

Building Act Emergency Management Proposals

Submission to Ministry of Business, Innovation and Employment

28 July 2015

Introduction

This joint Institution of Professional Engineers New Zealand (IPENZ) and Structural Engineering Society of New Zealand (SESOC) submission has been prepared by members of the SESOC Management Committee and IPENZ staff.

The Institution of Professional Engineers New Zealand (IPENZ) is the lead national professional body representing the engineering profession in New Zealand. It has approximately 16,000 Members, including a cross-section from engineering students, to practising engineers, to senior Members in positions of responsibility in business. IPENZ is non-aligned and seeks to contribute to the community in matters of national interest giving a learned view on important issues, independent of any commercial interest.

SESOC is a collaborating technical society of IPENZ, with a membership of approximately 1600, most of whom are practising structural engineers. Many of our members have participated in the review of buildings after recent earthquakes, some as volunteers in the immediate safety evaluation phase, many more since in the detailed evaluations during the recovery phase. SESOC is non-political and its aim is to contribute to society and the economy by fostering good engineering practice in our built environment.

SESOC has previously submitted to the Canterbury Earthquake Royal Commission (CERC) a document titled "Building Management after Earthquakes" dated 27 July 2012, a copy of which is available on request.

We would like to acknowledge the previous good work by both the CERC and MBIE that has resulted in this consultation document. It is important for public safety, the ability of communities to recover post an event and protection of property rights that Building Act amendments such as those proposed are passed. We fully endorse and support the purpose of the consultation document and in principal agree with many of the 14 proposals.

We also acknowledge that this is just part of a suite of changes. Other initiatives such as training assessors to carry out RBA and the review of the Earthquake prone building policy are all important factors in New Zealand's resilience and disaster recover preparedness.

Where we have provided examples these have been based on observation and personal experience of our members having direct involvement or observation of building management after previous events. We have provided discussion and recommendations for change on the proposals where we consider it necessary.

The Ministry of Business, Innovation and Employment (MBIE) Consultation Document asks 23 questions on the overall building management process. These are discussed below in detail. For simplicity we have used the same numbering as the MBIE document.

Summary

We commend the intention to incorporate the building emergency management powers into the Building Act. The proposals will significantly advance the current state and assist in the smooth transition from the Civil Defence Emergency Management Act 2002 (CDEM Act) to business as usual under the Building Act 2004 (the Building Act).

It is our view that the proposals need amendment in the following areas:

1. 121 Meaning of dangerous building

We recommend that Section 121 “meaning of a dangerous building” of the Building Act is changed so that a building that has undergone any event resulting in a reduced in its capacity can be classed as dangerous if its new capacity would make it Earthquake Prone.

2. Building Act emergency management powers outside a declared event

We recommend that the Building Act emergency management powers, proposal, requires an additional activation trigger to that of a declared event. We suggest that either a Mayor, Local Authority delegated representative, the MBIE Chief Executive or other person capable of declaring an event should be able to authorise the use of the Building Act emergency management powers.

- » The test for enacting these powers should be that an event has occurred, that there is evidence of damage and the event is of sufficient magnitude that public safety cannot be automatically assured without carrying out some form of building inspection process; all be it on a small scale.

3. Roles and responsibilities

We recommend that there is an obligation to consult with Heritage New Zealand Pouhere Taonga (HNZPT) and that consideration is given to level of consultation required with TA’s heritage. (Proposal 6)

4. The expiration of powers

We recommend that once a hazard is identified the power to “restrict access including cordons and other protective measures” does not expire until the hazard or risk is permanently removed. (Proposal 4)

We recommend that the 1 year limit should apply to the TA issuing a warrant to undertake (or require) work to remove dangers. (Proposals 5 and 7)

Further we are of the view that the following need strengthening/emphasising:

5. Roles and responsibilities

We recommend that TA’s should be responsible for public “safety” in the emergency response phase, this includes Rapid Impact Assessments (RIA’s) and Rapid Building Assessments (RBA’s). Building owners should be responsible for their building and *any* risk it poses to people and property in and around it. This includes Interim Use Evaluations (IUE’s) and Detailed Damage Evaluations (DDE’s).

