

# **NHC Claims Manual – Residential Buildings – NHI Act**

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# 1. Introduction

## a. Terminology

Throughout this document, when we refer to ‘we/our/us’ we mean the Natural Hazards Commission Toka Tū Ake (NHC). When we refer to ‘you/your’, we mean any of the people described in the ‘Application of Manual’ section below unless we have specified otherwise.

## b. Purpose of Manual

This Manual sets out policies on how we apply the [Natural Hazards Insurance Act 2023 \(NHI Act\)](#) and [Natural Hazards Insurance Regulations 2024 \(NHI Regulations\)](#) when dealing with residential building claims.

## c. Application of Manual

This Manual is for NHC and everyone authorised to deal with a residential building claim on our behalf:

- our staff and contractors;
- private insurers (acting as our agent under the NHI Act Natural Disaster Response Agreement (NHI Act NDRA), as amended from time to time) and their staff and contractors; or
- third-party providers (authorised to act on our behalf, either appointed by us or an insurer as permitted under the NHI Act NDRA) and their staff and contractors.

When dealing with Natural Hazards Cover (NHCover) claims, you must act in accordance with the [NHI Act](#), all other applicable laws, our delegations, this Manual, and our instructions in relation to the application of the NHI Act.

Where damage is not covered by the [NHI Act](#), you should consider whether it is covered by a private insurance policy. Where damage is covered by both the NHI Act and a private insurance policy, the NHI Act typically covers the first loss, therefore you should consider the coverage under the NHI Act first. In some cases, damage may not be covered by either the NHI Act or a private insurance policy.



In all cases, you must comply with your organisation's own internal processes and delegations, including the Fair Insurance Code (FIC). Under the [NHI Act](#), you are also required to manage NHCover claims in accordance with the [Code of Insured Persons' Rights](#). This Code sets out the rights of the insured person as well as the obligations of NHC and anyone authorised to perform claims management activities on our behalf. The Code of Insured Persons' Rights relates to NHCover claims and does not replace the FIC.

When we (or persons we authorise) make a referable decision<sup>1</sup> about an NHCover claim, an affected person<sup>1</sup> who disputes the decision may refer the dispute to the dispute resolution scheme.

We may amend this Manual (or part of it) from time to time. Amendments will be in writing.

This Manual sets out our interpretation of the [NHI Act](#) as at 1 July 2024. It therefore applies to claims made in relation to initial damage<sup>2</sup> from a natural hazard occurring on or after 1 July 2024.

An amended part of this Manual may set out our interpretation of the [NHI Act](#) as at a later date, whether because of legal developments or otherwise. That date will be recorded against the amended part of the Manual. The amendment will be effective from the date recorded against the amendment, or otherwise from the date we notify to the required party.

#### **d. Status of Manual**

We must comply with the [NHI Act](#) and all applicable laws.

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<sup>1</sup> 'Referable decision' and 'affected person' are defined in [section 104\(6\) of the NHI Act](#). Also, for information on decisions that are not referable decisions, see [regulation 17, NHI Regulations](#).

<sup>2</sup> 'Initial damage' is defined in [section 53 of the NHI Act](#).

This Manual sets out our interpretation of the [NHI Act](#) (as informed by relevant case law) as agreed by private insurers under the NHI Act NDRA in accordance with the NHC Manual development process under that agreement, and provides guidance as to, and examples of, how we apply the NHI Act to assessing claims for NHCover in practice. However, this Manual does not act as a substitute for the NHI Act because:

- claims will arise in a diverse range of fact situations; and
- the interpretation of the [NHI Act](#) may be contested.

You should escalate the matter to the appropriate NHC representative where this Manual or the NHC Assessment Manual – NHI Act:

- do not clearly provide for the fact situation or circumstances at hand,
- are capable of more than one interpretation, or
- have been applied using more than one interpretation.

#### **e. Relationship with NHC Claims Manual – Residential Land – NHI Act**

This Manual sets out how we apply the [NHI Act](#) when dealing with residential building claims in practice.

A separate manual called the [NHC Claims Manual - Residential Land - NHI Act](#) sets out how we apply the [NHI Act](#) when dealing with residential land claims in practice.

## 2. Overview

The flow diagram below illustrates the steps in the journey of assessing and settling an NHCover residential building claim.

At each step a series of questions arises.

Each of these questions is dealt with in this Manual.

Next to each question below, there is a reference to the main Sections of this Manual which set out the relevant NHC policies.

### Is the NHCover claim valid?

We (or a person we authorise) must notify the insured person of the decision regarding the validity of their claim	3.b
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When a claim is made, what information must the NHCover claim include?	3.d
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Was there a 'fire insurance contract' or direct NHCover over the property concerned in force at the relevant time?	3.g
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Is the NHCover cancelled, limited or otherwise unavailable?	3.i; 3.j and 3.k
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### How is the NHCover claim closed?

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### 3. Is the NHCover claim valid?

#### a. Overview

##### Validity of claim

We (or a person we authorise) must determine whether an NHCover claim is a valid claim, and notify the insured person of the decision regarding the validity of the claim (Section 3.b in this Manual).

An NHCover claim is valid where:

- the claimant is the insured person for the property and has an insurable interest in that property (Section 3.h in this Manual);
- the claim is made to us (or a person we authorise) or to the customer's private insurer (Section 3.c in this Manual);
- the claim includes the required details (Section 3.d in this Manual), and is made verbally or in writing (Section 3.e in this Manual);
- the claim is made within the time limit (Section 3.f in this Manual);
- the property the claim relates to is a residential building (Section 4 in this Manual) and has natural hazard cover either through a fire insurance contract or direct NHCover that was in force at the relevant time (Section 3.g and Section 3.i in this Manual); and
- the property has suffered natural hazard damage (see Section 5 in this Manual).

If the above requirements are met, it does not generally matter whether the Natural Hazards Insurance levy (NHI levy) has been paid to us (Section 3.k in this Manual).

In addition to the above, there must be no reason why the claim will be declined or otherwise not paid (Section 3.j in this Manual).

Details of these matters are set out in the Sections that follow.

[Section 59\(2\), NHI Act](#)

**b. We (or a person we authorise) must notify the insured person of the decision regarding the validity of the claim**

**i. We (or a person we authorise) must give reasons for the decision**

Decision and notification process

After receiving an NHCover claim, we (or a person we authorise) must either accept the claim as a valid claim or reject it as an invalid claim. The decision must be recorded on the claim file.

The insured person must be notified in writing of:<sup>3</sup>

- the decision on whether the claim is valid or not;
- the reasons for the decision; and
- their right to refer disputes about referable decisions to the dispute resolution scheme (see Section 11.k.ii in this Manual for further details, including the definition of a 'referable decision').

[Section 59\(1\) and \(4\), NHI Act](#)

**ii. When we (or a person we authorise) are not required to determine whether a claim is valid**

If the NHCover claim has already been declined, you are not required to determine whether the claim is valid.

Example

The insured person makes a claim, but the claims manager identifies that the record of title (RT) contains an entry made under section 74 of the Building Act 2004 (Building Act). The entry notes that building consent is granted, but that the property is known to be at risk of landslide.

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<sup>3</sup> The insured person can also be notified of the decision verbally, but they must then also be provided with written confirmation of the decision.

The claims manager establishes that the claim is for natural hazard damage of the same type that is notified on the RT (landslide).<sup>4</sup> At this point, the claims manager has not established whether the claim is valid, because the damage has not been assessed. If the claims manager determines that it is appropriate to decline the claim, they do not need to establish whether the claim is valid.

See Section 7 in this Manual for details on the declinature process.

[Section 59\(3\), NHI Act](#)

### **c. Who must the NHCover claim be made to?**

#### **i. The NHCover claim may be made to us or a person we authorise, or to the customer's private insurer**

The claim must be made either:

- to NHC (or a person we authorised to receive such claims); or
- to the customer's private insurer (in relation to a claim for natural hazard damage to a residential building or to residential land, or both).

#### **ii. Persons authorised to receive NHCover claims**

We have from time to time authorised people to receive claims against NHCover on our behalf.

Sometimes a person (other than NHC or a person we authorise<sup>5</sup> or the customer's private insurer) may say they have authority to receive claims against NHCover. In this situation, the matter must be escalated to the appropriate NHC representative, so they can check whether that person has authority to receive such claims at the relevant time.

[Section 130\(1\), NHI Act](#) and [regulation 12, NHI Regulations](#)

<sup>4</sup> If the insured person could not identify what type of natural hazard damage had occurred, an assessment of the damage would be required to determine this.

<sup>5</sup> Being a person authorised under the NHI Act NDRA.

### Situation where a claim against NHCover is made to a broker

Whether a broker has been authorised by us to receive claims against NHCover is a question of fact in each case.

We would only rarely authorise a broker to receive claims against NHCover on our behalf. A person we authorise to receive NHCover claims cannot authorise the broker to receive these claims.

If a broker says they have authority to receive claims against NHCover, the matter must be escalated to the appropriate NHC representative. The NHC representative will then check whether that broker has authority to receive such claims at the relevant time.

[Section 130\(1\), NHI Act](#)

### **iii. NHCover claims for one type of insured property only**

The insured person does not need to make a separate claim for each of the types of insured property (residential building and residential land) within the time limit (see Section 3.f in this Manual). A claim that is made for natural hazard damage to one type of insured property is sufficient.<sup>6</sup>

It follows that making a claim to us (or a person we authorise), or to the customer's private insurer, for damage to an insured person's residential land is sufficient for any damage that is later found to the residential building.

In that case, the insured person does not need to separately make a claim for the building damage.

The converse applies. A claim made for damage to an insured person's residential building is sufficient for any damage that is later found to the relevant residential land. In that case, the insured person does not need to separately make a claim for the land damage.

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<sup>6</sup> An NHCover claim can include damage to a residential building and/or residential land. Each one of these components is sometimes referred to by us individually. An 'entire NHCover claim' is used to describe the customer's claim against the property's natural hazard cover and can contain both components (for example, where the roof has collapsed and the land has cracked).



We do not provide cover for contents. Therefore:

- any claim made for natural hazard damage to contents will not be treated as a claim for natural hazard damage to their residential building or residential land; and
- natural hazard damage to that person's insured residential building or residential land will need to be specifically claimed for.

**d. When a claim is made, what information must the NHCover claim include?**

**i. What information must be provided when the NHCover claim is made?**

When making a claim, the following information must be included:

- the insured person's name and contact details; and
- the address or location of the damaged property.

There is no particular form for the claim (which can be made either verbally or in writing). There is no need for the claim to include any particular details of the damage.

[Section 52\(2\)\(a\) to \(c\) and \(3\), NHI Act](#) and [regulation 13, NHI Regulations](#)

**ii. What further details must be provided after the claim has been made?**

The NHI Act provides that the insured person shall, as soon as practicable after making the claim, give us (or a person we authorise) sufficient details about the following to enable the claim to be assessed, decided and settled:

- the damaged property;
- the natural hazard;
- the natural hazard damage;
- the fire insurance contract and any other insurance contract which any of the damaged property is insured under;
- any other persons who have an insurable interest in the damaged property.

Section 3 – Is the NHCover claim valid?

In practice, these further details are often provided with the information provided when the claim is made.

[Section 55\(1\)\(a\) to \(f\), NHI Act](#)

We (or a person we authorise) will not always insist that the customer provides the information noted above.

For each natural hazard event, we (or a person we authorise) will make clear to the customer the particular details that are required.

[Section 55\(2\), NHI Act](#)

The insured person must (at their own expense) obtain the information, including where they do not already have it, and give it to us (or a person we authorise).

[Section 55\(3\), NHI Act](#)

Potential for claim to be delayed if information not provided

The NHI Act entitles us (or a person we authorise) to defer taking any action in relation to the claim until the insured person provides the required information.

[Section 55\(4\), NHI Act](#)

Whether we (or a person we authorise) decide to defer progressing a claim until we have received all the information outlined above depends on the circumstances.

As an example, when determining the validity of a claim, it is necessary to confirm that the property has suffered natural hazard damage (Section 3.a in this Manual). In some cases, this information is easily provided, and, if it has not been, the claim may need to be paused while the relevant information is sought from the customer. However, in other cases, providing this information is more difficult and the claim may need to be progressed without the information, for example, to allow for physical assessment.

**e. How can the NHCover claim be made?**

A claim of natural hazard damage can be made:

- verbally (e.g. by telephone or face to face); or
- in writing (e.g. by email, text message, social media, letter or fax).

[Regulation 13, NHI Regulations](#)

**f. Has the NHCover claim been made in time?**

**i. NHCover claim must be made within the extended claim date**

A claim must be made:

- within 3 months of the ‘initial damage’.<sup>7</sup> This means on or before the date that is 3 months after the date the earliest damage included in the claim occurs on (**standard claim date**); or
- within 2 years of the ‘initial damage’. This means on or before the date that is 2 years after the date the earliest damage included in the claim occurs on (**extended claim date**).

[Section 54\(1\) to \(3\), NHI Act](#)

In determining the end of the extended claim date:

- the date that the ‘initial damage’ occurred is excluded from the calculation;
- if the extended claim date is not on a ‘working day’, the period is extended to the next working day; and

[Section 55, Legislation Act 2019](#)

- the extended claim date expires at midnight on the last day, not at close of business on that day.

**ii. Situation where lapse of time before NHCover claim is made materially prejudices ability to assess the damage**

There is a specific discretion to decline a claim if it is made for natural hazard damage more than three months after the damage occurs (but still before the extended claim date). In this case, we (or a person we authorise) may decline the claim if the lapse of time before the claim was made materially prejudices our ability to assess the claim.

See Section 7.h.i in this Manual.

[Section 68, NHI Act](#)

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<sup>7</sup> See 3.f.iii in this Manual for more information about ‘initial damage’.

### iii. Situation where there is more than one natural hazard in a 48-hour period or 7-day period

Sometimes natural hazard damage occurs as a result of more than one natural hazard. The NHI Act sets out a process for determining whether natural hazard events are treated as single or multiple claims. Whether an event and the damage it caused are part of a single claim or multiple claims depends on how and when the damage occurred.

To assist with this assessment, the NHI Act has provided the following defined terms: ‘initial damage’, ‘second damage’, ‘third damage’ and ‘extended damage’. These terms are explained in detail below.

#### Initial damage

Initial damage occurs where a property suffers natural hazard damage as a direct result of a natural hazard (Hazard A). An insured person may make a claim for initial damage (Claim A).

#### [Section 53, NHI Act](#)

#### Second damage

If an insured person makes a claim for initial damage to a property, any further damage that occurs within 48 hours of the initial damage – either as a direct result of that natural hazard (Hazard A) or another natural hazard (Hazard B) – is part of Claim A, where the initial damage is a direct result of:

- an earthquake;
- hydrothermal activity;
- a landslide;
- a tsunami;
- a storm; or
- a flood.

This damage is referred to as second damage. Therefore, the claim must be made on or before the extended claim date (being the date that is 2 years after the date the initial damage occurs).

However, if an insured person makes a claim for initial damage to a property, any further damage that occurs within 7 days of the initial damage – either as a direct result of that

natural hazard (Hazard A) or another natural hazard (Hazard B) – is part of Claim A, where the initial damage is a direct result of:

- volcanic activity; or
- a natural hazard fire.

This damage is referred to as ‘second damage’. The claim must be made on or before the extended claim date (being the date that is 2 years after the date the initial damage occurs).

As a shorthand, we refer to all the natural hazard damage occurring at the insured property during this 48-hour period or 7-day period (referred to as the **damage period**) and extended damage (discussed below) as one ‘event’.

The NHI Act does not use the term ‘event’ for this purpose, but this description is a useful way to collectively describe the natural hazard damage occurring within the same damage period and insured as one claim under the NHI Act. All damage occurring within either a consecutive 48-hour period or 7-day period which is a direct result of any natural hazards is treated as an event. Conversely, if the time between natural hazards is longer than 48 consecutive hours or 7 consecutive days, the NHI Act requires us to treat the events separately.

### Example

A house is damaged by an earthquake. The natural hazard damage from this earthquake is initial damage and results in a claim. A second earthquake occurs 12 hours later, causing new damage. This second damage is the subject of the same claim because it occurred within the same damage period.

The event may have different types of natural hazards during the 48-hour period or 7-day period (e.g. earthquake and landslide).

The definitions of ‘natural hazard’ and ‘natural hazard damage’ in the NHI Act are set out and discussed at Sections 5.b and 5.c in this Manual.

### [Section 53, NHI Act](#)

#### What if a claim is made during the 48-hour or 7-day event period?

It is not necessary for the insured person to wait for the end of the 48-hour or 7-day event before making a claim. A claim can be made at any time during the 48-hour or 7-day event.



A claim made during the 48-hour or 7-day period covers all the natural hazard damage that occurs at the insured property during that 48-hour or 7-day period. This includes:

- natural hazard damage that occurs during the 48-hour or 7-day period but after the claim is made; and
- natural hazard damage occurring as a direct result of all the different natural hazards during that 48-hour or 7-day period (e.g. earthquake and landslide).

### Third damage

If the 48-hour or 7-day period has ended and a property suffers further natural hazard damage, this damage is not part of claim A if it is a direct result of:

- the continuation of Hazard A, or Hazard B (such as ongoing volcanic activity resulting in continued ash inundation); or
- a new natural hazard (Hazard C).

This damage is referred to as 'third damage', and is treated as initial damage which the insured person must make a new claim for, and which the 'new' 48-hour or 7-day period begins from.

### [Section 53, NHI Act](#)

### Extended damage

Extended damage is damage outside of the 48-hour period or 7-day period, which is also:

- a direct result of a natural hazard that occurred during that time frame; and
- not the result of that hazard continuing.

Although it is outside the 48-hour period or 7-day period, extended damage is part of Claim A.

### Example

House walls are damaged by an earthquake, and a week later (i.e. outside the 48-hour period) the roof collapses. The damage to the roof is treated as part of the same event, and is part of the claim for the initial damage on the basis that it is extended damage from the earthquake.

### Extended damage is not imminent damage

Extended damage is different to imminent damage (see Section 5.g in this Manual). Imminent damage is damage that is more likely than not to occur within 12 months after the event occurred. In contrast, extended damage is damage that has actually occurred, as a direct result of a natural hazard, but outside the relevant damage period for that natural hazard.

Sections [24\(3\)](#) and [53](#), NHI Act

## **g. Was there a ‘fire insurance contract’ or direct NHCover over the property concerned in force at the relevant time?**

### **i. What is a ‘fire insurance contract’?**

The NHI Act defines a ‘fire insurance contract’ as follows:

Fire insurance contract means a contract of insurance under which an insurer (the fire insurer) insures 1 or more dwellings against physical loss or damage by fire, other than—

- (a) a contract of reinsurance; or
- (b) a contract that insures against physical loss or damage by natural hazard fire but not other fire.

A contract of insurance is not prevented from being a fire insurance contract only because—

- (a) it insures other property in addition to dwellings; or
- (b) it does not insure against loss or damage that is a direct result of a natural hazard fire.

[Section 21\(1\) and \(2\), NHI Act](#) – Fire insurance contract and fire insurer

In general, the fire insurance contract is between the insurance company and the insured person.

A fire insurance contract must (at least) insure the dwelling(s) within the eligible building against physical loss or damage by fire (other than natural hazard fire).

## Section 3 – Is the NHCover claim valid?

The contract may also provide insurance against other risks (whether they be other risks to the dwelling(s) or insurance in relation to other things entirely). However, the contract cannot be a contract of reinsurance.

The fire insurance contract is most often a standard home policy that insures against physical loss or damage by fire (other than policies that only insure against natural hazard fire and not any other type of fire).

## **ii. For residential building NHCover, the fire insurance contract must insure the dwelling(s)**

Unless the customer has direct NHCover, the fire insurance contract must be checked carefully to ensure that it covers the dwelling(s) that has suffered the natural hazard damage.

For example, many contract works policies insure against fire – but they may insure only the works themselves. For properties under alteration at the time of the natural hazard, NHCover may depend on whether the dwelling(s) is covered by a separate fire insurance contract (i.e. as well as the contracts works policy).

For the definition of the term ‘dwelling, see Section 4.C.c.

## **iii. Fire insurance contract or direct NHCover needs to be ‘in force’ at date of the damage-causing natural hazard**

NHCover in relation to a fire insurance contract continues only while the fire insurance contract is ‘in force’. If the private insurer cancels or suspends the fire insurance contract or if the contract expires or otherwise ceases, there is no NHCover for the dwelling unless direct NHCover is in force.

### What if there is no longer a ‘dwelling’ at the date of the natural hazard damage?

NHCover continues as long as the underlying fire insurance contract or direct NHCover continues.

So, if a building no longer meets the definition of ‘dwelling’ in the NHI Act, NHCover nevertheless continues for that building until:

- the fire insurance contract for that building ceases to be in force (e.g. expires or is cancelled or suspended or renewed by the private insurer); or
- we cancel the NHCover for that building (see Section 3.i.i in this Manual).

## Section 3 – Is the NHCover claim valid?

An example of where a building no longer meets the definition of ‘dwelling’ is where the building changes from residential to commercial use. This change of use may occur partway through the period of the cover under the fire insurance contract.

Where there has been a change of use part way through the period of cover, consider whether this was disclosed to the private insurer.

Non-disclosure may affect the validity of an NHCover claim if the private insurer voids the fire insurance contract from inception, or from before the natural hazard occurred. Non-disclosure may also provide grounds to decline the NHCover claim under sections [71](#) and [72](#) of the NHI Act. See Section 7 ‘What are the grounds for declining an NHCover claim?’ in this Manual.

If you are unsure what effect non-disclosure may have on an NHCover claim, you should escalate the matter to the appropriate NHC representative.

If the building no longer meets the definition of ‘dwelling’ when the new fire insurance contract or direct NHCover for that property is entered into (or when the existing contract is renewed), there is no NHCover for that property.

[Section 29, NHI Act](#)

#### iv. What is direct NHCover?

If a person has not insured their residential building against fire with a private insurer, they may have obtained NHCover directly from us for natural hazard damage. Section 48 of the NHI Act provides that, on application made by any person having an insurable interest in any residential building and residential land, we may enter into a contract to insure that building and land under this Act against natural hazard damage (not exceeding the maximum NHCover cap) and subject to the approval conditions.

[Section 48, NHI Act](#) – ‘Optional insurance for property without natural hazard cover’

Direct NHCover claims are made to us and proceed in the same manner as outlined in this Manual.

## h. Who can make a claim?

The person making a claim must:

- be an insured person; and
- have an insurable interest in the property concerned.

Sections [22](#) and [52\(1\)](#), NHI Act

The person making a claim must meet these conditions at the time that the damage occurred. A claim can be made on the insured person's behalf – see Section 3.h.iii in this Manual.

## i. Who is an 'insured person'?

The NHI Act defines an 'insured person' as follows:

- 1) The **insured person**, in relation to all or part of a residential building or residential land, means the person who is, or all of the persons who are, entitled to the benefit of the fire insurance contract for—
  - a) the residential building; or
  - b) the residential building situated on the residential land.

[Section 22\(1\), NHI Act – Definition of 'Insured person'](#)

In general, the insured person is the person (or persons) entitled to the benefit of the fire insurance contract (see Section 3.g in this Manual). This is usually the person (or persons) named as the insured in the fire insurance contract for the residential building.

Other persons may also be entitled to the benefit of the fire insurance contract, depending on its terms. For example, a fire insurance contract for a residential building may benefit other family members at the same address. Although the family members are not named in the fire insurance contract, they are insured persons where they are entitled to the benefit of the fire insurance contract under the terms of that contract.

If direct NHCover is in force, the insured person is the person (or persons) entitled to the benefit of the direct NHCover contract to insure the building and/or land under the NHI Act against natural hazard damage.

[Section 48, NHI Act – Optional insurance for property without natural hazard cover](#)

Section 3 – Is the NHCover claim valid?

### Who is the ‘insured person’ where the insurance is taken out on behalf of another person?

Sometimes a fire insurance contract or direct NHCover is taken out on behalf of the owner of the insured property.

For example, a daughter living in a residential building owned by her mother may take out an insurance contract on the mother’s behalf to cover the residential building. In this situation, the owner (the mother) is the ‘insured person’ because the insurance contract is in place for the mother’s benefit. The owner (the mother) can be an ‘insured person’ even though she is not named on the fire insurance contract.

### Who is the ‘insured person’ where a residential building is subject to a sale and purchase agreement?

In general, during the period between entering into the sale and purchase agreement and (the later of) the possession date or settlement date, the purchaser may also be an insured person for our purposes.

The purchaser is not named as the insured person on the vendor’s fire insurance contract or direct NHCover. But section 13 of the Insurance Law Reform Act 1985 has the effect of making the purchaser an insured person in this situation.

During the period between entering into the sale and purchase agreement and (the later of) the possession date or settlement date, any insurance maintained by the vendor is for the benefit of the purchaser as well as the vendor. This statutory rule is subject to anything to the contrary set out in the sale and purchase agreement for the residential building.

[Section 13\(1A\), Insurance Law Reform Act 1985](#) and [regulation 8, NHI Regulations](#)

### Who is an insured person for the purpose of shared property and shared land?

The Regulations also provide that classes of persons specified are insured persons for the purposes of shared property and shared land (sections [15\(2\)](#), [19\(5\)](#) and [20\(4\)](#) of the NHI Act).

A person who is not an insured person under [section 22\(1\) of the NHI Act](#), but who held an insurable interest in a residential building or residential land at the time the natural hazard occurred (person A), can be an insured person in certain circumstances.

What is required is that a person who is an insured person under [section 22\(1\) of the NHI Act](#) or under the [NHI Regulations](#) (**specified insured person**):

- had the legal obligation to insure person A's interest in the property against physical loss or damage; or
- had retained or assumed the risk of physical loss or damage in relation to person A's interest in the property.

Person A is not an insured person if person A and the specified insured person (in either of the two circumstances above) have mutual obligations to insure the residential building or residential land.

Person A is also not an insured person if all of the following apply:

- person A has the benefit of a contract of insurance against physical loss or damage by one or more natural hazards, or has the benefit of NHCover under the NHI Act, covering person A's interest in the residential building or residential land;
- the contract or NHCover is not the fire insurance contract or NHCover of the specified insured person (in either of the two circumstances above); and
- if person A has the benefit of a contract of insurance, the natural hazard damage suffered by the residential building or residential land is covered by that contract.

## ii. What is an 'insurable interest'?

In general terms, a person has an 'insurable interest' in property where:

- the person would suffer economic loss if the property were destroyed or damaged; and
- there is a legal or equitable relationship between that person and the insured property.

Persons generally recognised as having an insurable interest in the property include the following:

- the registered proprietor of the property (who is the legal owner);
- anyone with a registered or equitable interest in the property;



- where the property is leased, both the lessor and the lessee of the property;
- where the property is mortgaged, both the mortgagee and the mortgagor of the property;
- anyone holding a life estate in the property; and
- where the property is subject to an unconditional sale and purchase agreement, both the purchaser and the vendor of the property.

### iii. Can someone make a claim on the insured person's behalf?

The insured person can either:

- make a claim for the natural hazard damage personally; or
- have someone else make a claim on their behalf.

A person making a claim on behalf of the insured person must be authorised by the insured person to do so. The authority can be express or implied. Whether there is authority is a question of fact in each case.

[Section 52\(1\) of the NHI Act](#)

### iv. Can an insured person make a claim of damage for another person's property?

An insured person making a claim for natural hazard damage to their own property is not usually sufficient to make a claim for damage to another person's property.

An example is the situation of a unit title development where the residential building is managed by a body corporate. The unit owner within the building has insured their own property under a separate fire insurance contract. A claim by a body corporate of damage to the residential building is generally not sufficient to serve as a claim by a unit owner of damage to the unit owner's own property.

By way of further example, a claim by a tenant for damage to their own property is generally not sufficient to serve as a claim by the landlord for damage to the residential building.

There may be exceptions. For example, in some cases the insured person may have been authorised by the other person to make a claim for natural hazard damage to the other person's property (see Section 3.h.iii).

#### Section 3 – Is the NHCover claim valid?

## v. What about making a claim for damage on a neighbouring cross-lease property?

A cross-lease property is typically where:

- two people (Owner A and Owner B) own an undivided share in a piece of land; and
- Owner A and Owner B jointly lease:
  - to Owner A the part of the piece of land where Owner A's residential building is situated (i.e. Owner A's property); and
  - to Owner B the part of the piece of land where Owner B's residential building is situated (i.e. Owner B's property).

Clearly Owner A can make a claim for damage to Owner A's property.

But sometimes, for example, Owner A may make a claim for natural hazard damage to Owner B's property. That claim is not valid unless Owner B has authorised Owner A to make that claim.

## i. Has the NHCover been cancelled or limited in any way?

### i. Cancellation of NHCover

The RT<sup>8</sup> for the property must be checked to ensure that the NHCover has not been cancelled.

We may cancel NHCover for the property. For residential building claims, we can do this where both of the following criteria apply:

- A building claim has been settled by paying a building claim entitlement, and the entitlement was calculated based on the building cover cap<sup>9</sup> (see Section 8.e in this Manual); and

<sup>8</sup> Since the [Land Transfer Act 2017](#) came into force, what used to be known as the Certificate of Title is now called the record of title (RT).

<sup>9</sup> It does not matter which of the two building cover cap options applies. For example, cancellation could apply if the building cover cap was based on the 'default' position of \$300,000 plus GST per dwelling, or based on a sum insured that is specific to natural hazard cover.

- Either:
  - there were no reasonable steps that the insured person could take to replace or reinstate the damaged property; or
  - there were reasonable steps the insured person could have taken to replace or reinstate the damaged property, but they did not take them. They have also had sufficient time since the claim was settled to have a reasonable opportunity to take those steps.

### How cancellation of residential building cover relates to cancellation of residential land cover

For when residential land cover can be cancelled, see Section 3.i.i of the [NHC Claims Manual - Residential Land - NHI Act](#).

Cover may be cancelled for both the residential building and its residential land where the cancellation criteria are met only in relation to one of them. Cancellation for one type of cover, rather than both, should only occur when there is a clear rationale for the approach.

[Section 49\(4\) and \(5\), NHI Act](#)

### Cancellation under the EQC Act

Where EQCover for a property was cancelled under [Schedule 3, Clause 4 of the Earthquake Commission Act 1993](#) (EQC Act) and had not been reinstated as at 1 July 2024, the cancellation continues to apply as if it had been cancelled under [section 49 of the NHI Act](#).

[Schedule 1, clause 5, NHI Act](#)

### Effect of cancellation

If NHCover or EQCover for property has been cancelled, then, until we reinstate the NHCover, a claim made for NHCover or EQCover for any damage to that property is deemed to be an invalid claim.

### How cover is cancelled

In the case of a residential building, we cancel the NHCover by sending the owner a written notice of the cancellation and the reasons for it. The notice also needs to specify whether the cancellation applies to building cover, land cover, or both.

Cancellation takes effect when the notice is given, and continues until the cover is reinstated.

[Section 49\(2\) and \(3\), NHI Act](#)

We also arrange for a notice to be placed on the RT by providing a certificate to the Registrar-General of Land stating that cover has been cancelled. The certificate must be given as soon as practicable once the owner has been given written notice, be in form approved (if any) by the Registrar-General of Land, and include the following information:

- a statement that the purpose of the certificate is to record the cancellation of building cover or land cover (or both);
- a reference to section 49 of the NHI Act;
- any unique identifier assigned to the claim by us;
- a description of the land affected by the certificate, including the name of the registered proprietor, the RT reference, and the land registration district;
- the date the cancellation applies from;
- the reasons for the cancellation;
- a statement indicating whether the cancellation applies to building cover or land cover, or both;
- a statement summarising sections 49(6) and (7) of the NHI Act;
- the signature of a person authorised by us to give the certificate to the Registrar-General of Land.

[Section 51, NHI Act](#) and [regulation 11A, NHI Regulations](#)

The entry on the RT indicating a cancellation typically reads as follows:

Certificate under Section 51(2) of the Natural Hazards Insurance Act 2023

Where the notice of cancellation was entered on the RT under [Schedule 3, Clause 4\(1\) of the EQC Act](#), the entry indicating a cancellation typically reads as follows:

Certificate under Section 28(1) Earthquake Commission Act 1993

Section 3 – Is the NHCover claim valid?

In rare cases, the notice of cancellation may have been entered on the RT under regulation 16 of the Earthquake and War Damage (Land Cover) Regulations 1984. In such cases, the entry on the RT indicating a cancellation typically reads as follows:

Statutory Land Charge under the Earthquake and War Damage (Land Cover) Regulations 1984

We (or a person we authorise) should also obtain the original certificate issued at the time of the cancellation to check that the details listed on it confirm what the entry says.

#### Cancellation remains in effect until reinstatement

Cancellation remains in effect notwithstanding:

- the renewal of the fire insurance contract;
- the issue of a new fire insurance contract; or
- change of ownership of the property.

#### [Section 49\(7\), NHI Act](#)

#### Reinstatement

We must reinstate the NHCover if, on application by a person affected by the cancellation, we consider that the cancellation should no longer apply.

#### [Section 49\(6\), NHI Act](#)

If this occurs, we must give notice to the Registrar-General of Land discharging the certificate. The notice must be given as soon as practicable after the cover is reinstated, be in form approved (if any) by the Registrar-General of Land, and include the following information:

- a statement that the purpose of the notice is to record the reinstatement of cancelled building cover or land cover (or both) and to discharge the certificate recording cancellation;
- a reference to section 49 of the NHI Act;
- any unique identifier assigned to the claim by us;
- a description of the land affected by the notice, including the name of the registered proprietor, the RT reference, and the land registration district;

#### Section 3 – Is the NHCover claim valid?

- the date the cancelled cover was reinstated from;
- the signature of a person authorised by us to give the notice to the Registrar-General of Land.

[Section 51, NHI Act](#) and [regulation 11B, NHI Regulations](#)

Upon reinstatement, we must also notify, in writing, the person affected by the cancellation that it is no longer in effect.

The notice on the RT is then removed.

For residential building claims, the RT to the property should be checked before any settlement to ensure that the NHCover or EQCover was not cancelled at the time of the damage-causing natural hazard. For the purposes of this check, the copy of the RT sourced from Land Information New Zealand (LINZ) must be no older than three months from the date that LINZ sent it out.

Sections [49](#) and [51](#), NHI Act

## ii. Limitation on NHCover

The RT for the property must be checked to ensure that the NHCover or EQCover has not been limited.

We may limit NHCover for the property where:

- a residential building has suffered natural hazard damage as a direct result of a landslide;
- the building or land is likely to suffer **future damage** (discussed below); and
- the insured person could take reasonable steps to mitigate the risk of the **future damage**.

### Future damage

Future damage means further natural hazard damage of substantially the same kind as the previous damage.

### How cover is limited

We limit the NHCover by sending the owner a written notice stating that we may decline claims for future damage (under sections [67](#) and [73](#) of the NHI Act, a claim may be declined for failure to protect property), and the reasons for the decision.

Limitation takes effect when the written notice is given, and continues until it is removed.

#### [Section 50\(2\) and \(3\), NHI Act](#)

We also arrange for a notice to be placed on the RT by providing a certificate to the Registrar-General of Land stating that liability has been limited. The certificate must be given as soon as practicable after the owner has been given written notice, be in form approved (if any) by the Registrar-General of Land, and include the following information:

- a statement that the purpose of the certificate is to record the limitation of our liability under the NHI Act;
- a reference to section 50 of the NHI Act;
- any unique identifier assigned to the claim by us;
- a description of the land affected by the certificate, including the name of the registered proprietor, the RT reference, and the land registration district;
- the date the limitation applies from;
- the reasons for the limitation;
- a statement indicating whether the limitation applies to building cover or land cover, or both;
- a statement summarising sections 50(4) and (5) of the NHI Act;
- the signature of a person authorised by us to give the certificate to the Registrar-General of Land.

#### [Section 51, NHI Act](#) and [regulation 11A, NHI Regulations](#)

The entry on the RT indicating a limitation typically reads as follows:

Certificate under Section 51(2) of the Natural Hazards Insurance Act 2023

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Where the notice of limitation was entered on the RT under [Schedule 3, Clause 5\(1\) of the EQC Act](#), the entry indicating limitation typically reads as follows:

Certificate under Section 28(1) Earthquake Commission Act 1993

We should also obtain the original certificate issued at the time of the limitation to check that the details listed on it confirm what the entry says.

#### Limitation remains in effect until reinstatement

The notice remains on the RT notwithstanding:

- the renewal of the fire insurance contract;
- the issue of a new fire insurance contract; or
- change of ownership of the property.

#### [Section 50\(5\), NHI Act](#)

#### Reinstatement

We must remove the limitation to the NHCover if, on application by a person affected by the limitation, we consider that the limitation should no longer apply.

#### [Section 50\(4\), NHI Act](#)

If this occurs, we must give notice to the Registrar-General of Land discharging the certificate. The notice must be given as soon as practicable after the cover is reinstated, be in form approved (if any) by the Registrar-General of Land, and include the following information:

- a statement that the purpose of the notice is to record the removal of a limitation of our liability under the NHI Act and to discharge the certificate recording this limitation;
- a reference to section 50 of the NHI Act;
- any unique identifier assigned to the claim by us;
- a description of the land affected by the notice, including the name of the registered proprietor, the RT reference, and the land registration district;

#### Section 3 – Is the NHCover claim valid?

- the date the limitation of liability was removed from;
- the signature of a person authorised by us to give the notice to the Registrar-General of Land.

[Section 51, NHI Act](#) and [regulation 11B, NHI Regulations](#)

Upon reinstatement, we must also notify, in writing, the person affected by the limitation that it is no longer in effect.

The notice on the RT will then be removed.

Where there is a notice of limitation on the RT under [section 28](#) and [clause 5, Schedule 3, EQC Act](#) or [section 51 of the NHI Act](#):

- the person dealing with the claim may continue to do so only if they have specific authority to deal with claims where the NHCover or EQCover has been limited; and
- in all other cases, the claim must be escalated to the appropriate NHC representative.

Sections [50](#) and [51](#), NHI Act

## **j. What other matters must be considered early on in processing an NHCover claim?**

### **i. Circumstances where we (or a person we authorise) may decline cover**

Even if the requirements in Sections 3.c to 3.h in this Manual are met, there may be grounds to decline (or only meet part of) a claim in the circumstances set out in [sections 68 to 77 of the NHI Act](#).

Details of the grounds for declining claims are set out in Section 7 in this Manual.

Early in the claims management process, any potential grounds to decline should be considered. To the extent it is clear from information available that any of these grounds to decline may apply, this may make other aspects of the process (e.g. deciding the validity of the claim or full assessment of the damage) unnecessary, although the process for declining claims set out in Section 7 in this Manual must still be followed.

[Sections 68 to 77, NHI Act](#)

## Section 3 – Is the NHCover claim valid?

## ii. ‘Ground-up’ cover

A private insurer’s cover under the fire insurance contract can be either ‘ground-up’ cover or ‘top-up’ cover.

With ‘ground-up’ cover, the private insurer pays for all natural hazard damage within the terms of the fire insurance contract and NHCover pays the balance, if any (within the scope of the NHCover up to the limits specified in the NHI Act).

With ‘top-up’ cover, NHCover pays for all natural hazard damage covered by the NHI Act up to the limits specified in the NHI Act, and then the private insurer pays for the balance (if any).

Most private insurer fire insurance contracts provide for ‘top-up’ cover. However, if the private insurer’s fire insurance contract is ‘ground-up’ cover, (subject to the terms of that contract) we only have liability if the private insurer’s cover is exhausted.

Accordingly, our liability may be limited or even ‘nil’.

[Section 87, NHI Act](#)

## iii. Is further information needed to assess, decide or settle the claim, or for other purposes?

### Information for assessing, deciding or settling the claim

We (or a person we authorise) may, by written notice, request the insured person to provide (at their expense) any information it is reasonably believed is needed to assess, decide or settle the claim.

Such action can also be taken after the claim has been settled, if we (or a person we authorise) become aware that relevant matters or information were not taken into account when the claim was settled.

After giving the notice, we (or a person we authorise) may defer taking any action until the notice has been complied with.

[Section 58, NHI Act](#)

### Information for other purposes

A person who has been properly authorised can, by written notice, require a person to provide any information, document, or other thing that we reasonably need to perform our functions.

Section 3 – Is the NHCover claim valid?

However, this power cannot be used to obtain information from an insured person for the purposes of assessing, deciding, or settling a claim made by them.

The written notice must specify a reasonable period for compliance and may:

- specify the form and manner for providing the materials;
- require the insured person to provide a statutory declaration as to the truth of the material; and
- specify how anything required by the notice must be done.

[Section 144, NHI Act](#)

#### **iv. Has the customer updated us (or a person we authorise)?**

An insured person must update us (or a person we authorise) as soon as practicable after becoming aware of any material change in information or new information relating to the claim.

We (or a person we authorise) may defer taking any action in relation to the claim until we are given the required information.

[Section 56, NHI Act](#)

### **k. What if the levy is unpaid or underpaid?**

#### **i. Failure of private insurer or customer to pay levy does not affect NHCover claim**

The customer's NHCover claim can proceed if:

- the private insurer has not paid an NHI levy due to us; and/or
- the customer has not paid the levy due to the private insurer.

This is provided that the fire insurance contract has not been suspended or cancelled as a result of non-payment by the customer.

Check unpaid or underpaid levies at an early stage as these may indicate:

- the amount of NHCover is incorrect (see Sections 8.e and 8.g in this Manual);
- that the correct number of dwellings in the residential building has not been disclosed to the private insurer at the time that the fire insurance contract was entered into or renewed.

You must notify the appropriate NHC representative immediately of any unpaid NHI levy. We will expect recovery of any levy due to us through separate processes.

### Section 3 – Is the NHCover claim valid?



## 4. Is there an insured ‘residential building’?

### A. Overview

The definition of ‘residential building’ draws a line between those buildings, parts of buildings, appurtenant structures and certain service infrastructure that are insured under the [NHI Act](#) and those that are not.

In general terms, to find what is an insured ‘residential building’, it is necessary to identify:

- an ‘eligible building’ (Section 4.C in this Manual);
- a ‘dwelling’ (Section 4.C.c in this Manual);
- the ‘residential building’ itself, which may include:
  - the whole of an ‘eligible building’; or
  - in the case of a ‘mixed-use building’, all of the dwellings in the ‘eligible building’;
- the appurtenant structures (Section 4.D in this Manual);
- the service infrastructure (Section 4.E in this Manual).

