assessments if more clarity is needed about the risk.

These powers will provide assurance that people will not be occupying or approaching buildings assessed as potentially unusable.

Key Questions

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

- 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?
- 8 Should territorial authorities be able to restrict access to buildings on the basis of an assessment? Why / Why not?
- 9 Do you agree with the Royal Commission prioritisation of further assessments as outlined in Figure 4? Do you consider an alternative model could be used, and if so what is it?

2.4 Removing immediate dangers

After states of emergency, it is possible that immediate dangers need to be urgently removed, and cannot be temporarily managed by cordons. Situations where this could occur could include:

- significant dangers to life that cannot be managed temporarily
- dangers to emergency services
- dangers to life-line utilities
- designated emergency access routes that are not practical to manage in another way.

Removing danger can include full demolition, removing parts of the building posing danger (for example, the removal of parapets) or shoring up of damaged buildings. These proposals assume that the action will be limited to what is necessary to remove the life-safety risk or minimise disruption.

Ability to bypass consent processes for life-safety protection

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.

This power is available for up to one year after a state of emergency, but must be reviewed by the territorial authority every 28 days to determine if the powers are still necessary. Territorial authorities must take into account factors a-k listed in proposal 1 to determine if the power is still necessary.

The proposal seeks to protect building owners by limiting the circumstances in which the powers can be used, and requiring the territorial authority to be reasonably satisfied that the work is necessary. This contrasts with the broad powers to address immediate building risks that are available during the state of emergency under the CDEM Act.

When making a decision to remove a building, or part of a building, a territorial authority would be required to reconsider the criteria for commencement of a building safety

evaluation (factors a-k listed in Proposal 1), the circumstances at the time, and reasonable alternatives.

The territorial authority must take reasonable steps to give notice to owners and tenants of the building, but any shortcoming in the process of notifying these parties would not affect the validity of the warrant.

Owners will be liable for costs of work to remove the danger, which would be a charge on the land. This is consistent with Building Act provisions for dangerous buildings.

To ensure that significant life-safety risks are mitigated as quickly as possible and to enable decision-makers to take appropriate and timely actions in the public interest, these proposals do not allow for a right to apply for a determination⁶ or to appeal against a decision made by the territorial authority under these powers.

No compensation will be paid to owners for buildings that are lawfully removed under the building emergency management powers. This approach is consistent with the principles of compensation for demolition in states of emergency and the public interest principle – that protecting people from harm may outweigh private property rights in emergencies.

Compensation may be available for actions where the action caused disproportionately more harm than good (see proposal 13).

This proposal addresses a gap in the powers available immediately after a state of emergency, and strikes a balance between the need for urgent action to protect life and the need to protect owners' rights to the greatest extent possible.

⁶ In these circumstances a determination is an appeal to the Chief Executive of MBIE for a determination in relation to powers exercised by authority of the Building Act.

Consideration of heritage values when removing immediate dangers⁷

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.

Entry on the New Zealand Heritage List, maintained by Heritage New Zealand Pouhere Taonga, identifies significant historic heritage places, but does not give automatic protection. Under the Resource Management Act territorial authorities have some responsibility to provide for heritage in their district plans.

Proposal 6 would protect heritage values where possible and prevent unnecessary loss of heritage buildings where demolishing the building would not significantly improve life-safety. This proposal is consistent with the principle in the Building Act to facilitate the preservation of buildings of significant historical or heritage value.⁸

⁷ The Heritage New Zealand Pouhere Taonga Act 2014 contains full descriptions of the terms used in this proposal. See section 81 of that Act for 'National Historical Landmarks', section 65(4) for 'Category 1 historic places' and section 65 for the 'New Zealand Heritage List'.

⁸ Section 4 (2) (l) Building Act 2004.

Key Questions

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

- 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?
- 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?
- 12 Is it appropriate for territorial authorities to give at least 24 hours' notice (where possible) to Heritage New Zealand Pouhere Taonga, 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?

2.5 Removing dangers causing significant disruption

This leaves the issue of immediate dangers that are feasible to cordon, but are creating significant economic disruption to other properties (and the building causing the disruption might be damaged beyond repair). An example of this may be where a severely damaged building is forcing the closure of other, undamaged, buildings. This can impose high cost on the owners of the undamaged buildings as well as slowing the recovery process in the area.

Such situations might be dealt with during the state of emergency, but there is the potential that they could also become apparent after the state of emergency.

Ability to bypass consent processes to prevent significant economic disruption

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).

When making a decision to remove a building a territorial authority would be required to reconsider the criteria for commencement of a building safety evaluation as listed in Proposal 1, the circumstances at the time, and reasonable alternatives.

Territorial authorities would also need to ensure that work does not do more harm than good. Territorial authorities must be satisfied that the work necessary to remove the danger posed by a building that is significantly disrupting access to other properties does not cause

costs to the damaged building that are higher than the economic costs of disruption being mitigated.