We believe it is appropriate that the owner is liable for costs associated with lease of the adjacent land / buildings affected by the cordon. Where cordoning mitigation involves neighbouring land including both private and public then the TA must be compelled to remove the hazard by deconstruction to release the neighbouring land after it becomes apparent that timely building owner progress will not be achieved.

6. Building Act emergency management powers and event damage resulting in reduced structural capacity.

We believe that where normal process is suspended it must be shown that the building has been effected by the event and has had its capacity reduced before the powers can be used.

We believe that the following needs more consideration and is outside our technical expertise:

7. Compensation

The current proposal is too wide reaching and does not address the balance between public convenience, speed, safety and owners’ rights and obligations. We suggest that more guidance is required here.

8. Offences

The wording of proposal 14 is unclear, and appears to imply that anyone in breach of the first offence would also be in breach of the second.

We consider that the fine value should be a deterrent and that there is a willingness to enforce these offences.

Submission

General Comments

Legislative authority to manage buildings after an event is dictated by the decision to declare an emergency or not. The Civil Defence Emergency Management Act 2002 (CDEM Act) provides broad powers to manage buildings during the declaration period. The Building Act 2004 (the Building Act) provides more limited powers to manage buildings which are deemed dangerous or insanitary in non-declared situations. The fundamental difference is that the CDEM Act assumes that the building under consideration has undergone an event and has potentially suffered damage including a sudden reduction in capacity. The Building Act assumes gradual deterioration.

In a non-declared event the proposed Building Act emergency management powers will not address this important fact.

It is important that the proposals work for events of different scales from the small local to large national events. The MBIE document contains the following Figure 1 summarizing the current situation.

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>

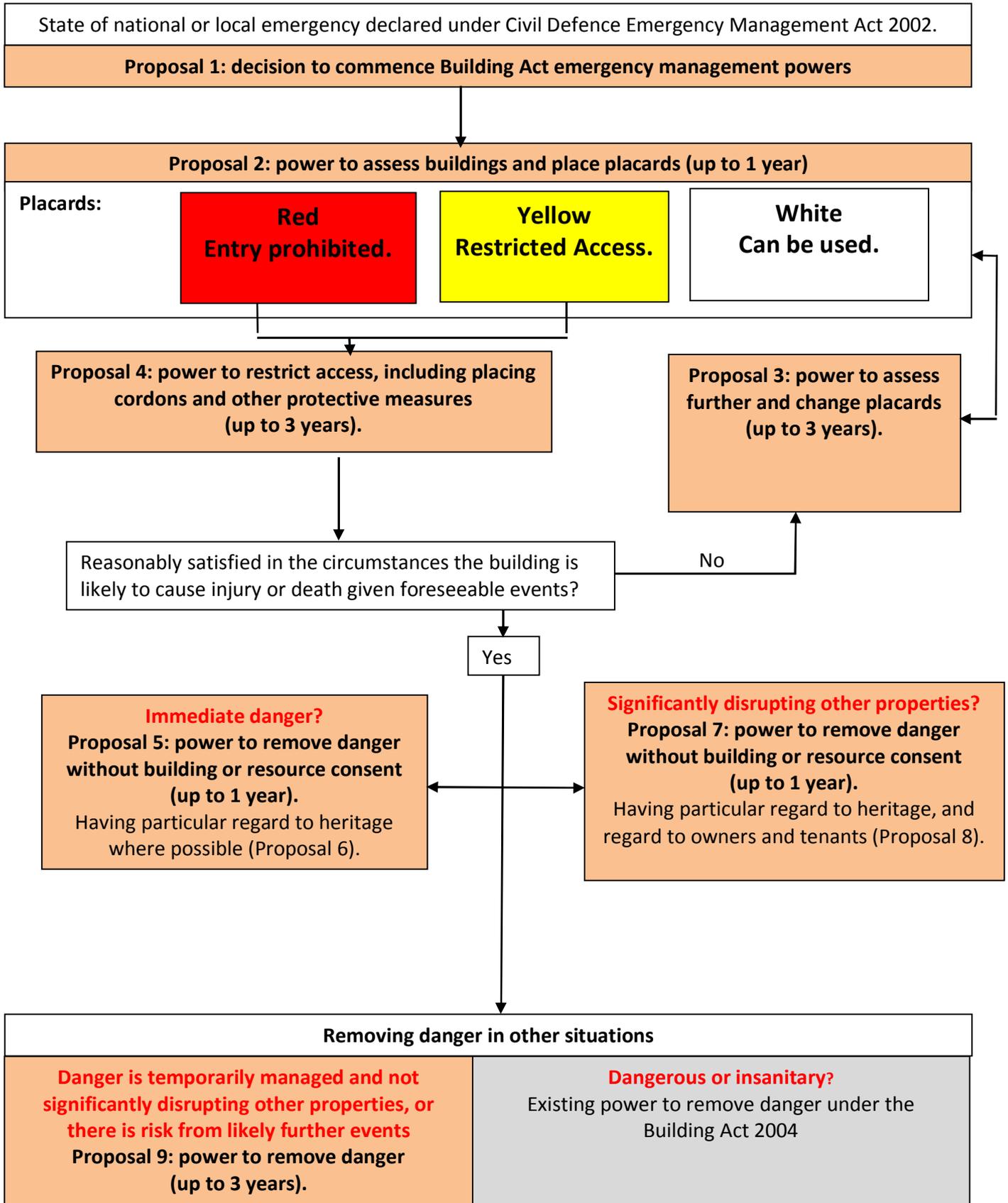
We note that there is no powers under Sections 121-129 of the Building Act for a Territorial Authority (TA) to initiate and carry out a Rapid Building Assessment (RBA) process.

