



Building (Earthquake-prone Buildings) Amendment Bill

(182—1)

Interim report of the Local Government and Environment Committee

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Building (Earthquake-prone Buildings) Amendment Bill

Recommendation

The Local Government and Environment Committee has considered the Building (Earthquake-prone Buildings) Amendment Bill, and recommends that the House take note of its interim report.

The Building (Earthquake-prone Buildings) Amendment Bill seeks to amend the Building Act 2004 in relation to earthquake-prone buildings. It would enforce national timeframes and procedures for addressing earthquake-prone buildings. The intent of the bill is to balance the protection of citizens from earthquake-prone buildings, the cost of strengthening, upgrading, or demolishing buildings, and the protection of heritage buildings.

The bill was referred to the Local Government and Environment Committee of the 50th Parliament, and reinstated before the Local Government and Environment Committee of the 51st Parliament. In the course of our examination we considered public submissions. We also received advice from the Ministry of Business, Innovation and Employment, the Parliamentary Counsel Office, and the Regulations Review Committee. As a result of this process, and in response to the issues raised by submitters, we are considering a range of potential changes to the original bill.

The purpose of this interim report is to invite feedback from previous submitters on the specific changes proposed by the Ministry of Business, Innovation and Employment. We consider this course of action appropriate as the proposed changes would significantly alter the version of the bill initially released. We are particularly interested to receive written submissions on the following issues:

- The timeframes for the identification and remediation of earthquake-prone buildings to be based on the seismic risk of the area, and with reference to Z factors.
- Reducing the scope of buildings to be covered by the bill, such as excluding farm buildings, bridges, and tunnels, and whether to include only buildings determined as earthquake prone on the public register (instead of all buildings) and their earthquake rating.
- The prioritisation of certain buildings in areas of medium and high seismic risk. These buildings would include hospitals, schools, and emergency response facilities. The applicable timeframe would be halved for the identification and remediation of these buildings.
- Proposed new section 133AX(2), which would require the upgrade of earthquake-prone buildings when substantial alterations are being undertaken. Criteria for assessing whether an alteration is substantial would be set out in regulations.
- Proposed new section 133AX, in relation to disability access and fire safety.

INTERIM REPORT ON BUILDING (EARTHQUAKE-PRONE BUILDINGS) AMENDMENT BILL

We have appended the following resources:

- **Summary report:** this details the advice we have received on proposed amendments and explains the differences between the Act, the bill as introduced, and the proposed changes. The report also includes an analysis of submissions and the ministry's responses to the issues raised in them.
- **Bill showing proposed amendments:** the proposed changes as they would affect the bill.

The deadline for submissions addressing the specific issues outlined above is 16 July 2015.

Appendix A

Committee procedure

The Buildings (Earthquake-prone Buildings) Amendment Bill was referred to the Local Government and Environment Committee of the 50th Parliament on 5 March 2014. The bill was reinstated as business before the 51st Parliament on 21 October 2014. The committee received and considered 121 submissions from interested groups and individuals, and heard 66 oral submissions. Hearings were held in Auckland, Christchurch, and Dunedin.

We received advice from the Ministry of Business, Innovation and Employment, and the Parliamentary Counsel Office. The Regulations Review Committee reported to the committee on the powers contained in clauses 2, 37, and 38.

Committee members

Scott Simpson (Chairperson)

Matt Doocey

Paul Foster-Bell

Julie Anne Genter

Joanne Hayes

Tutehounuku Korako

Ron Mark

Todd Muller

Eugenie Sage

Su'a William Sio

Dr Megan Woods

Mojo Mathers replaced Julie Anne Genter for this item of business.

Appendix B – Summary report



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI



BUILDING (EARTHQUAKE-PRONE BUILDINGS) AMENDMENT BILL

**Summary of Officials' Report to the Local Government and
Environment Committee**

12 June 2015

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Introduction

1. As requested by the Local Government and Environment Committee (the Committee), this report provides a summary of the full Officials' Report on the Building (Earthquake-prone Buildings) Amendment Bill (the Bill) to assist with the Committee's consultation on proposed changes to the Bill.
2. This report identifies the key issues raised by submitters regarding features of the Bill, and sets out proposals that are intended to work together as a package to address a number of these issues. This report includes:
 - a summary table that compares some key high level elements of the approach for managing earthquake-prone buildings under the Building Act 2004, the Bill, and the Bill with officials' main proposed recommendations for amendments
 - a summary high level process map of the Bill with officials' main recommendations for amendments.
3. Of the 121 submissions the Committee received on the Bill as introduced in Parliament on 9 December 2013, few submitters explicitly stated their support or opposition to the entire Bill, and those who did also went on to specifically support or raise concerns about particular proposals. In some cases, the same submitter equally supported and opposed different parts of the Bill.
4. Many submitters generally stated their overall support for the intent of the Bill, while also expressing concerns about specific provisions in the Bill. Submitters were concerned about the potential cost and impact of the proposals on individuals and communities. Concerns were expressed by several submitters (including Local Government New Zealand and some territorial authorities) about the potential impacts of the Bill on rural and provincial New Zealand, and areas of low seismic risk (for example, Auckland and Northland).
5. Some building owners expressed concerns about the potential impacts on themselves, which they considered to be disproportionate.
6. Submitters suggested a range of options to address their concerns, including alternative systems (for example, those that rely on local discretion like the current system), as well as amendments to specific clauses in the Bill.
7. The full Officials' Report includes further information on submissions and a clause by clause analysis of submissions on the Bill.
8. All recommendations are subject to the advice and drafting of Parliamentary Counsel.

Summary table of key high level elements of approaches for managing earthquake-prone buildings

	Building Act 2004	The Building (Earthquake-prone Buildings) Amendment Bill	The Bill with officials' main proposed recommendations for amendments*
Scope of buildings covered by the provisions	Existing buildings (Most residential buildings excluded)	Existing buildings (Most residential buildings excluded)	<p>Existing buildings, excluding:</p> <ul style="list-style-type: none"> farm buildings, retaining walls, fences, monuments that cannot be entered (e.g. statues), wharves, bridges, tunnels, storage tanks (e.g. water reservoirs) <p>(Most residential buildings also excluded)</p> <p><i>See pages 13 to 20 for more information</i></p>
Definition of earthquake-prone building	Section 122 of Building Act 2004 (and associated regulations) – in practice this definition is often referred to as <34% of the new building standard (NBS)	Modification and clarification of the Building Act 2004 definition, including that the law applies to whole buildings or parts of buildings	<p>Clarification of the definition in the Bill, including in relation to the definition of certain terms and the application to parts of buildings</p> <p><i>See pages 13 to 22 for more information</i></p>
Defining areas of high, medium, and low seismic risk for the purpose of setting identification and remediation timeframes	N/A	N/A	<p>Areas of high, medium and low seismic risk defined in the Bill in connection with the Building Code (and associated approved solutions and verification methods) with reference to seismic hazard factors (Z factors) as follows:</p> <ul style="list-style-type: none"> high seismic risk (Z factor ≥ 0.3) e.g. Wellington, Napier, Christchurch medium seismic risk (Z factor of 0.15 up to < 0.3) e.g. Wanganui, New Plymouth, Invercargill low seismic risk (Z factor < 0.15) e.g. Auckland, Dunedin <p><i>See pages 26, 37 to 38 , and Appendix 3 for more information</i></p>

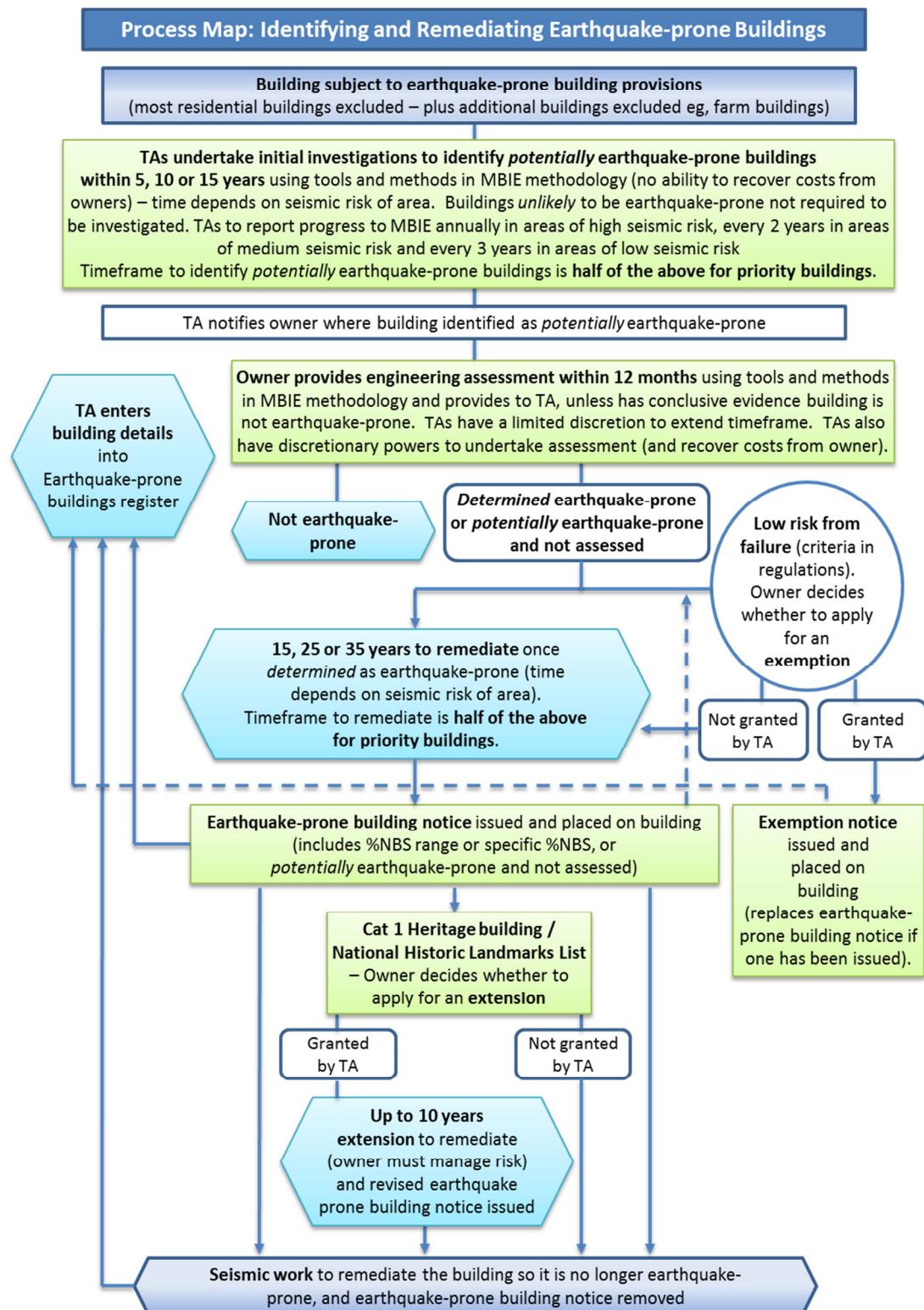
	Building Act 2004	The Building (Earthquake-prone Buildings) Amendment Bill	The Bill with officials' main proposed recommendations for amendments*
Identification of building performance	Can be active or passive (set by territorial authority policies)	<p>Seismic capacity assessment by territorial authorities within 5 years from commencement using methodology set by the Ministry of Business, Innovation and Employment (MBIE)</p> <p>Buildings defined as priority buildings prioritised for assessment</p>	<p>Territorial authorities to undertake initial investigations to identify potentially earthquake-prone buildings within 5, 10 or 15 years from commencement using the methodology set by MBIE (timeframe dependent on the seismic risk of the area). The timeframe is half of the above for priority buildings</p> <p>Building owners to provide an engineering assessment within 12 months of identification using tools and methods set in MBIE methodology (with an ability for territorial authorities to provide an extension of up to 12 months in certain circumstances)</p> <p>Residual discretionary power for territorial authorities to undertake assessments and recover costs</p> <p>Following consideration of an engineering assessment territorial authorities determine whether a building is earthquake-prone</p> <p><i>See pages 24 to 35 for more information</i></p>
Notification / disclosure	<p>Section 124 notices issued for earthquake-prone buildings</p> <p>Some territorial authorities have a public register (many do not)</p>	<p>Equivalent to section 124 notice issued for earthquake-prone buildings</p> <p>National register of outcome of assessments</p>	<p>Enhanced notices issued for earthquake-prone buildings to better differentiate buildings and incentivise action (including a grading scheme)</p> <p>National register of earthquake-prone buildings only</p> <p>Territorial authorities to report progress on identifying potentially earthquake-prone buildings to MBIE:</p> <ul style="list-style-type: none"> • annually in relation to areas of high seismic risk • every two years in relation to areas of medium seismic risk • every three years in relation to areas of low seismic risk <p><i>See pages 24 to 35 for more information</i></p>

	Building Act 2004	The Building (Earthquake-prone Buildings) Amendment Bill	The Bill with officials’ main proposed recommendations for amendments*
Timeframes to remediate	Set in council policies (the Government review estimated 28 years on average)	Within 15 years from assessment for most buildings	<p>For most buildings (once determined as earthquake-prone), within:</p> <ul style="list-style-type: none"> • 15 years for areas defined as high seismic risk • 25 years for areas defined as medium seismic risk • 35 years for areas defined as low seismic risk <p>Remediation timeframe for priority buildings is half that of other buildings outlined above</p> <p>Additional trigger also added so that where substantial alterations are to be carried out, a building consent will not be granted unless building work is undertaken so that the building (or the affected part) is no longer earthquake-prone</p> <p><i>See pages 36 to 46 (and Appendix 3) for more information</i></p>
Ability to require faster remediation timeframes	N/A	<p>Priority buildings defined in regulations</p> <p>TA powers to require faster timeframes for strengthening than mandated by central government for ‘priority buildings’, after following the special consultative procedure in Local Government Act 2002</p>	<p>Priority buildings defined in the Bill in areas of high and medium seismic risk as follows:</p> <ul style="list-style-type: none"> • ‘hospital buildings’ – those components of a hospital necessary for it to be able to maintain essential services in the event of a significant earthquake, but excluding administration buildings and aged residential care facilities • ‘school buildings’ – all buildings regularly occupied by 20 persons or more in an early childhood education centre, primary, secondary, or tertiary education facility, including registered private training establishments

	Building Act 2004	The Building (Earthquake-prone Buildings) Amendment Bill	The Bill with officials’ main proposed recommendations for amendments*
			<ul style="list-style-type: none"> • ‘emergency service facilities’ – emergency service facilities such as fire stations, police stations and emergency vehicle garages; and designated emergency shelters, designated emergency centres and ancillary facilities • ‘corridor buildings’ – those buildings identified by the territorial authority, after consulting their communities (using the special consultative procedure in section 83 of the Local Government Act 2002) that could, if they were to collapse in an earthquake, impede transport routes of strategic importance in an emergency. The use of this provision would be optional for territorial authorities <p><i>See pages 36 to 46 for more information</i></p>
Transitional provisions	N/A	<p>Existing notices issued under section 124 of the Building Act 2004 continue where the timeframe is 15 years or less. Where the timeframe on the notices is greater than 15 years, notices re-issued with the new timeframes in the Bill</p> <p>MBIE methodology to set out how engineering assessments already undertaken are to be recognised</p>	<p>Decisions that led to existing section 124 notices being issued remain valid. Revised transitional provisions to take into account the remediation timeframes above, with clarifications around the time remaining on notices</p> <p>Notices reissued to ensure consistent notification on buildings</p> <p>Inclusion of an ability for owners to apply to their territorial authority to have the relevant timeframes in the Bill apply from the date of issue of the original section 124 notice</p> <p>MBIE methodology to set out how engineering assessments already undertaken are to be recognised</p> <p><i>See pages 53 to 55 for more information</i></p>

* The ability for building owners to apply for exemptions from the requirement to remediate for certain buildings, and extensions of time for certain heritage buildings, as provided for under the current Bill would continue to apply. The ability for territorial authorities to not require upgrades to means of escape from fire and access and facilities for people with disabilities on a case-by-case basis would also remain.

Summary high level process map of the Bill with officials' main recommendations for amendments



* Additional substantial alterations trigger also applies. Transitional provisions also apply to recognise engineering tests that have already been undertaken, and notices already issued requiring the remediation of earthquake-prone buildings. Note: in the diagram above TA means territorial authority.

Alternative approaches for managing earthquake-prone buildings

9. Twenty-six submitters¹ suggested alternative approaches for managing earthquake-prone buildings than the system set out in the Bill. These alternative approaches are discussed in more detail below.

Alternative approaches that rely on the market

10. Five of the 26 submitters who suggested alternative approaches to the system set out in the Bill submitted that the market is currently re-pricing the risk posed by earthquakes and that there is no need to regulate to ensure the remediation of earthquake-prone buildings (Business New Zealand, Employers' and Manufacturers' Association, John and Frances Bickerton, Wellington Employers' Chamber of Commerce, and William Scott Macky).

Alternative approaches that rely on local discretion and local decision making

11. Several submitters raised concerns about the way the Bill takes local factors into account, often by asserting it takes a 'one size fits all' approach. Of the 26 submitters who proposed alternative approaches to the system set out in the Bill, 21 submitters expressed the view that the Bill needed to provide for more local decision making.
12. Twelve submitters (11 territorial authorities and the Waikato Mayoral Forum) wanted more local discretion and flexibility within a framework set by central government, accompanied by greater central government support and guidance. Submitters who expressed this view often supported features introduced in the Bill, such as priority buildings, exemptions and heritage extensions, which include flexibility for territorial authorities to exercise discretion in decision making.
13. Another six submitters (the Oamaru Whitestone Civic Trust and five territorial authorities) suggested that earthquake-prone buildings should be managed at a regional level. For example, the Joint Southern Councils' submission suggested that individual councils or groups of councils could retain local decision making (in whole or in part) at a regional/sub-regional level based on the level of seismicity to determine priorities and timeframes for the assessment and strengthening of earthquake-prone buildings.

¹ Ashburton District Council, Auckland Council, Business New Zealand, Central Otago District Council, Dunedin City Council, Employers and Manufacturers Association, Federated Farmers of New Zealand, Gore District Council, Grey District Council, John and Frances Bickerton, Kapiti Coast District Council, Local Government Forum, New Plymouth District Council, Oamaru Whitestone Civic Trust, Palmerston North City Council, Queenstown Lakes District Council, Ruapehu District Council, Joint Southern Councils, Stratford District Council, Tauranga City Council, Waikato Mayoral Forum, Waipa District Council, Waitaki District Council, Wanganui District Council, Wellington City Council, Wellington Employers' Chamber of Commerce, William Scott Macky.

14. A further three submitters (the Local Government Forum, Federated Farmers of New Zealand and the Gore District Council) suggested retaining the current system of only local decision making when managing earthquake-prone buildings.
15. Twenty-two submitters supported the Bill giving central government a greater role in the system for managing earthquake-prone buildings and taking a nationally consistent approach: 14 of these submitters were territorial authorities.

Comment

16. Under the Building Act 2004, section 131 requires territorial authorities to develop policies on how they will manage earthquake-prone buildings in their areas, in consultation with their communities (following the special consultative procedure in section 83 of the Local Government Act 2002). These policies must be reviewed every five years and a copy provided to the Ministry of Business, Innovation, and Employment.
17. Comprehensive reviews of the current system undertaken by the Government and the Canterbury Earthquakes Royal Commission identified problems with the current system, including:
 - too much variability in local practice
 - poor understanding of risk
 - lack of good data
 - inconsistent market responses
 - lack of central guidance and limited central monitoring and oversight of the sector.
18. Changes to the current system for managing earthquake-prone buildings are necessary to address the problems identified by the Royal Commission and in the comprehensive Government review.
19. Officials' recommendations for amendments to the Bill discussed in the following pages of this report are intended as a package of refinements that take a more focused approach, by reducing the scope of buildings covered by the Bill and prioritising those areas and buildings (and parts of buildings) that pose the greatest risk. A key change recommended includes lengthening the timeframes for earthquake-prone building identification and remediation to better align with the different levels of seismic risk around New Zealand.
20. Combined with a robust methodology for identifying earthquake-prone buildings, officials consider that a number of the concerns raised by submitters about the Bill can be adequately addressed through the refinements outlined later in this report, while at the same time sufficiently balancing the need to protect the public in an earthquake.

Key issue: Commencement

[Clause 2]

Introduction

21. Clause 2 provides that the Act comes into force on the earlier of:
 - a date appointed by the Governor General by Order in Council, and
 - the day that is two years after the date on which the new legislation receives Royal assent.

Issues raised by submitters

22. Thirty-five submitters (including Local Government New Zealand, the Waikato Mayoral Forum and 20 territorial authorities) raised concerns about the limited amount of detail about the content of the methodology, the definition of priority building and the content of regulations. Twenty-one of these submitters called for the regulations and/or methodology to be drafted, consulted on and/or considered by the Committee before the Bill is passed.
23. Seven submitters (the Institution of Professional Engineers New Zealand and other engineering submitters, the International Council on Monuments and Sites New Zealand, Watercare Services and the Property Council of New Zealand) requested involvement in the development of the regulations and methodology required to give effect to the Bill.
24. The Regulations Review Committee recommended that the Committee ask officials to explain why it is considered that the circumstances associated with bringing the Bill into force are 'rare and exceptional', such as to justify commencement by Order in Council. They also recommended that if the Committee is not satisfied that the particular circumstances are rare and exceptional, that the Bill be amended to include a fixed commencement date.