Details on each of these matters are set out in Sections 4.C to 4.E in this Manual.

A building, or part of a building that provides long-term accommodation for the elderly is considered a ‘dwelling’ under the [NHI Act](#) and therefore covered on the same basis as any other ‘residential building’. This aspect is addressed separately in Section 4.F in this Manual.

[Schedule 2 of the NHI Act](#) lists items that are excluded from NHCover or only insured under the [NHI Act](#) in limited circumstances. This Schedule has the effect of ‘carving out’ some items that may otherwise be insured as components of the ‘residential building’ (see Section 4.G in this Manual).

## B. What is a ‘residential building’?

### a. Key components of ‘residential building’ definition

The ‘residential building’ definition in the NHI Act can be broken down into three key components:

- the whole of an 'eligible building' (other than any excluded property) (see Section 4.C in this Manual);
- 'appurtenant structures' for the 'dwellings' in the building (see Section 4.D in this Manual);
- 'service infrastructure' for the dwellings in the building (see Section 4.E in this Manual).

[Section 9\(1\), NHI Act](#)

#### Key components for mixed-use buildings

In the case of an eligible building that is a 'mixed-use building' there are five key components of the ‘residential building’ definition in the NHI Act:

- all the 'dwellings' in the eligible building (see Section 4.C.c in this Manual);
- all 'appurtenant structures' for those dwellings (see Section 4.D in this Manual);
- all 'service infrastructure' for those dwellings (see Section 4.E in this Manual);
- all the 'common property' for the residential building (see Section 4.C.g in this Manual);
- all the 'joint property' for the residential building (see Section 4.C.h in this Manual).

There is no common property or joint property for a building that is not a mixed-use building.

[Section 9\(2\), NHI Act](#)



**b. Any 'residential building' may include 'shared property'**

Any 'residential building' may include 'shared property'. Shared property is any part of the residential building that a person who is not the 'insured person' also has an insurable interest in. For example, a shared wall in adjoining buildings. See Section 3.h.i in this Manual for how 'insured person' is defined for the purposes of shared property and shared land.

In the case of a 'mixed-use building', property that is 'common property' or 'joint property' in relation to that building may also be 'shared property' (i.e. shared with a party who is not one of the insured persons in the mixed-use building). See Section 4.C.i.iv in this Manual for how shared property is covered in mixed-use buildings.

[Section 15, NHI Act](#)

**c. Various components together can make up a 'residential building'**

One or more of these components together can comprise a 'residential building'. As such, they are insured by NHC under the [NHI Act](#), provided there is a 'fire insurance contract' or direct NHCover in force at the relevant time and the person who is entitled to the benefit of the fire insurance contract (or direct NHCover) has an insurable interest in the 'eligible building'.

So, for example, in broad terms a 'residential building' could be:

- a stand-alone eligible building PLUS 'appurtenant structures' PLUS the 'service infrastructure';
- a whole multi-unit building (such as a unit title development) that mainly comprises dwellings PLUS the appurtenant structures PLUS the service infrastructure; or
- in the case of a 'mixed-use building' (such as a commercial hotel with a dwelling on the top floor), the dwelling within the eligible building PLUS all appurtenant structures and service infrastructure for the dwelling PLUS 'common property' PLUS 'joint property' for the building.

Section 4 – Is there an insured 'residential building'?

#### d. What items make up a ‘residential building’?

A 'residential building' includes 'fixtures and fittings' (such as built-in cupboards, plumbed-in appliances, wired-in electrical appliances, and fixed carpets), unless they are 'excluded property'.

A residential building does not include 'building contents or other personal property'. For more information on excluded property and property not insured under the NHI Act, see Section 4.G.

[Section 9\(3\), NHI Act](#)

#### i. Fixtures and fittings vs building contents and other personal property

'Fixtures and fittings' are considered part of the 'residential building' (and are not 'building contents'). These are items that are affixed to the building and are, generally, items left as part of the building when somebody stops living there. Examples are toilets, sinks and basins, kitchen cabinetry and wood burners.

Sometimes it is difficult to ‘draw the line’ between fixtures and fittings and contents. For example, we have developed separate guidance to deal with the specific issues arising with respect to dishwashers, ovens, carpets, curtains and drapes (see below).

##### Dishwashers and ovens

If a dishwasher or oven is affixed to the residential building, it is considered to be part of the residential building. In this case ‘fixed’ means that:

- the dishwasher or oven is built-in, plumbed-in, wired-in or fixed to the wall or floor; and/or
- the removal of the dishwasher or oven would cause material damage.

If the dishwasher or oven can be unplugged and moved (without material damage), it is considered to be personal property.

In cases of doubt as to whether or not the dishwasher or oven is fixed into the residential building, the matter must be escalated to the appropriate NHC representative.

##### Carpets

The same analysis above applies to carpets. In this case, ‘fixed’ normally means that the carpet is glued or nailed to the flooring or otherwise permanently fixed (and not adhered through loose tacks, carpet grippers or other easily removable form of adherence).

Section 4 – Is there an insured ‘residential building’?

Sometimes carpets at a property are covered under the fire insurance contract as both part of the residential building and part of the contents. In these cases, whether to treat the carpet as part of the residential building claim must be escalated to the appropriate NHC representative.

### Curtains and drapes

Generally, curtains and drapes are not covered as part of the residential building. However, they may be covered if, for example, they are fixed to a structure (such as a pelmet) which they cannot be removed from and which is in turn affixed to the building.

Where the curtains or drapes are covered by the fire insurance contracts as part of both the residential building and the contents, the matter must be escalated to the appropriate NHC representative.

Each case will turn on its own facts.

## **e. Timing of determination of whether or not there is a ‘residential building’**

The question whether a building, part of a building, 'appurtenant structure' and/or 'service infrastructure' meets the requirements of the ‘residential building’ definition is usually determined:

- when the new 'fire insurance contract' or direct NHCover for the property is entered into; or
- if the fire insurance contract or direct NHCover is being renewed, when the renewal takes place.

If, partway through the period of the cover under the fire insurance contract or direct NHCover, the building no longer contains a 'dwelling' under the NHI Act, NHCover nevertheless continues. The cover continues for that building until:

- the fire insurance contract for that building ceases to be in force (e.g. expires or is cancelled or suspended by the private insurer); or
- the direct NHCover for that building ceases to be in force (e.g. expires or is cancelled by NHC); or
- the fire insurance contract or direct NHCover comes to an end (whether for renewal or otherwise) and the building no longer contains a ‘dwelling’; or
- we cancel the NHCover for that building (see Section 3.i.i in this Manual).

## Section 4 – Is there an insured ‘residential building’?

For more details, see Section 3.i in this Manual.

Sections [6](#), [29](#) and [48](#), NHI Act

## C. What is an 'eligible building'?

### a. Definition of 'eligible building'

The 'eligible building' is the building that contains the 'dwelling' or dwellings. The whole or part of a building can be an eligible building.

### b. Whole or part of a building may be an 'eligible building'

The whole of a building is an 'eligible building' where:

- the building contains one or more 'dwellings' (Section 4.C.c.ii in this Manual);
- the whole building is insured under a single 'fire insurance contract'; and
- the 'insured person' or insured persons have an insurable interest in the whole of the building.

[Section 7\(1\), NHI Act](#)

Part of a building is an eligible building where:

- the building contains one or more dwellings (Section 4.C.c.ii in this Manual);
- the insured person or insured persons have an insurable interest in part of the building including at least one dwelling; and
- those persons are entitled to the benefit of a single fire insurance contract that insures that part of the building.

[Section 7\(2\), NHI Act](#)

In practice, that means whether the whole or part of a building is an eligible building is determined by the area of the building that is covered by the insured person's (persons') fire insurance contract.

If the single fire insurance contract covers the whole building, the whole building is an eligible building.

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If only part of the building (that contains at least one dwelling) is insured under a single fire insurance contract, that part of the building is the eligible building. As a result, there may be several separate eligible buildings within the same building.

### Examples

- If a standalone building (containing a dwelling) is insured under a single fire insurance contract, the whole building is an eligible building.
- If a building consists of four connected town houses, of which three are insured under separate fire insurance contracts and the fourth is not insured, each of the three insured town houses are separate eligible buildings and the fourth is not an eligible building.
- If a whole building consisting of apartments and shops is insured under a single fire insurance contract, the whole building is an eligible building. Depending on how much of the building is taken up by the apartments and associated appurtenant structures (in the building), the eligible building may also be a mixed-use building (Section 4.C.d in this Manual).

## **c. What is a ‘dwelling’?**

### **i. Identifying a ‘dwelling’ is critical to determining whether there is an ‘eligible building’**

Identifying whether or not there is a ‘dwelling’ is a critical first step in applying the ‘eligible building’ definition.

The term ‘dwelling’ is also central to the definition of ‘residential building’. For example, under the ‘residential building’ definition:

- the eligible building must contain one or more dwellings;  
Sections [7](#) and [9\(1\)\(a\)](#), NHI Act
- any ‘appurtenant structure’ must be appurtenant to the dwelling;  
Sections [9\(1\)\(b\)](#) and [11\(1\)\(b\)](#), NHI Act
- any ‘service infrastructure’ must serve a dwelling, appurtenant structures to the dwelling or the insured person's land.  
Sections [9\(1\)\(b\)](#) and [12](#), NHI Act

## Section 4 – Is there an insured ‘residential building’?

## ii. What is the definition of ‘dwelling’?

The NHI Act defines a ‘dwelling’ as follows:

- (1) A building, or part of a building, is a dwelling if—
  - (a) it is self-contained with the facilities necessary for day-to-day living on an indefinite basis (including somewhere to cook, sleep, live, wash, and use a toilet); and
  - (b) 1 or more of the following apply to it:
    - (i) it is used by 1 or more persons to live in as their home;
    - (ii) it is used by 1 or more persons as their holiday home;
    - (iii) it is capable of being, and is intended by its owner to be, used for a purpose set out in subparagraph (i) or (ii).

### [Section 6\(1\), NHI Act](#)

#### Dwellings to be self-contained and used or capable of being and intended to be used as a home or holiday home

To be a ‘dwelling’, the premises must be self-contained with the facilities necessary for day-to-day living on an indefinite basis (including somewhere to cook, sleep, live, wash, and use a toilet) and **either**:

- be used by at least one person as their home or holiday home; or
- be:
  - capable of being the home or holiday home of at least one person; and
  - intended by the owner to be used as their home or holiday home.

Property that would otherwise be part of a dwelling is not part of a dwelling if it is ‘excluded property’ (see Section 4.G in this Manual).

### [Section 6\(8\), NHI Act](#)

Several qualifications within the NHI Act are set out below.

Sections 4.C.c.ii to 4.C.c.xi in this Manual discuss the various elements of the ‘dwelling’ definition and those qualifications.

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### iii. What does ‘self-contained’ mean?

To be a ‘dwelling’ the premises must be self-contained with the facilities necessary for day-to-day living on an indefinite basis. There must be somewhere to cook, sleep, live, wash, and use a toilet.

[Section 6\(1\)\(a\), NHI Act](#)

The facilities needed to do these things do not have to be in one building – for example they may also be in an appurtenant structure – but the facilities must be for the exclusive use of the owners or other occupants of the ‘dwelling’.

For example, a property may have an outside toilet in its grounds. In this example there are facilities for the premises to be self-contained, but the facilities are in two buildings (the house and the outside toilet). Provided the facilities are not shared with other homes, the premises will be self-contained for NHCover purposes.

[Section 6\(5\), NHI Act](#)

### iv. What is a ‘home’?

Where a person chooses to live (whether alone or with others) in premises on a more than temporary or transient basis, and the primary purpose of the premises is to serve as somebody’s home, the premises are a ‘home’ for NHCover purposes.

[Section 6\(1\)\(b\)\(i\), NHI Act](#)

#### Examples

Examples of a ‘home’ may include:

- premises where the owner lives (whether or not with others);
- premises leased to a single tenant;
- premises leased, where one occupant rents the entire home and lets others live there as well; and/or
- premises where occupants rent individual rooms as their home (on a more than transient or temporary basis) from a landlord (whether or not operating on a ‘commercial’ basis). The occupants share common facilities, such as kitchens and bathrooms, in that self-contained building.

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As a further example, a show home, which is purely used to showcase a product or design is not a 'home'. These types of buildings are generally not a home to anyone and there is generally no intention they will be lived in as a home during the period of the insurance.

However, say, at the time the fire insurance contract is made or renewed, the show home is on the market to be sold. In these circumstances, the show home is a 'home' if it is:

- capable of being a home; and
- intended by the owner to be a home for someone.

In each case, whether particular premises are a 'home' depends on the particular facts.

[Sections 6\(1\)\(b\)\(i\), \(3\) and \(11\), NHI Act](#)

#### v. What is a 'holiday home'?

A 'holiday home' is a secondary residence for somebody whose home is elsewhere. It may be used on a transient basis by that person, usually for holidays.

[Section 6\(1\)\(b\)\(iii\), NHI Act](#)

Premises are not a holiday home if they:

- are used **at all times** to provide 'temporary or transient accommodation' (being accommodation that is ordinarily provided for periods of less than 28 days at a time) and are never used or cannot be used by the owner as they wish;
- provide accommodation for persons who are not living there voluntarily. These premises include, for example, a Corrections prison, police jail, police barracks, police cells and lock-ups, and barracks conducted by the Armed Forces for the accommodation of people subject to the [Armed Forces Discipline Act 1971](#);
- are used primarily for a purpose other than accommodation (such as hospitals and night shelters).

[Sections 6\(3\) and \(11\), NHI Act](#)

#### Section 4 – Is there an insured 'residential building'?



### General examples

Generally, premises are unlikely to be a holiday home if:

- they are set up purely as a commercial enterprise and the owner does not use them, or intend to use them, at any time for their own purposes as a holiday home (and no-one else uses them as a holiday home);
- an organisation owns the building, and it is used purely for the benefit of its members, who pay to stay there; or
- they are on the same property as the owner's residence. Even though others, like family and friends, may use the building for holidays or visits, it is unlikely to be the holiday destination for the owner or the holiday home of any other person. In those circumstances, the building may be an appurtenant structure if it meets the criteria for an appurtenant structure (see Section 4.D in this Manual).

### Serviced apartments and timeshares

Serviced apartments and timeshares are not usually insured under the NHI Act.

However:

- if there are self-contained premises for the manager of the apartment block, they may be covered (subject to meeting the other requirements of a dwelling);
- if the building has both serviced and owner-occupied apartments, NHCover may apply to the owner-occupied apartments and may also extend to the serviced apartments in certain circumstances – see Section 4.C.e in this Manual.

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## vi. What is not a home or holiday home

Premises are not a 'home' if they:

- are used at all times to provide 'temporary or transient accommodation' (being accommodation that is ordinarily provided for periods of less than 28 days at a time);
- provide accommodation for persons who are not living there voluntarily. These premises include for example, a Corrections prison, police jail, police barracks, police cells and lock-ups, and barracks conducted by the Armed Forces for the accommodation of people subject to the [Armed Forces Discipline Act 1971](#);
- are used primarily for a purpose other than accommodation (such as hospitals and night shelters); or
- are 'large-scale accommodation' (see Section 4.C.c.xii in this Manual).

[Sections 6\(3\), \(7\) and \(11\), NHI Act](#)

## vii. What does 'capable of being the home or holiday home' mean?

Premises may contain all the components needed to be a self-contained 'home' (see Section 4.C.c.iv in this Manual) or 'holiday home' (see Section 4.C.c.v in this Manual), but may not be occupied as a home or holiday home. In these circumstances, the premises can still be covered by us if they:

- are capable of being a home or holiday home; and
- are intended by the owner to be used as a home or holiday home.

[Section 6\(1\)\(b\), NHI Act](#)

For example, a tenanted building may have a period where it is untenanted. That period may include the renewal date of the insurance policy. At that point the building is not being used as someone's home. However, in this example, if the landlord is intending to lease the building during the renewed insurance period, the building is considered to be capable of being a person's home.

### viii. What does ‘intended by the owner to be a home or a holiday home’ mean?

The owner’s intention for the premises to be a home may be inferred from, for example:

- the owner’s description of their intention regarding the property;
- the lease or tenancy type and duration that the owner intends to enter into for the premises;
- the type of insurance policy covering the premises;
- the steps the owner is taking to let the property as a home or holiday home, e.g. advertisements.

For holiday homes, the owner’s intention for the premises to be a holiday home may be inferred from the owner’s description of their intention to return again and again to the premises – no matter how minimal the use. At a minimum it is acceptable if:

- the owner can occupy the premises whenever they wish; and
- the owner stores (some of) their possessions there.

The owner’s intention can be that the holiday home is used:

- solely by the owner;
- by friends and family as well as the owner; and/or
- by tenants on a periodic basis, but by the owner too, whenever the owner wishes to use it.

[Section 6\(1\)\(b\), NHI Act](#)

### ix. What is the effect of a ‘dwelling’ becoming or ceasing to be a ‘dwelling’ (temporarily or otherwise)?

Usually, if the building does not contain a ‘dwelling’ at the time of determination of whether or not there is a ‘residential building’, the building does not have NHCover. In limited circumstances the building continues to have NHCover.

Section 4.B.e in this Manual discusses the timing of determination of whether or not there is an ‘eligible building’.

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### Temporarily ceases to be a dwelling

A building or part of a building that temporarily ceases to meet the criteria to be a 'dwelling' remains a 'dwelling' under the NHI Act if:

- the cessation is because of 'building work' (defined by [section 7 of the Building Act](#)) being carried out in connection with the dwelling; **or**
- the cessation is because of physical loss or damage to the building or part of the building as a result of a 'natural hazard' as defined by the [NHI Act](#), or a sudden and unexpected event that is not a natural hazard; **and**
- the owner of the building intends that the building or part of the building will:
  - again meet the criteria to be a dwelling; and
  - will not be used for any other purpose before then.

#### [Section 6\(4\), NHI Act](#)

However, for the building or part of a building to remain a dwelling under this exception, the restored building or part of a building must wholly or substantially be the same building that previously met the criteria for a dwelling. Therefore:

- if the owner intends to demolish the dwelling and construct a new building, this exception does not apply.
- if the building is so badly damaged, by the natural hazard or other sudden and unexpected event that is not a natural hazard, that the building cannot be inhabited and needs to be demolished, this exception does not apply. If the building can be inhabited before being demolished, this exception may apply.

The building continues to have NHCover if it falls under this exception at the date of determination of whether it is a 'residential building'. This is provided that a fire insurance contract remains in place for the building.

#### [Section 6\(4\), NHI Act](#)

### Section 4 – Is there an insured 'residential building'?

### Examples

- If a person renovated their house and the work involved removing the kitchen and bathroom and replacing them, the house would temporarily not meet the definition of dwelling while that work was being done because it would not have the facilities necessary for day-to-day living. Because the facilities would be reinstated and the building would meet the criteria for dwelling at that point, the building would still qualify as a dwelling so long as the building was not used for any other purpose before the date of determination (i.e. the renewal date of the fire insurance contract).
- If a person demolished their house to build a new one, the new building under construction would not be the same building. Therefore, the building would not 'temporarily cease' to be a dwelling. The new building under construction would not have NHCover. (The person may separately have contract works insurance.)
- If a person undertakes significant renovations and largely demolishes their house, but the existing foundations are reused, it is not the same building and does not have NHCover. However, if the building is stripped back to its framing but the majority of the existing framing is retained (with some addition or reconfiguration), that is usually considered to be the same building and has NHCover. Despite the replacement of most of the building's other elements, it retains the majority of its existing structural components and footprint.
- If a residential building suffers natural hazard damage or physical loss or damage, from a sudden and unexpected event that is not a 'natural hazard', to its kitchen and bathroom that requires partial demolition and renovation, it continues to have NHCover so long as at the date of determination (i.e. the renewal date of the fire insurance contract) the owner intends to repair the building. If the owner intends to demolish and construct a new building it does not continue to have NHCover.

### Ceasing to be a dwelling

If a dwelling insured under a fire insurance contract ceases to be a dwelling during the period of the contract, the building still has NHCover until the fire insurance contract either ceases or is renewed.

### [Section 29\(3\), NHI Act](#)

#### Section 4 – Is there an insured 'residential building'?



For example, the owner of a building converts it from a dwelling to a hairdressing salon during the term of the fire insurance contract. NHCover continues until the policy ends (most likely when it is replaced with an appropriate business insurance policy).

See also Section 3.g in this Manual.

### Becoming a dwelling

If property that does not include a dwelling is insured under a fire insurance contract, and all or part of the property becomes a dwelling during the period of the contract, the property does not have NHCover until the contract is renewed or a new fire insurance contract is entered into.

### [Section 29\(4\), NHI Act](#)

For example, the owner of a hairdressing salon converts it to a dwelling. NHCover does not begin until the existing contract of insurance covering the building is renewed (or, more likely, is replaced by a residential fire insurance contract).

See also Section 3.g in this Manual.

## **x. What happens when a dwelling is used 'some of the time to provide temporary or transient accommodation'?**

A building, or part of a building, can still be a 'dwelling' under the NHI Act even if it is used some of the time to provide 'temporary or transient accommodation'.

### [Section 6\(3\), NHI Act](#)

### Examples

For example, the building, or part of the building, is a dwelling in the following circumstances:

- a homeowner participates in a house swap for a period of 28 days or less;
- a holiday home is made available to others on a periodic basis for short term holiday accommodation (for example, through Airbnb, BookaBach or another comparable service) so long as it is capable of and intended to be used for personal use by the homeowner whenever they wish to use it; or

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- 'long-term accommodation for the elderly' that also provides temporary or transient accommodation for the elderly (see Section 4.F in this Manual).

[Section 6\(3\), NHI Act](#)

**xi. 'Dwellings' that are not buildings**

If a vehicle (including a motor vehicle, trailer, boat or aircraft) or structure (or part of a vehicle or structure) that is not ordinarily considered to be a building is immovable:

- it is taken to be a building (or part of a building); and
- it meets the criteria set out above under [section 6\(1\) of the NHI Act](#) for a dwelling (see Section 4.C.c.ii in this Manual), it is a dwelling.

[Section 6\(6\), NHI Act](#)

For example, a caravan that is immovable because it is permanently fixed to piles and is connected to power, water, and sewerage services, and that is being used on an indefinite basis as a person's home, may be a dwelling.

**xii. 'Large-scale accommodation' excluded from NHCover**

A building, or part of a building, is generally not a 'dwelling' (even it meets the criteria to be one) if it is:

- used to provide accommodation on a scale larger than is typical for use as the home of a single household; and
- not intended by the owner to be used as the home of a single household.

An exception to this is holiday homes that are used to provide accommodation on a scale larger than is typical for use as the home of a single household, which may have NHCover. This is discussed below.

[Section 6\(3\), NHI Act](#) and [regulation 4A, NHI Regulations](#)

What is a scale larger than is typical for use as the home of a single household?

The home of a single household typically provides accommodation on a small scale. The following factors should be considered to ascertain whether the building is being used to

provide accommodation on a scale larger than is typical for use as the home of a single household:

- whether the premises have seven or more standard bedrooms;
- whether the premises have any non-standard bedrooms or spaces intended for larger numbers of people to sleep in (e.g. large dormitory-style rooms);
- whether there are other facilities in the premises to suggest they are intended to accommodate people on a large scale (e.g. an industrial kitchen or multiple communal facilities); and
- whether the premises have the facilities to accommodate people on a large scale, if they are being used for that purpose.

The above factors are not a checklist but instead independent factors to consider – whether a building is being used on a scale larger than is typical for use as the home of a single household depends on the circumstances and must be determined on a case-by-case basis.

#### Determining whether the owner intends the premises to be used as the home of a single household

If the premises are used to provide accommodation on a scale larger than is typical for use as the home of a single household, the intention of the owner of the building must be considered. If the owner intends to use the building as the home of a single household, the building has NHCover despite its large scale (provided the criteria for a dwelling are also met).

#### Owner's intention is a question of fact

Whether the premises are intended to be used as the home of a single household is a question of fact. How and why the occupants live together should be considered. To be considered a 'household', the occupants should be a family, or have another similar relationship that has a degree of social cohesion between the occupants (e.g. friends sharing a house).



### Factors relevant to owner's intention

Consider the following factors when determining whether the premises are intended to be used as the home of a single household. There may also be other factors to consider:

- the number of residents at any given time;
- whether there is a level of permanence in the occupation of the building (or whether the occupation is more transient and short-term in nature);
- whether there is agreement of the residents to live together (in other words, are the tenants on the same tenancy agreement or has the landlord contracted with them individually);
- the degree of restriction placed on the residents by the owner (i.e. 'house rules'); and
- whether operation of the building is commercial in nature rather than a domestic dwelling (and any indications of this through design of the premises, e.g. a lack of shared social spaces).

### Examples

- The building has four bedrooms and 16 occupants. There is one full kitchen, one bathroom and a laundry. The bedrooms each contain two bunkbeds divided by curtains. There is a schedule for use of shared areas. The building is owned by a company that rents the bunkbeds out individually on a short-term tenancy agreement. The occupants do not know each other. The building is not large but is used to provide accommodation on a scale larger than is typical for a single household. The owner does not intend for the premises to be used as the home of a single household. The building likely does not have NHCover.
- The building has seven bedrooms and 12 occupants. There is a full kitchen and five bedrooms upstairs, and a kitchenette, laundry and two bedrooms downstairs. The house is owned by a couple, who live there with multiple generations of their family. This building is used to provide accommodation on a scale larger than is typical for a single household but it is intended by its owners to be used as the home of a single household so it has NHCover.
- The building has ten bedrooms which can be separately locked. There are 18 people living in the building, including several small unrelated families. The

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occupants are under separate fixed-term tenancy agreements. Some of the occupants do not know each other, although some occupants have developed friendships through living at the premises. The building has a large storage area, two kitchens and two laundries on separate floors with individual external access. This building likely does not have NHCover. It provides large-scale accommodation on a scale larger than is typical for a single household and the owner does not intend for the building to be used as the home of a single household.

### Holiday homes

Holiday homes that are used to provide accommodation on a scale larger than is typical for use as the home of a single household may have NHCover.

This applies if the building is not used, or is not intended by the owner to be used, by any person to live in as their home. The building (or part of the building) must be self-contained, with the facilities necessary for day-to-day living on an indefinite basis and either:

- used by 1 or more persons as their holiday home; or
- capable of being, and intended by its owner to be, used by 1 or more persons as their holiday home.

### [Regulation 4A, NHI Regulations](#)

#### **d. What is meant by a 'mixed-use building'?**

An 'eligible building' can contain both residential and non-residential premises. An eligible building is a 'mixed-use building' if its 'residential percentage' is less than 50%.

### [Section 8\(1\), NHI Act](#)

For example, a mixed-use building may be a commercial building with an apartment on the top floor or a 'residential building' that has been converted to operate a small business out of its front room.

#### **e. When is an 'eligible building' a 'mixed-use' building?**

An 'eligible building' is a 'mixed-use building' if its 'residential percentage' is less than 50%.

### [Section 8\(1\), NHI Act](#)

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## f. How to calculate a 'residential percentage'

### Equation for calculating residential percentage

The 'residential percentage' of a building is calculated using the following equation:

$$r = [(d + a + j) \div b] \times 100$$

where—

r is the eligible building's residential percentage

d is the floor area of the dwellings in the eligible building

a is the floor area of all appurtenant structures for the dwellings that are part of the eligible building

j is the floor area of all appurtenant structures for any joint-owner premises (as defined in [section 14\(4\)](#)) that are part of the eligible building

b is the floor area of the whole of the eligible building, excluding any common property.

[Section 8\(2\), NHI Act](#)

### 'Floor area of the whole of the eligible building' based on whether whole or part of building is an eligible building

If the **whole** of a building is an 'eligible building', the floor area of the whole building is used to calculate the residential percentage.

If **part** of a building is an eligible building, only the floor area of the part of the building that is an 'eligible building' is used to calculate the residential percentage.

Floor area is the internal floor area in square metres. The internal floor area of the dwellings and appurtenant structures to the dwellings that are part of the eligible building should be measured by including all usable or measurable floor areas including, dwellings, hallways, stairs, storage areas, basements, and parking spaces. It should exclude:

- external areas, such as, decks, external fire escapes, balconies and verandas;
- the roof (even if it is flat and can be walked on); and
- areas that do not have a measurable floor area (such as ceiling voids or subfloor areas).

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To calculate the residential percentage, assume that the eligible building has common property and joint property as if it were a mixed-use building.

[Section 8\(3\), NHI Act](#)

**g. A 'mixed-use building' may include 'common property'**

'Common property' for 'mixed-use buildings' is insured under the NHI Act.

[Section 13, NHI Act](#)

**i. What is 'common property'?**

A 'mixed-use building' may include 'common property'. The parts of the 'residential building' that are available for use by, or that are for the benefit of, the owners or occupants of **all premises** in the 'eligible building' (including both residential and non-residential premises) are common property if they are:

- integral components of the eligible building, such as the roof, foundations, cladding or structural elements;
- 'appurtenant structures for the premises', which could include a shared laundry area, shared stairwells, or shared lifts for example, where these are available for use by all occupants;
- 'service infrastructure for the premises', such as the building's main water line, an HVAC system that serves the whole building, or the main electrical switchboard for the building; or
- other areas in the eligible building that are not part of any premises (such as a foyer, or storage area for building maintenance supplies).

[Section 13\(2\), NHI Act](#)

**When are building parts 'available for use'?**

A particular part of the building is 'available for use' when it can be used **both** physically and legally by the owners and other occupants. For example, if a stairwell in a unit title building is common property on the unit plan, it is available physically and legally for use by all owners and occupants, even though some may not use it frequently (or ever) because it does not lead to their premises.

[Section 13\(2\)\(a\), NHI Act](#)

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### When are building parts 'for the benefit of' owners and occupants?

A particular part of the building is 'for the benefit of' the owners or occupants if it is intended to provide an advantage to them in their use or occupation of the premises (and they have an interest in it for that reason). This is most relevant where the area is not one that can be 'used'. For example, the roof and cladding are likely to provide the advantage of weather protection to all premises in the building, even though they are parts of the building that are not directly available for use by the owners and other occupants.

[Section 13\(2\)\(a\), NHI Act](#)

### What are 'appurtenant structures for the premises'?

An 'appurtenant structure for the premises' is the same as an 'appurtenant structure' (see Section 4.D in this Manual), except that, in the case of mixed-use buildings, it must be appurtenant to 'all premises in the eligible building'.

[Section 13\(4\), NHI Act](#)

### What is 'service infrastructure for the premises'?

'Service infrastructure for the premises' is the same as 'service infrastructure' (see Section 4.E in this Manual) except that, in the case of mixed-use buildings, it provides a service to:

- all premises in the eligible building and is in, or within 60 metres of, the eligible building in a horizontal line;
- an appurtenant structure for the premises or other common property that is part of the eligible building and is in, or within 60 metres of the eligible building in a horizontal line;
- any other appurtenant structure for the premises and is in, or within 60 metres of the appurtenant structure in a horizontal line; or
- 'common land' for the eligible building and is in, or within 60 metres of the eligible building or an appurtenant structure for the premises in a horizontal line (see Section 4.b.v of the [NHC Claims Manual - Residential Land - NHI Act](#)).

[Section 13\(5\), NHI Act](#)

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### What parts of the building are not common property?

A part of the building is not common property if:

- it is 'excluded property' (see Section 4.G in this Manual); or
- the owners of any of the premises in the building do not have an insurable interest in that part of the building.

#### [Section 13\(3\), NHI Act](#)

There is no common property for a building that is not a mixed-use building.

#### [Section 13\(1\), NHI Act](#)

### ii. How is 'common property' covered?

'Common property' is covered proportionately based on the 'common ownership interest' (see Section 4.C.i.ii in this Manual). 'Common property' may also be 'shared property', which means that it is shared with a party that is not one of the owners in the 'mixed-use building' (see Section 4.C.i.iv in this Manual).

Sections [13](#) and [15](#), NHI Act

### h. A 'mixed-use building' may include 'joint property'

'Joint property' for 'mixed-use buildings' is insured under the NHI Act (see Section 4.C.h.i in this Manual).

#### [Section 14, NHI Act](#)

### i. What is 'joint property'?

A 'mixed-use building' may include 'joint property'. Joint property is the parts of the residential building that are:

- available for use by, or that are for the benefit of, the owners or occupants of **some but not all premises** in the eligible building (the 'joint owner premises') (including non-residential premises, provided at least one of the premises in the eligible building includes a dwelling) and the owners of the joint owner premises all have an insurable interest in the property; and

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- any of the following:
  - integral components of the eligible building, such as the roof, foundations, cladding or structural elements;
  - 'appurtenant structures for the joint-owner premises', which could include a shared laundry area, shared stairwells, or shared lifts for example, where these were available for use for some owners;
  - 'service infrastructure for the joint-owner premises', such as an HVAC system that serves part of the building, or a separate electrical switchboard for part of the building; or
  - other areas in the eligible building that are not part of any premises (such as a foyer, or storage area for building maintenance supplies for joint-owner premises).

#### [Section 14\(2\), NHI Act](#)

#### When are building parts 'available for use'?

A particular part of the building is 'available for use' when it can be used both physically and legally by some of the owners and other occupants. For example, a hallway on a floor of the building may be legally for the joint use of premises on that floor, but not premises on other floors.

#### [Section 14\(2\)\(a\), NHI Act](#)

#### When are building parts 'for the benefit of' owners and occupants?

A particular part of the building is 'for the benefit of' some of the owners or occupants if it is intended to provide an advantage to them in their use or occupation of the premises (and they have an interest in it for that reason). This is most relevant where the area is not one that can be 'used' in the ordinary sense.

#### [Section 14\(2\)\(a\), NHI Act](#)

#### What are 'appurtenant structures for the joint-owner premises'?

An 'appurtenant structure for the joint-owner premises' is the same as an 'appurtenant structure' (see Section 4.D in this Manual), except that, in the case of mixed-use

buildings, it must be appurtenant to 'all the joint-owner premises' and used by the 'owners or other occupants of the joint-owner premises'.

[Section 14\(4\), NHI Act](#)

What is 'service infrastructure for the joint-owner premises'?

'Service infrastructure for the joint-owner premises' is the same as 'service infrastructure' (see Section 4.E in this Manual) except that, in the case of mixed-use buildings, it must provide a service to:

- all joint-owner premises and be in, or within 60 metres of, the eligible building in a horizontal line;
- an appurtenant structure for the joint-owner premises or other joint property that is part of the eligible building and be in, or within 60 metres of, the eligible building in a horizontal line;
- any other appurtenant structure for the joint-owner premises and be in, or within 60 metres of, the appurtenant structure in a horizontal line; or
- 'joint land' for the eligible building and be in, or within 60 metres of, the eligible building or an 'appurtenant structure for the joint-owner premises' in a horizontal line (see Section 4.b.v of the [NHC Claims Manual - Residential Land - NHI Act](#)).

[Section 14\(5\), NHI Act](#)

What parts of the building are not joint property?

A part of the building is not joint property if it is 'excluded property' (see Section 4.G in this Manual).

[Section 14\(3\), NHI Act](#)

There is no joint property for a building that is not a mixed-use building.

[Section 14\(1\), NHI Act](#)

Section 4 – Is there an insured 'residential building'?



## i. **Determining the common, joint, or shared ownership interest for common, joint or shared property**

‘Common property’, ‘joint property’ and ‘shared property’ have NHCover on a proportionate basis, depending on the ‘common ownership interest’, ‘joint ownership interest’ and ‘shared ownership interest’ respectively.

[Section 20\(5\), NHI Act](#)

### i. **When property is 'common property' or 'joint property' and 'shared property'**

Property that is 'common property' or 'joint property' can at the same time be 'shared property'. In those cases, two proportions may be applied to the entitlement.

[Section 15, NHI Act](#)

For example, if the 'mixed-use building' is connected to a neighbouring commercial building via a party wall, that party wall could be both common property and shared property. It is common property because it is for the benefit of all of the owners in the mixed-use building, and shared property because the owner of the commercial property has a 50% interest in it. A settlement for the repair of the wall would first be multiplied by the shared ownership interest percentage, and then by the common ownership interest percentage.

### ii. **'Common ownership interest'**

In the case of a mixed-use building, the 'common ownership interest' is the proportion of the interest in that 'common property' that is held by the owners of the 'dwellings' in the eligible building, by reason of that ownership. This is determined as a percentage of the total interest held by the owners of all of the premises in the 'eligible building'. If that percentage is not ascertainable, the eligible building's 'residential percentage' (based on the 50% test) is used instead.

For example, for a unit title development, the common ownership interest is determined based on the total ownership interests held by the owners of the dwellings (as a result of ownership of the dwellings and any accessory units). This is because under the [Unit Titles Act 2010](#), the ownership interest is used to determine the beneficial interest of the owner of a principal unit in the common property.

[Sections 20\(1\) and \(3\), NHI Act](#)

Section 4 – Is there an insured 'residential building'?

### iii. 'Joint ownership interest'

In the case of a mixed-use building, the 'joint ownership interest' is determined first on the basis of the 'repair responsibility' of the owners of the 'joint-owner premises' that are dwellings. 'Repair responsibility' means the responsibility to replace or reinstate, or to contribute to the cost of replacing or reinstating, the damaged joint property or joint land.

We (or a person we authorise) must determine the percentage of the repair responsibility held by the owners of the joint-owner premises as being equal to the percentage of the cost of replacing or reinstating the damaged joint property or joint land that at the relevant time the owners or persons would be required to contribute to or meet.<sup>10</sup>

If the repair responsibility is not ascertainable, the joint ownership interest is the percentage of the interest in the joint property or joint land that is held by the owners of the joint-owner premises that are 'dwellings' by reason of that ownership. Unless there is information to indicate otherwise, that percentage of the interest must be determined on the basis that the interest held by the owner or owners of each joint-owner premises (whether the premises are a dwelling or not) at the time the natural hazard damage occurred is an equal share of the total interest. However, if any of the following information indicates it is not equitable to determine the percentage of the interest based on equal shares, this must be taken into account when determining the percentage of the interest:

- the nature of the legal relationship that the owner or owners of each joint-owner premises had to the property or land at the relevant time (for example, holding a fee simple estate, a stratum estate in freehold, or a combination of freehold and a leasehold estate);
- the nature and extent of the loss the owner or owners of each joint-owner premises, at the relevant time, have suffered or are likely to suffer as a result of natural hazard damage that has occurred;
- any other information we (or a person we authorise) consider relevant.

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<sup>10</sup> See [regulation 3, NHI Regulations](#), Interpretation – definition of relevant time.

These percentages must be determined as a percentage of the total interest or repair responsibility held by the owners of all the premises in the 'eligible building'.

[Sections 20\(2\), \(3\) and \(6\), NHI Act](#) and [regulations 5, 6 and 7, NHI Regulations](#)

#### iv. 'Shared ownership interest'

For any eligible building, the 'shared ownership interest' can be determined in three ways:

- if the 'insured person' is the only person with 'repair responsibility', the 'shared ownership interest' is 1;
- if two or more persons share repair responsibility, the shared ownership interest is the insured person's percentage of the repair responsibility; or
- if that percentage cannot be ascertained, the shared ownership interest is the percentage of the total of all insurable interests in the shared property or land that are held by the insured person.

See Section 3.h.i in this Manual for the definition of 'insured person' for the purposes of shared property and shared land.

[Section 20\(4\), NHI Act](#)

We (or a person we authorise) must determine the percentage of the repair responsibility held by the insured person as being equal to the percentage of the cost of replacing or reinstating the damaged shared property or land that at the relevant time the owners or persons would be required to contribute to or meet.<sup>11</sup>

Where the insured person's percentage of the repair responsibility is not ascertainable, we (or a person we authorise) must determine the percentage of the total of all insurable interests in the shared property or shared land that is held by the insured person. This must be done on the basis that the insurable interest held by the holder or holders of each relevant insurable interest (meaning an insurable interest in that shared property or shared land that gives the use or benefit of the property to the holder or holders of the interest) at the time the natural hazard damage occurred is an equal share of the total of all insurable interests in the shared property. However, if any of the following information indicates it is not equitable to determine the percentage of the

<sup>11</sup> See [regulation 3, NHI Regulations](#), Interpretation – definition of relevant time.

interest based on equal shares, this must be taken into account when determining the percentage of the interest:

- the nature of the legal relationship that the holder or holders of an insurable interest had to the property or land at the time the natural hazard damage occurred (for example, holding a fee simple estate, lease, or easement);
- the nature and extent of the loss the holder or holders of an insurable interest in the property or land, at the time the natural hazard occurred, have suffered or are likely to suffer as a result of natural hazard damage that has occurred;
- any other information we (or a person we authorise) consider relevant.

[Regulations 5, 6 and 7](#), NHI Regulations

### Examples

- If there were two semi-detached dwellings that shared a party wall and the insured persons for the dwellings shared equal responsibility to replace or reinstate the wall, their shared ownership interest in the party wall would be 50% each.
- 'If there were two semi-detached dwellings that shared a party wall and the insured person for one of the dwellings were solely responsible for replacing or reinstating the wall, that person's shared ownership interest would be 100% and the other insured person's interest would be 0%.
- If a house and a shop had a retaining wall on the boundary of their land and shared equal responsibility for it, the insured person's shared ownership interest in the retaining wall would be 50%. The other 50% interest would not be insured under the NHI Act because the shop would not be a residential building.

## **D. What is an 'appurtenant structure'?**

The NHI Act defines a 'residential building' to include:

- (b) any other appurtenant structures ... for the dwellings in the building.

[Section 9\(1\)\(b\), NHI Act](#)

Section 4 – Is there an insured 'residential building'?

Property is an 'appurtenant structure' for a 'dwelling', if:

- it either:
  - is part of the 'eligible building' but is not part of the dwelling; or
  - is, or is part of, a separate building or another immovable structure (for example a garage or shed);
- it is appurtenant to the dwelling; and
- the property is used either:
  - for household purposes by the owners or people who occupy the dwelling or for access to the dwelling; or
  - to house 'service infrastructure' for the dwelling (for example a shed housing a pump that supplies drinking water to a house).