Additionally, the current meaning of 'dangerous building', Section 121, excludes earthquakes. It is presumed that this was intended to force buildings with low seismic capacity to be considered under the earthquake prone provisions of the Building Act. However as stated above while the CDEM Act assumes sudden change the Building Act does not. If the building has undergone an event *and* had its structural capacity reduced then we believe that there should be provision to class the building as 'dangerous'.

The rationale for this is that while the public may have accepted the risk associated with low seismic capacity buildings due to age, construction, materials or material condition, the same can not be said for any sudden reduction in capacity as a result of an event. As a minimum the TA should have the ability to insist on pre-event capacity is achieved ie the risk profile remains similar. Correcting this would require a change to the definition of 'dangerous buildings' under Section 121

We recommend that Section 121 "meaning of a dangerous building" of the Building Act is changed so that a building that has undergone any event that has resulted in sudden 'structural change' that has reduced its capacity can be classed as dangerous if its new capacity would make it Earthquake Prone.

An overview of the MBIE proposal is shown below and is taken from the MBIE document.



Specific Comments

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.

Key Questions

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.

Discussion

We consider it important to preserve the rights of property owners, however linking the Building Act emergency management powers to only those events that have resulted in a declared emergency could result in the following, unacceptable, scenarios:

1. An event is declared to enable building assessments to proceed
2. Where an event is not declared but the Building Act emergency management powers are required to enable building assessments and restrictions on a small group of buildings.

We note that the Canterbury Earthquake Royal Commission (CERC) 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.’ It is our experience that both of these statements can cause practical issues that make it difficult to achieve the principal recommendation that:

‘Life safety should be the overarching objective of building management after earthquakes as communities respond to recover from disaster’

Consider the following examples:

The Wellington (Cook Straight) earthquake of 2014. Wellington City Council (WCC) did not declare an event, however they had a carpark structure and lift shaft structure that required the building assessment and restriction process to efficiently manage the public safety requirements. For WCC to declare an event to manage a couple of buildings would have been an excessive use of powers. This situation required WCC to rely on goodwill and legislation that was not up to the task.

The Christchurch Boxing Day earthquake of 2010. In order to appear as though it was “business as usual” Christchurch City Council did not declare an event and yet at least one building partially collapsed and parapets etc. required inspections. Had the Building Act emergency management powers been available then this would have enabled building assessments to proceed in the interest of public safety under appropriate authority.

Our recommendation is that the Building Act emergency management powers proposal requires an additional activation trigger to that of a declared event. We suggest that either a Mayor, Local Authority delegated representative, the MBIE Chief Executive or other person capable of declaring an event should be able to authorise the use of that Building Act emergency management powers. The test for enacting these powers should be that an event has occurred, that there is evidence of damage and the event is of sufficient magnitude that public safety cannot be automatically guaranteed without carrying out some form of building inspection process all be it on a small scale. It is envisaged that the 28 day test is sufficient for the powers to lapse unless issues are identified.