Comment

25. When developing legislation, it is normal for technical detail not to be included in primary legislation, especially where flexibility is needed to ensure legislation is workable.
26. Considerable technical detail is involved in setting out how to identify, assess and remediate earthquake-prone buildings and it is appropriate that this occurs in regulations (and other legislative instruments) where necessary. Officials will take the regulations (and other legislative instruments) made under this Bill through a public consultation process to ensure they are workable, so members of the public will have the opportunity to comment on the proposals.
27. The Ministry of Business, Innovation and Employment has noted the level of interest in the development of the regulations and methodology to give effect to the Bill. Interested parties will be consulted on the content of regulations. This work will begin after the Bill is passed and there is certainty about the regulatory framework for which the regulations are required. To help address concerns about timing, officials recommend that the Bill be amended to provide that the methodology for

the identification of earthquake-prone buildings must be made no later than one month after the Act comes into force. The Ministry of Business, Innovation and Employment has begun initial work on the methodology, including working with the New Zealand Society for Earthquake Engineering (NZSEE), GNS Science, other engineers and experts, and local government.

28. Regarding the issue raised by the Regulations Review Committee, in this case the circumstances are rare and exceptional, to justify commencement by Order in Council. The methodology for identifying earthquake-prone buildings and the regulations underpinning the Bill will involve considerable technical detail, will take time to develop and need to be in place when the Act commences. The register also needs to be developed. A two year, long-stop period (rather than a one year long-stop) is considered appropriate in this case given the complexity of the tasks involved.

Recommendations

1 Officials recommend:

- 1.1 no change to the commencement provision**
- 1.2 that the Bill be amended to provide that the methodology for the identification of earthquake-prone buildings must be made no later than one month after the Act comes into force.**

Key issue: The definition of earthquake-prone building

[Clauses 23 (new sections 133AB, 133AD, 133AE) and 43]

Introduction

29. Section 122 of the Building Act 2004 sets out the definition of an earthquake-prone building. The term moderate earthquake (which forms part of the definition) is currently defined in regulations made under the Building Act 2004 as:

"For the purposes of section 122 (meaning of earthquake-prone building) of the Act, moderate earthquake means, in relation to a building, an earthquake that would generate shaking at the site of the building that is of the same duration as, but that is one-third as strong as, the earthquake shaking (determined by normal measures of acceleration, velocity, and displacement) that would be used to design a new building at that site".

30. From section 122 and the definition of moderate earthquake, earthquake-prone buildings are often referred to as those that do not meet 34% NBS. The standards for new buildings for earthquake resilience take into account the likely magnitude and frequency of earthquakes in particular locations. Therefore, these variables are factored in when buildings are assessed as to whether they are earthquake-prone. For example, a building at 34% NBS in Auckland will not be as strong in absolute terms as a building at 34% NBS in Wellington because seismic risk is higher in Wellington.
31. The Bill repeals section 122. New sections 133AB and 133AD inserted by clause 23 of the Bill replicates the existing definition in section 122 but with some amendments that are intended to clarify that:
- the existing requirement in section 122(1)(b) that the building be "likely to collapse causing" injury, death or damage to other property is about the possible consequence of building failure, not the likelihood of collapse, as the likelihood of failure is addressed by the test in section 122(1)(a)
 - parts of buildings can be earthquake-prone as well as whole buildings (as provided for in new section 133AE).
32. The definition in the Bill is set out below.

"Clause 23

133AB Meaning of earthquake-prone building

*A building is **earthquake prone** for the purposes of this Act if, having regard to its condition and to the ground on which it is built, and because of its construction,—*

(a) the building will have its ultimate capacity exceeded in a moderate earthquake (as defined in regulations); and

(b) if the building were to collapse in a moderate earthquake, the collapse would be likely to cause—

(i) injury or death to persons in the building or to persons on any other property; or

(ii) damage to any other property

133AD Application of this subpart to residential buildings

This subpart does not apply to a building that is used wholly or mainly for residential purposes, unless the building—

(a) comprises 2 or more storeys; and

(b) contains 3 or more household units.

133AE Application of this subpart to parts of buildings

*(1) If a territorial authority is satisfied that only part of a building is earthquake prone (within the meaning of **section 133AB**),—*

(a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and

*(b) for the purpose of **paragraph (a)**, this subpart applies with any necessary modifications.*

(2) Nothing in this section limits or affects the application of a provision of this Act outside this subpart”.

33. Part 2 of the Bill amends the definition of moderate earthquake contained in regulations to tie it to the commencement date of the Amendment Act. This means the earthquake-prone building threshold will not change as building standards change over time, unless the regulations are also amended. The purpose of this amendment is to provide greater certainty to building owners and to increase transparency around the process for incorporating new knowledge into the moderate earthquake definition.
34. The Bill also amends the Building Act 2004 to clarify that the level of remediation required is so that the building is no longer earthquake-prone. Currently the Building Act 2004 provides that the level of remediation required for earthquake-prone buildings is to ‘reduce or remove the danger’, and uncertainty about this has resulted in litigation around the meaning of reduce or remove the danger.

Issues raised by submitters

35. Twenty-six submitters indicated their support for the definition of an earthquake-prone building in the Bill (including Local Government New Zealand, the Waikato Mayoral Forum and 18 territorial authorities).
36. Some concerns were expressed by submitters about the accuracy and adequacy of the definition of an earthquake-prone building.
 - GNS Science expressed the view that the definition should be more explicitly related to life safety risk by using a specific life safety target – the Annualised Individualised Fatality Risk (AIFR)
 - several engineering industry bodies (including the Institution of Professional Engineers New Zealand, NZSEE and the Structural Engineering Society New Zealand) submitted that the term ultimate capacity in section 122(1)(a) (as replicated in new section 133AB(a)) is unclear and should be clearly defined in either the Bill or in regulations – suggestions included that the term ultimate capacity be replaced by the term 'seismic capacity', and that seismic capacity be defined as a building's ultimate limit state in structural engineering terms
 - a few submitters (including Mr Ian Harrison) suggested that the definition continues an overly excessive/conservative earthquake-prone building threshold and that it should be more closely defined in relation to potential for collapse
 - 31 submitters (including 19 territorial authorities, Local Government New Zealand and the Waikato Mayoral Forum) submitted that the definition of a building within the context of the earthquake-prone building provisions be amended to exclude low risk buildings such as farm buildings (11 submitters), structures not intended for human occupancy (eight submitters), or both (12 submitters)
 - Dunedin City Council recommended clarifying the application of the definition in relation to boardinghouses and other similar types of buildings which might otherwise be excluded through the application of the definition of 'household unit' in section 7 of the Building Act 2004
 - Neville Higgs suggested amending the definition to clarify its application to persons in or around the building.
37. Twenty-six submitters (including Local Government New Zealand, the Real Estate Institute of New Zealand and the Inner City Association) supported the Bill expressly including provisions to provide for parts of buildings as well as whole buildings to be earthquake-prone because this would allow a greater focus on vulnerable, high risk building elements such as falling hazards. Fifteen submitters (including the Legislation Advisory Committee) considered that these provisions needed to be more clearly expressed.
38. The Regulations Review Committee recommended amending the Bill to include a definition of moderate earthquake in the Bill, rather than leaving the definition within regulations, or amending the Bill to provide a purpose of defining moderate

earthquake and require regulations under section 402 (as amended by clause 38) to be made in accordance with that purpose.

Comment

AIFR and the definition of an earthquake-prone building

39. The Building Code is a risk based framework. As the definition of an earthquake-prone building is linked to the current Building Code through the definition of moderate earthquake, this risk framework is carried through to the definition in the Bill².
40. Changing the definition of earthquake-prone building to one that includes more explicit use of a life safety target (using AIFR as a metric) would present major challenges for the sector and likely introduce unintended consequences. Existing risk tools used in the current system will not be readily applied in such a framework, and there is no evidence that such a change would result in an improvement in the consistency of assessments than the current regime.
41. International experience of the use of a direct life safety criterion for determining earthquake-prone buildings is mixed. While it is used in some planning regulatory regimes overseas (e.g. in relation to the location of major hazard sites such as nuclear power stations), there is no international experience of it being used in a system that makes the number of individual decisions set out in the Bill. In addition, taking a solely AIFR approach does not adequately deal with societal risk concerns, i.e. society's aversion to large losses of life from an individual earthquake event.
42. In New Zealand AIFR has recently been used as a criterion for red zoning decisions relating to the Port Hills area of Christchurch and also indirectly in relation to the issue of dangerous building notices under section 124 of the Building Act 2004³. Its use in these applications has proved problematic, not least because of difficulties with the various assumptions and data needed to calculate the AIFR (for example, building occupancy levels, duration of occupancy and the frequency of seismic events).
43. For these reasons, officials do not recommend changing the definition of earthquake-prone building to one which includes a more explicit use of a life safety target (using AIFR as a metric).

² The relevant Building Code clause is that for Structure (B1). The Building Code clause is applied through the use of NZS 1170.5:2004 (which is cited in verification method B1/VM1). This cited Standard uses as a reference point in its development an International Standard (ISO 2394:1998) that sets a life safety target of an AIFR of 1 in 1,000,000. The AIFR for earthquake-prone buildings is lower than this target by approximately a power of 10.

³ The definition of a dangerous building under the Building Act 2004 was modified by an Order in Council made under the Canterbury Earthquake Recovery Act 2011.

Better specifying the definition of an earthquake-prone building and the scope of buildings covered

44. Officials do not agree with the view expressed by a few submitters that the Bill continues an overly excessive/conservative earthquake-prone building threshold, but we do agree that the definition of an earthquake-prone building in the Bill can be better specified. To improve the clarity of the definition in the Bill we recommend that:
 - the term ultimate capacity be defined in regulations – defining the term in regulations is necessary to address anticipated technical complexities associated with this matter and to ensure any unintended consequences are mitigated
 - the term moderate earthquake be removed from new section 133AB(b) to clarify that the test in 133AB(b) is a consequence test rather than a likelihood test.
45. We also recommend that additional buildings be excluded from the earthquake-prone building definition⁴.
46. On 3 July 2014, the Minister for Building and Construction and the Minister for Primary Industries jointly announced their intention to exclude farm buildings from the definition of an earthquake-prone building. In addition to farm buildings, officials also recommend that the following buildings be excluded from the definition of an earthquake-prone building: retaining walls, fences, monuments that cannot be entered (e.g. statues), wharves, bridges, tunnels, and storage tanks (e.g. water reservoirs).
47. Applying the earthquake-prone building provisions in the Bill to these buildings would likely either be impractical or excessive or both. In the case of the infrastructure buildings listed, applying the earthquake-prone building provisions may add little value beyond maintenance plans and requirements that exist under other legislation (such as the Railways Act 2005, Land Transport Management Act 2003, and Civil Defence Emergency Management Act 2002).
48. The buildings referred to above are covered by the current earthquake-prone building definition, but in practice territorial authorities do not focus on them for the reasons outlined. It is unlikely that many earthquake-prone notices have been issued for these buildings.

⁴ Currently most residential buildings are excluded from the earthquake-prone building definition. In addition, there are some structures that section 9 of the Building Act 2004 defines as not buildings. For example, this includes a pylon, free-standing communication tower, power pole, or telephone pole that is a Network Utility Operator (NUO) system or part of a NUO system. This also includes security fences, oil interception and containment systems, wind turbines, gantries, and similar machinery and other structures (excluding dams) not intended to be occupied that are part of, or related to, a NUO system. Containers as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996 are also excluded under section 9 of the Building Act 2004.

49. In the event that notices requiring remediation have been issued under the current system for managing earthquake-prone buildings for some of these buildings, officials propose that these notices lapse upon the commencement of the Act to ensure owners of these buildings are not disadvantaged.
50. It is important to note that the dangerous building provisions in the Building Act 2004 will still apply to these structures. The dangerous building provisions apply where a building is likely to cause injury or death, or property damage, in the ordinary course of events (excluding earthquakes).
51. It has been suggested by some submitters that buildings that are unlikely to be earthquake-prone could also be excluded from the system, for example timber framed buildings or timber framed churches and community halls. Officials consider that an exclusion is not appropriate as it is not possible to characterise other groups of buildings, such as rural timber framed churches/community halls, as always having similar low occupancy and intermittent frequency of use characteristics that farm buildings generally have. We consider that it is more appropriate to keep these buildings within the scope of the earthquake-prone building provisions in the Bill. Instead officials propose that under the methodology outlined in new section 133AG, assessments of these buildings will not be required (see later discussion in relation to seismic capacity assessments).

Clarification of the definition of earthquake-prone building in relation to boardinghouses and other similar types of buildings

52. As noted earlier, clause 23 new section 133AD provides that the earthquake-prone building provisions do not apply to a building that is used wholly or mainly for residential purposes, unless the building: (a) comprises two or more storeys, and (b) contains three or more household units. This is the same as the current provisions under the Building Act 2004.
53. Household unit under section 7 of the Building Act 2004:
 - (a) means a building or group of buildings, or part of a building or group of buildings, that is—
 - (i) used, or intended to be used, only or mainly for residential purposes; and
 - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
 - (b) does not include a hostel, boardinghouse, or other specialised accommodation".
54. To provide greater clarity about the application of the earthquake-prone building provisions to certain residential buildings, officials recommend that the Bill be amended to add a further 'carve-out' from the general residential exclusion, to clarify that the earthquake-prone building provisions apply in relation to hostels, boarding houses and other specialised accommodation.

Clarification of the definition of earthquake-prone building in relation to impacts to persons

55. As noted earlier, part of the definition of an earthquake-prone building in clause 23 new section 133AB relates to the likelihood of injury or death to persons in the building or to persons on any other property if the building were to collapse in an earthquake. This is the same as the current provisions under the Building Act 2004.
56. To improve the clarity of the provision, officials recommend that the definition of earthquake-prone building in clause 23 new section 133AB be amended to include injury or death to persons around the building to ensure that it covers people on the same property as the building in the way that it covers persons on other property.

Clarification of the definition of earthquake-prone building in relation to parts of buildings

57. Officials agree that the provisions of the Bill in relation to parts of buildings can be more clearly expressed. Officials recommend amending the Bill to ensure parts of buildings are adequately covered.

Definition of moderate earthquake in regulations

58. Officials understand the concerns expressed by the Regulations Review Committee in relation to the definition of moderate earthquake being defined in regulations.
59. The Building Act 2004 moved the definition of moderate earthquake from primary legislation into regulations (the preceding legislation made reference to a 1965 standard). The Bill continues the approach of the Building Act 2004.
60. The flexibility of retaining this matter in regulations is still required to ensure that any significant advances in knowledge can be incorporated into the definition in a timely way (if necessary). For example, knowledge about the seismicity of a region may change after a large seismic event and this will need to be incorporated into the definition in a timely way (this is a real example and occurred after the Canterbury Earthquakes – the seismic hazard factor in Christchurch was increased from 0.22 to 0.3).
61. No change is recommended.

Recommendations

2 Officials recommend that:

- 2.1 the definition of earthquake-prone building be amended to improve its clarity by:**
 - defining the term ultimate capacity in regulations
 - removing the reference to moderate earthquake from clause 23 new section 133AB(b)
- 2.2 the definition of earthquake-prone building in clause 23 new section 133AB be amended to exclude the following:**
 - farm buildings
 - retaining walls
 - fences
 - monuments that cannot be entered (e.g. statues)
 - wharves
 - bridges
 - tunnels
 - storage tanks (e.g. water reservoirs)
- 2.3 the transitional provisions in the Bill be amended so that any notices requiring remediation of the buildings listed in recommendation 2.2 issued under the current system for managing earthquake-prone buildings lapse upon commencement of the Act**
- 2.4 the Bill be amended to insert a further ‘carve-out’ from the general residential exclusion for hostels, boardinghouses or other specialised accommodation, to clarify that the earthquake-prone building provisions apply in relation to these buildings**
- 2.5 the definition of earthquake-prone building in clause 23 new section 133AB be amended to include injury or death to persons around the building, to ensure that it covers people on the same property as the building in the way that it covers people on other property**
- 2.6 the Bill be amended to ensure parts of buildings are adequately and clearly covered.**

Key issue: Application of the definition of earthquake-prone building in areas of low seismic risk

[Clause 23 (new section 133AB, 133AG)]

Introduction

62. The structural design standard NZS 1170.5:2004 is incorporated within the Building Code by reference in verification method B1/VM1 in relation to seismic performance requirements for new buildings. This flows through to existing buildings through the definition of earthquake-prone building, where moderate earthquake is defined with reference to the design of a new building at the same site.
63. NZS 1170.5:2004 sets out a seismic hazard factor (the Z factor) for different areas, based on ground motions derived from a uniform risk seismic hazard model produced by GNS Science (the 2002 seismic hazard model – see Appendix 2). NZS 1170.5:2004 differs from the 2002 seismic hazard model in that it sets a minimum seismic hazard factor in specific areas of low seismicity (i.e. roughly north of Hamilton).
64. Applying the minimum seismic hazard factor in NZS 1170.5:2004 to Auckland means that an earthquake-prone building in Auckland that is strengthened to 34% NBS only needs to be one third as strong as an identical building in Wellington. If the 2002 seismic hazard model was applied without the minimum seismic hazard factor specified in NZS 1170.5:2004, the building would only need to be 23% as strong as the Wellington building.

Issues raised by submitters

65. GNS Science raised concerns about the setting of a minimum seismic risk factor. GNS Science submitted that this results in a system that captures buildings that would not otherwise be regarded as earthquake-prone.
66. Heart of the City submitted that Auckland and other low risk areas, such as Northland, should be excluded from the earthquake-prone building system because of their low level of seismic risk.
67. Auckland Council commented on seismic risk issues in its submission, but did not suggest that the region should be exempted from the system. However, Auckland Council did note that these issues need to be considered in the context of requirements that apply to the region.

Comment

68. Officials do not consider it appropriate to exempt Auckland and other low risk areas such as Northland from the system for managing earthquake-prone buildings.
69. The minimum seismic risk factor in NZS 1170.5:2004 has been set to provide a margin against collapse from unknown faults (such as subterranean faults or faults with surface traces that have not been identified, for which there is no recorded history of activity) in earthquakes that may occur in low seismic areas⁵.
70. However, officials agree that timeframes in the Bill could be better aligned to different levels of seismic risk around New Zealand. Timeframes for identification, assessment and remediation in relation to these areas are discussed in more detail later in this report.

Recommendation

3 Officials recommend that:

- 3.1 **no change be made to the definition of earthquake-prone building in relation to its application in areas of low seismic risk.**

⁵ Note: A proposed amendment to NZS 1170.5:2004 is currently under consideration and expected to be finalised by mid-2015. The proposed amendment alters the map slightly in the Northland region and the region affected by the Canterbury earthquakes.

Key issue: Level of remediation required of earthquake-prone buildings

[Clause 23 (new section 133AA, 133AN)]

Introduction

71. Clause 23 new section 133AA defines the term seismic work as the building work required to ensure that a building is no longer earthquake-prone. This definition is also included in clause 23 new section 133AN that deals with the requirements for seismic work notices.

Issues raised by submitters

72. Eight submitters (including the International Council on Monuments and Sites New Zealand (in respect of heritage buildings), Wellington City Council, Rod and Rebecca Thompson, the NZSEE and some engineers) considered that there should be a requirement for a higher level of remediation (or an ability to require higher levels of remediation) for buildings or parts of buildings that have to be strengthened. Justification provided by submitters included to:
- ensure greater life safety
 - better address the risk posed by high risk parts of buildings, particularly falling hazards on unreinforced masonry buildings
 - help preserve heritage buildings
 - create more resilient communities that can respond better in an emergency.

Comment

73. While higher levels of remediation result in additional benefits, these predominantly relate to preserving buildings or reducing the broader social and economic impacts associated with earthquake damage rather than life safety. Officials consider that remediation so that a building is not earthquake-prone (34% NBS) is sufficient as a regulatory requirement. It is intended that strengthening above this level will be driven by a better informed market.

Recommendation

4 Officials recommend that:

- 4.1 no change be made to either the definition of seismic work in clause 23 new section 133AA or the level of remediation required under clause 23 new section 133AN.**

Key issue: Seismic capacity assessments, outcome notices, the seismic capacity register and seismic work notices

[Clauses 6, 7, 9, 23 (new sections 133AA, 133AF to 133AI, 133AK, 133AJ to 133AN, 133AR, 133AU), 33, 34, 35 (new sections 275A and 275B) and 37]

Introduction

74. To improve the quality of information on the number and specific location of earthquake-prone buildings across the country, the Bill currently requires territorial authorities to undertake seismic capacity assessments of all existing buildings within their district within five years from commencement using a methodology set by the Chief Executive of the Ministry of Business, Innovation and Employment (new sections 133AF and 133AG). The Bill provides that the methodology will also specify how a territorial authority is to prioritise the assessment of particular types of buildings, with particular reference to priority buildings (priority buildings are discussed in more detail later in this report).
75. In setting the methodology, the Chief Executive of the Ministry of Business, Innovation and Employment is required by new section 133AH to consult territorial authorities and any other persons or organisations likely to be substantially affected by the setting of the methodology.
76. The Bill provides that as soon as practicable after the territorial authority has completed the seismic capacity assessment it must give the owner a written notice of the outcome ('outcome notice'). The Bill also provides that a territorial authority must record the outcome of the seismic capacity assessment on the seismic capacity register and issue a notice to undertake work on the building (seismic work notice) as soon as practicable after the expiry of a period of 20 working days after the date of the outcome notice.
77. The 20 working day period in the Bill is intended to give building owners time to make decisions (e.g. whether they wish to obtain alternative evidence of their building's seismic capacity) and reduce the need for territorial authorities to issue multiple notices, while at the same time not leaving buildings identified as earthquake-prone off the seismic capacity register for long periods after the completion of the seismic capacity assessment. If a building owner chooses to obtain alternative evidence, the Bill provides that this must be provided to the territorial authority within a reasonable period of time (this recognises issues with scarce engineering resources).
78. It is intended that the seismic capacity register will give people better and more accessible information about the risks associated with buildings in their area so they can make informed decisions.

