

Regulatory Impact Statement

Emergency legislation to assist recovery in the areas affected by the Kaikoura earthquake sequence from 14 November 2016

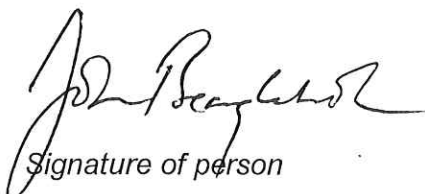
Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Civil Defence & Emergency Management and the Ministry for the Environment. It provides an analysis of options to assist with short-term recovery efforts in response to significant damage caused by the Kaikoura earthquake sequence.

It is necessary to urgently implement the proposals discussed in this RIS in order to facilitate recovery in an expedient manner.

In many cases quantification of impacts was not possible due to the urgency required and the lack of data.

John Beaglehole, Director National Security Policy, Department of Prime Minister and Cabinet



Signature of person

25/11/2016

Status quo and problem definition

14 November 2016 earthquakes have caused significant damage to infrastructure

1. A magnitude 7.8 earthquake occurred northeast of Culverden, New Zealand at 00:02 NZDT on 14 November 2016. Strong to severe shaking was felt throughout New Zealand and lasted for over two minutes in some locations. There have been well over a thousand aftershocks, and seismic activity is expected to continue for some time.
2. This Kaikoura earthquake sequence has caused significant damage to infrastructure and structures that either need to be removed, repaired or made safe. The main impacts have been felt in Canterbury (Kaikoura and Hurunui Districts), Marlborough (Blenheim), and Wellington central business district. Key impacts include damage to:
 - Local infrastructure and private and commercial buildings;
 - Much of the roading network in the north-east of the South Island (most significantly State Highway 1 from Seddon to Cheviot);
 - Wellington's CentrePort; and
 - Railway routes from Blenheim to Christchurch.

Existing emergency works processes are insufficient in the aftermath of the quakes

3. Under sections 330, 330A and 330B of the Resource Management Act 1991 (RMA), emergency works can be undertaken by owners of public works, local authorities and network utility operators to remove the cause of the emergency or to mitigate the adverse effects of the emergency. When such works are undertaken the person authorised to undertake, the works must, within 7 days, give notice to the appropriate consent authority that the works have been undertaken and within 20 working days must apply for the resource consents required for the activities.
4. These statutory timeframes apply to all scale of emergencies. With a significant emergency where numerous emergency works may be required, the standard timeframes in the RMA will be insufficient. These timeframes are likely to put pressure on those authorised to undertake the emergency works to give notice and prepare resource consent applications. It will also put pressure on the consent authority who will be required to receive and process any required resource consent applications.

There are no specific powers to require an owner to undertake a building assessment

5. There are currently no powers to direct an owner to carry out a building assessment to ensure that a building is safe after an emergency or if things change after an emergency such as due to an aftershock.
6. Existing obligations on building owners e.g. under health and safety and residential tenancy legislation mean that owners will generally be required to carry out checks following an earthquake to ensure that a building is safe. However, those obligations are general high-level ones and are not specific as to the type of building checks that may be required.

7. Further, in some circumstances, an owner may not be aware of systemic issues in relation to a type of building following an emergency or related event, so may not be in a position to know that a building assessment is necessary.

Farming activities

8. As a result of the damage caused by the Kaikoura earthquakes there has been significant disruption to farming activities. In order for farmers to respond to significant effects from the earthquakes, mitigate the loss of land, and animals, and to continue basic farming practice (feeding and watering of stock) farmers have had to dig bores and repair facilities on their land. In some cases to do this they have had to breach the normal regulatory requirements of the district and regional plan.

Restoration of Kaikōura harbours

9. The seabed around the North and South Kaikōura harbours has lifted significantly as a result of the earthquakes, meaning that it is no longer safe for ships to use the port.
10. Reliable access to the Kaikōura harbours is necessary to ensure that critical supplies are able to be easily brought to Kaikōura by sea. The closure of the harbours also has significant economic effects for local businesses, including tourism and fisheries businesses.
11. The inland road (SH70) is precarious and has been closed a number of times since the earthquakes, so does not provide a reliable route for critical supplies to the area.

Objectives

12. The key object of the proposals is to facilitate the response and recovery of earthquake-affected areas from the impacts of the earthquakes.
13. Any measures should minimise compliance costs for those affected e.g. building owners.