[Section 11\(1\), NHI Act](#)

**a. When is property 'part of the eligible building but not part of the dwelling'?**

An 'appurtenant structure' may be property that is 'part of the eligible building but not part of the dwelling'.

Examples include property that is within the eligible building, but:

- on a different floor to that dwelling; or
- on the same floor as the dwelling but separated by another premise (such as another dwelling or a non-residential premise).

[Section 11\(1\)\(a\)\(i\), NHI Act](#)

If the property is not an appurtenant structure, it may still be covered on the basis that it is part of the 'eligible building' (see Section 4.C in this Manual).

In cases of doubt as to whether the property is part of the eligible building but not part of the dwelling, the matter should be escalated to the appropriate NHC representative.

Section 4 – Is there an insured 'residential building'?

## b. What is a 'separate building' or 'another immovable structure' for these purposes?

### What is a 'separate building'

The phrase 'separate building' captures items such as garages, sleep-outs and other buildings of this nature that are separate and not attached to the 'eligible building'.

### What is a structure?

The NHI Act does not define what qualifies as a 'structure'. Our approach to the word 'structure' in this context is that it is generally:

- something of substantial size and similar in scale to a building; and/or
- of a sufficiently complex construction, in the sense that it is constructed of several parts.

The less similar an item is to a building, the less likely it is that it qualifies as a structure.

### What is immovable?

An 'immovable' structure or building does not have the design or characteristics that allow it to be lifted, pushed, or pulled around the site without:

- disassembly or significant damage to the structure or its surrounds;
- a need for any significant steps to 'shore up' the structure before it is moved; or
- a need for significant machinery (such as a crane) to be brought to the site.

Whether a structure is immovable depends on the circumstances and should be considered on a case-by-case basis.

### Immovable vehicles

Vehicles (including motor vehicles, trailers, boats and aircraft) are generally excluded from NHCover by [Schedule 2 of the NHI Act](#) unless the vehicle meets the requirement to be an 'appurtenant structure', in which case it must be immovable. Whether a vehicle is

immovable is a question of degree and depends on the functional characteristics and purpose of the vehicle. Some practical considerations include:

- whether the vehicle is attached to the ground and how easily it can be removed;
- whether the vehicle has retained its wheels or its towbar (and how easily they could be reattached to move the vehicle); and/or
- whether structures (such as decks, verandas, or additional rooms) have been attached to the vehicle and how easily these structures can be removed.

For example, if a customer keeps a caravan in their back garden to use as an extra building, it is not a separate building or another immovable structure if it can be (or is) removed from the property for travel.

If there is uncertainty about whether the property is a separate building or another immovable structure, you should escalate the matter to the appropriate NHC representative.

[Section 11\(1\)\(a\)\(ii\)](#) and [Schedule 2, Clause 2\(3\), NHI Act](#)

### c. What does ‘appurtenant’ mean?

There is no definition of ‘appurtenant’ in the NHI Act.

It is a question of fact and degree whether property is appurtenant to a 'dwelling'.

[Section 11\(1\)\(b\), NHI Act](#)

Property is likely to be considered appurtenant to a dwelling if it is located in close proximity to the dwelling and is clearly related to that dwelling.

In general, to be appurtenant to the dwelling, the building or structure must also be permanent or at least have a degree of permanence. Generally, an appurtenant structure is fixed to the ground.

When assessing whether an item is permanent or has a sufficient degree of permanence, it is useful to consider whether, if the dwelling were sold, the item would pass with the dwelling on the sale and purchase.

For example, a makeshift bike shed or woodshed that consists of only two pallets and a corrugated iron sheet roof, and that is not fixed to the land, is unlikely to be sufficiently

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permanent to be appurtenant to the main dwelling. It is not therefore an appurtenant structure.

Buildings or structures outside the insured person's land can be appurtenant structures

Buildings or structures related to the dwelling that are outside the 'insured person's land' are appurtenant structures if they:

- are in close proximity to the insured person's land;
- are clearly related to the dwelling; and
- will pass with the dwelling when the dwelling is sold.

A garage for a dwelling on neighbouring road reserve is an example of a building that is outside the insured person's land but is an appurtenant structure (assuming all of the criteria are met).

Where it is not clear whether the building or structure is appurtenant, because it is some distance away from the insured person's land and/or does not clearly relate to the dwelling, the matter should be escalated to the appropriate NHC representative.

**d. When is property 'used by the owners or other occupants of the dwelling for household purposes or for access to the dwelling'?**

To come within this part of the definition, the 'appurtenant structure' must be used by the owners or other occupants for:

- household purposes; or
- access to the dwelling.

[Section 11\(1\)\(c\), NHI Act](#)

Household purposes

In considering whether this part of the definition is satisfied, it is useful to consider whether the item provides some service to the owner or occupants of the household. If the item is used for the direct benefit of the household, that satisfies the test.



One instance where an item is unlikely to be covered is where its sole purpose is in connection with another item that is excluded from NHCover. For example, take the case of a pump shed that is near the dwelling. The test of ‘used for household purposes’:

- is not satisfied where the pump shed only houses a pool pump for a swimming pool and the pool does not have NHCover; but
- is satisfied if the pump shed also has another substantial function (such as, for example, to house the garden tools). In this instance, the pump shed is covered because it is being used for the purposes of the household of the occupier of the dwelling.

[Section 11\(1\)\(c\)](#) and [Schedule 2, Table 1, Item 11, NHI Act](#)

### Access to the building

Property is used for access to the dwelling where the item is integral to and comprises the access to the building.

If a cable car structure that provides access to a house is an appurtenant structure, the cable car is not excluded on the basis that vehicles are normally excluded property.

[Section 11\(1\)\(c\), NHI Act](#)

## **e. When is property 'used to house service infrastructure for the dwelling'?**

We consider property to be ‘used to house service infrastructure for the dwelling’ if it meets the following requirements:

- it is a building or structure;
- it houses (i.e. contains and provides protection from the weather or physical damage) service infrastructure;
- the service infrastructure serves the 'dwelling', an 'appurtenant structure', or the 'insured person's land'.

This must be the purpose of the building or structure, rather than incidentally containing service infrastructure.

As set out above (see Section 4.D.b in this Manual), structures need to be sufficiently substantial and complex to meet this requirement.

[Section 11\(1\)\(c\)\(ii\), NHI Act](#)

## Section 4 – Is there an insured ‘residential building’?

### Examples

For example, property used to house service infrastructure for the dwelling could be a pump shed housing a pump that moves water up to the dwelling. This is because the pump is service infrastructure that serves the dwelling, and the shed protects the pump from weather and damage.

The following would not be property used to house service infrastructure for the dwelling:

- An outbuilding with solar panels on its roof, because it does not ‘house’ service infrastructure but instead just supports it.
- For the same reasons, a concrete slab supporting a water tank does not meet this requirement, because it does not ‘house’ the water tank.
- A vinyl rain cover placed over a water tank would not meet this requirement because it is not sufficiently substantial or complex to be a structure.
- The waterproof case of a heat exchanger or a conduit that provides protection to a power cable would not meet the requirement and would instead be a component of the service infrastructure.

See also 'excluded property' and property that is not insured by NHC. (Section 4.G in this Manual).

#### **f. Is it a ‘dwelling’ or an ‘appurtenant structure’?**

Some items on their face may appear to be a ‘dwelling’ in their own right, but in fact they are only 'appurtenant structures' for a dwelling.

An example is a sleep-out. Separate NHCover for a sleep-out applies only if the sleep-out meets the definition of ‘dwelling’ in the NHI Act. For details on what is a ‘dwelling’, see Section 4.C.c in this Manual.

However, a sleep-out that contains no facilities to cook or wash is not a dwelling because it is not self-contained. It may, however, be covered as an appurtenant structure to the dwelling. This is provided the sleep-out meets all the criteria for an appurtenant structure set out in Section 4.D in this Manual. If the sleep-out is an appurtenant structure, the NHCover provided for the sleep-out is within the NHCover for the ‘residential building’ and subject to the same building cover cap (see Section 8.e in this Manual).

#### Section 4 – Is there an insured ‘residential building’?

### Why is it important to determine whether the building is a separate dwelling or an appurtenant structure?

Whether there are two dwellings or one in these cases is important for the purposes of applying the NHI Act. For example:

- the number of dwellings is important for calculating the building cover cap amount of NHCover available and the appropriate excesses that apply (see Sections 8.e and 8.h in this Manual); and
- in particular, if the number of dwellings is disclosed to the private insurer at the time that the fire insurance contract or direct NHCover is entered into or renewed, the building cover cap will increase. Such disclosure is critical to the building cover cap calculation (see Section 8.e in this Manual).

Appurtenant structures do not by themselves attract a separate amount of NHCover from the amount available for the dwelling (see Section 8.e in this Manual). They may, however, affect the amount of cover that is available for ‘residential land’. The correct identification of appurtenant structures is critical, including for these purposes.

#### **g. Is it ‘residential land’ or an ‘appurtenant structure’?**

Some items – such as certain retaining walls, bridges and culverts – are insured under the NHI Act as ‘residential land’ rather than an appurtenant structure.

‘Residential land’ is defined in the NHI Act as follows:

- (1) The **residential land**, in relation to a residential building, is—
  - (a) the part of the insured person’s land on which the residential building is situated; and
  - (b) any other part of the insured person’s land that is within 8 metres of the residential building; and
  - (c) any other part of the insured person’s land that—
    - (i) is part of the main access way from the boundary of the insured person’s land to the residential building, or supports land that is part of that access way; and
    - (ii) is within 60 metres of the residential building; and
  - (d) any retaining walls for the residential building; and
  - (e) any bridges or culverts for the residential building.

#### Section 4 – Is there an insured ‘residential building’?

However, land is not residential land if it is excluded property.

In this section, a reference to the residential building does not include any service infrastructure that is outside both the eligible building and the appurtenant structures.

[Section 17, NHI Act](#)

The retaining walls for the 'residential building' covered in section [17\(1\)\(d\)](#) of this definition and the bridges and culverts for the residential building covered in section [17\(1\)\(e\)](#) of this definition have land cover under the NHI Act.

## **h. When is property not an 'appurtenant structure'?**

Property is not an 'appurtenant structure' if:

- it is 'excluded property' (Section 4.G in this Manual);
- it is 'common property' (Section 4.C.g in this Manual) or 'joint property' (Section 4.C.h in this Manual); or
- the 'insured person' for the dwelling does not have an insurable interest in the property (Section 3.h.i in this Manual).

[Section 11\(2\), NHI Act](#)

## **i. 'Mixed-use buildings' and 'appurtenant structures for the premises' and 'appurtenant structures for joint-owner premises'**

In the case of a 'mixed-use building,' the 'residential building' may include an 'appurtenant structure for the premises' which is 'common property' and/or it may include an 'appurtenant structure for the joint-owner premises' which is 'joint property'.

In both situations, NHCover applies to the 'appurtenant structures for the premises' and 'appurtenant structures for the joint-owner premises' as common property and joint property respectively.

Sections [8](#), [9](#), [11](#), [13](#) and [14](#), NHI Act

See Section 4.C.g in this Manual regarding common property and Section 4.C.h in this Manual regarding joint property.

## Section 4 – Is there an insured 'residential building'?

## E. What is 'service infrastructure'?

The NHI Act defines a 'residential building' as including:

- (b) ...service infrastructure for the dwellings in the building.

[Section 9\(1\)\(b\), NHI Act](#)

Property is 'service infrastructure' when it is 'infrastructure' (see Section 4.E.a in this Manual) and any of the following apply:

- the infrastructure provides a 'service' to either the 'dwelling' or an 'appurtenant structure' for the dwelling that is part of the 'eligible building' AND is in, or within 60 metres of, the eligible building measured in a horizontal line;
- the infrastructure provides a service to any other appurtenant structure for the dwelling AND is in, or within 60 metres of, the appurtenant structure measured in a horizontal line; or
- the infrastructure provides a service to the 'insured person's land' AND is in, or within 60 metres of, either the eligible building or an appurtenant structure for the dwelling, measured in a horizontal line.

[Section 12\(1\), NHI Act](#)

### a. What is 'infrastructure'?

The NHI Act defines 'infrastructure' to mean 'structures' or 'fixtures' used to provide a service. This includes (but is not limited to):

- pipes, cables, wires, poles, and drains;
- water tanks, water towers, septic tanks, and tanks for storage of other liquids or gas (such as fuel for heating); and
- equipment and machinery (such as a pump, switchboard, or heating unit).

[Section 12\(3\), NHI Act](#)

### b. What is a 'service'?

The NHI Act defines a 'service' as water supply, drainage, sewerage, gas, electricity, heating, or telecommunications. This is a closed list.

[Section 12\(3\), NHI Act](#)

### c. What 'service infrastructure' is covered?

The defined services (water supply, drainage, sewerage, gas, electricity, heating and telecommunications), cover the means of conveyance, rather than the thing conveyed.

It follows that, for example, water supply services include the water pipes, but not the supply of potable water.

By way of further example, say a natural hazard directly causes the loss of a stream that had flowed through the residential property and had been used as a source of water. The loss of the potable water supply would not be covered under the [NHI Act](#).

### d. 'Mixed-use buildings' and 'service infrastructure for the premises' and 'service infrastructure for the joint-owner premises'

In the case of a 'mixed-use building' the 'residential building' may include 'service infrastructure for the premises' which is 'common property' and/or it may include an 'service infrastructure for the joint-owner premises' which is 'joint property'.

In both these situations, NHCover applies to the service infrastructure for the premises and service infrastructure for the joint-owner premises as common property and joint property respectively.

Sections [8](#), [9](#), [12](#), [13](#) and [14](#), NHI Act

See Section 4.C.g in this Manual regarding common property and Section 4.C.h in this Manual regarding joint property.

## F. How does the NHI Act cover 'long-term accommodation for the elderly'?

The NHI Act deems a building that provides 'long-term accommodation for the elderly' to be a 'dwelling' for the purpose of NHCover under the NHI Act.

A building, or part of a building, is also a dwelling if it is used to provide long-term accommodation for the elderly.

[Section 6\(2\), NHI Act](#)

NHCover is provided for buildings that provide long-term accommodation for the elderly in the same way that a 'residential building' is covered. See Sections 4.B to 4.F in this Manual.

**a. What is 'long-term accommodation for the elderly'?**

This type of accommodation for elderly people is found in many rest homes. It includes accompanying facilities.

This type of accommodation is distinct from self-contained accommodation (for example, self-contained villas and apartments in a rest home complex), which fall under the definition of a 'dwelling' in the [NHI Act](#) independently. See Section 4.C.c in this Manual. It is also distinct from dormitory-style accommodation, which is 'large-scale accommodation' and not insured under the NHI Act – see Section 4.C.c.xii in this Manual.

**b. How is 'long-term accommodation for the elderly' covered?**

Under the NHI Act, 'long-term accommodation for the elderly' is treated as a single 'dwelling' (excluding any independently qualifying dwellings disclosed to the private insurer at the time that the fire insurance contract or direct NHCover is entered into or renewed). This is the case even if the accommodation also provides short-term (temporary or transient) accommodation for the elderly.

- (2) A building, or part of a building, is also a **dwelling** if it is used to provide long-term accommodation for the elderly.

A building, or part of a building, that meets the criteria in subsection (1) or (2) is a dwelling even if it is used some of the time to provide temporary or transient accommodation.

[Section 6\(2\) and \(3\), NHI Act](#)

Whether long-term accommodation for the elderly is covered by the NHI Act is therefore determined by whether it qualifies as a 'residential building', which must in turn be identified by considering the factors above in Sections 4.B to 4.F in this Manual.

The treatment of long-term accommodation for the elderly as a dwelling has implications for the calculation of the building cover cap and disclosure requirements (see Section 8.e in this Manual for calculation of the building cover cap).

Section 4 – Is there an insured 'residential building'?

## G. What property is not insured under the NHI Act?

### a. Building contents or other personal property excluded

The NHI Act does not cover 'building contents' or 'personal property'. Sometimes what constitutes personal property may have to be determined in relation to whether it is a 'fixture or fitting'.

(1) A residential building—

(a) includes fixtures and fittings (such as built-in cupboards, plumbed-in appliances, wired-in electrical appliances, and fixed carpets), unless they are excluded property; but

(b) does not include building contents or other personal property (such as curtains and blinds).

[Section 9\(3\), NHI Act](#)

For example, curtains are usually considered personal property and therefore not insured under the NHI Act. However, if the curtains are fixed to a structure (such as a pelmet) which they cannot be removed from and which is in turn affixed to the building, they may be part of the 'residential building' (see Section 4.B.c in this Manual for what is part of a 'residential building').

### b. Dwelling or other property situated outside of New Zealand not insured

Any 'dwelling' or other property that is situated outside of New Zealand is not insured under the NHI Act.

This Act does not apply to a dwelling or other property that is situated outside New Zealand.

[Section 27, NHI Act](#)

### c. Schedule 2 lists property of the kind that is excluded from NHCover or is insured under the NHI Act in limited circumstances

Some items that might otherwise be, or form part of, a 'residential building' are excluded from NHCover (or are only insured under the [NHI Act](#) in limited circumstances).



## i. Uninsured property excluded

Property that is not insured under a 'fire insurance contract' and property that is no longer part of a 'residential building' are explicitly excluded from NHCover.

- (1) If property that would otherwise be part of a residential building is not insured under a fire insurance contract, it is excluded property.

If property that was part of a residential building or residential land ceases to be a fixture or fitting or is removed from the address or location that is insured under the fire insurance contract, it becomes excluded property.

[Schedule 2, Clause 1, NHI Act](#)

### Examples

If parts of a residential building are not insured under a fire insurance contract, they are not covered by the [NHI Act](#). For example, if a garden shed is not insured by a fire insurance contract, it is excluded from NHCover.

When property that was part of a residential building ceases to be a 'fixture or fitting', or is removed from the insured address, it becomes 'excluded property' (see Section 4.B.d.i in this Manual).

For example, if a shed were insured under a fire insurance contract for a particular residential building, but had been removed and reinstalled at a neighbour's property for the neighbour's use, it would be excluded from NHCover for the original address (although it may now fall under the neighbour's NHCover).

## ii. Property excluded except in limited circumstances

The NHI Act excludes specified property from NHCover except in limited circumstances. This property is broadly split into two groups:

- vehicles; and
- property that has been listed in Table 1 of Schedule 2.

### Vehicles

A vehicle is excluded property under the NHI Act unless it is a 'dwelling', or, but for the exclusion, it would be an 'appurtenant structure', 'common property' or 'joint property'.

The definition of a 'vehicle' includes (but is not limited to) a motor vehicle, trailer, boat or aircraft.

- (1) A vehicle (including a motor vehicle, trailer, boat, or aircraft) is excluded property unless—
  - (a) it is a dwelling under section 6(6); or
  - (b) it would, but for this schedule, be an appurtenant structure, common property, or joint property.

[Schedule 2, Clause 2, NHI Act](#)

The criteria for when a vehicle can be a dwelling are set out in Section 4.C.c.xi in this Manual.

For examples of vehicles that would be considered appurtenant structures, see Section 4.D.b in this Manual.

The criteria for common property are set out in Section 4.C.g in this Manual and the criteria for joint property are set out in Section 4.C.h in this Manual.

Other Table 1 property excluded in limited circumstances

In addition to vehicles, the NHI Act sets out other property that is excluded from NHCover other than in limited circumstances in Table 1.

- fences;
- mailboxes;
- clothes lines;
- structures used to house animals (such as dog kennels or chicken coops);
- outdoor cooking facilities;
- paths, driveways, stairs, walkways, and other forms of access;
- paving and other artificial surfaces;
- retaining walls that are not retaining walls for a residential building (see Section 4.h.ix of [NHC Claims Manual - Residential Land - NHI Act](#));
- other walls and poles;

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- bridges or culverts that are not bridges or culverts for a residential building; and
- tanks and other structures that are used to store water, other liquids, or gas, unless they are used primarily by the owners or other occupants of the dwelling for household purposes.

[Schedule 2, Clause 2, Table 1, NHI Act](#)

Table 1 property not excluded if it constitutes an 'integral component' of certain other property

Property in Table 1 of [Schedule 2](#) is generally excluded. However, this exclusion does not apply in either of the two situations below:

- the property is an 'integral component' of an 'eligible building'; or
- the property:
  - is an integral component of an appurtenant structure, service infrastructure, common property or joint property; but
  - does not constitute the **main use and purpose** of the property.

This means if the 'excluded property' serves multiple purposes it may still be covered. The 'main use and purpose' test applies even where the building or structure has several uses or purposes. To determine which of several uses and purposes is the main one, it should be considered which of those is the largest or most important in the context of the 'excluded property'.

'Integral components' of a building are:

- elements that have been integrated in such a way as to make them necessary for the building to be considered complete or whole; and
- an inherent part of the building's construction.

In other words, they have become part of the main building, and would no longer be thought of as a separate structure. For example, a mailbox is not an integral component of the residential building if it is free-standing, but becomes an integral component, and is insured under the NHI Act, if it is built into the wall of a garage. The garage meets the requirements to be an 'appurtenant structure', and its main use and purpose is the

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storage of a vehicle and other personal property. Collection of mail is a secondary (and minor) purpose of the garage.

### iii. Property excluded in all circumstances

Property listed below is expressly excluded from NHCover, regardless of any circumstances:

- Swimming pools, spas, and recreational baths and structures ancillary to them (unless they are an integral component of, and within, an eligible building)
- Sports fields and courts (such as tennis courts and football fields) and structures ancillary to them
- Living things (such as plants and fungi)
- Drainage ditches and other open drains, channels, tunnels, and cuttings
- Jetties, wharves, and landings
- Dams, reservoirs, breakwaters, moles and groynes

[Schedule 2, Clause 3, Table 2, NHI Act](#)

The exclusion of ‘drainage ditches and other open drains’ is limited to structures that are open to the air. This is in contrast to a drain formed from pipes or similar structures, which are insured under the NHI Act as service infrastructure (see Section 4.E in this Manual).

### iv. Effect of excluded property on residential land insurance

The land the excluded property is situated on is not necessarily excluded from NHCover because of the property on or within it being excluded property.

#### Examples

- Land under an artificial surface still has NHCover if it meets the requirements for residential land cover.
- Open drains do not have NHCover for the structure itself but there may be NHCover for the land surrounding and under the structure.

[Schedule 2, Clause 4, NHI Act](#)

Section 4 – Is there an insured ‘residential building’?

## 5. Is there ‘natural hazard damage’?

### a. Overview

In general terms, for ‘natural hazard damage’ (under the NHI Act, there must be:

- ‘physical loss or damage’ to the property ... (Section 5.d in this Manual);
- ... occurring as ‘a direct result’ of ... (Section 5.e in this Manual);
- ... a ‘natural hazard’ (Section 5.b in this Manual).

Each of these components is discussed at Sections 5.d, 5.e, and 5.b in this Manual.

[Section 24\(1\)\(a\), NHI Act](#)

The definition of natural hazard damage also covers:

- physical loss or damage that is a direct result of measures taken under proper authority to mitigate the consequences of a natural hazard. This type of natural hazard damage is discussed separately at Section 5.f in this Manual.
- imminent damage. This type of natural hazard damage is discussed separately at Section 5.g in this Manual.

[Section 24\(1\)\(b\) and \(c\), NHI Act](#)

### b. What is a ‘natural hazard’?

For there to be ‘natural hazard damage’ a natural hazard must have occurred.

#### i. What is the NHI Act definition of ‘natural hazard’?

The NHI Act defines ‘natural hazard’ as follows:

(1) Each of the following is a natural hazard:

- (a) an earthquake:
- (b) hydrothermal activity:
- (c) a landslide:
- (d) a tsunami:
- (e) volcanic activity:

- (f) a flood:
- (g) a storm:
- (h) a natural hazard fire.

[Section 23\(1\), NHI Act](#)

However, 'normal action of the wind or water causing gradual erosion (including, for example, coastal erosion, bank erosion, and sheet erosion)' is not a natural hazard.

[Section 23\(2\), NHI Act](#)

Residential buildings and residential land have NHCover for earthquakes, hydrothermal activity, landslides, tsunamis, volcanic activity, and natural hazard fire occasioned by those types of hazards. This is provided there is a relevant fire insurance contract or direct NHCover in force at the relevant time.

But only residential land has NHCover for storms, floods, and natural hazard fire occasioned by a storm or flood. There is only NHCover for the residential land where there is a fire insurance contract or direct NHCover for the residential building on that land, which is in force at the relevant time.

[Section 24\(5\), NHI Act](#)

## ii. Who determines whether there has been a natural hazard under the NHI Act?

We (or a person we authorise) determine whether there is a 'natural hazard' under the [NHI Act](#).

## iii. What is an 'earthquake'?

The NHI Act defines 'earthquake' as follows:

**earthquake** means ground shaking caused by seismic waves generated from tectonic processes or volcanic processes.

[Section 5\(1\), NHI Act](#) – definition of 'earthquake'

Earthquake includes ground shaking caused by volcanic processes and the definition of 'volcanic activity' expressly excludes ground shaking that constitutes an earthquake. Therefore, damage that is a direct result of such ground shaking is earthquake damage, not volcanic activity damage.

See Section 3.f.iii in this Manual for more information on damage periods.

## Section 5 – Is there 'natural hazard damage'?

#### iv. What is 'hydrothermal activity'?

The NHI Act defines 'hydrothermal activity' as follows:

**hydrothermal activity** means the release of energy, gas, or other matter due to sub-surface or surface processes involving the convection and movement of hot waters driven by magmatic or tectonic processes resulting in surface phenomena (including, for example, hydrothermal steam explosions).

[Section 5\(1\), NHI Act](#) – definition of 'hydrothermal activity'

#### v. What is a 'landslide'?

The NHI Act defines 'landslide' as follows:

**landslide** means movement (by way of 1 or more of falling, sliding, or flowing) of ground-forming materials (being 1 or more of natural rock, soil, or artificial fill) that, before they moved, formed an integral part of the ground, but not movement of the ground due to below-ground subsidence, soil expansion, soil shrinkage, or soil compaction (but see section 23(2)).

[Section 5\(1\), NHI Act](#) – definition of 'landslide'

[Section 23\(2\) of the NHI Act](#) provides that the 'normal action of the wind or water causing gradual erosion (including, for example, coastal erosion, bank erosion, and sheet erosion)' is not a natural hazard.

The central features of a 'landslide' are:

- there must be movement (whether falling, sliding, flowing or a combination); and
- the material that has moved must be ground-forming. It must:
  - be natural rock, soil, artificial fill or a combination of those materials; and
  - have formed an integral part of the ground before the movement.

A landslide does not include:

- the movement of ground due to below-ground subsidence;
- the movement of ground due to soil expansion, soil shrinkage, or soil compaction; or
- gradual erosion caused by normal action of the wind or water.

Section 5 – Is there 'natural hazard damage'?

### Landslide-related claims may be declined in certain circumstances

A landslide may occur where human action is the trigger. The most common example of this is the failure of an excavated slope that has been left unsupported. If the customer is responsible for this event, their claim may be declined (or only met in part) due to, for example:

- negligence;
- failure to meet construction standards; or
- failure to comply with any law or legal requirement.

For more details, see Section 7 in this Manual.

[Sections 68 to 77, NHI Act](#)

## vi. What is a 'tsunami'?

The NHI Act defines 'tsunami' as follows:

**tsunami** means a wave, or series of waves, generated when a large volume of water in the sea or a lake is rapidly displaced by an earthquake, landslide, meteorite, or volcanic activity.

[Section 5\(1\), NHI Act](#) – definition of 'tsunami'

Tsunami includes inundation that is a direct result of a tsunami, because the definition of flood expressly excludes inundation due to a tsunami. Therefore, damage that is a direct result of such inundation is tsunami damage, not flood damage.

## vii. What is 'volcanic activity'?

The NHI Act defines 'volcanic activity' as follows:

**volcanic activity** means the release of energy, gas, water, rock, magma, or other matter due to sub-surface volcanic processes resulting in surface phenomena (including, for example, volcanic explosions, lava flows, or lahars), but not ground shaking that constitutes an earthquake.

[Section 5\(1\), NHI Act](#) – definition of 'volcanic activity'

Volcanic activity excludes ground shaking that constitutes an earthquake. Therefore, damage that is a direct result of such ground shaking is earthquake damage, not volcanic activity damage.



### viii. What is a 'flood'?

The NHI Act defines 'flood' as follows:

**flood** means inundation of normally dry land by water due to a storm, a storm surge, or the escape or release of water from its normal confines, but not inundation due to a tsunami.

[Section 5\(1\), NHI Act](#) – definition of 'flood'

Flood excludes inundation due to a tsunami. Therefore, inundation that is a direct result of a tsunami is tsunami damage, not flood damage.

### ix. What is a 'storm'?

The NHI Act defines 'storm' as follows:

**storm** means a disturbance of the earth's atmosphere that includes 1 or more of strong winds, heavy precipitation, and lightning (including, for example, a gale, hailstorm, snowstorm, or tornado).

[Section 5\(1\), NHI Act](#) – definition of 'storm'

### x. What is a 'natural hazard fire'?

The NHI Act defines 'natural hazard fire' as follows:

**natural hazard fire** means fire occasioned by, through, or in consequence of any other natural hazard.

[Section 5\(1\), NHI Act](#) – definition of 'natural hazard fire'

In other words, a natural hazard fire is a fire that is occasioned by or through or as a consequence of:

- (in the case of NHCover for residential buildings and residential land), an earthquake, hydrothermal activity, landslide, tsunami, volcanic activity; or
- (in the case of NHCover for residential land), storm or flood. See Section 6.b.i of the [NHC Claims Manual - Residential Land - NHI Act](#)).

## c. What is ‘natural hazard damage’?

### i. What is the NHI Act definition of ‘natural hazard damage’?

The NHI Act defines ‘natural hazard damage’ as follows:

- (1) Physical loss or damage to a residential building or residential land is **natural hazard damage** if—
- (a) it occurs as a direct result of a natural hazard; or
  - (b) it occurs as a direct result of measures taken under proper authority to mitigate the consequences of a natural hazard; or
  - (c) it is imminent damage.

[Section 24\(1\), NHI Act](#)

### ii. Components of subsection (1)(a) of the definition of ‘natural hazard damage’

Subsection (1)(a) of the definition of ‘natural hazard damage’ can be broken down into the following components. There must be:

- ‘physical loss or damage’ to the property ... (Section 5.d in this Manual);
- ... occurring as a ‘direct result’ of ... (Section 5.e in this Manual);
- ... a ‘natural hazard’ (Section 5.b in this Manual).

Each of these components is discussed at Sections 5.d, 5.e, and 5.b in this Manual.

[Section 24\(1\)\(a\), NHI Act](#)

### iii. Physical loss or damage that occurs as a direct result of measures taken under proper authority to mitigate the consequences of a natural hazard

Subsection (1)(b) of the definition of ‘natural hazard damage’ covers physical loss or damage that occurs as a direct result of measures taken under proper authority to mitigate the consequences of a natural hazard (referred to as ‘mitigation damage’). An example is damage caused by Urban Search and Rescue (USAR) teams entering residential buildings by force after an earthquake in order to check on the safety of any person inside the building. The type of loss or damage covered by subsection (1)(b) is discussed separately – see Section 5.f in this Manual.

[Section 24\(1\)\(b\), NHI Act](#)

Section 5 – Is there ‘natural hazard damage’?

#### iv. Physical loss or damage that is imminent damage

Subsection 1(c) of the definition of 'natural hazard damage' covers physical loss or damage that has not yet occurred. For cover to apply, a natural hazard must have occurred, and, as a direct result of that natural hazard, the loss or damage must be more likely than not to occur within 12 months after the natural hazard occurred. The type of loss or damage covered by subsection 1(c) is discussed separately – see Section 5.g in this Manual.

[Section 24\(1\)\(c\), NHI Act](#)

If physical loss or damage is covered as 'imminent damage', and the loss or damage subsequently actually occurs, it cannot be claimed for again and is not considered natural hazard damage.

[Section 24\(5\)\(b\), NHI Act](#)

#### d. Is there 'physical loss or damage'?

'Physical loss or damage' occurring as a direct result of a natural hazard is covered under the NHI Act.

[Section 24, NHI Act](#)

#### i. Loss or damage must be physical

##### Physical loss – not economic loss

Loss or damage in the context of the [NHI Act](#) means loss or damage to the physical materials or structure of the insured property.

For example, depriving a person of the use of their home because of the threat of rockfall is not 'physical loss' to the property under the NHI Act. It is an economic loss.

##### Material physical change that affects the utility or amenity value of the insured property

The physical loss or damage must be a material physical change that adversely affects the utility or amenity value of the insured property (from a structural, functional or aesthetic perspective). Material physical change includes change that is 'more-than-negligible', i.e. something beyond the minor, inconsequential or immaterial.

There may be physical changes to insured property caused by a natural hazard that are not material or do not adversely affect the utility or amenity value of the property. In that case, the change is not natural hazard damage. For example, cracking to the foundation

(which is covered by carpet) of a residential building caused by an earthquake is not natural hazard damage if it does not affect the structural integrity of the foundations as a whole or the floor's aesthetic value (and therefore does not impair the utility or amenity of the residential building). It is a question of fact in each case:

- whether there is a material physical change to the insured property; and
- whether the material physical change adversely affects the utility or amenity value of the insured property.

**e. Is the physical loss or damage ‘a direct result’ of a natural hazard?**

Property that is insured under the NHI Act is insured against ‘natural hazard damage’, which is any physical loss or damage occurring as ‘a direct result’ of a natural hazard.

[Section 24\(1\)\(a\), NHI Act](#)

**i. Physical loss or damage must be ‘a direct result’ of a natural hazard**

Whether physical loss or damage is ‘a direct result’ of a natural hazard is a question of fact to be resolved in the circumstances of the particular case. As a general rule, physical loss or damage to property is a direct result of a natural hazard where the natural hazard is the proximate cause of the physical loss or damage.

Imminent damage that is mitigated before it can become actual or extended damage is still ‘a direct result’ of a natural hazard if it occurs as a direct result of a natural hazard.

For details on the meaning of ‘imminent damage’, see Section 5.g in this Manual.

Determining causation

Determining causation is largely a decision based on the factual circumstances and expert advice. When considering whether the natural hazard was the proximate cause of the physical loss or damage to the property, the person making the decision should consider whether, in light of all the evidence viewed as a whole, the natural hazard was more likely than not the cause of the damage. In general, the natural hazard is the proximate cause of the physical loss or damage to property where:

- the natural hazard leads, in the natural and ordinary course of events, to that kind of loss or damage; and
- there is no break in the physical chain of causation.

For details on when there are multiple causes of physical loss or damage see Section 5.e.iv in this Manual.

### Examples

The following examples illustrate where a natural hazard has ‘caused’ the damage.

#### Example 1: Damage to water pumps, taps and hot water cylinder in a residential building after the bore is damaged by earthquake

The earthquake has caused fine silt to be drawn into the water bore. Water from the bore is then pumped through the water supply system for the residential building. The silt in the water damages the cylinder, water pump and taps. This damage is:

- the consequence of the earthquake, and it would occur in the natural and ordinary course of events; and
- there is no intervening cause that breaks the physical chain of causation.

The damage is therefore a direct result of the earthquake.

#### Example 2: Residential building with cracks in the roof letting water in; section 124 notice means owners cannot access the residential building

The earthquake has caused cracks in the roof of the residential building. The cracks have let water in when it rained. The owners have been unable to access the residential building because a notice under [section 124 of the Building Act](#) has been issued in respect of the property.

In this case, the water damage from the rain is:

- the consequence of the earthquake. The damage would occur in the natural and ordinary course of events; and
- there is no intervening cause breaking the physical chain of causation.

The water damage is therefore a direct result of the earthquake.

## **ii. What if the natural hazard damage has also been caused or exacerbated by somebody’s action or inaction?**

In some cases, a claim for natural hazard damage can be declined (or only met in part). One such case is where the physical loss or damage – although a direct result of the natural hazard – has also been caused or exacerbated by somebody’s action or inaction.

These grounds to decline claims are set out in Sections 68 to 77 of the NHI Act. For further details of the grounds for declining a claim, see Section 7 in this Manual.

#### [Sections 68 to 77, NHI Act](#)

The question of whether any physical loss or damage is a direct result of a natural hazard must be considered before – and separately from – the question of whether there are any grounds to decline the claim. If the physical loss or damage is not ‘a direct result’ of the natural hazard, there is no natural hazard damage. There is no need then to go on to consider the grounds to decline the claim under sections 68 to 77 of the NHI Act.

#### Examples

Set out below are examples of relevant grounds where a claim can be declined (or only met in part) because the natural hazard damage has been caused or exacerbated by somebody’s action or inaction:

- Where a person has failed to take reasonable steps to mitigate the risk of natural hazard damage. This includes both the situation where:
  - a person has failed to mitigate the risk of natural hazard damage before the natural hazard occurred; and
  - a person has failed to mitigate the risk of natural hazard damage after the natural hazard occurred. This includes where a payment was made for earlier natural hazard damage and that payment was not used to repair the property. In this case, the earlier natural hazard damage has caused or exacerbated the current natural hazard damage.

#### [Section 73, NHI Act](#)

- Where the insured person failed to comply with any law or legal requirement, and that failure caused or exacerbated the natural hazard damage.

#### [Section 75, NHI Act](#)

- Where certain property types (set out below) were not constructed in accordance with standards considered appropriate for that property at the time it was constructed, and the natural hazard damage occurred, or was

exacerbated by, the failure to comply with those standards. The relevant property types are:

- any part of the residential building that is not an integral component of the eligible building;
- a retaining wall;
- a bridge; or
- a culvert.

[Section 76, NHI Act](#)

- Where the insured person's intentional act, omission or negligence caused or exacerbated the natural hazard damage.

[Section 74, NHI Act](#)

- Where a previous owner's or previous occupier's intentional act, omission or negligence caused or exacerbated the natural hazard damage. The insured person was aware of that other person's intentional act, omission or negligence when the insured person acquired their insurable interest in the property.

[Section 74, NHI Act](#)

For a fuller discussion of the grounds for declining a claim, see Section 7 in this Manual.

### iii. **Consequential loss is excluded from NHCover**

The NHI Act does not cover any consequential loss.

[Section 28\(3\), NHI Act](#)

The NHI Act states that 'consequential loss' includes temporary accommodation costs, loss of profits, loss or damage as a result of theft, vandalism, or business interruption, or loss of intangible property. This list is not exhaustive.

Sometimes the natural hazard may merely 'set the scene'. The physical loss or damage may in fact be the direct result of human intervention (for example, vandalism or theft). Such physical loss or damage is not covered by the NHI Act.

### Examples

- Temporary accommodation costs. An example of these are costs incurred by renting alternative accommodation. This applies both where alternative accommodation is necessary because the dwelling has suffered natural hazard damage to the point it cannot be occupied, or because the dwelling needs to be temporarily vacated for repairs to occur.
- Loss of profits and business interruption. An example of this is when a landlord's residential rental property suffers natural hazard damage, resulting in the tenants having to move out for repairs to the dwelling.
- Intangible property. An example of this is where a home automation and security system is damaged by a natural hazard, resulting in the loss of data stored on the system (such as recorded video).

If there is consequential loss, you should consider whether it is covered by a private insurance policy.

#### **iv. What if there are multiple causes of physical loss or damage?**

The NHI Act provides that:

- residential buildings have NHCover for damage that occurs as a direct result of earthquakes, hydrothermal activity, landslides, tsunamis, volcanic activity and natural hazard fire occasioned by those types of hazards; but
- residential buildings do **not** have NHCover for damage that occurs as a direct result of storms, floods, and natural hazard fire occasioned by a storm or flood.

As a first step, it is necessary to determine what hazard has caused damage to the residential building.

If it is determined that a residential building has suffered damage from multiple natural hazards, and the damage from one of those hazards is covered but the damage from another is not, you should escalate the matter to the appropriate NHC representative.

See also Section 3.f.iii and Section 6.C in this Manual.

#### Section 5 – Is there 'natural hazard damage'?



## f. What is 'mitigation damage'?

Physical loss or damage to property that occurs as a direct result of measures taken under proper authority to mitigate the consequences of a natural hazard (referred to as 'mitigation damage') is natural hazard damage per section 24(1)(b) of the NHI Act.

The NHI Act provides that:

Mitigation damage

(1) Loss or damage referred to in subsection (1)(b)—

(a) is natural hazard damage regardless of whether it is intentional or accidental; and

(b) is taken to occur as a direct result of the natural hazard in relation to which the measures were taken.

[Section 24\(2\), NHI Act](#)

See also Section 5.h.iii in this Manual for a situation where mitigation damage is not natural hazard damage.

## i. Components of 'mitigation damage' definition

The above provisions can be broken down into three key components. For there to be mitigation damage:

- there must be physical loss or damage to the property;
- the physical loss or damage must occur (whether intentionally or accidentally) as a direct result of measures taken under proper authority; and
- those measures must be to mitigate the consequences of a natural hazard.

For mitigation damage to have occurred, all components must be met. Each component is discussed below.

### 1. There must be physical loss or damage to the property

The definition of 'physical loss or damage' is set out and discussed at Section 5.d in this Manual.

2. The physical loss or damage must occur (whether intentionally or accidentally) as a direct result of measures taken under proper authority

The physical loss or damage to the property is a direct result of a measure taken under proper authority where:

- the measure has caused the physical loss or damage; and
- the physical loss or damage has occurred or is ‘imminent’. For details on the meaning of ‘imminent damage’, see Section 5.g in this Manual.

In this context, ‘proper authority’ could be authority derived from any enactment. An enactment is an Act or regulations.

An example is Urban Search and Rescue (USAR) teams (which come under the umbrella of Fire and Emergency New Zealand). They cause physical loss or damage by the measures they take to break down doors and enter residential buildings to check for the safety of the occupants of those buildings after an earthquake. They derive their authority from legislation governing Fire and Emergency New Zealand.

3. Those measures must be to mitigate the consequences of a natural hazard

The words ‘to mitigate the consequences of a natural hazard’ include both:

- measures taken to avoid the spread of the natural hazard; and
- measures taken to preserve life or otherwise assist people possibly hurt as a result of the natural hazard.

**ii. Who determines whether ‘mitigation damage’ applies?**

We (or a person we authorise) determine whether ‘mitigation damage’ applies.

