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# Building Amendment Bill

Local Government New Zealand's submission to Parliament's Transport and Infrastructure Committee

16 November 2018

## **We are. LGNZ.**

Local Government New Zealand (LGNZ) is the national organisation of local authorities in New Zealand. All 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This submission was endorsed under delegated authority by Mayor Dave Cull, President, Local Government New Zealand.

## **Introduction**

The proposed Building Amendment Bill amends the Building Act of 2004 to provide new powers to address risks to people and property from buildings during and after an emergency. Further, the proposed amendment seeks to create a system that is clear, has proportionate impacts on personal and property rights, and ensures that heritage values are appropriately recognised.

LGNZ has been requested to provide comment on this Bill by the Transport and Infrastructure Select Committee. We can provide a general overview and comment on the proposed Bill, but we note territorial authorities that work more closely with the Building Act would have greater clarity and useful comment on engagement. As such, we intend to provide comment on the outcomes of the proposed Bill and leave it to council stakeholders to provide specific and operational review.

## **Reason for the amendment**

It is LGNZ's understanding that existing business-as-usual powers under the Building Act implemented to manage dangerous and insanitary buildings are inadequate, and that a new scheme of powers is needed to manage risks to people and property during and after an emergency.

## Summary of proposed changes

We understand that proposed new powers, with specific regard to territorial authorities:

- Provide powers to territorial authorities (and, where a state of emergency or transition period is in force, the relevant civil defence emergency management person) to manage buildings during and after an emergency event, including:
  - Inspecting and placing notices on buildings;
  - Evacuating and restricting entry to buildings;
  - Closing roads and cordoning streets;
  - Requiring further information from building owners, such as detailed engineering assessments;
  - Demolishing or carrying out works to buildings that pose a risk of injury or death (including through impacts to critical infrastructure) or a risk of damage or disruption to neighbouring buildings, critical infrastructure;
  - Public thoroughfares; and
  - Requiring building owners to remove or reduce risks posed by their building, on a case-by-case basis.
- Provide that the powers can be used when no state of emergency or transition period is in force;
- Provide that the powers are available for up to three years and can be extended, once only, for a further three years;
- Provide a requirement that territorial authorities review whether powers are still necessary every 90 days; and
- Provide for powers of varying durations of six months or three years (depending on the power).

## Background

LGNZ recognises that proposals in this Bill intend to fill evident legislative gaps that some councils had to manage post recent Canterbury and Kaikoura earthquakes. In general, LGNZ believes this Bill provides a thoughtful response to powers that may be needed in a range of emergencies. Additionally, LGNZ is encouraged that many of the recommendations made by the Royal Commission on the Canterbury Earthquakes, and the Regulations Review Committee in its Inquiry into Parliament's Legislative Response to Future National Emergencies have been considered for inclusion in this Bill.

LGNZ agrees that there has been a need for this legislation, and believes the Bill takes many measured steps to fill gaps to enable government, and specifically councils, to more effectively manage post earthquake conditions. In particular, appropriate control and management to; exercise powers protecting human life and safety, limit restriction of an individual's ability to continue to use and occupy property, and ensure actions are proportionate to the risk.

## Noted issues for further consideration

### Definitions

LGNZ notes that Section 133B sets out definitions. However, it is clear that definitions are also outlined in other related documents (eg Section 163 of the Building Act 2004 for Subpart 8 – Notices to Fix). Considerable benefit may be found in one sourced definition location. In addition, there are some unreferenced terms, or designations, that were not immediately noted or available, including:

- Dangerous building;
- Desirable;
- High seismic risk area;
- Inspection; and
- Reasonable cause.

Further, the definition of dangerous building in section 121(1) of the Act should be amended so that in a high seismic risk area - as defined in section 133AD of the Act - the following words, “excluding the occurrence of an earthquake”, are not read into the definition. If removed, territorial authorities in high seismic risk areas can address dangerous parts of an earthquake-prone building that present a risk in an earthquake more quickly than other work on the building.

### Timing and recording

It is clear that post earthquake actions are intended to be taken in the most practicable and timely manner. However, there is little definition of when actions need to be completed after a request. For example, Section 133BV notes that “the responsible person may carry out the works or direct the building owner to do so”. There is some inference of communication about timing. This, no doubt, has reference to the fact that after a significant emergency, human and capital resources are limited and timing would be a point of discussion. But, there is no requirement to record dialogue and no intended schedule to communicate to the public. It is recommended that greater clarity is embedded into outcomes through recorded correspondence and anticipated timing.

### Guidance

LGNZ notes that responsible persons may need more certainty about which ‘works’ power should be used in different situations. While this might be achieved in guidance delivered by the Ministry, and examples provided in the legislation would offer clearer direction in the application of these powers.

For example, three sections of the proposed Bill (133BU, 133BV and 133BW) should be clarified. The three powers are for the responsible person to do:

- Urgent works that are reasonably necessary to remove or reduce risks, that must be done without delay (section 133BU(1));
- Other works (power is available for six months, and a possible one-time three month extension), or direct the owner to do the other works. In both cases the works must be reasonably necessary to remove or reduce risks, but be a situation when the urgency in s133BU(1) doesn’t apply (section 133BV(1)); and
- To direct the owner to do works reasonably necessary to remove or reduce risks, in situations where sections 133BU(1) and s133BV(1) do not apply.

Each section refers to the works being ‘reasonably necessary to remove or reduce risks’ posed by the building, but there are different requirements applied when exercising the powers in each section. The same basic test cannot be used in each case as it could be argued that the responsible person used the wrong section.

### Clarification

In Section 113BR, some clarification is needed toward the use of private land. Specifically, the powers in this section allow a responsible person to put measures in place to keep people a safe distance from a building, or protect a building in a designated area from being damaged. These powers require explanation to confirm where and how the responsible person can go on-to private land to put those measures in place.

### A remaining gap

Minimum thresholds may be appropriate to ensure that building owners have a legal obligation to ensure their buildings are safe. Perhaps a minimum or maximum threshold, such as a certain magnitude earthquake, for engineering assessments to be carried out before they will allow reoccupation of their buildings should be considered.

## Conclusion and recommendation

As noted, LGNZ can only comment on generally observed intended outcomes on this Bill. In doing so, there are some observations that result due to the historic nature of this issue and the complexity of legislative measures that share overlapping objectives.

In general, our observations are that greater definition of outcomes with the use of more detail and specific measures, on the noted subjects, would be valuable. We note experiences and tenure across the local government sector and private industry vary considerably. Consequently, interpretation, clear understanding of intention, and elevated levels of caution (among other variables) may not result in optimal outcomes.

We recommend that the Bill proceed, but that the Select Committee consider the issues we have raised.

Thank you for the opportunity to submit on the Building Amendment Bill.