79. As currently drafted, the Bill provides that in relation to existing buildings the register will include:
 - information identifying each building
 - the outcome of the seismic capacity assessment (whether it is earthquake-prone or not)
 - details of notices issued by the territorial authority setting out the obligations of building owners if the building is earthquake-prone (but not building owner details).
80. For new buildings, the Bill currently provides that the register will include sufficient details to identify the building, the date on which the code compliance certificate was issued, and a statement that the building is not earthquake-prone. Existing buildings are those for which a code compliance certificate has been issued for construction before commencement.
81. The Bill provides that the content of the register may be expanded through regulations. However, the Bill also provides that this additional information may have restricted public access either through regulations, or if the Chief Executive of the Ministry of Business, Innovation and Employment considers it not necessary, or not desirable, for the information to be made publicly available. An example of such circumstances might be in relation to commercially sensitive information (this might apply for example if the register was expanded to include building owners' indicative remediation plans).
82. The Bill also provides for seismic work notices to be placed on earthquake-prone buildings.

Issues raised by submitters about seismic capacity assessments and outcome notices

83. As discussed earlier in this report, several submitters raised concerns about the scope of buildings to be assessed under the Bill.
84. Thirty-three submitters (including 14 territorial authorities, Local Government New Zealand and the Waikato Mayoral Forum) raised concerns about resourcing for assessments and remediation work. Of these, 18 submitters questioned whether there are enough suitably qualified and experienced engineers available to do the work. Another five submitters queried whether territorial authorities, particularly smaller territorial authorities, had the capacity or capability to make seismic capacity assessments. Ten submitters expressed concerns about both. Not all existing buildings would have been required to be assessed by an engineer but there was a perception in submissions that this was the case.

85. Eighteen submitters had issues with territorial authorities undertaking the seismic capacity assessments (including Local Government New Zealand and 12 territorial authorities). Because of concerns about cost (and in some submissions, concerns about perceived liability issues) 12 of these submitters suggested that building owners should be responsible for obtaining assessments and providing them to territorial authorities. Four of the 18 submitters who had issues with territorial authorities undertaking assessments suggested that only engineers should carry out the assessments (other submitters also raised concerns about the need for assessors to be suitably qualified and trained). Seven submitters such as the Joint Southern Councils submitted that this provision of the Bill (clause 23 new section 133AF) should be amended so that territorial authorities have the option of undertaking the assessments themselves or can require owners to undertake the assessments and submit them to the territorial authority within the five year period.
86. In contrast, Auckland Council explicitly supported territorial authorities undertaking this role as it considered this to be a more cost-effective, consistent and expeditious approach.
87. An issue raised by three submitters (including Wellington City Council) was in respect of the 20 working day period for owners to make decisions after receiving an outcome notice (e.g. whether they wish to obtain alternative evidence of their building's seismic capacity) due to concerns about resource availability. Beca suggested extending this timeframe to 60 days to help address this issue, and help deal with issues associated with buildings with complex ownership arrangements.

Comment

88. Officials agree that the Bill can be improved in this area, and effort and scarce resource better focused.
89. Rather than requiring territorial authorities to assess existing buildings within five years of commencement, officials recommend amending the Bill to require territorial authorities to undertake initial investigations to *identify potentially* earthquake-prone buildings within their districts using the methodology to be set and published by the Ministry of Business, Innovation and Employment, and to notify owners by way of a request for an engineering assessment, within the following timeframes from commencement:
 - five years in areas of high seismic risk
 - 10 years in areas of medium seismic risk
 - 15 years in areas of low seismic risk.
90. We recommend defining areas of high, medium and low seismic risk in the Bill in connection with the Building Code (and associated approved solutions and verification methods), with reference to the seismic hazard factor (Z factor) as follows:
 - high seismic risk ($Z \text{ factor} \geq 0.3$)
 - medium seismic risk ($Z \text{ factor of } 0.15 \text{ up to } < 0.3$)
 - low seismic risk ($Z \text{ factor } < 0.15$).

91. Officials recommend amending the Bill to require territorial authorities to prioritise for identification those buildings defined as a priority building (within half the timeframe for identification of other buildings). The definition of a priority building and timeframes for remediation of a priority building are discussed later in this report.
92. Officials also recommend that the Bill be amended to:
 - change the name of the seismic capacity assessment to the engineering assessment
 - require building owners to provide an engineering assessment to their territorial authority (in accordance with tools and methods specified and published in the methodology set by the Ministry of Business, Innovation and Employment) within 12 months of being advised by their territorial authority in a request that their building is potentially earthquake-prone, unless they can provide conclusive evidence that their building is not earthquake-prone
(the Bill currently includes transitional provisions to recognise assessments that have already been undertaken, and notices already issued requiring the remediation of earthquake-prone buildings – amendments are recommended to these provisions as outlined later in this report)
 - provide territorial authorities with a limited discretion to extend the 12 month period for assessment (for up to a further 12 months), for example where there is insufficient engineering resource available to undertake assessments
 - provide that where an owner either advises the territorial authority that they do not wish to undertake an assessment, (e.g. because they intend to demolish the building), or fails to provide an engineering assessment, the building is designated as potentially earthquake-prone (not assessed) and is automatically categorised with earthquake-prone buildings that have the lowest level of performance (see further description below). The register and notices issued requiring work to be carried out will record the fact that the building is potentially earthquake-prone and that an assessment has not been undertaken. Remediation to ensure that the building is no longer earthquake-prone will be required as if the building was an earthquake-prone building (this could simply involve an owner providing an assessment that determines the building is not earthquake-prone)
 - provide territorial authorities with discretionary powers to undertake an assessment using tools and methods specified in the methodology set by the Chief Executive of the Ministry of Business, Innovation and Employment (with the ability for the territorial authority to recover the costs of undertaking assessments from the building owner as a debt due).

93. Officials also recommend that the Bill be amended to provide that the methodology for the identification and determination of earthquake-prone buildings is risk based, and require the methodology to specify:
- the tools and methods to be used to identify potentially earthquake-prone buildings
 - (this is likely to consist of building categories which, by virtue of their location, age, and construction type, territorial authorities can consider contain potentially earthquake-prone buildings (or parts of buildings) and therefore require assessment by owners. It is anticipated these categories may not include, for example, most timber framed buildings and post-1976 buildings, some low-rise non-unreinforced masonry buildings, and some 1936-1976 multi-storey buildings in low seismicity areas such as Auckland and Northland)
 - the requirements for an engineering assessment of a potentially earthquake-prone building, including how evidence from engineering or other tests completed before the commencement of this Act may be used in the assessment
 - the tools and methods to be used to determine whether a potentially earthquake-prone building is earthquake-prone and its rating.
94. The tools and methods to *identify potentially* earthquake-prone buildings will act as a profiling mechanism and due to their nature may not ensure every earthquake-prone building is identified. To address this issue, officials recommend that the Bill be amended so that it also provides territorial authorities with residual discretionary powers to apply their earthquake-prone building powers to those buildings that are not initially identified as potentially earthquake-prone, including after the relevant identification period if necessary. These powers include the ability to require (or undertake) assessments and issue notices requiring work to be carried out to ensure a building is no longer earthquake-prone.
95. To help ensure that the process for identifying potentially earthquake-prone buildings is carried out in a measured fashion, officials recommend including in the Bill provisions requiring territorial authorities to monitor and report their progress on identification to the Chief Executive of the Ministry of Business, Innovation and Employment:
- annually in relation to areas of high seismic risk
 - every two years in relation to areas of medium seismic risk
 - every three years in relation to areas of low seismic risk
- (where a territorial authority's region includes more than one level of seismic risk, officials recommend the shortest relevant reporting timeframe applies).
96. This will also assist with the new function under the Bill for the Ministry of Business, Innovation and Employment to monitor the application and effectiveness of the system for managing earthquake-prone buildings.

97. The changes to the Bill recommended above mean that the 20 working day period referred to in paragraph 76 is no longer relevant as it has been superseded by an alternative approach. Similarly the definitions of existing building and new building in the Bill are no longer needed as they will be superseded by an alternative approach.

Issues raised by submitters about the seismic capacity register and seismic work notices

98. Thirty-one submitters supported having publicly available information about earthquake-prone buildings so that people can make informed decisions about using buildings: 24 of these submitters stated their support for the establishment of a seismic capacity register, two submitters indicated their support for signage on buildings and five submitters supported both.
99. There was some discussion in submissions about the wide range of information that should be held on the register, what information should be publicly available, and what information should be on the seismic work notice placed on the building. To reduce administration costs, 10 submitters (including the Joint Southern Councils, Stratford District Council and Wellington City Council) suggested that the register contain only earthquake-prone buildings. Auckland Council and Dunedin City Council submitted that the extent of parties required to be notified of the requirement for seismic work be reduced.
100. The Office of the Ombudsman raised concerns about the register provisions in the Bill (clause 35 new section 275B) possibly overriding the Official Information Act 1982 by providing for restrictions on public access to prescribed information on the register.

Comment

101. Officials agree that the Bill can be improved in this area. Following on from our recommended changes outlined earlier in this section, we also recommend:
 - changing the seismic capacity register provisions so that the register only includes details of buildings that have been determined as being earthquake-prone, and the details of buildings designated as potentially earthquake-prone (not assessed), rather than including the details of all buildings
 - clarifying that the register includes relevant details where only part of the building is earthquake-prone
 - changing the name of the seismic capacity register to the earthquake-prone buildings register
 - amending the register provisions in the Bill so that the register also includes details of an earthquake-prone building's percentage of NBS range or specific percentage NBS, or in the case of a potentially earthquake-prone building where no engineering assessment has been undertaken, a statement that it has not been assessed

- changing the name of the seismic work notice to the earthquake-prone building notice, and amending the relevant provisions in the Bill so that:
 - notices issued requiring work to be done for earthquake-prone buildings will specify its percentage NBS range or specific percentage NBS, or in the case of a potentially earthquake-prone building where no engineering assessment has been undertaken, a statement that it has not been assessed
 - the form of the earthquake-prone building notice be set in regulations (using a grading scheme to help differentiate earthquake-prone buildings and incentivise action)
 - provide owners with the ability to provide an engineering assessment to the territorial authority (in accordance with the tools and methods to be specified and published in the methodology) at any time after the issue of an earthquake-prone building notice, and in the event that the territorial authority considers this changes the outcome of the earthquake-prone building notice to require the territorial authority to reissue (or revoke) the notice and update the register.
102. It is anticipated that a grading scheme to come into effect upon commencement could be based on the NZSEE guidelines and/or a traffic light system (<20% NBS in the NZSEE guidelines is an E rating (could be a red notice), 20-34% NBS in the NZSEE guidelines is a D rating (could be an orange notice)).
103. To reduce compliance costs for territorial authorities, officials recommend removing the requirement in the Bill (which restates the current requirements in section 125 of the Building Act 2004) for territorial authorities to provide copies of earthquake-prone building notices to the occupiers of the building. This is considered an unnecessary compliance cost as there will be a requirement for earthquake-prone building notices to be placed on the buildings, and information about earthquake-prone buildings will be on a publicly accessible register available on the internet.
104. In relation to the issue raised by the Office of the Ombudsman, it was not intended that the register provisions would override the Official Information Act 1982. Clear words would have been used if this was the case. Officials recommend amending the Bill to clarify that Official Information Act 1982 applies to prescribed information (if any) in the register that is restricted from public access by the Chief Executive of the Ministry of Business, Innovation and Employment or through regulations.

Issues raised by submitters about cost recovery by territorial authorities

105. Twenty-seven submitters (including 21 territorial authorities, Local Government New Zealand and the Waikato Mayoral Forum) raised concerns about the cost recovery mechanisms available to territorial authorities and called for greater cost recovery powers for territorial authorities to enable them to pass on the costs of administering the system.

Comment

106. Noting the changes to the Bill recommended by officials in this section of the report, officials consider that identifying potentially earthquake-prone buildings in their area is a function that sits appropriately with territorial authorities and it is appropriate that the costs of undertaking this function are met by territorial authorities. This is consistent with the long standing function territorial authorities have in managing the built environment in their districts.
107. Officials consider that the use of cost recovery powers is appropriate where a territorial authority wishes to exercise its discretionary powers to carry out an engineering assessment (using tools and methods specified in the methodology set by the Chief Executive of the Ministry of Business, Innovation and Employment). Officials therefore recommend the Bill be amended to clarify that territorial authorities can recover the costs of undertaking engineering assessments as a debt due to the territorial authority.

Recommendations

5 Officials recommend amending the Bill to:

Identification of potentially earthquake-prone buildings and assessment

- 5.1 require territorial authorities to undertake initial investigations to identify potentially earthquake-prone buildings within their districts (using the methodology to be set and published by the Chief Executive of the Ministry of Business, Innovation and Employment), within the following timeframes from commencement:
- five years in areas of high seismic risk
 - 10 years in areas of medium seismic risk
 - 15 years in areas of low seismic risk

(and for territorial authorities to thereafter request that building owners undertake an engineering assessment of the building or part of the building)

- | | |
|-----|--|
| 5.2 | <p>define areas of high, medium and low seismic risk in connection with the Building Code (and associated approved solutions and verification methods), with reference to the seismic hazard factor (Z factor) as follows:</p> <ul style="list-style-type: none">• high seismic risk (Z factor ≥ 0.3)• medium seismic risk (Z factor of 0.15 up to < 0.3)• low seismic risk (Z factor < 0.15) |
| 5.3 | <p>require territorial authorities to prioritise for identification those buildings defined as a priority building (within half the timeframe for identification of other buildings)</p> |
| 5.4 | <p>require territorial authorities to send requests to owners of those buildings identified as potentially earthquake-prone that:</p> <ul style="list-style-type: none">• state that the building has been identified as potentially earthquake-prone• state whether the building is a priority building• state that the building owner must provide an engineering assessment (using the tools and methods specified in the methodology) within 12 months of the request, unless they can provide conclusive evidence that their building is not earthquake-prone• set out the implications of an owner not undertaking an assessment i.e. that it will automatically be classified as potentially earthquake-prone (not assessed) and/or that a territorial authority may undertake the assessment and recover the costs of doing so• explain the timeframe within which the territorial authority will issue an earthquake-prone building notice for the building |
| 5.5 | <p>change the name of the seismic capacity assessment to the engineering assessment</p> |
| 5.6 | <p>require building owners issued with requests to provide an engineering assessment within 12 months of the date of the request (using the tools and methods specified in the methodology) unless the building owner can provide conclusive evidence that their building is not earthquake-prone</p> |
| 5.7 | <p>provide territorial authorities with a limited discretion to extend the 12 month assessment period (for up to a further 12 months), for example where there is insufficient engineering resource available to undertake assessments</p> |

- 5.8 provide that if an engineering assessment provided to a territorial authority means that the territorial authority is satisfied (in accordance with the methodology) that the building is earthquake-prone then the territorial authority must, as soon as practicable, issue an earthquake-prone building notice for the building
- 5.9 provide territorial authorities with discretionary powers to undertake an engineering assessment (using tools and methods specified in the methodology set by the Chief Executive of the Ministry of Business, Innovation and Employment) and if determined to be earthquake-prone to issue earthquake-prone building notices and to recover the costs of undertaking the assessment as a debt due to the territorial authority
- 5.10 provide that where an owner either advises the territorial authority that they do not wish to undertake an engineering assessment, or fails to provide an engineering assessment, the building is designated as potentially earthquake-prone (not assessed) and:
- is automatically categorised with earthquake-prone buildings that have the lowest level of performance
 - notices issued requiring work to be carried out on the building and the register will record the fact that the building is potentially earthquake-prone and an assessment has not been undertaken
 - remediation to ensure that the building is no longer earthquake-prone will be required as if the building was an earthquake-prone building
- 5.11 provide that the Chief Executive of the Ministry of Business, Innovation and Employment must set and publish a methodology that is risk-based and to specify:
- the tools and methods to be used to identify potentially earthquake-prone buildings
 - the requirements for an engineering assessment of a potentially earthquake-prone building, including how evidence from engineering or other tests completed before the commencement of this Act may be used in the assessment
 - the tools and methods to be used to determine whether a potentially earthquake-prone building is earthquake-prone and its rating

- 5.12 require territorial authorities to monitor and report their progress on the identification of potentially earthquake-prone buildings to the Ministry of Business, Innovation and Employment:
- annually in relation to areas of high seismic risk
 - every two years in relation to areas of medium seismic risk
 - every three years in relation to areas of low seismic risk
- (where a territorial authority's region includes more than one level of seismic risk, the shortest relevant reporting timeframe applies)
- 5.13 provide territorial authorities with residual discretionary powers to apply their earthquake-prone building powers to those buildings not initially identified as potentially earthquake-prone (including the ability to require or undertake assessments and issue notices requiring work to be carried out to ensure a building is no longer earthquake-prone) and to exercise these powers after the relevant identification period if necessary

Seismic capacity register and remediation notices

- 5.14 change the name of the seismic capacity register to the earthquake-prone buildings register
- 5.15 amend the register provisions so that the register only includes details of buildings that have been determined as being earthquake-prone, and the details of buildings designated as potentially earthquake-prone (not assessed), rather than including details of all buildings
- 5.16 clarify that the register includes relevant details where only part of the building is earthquake-prone
- 5.17 amend clause 35 new section 275A so that the register also includes details of an earthquake-prone building's percentage of new building standard (NBS) range or specific percentage NBS, or in the case of a potentially earthquake-prone building where no assessment has been undertaken, a statement that the building has not been assessed
- 5.18 change the name of the seismic work notice to the earthquake-prone building notice and amend the relevant provisions in the Bill so that:
- notices issued requiring work to be done for earthquake-prone buildings will specify its percentage NBS range or specific percentage NBS, or in the case of a potentially earthquake-prone building where no engineering assessment has been undertaken, a statement that it has not been assessed
 - the form of the earthquake-prone building notice be set in regulations (using a grading scheme to help differentiate earthquake-prone buildings and incentivise action)

- 5.19 provide owners with the ability to provide an engineering assessment to the territorial authority (in accordance with the tools and methods to be specified and published in the methodology) at any time after the issue of an earthquake-prone building notice, and in the event the territorial authority considers that this changes the outcome of the earthquake-prone building notice to require the territorial authority to reissue (or revoke) the notice and update the register
- 5.20 remove the requirement in clause 23 new section 133AN for territorial authorities to provide copies of earthquake-prone building notices to occupiers of the building
- 5.21 amend the timeframe requirements in clause 23 new section 133AM to remove the 20 working day requirement, and to adjust the timeframes as necessary to accord with the recommendations outlined in this report
- 5.22 remove the definition of existing building and new building in the Bill as these are no longer needed because they have been superseded by the approach in the recommendations above
- 5.23 clarify that Official Information Act 1982 applies to prescribed information (if any) in the register that is restricted from public access by the Chief Executive of the Ministry of Business, Innovation and Employment or through regulations (clause 35 new section 275B)

Cost recovery of assessments by territorial authorities

- 5.24 clarify that territorial authorities can recover the costs of undertaking engineering assessments as a debt due to the territorial authority.

Key issue: Remediation timeframes

[Clauses 23 (new section 133AA, 133AC, 133AN, 133AO) and 37]

Introduction

108. Currently, timeframes for remediating earthquake-prone buildings are set by territorial authorities in their earthquake-prone building policies and vary around New Zealand (e.g. timeframes in Wellington are shorter than in Wanganui). Overall, the Government's review estimated the average timeframe for strengthening earthquake-prone buildings under the current system at 28 years. Some territorial authorities allow longer timeframes than this.
109. The Bill provides that remediation of earthquake-prone buildings is required within 15 years of assessment for most buildings (with assessments having been carried out within five years of commencement).
110. The Bill also provides that territorial authorities can set a shorter timeframe than 15 years for the remediation for buildings that come within the definition of a priority building, which the Bill currently provides will be defined in regulations. Priority buildings will also be required to be examined as a priority as part of the methodology to be set in accordance with clause 23 new section 133AG. The regulation making power in respect of defining priority buildings (clause 37 new section 401C(a)) includes the following examples:
 - buildings that could, if they were to collapse in an earthquake, impede a transport route of strategic importance in an emergency
 - buildings of particular significance in terms of public safety (for example, because of what may fall off or from them in an earthquake).
111. The Bill provides that territorial authorities must set a timeframe for the completion of seismic work on priority buildings in their district. The Bill provides that the timeframe may include different completion periods for particular buildings or classes of buildings. The timeframe must be developed following the special consultative procedure in section 83 of the Local Government Act 2002, which sets out a detailed process for consultation (including providing people who make submissions on a proposal with a reasonable opportunity to be heard if they wish).

Issues raised by submitters

112. Seventeen submitters supported the remediation timeframes in the Bill (including eight territorial authorities). However, there was a recognition by many submitters that the timeframes may be challenging for some owners and in some regions.
113. Submitters who had concerns about the assessment and remediation timeframes in the Bill typically expressed these concerns within the wider context of the overall impact of the proposals and possible alternative systems for managing earthquake-prone buildings (see the discussion earlier in this report).

114. Thirty-three submitters (including Ann Brower, Christchurch City Council and Tauranga City Council) suggested shortening the timeframes for remediating certain parts of unreinforced masonry buildings (for example, parapets) and other high risk features because of the hazard posed. Local Government New Zealand submitted that the timeframe for the completion of seismic work on parts of buildings with high risk features such as parapets should be set to reflect risk – 10 years for provincial and rural New Zealand and five years for main centres where there is the potential for more passers-by.
115. Twenty submitters also requested greater clarity about the definition of priority buildings, including the Legislation Advisory Committee. The Regulations Review Committee recommended amending the Bill to include a definition of priority building in the Bill, rather than in regulations, or to provide for the purpose of defining priority building and require regulations made under new section 401C(a) to be made in accordance with that purpose.
116. The Waikato Mayoral Forum submitted including as priority buildings those buildings critical to recovery including civil defence centres, fire, police and ambulance stations, hospitals and medical centres along with civic assembly/accommodation and dams. Grey District Council submitted that the definition of priority buildings should include buildings with post-disaster recovery functions, buildings where there is high occupancy, and schools and other educational or early learning facilities.
117. Rod and Rebecca Thompson submitted that remediation notices for priority buildings should also state the priority and the timeframe.
118. Seven submitters raised concerns about the consequences of earthquake-prone buildings, particularly heritage buildings, not being strengthened within the timeframe set out on the seismic work notice and want to ensure that the Bill will not require automatic demolition at the end of the 15 year period. Suggested alternatives to demolition should include closing the building, cordoning it off, extending the remediation timeframe on a case by case basis, or the territorial authority taking ownership and remediating the building itself.