Investing this power in a Mayor, Local Authority delegated representative, the MBIE Chief Executive or other person capable of declaring an event should be a sufficiently high enough test to meet CERC recommendations, property owner rights and public safety.

Clarification

We have interpreted the wording:

“Proposal 1 – A Civil Defence Controller may decide whether to use Building Act emergency management powers.”

And

“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.”

To mean:

Once an emergency has been declared the controller *must* use the Civil Defence Emergency Management Act 2002 (CDEM Act) to manage the event, as this is the authority under which the controller can operate. Noting that a controller does not need to use all powers only that they are available if required. Before the event ends the controller *must* make a recommendation as to whether to use the Building Act emergency management powers once the event ends. We suggest the above statements are amended to:

Proposal 1 – A Civil Defence Controller must use the CDEM Act to manage the declared event.

And

During a state of emergency declared under the CDEM Act, a controller appointed under that Act must make a recommendation as to the use of the Building Act emergency management powers after the declaration has ended.

Response

Question 1:- We consider it appropriate for the controller to account for factors a-k in making a recommendation about future requirements. We consider the presence of damage that has reduced the capacity of buildings a key consideration for the controller. SESOC members used many of these factors under the CER Act in Christchurch when advising on public safety issues and building management.

Question 2:- 1 year is appropriate for undertaking initial building assessments and starting the reduction or removal of immediate risk. However we are aware of cases where initial assessment, risk evaluation, decision to make-safe, develop a deconstruction methodology, procure a contractor, and carry out the demolition, may mean that it is not possible to complete the removal of immediate risk within this timeframe. SESOC recommends that the 1 year limit should apply to the TA issuing a warrant to undertake (or require) work to remove dangers, and not to the completion of the work.

Consider the following:

The demolition of the Clarendon Tower in Christchurch and the Grand Chancellor in Christchurch were not completed within 1 year of the February 22 event.

Question 3:- We consider 3 years appropriate for changing placards and requiring assessments (proposal 3). We note that this was approximately the time used for this purpose in Christchurch. However, we do not recommend this time limit be placed on cordons or other forms of risk reduction or isolation (proposal 8).

Consider the following:

In Christchurch the following buildings still have cordons in place because the hazard has not been able to be removed: The Cathedral, The Odeon Theatre and the Excelsior Tavern.

Question 4:- We are happy with this proposal as it gives Territorial Authorities (TA's) the ability to react to the scale of the event. We recommend that once the powers are enacted that the TA must document why they are satisfied that the powers are no longer needed before the powers are removed. See our discussion above about political motivation to give the appearance of "business as usual".

Question 5:- No it is not appropriate. See discussion above for more detail on this.

We have recommended a second trigger refer discussion above.

Question 6:- Refer question 5 and discussion above for Christchurch Boxing Day and Wellington examples.

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.

Key Questions

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? .

Discussion

Roles and responsibilities:

Just as it's important not to unnecessarily remove the rights of property owners it is equally important not to take over or reduce the responsibility of the property owner. Ultimately the TA's should be responsible for public "safety" of public places but the building owner must be fully responsible for their building and *any* risk it poses to people in and around it.

Territorial authorities should only be carrying out rapid assessments ie Rapid Impact Assessments (RIA's) and Rapid Building Assessments (RBA's). Building owners should be responsible for evaluations ie Interim Use Evaluation (IUE's) and Detailed Damage Evaluations (DDE's), the difference being the level of information required before the inspection and who is responsible – this nomenclature is consistent with the CERC recommendation in table 4 of the consultation document. SESOC acknowledges that different terms exist in the market and that there is some confusion amongst some parties.

We recommend that TA's should be responsible for public "safety" in the emergency response phase, this includes Rapid Impact Assessments (RIA's) and Rapid Building Assessments (RBA's). Building owners should be responsible for their building and *any* risk it poses to people and property in and around it. This includes Interim Use Evaluation (IUE's) and Detailed Damage Evaluations (DDE's).

