Natural Hazards Commission
Toka Tū Ake

NHI Act – For claims made in relation to initial damage from natural hazards occurring **on or after** 1 July 2024

NHC Claims Manual – Residential Land – NHI Act

Version as at 13 August 2026

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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 land 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[1] about an NHCover claim, an affected person 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[2] 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.

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

[1] '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.

[2] 'Initial damage' is defined in section 53 of the NHI Act.

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 Buildings – NHI Act

This Manual sets out how we apply the NHI Act when dealing with residential land claims in practice.

A separate manual called the NHC Claims Manual - Residential Buildings - NHI Act sets out how we apply the NHI Act when dealing with residential building claims in practice.

2. Overview

The flow diagram below illustrates the steps in the journey of assessing and settling an NHCover residential land 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 in this Manual which set out the relevant NHC policies.

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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.c in this Manual);
- the claim is made to us (or a person we authorise) or to the customer's private insurer (Section 3.d in this Manual);
- the claim includes the required details (Section 3.e in this Manual), and is made verbally or in writing (Section 3.f in this Manual);
- the claim is made within the time limit (Section 3.g in this Manual);
- the property the claim relates to is residential land (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.h and Section 3.i in this Manual); and
- the property has suffered natural hazard damage (see Section 6 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.i 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:[3]

- 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 12.k 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.

The claims manager establishes that the claim is for natural hazard damage of the same type that is notified on the RT (landslide).[4] At this point, the claims manager has not established whether the claim is valid, because the damage

[3] The insured person can also be notified of the decision verbally, but they must then also be provided with written confirmation of the decision.

[4] 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.

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 8 in this Manual for details on the declinature process.

Section 59(3), NHI Act

c. 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.c.iii in this Manual.

i. Who is an 'insured person'?

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

> 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.h in this Manual). This is usually the person (or persons) named as the insured in the fire insurance contract for the residential building.

Other people 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

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) 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) 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.

Generally, if person A is an insured person as a result of the Regulations in relation to all or part of a residential building ('building X'), person A is also an insured person in relation to the residential land for building X or the relevant part of building X.[5] This does not apply if:

- person A does not hold an insurable interest in the residential land;
- person A has the benefit of a contract of insurance in relation to the residential land, on the same terms as set out above;

[5] Residential land for building X means the land that is residential land within the meaning of section 17 of the NHI Act in relation to building X.

- person A has a legal obligation to insure their own interest in the residential land, which person A owes to the specified insured person (in either of the two circumstances above);
- in relation to the specified insured person (in either of the two circumstances above), person A has retained or assumed the risk of physical loss or damage in relation to their own interest in the residential land; or
- all of the following apply:
    - person A has an insurable interest in a building or part of a building ('building Y') that relates to the residential land, which is not, and is not part of, building X;
    - the residential land is for the use or benefit of the owners or other occupants of premises in both building X and building Y; and
    - building Y is not part of the same eligible building as building X.

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.

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.c.iii in this Manual).

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.

If Owner A makes a claim for natural hazard damage to residential land that includes shared land between Owner A and Owner B, that is only a valid claim for damage to:

- Owner A's property; and
- any such shared land (within Owner A's residential land).

In some cross-lease situations, there may be a number of persons who own the undivided share in a piece of land, but the same principles apply regarding making claims.

d. 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 residential land or a residential building, 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, a person we authorise[6] 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

[6] 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 land and residential building) within the time limit (see Section 3.g in this Manual). A claim that is made for natural hazard damage to one type of insured property is sufficient.[7]

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 building is sufficient for any damage that is later found to the residential land.

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

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

[7] An NHCover claim can include damage to residential land and a residential building. 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 land has cracked and the roof has collapsed).

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 land or residential building; and
- natural hazard damage to that person's insured residential land or residential building will need to be specifically claimed for.

e. 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; and
- any other persons who have an insurable interest in the damaged property.

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.

f. How can the NHCover claim be made?

A claim for 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

g. 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'.[8] 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 8.h.i in this Manual.

Section 68, NHI Act

[8] See Section 3.g.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 that 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 property 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 6.b and 6.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

A bridge abutment is undermined by a flood, and a week later (i.e. outside the 48-hour period) the bridge superstructure collapses as a direct result of the flood damage. The damage to the bridge superstructure 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 flood.

Extended damage is not imminent damage

Extended damage is different to imminent damage (see Section 6.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

h. 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:

> (1) 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).

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 land 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) within the relevant residential building. The relevant residential building is the one on the residential land that has suffered the natural hazard damage.

If the fire insurance contract covers the residential building, the residential building is insured under the NHI Act. In turn, once the residential building is insured under the NHI Act, the associated residential land is also insured under the NHI Act (see Section 4.b in this Manual).

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 for the residential building (and the residential land) may depend on whether the dwelling(s) within the residential building is covered by a separate fire insurance contract (i.e. as well as the contracts works policy). See Section 4.f.v in this Manual.

For the definition of the term 'residential building', see Section 5 in this Manual.

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 for the residential land continues only while the NHCover for the associated residential building is 'in force'. In turn, the NHCover for the residential building continues only while the fire insurance contract for that building is in force, unless direct NHCover is in force.

If the private insurer cancels or suspends the fire insurance contract for the residential building or if the contract expires or otherwise ceases, unless direct NHCover is in force, there is no NHCover for:

- the residential building; or
- the associated residential land.

What if there is no longer a 'residential building' at the date of the natural hazard damage?

NHCover for the residential land continues as long as the NHCover for the residential building continues.

So, if a building no longer meets the definition of 'dwelling' in the NHI Act, NHCover nevertheless continues for that building and the associated residential land 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 and/or that land (see Section 3.i in this Manual).

An example of where a building no longer meets the definition of 'residential building' 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 8 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, the matter should be escalated 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 either the residential building or the residential land.

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 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.

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

i. Cancellation of NHCover

The RT[9] for the property must be checked to ensure that the NHCover has not been cancelled.

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

- A land claim has been settled by paying a land claim entitlement that was calculated using the assessed market value, and the area of the damaged part of the residential land is greater than the area cap or is the whole of the residential land (see Section 9.e.i in this Manual); and
- 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 reasonable opportunity to take those steps.

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

For when residential building cover can be cancelled, see Section 3.i.i of the NHC Claims Manual - Residential Buildings - 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

[9] 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).

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 an invalid claim.

How cover is cancelled

In the case of residential land, 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 land cover, building 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 from 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

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;
- 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 land 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.

If we have cancelled the NHCover or EQCover for a residential building, that cancellation also has the effect of cancelling the NHCover for the associated residential land for that building only (not to any other parts of the insured person's land) or the EQCover for the associated residential land.

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:

- residential land has suffered natural hazard damage as a direct result of a landslide, flood or storm;
- 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

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;
- 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 is then 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.i 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 at Section 8 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 8 in this Manual must still be followed.

Sections 68 to 77, NHI Act

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 the 'ground-up' cover or 'top-up' cover distinction relevant to NHCover for residential land?

Yes. This is because some fire insurance contracts may cover some residential land.

Most private insurers do not generally cover land in a fire insurance contract. But a private insurer's fire insurance contract for a residential building may sometimes cover retaining walls, bridges and culverts. Some retaining walls, bridges and culverts are insured as 'residential land' under the NHI Act. See Sections 4.b, 4.h, 4.i and 4.j in this Manual.

iv. 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.

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

v. 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

No levy for residential land cover

No levy is payable in respect of the insurance of any residential land under the NHI Act.

However, there is no residential land cover without there being a fire insurance contract in force for the residential building. And there is a levy for the residential building cover under the NHI Act.

What if the levy is not paid for the residential building cover?

The customer's NHCover claim can proceed if:

- the private insurer has not paid an NHI levy due to us for the residential building cover; 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 9.e and 9.g in this Manual);
- that the 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.

4. Is there insured 'residential land'?

a. Overview

The definition of 'residential land' draws a line between land that is insured under the NHI Act and land that is not.

In general terms, to find what the insured residential land is, it is necessary to identify:

- the relevant 'residential building' (Sections 4.b and 4.c in this Manual);
- the insured person's land (Section 4.d in this Manual);
- the land the residential building (excluding service infrastructure) is situated on (Section 4.e in this Manual);
- the land within 8 metres, in a horizontal line,[10] of the residential building (excluding service infrastructure) (Section 4.f in this Manual);
- the main access way to the residential building (excluding service infrastructure) and land supporting the main access way (Section 4.g in this Manual);
- the retaining walls and their support systems situated within the insured person's land, and certain retaining walls and their support systems situated outside the insured person's land (Section 4.h in this Manual);
- the bridges situated within the insured person's land, and certain bridges situated outside the insured person's land (Section 4.i in this Manual); and
- the culverts situated within the insured person's land, and certain culverts situated outside the insured person's land (Section 4.j in this Manual).

Details of these matters are set out in Sections 4.c to 4.j in this Manual. For a description of 'residential building', see Section 5 in this Manual.

Schedule 2 of the NHI Act lists items that are excluded property under the NHI Act. This Schedule has the effect of excluding some property from cover that may otherwise have been insured as components of the residential land (Section 4.k in this Manual).

[10] Section 5(2) of the NHI Act provides that 'a reference to a distance in metres means that distance measured in a horizontal line'.

b. What is 'residential land'?

i. 'Residential land' is in relation to a 'residential building'

Identifying the relevant residential building is critical to identifying the residential land insured under the NHI Act.

The area of land that is insured under the NHI Act is generally identified by reference to the residential building situated on that land.

ii. Key components of residential land

The residential land definition in the NHI Act can be broken down into the following components:

- 'insured land areas':
    - the land under the residential building (excluding service infrastructure) (Section 4.e in this Manual);
    - the land within 8 metres, in a horizontal line, of the residential building (excluding service infrastructure) (Section 4.f in this Manual); and
    - the land within 60 metres, in a horizontal line, of the residential building (excluding service infrastructure) that is either the main access way (from the boundary of the insured person's land) to the residential building or land that supports that main access way (Section 4.g in this Manual);
- 'insured land structures':
    - certain retaining walls and their support systems. These must be necessary for the support or protection of the residential building (excluding service infrastructure) or the insured land areas (Section 4.h in this Manual); and
    - the bridges (Section 4.i in this Manual) and culverts (Section 4.j in this Manual) within the insured land areas, and certain bridges and culverts fully or partially outside of the insured person's land.

For each of these components, the residential building is critical (see Section 4.c and Section 5 in this Manual). Importantly, the residential building typically includes not only the dwelling, but also buildings and structures appurtenant to the dwelling.

For further information on the exclusion of certain service infrastructure from the definition of 'residential building' for the purpose of determining residential land, see Section 4.e.i

What is the ‘residential building’ for this purpose? in this Manual.

Section 17(1), NHI Act

iii. Insured land areas must be part of the 'insured person's land'

For land areas to be residential land (and insured under the NHI Act), they must be part of the ‘insured person’s land'.

Section 17(1)(a), NHI Act

'Insured person's land' is defined as:

> … all the land that the estates and interest that make up the land holding within which a residential building is situated relate to.

Section 16(1), NHI Act

Therefore, the insured person's land is determined by confirming the 'land holding' the residential building is situated within (Section 4.d in this Manual). In other words, for land areas to be insured under the NHI Act as residential land, they must be within the land holding.

The land holding is further defined as 'estates or interests' that the insured person has in relation to:

- the land the residential building is lawfully situated on;
- land that is contiguous with, and used, or intended to be used, as a single residential property with the land the residential building is lawfully situated on; and
- land that benefits any of these estates or interests in land.

Section 16(2), NHI Act

Estates and interests include freehold titles and easements, but do not include non-proprietary rights to use the land, such as a licence to occupy or an encroachment licence.

Section 16(3), NHI Act

The difference between the insured person's land and the land holding is best understood as follows:

- The insured person's land is the physical land.
- The land holding is the legal rights and interests held by the insured person. For example, their freehold title plus an easement they hold over a neighbouring property.

The insured person's land generally refers to the land within the boundaries shown within the RT for the property. However, the insured person's land can sometimes include areas of land outside those boundaries. See Sections 4.d.i, 4.d.ii and 4.d.iii in this Manual.

Once the insured person's land has been determined by reference to the land holding, the next step is to establish what the residential land is (land areas and land structures) that is insured under the NHI Act. This includes:

- the land areas within the insured person's land that are residential land;
- the retaining walls, bridges and culverts that are within the insured person's land that are residential land; and
- certain retaining walls, bridges and culverts that are fully or partially outside the insured person's land and are residential land.

iv. Various components together can make up 'residential land'

One or more of these components together can comprise the insured 'residential land'. So, for example, in broad terms 'residential land' could be:

- the land under the dwelling and the garage PLUS the land within 8 metres of the dwelling PLUS the land within 8 metres of the garage PLUS the land that is part of the main access way (from the boundary of the insured person's land), to each of the dwelling and the garage that is within 60 metres of the dwelling and the garage;
- the land under the dwelling PLUS the land within 8 metres of the dwelling PLUS a retaining wall (and its support systems), within 60 metres of the residential building, that is necessary for the support or protection of the insured land areas; or

- the land under the dwelling PLUS the land within 8 metres of the dwelling PLUS land that is part of the main access way (from the boundary of the insured person's land), to the dwelling that is within 60 metres of the dwelling PLUS a bridge within the insured land areas PLUS a retaining wall (and its support systems), within 60 metres of the dwelling, that is necessary for the support or protection of the insured land areas.

v. Residential land may include 'common land', 'joint land' and 'shared land'

Joint and common land

Where a residential building is a mixed-use building (see Section 4 of the NHC Claims Manual - Residential Buildings - NHI Act), the residential land may include common land or joint land.

Common land is any part of the residential land that is for the use or benefit of all of the owners or occupants of the mixed-use building, and which all of the owners have an insurable interest in.

Joint land is any part of the residential land that is for the use or benefit of some, but not all, of the owners or occupants of the mixed-use building, and which those owners have an insurable interest in.

Shared land

Any residential land may include shared land. Shared land is any part of the residential land that a person who is not the insured person has an insurable interest in. See Section 3.c.i Who is an insured person for the purpose of shared property and shared land? in this Manual.

Section 19, NHI Act

Determining what part of the common, joint or shared land has NHCover

Common, joint and shared land have NHCover on a proportionate basis, depending on the 'common ownership interest', 'joint ownership interest' and 'shared ownership interest' respectively. For how to determine these interests, see Section 4.D.e.ii to 4.D.e.iv of the NHC Claims Manual - Residential Buildings - NHI Act.

Section 20, NHI Act

vi. Timing of determination of whether or not there is 'residential land'

Whether any area of land, retaining wall, bridge, and/or culvert meets the requirements of the residential land definition is usually determined:

- when the new fire insurance contract or direct NHCover for the associated residential building is entered into; or
- if that 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 associated residential building no longer meets the definition of 'residential building' in the NHI Act, NHCover for that building and its associated residential land nevertheless continues. The cover continues for the residential land until:

- the fire insurance contract for the associated residential building ceases to be in force (e.g. expires or is cancelled or suspended by the private insurer); or
- the direct NHCover for the associated residential building ceases to be in force (e.g. expires or is cancelled by NHC); or
- when the fire insurance contract comes to an end (whether for renewal or otherwise), the associated building no longer meets the definition of 'residential building' and/or the associated land no longer meets the definition of 'residential land'; or
- we cancel the NHCover for that building and/or the associated residential land (see Section 3.i.i in this Manual).

Section 29(3), NHI Act

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

Where the associated residential building temporarily ceases to meet the criteria to be a residential building, it can, in certain circumstances, remain a residential building under the NHI Act, allowing NHCover for that building and its associated residential land to continue. For further details see Section 4.C.c.ix of the NHC Claims Manual - Residential Buildings - NHI Act.

Section 6(4), NHI Act

Sometimes a residential building is undergoing alterations at the time of the natural hazard. These alterations may extend or reduce the building footprint. For determining the extent of the residential land in this situation, see Section 4.f.v in this Manual.

c. Identifying a 'residential building' is critical to determining whether there is 'residential land'

i. What is a 'residential building'?

Identifying the residential building on the insured person's land is a critical first step in applying the residential land definition.

'Residential land' is defined under the NHI Act to mean certain property in relation to the residential building.

ii. What does residential land 'in relation to a residential building' mean?

The residential land definition in the NHI Act begins in this way:

> (1) The residential land, in relation to a residential building, is—…
>
> Section 17, NHI Act

To determine what property comes within the residential land definition, it is necessary to identify that property by reference to each residential building lawfully situated on the insured person's land (excluding service infrastructure outside of both the eligible building and the appurtenant structures).

Residential land in relation to different types of residential buildings

This Manual sets out how to determine the residential land in the following situations:

- where there is a single residential building with one or more dwellings insured under a single fire insurance contract (Section 4.c.iv in this Manual);
- where there is more than one residential building on the insured person's land (Section 4.c.v in this Manual);
- where there is a cross-lease property (Section 4.c.vi in this Manual);
- where there is a building that contains both dwellings and commercial premises, but the residential percentage is greater than 50% (Section 4.c.vii in this Manual);

- where there is a mixed-use building (Section 4.c.viii in this Manual);
- where there is a mixed-use building and common or joint land (Section 4.c.ix in this Manual); and
- where there are two buildings and shared land (Section 4.c.x in this Manual).

iii. The residential building must be lawfully situated on the insured person's land

For there to be residential land cover in relation to a particular residential building, the residential building must be 'lawfully' situated on the insured person's land.

Section 16(2)(a), NHI Act

For example, to be lawfully situated on the insured person's land, the residential building must not have been built without the permission of the owner of the land that the building was built on. The owner's permission may be in any form – written or verbal, permanent or temporary.

What if the residential building was once (but is no longer) lawfully situated?

The residential building is treated as not lawfully situated on the insured person's land if it is no longer there lawfully.

For example, the residential building is not lawfully situated on the insured person's land if:

- the residential building was lawfully built on the insured person's land (because the owner of the land gave permission for the building to be built and kept there for a certain period); but
- the building is no longer lawfully situated on the insured person's land (because the owner has lawfully revoked that permission).

Where it appears that a building is not lawfully situated on the insured person's land, all relevant information about that building should be collected, and the matter should be escalated to the appropriate NHC representative.

iv. Situation where there is a residential building with one or more dwellings insured under a single fire insurance contract

It is straightforward to identify the extent of the insured residential land where:

- the insured person's land contains a single residential building comprising one or more dwellings;
- the whole building is insured under a single fire insurance contract; and
- there are one or more appurtenant structures (e.g. a garage or shed).

In this situation, the insured residential land comprises:

- the land which the dwelling and the appurtenant structures are situated on;

  Section 17(1)(a), NHI Act

- all land within 8 metres, in a horizontal line, of the dwelling and of each appurtenant structure (excluding service infrastructure);

  Section 17(1)(b), NHI Act

- the land that:
  - is within 60 metres, in a horizontal line, of the dwelling and of each appurtenant structure (excluding service infrastructure); and
  - constitutes the main access way or part of the main access way to the dwelling and to each appurtenant structure (excluding service infrastructure) from the boundary of the insured person's land, or supports land that is part of that access way; and

  Section 17(1)(c), NHI Act

- all retaining walls and their support systems within 60 metres, in a horizontal line, of a dwelling and of each appurtenant structure (excluding service infrastructure) necessary for the support or protection of:
  - the dwelling and the appurtenant structure (excluding service infrastructure); or
  - any of the above areas of land.

This includes retaining walls and their support systems situated fully or partially outside the insured person's land and which the insured person has an insurable interest in.

Section 17(1)(d), NHI Act

- all bridges and culverts situated on or in land that is:
    - any of the above areas of land, or
    - fully or partially outside the insured person's land but is otherwise land of the kind referred to as the insured land areas and which the insured person has an insurable interest in.

Section 17(1)(e), NHI Act

v. Situation where there is more than one residential building on the insured person's land

If there is more than one residential building lawfully situated on the insured person's land, the insured residential land is determined by reference to each residential building.

For example, if there are two residential buildings on the insured person's land, the insured residential land must be determined by reference to each of those buildings (which includes their respective appurtenant structures).

vi. Situation where there is a cross-lease property

Where there is a cross-lease situation, the extent of the insured residential land must be identified depending on how many separately insured residential buildings there are.

A single building with multiple dwellings insured as a single building

Sometimes in a cross-lease property, the dwellings are located in one building that is insured as a single residential building under the NHI Act. In that case, the extent of the insured residential land is identified by reference to that single residential building (Section 4.c.iv in this Manual).

A cross-lease building where each dwelling is separately insured

More typically in a cross-lease property, there is a single building comprising multiple dwellings, but each dwelling is separately insured as a residential building in its own right. In that case, the area of the insured residential land must be identified separately for each residential building (Section 4.c.v in this Manual).

There will be areas of shared land between the insured areas of residential land for the different residential buildings. This shared land must be taken into account when settling the residential land claims.

Land structures on a cross-lease property

Insured land structures (bridges, culverts and retaining walls) within the insured land areas for each residential building are covered as part of the residential land for that building.

A single land structure may come within the insured area of residential land for more than one residential building. This scenario must be taken into account when settling the residential land claim (Section 9.e.x in this Manual).

vii. Situation where there is a building that contains both dwellings and commercial premises, but the residential percentage is greater than 50%

Where a building contains both dwellings and commercial premises but the residential percentage is greater than 50% (i.e. not a mixed-use building), the insured residential land is determined by reference to the entire residential building. In other words, the part of the building containing the commercial premises is not treated differently.

Consequently, the insured residential land for the building is identified as set out in Section 4.c.iv in this Manual.

viii. Situation where there is a mixed-use building

A residential building is a mixed-use building if its residential percentage is less than 50% (see Section 4.C.d of the NHC Claims Manual - Residential Buildings - NHI Act). For a mixed-use building, only the dwellings (as well as the appurtenant structures and service infrastructure for those dwellings) and common and joint property for the building (see Section 5.d in this Manual) are considered to be part of a residential building.

However, for the purpose of determining residential land, service infrastructure outside both the eligible building and the appurtenant structures is not included as part of the residential building.

Consequently, the insured residential land for a mixed-use building is identified as set out in Section 4.c.iv in this Manual, but only for the residential part of the mixed-use building (and its appurtenant structures), not the entire building.

ix. Situation where there is a mixed-use building and common or joint land

Where there is a mixed-use building, the residential land may include common or joint land. Such land is determined by reference to the mixed-use building, in that it must be land that is available for the use or benefit of the owners or other occupants of the premises in the mixed-use building. For common land it must be for all owners or occupiers of all premises in the eligible building. For joint land it must be for the owners or other occupants of some of the premises in the building (including at least one dwelling). For both joint and common property, the relevant owners must also have an insurable interest in the mixed-use building.

Example

If the residential land for a mixed-use building shares a retaining wall with a neighbouring property, all the owners of premises in the mixed-use building have an insurable interest in the wall, and it is for the benefit of those owners, it is common land. In this situation, the retaining wall may also be shared land – see Section 4.c.x in this Manual.

Section 19, NHI Act

x. Situation where there is shared land

Shared land is any part of the residential land that a person who is not an insured person has an insurable interest in. Therefore, to determine what is shared land, identify:

- the insured residential land for the residential building as set out in Section 4.c.iv in this Manual; and
- whether there is a person who is not the insured person but has an insurable interest in any part of that land.

Example

Where residential land for a mixed-use building shares a retaining wall with a neighbouring property, it is shared land as between:

- the insured person for the mixed-use building; and
- the persons who have insurable interests in the neighbouring land.

Section 19, NHI Act

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

xi. What if there is another type of residential building on the property?

Where there is some other type of residential building, the person dealing with the claim should collect relevant information about the residential building(s) on the property and escalate the matter to the appropriate NHC representative.

The information should be collected using a land sketch or other means and should include the following for each building on the property:

- whether the building (or part of it) is or may be a residential building;
- whether the building contains any dwellings and, if so, how many and where they are situated;
- what the area of the dwelling or dwellings is, when compared to the total area of the building;
- which buildings and structures are or may be appurtenant to that building (or part of the building);
- the total levy that the private insurer paid to us for the residential building or buildings.

Collecting this information about the residential buildings (if any) on the property is critical to enabling the appropriate NHC representative to consider the extent of the insured residential land (if any) on the property.

d. What is the insured person's land?

i. Is the insured person's land always the same as the area of land shown within the RT?