The right to apply to the Chief Executive of MBIE for a determination mirrors the appeals process for powers in the Building Act for removing immediate dangers.

Consideration of heritage values when removing danger causing significant economic disruption

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 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.

Proposal 8 would protect heritage values where possible and prevent unnecessary loss of heritage buildings where demolishing the building would not significantly improve occupancy or remove a significant economic disruption. The proposal is consistent with the principle in the Building Act to facilitate the preservation of buildings of significant historical or heritage value.⁹

⁹ Section 4 (2) (l) Building Act 2004.

Key Questions

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

- 13 Should territorial authorities be able to remove dangers causing significant economic disruption without requiring resource or building consents? Why /Why not?
- 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?
- 15 Is it appropriate for Heritage New Zealand Pouhere Taonga 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?
- 16 Should territorial authorities have particular regard to the advice of HNZPT? Why / Why not?

2.6 Removing danger in other situations

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.

Once buildings that are posing immediate danger or a significant disruption have been dealt with under proposals 5 and 7, territorial authorities can address other buildings posing a danger. Proposal 9 applies to danger that is likely to cause injury or death given reasonably foreseeable events, which includes danger arising due to likely subsequent events (such as aftershocks, which are likely to occur following an earthquake).

This power is similar to those already available in the Building Act to manage dangerous buildings but allows for damage caused by earthquakes to be managed, closing the legislative gap identified by the Royal Commission. It also allows territorial authorities to finish managing dangers that were identified during the placarding process in proposal 2.

The power enables territorial authorities to make more informed decisions once they are in a better resourced position after a state of emergency.

Proposal 9 is suited to situations where danger to people is being managed temporarily (e.g. by cordons) and is not significantly disrupting other properties. In such situations, there is less justification for overriding normal processes. Territorial authorities would therefore be required to follow standard resource consent and building consent processes through the Resource Management Act and Building Act.

When deciding to use the power to remove danger in other situations, territorial authorities would take into account alternative ways of managing the danger (aside from doing building work to remove it). One alternative might be to continue to restrict access until the likelihood of extraordinary events subsides.

Appeal rights and compensation provisions will help to avoid any loss to owners resulting from work on their building being disproportionate to the benefit of doing that work.

Proposal 9 provides for the protection of heritage, because resource consent would be required prior to any work being carried out.

People would be adequately protected from risk during the resource consent process (and where that is not the case, territorial authorities would have power under Proposal 5 or Proposal 7 to take urgent action). A three year timeframe is considered long enough for the powers to remain in force to allow work to occur, even subsequent to a large event.

Key Questions

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

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

Section 3: Other provisions that support the proposals

3.1 Appeals

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.

Appeals will be available in most situations, except where immediate dangers are required to be removed (as noted in section 2.4). This proposed appeal process is the same process currently available for other decisions under the Building Act, including decisions relating to dangerous buildings.

Key Question

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

- 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?

3.2 Liability

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.

Removing liability from territorial authorities and assessors allows them to focus on the life-safety risks they are addressing and make the best decision possible in the circumstances. This proposal mirrors existing provisions in section 129 of the Building Act concerning building work to remove immediate dangers.

Key Question

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

- 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?

3.3 Costs

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.

The charging provisions are consistent with Building Act provisions for dangerous buildings.

Owners are liable to pay or reimburse territorial authorities for:

- costs associated with protective measures such as cordons (if still in place three months after the state of emergency has been lifted)
- building assessments (excluding the initial rapid building assessments)
- building work associated with repair, removal or disposal.

Territorial authorities can take steps to recover such debts, or they would become a charge on the land if remained unpaid.

Key Question

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

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

3.4 Compensation

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.

The compensation provisions are consistent with principles already existing in legislation.

While no compensation will be paid to owners for buildings that are lawfully removed under the building emergency management powers, the proposal is also intended to constrain activity where the cost is disproportionate to the benefit. For example, removing danger through demolition where more cost effective alternatives were available or continuing to restrict access for longer than necessary.

Key Question

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

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

3.5 Offences

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.

Key Questions

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

- 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?
- 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?