Sometimes the authority (for measures for mitigating the consequences of a natural hazard) is granted by emergency legislation. We (or a person we authorise) determine whether mitigation damage applies, taking into account, in each case, the specific facts and legal position at the relevant time.

## g. What is 'imminent damage'?

The NHI Act defines 'imminent damage' as:

- (3) Physical loss or damage to a residential building or residential land that has not yet occurred is imminent damage if—
  - (a) a natural hazard has occurred (event 1); and
  - (b) the Commission is of the opinion that, as a direct result of event 1, the loss or damage is more likely than not to occur within 12 months after event 1 first occurred.

[Section 24\(3\), NHI Act](#)

## i. Components of 'imminent damage'

The above provisions can be broken down into three key components. For there to be imminent damage:

- there must be the potential for physical loss or damage to property;
- the potential physical loss or damage must be a direct result of the natural hazard that has occurred; and
- the potential physical loss or damage must be 'more likely than not to occur within 12 months' after the natural hazard first occurred.

For imminent damage to have occurred, all components must be met. Each component is discussed below.

### 1. There must be the potential for 'physical loss or damage' to property

The definition of 'physical loss or damage' is set out and discussed at Section 5.d in this Manual.

### 2. The potential physical loss or damage must be 'a direct result' of the 'natural hazard' that has occurred

The definition of 'natural hazard' is set out and discussed at Section 5.b in this Manual and the definition of 'a direct result' is set out and discussed at Section 5.e in this Manual.

### 3. The potential physical loss or damage must be 'more likely than not to occur within 12 months' after the natural hazard occurred

Imminent damage is taken to have occurred at the time the natural hazard first occurred. Therefore, the 12 months starts from when the natural hazard, which the imminent damage is a direct result of, occurred.

#### [Section 24\(4\), NHI Act](#)

Determining what damage is 'more likely than not to occur' within the 12-month time frame is a decision based on the factual circumstances and expert advice.

Engineers or other assessors must provide their best estimate of the further natural hazard damage they expect to occur to the insured property as a direct result of the original natural hazard, during the 12-month period following that natural hazard.

Based on the engineers' and others' assessments, the person making the decision should consider whether, in light of all the evidence viewed as a whole, the damage is more likely than not to occur within 12 months.

#### Examples

- A landslide on a slope below a house and shed creates a risk of further land falling down the slope, which could undermine support for the house and shed. The shed is close to the slope, and it is more likely than not that the shed will be undermined within 12 months, unless it is relocated. The house is farther away from the slope, and it is more likely than not that the house will not be undermined within 12 months. In that case, the possible future damage to the shed is imminent damage, but the possible future damage to the house is not. The further land damage that will more likely than not occur in the next 12 months is also imminent damage.
- Physical loss or damage caused by an aftershock following an earthquake is not imminent damage under the claim for the original earthquake. Aftershocks (more than 48 hours apart) are covered under the [NHI Act](#) as separate earthquake events, where the relevant requirements are met.

#### Interrelationship between imminent damage to residential buildings and imminent damage to land

When assessing whether there is 'imminent damage' to a residential building, it is important to consider the interrelationship with the residential land cover. A remediation strategy to prevent the imminent damage to the residential building from

occurring may have the effect of removing the imminent damage to the residential land, or vice versa. See Section 8.d.ii and Section 6.A.c.viii in this Manual.

If different people are dealing with different components of an entire NHCover claim (residential building claim and residential land claim), those people should:

- liaise with each other on whether and how the decision to settle imminent damage for one component of the entire NHCover claim (e.g. residential building claim) affects settlement of the other component of the entire NHCover claim (e.g. residential land claim); and
- escalate the matter to the appropriate NHC representative.

## ii. Who determines whether imminent damage applies?

We (or a person we authorise) determine whether 'imminent damage' applies.

## h. What is not natural hazard damage?

### i. Loss or damage to a residential building that occurs as a direct result of a storm, flood, or natural hazard fire occasioned by through or in consequence of a storm or flood

Damage caused to a residential building by a storm, flood, or natural hazard fire occasioned by a storm or flood, is not natural hazard damage. Therefore, as noted above, such physical loss or damage is not covered under the NHI Act.

[Section 24\(5\)\(a\), NHI Act](#)

### ii. Natural hazard damage that was imminent damage under a previous claim

If an insured person has a prior claim that includes imminent damage and that imminent damage does actually occur at a later date, that actual damage is not new natural hazard damage and is not separately covered under the NHI Act.

This is the case regardless of when the actual loss or damage occurs.

[Section 24\(5\)\(b\) and \(6\), NHI Act](#)

### iii. Natural hazard damage that is compensated by payment under another Act

Mitigation damage is not natural hazard damage if compensation for the loss or damage is payable under another Act. For mitigation damage to be natural hazard damage, there

Section 5 – Is there 'natural hazard damage'?

must be no compensation payable under any other enactment for the physical loss or damage. For example, take the USAR team scenario. If the Civil Defence Emergency Management legislation provides for compensation for the physical loss or damage caused by the USAR team, there is no NHCover for that loss or damage

In each case it is a matter of:

- identifying the particular physical loss or damage caused as a direct result of the measure; and
- ascertaining whether there is any alternative compensation available under any enactment for that loss or damage.

[Section 24\(5\)\(c\), NHI Act](#)

#### **iv. Physical damage that is not a material physical change that adversely affects utility or amenity value**

Physical loss and damage must be a material physical change that adversely affects the utility or amenity value of the insured property (see Section 5.d.i in this Manual).

Therefore, physical damage that does not cause a material physical change to the utility or amenity value of the property is not natural hazard damage and is not covered.

## 6. How is the natural hazard damage assessed?

This section is divided into three parts:

- Section 6.A, which addresses the assessment of natural hazard damage to residential buildings;
- Section 6.B, which deals with the process and output for the assessment; and
- Section 6.C, which sets out principles for assessment of natural hazard damage where there are multiple events.

### A. Residential buildings

#### a. Overview

The main purpose of assessing the residential building is to find:

- whether the residential building has suffered natural hazard damage as claimed by the customer; and
- the extent of that damage (if any).

The customer's building claim entitlement is then assessed by determining the extent of the natural hazard damage and the cost of reinstatement and/or replacement of the damaged parts of the building. (Section 6.A.b in this Manual)

The residential building being assessed includes appurtenant structures, service infrastructure and shared property (see Sections 4 and 6.A.h.i in this Manual). In the case of an eligible building that is a mixed-use building, the assessment also includes all common property and joint property for the residential building (see Section 4.C.e in this Manual).

The building claim entitlement available for the natural hazard damage is measured on the basis of replacement cost (up to the building cover cap). (Section 6.A.c in this Manual).

The assessment typically involves:

- engaging sufficiently qualified people (Section 6.A.e in this Manual);
- visiting the residential building (Sections 6.A.f and 6.A.g in this Manual);
- assessing any natural hazard damage to the residential building (Section 6.A.h in this Manual); and
- costing the reinstatement and/or replacement on the basis of the replacement cost standard in the NHI Act (Section 6.A.c in this Manual).

The assessment process involves taking into account relevant considerations, disregarding all irrelevant considerations, and weighing the available evidence (Section 6.B.a in this Manual).

The output of the assessment is full documentation recording the results of the assessment and the reasoning that supports those results (Section 6.B.b in this Manual).

Where there are multiple events, the principles for assessment of claims for natural hazard damage under Section 6.C in this Manual also applies.

Details of these matters are set out below.

This Section does not address the specific circumstances where a repair has already been carried out in relation to the current claim and the residential building needs to be reassessed because that repair strategy has failed or otherwise. Additional matters will need to be addressed in such assessments.

## **b. What is the purpose of the claims assessment process?**

The main purpose of the residential building assessment is to find:

- whether the residential building has suffered natural hazard damage as claimed by the customer; and
- if so, the extent of the natural hazard damage and the customer's insurance entitlements.



### i. Has the residential building incurred natural hazard damage?

The residential building has incurred natural hazard damage where there is:

- physical loss or damage to the residential building occurring as the direct result of a natural hazard; and/or
- physical loss or damage to a residential building occurring as a direct result of measures taken under proper authority to mitigate the consequences of a natural hazard; and/or
- imminent damage.

Details on these components are set out at Sections 5.d, 5.e, 5.b and 5.g in this Manual.

[Section 24\(1\), NHI Act](#)

### ii. What is the amount of the natural hazard damage covered?

The building claim entitlement available in respect of the natural hazard damage suffered is generally measured on the basis of replacement cost. Details are set out at Section 6.A.c in this Manual.

For ‘imminent damage’, the building claim entitlement available is measured on the basis of ‘future replacement cost’ or ‘mitigation cost’ (see Section 6.A.c.viii in this Manual).

## c. What is ‘replacement cost’?

### i. What is the definition of ‘replacement cost’?

NHCover insures a residential building against natural hazard damage for its replacement cost.

The amount of the NHCover for a residential building is also subject to a maximum amount of insurance (referred to in the NHI Act as the ‘building cover cap’) (see Section 8.e in this Manual). But before it can be determined whether or not the building cover cap is reached, it is necessary to assess the amount of the natural hazard damage on the basis of the replacement cost.

Replacement cost, in relation to a residential building, is defined in the NHI Act as follows:

The **replacement cost** of the damaged parts of the residential building is the total cost that would reasonably be incurred to replace or reinstate the damaged parts of the building to a condition substantially the same as, but not better or more extensive than, their condition when they were new, but—

(a) modified as necessary to comply with all applicable laws (such as the Building Act 2004 and the building code under that Act); and

(b) replaced or reinstated using materials and methods that are currently in common use.

[Section 32\(1\), NHI Act](#)

The replacement cost is the ‘total cost’ that would reasonably be incurred to replace or reinstate the damaged parts of the building (to a condition substantially the same as, but not better or more extensive than, their condition when they were new). Total cost comprises the costs that are reasonably incurred in doing all of the following:

- Replacing or reinstating the damaged parts of the residential building to a condition substantially the same as (but not better or more extensive than) their condition when they were new. This may include work that needs to be done to undamaged parts of the residential building to replace or reinstate the damaged parts, or relocating parts of the residential building. The ‘when it was new’ condition is modified as necessary to comply with any new applicable laws.
- Demolishing and removing debris, but only to the extent that the demolition and removal is reasonably required to carry out the replacement or reinstatement work.
- Complying with any applicable laws relating to replacing and reinstating the residential building.
- Paying other fees or costs in the course of replacing or reinstating the residential building (for example, architects’ fees and fees payable to local authorities).

[Section 32\(2\), NHI Act](#)

For all of the four components above, GST is included.

Section 6 – How is the natural hazard damage assessed?

### What does ‘when they were new’ mean?

For the purpose of determining the replacement cost, we (or a person we authorise) are obliged to replace or reinstate the damaged parts of a residential building to a condition substantially the same as, but not better or more extensive than, their condition when they were new.

If a component only has a functional purpose, our obligation is met by restoring that functional purpose to its when-new condition. Where a component also has an aesthetic purpose, the remediation strategy must also (as far as possible) restore the original aesthetic quality of the component. The restoration is not required to be to the same level as modern standards but rather to the same level as the original standard.

A common issue that might arise relating to the when-new repair standard is where a residential building was built with materials that are no longer available. Under [section 32\(1\)\(b\) of the NHI Act](#), the damaged parts of the building are to be repaired using materials and methods that are currently in common use. The damaged parts must be returned to a condition that is substantially the same as, but not better or more extensive than, when the building was built.

Another issue is how the when-new standard applies where there have been changes to the building laws since the residential building was built. In this case, under [section 32\(1\)\(a\) of the NHI Act](#), the NHCover meets the costs of modifying the residential building as necessary to comply with all applicable laws (such as the Building Act and the building code under the Act).

For example, if a chimney of an older type residential building was damaged by an earthquake, and the building code required that the replacement chimney have a different specification than the one used when the building was built, the NHCover would meet the cost of the improvement.

However, if there was a legal obligation to modify the residential building (whether at the time or in the future) immediately before the natural hazard damage occurred, the replacement cost would not include the cost of modifications required to comply with that legal obligation (see Section 6.A.d in this Manual).

## Section 6 – How is the natural hazard damage assessed?

## ii. What demolition and removal of debris is reasonably required for replacement or reinstatement work?

The cost of demolishing a building element and removing debris should be included in the replacement cost to the extent that is reasonably required to carry out the replacement or reinstatement works.

### [Section 32\(2\)\(b\), NHI Act](#)

If a relevant construction professional would consider demolition or removal of debris a reasonable and necessary solution as part of the overall repair strategy, this indicates the work is reasonably required.

## iii. Situation where reinstatement or replacement requires doing work on undamaged property elements

It is sometimes necessary to do work on an undamaged part of the residential building to meet the replacement cost standard. An example of this is removing undamaged floorboards in order to repair foundations.

### [Section 32\(2\)\(a\)\(i\), NHI Act](#)

In these situations, NHCover includes the cost of:

- the work on the undamaged part of the residential building that is necessary to carry out the repair;
- reinstating the undamaged part if it was damaged in the course of the work being done on it; and
- modifying the undamaged part, if any laws or legal requirements, such as the performance standards in the building code, require the undamaged part to be modified as a result of the work being done on it.

Whether work on an undamaged part of the residential building is necessary in order to replace or reinstate the damaged parts of the building will depend on the particular circumstances of each damaged residential building.

### Example

The following is an example of how the replacement cost standard may apply in practice.

Following an earthquake, a brick chimney falls through the corrugated iron roof of a 1900s-era villa.

The falling chimney smashes through the ceiling, shattering a ceramic light fitting, whose wiring was not compliant but was functional before the earthquake.

To repair the roof, the corrugated iron in the area where the chimney fell would be replaced with new corrugated iron. If corrugated iron of the same type as the damaged iron were not available because it was no longer manufactured, the new corrugated iron would be a modern compatible product, which matched as closely as possible the profile of the damaged corrugated iron.

It would also be necessary to repair or replace non-damaged parts of the roof that would need to be removed in order to repair the earthquake damage, such as the iron ridding on the roof apex.

The repair work to the roof would be carried out to ensure that the work met applicable laws such as the performance standards in the building code.

The light fitting would be replaced. If the existing wiring could not be safely reconnected to the light fitting, an Electrical Safety Inspection would be required. The wiring would need to be replaced to a point where the electrician determined it could safely be reconnected, and to meet any legal requirements for that work.

### Residential buildings with structural or design issues

Before finalising the assessment of a residential building which has structural or design issues (for example, weathertightness issues arising from the specific design or construction of the building), the assessment should be escalated to the appropriate NHC representative.

#### iv. Relocating parts of the residential building

The replacement cost can include the cost of relocating part of the residential building (see [section 32\(2\)\(a\)\(ii\) of the NHI Act](#)).

The NHI Act expressly allows a claim to be settled by relocating all or part of the residential building (even if this includes moving parts of the residential building that are undamaged). If relocated, the residential building (or any part of it) must be reinstated to a condition substantially the same as, but not better or more extensive than, its condition when it was new. This includes repairing any natural hazard damage and any damage that was reasonably incurred as part of the relocation (see Section 8.c.iii in this Manual).

#### v. How does ‘replacement cost’ apply with respect to floor levels?

If the natural hazard damage includes floor dislevelment, whether releveling is required is determined under the [NHI Act](#). Any releveling is on the basis of the replacement cost standard. See Section 6.A.c.i in this Manual.

The replacement cost standard does not mean that we (or a person we authorise) must necessarily replace or reinstate a residential building exactly the same as it was when it was new. This is a particular issue where a residential building has floors that were not level before an earthquake and the residential building has previously been altered to accommodate the floors not being level.

If the floors were to be completely re-levelled, it could damage the other parts of the residential building that had previously been altered. In those circumstances, a repair of the foundation system that does not result in the floors being completely level may be sufficient to meet the requirements of the [NHI Act](#). What is required depends on the circumstances of each residential building. Any repair strategy must also comply with all applicable laws, such as the [Building Act](#).

##### Effect of MBIE Guidance document

Under the Building Act, the Ministry of Business Innovation & Employment (MBIE) issued a Guidance document called [Repairing and Rebuilding Houses affected by the Canterbury Earthquakes \(Guidance Document\)](#). The Guidance Document contains suggested indicator criteria for the levelness of floors.

The Guidance Document relates to the Canterbury Earthquake Sequence only. The Guidance Document does not apply to subsequent natural hazards.

Table 2.2 of Part A of the Guidance document includes the following floor level criteria:

Vertical differential settlement <50 mm and floor slope less than one in 200 between any two points >2 m apart.

The Guidance Document states that these criteria may be used to indicate that no releveling of the floor or foundation is considered necessary.

If a residential building has suffered earthquake damage that includes the floor being out of level:

- the fact that the floor level is within the MBIE Guidance criteria is not a sufficient reason for the [NHI Act](#) **not** to cover the releveling of the floor; and
- if the releveling of the floor is covered under the NHI Act, the releveling required is determined by the NHI Act (on the basis of the replacement cost standard), not by the MBIE Guidance criteria. Details of the replacement cost standard are set out in this Section 6.A.c in this Manual.

#### vi. How does the ‘replacement cost’ standard apply where there is a cash settlement?

If the claim is cash settled, the payment must be the replacement cost of the property as defined in [section 32 of the NHI Act](#) (and otherwise in accordance with the provisions of the [NHI Act](#), including the building cover cap on the amount of the insurance). This replacement cost standard of repair is the same whether the NHCover claim is cash settled or the residential building is repaired.

#### vii. How does the ‘replacement cost’ apply with respect to shared, common or joint property?

Assessing replacement cost involves an additional step where property is:

- shared (Section 4.B.b in this Manual);
- common (Section 4.C.g in this Manual); or
- joint (Section 4.C.h in this Manual).

Both common and joint property only apply where there is a mixed-use building. For an explanation of mixed-use buildings, see Section 4.C.d in this Manual.

To assess the replacement cost for all three types of property, we (or a person we authorise) must first determine the total cost that would reasonably be incurred to

replace or reinstate the damaged parts of the building to a condition substantially the same as (but not better or more extensive than) their condition when they were new.

This is the same assessment as set out in Sections 6.A.c to 6.A.d in this Manual.

After this assessment is carried out, the outcome is multiplied by the insured person's shared, common, or joint ownership interest (depending on the nature of the property) (see Section 4.C.i in this Manual).

### [Section 33, NHI Act](#)

For example, if the replacement cost for a shared wall was determined to be \$10,000 (using the natural hazard damage assessment of replacement cost set out in Sections 6.A.c to 6.A.d in this Manual) and the insured person had a half share in the repair responsibility of the wall, the replacement cost would be:

$$\$10,000 \times 50\% = \$5,000$$

### Shared property and common property

There may be circumstances where property that is both shared property and common property is damaged in a residential building. In this scenario, the replacement cost for the shared property is calculated first, and then the common property replacement cost (with any necessary modifications) is calculated.

For example, if an apartment block that is a mixed-use building shares a party wall with a neighbouring office block, damage to the party wall is damage to shared property (as between the insured person for the office block and the persons who have insurable interests in the apartment block) (Section 4.B.b in this Manual). Damage to the party wall is also damage to common property for all owners of the premises in the apartment block who have an insurable interest in the wall and benefit from it (see Section 4.C.i in this Manual).

For the purposes of this example, there is an equal repair responsibility between the insured person for the office block and the persons who have insurable interests in the apartment block. There are four persons from the apartment block with a common ownership interest in the party wall.



If the replacement cost for the party wall is determined to be \$10,000 (using the natural hazard damage assessment of replacement cost set out in Section 6.A.c.i to 6.A.c.iii in this Manual), the replacement cost is calculated as follows:

Shared property (Calculation A)

- \$10,000 x 50% (the shared ownership interest) = \$5,000
- \$5,000 goes to the insured person for the office block
- The remaining \$5,000 is the starting amount for Calculation B below.

Common property (Calculation B)

- The \$5,000 from Calculation A is the starting amount
- \$5,000 x 25% (the common ownership interest) = \$1,250
- So, each of the four persons who have an insurable interest in the apartment block receive \$1,250.

Shared property and joint property

There may be circumstances where property that is both shared property and joint property in a residential building is damaged. In this scenario, the replacement cost for the shared property is calculated first, and then the joint property replacement cost (with any necessary modifications) is calculated.

**viii. How does 'replacement cost' apply with respect to imminent damage?**

Imminent damage is physical loss or damage that is, as a direct result of a natural hazard, more likely than not to occur within 12 months after the natural hazard first occurred (see Section 5.g in this Manual).

The replacement cost for any parts of the residential building, to the extent they are the subject of imminent damage, must be determined using the 'future replacement cost' value, the 'mitigation cost' value, or a combination of both. We (or a person we authorise) decide which of these options is used.

[Section 34, NHI Act](#)

### Future replacement cost

The future replacement cost is the replacement cost, as set out at Section 6.A.c.i in this Manual, that would be calculated if the imminent damage had in fact occurred.

#### [Section 34\(3\), NHI Act](#)

For example, if a shed is surrounded by soil from a landslide, there may be imminent damage in relation to the moisture from the surrounding soil causing physical loss or damage to the shed. The future replacement cost for the shed is the amount that would be reasonably incurred to replace or reinstate the shed, as if it had suffered the imminent damage due to the natural hazard. This future replacement cost includes the total cost that would reasonably be incurred to repair the shed to a condition substantially the same as, but not better or more extensive than, its condition when it was new.

### Mitigation cost

The mitigation cost is the total cost that would reasonably be incurred to carry out the work required to mitigate the risk of the imminent damage occurring (which might include relocating parts of the building) (see Section 6.A.c.iv in this Manual).

#### [Section 34\(4\), NHI Act](#)

The mitigation cost for the replacement of a residential building should be to a standard substantially the same as, but not better or more extensive than, its condition when it was new.

The scope of the mitigation works should be guided by the considerations set out in [section 34\(5\) of the NHI Act](#), such as the likely effectiveness of the works and whether they are technically feasible (see ‘Future replacement cost or mitigation cost’ below).

The total cost of the mitigation works should include:

- the cost of the works themselves;
- the cost of complying with all applicable laws;
- other fees or costs payable in the course of carrying out the works; and
- GST.

### Mitigation cost – overlap between a residential building and residential land

In some circumstances where there is imminent damage to the residential building, the mitigation works to address that imminent damage also address natural hazard damage to the residential land (which may be imminent damage, actual damage, or both).

Where that is the case, we (or a person we authorise) must determine how those costs of the relevant works are to be allocated between the building and land claims.

#### [Section 34\(7\), NHI Act](#)

This depends primarily on the nature of the mitigation works, and in particular, whether they are connected with the residential building, residential land, or neither of them.

There is overlap between the residential building and residential land when the cost of work relates to work that is both:

- work to mitigate the risk of imminent damage to a residential building (the cost of which is calculated as the mitigation cost); and
- work to either:
  - reinstate damaged residential land (the cost of which is calculated as the reinstatement cost); or
  - mitigate the risk of imminent damage to residential land (the cost of which is calculated as the mitigation cost).

In relation to work that, if carried out, would be carried out on the residential building, the cost of those works must first be allocated to the replacement cost for the building claim (up to the building cover cap). The remaining portion of the cost of those works (if any) should be allocated to the reinstatement cost for the land claim (up to the land cover cap).

If we (or a person we authorise) decide to settle the imminent damage using either the future replacement cost or future reinstatement cost on one or both of the claims, it is not necessary to allocate the damage between the building and land claims.

### Future replacement cost or mitigation cost?

In deciding whether, or to what extent, to use the future replacement cost or mitigation cost, NHC (or a person we authorise) must take into account the following:

- whether, or to what extent, mitigation is technically feasible, could be carried out lawfully, and is likely to be effective;
- the relative cost of future replacement and mitigation;
- if the residential land has also suffered natural hazard damage, whether, or to what extent, the work required to mitigate the risk of the imminent damage occurring to the residential building:
  - might need to be taken to reinstate the damaged land; or
  - might also mitigate the risk of imminent damage to the land.

#### [Section 34\(5\), NHI Act](#)

Mitigation cost may be used where the mitigation work is technically feasible, lawful, and likely to be effective. Generally, if mitigation work has these characteristics, it is available as an option for addressing imminent damage.

The relative costs of the future replacement cost and mitigation cost is also relevant. Generally, of the approaches that are available, we (or a person we authorise) should use the approach that will be the most cost effective.

We (or a person we authorise) should also generally look to use a repair strategy that will address the damage through a single repair. For example, if constructing a single retaining wall could address actual and imminent damage to the residential land, and imminent damage to the residential building, that combined approach is likely to be more appropriate than an approach that uses separate works to address imminent damage to the residential building.

If it is unclear whether a claim should be determined based on the future replacement cost or mitigation cost, this should be referred to the appropriate NHC representative.

For settlement purposes, we (or a person we authorise) must ensure that the NHC customer has not been over-indemnified by assessing different types of damage separately.

#### d. What does the 'replacement cost' not include?

Under [section 32\(4\) of the NHI Act](#), the replacement cost does not include claim handling costs or any allowance for contingencies.

The replacement cost also does not include the cost of modification required to comply with the law if the specific legal obligation to make that modification existed immediately before the natural hazard damage occurred.

If, immediately before the natural hazard damage occurred, the insured person had a legal obligation under an applicable law to modify any property (whether at the time or in the future), the replacement cost does not include the cost of modifications required to comply with that law.

##### [Section 32\(3\), NHI Act](#)

This provision applies where the insured person already had an obligation to carry out the modifications before the natural hazard damage occurred. It applies even in cases where they were not required to carry out the modifications immediately, but only at some point in the future.

For example, if a seismic upgrade was required by law in relation to an earthquake-prone building immediately before the natural hazard damage occurred, the cost of complying with that legal obligation is excluded from the replacement cost. This applies even if the seismic upgrade was only required to be carried out at some point in the future.

Other examples of where this exclusion applies are:

- modifications that must be made to comply with a dangerous building notice under [section 124\(2\)\(c\) of the Building Act](#); or
- modifications that must be made to comply with the healthy homes standards under [section 45\(1\)\(bb\) of the Residential Tenancies Act 1986](#).

**e. What are the standards required in carrying out assessments?**

All people engaged in claims assessments must:

- be sufficiently experienced, qualified and skilled for the purpose, in each case meeting the expectations in the NHC Insurers Manual;
- meet any applicable legal obligations (such as complying with health and safety obligations);
- conduct themselves in a professional manner at all times; and
- be appropriately trained.

**f. When must the assessor visit a residential building for an assessment?**

The assessment involves a visit to the residential building where the person dealing with the claim considers that a visit is necessary to assess the natural hazard damage to the property.

Whether a visit is necessary is a matter of judgement. In most instances a visit is necessary.

However, there may be some instances where a visit is not necessary. For example, it may not be necessary to visit where other information (obtained without visiting the site) clearly indicates that there is no damage to the residential building.

**i. What about where the property is situated in an area in New Zealand where damage to property from the natural hazard would not be expected?**

In some limited cases the property that is the subject of the NHCover claim is in an area in New Zealand where damage to property from the natural hazard would not be expected.

In these cases, the person dealing with the claim may determine that property at that location is highly unlikely to be damaged as the direct result of the natural hazard and that therefore a visit to the property is not warranted.

Where the residential building is not visited for the above reason, the person dealing with the claim must request that the customer provide supporting information that shows the extent of the damage claimed. For more details, see Section 3.d.ii in this Manual.

Section 6 – How is the natural hazard damage assessed?

This supporting information:

- should include a detailed written description with clear photos of the damaged property; and
- may include other information, such as engineering or other specialist reports.

The person dealing with the claim must have regard to any such supporting information provided by the customer in assessing the residential building claim and may determine that a visit to the property is required.

To assist with considering these issues, we may, for a particular natural hazard, commission technical information and advice from specialist advisers (e.g. engineers). This information and advice helps establish the regions across New Zealand where damage to property as the direct result of that natural hazard would not be expected.

## ii. What about taking a ‘digital’ or ‘desktop’ approach to the assessment of residential buildings?

Any proposal to take a general approach to the assessment of more than one NHCover residential building claim (that does not involve site visits) must first be escalated to the appropriate NHC representative. Prior NHC approval to any such approach is required.

## g. What are the requirements for visiting a residential building for an assessment?

### i. Arranging access to residential building

Before the visit, we (or a person we authorise) must obtain the customer’s consent to access the property to carry out the assessment.

Where possible, the site visit should be arranged to:

- give the customer at least 24 hours’ notice of the visit (unless some other arrangement is mutually agreed); and
- have the customer (or their representative) at the residential building at the time of the visit.

If, after reasonable steps have been taken to obtain the customer’s consent, the customer will still not allow access to the residential building for the assessment, the matter should be escalated to the appropriate NHC representative.

## ii. Health and safety

All health and safety requirements must be met in connection with the visit to the residential building for the purposes of the assessment.

For more details see Section 11.a in this Manual.

## iii. Dangerous and insanitary buildings

If at any time in connection with the assessment, it is found that the property is dangerous, insanitary and/or contaminated, the policies set out in Section 11.b in this Manual must be followed.

## iv. Proper identification

People engaged in the assessment who visit the residential building must carry proper identification. The identification must enable the NHC customer and/or occupants of the property to clearly identify the person attending, their role and the organisation they are working for.

# h. Other requirements for an assessment of the natural hazard damage to the residential building

## i. What must be assessed?

The assessment is an appraisal of the natural hazard damage to the residential building claimed by the customer. It is recognised, however, that the assessment of natural hazard damage will involve assessing parts of the residential building that may or may not have natural hazard damage.

The assessment will involve a visit to the residential building, where a visit is necessary to assess the natural hazard damage to the residential building.



The residential building comprises:

- the whole of an eligible building (other than any excluded property) (Section 4.C in this Manual);
- any other appurtenant structures and service infrastructure for the dwellings in the building (Section 4.D and 4.E in this Manual);
- in the case of an eligible building that is a mixed-use building:
  - all dwellings on the eligible building;
  - all appurtenant structures and service infrastructure for those dwellings; and
  - all the common property and joint property for the building.

For details on what is meant by the term ‘residential building’, see Sections 4.B to 4.G in this Manual.

## ii. What appraisals are required?

The appraisals must be sufficient to ascertain:

- whether the residential building has suffered natural hazard damage; and
- if so, the extent of that natural hazard damage.

The building claim entitlement available to the customer depends on the extent of the natural hazard damage and the costing of the repair and/or replacement on the basis of replacement cost (see Section 6.A.c in this Manual)

## iii. What about material supplied by NHC customers?

In carrying out the assessment, the person dealing with the claim must have regard to any material that is provided by the NHC customer:

- under sections [52](#), [55](#), [56](#) and [58](#) of the NHI Act (see Section 3 in this Manual); and
- otherwise in relation to the claim.

## Section 6 – How is the natural hazard damage assessed?

#### iv. Engaging engineers and other professionals

Sometimes the person dealing with the claim needs to engage an engineer and other professionals (e.g. surveyors) to complete the assessment. This engagement must in all cases be made on our behalf.

These engineers and other professionals must:

- be engaged on arm's-length commercial terms;
- be appropriately qualified and experienced;
- be independent of the NHC customer; and
- not be subject to any conflict of interest that would, in the circumstances, reasonably be considered to prevent the engineer (or other professional) from providing services to us in relation to the NHC customer's claim or claims generally.

Reports from engineers and other professionals must be addressed to, and for the use of, NHC. They must be able to be relied on by us. The reports will be available to customers. In some cases, they will also be for the use of the private insurer.

#### v. Other matters

We may from time to time issue specific guidance on matters related to assessments.

## B. Assessment process and output

### a. What is the process for the assessment?

#### i. Carrying out the assessment

The assessment should weigh the available evidence in reaching a conclusion on the balance of probabilities. The assessment must be undertaken:

- in good faith;
- not mechanically (that is, not in a simply process-driven way); and
- in a manner that does not exclude consideration of factors that are relevant to any particular case.

Section 6 – How is the natural hazard damage assessed?

## ii. Information to be taken into account

Assessors should ensure that they collect sufficient information in their assessment of the property, including (where relevant) information from the NHC customer, to enable them to determine the damage caused by each event to the property.

The same set of information for every claim or occurrence of natural hazard damage may not be available. Therefore, the assessment process requires identification of the most reliable information available for the relevant property.

Assessments should be made having regard to the best available information.

Where previous NHCover (or EQCover) claims have been made to us for the same property, assessors must review the material on those claims files when assessing the current claim. For example, review of the previous claims material may disclose that we previously paid to repair natural hazard damage and our payment has not been used to repair that damage. In this situation, there may be grounds to decline the claim if the earlier natural hazard damage caused or exacerbated the current natural hazard damage. See Section 7.h.vi in this Manual.

## iii. Irrelevant considerations

When assessing the amount of damage caused by an event to the property, the following matters should not be taken into account:

- anticipated settlement outcomes (excess and NHCover cap implications);
- when applying the principles under Section 6.C in this Manual, whether the insured person is covered by private insurance and any conditions or excesses imposed by that insurance. For example, the insured person's private insurance may be conditional on there being an NHCover pay-out for each event; or
- any other irrelevant factors. For example, in managing the claim, the assessor may have empathy for personal or family factors that the customer identifies. But those factors should not be taken into account in assessing the amount of the damage.

#### iv. Process

All information required to complete the assessment must be collected and made available to us upon request.

All decisions are subject to audit processes.

#### b. What is the output of the assessment?

For each assessment, the person dealing with the claim must complete and have available full documentation and evidence recording the reasoning underpinning, and the results of, the assessment.

Where we issue a template that we and the persons we authorise agree to use for the recording of this material, that template must be used.

If a form is approved by us under [section 161 of the NHI Act](#), this must be used.

However, in all circumstances, the records must be:

- comprehensive;
- robust; and
- suitable for use, should any settlement decision (that is based on the assessment) later be disputed.

### C. Principles for assessment where there are multiple events

The guidance below sets out the legal principles that apply to the settlement of residential building damage claims under the [NHI Act](#) where multiple but separately insured natural hazard events have caused damage to the building.

## a. How should the amount of the natural hazard damage be assessed where there are multiple events?

An assessment must be made of the extent of natural hazard damage that is the direct result of each event there is a claim for. The guidance below sets out:

- the principles used to assess the extent of damage for each event; and
- the information that should be taken into account in making that assessment.

For the definition of the term ‘natural hazard damage’, see Section 5.c in this Manual.

### i. What is an ‘event’?

The NHI Act does not use the term ‘event’, but this description is a useful shorthand to refer to all the natural hazard damage occurring during the damage period (being ‘initial damage’ or ‘second damage’) and ‘extended damage’ (see Section 3.f.iii in this Manual).

The damage period for most natural hazards is 48 hours. A different period (7 days) applies for volcanic activity or a natural hazard fire (see Section 3.f.iii in this Manual).

All natural hazard damage that occurs during an event is the subject of the same claim (see Section 3.f.iii in this Manual). This is the case even if different types of natural hazard (e.g. earthquake and landslide) cause natural hazard damage within the damage period. However, where the ‘event’ has different types of natural hazards during the damage period, the claim and settlement of it must be escalated to the appropriate NHC representative.

If the time since the residential building suffered natural hazard damage is longer than the damage period, and the damage in question is not extended damage, the [NHI Act](#) requires that the damage fall under separate claims.

### Assessing damage within an event

Within an event, we (or a person we authorise) can assess different types of damage, including types of damage caused by different natural hazards, separately. However, for settlement purposes, we (or a person we authorise) must ensure that the NHC customer has not been over-indemnified by assessing different types of damage separately (e.g., because the repair of one type of damage will also repair another type of damage).

### Settling an NHCover claim for an event

An NHCover claim should only be considered for settlement (by payment, notification that payment entitlement is zero, replacement, reinstatement, or relocation of the building) if there is a valid NHCover claim (see Section 3 in this Manual).

An NHCover claim can be declined before the claim is determined to be valid. Even if a claim is valid, it may still be declined if one of the grounds to decline a claim under sections [68 to 77 of the NHI Act](#) is met.

An NHCover claim should only be considered for settlement (by any method) if there has been an assessment (see Sections 6.A, 6.B and 6.C in this Manual) to help determine the extent, and amount (if any), of any natural hazard damage.

If there has been damage caused by a prior event which no claim has been made for (an unclaimed event), the unclaimed event damage is deducted from the new event claim and the amount of damage attributable to subsequent events needs to be assessed taking this into account.

For each event that there is a claim for, it is necessary to consider:

- what physical loss or damage was the direct result of each natural hazard within that event;
- what physical loss or damage occurred as a direct result of measures taken under proper authority to mitigate the consequences of a natural hazard; and
- what physical loss or damage is imminent as the direct result of the event (see Section 5.g in this Manual)

### **ii. What are the principles that should be applied in the assessment?**

To assess the extent of the damage caused by an event to a residential building in a context where the building has been damaged by multiple events without intervening repairs, the following principles should be applied (using here the example of earthquakes, and assuming the other requirements of the [NHI Act](#) have been met for each event):

- The task is to assess, in respect of the first earthquake event (EQ1), the damage that occurred as a direct result of EQ1 and the cost of repairing that damage to the required standard under the [NHI Act](#). For a discussion of the required standards, see Section 6.A.c in this Manual.

### Section 6 – How is the natural hazard damage assessed?

- In respect of the next earthquake event (EQ2), the task is to assess what additional damage (if any) occurred as a direct result of EQ2 – beyond the damage that had already occurred – and the additional marginal cost (if any) of repairing the damage that occurred as a direct result of EQ2.
- However, if a component of the building needs to be replaced after an earthquake, it cannot in any meaningful sense be further damaged or have further cost incurred – it already needs replacement. No further amount is payable under the NHI Act in respect of that component.
- By extension, if the building as a whole needs to be replaced after an earthquake, it cannot be further damaged or have further repair cost incurred.
- The allocation of damage should not be directly translated to a share of the total cost of repairing the combined damage caused by all of the earthquakes. This is because costs do not necessarily increase in relation to extent of damage in a linear or uniform fashion. Rather, reference should be had to the circumstances of each damaged component or property.
- The total cost of all of the insured damage cannot exceed the cost of replacement of the building.

### Example of application of principles

The following example shows how the principles apply:

- a building is damaged in two earthquakes – EQ1 and EQ2;
- EQ1 and EQ2 have occurred more than 48 hours apart;
- the cost to repair the damage that is the direct result of EQ1 to the standard required under the NHI Act is \$20,000;
- the cost to repair the damage that is the direct result of EQ1 and EQ2 to the standard required under the NHI Act is \$80,000;
- the amount of damage (subject to the applicable NHCover cap, the excess and any grounds to decline the claim) for:
  - EQ1 is \$20,000;
  - EQ2 is \$60,000 (i.e. \$80,000 less \$20,000).

### Section 6 – How is the natural hazard damage assessed?

## 7. What are the grounds for declining an NHCover claim?

### a. Overview

This section discusses the decision to decline an NHCover claim on one or more of the grounds under [sections 68 to 77 of the NHI Act](#).

An NHCover claim may be declined before a determination is made on its validity (see Section 7.b in this Manual). An NHCover claim should only be considered for settlement by other methods (i.e. by payment, notification that payment entitlement is zero, replacement or reinstatement, or relocation) after the claim is determined to be valid (see Section 7.b in this Manual).

An NHCover claim cannot be valid if the NHCover for the property was cancelled at the time of the natural hazard damage (see Section 7.c in this Manual).

This section outlines:

- who may make a decision to decline an NHCover claim under (see Section 7.e in this Manual);
- the nature of such a decision to decline (see Section 7.f in this Manual);
- the process for such a decision to decline (see Section 7.g in this Manual);
- the grounds to decline an NHCover claim (in whole or part) under (see Section 7.h in this Manual); and
- the grounds to limit NHCover (see Section 7.i in this Manual).

### b. Is the NHCover claim valid?

An NHCover claim can be declined under any of the [sections 68 to 77 of the NHI Act](#) grounds before the claim is determined to be valid. An NHCover claim should only be considered for settlement by payment, notification of no entitlement, replacement or reinstatement, or relocation of residential building if the NHCover claim is determined to be valid. Even if a claim is valid, it may still be declined if one of the grounds to decline a claim under sections 68 to 77 of the NHI Act is met.

[Section 59\(3\), NHI Act](#)



Early in the claims management process, the person dealing with the claim should consider whether there are any grounds to decline under sections 68 to 77 of the NHI Act. To the extent it is clear from information available that any of these grounds to decline may apply, this may make other aspects of the claims management process unnecessary (e.g. determining whether the claim is valid or full assessment of the damage under Section 6 in this Manual). See also Section 3.j in this Manual.

Sections [59](#) and [67](#), NHI Act

### c. **Has the NHCover been cancelled?**

We may cancel NHCover for property (residential building or residential land). See Section 3.i.i in this Manual.

There is no valid NHCover claim if the NHCover for the property was cancelled at the time of the natural hazard damage.

For residential building claims, the RT to the property should be checked before any settlement to ensure that the NHCover or EQCover was not cancelled at the time of the damage-causing natural hazard. Where EQCover for a property was cancelled under Schedule 3, Clause 4 of the EQC Act and had not been reinstated as at 1 July 2024, the cancellation continues to apply as if it had been cancelled under section 49 of the NHI Act. For the purposes of this check, the copy of the RT sourced from Land Information New Zealand (LINZ) must be no older than three months from the date that LINZ sent it out.

[Section 49](#) and [Schedule 1, Clause 5](#), NHI Act

[Schedule 3, Clause 4, EQC Act](#)

The entry on the RT indicating a cancellation under [section 49 of the NHI Act](#) typically reads as follows:

Certificate under Section 51(2) of the Natural Hazards Insurance Act 2023

The entry on the RT indicating a cancellation under Schedule 3, Clause 4 of the EQC Act typically reads as follows:

Certificate under Section 28(1) Earthquake Commission Act 1993

**d. Is there any reason for the claim (or any part of it) to be declined?**

Unless it has already been determined early in the claims management process that the claim should be declined, if the NHCover claim is determined to be valid, the next question is whether there are any grounds to decline the claim.