Time frames:

Proposals 2, 3, 4, 5, 7 & 9 all talk about timeframes and expiration of powers. As stated above SESOC believes it's important not to unnecessarily remove the rights of property owners, however we note that the principal recommendation of the CERC is:

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

And that the consultation document on page 9 states "..... – a duplication of effort....". We are of the opinion that the proposed time frames of 1 year for TA's to do assessments and place placards (proposal 2) and up to 3 years to assess further and change placards (proposal 3) ie the inspection side of the proposal is sufficient and sensible.

We disagree with any proposal that causes powers in relation to "restrict access including cordons and other protective measures" to expire in the management of identified hazards. We believe that the power must remain until the hazard or risk is permanently removed. To have powers expire would at best mean duplication of effort is required in going from Building Act emergency management powers to Building Act powers (sections 121-129) and at worst mean that TA's do not have sufficient powers to deal with the hazard in some earthquake prone building scenarios.

Consider the following:

In Christchurch 4 years after the state of emergency ended, we are still faced with damaged buildings for which their use is restricted. These buildings may not be considered 'Dangerous Buildings' under the Building Act, as they may not necessarily pose a collapse hazard under events other than earthquake. Under the current proposal, use of these buildings could no longer be restricted and public use could resume with little regard for safety.

The Christchurch Cathedral remains in a dangerous condition, with safety cordons extending into public space and no definitive conclusion in sight. Similar examples are available internationally, such as the McKinley Towers in Alaska which remained abandoned for some 40 years after the 1964 Anchorage earthquake.

SESOC recommends that once a hazard is identified the power to "restrict access including cordons and other protective measures" does not expire until hazard or risk is permanently removed.

Response

Question 7:- Yes. One year is an appropriate time to understand the implications the event has had on the building stock. It allow sufficient time to provide resources to properly understand and investigate any issues that the event has induced so as the risks can be inspected and placarded. The one year period is approximately what was used in Christchurch before CERA resourced inspections effectively stopped to be replaced by owner initiated inspections with or without CERA requests to do so.

Question 8:- Yes. It is vital that identified risks can be isolated via appropriate restrictions. See discussion above on time frames about restrictions.

Question 9:- Yes. We note that the Royal Commission prioritisation mixes both owner and TA inspection responsibilities, refer to our discussion above in Roles and Responsibilities. Additionally, we would recommend that the following notes are added to the bottom of the table:

1. Any building identified as requiring further inspection by the level 1 Rapid Building Assessment must undergo a level 2 Rapid assessment as a minimum.
2. Conventional 1 & 2 storey timber structures will only require further assessment if it is evident that they have been heavily modified by the removal of structural elements or are obviously structurally deficient.

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.

Key Questions

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?

Discussion

Proposal 5

It is assumed that the most urgent works should have been carried out during a State of Emergency, however this proposal is reasonable as not all works can be done for a large scale event or not all hazards may be identified during the emergency period. Given that normal process is being suspended, we believe that there must be some sort of review process that quickly reviews or gives a second opinion and is documented before any demolition.

We also believe that where normal process is suspended it must be shown that the building has been effected by the event and has had its capacity reduced before the powers can be used ie we would not like to see normal process bypassed for a building that has not suffered any damage as a result of the event.

Proposal 5 does not state whether this is intended to be 1 year for issuing a warrant to carry out the works, or to complete the works themselves. Noting that there could be a significant period of initial assessment, risk evaluation, decision to make-safe (essentially the issue of a warrant), develop a deconstruction methodology, procure a contractor, and carry out the demolition, the period of 1 year is considered too short to complete the full works.

We recommend that the 1 year limit should apply to the TA issuing a warrant to undertake (or require) work to remove dangers.

Consider the following:

A derelict building that is subject to a contentious resource consent process prior the event. The building suffers damage during the event that poses an immediate hazard that is easily mitigated by minor works or temporary propping. Should this building bypass normal process and be completely demolished? We note that category 2 or lower heritage buildings could be included in this example.

Proposal 6

Proposal 6 states only that the TA must give Heritage New Zealand Pouhere Taonga (HNZPT) 24 hours' notice of demolition, but does not provide any obligation to *consult* with HNZ. Given that urgent works should have been carried out during a State of Emergency, it seems reasonable to require the TA to have regard to advice from HNZPT in relation to listed buildings.