As noted in Section 4.b.iii in this Manual, the insured person's land is determined by confirming the land holding that the residential building is lawfully situated within.

The NHI Act defines '[t]he land holding within which a residential building is situated' as:

> (a) the estate or interest held by the insured person in the land on which the residential building is lawfully situated;…
>
> Section 16(2)(a), NHI Act

Therefore, in general, the insured person's land consists of all the land within the boundaries shown within the RT for that property.

However, the definition of land holding also includes:

> (b) any other estate or interest in land held by the insured person that relates to land that is—
> (i) contiguous with the land referred to in paragraph (a); and
> (ii) used, or intended to be used, with the land referred to in paragraph (a) as a single residential property; and
> (c) any other estate or interest in land that benefits an estate or interest referred to in paragraph (a) or (b).
>
> Section 16(2)(b) and (c), NHI Act

Therefore, land outside the boundaries shown within the RT also forms part of the insured person's land in two situations as follows:

- where an estate or interest in land held by the insured person relates to land that is contiguous with the land within the RT and that land is used, or intended to be used, with the land within the RT as a single residential property;
- where an estate or interest in land is for the benefit of:
    - the land within the RT; or
    - land or interest held by the insured person and relates to land that is contiguous with the land within the RT, and that land is used, or intended to be used, with the land within the RT as a single residential property.

ii. When is land contiguous to, and intended to be used as a single residential property with, land within the RT?

When is land contiguous?

Land is generally contiguous with the land within the RT where it shares a boundary with the land within the RT.

However, two areas of land are still contiguous where they are divided only by:

- a watercourse;
- a road;
- a railway;

- an access way; or
- a similar narrow area of separation.

Section 16(4), NHI Act

When is contiguous land used, or intended to be used, as a single residential property?

To be used, or intended to be used, as a single residential property, the two areas need to be:

- in close proximity;
- readily accessible from one another; and
- used together.

Examples

If a homeowner has a lot with a garage on the other side of the street, both properties likely meet the above test, because the properties are only divided by a road, and are readily accessible from one another.

If a homeowner has a lot with an art studio that is several houses down the street, that is unlikely to meet the above test, because the two properties are not in close proximity.

If a homeowner has a lot next door to their home that they operate a dairy from, it does not meet this test because the two properties are not being used together as a single residential property.

One RT treated as two

By contrast, there may be rare situations where the land within a single RT should in fact be treated as two (or more) insured person's lands under the NHI Act.

That situation arises where the insured person's land has two separate residential buildings, and the insured person has an insurable interest in both buildings. Where this occurs, the residential land must be determined for each building separately, and the insured person is treated as a separate person for each building and its associated residential land. For situations where there is residential land that is shared between both buildings, see Section 4.b.v Residential land may include ‘common land’, ‘joint land’ and ‘shared land’ in this Manual.

Section 22(3), NHI Act

iii. When is an estate or interest in land for the benefit of land within the RT, or land contiguous to, and intended to be used with, land within the RT?

Easements over neighbouring land

A typical example of an interest that benefits land within the RT, or land contiguous to and intended to be used with land within the RT, is an easement over neighbouring land. An easement confers a legal or equitable right to cross or otherwise use someone else's land for a specified purpose.

The most common example is where the owners of 'property A' have an easement over land on neighbouring 'property B', allowing property A to use the land as a driveway. In this situation, the driveway can form part of property A's insured person's land.

Other estates or interests

If an estate or interest that is not an easement is considered to be an estate or interest benefitting the land within the RT, or land contiguous to and intended to be used with land within the RT, the claim must be escalated to the relevant NHC representative. However, licences to occupy or encroachment licences never constitute an estate or interest for these purposes (see Section 4.b.iii in this Manual).

iv. What if the customer has an encroachment licence or licence to occupy the neighbouring land?

A non-proprietary right to use land, such as a licence to occupy or an encroachment licence, is not treated as part of the insured person's land.

For example, if the customer has an encroachment licence or licence to occupy neighbouring land that a garage is situated on, that garage is not treated as being within the insured person's land.

For NHCover for appurtenant structures on neighbouring land, see Section 4.D.c of the NHC Claims Manual - Residential Buildings - NHI Act.

Section 16(3), NHI Act

e. What is 'land on which the residential building is situated'?

Under the residential land definition, NHCover includes, in relation to a residential building:

> (a) the part of the insured person's land on which the residential building is situated;…

Section 17(a), NHI Act

The land that comes within paragraph (a) of the residential land definition is the land directly underneath the building.

i. What is the 'residential building' for this purpose?

For this purpose, the residential building may comprise:

- the building that is or includes one or more dwellings (see Section 5.c in this Manual); and
- buildings and structures appurtenant to the dwelling. These are called 'appurtenant structures' (see Section 5.e in this Manual).

What about the land underneath the service infrastructure that serves the dwelling (and appurtenant structures)?

The service infrastructure that is outside both the eligible building and the appurtenant structures, and that serves the dwelling or appurtenant structures (such as pipes, cables, wires, poles, and drains that provide a service of water supply, drainage, sewerage, gas, electricity, heating or telecommunications) is not treated as a residential building for the purposes of the residential land definition. Therefore, the land underneath the service infrastructure outside both the eligible building and the appurtenant structures is not treated as an additional component of residential land.

Service infrastructure is covered by the residential building claim, provided certain conditions are met (see Section 4.E of the NHC Claims Manual - Residential Buildings - NHI Act).

Sections 12 and 17(3) of the NHI Act

f. What is 'land that is within 8 metres of the residential building'?

Under the residential land definition, NHCover includes, in relation to a residential building:

> (b) any other part of the insured person's land that is within 8 metres of the residential building;…
>
> Section 17(b), NHI Act

The land that comes within paragraph (b) of the residential land definition is all the land surrounding the residential building, for a distance of 8 metres in a horizontal line, of the building.

i. What is the 'residential building' for this purpose?

The residential building may comprise:

- the building that is or includes one or more dwellings (see Section 5.c in this Manual); and
- any buildings and structures appurtenant to the dwelling. These are called 'appurtenant structures' (see Section 5.e in this Manual).

For the purposes of the above, a reference to the residential building does not include any service infrastructure that is outside both the eligible building and the appurtenant structures.

The 8 metres in a horizontal line is measured around each such building and structure.

For example, if there is a house and garage on the insured person's land, the 8 metres in a horizontal line is measured around each of them.

The residential building is described in more detail in Section 4.e.i in this Manual.

ii. Where is the start point for the measurement of the 8 metres?

The start point for measuring the 8 metres is the outermost point, at ground level, of the building.

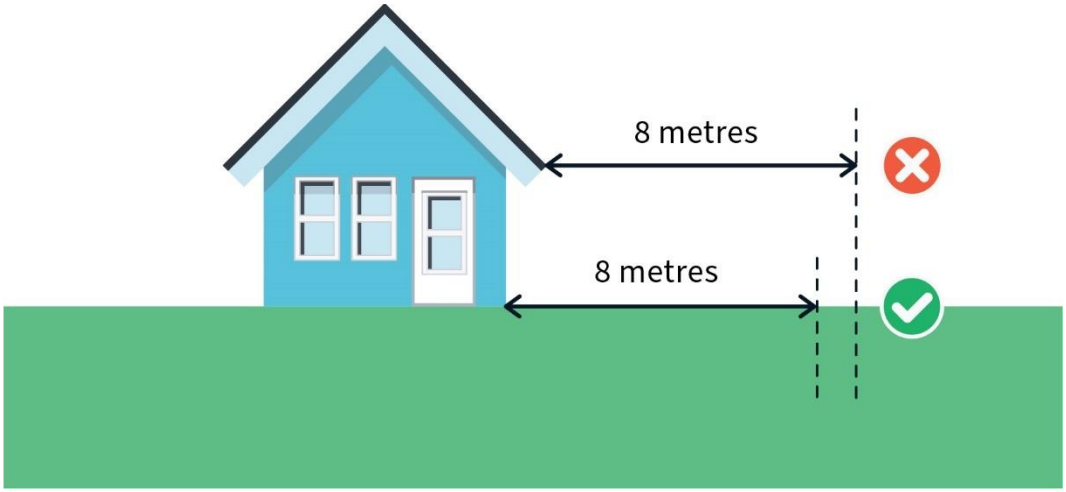

Figure 1: Residential land cover – start point measurement of the 8 metres

The outermost point is a point that provides a permanent firm base of the building on the ground. It is not a point on a part of the building that protrudes from the wall. For example, in the diagram below, the outermost point is where the pile for the deck meets the ground, not the far end of the cantilevered deck suspended above the ground.

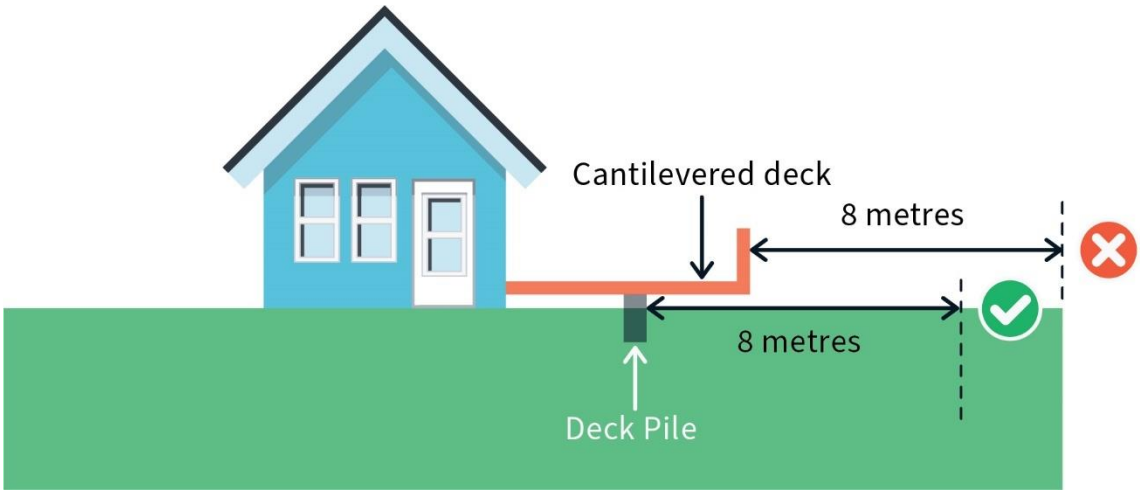

Figure 2: Residential land cover – start point of measurement of the 8 metres. Cantilevered deck example

It may be necessary to obtain advice from an appropriately qualified professional (such as a licensed building practitioner, a geotechnical engineer or (in some cases) a structural engineer) to determine the outermost point of the building or structure. In cases of doubt about where the outermost point of the building or structure is, the matter should be escalated to the appropriate NHC representative.

iii. How is 8 metres 'in a horizontal line' measured on a sloping site?

The 8 metres must be measured 'in a horizontal line'. If the 8 metres is being measured

across a sloping site, the 8 metres is measured in a horizontal line straight across from the building. The 8-metre distance is not measured following the contours of the land.

The correct approach to measuring the 8 metres is set out in the diagram below.

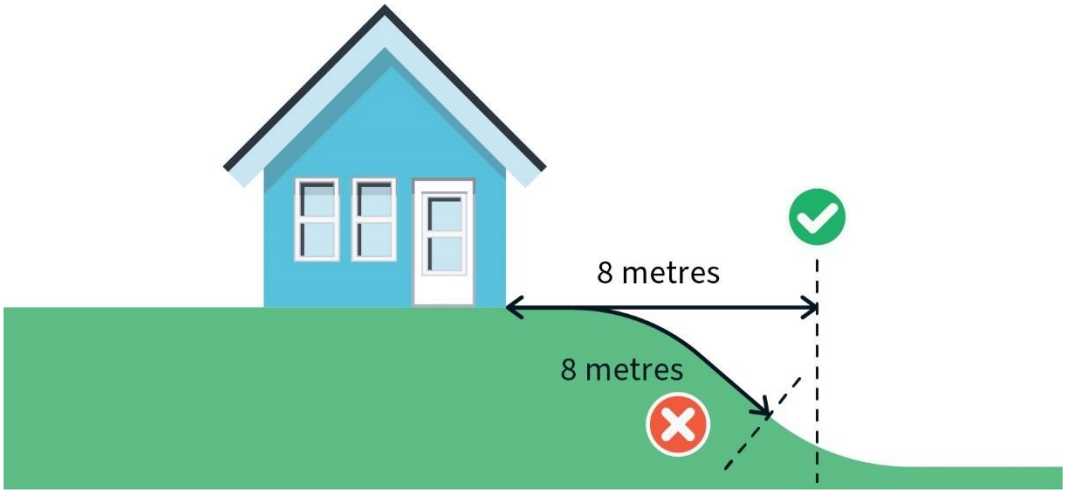

Figure 3: Residential land cover – measurement of the 8 metres. Sloping site example

iv. What is the end point for the measurement of the 8 metres?

The end point for the measurement is:

- the point that is 8 metres, in a horizontal line, from the start point; or
- the boundary of the insured person's land, if the boundary is less than 8 metres in a horizontal line from the start point.

v. How is the 8 metres measured when the building is in the course of alterations?

Sometimes a residential building is undergoing alterations at the time of the natural hazard. These alterations may extend or reduce the building footprint.

In these cases, the person dealing with the claim should collect the following information:

- the original footprint of the building;
- the condition and use of the building at the time when the fire insurance contract or direct NHCover was entered into or last renewed (whichever occurred more recently before the damage-causing natural hazard);

- the footprint of the building at the time of the damage-causing natural hazard;
- the progress of the alterations at the time of the damage-causing natural hazard;
- full details of the fire insurance contract or direct NHCover for the building;
- full details of the contract works insurance (if any) for the alterations.

This information must then be escalated to the appropriate NHC representative.

g. What access way (or part of an access way) is 'residential land'?

i. What is an 'access way'?

An 'access way' is a route that is taken to reach a building from the boundary of the insured person's land.

An access way usually follows a driveway or pathway from the boundary to a building. It may be a walkway – it does not need to allow access for a vehicle.

The access way often has some form of artificial surface. However, it is the land that forms the access way (or part of the access way) that is insured, not any artificial surface on top of the access way.

Under the residential land definition, NHCover includes, in relation to a residential building:

> (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; …
>
> Section 17(1)(c)

This means that to come within paragraph (c) of the residential land definition, the land must:

- be within 60 metres, in a horizontal line, of the building; and
- be the main access way (or part of the main access way) to that building from the boundary of the insured person's land.

Paragraph (c) of the residential land definition also covers any land supporting the insured parts of the access way. The supporting land is covered if it is within 60 metres, in a horizontal line, of the building. See Section 4.g.viii in this Manual.

ii. What is the 'residential building' for this purpose?

The building may comprise:

- the building that is or includes one or more dwellings (see Section 5.c in this Manual); and
- any buildings and structures appurtenant to the dwelling. These are called 'appurtenant structures' (see Section 5.e in this Manual).

For the purposes of the above, a reference to the residential building does not include any service infrastructure that is outside both the eligible building and the appurtenant structures.

An access way may serve each such building and structure. For example, if there is a house and garage, there may be an access way to one of those buildings, or access ways to both of them. These scenarios are discussed in Section 4.g.iii in this Manual.

The residential building is described in more detail in Section 4.e.i in this Manual.

iii. What is the 'main access way' to the building from the boundary of the insured person's land?

In most cases, there is one 'main' access way to a building.

What if there is more than one access way to the same building?

If there are two or more access ways leading to the same building, NHCover only covers the main access way.

What if there are several access ways serving several buildings?

There may be several 'main access ways' on the insured person's land serving several buildings.

For example, as well as the dwelling on the insured person's land, there may be a separate appurtenant structure such as a garage on the insured person's land. Each 'building' could in principle have a separate main access way leading to that building from the boundary of the insured person's land. In such a case, both the main access way to the dwelling and the main access way to the garage can be covered under paragraph (c) of the residential land definition.

Access way must lead from the boundary to the building

An access way is covered only if it leads from the boundary of the insured person's land to the residential building in question.

Any paths or tracks that lead only from one residential building to another are not covered under paragraph (c) of the residential land definition. That is because these paths or tracks do not go from the boundary of the insured person's land to the building.

However, paths or tracks are covered where:

- they form part of the main access way itself; or
- are a continuation of the main access way.

An example is where a driveway leads to a parking area and the continuation of the access way is the pathway from the parking area to the dwelling. In this situation, the parking area is covered only to the extent it is part of the access way itself.

Access way must be on the insured person's land

An access way is covered only if it is on the insured person's land.

The main access way to a building is within the insured person's land, if:

- the access way is part of neighbouring land; and
- the owners of the building have a right of way, in the form of an easement, over that neighbouring land. This is the case no matter who owns the neighbouring land. For example, it doesn't matter if it is owned by neighbouring residential owners, a commercial operation or someone else.

For the situation where two or more RTs may be treated as part of the same insured person's land, see Section 4.d.i in this Manual.

What if the access way is 'seasonal'?

Sometimes the main access way changes with the seasons. In these cases, the person dealing with the claim should collect the following information:

- how the customer uses the different access ways over the course of a year;
- which access way was being used at the time of the damage-causing natural hazard.

This information should be escalated to the appropriate NHC representative.

iv. Where is the start point for measuring the 60 metres?

The main access way must be within 60 metres, in a horizontal line, of the residential building.

The 60 metres is measured from the building, not from the boundary to the building.

The start point for measuring the 60 metres is the outermost point, at ground level, of the residential building.

The outermost point is a point that provides a permanent firm base of the building on the ground. It is not a point on a part of the building that protrudes from the wall. For illustrations of the start point, see Figure 1, Figure 2 and Figure 3 above.

It may be necessary to obtain advice from an appropriately qualified professional (such as a licensed building practitioner, a geotechnical engineer or (in some cases) a structural engineer) to determine the outermost point of the building. In cases of doubt about where the outermost point of the residential building is, the matter should be escalated to the appropriate NHC representative.

v. How is the 60 metres 'in a horizontal line' measured?

The 60 metres must be measured 'in a horizontal line'. If the 60 metres is being measured across a sloping site, the 60 metres is measured in a horizontal line straight across from the building. The 60-metre distance is not measured following the contours of the land.

The main access way itself may not follow in a straight line. In that case, the 60 metres is measured, not by following the main access way, but by measuring out 60 metres from the residential building in a straight line.

The correct approach to measuring the 60 metres is set out in the diagram examples below. These examples are illustrative only. More complex situations need to be assessed on a case-by-case basis.

Example 1: Circular main access way to the dwelling

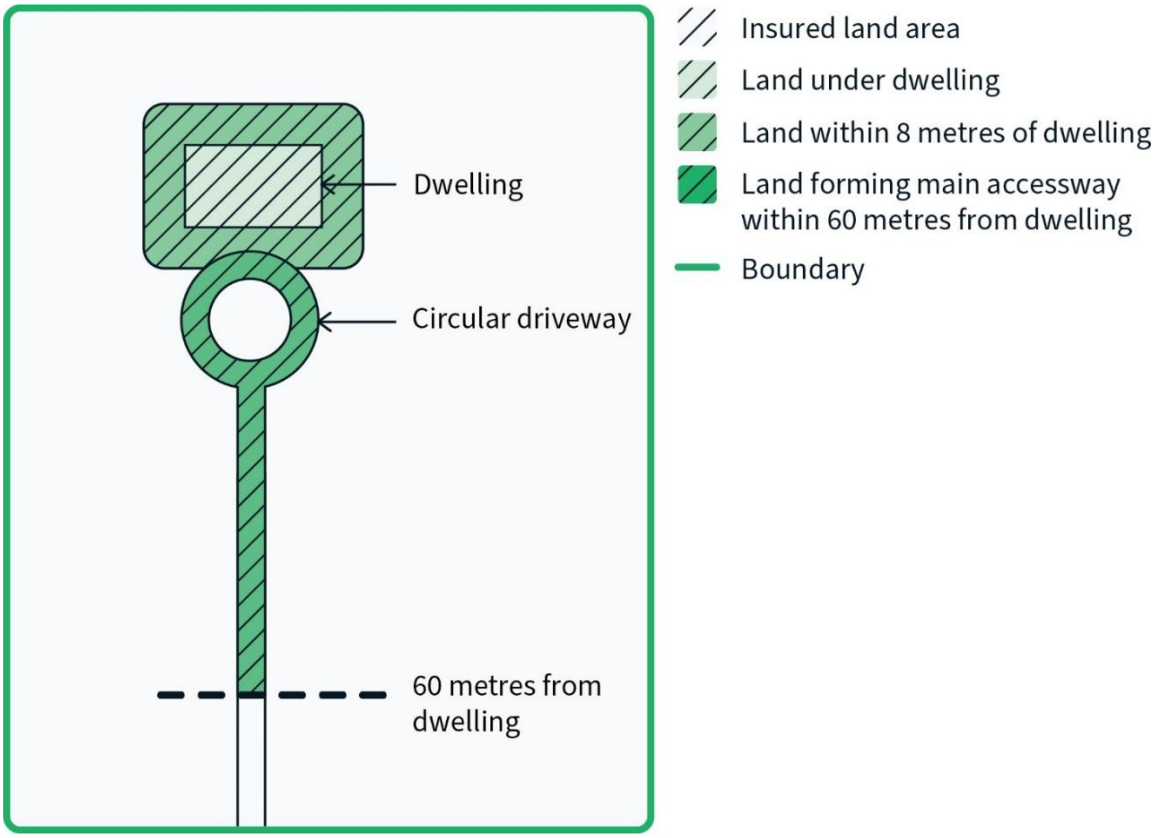

Figure 4: Residential land cover – circular driveway

In Example 1, the shaded area of land is insured as 'residential land'. Both sides of the circular main access way are covered because both are part of the main access way to a residential building (in this case, the dwelling) from the boundary of the insured person's land. The shaded parts of the access way are covered because they are within 60 metres, in a horizontal line, of the dwelling. The rest of the main access way is not covered.

Example 2: Main access way to the dwelling and a path from the dwelling to a shed

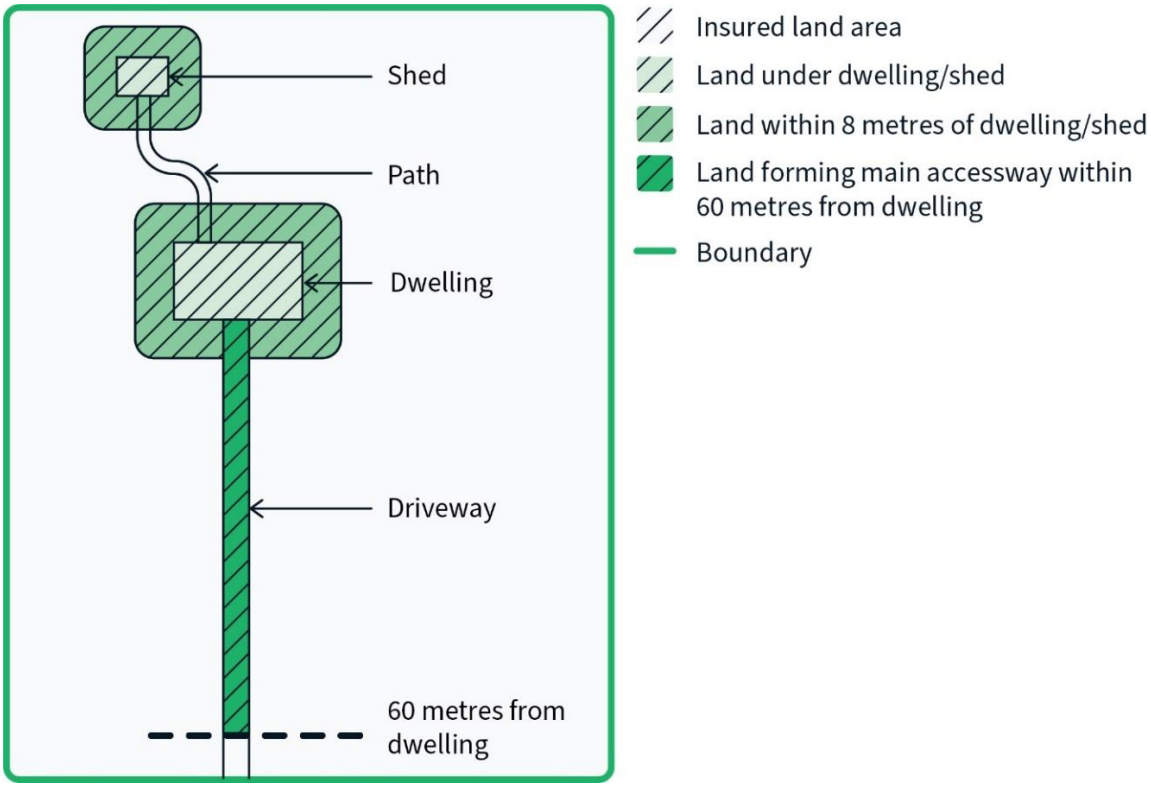

Figure 5: Residential land cover – main access way to dwelling – path from dwelling to shed

In Example 2, the shaded area of land is insured as residential land. For the most part, the main access way to the shed is not covered. That is because the main access way to the shed goes from the dwelling – not from the boundary of the insured person's land. However, the parts of the main access way that are within 8 metres, in a horizontal line, of a building (either the dwelling or the shed) are covered (under paragraph (b) of the residential land definition).