**i. Grounds to decline a claim**

An NHCover claim may be declined (or only met in part) on the grounds set out in [sections 68 to 77 of the NHI Act](#). Specifically:

- the delay in making the claim is prejudicial (Section 7.h.i in this Manual);
- the insured person has suffered no financial loss (Section 7.h.ii in this Manual);
- the insured person has not complied with a condition of NHCover (Section 7.h.iii in this Manual);
- the insured person has given misleading information to us, a person we authorise or their private insurer (Section 7.h.iv in this Manual);
- the claim is fraudulent (Section 7.h.v in this Manual);
- the insured person has failed to mitigate the risk of natural hazard damage (Section 7.h.vi in this Manual);
- the natural hazard damage is due to (or exacerbated by) an intentional act, omission, or negligence (Section 7.h.vii in this Manual);
- the natural hazard damage is due to (or exacerbated by) unlawful conduct; (Section 7.h.viii in this Manual);
- the natural hazard damage is due to (or exacerbated by) substandard construction (Section 7.h.ix in this Manual); or
- there is a natural hazard notification on the RT (Section 7.h.x in this Manual)

An NHCover claim for future damage may also be declined (or met in part) on the grounds set out in [sections 68 to 77 of the NHI Act](#). This can occur where we have given a written notice under [section 50 of the NHI Act](#) (which sets out grounds to limit NHCover). The notice will state that any claim for loss or damage after the date of the notice may be declined and give the reasons for the decision (Section 7.i in this Manual).

These grounds to decline a claim under [sections 68 to 77 of the NHI Act](#) are discussed in more detail in Section 7.h in this Manual.

Further:

- Section 7.e in this Manual sets out who may decline claims; and
- Sections 7.f and 7.g in this Manual outline the decision-making process.

**ii. Prescribed grounds to decline are the only grounds relevant when determining whether to decline part or all of the NHCover claim**

The grounds to decline an NHCover claim are those set out in [sections 68 to 77 of the NHI Act](#).

Any separate grounds to decline a claim that may be set out in the fire insurance contract do not apply to the NHCover claim.

**e. Who may make a decision to decline an NHCover claim?**

**i. Appropriate delegated authority before declining a claim**

A decision to decline an NHCover claim is unlawful unless that decision is made by:

- NHC; or
- a person we authorise.

[Section 130, NHI Act](#)

Where a claim is being dealt with by a person we authorise, we will let that person know specifically:

- whether or not they have been delegated the authority to decline NHCover claims;
- which powers to decline NHCover claims they have been delegated; and
- any prerequisites to the exercise of that delegated authority.

Where the person dealing with a claim does not have the specific delegated authority to decline an NHCover claim, they must:

- gather all relevant information in accordance with Section 7 in this Manual in relation to the claim; and
- escalate the matter of whether to decline the claim (in whole or in part) to the appropriate NHC representative.

## **ii. Decision-makers dealing with different components of an entire NHCover claim may need to liaise**

Even if a person we authorise does have the delegated authority to decline an NHCover claim, they may need to liaise with us regarding the decision to decline the claim.

For example, grounds to decline NHCover claims can apply across all property (residential land and residential buildings). These cases are discussed at Section 7.e.i in this Manual. If different people are dealing with different components of an entire NHCover claim (residential building claim and residential land claim), those people must:

- liaise with each other on whether and how the decision applies in respect of the entire NHCover claim; and
- escalate the matter to the appropriate NHC representative.

If the person dealing with the claim does not have the specific delegated authority to make a decision to decline the NHCover claim:

- they should nevertheless consider whether the grounds under [sections 68 to 77 of the NHI Act](#) may apply; and
- if they consider that one or more of the grounds may apply, they must escalate the matter to the appropriate NHC representative.

## **f. What is the nature of a decision whether or not to decline a claim?**

### **i. Power to decline an NHCover claim is discretionary**

The power under [section 67 of the NHI Act](#) to decline or meet part only of an NHCover claim is a discretionary power. However, it is still subject to legal challenge, including by way of judicial review.

Where there are grounds to decline the NHCover claim, this does not necessarily mean the claim should automatically be declined (in full or in part). There are additional relevant considerations, set out below, to consider when deciding whether or not to decline the claim in full or in part.

The decision-maker must:

- consider the issues with an open mind;
- consider all viewpoints and relevant evidence; and
- approach each decision on a case-by-case basis and on its own facts.

[Section 67 of the NHI Act](#) gives the power to decline the claim entirely and in part. In each case, it is necessary to consider:

- whether or not the claim should be declined entirely; and
- whether or not only part of the claim should be declined.

Because grounds to decline NHCover claims can apply across all property (residential land claim and residential building claim), it is necessary in these cases to consider whether and how the overall decision applies in respect of each of those claims.

## ii. Relevant considerations

In making the decision on whether to decline a claim in whole or in part, all relevant considerations must be taken into account and all irrelevant considerations disregarded.

Any decision on whether to decline an NHCover claim must be based on material that:

- is relevant to the decision at hand;
- is cogent;
- is credible; and
- logically proves the facts relied on.

Advice from an appropriately qualified professional (e.g. an engineer) is typically necessary where, for example, there may have been failures to comply with building laws or appropriate standards.

## **g. What is the process for deciding whether or not to decline a claim?**

Before making any decision to decline an NHCover claim it is necessary to conduct a fair process.

### **i. Fair hearing**

The customer must be given a fair hearing. Specifically, the customer must be notified:

- that consideration is being given to declining the claim;
- of the reasons why consideration is being given to declining the claim; and
- of the factual material underpinning that consideration.

Furthermore:

- the customer must be given a reasonable time (10 working days minimum) to respond to the notice and comment on the proposed reasons and material for declining the claim. What is a reasonable time depends on factors such as the complexity of the material; and
- genuine and fair consideration must be given to the customer's comments.

The decision-maker must be:

- free of bias; and
- have no conflict of interest, including with respect to the customer.

### **ii. Information for the purpose of deciding whether or not to decline**

For some of the grounds under [sections 68 to 77 of the NHI Act](#) for declining claims, information about previous NHCover claims at the property may be used to help decide whether or not to decline the current NHCover claim.

An example is failure to mitigate the risk of natural hazard damage, which contemplates referring to information from a previous NHCover claim in order to decide whether to decline the subsequent claim (see Section 7.h.vi in this Manual)

For more details on obligations regarding shared information, see Section 11.f in this Manual.

### iii. Reasonableness

All steps in the decision-making process (and the ultimate decision on whether to decline the claim) must be reasonable.

The decision must be justifiable. The customer must be informed of the reasons for any decision to decline the claim.

### iv. Notification of any decision to decline

The person dealing with the claim must notify the insured person in writing of:

- the decision to decline an NHCover claim;
- the reasons for the decision (including the specific grounds under [sections 68 to 77 of the NHI Act](#)); and
- their right to refer disputes about referable decisions to the dispute resolution scheme (see Section 11.k.ii in this Manual for further details, including the definition of a ‘referable decision’).

Such notice must include a description of the customer’s right to refer the decision to decline to the Ombudsman.

An example is set out below of the form of words that can be used to describe the customer’s right to refer the decision to decline to the Ombudsman:

If you are not satisfied with the outcome of [the settlement of your NHCover claim for your property] you have the right to ask the Ombudsman to investigate and review the settlement decision. The Ombudsman can be contacted at PO Box 10152, Wellington 6143, or on Freephone 0800 802 602, or at <https://www.ombudsman.parliament.nz/>.

After the customer has been notified, the person dealing with the claim must compile and have available for NHC full records of:

- the investigation;
- the decision to decline (with reasons, including the specific grounds under [sections 68 to 77 of the NHI Act](#)); and
- all communications with the customer.

The records must be:

- comprehensive and robust for audit and reporting purposes;
- suitable for use, should the decision to decline the NHCover claim later be disputed; and
- in the case of a decision to decline because the claim is in any respect fraudulent, suitable for use to support any prosecution undertaken by NHC or the Police.

#### **h. What are the grounds to decline NHCover claims (in whole or part)?**

[Sections 68 to 77 of the NHI Act](#) set out circumstances where we (or a person we authorise) may decline (or meet part only of) a claim made under any insurance of any property under the [NHI Act](#).

Because [section 67 of the NHI Act](#) contemplates the claim being declined in whole or in part where one of the grounds applies, you must in each case consider both:

- whether the claim should be declined entirely; and
- whether the claim should be declined only in part.

For example, it may be appropriate, having considered all the circumstances of the entire NHCover claim, to decline all (or part of) one of the NHCover claims only. This could mean for example, that all (or part of) the residential land claim is declined, but the residential building claim is not declined.

In cases where the entire NHCover claim has a residential land claim, the person dealing with the residential building claim must:

- liaise with the person dealing with the residential land claim as to whether and how the decision applies in respect of the residential land and/or residential building; and
- escalate the matter to the appropriate NHC representative.

The ten grounds of declining claims under [section 68 to 77 of the NHI Act](#) are discussed in more detail below.



## i. Delay in making the claim is prejudicial to NHC

Section 68 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

There are grounds to decline a claim if—

- (a) the claim is made after the standard claim date under section 54(1)(b) or (c); and
- (b) the lapse of time before the claim was made materially prejudices the Commission's ability to assess the claim.

[Section 68, NHI Act](#)

The 'standard claim date' means:

the date that is 3 months after the date on which the earliest damage included in the claim occurs, or any later date allowed by the regulations

[Section 54\(3\), NHI Act – definition of 'standard claim date'](#)

The 'extended claim date' means:

the date that is 2 years after the date on which the earliest damage included in the claim occurs, or any later date allowed by the regulations

[Section 54\(3\), NHI Act – definition of 'extended claim date'](#)

Although the insured person has until the extended claim date to make an NHCover claim for natural hazard damage, there is discretion to decline the claim if the claim for natural hazard damage is made after the standard claim date. The claim may be declined if the lapse of time before the claim was made materially prejudices our ability (or the ability of a person we authorise) to assess the claim.

### What does 'materially prejudice' mean?

For there to be grounds for us (or a person we authorise) to decline the claim on this basis we (or a person we authorise) need to be able to demonstrate, on balance, that we (or a person we authorise) have been materially disadvantaged in assessing the claim. The disadvantage must have been caused by the claim being made after the standard claim date.

Delay in itself is not enough to establish prejudice. The delay must cause other consequences, which materially prejudice the ability to assess the claim.

In some instances, technical or engineering input is needed to determine whether the ability to assess the claim has been materially prejudiced due to the passage of time.

If the person dealing with the NHCover claim considers that their ability to assess the claim has been materially prejudiced, they must escalate the matter immediately to the appropriate NHC representative.

#### Situations where ‘material prejudice’ applies

By way of example, our (or a person we authorise’s) ability to assess the claim may have been materially prejudiced by the insured person’s delay in making the claim until after the standard claim date if the passing of time means we (or a person we authorise) cannot assess time-sensitive evidence of the natural hazard damage. For example, the delay may make it impossible to distinguish between natural hazard damage and damage caused by exposure to the weather.

Each claim should be considered on a case-by-case basis.

## **ii. The insured person has suffered no financial loss**

Section 69 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

There are grounds to decline a claim if the natural hazard damage has not caused, and is not likely to cause, financial loss to the insured person because—

- (a) the damaged property has been, or will be, reinstated by a third party at no cost to the insured person; or
- (b) before the natural disaster damage occurred, the insured person intended to demolish the damaged property.

[Section 69, NHI Act](#)

There are grounds to decline the claim when the natural hazard damage has not caused, and is not likely to cause, financial loss to the insured person.<sup>12</sup> There are two circumstances where this may occur:

- when the damaged property has been (or will be) reinstated by a third party at no cost to the insured person; and/or
- if, before that damage occurred, the insured person intended to demolish the damaged property.

#### Reinstatement by third party

A claim may be declined in whole (or in part) where a third party has agreed to reinstate the damaged property, and the insured person (or we (or a person we authorise) on behalf of the insured person) is not required to meet the cost of remediation (and accordingly the insured person will not suffer any financial loss). For example, a local authority carrying out area-wide repairs and does not seek to recover costs from individual homeowners.

There are not grounds to decline in situations where the third party:

- has an agreement with the insured person or us (or a person we authorise) to carry out repairs and the third party will receive payment; or
- has taken assignment of the insured person's claim before carrying out repairs.

#### The insured person intended to demolish the damaged property before the natural hazard damage occurred

A claim may be declined in whole or in part where the insured person intended to demolish the damaged property before the natural hazard damage occurred, and therefore has not suffered any financial loss. There are not grounds to decline the claim where the insured person intends to demolish property because of natural hazard damage.

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<sup>12</sup> NHCover does not include insurance against consequential loss (such as temporary accommodation, loss of profits, loss or damage as a result of theft, vandalism, or business interruption, or loss of intangible property).

Intention can be inferred from the circumstances, including:

- the insured person's description of their intention; and
- steps the insured person had taken towards demolition before the natural hazard damage occurred.

We (or a person we authorise) can request information about the insured person's intention to demolish under [section 58 of the NHI Act](#), including requiring a statutory declaration regarding their intention.

Whether or not the insured person has suffered or is likely to suffer financial loss as a direct result of the natural hazard damage depends on whether they:

- proceed with the demolition as intended (in which case no financial loss will be caused by the natural hazard damage); or
- replace or reinstate the property that has suffered natural hazard damage.

### iii. The insured person has not complied with a condition of NHCover

Section 70 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

There are grounds to decline a claim if—

- (a) regulations imposing a condition (referred to in section 30 or 38) state that non-compliance with the condition is a ground for declining a claim; and
- (b) the condition is not complied with.

[Section 70, NHI Act](#)

There are currently no regulations under the NHI Act imposing conditions on NHCover that state non-compliance with conditions are grounds for declining the claim. This means an NHCover claim cannot be declined under section 70 of the NHI Act.

#### iv. The insured person has given misleading information to us, a person we authorise, or their private insurer

Section 71 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

- (1) There are grounds to decline a claim if the insured person knowingly gives misleading information—
  - (a) to the Commission or an authorised person for the purposes of this Act; or
  - (b) to the fire insurer in relation to the fire insurance contract or any claim made under it.

In this section, misleading information means information that is false, misleading in a material particular, or misleading because of the omission of a material particular.

##### [Section 71, NHI Act](#)

There are grounds to decline the NHCover claim where the insured person has at any time, knowingly given misleading information to us, a person we authorise, or to the private insurer in their own capacity.

To be 'knowingly given', the misleading information must be given deliberately. The insured person must have known what they were doing in giving the misleading information and must have intended to give it.

To be 'false', information must be incorrect or untrue. Information is 'misleading' if, because of the context it is made in, or what it contains or omits, it could give the wrong idea or impression to the person it is given to.

To be 'material', the misleading information must make a difference to the claim, or affect our liability to settle the claim. This includes affecting the settlement amount or any other aspect of the decision-making in relation to the claim.

The grounds to decline an NHCover claim for knowingly giving misleading information may overlap with the grounds to decline a claim on the basis of fraud (see Section 7.h.v in this Manual).

#### v. The claim is fraudulent

Section 72 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

There are grounds to decline a claim if it (or any part of it) is fraudulent.

##### [Section 72, NHI Act](#)

#### Section 7 – What are the grounds for declining an NHCover claim?

Care must be taken in the investigation of suspected fraudulent behaviour to avoid mistaken accusations or potentially defamatory statements. Fraudulent behaviour does not have to be only by the insured person but may be by any person in relation to the NHCover claim.

For details of our policy on investigating suspected fraudulent claims, see Section 11.n in this Manual.

#### **vi. The insured person has failed to mitigate the risk of natural hazard damage**

Section 73 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

(1) An insured person must—

- (a) take reasonable steps to mitigate the risk of natural hazard damage to the residential building and residential land; and
- (b) if the residential building or residential land suffers natural hazard damage, take reasonable steps to mitigate the risk of any further damage.

Subsection (1) applies only to the extent that there are reasonable steps that the insured person could take to mitigate the risk.

There are grounds to decline a claim if—

- (a) the insured person has failed to comply with subsection (1); and
- (b) the natural hazard damage to which the claim relates occurred because of (or was exacerbated by) that failure.

This section applies whether or not the Commission has limited its liability in relation to the damage under section 50.

[Section 73, NHI Act](#)

The obligation to mitigate the risk of further natural hazard damage under section 73 of the NHI Act is as follows:

- at all times the insured person must take reasonable steps to mitigate the risk of natural hazard damage to the property; and
- if at any time the property (or any premises where that property is situated) suffers natural hazard damage, the insured person must take reasonable steps to mitigate the risk of further such damage.

The obligation to mitigate the risk of natural hazard damage arises as soon as the relevant fire insurance contract or direct NHCover is entered into, and continues for as long as the fire insurance contract or direct NHCover remains in force.

One situation where the obligation to mitigate the risk of further natural hazard damage arises is when a previous NHCover claim (or EQCover claim) has been settled by payment. The insured person must use the payment to mitigate the risk of further natural hazard damage, usually by repairing or reinstating the property.

'Reasonable steps' to mitigate the risk of natural hazard damage, or further natural hazard damage means taking steps that the insured person could reasonably be expected to take in the circumstances depending on the risk. If there was a significant risk that was foreseeable to the insured person (or should reasonably have been foreseeable), and the insured person disregarded that risk by not taking reasonable steps that were available, the insured person is in breach of this requirement.

There are grounds to decline an NHCover claim where natural hazard damage (or further natural hazard damage) that is the subject of the current claim is caused or made worse by the insured person failing to mitigate the risk of the natural hazard damage.

Factors to consider when determining whether there are grounds to decline an NHCover claim for failure to mitigate the risk of natural hazard damage include whether:

- the risk of the natural hazard damage that is being claimed for occurring was a risk that was (or should reasonably have been) foreseeable to the insured person;
- there were steps that could have been taken that would have mitigated the risk of the damage occurring (such as carrying out construction work);
- those steps could reasonably have been carried out in the available time before the natural hazard damage occurred (i.e. considering the resources required and all steps in the construction process);
- those steps would have been appropriate to the level of risk;
- if the insured person had taken the steps to mitigate the risk they would have been adequate in the circumstances; and
- the natural hazard damage occurred (or was made worse) because the insured person did not take reasonable steps.

#### Section 7 – What are the grounds for declining an NHCover claim?

## **vii. The natural hazard damage is due to (or exacerbated by) an intentional act, omission, or negligence**

Section 74 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

There are grounds to decline a claim if the natural hazard damage occurred because of (or was exacerbated by) an intentional act or omission of, or the negligence of,—

- (a) the insured person; or
- (b) a previous owner or occupier of the property, if the insured person was aware of the act, omission, or negligence when they acquired their insurable interest in the property.

### [Section 74, NHI Act](#)

For there to be grounds to decline an NHCover claim there must be natural hazard damage that was caused or made worse by either:

1. the intentional act or omission of, or negligence of the insured person; or
2. the intentional act or omission of, or negligence of the previous owner or occupier of the property. In this case, the insured person must have known (or reasonably should have known) of the intentional act or omission, or negligence when the insured person bought the property.

These two parts (1. or 2.) are discussed below.

### 1. Intentional act or omission of, or negligence of insured person

The insured person has committed an ‘intentional act or omission’ where the insured person wilfully did it, knowing it would cause the damage that occurred or make it worse.

‘Negligence’ of an insured person may occur when they carry out work on the property themselves. Negligence is, inevitably, a fact-specific assessment. The insured person may have been negligent if they failed to apply the degree of skill and care expected of a reasonably competent tradesperson carrying out that work at the time the work was done.

As a general rule, if the insured person calls in a reputable expert or specialist to carry out the work on the property, the insured person has taken reasonable care and is not



responsible for any shortcomings on the part of the expert. By contrast, there may be negligence where the insured person:

- calls in people the insured person knew (or should reasonably have known) were not qualified to carry out the work; or
- instructs the tradesperson not to complete the work to the required standard.

## 2. Aware of the intentional act or omission of, or negligence of previous owner or occupier

Similar considerations as set out above apply in identifying whether there has been an intentional act or omission, or negligence on the part of the previous owner or occupier.

The insured person must have been aware of (or should reasonably have been aware of) the intentional act or omission of, or negligence of, the previous owner or occupier when the insured person acquired their insurable interest in the property. It is not sufficient if the insured person found out about the relevant facts after the insured person bought the property. In this situation, there may be grounds to decline an NHCover claim when the insured person has failed to mitigate the risk of natural hazard damage (Section 7.h.vi in this Manual).

## Intentional act or omission, or negligence must cause or make natural hazard damage worse

The intentional act or omission, or negligence (under either 1. or 2. above) must cause the natural hazard damage or make it worse.

Advice from an appropriately qualified professional (e.g. an engineer) is needed to identify whether (and to what extent) the intentional act or omission, or negligence caused or made the natural hazard damage worse.

The grounds to decline an NHCover claim when natural hazard damage is due to (or exacerbated by) an intentional act or omission, or negligence may overlap with the grounds to decline a claim when natural hazard damage is due to (or exacerbated by) unlawful conduct (see Section 7.h.viii in this Manual).

In cases where it is identified that grounds to decline (or meet part only of) an NHCover claim under [section 74 of the NHI Act](#) may be appropriate, the matter must be escalated to the appropriate NHC representative.

### viii. The natural hazard damage is due to (or exacerbated by) unlawful conduct

Section 75 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

There are grounds to decline a claim if the natural hazard damage occurred because of (or was exacerbated by) a failure by the insured person to comply with any law or legal requirement.

#### [Section 75, NHI Act](#)

There are grounds to decline an NHCover claim when:

- the insured person has failed to comply with any law or legal requirement; and
- that failure has caused the natural hazard damage or made it worse.

#### Insured person must have failed to comply

In general, the ‘insured person’ is the person (or persons) named in the fire insurance contract or direct NHCover as the insured. They are the person (or persons) entitled to the benefit of the fire insurance contract. For more details on who is the ‘insured person’, see Section 3.h.i in this Manual.

Where the insured person owned the residential building at the time that it was built (or, if relevant, at the time that it was altered), the insured person had obligations under building and resource management legislation. Accordingly, [section 75 of the NHI Act](#) may potentially be grounds to decline in this situation if the insured person failed to comply with their legal obligations.

But where somebody else owned the residential building when it was being built (or altered) and the insured person bought it afterwards (and has not since carried out an alteration to it), [section 75 of the NHI Act](#) generally does not apply in dealing with cases of, for example, deficient design, construction or siting of the building.

#### Failure to comply with any law or legal requirement

If the insured person owned the residential building at the time that it was built (or altered), in considering whether to decline a claim under [section 75 of the NHI Act](#) it is often necessary to identify whether the insured person failed to comply with the [Building Act](#), [Resource Management Act 1991 \(RMA\)](#) or predecessor legislation, and if so how.

This exercise involves, for example, examining any requirements laid down in consents issued under this legislation that were binding on the insured person, or by any relevant legal requirements. Expert advice is required from an appropriately qualified

professional (e.g. an engineer) identifying the extent to which the building work carried out deviated from the building code or building consent, or otherwise failed to comply with any law or legal requirement.

Failure to comply must have caused the natural hazard damage or made it worse

For there to be grounds to decline an NHCover claim, the natural hazard damage must be caused or made worse by the failure to comply with any law or legal requirement.

Again, advice from an appropriately qualified professional (e.g. an engineer) is needed to identify whether (and the extent to which) the failure to comply with any law or legal requirement caused or worsened the natural hazard damage.

In cases where it is identified that grounds to decline (or meet part only of) an NHCover claim under section 75 of the NHI Act may be appropriate, the matter must be escalated to the appropriate NHC representative.

**ix. The natural hazard damage is due to (or exacerbated by) substandard construction**

Section 76 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

- (1) This section applies if a claim relates to damage to—
  - (a) any part of a residential building that is not an integral component of the eligible building; or
  - (b) a retaining wall, or a bridge or culvert.

There are grounds to decline the claim (to the extent that it relates to that damage) if—

- (a) the damaged property was not constructed in accordance with standards considered appropriate for that property at the time it was constructed; and
- (b) the damage occurred because of (or was exacerbated by) the failure to comply with those standards.

[Section 76, NHI Act](#)

Grounds to decline a claim may be used in respect of any part of a residential building that is not an integral component of the eligible building

So far as it relates to residential buildings, this ground to decline a claim may be used only in respect of any part of the residential building that is not an integral component of

the eligible building (including common property or joint property if the eligible building is a mixed-use building).

- Insured appurtenant structures are described at Section 4.D in this Manual.
- Insured service infrastructure is described at Section 4.E in this Manual.
- Integral components of eligible buildings are described at Section 4.C.b in this Manual.

#### Grounds to decline a claim may be used in respect of insured retaining walls, bridges or culverts

There are also grounds decline a claim where certain residential land structures (retaining walls, bridges, culverts) fail to meet appropriate standards. See Section 8.h.ix of the [NHC Claims Manual - Residential Land - NHI Act](#).

If different people are dealing with the residential building and residential land claims, they should liaise with each other as to whether and how any decision to decline will apply in respect of the different claims.

If the failure of the retaining walls, bridges and/or culverts to meet appropriate standards may have potential consequences for the residential building claim, the person dealing with the residential land claim should pass that information on to the person dealing with the residential building claim. The person dealing with the residential land claim must also escalate the matter to the appropriate NHC representative.

Equally, if the failure of the parts of residential building that are not integral components of the eligible building to meet construction standards may have potential consequences for the residential land claim, the person dealing with the residential building claim should pass that information on to the person dealing with the residential land claim. The person dealing with the residential building claim must also escalate the matter to the appropriate NHC representative.

#### Failure to meet appropriate standards at the time of construction

There are only grounds to decline an NHCover claim on this basis if the damaged property was ‘not constructed in accordance with standards considered appropriate for that property at the time it was constructed’.

For this purpose, it is necessary to identify:

- when the property was built; and
- what the appropriate standards were at that time.

Advice from an appropriately qualified professional (e.g. an engineer) is needed to identify whether (and the extent to which) the failure to meet those standards caused or worsened the natural hazard disaster damage.

#### Failure to comply must have caused or made the natural hazard damage worse

For there to be grounds to decline an NHCover claim on this basis, the natural hazard damage must be caused or made worse by the failure to meet the appropriate standards at the time of construction.

Advice from an appropriately qualified professional (e.g. an engineer) is needed to identify whether (and the extent to which) the failure to meet those standards caused or worsened the natural hazard damage.

### **x. Natural hazard notification on the RT**

Section 77 of the NHI Act sets out the following circumstance where we (or a person we authorise) may decline (or meet part only of) an NHCover claim:

- (1) There are grounds to decline a claim if—
  - (a) the record of title for residential land (or any part of it) contains an entry under [section 74](#) of the Building Act 2004 in relation to a building consent granted under [section 72](#) of that Act; and
  - (b) the notice relates to a natural hazard (as defined in [section 71](#) of the Building Act 2004) that is also a natural hazard as defined in [section 23](#) of this Act; and
  - (c) the claim relates to damage that is a direct result of a natural hazard of the kind that the notice relates to.

Subsection (1) applies (with any necessary modifications) to an entry on a record of title under section 36(2) of the Building Act 1991 or section 641A of the Local Government Act 1974.

[Section 77, NHI Act](#)

There are grounds to decline an NHCover claim (in whole or in part) where:

- the property has [a section 74, Building Act](#) notification on its RT;
- the section 74, Building Act notification relates to a natural hazard (as defined by section 71 of the Building Act) that is also a natural hazard (as defined by the NHI Act); and
- the NHCover claim relates to damage that is (or part of the damage is) a direct result of a natural hazard of the kind the section 74, Building Act notification relates to.

#### Notification under section 74, Building Act

Section 74, Building Act notifications are placed on an RT where:

- the local authority grants a conditional building consent; and
- the land (that the building work is carried out on) is, or will likely be, subject to one or more natural hazards (as defined by the Building Act).

These natural hazards (as defined by the Building Act) include erosion, falling debris, subsidence, inundation and slippage.

#### [Section 71, Building Act](#)

In deciding whether to decline an NHCover claim on this ground, the decision-maker must take into account the particular circumstances of the property, and the details of the section 74, Building Act notification and the claim. As a general rule, this means considering whether the insured person has assumed the risk for the type of damage referred to in the notice, when either:

- purchasing the property, or
- progressing with alterations conditional to section 74, Building Act.

In practice, the RT shows a section 74, Building Act notification as being under section 72 of the Building Act.

#### Notifications under section 36(2) of the Building Act 1991 or section 641A of the Local Government Act 1974

Similar notifications on RTs were made under section 36(2) of the Building Act 1991 and section 641A of the Local Government Act 1974. These notifications still appear on some

titles, although both these sections are now superseded. These notifications have the same effect as a section 74, Building Act notification. However the notifications under these superseded provisions do not always identify the natural hazard (or hazards) (as defined by the Building Act or equivalent under predecessor legislation) concerned. Where the natural hazard (as defined by the Building Act or equivalent under predecessor legislation) is not identified in the notice, the matter must be escalated to the appropriate NHC representative.

[Section 74, Building Act](#)

[Section 36\(2\), Building Act 1991](#)

[Section 641A, Local Government Act 1974](#)

## i. **What are the grounds to limit NHCover?**

We may limit NHCover for the property under section 50 of the NHI Act. See Section 3.i.ii in this Manual.

In some cases where we limit cover, we may decline cover for claims for further natural hazard damage (called 'future damage' by the NHI Act). If we decide to limit our liability for future damage to property, we must give written notice to the insured person that claims may be declined under sections [67](#) and [73](#) of the NHI Act. In such cases, the ground to decline a claim is when the natural hazard damage is due to (or exacerbated by) the failure to mitigate the risk of further natural hazard damage (see Section 7.h.vi in this Manual). We must give reasons for our decision to the insured person. The limitation takes effect when notice is given to the insured person and continues until it is removed.

[Section 50\(1\) to \(3\), NHI Act](#)

For residential building claims, the RT to the property should be checked before any settlement to ensure that the NHCover or EQCover was not limited at the time of the damage-causing natural hazard. Where EQCover for a property was limited under Schedule 3, Clause 5, of the EQC Act and had not been reinstated as at 1 July 2024 the limitation continues to apply as if it had been limited under section 50 of the NHI Act.

Section [50](#) and [Schedule 1, Clause 5](#), NHI Act

[Schedule 3, Clause 5, EQC Act](#)

The entry on the RT indicating a limitation under Section 50 of the NHI Act typically reads as follows:

Certificate under Section 51(2) of the Natural Hazards Insurance Act 2023

The entry on the RT indicating a limitation under Schedule 3, Clause 5 of the EQC Act typically reads as follows:

Certificate under Section 28(1) Earthquake Commission Act 1993

Where there is a certificate of limitation on the RT, the person dealing with the claim must escalate it to the appropriate NHC representative.



## 8. How is an NHCover claim settled?

This section addresses the settlement of NHCover claims for natural hazard damage to residential buildings. It covers settlement by payment, notification that payment entitlement is zero, replacement, reinstatement, relocation, and declining the claim.

### a. Overview

This part deals with settlement of NHCover claims for natural hazard damage to residential buildings.

An NHCover claim may be declined before a determination is made on its validity. An NHCover claim should only be considered for settlement by other methods (i.e. by payment, notification that payment entitlement is zero, replacement or reinstatement, or relocation) after the claim is determined to be valid (see Section 7.b in this Manual).

The extent to which the claim is to be, or has been, settled is a referable decision. However, the decision on whether the claim is settled by payment, relocation or replacement is not a referable decision, meaning a dispute about this decision cannot be referred to the dispute resolution scheme.

An NHCover claim cannot be valid if the NHCover for the property was cancelled at the time of the natural hazard damage (see Section 3.i.i in this Manual).

Specifically, this part sets out:

- the methods that can be used to settle a residential building claim (cash payment, notification that payment entitlement is zero, replacement, reinstatement, relocation, and declining the claim) (Section 8.c in this Manual);
- how the building claim entitlement is calculated (Section 8.d in this Manual);
- the maximum amount (or the building cover cap) that can be paid (Section 8.e in this Manual);
- the recovery of overpayments (Section 8.f in this Manual);
- the excess that applies (Section 8.h in this Manual);
- the time limit for settlement (Section 8.i in this Manual); and
- how the settlement is communicated (Section 8.j in this Manual).

### Section 8 – How is an NHCover claim settled?

This part does not address every aspect of a residential building settlement where:

- a repair to the residential building has already been carried out in relation to the current claim; and
- the residential building needs to be reassessed because that repair strategy has failed or otherwise.

Additional matters (not dealt with in this part) must be addressed in such settlements. These settlements must be escalated to the appropriate NHC representative.

For details of what is meant by the term ‘residential building’, see Section 4.B in this Manual.

## **b. Is the NHCover claim valid?**

An NHCover claim should only be considered for settlement (by payment, notification that payment entitlement is zero, replacement, reinstatement, or relocation of the building) if there is a valid NHCover claim (see Section 3 in this Manual).

An NHCover claim can be declined before the claim is determined to be valid. Even if a claim is valid, it may still be declined if one of the grounds to decline a claim under sections [68 to 77 of the NHI Act](#) is met.

An NHCover claim should only be considered for settlement (by any method) if there has been an assessment (see Sections 6.A, 6.B and 6.C in this Manual) to help determine the extent, and amount (if any), of any natural hazard damage.

Check that there are no other reasons why the claim might not be accepted

If the private insurer’s fire insurance contract is ‘ground-up’ cover, (subject to the terms of that contract) we only have liability if the private insurer’s cover is exhausted. Accordingly, our liability may be limited or even ‘nil’ (see Section 3.j.ii in this Manual).

## **c. What methods can be used to settle an NHCover residential building claim?**

The following methods can be used to settle an NHCover residential building claim:

- payment (see Section 8.c.i in this Manual);
- notification that payment entitlement is zero (see Section 8.c.i in this Manual);
- replacement (see Section 8.c.ii in this Manual);

### Section 8 – How is an NHCover claim settled?

- reinstatement (see Section 8.c.ii in this Manual);
- relocation (see Section 8.c.iii in this Manual); and
- declining the claim (see Section 8.c.iv and Section 7 in this Manual).

#### [Section 61, NHI Act](#)

The whole of the NHCover residential land claim can be settled using one method, or two or more of the above methods can be used to settle different parts of the claim in different ways.

#### [Section 60\(1\)\(b\), NHI Act](#)

### **i. Payment or notification that payment entitlement is zero**

The NHI Act includes an option to settle a claim for natural hazard damage for a residential building by payment or by notification that payment entitlement is zero. Specifically, section 61(1) provides:

- (1) The methods for settling a claim are the following:
  - (a) paying the building claim entitlement and land claim entitlement to the insured person (or to another person who is lawfully entitled to it) (see also sections 63 and 64);
  - (b) if the building claim entitlement and land claim entitlement are zero, notifying the insured person of that fact:

#### [Section 61\(1\)\(a\) and \(b\), NHI Act](#)

### **Building claim entitlement**

The building claim entitlement is the lesser of:

- the replacement cost of the damaged parts of the residential building (see Section 8.d.i in this Manual); and
- the building cover cap for the residential building (see Section 8.e in this Manual).

Minus the building cover excess, being the number of dwellings in the residential building multiplied by \$500 (including GST) (see Section 8.h in this Manual).

#### [Section 31, NHI Act](#)

### When is the building claim entitlement zero?

A building claim entitlement is zero if the building cover excess is greater than the replacement cost.

In this situation, we (or a person we authorise) must contact the insured person and notify them that there is no payment entitlement.

#### [Section 31\(3\), NHI Act](#)

### Payment if insured person is two or more persons

If a fire insurance contract is for the benefit of two or more persons, the payment must be made as follows:

- If the insured persons have agreed on who will receive the payment, or how the payment is to be divided, we (or a person we authorise) must make the payment in accordance with the agreement.
- If there is no agreement, we (or a person we authorise) must divide the payment between the insured persons according to:
  - their respective responsibilities to replace or reinstate the damaged property; or
  - their respective insurable interests in the damaged property, if their respective responsibilities to replace or reinstate the damaged property cannot be ascertained.

However, if there is any law that provides for an approach contrary to the above, that law takes precedence.

We (or a person we authorise) must also comply with any regulations that relate to how the payment is to be divided, or the matters that are to be considered when deciding how to divide the payment (see Section 9.b.iii in this Manual).

#### [Section 63, NHI Act](#)

### Payment if two or more persons entitled to payment

If one or more persons who are not insured persons are entitled to all or part of the payment under a contract (for example, a mortgagee or a party to an agreement under the Property (Relationships) Act 1976), the payment must be made:

- to each person entitled to the payment under contract, according to their respective rights under their contracts or under any other law; and
- to the insured person, if any amount remains.

[Section 64, NHI Act](#)

## **ii. Replacement and reinstatement**

The NHI Act includes an option to settle a claim for natural hazard damage to a residential building by replacement or reinstatement. Specifically, section 61(1)(c) provides:

- (1) The methods for settling a claim are the following:
  - (c) replacing or reinstating the damaged property to the standard described in section 32 or 41:

[Section 61\(1\)\(c\), NHI Act](#)

See Section 6.A.c in this Manual for the standards for replacement and reinstatement.

## **iii. Relocation**

The NHI Act also includes an option to settle a claim for natural hazard damage for a residential building by way of relocation of all (or part of) the residential building (whether damaged or not). Specifically, section 61(1)(d) of the NHI Act provides:

- (1) The methods for settling a claim are the following:
  - (d) relocating the residential building under section 65:

[Section 61\(1\)\(d\), NHI Act](#)

Sections 65(1) and (2) of the NHI Act provide:

- (1) A claim may be settled by relocating all or part of a residential building (whether damaged or not) from the site where it was situated immediately before the natural hazard occurred (the original site) to another site (the new site)—
  - (a) on the insured person's land (or land that is contiguous with the insured person's land and on which the relocated property may lawfully be situated); or
  - (b) if, because of the natural hazard damage, that land is no longer suitable for that purpose, on other land.

The new site must be reasonably equivalent in all material respects to the original site.

[Section 65\(1\) and \(2\), NHI Act](#)

Under this option, the relocation of the residential building may be:

- on the same site; or
- on a different (but reasonably equivalent) site, if relocation on the same site is unsuitable because of the damage that site has suffered, or is more likely than not to suffer within 12 months (i.e. imminent damage).

The relocated property must be reinstated to the replacement cost standard, including for any damage to the property that is reasonably incurred as part of carrying out the relocation (see Section 6.A.c.iv in this Manual).

Sections [35](#) and [65\(3\)](#), NHI Act

If the residential building is relocated to a new site, we must ensure the insured person is given an estate or interest that is equivalent to, or greater than, their estate or interest in the original site. The land at the original site is then salvageable property (see Section 11.o in this Manual).

[Section 65\(4\), NHI Act](#)

### Example

An earthquake damages a section of water pipe under residential land positioned between a house and a road. It is not possible to replace the damaged section of pipe because of the damage to the land. The water pipe (both the damaged and undamaged parts) could be rerouted to cross the insured person's land and the council road reserve in a different place.

#### iv. Declining the claim

The NHI Act includes an option to settle a claim for natural hazard damage to a residential building by declining the claim. Specifically, section 61(1)(e) provides:

- (1) The methods for settling a claim are the following:
- (e) declining the claim under section 67.

[Section 61\(1\)\(e\), NHI Act](#)

Section 67 of the NHI Act provides that we (or persons we authorise) may decline a claim under any grounds that exist under [sections 68 to 77 of the NHI Act](#).

A description of the grounds to decline and the process for deciding whether to decline a claim are set out at Section 7 in this Manual.

We (or a person we authorise) should consider whether any of the grounds for declining a claim are applicable to the entire NHCover claim (across both the residential land claim and residential building claim). The grounds are set out at Section 7.h in this Manual.

#### v. Method of settling (payment, replacement or reinstatement, relocation or declining the claim) is at our option (or, in some cases, the option of a person we authorise)

The method of settling (payment, replacement, reinstatement, or declining the claim) is at our option (or the option of a person we authorise). It is not the customer's choice. In some cases, there may be a combination of settlement methods.

However, only we can make the decision to relocate. Any suggestion or proposal to settle any part of a claim by relocation must be escalated to the appropriate NHC representative for approval.

Settlement is usually by payment, unless we otherwise instruct

If a person we authorise considers a claim should be settled by a method other than payment, the claim must be escalated to the appropriate NHC representative for approval.

The building claim entitlement is typically the cost of repairing the residential building to the 'replacement cost' standard (see Section 8.d.i in this Manual). However, the building claim entitlement is always subject to the building cover cap (see Section 8.e in this Manual). Any settlement is only to the extent that we are liable under the NHI Act.

#### **d. How is the building claim entitlement calculated for an NHCover residential building claim?**

Section 8.d.i in this Manual discusses the basis of cover ('replacement cost') for the settlement of an NHCover claim for natural hazard damage to a residential building.

Other matters relevant to the calculation of the building claim entitlement are discussed at Sections 8.d.ii to 8.d.xi in this Manual.

##### **i. Basis of cover – replacement cost**

A residential building is insured under the NHI Act against natural hazard damage for its 'replacement cost'.

The building claim entitlement for an NHCover residential building claim is subject to a maximum amount of cover (referred to in the NHI Act as the 'building cover cap') (see Section 8.e in this Manual).

But before it can be determined whether or not the building cover cap is reached, it is necessary to assess the amount of the natural hazard damage on the basis of the 'replacement cost'.

For the definition of 'replacement cost' and details on how that definition is applied, see Section 6.A.c in this Manual.

##### **ii. Imminent damage**

The replacement cost for imminent damage is based on either or both of:

- mitigation cost: the cost to mitigate the risk of the imminent natural hazard damage occurring (where this is possible);
- future replacement cost: the cost to replace or reinstate the damaged parts of the residential building if the imminent natural hazard damage had in fact occurred.

See Section 6.A.c.viii in this Manual for further details.

[Section 34, NHI Act](#)

Payments for imminent damage form part of the building claim entitlement for the overall residential building claim.



If the person dealing with the claim identifies or suspects there is also natural hazard damage to the residential land on the property:

- if they are authorised to settle the residential land claim, that person should also assess and settle the residential land claim (see Section 9.a in this Manual); and
- if they are not authorised to settle the residential land claim, that person should escalate the matter to the appropriate NHC representative.

For a description of ‘imminent damage’, see Section 5.g in this Manual.

### iii. GST

The GST-exclusive amount of the building claim entitlement for the residential building is increased by the amount of GST the insured person has paid or will pay to replace or reinstate the residential building.

In other words, the GST component that has been paid or will be payable by the insured person is included for the purposes of calculating the building claim entitlement. This GST component must be set out in the Scope of Works prepared for the assessment of the residential building.