Comment

Remediation timeframes

119. Officials agree that the Bill can be improved in this area. In addition to the manner in which seismic risk is taken into account in assessing whether a building is earthquake-prone (as outlined earlier in this report), it is considered that further account needs to be taken of seismic risk in the setting of remediation timeframes. Rather than specifying a single timeframe for remediating most earthquake-prone buildings, officials propose to better align remediation timeframes with seismic risk around New Zealand.

120. Officials recommend amending the Bill to set the timeframes for the remediation of earthquake-prone buildings at:

- 15 years for areas of high seismic risk
- 25 years for areas of medium seismic risk
- 35 years for areas of low seismic risk

(with areas of seismic risk as set out in recommendation 5.2).

121. These proposals mean that the timeframe for remediating buildings determined to be earthquake-prone will be, for example:

- 15 years in Christchurch (Z factor of 0.3), Gisborne (Z factor of 0.36), Napier (Z factor of 0.38) and Wellington (Z factor of 0.4)
- 25 years in Hamilton (Z factor of 0.16), Invercargill (Z factor of 0.17), New Plymouth (Z factor of 0.18), Tauranga (Z factor of 0.2), Rotorua (Z factor of 0.24), Whanganui (Z factor of 0.25) and Nelson (Z factor of 0.27)
- 35 years in Auckland (Z factor of 0.13) and Dunedin (Z factor of 0.13).

122. A more detailed list of locations and proposed timeframes is outlined in Appendix 3.

123. The timeframes will run from when buildings are determined as earthquake-prone (or potentially earthquake-prone and not assessed).

124. The existing provisions in the Bill regarding exemptions from the requirement to remediate in certain circumstances and extensions of time of up to an extra 10 years to remediate Category 1 listed historic places that are earthquake-prone (owners must manage risk if an extension is granted) would continue to apply.

Definition of priority buildings and remediation timeframes

125. Following consideration of the points raised by the Regulations Review Committee and other submitters (including the Legislation Advisory Committee) officials recommend that the Bill be amended to:

- define priority building within primary legislation in areas of high and medium seismic risk as follows:
 - 'hospital buildings' – those components of a hospital necessary for it to be able to maintain essential services in the event of a significant earthquake, but excluding administration buildings and aged residential care facilities
 - 'school buildings' – all buildings regularly occupied by 20 persons or more in an early childhood education centre, primary, secondary, or tertiary education facility, including registered private training establishments

- ‘emergency service facilities’ – emergency service facilities such as fire stations, police stations and emergency vehicle garages; and designated emergency shelters, designated emergency centres and ancillary facilities
 - ‘corridor buildings’ – those buildings identified by the territorial authority, after consulting their communities (using the special consultative procedure in section 83 of the Local Government Act 2002) that could, if they were to collapse in an earthquake, impede transport routes of strategic importance in an emergency. The use of this provision would be optional for territorial authorities
- set the timeframe for remediating a priority building at half the timeframe for other earthquake-prone buildings (after a building is determined as being earthquake-prone or designated as potentially earthquake-prone (not assessed)).
126. With respect to corridor buildings, as outlined earlier, the Bill currently makes reference to buildings that could, if they were to collapse in an earthquake, impede transport routes of strategic importance in an emergency in the regulation-making power (clause 37 new section 401C(a)) as an example of priority buildings. Officials' recommendations will make this explicit in primary legislation, while also providing some flexibility to link in with local civil defence and emergency management planning functions.
127. It is important to note that these provisions only affect buildings that are earthquake-prone (or those buildings designated as potentially earthquake-prone (not assessed)), only apply in areas of high and medium seismic risk, and the effect of the provisions is only to accelerate the identification and remediation timeframes. The level of remediation required is the same as for other earthquake-prone buildings.
128. Following on from this, officials therefore also recommend removing the provisions allowing territorial authorities to set a shorter timeframe than 15 years for remediating buildings that come within the definition of a priority building.

Additional substantial alterations trigger for upgrading earthquake-prone buildings

129. To help further ensure that earthquake-prone buildings are remediated in a timely manner, officials recommend including a further trigger in the Bill to require upgrades to earthquake-prone buildings when substantial alterations are undertaken to existing buildings.
130. This additional trigger may help to ensure more progressive upgrades of earthquake-prone buildings.
131. Officials therefore recommend including in the Bill an amendment to the Act providing that where substantial alterations are to be carried out on an earthquake-prone building, a building consent will not be granted unless building work is also undertaken so that the building (or the affected part) is no longer earthquake-prone.

132. Officials also recommend that criteria that territorial authorities must apply when considering whether an alteration is a substantial alteration be specified in regulations, e.g. in connection with the value of the building work in the building consent as a ratio of the value of the building, or some other criteria as determined. Providing for criteria to be specified in regulations is necessary due to the anticipated technical complexity and the need for flexibility to mitigate any potential unintended effects of such a trigger.

What happens at the end of the remediation timeframe

133. The Bill does not provide for the automatic demolition of earthquake-prone buildings at the end of the remediation timeframe.

134. The Bill restates existing enforcement mechanisms and offence provisions in the Building Act 2004 in relation to earthquake-prone building remediation requirements, and clarifies who they apply to. In summary, the enforcement and offence provisions include:

- a maximum fine of \$200,000 where an owner fails to complete seismic work by the deadline
- a maximum fine of \$200,000, and in the case of a continuing offence a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues, where a person fails to comply with safety requirements imposed by the territorial authority (in the form of a hoarding or fence, or a notice warning people not to approach the building)
- the ability for territorial authorities to directly undertake seismic work where the owner fails to do so (this work can include demolition), and to recover costs.

135. Enforcement and offences (including officials' recommendations in relation to infringement offences) are discussed in more detail in the enforcement and offences section of this report.

Recommendations

6 Officials recommend amending the Bill to:

- 6.1 remove the provisions in the Bill setting the timeframe for the remediation of most buildings at 15 years from assessment**
 - 6.2 set the timeframe for the remediation of earthquake-prone buildings at:**
 - 15 years for areas of high seismic risk**
 - 25 years for areas of medium seismic risk**
 - 35 years for areas of low seismic risk**
- (with areas of seismic risk categorised as set out in recommendation 5.2)**
- 6.3 provide that the timeframes for the remediation of earthquake-prone buildings run from when buildings are determined as earthquake-prone or designated as potentially earthquake-prone (not assessed)**

Priority buildings

- 6.4 define priority buildings in the Bill in areas of high and medium seismic risk as follows:**
 - hospital buildings – those components of a hospital necessary for it to be able to maintain essential services in the event of a significant earthquake, but excluding administration buildings and aged residential care facilities**
 - school buildings – all buildings regularly occupied by 20 persons or more in an early childhood education centre, primary, secondary, or tertiary education facility, including registered private training establishments**
 - emergency service facilities – emergency service facilities such as fire stations, police stations and emergency vehicle garages; and designated emergency shelters, designated emergency centres and ancillary facilities**
 - corridor buildings – those buildings identified by the territorial authority, after consulting their communities (using the special consultative procedure in section 83 of the Local Government Act 2002) that could, if they were to collapse in an earthquake, impede transport routes of strategic importance in an emergency. The use of this provision would be optional for territorial authorities**

- 6.5 clarify that an earthquake-prone building notice will specify whether a building is a priority building
- 6.6 set the timeframe for remediating priority buildings at half the timeframe for other earthquake-prone buildings (after a building is determined as being earthquake-prone or designated as potentially earthquake-prone (not assessed))
- 6.7 remove the provisions in the Bill allowing territorial authorities to set a shorter timeframe than 15 years for remediation for buildings that come within the definition of a priority building
 - Additional substantial alterations trigger for upgrading earthquake-prone buildings*
- 6.8 include new provisions to add a further trigger for remediating earthquake-prone buildings so that where substantial alterations are to be carried out, a building consent will not be granted unless building work is undertaken so that the building (or the affected part) is no longer earthquake-prone
- 6.9 provide for a regulation making power to specify criteria that territorial authorities must apply when considering whether an alteration is a substantial alteration.

Key issue: Remediation timeframes for heritage buildings

[Clause 23 (new section 133AT)]

Introduction

136. The Bill provides that owners of buildings that are registered as a Category 1 historic place under the Historic Places Act 1993 are eligible to apply to their territorial authority for an extension of time to complete seismic work⁶. A territorial authority may grant an extension of up to an additional 10 years. The extension of time also applies to those priority buildings that have been given a shorter timeframe than 15 years.
137. The Bill provides that if the territorial authority grants an extension, the owner of the building must:
 - take all reasonably practicable steps to manage or reduce the risks associated with the building being earthquake-prone
 - comply with any conditions imposed by the territorial authority for the purpose of managing or reducing those risks.
138. It is expected that conditions imposed by territorial authorities will primarily relate to use/occupancy.

Issues raised by submitters

139. Thirty-three submitters stated their support for the Bill providing for time extensions for heritage buildings.
140. Of these, 18 submitters (including eight territorial authorities) suggested that the definition of heritage should be widened so that it is not limited to Category 1 listed historic places. Options suggested by submitters included (among others) widening the scope of the provision to include Category 2 listed historic places and/or heritage buildings listed on district plans.

⁶ In the explanatory note to the Bill it was noted that it was intended that, before the Bill is enacted, amendments would be made to enable owners of buildings on the National Historic Landmarks List under the Heritage New Zealand Pouhere Taonga Bill (once enacted) to also apply for the extension of time of up to 10 years to complete seismic work. The Heritage New Zealand Pouhere Taonga Bill has now been enacted.

Comment

141. The Bill provides for special consideration for our most important heritage buildings, those with special and outstanding heritage values. These provisions are not intended to apply in respect of Category 2 listed historic places or other buildings listed on district plans.

Recommendation

7 Officials recommend that:

- 7.1 the Bill be amended to incorporate amendments arising as a result of the enactment of the Heritage New Zealand Pouhere Taonga Act 2014 for example to provide for owners of buildings on the National Historic Landmarks List to also apply for the extension of time of up to 10 years to complete seismic work.**

Key issue: Exemptions from remediation requirements

[Clauses 23 (new section 133AS) and 37]

Introduction

142. The Bill provides that owners of certain buildings that meet criteria to be specified in regulations may apply for an exemption from the requirement to carry out seismic work on their buildings. This provision is intended to apply where the consequence of failure of the affected building is low. One example of the type of building that could fall within this exemption is a rarely used rural church/community hall that is earthquake-prone.

Issues raised by submitters

143. Many submissions on the issue of exemptions were in relation to excluding buildings (or regions) from the Bill, rather than the specific provision in clause 23 new section 133AS. For example, Federated Farmers recommended exempting farm buildings from the Bill completely, based on the limited risk to life that they pose. These issues are discussed earlier in this report.
144. In respect of clause 23 new section 133AS (and the regulation making power in clause 37), eight submitters (including Wellington City Council and the Institution of Professional Engineers New Zealand) discussed criteria that could be applied in regulations.
145. The Regulations Review Committee recommended amending the Bill to provide for a purpose of granting the territorial authorities power to grant exemptions from the requirements to carry out seismic work, and amending the Bill to specify the criteria a territorial authority should apply when determining whether to grant an exemption from a requirement to carry out seismic work on the face of the Bill rather than leaving the definition to regulations.

Comment

146. The exemption criteria will be highly technical in nature and the flexibility of determining the criteria through regulations is needed for exemptions to be workable. However, in order to provide greater clarity and certainty, officials propose that the Bill include a purpose statement for the criteria for granting an exemption from the requirement to remediate an earthquake-prone building in the regulation making power in clause 37 new section 401C(b), to guide the development of these criteria.

Recommendation

8 Officials recommend amending the Bill to:

8.1 include a purpose statement in the regulation-making power in clause 37 new section 401C(b) of the criteria for granting an exemption from a requirement to remediate an earthquake-prone building that includes but is not limited to:

- location (including streetscape and seismicity)**
- the age of the building**
- construction type**
- building use**
- building occupancy.**

Key issue: Upgrade requirements

[Clauses 23 (new section 133AX) and 37]

Introduction

147. The Bill amends the Building Act 2004 to enable territorial authorities in certain limited circumstances, despite section 112(1), to issue building consents for earthquake strengthening work on buildings that are earthquake-prone without requiring upgrades to means of escape from fire, and access and facilities for persons with disabilities (clause 23 new section 133AX, refers). This provision requires a case by case decision to be made by the territorial authority.
148. Under section 112 of the Building Act 2004, a building consent authority must not grant a building consent for the alteration of an existing building unless it is satisfied the altered building will:
 - comply as nearly as is reasonably practicable with the Building Code provisions for means of escape from fire, and access and facilities for persons with disabilities (if required by section 118 of the Building Act 2004) and the building will:
 - if it complied with the other provisions of the Building Code immediately before the building work began, continue to comply with those provisions, or
 - if it did not comply with the other provisions of the Building Code immediately before the building work began, continue to comply at least to the same extent as it did then comply.
149. The Bill gives effect to the feedback received during public consultation as part of the Government review that the cost of these section 112 upgrades can operate as an impediment to owners carrying out earthquake strengthening, particularly for old or historic buildings.
150. The Canterbury Earthquakes Royal Commission made a similar recommendation with respect to upgrades to access and facilities for persons with disabilities. The Royal Commission emphasised the need to strike an acceptable balance between cost and strengthening work, and the desirability of the latter actually being carried out.

Issues raised by submitters

151. There was a significant amount of comment on this provision in submissions on the Bill. Views on the provision were polarised: 30 submitters stated they supported this provision and 37 submitters stated they opposed it.
152. Of those that supported the provision, this included (among others) the majority of the territorial authorities that submitted on the Bill (with a few notable exceptions such as Wellington City Council), Local Government New Zealand, the Property Council of New Zealand, and Historic Places Aotearoa. Of those opposed to the provision, this included (among others) disability groups, as well as the New Zealand Human Rights Commission.

153. In general, some or all of the following reasons were given by those opposed to the provision:

- it is viewed as a backwards step, and not justified by evidence (including a claim that cost implications are exaggerated)
- it is viewed as inconsistent with domestic and international obligations and commitments (in particular, the United Nations Convention on the Rights of Persons with Disabilities)
- improved access has considerable economic and social benefits including for those not disabled
- the current Act provides sufficient flexibility to address the issues raised about the cost, but additional guidance to address difficulties with application of the current provisions may be needed.

154. The Canterbury District Health Board, Geoffrey Charles Thomas and the Insurance Council also expressed concerns about the inclusion of means of escape from fire in the exception.

155. Dunedin City Council raised an issue about the clarity of the provision in respect of work that might be done to reduce risk of collapse as well as work to ensure that the building is no longer earthquake-prone.

Comment

156. There is evidence in submissions on the Bill (for example from the Property Council of New Zealand and Dunedin City Council) that the application of the current upgrade provisions of the Building Act 2004 in relation to means of escape from fire and access and facilities for persons with disabilities can be a barrier to earthquake strengthening being undertaken.

157. The Ministry of Foreign Affairs and Trade (MFAT) was consulted on the content of the Bill⁷. In confirming the Bill's consistency with international legal obligations related to equitable access to buildings, MFAT advised that it referred to the following relevant sources of international law and practice:

- United Nations Convention on the Rights of Persons with Disabilities
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Committee on the Rights of Persons with Disabilities – relevant decisions and guidance

⁷ As noted in the Departmental Disclosure Statement available at: <http://disclosure.legislation.govt.nz/bill/government/2013/182>.

- United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993).
158. In their report to the Attorney General, the Ministry of Justice considered the Bill and concluded that it appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act 1990. In reaching that conclusion, the Ministry of Justice considered possible inconsistency with section 19 of that Act (freedom from discrimination on the grounds of disability)⁸.

Improving the provision

159. Officials consider that improvements to this provision can be made, while still giving effect to the underlying policy intent.
160. As drafted, the Bill currently provides that both upgrades – for means of escape from fire, and access and facilities for persons with disabilities – are required, or both are not. This does not fully reflect the policy intent because some fire upgrades are expected to cost more than some upgrades for access and facilities for disabled persons, or vice versa, and that in some cases one or other of these upgrades may be a barrier to strengthening.
161. For greater flexibility and to achieve the policy intent, officials recommend amending new section 133AX to clarify that territorial authorities are able to not require upgrades to *either* the means of escape from fire, *or* upgrades to access and facilities for persons with disabilities, *or both*. This will also allow other issues of life safety to be given appropriate weight.
162. To simplify the provision, officials also recommend clarifying the test to be applied by amending the Bill so that the criteria in new section 133AX(c)(i), which are to be defined in regulations, become considerations for territorial authorities to have regard to when applying the test in new section 133AX(c)(ii), rather than criteria that have to be met separately. The test applied in 133AX(c)(ii) requires territorial authorities to be satisfied that the benefits of ensuring the building is no longer earthquake-prone outweighs any detriment likely to arise as a result of the building not complying as nearly as is reasonably practicable with the Building Code with respect to means of escape from fire, and access and facilities for persons with disabilities.
163. Officials also recommend amending new section 133AX to clarify that the exception applies in relation to interim work undertaken in advance of the main seismic work required to ensure the building is no longer earthquake-prone.

⁸ Available at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/building-earthquake-prone-buildings-amendment-bill>.

Recommendations

9 Officials recommend amending clause 23 new section 133AX to:

- 9.1 clarify that the exception applies in relation to interim work undertaken in advance of the main seismic work required to ensure the building is no longer earthquake-prone**
- 9.2 clarify that the ability to not require upgrades can apply to upgrades to:**
 - *either the means of escape from fire, or*
 - **upgrades to access and facilities for persons with disabilities, or**
 - **both**
- 9.3 clarify the test to be applied by amending the Bill so that the criteria in new section 133AX(c)(i), which are to be defined in regulations, become considerations for territorial authorities to have regard to when applying the test in new section 133AX(c)(ii), rather than criteria that have to be met separately.**

Key issue: Enforcement and offences

[Clauses 23 (new sections 133AV, 133AW, 133AY), 28 and 39]

Introduction

164. As noted earlier in this report, the Bill restates existing enforcement mechanisms and offence provisions in the Building Act 2004 in relation to earthquake-prone building remediation requirements, and clarifies who they apply to. In summary, the enforcement and offence provisions include:

- a maximum fine of \$200,000 where an owner fails to complete seismic work by the deadline
- a maximum fine of \$200,000, and in the case of a continuing offence a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues, where a person fails to comply with safety requirements imposed by the territorial authority (in the form of a hoarding or fence, or a notice warning people not to approach the building).

165. The Bill also introduces a new offence into the Building Act 2004 in relation to building owners failing to display a seismic work notice or an exemption notice, with a maximum fine of \$20,000.

Issues raised by submitters

166. Local Government New Zealand, the Waikato Mayoral Forum and 10 territorial authorities suggested the Bill should provide for an infringement regime in addition to the offence provisions set out in the Bill. These submitters contend that taking court action is costly and is therefore only used as a last resort.

167. Other issues raised by submitters with respect to enforcement when strengthening is not carried out within the timeframe specified on the seismic work notice are discussed in the remediation timeframes section of this report.

Comment

168. The Building (Infringement Offences, Fees, and Forms) Regulations 2007 set out existing infringement offences under the Building Act 2004.

169. It is intended to clarify that the infringement regime that currently applies in respect of earthquake-prone buildings in the Building (Infringement Offences, Fees, and Forms) Regulations 2007 continues to apply in the revised system for managing earthquake-prone buildings provided for in the Bill.

170. It is also intended to include in the Building (Infringement Offences, Fees, and Forms) Regulations 2007 that failures related to displaying seismic work notices and exemption notices on buildings under clause 23 new sections 133AY(2) and (3) are infringement offences, and that the infringement fine for these matters is set at \$1000 (the same fine as for displaying a false or misleading building warrant of fitness).

171. It is intended that these changes to the Building (Infringement Offences, Fees, and Forms) Regulations 2007 setting out infringement offences under the Building Act 2004 will be made after the Bill is enacted, but before it comes into force.
172. These changes will provide territorial authorities with alternative mechanisms to enforce compliance in relation to those infringement offences instead of having to take non-compliant building owners through the courts.

Recommendations

10 Officials recommend that:

- 10.1 the Bill be amended to clarify that the infringement regime that currently applies in respect of earthquake-prone buildings in the Building (Infringement Offences, Fees, and Forms) Regulations 2007 continues to apply in the revised system for managing earthquake-prone buildings provided for in the Bill**
- 10.2 no change be made to the Bill in respect of the proposed infringement regime, as this will be dealt with as part of intended amendments to the Building (Infringement Offences, Fees, and Forms) Regulations 2007 before the Bill commences.**

Key issue: Transitional provisions

[Clauses 23 (new sections 133AG to 133AI), 41 and Schedule 1AA]

Introduction

173. The Bill includes transitional provisions in respect of building assessments already undertaken that resulted in a notice being issued under the current system.
174. Existing notices to reduce or remove the danger are issued under section 124 of the Building Act 2004. The Bill provides that these notices will continue where there is a timeframe of 15 years or less and territorial authorities will not be required to re-issue seismic work notices under the new system. The Bill currently requires a territorial authority to enter the relevant information about the earthquake-prone building into the seismic capacity register.
175. The Bill currently provides that where the timeframe to reduce or remove the danger exceeds 15 years, clause 2 of Schedule 1AA provides that an existing section 124 notice will be revoked on the issue of a seismic work notice under the provisions of the Bill that will determine the new deadline for completing the seismic work.