Options and impact analysis

Existing emergency work processes

Option 1: Status quo

14. Under this option, the standard timeframes for emergency works in sections 330, 330A and 330B of the Resource Management Act would continue to apply. This option is not supported as the standard timeframes are insufficient for an event of the scale of the Kaikoura earthquake sequence. As set out in the problem definition section, a significant number of emergency works are likely to be undertaken. If the standard timeframes were applied, this could put pressure on those undertaking the works and the consent authorities, diverting resources away from the response and recovery effort.

Option 2: temporary increase timeframes for emergency works (*preferred option*)

15. Under this option:
 - The timeframe to give notice to the consent authority that emergency works have been undertaken would be increased from 7 days to 40 working days;

- The timeframe in which any required resource consent must be applied for would be increased from 20 working days to 120 working days; and
 - The requirements under section 330(3) of the RMA to inform occupiers that land has been entered for the purpose of undertaking emergency works would be relaxed. Where occupiers are no longer present, the person undertaking the emergency work would only need to display a notice in a prominent place on the land that advises of the date and purpose of entry and provides the contact details of the person who can provide further information.
16. These changes would only until 30 March 2018 to those districts and regions that were directly affected by the earthquakes, being Kaikoura District Council, Hurunui District Council, Environment Canterbury, Marlborough District Council, Wellington City Council, Hutt City Council and Greater Wellington Regional Council. Given the unknown impact of ongoing aftershocks, it is proposed that additional districts or regions could be added by Order in Council.
17. This will provide additional time for those undertaking emergency work arising from the earthquakes to comply with the statutory requirements. The benefits of this option is that it will ensure resources are not diverted from the earthquake response and recovery and take pressure off consent authorities. Consent time frames were extended as part of the Canterbury earthquake legislation and were useful for the councils concerned.
18. The disadvantage will be that there will a longer period of time before councils are notified about all emergency activities and any consent applications made.

Building assessments

Option 1: Status quo

19. Under this option, existing general obligations on building owners and landlords would continue to apply. Under the Health and Safety at Work Act 2015, owners of buildings which are places of work must identify and manage hazards in the place of work. Under the Residential Tenancies Act 1986, landlords should check after an earthquake that it safe for tenants to remain on the premises.
20. The existing obligations are not specific as to the types of checks that are required, so there may be uncertainties as to the level and robustness of the checks required.
21. There is also one possible gap in the existing law in that if the authorities were aware of systemic issues in relation to a type of building which are not known to the owner, it is likely that the owner would not have been obliged to carry out an assessment.

Option 2: Provide a power to require building owners to obtain a building assessment (preferred option)

22. Under this option, the Controller or constable under a state of emergency or a Recovery Manager under a transition notice may require:
- a building owner to undertake a building assessment of the effect of an emergency on a building; or
 - building owners of a type of building (e.g. in a particular area, with particular building features) to undertake a building assessment on the effects of an emergency for their building.

23. The second type of assessment would allow buildings with common features to be required to gain assessments without the need to individually identify the owners. For example, if there were concerns around a particular feature of a building failing.
24. While a building assessment could be costly for a building owner, this power is not expected to impose significant compliance costs given existing obligations on building owners e.g. under health and safety legislation as mentioned above.
25. Several safeguards are also proposed to apply to this provision to reduce the risk that unnecessary and costly assessments are requested. They are:
- the owner may appeal the costs of the assessment to the District Court after the assessment has been provided on the grounds of reasonableness of the request;
 - the Recovery Manager may only exercise the power subject to the general tests under the CDEMA (i.e. including that the exercise of power must be in the public interest; necessary or desirable to ensure a timely and effective recovery; and proportionate in the circumstances); and
 - the ability to direct an assessment is time limited to the state of emergency or transition periods.

Farming activities

Option 1: Status quo

26. The problems identified in the problem definition above would continue to exist and this would have significant impacts on farmers and would be likely to give rise to animal welfare concerns.

Option 2: Permitted Activity status for emergency farming works

27. This option would use a legislative solution to specify that emergency farming practices are a permitted activity. This would allow for farmers to respond to significant effects from the earthquakes and in order to mitigate the loss of land, life and animals.
28. The farmer would be required to notify the council that the activities have been undertaken within 40 working days, but would not be required to seek retrospective consents for these activities.
29. Where there are ongoing adverse environmental effects the council may have a conversation with the person undertaking the work regarding mitigation and monitoring measures. Enforcement of the activities will be limited to consent authorities.
30. This temporary permitted activity status should be enabled until 30 March 2017 to provide sufficient time for farmers to understand and respond to significant effects.

