



29 July 2015

**SUBMISSION ON THE
BUILDING ACT EMERGENCY MANAGEMENT PROPOSALS**

Name of submitter

The New Zealand Institute of Architects Incorporated
PO Box 2516
Shortland Street
Auckland 1140

The New Zealand Institute of Architects Incorporated (NZIA)

1. The New Zealand Institute of Architects Incorporated, which was founded in 1905, is the professional body that represents more than 90 per cent of New Zealand's registered Architects, as well as hundreds of architecture graduates and students. The Institute promotes high standards of building design and professional performance. It produces material essential to architects' practice, operates design and technical programmes to educate its members, and runs a rigorous, peer-reviewed awards programme that sets the benchmark for New Zealand architecture. The Institute seeks to collaborate with central and local government, other professional organisations and the wider construction industry in order to achieve its purpose: The NZIA champions the built environment and supports its members in their creation of better buildings, places and communities.

General comments

2. The NZIA is generally supportive of the Building Act Emergency Management Proposals. We see a significant role for Architects in these proposals in cases of a 'state of emergency' and/or where the 'state of emergency' is extended. The Institute and its members look forward to working with Government, engineers and TLAs on these issues and the detailed guidance and advice to be developed. If we can be of further assistance, please contact Teena Hale Pennington, Chief Executive on thalepennington@nzia.co.nz or 027 527 5273.

3. The NZIA would encourage the Government and officials to review the use of the phrase 'removal of risk'. Some may interpret this as support for demolition, when in fact the outcome being sought is risk mitigation. The NZIA would encourage the use of the phrase, 'mitigation of risk', which would recognise demolition, as well as, temporary restraining as possible options. Our members understand that Italian Architects often place buildings in a tension tie, which removes the immediate risks/dangers and allows for the repair solution or demolition to be more carefully considered.

Key issue: Commencement

4. **Proposal 2 - Powers of Territorial Authorities** – The NZIA in principle supports the powers extended to territorial authorities which will improve the management of issues following the ending of a state of emergency and the powers of the Building Act being in place.
5. The NZIA is however concerned about the lack of appeal provisions available for these extended powers. The recent proposed amendments to the *Building (Earthquake-prone Buildings) Amendment Bill* allows owners to provide an engineering assessment to the territorial authority to demonstrate that their building is not earthquake-prone. As a consequence, the territorial authority must revoke or reissue the earthquake-prone notice applying to the building and update the public register. The NZIA considers it fair and reasonable that a similar provision be provided to owners where territorial authorities are exercising powers under the Civil Defence Emergency Management Act (a controller) and/or territorial authorities are transitioning to a situation where normal powers are adequate for managing the risks.
6. The NZIA would also strongly urge officials to consider a requirement that the territorial authority separates the decision making within the organisation on decisions to extend the state of emergency powers. The NZIA understands that in Christchurch, the position in CERA responsible for Section 38 notices was separate from the CCDU.
7. **Proposal 5: Resource or building consents will not be required to remove significant and/or immediate dangers** – The NZIA would encourage officials to consider the Christchurch experience and the challenges where different professional opinions and judgements were offered around the "significant and/or immediate dangers". To manage these professional differences, the NZIA would encourage officials to consider the inclusion of either a right of appeal and/or a peer review provision. This will ensure only the necessary building/structural elements are removed and/or remedied and is consistent with most of these immediate dangers being correctly identified during the "state of emergency" period.
8. **Proposal 6: Heritage values will be taken into account where possible when removing significant or immediate dangers** – The NZIA considers that the Heritage New Zealand list is not comprehensive enough to offer appropriate protection. The NZIA provided a similar comment in its submission on the proposed amendments to the *Building (Earthquake-prone Buildings) Amendment Bill*. The Heritage New Zealand list identifies, Category 1 – 1,003 and Category 2 – 4,428 buildings. The NZIA understands that Heritage New Zealand estimate that there are 17,000 buildings listed in District Plans across the country.

9. The NZIA would recommend that Heritage New Zealand be consulted by the territorial authority prior to issuing a warrant. Heritage knowledge and expertise is a specialist skill which is not readily available across all territorial authorities. A requirement to consult and seek advice from Heritage New Zealand would provide a level of consistent advice and certainty in the decisions being made by territorial authorities. Heritage New Zealand could also assist the decisions of territorial authorities and the Minister for Building and Housing with peer reviews and/or a scope of services for a peer review in response to a significant and/or immediate danger posed by a heritage building or building element. Whilst this advice is being developed, the Civil Defence Controller and/or territorial authority could make use of cordons to manage the risks.
10. **Proposal 7: Resource or building consents will not be required to remove dangers causing significant economic disruption** – The NZIA would encourage officials to develop a definition for “significant economic disruption” to ensure a consistent interpretation by territorial authorities. In removing the dangers, the NZIA would encourage officials to include weathertightness as a priority.
11. For heritage buildings, the NZIA would recommend that appeal decisions should be jointly made by the Chief Executive of MBIE and the Chief Executive of Heritage New Zealand or at least must consider the advice of the Chief Executive of Heritage New Zealand. This is in recognition of the lack of specialist heritage knowledge across the country. Alternatively, officials could consider the appointment of a Panel (similar to those under the Resource Management Act) to advise the Chief Executive, MBIE on appeal matters. This would ensure the best available information and expertise is available for decisions taken by the Chief Executive, MBIE.
12. **Proposal 8: Heritage values will be taken into account where possible when removing danger causing significant economic disruption** – The NZIA would reiterate its comments made in relation to proposal 6 and 7.
13. **Proposal 9: Power to remove danger in other situations** – The NZIA would recommend that resource and building consent requirements be maintained for all Proposals. This creates a consistent understanding across all parties involved (territorial authorities; professional services/consultants; owners). We know currently that the provisions of the Building Act are inconsistently applied across the country by territorial authorities. The introduction of further opportunities for inconsistencies in decisions is unhelpful for decision-makers, owners and/or their advisers.
14. **Proposal 10: Appeals** – As noted in Proposal 9 there is variability in the appeal processes for the Proposals, ranging from none, Minister and Chief Executive, MBIE. This layered approach to appeals has the potential to create confusion, ambiguity and inconsistent implementation. As noted in Proposal 7, the NZIA would encourage officials to consider empowering a Panel) to make decisions using the resource and building consent processes. Depending on the extent of damage, it is likely a special resource consent Panel will be formed to facilitate the construction of a new building. It would appear reasonable to the NZIA that heritage buildings could be included within the brief of such Panels.

15. **Proposal 11: Liability** – The NZIA notes that proposals have been developed in response to the need for transitional powers between the Civil Defence Emergency Management Act and the Building Act¹. It is unclear under the Proposal, whether territorial authorities and assessors authorised by territorial authorities operating under Proposals 1 and 2 would be extended the same “no liability arising” conditions as those operating under a state of emergency.
16. As both of these Proposals (Proposal 1 and 2) seek to extend the building emergency powers of territorial authorities, it would seem fair and reasonable that the removal of liability under a state of emergency, which is assessed and extended, should also continue.

¹ MBIE (2015), *Building Act Emergency Management Proposals – Consultation Document*, page 9.