Issues raised by submitters

176. Twenty-five submitters (including 18 territorial authorities, Local Government New Zealand and the Waikato Mayoral Forum) raised concerns that the Bill may require assessments that have already been undertaken under the current system to be repeated and for strengthening work that has already been undertaken to be reassessed. Wellington City Council, Upper Hutt City Council and Hutt City Council submitted that the Bill needed to be very clear around transitional provisions for existing section 124 notices issued for earthquake-prone buildings.

Comment

Previous assessments

177. With regard to existing assessments, the policy intent is to leverage off work that has already been undertaken, rather than repeat work unnecessarily.
178. Clause 23 new section 133AG(2)(d) of the Bill currently includes a provision that states that the methodology set by the Chief Executive of the Ministry of Business, Innovation and Employment is to specify how a territorial authority is to evaluate, as evidence of a building's seismic capacity, engineering tests completed before the legislation comes into force. Noting the recommended changes to the Bill outlined earlier in this report, it is recommended that an equivalent provision continue.
179. These previous assessments either may or may have not resulted in an earthquake-prone building notice being issued under section 124 of the Building Act 2004.

180. As the definition of an earthquake-prone building is not being significantly changed by the Bill, assessments that have already been undertaken using current accepted procedures will be recognised in the methodology. It is anticipated that previous assessments will be recognised in the methodology based on a combination of factors including the type of assessment, and the skills and qualifications of the engineering practitioner that carried out the assessment.

Strengthening work already undertaken

181. In relation to recent strengthening work, it is not intended that buildings will be subject to a detailed reassessment where they have already been strengthened under the current system, and are in compliance with the current system.
182. The methodology is expected to take into account recent building consents and code compliance certificates issued in relation to strengthening, so that in practice it will be relatively easy to determine that a building is not earthquake-prone.
183. In setting the methodology, clause 23 new section 133AH requires the Chief Executive of the Ministry of Business, Innovation and Employment to consult territorial authorities and any other persons or organisations that appear to be representative of persons likely to be substantially affected by the setting of the methodology. This consultation provision is not affected by the changes proposed in this report.

Notices already issued requiring remediation of earthquake-prone buildings

184. In light of the recommendations for amendments to the Bill outlined in this report, including changes to timeframes for remediation of earthquake-prone buildings, some changes to the transitional provisions in the Bill will be necessary.
185. Officials recommend replacing the provisions of the Bill discussed in paragraphs 174 and 175, and instead recommend including the following proposals in the Bill to amend the Building Act 2004 to provide that:
 - decisions made by territorial authorities that led to section 124 notices being issued for earthquake-prone buildings remain valid
 - notices issued under section 124 for earthquake-prone buildings be reissued by the territorial authority under the Bill to ensure there are consistent notifications on earthquake-prone buildings
 - where the remediation timeframe remaining on the existing section 124 notices is less than the relevant timeframe of 15, 25, or 35 years (or the relevant timeframe for priority buildings) then the original remediation timeframe will apply
 - where the remediation timeframe remaining on the existing section 124 notices is longer than the relevant timeframe of 15, 25, or 35 years (or the relevant timeframe for priority buildings) then the new relevant timeframes referred to above will apply.

186. It is also recommended to include in the Bill amendments to the Building Act 2004 to provide that building owners may apply to their territorial authority to have the relevant timeframe of 15, 25, or 35 years (or the relevant timeframe for priority buildings) for buildings in that specific seismic area to apply from the date of issue of their original section 124 notice. It is intended for the Ministry of Business, Innovation and Employment to provide guidance to territorial authorities on how to exercise their discretion as to whether to grant these applications.
187. These proposals will provide for a clear transitional system, will help to provide certainty for building owners and territorial authorities, will reduce unnecessary re-work and will retain momentum generated since the Canterbury Earthquakes.

Recommendation

11 Officials recommend amending the Bill to:

- 11.1 replace the transitional provisions of the Bill in respect of notices already issued under section 124 of the Building Act 2004 for earthquake-prone buildings to provide that:**
 - decisions made by territorial authorities that led to section 124 notices being issued for earthquake-prone buildings remain valid
 - notices issued under section 124 for earthquake-prone buildings be reissued by the territorial authority under the Bill to ensure there are consistent notifications on earthquake-prone buildings
 - where the remediation timeframe remaining on the existing section 124 notices is less than the relevant timeframe of 15, 25, or 35 years (or the relevant timeframe for priority buildings) then the original remediation timeframe will apply
 - where the remediation timeframe remaining on the existing section 124 notices is longer than the relevant timeframe of 15, 25, or 35 years (or the relevant timeframe for priority buildings) then the new relevant timeframes referred to above will apply
 - building owners may apply to their territorial authority to have the relevant timeframe of 15, 25, or 35 years (or the relevant timeframe for priority buildings) apply from the date of issue of their original section 124 notice, and for the Ministry of Business, Innovation and Employment to provide guidance to territorial authorities on how to exercise their discretion as to whether to grant these applications.

Appendix 1: Other recommendations

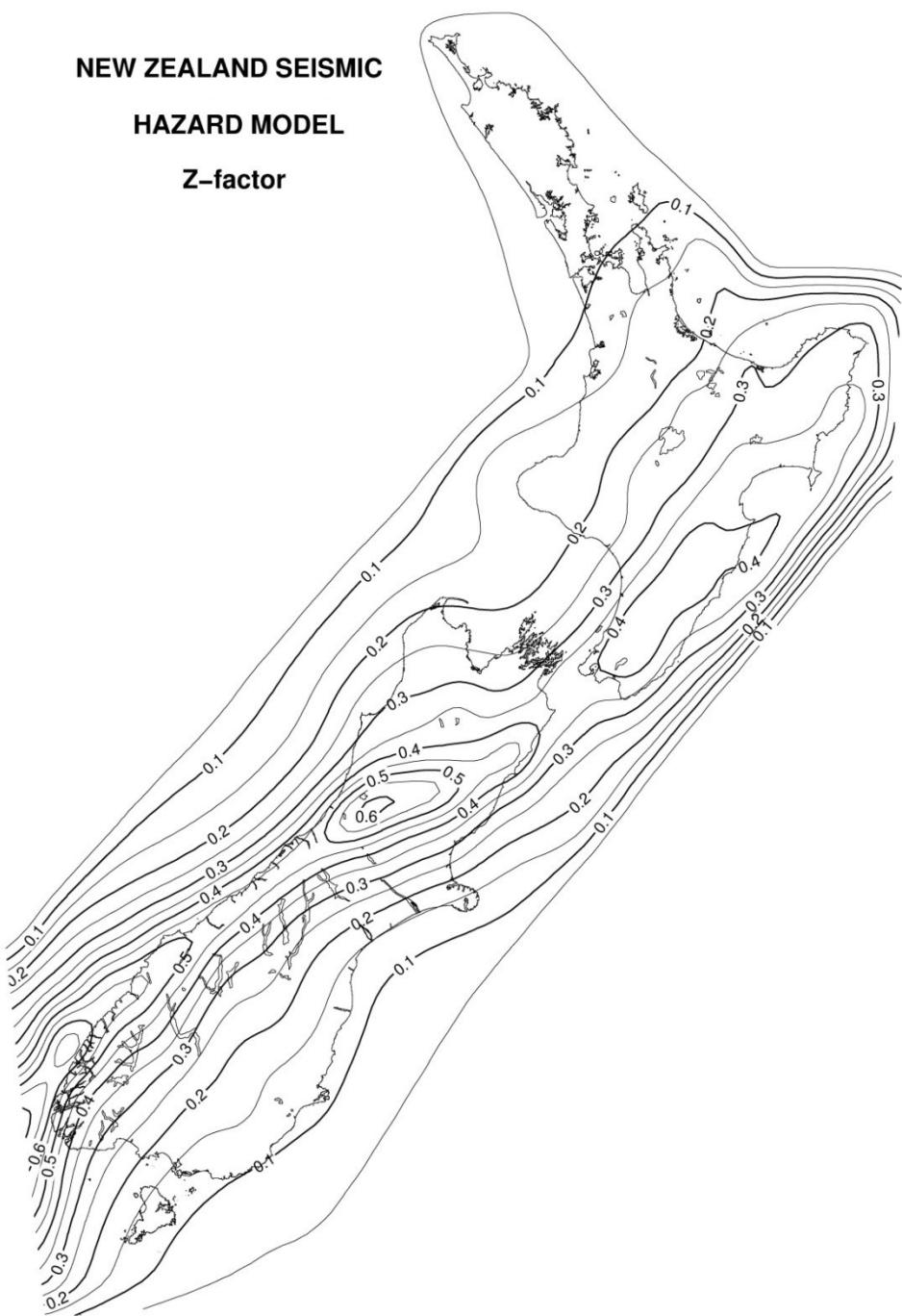
Officials have a number of recommendations that are not directly related to submissions on the Bill. These are set out in the following table.

Issue	Recommendation
<p><i>Originating applications</i></p> <p>The provisions in the District Court Rules in relation to filing originating applications need to apply to new section 133AW in the same way that they currently do in relation to section 126. A consequential amendment is required.</p> <p>In addition, the same provisions of the District Court Rules also need to apply to applications under section 220. The requirement to apply to the District Court to seek an order in relation to the general power of territorial authorities to carry out building work on default was included in the Act. Section 74 of the Building Act 1991 had no requirement for a court order. It appears that this consequential amendment was overlooked.</p>	<p>Recommendation 12</p> <p>Officials recommend consequentially amending rule 20.13(1)(f) of the District Court Rules 2014 to refer to new section 133AW and section 220.</p>
<p><i>Restricting entry to buildings for particular purposes/persons</i></p> <p>There is a need to retain section 124(2)(d) of the Building Act 2004 and associated provisions for restricting entry to buildings for particular purposes or restricting entry to buildings to particular persons or groups of persons in relation to earthquake-prone buildings. The omission was an oversight while incorporating the Building Amendment Act 2013 amendments into the Bill.</p>	<p>Recommendation 13</p> <p>Officials recommend inserting equivalent provisions to sections 124(2)(d), 125(1A) and 128(2) of the Building Act 2004 into new sections 133AV, and 133AY so the ability to restrict entry to buildings for particular purposes or restricting entry to buildings to particular persons or groups of persons is not lost in relation to earthquake-prone buildings.</p>

<p><i>Cost recovery provisions (general)</i></p> <p>The Building Amendment Act 2012 replaced sections 45(1)(d) and 95(c) to remove the general reference to building consent authority charging powers and instead referred specifically to charges under section 240. Section 240 only applies in relation to private building consent authorities.</p> <p>These sections need to also refer to charges under section 219 to provide the correct cross reference to the charging provision in relation to building consent authorities that are also territorial authorities. This error did not affect the ability of building consent authorities to charge for issuing code compliance certificates under sections 95 or for building consent applications under section 45 because section 219 provides for territorial authorities to impose fees and charges in relation to building consents and for the performance of any other functions or services under the Building Act 2004. A relevant cross reference to section 219 was omitted in error in the Building Amendment Act 2012.</p>	<p>Recommendation 14</p> <p>Officials recommend amending section 95(c) and 45(1)(d) to also include a cross reference to section 219 in addition to section 240.</p>
<p><i>Drafting of section 112</i></p> <p>Clause 23 new section 133AX(b) reflected the drafting of section 112(1)(b) prior to the enactment of the Building Amendment Act 2013. The omission was an oversight while incorporating the Building Amendment Act 2013 amendments into the Bill.</p>	<p>Recommendation 15</p> <p>Officials recommend amending new section 133AX(b) to align with section 112(1)(b).</p>

Appendix 2: Seismic hazard model

The model below forms the basis of NZS 1170.5:2004 Structural Design Actions – Part 5: Earthquake actions.



Appendix 3: Proposed timeframes for remediation of earthquake-prone buildings

Location	Z factor listed in Verification Method B1/VM1 NZS 1170.5:2004	Proposed remediation timeframe based on Z factor
Otira	0.60	15 years
Arthurs Pass	0.60	15 years
Hanmer Springs	0.55	15 years
Milford Sound	0.54	15 years
Harihari	0.46	15 years
Springs Junction	0.45	15 years
Hokitika	0.45	15 years
Fox Glacier	0.44	15 years
Franz Joseph	0.44	15 years
Dannevirke	0.42	15 years
Pahiatua	0.42	15 years
Masterton	0.42	15 years
Upper Hutt	0.42	15 years
Kaikoura	0.42	15 years
Waipawa	0.41	15 years
Waipukurau	0.41	15 years
Woodville	0.41	15 years
Levin	0.40	15 years
Otaki	0.40	15 years
Waikanae	0.40	15 years
Paraparaumu	0.40	15 years
Porirua	0.40	15 years
Wellington	0.40	15 years
Hutt Valley	0.40	15 years

Location	Z factor listed in Verification Method B1/VM1 NZS 1170.5:2004	Proposed remediation timeframe based on Z factor
Eastbourne/Point Howard	0.40	15 years
Wainuiomata	0.40	15 years
Seddon	0.40	15 years
Ward	0.40	15 years
Cheviot	0.40	15 years
Hastings	0.39	15 years
Napier	0.38	15 years
Palmerston North	0.38	15 years
Mt Cook	0.38	15 years
Wairoa	0.37	15 years
Feilding	0.37	15 years
Reefton	0.37	15 years
Greymouth	0.37	15 years
Gisborne	0.36	15 years
Foxton	0.36	15 years
St Arnaud	0.36	15 years
Te Anau	0.36	15 years
Murchison	0.34	15 years
Ruatoria	0.33	15 years
Taihape	0.33	15 years
Blenheim	0.33	15 years
Rangiora	0.33	15 years
Queenstown	0.32	15 years
Bulls	0.31	15 years
Whakatane	0.30	15 years
Opotiki	0.30	15 years
Murupara	0.30	15 years

Location	Z factor listed in Verification Method B1/VM1 NZS 1170.5:2004	Proposed remediation timeframe based on Z factor
Marton	0.30	15 years
Picton	0.30	15 years
Westport	0.30	15 years
Darfield	0.30	15 years
Akaroa	0.30 ⁱ	15 years
Christchurch	0.30 ⁱⁱ	15 years
Wanaka	0.30	15 years
Arrowtown	0.30	15 years
Kawerau	0.29	25 years
Waiouru	0.29	25 years
Taupo	0.28	25 years
Turangi	0.27	25 years
Ohakune	0.27	25 years
Nelson	0.27	25 years
Twizel	0.27	25 years
Raetihi	0.26	25 years
Motueka	0.26	25 years
Wanganui	0.25	25 years
Rotorua	0.24	25 years
Fairlie	0.24	25 years
Cromwell	0.24	25 years
Takaka	0.23	25 years
Te Puke	0.22	25 years
Putaruru	0.21	25 years
Tokoroa	0.21	25 years
Mangakino	0.21	25 years
Taurmarunui	0.21	25 years

Location	Z factor listed in Verification Method B1/VM1 NZS 1170.5:2004	Proposed remediation timeframe based on Z factor
Alexandra	0.21	25 years
Tauranga	0.20	25 years
Mount Manganui	0.20	25 years
Ashburton	0.20	25 years
Riverton	0.20	25 years
Winton	0.20	25 years
Matamata	0.19	25 years
Geraldine	0.19	25 years
Paeroa	0.18	25 years
Waihi	0.18	25 years
Morrinsville	0.18	25 years
Te Aroha	0.18	25 years
Cambridge	0.18	25 years
Te Kuiti	0.18	25 years
Waitara	0.18	25 years
New Plymouth	0.18	25 years
Inglewood	0.18	25 years
Stratford	0.18	25 years
Opunake	0.18	25 years
Hawera	0.18	25 years
Patea	0.18	25 years
Gore	0.18	25 years
Te Awamutu	0.17	25 years
Otorohanga	0.17	25 years
Temuka	0.17	25 years
Mataura	0.17	25 years
Invercargill	0.17	25 years

Location	Z factor listed in Verification Method B1/VM1 NZS 1170.5:2004	Proposed remediation timeframe based on Z factor
Thames	0.16	25 years
Hamilton	0.16	25 years
Huntly	0.15	25 years
Ngaruawahia	0.15	25 years
Timaru	0.15	25 years
Bluff	0.15	25 years
Waimate	0.14	35 years
Oban	0.14	35 years
Kaitaia	0.13	35 years
Pahia/Russell	0.13	35 years
Kaikohe	0.13	35 years
Whangarei	0.13	35 years
Dargaville	0.13	35 years
Warkworth	0.13	35 years
Auckland	0.13	35 years
Manakau City	0.13	35 years
Waiuku	0.13	35 years
Pukekohe	0.13	35 years
Palmerston	0.13	35 years
Oamaru	0.13	35 years
Dunedin	0.13	35 years
Mosgiel	0.13	35 years
Balclutha	0.13	35 years

ⁱ Z value in NZS 1170.5:2004 modified by B1/VM1 due to the heightened risk of seismic activity in Canterbury over the next few decades above that currently factored into structural design requirements.

ⁱⁱ Z value in NZS 1170.5:2004 modified by B1/VM1 due to the heightened risk of seismic activity in Canterbury over the next few decades above that currently factored into structural design requirements.

Appendix C – Bill with proposed amendments

Building (Earthquake-prone Buildings) Amendment Bill

Government Bill

Proposed amendments for the consideration of the select committee

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This version of the Bill shows amendments to the Bill that have been prepared by the PCO for the purposes of select committee consideration. This version does—

- NOT have official status in terms of unamended text
- NOT show whether amendments might in due course be voted as majority or unanimous amendments
- NOT have the status of an as-reported back version of the Bill.

Hon Dr Nick Smith

Building (Earthquake-prone Buildings) Amendment Bill

Government Bill

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Building (Earthquake-prone Buildings) Amendment Bill

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Building (Earthquake-prone Buildings) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Building (Earthquake-prone Buildings) Amendment Act **2013**.

2 Commencement

This Act comes into force on the earlier of—

- (a) a date appointed by the Governor-General by Order in Council; and
- (b) the day that is 2 years after the date on which this Act receives the Royal assent.

Part 1
Amendments to principal Act

3 Principal Act

This **Part** amends the Building Act 2004 (the **principal Act**).

4 Section 4 amended (Principles to be applied in performing functions or duties, or exercising powers, under this Act)

In section 4(1)(c), replace “in relation to the grant of waivers or modifications of the building code and the adoption and review of policy on dangerous, earthquake-prone, and insanitary buildings or, as the case may be, dangerous dams” with “under subpart 6A of Part 2 (which relates to earthquake-prone buildings) or in relation to the grant of waivers or modifications of the building code or, the adoption and review of policy on dangerous and insanitary buildings or dangerous dams, or the setting of a time frame for completing seismic work on priority buildings”.

5 New section 5A and cross-heading inserted

After section 5, insert:

Provisions affecting application of amendments to this Act

5A Provisions affecting application of amendments to this Act

Schedule 1AA contains application, savings, and transitional provisions relating to amendments made to this Act after 1 January 2014 (see **section 450A**).

Transitional, savings, and related provisions

5A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

6 Section 7 amended (Interpretation)

In section 7, insert in their appropriate alphabetical order:

~~Category 1 heritage building has the meaning given in section 133AA~~
~~deadline, in relation to seismic work, has the meaning given in section 133AA~~

~~earthquake-prone building has the meaning given in section 133AB~~

~~earthquake rating has the meaning given in section 133ABA~~

~~engineering assessment, in relation to a building or a part of a building, means an engineering assessment of the building or part that complies with the requirements of the EPB methodology~~

~~EPB exemption notice means an exemption notice issued under section 133AS~~

~~EPB methodology means the methodology for identifying earthquake-prone buildings that is set by the chief executive under section 133AZ~~

~~EPB notice means an earthquake-prone building notice issued under section 133AK~~

~~EPB register means the register of earthquake-prone buildings established and maintained under section 273(1)(aab)~~

~~heritage building means a building registered as a historic place under Part 2 of the Historic Places Act 1993~~

~~heritage dam means a dam registered as a historic place under Part 2 of the Historic Places Act 1993~~

~~heritage building means a building that is included on—~~

- (a) ~~the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or~~
- (b) ~~the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ūna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014~~

~~heritage dam means a dam that is included on—~~

- (a) ~~the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or~~
- (b) ~~the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ūna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014~~

~~high seismic risk has the meaning given in section 133ABB~~

~~low seismic risk has the meaning given in section 133ABB~~

~~medium seismic risk has the meaning given in section 133ABB~~

~~outcome notice has the meaning given in section 133AA~~

priority building has the meaning given in **section 133AC**

seismic capacity assessment has the meaning given in **section 133AA**

seismic capacity register has the meaning given in **section 133AA**

seismic work has the meaning given in **section 133AA**, in relation to a building or a part of a building that is subject to an EPB notice, means the building work required to ensure that the building or part is no longer earthquake prone

seismic work notice has the meaning given in **section 133AA**

7 Section 11 amended (Role of chief executive)

(1) After section 11(d), insert:

(da) monitors, in accordance with **section 169A**, the application and effectiveness of **subpart 6A of Part 2** (which relates to earthquake-prone buildings); and

(2) After section 11(i), insert:

(ia) sets a methodology under **section 133AG** for seismic capacity assessments; and

(ia) sets a methodology under **section 133AZ** for identifying earthquake-prone buildings; and

7A Section 45 amended (How to apply for building consent)

In section 45(1)(d), replace “section 240” with “section 219 or 240 (as applicable)”.

8 Section 85 amended (Offences relating to carrying out or supervising restricted building work)

In section 85(4), after “liable”, insert “on conviction”.

9 Section 95 amended (Issue of code compliance certificate)

In section 95, insert as subsection (2):

(2) As soon as practicable after a certificate is issued under this section for the construction of a building that is to be included in the seismic capacity register under **section 275A(3)**, the territorial authority in whose district the building is situated must record on the seismic capacity register any information that the register is required to contain under that section.

8A Section 95 amended (Issue of code compliance certificate)

In section 95(c), replace “section 240” with “section 219 or 240 (as applicable)”.

10 Section 112 amended (Alterations to existing buildings)

After section 112(2), insert:

- (3) This section is subject to **section 133AX**.