The shaded area of the main access way to the dwelling from the boundary is covered. That is because:

- it is within 60 metres, in a horizontal line, of the dwelling, and
- it goes to the dwelling from the boundary of the insured person's land.

The part of the main access way that is more than 60 metres, in a horizontal line, from the dwelling is not covered.

Example 3: Main access ways to the dwelling and a shed

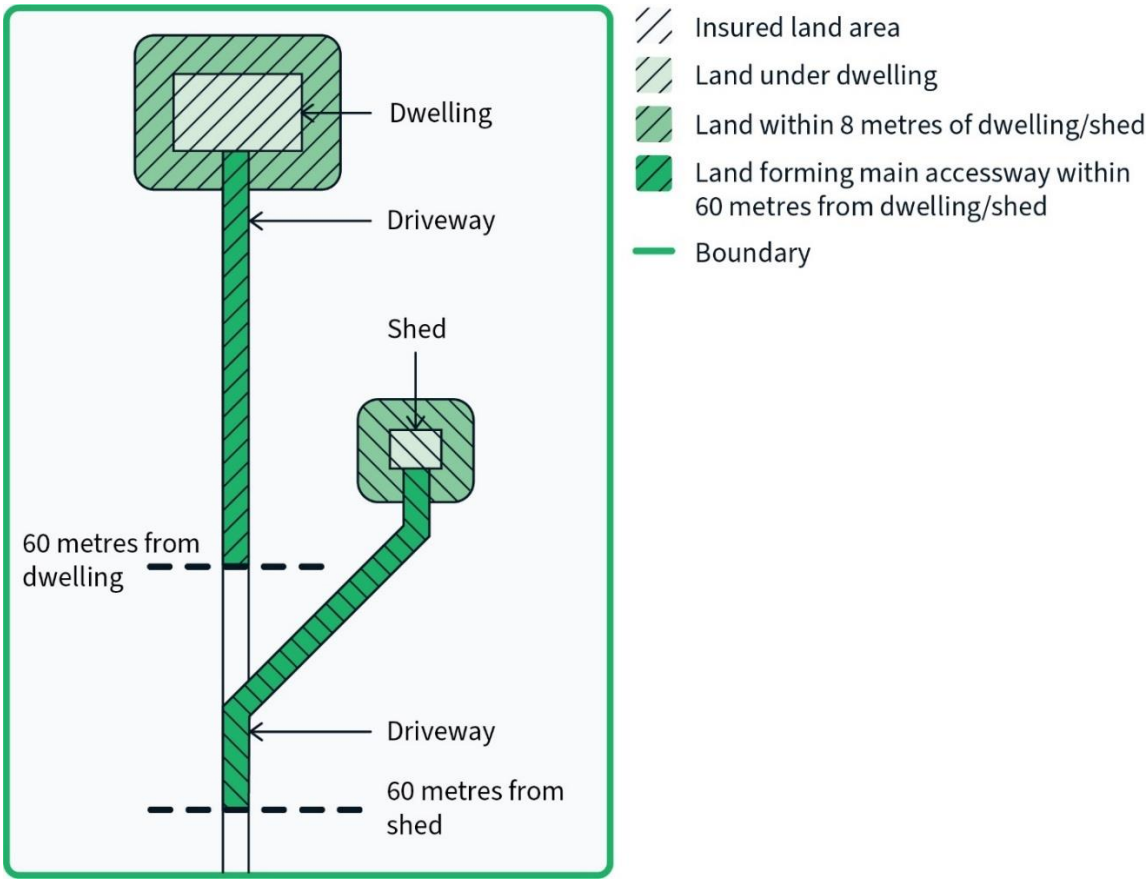

Figure 6: Residential land cover – main access ways to the dwelling and a shed

In Example 3, the shaded area of land is insured as residential land. The main access way from the boundary forks to go to both the dwelling and the shed (which is an appurtenant structure). The shaded part of the main access way to the shed from the boundary is covered because:

- it is within 60 metres, in a horizontal line, of the shed; and
- it goes to the shed from the boundary of the insured person's land.

Similarly, the shaded part of the main access way to the dwelling from the boundary is covered because:

- it is within 60 metres, in a horizontal line, of the dwelling; and
- it goes to the dwelling from the boundary of the insured person's land.

The parts of the main access way that are more than 60 metres, in a horizontal line, from the particular building that those parts serve are not covered.

Example 4: A winding main access way

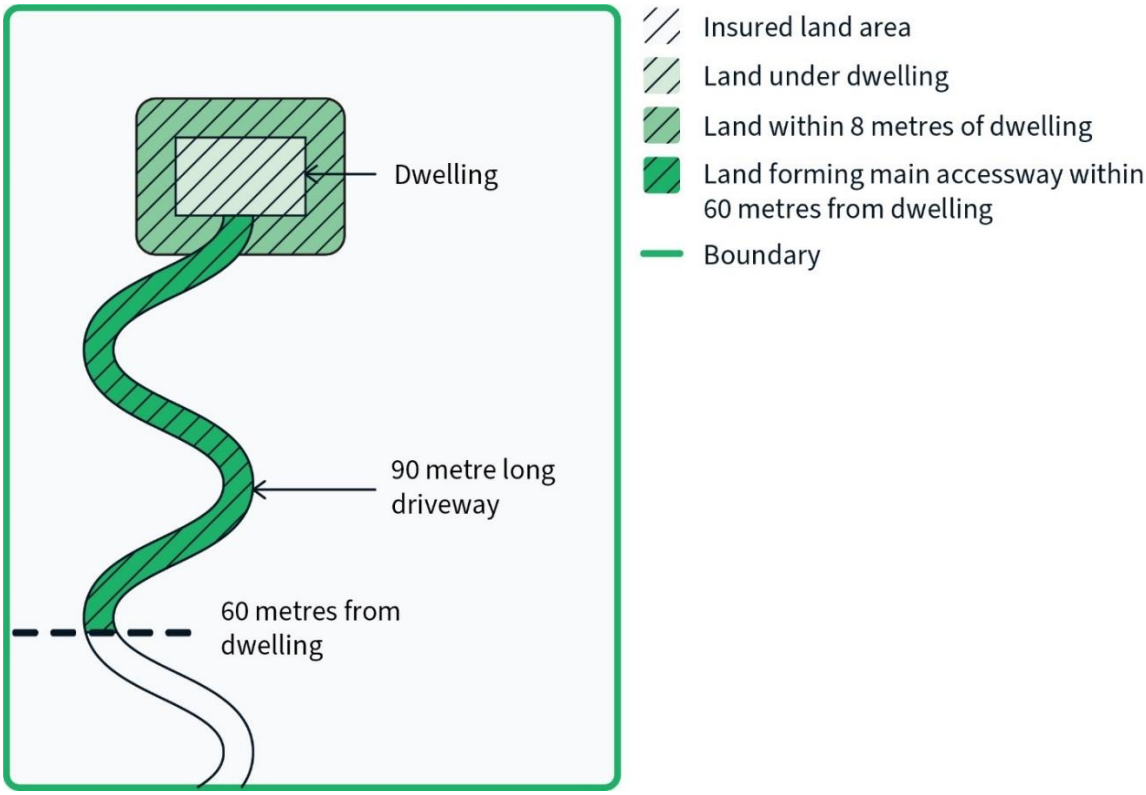

Figure 7: Residential land cover – winding main access way

In Example 4, the shaded area of land is insured as residential land. The main access way from the boundary goes to the dwelling by a winding and indirect route. The first 60 metres of the main access way, in a horizontal line from the dwelling, is covered, even though the actual length of the main access way in this area is 90 metres.

The part of the main access way that is more than 60 metres, in a horizontal line, from the dwelling is not covered.

vi. What is the end point for the measurement of the 60 metres?

The end point for the measurement is:

- the point that is 60 metres, in a horizontal line, from the start point; or
- the boundary of the insured person's land, if the boundary is less than 60 metres, in a horizontal line, from the start point. The insured person's land may include neighbouring land if the owners of the building have a right of way, in the form of an easement, over that neighbouring land (see Section 4.g.iii in this Manual).

vii. How wide can the access way be?

The access way must be for the purposes of access. Land that is not reasonably necessary for that purpose does not form part of the access way. For example, land used for turning bays or parking areas beside the driveway do not form part of the access way.

viii. What is 'land supporting such access way'?

Paragraph (c) of the residential land definition also covers land supporting the main access way (or part of it) insured under the NHI Act.

For example, the main access way may be elevated and supported by land on either side of the access way. In this case, the land supporting the access way is also covered under paragraph (c).

To be covered under paragraph (c), this supporting land must also be within 60 metres, in a horizontal line, of the residential building.

In cases of doubt, what constitutes land supporting the main access way should be determined by an appropriately qualified professional (such as a geotechnical engineer).

ix. What if there is a shared access way?

Sometimes two or more properties share some or all of a main access way.

Because of the way NHCover is defined for access ways, the damaged part of the access way may come within the insured 'residential land' for some of these properties but not others.

In these cases, the person dealing with the claim should collect the following information:

- which properties share the damaged access way;
- the legal basis on which they share the access way and the supporting documentary evidence (such as the RT and easement document);
- whether each property that shares the access way has NHCover;

- maps or drawings (to scale) showing the location of:
    - the properties affected;
    - the residential buildings on those properties, including appurtenant structures served by the access way;
    - the shared access way;
    - the precise location of the damage on the access way;
- whether any particular property owner seems better placed than the others to carry out the repair.

This information should then be escalated to the appropriate NHC representative.

x. Cases of doubt

If there is remaining doubt about whether an access way is the 'main' access way or whether any particular land forms part of (or supports) the main access way, the person dealing with the matter should:

- collect all relevant information; and
- escalate the matter to the appropriate NHC representative.

h. What retaining walls are 'residential land'?

Under the residential land definition, NHCover includes, in relation to a residential building:

> (d) any retaining walls for the residential building;…
>
> Section 17(1)(d), NHI Act

i. What are 'retaining walls'?

The NHI Act defines a 'retaining wall' as:

> (1) A retaining wall for a residential building means a retaining wall and its support system—
>
> (a) that are necessary to support or protect—
>
> (i) the residential building; or
>
> (ii) the residential land referred to in section 17(1)(a) to (c) [i.e. the insured land areas]; and
>
> (b) that are within 60 metres of the residential building, whether or not it is on the insured person's land.
>
> ….
>
> (3) However, property is not a retaining wall … for the residential building if the insured person for the residential land does not have an insurable interest in the property.
>
> Section 18(1) and (3), NHI Act

This means that a retaining wall and its support system is insured under the NHI Act where it is:

- within 60 metres (in a horizontal line) of the residential building; and
- necessary to support or protect the residential building, or the insured land areas.

and it is:

- within the insured person's land; or
- fully or partially outside the insured person's land and the insured person has an insurable interest in it.

In general, a retaining wall is a wall built to support earth at a higher level on one side of the wall than on the other side of the wall.

A retaining wall may:

- be self-standing;
- be anchored into the land it retains;
- be below ground; or
- get structural support from the land it retains.

Retaining walls take many forms. Examples include (but are not limited to) timber pole, steel pole, concrete block, mass block, dry stack, gabion basket, shotcrete (with anchors), sheet piling, crib, geogrid reinforced fill, or keystone (gravity) retaining walls.

In cases of doubt about whether something is a retaining wall, the person dealing with the claim should obtain advice from an appropriately qualified professional (such as an engineer). If that professional is unable to confirm the position, the matter should be escalated to the appropriate NHC representative.

ii. What are a retaining wall's 'support systems' and when are the support systems covered?

What are the support systems of a retaining wall?

The support systems of a retaining wall may include (but are not limited to) anchors, cabling, footings, piles, capping beams, and drainage systems behind the retaining wall.

In cases of doubt about whether something is a support system of a retaining wall, the person dealing with the claim should obtain advice from an appropriately qualified professional (such as an engineer). If that professional is unable to confirm the position, the matter should be escalated to the appropriate NHC representative.

When are the support systems covered?

Where a retaining wall is covered, the support systems of the retaining wall are also covered. But to be covered, both the retaining wall and their support systems must be:

- within 60 metres, in a horizontal line, of the residential building; and
- necessary to support or protect the residential building or the insured land areas.

iii. What is the 'residential building' for this purpose?

The residential building may comprise:

- the building that is or includes one or more dwellings (Section 5.c in this Manual)
- any buildings and structures appurtenant to the dwelling. These are called 'appurtenant structures' (Section 5.e in this Manual).

For the purposes of the above, a reference to the residential building does not include any service infrastructure that is outside both the eligible building and the appurtenant structures.

Section 18(4), NHI Act

The retaining wall and its support systems must be within 60 metres (in a horizontal line) of the building. They must be necessary to support or protect that building or the insured land areas.

The 'building' is described in more detail in Section 4.e.i in this Manual.

iv. Where is the start point for measuring the 60 metres?

To be insured residential land, the retaining wall and its support systems must (among other things) be within 60 metres, in a horizontal line, of the residential building.

The start point for measuring the 60 metres is the outermost point, at ground level, of the residential building.

The outermost point is a point that provides a permanent firm base of the building on the ground. It is not a point on a part of the building that protrudes from the wall. For illustrations of the start point, see Figure 1, Figure 2 and Figure 3 above.

It may be necessary to obtain advice from an appropriately qualified professional (such as a licensed building practitioner, a geotechnical engineer or (in some cases) a structural engineer) to determine the outermost point of the building. In cases of doubt about where the outermost point of the residential building is, the matter should be escalated to the appropriate NHC representative.

v. How is the 60 metres 'in a horizontal line' measured?

The 60 metres must be measured 'in a horizontal line'. If the 60 metres is being measured across a sloping site, the 60 metres is measured in a horizontal line straight across from the building. The 60-metre distance is not measured following the contours of the land.

The correct approach to measuring the 60 metres is set out in the diagram below. In this example, the retaining wall is within 60 metres (in a horizontal line) of the building.

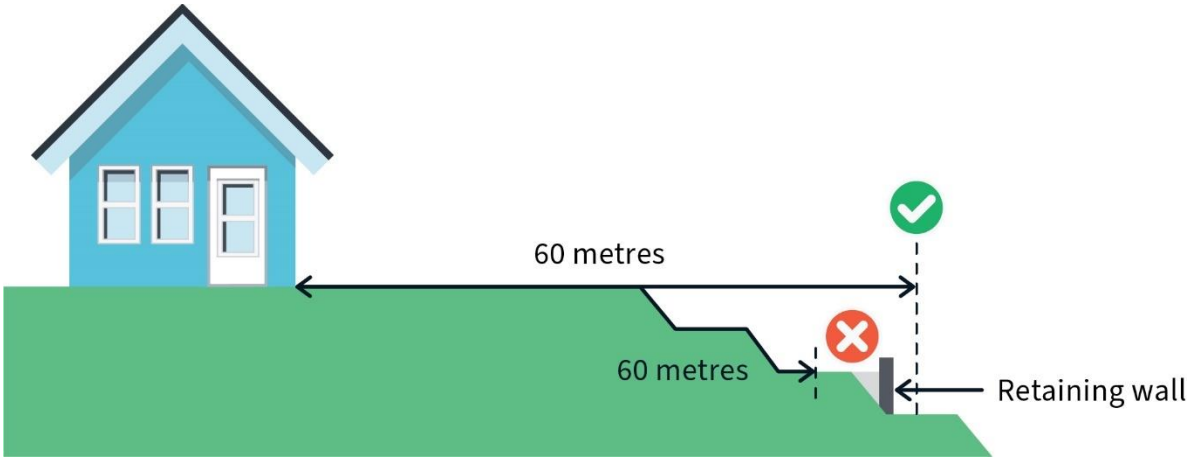

Figure 8: Residential land cover – measurement of the 60 metres – retaining wall cover

vi. What if one end of the retaining wall and its support systems are beyond the 60 metres?

A retaining wall and its support systems are covered only if (among other things) they are within 60 metres, in a horizontal line, of a residential building (excluding service infrastructure outside of both the eligible building and appurtenant structures).

Any section of a retaining wall that is more than 60 metres away, in a horizontal line, from a residential building is not covered.

If the section of the retaining wall that is within the 60 metres can be considered a retaining wall in its own right, that section is covered – if it meets the requirements for cover in paragraph (d) of the residential land definition. This section of the retaining wall is covered, even if it is attached to another section of the wall that is outside the 60 metres and also a retaining wall in its own right. It may be necessary to obtain advice from an appropriately qualified professional (such as a geotechnical engineer) on these matters.

vii. What if the retaining wall is situated outside the insured person's land?

If a retaining wall is situated outside the insured person's land it can still be insured under the NHI Act where;

- it is within 60 metres (in a horizontal line) of the residential building;
- it is necessary to support or protect the residential building, or the insured land areas; and
- the insured person has an insurable interest in the retaining wall.

Sections 18(1) and (3), NHI Act

Examples of instruments that can create an insurable interest in a retaining wall include:

- an easement;
- a licence to occupy;
- an encroachment licence; and
- a vehicle crossings bylaw that imposes obligations in relation to the wall.

Non-proprietary rights such as a licence to occupy or an encroachment licence can create an insurable interest in a retaining wall, even though they are not sufficient to constitute a part of the insured person's land holding. This is because the NHI Act explicitly states that the land holding does not include any non-proprietary right to use the land (see Section 4.d.iv in this Manual), but there is no such exclusion for retaining walls.

Section 16(3), NHI Act

viii. What if the retaining wall is situated on the boundary of the insured person's land?

If a retaining wall is situated partially within and partially outside the boundary of the insured person's land, it can still be covered under the NHI Act where:

- it is within 60 metres (in a horizontal line) of the residential building; and
- it is necessary to support or protect the residential building, or the insured land areas; and
- the insured person has an insurable interest in the retaining wall.

The requirement for the insured person to have an insurable interest in the retaining wall is met through the insured person's interest in the part of the wall that is on the insured person's land.

If the retaining wall is covered, it is shared land, because the owner of the neighbouring property also has an insurable interest in the wall. See Section 4.b.v Residential land may include 'common land', 'joint land' and 'shared land' in this Manual.

What should be done if it is not clear, or if there is a disagreement, where the boundary lies in relation to the retaining wall?

If it is not clear, or if there is a disagreement, where the boundary lies in relation to the retaining wall, a survey specialist (for land) should be engaged to provide a survey plan showing the retaining wall and boundary locations.

When is a survey of the location of the retaining wall required?

For the purposes of determining if a survey to identify the location of the retaining wall is required, the person dealing with the claim should obtain and consider (at a minimum):

- copies of the relevant records of title (particularly showing the location of the boundary); and
- any relevant information from the TA for the properties in question.

If the location of the wall cannot be determined from this information with reasonable confidence, then a survey to confirm the location should be obtained.

If the person dealing with the claim is unsure about how to proceed with this process, they should escalate the matter to the appropriate NHC representative.

ix. What retaining walls are 'necessary for the support or protection' of the residential building or the insured land areas?

The retaining walls are covered only if (among other things) they are necessary for the support or protection of the residential building or the insured land areas.

A retaining wall is necessary for the support or protection of a residential building (or land) if the residential building (or land):

- would collapse (that is, evacuate) or be undermined without the presence of the retaining wall; or
- would be affected or inundated – if the retaining wall were removed – by the earth behind the retaining wall.

Walls that serve a landscaping function only, rather than supporting or protecting the residential building or the insured land, are not insured under the NHI Act.

It is often appropriate and reasonable to obtain engineering advice to determine whether a retaining wall is necessary for the support or protection of a residential building or the insured land areas.

Where a retaining wall is necessary for the support or protection of a particular residential building, in order to be covered, the retaining wall (and its support systems) must be within 60 metres, in a horizontal line, of that residential building.

x. When is a retaining wall and its support systems insured under the NHI Act as part of the residential building (and not as part of the residential land)?

If a retaining wall is constructed in a residential building or is an integral part of a residential building, the retaining wall is insured under the NHI Act as part of the residential building. An example is where a garage is built into a bank and the back wall of the garage also serves to retain the earth behind it.

In this case, the retaining wall is not insured as part of the residential land. It may be insured as part of the residential building, provided certain conditions are met (see Section 4 of the NHC Claims Manual - Residential Buildings - NHI Act).

i. What bridges are 'residential land'?

Under the residential land definition, NHCover includes, in relation to a residential building:

> (e) any bridges … for the residential building; …
>
> Section 17(1)(e), NHI Act

The NHI Act defines a bridge for the residential building as:

> (2) A bridge … for a residential building means a bridge … that is on or in—
> (a) land referred to in section 17(1)(a) to (c) [i.e. the insured land areas]; or
> (b) land that is outside the insured person's land but is otherwise land of the kind referred to in section 17(1)(a) to (c) [i.e. the insured land areas].
> (3) However, property is not a … bridge … for the residential building if the insured person for the residential land does not have an insurable interest in the property.
>
> Section 18(2) and (3), NHI Act

This means that a bridge is covered where it is on or in land that is:

- the insured person's land, and the insured land areas; or
- fully or partially outside the insured person's land but is otherwise land of the kind referred to as the insured land areas, and the insured person has an insurable interest in the bridge.

i. What is a 'bridge'?

A bridge is a structure for the purpose of carrying a road or path across a river, road or similar. The bridge includes all components necessary for this purpose.

ii. Bridge must be situated on or in insured land areas

Generally, to be insured under the NHI Act, the bridge must be situated on or in the insured land areas that are within the insured person's land (though see Section 4.i.iii in this Manual).

In other words, the whole bridge must be within the insured person's land and on or in land that is:

- within the land area that one or more of the residential buildings is also situated on (see Section 4.e in this Manual). Note, however, that there is an exception where the bridge is part of the building (see Section 4.i.v in this Manual);
- within 8 metres, in a horizontal line, of one or more of the residential buildings or appurtenant structures (see Section 4.f in this Manual); and/or
- within 60 metres, in a horizontal line, of one or more of the residential buildings or appurtenant structures, and part of the main access way to those buildings or appurtenant structures (see Section 4.g in this Manual).

iii. What if the bridge is situated outside the insured person's land?

If a bridge is situated outside the insured person's land it can still be insured under the NHI Act where:

- the whole bridge is otherwise on or in land of the kind referred to as the insured land areas; and
- the insured person has an insurable interest in it.

Examples of instruments and laws that can create an insurable interest in a bridge include:

- an easement;
- a licence to occupy
- an encroachment licence; and
- a vehicle crossings bylaw that imposes obligations in relation to the bridge.

Non-proprietary rights such as a licence to occupy or an encroachment licence can create an insurable interest in a bridge, even though they are not sufficient to constitute a part of the insured person's land holding. This is because the NHI Act explicitly states that the land holding does not include any non-proprietary right to use the land (see Section 4.b.iii in this Manual), but there is no such exclusion for bridges.

Section 16(3), NHI Act

iv. What if the bridge is situated on the boundary of the insured person's land?

If a bridge is situated partially within and partially outside the boundary of the insured person's land, it can still be covered under the NHI Act where:

- the whole bridge is otherwise on or in land of the kind referred to as the insured land areas; and
- the insured person has an insurable interest in it.