Appendix: Canterbury Earthquakes Royal Commission recommendations on post-disaster building management

- **Recommendation (Rec) 92:** The Building Act [2004] should be amended to empower territorial authorities to take action where a building is not deemed dangerous under section 121 or earthquake-prone under section 122, but requires immediate repair or demolition due to damage caused by an event such as an earthquake. [See Volume 4 for discussion].
- **Rec 100:** Legislation would provide that, where a building is in a state that makes demolition or protective works necessary to protect persons from injury or death, no consent is required, regardless of whether the building is protected by a district plan, or registered or otherwise protected under the Historic Places Trust Act 1993 (Replaced by the Heritage New Zealand Pouhere Toanga Act 2014) [See Volume 4 for discussion noting that the proposals include modifications safeguard heritage values)
- **Rec 112:** The building safety evaluation process should be used following a range of disasters. [See Volume 7 for discussion on this Rec, and all the following Recs listed].
- **Rec 113:** Legislation should provide that a building safety evaluation should only be commenced during a state of emergency.
- **Rec 114:** The Ministry of Business, Innovation and Employment [MBIE] should progress its proposals to incorporate new emergency risk management provisions into the Building Act to:
 - i) Make MBIE responsible for the development and maintenance of New Zealand's building safety evaluation operation
 - ii) Make territorial authorities responsible for delivering a building safety evaluation operation
 - iii) Give MBIE a formal role within national civil defence and emergency planning arrangements.
- **Rec 121:** Legislation should continue to provide a waiver of liability for building safety evaluators carrying out rapid assessments.

- **Rec 122:** The liability waiver for building safety evaluators should be aligned with the building safety evaluation process instead of being restricted to an operation carried out in a state of emergency.
- **Rec 133:** Only trained building safety evaluators should be authorised to participate in a building safety evaluation operation unless the circumstances of a particular disaster makes this impractical.
- **Rec 141:** Only official building safety evaluators should be authorised to place, change or remove placards, and to carry out rapid assessments for this purpose.
- **Rec 144:** Formal procedures should be developed that set out what and how the status of a building could be changed. The placard on a building should only be changed if the formal procedures are followed.
- **Rec 151:** After an earthquake that has given rise to the declaration of a state of emergency, buildings should be assessed in accordance with the following process:
 - (a) all buildings should be subject to a rapid assessment process
 - (b) for the purposes of subsequent steps, buildings should be placed in the following categories:
 - i) Group 1: non-unreinforced masonry buildings that do not have a known critical structural weakness, and either, - in the case of concrete buildings were designed to NZS 3101:1995 or later editions of that Standard; - in the case of structural steel buildings, were designed to NZS 3404:1992 (informed by the Heavy Engineering Research Association guidelines published in 1994) or later editions of that Standard; or have been subject to an evaluation that has shown that the building has 67% ULS or greater (we discuss the term “ULS” in section 6.2.4 of Volume 4)
 - ii) Group 2: buildings designed between 1976 and the mid-1990s, but not included in Group 1
 - iii) Group 3: buildings designed before 1976, but not included in Group 1
 - iv) Group 4: unreinforced masonry buildings;
 - (c) buildings used for residential purposes that are three or less storeys in height should be excluded from Groups 2 and 3. In the case of those buildings, a

pragmatic approach needs to be taken to assessment and occupancy, which balances the need for shelter with safety considerations. Other commercial and residential buildings should not be occupied unless approved for occupancy in accordance with the process outlined below

(d) legislation should require territorial authorities to classify buildings in their districts in accordance with the preceding recommendation within the timeframes established under Rec 82 in Volume 4 of our Report [Rec 82 requires the assessment of earthquake-prone and potentially earthquake-prone buildings]

(e) where the rapid assessment process had identified the need for further evaluation of a building in one of these defined Groups, the building should not be occupied until the Civil Defence Controller or the territorial authority (as appropriate) has approved the occupancy of the building after the following assessments:

i) for Group 1 buildings: - where no significant structural damage was seen, a Level 2 Rapid Assessment; - where significant structural damage was seen, a Plans-Based Assessment [PBA] for lower levels of structural damage and a Detailed Engineering Evaluation [DEE] for higher levels of structural damage

ii) for Group 2 buildings: where no significant structural damage was seen, a PBA; where significant structural damage was seen, a DEE

iii) for Group 3 buildings: for all levels of damage, a DEE

iv) for Group 4 buildings: - where no significant structural damage was seen and the building has been retrofitted to 67% ULS or greater, a PBA; - where significant structural damage is apparent and where the building has not been retrofitted to 67% ULS or greater, a DEE

(f) arranging for the PBAs and DEEs should be the responsibility of the owner of the buildings concerned

(g) MBIE should further develop the PBA concept, in consultation with the NZ Society for Earthquake Engineering and the Structural Engineering Society NZ, and set out the PBA in published guidelines. [To be detailed in regulations].

- **Rec 157:** Territorial authorities should be responsible for maintaining any cordons that are in place at the end of a state of emergency until the public space or building they surround is made safe.
- **Rec 158:** Territorial authorities should be able to recover the costs of maintaining cordons from the building owner after three months.
- **Rec 159:** The roles and responsibilities of decision makers should be described in the building safety evaluation process. The roles and responsibilities should allow for flexibility of operation according to circumstances and scale of events.
- **Rec 161:** The building safety evaluation and wider building management after earthquakes (and other disasters) framework should be developed and provided for in legislation.