11 Subpart 6 heading in Part 2 amended

In Part 2, in the subpart 6 heading, replace “certain categories of buildings” with “dangerous, affected, and insanitary buildings”.

12 Cross-heading above section 121 replaced

Replace the cross-heading above section 121 with:

Interpretation and application

13 Section 122 repealed (Meaning of earthquake-prone building)

Repeal section 122.

14 New section 123A inserted (Application of this subpart to parts of buildings)

After section 123, insert:

123A Application of this subpart to parts of buildings

- (1) If a territorial authority is satisfied that only part of a building is dangerous (within the meaning of section 121) or insanitary (within the meaning of section 123),—
 - (a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and
 - (b) for the purpose of **paragraph (a)**, this subpart applies with any necessary modifications.
- (2) To the extent that a power or function of a territorial authority under this subpart relates to affected buildings,—
 - (a) the territorial authority may exercise the power or perform the function in respect of all or part of an affected building; and
 - (b) for the purpose of **paragraph (a)**, this subpart applies with any necessary modifications.
- (3) ~~Nothing in this section limits or affects the application of a provision of this Act outside this subpart.~~

15 Cross-heading above section 124 amended

In the cross-heading above section 124, delete “*earthquake-prone*.”

16 Section 124 amended (Dangerous, affected, earthquake-prone, or insanitary buildings: powers of territorial authority)

- (1) In the heading to section 124, delete “*earthquake-prone*.”
- (2) In section 124(1), delete “*earthquake-prone*.”

(3) Repeal section 124(3).

17 Section 125 amended (Requirements for notice requiring building work or restricting entry)

Replace section 125(2)(e) with:

- (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and

18 Section 128 amended (Prohibition on using dangerous, affected, earthquake-prone, or insanitary building)

In the heading to section 128, delete “**earthquake-prone**,”.

19 Section 128A amended (Offences in relation to dangerous, affected, earthquake-prone, or insanitary buildings)

In the heading to section 128A, delete “**earthquake-prone**,”.

20 Section 129 amended (Measures to avoid immediate danger or to fix insanitary conditions)

In section 129(1)(a), replace “or section 122 or section 123” with “or 123”.

21 Cross-heading above section 131 amended

In the cross-heading above section 131, delete “, *earthquake-prone*,”.

22 Section 131 amended (Territorial authority must adopt policy on dangerous, earthquake-prone, and insanitary buildings)

(1) In the heading to section 131, delete “, **earthquake-prone**,”.

(2) In section 131(1), delete “, **earthquake-prone**,”.

23 New subpart 6A of Part 2 inserted

After section 133, insert:

Subpart 6A—Special provisions for earthquake-prone buildings

*Interpretation and application**Application and interpretation*

133AA Interpretation

In this subpart,—

Category 1 heritage building means a building registered as a Category 1 historic place under Part 2 of the Historic Places Act 1993

deadline, in relation to seismic work, means the deadline for completing that work as specified in **section 133AO**

~~outcome notice~~ means a notice, given under **section 133AJ**, of the outcome of a seismic capacity assessment of a building

~~priority building~~ has the meaning given in **section 133AC**

~~seismic capacity assessment~~ means an assessment, made under **section 133AF**, of the seismic capacity of a building

~~seismic capacity register~~ means the register established and maintained under **section 273(1)(aab)**

~~seismic work~~ means the building work required to ensure that a building is no longer earthquake prone

~~seismic work notice~~ means a notice given under **section 133AL** requiring the owner of a building to carry out seismic work on the building.

133AA Buildings to which this subpart applies

- (1) This subpart applies to all buildings except the following:
 - (a) a building that is used wholly or mainly for residential purposes (but see subsection (2)):
 - (b) a farm building (being a shed or other building that is located on a farm and used primarily for farming activities or an ancillary purpose):
 - (c) a retaining wall:
 - (d) a fence:
 - (e) a monument (including a statue), unless the monument is capable of being entered by a person:
 - (f) a wharf:
 - (g) a bridge:
 - (h) a tunnel:
 - (i) a storage tank.
- (2) Despite subsection (1)(a), this subpart applies to a building described in that subsection if the building—
 - (a) is a hostel, boarding house, or other specialised accommodation; or
 - (b) comprises 2 or more storeys and contains 3 or more household units.

133AB Meaning of earthquake-prone building

- (1) A building or a part of a building is earthquake prone for the purposes of this Act if, having regard to its the condition of the building or part and to the ground on which it the building is built, and because of its the construction of the building or part,—
 - (a) the building or part will have its ultimate capacity exceeded in a moderate earthquake (as defined in regulations); and

- (b) if the building or part were to collapse in a moderate earthquake, the collapse would be likely to cause—
 - (i) injury or death to persons in or near the building or to persons on any other property or on any other property; or
 - (ii) damage to any other property.
- (2) Whether a building or a part of a building is earthquake prone is determined by the territorial authority in whose district the building is situated: *see section 133AJ.*
- (3) For the purpose of **subsection (1)(a)**, **ultimate capacity** and **moderate earthquake** have the meanings given to them by regulations.

Compare: 1991 No 150 s 66

133ABA Meaning of earthquake rating

- (1) In this Act, **earthquake rating**, in relation to a building or a part of a building that a territorial authority has determined is earthquake prone, means the degree to which the building or part meets the requirements of the building code—
 - (a) that relate to how a building is likely to perform in an earthquake; and
 - (b) that would be used to design a new building on the same site; and
 - (c) as they apply on the day on which this section comes into force.
- (2) The earthquake rating of a building or a part of a building—
 - (a) is determined by a territorial authority in accordance with the EPB methodology (*see section 133AJ*); and
 - (b) is specified on the EPB notice issued for the building or part and recorded in the EPB register; and
 - (c) determines the form of the EPB notice issued for the building or part (*see section 401C(a)*).
- (3) An earthquake rating may be expressed as a percentage or a percentage range.

Examples

If a territorial authority determines that a building meets 25% of the requirements of the building code referred to in **subsection (1)**, the earthquake rating of the building is 25%.

If a territorial authority determines that a building meets between 0% and 10% of the requirements of the building code referred in **subsection (1)**, the earthquake rating of the building is the range of 0% to 10%.

133ABB Meaning of low, medium, and high seismic risk

- (1) For the purposes of this Act, the area in which a building is located has—
 - (a) a **low seismic risk** if the area has a Z factor that is less than 0.15; and

- (b) a medium seismic risk if the area has a Z factor that is greater than or equal to 0.15 and less than 0.3; and
 - (c) a high seismic risk if the area has a Z factor that is greater than or equal to 0.3.
- (2) For the purpose of subsection (1), the Z factor of an area is the seismic hazard factor that would be used to design a new building on a site in that area in accordance with the following, as they relate to calculating Z factors and as they apply on the day on which this section comes into force:
- (a) the building code; and
 - (b) verification methods; and
 - (c) standards incorporated by reference into the building code or a verification method.
- (3) The seismic risk of an area affects—
- (a) the time frame within which a territorial authority must—
 - (i) apply the EPB methodology to identify buildings or parts of buildings in the area that are potentially earthquake prone (see section 133AF); and
 - (ii) report to the chief executive on its progress towards that objective; and
 - (b) the deadline for completing seismic work on a building or a part of a building in the area, if it is subject to an EPB notice (see section 133AL).

133AC Meaning of priority building

- (1) In this subpart, priority building has the meaning given in regulations made under section 401C(a).
- (2) If a building is a priority building, a territorial authority—
- (a) must, in accordance with the methodology set under section 133AG, prioritise its assessment of the building's seismic capacity; and
 - (b) may, in setting a time frame under section 133AZ, shorten the time frame within which seismic work on the building must be completed.

133AC Meaning of priority building

- (1) In this subpart, priority building means any of the following that are located in an area of medium or high seismic risk:
- (a) a hospital building that is likely to be needed in an emergency (within the meaning of the Civil Defence Emergency Management Act 2002) to provide—
 - (i) emergency medical services; or

- (ii) ancillary services that are essential for the provision of emergency medical services;
 - (b) a building that is likely to be needed in an emergency for use as an emergency shelter or emergency centre;
 - (c) a building that is used to provide emergency response services (for example, policing, fire, ambulance, or rescue services);
 - (d) a building that a territorial authority has identified, using the special consultative procedure in section 83 of the Local Government Act 2002, as having the potential to impede a transport route of strategic importance (in terms of an emergency response) if the building were to collapse in an earthquake;
 - (e) a building that is regularly occupied by at least 20 people and that is used as any of the following:
 - (i) an early childhood education and care centre licensed under Part 26 of the Education Act 1989;
 - (ii) a registered school or an integrated school (within the meaning of the Education Act 1989);
 - (iii) a private training establishment registered under Part 18 of the Education Act 1989;
 - (iv) a tertiary institution established under section 162 of the Education Act 1989.
- (2) For the purposes of **subsection (1)(a) and (b)**, the likelihood of a building being needed in an emergency for a particular purpose must be assessed having regard to—
- (a) any national civil defence emergency management plan made under section 39 of the Civil Defence Emergency Management Act 2002; and
 - (b) the civil defence emergency management group plan approved under section 48 of the Civil Defence Emergency Management Act 2002 that covers the district in which the building is situated.
- (3) If only part of a building meets the criteria specified in **subsection (1)**, only that part of the building is a priority building.
- (4) To avoid doubt, a territorial authority need not identify buildings for the purpose of **subsection (1)(d)**.
- (5) Whether a building is a priority building affects—
- (a) the deadline by which a territorial authority must identify whether the building or a part of the building is potentially earthquake prone (*see section 133AF*); and
 - (b) the deadline for completing seismic work on the building or a part of the building, if it is subject to an EPB notice (*see section 133AL*).

133AD Application of this subpart to residential buildings

- This subpart does not apply to a building that is used wholly or mainly for residential purposes, unless the building—
- (a) comprises 2 or more storeys; and
 - (b) contains 3 or more household units.

133AE Application of this subpart to parts of buildings

- (1) If a territorial authority is satisfied that only part of a building is earthquake prone (within the meaning of **section 133AB**),
 - (a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and
 - (b) for the purpose of **paragraph (a)**, this subpart applies with any necessary modifications.
- (2) Nothing in this section limits or affects the application of a provision of this Act outside this subpart.

*Seismic capacity assessments***133AF Territorial authority must assess seismic capacity of existing buildings**

- (1) A territorial authority must complete seismic capacity assessments of existing buildings within the district of the territorial authority.
- (2) A seismic capacity assessment—
 - (a) must be carried out using the methodology set under **section 133AG**; and
 - (b) must be completed not later than 5 years after the day on which this section comes into force.
- (3) For the purpose of **subsection (1)**, a building is an **existing building** if,
 - (a) before the day on which this section comes into force, a certificate is issued under section 95 for the construction of the building; or
 - (b) the building was constructed before 31 March 2005.

133AG Chief executive must set methodology for seismic capacity assessments

- (1) The chief executive must set a methodology for territorial authorities to use for the purpose of carrying out seismic capacity assessments under **section 133AF**.
- (2) The methodology must—
 - (a) specify how a territorial authority is to assess a building's seismic capacity; and

- (b) specify how a territorial authority is to prioritise the assessment of buildings within its district, with particular reference to priority buildings; and
- (c) specify engineering tests from which alternative evidence of a building's seismic capacity may be derived (*see section 133AR*); and
- (d) specify how a territorial authority is to evaluate, as evidence of a building's seismic capacity, engineering tests completed before the day on which this section comes into force.
- (3) The methodology may incorporate material by reference in accordance with sections 405 to 413.
- (4) The chief executive may—
 - (a) set the methodology in 1 or more stages; and
 - (b) amend or replace the methodology at any time.
- (5) If the chief executive amends or replaces the methodology, **sections 133AH and 133AI** apply in respect of that amendment or replacement with any necessary modifications.

133AH Consultation requirements for setting methodology

- (1) Before setting a methodology under **section 133AG**, the chief executive must do everything reasonably practicable on his or her part to consult territorial authorities and any other persons or organisations that appear to the chief executive to be representative of the interests of persons likely to be substantially affected by the setting of the methodology.
- (2) The process for consultation should, to the extent practicable in the circumstances, include—
 - (a) giving adequate and appropriate notice of the intention to set the methodology; and
 - (b) giving a reasonable opportunity for territorial authorities and other interested persons to make submissions; and
 - (c) giving adequate and appropriate consideration to submissions.
- (3) A failure to comply with this section does not affect the validity of a methodology set under **section 133AG**.

133AI Notification and availability of methodology

- (1) As soon as practicable after the chief executive has set a methodology under **section 133AG**, the chief executive must—
 - (a) notify territorial authorities that the methodology has been set; and
 - (b) publicly notify that the methodology has been set; and
 - (c) make the methodology available on the Internet in an electronic form that is publicly accessible at all reasonable times; and

- (d) make the methodology available in printed form for purchase on request by members of the public.
- (2) A methodology set under **section 133AG** is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

What territorial authority must do after seismic capacity assessment

133AJ Territorial authority must notify building owner of outcome of assessment

- (1) A territorial authority must, as soon as practicable after it has assessed the seismic capacity of a building, give the owner of the building a written notice of the outcome of the assessment (an **outcome notice**).
- (2) An outcome notice must be dated and must—
- (a) state whether the building is earthquake prone; and
 - (b) if the building is earthquake prone,—
 - (i) state that the building requires seismic work; and
 - (ii) state that the owner of the building may apply under **section 133AS** for an exemption from the requirement to carry out seismic work; and
 - (iii) if the building is a Category 1 heritage building, state that the owner of the building may apply under **section 133AT** for an extension of time to complete seismic work; and
 - (c) state that the owner of the building may provide alternative evidence of the building's seismic capacity under **section 133AR**; and
 - (d) explain the time frame (as set out in **section 133AM**) within which the territorial authority will—
 - (i) record the outcome of the assessment on the seismic capacity register; and
 - (ii) if the building is earthquake prone, issue a seismic work notice for the building.

133AK Territorial authority must record outcome of assessment on seismic capacity register

A territorial authority must, within the time frame specified in **section 133AM**, record on the seismic capacity register the outcome of a seismic capacity assessment and any related information that the register is required to contain under **section 275A**.

133AL Earthquake-prone buildings: territorial authority must issue seismic work notice

- (1) If a territorial authority gives an outcome notice stating that a building is earthquake prone, the territorial authority must, within the time frame specified in **section 133AM**, issue a seismic work notice for the building in accordance with **section 133AN**.
- (2) However, **subsection (1)** does not apply if an exemption from the requirement to carry out seismic work on the building is in force under **section 133AS**.

133AM Time frame for territorial authority to act under sections 133AK and 133AL

- (1) This section sets out the time frame within which a territorial authority must act under **section 133AK** and, if applicable, **section 133AL**.
- (2) The territorial authority must act as soon as practicable after the expiry of the period of 20 working days after the date of the outcome notice (the **notice period**), unless **subsection (3) or (4)** applies.
- (3) If the owner of the building notifies the territorial authority before the expiry of the notice period that the owner intends to provide alternative evidence of the building's seismic capacity (see **section 133AR**), the territorial authority must act—
 - (a) as soon as practicable after the territorial authority has considered the alternative evidence; or
 - (b) if the owner does not provide alternative evidence within a reasonable time, as soon as practicable after the expiry of that reasonable time.
- (4) If the owner of the building applies before the expiry of the notice period for an exemption under **section 133AS**, the territorial authority must act as soon as practicable after it has made a decision on the application.

133AN Requirements for seismic work notice

- (1) A seismic work notice for a building must—
 - (a) be in writing; and
 - (b) state that the building is earthquake prone; and
 - (c) state that the owner of the building is required to carry out building work to ensure that the building is no longer earthquake prone (**seismic work**); and
 - (d) state the deadline for completing the seismic work; and
 - (e) be attached to the building in accordance with **subsection (4)**.
- (2) A copy of the notice must be given to—
 - (a) the owner of the building; and

- (b) an occupier of the building; and
 - (c) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and
 - (d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and
 - (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and
 - (f) the New Zealand Historic Places Trust, if the building is a heritage building.
- (3) A notice attached to a building is not invalid by reason only that a copy of it has not been given to any or all of the persons referred to in **subsection (2)**.
- (4) As soon as practicable after issuing a seismic work notice for a building, a territorial authority must attach, or require the owner of the building to attach, the notice in a prominent place on or adjacent to the building.
- (5) If the seismic work notice ceases to be attached in a prominent place on or adjacent to the building, or becomes illegible,—
- (a) the owner of the building must notify the territorial authority of that fact; and
 - (b) the territorial authority must issue a replacement notice; and
 - (c) **subsections (1) and (4)** apply to that replacement notice.
- (6) However, **subsection (5)** does not apply if the removal of the notice from the building is authorised by or under this subpart.

133AO Deadline for completing seismic work

- (1) The owner of an earthquake-prone building must complete seismic work on the building on or before the deadline specified in this section.
- (2) For a priority building (subject to **subsection (4)**), the deadline is the earlier of—
 - (a) the expiry of 15 years after the date of the outcome notice; and
 - (b) the expiry of the period stated for that building or class of building in the time frame set by the territorial authority under **section 133AZ**, as measured from the date of the outcome notice.
- (3) For a Category 1 heritage building (subject to **subsection (4)**), the deadline is the later of—
 - (a) the expiry of 15 years after the date of the outcome notice; and

- (b) the expiry of the period of an extension in force under **section 133AT** (if any), as measured from the expiry of 15 years after the date of the outcome notice.
- (4) For a building that is both a priority building and a Category 1 heritage building, the deadline is the later of—
 - (a) the deadline calculated under **subsection (2)**; and
 - (b) the expiry of the period of an extension in force under **section 133AT** (if any), as measured from the deadline calculated under **subsection (2)**.
- (5) For any other building, the deadline is the expiry of 15 years after the date of the outcome notice.

133AP Seismic work notice to be removed when building no longer earthquake prone

- (1) This section applies if—
 - (a) a territorial authority has issued a seismic work notice for a building; and
 - (b) the territorial authority is satisfied that the building is no longer earthquake prone.
- (2) The territorial authority must remove, or authorise the owner of the building to remove, any seismic work notice attached to the building.

133AQ What territorial authority must do if definition of moderate earthquake amended

- (1) This section applies if the definition of moderate earthquake, as defined in regulations for the purpose of **section 133AB** (Meaning of earthquake-prone building), is amended or replaced.
- (2) As soon as is reasonably practicable after the definition is amended or replaced, a territorial authority must—
 - (a) consider whether the outcome of any seismic capacity assessment completed by the territorial authority before the amendment or replacement was made (**existing outcome**) is likely to be incorrect as a result of the amendment or replacement; and
 - (b) if the territorial authority considers that an existing outcome is likely to be incorrect as a result of the amendment or replacement, reassess the seismic capacity of the building concerned.

What building owner may do after seismic capacity assessment

133AR Owner may provide alternative evidence of building's seismic capacity

- (1) The owner of a building may provide to the territorial authority alternative evidence of the building's seismic capacity.

- (2) Alternative evidence must be derived from an engineering test specified in the methodology set under **section 133AG**.
- (3) If a territorial authority considers, in accordance with the methodology, that the alternative evidence changes the outcome of the seismic capacity assessment, the territorial authority must—
 - (a) give the owner of the building a revised outcome notice; and
 - (b) comply with **section 133AK or 133AU** (as applicable); and
 - (c) if the building is not earthquake prone, remove, or authorise the owner of the building to remove, any seismic work notice already attached to the building; and
 - (d) if the building is earthquake prone, issue a seismic work notice in accordance with **section 133AN**.

Identifying earthquake-prone buildings

133AF Territorial authority must identify potentially earthquake-prone buildings

- (1) Within the time frame that applies under **subsection (4)** (the **applicable time frame**), a territorial authority—
 - (a) must apply the EPB methodology to buildings in its district to identify buildings or parts of buildings that are potentially earthquake prone; and
 - (b) may, if it has reason to suspect that a building or a part of a building in its district may be earthquake prone, identify the building or part as potentially earthquake prone, whether or not by reference to any aspect of the EPB methodology.
- (2) Until the end of the applicable time frame, a territorial authority must report to the chief executive on its progress towards identifying buildings or parts of buildings within its district that are potentially earthquake prone, as follows:
 - (a) if the whole district is of low seismic risk, every 3 years; or
 - (b) if the district includes areas of low and medium seismic risk, but no areas of high seismic risk, every 2 years; or
 - (c) if the district includes any area of high seismic risk, every year.
- (3) After the end of the applicable time frame, a territorial authority may, if it has reason to suspect that a building or a part of a building in its district may be earthquake prone, identify the building or part as potentially earthquake prone, whether or not by reference to the EPB methodology.
- (4) The applicable time frame is the period commencing on the day on which this section comes into force (the **commencement date**) and ending on—
 - (a) for each area of low seismic risk, the expiry of 15 years after the commencement date; and

- (b) for each area of medium seismic risk, the expiry of the following period after the commencement date:
 - (i) 5 years for priority buildings; and
 - (ii) 10 years for other buildings; and
- (c) for each area of high seismic risk, the expiry of the following period after the commencement date:
 - (i) 2 years and 6 months for priority buildings; and
 - (ii) 5 years for other buildings.

133AG Territorial authority must request engineering assessment of potentially earthquake-prone buildings

- (1) If a territorial authority identifies that a building or a part of a building is potentially earthquake prone, the territorial authority must ask the owner of the building or part to provide an engineering assessment of the building or part.
- (2) The request must—
 - (a) be in writing; and
 - (b) be dated; and
 - (c) identify the building or the part of a building that the territorial authority has identified as potentially earthquake-prone; and
 - (d) explain the basis on which the territorial authority has identified the building or the part of the building as potentially earthquake prone; and
 - (e) explain the owner's obligations under **section 133AH**; and
 - (f) state whether the building is a priority building; and
 - (g) state the due date for the engineering assessment, which must be 12 months after the date of the request; and
 - (h) explain that if the owner is not reasonably able to provide an engineering assessment by the due date (for example, because of a shortage of people qualified to conduct engineering assessments), the owner may apply for an extension of up to 12 months; and
 - (i) explain the consequences of the owner failing to provide the engineering assessment by the due date; and
 - (j) explain what will happen if the territorial authority determines that the building or the part of the building is earthquake prone.