The requirement to notify HNZPT also applies only to "heritage buildings individually listed in district plans, and buildings that are subject to a heritage order or covenant". This would result in HNZPT receiving notice of impending works to buildings listed in a district plan (prepared by others) but not necessarily for buildings listed on the national register (for which HNZPT are actually responsible for). Some consideration should be given as to whether HNZPT should be responsible for all heritage buildings, or whether HNZPT should be responsible only for listed Historic Places on their own Register, with the TA's own heritage team responsible for the places listed in their own District Plan.

We recommend that there should be an obligation to consult with HNZPT and that consideration is given to level of consultation required with TA's heritage teams and buildings placed on the District Plan.

Response

Question 10:- Yes. By definition immediate life safety requires an immediate response without time consuming process. There may be a need to provide guidance or a test for both urgent and significant.

Question 11:- We consider it more appropriate to notify the Ministers rather than obtain approval for *removal of significant or immediate dangers*. It is also important that both HNZPT and the TA's own Heritage team are *consulted* as HNZ may not know about local issues. There should also be a requirement for both HNZ and the TA's Heritage team to have their own technical advice on safety issues back to the controller/TA within the same time period and that both parties should be compelled to consult and try and reach consensus on the fate of any heritage building.

Where deconstruction is required we believe that both parties must agree on any deconstruction methodology. Deconstruction should aim to either preserve or retain (including remnant preservation) as much heritage as possible including documenting the process for public record.

Question 12:- Yes. As stated in 11 the advice must be timely, from an appropriately, technically, qualified professional and that consensus should be achieved through consultation.

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 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.

Key Questions

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?

Discussion

Proposal 7 does not state whether this is intended to be 1 year for issuing a warrant to carry out the works, or to complete the works themselves. Noting that there could be a significant period of initial assessment, risk evaluation, decision to make-safe (essentially the issue of a warrant), develop a deconstruction methodology, procure a contractor, and carry out the demolition, the period of 1 year is considered too short to complete the full works.

We recommend that the 1 year limit should apply to the TA issuing a warrant to undertake (or require) work to remove dangers.

Response

Question 13:- Yes. As in question 10 above we consider that any delay in removing dangers with significant consequences is unnecessary. We fully supports owner and tenant involvement in the assessment and demolition planning process and the costs must be borne by the owner.

Question 14:- Yes. Unlike question 11 above, as the consequence of the danger is not immediate life safety. We consider that for these special buildings there may be alternative means such as financial compensation etc. to mitigate the economic consequences.

Again we believe it's important for both the TA and HNZPT to have their own technical advice on the appropriate treatment to the building. It is also important that part of the decision process takes into account the ability to secure funding to carry out the works.

Question 15:- It is appropriate to for HNZPT to have a period of time to consider the matter properly however "at least two weeks" is open ended. Given that Ministerial involvement is required we suggest that the sentence is re-worded to read "HNZPT will be allowed two weeks to provide their preliminary advice. Following that both parties must agree a programme going forward, where an agreement cannot be reached HNZPT will be allowed another two weeks to present their advice."

We believe it's in everyone's interest for consensus to be reached on important historical buildings. Provided funding is available and it is practical to safely mitigate any danger, no structures of significant heritage should be demolished outside of the normal public consultation and consenting process.

Question 16:- Yes. TA's must carefully consider HNZPT advice, this is different from agreeing with it. As stated above SESOC believes that consensus is the appropriate solution and where this is not possible then public consultation is the preferred resolution.

SESOC also recommends that HNZPT must also consider the TA and local community perspective when making recommendations.

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.

Key Questions

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?

Discussion

Proposal 9 states that it is intended to close the gap around Dangerous Buildings as defined in the Building Act with respect to considering future earthquake events. However, the powers of Proposal 9 are also intended to expire 3 years after the state of emergency. Furthermore, Proposal 9 requires application for resource and building consents to carry out the work. It seems unreasonable to expect the TA to apply for resource and building consents for demolition of all remaining yellow and red placarded buildings at the conclusion of the 3 year period. However, this is the only way the current proposal appears to give them the ability to manage the risk going forward.

Response

Question 17:- Yes. However a test is needed to say that the event caused damage and structural capacity has been reduced i.e. before you use enhanced powers you must satisfy a test that the event has damaged the capacity of the building. As an example if the event is a seismic event and an earthquake prone building has suffered no damage then its risk profile has not changed and you should not be able to use enhanced Building Act powers.