Restoration of Kaikōura harbours

Option 1: Status quo

31. The problems identified in the problem definition above would continue to exist and this would have significant impacts on the area.

Option 2: Legislative changes to assist restoration (preferred option)

32. This option proposes a legislative mechanisms by which the harbours may be restored to the extent necessary to allow its port facilities to be safely used while at the same time having as little impact on the marine environment and its flora and fauna as is reasonably practicable.
33. In particular this option would:
- change the status of the consent activities needed to be undertaken to restore the harbour to 'controlled', unless already permitted in the current Regional Coastal Plan. This will enable Environment Canterbury and Kaikōura District Council to apply for retrospective consent after they have begun the harbour restoration;
 - set out a requirement to mitigate the effects of the work on the marine environment, specifically on marine mammals and seabirds;
 - provide that the standard resource consent process does not apply and instead will require a limited consultation process with specified parties to be invited to make written comments within a 10 working day period. The council will be required to provide a summary report on how the views of those consulted have been considered and include this in its decision. There will be no opportunity to object or appeal these decisions;
 - include a consultation requirement for key parties, being Te Rūnanga o Ngāi Tahu and any relevant Papatipu Rūnanga identified by Te Rūnanga o Ngāi Tahu; Kaikoura District Council; Kaikoura Marine Guardians; Canterbury Regional Council; Maritime New Zealand; the Minister of Conservation, the Minister for the Environment, the Minister of Defence, the Minister of Primary Industries; the Canterbury Regional Harbourmaster, the relevant owners and occupiers of land and any other person or organisation that the consent authority considers appropriate.
34. The core benefits of this option is that it allows for timely recovery. It ensures the necessary resource consents for essential harbour rehabilitation can be granted without delay.
35. An expedited resource consent process was provided for certain activities by way of Order in Council for the Christchurch earthquake recovery. The resource consents will provide for ongoing management and monitoring of any adverse effects of the dredging operations on the marine environment.
36. The disadvantages of this option is that the safeguards of the Resource Management Act 1991 processes are set aside. Given the constrained nature of the work, the proposed measures to reduce any impact on the marine environment, the modified nature of the environment, and the urgency of restoring the Port, in these circumstances, justify a streamlined process and reduced public participation.

Consultation

37. MCDEM undertook very brief consultation with the following government agencies on the policy proposals and on the draft Bill: the Accident Compensation Corporation; the Departments of Conservation, Internal Affairs; the Earthquake Commission; the Inland

Revenue Department; Maritime New Zealand; the Ministries for the Environment, Primary Industries; the Ministries of Business, Innovation and Employment, Culture and Heritage, Defence, Education, Health, Justice, Social Development, and Transport; the New Zealand Defence Force; the New Zealand Fire Service; the New Zealand Police; the State Services Commission; Te Puni Kōkiri; and the Treasury. The Department of the Prime Minister and Cabinet was informed.

38. Ministry for the Environment officials have discussed the proposed amendments to the timeframes for s330, 330A and 330B with Environment Canterbury, Hurunui District Council, Marlborough District Council, Kaikoura District Council and the New Zealand Transport Agency.
39. Kaikoura District Council noted that a longer timeframe than what was originally proposed (20 working days) may be useful. The timeframe was amended to 60 working days.

Conclusions and recommendations

40. To facilitate response and recovery in earthquake-affected areas, the preferred options are to
- provide temporary increases to timeframes for emergency works under the RMA is required. This will ensure that resources are not diverted from earthquake response and recovery; and
 - a legislative solution to specify that emergency farming practices are a permitted activity; and
 - provide a clear power to require building owners to undertake a building assessment; and
 - change legislation to provide for the restoration of Kaikoura Harbour.

Implementation plan

41. The preferred options requires amendment to primary legislation, which are proposed to be undertaken through the Civil Defence Emergency Management Amendment Act 2016 Amendment Bill and the Hurunui Kaikoura Earthquake Recovery (Resource Management Emergency Powers) Bill 2016. The Bills are planned to be introduced, passed and implemented as soon as possible.

Monitoring, evaluation and review

42. The emergency farmers works will be prescribed permitted farming activities only for the period up to 30 March 2017.
43. The other extensions the timeframes in RMA section 330 and the changes relating to the Kaikoura Harbour restoration will be in place until 30 March 2018.
44. The respective consents that will be sought can provide for ongoing monitoring of the effects of the activities. In the case of the permitted farming activities, where there are adverse environmental effects, the Council can request the farmer to monitor these.