133AH Obligations of owners on receiving request for engineering assessment

- (1) If a territorial authority asks the owner of a building or a part of a building to provide an engineering assessment of the building or part under **section 133AG**, the owner must, by the due date (which may be extended under **section 133AI**),—

- (a) provide to the territorial authority an engineering assessment of the building or part that complies with the requirements of the EPB methodology; or
 - (b) provide to the territorial authority evidence that there is a factual error in the basis on which the territorial authority has identified the building or part as potentially earthquake prone; or
 - (c) notify the territorial authority that the owner does not intend to provide an engineering assessment.
- (2) If a territorial authority is satisfied that it has incorrectly identified a building or a part of a building as potentially earthquake prone, the territorial authority must cancel the request for an engineering assessment and give the owner of the building or part written notice of that fact.
- (3) If an owner fails to comply with **subsection (1)**, or notifies the territorial authority under **subsection (1)(c)** that the owner does not intend to provide an engineering assessment of a building or a part of a building,—
- (a) the territorial authority must, under **section 133AJ(2)**, proceed as if it had determined the building or part to be earthquake prone; and
 - (b) the EPB notice issued for the building or part must, under **section 133AK(4)**, be in the form that is prescribed for the category of earthquake ratings that includes the lowest earthquake ratings; and
 - (c) the territorial authority may obtain an engineering assessment of the building or part and recover, as a debt due from the owner of the building or part, the costs of doing so.

133AI Owners may apply for extension of time to provide engineering assessment

- (1) This section applies if—
- (a) a territorial authority asks the owner of a building or a part of a building to provide an engineering assessment of the building or part under **section 133AG**; and
 - (b) the owner is unable to provide an engineering assessment by the due date (for example, because of a shortage of people qualified to conduct engineering assessments).
- (2) The owner may, no later than 2 months before the due date, apply to the territorial authority for an extension of up to 12 months from the due date.
- (3) The territorial authority must deal with the application promptly, by either—
- (a) granting the extension and notifying the owner in writing of the revised due date for the engineering assessment; or
 - (b) notifying the owner in writing that the extension has not been granted.

- (4) A territorial authority must not extend the due date for an engineering assessment more than once.

133AJ Territorial authority must determine whether building is earthquake prone

- (1) If a territorial authority receives an engineering assessment of a building or a part of a building, the territorial authority must, in accordance with the EPB methodology, determine whether the building or part is earthquake prone and, if it is, its earthquake rating.
- (2) If a territorial authority asks the owner of a building or a part of a building to provide an engineering assessment of the building or part under section 133AG, and either does not receive it by the due date or is notified that the owner does not intend to provide it by the due date,—
- (a) the territorial authority—
 - (i) must proceed as if it had determined the building or part to be earthquake prone; and
 - (ii) need not determine the earthquake rating of the building or part; and
 - (b) this Act applies as if the territorial authority had determined the building or part to be earthquake prone.
- (3) If a territorial authority determines that a building or a part of a building is earthquake prone, the territorial authority must promptly—
- (a) issue an EPB notice for the building or part under section 133AK; and
 - (b) record the details of the decision in the EPB register and update other information in the EPB register as necessary.

Remediation of earthquake-prone buildings

133AK Territorial authority must issue earthquake-prone building notice for earthquake-prone buildings

- (1) This section applies if a territorial authority makes any of the following decisions:
- (a) determining under section 133AJ or 133AZC or clause 2 of Schedule 1AA that a building or a part of a building is earthquake prone; or
 - (b) revoking an exemption under section 133AS; or
 - (c) revoking an extension under section 133AT; or
 - (d) determining under section 133ATB or 133AZC that the earthquake rating of a building or a part of a building that is subject to an EPB notice is different from the earthquake rating (if any) of the building or part that is stated in the notice or the EPB register.

- (2) The territorial authority must promptly issue an earthquake-prone building notice (an EPB notice) for the building or the part of the building, which must—
- (a) be dated; and
 - (b) be in the prescribed form; and
 - (c) identify the building or the part of a building determined to be earthquake prone; and
 - (d) specify whether the building is a priority building; and
 - (e) specify the earthquake rating of the building or part, as determined by the territorial authority (unless subsection (4) applies); and
 - (f) state that the owner of the building or part is required to carry out building work to ensure that the building or part is no longer earthquake prone (seismic work); and
 - (g) state the deadline for completing seismic work (see section 133AL); and
 - (h) state that the owner of the building or part may apply under section 133AS for an exemption from the requirement to carry out seismic work; and
 - (i) if the building is a heritage building to which section 133AT applies, state that the owner of the building or part may apply under that section for an extension of time to complete seismic work; and
 - (j) state that the owner is not required to complete seismic work if the territorial authority determines or is satisfied, in accordance with section 133ATB, that the building or part is not earthquake prone.
- (3) If the earthquake rating of a building or a part of a building is a percentage range that spans more than 1 prescribed category of earthquake ratings, the notice issued for the building or part must be in the form prescribed for the category that includes the lowest point in the percentage range.
- (4) If the territorial authority is proceeding under section 133AJ(2) as if it had determined a building or a part of a building to be earthquake prone (because the owner has not provided an engineering assessment),—
- (a) subsection (2)(e) does not apply; and
 - (b) the notice must be in the form prescribed for the category of earthquake ratings that includes the lowest earthquake ratings (see section 401C(a)); and
 - (c) the notice must state—
 - (i) that the territorial authority has not determined whether the building or part is earthquake prone, but is proceeding as if it had; and
 - (ii) that the earthquake rating of the building or part has not been determined.

- (5) The territorial authority must give a copy of the notice to—
- (a) the owner of the building or the part of the building; and
 - (b) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and
 - (c) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and
 - (d) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and
 - (e) Heritage New Zealand Pouhere Taonga, if the building is a heritage building.
- (6) A notice is not invalid by reason only that a copy of it has not been given to any or all of the persons referred to in subsection (5).

133AL Deadline for completing seismic work

- (1) The owner of a building or a part of a building that is subject to an EPB notice must complete seismic work on the building or part on or before the deadline specified in this section.
- (2) The deadline is the expiry of whichever of the following periods, as measured from the date of the first EPB notice issued for the building or the part of the building (rather than any replacement EPB notice), is applicable:
- (a) 35 years for any building in an area of low seismic risk; and
 - (b) in an area of medium seismic risk, 12 years and 6 months for a priority building and 25 years for any other building; and
 - (c) in an area of high seismic risk, 7 years and 6 months for a priority building and 15 years for any other building.
- (3) However, if the building is a heritage building for which an extension is granted under section 133AT, the deadline is the expiry of the period of the extension, as measured from the deadline that would apply under subsection (2) if no extension were granted.

133AS Owner may apply for exemption from requirement to carry out seismic work

- (1) The owner of a building The owner of a building or a part of a building that is subject to an EPB notice may apply to a territorial authority for an exemption from the requirement to carry out seismic work on the building or part.
- (2) An application must be in writing and must be accompanied by any fee imposed by the territorial authority under section 219.

- (3) If the territorial authority is satisfied that the building meets the criteria specified in regulations made under **section 401C(b)**, the territorial authority may grant an exemption by issuing an exemption notice.
- (3) The territorial authority must deal with the application promptly, by doing one of the following:
- (a) if the territorial authority is satisfied that the building or the part of the building has the prescribed characteristics (see **section 401C(b)**),—
 - (i) granting the exemption and issuing an EPB exemption notice; and
 - (ii) recording the details of the exemption in the EPB register and updating other information in the EPB register as necessary; or
 - (b) notifying the owner in writing that the exemption has not been granted.
- (4) An EPB exemption notice must—
- (a) state that the building is earthquake proneidentify the building or the part of the building that is subject to an EPB notice; and
 - (b) state that the owner of the building or the part of the building is exempt from the requirement to carry out seismic work on the building or part; and
 - (c) give the territorial authority's reasons for granting the exemption.
- (5) As soon as practicable after issuing an exemption notice, a territorial authority must—
- (a) attach, or require the owner of the building to attach, the exemption notice in a prominent place on or adjacent to the building; and
 - (b) remove, or authorise the owner of the building to remove, any seismic work notice already attached to the building.
- (6) If the exemption notice ceases to be attached in a prominent place on or adjacent to the building, or becomes illegible,—
- (a) the owner of the building must notify the territorial authority of that fact; and
 - (b) the territorial authority must issue a replacement notice; and
 - (c) **subsections (4) and (5)** apply to that replacement notice.
- (7) However, **subsection (6)** does not apply if the removal of the notice is authorised by or under this subpart.
- (8) A territorial authority may, but need not, review an exemption at any time, and may revoke it if satisfied that the building no longer meets the criteria.
- (9) An exemption stays in force until the territorial authority revokes it.
- (10) As soon as practicable after revoking an exemption, a territorial authority must—
- (a) issue a seismic work notice in accordance with **section 133AN**; and

- (b) remove, or require the owner of the building to remove, any exemption notice already attached to the building.
- (a) reissue an EPB notice under **section 133AK** for the building or the part of the building that is earthquake prone; and
- (b) record the details of the revocation in the EPB register and update other information in the EPB register as necessary.

133AT Owner of Category 1 Owners of certain heritage buildings may apply for extension of time to complete seismic work

(1AA) This section applies to a building if—

- (a) the building or a part of the building is subject to an EPB notice; and
 - (b) the building is—
 - (i) included as a Category 1 historic place on the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
 - (ii) included on the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ūna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014.
- (1) The owner of a Category 1 heritage building of the building or the part of the building (the owner) may apply to the territorial authority for an extension of time to complete seismic work on the building or part.
 - (2) An application must be in writing and must be accompanied by any fee imposed by the territorial authority under section 219.
 - (3) The territorial authority may, by notice in writing to the owner of the building, extend by up to 10 years the deadline for completing seismic work on the building that applies under **section 133AL(2)**.
 - (4) If the territorial authority grants an extension, the owner of the building must—
 - (a) take all reasonably practicable steps to manage or reduce the risks associated with the building or the part of the building being earthquake prone; and
 - (b) comply with any conditions imposed by the territorial authority for the purpose of managing or reducing the risks referred to in **paragraph (a)**.
 - (5) If the owner of a building fails to comply with **subsection (4)**, the territorial authority may revoke the extension.
 - (6) As soon as practicable after granting or revoking an extension, a territorial authority must—
 - (a) issue a seismic work notice in accordance with **section 133AN**; and
 - (b) remove, or require the owner of the building to remove, from the building any seismic work notice already attached to the building.

- (a) reissue an EPB notice under **section 133AK** for the building or the part of the building; and
- (b) record the details of the extension or revocation in the EPB register and update other information in the EPB register as necessary.

133ATA EPB notices and EPB exemption notices to be attached to earthquake-prone buildings

- (1) As soon as practicable after issuing an EPB notice or an EPB exemption notice for a building or a part of a building, the territorial authority must—
 - (a) attach, or require the owner of the building or part to attach, the notice in a prominent place on or adjacent to the building; and
 - (b) remove, or authorise the owner of the building or part to remove, any superseded EPB notice or EPB exemption notice that is attached on or adjacent to the building.
- (2) If an EPB notice or an EPB exemption notice ceases to be attached in a prominent place on or adjacent to a building, or becomes illegible,—
 - (a) the owner of the building or the part of the building to which the notice relates must notify the territorial authority of that fact; and
 - (b) the territorial authority must issue a replacement notice; and
 - (c) **subsection (1)** applies to the replacement notice.
- (3) **Subsection (2)** does not apply if the removal of the notice is authorised by or under this subpart.

133ATB Territorial authority may assess information relating to earthquake-prone building status at any time

- (1) This section applies if, at any time,—
 - (a) the owner of a building or a part of a building sends to the territorial authority an engineering assessment of the building or part (whether or not the building or part is already subject to an EPB notice); or
 - (b) a territorial authority is satisfied, on the basis of evidence other than an engineering assessment, that a building or a part of a building that is subject to an EPB notice is not earthquake prone.
- (2) As soon as practicable after receiving an engineering assessment under this section for a building or a part of a building, the territorial authority must determine, in accordance with the EPB methodology,—
 - (a) whether the building or part is earthquake prone; and
 - (b) if the building or part is earthquake prone, its earthquake rating.
- (3) If a building or a part of a building is already subject to an EPB notice and the territorial authority determines or is satisfied that the building or part is not earthquake prone, the territorial authority must—

- (a) record the details of the decision in the EPB register and update other information in the EPB register as necessary; and
 - (b) remove, or authorise the owner of the building or part to remove, any EPB notice or EPB exemption notice attached on or adjacent to the building.
- (4) If a building or a part of a building is already subject to an EPB notice and the territorial authority determines that the building or part is still earthquake prone,—
- (a) if the territorial authority determines that the earthquake rating of the building or part is the same as the rating stated on the EPB notice, nothing further is required; and
 - (b) if the territorial authority determines that the earthquake rating of the building or part is different from the rating stated on the EPB notice, the territorial authority must—
 - (i) reissue an EPB notice under **section 133AK** for the building or part; and
 - (ii) record the details of the decision in the EPB register and update other information in the EPB register as necessary.
- (5) If a building or a part of a building is not already subject to an EPB notice and the territorial authority determines that the building or part is earthquake prone, the territorial authority must—
- (a) issue an EPB notice for the building or part under **section 133AK**; and
 - (b) record the details of the decision in the EPB register and update other information in the EPB register as necessary.

133AU Territorial authority must update seismic capacity register as necessary

- (1) This section applies if, at any time after recording information on the seismic capacity register under **section 133AK**, a territorial authority—
- (a) considers that alternative evidence provided under **section 133AR** changes the outcome of a seismic capacity assessment; or
 - (b) grants or revokes an exemption under **section 133AS** or an extension under **section 133AT**; or
 - (c) is satisfied that a building is no longer earthquake prone; or
 - (d) becomes aware that the seismic capacity register does not correctly record the information that the register is required to contain under **section 275A**.
- (2) If this section applies, the territorial authority must update the seismic capacity register so that it correctly records the information that the register is required to contain under **section 275A**.

Powers of territorial authorities in respect of earthquake-prone buildings

133AV Territorial authority may impose safety requirements

- (1) If a territorial authority ~~is satisfied~~ determines that a building ~~or a part of a building~~ in its district is earthquake prone, the territorial authority may do either or both ~~any~~ or all of the following:
 - (a) put up a hoarding or fence to prevent people from approaching the building ~~or part~~ nearer than is safe;
 - (b) attach in a prominent place, on or adjacent to the building ~~or part~~, a notice that warns people not to approach the building ~~or part~~;
 - (c) issue a notice that complies with **subsection (1A)** restricting entry to the building or part for particular purposes or restricting entry to particular persons or groups of persons.
- (1A) A notice issued under **subsection (1)(c)**—
 - (a) ~~must be in writing; and~~
 - (b) ~~must be fixed to the building in question; and~~
 - (c) ~~must be given in the form of a copy to the persons listed in section 133AK(5); and~~
 - (d) ~~may be issued for a period of up to 30 days; and~~
 - (e) ~~may be reissued, but not more than once, for a further period of up to 30 days.~~
- (2) If, in relation to a building ~~or a part of a building~~, a territorial authority has put up a hoarding or fence or attached a ~~warning notice~~ notice under **subsection (1)(b) or (c)**, no person may, ~~other than~~ in accordance with the terms of a notice issued under **subsection (1)(c)**.
 - (a) use or occupy the building ~~or part~~; or
 - (b) permit another person to use or occupy the building ~~or part~~.

133AW Territorial authority may carry out seismic work

- (1) This section applies if seismic work on ~~an earthquake-prone building~~ a building or a part of a building that is subject to an EPB notice is not completed by the deadline ~~that applies under section 133AL~~, or is not proceeding with reasonable speed in the light of that deadline.
- (2) The territorial authority may apply to a District Court for an order authorising the territorial authority to carry out seismic work on the building ~~or the part of the building~~.
- (3) Before the territorial authority applies to a District Court under **subsection (2)**, the territorial authority must give the owner of the building ~~or the part of the building~~ not less than 10 days' written notice of its intention to do so.

- (4) If a territorial authority carries out seismic work on a building or a part of a building under the authority of an order made under **subsection (2)**,—
- the owner of the building or part is liable for the costs of the work; and
 - the territorial authority may recover those costs from the owner; and
 - the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.
- (5) Seismic work authorised to be done under this section may include the demolition of a building or part of a building.

Compare: 1991 No 150 s 65(4), (5)

133AX Territorial authority may grant building consent for earthquake-prone building despite section 112(1)

Despite section 112(1), a territorial authority may grant a building consent for the alteration of a building if the territorial authority is satisfied that—

- the alteration is for the purpose of ensuring that the building is no longer earthquake prone; and
- after the alteration, the building will continue to comply with provisions of the building code to at least the same extent as before the alteration; and
- the territorial authority is satisfied that—
 - the alteration meets criteria prescribed under **section 401C(c)** (if any); and
 - ensuring that the building is no longer earthquake prone outweighs any detriment that is likely to arise as a result of the building not complying as nearly as is reasonably practicable with the provisions of the building code that relate to—
 - means of escape from fire; and
 - access and facilities for persons with disabilities (if this is a requirement in terms of section 118).

133AX Alterations to buildings subject to EPB notice

- This section applies instead of section 112 in relation to an application for a building consent for the alteration of a building or a part of a building that is subject to an EPB notice.
- A building consent authority must not grant a building consent for the alteration of the building or the part of the building unless the building consent authority is satisfied that,—
 - after the alteration, the building or part will satisfy the requirements of section 112(1)(a) and (b); and

- (b) in the case of a substantial alteration, the alteration includes the building work necessary to ensure that the building or part is no longer earthquake prone.
- (3) Despite **subsection (2)(a)**, a territorial authority may, by written notice to the owner of the building or the part of the building, allow the alteration of the building or part without the building or part complying with provisions of the building code specified by the territorial authority, if the territorial authority is satisfied that—
- (a) the alteration is for the purpose of ensuring that the building or part is no longer earthquake prone; and
 - (b) if, after the alteration, the building or part will not comply as nearly as is reasonably practicable with the provisions of the building code that relate to means of escape from fire, or access and facilities for persons with disabilities (if this is a requirement in terms of section 118), or both,—
 - (i) the building or part will continue to comply with those provisions of the building code to at least the same extent as immediately before the building work began; and
 - (ii) the objective of ensuring that the building or part is no longer earthquake prone outweighs any detriment that is likely to arise as a result of the building or part not complying as nearly as is reasonably practicable with those provisions of the building code; and
 - (c) after the alteration, the building or part will,—
 - (i) if it complied with the other provisions of the building code immediately before the building work began, continue to comply with those provisions; or
 - (ii) if it did not comply with the other provisions of the building code immediately before the building work began, continue to comply at least to the same extent as it did then comply.
- (4) Before making the assessment required by **subsection (3)(b)(ii)**, the territorial authority must take into account any criteria prescribed under **section 401C(c)**.
- (5) For the purpose of **subsection (2)(b)**, an alteration of a building is a **substantial alteration** if the territorial authority is satisfied that the alteration meets criteria prescribed under **section 401C(ba)**.

Offences

133AY Offences in relation to earthquake-prone buildings

Failure to complete seismic work

- (1) The owner of an earthquake-prone building a building or a part of a building that is subject to an EPB notice who fails to complete seismic work on the building or part by the deadline that applies under section 133AL—
 - (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding \$200,000.

Failures relating to seismic work EPB notices and EPB exemption notices

- (2) A person commits an offence if—
 - (a) a territorial authority requires the person to attach to an earthquake-prone building an EPB notice or an EPB exemption notice on or adjacent to a building under section 133ATA; and
 - (i) a seismic work notice under **section 133AN(4)**; or
 - (ii) an exemption notice under **section 133AS(5)**; and
 - (b) the person—
 - (i) fails to attach the notice in accordance with that section; or
 - (ii) attaches the notice otherwise than in accordance with that section.
 - (3) A person commits an offence if—
 - (a) the person is required under **section 133AN(5) or 133AS(6) section 133ATA(2)(a)** to notify the territorial authority if a seismic work when an EPB notice or an EPB exemption notice ceases to be attached on or adjacent to a building or becomes illegible; and
 - (b) the person fails to notify the territorial authority in accordance with that section.
 - (4) A person who commits an offence under **subsection (2) or (3)** is liable on conviction to a fine not exceeding \$20,000.
- Failure to comply with safety requirements*
- (5) A person who fails to comply with **section 133AV(2)** commits an offence and is liable on conviction—
 - (a) to a fine not exceeding \$200,000; and
 - (b) in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues.

*Time frame for completing seismic work on priority buildings***133AZ Territorial authority must set time frame for completing seismic work on priority buildings**

- (1) A territorial authority must, not later than 12 months after the day on which this section comes into force, set a time frame for the completion of seismic work on priority buildings within its district.
- (2) The time frame—
 - (a) must include the period of time, in relation to the date of an outcome notice, within which seismic work on priority buildings must be completed (the **completion period**); and
 - (b) may include different completion periods for particular buildings or classes of building.
- (3) A completion period—
 - (a) may be a period of less than 15 years after the date of an outcome notice; but
 - (b) must not exceed a period of 15 years after the date of an outcome notice.

133AZA Adoption and review of time frame

- (1) A time frame under **section 133AZ** must be set using the special consultative procedure in section 83 of the Local Government Act 2002.
- (2) A time frame may be amended or replaced only in accordance with the special consultative procedure.

133AZB Notification and availability of time frame

- (1) As soon as practicable after a territorial authority has set a time frame under **section 133AZ**, the territorial authority must—
 - (a) provide a copy of the time frame to the chief executive; and
 - (b) make the time frame available on the Internet in an electronic form that is publicly accessible at all reasonable times; and
 - (c) make the time frame available in printed form for purchase on request by members of the public.
- (2) A time frame set under **section 133AZ** is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

133AZC What territorial authority must do if time frame amended or replaced

- (1) This section applies if a territorial authority amends or replaces a time frame under **section 133AZA(2)**.