[Section 32\(2\)\(e\), NHI Act](#)

### iv. Fees incurred in the course of carrying out the replacement or reinstatement work

Fees incurred in replacing or reinstating the residential building (part of the building claim entitlement)

‘Replacement cost’ includes fees or costs payable in the course of carrying out the replacement or reinstatement work to the residential building. These fees can include architects’ fees, and fees payable to local authorities.

The cost of these fees is included in calculating the building claim entitlement.

[Section 32\(2\)\(d\), NHI Act](#)

These fees must be distinguished from fees that are incurred in actually establishing the amount of the natural hazard damage (referred to in the NHI Act as ‘claim handling costs’), which are discussed next.

### Fees that are incurred in establishing the amount of the natural hazard damage to the residential building (not part of the building claim entitlement)

The replacement cost does not include claim handling costs (CHC), defined in the NHI Act as ‘...expenses and capital expenditure incurred ... in administering a claim (such as those incurred in valuing property or establishing a reinstatement methodology, and legal expenses)’.

Sections [5\(1\)](#) and [32\(4\)](#), NHI Act – definition of ‘claim handling costs’

Therefore, the following fees are not included in the building claim entitlement:

- other professional fees incurred in helping to determine the building claim entitlement (i.e. ascertaining the cause and extent of the natural hazard damage, identifying repair strategies, and costing and quantifying the amount of the damage). Accordingly, the fees of consultants (e.g. assessors, estimators, surveyors, valuers, engineers) that are incurred in helping to determine the building claim entitlement are not added in calculating that building claim entitlement; or
- legal fees (including the customer’s and our legal fees) in establishing the amount of the natural hazard damage.

Section 11.q in this Manual addresses separately the treatment of fees where there is a reassessment of the building claim entitlement (e.g. professional fees incurred by a customer following a request by the customer for a review).

## **v. Urgent works to the residential building**

### What are urgent works?

Urgent (or emergency) works are repairs that are needed to make the residential building safe, sanitary, secure and weathertight.

There is no reference to ‘urgent works’ in the NHI Act. But in practice, urgent repairs are completed urgently because final repairs cannot be carried out immediately.

The customer is required under the NHI Act to take reasonable steps to protect their insured property from further natural hazard damage. For details, see Section 7.h.vi in this Manual.

After the natural hazard event, if the customer is safely able to, they should do things like:

- board up broken windows;
- put tarpaulins over holes in the roof or walls; and
- get essential services like toilets repaired immediately.

Sometimes the customer needs to get urgent help from a tradesperson to carry out some urgent repairs of the natural hazard damage. For example, the customer may need to get essential services like toilets up and running (if possible) or otherwise get work done to make the residential building safe, sanitary, secure and weathertight.

#### Paying or reimbursing the customer for the tradesperson's services for the urgent works

The customer may have sent invoices (or receipts) for urgent works from these tradespeople to the person dealing with the claim. That person may then either:

- pay the customer, so that the customer can in turn pay the tradesperson for the urgent works; or
- reimburse the customer, where the customer has already paid the tradesperson for the urgent works.

This early payment or reimbursement should only occur where there are actually urgent works. The works must be needed urgently to make the residential building safe, sanitary, secure or weathertight.

Our strong preference is to pay or reimburse the customer for the tradesperson's services for the urgent works. It is not anticipated that the tradesperson would be paid directly, except in exceptional circumstances.

#### Prerequisites for payment or reimbursement for the cost of urgent works

Any payment or reimbursement for the cost of urgent works depends on there first being a valid NHCover claim. See Section 3 in this Manual.

Where urgent works cover multiple events, the person dealing with the claim needs to identify which urgent works pertain to which event, usually by asking the customer.

### Payment or reimbursement for the cost of urgent works forms part of the overall building claim entitlement

Any payment or reimbursement for the cost of urgent works forms part of the overall building claim entitlement. This means any payment or reimbursement for the cost of urgent works (when added to the full cost of other repairs) is subject to the land cover cap.

Item A.9 of Appendix 1 in this Manual sets out step-by-step how to calculate the building claim entitlement if urgent works have already been paid for or reimbursed.

## **vi. Damaged heat sources that are an integral part of the residential building**

If a heat source is damaged as the direct result of a natural hazard, we may pay the amount of that damage in advance of the final settlement. Any such advance payment forms part of the overall building claim entitlement.

We (or a person we authorise) may make the advance payment where we are reasonably satisfied that this payment forms part of the overall settlement. This is a payment for the repair or replacement of the heat source that has been damaged as the direct result of the natural hazard. We expect that the customer would use the advance payment to repair or replace the heat source that has been damaged.

However, sometimes the customer may not apply the advance payment to the repair or replacement of the damaged heat source. For example:

- the heat source is a log fire and there is earthquake damage to the chimney;
- an advance payment is made that is sufficient to cover the repair of the chimney; and
- instead of repairing or replacing the chimney, the customer uses the advance payment to buy and install a heatpump.

In that example, we (or a person we authorise) must not pay again on final settlement for the repair or replacement of the chimney.

## vii. Temporary accommodation

NHCover does not cover the cost of temporary accommodation for customers (or pet accommodation costs) as part of settlements. This reflects section 28(3) of the NHI Act which provides that NHCover does not include consequential loss, and specifically lists temporary accommodation costs as a consequential loss.

[Section 28\(3\), NHI Act](#)

## viii. Removal and storage of personal property where residential building is to be repaired or rebuilt

We may issue guidance from time to time on whether (and the extent to which) the removal and storage of personal property is covered under the NHI Act where the residential building is to be:

- demolished before a rebuild; or
- repaired.

To the extent that they are covered under the NHI Act, the removal and storage costs (plus GST) may be included in the overall building claim entitlement for the residential building claim.

## ix. Travel costs

The building claim entitlement must take into consideration the cost of transporting materials to the property and costs for contractors in travelling to and from the property.

## x. Costings

We may issue guidance from time to time regarding costings on the rates to apply, preliminary and general (P and G) and margin.

## xi. Ex gratia payments

The NHI Act allows for making ex gratia payments in limited circumstances. Section 81 provides:

- (1) The Commission may make an ex gratia payment to a person in relation to natural hazard damage to property if—
  - (a) the property is not part of a residential building or residential land; but
  - (b) the person has paid [an amount equal to the amount of the levy] in relation to the fire insurance contract for the property in the honest but mistaken belief that it was insured under this Act.

The amount of the ex gratia payment must not exceed what would have been payable under this Act in respect of the natural hazard damage if the property had been covered by natural hazard cover.

### [Section 81, NHI Act](#)

Under this provision, we may only make ex gratia payments to a person who does not have NHCover in the unusual situation where a levy has been paid for property mistakenly thought to be insured under the NHI Act.

No ex gratia payment may be made on our behalf without the prior written approval of the appropriate NHC representative on each occasion.

## e. What is the maximum amount (the building cover cap) that can be paid for a residential building claim?

### i. How is the building cover cap calculated?

The maximum amount of NHCover (or the building cover cap) available per event for a residential building is the least of the following (all of which are GST exclusive):

1. Any replacement sum insured (the residential building is insured for against fire) set out in the fire insurance contract.

### [Section 35, NHI Act](#)

2. If there is no such replacement sum insured (as described in Item 1.), the amount the residential building is to be insured for under the NHI Act (as set out in the fire insurance contract or direct NHCover). However, this amount cannot be less than a minimum amount prescribed by the NHI Act. For details,

see the Minimum amount insured under section 36 of the NHI Act (Item 2) below.

[Section 36, NHI Act](#)

3. \$300,000 multiplied by the number of dwellings in the residential building. For details, see the Number of dwellings in the residential building under section 37 of the NHI Act (Item 3) below.

[Section 37, NHI Act](#)

GST is then added to determine the maximum amount of the NHCover. In other words, to determine the maximum amount of the NHCover, find the least of the (GST exclusive) amounts in Items 1 to 3.

In other words, find the lesser of the amounts in Items 1 and 3. If there is no Item 1, find the lesser of the amounts in Items 2 and 3. If there is no Item 1 and no Item 2, find the amount in Item 3. GST is then added to this amount to determine the building cover cap.

Sections [35](#), [36](#) and [37](#), NHI Act

Items 1, 2 and 3 are examined in more detail below.

Replacement sum insured under section 35 of the NHI Act (Item 1)

The replacement sum insured under [Item 1](#) above is an actual dollar figure set out in the fire insurance contract. This replacement sum insured is a sum that applies if the residential building is damaged by fire. Some fire insurance contracts include such a replacement sum insured – and some do not.

A 'replacement sum insured' amount is different to a 'sum insured' amount. An 'indemnity sum insured' amount is the amount the residential building was worth before it was damaged.

Open-ended 'replacement policies' that do not include a specific replacement sum insured for fire do not fall within [Item 1](#) above.

### Replacement sum where there are multiple eligible buildings

Where there are 2 or more residential buildings covered by one fire insurance contract, section 35 only applies if:

- the contract specifies one or more replacement sums insured for each of the residential buildings, and
- none of the specified sums relate to more than one eligible building.

We expect that where a fire insurance contract sets out more than one replacement sum insured, the contract clearly states which residential building each replacement sum insured relates to.

If a fire insurance contract covers more than one eligible building and that contract has a single replacement sum insured for all buildings on the fire insurance contract (i.e. the replacement sum insured ‘floats’ over all the buildings) section 35 of the NHI Act does not apply to determine the building cover cap. Instead, the building cover cap for each building is determined by [section 37 of the NHI Act](#). This means the building cover cap is calculated by multiplying the number of dwellings in that residential building by \$300,000 (plus GST). For more information, see the section Number of dwellings in the residential building under section 37 of the NHI Act (Item 3) in this Manual.

In cases where it is unclear how you should treat a fire insurance contract that covers multiple eligible buildings you must escalate this matter to an appropriate NHC representative.

#### [Section 35\(3\), NHI Act](#)

### Where there are multiple replacement sums

Where there are multiple replacement sums insuring different parts of a residential building (for example, a replacement sum for a house and a replacement sum for a cable car) the replacement sums are added together.

Only replacement sums for property insured under the NHI Act are to be used. For example, if there is a replacement sum for a swimming pool, which is excluded from NHCover, this sum is not included.

#### [Section 35\(1\), NHI Act](#)



### Minimum amount insured under section 36 of the NHI Act (Item 2)

If there is no replacement sum insured (as described in [Item 1](#)), (subject to the minimum discussed below), [Item 2](#) is the amount to which the residential building is to be insured under the NHI Act (as set out in the fire insurance contract or direct NHCover).

The amount under [Item 2](#) cannot be less than \$2,500 multiplied by the **insured floor area**. Floor area means the internal floor area in square metres, as set out below:

- **Insured floor area for a residential building (except for a mixed-use building):** The insured floor area is the floor area of the whole eligible building and the floor area of all appurtenant structures for the dwellings that are not part of the eligible building but are, or are part of, a different building.
- **Insured floor area for a mixed-use building:** The insured floor area is calculated as follows:

$$f = d + a + j + (c \times r \div 100)$$

where—

- f is the insured floor area
- d is the floor area of the dwellings in the residential building
- a is the floor area of all appurtenant structures for the dwellings that are, or are part of, a building
- j is the floor area of all appurtenant structures for any joint-owner premises (as defined in section 14(4)) that are, or are part of, a building
- c is the floor area of any common property that is, or is part of, a building
- r is the eligible building's residential percentage

If the amount the residential building is to be insured for under the NHI Act (as set out in the fire insurance contract or direct NHCover) is less than the amount calculated by the formula quoted immediately above, the amount calculated by the formula is deemed to be the amount for the purposes of [Item 2](#).

The '\$2,500' in the quoted formula is GST-exclusive.

### [Section 36, NHI Act](#)

### Amount insured under the NHI Act where there are multiple eligible buildings

Where there are two or more residential buildings covered by one fire insurance contract, section 36 only applies if:

- the contract specifies one or more amounts insured under the NHI Act for each of the residential buildings, and
- none of the specified amounts insured under the NHI Act relate to more than one eligible building.

We expect that where a fire insurance contract sets out an amount insured under this Act, the contract clearly states which residential building the amount insured under this Act relates to.

If a fire insurance contract covers more than one eligible building and that contract specifies a single amount insured under this Act for all buildings on the fire insurance contract (i.e. the amount specified under this Act ‘floats’ over all the buildings) section 36 of the NHI Act does not apply to determine the building cover cap. Instead, the building cover cap for each building is determined by section 37 of the NHI Act. This means the building cover cap is calculated by multiplying the number of dwellings in that residential building by \$300,000 (plus GST). For more information, see Section 8.e.i in this Manual.

In cases where it is unclear how you should treat a fire insurance contract that covers multiple eligible buildings, you must escalate this matter to an appropriate NHC representative.

Sections [36\(3\)](#) and [37](#), NHI Act

### Number of dwellings in the residential building under section 37 of the NHI Act (Item 3)

For the purposes of [Item 3](#), the NHI Act deems that the number of dwellings in the residential building is one dwelling – unless a higher number is disclosed to the private insurer, or to us in relation to direct NHCover.

The relevant time for the disclosure to the private insurer of the higher number of dwellings is:

- the date of entering into the fire insurance contract; or
- the date of renewal of the fire insurance contract.

#### [Section 10, NHI Act](#)

The disclosure of the higher number of dwellings to the private insurer, or to us in relation to direct NHCover, can be oral or in writing.

In most cases, disclosing ‘more than one dwelling’ requires an actual number to be provided. If the number is not disclosed, the number of dwellings is deemed to be ‘one’.

We expect that each private insurer:

- keeps robust records of the actual number of dwellings in a residential building that have been disclosed to the private insurer (and the timing of the disclosures); and
- pays the correct levies to us accordingly.

However, the matter must be escalated to the appropriate NHC representative where:

- it has been disclosed that there is ‘more than one dwelling’, but the actual number of dwellings has not been disclosed;
- there is a dispute with the insured person as to whether the necessary disclosure was made to the private insurer;
- the actual number of dwellings and the disclosed number of dwellings differ; or
- the purported disclosure is to a broker.

Before escalating the matter, the person dealing with the claim should gather evidence from the insured person, the broker and/or the private insurer about:

- what information regarding the number of dwellings was disclosed; and
- when that information was disclosed.

## ii. What does the building cover cap apply to?

The building cover cap is per residential building per event (see Section 8.e.ii in this Manual).

For a description of the 'residential building', see Section 4 in this Manual.

As set out in Section 4 in this Manual, identifying the building (or buildings) and/or the part of a building that comprises the insured residential building is critical to the correct calculation of the building cover cap.

### Examples

- One residential building or two on the same property – Knowing whether there are one or two residential buildings on the property is important for the purposes of calculating the building cover cap. If there are two residential buildings on the property, there are two building cover caps (one for each building) as opposed to one building cover cap, provided all the requirements of the NHI Act are met;
- Appurtenant structure or separate residential building – Knowing whether or not the building is an appurtenant structure is important for the purposes of calculating the building cover cap. Appurtenant structures do not by themselves attract a separate amount of NHCover from the amount available for the residential building. In other words, when an item is identified as an appurtenant structure, it does not increase the overall amount of NHCover for the 'residential building'. There is no separate capped amount of insurance for the appurtenant structure.
- To illustrate, if a sleep-out is self-contained, it may be a separate residential building (as opposed to an appurtenant structure). If it is a separate residential building, this means the sleep-out has its own separate building cover cap, provided the other requirements of the NHI Act are met. For example, the sleep-out needs to be insured under a fire insurance contract or direct NHCover (see Section 4.D.f in this Manual).
- Mixed use buildings – An eligible building is a mixed-use building if its residential percentage is less than 50% (see Section 4.C.e in this Manual). For a mixed-use building, only the dwellings (as well as the appurtenant structures and service infrastructure for those dwellings) and the common and joint property for the building (see Sections 4.C.g and 4.C.h in this Manual) are considered to be part of a 'residential building'. This means that only those

dwellings and related property have NHCover (assuming all other requirements under the NHI Act are met) (for more details, see Section 4.C in this Manual). Therefore, the building cover cap only applies to the dwellings and related property in the mixed-use building.

- The building cover cap is calculated in accordance with the calculation set out in Section 8.e.i in this Manual. If there are multiple dwellings in the residential building, they are taken into account in that calculation.

### iii. What is the building cover cap for long-term accommodation for the elderly?

Certain buildings are insured under the NHI Act as long-term accommodation for the elderly. See generally Section 4.F in this Manual.

Long-term accommodation for the elderly means accommodation for elderly people that is found in many rest homes. It includes accompanying facilities.

This type of accommodation is distinct from self-contained accommodation (for example, self-contained villas and apartments in a rest home complex) – see Section 4.C.c in this Manual. It is also distinct from dormitory-style accommodation that would be 'large-scale accommodation' and not insured under the NHI Act – see Section 4.C.c.xii in this Manual.

Facilities within a building that comprise long-term accommodation for the elderly together have the building cover cap equivalent to a single dwelling (i.e. a 'single building cover cap').

If an eligible building contains both long-term accommodation for the elderly and self-contained dwellings (under the same fire insurance contract), the building cover cap is calculated on the basis that the long-term accommodation for the elderly is one dwelling in its own right and the self-contained dwellings are additional to it. An example of this type of building is a rest home complex that includes both:

- individual bedrooms with shared facilities; and
- self-contained apartments.

The number of dwellings must still be disclosed. For example, if an eligible building contains long-term accommodation for the elderly and four self-contained dwellings, both that accommodation and the dwellings need to be separately disclosed for the building cover cap to be applied on the basis of five dwellings.

#### iv. Does a new building cover cap apply for each event?

Yes. NHCover reinstates with a new building cover cap after each event (see 'What is an event?' below for the definition of 'event').

However, NHCover is subject always to the requirements of the NHI Act. For example, for there to be cover:

- there must be a fire insurance contract or direct NHCover over the residential building concerned in force at the relevant time (Section 3.g in this Manual);
- the NHCover must not have been cancelled at the time of the damage-causing event (Section 3.i.i in this Manual); and
- there must be no other reason why the claim (or part of it) will not be accepted (Section 3.j in this Manual).

#### What is an event?

All damage occurring within a consecutive 48-hour period, that is a direct result of any natural hazards and following extended damage, is treated as an 'event'. A different period (7 days) applies for volcanic activity and natural hazard fires. The term 'event' is discussed in more detail at Section 3.f.iii in this Manual.

Where the 'event' has different types of natural hazards during the 48-hour or 7-day period (e.g. earthquake and tsunami) the claim and the settlement must be:

- escalated to an appropriate NHC representative; or
- otherwise dealt with in accordance with any operational processes that we have notified.

One reason for these approaches is to ensure that the building cover cap is correctly applied for the claim. This is particularly important where, as in the example above, different people are dealing with the different natural hazards (e.g. one person is dealing with the earthquake and the other is dealing with the tsunami).

## f. Recovery of overpayments

### When can overpayments be recovered?

We (or a person we authorise) may require a person to repay an overpayment or an amount paid in error where an amount has been paid to a person, but:

- the amount was more than they were entitled to because of a miscalculation or other error;
- after receiving new information, and where it was reasonable to do so, we (or a person we authorise) changed our decision and decided to decline the claim or reduce the amount payable to settle the claim;
- we (or a person we authorise) then decline the claim; or
- it was paid out of the Natural Hazard Fund in error.

### [Sections 86\(1\) and \(2\), NHI Act](#)

However, we (or a person we authorise) cannot require repayment of an amount if the recipient:

- did not intentionally contribute to the error or overpayment;
- received the payment in good faith; and
- has so altered their position in reliance on the validity of the payment that it would be inequitable to require repayment.

### [Section 86\(3\), NHI Act](#)

Any amount repaid or recovered must be paid into the Natural Hazard Fund.

### [Section 86\(5\), NHI Act](#)

### How can overpayments be recovered?

We (or a person we authorise) may recover overpayments either by:

- written notice to the person which may specify the time frame that the overpayment must be repaid within, and give the person reasonable time to comply; or
- setting off the overpayment against another claim payment due under the NHI Act to the same person.

If the amount is not repaid in the time allowed, the matter must be escalated to the appropriate NHC representative, who will then determine how to recover the amount.

Recovery of an overpayment and any relevant details about the overpayment, including any amounts recovered, must also be recorded on the claim file.

### **g. How are the building claim entitlements reduced if other catastrophe insurance applies?**

The building claim entitlement may be reduced if:

- the residential building is insured by a private insurer under a contract of insurance against physical loss or damage by one or more natural hazards (the ‘private contract’);
- the contract is not limited to insuring the residential building only to the extent that the amount of any damage exceeds the building claim entitlement for the damage;
- the residential building suffers natural hazard damage as a direct result of a natural hazard covered by the private insurer; and
- the private contract does not include a contract of reinsurance.



For the purposes of calculating the building claim entitlement, if the scenario above applies, the amount for the building claim entitlement is reduced to an amount calculated as follows:

$$r = n - (c + e)$$

where—

r is the reduced building claim entitlement

n is the amount that would be the building claim entitlement as calculated under section 39 of the NHI Act.

c is the amount payable under the private contract for the damage (or that would be payable if a claim were made)

e is the total of any excess or other amounts to be borne by the insured person in relation to a claim under the private contract in respect of the damage.

[Section 87, NHI Act](#)

## **h. What excess applies for a residential building claim?**

### **i. What is the excess for an NHCover building claim?**

For a cash settlement, the customer does not ‘pay’ the excess. The excess is deducted before the cash building claim entitlement is paid out.

[Section 31\(2\)\(b\), NHI Act](#)

Where settlement is by way of repair, replacement or relocation of the residential building, we (or a person we authorise) must send the insured person an invoice for the excess once the repair, replacement, or relocation has been completed. When they receive it, they must pay us (or a person we authorise) the excess amount.

If we settle the claim partially by cash settlement and partially by repair, replacement or relocation, we may either deduct the excess from the total amount the claim is settled for, issue an invoice as set out above, or a combination of the two.

[Section 66\(1\) to 66\(3\), NHI Act](#)

Any excess paid to us (or a person we authorise) must be paid into the Natural Hazard Fund.

[Section 66\(4\), NHI Act](#)

One excess per event

One building cover excess applies per event.

As set out above in the discussion on the building cover cap that applies, all damage occurring within a consecutive 48-hour period that is a direct result of any natural hazards and following extended damage is treated as an event. A different period (7 days) applies for volcanic activity and natural hazard fires. The term ‘event’ is discussed in more detail at Section 3.f.iii in this Manual.

Where the ‘event’ has different types of natural hazards during the 48-hour period or 7-day period (e.g. earthquake and tsunami) the claim and the settlement must be:

- escalated to an appropriate NHC representative; or
- otherwise dealt with in accordance with any operational processes that we have notified.

One reason for these approaches is to ensure that the excess is calculated correctly for the claim. This is particularly important where, as in the example above, different people are dealing with different natural hazards (e.g. one person is dealing with the earthquake and the other is dealing with the tsunami).

A separate excess applies for the NHCover building claim and NHCover land claim

If there is a valid entire NHCover claim that involves natural hazard damage to both the insured residential building and residential land, a separate excess applies for each component of this claim (the NHCover building claim and NHCover land claim).

For details on the applicable excess for an NHCover land claim, see Section 9.h of the [NHC Claims Manual - Residential Land - NHI Act](#).

**ii. What is the amount of the excess for residential building claims?**

The excess deducted per NHCover claim for a residential building is \$500 (including GST) multiplied by the number of dwellings in the residential building.

[Section 31\(2\)\(b\), NHI Act](#)

### iii. What is ‘the number of dwellings in the residential building’?

We consider that the number of dwellings in the residential building is one dwelling unless a higher number is disclosed. Who the customer needs to make the disclosure to, and the relevant time for making the disclosure, depend on whether the customer has a fire insurance contract or direct NHCover. Details are set out below.

#### Fire insurance contract

The NHI Act deems that the number of dwellings in the residential building is one dwelling – unless a higher number is disclosed to the private insurer. The relevant provision ([section 10 of the NHI Act](#)) is the same as for identifying the number of dwellings for building cover cap purposes – see Section 8.e.i in this Manual.

Details are set out below on how to identify whether a higher number of dwellings has been disclosed to the private insurer.

The relevant time for the disclosure to the private insurer of the higher number of dwellings is:

- the date of entering into the fire insurance contract; or
- the date of renewal of the fire insurance contract.

#### [Section 10, NHI Act](#)

The disclosure to the private insurer can be oral or in writing.

In most cases, disclosing ‘more than one dwelling’ requires an actual number to be provided. If the number is not disclosed, the number of dwellings is deemed to be ‘one’.

We expect that each private insurer:

- keeps robust records of the actual number of dwellings in a residential building that have been disclosed to the private insurer (and the timing of the disclosures); and
- pays the correct levies to us accordingly.

However, you must escalate the matter to the appropriate NHC representative where:

- it has been disclosed that there is more than one dwelling, but the actual number of dwellings has not been disclosed;
- there is a dispute with the insured person as to whether the necessary disclosure was made to the private insurer;
- the actual number of dwellings and the disclosed number of dwellings differ; or
- the purported disclosure is to a broker.

#### Direct NHCover

In relation to direct NHCover, the same principles apply as above, however we will carry out the role of the private insurer.

#### **iv. What is the excess for long-term accommodation for the elderly?**

If an eligible building contains both long-term accommodation for the elderly and self-contained dwellings (under the same fire insurance contract), the excess is calculated on the basis that the long-term accommodation for the elderly is one dwelling in its own right and the self-contained dwellings are additional to it. An example of this type of building is a rest home complex that includes both:

- individual bedrooms with shared facilities; and
- self-contained apartments.

As for the building cover cap, the number of dwellings must still be disclosed. For example, if an eligible building contains long-term accommodation for the elderly and four self-contained dwellings, both that accommodation and the dwellings need to be separately disclosed for the excess to be applied on the basis of five dwellings.

## i. What is the time limit for settlement?

### Assessing, deciding and settling claims ‘as soon as practicable’

Claims are required to be assessed, decided, and settled ‘as soon as practicable’ under the NHI Act. In particular, for settlement, we (or a person we authorise):

- must decide upon the settlement method as soon as practicable; and
- must, if the settlement method is payment, replacement, reinstatement or relocation, implement that settlement method as soon as practicable after deciding upon it.

Sections [60\(2\), \(4\) and \(5\)](#), and [61\(1\)](#), NHI Act

‘As soon as practicable’ means that we (or a person we authorise) must take the action as soon as it is feasible to do so. Whether it is feasible to assess a claim, decide on a settlement method, or implement a settlement method depends on the context. Factors that may be relevant include whether:

- the insured person has provided all the information needed to assess and settle the claim.
- the circumstances require additional steps to be taken, including whether expert opinions are needed.
- the natural hazard event and resulting damage are minor, moderate or severe. For example, the natural hazard event may be so widespread that it causes a shortage of suitably qualified experts or contractors to assist with the assessment and repair processes.
- practical difficulties outside the control of NHC (or people we authorise) have caused delay. For example, the circumstances of the natural hazard event may make it too dangerous to assess the natural hazard damage immediately.

In practice, a combination of the relevant factors, rather than any one factor individually, may be relevant in determining what ‘as soon as practicable’ means.

## j. **How is the settlement communicated?**

Once we (or a person we authorise) make a decision, we must notify the insured person of the decision. The notice must set out:

- the decision;
- the reasons for the decision; and
- the insured person's rights to refer disputes about referable decisions to the dispute resolution scheme (see Section 11.k.ii in this Manual for further details, including the definition of 'referable decisions').

[Sections 60\(3\)\(a\) and \(7\), NHI Act](#)

Nothing we (or a person we authorise) do before giving this notice is to be taken as evidence that a decision has been made.

[Section 60\(8\), NHI Act](#)

Section A of Appendix 1 in this Manual sets out the requirements that must be addressed in a communication for the cash settlement of an NHCover residential building claim.

Section B of Appendix 1 in this Manual sets out some suggested items for the cash settlement communication.

Communications of other settlement outcomes for a residential building claim are addressed in Section 10.A.c in this Manual.

### Notification to the appropriate NHC representative of building cover cap payments

Where the residential building claim is settled on the basis of the building cover cap, the person dealing with the claim must notify the appropriate NHC representative of that settlement.

We can then consider the specific circumstances of the claim to determine whether there are grounds to cancel future NHCover under [section 49 of the NHI Act](#).

## 9. Who is the NHCover claim settled with?

### a. Overview

The NHCover claim is normally settled by payment with the insured person where:

- the 'insured person' is the owner of the insured property;
- nobody else has any lawful entitlement to payment; and
- there has been no assignment of the NHCover claim.

However, the situation is not always that straightforward.

This section addresses numerous situations where particular issues arise in:

- identifying the person or people the NHCover claim may be settled with; and
- deciding who the NHCover claim will be settled with.

Specifically, this section deals with situations where:

- there are multiple insured persons, or persons with lawful entitlement to settlement payments (Section 9.b in this Manual);
- there is an assignment of the NHCover claim (Section 9.c in this Manual);
- there is a mortgage over the insured property (Section 9.d in this Manual);
- the insured property is owned by a company (or by a company that is in receivership, voluntary administration or liquidation), or was owned by a company that has since been removed from the Companies Register (Section 9.e in this Manual);
- the owner of the property died after the NHCover claim was made, or died before the natural hazard occurred and the claim was made by the executors of the deceased person's estate (Section 9.f in this Manual);
- the insured property is owned by a trust (Section 9.g in this Manual);
- the insured property is a unit title development (Section 9.h in this Manual);
- the insured property is a leasehold property (Section 9.i in this Manual);

#### Section 9 – Who is the NHCover claim settled with?

- the insured property is Māori freehold land with multiple owners (Section 9.j in this Manual);
- two people have together owned the insured property (which is the subject of an NHCover claim) and the relationship between them ends (Section 9.k in this Manual);
- other registered interests are shown on the RT to the property (Section 9.l in this Manual).

Section 9.m in this Manual addresses the position if there is a dispute over who receives an NHCover claim settlement payment.

Decision-makers dealing with different components of an entire NHCover claim must liaise

In cases where different people are dealing with different components of an entire NHCover claim (residential building claim and residential land claim), they must liaise with each other to:

- identify the person or people the NHCover claim may be settled with; and
- decide who the various components of the entire NHCover claim will be settled with where there is more than one such person.

In cases of doubt, the matter should be escalated to the appropriate NHC representative.

**b. Insured person or person lawfully entitled to payment**

For settlement of all NHCover claims, it is important to determine who:

- is an 'insured person' (see Section 3.h.i in this Manual); and/or
- is lawfully entitled to payment.



### i. Person lawfully entitled to payment

A 'person lawfully entitled to payment' is a person (or persons) who:

- is **not** the insured person; but
- is entitled to all or part of the payment under either:
  - a contract or other document (such as a deed of assignment, mortgage, or lease); or
  - another law.

### ii. Settlement of an NHCover claim is with insured person and/or person lawfully entitled to payment

Section 61(1)(a) of the NHI Act provides:

(1) The methods for settling a claim are the following:

(a) paying the building claim entitlement and land claim entitlement to the insured person (or to another person who is lawfully entitled to it) (see also sections 63 and 64):

[Section 61\(1\)\(a\), NHI Act](#)

The NHCover claim should normally be settled with the insured person where:

- the insured person is the owner of the insured property;
- nobody else is lawfully entitled to the settlement payment; and
- there has been no assignment of the NHCover claim.

But if there is more than one insured person and/or person lawfully entitled to payment, the settlement payment must be divided or made in accordance with their respective rights.

Where there is more than one insured person and/or person lawfully entitled to payment, and they agree to who should receive the payment and/or how the payment

should be divided, that agreement should be recorded in writing and held on the claim file.

- See Section 9.b.iii Settlement payments if the insured person is two or more persons in this Manual.
- See Section 9.b.iv Settlement payments if two or more persons are entitled to payment in this Manual.

### iii. Settlement payments if the insured person is two or more persons

Section 63 of the NHI Act provides:

This section applies if—

- (a) the Commission decides to settle a claim by making a payment referred to in section 61(1)(a); and
- (b) the insured person consists of 2 or more persons (see section 22(1)).

If both or all of those persons have agreed on whom the amount is to be paid to or how it is to be divided between them, the amount payable to the insured person must be paid as agreed.

If not, the Commission must divide the amount between them in the same proportions as—

- (a) their respective responsibilities to replace or reinstate the damaged property; or
- (b) if the extent of their responsibilities cannot be ascertained, their respective insurable interests in the damaged property.

However, subsections (2) and (3) are subject to any law to the contrary.

In deciding how to divide the amount under this section, the Commission must comply with any requirements in the regulations relating to—

- (a) how the amount is to be divided; and
- (b) the matters that are to be taken into account in deciding how the amount is to be divided.

[Section 63, NHI Act](#)

If we (or a person we authorise) decide to settle a claim by making a payment and there are two or more insured persons, payment can be divided in two ways:

1. if both or all of those persons have agreed on who the amount is to be paid to or how it is to be divided between them, the amount payable must be paid as agreed between them; or
2. if those persons cannot agree, we (or the person we authorise) must divide the amount between them in the same proportions as:
  - a. their respective responsibilities to replace or reinstate the damaged property; or
  - b. their respective insurable interests in the damaged property, if the extent of their responsibilities cannot be determined.

The division set out above is subject to any law to the contrary (see Sections 9.c to 9.l in this Manual).

As set out above at 2(a), we (or a person we authorise) must determine each insured person's responsibility to replace or reinstate the damaged property as being equal to the proportion of the cost of replacing or reinstating the damaged property that they were required to contribute to or meet at the time the natural hazard damage occurred.

In determining the respective insurable interests of each insured person under 2(b), we (or a person we authorise) must treat each person as having an equal share of the insurable interests in the damaged property. However, if any of the following information indicates it is not equitable for each person to be treated as having an equal share, we (or a person we authorise) must take that information into account when determining the respective insurable interests of each person:

- the nature of the legal relationship that each person had to the damaged property at the time the natural hazard occurred;
- the nature and extent of the loss each person, at the time the natural hazard occurred, has suffered or is likely to suffer as a result of natural hazard damage that has occurred; or
- any other information we (or a person we authorise) consider relevant.

[Regulation 14, NHI Regulations](#)

#### iv. Settlement payments if two or more persons are entitled to payment

Section 64 of the NHI Act provides:

This section applies if—

- (a) the Commission decides to settle a claim by making a payment referred to in section 61(1)(a); and
- (b) there are 1 or more persons who—
  - (i) are not the insured person; but
  - (ii) are entitled to all or part of the payment under a contract (such as an assignment or a document referred to in section 79) or another law.

The Commission must pay the amount—

- (a) first, to each of the persons referred to in subsection (1)(b) according to their respective rights under their contracts or the other law; and
- (b) if any amount remains, to the insured person.

##### [Section 64, NHI Act](#)

If we (or a person we authorise) decide to settle a claim by making a payment and there are any persons who are not the insured person, but are lawfully entitled to all or part of the payment, payment must be made:

- first, to each of those persons lawfully entitled to payment according to their respective rights (i.e. in accordance with their contract or any other law); and
- any remaining amount to the insured person.

#### c. NHCover claims where there has been an assignment

There are a number of situations where an NHCover claim is assigned to a new person. This may be, for example, because of a sale of insured property or a relationship break-up.

In these cases, the new person (sometimes referred to as the ‘assignee’) has rights and is a person lawfully entitled to payment in respect of the NHCover claim but does not become the insured person. If we receive clear written evidence of the assignment, the NHCover claim must be settled with the assignee (and not the assignor), subject always to:

- any specific terms and conditions of the assignment document; and
- consideration of any other person that may lawfully be entitled to payment (see Section 9.b.ii in this Manual).

#### [Section 78, NHI Act](#)

### **i. What evidence of an assignment is required?**

It is critical that there is clear written evidence that the original claimant (‘assignor’) wishes us to deal with and to settle the NHCover claim with the new person (‘assignee’). Each situation needs to be considered on an individual basis.

Ideally, the parties involved complete a formal deed of assignment (DOA) – see Section 9.c.ii in this Manual. But sometimes a customer attempts to assign their NHCover claim without a DOA. For example, there might be a provision assigning the claim in an agreement for sale and purchase or in a relationship property agreement – see Section 9.c.iii in this Manual.

Transfer of ownership of insured property does not also assign an NHCover claim relating to that property.

#### What are the risks of settling with a purported assignee where there is insufficient evidence of the assignment?

If there is not sufficient evidence of an assignment, there is a risk of having to pay the claim again to the original claimant.

### **ii. What are the requirements for a deed of assignment (DOA)?**

If the DOA is properly signed and witnessed and sets out all necessary information, it provides good evidence of the assignment.

### What information must be included in the DOA?

The DOA needs to set out:

- the full names of the original claimant ('assignor') and the person taking over the claim ('assignee');
- the address of the damaged insured property;
- the date the assignment is to take effect on;
- a clear description of the claims being assigned. This may include the NHCover claim number(s) of the claim(s) being assigned or a more general (but clear) description of the claim(s) being assigned. In either case, it is important that it is clear which components of an entire NHCover claim are being assigned (for example, the residential building and/or residential land claim(s)). Some claimants only assign aspects of their claim(s) – for example, their residential building claim(s) but not their residential land claim(s);
- a clear statement of intention that the claim(s) be assigned.

### What if there is doubt about which NHCover claim(s) are assigned under the DOA?

If no claim numbers are specified in the DOA and there is no other clear description of what is to be assigned, before settlement can be made to the assignee, as evidence of the parties' intentions regarding the assignment:

- the DOA needs to be amended; or
- other evidence needs to be provided (see Section 9.c.iii in this Manual).

If only some claim numbers are referred to in the DOA, (assuming all other requirements are met) settlement can only be made with the assignee in respect of those claims. If the intention is to assign the other claims as well, before settlement can be made to the assignee with respect to the other claims, as evidence of the parties' intentions regarding the assignment of those other claims:

- the DOA needs to be amended; or
- other evidence provided (see Section 9.c.iii in this Manual).

Where there is a typographical error in the claim number(s) noted in a DOA but it is possible to figure out the intended claim number(s) from the balance of the DOA (for

example, from the physical address of the insured property), the parties to the DOA must be contacted to confirm the correct claim number(s).

#### What are the technical requirements for a DOA to be effective?

DOAs must be written, signed and (in most cases) witnessed – see below. The DOA is binding on the parties once:

- the person to be bound by it (or someone on their behalf) delivers the DOA; and
- it is apparent from the circumstances that they intended to be bound by the DOA.

The DOA may contain conditions that must be fulfilled before the DOA is binding.

#### [Section 9, Property Law Act 2007](#)

We (or a person we authorise) must act in accordance with the assignment only after receiving clear written evidence of the assignment. If such evidence is not received, the person dealing with the claim must write to the relevant parties requesting such evidence, and follow up on the request if no response is received within a reasonable timeframe.

#### How must the DOA be signed and witnessed?

An individual must sign the DOA before a witness.

A company that is registered in New Zealand can sign a DOA in accordance with the procedure set down in any relevant statute that governs how companies can execute deeds, or as follows:

- If there is only one director, that director must sign the DOA before a witness.
- If there are two or more directors of the company, not fewer than two directors must sign the DOA.
- If the company's constitution authorises it, one director or another person may sign the deed before a witness.

Appropriate searches must be made of the Companies Register to check that the requirements for the signing of the DOA by the company as described above are met.

A witness must not be a party to the DOA. The witness must sign the DOA and then write the name of the town or city that they ordinarily live in, as well as their occupation.

[Section 9, Property Law Act 2007](#)

If there are multiple owners who are assigning their NHCover claim under a DOA, normally all the owners must sign the DOA.

What if the DOA is not signed by all the parties to it?

Ordinarily a DOA must be signed by all parties.

Where the assignee receives the benefits under the DOA and has no obligations to the assignor, it may be possible to safely treat the DOA as effective to assign the NHCover claim, even where the assignee has not signed the DOA.

But the assignor always needs to sign the DOA.

What if the counterpart DOAs are not the same?

It is acceptable to sign a DOA in counterpart (that is, one party to sign one copy and the other party to sign another copy) if the DOA provides for this.

But if the two counterparts do not use the same wording, there is no agreement between the parties and therefore no valid assignment. In these cases, the parties must be advised that the DOA is ineffective and be invited to execute a (new) valid DOA.

What are the technical requirements for an amendment to a DOA?

An amendment to a DOA must take the form of a Deed.

The requirements that apply to a DOA (i.e. signing, witnessing, delivery, use of counterparts) also apply to an amendment to a DOA.

What if there is a conflict between the DOA and the Notice of Assignment?

If there is a conflict between the terms of the DOA and the terms of the notice of assignment given under [section 50 of the Property Law Act 2007](#), the terms of the DOA are usually determinative.

In these cases, it is necessary to write to the parties involved, noting the intention to settle the claim in accordance with the DOA, unless the parties provide a written amendment to the DOA or provide other evidence to prove the parties' intentions regarding the assignment.



### iii. If there is no formal DOA, what evidence of assignment is required?

If there is no formal DOA, we (or a person we authorise) need clear written instructions from the original claimant giving direction to settle the claim with the new person, and/or to deal with the new person in the lead-up to settlement.

The written instructions must set out:

- the full names of the original claimant ('assignor') and the person taking over the claim ('assignee');
- the address of the damaged insured property;
- the date the assignment is to take effect on;
- a clear description of the claims being assigned. This may include the NHCover claim number(s) of the claim(s) being assigned or a more general (but clear) description of the claim(s) being assigned. In either case, it is important that it is clear which components of an entire NHCover claim are being assigned (for example, the residential building and/or residential land claim(s)). Some claimants only assign aspects of their claim(s) - for example, their residential building claim(s) but not their residential land claim(s);
- a clear statement of intention that the claim(s) be assigned;
- if the name of the original claimant and the name on the fire insurance contract or direct NHCover are different, an explanation for this discrepancy (see Section 3.h in this Manual.)

The instructions must be correctly signed by the assignor and assignee.

#### Can an assignment be set out in an agreement instead of a DOA?

Yes.

For example:

- a sale and purchase agreement of insured property may include an assignment of an NHCover claim;
- a relationship property agreement may include an assignment of an NHCover claim.