We strongly disagree with the three year restriction in this case. We consider it unacceptable to remove a cordon due to time expiration i.e. the only reason for removing a cordon should be the danger has been removed. We accept that removal of the danger might be as a result of more detailed assessment i.e. understanding the risk better. To have powers expire would at best mean duplication of effort is required in going from Building Act emergency management powers to Building Act powers (sections 121-129) and at worst mean that TA's do not have sufficient powers to deal with the hazard in some earthquake prone building scenarios.

Question 18:- Yes. As a general rule we believe that normal process should only be suspended where necessary. We note that if resource consent is required and the three year time limit required we would need to change our view to allow for sufficient time to mitigate the danger.

Question 19:- No. refer above.

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.

Key Questions

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?

Question 20:- Yes. However it must be recognised that encroaching onto public space for cordons and temporary propping etc must be a charge on the building owner refer questions 12 and 14 below for more detail.

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.

Key Questions

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?

Question 21:- Yes. It is vital that assessors and TA's are limited in their liability to ensure decisions are not based on risk aversion. It must be a pre-requisite that a contract/MoU exists between the TA's and the assessor and that both parties only act within both their delegation/authority and competence.

Engineers are usually very willing to volunteer in times of need to assist with the assessment of buildings and structures post a significant earthquake, or other event.

Under a declared state of emergency Section 110 of CDEM Act provides protection from liability for loss or damage caused by engineers who work in this capacity, and specifically protects engineers from liability relating to their actions or inaction. The exception is for any act or omission to act that constitutes bad faith or gross negligence on the part of the engineer.

Notwithstanding, there will always be a duty on a volunteer to take reasonable care that their actions or omissions do not adversely affect the health and safety of other persons.

In post event situations where a state of emergency has not been declared or has been lifted, in order to protect themselves from liability, the engineer must currently operate under a commercial contractual arrangement. Although the larger territorial authorities may have in place standing arrangements with engineering firms, where significant engineering resources are required quickly, establishing such commercial arrangements will be impractical given the other priorities likely to be facing the territorial authority. Furthermore the likely scarcity of information on which the engineer is required to make determinations and the time pressures under which he or she will be operating may mean existing commercial arrangements are not sufficient to adequately cover their risk.

Having in place liability protection provisions similar to those under the CDEM Act will ensure a smooth transition from a declared state of emergency and a continued high level of professional engineers willing to assist during the response and recovery phases of an event. However the duration of any voluntary contribution will be finite and territorial authorities must expect to revert to some form of commercial arrangement for ongoing engineering support.

IPENZ fully supports the proposal to provide liability protection under the emergency management provisions to the Building Act.

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.

Key Questions

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

Question 22:- Yes. It is also appropriate that the owner is liable for costs associated with lease of the adjacent land / buildings affected by the cordon. Where cordoning mitigation involves neighbouring land including both private and public then the TA must be compelled to remove the hazard to release the neighbouring land after it becomes apparent that timely building owner progress will not be achieved.

Consider the following examples:

Odeon Theatre in Christchurch is still cordoned off and the owner's solvency is uncertain, there is no resolution in sight for this building.

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.

Key Questions

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

Question 23:- This proposal needs more work. In its current state it is wide reaching and does not address the balance between public convenience, speed, safety and owners' rights and obligations.

For example, demolition may be the safest option, whereas retention and shoring may be more cost-effective in the long run.

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

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?

Discussion

The wording of proposal 14 is unclear, and appears to imply that anyone in breach of the first offence would also be in breach of the second.

We have assumed that Question 24 is for occupants, and Question 25 for owners.

Question 24:- We consider that the fine value should be a deterrent and in line with other accepted building related fines.

Perhaps more important is the willingness to enforce these offences ie we are aware of instances in Christchurch where occupation of buildings continued in violation of placards and the authorities and police were unwilling to prosecute.

Question 25:- We consider that the fine value should be a deterrent and in line with other accepted building related fines.

We also consider that there needs to be some form of time frame associated with a notice to remove danger and that this rule needs to stand outside of any expiration rule.

Conclusion

SESOC and IPENZ are pleased to provide this joint submission to MBIE and we would be happy to provide further information and work with MBIE on any aspects of this consultation document.

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