- (2) ~~**Section 133AZB** applies to the amendment or replacement with any necessary modifications.~~
- (3) ~~As soon as is reasonably practicable after the time frame is amended or replaced, the territorial authority must—~~
 - (a) ~~assess whether the deadline for completing seismic work on any building within its district has changed as a result of the amendment or replacement; and~~
 - (b) ~~if the deadline has changed,—~~
 - (i) ~~issue a seismic work notice in accordance with **section 133AN**; and~~
 - (ii) ~~remove, or require the owner of the building to remove, from the building any seismic work notice already attached to the building.~~

Methodology for identifying earthquake-prone buildings (EPB methodology)

- 133AZ Chief executive must set methodology for identifying earthquake-prone buildings (EPB methodology)**
- (1) ~~The chief executive must set a methodology for identifying earthquake-prone buildings (the **EPB methodology**) that specifies how territorial authorities are to—~~
 - (a) ~~identify the buildings or parts of buildings in their district that are potentially earthquake prone; and~~
 - (b) ~~determine whether a potentially earthquake-prone building or part of a building is earthquake prone and, if it is, its earthquake rating.~~
 - (2) ~~The methodology—~~
 - (a) ~~may specify buildings, parts of buildings, or classes of buildings or parts of buildings that are potentially earthquake prone; and~~
 - (b) ~~may specify a method for identifying buildings, parts of buildings, or classes of buildings or parts of buildings that are potentially earthquake prone; and~~
 - (c) ~~must specify the requirements for an engineering assessment of a building or a part of a building; and~~
 - (d) ~~must specify how a territorial authority may use engineering or other tests completed before the commencement of this section to determine whether a building or a part of a building is potentially earthquake prone or earthquake prone.~~
 - (3) ~~The chief executive must set the methodology no later than 1 month after the commencement of this section.~~
 - (4) ~~The methodology may incorporate material by reference in accordance with sections 405 to 413.~~

- (5) The chief executive may amend or replace the methodology at any time.
- (6) If the chief executive amends or replaces the methodology, **sections 133AZA and 133AZB** apply in respect of the amendment or replacement with any necessary modifications.

133AZA Consultation requirements for setting EPB methodology

- (1) Before setting the EPB methodology, the chief executive must do everything reasonably practicable on his or her part to consult territorial authorities and any other persons or organisations that appear to the chief executive to be representative of the interests of persons likely to be substantially affected by the setting of the methodology.
- (2) The process for consultation should, to the extent practicable in the circumstances, include—
 - (a) giving adequate and appropriate notice of the intention to set the methodology; and
 - (b) giving a reasonable opportunity for territorial authorities and other interested persons to make submissions; and
 - (c) giving adequate and appropriate consideration to submissions.
- (3) A failure to comply with this section does not affect the validity of the methodology.

133AZB Notification and availability of EPB methodology

- (1) As soon as practicable after the chief executive has set the EPB methodology, the chief executive must—
 - (a) notify territorial authorities that the methodology has been set; and
 - (b) publicly notify that the methodology has been set; and
 - (c) make the methodology available on the Internet in a form that is publicly accessible at all reasonable times; and
 - (d) make the methodology available in printed form for purchase on request by members of the public.
- (2) The methodology is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Miscellaneous

133AZC What territorial authority must do if definition of ultimate capacity or moderate earthquake amended

- (1) This section applies if the definition of ultimate capacity or moderate earthquake, as set out in regulations made for the purpose of **section 133AB** (meaning of earthquake-prone building), is amended or replaced.

- (2) As soon as is reasonably practicable after the definition is amended or replaced, a territorial authority—
- (a) must consider whether any decision that it has made under this subpart should be reassessed in the light of the changes to the definition; and
 - (b) may remake the decision.
- (3) **Section 133ATB(3) to (5)** applies if a decision is remade under this section.

24 Section 154 amended (Powers of regional authorities in respect of dangerous dams)

Repeal section 154(2).

25 Section 155 amended (Requirements for notice given under section 154)

Replace section 155(2)(e) with:

- (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the dam or the land on which the dam is situated; and

26 New section 169A inserted (Chief executive must monitor application and effectiveness of subpart 6A of Part 2 (earthquake-prone buildings))

After section 169, insert:

169A Chief executive must monitor application and effectiveness of subpart 6A of Part 2 (earthquake-prone buildings)

The chief executive must monitor the application of **subpart 6A of Part 2** and its effectiveness in regulating earthquake-prone buildings.

27 Section 175 amended (Chief executive may publish guidance information)

(1) In section 175(1)(b)(iii), after “practitioners”, insert “; and”.

(2) After section 175(1)(b), insert:

- (c) owners of buildings and members of the public in relation to the application of **subpart 6A of Part 2**.

28 Section 177 amended (Application for determination)

(1) In section 177(3)(f), replace “(which relate to dangerous, earthquake-prone, and insanitary buildings)” with “(which relate to dangerous, affected, and insanitary buildings)”.

(2) After section 177(3)(f), insert:

- (fa) any power of decision of a territorial authority under **subpart 6A of Part 2**, other than a power of decision under **section 133AW** (Territorial authority may carry out seismic work) or any of **sections 133AZ to 133AZC** (which relate to time frames for completing seismic work on priority buildings):

29 Section 181 amended (Chief executive may make determination on own initiative)

- (1) In section 181(1), replace “section 177” with “**subsection (4)**”.
- (2) Replace section 181(2)(a) with:
 - (a) may give a direction under subsection (1) either before or after a decision or a power that relates to the matter is made or exercised (as the case may be); and
- (3) After section 181(3), insert:
- (4) **Subsection (1)** applies in respect of a matter referred to in section 177.
 - (a) a matter referred to in section 177; or
 - (b) any power of decision of a territorial authority under subpart 6A of Part 2.

30 Section 216 amended (Territorial authority must keep information about buildings)

Repeal section 216(2)(b)(ivc).

31 Section 218 amended (Territorial authority must provide information to chief executive for purpose of facilitating performance of chief executive's function under section 169)

- (1) In the heading to section 218, replace “**section 169**” with “**sections 169 and 169A**”.
- (2) In section 218(1), after “etc)”, insert “and **section 169A** (which relates to monitoring the application and effectiveness of **subpart 6A of Part 2** (earthquake-prone buildings))”.

32 Section 222 amended (Inspections by territorial authority)

Replace section 222(1)(b)(ii) with:

- (ii) the purpose of determining whether the building is dangerous or insanitary within the meaning of subpart 6 of Part 2; or
- (iii) the purpose of determining whether the building or a part of the building is potentially earthquake prone or earthquake prone within the meaning of **subpart 6A of Part 2**.

33 Section 273 amended (Chief executive must keep registers)

- (1) After section 273(1)(aaa), insert:
 - (aab) a register of earthquake-prone buildings for the purposes of **subpart 6A of Part 2** (the **seismic capacity EPB register**);
- (2) After section 273(3), insert:

- (3A) The seismic capacity EPB register must be kept in a manner that enables territorial authorities, as well as the chief executive, to record and update information in the register.

34 Section 274 amended (Purpose of registers)

After section 274(a)(ia), insert:

- (iab) ~~in the case of the seismic capacity register, whether a building is earthquake prone, together with information about the building; and~~
- (iab) in the case of the EPB register, information relating to buildings or parts of buildings that territorial authorities have determined to be earthquake prone; and

35 New sections 275A and 275B inserted

After section 275, insert:

275A Content of seismic capacity register

- (1) The seismic capacity register must contain, for each building the seismic capacity of which a territorial authority assesses under **section 133AF**,—
 - (a) the address of, and any other details necessary to identify, the building; and
 - (b) the name of the territorial authority that made the assessment; and
 - (c) the date of the outcome notice; and
 - (d) the outcome of the assessment (that is, whether the building is earthquake prone); and
 - (e) if the building is earthquake prone,—
 - (i) whether the building is a priority building; and
 - (ii) the deadline for completing seismic work on the building (subject to **subsection (2)**); and
 - (iii) whether an exemption from the requirement to carry out seismic work on the building is in force under **section 133AS**; and
 - (iv) whether an extension of time for completing seismic work on the building is in force under **section 133AT** and, if so,—
 - (A) the deadline for completing the seismic work that applies as a result of the extension; and
 - (B) the deadline for completing the seismic work that would have applied if the extension had not been granted; and
 - (C) a summary of any conditions of the extension; and
 - (f) any information prescribed under **section 401C(d)**.
 - (2) However, **subsection (1)(e)(ii)** does not apply if—

- (a) an exemption notice is in force under **section 133AS**; or
 - (b) an extension of time for completing seismic work on the building is in force under **section 133AT** (in which case **subsection (1)(e)(iv)** applies).
- (3) The seismic capacity register must also contain, for each new building—
- (a) the address of, and any other details necessary to identify, the building; and
 - (b) the date on which a certificate was issued under section 95 for the construction of the building; and
 - (c) a statement that the building is not earthquake prone; and
 - (d) any information prescribed under **section 401C(d)**.
- (4) For the purpose of **subsection (3)**, new building—
- (a) means a building for which a certificate for the construction of the building is issued under section 95 on or after the day on which this section comes into force; but
 - (b) does not include any building that is used wholly or mainly for residential purposes, unless the building—
 - (i) comprises 2 or more storeys; and
 - (ii) contains 3 or more household units.

275B Restriction on public access to certain information on seismic capacity register

- (1) Despite section 273(2), the chief executive must restrict public access to any prescribed information in the seismic capacity register—
 - (a) if required to do so by regulations made under **section 401C(e)**; or
 - (b) if the chief executive considers that it is not necessary, or it is not desirable, for the information to be publicly available.
- (2) Despite **subsection (1)**, the chief executive may supply any information contained in the register—
 - (a) to an entity in the State services (within the meaning of the State Sector Act 1988) if the chief executive is satisfied that it is necessary or desirable for the entity to have the information to assist in the exercise of its powers or the performance of its functions under any enactment; and
 - (b) to any person, with the permission of the person to whom the information relates.

275A Content of EPB register

- (1) The EPB register must contain the following information for each building or part of a building that a territorial authority determines is earthquake prone:
 - (a) the name of the territorial authority that made the decision;

- (b) the address of, and any other details necessary to identify, the building or the part of the building determined to be earthquake prone;
 - (c) whether the building is a priority building;
 - (d) the date of the EPB notice issued for the building or part;
 - (e) the earthquake rating of the building or part, as determined by the territorial authority;
 - (f) the deadline for completing seismic work that applies under **section 133AL** or **clause 2 of Schedule 1AA** (unless an exemption from the requirement to carry out seismic work is in force under **section 133AS**);
 - (g) the details of any exemption from the requirement to carry out seismic work that is in force under **section 133AS**;
 - (h) the details of any extension of time for completing seismic work that is in force under **section 133AT**, including a summary of any conditions imposed by the territorial authority for the purpose of **section 133AT(4)(b)**:
 - (i) any information prescribed under **section 401C(d)**.
- (2) If the territorial authority is proceeding under **section 133AJ(2)** as if it had determined the building or the part of the building to be earthquake prone (because the owner has not provided an engineering assessment),—
- (a) **subsection (1)(e)** does not apply; and
 - (b) the register must contain statements to the following effect:
 - (i) that the territorial authority has not determined whether the building or part is earthquake prone, but is proceeding as if it had because the owner has not provided an engineering assessment; and
 - (ii) that the EPB notice issued for the building or part is in the form prescribed for the category of earthquake ratings that includes the lowest earthquake ratings (see **section 401C(a)**); and
 - (iii) that the earthquake rating of the building or part has not been determined.
- 275B Modification of chief executive's obligation to make EPB register available for public inspection**
- (1) This section applies to information that is required to be kept in the EPB register by regulations made under **section 401C(d)** (the **prescribed information**).
 - (2) Despite section 273(2), the chief executive need not make the prescribed information available for public inspection, or include the prescribed information in a copy of all or part of the register supplied to a person under that section, un-

- less the regulations require the information to be made available for public inspection.
- (3) However, the chief executive may supply any prescribed information contained in the EPB register to an entity in the State services (within the meaning of the State Sector Act 1988) if the chief executive is satisfied that it is necessary or desirable for the entity to have the information to assist in the exercise of its powers or the performance of its functions under any enactment.
- (4) This section does not limit the Official Information Act 1982.
- 36 Section 381 amended (District Court may grant injunctions for certain continuing breaches)**
- (1) In section 381(1)(b), delete “, earthquake prone.”.
- (2) After section 381(1)(b), insert:
- (ba) a building or a part of a building is earthquake prone in terms of **sub-part 6A of Part 2** and the territorial authority has failed to take appropriate action; or
- 37 New section 401C inserted (Regulations: earthquake-prone buildings)**
- After section 401B, insert:
- 401C Regulations: earthquake-prone buildings**
- The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that,—
- (a) define priority buildings for the purpose of **subpart 6A of Part 2**, for example,
- (i) buildings that could, if they were to collapse in an earthquake, impede a transport route of strategic importance in an emergency;
- (ii) buildings of particular significance in terms of public safety (for example, because of what may fall off or from them in an earthquake);
- (a) for the purpose of **section 133AK**,
- (i) prescribe categories of earthquake ratings;
- (ii) prescribe the form of EPB notice to be issued for buildings or parts of buildings in each earthquake ratings category;
- (iii) prescribe the form of EPB notice to be issued for a building or a part of a building to which **clause 2 of Schedule 1AA** (which is a transitional provision) applies;
- (b) prescribe the criteria for granting an exemption from a requirement to carry out seismic work on a building (see **section 133AS**);
- (b) prescribe the age, construction type, use, level of occupancy, location in relation to other buildings or building types, and any other characteris-

tics that a building or a part of a building must have for a territorial authority to grant an exemption under **section 133AS** from the requirement to carry out seismic work on the building or part:

- (ba) prescribe the criteria for determining whether a building alteration is a substantial alteration for the purpose of **section 133AX(2)(b)**:
- (e) prescribe the criteria for granting a building consent for an alteration to an earthquake-prone building, where section 112(1) would otherwise prevent a building consent authority from granting a building consent (see **section 133AX**):
- (c) prescribe the criteria that a territorial authority must take into account under **section 133AX(4)** (for the purpose of deciding whether to grant a building consent for the alteration of a building or a part of a building that is subject to an EPB notice if, after the alteration, the building or part will not comply with certain provisions of the building code):
- (d) prescribe information that must be kept on in the seismic capacity EPB register, and specify whether the chief executive is required to make that information available for public inspection (see **section 275B**).
- (e) specify any information prescribed under **paragraph (d)** to which the chief executive must restrict public access (see **section 275B(1)(a)**).

38 Section 402 amended (Regulations: general)

- (1) In section 402(1)(p), replace “122” with “**133AB**”.
- (2) After section 402(1)(p), insert:

(pa) defining ultimate capacity for the purposes of **section 133AB** (meaning of earthquake-prone building):

39 Section 405 amended (Incorporation of material by reference into regulations, certain Orders in Council, acceptable solutions, and verification methods)

- (1) In the heading to section 405, replace “**regulations, certain Orders in Council, acceptable solutions, and verification methods**” with “**certain instruments, solutions, and methods**”.
- (2) In section 405(4)(c), after “285”, insert “; and”.
- (3) After section 405(4)(c), insert:

(d) a methodology set under **section 133AG** for seismic capacity assessments;

(d) the EPB methodology set under **section 133AZ**.

40 New section 450A inserted (Application, savings, and transitional provisions relating to amendments to Act)

After section 450, insert:

450A Application, savings, and transitional provisions relating to amendments to Act

The application, savings, and transitional provisions set out in **Schedule 1AA**, which relate to amendments made to this Act after 1 January 2014, have effect for the purposes of this Act.

41 New Schedule 1AA inserted

Before Schedule 1, insert the **Schedule 1AA** set out in the Schedule of this Act.

Part 2**Amendment to Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005****42 Principal regulations**

This **Part** amends the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (the **principal regulations**).

43 Regulation 7 replaced (Earthquake-prone buildings: moderate earthquake defined)

Replace regulation 7 with:

7 Earthquake-prone buildings: moderate earthquake defined

- (1) For the purposes of **section 133AB** of the Act (Mmeaning of earthquake-prone building), **moderate earthquake** means, in relation to a building, an earthquake that would generate shaking at the site of the building that is of the same duration as, but that is one-third as strong as, the earthquake shaking (determined by normal measures of acceleration, velocity, and displacement) that would be used to design a new building at that site if it were designed on the commencement date.
- (2) In this regulation, **commencement date** means the day on which **section 23** of the Building (Earthquake-prone Buildings) Amendment Act **2013** (which inserts **subpart 6A of Part 2 of the Act**) **section 133AB** of the Act comes into force.

Schedule
New Schedule 1AA inserted

s 41

Schedule 1AA

**Application, savings, and transitional Transitional, savings, and
related provisions relating to amendments made to Act after 1**

January 2014 2015

ss 5A, 450A

1 Interpretation

In this schedule,—

amendment Act means the Building (Earthquake-prone Buildings) Amendment Act **2013**

commencement date means the day on which **section 23** of the amendment Act (which inserts **subpart 6A of Part 2**) comes into force.

2 Notices given under section 124 before commencement date

(1) This clause applies if—

(a) the outcome of a seismic capacity assessment of a building is that the building is earthquake prone; and

(b) before the commencement date, a territorial authority gave a written notice under section 124(2)(e)(i) (the **notice**) requiring work to be carried out on the building, within a time stated in the notice (the **time frame**), to reduce or remove the danger associated with the building being earthquake prone (the **work**).

(2) If the time frame exceeds 15 years after the notice is given, the notice is revoked on the issue of a seismic work notice for the building.

(3) If the time frame is, or is less than, 15 years after the notice is given, **subpart 6A of Part 2** applies as if the work were seismic work and as if the notice were a seismic work notice issued under that subpart, except that—

(a) **section 133AL** (which requires a territorial authority to issue a seismic work notice) does not apply; and

(b) if the building is a priority building, **section 133AO(2) and (4)** (which specifies the deadline for completing seismic work on priority buildings) does not apply.

2 Notices given under section 124 before commencement date

(1) This clause applies to a building or a part of a building if, before the commencement date, a territorial authority gave a written notice under section

- 124(2)(c)(i) (the **old notice**) requiring work to be carried out on the building or part, by a deadline stated in the old notice (the **old deadline**), to reduce or remove the danger associated with the building or part being earthquake prone (the **seismic work**).
- (2) If **subpart 6A of Part 2** does not apply to the building (see **section 133AA**), the old notice is revoked on the commencement date.
- (3) If **subpart 6A of Part 2** applies to the building,—
- (a) the territorial authority is deemed to have determined that the building or the part of the building is earthquake prone; and
 - (b) the territorial authority must, as soon as practicable after the commencement date,—
 - (i) issue an EPB notice for the building or the part of the building under **section 133AK**; and
 - (ii) record the details of the building or the part of the building in the EPB register and update other information in the EPB register as necessary (but the territorial authority need not record the earthquake rating of the building or part); and
 - (c) if the old deadline is earlier than the applicable deadline under **section 133AL**,—
 - (i) **section 133AL** does not apply; and
 - (ii) the deadline for completing the seismic work is the old deadline (subject to **subclause (5)**); and
 - (d) if the old deadline is on or after the applicable deadline under **section 133AL**,—
 - (i) the old deadline ceases to apply; and
 - (ii) the deadline for completing the seismic work is the deadline that applies under **section 133AL**; and
 - (e) until the territorial authority issues an EPB notice, the old notice must be treated as if it were an EPB notice issued under this Act.
- (4) For the purpose of **subclause (3)(c) and (d)**, the reference in **section 133AL(2)** to the date of the first EPB notice issued for the building or the part of the building must be read as if it were a reference to the date of the old notice.
- (5) If **subclause (3)(c)** applies to a building or a part of a building, the owner of the building or part may apply to the territorial authority for the applicable deadline under **section 133AL** to be applied instead of the old deadline, except that for this purpose **section 133AL** must be read as if the periods referred to in **section 133AL(2)** were measured from the date of the old notice instead of the date of the first EPB notice.

- (6) In deciding whether to grant an application under **subclause (5)**, the territorial authority must have regard to the particular circumstances and any guidance issued by the chief executive under section 175 for that purpose.
- (7) If a territorial authority grants an application under **subclause (5)**, the territorial authority must—
- issue or reissue (as applicable) an EPB notice for the building or part under **section 133AK**; and
 - record the details of the decision in the EPB register and update other information in the EPB register as necessary.
- 3 Policy adopted under section 131 before commencement date**
- This clause applies to a policy under section 131 (policy on dangerous, earthquake-prone, and insanitary buildings) that is adopted by a territorial authority before the commencement date.
 - To the extent that the policy applies to earthquake-prone buildings, the policy ceases to apply on the commencement date.
 - As soon as is reasonably practicable after the commencement date, the territorial authority must amend or replace the policy to remove references to earthquake-prone buildings.
 - Section 132 applies to an amendment or a replacement made under **subclause (3)**, except that the special consultative procedure in section 83 of the Local Government Act 2002 (*see* section 132(2)) does not apply unless the amendment or replacement materially affects the policy as it applies to dangerous and insanitary buildings.
- 4 What territorial authority must do after setting time frame under section 133AZ**
- ~~As soon as is reasonably practicable after setting a time frame under **section 133AZ**, a territorial authority must comply with **section 133AZC(3)(a) and (b)**, which applies as if the reference in **section 133AZC(3)(a)** to an amendment or a replacement of the time frame were a reference to the setting of the time frame.~~
- 4 Effect of certain references to parts of buildings**
- ~~The fact that provisions added to this Act by the amendment Act refer separately to buildings and parts of buildings does not limit or affect any other provision of this Act in terms of how that provision applies in respect of parts of buildings.~~