However, for an agreement such as a sale and purchase agreement or a relationship property agreement to provide sufficient evidence of the assignment of the NHCover claim, the agreement has to:

- be correctly signed and otherwise valid in all respects; and
- include all the information required for written instructions as listed above. In particular, the agreement must actually assign the NHCover claim(s). It is not enough for the agreement simply to contemplate a further step which assigns the claim(s) (e.g. the future signing of a DOA).

If a claimant maintains that there was a verbal agreement to assign a claim (but there is nothing in writing), the matter (including all available information about the verbal agreement) should be escalated to the appropriate NHC representative.

#### iv. What if there is no formal DOA or other evidence of an assignment?

Sometimes a property is sold and the purchaser comes looking for settlement of the NHCover claim over the property, but there is no DOA or other evidence that the vendor intended to assign the claim to the purchaser.

Other than in exceptional cases, it is appropriate in these circumstances to settle the claim with the vendor. In exceptional circumstances, the matter should be escalated to the appropriate NHC representative.

#### v. Can an assignment improve a claim?

No.

Assigning a claim does not fix any existing problems with the validity of an NHCover claim. So, for example, an NHCover claim that is made out of time is invalid. If the claim is assigned to another party, the claim has still been made out of time and is still invalid. An assignee, in effect, ‘stands in the shoes’ of the original claimant.

#### vi. What if there is more than one assignment?

Sometimes a property may have been sold more than once, after the natural hazard damage occurred and before the NHCover claim is settled.

An assignee can only receive what the assignor owns. It is necessary to review the chain of assignments to check what exactly has been validly assigned and who it has been assigned to. If the situation is unclear, the person dealing with the claim must (as a first

step) ask the relevant parties to identify between themselves who is entitled to the settlement.

**vii. What if there is an existing mortgage over the property where there is an assignment of the NHCover claim?**

Subject to any mortgagee waiver (see Section 9.d in this Manual), a mortgagee usually has a prior claim over money to be paid in settlement of an NHCover claim.

However, where for example, a property has been sold, it is usual for the prior mortgage to be discharged before or when the NHCover claim is assigned to the purchaser. A historical search of the RT will confirm whether this has occurred.

If the mortgage prior to the assignment of the NHCover claim remains on the RT, the matter should be escalated to the appropriate NHC representative.

**viii. Claim information may be disclosed to assignees**

Where it is necessary to use information that we (or a person we authorise) collected relating to a claim (including personal information of the assignor or property-related information), that information can be shared with the assignee in order to:

- resolve the NHCover claim;
- resolve a subsequent NHCover claim by the assignee (or any subsequent owner); and
- resolve a claim related to the same property with the private insurer.

Personal information of the assignor can only be shared with the assignee if the assignor has consented to this.

[Information privacy principle 11, Section 22, Privacy Act 2020](#)

Such consent is usually provided for in the DOA or the sale and purchase agreement. This should be reviewed and confirmed before personal information of the assignor is disclosed in accordance with this section. Any sensitive cases should be escalated to the appropriate NHC representative.

**d. Mortgages**

Where there is a mortgage over the insured property, the mortgagee is usually lawfully entitled to payment.

### i. When is the mortgagee entitled to the NHCover building claim entitlement payment?

For the purpose of settling claims, we assume that any mortgage on the title includes a condition that has the effect of assigning the NHCover claim proceeds for the residential building and residential land claims to the mortgagee. However, mortgagees can waive their entitlement to receive the NHCover proceeds and agree that the NHCover proceeds may instead be paid to the insured person.

In practice, most major lenders have supplied us with a waiver, referred to as the ‘mortgagee cap’. The mortgagee cap lets us pay claims up to a certain amount directly to the insured person and not to the mortgagee.

If the amount of the NHCover claim proceeds to be paid is greater than the mortgagee cap, the payment must go to the mortgagee.

The mortgagee cap for each major lender varies depending on what that lender has told us.

The mortgagee cap is applicable for the entire NHCover claim and must be checked at the time of settlement to determine who receives the claim payment. If a mortgagee cap changes and a further claim payment is made, the updated mortgagee cap must be applied to determine who receives this further payment.

### ii. What if payment(s) have already been made to the NHC customer in respect of the same NHCover claim?

Sometimes we (or a person we authorise) have already made payments to the customer in respect of the same claim (e.g. for urgent works under the residential building claim or for the residential land claim). If the current payment will push the total amount that has been paid out on the claim over the mortgagee cap, the current payment must be paid to the mortgagee.

In cases where the claim has a residential building claim and a residential land claim, and there is an issue whether the mortgagee cap applies:

- if they are authorised to assess residential land damage, the person dealing with the residential building claim should also deal with the residential land claim and address the mortgagee cap issue; and
- if the person dealing with the residential building claim is not authorised to deal with residential land claim, that person should escalate the mortgagee cap issue to the appropriate NHC representative.

### Example

An NHC customer has made a claim for natural hazard damage as the direct result of an earthquake. There is a mortgage on the RT to the property. The mortgagee has a mortgagee cap of \$25,000.

We have previously made a payment of \$10,000 for the residential land claim for the same earthquake. This payment was made to the NHC customer because it was under the mortgagee cap.

However, we now need to make a payment of \$20,000 for the NHCover residential building claim for that earthquake.

The current payment (the \$20,000) when added to the previous payment (\$10,000) will push the claim over the mortgagee cap of \$25,000. We must therefore pay the current payment (of \$20,000) to the mortgagee.

### **iii. What if there is no existing mortgagee cap for the mortgagee?**

Where a mortgagee is previously unknown to us, the mortgagee will not have provided us with any waiver. In this case there is no waiver and so the mortgagee cap is zero. This means the mortgagee is generally entitled to the NHCover proceeds, unless the mortgagee agrees otherwise.

In this situation, the person dealing with the claim needs to contact the mortgagee to ask for:

- details about how the NHCover claim proceeds should be paid to the mortgagee; or
- a waiver so the payment can be sent to the NHC customer.

The person dealing with the claim must establish contact directly with the mortgagee and not through the NHC customer, unless it proves impossible to make contact with the mortgagee.

If the mortgagee is willing to provide a waiver, the person dealing with the claim should obtain a written letter of authority (sometimes called an 'LOA') from the mortgagee, and add the letter to the claim file. If any specific difficulties arise related to the waiver, the matter should be escalated to the appropriate NHC representative.

## **e. Companies**

A company is recognised in law as an independent legal entity. This means it is treated as a separate legal 'person' from its directors and shareholders.

A company can be an insured person (for example, as the owner of that property) or a person lawfully entitled to payment, and an NHCover claim can be settled with the company.

## **i. What happens where a company with an NHCover claim is in receivership, voluntary administration or liquidation?**

As long as the company in any of these circumstances is still registered on the Companies Register, we may settle a company's NHCover claim with the company. However, if the settlement is by payment, there may be constraints on what happens to the payment.

The receiver, administrator or liquidator has authority to direct where the settlement payment should be made. Where a direction is made to an account that does not belong to the company, it is necessary to obtain documentation that:

- demonstrates that the person directing the payment has been appointed as the receiver, administrator or liquidator and is acting within their authority; and
- provides a written, signed and witnessed statement authorising payment of the NHCover claim proceeds to the particular account.

It is also necessary to look at the Companies Office website (<http://www.companiesoffice.govt.nz/companies>) in relation to the relevant company name to check:

- whether the company has been put into voluntary receivership, administration or liquidation;
- that the notice of appointment of receiver, administrator or liquidator is there;
- that the name on the notice matches the name of the person holding themselves out to be the receiver, administrator or liquidator; and
- the date the appointment was made.

## ii. What happens where a company has been removed from the Companies Register?

A company can be removed from the Companies Register for many reasons, including not paying the required fees to the Companies Office or having ceased carrying on business.

[Part 17, Companies Act 1993](#)

The right to any proceeds from outstanding NHCover claims may ultimately vest with the Crown where:

- a company owned the insured property at the date that that property suffered natural hazard damage; and
- the company has since been removed from the Companies Register.

[Section 324, Companies Act 1993](#)

However, before paying any proceeds to the Crown, we must consider three questions:

- Did the company assign the NHCover claim before it was removed from the Companies Register?
- Can the company be restored to the Companies Register?
- Are there any other insured persons or persons lawfully entitled to payment in relation to the damaged property?

### Did the company assign the claim before it was removed from the Companies Register?

We (or a person we authorise) must confirm with the former directors that the company did not make any arrangements before being struck off to assign the benefit of the NHCover claims (either by way of DOA or through other documentation). If the company did make such arrangements, after receiving supporting documents, we (or a person we authorise) can progress the claim with the assignee.

Those arrangements must have been made before the company was struck off. The former directors of the company have no power to assign claims on behalf of the company after the company has been struck off.

Similar enquiries regarding the assignment of the NHCover claim can be made with any receiver, administrator, or liquidator who was appointed before the company was struck off.

### Can the company be restored to the Companies Register?

Various parties can apply to the Companies Registrar for the company to be restored to the Companies Register. This approach may be appropriate where, for example, the company has been struck off because an annual return has not been filed.

If any party proceeds with this option, it is necessary to wait to see if the Companies Office restores the company to the Register before settling the NHCover claim with the company.

### Are there any other insured persons or persons lawfully entitled to payment in relation to the damaged property?

The removed company may not have been the only insured person or person lawfully entitled to payment in relation to the damaged property. In that case, any of those persons could properly be paid the benefit of the claim.

Before settlement is completed with any party other than the company (if restored to the register) or valid assignee, the matter must be escalated to the appropriate NHC representative.

### Paying the money to The Treasury (if required)

Where the above options have been considered but none can proceed, the NHCover claim payment due to the company that has been removed may instead be paid to The Treasury, which receives the NHCover claim proceeds on behalf of the Crown.



Any proposed payment of NHCover claim proceeds to The Treasury should be escalated to the appropriate NHC representative, as only the NHC representative should liaise with The Treasury. In all cases, the NHC representative should liaise with The Treasury about any possible payment to The Treasury.

## **f. Deceased estates**

Where an insured person, or person lawfully entitled to payment, in relation to an NHCover claim dies, the claim is usually transferred in accordance with the laws of succession. These laws are discussed below.

Communications with family members and other beneficiaries in relation to a claim involving a deceased person should be handled especially sensitively, given the circumstances.

### **i. If the NHCover claim was made before the deceased person died, who inherits the NHCover claim?**

If the deceased person had a valid will, the NHCover claim is transferred in accordance with the terms of the will.

If the deceased person died without a valid will, they are said to have died ‘intestate’. In this case, the rules of intestacy in Part 3 of the Administration Act 1969 (Administration Act) set out who gets the deceased person’s assets (which will include the NHCover claim). These rules set out a certain order of priority for who will receive the deceased person’s assets - for example, spouse or partner, children, parents, siblings etc, and in what proportions.

[Part 3, Administration Act 1969](#)

#### What happens to the deceased person’s assets if there is a will?

Once the executor has obtained probate, the executor must collect in the assets that were owned by the deceased. In most cases, an NHCover claim is unlikely to be mentioned specifically in a will – but, unless there is information to the contrary, the assets of the estate generally include the NHCover claim.

Once the executor has collected in the assets of the deceased person’s estate, the executor can distribute the assets in the estate (including the NHCover claim) to a beneficiary or beneficiaries as set out in the deceased person’s will.

### What happens to the deceased person's assets if there is no will?

If there is no will, or if the persons named as executors under the will are unwilling to act, an administrator is appointed under the Administration Act. The administrator fulfils a similar role to an executor.

For convenience in this Manual, we refer to 'executor', but 'administrator' can be substituted as needed.

### Who gets the NHCover claim?

Unless there is information to the contrary, an NHCover claim in relation to a residential building and/or residential land is treated as being transferred to the person entitled to ownership of the residential building and/or residential land. That person may be the executor. After the assets of the estate are distributed, it is the person (or persons) entitled to the property under the will or the rules of intestacy.

### Should NHC (or a person we authorise) deal with the executor or with the beneficiaries who get the property under the will or the rules of intestacy?

Whether we (or a person we authorise) should deal only with the executor, or with the intended recipient of the benefit of the NHCover claim, depends on where the administration of the estate is up to. Generally, we (or a person we authorise) should deal with the executor, unless the executor notifies in writing that the distribution of the assets of the estate is complete.

This is of course subject to consideration of any other insured person or person lawfully entitled to payment (e.g. mortgagees) (see Section 9.b in this Manual).

### What if the executor wants to transfer the NHCover claim to the beneficiaries of the estate?

If the NHCover claim takes some time to settle, the executor might, in the meantime, wish to transfer or vest the claim directly to the beneficiaries of the estate. Before giving effect to such a request, we (or a person we authorise) need written notice of the request from the executor.

## **ii. How does the form of property ownership affect who gets the proceeds of the NHCover claim after the deceased person has died?**

The way the insured property was owned by a person affects who owns the property (and the NHCover claim) after that person's death.

### What are the different forms of property ownership?

The deceased person can only pass on the interest in property that they actually owned.

- Sole ownership – When the sole owner of a property dies, ownership of the property transfers to the executor of the estate. The executor then transfers the property to the intended beneficiaries.
- Joint tenancy – When a joint owner of property dies, their interest in the property may vest with any surviving joint owner or owners. This is known as the ‘principle of survivorship’. The interest of the surviving joint tenant (or tenants) is not usually dealt with as part of the deceased person’s estate.
- Tenants in common – When a person dies who was the owner of a share in a property that was held as a tenant in common, only ownership of that share is transferred to the executor for the owner’s estate. Then that share of the property is transferred to the intended beneficiaries.

Property can be owned as ‘tenants in common’ and ‘joint tenants’. For example, a property might be divided into two shares, each held as tenants in common. But each of those shares may be jointly owned by two people as joint tenants. In that instance, the principle of survivorship applies only within the joint ownership of the deceased person’s share.

### What if the deceased person owned the insured property as a sole owner?

If the deceased person was the sole owner of the insured property:

- the NHCover claim may be settled with the executor of the estate; or
- on the executor’s direction, the NHCover claim may be settled directly with the person (or persons) that are entitled to the property under the will or the rules of intestacy. The direction must be in writing and be signed by all the appointed executors. If the direction is not signed by all the appointed executors, the facts and documents available in each instance must be assessed to determine if authority has been granted to the sole executor signing the direction.

Sometimes the executor may complete the administration of the estate and transfer or vest the assets of the estate in the beneficiaries before the NHCover claim is settled. If the executor gives notice to us (or a person we authorise) that the benefit of the NHCover

claim has been transferred or vested in the beneficiaries, we (or a person we authorise) may then deal directly with the beneficiaries.

In any event, this is subject to consideration of any other insured person, or person lawfully entitled to payment (e.g. mortgagees) (see Section 9.b in this Manual).

#### What if the deceased person owned the insured property as a joint tenant?

If a property or a share in a property was owned by joint tenants and one of them died before the natural hazard occurred, generally the approach is to proceed as if the deceased person has been removed from the RT. The survivor normally becomes the sole insured person. On that basis, the NHCover claim would be settled with the survivor.

However, where the deceased held an interest in insured property as a joint tenant, and died after the natural hazard damage occurred but before the settlement of the NHCover claim, it is necessary to check whether we (or a person we authorise) are on notice that:

- the fire insurance contract was taken out on a ‘composite basis’. If so, the survivor and the deceased person’s estate might both be entitled to receive some of the NHCover claim proceeds; or
- the joint tenancy has been severed.

Either of these factors might indicate that there was an agreement between the parties as to how the NHCover claim was to be treated. In these cases, the matter should be escalated to the appropriate NHC representative.

#### What if the deceased person owned the insured property as a tenant in common?

If the deceased person held insured property as a tenant in common, that interest in the insured property passes to the executor and then to the beneficiary or beneficiaries, in the way already discussed above.

The proportion of the deceased person’s share in the insured property is a sensible guide to determining the percentage of the NHCover claim proceeds that should be paid to the deceased person’s estate. But this rule of thumb is always subject to:

- any specific arrangements about how the NHCover claim proceeds are to be dealt with; or
- consideration of any other person lawfully entitled to payment.

If either of these factors is present, the matter should be escalated to the appropriate NHC representative.

### iii. What if the property was transferred to an executor or survivor before the natural hazard?

If legal ownership of the property was transferred to the executor before the natural hazard occurred, the executor is treated as the owner of the property at the date of the natural hazard giving rise to the claim.

An NHCover claim can usually be made by an executor on behalf of the estate, or by a survivor. However, the executor on behalf of the estate, or the survivor, needs to show that they were the insured person in relation to the property at the time of the natural hazard damage.

The executor, administrator or survivor can be treated as the owner of a property (or a share of it) if a historical search copy of the RT shows that that property (or share of a property) was transferred before the date of the natural hazard from the deceased:

- to individuals listed ‘as executors’ or ‘as administrators’; or
- to individuals listed ‘as survivors’.

The NHCover claim made by the executor, administrator or survivor for damage as the direct result of the natural hazard can then be assessed in the usual way.

If updates to property ownership shown on the RT occurred after the date of the natural hazard, or have not occurred at all, further documentation may be required – for example, a copy of the death certificate, probate documents or letters of administration for the deceased person. Where necessary, this will confirm whether the property was transferred before the date the natural hazard occurred.

### iv. Is a death certificate required?

Not necessarily.

A death certificate is one way of proving death. But there are other types of documentation which can also prove death, for example:

- evidence that probate has been granted;
- evidence that letters of administration have been issued;

- a coroner's report;
- a certificate from Public Trust or a Trustee Company.

Is it acceptable to rely on a Public Trust or Trustee Company certificate instead of probate or letters of administration?

Yes. A certificate from Public Trust (see [section 144 of the Public Trust Act 2001](#)) or an authorised trustee company (under [section 42 of the Trustee Companies Act 1967](#)) in relation to a deceased person is sufficient evidence of:

- the death of a person;
- the appointment of Public Trust or the trustee company as executor or other administrator; and
- Public Trust's or the trustee company's right to administer the estate.

The certificate must:

- state the name, residence, and occupation of the deceased person at the time of their death, and the date of death;
- certify that Public Trust or the trustee company has obtained a grant of probate or an order to administer, or is otherwise authorised to administer the estate; and
- state the date when the probate or order to administer was granted, or the manner in which and time at which Public Trust or the trustee company became authorised to administer it.

[Section 144, Public Trust Act 2001](#)

[Section 42, Trustee Companies Act 1967](#)

## v. What if someone challenges the deceased person's estate?

There can be challenges against the estate of a deceased person. These include challenges under:

- the [Law Reform \(Testamentary Promises\) Act 1949](#), where someone might argue that the deceased person promised to leave them some money;
- the [Family Protection Act 1955](#), where a family member might argue that the deceased has not provided adequately for them; or
- the [Property \(Relationships\) Act 1976](#), by a spouse or partner of the deceased.

If there are challenges of this nature to the estate that will involve the NHCover claim, the matter should be escalated to the appropriate NHC representative.

## g. Trusts

### i. Settlement by payment to a trust

If settlement is by way of payment, there are two ways that NHCover claim proceeds can be paid to a trust:

- to a bank account in the name of the trust; or
- to the bank account of one of the trustees on behalf of the trust. This can occur where the trust has no bank account and all the trustees request in writing that the proceeds of claim be paid in this way.

It is necessary, save in exceptional circumstances, that we (or a person we authorise) only act on the instructions of all the trustees as to how payment should be made. Such instructions provide assurance that there is consensus between the trustees.

If there are difficulties in obtaining instructions from all the trustees, the matter should be escalated to the appropriate NHC representative.

This is still of course always subject to consideration of any other insured person or person lawfully entitled to payment (e.g. mortgagees) (see Section 9.b in this Manual).

## ii. What if the trustees have changed?

If there have been changes to the trustees, there will be documentation that records the retirements and the new appointments. Copies of this documentation must be obtained if the trustees are no longer the same as those recorded on the RT to the property.

## iii. Is a copy of the trust deed of the trust required?

A copy of the pages of the trust deed showing the name of the trust, the name of the trustees and the signatures of the trustees (which should be witnessed) may be needed in order to:

- ensure that the claim has been made by the insured person. This is a requirement for the NHCover claim to be valid (see Section 3.h in this Manual); and/or
- confirm that the trust name reconciles with the name of the bank account.

But the RT is enough to establish who owns the relevant property.

## h. Unit title developments

### i. Settlement by payment

In most cases, the unit title development under the [Unit Titles Act 2010](#) is insured under a 'principal insurance policy' and the payment is made to the body corporate.

However, complex issues can arise as to whether the NHCover claims should be settled with the body corporate, the unit owners or the mortgagees. These issues can arise for three key reasons:

- The insurance situation: Sometimes the individual unit owners hold separate fire insurance contracts or direct NHCover (and the body corporate does not have a fire insurance contract). Occasionally in these cases, not all unit owners are insured. On the other hand, sometimes both the body corporate and



(some or all of) the individual unit owners hold fire insurance contracts or direct NHCover.

- The nature of the damage suffered: Damage that overlaps individual units and/or common property, joint property or shared property may raise difficult issues about appropriate repair strategies and correct payees.
- There are mortgagees who have a lawful entitlement to payment: The Unit Titles Act 2010 generally requires money paid under a principal insurance policy to be applied towards reinstatement of the unit title development. Where this happens, a mortgagee is not entitled to demand that any of this money is paid or applied towards repayment of the mortgage debt.

In any of these cases, the issue should be escalated to the appropriate NHC representative.

## ii. What if the deed of assignment (DOA) relates to a property held under the Unit Titles Act 2010?

If a unit is separately insured and a separate NHCover claim has been made by the owner, a DOA is relevant to the NHCover claim in the usual way.

But if the body corporate holds the fire insurance contract for the residential building and has made the claim, a DOA signed by the owner of the unit is usually irrelevant. The NHCover claim is settled with the body corporate and the new owner of a unit benefits as determined by the body corporate.

## iii. Further guidance

We may issue more detailed guidance from time to time on settlements of NHCover claims involving unit title developments.

## i. Leasehold properties

### i. Who is the insured person for the leasehold property?

Where a property is leased, a lessor owns the land and, generally, any buildings on the land, and the lessee pays rent to the lessor. In return, the lessee has an exclusive right to possession of the land and the buildings on it for a specific period of time according to terms set out in a lease. A lease usually allocates responsibility for obtaining insurance for the property to the lessor. This often means that the fire insurance contract is held by

the lessor. The lease and fire insurance contract should be checked to confirm the position.

In the case of a 'ground lease', usually only the lessee is the insured person. This is because a ground lease is generally only a lease of land and relatively minor improvements, and the lessee owns the buildings (and any other substantive improvements on the land). The lease usually allocates responsibility for obtaining insurance for the property to the lessee. This means that the fire insurance contract is usually held by the lessee. The lease and fire insurance contract should be checked to confirm the position.

Some leases are of a very long duration such as 999 years, or they may be indefinitely renewable. This does not itself determine responsibility for holding insurance. It usually indicates either a ground lease, or a lease where the lessee has agreed to take on most responsibilities relating to the property, including insurance. Again, this depends on the terms of the lease and the fire insurance contract (which should be checked).

In any cases involving leasehold properties, a copy of the underlying lease agreement should be obtained and the matter must be escalated to the appropriate NHC representative.

Generally, lessees in residential tenancies are not the insured person, but any concerns should be escalated to the appropriate NHC representative.

## ii. Can a lease operate to assign the NHCover proceeds to the lessor?

Sometimes the terms of a lease operate to assign the NHCover proceeds to the lessor. The terms of the lease must be checked to find out whether the lease has this effect. If the lease assigns the NHCover proceeds to the lessor (in whole or in part), the lessor is a person lawfully entitled to payment in accordance with their respective rights under the lease.

The effect of section 79 of the NHI Act is that, if any lease contains a condition relating to the fire insurance contract on the property, that condition applies equally to the NHCover on the property. So, if a lease assigns the fire insurance contract proceeds to the lessor, any NHCover claim proceeds must also go to the lessor.

[Section 79, NHI Act](#)

If the NHCover proceeds have been assigned to the lessor, the NHCover proceeds should be paid to the lessor in accordance with the terms of the assignment, assuming all other requirements under the NHI Act are met.

See Section 9.b.iv Settlement payments if two or more persons are entitled to payment in this Manual.

In this case, any insured person and/or person lawfully entitled to payment must be advised that the proposal is to proceed in that manner (and why). Those persons must be given a reasonable period to make any comments that they wish to make before settling the claim. Doing so is likely to reveal whether any person opposes that course and whether there is any sound basis for their opposition.

### iii. What if the lease does not assign the proceeds to the lessor or any other person?

If the lessor is not an insured person and the lease does not assign the NHCover proceeds to any particular person, it is generally appropriate to give the lessor and lessee the opportunity to agree on who should be paid. Letters of authority must be obtained from each party recording any agreement reached. The letters of authority must be correctly signed and dated.

#### What if the lessor and lessee do not agree on how the NHCover proceeds should be paid out?

If the lease does not assign the NHCover proceeds to any particular person, and the lessor and lessee cannot agree on who should be paid the NHCover proceeds, payment should be made to the lessee as the insured person unless the lessor can establish another legal entitlement to payment.

See Section 9.b.iv Settlement payments if two or more persons are entitled to payment in this Manual.

In cases of uncertainty, the matter should be escalated to the appropriate NHC representative.

### iv. Cross-lease properties

We may issue more detailed guidance from time to time on settlements involving cross-lease properties.

## j. Māori land interests

For some NHCover claims, the RT may show that the property is Māori freehold land.

In some instances, the property is owned in undivided shares by a large number of people (per the RT), with part of the land made available for individual residential use. This scenario is discussed below.

### i. Settlement payments where Māori freehold land is owned by multiple owners

Where part of a block of Māori freehold land with multiple owners is made available for individual residential use, this use is generally granted by an occupation order, lease or licence. The settlement approach is broadly the same under each of these arrangements.

Whichever arrangement is used, the insured person's land is the area of land that has been made available for that person's residential use, even if the insured person also holds a separate interest in the wider block of land.

Where there is a licence over Māori freehold land, the licence should only be treated as an interest in land if it grants exclusive possession of that area of land (meaning it has the same effect as a lease and will likely have NHCover for the residential land on this basis). If the licence does not grant the licence holder exclusive possession of that area of land, the licence does not give them an interest in that land. This means the insured person does not have NHCover for that land, unless they also hold a separate interest in that land.

If the fire insurance contract covers all the owners of the Māori freehold land, and there are relatively few owners or the property is managed by a trust, written agreement should be obtained, confirming who the NHCover settlement proceeds will be paid to.

If the property is owned by more people than we (or a person we authorise) can reasonably get agreement or obtain a payment authority from, and there is no trust in place, another approach needs to be considered.

See Section 9.b.iv in this Manual.

If the fire insurance contract only covers the person who holds the occupation order, lease or licence, all of the residential land is shared land. This is because the multiple owners of the land (who are not the insured person) have an insurable interest in that land.

In these cases, the land claim entitlement is generally paid to the insured person because they typically have a 100% shared ownership interest for the residential land. The insured person has a 100% shared ownership interest for the land if, under the arrangement of an occupation order, lease or licence:

- they are the only person with repair responsibility for the residential land; or
- the repair responsibility is not ascertainable, they are the only person with use of the residential land, and it would be equitable to pay them the full claim entitlement.

Where none of these points are met, the claim should be escalated to the appropriate NHC representative.

The residential land (or part of it) is not shared land if it meets the requirements of regulation 8 or 8A, NHI regulations, because the specified insured person has:

- a legal obligation to all of the landowners to insure the landowners' interest in the residential building (or the residential building and residential land); or
- retained or assumed all of the landowners' risk of damage in relation to the residential building (or the residential building and residential land).

A mortgagee often only has an interest in the dwelling under the arrangements of an occupation order, lease or licence. Before a residential land payment is made to a mortgagee, it should be confirmed that they hold an interest in the residential land.

## **k. Relationship property issues**

Various issues may arise when a relationship ends and the parties have owned property together that is the subject of an NHCover claim. Most commonly, issues arise over the parties' shared home.

### **i. What happens where only one party is the owner on the RT and is the insured person?**

If one party alone holds the RT and is the insured person, the NHCover claim is ordinarily settled with that party alone. However, if before the claim is settled, we (or a person we authorise) become aware of potential property issues arising from a relationship break-up, both parties must be consulted. This is to ensure there is no other matter that affects payment of the NHCover claim proceeds (for example, a relationship property order).

## ii. What if both parties are owners on the RT and are insured persons?

If, at the time of the natural hazard damage, both parties are owners on the RT (whether as joint tenants or tenants in common) and are insured persons, payment can be made in accordance with Section 9.b.ii in this Manual.

Ideally, the individuals involved agree to have the NHCover proceeds paid into a solicitor's trust account, leaving the parties and their advisers to determine the allocation. Letters of authority must be obtained from each party, recording any such agreement to pay the NHCover proceeds into a solicitor's trust account. The letters of authority must be correctly signed and dated.

## iii. Relationship property agreement ideally deals expressly with NHCover claims

Ideally, if there is a relationship property agreement, it records the parties' agreed intentions as to what happens to the NHCover claim. Usually that agreement can be acted on in reliance on the recorded intentions of the parties.

The relationship property agreement needs to be properly signed by the parties and set out:

- the full names of both parties;
- the address of the damaged property;
- the date the agreement is to take effect;
- a clear description of the claims being addressed. This may include the NHCover claim number(s) of the claim(s) or a more general (but clear) description of the claim(s). In either case, it is important that it is clear which components of an entire NHCover claim are being assigned (for example, the residential building and/or residential land claim(s)). Some agreements only assign aspects of the claim(s) – for example, the residential building claim(s) but not their residential land claims(s);
- a clear statement as to who is to receive the benefit of the NHCover claim(s).

## iv. What if the relationship property agreement is silent about the NHCover claim?

Sometimes the relationship property agreement is silent about what is to happen about an NHCover claim. If under the agreement, one party has become the sole owner of the

property, it may have been intended by the parties that the NHCover claim is transferred to that person.

However, it cannot be assumed that this is the case.

The parties' express agreement is required as to how the NHCover claim is to be treated. Ideally, the individuals involved agree to have the NHCover proceeds paid into a solicitor's trust account, leaving the parties and their advisers to determine the allocation.

Letters of authority must be obtained from each party, recording any such agreement to pay the NHCover proceeds into a solicitor's trust account. The letters of authority must be correctly signed and dated.

If there is a dispute as to who is entitled to the proceeds of the NHCover claim, the matter should be escalated to the appropriate NHC representative.

#### **v. What if there is a new mortgagee?**

If the parties have transferred the property to one party (as part of the resolution of relationship property issues), there is often a new mortgagee recorded on the RT.

The mortgagee may have made it a term of the loan that they receive any proceeds from any existing NHCover claim. It is necessary to write to the relevant parties to check whether there is any such arrangement with the mortgagee.

### **I. Other registered interests on the RT of the property**

Other forms of registered interests on the RT may indicate that a person is lawfully entitled to payment.

We have already mentioned some registered interests above (e.g. mortgagees, leases). Some other interests are itemised below.

#### **i. Caveats**

If a caveat appears on the RT, a copy of the caveat instrument must be obtained to see what interest it protects. If it protects an interest that does not affect the payment of the NHCover claim proceeds, the caveat can be ignored.

If, however, the caveat protects an interest that could affect the payment of the NHCover claim proceeds, for example a mortgage that predates the natural hazard damage, we

(or a person we authorise) should consult with the caveator. The caveator's contact details are recorded in the caveat instrument.

If the owner and caveator do not agree on who the NHCover claim proceeds are to be paid to, the matter should be escalated to the appropriate NHC representative.

## ii. Section 42(2) Property (Relationships) Act 1976 notices

A notice under [section 42\(2\) of the Property \(Relationships\) Act 1976](#) effectively acts as a caveat preventing dealings with the property until the relationship property claim is resolved. It does not itself create an interest in the property where an interest does not already exist. Whether the person who entered the notice against the title is an insured person or a person lawfully entitled to payment is not something that can be determined simply from the RT.

It is necessary to check whether the individual named in the notice was an owner of the property at the date of loss. A historical search is generally required for this purpose.

If the person named in the notice was an insured person at the date of loss and has not assigned their rights to the claim, they and the other owner(s) need to reach an agreement about who should get the NHCover claim proceeds. Letters of authority must be obtained from each party recording any agreement reached. The letters of authority must be correctly signed and dated.

Alternatively, the individuals involved can agree to have the NHCover proceeds paid into a solicitor's trust account, leaving the parties and their advisers to determine entitlement to the NHCover proceeds.

The person named in the notice may instead be a person lawfully entitled to payment. See Section 9.b.iv Settlement payments if two or more persons are entitled to payment in this Manual.

If there is a dispute about who is entitled to the proceeds of the NHCover claim, the matter should be escalated to the appropriate NHC representative.

## iii. Charging orders

A charging order simply stops the charged land from being sold or otherwise disposed of. It does not mean that the person who holds the charge is lawfully entitled to payment. Accordingly, it is usually appropriate to disregard a charging order for the purposes of settling the NHCover claim.



#### iv. Family benefit charges

A family benefit charge is effectively a statutory mortgage in favour of (usually) Kāinga Ora – Homes and Communities. The charge is governed by the [Family Benefits \(Home Ownership\) Act 1964](#), which provides that the charge is to be treated as a mortgage under the [Property Law Act 2007](#). The effect of this provision is to assign to Kāinga Ora – Homes and Communities any NHCover claim proceeds in respect of the mortgaged property.

A family benefit charge is treated as though it were a mortgage to Kāinga Ora – Homes and Communities. However, the charges are generally very old, and so are likely to have been repaid. It is therefore necessary to check with Kāinga Ora – Homes and Communities whether any amount is still secured by the charge and, if not, make the payment to the customer. It is also necessary to check the priority of the charge with other mortgages.

#### v. Other interests

There are other interests that may appear on the RT which are not covered by this Manual. Where the person dealing with the NHCover claim is uncertain as to whether any particular registered interest gives rise to a lawful entitlement to payment, the matter should be escalated to the appropriate NHC representative.

#### m. What if there is a dispute over who is to receive the NHCover claim settlement?

If there is a dispute over who is to receive the NHCover claim settlement and the matter cannot be resolved with the claimants directly, the matter should be escalated to the appropriate NHC representative.

## 10. How is an NHCover claim closed?

Throughout this Section, the ‘entire NHCover claim’ is used to describe the customer’s claim against the property’s natural hazard cover. The entire NHCover claim can, for the purposes of this Section, be broken down into two components based on the subject matter of the claim — the ‘building claim’ and the ‘land claim’.

The entire NHCover claim is only closed where:

- there is an outcome for the applicable residential building claim and/or the residential land claim; and
- all other requirements for closure of the entire NHCover claim (as described below) are met.

Section 10.A in this Manual sets out the requirements for closure of a residential building claim.

Section 10.B in this Manual sets out the requirements for closure of the entire NHCover claim.

Section 11.A of the [NHC Claims Manual - Residential Land - NHI Act](#) sets out the requirements for the closure of a residential land claim.

### A. How is a residential building claim closed?

#### a. Overview

Before a residential building claim can be closed, the following requirements must be met:

- the outcome of the building claim must be identified (Section 10.A.b in this Manual);
- the customer must be advised of the outcome of the building claim, the reasons for the decision and the right to refer disputes about referable decisions to the dispute resolution scheme (For further details, including the definition of a 'referable decision, see Sections 10.A.c and 11.k.ii in this Manual);

- all other actions related to the closure of the building claim must be completed (Section 10.A.d in this Manual); and
- a full record of the building claim must be available for us (Section 10.A.e in this Manual).

Details of each of these requirements are set out below.

## **b. Identifying the outcome of the residential building claim**

The possible outcomes for a residential building claim and the reasons for those possible outcomes are set out in the table below.

In identifying the outcome of a building claim, the person dealing with the building claim must:

- select from the six ‘Outcome’ terms set out in this table (that is, ‘Accepted’; ‘Withdrawn’; ‘Duplicate’; ‘Not Accepted’; ‘Declined’; and ‘Invalid’); and
- specify the particular reason for the outcome (drawing from the column headed ‘Reason’ in the table). For example, if the outcome is ‘Declined’, the reason might be ‘declined (in whole) on the grounds set out in section 69 of the NHI Act’.

#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
1	Accepted	The building claim is: <ul style="list-style-type: none"> <li>• settled by payment of a cash amount;</li> <li>• settled by reinstatement, replacement or relocation;</li> </ul>	Cash settled.  Settled on the basis of reinstatement, replacement or relocation.	Section 8.c.i  Sections 8.c.ii and 8.c.iii

### Section 10 – How is an NHCover claim closed?

#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
		<ul style="list-style-type: none"> <li>below the amount of the applicable excess;</li> </ul>	The replacement cost is below the excess amount. Therefore, the building claim entitlement is zero.	Section 8.c.i
		<ul style="list-style-type: none"> <li>nil, as the fire insurance contract provides 'ground-up' cover and there is nothing else for us to pay</li> </ul>	The fire insurance contract provides 'ground-up' cover. The private insurer has paid for all the natural hazard damage within the terms of the contract and there is nothing else to pay.	Section 3.j.ii
		<ul style="list-style-type: none"> <li>'accepted' in part.</li> </ul>	The building claim has been settled in part by payment (or reinstatement, replacement or relocation) and the other part of the building claim is 'declined'.	Section 8.c
		'accepted in full'	Part cash settled and part settled by reinstatement, replacement or relocation	Section 8.c

## Section 10 – How is an NHCover claim closed?



#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
2	Withdrawn	The customer has withdrawn the building claim.	The customer has withdrawn (in writing or by recorded telephone communication) either the entire NHCover claim or the building claim.	n/a
3	Duplicate	The building claim is a duplicate of an existing building claim in another existing entire NHCover claim	The building claim has been identified as a duplicate of an existing building claim in another existing entire NHCover claim.	n/a
4	Not accepted	The building claim is not accepted.	<p>After making reasonable efforts, it has not been possible to ascertain the following:</p> <ul style="list-style-type: none"> <li>the relevant insurance policy number; and</li> <li>the name of the private insurer.</li> </ul> <p>We consider that the above two items are the minimum information required</p>	Section 3.j.iii

## Section 10 – How is an NHCover claim closed?



#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
			to proceed with a building claim.	
5	Declined	The building claim is declined (in whole) on one or more grounds under sections <a href="#">68 to 77 of the NHI Act</a> .	The building claim is declined (in whole) for one or more of: <ul style="list-style-type: none"> <li>the delay in making the claim was prejudicial (section 68)</li> <li>there was no financial loss (section 69)</li> <li>a condition was not complied with (section 70)</li> <li>misleading information was knowingly provided (section 71)</li> <li>fraud (section 72)</li> </ul>	Section 7.h.i  Section 7.h.ii  Section 7.h.iii  Section 7.h.iv  Section 7.h.v
			<ul style="list-style-type: none"> <li>failure to protect property (section 73)</li> </ul>	Section 7.h.vi

## Section 10 – How is an NHCover claim closed?



#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
			<ul style="list-style-type: none"> <li>damage due to intentional act, omission, or negligence (section 74)</li> </ul>	Section 7.h.vii
			<ul style="list-style-type: none"> <li>damage due to unlawful conduct (section 75)</li> </ul>	Section 7.h.viii
			<ul style="list-style-type: none"> <li>damage due to substandard construction (section 76)</li> </ul>	Section 7.h.ix
			<ul style="list-style-type: none"> <li>natural hazard notification on land title (section 77)</li> </ul>	Section 7.h.x
		‘declined in part’	The building claim has been declined in part and the other part of the building claim is settled by payment (or reinstatement, replacement or relocation)	Sections 7.h and 8.c
6	Invalid	The building claim is not valid for one or more of the	The reasons are: <ul style="list-style-type: none"> <li>an insured person with an insurable</li> </ul>	Section 3.h

## Section 10 – How is an NHCover claim closed?



#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
		reasons in the next column.	interest in the property concerned did not make (or authorise anyone else to make) a claim;	
			<ul style="list-style-type: none"> <li>the claim did not include the information required under section 52 of the NHI Act;</li> </ul>	Section 3.d.i
			<ul style="list-style-type: none"> <li>the claim has not been made to NHC (or a person we authorised to receive the claim) or the customer's private insurer by the time limit specified in under section 54 of the NHI Act;</li> </ul>	Sections 3.c and 3.f
			<ul style="list-style-type: none"> <li>the property the claim relates to is not a residential building;</li> </ul>	Section 4
			<ul style="list-style-type: none"> <li>there was no fire insurance contract</li> </ul>	Section 3.g

## Section 10 – How is an NHCover claim closed?



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#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
			or direct NHCover over the dwelling (or dwellings) concerned in force at the relevant time;	
			<ul style="list-style-type: none"> <li>the NHCover has been cancelled;</li> <li>there is no natural hazard damage to the residential building.</li> </ul>	Section 3.i.i  Sections 4 and 5

### c. Advising the customer of the outcome of the residential building claim

Before the residential building claim is closed, the customer must be clearly advised of the outcome of the building claim and the reason for it. The customer must also be advised of the right to refer disputes about referable decisions to the dispute resolution scheme.

Sections [59\(4\)](#) and [60\(7\)](#), NHI Act

To this end, the minimum requirements set out above and below must be addressed when communicating the outcome of the building claim (see Section 8.j in this Manual).

#### i. How is a validity outcome communicated?

As part of the process of deciding the validity of the NHCover building claim, we (or a person we authorise) must notify the insured person of the decision regarding the validity of the NHCover building claim (see section 3.b in this Manual).

If a building claim has been declined under one of the grounds set out in sections [68 to 77 of the NHI Act](#), there is no need to determine the validity of the building claim and the

settlement outcome (the building claim being declined) can be immediately communicated to the customer.

Otherwise, the decision on whether the building claim is valid (and the associated notification requirements) takes place before any settlement decision. Typically, the customer is notified as follows:

- Where the building claim is determined to be valid, this fact must be communicated to the customer. Then, a settlement decision must be made. The building claim outcome is any of the outcomes set out in the 'Accepted' row of the table above (see Section 10.A.b in this Manual), and this settlement decision must also be communicated to the customer (see Section 8.j in this Manual).
- If a building claim is invalid, that is the building claim outcome. Therefore, the fact that the building claim is invalid, and that this is the building claim outcome, is communicated to the customer at the same time.

If both the building claim and land claim are being settled at the same time, notification should be made for both claims.

## ii. How is an 'accepted' cash settlement outcome communicated?

Section A of Appendix 1 in this Manual sets out the requirements that must be addressed in a communication for an 'accepted' cash settled residential building claim.