The requirement for the insured person to have an insurable interest in the bridge is met through the insured person's interest in the part of the bridge that is on or in the insured person's land.

If the bridge is covered, it is shared land, because the owner of the neighbouring property (which may be the Council) also has an insurable interest in the bridge. See Section 4.b.v Residential land may include 'common land', 'joint land' and 'shared land' in this Manual.

Example: Bridges insured, not insured under the NHI Act

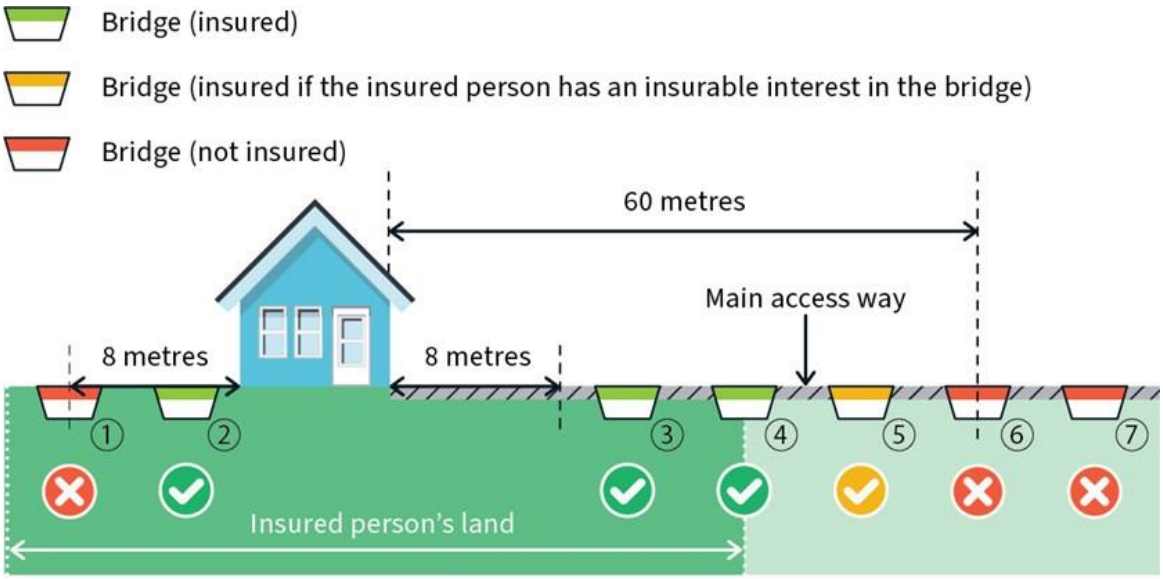

Figure 9: Residential land cover – bridges

Bridge	Is it insured?	Reason
1	Not insured	Part of the bridge is situated outside of 8 metres of the residential building. This means it is outside the insured land areas.
2	Insured	The whole bridge is within the insured person's land and also within 8 metres of the residential building. This means it is on or in the insured land areas.
3	Insured	The whole bridge is within the insured person's land. It is part of the main access way and the whole bridge is within 60 meters of the residential building. This means it is on or in the insured land areas.
4	Insured	Even though part of the bridge is situated outside the insured person's land, it is part of the main access way and the whole bridge is within 60 metres of the residential building. This means it is on or in land of the kind referred to as the insured land areas. The requirement for the insured person to have an insurable interest in the bridge is met through the insured person's interest in the part of the bridge that is on or in the insured person's land.
5	Insured if the insured person has an insurable interest in the bridge	Even though the whole bridge is situated outside the insured person's land, it is part of the main access way and the whole bridge is within 60 metres of the residential building. This means it is on or in land of the kind referred to as the insured land areas.

Bridge	Is it insured?	Reason
6	Not insured	The whole bridge is situated outside the insured person's land. Even though the bridge is part of the main access way, part of it is situated outside of 60 metres of the residential building. This means it is outside the land of the kind referred to as the insured land areas.
7	Not insured	The whole bridge is situated outside the insured person's land. Even though it is part of the main access way, the whole bridge is situated outside of 60 metres of the residential building. This means it is outside the land of the kind referred to as the insured land area.

v. When is a bridge insured under the NHI Act as part of the residential building (and not as part of the residential land)?

If a bridge is constructed in a residential building or is an integral part of a residential building, the bridge is insured under the NHI Act as part of the residential building. In this case, the bridge is not insured as part of the residential land.

j. What culverts are 'residential land'?

Under the residential land definition, NHCover includes, in relation to a residential building:

> (e) any culverts … for the residential building.
>
> Section 17(1)(e), NHI Act

The NHI Act defines a culvert for the residential building as:

> (2) A culvert … for a residential building means a culvert … that is on or in—
> (a) land referred to in section 17(1)(a) to (c) [i.e. the insured land areas]; or
> (b) land that is outside the insured person's land but is otherwise land of the kind referred to in section 17(1)(a) to (c) [i.e. the insured land areas].
> (3) However, property is not a … culvert for the residential building if the insured person for the residential land does not have an insurable interest in the property.
>
> Section 18(2) and (3), NHI Act

This means that a culvert is covered where it is on or in land that is:

- the insured person's land, and the insured land areas; or
- fully or partially outside the insured person's land, but is otherwise land of the kind referred to as the insured land areas, and the insured person has an insurable interest in the culvert.

i. What is a 'culvert'?

A culvert is a tunnel for the purpose of carrying a stream or open drain under a road or access way. The culvert includes all components necessary for this purpose.

ii. Culvert must be situated on or in the insured land area

Generally, to be insured under the NHI Act, the culvert must be situated on or in the insured land areas that are within the insured person's land (though see Section 4.j.iii in this Manual). In other words, the whole culvert must be within the insured person's land and on or in land that is:

- within the land area that one or more of the residential buildings is also situated on (see Section 4.e in this Manual). Note, however, that there is an exception where the culvert is part of the building (see Section 4.j.iv in this Manual);
- within 8 metres, in a horizontal line, of one or more of the residential buildings or appurtenant structures (see Section 4.f in this Manual); and/or
- within 60 metres, in a horizontal line, of one or more of the residential buildings or appurtenant structures, and part of the main access way to those buildings or appurtenant structures (see Section 4.g in this Manual).

iii. What if the culvert is situated outside the insured person's land?

If a culvert is situated outside the insured person's land, it can still be insured under the NHI Act where:

- the whole culvert is otherwise on or in land of the kind referred to as the insured land areas; and
- the insured person has an insurable interest in it.

Examples of instruments and laws that can create an insurable interest in a culvert include:

- an easement;
- a licence to occupy;
- an encroachment licence;
- a vehicle crossings bylaw that imposes obligations in relation to the culvert.

Non-proprietary rights such as a licence to occupy or an encroachment licence can create an insurable interest in a culvert, even though they are not sufficient to constitute a part of the insured person's land holding. This is because the NHI Act explicitly states that the land holding does not include any non-proprietary right to use the land (see Section 4.b.iii in this Manual), but there is no such exclusion for culverts.

iv. What if the culvert is situated on the boundary of the insured person's land?

If a culvert is situated partially within and partially outside the boundary of the insured person's land, it can still be covered under the NHI Act where:

- the whole culvert is otherwise on or in land of the kind referred to as the insured land areas; and
- the insured person has an insurable interest in it.

The requirement for the insured person to have an insurable interest in the culvert is met through the insured person's interest in the part of the culvert that is on or in the insured person's land.

If the culvert is covered, it is shared land, because the owner of the neighbouring property (which may be the Council) also has an insurable interest in the bridge. See Section 4.b.v Residential land may include 'common land', 'joint land' and 'shared land' in this Manual.

v. When is a culvert insured under the NHI Act as part of the residential building (and not as part of the residential land)?

Although rare, if a culvert is constructed in a residential building or is an integral part of a residential building, the culvert is insured under the NHI Act as part of the residential building. In this case, the culvert is not insured as part of the residential land.

k. What property is not insured by virtue of Schedule 2 of the NHI Act?

i. Schedule 2 lists excluded property that is not insured by the NHI Act

Some items that might otherwise be part of the residential land are either only insured under the NHI Act in limited circumstances, or are excluded from NHCover in all circumstances.

Items that are excluded from NHCover in all circumstances include:

- living things (such as plants and fungi);
- sports fields and courts (such as tennis courts and football fields) and structures ancillary to them;
- drainage ditches and other open drains, channels, tunnels, and cuttings; and
- dams, reservoirs, breakwaters, moles, and groynes.

Schedule 2, cl 3 NHI Act

Items that are insured under the NHI Act in limited circumstances are:

- fences;
- mailboxes;
- clotheslines;
- structures used to house animals (such as dog kennels or chicken coops);
- 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 as defined in section 18 of the NHI Act;
- other walls and poles; and
- bridges or culverts that are not bridges or culverts for a residential building as defined in section 18 of the NHI Act.

The limited circumstances in which this property would be insured under the NHI Act are where:

- 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 appurtenant structure, service infrastructure, common property, or joint property.

Schedule 2, clauses 1 to 3 NHI Act

Effect of excluded property on residential land insurance

The land that the excluded property is situated on is not necessarily excluded from NHCover just because the property on or within it is excluded property. For example, although the artificial surface of a driveway is excluded, the land under that artificial surface is still covered, subject to all other requirements of the NHI Act being met.

Schedule 2, clause 4, NHI Act

Land in relation to motor vehicles, trailers, boats, aircrafts or structures

Motor vehicles, trailers, boats, aircrafts and structures (such as tiny homes) are not usually insured as residential buildings under the NHI Act. However, in some instances, they may have residential building insurance if they meet the definition of, and are being used as, a dwelling, appurtenant structure, common property, or joint property. For further information, see Section 4.G.c.ii of the NHC Claims Manual - Residential Buildings - NHI Act.

Where the motor vehicle, trailer, boat, aircraft or structure (such as a tiny home) meets the definition of a residential building, there may be associated residential land cover. See Section 3 in this Manual.

Schedule 2, clause 2, sub-clause 3, NHI Act, Section 6 (6) NHI Act

5. Is there an insured 'residential building'?

a. Identifying a 'residential building' is critical to determining whether there is 'residential land'

As explained in Section 4, identifying the residential building on the insured person's land is a critical first step in applying the residential land definition.

For that reason, this Section sets out at a high level how to identify whether there is an insured residential building. Details about cover for residential buildings are set out in Section 4 of the NHC Claims Manual - Residential Buildings - NHI Act.

For the purpose of identifying residential land, the residential building does not include any service infrastructure that is outside both the eligible building and the appurtenant structures (see Section 5.f in this Manual).

The residential land definition in the NHI Act can be broken down into the insured land areas and insured land structures (of which there are three different types – retaining walls, bridges and culverts):

Insured land areas

For a land area to be residential land (and insured under the NHI Act), it must be part of 'the insured person's land' (see Section 4.b.iii in this Manual) AND one of the following types of land:

- the land under the residential building (excluding service infrastructure) (Section 4.e in this Manual);
- the land within 8 metres, in a horizontal line, of the residential building (excluding service infrastructure) (Section 4.f in this Manual); and
- the land within 60 metres, in a horizontal line, of the residential building (excluding service infrastructure) that is either the main access way to the residential building or land that supports the main access way (Section 4.g in this Manual).

Insured land structures: retaining walls

A retaining wall and its support system is covered where it is:

- within 60 metres (in a horizontal line) of the residential building (excluding service infrastructure); and
- necessary to support or protect the residential building (excluding service infrastructure), or the insured land areas;

and it is:

- within the insured person's land; or
- fully or partially outside the insured person's land and the insured person has an insurable interest in it.

Insured land structures: bridges or culverts

Generally, to be insured under the NHI Act, the bridge or culvert must be situated within the insured land areas that are within the insured person's land. In other words, the whole bridge or culvert must be within the insured person's land holding and:

- within the land area that one or more of the residential buildings (excluding service infrastructure) is also situated on;
- within 8 metres, in a horizontal line, of one or more of the residential buildings (excluding service infrastructure); and
- within 60 metres, in a horizontal line, of one or more of the residential buildings (excluding service infrastructure), and be part of the main access way to those buildings.

However, if a bridge or culvert is situated fully or partially outside the insured person's land, it can still be insured under the NHI Act where:

- the whole bridge or culvert is otherwise in or on land of the kind referred to as the insured land areas; and
- the insured person has an insurable interest in it.

For each of the above land structures, the residential building is critical (see Section 4.c and Section 5 in this Manual). Importantly, the residential building typically includes not only the dwelling, but also buildings and structures appurtenant to the dwelling.

Section 17(1), NHI Act

Section 17 and section 18, NHI Act

In general terms, to find the insured residential land, it is, or may be, necessary to consider:

- what a ‘residential building’ is (Section 5.b in this Manual)
- what an 'eligible building' is (Section 5.c in this Manual)
- what is meant by a 'mixed-use building' (Section 5.d in this Manual)
- what an ‘appurtenant structure’ is (Section 5.e in this Manual)
- what 'service infrastructure' is (Section 5.f in this Manual).

Details on each of these matters are set out in Sections 5.b to 5.f in this Manual.

A building that provides ‘long-term accommodation for the elderly’ is considered a ‘dwelling’ under the NHI Act. It therefore qualifies as an eligible building 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 and 4.G of the NHC Claims Manual - Residential Buildings - NHI Act.

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 5.g.iii in this Manual).

b. What is a ‘residential building’?

i. 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 excluded property) that contains one or more dwellings (see Section 5.c in this Manual);
- 'appurtenant structures' for the ‘dwellings’ in the building (see Section 5.e in this Manual); and
- 'service infrastructure' for the dwellings in the building (for the purpose of identifying residential land, the residential building does not include any service infrastructure that is outside both the eligible building and the appurtenant structures) (see Section 5.f 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;
- all 'appurtenant structures' for those dwellings;
- all 'service infrastructure' for those dwellings (for the purpose of identifying residential land, the residential building does not include any service infrastructure that is outside both the eligible building and the appurtenant structures);
- all the 'common property' for the residential building;
- all the 'joint property' for the residential building.

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

Section 9(2), NHI Act

For details, see Section 5.d in this Manual.

ii. 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. See Section 3.c.i in this Manual for the definition of insured person 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).

Section 15, NHI Act

iii. 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 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.

iv. 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 us); 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 in this Manual).

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

Sections 6, 29 and 48, NHI Act

v. Service infrastructure outside both the eligible building and appurtenant structures not relevant to defining area of 'residential land'

The service infrastructure that is outside both the eligible building and appurtenant structures is not treated as a residential building for the purpose of defining the area of residential land. Therefore, the land related to it is not treated as an additional component of residential land.

For a full description of service infrastructure, see Section 5.f in this Manual.

c. What is an ‘eligible building’?

Identifying whether or not there is an ‘eligible building’ is a critical first step in applying the ‘residential building’ definition. The eligible building is the building that contains the dwelling or dwellings. The whole or part of a building can be an eligible building.

For details, see Section 4.C of the NHC Claims Manual - Residential Buildings - NHI Act.

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%.

The footprint of a residential building that contains a mixed-use building includes common property, joint property and shared property.

For details, see Sections 4.C.d to 4.C.h of the NHC Claims Manual - Residential Buildings - NHI Act.

e. 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

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

For details, see Section 4.D of the NHC Claims Manual - Residential Buildings - NHI Act.

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 as an appurtenant structure.

Sections 4.h, 4.i and 4.j in this Manual set out the retaining walls, bridges and culverts insured by residential land insurance under the NHI Act. These structures are not treated as appurtenant structures.

f. What is 'service infrastructure'?

The NHI Act defines a residential building to include:

> (b) …service infrastructure for the dwellings in the building.

Section 9(1)(b), NHI Act

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

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

Section 12(3), NHI Act

The service infrastructure that is outside both the eligible building and appurtenant structures is not treated as a residential building for the purpose of defining the area of residential land. Therefore, the land related to it is not treated as an additional component of residential land.

For details, see Section 4.E of the NHC Claims Manual - Residential Buildings - NHI Act.

g. What property is not insured under the NHI Act?

i. Building contents or other personal property are excluded

The NHI Act does not cover 'building contents' or 'personal property'.

For details, see Section 4.G.a of the NHC Claims Manual - Residential Buildings - NHI Act.

ii. 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.

For details, see Section 4.G.b of the NHC Claims Manual - Residential Buildings - NHI Act.

iii. 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).

For details, see Section 4.G.c of the NHC Claims Manual - Residential Buildings - NHI Act.

Land that has excluded property on or within it is not necessarily excluded from NHCover.

Example

A shed is not insured under a fire insurance contract, making it excluded property under Schedule 2 of the NHI Act. However, the land beneath and within 8 metres of that shed may still be insured under the NHI Act if that land is within 8 metres of the insured residential building (excluding service infrastructure outside of both the eligible building and appurtenant structures).

Schedule 2, Clause 4, NHI Act

See Section 4.k.i in this Manual for more information on the effect of excluded property on residential land insurance.

6. 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 6.d in this Manual);
- … occurring as 'a direct result' of … (Section 6.e in this Manual);
- … a 'natural hazard' (Section 6.b in this Manual).

Each of these components is discussed at Sections 6.d, 6.e, and 6.b in this Manual.

Section 24(1)(a), NHI Act – 'natural hazard damage'

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 6.f in this Manual.
- imminent damage. This type of natural hazard damage is discussed separately at Section 6.g in this Manual.

Section 24(1)(b) and (c), NHI Act – 'natural hazard damage'

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:

> 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, NHI Act – 'natural hazard'

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 – 'natural hazard'

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, that 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.g.iii in this Manual for more information on damage periods.

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.

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 8 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, as 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; and
- (in the case of NHCover for residential land), storm or flood.

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 – 'natural hazard damage'

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 6.d in this Manual);
- … occurring as a 'direct result' of … (Section 6.e in this Manual);
- … a 'natural hazard' (Section 6.b in this Manual).

Each of these components is discussed at Sections 6.d, 6.e, and 6.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 6.f in this Manual.

Section 24(1)(b), NHI Act

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 6.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, minor rotation of a retaining wall caused by an earthquake is not natural hazard damage if it does not affect the structural integrity of the wall as a whole or its aesthetic value (and therefore does not impair the utility or amenity of the wall). 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 6.g in this Manual.

Determining causation

Determining causation is largely a decision based on the factual circumstances and on 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.

Example

The following example illustrates where a natural hazard has 'caused' the damage.

An 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 example, 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 8 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 international 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 8 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.

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
>
> (2) 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 6.h.ii 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 6.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 6.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 6.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 6.b in this Manual and the definition of ‘a direct result’ is set out and discussed at Section 6.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 that 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 as separate earthquake events, where the relevant requirements of the NHI Act are met.

Interrelationship between imminent damage to residential buildings and imminent damage to land

When assessing whether there is 'imminent damage' to residential land, it is important to consider the interrelationship with the residential building cover. A remediation strategy to prevent the imminent damage to the residential land from occurring may have the effect of removing the imminent damage to the residential building, or vice versa. See Section 9.d.ii and Section 7.A.b.ii in this Manual.

If different people are dealing with different components of an entire NHCover claim (residential land claim and residential building 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 land claim) affects settlement of the other component of the entire NHCover claim (e.g. residential building 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. 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

ii. 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 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

iii. 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 6.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.

7. How is the natural hazard damage assessed?

This Section is divided into three parts:

- Section 7.A, which addresses the assessment of natural hazard damage to residential land;
- Section 7.B, which deals with the process and output for the assessment; and
- Section 7.C, which sets out principles for assessment of natural hazard damage where there are multiple events.

A. Assessment of residential land damage

a. Overview

The main purpose of assessing the residential land is to determine:

- whether the residential land has suffered natural hazard damage as claimed by the customer;
- the extent of that natural hazard damage (if any); and
- the customer's land claim entitlement.

The assessment also involves arranging valuations for the purposes of calculating the maximum amount (or 'land cover cap') that can be paid for the residential land claim (Section 7.A.b in this Manual).

The residential land being assessed includes retaining walls, bridges or culverts. These are referred to as 'land structures' (see Sections 4.h, 4.i, and 4.j in this Manual).

Insured land structures are land structures that are classified as residential land under the NHI Act. These include:

- the retaining walls and their support systems situated within the insured person's land and certain retaining walls and their support systems situated fully or partially outside the insured person's land. These must be within 60 metres of the residential building (excluding service infrastructure) and necessary for the support or protection of the residential building (excluding service infrastructure) or the insured land areas; and

- the bridges (Section 4.i in this Manual) and culverts (Section 4.j in this Manual) within the insured land areas, and certain bridges and culverts fully or partially outside of the insured person's land.

The assessment typically involves:

- engaging sufficiently qualified people (Section 7.A.k.iii in this Manual);
- visiting the residential land (Sections 7.A.i and 7.A.j in this Manual);
- assessing any natural hazard damage to the residential land (Section 7.A.b in this Manual);
- formulating a conceptual remediation strategy for the damaged residential land (Section 7.A.c.iv in this Manual);
- costing the reinstatement (Section 7.A.c.v in this Manual);
- valuing the damaged insured land areas and other specified land areas (Section 7.A.d in this Manual); and
- costing the undepreciated value of the damaged insured land structures (Section 7.A.d.vi in this Manual).

The assessment process involves taking into account relevant considerations, disregarding all irrelevant considerations, and weighing the available evidence. (Section 1.A.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 7.B.b in this Manual).

Where there are multiple events, the principles for assessment of claims for natural hazard damage under Section 7.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 land needs to be reassessed because that repair strategy has failed or otherwise. Additional matters will need to be addressed in such assessments.

b. What are the steps in the assessment?

In general terms, there are seven steps involved in assessing a residential land claim. The person dealing with the claim must determine (or arrange for someone else to determine):

- the extent of the insured person's land (Section 7.A.b.i in this Manual);
- the type and extent of the damage to the land area and land structures on the insured person's land (Section 7.A.b.ii in this Manual);
- the extent of the insured residential land (Section 7.A.b.iii in this Manual);
- the insured residential land that is lost or damaged (Section 7.A.b.iv in this Manual);
- the conceptual remediation strategy for damage to the insured residential land (Section 7.A.c.iv in this Manual);
- the actual loss suffered from the damage to the insured residential land (Section 7.A.c.i in this Manual);
- the land values related to the land cover cap, which include:
    - the assessed market value of the damaged insured land areas and other specified land areas (Section 7.A.d.v in this Manual); and
    - costing the undepreciated value of the damaged insured land structures (Section 7.A.d.vi in this Manual).

More details on each of these seven steps are set out below.

i. Assessing the extent of the insured person's land

As a first step, the extent of the insured person's land must be identified.

Section 4.d in this Manual sets out in detail how to identify the insured person's land.

In general, the insured person's land consists of all the land within the boundaries shown on the RT for that property.

However, land outside those boundaries may also form part of the insured person's land in two situations as follows:

- Where an estate or interest in land held by the insured person relates to land that is contiguous with the land within the RT and is used, or intended to be used, with the land within the RT as a single residential property (see Section 4.d.i in this Manual);
- Where an estate or interest in land is for the benefit of:
    - the land within the RT; or
    - land or interest held by the insured person and is contiguous with the land within the RT that is used, or intended to be used, with the land within the RT as a single residential property (Section 4.d.i in this Manual).

In rare situations, land within a single RT should in fact be treated as two (or more) insured person's lands under the NHI Act (see Section 4.d.ii in this Manual).

ii. Assessing the type and extent of the natural hazard damage to the land area and land structures on the insured person's land

Next it is necessary to identify the type and extent of natural hazard damage to the land area and land structures (insured and uninsured) within the insured person's land.

What is the natural hazard damage?

The residential land has incurred natural hazard damage where there is:

- physical loss or damage to the residential land occurring as the direct result of a natural hazard; and/or
- physical loss or damage to residential land 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 6.d, 6.e, and 6.g in this Manual.

Section 24 (1), NHI Act

In each case, there is land damage where:

- the residential land has been materially physically changed as a direct result of a natural hazard; and
- that change has adversely affected the utility or amenity value of the land.

Material physical change includes change that is 'more-than-negligible', i.e. something beyond the minor, inconsequential or immaterial.

Identifying damage to both insured and uninsured land

At this stage of the assessment, the assessor should identify and record damage to all of the land area and land structures within the insured person's land, where appropriate. This means that the assessment includes damage to both:

- the insured land area and the insured land structures; and
- the uninsured land area and uninsured land structures.

Only the insured land areas and the insured land structures of the residential land are insured under the NHI Act. But it is useful to also have information about any damage to the uninsured land area and uninsured land structures within the insured person's land). That information may (where relevant) inform the assessment of the current or a future NHCover claim related to the property.

In some circumstances, it may not be appropriate to identify and record damage to the entirety of the insured person's land. For example, on a large lifestyle property or a farm, the assessment of the entirety of the insured person's land may be impractical. In these cases, the assessor may identify a smaller area of land to limit their assessment of the land to (this only applies to this stage of the assessment). This area must be clearly defined and recorded as part of the assessment and must include (as a minimum) any damage to the land area and land structures within 60 metres, in a horizontal line, of the residential building (see Section 4.b to 4.j in this Manual).

Some typical types of land damage

Typical types of land damage from different natural hazards include (but are not limited to) those identified in the table below.

			NATURAL HAZARD TYPE							
			Earthquake	Landslide	Volcanic activity	Hydrothermal activity	Tsunami	Storm*	Flood*	Natural hazard fire
LAND DAMAGE TYPE	Land	Evacuation (including scouring)	X	X	X	X	X	X	X	
		Inundation (falling, sliding, flowing or ejection)	X	X	X	X	X	X	X	X
		Cracking (lateral spreading)	X	X	X	X				
		Cracking (oscillation movement)	X							
		Undulating land	X	X	X					
		Localised ponding	X		X					
		Localised settlement	X	X	X					
		Groundwater springs	X	X	X		X			
		Contamination	X	X	X	X	X	X	X	
	Land structures (bridges, culverts,	Impact	X	X	X	X	X	X	X	
		Cracking	X	X	X	X	X	X	X	
		Rotation	X	X	X	X	X		X	
		Collapse	X	X	X	X	X		X	
		Washed away			X		X		X	

* Residential land only

Landslide

Not all ground movement is a landslide. The definition of landslide excludes the movement of ground due to below-ground subsidence, soil expansion, soil shrinkage or soil compaction. See Section 6.b in this Manual.

Section 5, NHI Act

The normal action of the wind or water causing gradual erosion is expressly excluded from being a natural hazard.

Section 23(2), NHI Act

Imminent damage

In assessing any imminent damage, the engineer (or other assessor) engaged should provide their best estimate of any further natural hazard damage that is more likely than not to occur to the residential land:

- as a direct result of the original natural hazard; and
- during the 12-month period following that natural hazard (see Section 6.g in this Manual).

That assessment should be based on the following assumptions:

- normal weather patterns with no extraordinary events; and
- no remediation or mitigation of the original natural hazard damage.

As at what date must the damage be assessed?

The damage must generally be assessed as at the date that the natural hazard occurred, not as at the date of the assessment. This includes assessing:

- the damage that has occurred; and
- any imminent damage

For example, the customer may have started repairs (such as debris removal) before the damage assessment. But in this case, the damage must nevertheless be assessed as at the date of natural hazard rather than at the date of the assessment.

Situation where there is both residential land and residential building damage

Sometimes (particularly for a landslide), the natural hazard damage to the residential land also affects the residential building on the insured person's land. For example, this may be the case where the land damage has resulted in imminent damage to the residential building.

In this situation, it is necessary to consider whether and how the decision to settle the residential land claim affects settlement of the residential building claim. See Section 7.A.c.iii in this Manual.

Recording the type and extent of the natural hazard damage

The type and extent of the natural hazard damage to the land areas and land structures on the insured person's land should be recorded using a land sketch and accompanying report. More details about the land sketch are set out at Section 7.A.b.iv in this Manual.

iii. Assessing the extent of the insured residential land

The extent of the insured residential land must be identified.

We only cover natural hazard damage to insured residential land.

How is the insured residential land identified?

Section 4 in this Manual sets out in detail how to identify the insured residential land.

In summary, the insured residential land is defined under the NHI Act to mean:

- the insured land areas (Section 4.b.ii in this Manual); and
- insured land structures (Section 4.b.ii in this Manual).

Sections 4.b and 4.c in this Manual set out details on assessing the extent of the residential land in different situations.

Section 17, NHI Act

What if there is doubt about whether any particular property is insured residential land?

Sometimes there is doubt whether a particular land area or land structure comes within the definition of the insured residential land under the NHI Act.

For example, there may be doubt about:

- whether a specific land area supports the main access way of the property; (see Section 4.g.vii in this Manual); or
- whether a particular wall within or outside the insured person's land is an insured retaining wall (see Section 4.h in this Manual).

If there is doubt about whether any particular land area or land structure comes within the residential land at the property, the assessor should:

- record the exact location and footprint of that land area or land structure;
- obtain photographs of the damage situation; and
- note in writing why that particular land area or land structure was or was not considered part of the residential land.

In the first instance, that information should be referred to a relevant expert to see if the doubt can be resolved. For example, a geotechnical engineer may be engaged to provide advice about whether a specific land area supports the main access way. If, after the relevant expert's advice has been obtained, there remains doubt about whether the particular land area or land structure is insured residential land, the matter should be escalated to the appropriate NHC representative.

Recording the type and extent of the insured residential land

The extent of the insured residential land (including any particular land areas or land structures that are in doubt) should be recorded using a land sketch and accompanying report. More details about the land sketch are set out at Section 7.A.b.iv in this Manual.

iv. Assessing the insured residential land that is lost or damaged

It is necessary to identify the insured residential land (insured land areas and land structures) that is actually lost or damaged.

Key components for calculating the maximum amount (or land cover cap) that can be paid for a residential land claim include the:

- prior market value of the area of the damaged part of the residential land (or sometimes the prior market value of the hypothetical 'area cap'), and
- undepreciated value of any insured land structures that are damaged.

The insured land area and insured land structures that are actually lost or damaged includes any land area or land structure for which physical loss or damage is, in our opinion, imminent as the direct result of the natural hazard (see Section 7.A.b.ii in this Manual under the heading 'Imminent damage').

Identifying the insured land area and any insured land structures that have actually been lost or damaged should be done early in the assessment process.

Preparing a land sketch

For each residential land claim, the assessor should prepare a detailed land sketch identifying:

- the extent of the insured person's land;
- the extent of the insured residential land. This includes:
    - insured land areas and land structures within the insured person's land (whether damaged or not); and
    - insured land structures outside the insured person's land that are lost or damaged (if any);
- the type and extent of the land damage. This includes natural hazard damage (including imminent damage) to:
    - the insured land areas; and
    - any uninsured land areas and land structures within the insured person's land; and
    - any insured land structures within and outside the insured person's land.

Enough information should be recorded on the land sketch and accompanying report to help enable the next steps of the assessment to be progressed, namely:

- the formulation of a conceptual remediation strategy (see Section 7.A.c.iv in this Manual);
- the assessment of the cost of carrying out the conceptual remediation strategy (see Section 7.A.c.v in this Manual); and
- the assessment of the value of the damaged area of insured land and the undepreciated value of any damaged insured land structure (see Sections 7.A.d.v and 7.A.d.vi in this Manual).

If an engineer has been engaged, the engineer must also prepare a land sketch of their own.

What specific information regarding land damage should be recorded on the land sketch?

The land sketch should be drawn to scale and show the following items regarding land damage:

- each insured land area that is actually lost or damaged;
- each insured land area (if any) that physical loss or damage is imminent for as the direct result of the natural hazard;
- each insured land structure that is actually lost or damaged;
- each insured land structure that physical loss or damage is imminent for as the direct result of the natural hazard;
- each insured land structure within the insured person's land that has not been lost or damaged; and
- where applicable, the relevant information about the building damage that has occurred as the direct result of the natural hazard damage to the residential land (including imminent damage).

The land sketch (or accompanying report) should also record:

- the area, in square metres, of each damaged land area;
- enough detail about each damaged insured land structure (such as its dimensions and construction details) to allow an assessor (or other suitably qualified expert) to assess the undepreciated value of that structure.

For example, Figure 10 below provides an illustration of a land sketch after a landslide and flood occurred as part of one natural hazard event. The land sketch for the insured person's land provides detailed dimensions of:

- an area of 20 m^2 of inundation (from the flood) (see A1 on the sketch);
- an area of 24 m^2 of inundation both on and in close proximity to the main access way (from the flood) (see A2 on the sketch);
- a retaining wall that has rotated forward (from the landslide), which is 4.2 metres high and 12 metres long (see RTW1 on the sketch);

- an area of 4 m^2 of evacuated land behind the damaged retaining wall (from the landslide) (see B1 on the sketch);
- an area of 2.5 m^2 of inundation in front of the damaged retaining wall (from the landslide) (see A3 on the sketch); and
- an entire retaining wall that has not suffered any damage (see RTW2 on the sketch).

Note also, the sketch:

- is drawn to scale;
- identifies the boundary of the insured person's land (including dimensions);
- indicates the dimensions of the house and shed;
- indicates (with the red dotted line) the insured land area within 8 metres of the house and the shed;
- identifies the main access way (including its distance from the house);
- identifies the areas of damaged land that are insured and not insured;
- includes details of the location and type of the retaining walls;
- identifies the street name; and
- shows the direction of north.

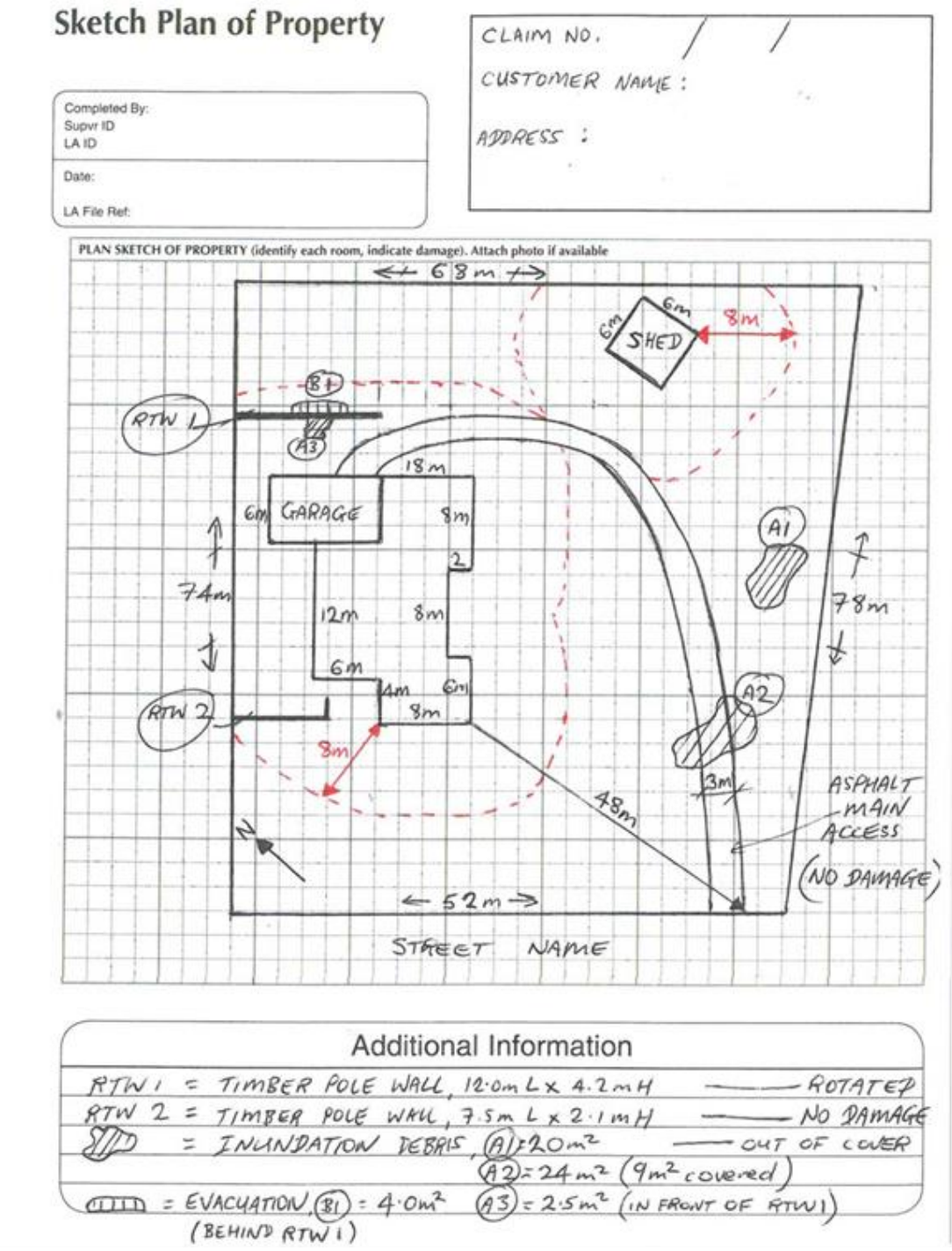

Figure 10: Example of a land sketch

c. Assessing actual loss suffered

The land claim entitlement for the natural hazard damage suffered is generally based on the actual loss suffered.

'Actual loss' is typically quantified using 'reinstatement cost' or 'diminution of value', or a combination of both.

i. What is the actual loss suffered?

NHCover insures residential land against natural hazard damage for the actual loss suffered.

The amount of the NHCover for residential land is also subject to a maximum amount of insurance (the land cover cap) (see Section 9.e in this Manual). But before it can be determined whether or not the land cover cap is reached, it is necessary to assess the amount of the natural hazard damage on the basis of the actual loss suffered.

Actual loss is defined in the NHI Act as follows:

> (1) The actual loss suffered is the actual loss suffered—
>
> (a) by the person who was the insured person for the residential land at the time the natural hazard damage occurred; and
>
> (b) as a direct result of the natural hazard damage to the residential land, but not including any consequential loss (see section 28(3)).
>
> (2) To the extent that the actual loss suffered can be reasonably quantified using reinstatement cost or diminution of value, or a combination of both, the Commission must quantify the loss in that way.
>
> Section 40, NHI Act

For details on the definition of an insured person, see Section 3.c.i in this Manual. The actual loss suffered is determined for the person who was the insured person at the time of the natural hazard damage, even if the claim is subsequently assigned, or the land claim entitlement is required to be paid to someone else (see Section 10 in this Manual).

The method of quantifying the actual loss is, in almost all cases, 'reinstatement cost' or sometimes 'diminution of value' (DOV). A combination of both methods of quantifying actual loss can be used.

For example, a single area of land damage may be settled through both partial reinstatement and DOV (reflecting a residual loss in value that may exist after partial reinstatement). An example of this occurring is where an area of residential land has

suffered undulation and increased flooding vulnerability (IFV). The undulation can be addressed using reinstatement cost. However, when IFV cannot be repaired, DOV is appropriate to recognise the residual loss in value to the area of land.

If the actual loss suffered cannot reasonably be quantified using either reinstatement cost or DOV, this must be escalated to the relevant NHC representative.

ii. What method is used to quantify the actual loss suffered?

The method used to quantify the actual loss suffered (typically reinstatement cost, sometimes DOV or a combination of both) is determined by us (or a person we authorise). It depends on all of the circumstances, including:

> (a) whether, or to what extent, reinstatement —
> (i) is technically feasible; and
> (ii) could lawfully be carried out; and
> (iii) would be disproportionately expensive compared with the diminution of value if the land were not reinstated; and
> (b) whether, or to what extent, the person who was the insured person for the residential land at the time the natural hazard damage occurred has reinstated the land or intends to do so.
>
> Section 40(3), NHI Act

These factors are not exhaustive, meaning that other circumstances can be taken into account when determining whether to use the reinstatement cost or DOV.

For example, if the person who was the insured person for the residential land at the time the natural hazard damage occurred has reinstated the land or intends to do so, this is an indicator that reinstatement cost may be the appropriate method to quantify the actual loss (rather than the DOV).

Factors that could indicate it may be appropriate for us (or a person we authorise) to settle a residential land claim (or part of that claim) by paying DOV (rather than the reinstatement cost) include where:

- it is not possible to carry out the repair lawfully. For example, it may not be possible to get a resource consent to carry out the repair;
- we are satisfied that the customer does not intend to undertake the repair of the land within a reasonable period of time (if at all); or

- the cost of the repair work is disproportionate to the reduction of value to the property caused by the land damage. In this case, we have regard to the particular circumstances of the customer (including their stated intentions in relation to repair of the land).

More details on settling a residential land claim (or part of that claim) by paying DOV are set out in Section 9.d.i in this Manual.

We (or a person we authorise) should decide whether to quantify the actual loss suffered after an initial assessment of the damaged residential land. We (or a person we authorise) may need to engage relevant experts for further advice before making this decision.

In cases where it is identified that assessment on the basis of DOV may be appropriate, the matter must be escalated to the appropriate NHC representative.

iii. What is reinstatement cost?

The reinstatement cost of residential land (or part of it) is the total cost that would be reasonably incurred to reinstate the damaged residential land (or that part of it) in a way that would be reasonably sufficient in the circumstances.

The 'total cost' to reinstate the damaged residential land means:

- the cost of all reinstatement work (including the cost of any work that needs to be done to undamaged parts of the residential land in order for the damaged land to be reinstated);
- the costs of complying with all applicable laws relating to reinstating the residential land;
- other fees or costs payable in the course of carrying out the reinstatement work (for example, architect's fees and fees payable to local authorities); and
- GST.

Section 41(6), NHI Act

If the natural hazard damage includes the accumulation of earth, rock, or other debris on the residential land (commonly referred to as inundation), the reinstatement cost of that accumulation is the cost of removing the debris.

Section 41(5), NHI Act

Practically, the assessment for reinstatement cost requires the assessor to use the 'conceptual remediation strategy' (see Section 7.A.c.iv in this Manual).

What does reinstatement cost not include?

Under s 41(8) of the NHI Act, the reinstatement cost does not include any claim handling costs or any allowance for contingencies.

The reinstatement cost also does not include the cost of any 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 reinstatement cost does not include the cost of modifications required to comply with that law.

Section 41(7), NHI Act

For example, before the natural hazard damage occurred, an insured retaining wall was subject to a dangerous building notice requiring the demolition and replacement of that retaining wall. The cost to comply with the dangerous building notice would not be included in the reinstatement cost.

Partial and full reinstatement

The reinstatement cost may be applied to all of the land damage, or just to a part of the damage (with the other part being settled on the basis of DOV).

For the damaged parts of the residential land where reinstatement cost is applied, the reinstatement may be either full reinstatement or partial reinstatement, or a combination of both for different parts of the damaged land.

Section 41, NHI Act

Full reinstatement means reinstatement so that the land is:

- able to support or protect the residential building and access to it to substantially the same extent as it did before the land was damaged; and
- able to be used for substantially the same purpose as it was used before it was damaged; and
- not materially more or less valuable than it was before it was damaged.

Section 41(3), NHI Act

In many cases remediation work results in at least some increase in value (for example, because the property is more resilient than it was before the damage). This increase is an inevitable result of the works and is not considered material, if the works are the most cost-effective strategy to restore support, protection and usability.

However, even the most cost-effective full remediation may in some cases still be disproportionately expensive under section 40(3)(a)(iii) of the NHI Act. In these cases, a partial reinstatement or DOV settlement may be considered as alternatives.

Partial reinstatement means reinstatement to some extent so that one or both of the following are improved:

- the land's ability to support or protect the residential building and access to it; or
- the usability of the land for the purpose for which it was used before it was damaged.

Section 41(4), NHI Act

For example, in some cases it may only be technically feasible to construct a retaining wall that restores some, but not all, evacuated land. This may result in part of the land being materially less usable (such as an area of previously flat lawn that is graded into a steep slope). This is considered partial reinstatement.

How does reinstatement cost apply to shared, common or joint property?

An extra step is required to assess shared, common, or joint land. See Section 7.A.e in this Manual.

How is reinstatement cost calculated for 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 6.g in this Manual).

One or a combination of the following must be used to determine the reinstatement cost in respect of the imminent damage:

- the 'future reinstatement cost' value;
- the 'mitigation cost' value.

We (or a person we authorise) must decide which of these options to use.

Future reinstatement cost

The future reinstatement cost is the reinstatement cost that would be calculated if the imminent damage had in fact occurred.

Section 47(3), NHI Act

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.

Section 47(4), NHI Act

Mitigation cost – overlap between a residential building and residential land

In some circumstances where there is imminent damage to the residential land, the mitigation works to address that imminent damage would also address natural hazard damage to the residential building (which may be imminent damage, actual damage, or both).

Where that is the case, we (or a person we authorise) must determine how to allocate the costs of the relevant works 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 related to the residential land, residential building, or neither of them.

There is overlap between the residential land and residential building 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 land (or a structure that is not the residential building), the cost of those works must first be allocated to the reinstatement cost for the land claim (up to the land cover cap). The remaining portion of the cost of those works (if any) should be allocated to the replacement cost for the building claim, but only to the extent of the imminent damage risk to the residential building (up to the building cover cap).

For example, if the mitigation works involved constructing a new retaining wall to address actual and imminent damage to the residential land, as well as imminent damage to the residential building, the cost of the retaining wall would first be allocated to the reinstatement cost (the residential land claim). This is because a retaining wall is a structure that forms part of the residential land. If the land claim reached the land cover cap, the balance of any costs relating to the retaining wall would be allocated to the replacement cost (the residential building claim), but only to the extent of the imminent damage risk to the residential building caused by the land damage.

For settlement purposes, we (or a person we authorise) must ensure that the NHC customer has not been over-indemnified as a consequence of us (or a person we authorise) assessing different types of damage separately.

Future reinstatement cost or mitigation cost?

In deciding whether, or to what extent, to use the future reinstatement cost or mitigation cost, we (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 reinstatement and mitigation;
- if the residential building 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 land:
    - might need to be taken to replace or reinstate the damaged building; or
    - might also mitigate the risk of imminent damage to the building.

Section 47(5), NHI Act

iv. Assessing the conceptual remediation strategy

A conceptual remediation strategy for the insured land damage must be prepared.

Purpose of the conceptual remediation strategy

The remediation strategy is described as 'conceptual' because its purpose is to identify an appropriate remediation strategy for costing purposes.

The conceptual remediation strategy does not comprise a detailed specification for construction purposes. Specific engineering or design documentation is required for construction purposes in most situations.

Preparing a conceptual remediation strategy does not mean that we (or a person we authorise) will be:

- carrying out, or arranging to carry out, the land repair (reinstatement); or
- settling based on cost of repair (payment).

We (or a person we authorise) must decide whether to settle a residential land claim by payment or reinstatement (or another available method of settlement). Methods of settlement are addressed in Section 9.c in this Manual.

Conceptual remediation strategy normally based on a visual site walkover

The conceptual remediation strategy should normally be based on a visual site walkover. The strategy must be designed to:

- repair the actual damage to the residential land by restoring its utility or amenity value to immediately before the natural hazard; and
- remove any risk of identified imminent damage to the residential land (either by mitigating it or by repairing that damage once it (hypothetically) happens).

The conceptual remediation strategy does not remove any risk of future damage where that damage is not imminent.

If a more invasive investigation than a visual site walkover is required to develop a conceptual remediation strategy, the person dealing with the claim should escalate the matter to the appropriate NHC representative.

Other key features of the conceptual remediation strategy

The conceptual remediation strategy should:

- be appropriate for the specific site and the nature of the damage to the insured land areas and the insured land structures;
- be designed to identify the repair required as at the date of the natural hazard (including any imminent damage from that date). This is the case even if some or all of the damage has been repaired by the time of the assessment;
- take into account information about any repair of the natural hazard damage to the residential land already carried out by the customer and whether that repair was appropriate in the circumstances;
- be lawful, including by meeting the requirements of the building code;
- be able to obtain (after any detailed design work is complete) a building and/or resource consent, if required; and
- be practical.

Scope of conceptual remediation strategy

The conceptual remediation strategy must be limited to repairing the natural hazard damage to the insured residential land. However, there may be circumstances where the conceptual remediation strategy for the insured residential land incidentally reinstates

damaged land that is not insured under the NHI Act.