Section B of Appendix 1 in this Manual sets out some suggested items for the cash settlement communication.

## iii. How are other outcomes communicated?

Where the building claim (or any part of it) is not cash settled, the communication to the customer must:

- set out the outcome of the building claim and the reason for it. The possible outcomes and reasons are set out in the table at Section 10.A.b in this Manual;
- include any supporting documentation from professional advisers who have been involved in the assessment;
- where a private insurer or third-party provider is dealing with the building claim, make clear (unless we direct otherwise) that the private insurer or third-

### Section 10 – How is an NHCover claim closed?

party provider is acting in an agency role in assessing the NHCover claim in accordance with the NHI Act (see Item A.1 of Appendix A in this Manual, which applies for this purpose);

- set out the claim number allocated for the NHCover claim (in respect of the building claim) and the address of the property where the natural hazard damage allegedly occurred;
- make clear which claims the communication relates to (for example, it may also relate to the residential land claim);
- be consistent with other relevant provisions in this Manual with respect to specific communications (see Sections 7.g.iv and 8.j in this Manual); and
- set out how the customer can request further information.

#### Particular requirements regarding ‘not accepted’ outcome

Any communication informing a customer that the outcome of their claim is ‘not accepted’ must include a clear statement:

- itemising the required information that has not been received (and which has caused the claim to be ‘not accepted’);
- explaining that the customer may still provide the required information; and
- stating that the claim will be re-opened as soon as that information is received.

#### Form of communication

We do not generally prescribe any particular form of the communication. However, the communication must:

- be in writing;
- meet the requirements set out above in this Section 10.A.c.iii and be consistent with them throughout; and
- be in the form of an NHC template, if we have issued a template communication that we and the persons we authorise agree to use.

If a form is approved by us in line with [section 161 of the NHI Act](#), this must be used.

### Communications by private insurers acting on our behalf

Where a private insurer is dealing with a building claim on our behalf, the communication may be:

- in two communications (one about the NHCover residential building claim and one about the building component that is covered by the private insurer for the same property); or
- in one communication (about both), provided the two components can clearly be understood separately.

The private insurer must set out clearly the different reasons for, and the effect (if any), of the respective decisions to decline where:

- the relevant NHCover building claim is declined under one of the grounds set out in [sections 68 to 77 of the NHI Act](#); and
- the private insurer also declines the relevant claim under the fire insurance contract for the same property.

#### **d. Other requirements before closing a residential building claim**

Before a residential building claim can be closed, all relevant records must be checked to ensure that (in relation to that building claim) there are:

- no outstanding payments to the customer, any supplier or any other person;
- no open activities, or requests to any party, of any kind; and
- no unresolved complaints or disputes, including (but not limited to) any that:
  - have been made by the customer, lawyers, advocacy groups or other agencies, the Minister's office or MPs; or
  - are in mediation (or any other form of alternative dispute resolution), or before any decision-maker such as the Ombudsman, the Disputes Tribunal or a Court.

### Additional requirement for 'duplicate' building claims

Where the building claim is a 'duplicate', the person dealing with the claim must transfer any new information from the duplicate building claim onto the relevant main claim.

## e. **Compiling a full record of the residential building claim**

### i. **What records need to be compiled where the residential building claim is closed?**

The person dealing with the residential building claim must compile and have available for us:

- the full file relating to the residential building claim; and
- any other information as we direct from time to time.

The file and other information must be:

- comprehensive and robust for audit and reporting purposes;
- suitable for use (including in any tribunal or Court), should the outcome later be disputed; and
- in accordance with any direction that we may give (for example, as to the form and mode of storage of the file and other information).

### ii. **What other records must be compiled on the closure of any residential building claim?**

Details must be compiled and be available for us where any of the following have occurred:

- an inquiry relating to the building claim has been directed to the Minister;
- the building claim has attracted media attention.

## f. **What happens if the building claim needs to be re-opened?**

Sometimes there may be circumstances where a previously closed building claim needs to be re-opened.

This is specifically provided for in [section 57\(4\) of the NHI Act](#), which allows for reconsideration of any decision made in relation to a claim.

A decision on a claim may be reconsidered when further information relevant to the decision is received. This information could be received under [section 56](#) or [section 58](#) of the NHI Act, or by any other means. The decision may be reconsidered in light of this new information and, if reasonable to do so, the decision may be changed.

The decision can be reconsidered under section 57(4) whether the claim has an 'open' or 'closed' status in the claims system. This is because the claim status is an operational administrative step and not a legal requirement.

Where a building claim needs to be re-opened, the entire NHCover claim must also be re-opened.

Once resolved, the re-opened building claim and entire NHCover claim can be closed in accordance with the requirements for closure set out in Section 10 in this Manual.

## **B. How is an NHCover claim closed?**

### **a. Overview**

An entire NHCover claim is only closed where:

- there is an outcome for the applicable residential building claim and/or the residential land claim (see Section 10.A in this Manual); and
- all other requirements for closure (as described below) are met.

### **b. What is required before an NHCover claim can be closed?**

Before an entire NHCover claim can be closed, all relevant records must be checked to ensure that the applicable residential building claim and/or the residential land claim are closed.

Section 10.A in this Manual sets out the requirements for closure of a residential building claim.

Section 11.A of the [NHC Claims Manual - Residential Land - NHI Act](#) sets out the requirements for closure of the residential land claim.

### **c. Who should close the NHCover claim?**

Sometimes the entire NHCover claim (i.e. the building claim and/or the land claim) is being dealt with by one organisation (i.e. by us or by a person we have authorised). In these cases, that organisation closes the entire NHCover claim after they have closed the last of the relevant claims (the building or land claim).

However, different organisations may be dealing with different parts of the entire NHCover claim. For example, a private insurer (as our agent) may be dealing with a residential building claim; and another agent of ours may be dealing with the residential land claim. In cases like this, the organisation that closes the last of the relevant claims (the building or land claim) must also close the entire NHCover claim.

If there is any doubt about who should close the entire NHCover claim, the matter should be escalated to the appropriate NHC representative.

#### **d. Completing all other actions related to closing an NHCover claim**

##### **i. Records required before an entire NHCover claim is closed**

Before the entire NHCover claim is closed, the person dealing with its closure must compile and have available for us:

- the full files and other information relating to the building claim and/or the land claim (see Section 10.A.e.i in this Manual and Section 11.A.e.i of the [NHC Claims Manual - Residential Land - NHI Act](#)); and
- all other details required in relation to the building claim and/or land claim (see Section 10.A.e.ii in this Manual and Section 11.A.e.ii of the [NHC Claims Manual - Residential Land - NHI Act](#)).

##### **ii. Other actions before a claim can be closed**

Before the entire NHCover claim is closed, the person dealing with its closure must complete all other actions as we may direct from time to time in relation to the entire NHCover claim, including (but not limited to) actions in connection with:

- NHC audit requirements;
- quality assurance related to the processing of the claim; and
- any other issue identified by us that must be resolved to our satisfaction before the entire NHCover claim is closed.

## 11. Other matters

This section addresses other matters relating to the assessment and settlement of NHCover claims for natural hazard damage to residential property.

We will provide additional guidance for many of the matters covered in this Section of the Manual from time to time. Where applicable, this additional guidance must be considered.

### a. Health and safety

Any person dealing with an NHCover claim must comply with all statutory obligations including the [Health and Safety at Work Act 2015 \(HSWA\)](#) and regulations under that Act in all relevant respects. Sometimes we (or a person we authorise) and third parties all have health and safety responsibilities for the same person. When this occurs, we (or a person we authorise) and the third party must consult.

#### i. Our responsibilities

We have responsibilities for the health and safety performance of all staff and contractors dealing with NHCover claims, whether they are the staff and contractors of:

- NHC;
- a private insurer; or
- a third-party provider.

#### ii. Responsibilities of private insurers and third-party providers (as persons we authorise)

A private insurer or third-party provider (acting as a person we authorise) is also responsible for the health and safety performance of their staff and contractors who are dealing with an NHCover claim.

The persons we authorise to manage claims on our behalf must:

- comply with and ensure their staff and contractors comply with:
  - any NHC health and safety policies, processes and procedures that have been notified to them or of which they are aware, including our health and safety prequalification process;



- any requirements to report to us regarding health and safety (including reporting of notifiable events or notifiable incidents);
- the reasonable requirements of any health and safety plan operated by any other party in control of a property;
- have in place, implement and operate appropriate health and safety policies, processes and procedures that comply with all relevant legislation;
- ensure that:
  - any information we provide on health and safety is conveyed to their staff and contractors and is implemented; and
  - their staff and contractors complete and pass any health and safety training that we require.

### iii. Site hazards

The person dealing with the claim must consider health and safety (including identifying and managing any site hazards) throughout the assessment process because risks may change or become more evident as the assessment progresses. For example, before the assessor visits a property, the owner or occupier of the property should be asked to provide details about any known site hazards (for example, whether there are any dogs). Then, when carrying out their assessment and before entering the property, the assessor should check for any obvious site hazards.

[HSWA](#)

[Health and Safety at Work \(General Risk and Workplace Management\) Regulations 2016](#)

[Health and Safety in Employment Regulations 1995](#)

[Worksafe – Identifying, Assessing and Managing Work Risks \[PDF, 404 KB\]](#)

### iv. Asbestos

The Health and Safety at Work (Asbestos) Regulations 2016 contain detailed provisions regulating work involving asbestos. Those regulations must be complied with when assessing or repairing a residential property that contains, or might contain, asbestos.

[Health and Safety at Work \(Asbestos\) Regulations 2016](#)

[Worksafe – Approved Code of Practice: Management and Removal of Asbestos \[PDF, 3.8 MB\]](#)

## v. Heights and confined spaces

Particular care must be taken, when assessing or repairing residential properties, to deal appropriately with site hazards arising when working at height or in confined spaces.

### Further information

WorkSafe New Zealand publishes information about working at height or in confined spaces. For the most recent information, see:

- [Best Practice Guidelines for Working at Height in New Zealand](#) (Ministry of Business, Innovation and Employment, July 2019 modified); and
- [Confined Spaces: Planning Entry and Working Safely in a Confined Space](#) (WorkSafe New Zealand, March 2020).

### [HSWA](#)

### [Regulation 21, Health and Safety in Employment Regulations 1995](#)

## b. Notices restricting access to buildings

Notices issued under the Building Act may restrict access to buildings if they have been declared by the relevant authority to be:

- dangerous, affected, or insanitary (notice under [section 124 of the Building Act](#));
- earthquake-prone (notice under [section 133AR of the Building Act](#)); or
- within a designated area during a state of emergency (or transition period) (notice under [section 133BT of the Building Act](#)).

All three notices generally restrict our (or persons we authorise's) ability to assess natural hazard damage to buildings. This is also consistent with our (or persons we authorise's) health and safety obligations (see Section 11.a in this Manual).

These notices are colloquially known as 'red and yellow stickers'.

## i. What buildings are subject to these notices under the Building Act?

### Dangerous, affected or insanitary buildings

Under [section 124 of the Building Act](#), a Council has certain powers in relation to 'dangerous', 'affected' or 'insanitary' buildings.

A building is 'dangerous' for the purposes of the Building Act if (among other things) the building is likely, in the ordinary course of events (other than during an earthquake), to cause injury or death (whether by collapse or otherwise) to any people in the building.

A building is 'insanitary' for the purposes of the Building Act if (among other things) the building is likely to be injurious to health because of how it is situated or constructed or because it is in a state of disrepair.

A building is 'affected' for the purposes of the Building Act if it is adjacent to, adjoining, or near by a dangerous building or dangerous dam.

Where a building is 'dangerous', it may mean that access to the residential land at the property is also unsafe (for example, because the building is at risk of collapsing onto the land).

#### [Section 124, Building Act](#)

#### Earthquake-prone buildings

Under [Subpart 6A of Part 2 of the Building Act](#), a Council has certain powers in relation to 'earthquake-prone' buildings.

A building is 'earthquake-prone' for the purposes of the Building Act if (among other things):

- the building or part of the building would have its ultimate capacity exceeded by a moderate earthquake; and
- if the building were to collapse, the collapse would be likely to cause injury or death to persons in or near the building.

#### [Section 133AB, Building Act](#)

#### Buildings within a designated area for emergency management of buildings

Under [Subpart 6B of Part 2 of the Building Act](#), buildings affected by an emergency may be declared part of a designated area for emergency management of those buildings. Buildings in a designated area affected by an emergency may be unsafe. Some of the buildings may also meet the definition of dangerous, affected or insanitary under the Building Act. The designation of an area usually lasts three years (unless terminated sooner).

When a building is part of a designated area, certain persons (known as responsible persons<sup>13</sup>) have certain powers in relation to these buildings.

Sections [133BJ](#), [133BK](#), [133BS](#) and [133BT](#), Building Act

## ii. What if the building is 'red stickered'?

Under sections [124](#) or [133AR](#) of the Building Act, if a Council is satisfied that a building is dangerous, affected, insanitary or earthquake-prone, it may:

- put up a hoarding or fence to prevent people from approaching the building nearer than is safe;
- attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building; or
- issue a notice restricting entry to the building for particular purposes or restricting entry to particular people or groups of people.

Under [section 133BS of the Building Act](#), responsible persons may place signs or notices on or near buildings within a designated area that prohibit or restrict access to those buildings, and/or informing members of the public of the risks posed by the buildings. Responsible persons may also:

- put up a hoarding or fence to prevent people from approaching the building;
- put in place measures to prevent or limit public access, with or without vehicles, to any road or other public place near the building;
- put in place measures to prevent the building or debris from the building harming people; and/or
- put in place measures that allow limited access for a purpose the responsible person considers appropriate.

If the Council or a responsible person has done any of these things, no person may use or occupy the building, or permit another person to use or occupy the building (except where the Council or the relevant responsible person has permitted access to particular

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<sup>13</sup> Who the 'responsible person' is depends on the circumstances the area was designated under. [Section 133BJ of the Building Act 2004](#) sets out who the responsible person is.

people or for particular purposes). This means that any person carrying out an assessment should not enter the building to assess it, unless the Council or responsible person has expressly allowed that entry.

Sections [121](#), [123](#), [124](#), [128](#), [133AA](#), [133AB](#), [133BC](#), [133BJ](#), [133BS](#) and [133BT](#), Building Act

### iii. What if an assessor thinks a property may be dangerous, affected or insanitary but the Council has not ‘red stickered’ the building?

Where the Council has not ‘red stickered’ a residential building, a person assessing the property on our behalf may nevertheless reasonably form the view that:

- the property being assessed poses, or may pose, a threat to personal health or safety by being dangerous, affected or insanitary; or
- an adjacent property poses, or may pose, a similar threat in relation to the property being assessed.

In these cases, the assessor should notify us, the customer and the Council in strict accordance with the processes notified by us from time to time.

For our ability to share information to prevent or lessen a serious threat to health or safety, see Section 11.f.ii in this Manual.

## c. Extra care claims

Any person dealing with an NHCover claim must take reasonable steps to identify claims that need extra care based on the specific circumstances of the homeowner, occupant of the property or third party who may be directly affected by the claims management process (extra care claim<sup>14</sup>).

Any person dealing with an NHCover claim should comply with their organisation’s guidelines (as agreed with NHC) for managing extra care claims.

## d. Communicating with customers

We expect our staff and contractors, private insurers (including their staff and contractors) and third-party providers (including their staff and contractors) to

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<sup>14</sup> For more information about extra care claims, see our [Extra Care Claims Policy](#). Your organisation may use similar terms such as ‘customers experiencing vulnerability’.

communicate with NHC customers in a fair, responsive, empathetic, straightforward and helpful manner in accordance with the [Code of Insured Persons Rights](#) (see Section 11.j in this Manual).

All these people must at all times be honest, transparent, respectful and professional in their dealings with NHC customers.

All these people must also be able to work in partnership with NHC resources and other suppliers and specialists.

All communications must use a plain language style, avoiding jargon, technical terms and acronyms.

Any template communication which refers to NHC or uses the NHC logo must be pre-approved by us (see Section 11.e in this Manual).

#### **i. Keeping customers informed**

Customers must be regularly updated on the status of their NHCover claim, in line with any NHC standards regarding keeping customers informed. We will issue and notify these standards from time to time.

#### **ii. Communicating settlement outcomes**

Settlement outcomes must be communicated to NHC customers in accordance with Section 10.A.c in this Manual.

### **e. Use of NHC name and logo**

Private insurers (including their staff and contractors) and third-party providers (including their staff and contractors) must not use the NHC name and logo without our permission.

When used, the NHC logo and other NHC brand elements must be applied in accordance with the specifications of the NHC Brand Guidelines. We will issue and notify the NHC Brand Guidelines from time to time.

## f. Information sharing

### i. Sharing information

People we authorise to manage claims on our behalf must at all times act in accordance with our position on information sharing. We will either specify our requirement in an applicable contract or issue and notify our position on information sharing from time to time.

### ii. Sharing information to prevent or lessen a serious threat to health or safety

Generally, you should not disclose information about the property to anyone outside your organisation or NHC. However, you may make available any information you have to relevant third parties (e.g. police, medical providers or territorial authority (TA)) if you believe on reasonable grounds that doing so is necessary to prevent or lessen a serious threat to:

- public health or public safety; or
- the life or health of any individual.

In this context, ‘serious threat’ has the same meaning as in the Privacy Act 2020 (Privacy Act), meaning a threat reasonably believed to be serious having regard to the likelihood of the threat being realised, the severity of the consequences that would follow, and the time at which the threat might be realised.

You do not need our prior approval to make this information available in these circumstances.

[Part 5, Subpart 3, NHI Act](#)

[Section 7\(1\), Privacy Act – definition of ‘serious threat’](#)

## g. Reporting to NHC

Any person authorised to manage claims on our behalf must provide reporting to us in relation to:

- any claims; or
- the claim management process more generally.

This reporting must be in a manner and include content as requested and agreed from time to time by us.

This reporting may include, for example, reporting the number of claims opened, in progress or closed during a specified period, as well as reporting on applicable KPIs and health and safety requirements.

The reporting may be at a claim level, at a property level or at an administrative level (for example, reporting on costs incurred).

We have obligations to report, including to our board, our minister, Parliament and the public. In order for us to comply with our own reporting obligations, all persons we authorise to deal with claims must report to us in a timely and accurate way.

## **h. Co-ordination**

A person dealing with an NHCover claim should ensure appropriate co ordination with other people dealing with:

- another component of the same entire NHCover claim;
- any related entire NHCover claims; and
- any related private insurer claims.

For example, where a natural hazard (such as a landslide) affects multiple properties, it may sometimes be appropriate to co-ordinate with other insurers involved in:

- obtaining reports on the damage and its repair; or
- considering whether to settle on the basis of a global remedial solution.

## **i. Cross-lease claims**

Where a cross-leased property contains multiple dwellings in a single building, the dwellings involved are often insured by different private insurers.

The appropriate remediation strategy for the residential building might involve work to the building as a whole, rather than to each individual unit. Furthermore, the remediation strategy for the residential land damage might be an overall solution affecting all of the residential land associated with the units.



In this type of situation, the person dealing with the NHCover claim must co-ordinate, as appropriate, with the people dealing with the other insurance claims for the building and the residential land.

In the case of doubt as to who should lead the insurance response, the matter should be escalated to the appropriate NHC representative.

## j. **Code of Insured Persons' Rights**

### Insured persons' rights

Claims are required to be managed and settled in a fair and timely manner under the NHI Act.

#### [Section 128\(2\)\(a\), NHI Act](#)

What is 'fair and timely' depends on the circumstances of each claim and is likely to differ depending on each insured person's circumstances.

The Code of Insured Persons' Rights sets out the rights of insured persons to have their claim managed and settled in a fair and timely manner.

The Code of Insured Persons' Rights applies to us and all persons we authorise to deal with claims. In all dealings with insured persons, we (or persons we authorise) are required to:

- be consistent with the Code of Insured Persons' Rights; and
- uphold the rights of insured persons under the Code of Insured Persons' Rights.

The obligations imposed under the Code of Insured Persons' Rights are in addition to other obligations imposed by the NHI Act, other legislation and the law generally.

#### [Part 3, Subpart 4, NHI Act](#)

#### [Code of Insured Persons' Rights](#)

## k. **Customer complaints and disputes**

A 'complaint' is where a customer makes a formal expression of dissatisfaction with a decision, a process, an outcome, a level of service, an action of a person involved in one or more of these matters and/or a breach of the [Code of Insured Persons' Rights](#).

All complaints must be managed in accordance with our complaint procedure (or one we have agreed to). This includes complaints that:

- do not relate to a referable decision, or
- relate to a referable decision that the customer disputes, but:
  - does not wish to refer to the dispute resolution scheme, or
  - wishes to go through the complaint procedure first.

If a customer has been through the complaint procedure, they can still refer a dispute about a referable decision to the dispute resolution scheme.

Any communications to a customer about a complaint or a dispute must be:

- in writing; or
- (if verbal) promptly confirmed in writing.

Any person dealing with a complaint on our behalf must comply with our requirements for managing customer complaints, including complaints made about breaches of the [Code of Insured Persons' Rights](#).

When dealing with a complaint on our behalf, any private insurer must comply with the:

- Fair Insurance Code, and
- [Code of Insured Persons' Rights](#).

Where a complaint is made, the person dealing with the claim must ensure that full and accurate written records are kept recording the complaint, how it was addressed and its outcome.

Where a customer raises a concern that is not a complaint or a dispute, the person dealing with the claim must act in accordance with normal claims management processes. This includes advising the customer of the complaint procedure and their right to refer any dispute about a referable decision to the dispute resolution scheme.

Any threats of legal action made by customers must be recorded in a register which is available to us on request.

## i. Complaint procedure

All complaints (including complaints made about breaches of the [Code of Insured Persons' Rights](#)) must be managed in accordance with our complaint procedure, or one we have agreed to.

See our [Complaint Procedure](#).

[Section 91, NHI Act](#)

## ii. Dispute resolution scheme

When we (or a person we authorise) make a referable decision about a claim, an affected person who disputes the decision may refer the dispute to the dispute resolution scheme.

A referable decision is a decision about:

- whether, (or to what extent), a claim is valid; or
- the extent to which a claim is to be, or has been, settled.

When we (or a person we authorise) decide to settle a claim, or part of a claim, by payment, relocation, or replacing or reinstating the damaged property, the decision as to which of those methods to use is not a referable decision. This means a dispute about this decision cannot be referred to the dispute resolution scheme.

An affected person is:

- the insured person for the residential building or residential land that the claim relates to; and/or
- any other person that is lawfully entitled to all or part of any building claim entitlement or land claim entitlement payable on the settlement of the claim.

See the [Dispute Resolution Scheme](#).

Sections [101](#) and [104](#), NHI Act and [regulation 17, NHI Regulations](#).

## I. Official Information Act and Privacy Act requests

All requests for information made by a NHC customer under the [Official Information Act 1982](#) must be referred in the first instance to the appropriate NHC representative.

Persons we authorise may process requests for information in relation to the NHCover claim under the [Privacy Act 2020](#).

### **m. Media enquiries**

All media inquiries related to NHC or any NHCover claim must be referred to the appropriate NHC representative.

Specified NHC staff are authorised to speak to the media on our behalf. No other person may speak to media on our behalf.

### **n. Suspected fraudulent claims**

We do not tolerate fraud or corruption in any form. We are committed to preventing, detecting and responding to fraud, dishonesty and corruption. We do this by developing efficient controls and processes to reduce the likelihood of, opportunities for and effect of fraud, dishonesty and corruption.

We have established a Fraud Policy to assist in preventing, detecting and responding to fraud and corruption when it occurs, including by:

- encouraging transparency and ethical behaviour across our operational activities;
- applying our values to ensure that all persons dealing with claims are aware of the ethical standards that are expected of them;
- articulating our position on fraud and corruption;
- detailing our responsibilities (and the responsibilities of persons we authorise) to ensure that appropriate prevention, detection and response processes are in place;
- communicating our procedures and systems used to detect and prevent fraudulent, dishonest and corrupt behaviour;
- providing training and education where required on how to identify activities that could be fraudulent or corrupt; and
- informing all persons dealing with claims of their obligations to report fraud and corruption and the process to do this.

We will issue and notify the Fraud Policy from time to time.

The person dealing with an NHCover claim must comply with their responsibilities under the Fraud Policy, including to:

- adhere to and comply with this policy and any processes relating to the policy;
- report suspected fraud and corruption through the authorised persons' appropriate internal reporting channels;
- ensure fraud risk controls that are agreed are embedded into processes and adhered to;
- complete fraud awareness training to assist in knowledge of potential red flags that can indicate fraudulent or corrupt activities; and
- co-operate in investigations if required to do so, including by making available necessary information.

## **o. Salvage**

[Sections 82 to 85](#) of the NHI Act set out the rights of NHC as to salvage.

If a claim is settled by way of payment, replacement or reinstatement, or relocation we may exercise our rights to salvage property.

We may salvage:

- any part of the property settlement relates to (other than land) that is not required for the purposes of reinstating or replacing that property by taking possession of that part of the property; and/or
- land in certain circumstances (see Section 12.o of the [NHC Claims Manual - Residential Land - NHI Act](#)).

[Sections 82 to 85, NHI Act](#)

The person dealing with an NHCover claim must escalate the matter to the appropriate NHC representative if they:

- consider that it may be appropriate in all the circumstances for us to exercise our salvage powers; or
- become aware that any private insurer involved intends (or considers it may be appropriate) to exercise salvage powers.

#### **p. Recordkeeping**

We are subject to recordkeeping obligations under the [Public Records Act 2005](#). Any person dealing with an NHCover claim must:

- maintain full, complete and accurate records for that claim (and any other NHC matters they are working on); and
- compile and have available for us the full file relating to the NHCover claim and any other information as we direct from time to time.

#### **q. Reimbursing fees incurred by customers where a claim is reassessed**

Sometimes a customer who has asked for their NHCover claim to be reassessed provides, in support of that request, a report that they have commissioned and paid for (such as an engineering report or a contractor's quotation).

At our discretion, we (or a person we authorise) may reimburse the customer (in whole or in part) for the cost of obtaining that report or quotation. In exercising our discretion, we (or a person we authorise) should take into account:

- whether the report or quotation uncovers legitimate natural hazard damage that we (or a person we authorise) did not identify during the original assessment of the property;
- if so, whether the repair strategy and/or the further natural hazard repair works recommended in the report or quotation are reasonable in all the circumstances; and
- if so, whether the costs claimed are reasonable.

Reimbursement of such costs is not guaranteed. Whether those costs should be reimbursed must be determined based on the specific facts of each claim and must comply with our Customer Reimbursement Policy.

#### **r. Escalating matters to NHC**

In this Manual, the words:

- ‘must be escalated to the appropriate NHC representative’ mean that that action is required. The matter has to be raised with the appropriate NHC representative – and there are no exceptions;
- ‘should be escalated to the appropriate NHC representative’ mean that that action is not required, but is recommended. We expect that the matter will be raised with the appropriate NHC representative – except in the occasional instance where it is not reasonably necessary to do so.

We will provide:

- a list of appropriate NHC representatives, including contact details; and
- the process for escalating matters under this Manual.

This list and the process will be issued and notified by us from time to time.

Any person escalating a matter to the appropriate NHC representative must comply with the escalation process set out by us.

## APPENDICES

### Appendix 1. How is the cash settlement of an NHCover residential building claim communicated?

#### a. Overview

The purpose of the communication of the cash settlement of an NHCover residential building claim is to clearly inform the person receiving the cash settlement (the recipient):

- that we have completed assessing the natural hazard damage;
- how the building claim entitlement has been calculated;
- how the building claim entitlement is being paid;
- of the possible consequences for their future NHCover of not using the building claim entitlement for the purpose of repair or replacement;
- of their rights to refer disputes about referable decisions to the dispute resolution scheme, and any information about that scheme (see Section 11.k.ii in this Manual for further details, including the definition of a 'referable decision'); and
- how they can obtain further information.

The [Code of Insured Persons' Rights](#) imposes obligations on us (and persons we authorise) when communicating with insured persons. See Section 11.j in this Manual for further details about the Code of Insured Persons' Rights.

#### Section A: Requirements

To this end, the minimum requirements set out in Section A of this Appendix must be addressed in the settlement communication when communicating the cash settlement of an NHCover residential building claim.

Appendix 1 – How is the cash settlement of an NHCover residential building claim communicated?



Other than the procedural requirements outlined in Section 8.j in this Manual, we do not generally prescribe any particular format for the communication. However, the communication must:

- be in writing;
- meet the requirements as set out in Section 10.A.c in this Manual and be consistent with them throughout; and
- be in the form of an NHC template, if we have issued a template communication that we and the persons we authorise agree to use.

If a form is approved by us in line with section 161 of the NHI Act, this must be used.

[Section 161, NHI Act](#)

Where a private insurer is dealing with an NHCover residential building claim on our behalf, the communication may be:

- in two communications (one about the NHCover residential building claim and one about the building component that is covered by the private insurer for the same property); or
- in one communication (about both), provided the two components can clearly be understood separately.

While examples are set out below of how the requirements in Section A of this Appendix might be addressed in the settlement communication, we do not prescribe any particular form of words (except where we supply a specific template for communications). However, when communicating with customers, other requirements (including as to clarity and tone) must be met (see Section 11.d in this Manual).

Section B: Suggestions

Section B of this Appendix sets out some suggested items for the settlement communication. While we recommend that people dealing with NHCover residential building claims consider including these items in the settlement communications, these are not required.

Communication templates prepared by private insurers and third-party providers must be approved by NHC

All template settlement communications must be pre-approved.

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We will consider requests for approval promptly and will not unreasonably withhold approval.

### Scope of Appendix

This Appendix does not address the specific circumstances where a repair has already been carried out in relation to the current residential building claim and the residential building needs to be reassessed because that repair strategy has failed or otherwise. Additional matters will need to be addressed in communications of settlements following such assessments.

## **A. Requirements for cash settlement communications about NHCover settlements**

- 1. Where a private insurer or third-party provider is dealing with the residential building claim, make clear that the private insurer or third-party provider is acting in an agency role in assessing and settling that residential land claim in accordance with the NHI Act**

Unless we direct otherwise, the communication must make clear that the NHCover residential building claim (as distinct from any private insurer claim):

- is being managed by the private insurer or third-party provider on our behalf; and
- is being assessed and settled by the private insurer or third-party provider in accordance with the NHI Act.

The private insurer or third-party provider must make it clear that they are acting as our agent, whether the amount of damage exceeds the NHCover cap or not.

- 2. Set out the claim number for the NHCover claim(s), the address of the property where the natural hazard damage occurred, and the relevant natural hazard event(s)**

The communication must include the following three items:

#### i. The relevant claim number of each NHCover claim

This is a number allocated by NHC (or a person we authorise).

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ii. The property where the natural hazard damage occurred

This is the street address for the property.

iii. The relevant natural hazard event that is the subject of the building claim entitlement

The term ‘event’ is discussed in more detail at Section 3.f.iii in this Manual.

Example

Dear [            ],

Your claim(s): [            ] Damage address: [            ]

Natural hazard event(s): [    ]

[Text of letter starts here ...]

**3. Make clear that the settlement covers the residential building**

The communication must make clear that it covers the residential building claim.

Example for letter from private insurer or third-party provider

On behalf of NHC, we are settling your NHCover claim for the earthquake damage to your residential building.

**4. Make clear if any residential land claim is being dealt with separately**

If any residential land claim for the same NHCover claim is being dealt with separately (for example, by another NHC agent), the communication must also include a clear statement regarding that fact.

**5. Confirm that the assessment of the natural hazard damage has been completed**

Before settlement, the person dealing with the residential building claim must have completed an assessment of:

- whether the residential building has incurred natural hazard damage; and
- if so, the extent of that natural hazard damage.

This must be confirmed in the communication.

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### Example

We have now completed the assessment of the earthquake damage to your residential building.

## **6. Itemise separately the damaged property that pertains to the NHCover residential building claim and provide a separate costing for those items**

The communication must set out what damaged items pertain to the NHCover residential building claim and the costings for the repair or replacement of that damage to the relevant standard under the NHI Act.

Where a private insurer is dealing with the residential building claim on our behalf (or where a third-party provider is dealing with a residential building claim on behalf of both NHC and a private insurer), these items must be shown separately from any items that pertain exclusively to the private insurer claim (e.g. fences, swimming pools, paving).

### Example

Enclosed is a scope of works that relates to your NHCover residential building claim. This document shows the items damaged by the event claimed and the estimated cost to repair this damage based on a visual inspection of the property only.

## **7. Set out the situation under the NHCover settlement where damaged property potentially contains asbestos or is otherwise contaminated**

The communication must address the situation where any damaged property (under the NHCover claim) potentially contains asbestos or is otherwise contaminated.

The communication must explain:

- how the costs cover asbestos testing (or testing for any other contamination); and
- what happens should the test be positive.

### Example

Asbestos testing [delete whole section if not applicable]

A cost allowance is included in your NHCover cash settlement for sampling and testing earthquake-damaged areas potentially containing asbestos. If the test returns a

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negative result, there is nothing more you need to do because your cash settlement will not be affected.

If the test returns a positive asbestos result, you will need to provide a copy of the asbestos test certificate to us because your cash settlement figure may need to be reviewed.

You can find information about asbestos and testing by visiting <https://worksafe.govt.nz/topic-and-industry/asbestos/>

## **8. Include supporting documentation from professional advisers who have been involved in the assessment**

Reports that have been commissioned from engineers and other professionals in the assessment of the NHCover residential building claim must be included in the communication.

### Example

Enclosed with this letter are some documents to explain how we calculated your NHCover residential building claim entitlement. These documents are: [Delete as applicable]

- Engineering report
- Surveyor's report
- Architect's report

## **9. Set out how the settlement amount has been calculated**

For each NHCover claim, the communication must set out the total amount payable for the residential building damage. It should also include a breakdown that explains the total amount payable.

The total amount payable does not exceed the relevant NHCover caps under the NHI Act. This amount should be GST-inclusive (if any).

The amount deducted for the excess calculated under the NHI Act must be shown separately.

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Any previous payments made in respect of an NHCover residential building claim must be itemised separately.

An example for a single NHCover residential building claim is set out immediately below.

Example for single NHCover residential building claim

Item	Amount	Excess deducted*	Less payments already made**	Balance
Residential building	\$	\$	\$	\$
Total payment incl. GST (if any)				\$

\* **Residential building** - The excess deducted per NHCover claim for a residential building is \$500 multiplied by the number of dwellings in the residential building.

\*\* This amount includes the cost of urgent works (if any) already paid or reimbursed by us to you. Any other prior payments (e.g. interim payments) are also included here. Any prior payments are net of any excess deducted at the time that the prior payment was made.

Urgent works

Urgent (or emergency) works are repairs that are needed to make the residential building safe, sanitary, secure and weathertight.

Sometimes the customer needs to get urgent help from a tradesperson to carry out some urgent repairs of natural hazard damage. For example, the customer may need to get essential services like toilets and water systems up and running (if possible) or otherwise get work done to make the residential building safe, sanitary, secure and weathertight.

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The customer may have sent invoices (or receipts) for urgent works from these tradespeople to the person dealing with the residential building claim. That person may then either:

- pay the customer, so the customer can in turn pay the tradesperson for the urgent works; or
- reimburse the customer, where the customer has already paid the tradesperson for the urgent works.

Any such payment or reimbursement for the cost of urgent works to the customer depends on there being a valid NHCover claim and no grounds to decline the claim under the NHI Act. See Section 3 in this Manual.

We do not anticipate paying the tradesperson directly for urgent works, except in exceptional circumstances.

#### Where urgent works have already been paid for or reimbursed to the customer

Set out below is a step-by-step guide to calculating the building claim entitlement if the cost of the urgent works has already been paid for or reimbursed by us to the customer:

- **Step 1:** The full cost of the urgent works already paid or reimbursed to the customer should be included for the purposes of calculating whether the NHCover residential building settlement is under or over the building cover cap.
- For example, the person dealing with the residential building claim pays or reimburses the customer for the cost of the urgent works. That person then later assesses (under the same residential building claim) other repairs to the natural hazard damage. The full cost of the urgent works and the full cost of the other repairs (without deducting any excess at this point of the calculation) are added together to calculate whether or not the NHCover cap has been reached.

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- **Step 2:** The ‘amount’ inserted in Column 2 of the table above (for residential building) is the lesser of:
  - the amount calculated under Step 1 by adding together the full cost of the urgent works and the full cost of the other repairs; or
  - the building cover cap. See Section 8.e in this Manual regarding the amount of the NHCover cap.
- **Step 3:** The applicable ‘excess’ in Column 3 should be identified. The excess is calculated on the ‘amount’ inserted in Column 2. The excess is then deducted from the amount in Column 2.
- **Step 4:** The urgent works already paid or reimbursed is inserted in Column 4. This payment or reimbursement must also be deducted.

If an amount of excess was deducted at the time that the urgent works were paid, the amount inserted in Column 4 should be net of that excess that was deducted. This is to ensure that the excess is not deducted twice.

The resulting balance – once the amount in Columns 3 and 4 are deducted – is the building claim entitlement. That ‘balance’ is inserted in Column 5. See the equation on the next page.

**Amount in Column 2**

**minus Excess in Column 3**

**minus Amount in Column 4**

-----

**Equals Balance in Column 5**

The above example assumes there are no other payments in respect of the residential building claim (i.e. other than the payment or reimbursement for the urgent works) already made.

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### Where urgent works have **not** already been paid for or reimbursed by NHC

If, at the time of settlement, the cost of the urgent works has not already been paid for or reimbursed:

- the cost of the urgent works should be simply included in the amount in Column 2. The amount in Column 2 must not exceed the NHCover cap;
- the excess in Column 3 should be deducted;
- the cost of the urgent works is not included in Column 4. This is because the cost has not already been paid or reimbursed to the customer. The cost is therefore not deducted.

The communication must also:

- explain that the cost of the urgent works has been included in the Amount in Column 2; and
- state the cost of the urgent works.

### Multiple events

The principles for assessment where there are multiple events must be applied to NHCover residential building claims where multiple but separately insured natural hazard events have caused damage to the residential building. See Section 6.C in this Manual.

In the case of multiple residential building claims, we suggest separate tables for each NHCover claim.

## **10. Set out how the NHCover residential building claim entitlement will be paid**

The communication must set out that the NHCover settlement is a cash settlement, and the mode of payment. For more detail on payments to mortgagees and people other than the customer, see Item 11 below.

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### Example

#### **Payment paid to mortgagee**

Your cumulative cash payments for your NHCover residential building and residential land claims have exceeded your mortgagee's threshold. Payment has been made to the mortgagee and they have received a copy of this letter.

#### **Payment to your bank account**

The payment for your NHCover building claim entitlement has been electronically transferred to the bank account [insert account name here].

[Delete the option above that does not apply]

## **11. Identify who the payment will be made to**

In most cases, the building claim entitlement is paid to:

- the insured person (the person entitled to the benefit of the fire insurance contract) (see Section 3.h.i in this Manual); or
- the mortgagee.

### Mortgagees

In practice, most major lenders have supplied us with a waiver, referred to as the 'mortgagee cap'. The mortgagee cap lets us pay claims up to a certain amount directly to the insured person and not to the mortgagee.

Payment should be made to a mortgagee where the mortgagee cap is met (see Section 9.d in this Manual).

The NHCover threshold applies across the entire NHCover claim (both the residential land and the residential building claims). Accordingly, where different people are dealing with the two claims, they must liaise with each other about this before paying the building claim entitlement.

An example of a paragraph setting out payment to a mortgagee is set out under Item 8 above.

If the insured person is two or more persons, or two or more persons are lawfully entitled to payment.

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The settlement payment must be divided in accordance with the respective rights of each person if:

- the insured person is two or more persons, or
- two or more persons are lawfully entitled to payment (see Section 9.b in this Manual).

The form of communication will likely need to be adapted if all or part of the building claim entitlement is paid to a person lawfully entitled to payment, other than the insured person or the mortgagee. The changes will need to explain the payment (or part payment) of the building claim entitlement to that person.

## **12. Set out the possible consequences for future NHCover of not using the building claim entitlement for the purpose of repair or replacement**

We have a discretion to cancel cover and decline cover in some instances where the building claim entitlement is not used to carry out the repair or replacement.

The communication must set out the possible consequences if the building claim entitlement is not used for the purpose of repair or replacement.

### Example

It is important that the NHCover building claim entitlement is used to repair or replace the damaged property. In some circumstances, any future NHCover claims may be affected if your NHCover building claim entitlement is not used for this purpose.

We strongly recommend that you proceed with your repair or replacement promptly to minimise the risk of inflation increasing the cost. If the NHCover building claim entitlement does not cover the full cost of repair or replacement, you may wish to contact your private insurer to see whether there is any further cover under your private insurance policy.

## **13. No full and final discharge required**

NHCover settlements are not full and final, and recipients should not be required to enter into any form of full and final discharge.

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#### 14. A building claim entitlement is not an offer

A building claim entitlement is an entitlement under the NHI Act. It is not an offer, and the settlement communication should not be expressed as an offer subject to the customer's acceptance.

#### 15. Set out how the recipient can request further information

The communication must set out how the recipient can request further information regarding the assessment and settlement of the NHCover residential building claim.

##### Example

For further information about the assessment and settlement of your NHCover claim, you can contact us by email on [ ] or call [ ].

### B. Suggestions for cash settlement communications from private insurers or third-party providers about NHCover settlements

The following items are suggested but not required.

#### 16. Set out an acknowledgement regarding accuracy of information provided in support of the NHCover residential building claim

The communication may include a record of the recipient's agreement that the information they have provided in support of the NHCover residential building claim is correct.

But the acknowledgement should not go beyond this. Settlements are not full and final, and recipients should not be required to enter into any form of full and final discharge.

##### Example

By accepting this payment, you are agreeing that the claim information that you submitted in support of the NHCover claim is true and accurate and that you have not withheld any material information. Please inform us if you are or become aware that the claim information you provided is no longer accurate or you have new information.

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## 17. Refer to guidance about repairing and rebuilding

The [Ministry of Business, Innovation and Employment \(MBIE\)](#) from time to time prepares guidance for homeowners repairing or rebuilding. This guidance may be helpful for recipients.

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