For example, it may not be technically feasible to reinstate a damaged insured retaining wall situated outside the insured person's land without also carrying out work to some of the uninsured land surrounding the retaining wall. This means it is necessary to reinstate some uninsured land in order to reinstate the insured retaining wall. The cost to reinstate that land may be included as part of the cost to reinstate the insured retaining wall, even though that land is not insured under the NHI Act.

If there is any uncertainty on whether any cost to reinstate uninsured land should be included in the reinstatement cost, the matter should be referred to the appropriate NHC representative.

If the conceptual remediation strategy is not going to restore all of the insured land areas and land structures, it should:

- identify the lost or damaged insured land areas and insured land structures that will not be restored; and
- quantify (in square metres) those lost or damaged insured land areas and insured land structures.

One repair method may repair several types of land damage

Under the conceptual remediation strategy, the repair method for repairing land for one type of land damage may also repair other land damage types at the same time.

For example, the repair of undulating land may fully or partially repair local ponding.

Enabling works

It may be necessary to include enabling works as part of the conceptual remediation strategy for the land damage. For example:

- the land damage may be undulation under a driveway, but the artificial surface of the driveway is not damaged. In order to repair the damage to the underlying land, it may be necessary to lift the undamaged driveway to get access to the land. It will then be necessary to re-lay the driveway once the underlying land has been repaired. In this example, the lifting and re-laying of the driveway will be part of the repair; and
- the land damage may be silt inundation under the dwelling following an earthquake. It may be that the only way that the silt can be removed is by hand

and that the repair will involve lifting the otherwise undamaged floorboards. In this case, removing the silt (including lifting and replacing the floorboards) will form part of the land repair.

On the other hand:

- in the first example above, if the driveway surface had been damaged, it would already require repair or replacement. In this situation, it would typically not be appropriate to include lifting and re-laying the driveway in the conceptual remediation strategy for the land damage; and
- in the second example above, if the floorboards were already damaged, they would already require repair or replacement. In this situation, it would typically not be appropriate to include lifting and re-laying the floorboards in the conceptual remediation strategy for the land damage.

Consents and other statutory approvals

It may be necessary to contact the local authority to confirm the site-specific requirements of the property. The conceptual remediation strategy should take into account the need for any required resource or building consents for the repairs to the insured land areas and insured land structures.

For this and other reasons, engineering or drainage advice may also be required in the preparation of the conceptual remediation strategy.

The reinstatement cost also does not include the cost of any 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 reinstatement cost does not include the cost of modifications required to comply with that law.

Neighbouring properties affected by the same natural hazard

Where neighbouring properties are affected by the same natural hazard, it may be appropriate to consider whether a cross-boundary remediation strategy is appropriate. In this case, the person dealing with the claim should escalate the matter to the appropriate NHC representative.

What if the insured land damage is unrepairable?

If the insured land is unrepairable, the conceptual remediation strategy should note this. It should also identify where that land is and set out the reasons for the conclusion that the insured land is unrepairable.

See Section 7.A.c.vi in this Manual.

v. Assessing the cost of repair

It is necessary to assess the cost of the conceptual remediation strategy for repairing the natural hazard damage to the insured land area and insured land structures.

The land repair needs to be costed for the purposes of calculating the land claim entitlement.

The reinstatement cost may include engineering and consent fees and the cost of obtaining access to the site for the purposes of carrying out the land repair.

The person assessing the residential land claim should collect invoices for repairs already done and have regard to the costs of any such repair.

Imminent damage

The cost of repair should include the cost of addressing any physical loss or damage to the residential land that, in our opinion, is imminent as the direct result of the natural hazard that has occurred (see Section 6.g in this Manual).

Repair costings for imminent natural hazard damage to residential land takes into account either:

- the cost to mitigate the risk of the imminent natural hazard damage occurring (where this is possible); or
- the cost to repair the imminent natural hazard damage as if the imminent damage had in fact occurred.

If some or all of the land damage has already been repaired after the natural hazard and before the assessment, the assessor should nevertheless prepare a costing as though that damage has not been repaired.

vi. What is diminution of value?

Actual loss can also be quantified using diminution of value. Diminution of value (DOV) is defined as:

> ... the loss of value (including any GST) of the residential land, or the residential land and residential building, as a direct result of the natural hazard damage to the damaged residential land.
>
> Section 42(1), NHI Act

For details on whether DOV, reinstatement cost, or a combination of both is used to quantify actual loss, see Section 7.A.c.ii in this Manual.

DOV does not include any loss in value resulting from any of the following (whether occurring as a direct result of the natural hazard or otherwise):

- damage to the residential building;
- changes in the value of the residential building (other than changes that are a direct result of the natural hazard damage to the residential land);
- damage to, or changes in the value of, other land or buildings;
- any general stigma arising from the natural hazard;
- changes in market conditions; and
- regulatory changes.

Section 42(2), NHI Act

Diminution of value may be measured as a loss of value to both the residential building and residential land as a direct result of natural hazard damage to the residential land.

For example, if residential land had suffered increased liquefaction vulnerability (ILV) land damage as a result of an earthquake that was not technically feasible to repair (among the other considerations of section 40(3) of the NHI Act), and the eligible building

had also suffered shaking damage from the earthquake (such as cracks to wall linings and other building elements):

- the residential building entitlement would meet the cost of the shaking damage to the eligible building; and
- the residential land entitlement would meet the DOV of the residential building and residential land as a direct result of the ILV land damage.

In this example, the DOV would not include any loss in value of the eligible building as a result of the shaking damage (which would be covered separately under the residential building claim). However, it would include the loss in value to both the residential building and residential land as a direct result of the ILV land damage. This is because the land would be more vulnerable to flooding as a result of the ILV land damage, and this could also affect the building.

However, DOV may also only reflect the loss of value of the residential land in some cases — for example, if the residential building needs to be rebuilt because of the damage.

How does diminution of value apply with respect to shared, common or joint property?

An extra step is required for the assessment of shared, common, or joint land. See Section 7.A.e in this Manual.

d. Assessing the relevant land values

The assessor generally needs to obtain a valuation of the 'assessed market value' of the damaged part of the residential land (or a hypothetical area of residential land).

If there is an insured land structure that has been lost or damaged on the residential land, an assessor (or other suitably qualified expert) will provide a costing of the undepreciated value of that insured land structure.

This assessment is required to obtain information that may be needed later for calculating the maximum amount (or land cover cap) that can be paid for the residential land claim.

i. What are the different types of land valuation?

Standard land valuation

Most residential land claims require a standard land valuation, which is provided by a valuer. A standard valuation is site-specific and usually based on an on-site assessment, but sometimes a desktop assessment is appropriate. The valuer applies the 'utility approach'[11] to these valuation assessments where appropriate.

Alternative land valuation

An alternative land valuation (such as an 'adjusted rating valuation' or 'notional valuation') considers market value based on a mass appraisal approach[12] and does not usually apply the utility approach to land valuation assessment. These types of valuation provide an indicative square metre land value, which can be used to calculate an indicative land cover cap. This may help determine the basis of the land claim settlement.

The indicative land cover cap is determined in the same way as the land cover cap under section 43 of the NHI Act. It is 'indicative' because it is based on a notional valuation, not a site-specific valuation.

A land claim must not be settled based on an indicative land cover cap. However, it can be settled based on reinstatement cost (in certain circumstances only) using that indicative land cover cap.

For more information, see this Manual, Section 9.e.viii When may each valuation type be used to settle an NHCover land claim?.

[11] The 'utility approach' means applying (where appropriate) different rates for different areas of the land based on their different utility. See section 44(4) of the NHI Act.

[12] The mass appraisal approach calculates value by analysing area market trends and recent sales, rather than by individual property assessments.

ii. Obtaining an alternative land valuation

Adjusted rating valuation[13]

We obtain an adjusted rating valuation from valuation experts for each NHCover land claim and make it available to anyone dealing with the claim. The person dealing with the claim must determine whether this valuation can be used to determine the basis of the land claim settlement.

Notional valuation

All requests for a notional valuation report must be made to the appropriate NHC representative.

A Notional Valuation Request may be made where:

- an adjusted rating valuation is not available;
- the utility value of the land for the affected properties is expected to be materially the same across the site (such as for properties with a uniform contour);
- most affected properties do not have landslide damage, imminent damage to any insured land areas, or actual or imminent damage to any insured land structures; and
- the cost of repairing the residential land damage is expected to be less than 80% of the indicative land cover cap, based on the notional valuation being requested.

[13] This adjustment is for the purposes of determining the indicative land value for NHCover land claims only and it does not result in any change to a property's rating valuation or the amount of council rates that apply to a property. It is different to the formal 'adjusted rating valuation' process where a homeowner can apply to a council to have their land and/or improvements valuations adjusted between 3-year cycles.

iii. When is a land valuation not required?

A land valuation may not be required where:

- there is no loss or damage; or
- the cost of repairing the land damage is less than the land excess.

When a land valuation is not required, clearly document the reason for this on the claim file.

iv. What date should the value be assessed at?

The value is assessed as at the date the natural hazard damage occurred on.

v. What is the assessed market value?

The 'assessed market value' is determined under the NHI Act as follows:

> (1) If the area of the damaged part of the residential land is less than or equal to the area cap, the assessed market value is the prior market value of that part of the residential land.
> (2) If the area of the damaged part of the residential land is greater than the area cap, the assessed market value is the prior market value of a hypothetical area of residential land that, to the extent that is practicable,—
> (a) has an area equal to the area cap; and
> (b) is situated in the same place as the residential land; and
> (c) has all of the same features as the residential land.
>
> Section 44, NHI Act

In practical terms, this means the area cap must be determined first. The area of the area cap is then used to determine whether the area of the damaged part of the residential land is less than, equal to, or greater than that area cap. ‘Area cap’ means:

> (a) if there is an district plan minimum area, the lesser of—
> (i) the district plan minimum area; and
> (ii) 4,000 square metres; or
> (b) if there is no district plan minimum area, 4,000 square metres
>
> Section 44(6), NHI Act

The ‘district plan minimum area’ is the minimum area (in square metres) allowable under the district plan for land that is used for the purpose for which the damaged residential land was being used at the time the natural hazard damage occurred.

'District plan' is the operative plan under the Resource Management Act 1991 for the region where the damaged residential land is situated.

The valuer must provide us with a record of:

- the area of the damaged part of the residential land; and
- the area of the applicable area cap; and
- the prior market value of whichever of the two areas (above) is the smallest area.

If there is any uncertainty about the determination of the area cap, this matter must be escalated to the appropriate NHC representative.

Once the area cap has been determined, the assessed market value is calculated as below:

- If the area of the damaged part of the residential land is **less than or equal to** the area cap, the assessed market value is the prior market value of that part of the residential land.
- If the area of the damaged part of the residential land is **greater than** the area cap, the assessed market value is the prior market value of a hypothetical area of residential land that, to the extent that is practicable:
    - has an area equal to the area cap; and
    - is situated in the same place as the residential land; and
    - has all of the same features as the residential land.

Section 44(6), NHI Act

Practically, this means the valuer needs to provide the prior market value of whichever is the smaller area of either:

- the damaged part of the residential land; or
- a hypothetical area that is (to the extent that is practicable) equal to the area cap.

The hypothetical area is, to the extent that is practicable, situated in the same place as the residential land and has all the same features as the residential land.

The 'prior market value of land' is the amount that would have been the market value of the land immediately before the natural hazard damage occurred (including any GST).

Section 44(3), NHI Act

The valuation must be made using per square metre market rates, applying (where appropriate) different rates for different areas of the land based on their different utility. The sum of the values of the different areas must still equate to the value of the land being valued as a whole.

Section 44(4), NHI Act

The valuer must assess the prior market value of the insured land area. For the purposes of this assessment, any improvements to the land must be excluded.

How does the assessed market value apply to shared, common or joint property?

An extra step is required for the assessment of shared, common, or joint land. See Section 7.A.e in this Manual.

vi. What is the undepreciated value of the insured land structures for the purposes of the land cover cap?

The 'undepreciated value' of a damaged retaining wall, bridge, or culvert is the total cost that would reasonably be incurred to construct a structure that is substantially the same as, but not better or more extensive than, the damaged one was when it was new. This applies even if a structure of that kind would not comply with current building standards or applicable laws.

This amount must be calculated for each damaged retaining wall, bridge and culvert that is insured under the NHI Act.

Section 45(1), NHI Act

For the purpose of assessing the undepreciated value:

> The **total cost** of constructing the structure means—
> (a) the cost of all construction work; and
> (b) the cost of complying with all applicable laws, other than any requirements in the current building standards or other laws that would require modification of the structure from when it was new;
> (c) other fees or costs payable in the course of constructing the structure (for example, architects' fees and fees payable to local authorities) as if the structure did comply with current building standards and applicable laws; and
> (d) GST.
>
> Section 45(2), NHI Act

> The undepreciated value does not include—
> (a) the cost of carrying out any work other than the actual construction of the structure, even if that work would be necessary to enable the structure to be constructed (such as removing the damaged structure or removing or rebuilding other structures to provide access to the construction site); or
> (b) claim handling costs; or
> (c) any allowance for contingencies.
>
> Section 45(3), NHI Act

How does undepreciated value apply to shared, common or joint property?

An extra step is required for the assessment of shared, common, or joint land. See 7.A.e in this Manual.

What does the undepreciated value apply to?

The undepreciated value applies to the whole insured land structure, not just the damaged part of it.

For example, if there is an insured retaining wall 10 metres long, but only a 2 metre length at the end of the retaining wall is damaged, the undepreciated value must be costed based on the entire insured retaining wall (the whole 10 metre length of the wall and its associated support system, if any) to find its undepreciated value.

For this purpose, it is important to identify the insured retaining wall. For more details on what comprises an insured land structure, see Sections 4.h, 4.i and 4.j (and in particular, 4.h.vi and 4.h.vii) in this Manual.

e. How are the proportionate costs, values, and amounts for shared, common or joint land determined?

Residential land may include common, joint and shared land (see Section 4.b.v in this Manual). Assessing or valuing residential land that falls under one of these categories involves an additional step.

This extra step is needed to determine:

- the reinstatement cost of any of the damaged residential land that is shared land, common land, or joint land;
- any part of the DOV that relates to shared land, common land, joint land, shared property, common property, or joint property;
- the assessed market value of any residential land that is shared land, common land, or joint land;
- the undepreciated value of any insured land structure that is shared land, common land or joint land.

Section 46(1), NHI Act

To assess the 'relevant amount', as set out above, we (or a person we authorise) must first determine the reinstatement cost (using the conceptual remediation strategy), the DOV (whether this has been identified as the sole or partial quantification method for assessed market value), the assessed market value, or the undepreciated value of any insured land structure (see Section 7.A.d in this Manual).

After this assessment is carried out, the amount is multiplied by the insured person's shared, common, or joint ownership interest (depending on the nature of the property) (see Section 4.b.v in this Manual).

Shared property and common property

There may be circumstances where property that is both shared property and common property is damaged. In this scenario, the relevant amount for the shared property is calculated first, and then the relevant amount for the common property (with any necessary modifications) is calculated.

For example, if a residential building is a mixed-use building and the residential land includes shared and common land, the calculation for the residential land that is both shared land and common land (Area A) would be as is set out below.

For the purposes of this example, there was an equal repair responsibility between the insured person for the shared land and the persons who had insurable interests in the common land. There were four persons with a common ownership interest in the common land. The reinstatement cost for Area A was determined to be $10,000.

Shared property (Calculation A)

- $10,000 x 50% (the shared ownership interest) = $5,000.
- $5,000 would go to the insured person for the shared land.
- The remaining $5,000 would be 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 common land would receive $1,250.

Shared property and joint property

There may be circumstances where property that is both shared property and joint property is damaged. In this scenario, the relevant amount for the shared property is calculated first, and then the relevant amount for the joint property (with any necessary modifications) is calculated.

f. What if the residential land has, or in the short term will be, self-repaired?

Where the land has, or will in the short term be, 'self-repaired', no land damage repair will be costed. Self-repair can, for example, happen where:

- light silt inundation left on the property from a flood event is washed away through normal rainfall processes; or
- inundation from a stream bank into a stream is removed by the natural flow of the stream.

Land damage will be costed where the damage involves a long-term or permanent change to the land.

g. What if the residential land is contaminated?

i. What if the residential land is contaminated as a direct result of a natural hazard?

If residential land is contaminated as a direct result of a natural hazard (and this contamination is not temporary), this may be considered natural hazard damage. For there to be natural hazard damage, there must be a material physical change that adversely affects the utility or amenity value of the insured property (see Section 6.d in this Manual).

An example of this type of contamination is residential land being inundated by debris containing asbestos.

ii. What if the residential land is temporarily contaminated?

Sometimes a natural hazard may cause residential land to become temporarily contaminated (for example, sewage seeps to the surface of the land).

However, in these cases, the contamination often breaks down to safe levels over a short period (for example, because the bacteria in the sewage break down in the sunshine or normal rainfall).

In these situations, the land has, or will in the short term be, 'self-repaired'. No land damage repair needs to be costed, unless there are other types of land damage to the insured land.

iii. What if the residential land is contaminated due to a pre-existing condition?

Potentially contaminated land refers to residential land that is identified on a local or regional authority register as potentially being contaminated from previous land use. In other words, the contamination is not the result of a natural hazard.

An example is residential land on a Hazardous Activities and Industries List (HAIL) site that is listed on the Environment Canterbury (ECan) Listed Land Use Register (LLUR).

All health and safety requirements must be met in connection with any visit to potentially contaminated land. For more details, see Section 12.a in this Manual.

The contamination-related costs incurred in carrying out the repair of natural hazard damage to insured residential land are covered under the NHI Act. Those costs may sometimes include complying with the requirements of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. The cost of addressing the effects on the site itself (e.g. the contamination) is not covered under the NHI Act.

h. 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.

i. When must the assessor visit the residential land for an assessment?

The assessment involves a visit to the residential land 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 insured land.

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 land 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.e.ii in this Manual.

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 land 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 land?

Any proposal to take a general approach to the assessment of more than one NHCover residential land 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.

j. What are the requirements for visiting residential land for an assessment?

i. Arranging access to residential land

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 customer should be given at least 24 hours' notice of the visit (unless some other arrangement is mutually agreed).

The visit should be arranged such that either:

- the customer (or their representative) is at the property at the time of the visit; or
- the customer has agreed that the assessor can come onto the property to carry out the residential land assessment without the customer (or their representative) being there.

If, after reasonable steps have been taken to obtain the customer's consent, the customer will still not allow access to the residential land 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 land for the purposes of the assessment.

For more details, see Section 12.a in this Manual.

iii. Dangerous, insanitary and/or contaminated land

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 12.b in this Manual must be followed.

iv. Proper identification

People engaged in the assessment who visit the residential land 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.

k. Other requirements for an assessment of the natural hazard damage to the residential land

i. What if there is also damage or suspected damage to the residential building?

We (or a person we authorise) are not required to determine whether there is any damage to the residential building or residential land beyond that identified by the insured person.

However, if we (or a person we authorise) become aware of any such damage to the residential building or residential land beyond that identified, the insured person must be notified of that damage.

Section 57(3), NHI Act

Practically, if the person assessing the damage identifies or suspects that there is natural hazard damage to the residential building on the property and:

- they are authorised to assess residential building damage, that person should also assess the residential building damage;
- they are not authorised to assess residential building damage, that person should escalate the matter to the appropriate NHC representative.

ii. 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.

iii. Engaging engineers, valuers and other professionals

Typically, the person dealing with the claim needs to engage professionals (e.g. geotechnical engineers and valuers) to complete the assessment. This engagement must in all cases be made on our behalf.

These 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 professional from providing services to us in relation to the NHC customer's claim or claims generally.

Reports from professionals must be addressed to, and be 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.

However, there may be cases where it is unnecessary to engage any professionals, for example:

- where the land damage is clearly outside the insured areas of residential land; or
- where there is only minor inundation damage and there is a small cost of removing the debris.

iv. 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.

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 claims have been made 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 a payment was previously made to repair natural hazard damage and that 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 8.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 land cover cap implications);
- when applying the principles under Section 7.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 be used 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 land damage claims under the NHI Act where multiple but separately insured natural hazard events have caused damage to the land.

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 6.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 that occurs during the damage period (being initial damage or second damage) and extended damage (see Section 3.g.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.g.iii in this Manual).

All natural hazard damage that occurs during an event is the subject of the same claim (see Section 3.g.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 there is new natural hazard damage (that is not extended damage or imminent damage from another event) to the residential land that occurs outside the damage period, this damage is treated as initial damage that the insured person must make a new claim for.

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).

Where there is a residential building claim as well as a residential land claim, there is a separate excess for each claim.

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 7.A, 7.B and 7.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 that 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 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 6.e 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 residential land in a context where the land has been damaged by multiple events without intervening repairs, the following principles should be applied (using here the example of landslides, 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 landslide event (LS1), the damage that occurred as a direct result of LS1 and the cost of repairing that damage.
- In respect of the next landslide event (LS2), the task is to assess what additional damage (if any) occurred as a direct result of LS2 – 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 LS2.
- However, in the case of land structures, if a component of the structure needs to be replaced after a landslide, 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 land structure as a whole needs to be replaced after a landslide, it cannot be further damaged or have further repair cost incurred.
- Similarly, in the case of land that is lost, it cannot in any meaningful sense be further damaged or have further costs 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 landslides. This is because costs do not necessarily increase in relation to the extent of

damage in a linear or uniform fashion. Rather, reference should be had to the circumstances of each damaged component.

Example of application of principles

The following example shows how the principles apply:

- the same area of land is damaged in the same location in two landslides – LS1 and LS2;
- LS1 and LS2 have occurred more than 48 hours apart;
- the cost to repair the damage that is the direct result of LS1 is $20,000;
- the cost to repair the damage that is the direct result of LS1 and LS2 to the standard required under the NHI Act is $80,000;
- the amount of damage (subject to the applicable land cover cap, the excess, and any grounds to decline the claim) for:
    - LS1 is $20,000;
    - LS2 is $60,000 (i.e. $80,000 less $20,000).

8. 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 8.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, reinstatement or relocation) after the claim is determined to be valid (see Section 8.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 8.c in this Manual).

This Section outlines:

- who may make a decision to decline an NHCover claim under (Section 8.e in this Manual);
- the nature of such a decision to decline (Section 8.f in this Manual);
- the process for such a decision to decline (Section 8.g in this Manual);
- the grounds to decline an NHCover claim (in whole or part) under (Section 8.h in this Manual); and
- the grounds to limit NHCover (Section 8.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 7 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 and/or residential land) (see Section 3.i.i in this Manual)

If we have cancelled the NHCover for a residential building, that cancellation also has the effect of cancelling the NHCover for the associated residential land.

There is no valid NHCover claim if the NHCover for the property was cancelled at the time of the natural hazard damage.

For residential land 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 if 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

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

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

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 8.h.i in this Manual);
- the insured person has suffered no financial loss (Section 8.h.ii in this Manual);
- the insured person has not complied with a condition of NHCover (Section 8.h.iii in this Manual);
- the insured person has given misleading information to us, a person we authorise or their private insurer (Section 8.h.iv in this Manual);
- the claim is fraudulent (Section 8.h.v in this Manual);
- the insured person has failed to mitigate the risk of natural hazard damage (Section 8.h.vi in this Manual);
- the natural hazard damage is due to (or exacerbated by) an intentional act, omission, or negligence (Section 8.h.vii in this Manual);
- the natural hazard damage is due to (or exacerbated by) unlawful conduct (Section 8.h.viii in this Manual);
- the natural hazard damage is due to (or exacerbated by) substandard construction (Section 8.h.ix in this Manual); or
- there is a natural hazard notification on the RT (Section 8.h.xi 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 (see Section 8.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 8.h in this Manual.

Further:

- Section 8.e in this Manual sets out who may decline claims; and
- Sections 8.f and 8.g in this Manual outline the decision-making process.

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 8 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 8.f.i in this Manual. If different people are dealing with different components of an entire NHCover claim (residential land claim and residential building 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.

As 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 8.h.vi in this Manual).

For more details on obligations regarding shared information, see Section 12.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 12.k 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 sections 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 – 'standard claim date' definition

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 – 'extended claim date' definition

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 the person we authorise) need to be able to demonstrate, on balance, that we (or the 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

For example, our (or the 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.[14] 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.

[14] 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).

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.

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 is not able to 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.
>
> (2) 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 8.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

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 12.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.
> (2) Subsection (1) applies only to the extent that there are reasonable steps that the insured person could take to mitigate the risk.
> (3) 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.
> (4) 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.

If a settlement payment has been made to the insured person on the basis of DOV for some of the natural hazard damage, it is likely that there are no reasonable steps that the insured person could have taken in relation to that part of the damage. There may be other natural hazard damage under the same claim that this ground to decline could apply to.

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.

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.

In either case the wilful act or negligence (under either 1. or 2. above) must cause or contribute to natural hazard damage.

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 (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 8.h.v 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 or make the natural hazard damage 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 8.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. Typically, the failure relates to earthworks or a land structure; and
- that failure has caused the natural hazard damage or made it worse.

In the explanation below, we use the example of an insured retaining wall (which is a land structure) to illustrate how this ground to decline would apply.

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(s) entitled to the benefit of the fire insurance contract. For more details on who is the insured person, see Section 3.c.i in this Manual.

Where the insured person owned, for example, an insured retaining wall at the time that it was built (or, if relevant, at the time that it was altered), the insured person will have had obligations under the building and resource management legislation. Accordingly, section 75 of the NHI Act may potentially be grounds to decline in this situation if the insured failed to comply with their legal obligations.

But where somebody else owned the retaining wall 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 or construction.

Failure to comply with any law or legal requirement

If the insured person owned the insured retaining wall 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 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 (which may include site work) 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.
>
> (2) 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

x. Ground to decline a claim may be used in respect of insured retaining walls, bridges and culverts

So far as it relates to residential land, this ground to decline a claim may be used only in respect of insured retaining walls, bridges and culverts.

Insured retaining walls, bridges, and culverts are described at Sections 4.h, 4.i, and 4.j in this Manual.

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

There are also grounds to decline a claim in respect of any part of the residential building that is not an integral component of the eligible building that fails to meet appropriate standards. See Section 7.h.ix NHC Claims Manual - Residential Buildings - NHI Act.

If different people are dealing with the residential building claim and residential land claim, they should liaise with each other as to whether and how any decision to decline applies in respect of each of the claims.

If the failure of the insured appurtenant buildings or the insured service infrastructure 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.

Equally, 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.

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 retaining walls, bridges or culverts were '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 retaining walls, bridges or culverts were built; and
- what the appropriate standards were at that time.

Advice from an appropriately qualified professional (e.g. an engineer) is required.

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.

xi. 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.
>
> (2) 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(s) (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 8.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 land 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 2023, 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.

9. How is an NHCover claim settled?

This Section addresses the settlement of NHCover claims for natural hazard damage to residential land. It covers settlement by payment, notification that payment entitlement is zero, replacement, reinstatement, relocation of the residential building, and declining the claim.

a. Overview

This Section deals with settlement of NHCover claims for natural hazard damage to residential land.

An NHCover claim may be declined before a determination is made on its validity (see Section 8 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, reinstatement or relocation) after the claim is determined to be valid (see Section 9.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 reinstatement 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 land claim (cash payment, notification that payment entitlement is zero, reinstatement, relocation, and declining the claim) (Section 9.c in this Manual);
- how the land claim entitlement is calculated (Section 9.d in this Manual);
- the maximum amount (or land cover cap) that can be paid (Section 9.e in this Manual);
- the recovery of overpayments (Section 9.f in this Manual);
- the excess that applies (Section 9.h in this Manual);

- the time limit for settlement (Section 9.i in this Manual); and
- how the settlement is communicated (Section 9.j in this Manual).

This part does not address every aspect of a residential land settlement where:

- a repair to the residential land has already been carried out in relation to the current claim; and
- the residential land 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 land', see Section 4 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, 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 7.A, 7.B and 7.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 land claim?

The following methods can be used to settle an NHCover residential land claim:

- payment (see Section 9.c.i in this Manual);
- notification that payment entitlement is zero (see Section 9.c.i in this Manual);
- reinstatement (see Section 9.c.ii in this Manual);
- relocation of the residential building (see Section 9.c.iii in this Manual); and
- declining the claim (see Section 9.c.iv and Section 8 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 to residential land by payment or notification that payment entitlement is zero. Specifically, section 61(1) 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):
>
> (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

Land claim entitlement

The land claim entitlement is the lesser of:

- the actual loss suffered (see Section 9.d.i in this Manual); and
- the land cover cap (see Section 9.e in this Manual);

minus the land cover excess, being the lesser of:

- the number of dwellings in the residential building multiplied by $500 (including GST); and
- $5,000 (including GST).

Section 39, NHI Act

See also Section 9.d in this Manual.

When is the land claim entitlement zero?

A land claim entitlement is zero if the land cover excess is greater than the actual loss suffered. In this situation, we (or a person we authorise) must contact the insured person and notify them that there is no payment entitlement.

Section 39(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 10.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 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:

Residential land cannot be settled by replacement, but it can be settled by reinstatement. See Section 7.A.c in this Manual for the standards for reinstatement.

Section 41, NHI Act

‘Replacement’ is not an option in practice

Residential land is not insured against natural hazard damage for its ‘replacement cost’. Accordingly, in practice, the settlement methods available under section 61 of the NHI Act for a residential land claim are payment, notification that the claim entitlement is zero, reinstatement, relocation and declinature only.

iii. Relocation

The NHI Act also includes an option to settle a claim for natural hazard damage for residential land by way of relocation of all (or part of) the residential building (whether damaged or not) concerned on that land. 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, NHI Act

> 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.
>
> (2) 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 occur within 12 months (i.e. imminent damage).

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 12.o in this Manual).

Section 65(4), NHI Act

When a residential building is relocated to a new site on other land:

- the relocation and reinstatement of the building settles the residential building claim, and
- the transfer of the estate or interest in the new site to the insured person settles the residential land claim.

Section 61(2), NHI Act

iv. Declining the claim

The NHI Act includes an option to settle a claim for natural hazard damage to a residential land 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), NHI Act

Section 67 of the NHI Act provides that we (or a person 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 8 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 all of its relevant claims – residential land and residential building). The grounds are set out at Section 8.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, 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 instruct otherwise

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 land claim entitlement is typically the actual loss suffered (see Section 9.d.i in this Manual). However, the land claim entitlement is always subject to the land cover cap (see Section 9.e in this Manual). Any settlement is only to the extent that we are liable under the NHI Act.

d. How is the land claim entitlement calculated for an NHCover residential land claim?

The land claim entitlement is the lesser of:

- the actual loss suffered (see Section 9.d.i in this Manual); and
- the land cover cap (see Section 9.e in this Manual),

minus the land cover excess.

Section 9.d.i in this Manual discusses the basis of cover for the settlement of an NHCover claim for natural hazard damage to residential land.

Other matters relevant to the calculation of the land claim entitlement are discussed at Sections 9.d.ii to 9.d.viii in this Manual.

i. Basis of cover – actual loss suffered

Residential land is insured under the NHI Act against natural hazards on an indemnity basis. Unlike residential buildings, residential land is not insured against natural hazard damage on a 'replacement cost' basis.

The land claim entitlement for an NHCover residential land claim is subject to a maximum amount of cover (referred to in the NHI Act as 'land cover cap'). In summary, the land cover cap is the sum of:

- the assessed market value of the damaged part of the insured land area (or other specified area of land) (see Section 9.e.i in this Manual);

  PLUS

- if there are damaged insured land structures, the lesser of:
  - the undepreciated value of the damaged insured land structures (see Section 9.e.iii in this Manual); and
  - the number of dwellings in the residential building multiplied by a fixed value (the 'applicable limit') (see Section 9.e.i in this Manual).

But before it can be determined whether or not the land cover cap is reached, it is necessary to assess the amount of the natural hazard damage on the basis of the actual loss suffered (see Section 7.A.c in this Manual). This can be quantified using:

- the reinstatement cost (see Section 7.A.c.iii in this Manual); and/or
- the DOV (see Section 7.A.c.vi in this Manual).

For details on how we (or a person we authorise) determine whether to use reinstatement cost or the DOV to quantify the actual loss, see Section 7.A.c.ii in this Manual.

In cases where it is identified that DOV may be an appropriate method to quantify the actual loss suffered, the matter must be escalated to the appropriate NHC representative.

Settlements using both reinstatement cost and the DOV

In some cases, it may be appropriate to settle a claim partly by paying the reinstatement cost and partly by paying DOV. For example, a landslide may have:

- damaged a retaining wall (which is repairable); and
- resulted in the permanent loss of an area of land that cannot be restored (for example, where a cliff has collapsed).

In such cases, the amount of the damage to the residential land may be settled by adding:

- the reinstatement cost for the damage that can be repaired (in the above example, the repairable retaining wall); and
- the DOV (if any) of the property caused by the unrepairable land damage (in the above example, the lost land that cannot be restored).

The settlement amount is of course always subject to the land cover cap – see Section 9.e in this Manual.

In any case, where it is identified that settlement (in whole or in part) using the DOV to quantify actual loss suffered may be appropriate, the matter must be escalated to the appropriate NHC representative.

ii. Imminent damage

Where a land claim includes imminent damage, we (or a person we authorise) must determine the appropriate method to quantify that damage (typically reinstatement cost, DOV, or a combination of both). Details on how to determine the method of quantifying the actual loss suffered are set out in Section 7 in this Manual.

If the actual loss suffered in relation to the imminent damage is quantified using reinstatement cost, this actual loss is determined under section 47 of the NHI Act (see Section 7 in this Manual). The reinstatement cost for imminent damage is based on either or both of:

- mitigation cost: the total cost that would reasonably be incurred to carry out the work required to mitigate the risk of the imminent damage occurring; or
- future reinstatement cost: the cost that would be the reinstatement cost if the imminent damage had in fact occurred.

See Section 7 in this Manual for further details.

Section 47, NHI Act

If we (or a person we authorise) decides that DOV is the appropriate method of quantifying the actual loss suffered in relation to imminent damage, section 42 of the NHI Act applies (see Section 7 in this Manual).

In cases where it is identified that DOV may be an appropriate quantification method, the matter must be escalated to the appropriate NHC representative.

In some situations, a combination of both reinstatement cost and DOV may be used to quantify the actual loss suffered in relation to imminent damage.

If a person we authorised considers a method other than reinstatement cost or DOV should be used to quantify the actual loss suffered in relation to imminent damage, this must be escalated to the appropriate NHC representative.

Payments for imminent damage form part of the land claim entitlement for the residential land claim.

If the person dealing with the land claim identifies or suspects there is also natural hazard damage to the residential building on the property:

- if they are authorised to settle the residential building claim, that person should also settle the residential building claim;[15] and
- if they are not authorised to settle the residential building claim, that person should escalate the matter to the appropriate NHC representative.

For a description of 'imminent damage', see Section 6.g in this Manual.

iii. GST

When assessing the cost of repair for the residential land, it is appropriate to include a component for GST that has been paid or will be payable by the insured person when carrying out the repair. This GST component must be set out in the costing prepared for the assessment of the residential land.

The settlement amount (inclusive of GST) is of course subject to the land cover cap. See Section 9.e in this Manual.

Section 41(6)(d), NHI Act

iv. Fees incurred in the course of reinstating the residential land

[15] See Section 7.A.c.iii What is reinstatement cost?: Mitigation cost – overlap between a residential building and residential land in this Manual.

Fees incurred in reinstating the natural hazard damage to the residential land (part of the land claim entitlement)

The reinstatement cost includes the fees or costs payable in the course of carrying out the reinstatement work to the residential land. These fees can include engineers' fees and fees payable to local authorities.

The cost of these fees is included in calculating the land claim entitlement if reinstatement cost is chosen by us (or a person we authorise) as the method to quantify actual loss (subject to the land cover cap).

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 land (not part of the land claim entitlement)

The reinstatement cost does not include claim handling costs, 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 and 41(9), NHI Act

Therefore, the following fees are not included in the land claim entitlement:

- professional fees incurred in helping us to determine the land claim entitlement (i.e. ascertaining the cause and extent of the natural hazard damage, identifying conceptual remediation strategies, and costing and quantifying the amount of the damage). Accordingly, the fees of consultants that are incurred in helping to determine the land claim entitlement are not added in calculating that land claim entitlement; or

- legal fees (including the customer's and our legal fees) in establishing the amount of the natural hazard damage.

Section 12.q of the Manual addresses separately the treatment of fees where there is a reassessment of the land 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 land

What are urgent works?

Urgent (or emergency) works are repairs that are needed to make the residential land safe, sanitary and secure.

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.

After the natural hazard event, if the NHC customer is safely able to, they should do things like:

- temporarily brace a retaining wall which is at risk of collapse;
- fence off unsafe areas at risk of imminent damage from a landslide;
- temporarily divert any overland water flow away from a landslide area.

The customer is required under the NHI Act to take reasonable steps after a natural hazard to protect their insured property from further natural hazard damage. For details, see Section 8.h.vi in this Manual.

Sometimes the customer needs to get urgent help from a tradesperson to carry out some urgent repairs of the natural hazard damage.

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 land safe, sanitary and secure.

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 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 land claim entitlement

Any payment or reimbursement for the cost of urgent works forms part of the overall land 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 A12 of Appendix 1 in this Manual sets out a step-by-step guide to calculating the land claim entitlement if there have been urgent works that have already been paid for or reimbursed.

vi. Costings

We may issue guidance from time to time regarding costings on the rates to apply, preliminary and general (P and G) and margin.

vii. Date for determining amounts

Reinstatement cost

Rates for calculating the reinstatement cost are generally at the date the amount of the reinstatement cost is determined, unless we instruct otherwise.

If a person we authorise considers calculating the reinstatement cost using rates that are different to the rates applicable at the date they are determining the reinstatement cost, they must escalate the claim to the appropriate NHC representative.

Section 62(1), NHI Act

Assessed market value or undepreciated value

The date for calculating the assessed market value or the undepreciated value is generally at the date the damage occurred on, unless we instruct otherwise.

If a person we authorise considers valuing the assessed market value or costing the undepreciated value as at a date that is different to the date the damage occurred on, they must escalate the claim to the appropriate NHC representative.

Section 62(2), NHI Act

viii. Ex gratia payments

The NHI Act allows for making ex gratia payments in limited circumstances.

Section 81 of the NHI Act 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.
>
> (2) 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 land cover cap) that can be paid for a residential land claim?

i. How is the land cover cap calculated?

The maximum amount of NHCover (or land cover cap) available per event for a residential land claim is determined under the NHI Act as the sum of:

1. the assessed market value;

PLUS

2. if there are any damaged retaining walls for the residential building, the lesser of—
    - the undepreciated value of the damaged retaining walls; and
    - the number of dwellings in the residential building multiplied by $50,000 plus GST;

PLUS

3. if there are any damaged bridges or culverts for the residential building, the lesser of—
    - the undepreciated value of the damaged bridges or culverts; and
    - the number of dwellings in the residential building multiplied by $25,000 plus GST.

Section 43, NHI Act

The assessed market value

The 'assessed market value', referred to as item 1 above, is determined under the NHI Act as follows:

> (1) If the area of the damaged part of the residential land is less than or equal to the area cap, the **assessed market value** is the prior market value of that part of the residential land.
> (2) If the area of the damaged part of the residential land is greater than the area cap, the **assessed market value** is the prior market value of a hypothetical area of residential land that, to the extent that is practicable,—
> (a) has an area equal to the area cap; and
> (b) is situated in the same place as the residential land; and
> (c) has all of the same features as the residential land.
>
> Section 44, NHI Act

Practically, this means the valuer must provide the assessed market value, which is the prior market value of whichever is the smallest area of either:

- the damaged part of the residential land; or
- a hypothetical area that is (to the extent that is practicable) equal to the area cap.

The hypothetical area is, to the extent that is practicable, situated in the same place as the residential land and has all the same features as the residential land.

For further details on the assessed market value, including the valuation of shared, common and joint land, see Section 7.A.e in this Manual.

Insured land structures

If there are any insured land structures (referred to in items 2 and 3 above) that are damaged, the undepreciated value of these (subject to the applicable limit) is included in the land cover cap.

Section 43(1), NHI Act

For the purposes of items 2 and 3, the undepreciated value is calculated for each of the relevant insured land structures that are damaged or lost. For details on the costing of the undepreciated value of a damaged insured land structure, see Section 7.A.d.vi in this Manual.

If the insured land structure is shared, common or joint land, the undepreciated value is multiplied by the insured person's shared, common, or joint ownership interest in that

structure (depending on the nature of the property) (see Section 7.A.e in this Manual). If the percentage of the undepreciated value would be reduced to zero, the damaged structure does not contribute any value to the land cover cap.

The undepreciated value of the damaged land structures under items 2 and 3 is subject to the 'applicable limit' (the number of dwellings in the residential building multiplied by $50,000 or $25,000, respectively).

The applicable limit of $25,000 (plus GST) in item 3 applies to all damaged bridges and culverts for the residential building. For example, if there was a damaged bridge and culvert on the residential land, the limit for both of these insured land structures would be the number of dwellings on the residential land multiplied by $25,000 (plus GST).

For details on the number of dwellings in the residential building, see Section 9.h.iii in this Manual.

If the insured land structure is shared, common or joint land, the applicable limit is not multiplied by the insured person's shared, common, or joint ownership interest in that structure. Rather, the applicable limit continues to apply in full even if the undepreciated value is reduced.

ii. How does NHC determine the assessed market value of the areas of land?

The person dealing with the claim typically appoints a valuer to provide the assessed market value.

For more details on assessing the value of the land, see Section 7.A.d in this Manual.

For engaging professionals on our behalf, see Section 7.A.k.iii in this Manual.

iii. How does NHC determine the undepreciated value of land structures?

The person dealing with the claim must appoint an assessor (or other suitably qualified expert) to assess the undepreciated value of each lost or damaged bridge, culvert and retaining wall. There is no need to assess the undepreciated value of any land structures that are undamaged.

For more details on assessing the undepreciated value of these land structures, see Section 7.A.d.vi in this Manual.

iv. One land cover cap in relation to the residential land associated with each residential building

Identifying the insured residential building(s) is critical to identifying:

- the residential land; and
- in turn, the correct calculation of the land cover cap.

For each event, a separate land cover cap applies in relation to the residential land associated with each residential building.

For example:

- One residential building or two on the same property? – Whether there are one or two residential buildings on the property is important for the purposes of calculating the land cover cap. If there are two residential buildings on the property, there are two land cover caps (one each for the residential land associated with each residential building) as opposed to one land cover cap, provided all the requirements of the NHI Act are met;
- Appurtenant structure or separate residential building? – Whether or not the building is an appurtenant structure is important for the purposes of calculating the land cover cap. There is no separate capped amount of residential land insurance for the appurtenant structure (see Section 5.e in this Manual).

  For example, if a sleepout is self-contained, it may be a separate residential building (as opposed to an appurtenant structure). If it is a separate residential building, this would mean that the residential land pertaining to the sleep-out has its own separate capped amount of insurance, provided the other requirements of the NHI Act are met (see Section 5.e in this Manual);
- Mixed-use buildings – A residential building is a mixed-use building if its residential percentage is less than 50% (see Section 4.D of the NHC Claims Manual - Residential Buildings - NHI Act). 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 Section 5.d in this Manual) are considered to be part of a residential building.

Consequently, the insured residential land for a mixed-use building is identified as set out in Section 4.c.iv in this Manual, but only for the residential part of the mixed-use building (and its appurtenant structures), not the entire building.

Where there is a mixed-use building, the residential land may include common or joint land. Such land is determined by reference to the mixed-use building, in that it must be land that is for the use or benefit of the owners or other occupants of the mixed-use building. For common land, it must be for all of the owners or occupants. For joint land, it must be for some of the owners or occupants. The owners must also have an insurable interest in the mixed-use building.

The land cover cap must accordingly only be calculated for the insured residential land (including common or joint land).

Situation where areas of residential land are shared land

There may be shared land (land areas and/or land structures) between the insured residential land for different residential buildings (for details on shared land see Section 4.c.x in this Manual). This shared land must be taken into account when settling the respective residential land claims.

Where the areas of residential land are shared land, the matter of calculation of the settlement amounts (and the relevant land cover caps) should be escalated to the appropriate NHC representative.

v. The land cover cap is a single cap (in relation to the residential land associated with each residential building)

Although the land cover cap has three components (as set out in section 43 of the NHI Act), the land cover cap is treated as a single cap in relation to the residential land associated with each residential building.

In other words, the land cover cap is a single amount, being the sum of:

- the assessed market value;

PLUS

- if there are damaged insured land structures, the lesser of:
    - the undepreciated value of the damaged insured land structures (see Section 9.e.iii in this Manual); and
    - the number of dwellings in the residential building multiplied by a fixed value (the 'applicable limit') (see Section 9.e.i in this Manual).

The land cover cap is the maximum amount that can be paid for all of the components (together) of the land damage for the residential land claim.

For example, the cost of repair for the residential land claim (in relation to a single residential building containing one dwelling) totals $80,000 (including GST), comprising the following costs:

- $10,000 (including GST) for the reinstatement cost of the damaged residential land area;
- $30,000 (including GST) for the reinstatement cost of one damaged retaining wall; and
- $40,000 (including GST) for the reinstatement cost of another damaged retaining wall.

The land cover cap for the residential land claim totals $50,000, comprising the following:

- $20,000 for the assessed market value of the damaged part of the residential land;
- $12,000 for the undepreciated value of one retaining wall; and
- $18,000 for the undepreciated value of the other retaining wall.

The single land cover cap of $50,000 applies to the entire residential land claim. The land cover cap is the maximum amount that can be paid.

As the land cover cap ($50,000) is less than the total cost of repair in this example ($80,000), the amount of the payment to settle the residential land claim is the land cover cap of $50,000 (less the excess that applies).

The undepreciated value of two retaining walls is used in this example. The undepreciated value is used here because the total undepreciated value of these retaining walls ($30,000) is less than the applicable limit ($50,000 plus GST). See Section 9.e.i in this Manual for details on the applicable limit.

vi. New land cover cap applies for each event

NHCover reinstates with a new land 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 (see Section 3.h in this Manual);
- the NHCover must not have been cancelled at the time of the damage-causing event (Section 3.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.g.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 land 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).

vii. What is the land cover cap where the residential land relates to 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.g of the NHC Claims Manual - Residential Buildings - NHI Act.

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). It is also distinct from dormitory-style accommodation that would be 'large-scale accommodation' and not covered under the NHI Act (see Section 4.C.c.xi of the NHC Claims Manual - Residential Buildings - NHI Act).

Facilities within a building that comprise long-term accommodation for the elderly together have the land cover cap equivalent to a single dwelling (i.e. a 'single land 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 land 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 land cover cap to be applied on the basis of five dwellings.

viii. When may each valuation type be used to settle an NHCover land claim?

When each valuation type may be used

Type / Use	On-site assessment (Standard valuation)	Desktop assessment (Standard valuation)	Adjusted rating valuation (Alternative valuation)	Notional valuation[16] (Alternative valuation)
To calculate	Land cover cap	Land cover cap	Indicative land cover cap	Indicative land cover cap
To settle based on	Reinstatement cost and/or DOV* **or** land cover cap	Reinstatement cost **or** land cover cap	Reinstatement cost (only)	Reinstatement cost (only), up to $50,000 including GST**

*Where you need to determine the diminution of value (DOV), you must obtain a standard valuation based on an on-site assessment for both the:

- DOV for all relevant land areas, and
- market value of all damaged insured land areas.

** Where the reinstatement cost is $50,000 (inclusive of GST) or more and you want to settle the land claim based on a notional valuation, you must escalate the matter to the appropriate NHC representative.

<u>When certain valuation types must not be used</u>

- **Desktop assessment** must not be used when:
  - the reinstatement cost is 120% or more of the land cover cap, or
  - the valuer determines that they need to carry out an on-site assessment.

[16] You must make all requests for a notional valuation to the appropriate NHC representative.

- **Adjusted rating valuations** and **notional valuations** must not be used in any of the following circumstances:
    - When the reinstatement cost is 80% or more of the indicative land cover cap.
    - For any claim that includes:
        - landslide damage
        - imminent damage to any insured land areas
        - actual or imminent damage to any insured land structures, or
        - damage to shared land between two or more properties (such as within a right of way easement).
    - For any property that:
        - is likely to have a materially variable utility value across the site (such as properties with an irregular contour)
        - is larger than 4,000 m^2, or
        - has a complex property ownership (such as unit title, cross-lease, leasehold, is zoned commercial or has two or more records of title).

ix. When do you need to obtain another valuation type?

Sometimes, the result of one valuation type means you still need to obtain another valuation type. Where the criteria are not met for using:

- a land valuation based on a desktop assessment, you must obtain a valuation based on an on-site assessment.
- an alternative land valuation, you must obtain a standard valuation, which may be based on either an on-site or desktop assessment.

For more information about the different types of land valuation, see Section 7.A.d.i What are the different types of land valuation?.

x. How does NHC deal with more complex land settlements?

Residential land claims can give rise to more complex settlements. For example, these include where, in the case of a landslide:

- the sum of the following is sufficient to carry out the land repair:
    - the land cover cap under the residential land claim; and
    - part of the amount of the imminent damage to the residential building under the residential building claim;

  or

- the settlement solution cannot remove the risk of re-inundation. This may occur where the property is subject to debris fall from a landslide. The repair strategy might be a catch fence. This solution does not eliminate the imminent damage, but 'catches' the re-inundation (which must later be removed).

When these types of scenarios arise in relation to a residential land claim, the matter of calculation of the land claim entitlement (and the relevant land cover cap) should be escalated to the appropriate NHC representative.

<u>Cross-lease properties</u>

Where there is a cross-lease situation, the extent of the insured residential land must be identified depending on how many separately insured residential buildings there are (see Section 4.c.vi in this Manual).

There may be areas of shared land (land areas and/or land structures) between the insured areas of residential land for the different residential buildings. This shared land must be taken into account when settling the residential land claims.

Where there are areas of shared land, the matter of calculation of the settlement amounts (and the relevant land cover caps) should be escalated to the appropriate NHC representative.

See also Section 12.h in this Manual regarding the co-ordination of cross-lease claims.

<u>Situation where entire insured land area is lost or damaged</u>

If the entire insured residential land area has been lost or damaged, the residential land claim must be escalated to the appropriate NHC representative.

f. Recovery of overpayments

i. 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 if 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.

Section 86(1), (2) and (5), 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

ii. 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 land claim entitlements reduced if other catastrophe insurance applies?

The land claim entitlement may be reduced if:

- the residential land (land areas and/or land structures) 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'); and
- the contract is not limited to insuring the residential land only to the extent that the amount of any damage exceeds the land claim entitlement for the damage; and
- the residential land suffers natural hazard damage as a direct result of a natural hazard covered by the private insurer.

The private contract does not include a contract of reinsurance.

For the purposes of calculating the land claim entitlement, if the scenario above applies, the amount for the land claim entitlement is reduced to an amount calculated as follows:

$$r = n - (c + e)$$

where—

r is the reduced land claim entitlement

n is the amount that would be the land 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 land claim?

i. What is the excess for an NHCover land claim?

For a cash settlement, the customer does not 'pay' the excess. The excess is deducted before the cash land claim entitlement is paid out.

Section 39(2)(b), NHI Act

Where settlement is by way of reinstatement of the residential land or relocation of the residential building concerned on that land, and once the reinstatement or relocation has been completed, we (or a person we authorise) must send the insured person an invoice for the excess. When they receive it, they must pay us (or a person we authorise) the amount of the excess (see Section 9.h.ii in this Manual).

If we settle the claim partially by cash settlement and partially by reinstatement 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 land cover excess applies per event.

As set out above in the discussion on the land 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.g.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 land claim and NHCover building 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 land claim and NHCover building claim).

For details on the applicable excess for an NHCover building claim, see Section 8.h of the NHC Claims Manual - Residential Buildings - NHI Act.

ii. What is the amount of the excess for residential land claims?

The land cover excess deducted per NHCover claim for residential land is the lesser of:

- $500 (including GST) multiplied by the number of dwellings in the residential building situated on the land; or
- $5,000 (including GST).

Section 39(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 land cover cap purposes – see Section 9.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.

Sections 10 and 21(3), NHI Act

The disclosure to the private insurer can be verbal 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 carry out the role of the private insurer.

iv. What is the excess where the residential land relates to 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 land 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; and
- 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 12.k in this Manual for further details, including the definition of a 'referable decision")

Section 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 land 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 land claim are addressed in Section 11.A.c in this Manual.

Notification to the appropriate NHC representative of certain land cover cap payments

The person dealing with the claim must notify the appropriate NHC representative when any residential land claim is settled on the basis of the land cover cap and the valuation of the assessed market value for the land cover cap has been reached using:

- the district plan minimum area;
- an area of land of 4,000 m^2; or
- the entire insured residential land area.

We can then consider the specific circumstances of the claim to determine if there are grounds to cancel future NHCover under section 49 of the NHI Act. In some cases, the land cover cap settlement may also include the undepreciated value of the insured land structures (subject to the applicable limit). It may also include the proportionate value for shared land, common land, or joint land.

10. 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 people with lawful entitlement to settlement payments (Section 10.b in this Manual);
- there is an assignment of the NHCover claim (Section 10.c in this Manual);
- there is a mortgage over the insured property (Section 10.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 10.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's estate (Section 10.f in this Manual);
- the insured property is owned by a trust (Section 10.g in this Manual);
- the insured property is a unit title development (Section 10.h in this Manual);
- the insured property is a leasehold property (Section 10.i in this Manual);

- the insured property is Māori freehold land with multiple owners (Section 10.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 10.k in this Manual);
- other registered interests are shown on the RT to the property (Section 10.l in this Manual).

Section 10.m in this Manual addresses the position if there is a dispute over who will receive an NHCover claim settlement payment.

Decision-makers dealing with different component(s) of the entire NHCover claim must liaise

In cases where different people are dealing with different component(s) of the entire NHCover claim (for example, the residential building claim and/or residential land claim(s)), they must liaise with each other to:

- identify the person or people the NHCover claim may be settled with; and
- decide who the various component(s) 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 the settlement of all NHCover claims, it is important to determine who:

- is an 'insured person' (see Section 3.c.i); 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 10.b.iii Settlement payments if the insured person is two or more persons, and Section 10.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:

(1) 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)).

(2) 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.

(3) 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.

(4) However, subsections (2) and (3) are subject to any law to the contrary.

(5) 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:

    1. their respective responsibilities to replace or reinstate the damaged property; or

    2. 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 10.c to 10.l in this Manual).

As set out above at 2(a), we (or a person we authorise) must determine each 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:

(1) 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.

(2) 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 10.b.iv 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 10.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 10.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 a 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 component(s) of the entire NHCover claim are being assigned (for example, the residential building claim 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 10.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 needs to be provided (see Section 10.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 component(s) of the entire NHCover claim are being assigned (for example, the residential building claim(s) 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.c 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 10.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 land 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 entire NHCover 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 entire NHCover claim over the mortgagee cap, the current payment must be paid to the mortgagee.

In cases where the entire NHCover 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 building damage, the person dealing with the residential land claim should also deal with the residential building claim and address the mortgagee cap issue; and
- if the person dealing with the residential land claim is not authorised to deal with residential building 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 building 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 land claim for that earthquake.

The current payment (the $20,000) when added to the previous payment ($10,000) will push the entire NHCover 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 that 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 (https://companies-register.companiesoffice.govt.nz/) 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 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 set out who gets the deceased person's assets (which include the NHCover claim). These rules set out a certain order of priority for who receives 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 person. 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 residential land and/or a residential building is treated as being transferred to the person entitled to ownership of the residential land and/or residential building. 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 10.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 10.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 person 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 share of it) if a historical search copy of the RT shows that a property (or a share of it) was transferred before the date of the natural hazard from the deceased person:

- 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 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 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 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 10.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.c 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; or
- The nature of the damage suffered: Damage to shared, common or joint land and/or property in relation to individual units may raise difficult issues about appropriate repair strategies and correct payees; or
- 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 10.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 10.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 10.b.iv Settlement payments if two or more persons are entitled to payment 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 NHI 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 that 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 10.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 on;
- 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 component(s) of the entire NHCover claim are being assigned (for example, the residential building claim 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 claim(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 would 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.

l. 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 10.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, to 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.

11. 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 'land claim' and the 'building claim'.

The entire NHCover claim is only closed where:

- there is an outcome for the applicable residential land claim and/or the residential building claim; and
- all other requirements for closure of the entire NHCover claim (as described below) are met.

Section 11.A in this Manual sets out the requirements for closure of a residential land claim.

Section 11.B in this Manual sets out the requirements for closure of the entire NHCover claim.

Section 10.A of the NHC Claims Manual - Residential Buildings - NHI Act sets out the requirements for the closure of a residential building claim.

A. How is a residential land claim closed?

a. Overview

Before a residential land claim can be closed, the following requirements must be met:

- the outcome of the land claim must be identified (Section 11.A.b in this Manual);
- the customer must be advised of the outcome of the land claim, the reasons for the decision and the right to refer disputes about referable decisions to the dispute resolution scheme (Section 11.A.c, and see Section 12.k in this Manual for further details, including the definition of a 'referable decision');
- all other actions related to the closure of the land claim must be completed (Section 11.A.d in this Manual); and

- a full record of the land claim must be available for us (Section 11.A.e in this Manual).

Details of each of these requirements are set out below.

b. Identifying the outcome of the residential land claim

The possible outcomes for a residential land claim and the reasons for those possible outcomes are set out in the table below.

In identifying the outcome of a land claim, the person dealing with the land 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 land claim is:		
		• settled by payment of a cash amount;	Cash settled.	Section 9.c.i
		• settled by reinstatement or relocation;	Settled on the basis of reinstatement of the residential land or relocation of the residential building.	Section 9.c.ii and 9.c.iii
		• below the amount of the applicable excess;	The replacement cost is below the excess amount. The land claim entitlement is therefore zero.	Section 9.c.i
		• nil, as the fire insurance contract provides 'ground-up' cover and there is nothing else for us to pay	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
		• 'accepted' in part.	The land claim has been settled in part by payment (or reinstatement of the residential land or relocation of the	Section 9.c

#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
			residential building), and the other part of the land claim is 'declined'.	
		• 'accepted in full'	Part cash settled and part settled by reinstatement of the residential land or relocation of the residential building.	Section 9.c
2	Withdrawn	The customer has withdrawn the land claim.	The customer has withdrawn (in writing or by recorded telephone communication) either the entire NHCover claim or the land claim.	n/a
3	Duplicate	The land claim is a duplicate of an existing land claim in another existing entire NHCover claim	The land claim has been identified as a duplicate of an existing land claim in another existing entire NHCover claim.	n/a
4	Not accepted	The land claim is not accepted.	After making reasonable efforts, it has not been possible to ascertain the following: • the relevant insurance policy number; and • the name of the private insurer. We consider that the above two items are the minimum information required to proceed with a land claim.	Section 3.j.iii
5	Declined	The land claim is declined (in whole) on one or more grounds under sections 68 to 77 of the NHI Act.	The land claim is declined (in whole) for one or more of: • the delay in making the claim was prejudicial (section 68); • there was no financial loss (section 69); • a condition was not complied with (section 70); • misleading information was knowingly provided (section 71); • fraud (section 72); • failure to protect property (section 73);	 Section 8.h.i Section 8.h.ii Section 8.h.iii Section 8.h.iv Section 8.h.v Section 8.h.vi

#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
			• damage due to intentional act, omission, or negligence (section 74);	Section 8.h.vii
			• damage due to unlawful conduct (section 75);	Section 8.h.viii
			• damage due to substandard construction (section 76);	Section 8.h.ix
			• natural hazard notification on land title (section 77).	Section 8.h.xi
		'declined in part'	The land claim has been declined in part and the other part of the land claim is settled by payment (or reinstatement of the residential land or relocation of the residential building).	Sections 8.h and 9.c
6	Invalid	The land claim is not valid for one or more of the reasons in the next column.	The reasons are:	
			• an insured person with an insurable interest in the property concerned did not make (or authorise anyone else to make) a claim;	Section 3.c
			• the claim did not include the information required under section 52 of the NHI Act;	Section 3.e.i
			• 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 under section 54 of the NHI Act;	Sections 3.d and 3.g
			• the property the claim relates to is not residential land;	Section 4
			• there was no fire insurance contract or direct NHCover over the dwelling or dwellings concerned in force at the relevant time;	Section 3.h
			• the NHCover has been cancelled;	Section 3.i.i

#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
			• there is no natural hazard damage to the residential land.	Sections 4 and 6

c. Advising the customer of the outcome of the residential land claim

Before the residential land claim is closed, the customer must be clearly advised of the outcome of the land 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 land claim (see Section 9.j in this Manual).

i. How is a validity outcome communicated?

As part of the process of deciding the validity of the NHCover land claim, we (or a person we authorise) must notify the insured person of the decision regarding the validity of the NHCover land claim (see Section 3.b in this Manual).

If a land 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 land claim and the settlement outcome (the land claim being declined) can be immediately communicated to the customer.

Otherwise, the decision on whether the land claim is valid (and the associated notification requirements) takes place before any settlement decision. Typically, the customer is notified as follows:

- Where the land claim is determined to be valid, this fact must be communicated to the customer. Then, a settlement decision must be made. The land claim outcome is either any of the outcomes set out in the 'Accepted' row of the table above (see Section 11.A.b in this Manual), or is declined as set out in the 'Declined' row of the table above, and this settlement decision must also be communicated to the customer (see Section 9.j in this Manual).

- If a land claim is invalid, that is the land claim outcome. Therefore, the fact that the land claim is invalid, and that this is the land claim outcome, is communicated to the customer at the same time.

If both the land claim and building 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 land 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 land claim (or any part of it) is not cash settled, the communication to the customer must:

- set out the outcome of the land claim and the reason for it. The possible outcomes and reasons are set out in the table at Section 11.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 land claim, make clear (unless we direct otherwise) that the private insurer or third-party provider is acting in an agency role in assessing the NHCover claim in accordance with the NHI Act (see Item A1 of Appendix 1 in this Manual, which applies for this purpose);
- set out the claim number allocated for the NHCover claim (in respect of the land 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 building claim);
- be consistent with other relevant provisions of this Manual with respect to specific communications (see Sections 8.g.iv and 10.f 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 reopened as soon as that information is received.

Form of communication

We do not generally prescribe any particular format for the communication. However, the communication must:

- be in writing;
- meet the requirements set out in Section 11.A.c.ii in this Manual above 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 land claim on our behalf, the communication may be:

- in two communications (one about the NHCover residential land claim and one covering any land 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 land 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 land claim

Before a residential land claim can be closed, all relevant records must be checked to ensure that (in relation to that land 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' land claims

Where the land claim is a 'duplicate', the person dealing with the claim must transfer any new information from the duplicate land claim onto the relevant main claim.

e. Compiling a full record of the residential land claim

i. What records need to be compiled where the residential land claim is closed?

The person dealing with the residential land claim must compile and have available for us:

- the full file relating to the residential land 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 land claim?

Details must be compiled and be available for us where any of the following have occurred:

- an inquiry relating to the land claim has been directed to the Minister;
- the land claim has attracted media attention.

f. What happens if the land claim needs to be re-opened?

Sometimes there may be circumstances where a previously closed land 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 land claim needs to be re-opened, the entire NHCover claim must also be re-opened.

Once resolved, the re-opened land claim and entire NHCover claim can be closed in accordance with the requirements for closure set out in Section 11 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 land claim and/or the residential building claim (see Section 11.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 land claim and/or the residential building claim is closed.

Section 11.A in this Manual sets out the requirements for closure of a residential land claim.

Section 11A of the NHC Claims Manual – Residential Building – NHI Act sets out the requirements for closure of the residential building claim.

c. Who should close the NHCover claim?

Sometimes the entire NHCover claim (i.e. the land claim and/or the building 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 land claim, and another agent of ours may be dealing with the residential building claim. In cases like this, the organisation that closes the last of the relevant claims (the land or building 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 the 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 land claim and/or building claim (see Section 11.A.e.i in this Manual above and Section 11.A.e.i of the NHC Claims Manual - Residential Buildings - NHI Act); and
- all other details required in relation to the land claim and/or building claim (see Section 11.A.e.ii in this Manual above and Section 11.A.e.ii of the NHC Claims Manual - Residential Buildings - 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.

12. 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 (HSW Act) 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.

HSW Act

HSW (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.

HSW (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 heights 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); and
- Confined Spaces: Planning entry and working safely in a confined space (WorkSafe New Zealand, March 2020).

HSW Act

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 and land if the building has 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 ability (or the ability of the persons we authorise) to assess natural hazard damage to buildings and land. This is also consistent with our health and safety obligations (or those of the persons we authorise) (see Section 12.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.

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).

A building is 'affected' for the purposes of the Building Act if it is adjacent to, adjoining, or nearby a dangerous building or dangerous dam.

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[17]) 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 section 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 relevant responsible person has permitted access to particular people or for particular purposes). This means that any person carrying out an

[17] Who the 'responsible person' is will depend on the circumstances under which the area was designated. Section 133BJ of the Building Act 2004 sets out who the responsible person is.

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, 133AR, 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 12.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[18]).

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 communicate with NHC customers in a fair, responsive, empathetic, straightforward and

[18] For more information about extra care claims, see our Extra Care Claims Policy. Your organisation may use other similar terms such as 'customers experiencing vulnerability'.

helpful manner in accordance with the Code of Insured Persons Rights (see Section 12.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 12.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 11.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, 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

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 (residential building claim or residential land claim) under the same NHCover claim;
- any related 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 remedial solution for the residential building might involve work to the building as a whole, rather than to each individual unit. Furthermore, the remedial solution 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 3, 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 management 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 complaints 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

l. Official Information Act and Privacy Act requests

All requests for information made by an 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 that 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 (see Section 11.o of the NHC Claims Manual - Residential Buildings - NHI Act); and/or
- land, if the claim against land cover is settled for an amount equal to or greater than the prior market value of the insured person's land minus the land cover excess, by requiring the insured person to transfer their title to that land to us.

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 record-keeping 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 land claim communicated?

a Overview

The purpose of the communication of the cash settlement of an NHCover residential land claim is to clearly inform the person receiving the cash settlement (the recipient):

- that we have completed assessing the natural hazard damage;
- how the land claim entitlement has been calculated;
- how the land claim entitlement is being paid;
- of the possible consequences for their future NHCover of not using the land claim entitlement for the purpose of repair;
- of their rights to refer disputes about referable decisions to the dispute resolution scheme (see Section 12.k 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 12.j 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 land claim.

Other than the procedural requirements outlined in Section 9.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 11.A.c.ii 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 land claim on our behalf, the communication may be:

- in two communications (one about covering the NHCover residential land claim and one about any land 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 12.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 land 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.

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 land claim and the residential land 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;
- communications regarding settlements based (in whole or in part) on diminution of value (DOV). We will issue and notify separate guidelines regarding communicating DOV settlements from time to time.

A. Requirements for cash settlement communications about NHCover settlements

1. Where a private insurer or third-party provider is dealing with the residential land 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 land 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 us (or a person we authorise).

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 land claim entitlement

The term 'event' is discussed in more detail in Section 3.g.iii.

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 land

The communication must make clear that it covers the residential land 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 land.

4. Make clear if any residential building claim is being dealt with separately

If any residential building 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 land claim must have completed an assessment of:

- whether the residential land has incurred natural hazard damage; and
- if so, the extent of that natural hazard damage.

This must be confirmed in the communication.

Example

We have now completed the assessment of the earthquake damage to your residential land.

6. Itemise separately the damaged property that pertains to the NHCover residential land claim and provide a separate costing for those items

The communication must set out what damaged items pertain to the NHCover residential land claim and the costings for the repair of that damage to the relevant standard under the NHI Act.

Where a private insurer is dealing with the residential land claim on our behalf (or where a third-party provider is dealing with a residential land 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, paving, any over-land cover cap cover for a retaining wall).

Example

Enclosed is a scope of works that relates to your NHCover residential land 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 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, valuers and other professionals in the assessment of the NHCover residential land claim must be included in the communication.

Example

Enclosed with this letter are some documents to explain how we calculated your NHCover residential land claim entitlement. These documents are: [Delete as applicable]

- Engineering report
- NHC scope of works
- Valuer'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 land damage. It should also include a breakdown that explains the total amount payable.

It should also set out whether the land claim entitlement is being paid below or at the land cover cap.

The total amount payable does not exceed the relevant NHCover caps under the NHI Act. The amount should be GST-inclusive (if any).

The amount deducted for the excess calculated under the NHI Act must be shown separately.

Any previous payments made in respect of an NHCover residential land claim must be itemised separately.

An example for a single NHCover residential land claim is set out immediately below.

Example for single NHCover residential land claim

Item	Amount	Excess deducted*	Less payments already made**	Balance
Residential land	$	$	$	$
			Total payment incl GST (if any)	$

* **Residential land** - The land cover excess deducted per NHCover claim for residential land is $500 multiplied by the number of dwellings in the residential building situated on the land. However, the maximum land cover excess per NHCover claim for residential land is $5,000.

** 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 land safe, sanitary and secure.

Sometimes the customer needs to get urgent help from a tradesperson to carry out some urgent repairs of natural hazard damage.

The customer may have sent invoices (or receipts) for urgent works from these tradespeople to the person dealing with the residential land 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.

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 land 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 land settlement is under or over the land cover cap.

  For example, the person dealing with the residential land claim pays or reimburses the customer for the cost of the urgent works. That person then later assesses (under the same residential land 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;

- **Step 2**: The 'amount' inserted in Column 2 of the table above (for residential land) 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 NHCover cap. See Section 9.e 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 land claim entitlement. That 'balance' is inserted in Column 5. See the equation below.

Amount in Column 2

minus Excess in Column 3

minus Amount in Column 4

Equals Balance in Column 5

The above example assumes that there are no other payments in respect of the residential land claim (i.e. other than the payment or reimbursement for the urgent works) already made.

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 land claims where multiple but separately insured natural hazard events have caused damage to the residential land. See Section 7.C in this Manual.

In the case of multiple residential land claims we suggest separate tables for each NHCover claim.

10. Explain how the land cover cap was calculated (if a land cover cap was paid)

Where the residential land claim is being settled on the basis of a land cover cap payment, the communication must set out how the land cover cap has been calculated.

Example

How the land cover cap has been calculated

Your residential land claim has reached the land cover cap. The land cover cap is calculated by adding:

- the prior market value of the area of insured residential land that has been damaged; and
- the undepreciated value of the insured retaining walls that have been damaged.

These values have been assessed in the valuer's report and the undepreciated value costing and are provided with this letter.

11. Set out how the NHCover residential land 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 39 below.

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 land claim entitlement has been electronically transferred to the bank account [insert account name here].

[Delete the option above that does not apply]

12. Identify who the payment will be made to

In most cases the land claim entitlement is paid to:

- the insured person (the person entitled to the benefit of the fire insurance contract or direct NHCover) (see Section 3.c.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 10.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 land claim entitlement.

An example of a paragraph setting out payment to a mortgagee is set out under Item 11 above.

If the insured person is two or more persons, or two or more persons are lawfully entitled to payment. 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.c.i in this Manual).

The form of communication will likely need to be adapted if all or part of the land 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 land claim entitlement to that person.

13. Set out the possible consequences for future NHCover of not using the land claim entitlement for the purpose of reinstatement

We have a discretion to cancel cover and decline cover in some instances where the land claim entitlement is not used to carry out the repair.

The communication must set out the possible consequences if the land claim entitlement is not used for the purpose of repair.

Example

It is important that the NHCover land claim entitlement is used to repair the damaged property. In some circumstances, any future NHCover claims may be affected if your NHCover land claim entitlement is not used for this purpose.

We strongly recommend that you proceed with your repair promptly to minimise the risk of inflation increasing the cost of your repair. If the NHCover land claim entitlement does not cover the full cost of repair, you may wish to contact your private insurer to see whether there is any further cover under your private insurance policy.

14. 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.

15. A land claim entitlement is not an offer

A land 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.

16. 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 land 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.

1. Set out an acknowledgement regarding accuracy of information provided in support of the NHCover residential land claim

The communication may include a record of the recipient's agreement that the information they have provided in support of the NHCover residential land 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.

2. 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.