

Mayor and Councillors
COUNCIL

17 APRIL 2014

Meeting Status: **Public**

Purpose of Report: For Decision

SUBMISSION ON THE BUILDING (EARTHQUAKE PRONE BUILDING) AMENDMENT BILL

PURPOSE OF REPORT

- 1 This report outlines a draft Kāpiti Coast District Council submission on the Building (Earthquake Prone Buildings) Amendment Bill, for the Council's approval. A copy of the draft submission is attached as Appendix 1 to this report.

SIGNIFICANCE OF DECISION

- 2 This report does not trigger the Council's Significance Policy

BACKGROUND

- 3 The Government has recently introduced the Building (Earthquake Prone Buildings) Amendment Bill and referred this to the Local Government and Environment Select Committee for its consideration.
- 4 Submissions are being called for and are due by 17 April 2014. Officers have forwarded a copy of the draft submission which will be confirmed today with any changes made by Council.
- 5 The Bill introduces a number of significant changes to the Building Act 2004 and how it regulates building standards for the seismic strength of buildings. These build on the recommendations of the Royal Commission into the Christchurch earthquakes.
- 6 The Council has previously made a submission to the Ministry of Business, Innovation and Employment (MBIE) in March 2013 on the development of this Bill. The relevant parts of this submission are included in Appendix 2. The Bill has been drafted consistently with the earlier consultation documents from MBIE and this report proposes the Council's view remains similar to that which was provided in the consultation last year to MBIE.
- 7 There are a number of areas where it is proposed the Council should take a different view and these are highlighted in the attached submission to the Select Committee.
- 8 The amendments in the Bill include:
 - Requiring Councils to undertake a seismic capacity assessment of existing non-residential buildings and multi-storey and multi-unit residential buildings in their districts within 5 years;
 - Providing for a register of information on the seismic capacity of buildings to be held by MBIE;

- Clarifying the current 33% new building standard (NBS) threshold for defining an earthquake prone building, including that it applies to parts of buildings as well as whole buildings;
- Requiring work on existing earthquake prone buildings to be undertaken within a single national time frame—within 20 years of the legislation taking effect (ie, assessment by territorial authorities within five years and work completed within 15 years of assessment);
- Providing for work on priority buildings (these will be defined in regulations) to be prioritised and have shorter timeframes;
- Exemptions from requirements to undertake work for certain buildings;
- That owners of buildings classified as Category 1 Historic Places under the Historic Places Act 1993 may apply to the relevant territorial authority for an extension of up to 10 years to complete the work; and
- Enabling Councils (that are building consent authorities) to issue building consents for required work on buildings that are earthquake prone without requiring other upgrades (for access and facilities for people with disabilities and for means of escape from fire).

CONSIDERATIONS

Issues

- 9 This section highlights some key concerns officers have with the provisions of the Bill. The more detailed commentary is provided in the attached draft submission.

Definition of Building

- 10 The current definition of building in the Building Act 2004 includes such structures as bridges, retaining walls and monuments. To provide certainty for people wanting to know if they can continue to use such buildings, an amendment to the definition to remove such structures would be more effective than regulations that allow them to apply for exemptions. This report recommends the Council supports structures such as bridges, retaining walls and monuments being excluded from the definition of a building for the purposes of assessment and placing in the building register.

Timeframes and Seismic Strength

- 11 The introduction of a consistent national approach to earthquake prone building assessment, the 33% baseline level of assessment and the shorter timeframes proposed are supported in principle. However, the timeframes will be challenging for those councils like Kāpiti Coast with limited access to engineering resource.
- 12 Some building owners will struggle to meet these timeframes. They may not have the financial capacity to address this issue within the 15 year timeframe and in some cases the strengthening costs will outstrip the value of the building.
- 13 The blanket level of 33% NBS sets expectations that this is sufficient. Community resilience is a key concern beyond life safety, which has not been taken into account in setting the level at 33%.

- 14 The Council has previously supported the public availability of consistent building information on a national basis so there is a good understanding of the quality of NZ's building stock. It may be more realistic for this database to be of earthquake prone buildings only, given the significant volume of records to be maintained.

Priority Buildings and Heritage

- 15 The Council has previously supported the option to have shorter strengthening timeframes for priority buildings, with the proviso that the community also agrees or supports this as a public safety and resilience issue.
- 16 The draft submission proposes the Council agrees with owners of Category 1 Heritage Buildings being able to apply for an extension due to the cost and complexity in strengthening some of these buildings.
- 17 This does raise a question about local autonomy and being able to decide which buildings a community might like to allow more time to strengthen. The options set out in the Bill only apply to Historic Places Trust Category 1 buildings and not, for example, to heritage buildings in a District Plan.

Decoupling Fire Safety and Accessibility provisions

- 18 In the Council's previous submission, a statement was made that in some cases projects can trigger wider provisions of the Act, such as fire safety and accessibility, and this can be a barrier to earthquake strengthening. It is recommended the Council maintains its position and does not support the proposal to separate these provisions on the basis that other obligations on building owners e.g. fire safety should not be excused or avoided.

Processing Timeframes

- 19 It is proposed the Council does not support the establishment of an imposed timeframe (20 working days) for regulatory staff to process seismic performance reports. The processing will include working with owners to clarify seismic reports. Achieving this is dependent on the availability of both the owner's and the territorial authority's engineering advisors and may be difficult to achieve in the 20 days

Strengthening of parapets and other parts of buildings

- 20 It is recommended the Council supports prioritising the strengthening of parts of buildings such as parapets that do not perform well in earthquakes. This can improve life safety outcomes and can be relatively inexpensive to achieve.

Financial Considerations

- 21 When the proposed amendment to the Building Act 2004 is enacted, it is likely there will be a significant cost to the Council. The Draft 2014/15 Annual Plan includes budget provision of \$275,000 in the Building Control and Resource Consents activity. Further costs of up to \$475,000 per year (on current estimates) over a six year timeframe will be considered as part of the development of the 2015 Long Term Plan.
- 22 These changes will also affect the Council as a building owner. Once the proposed legislation is enacted, the Council will need to formulate a plan for assessment of buildings and identify subsequent strengthening works. This focus is reflected in the Draft 2014/15 Annual Plan statement for the Community

Facilities Activity. This will have financial implications and require consideration in the development of asset management plans and the 2015 Long Term Plan.

Delegation

23 The Council has the authority to make this decision.

Consultation

24 There is no need to consult on the issues discussed in this report. Local Government New Zealand has circulated a copy of their submission to the Bill and the draft Council submission generally supports their approach. Council officers have discussed the content of the draft submission with other Councils in the Wellington Region to give a regionally consistent approach to central government. The draft submission is generally in accordance with the Council's previous submission in March 2013.

Policy Implications

25 Currently Kāpiti Coast District Council has an Earthquake Prone Building Policy. The proposed Bill once enacted would remove this requirement from territorial authorities.

Tāngata Whenua Considerations

26 There are no known issues for consideration relating to iwi or the Treaty of Waitangi.

RECOMMENDATIONS

27 That the Council approves the submission to the Local Government and Environment Select Committee on the Building (Earthquake Prone Building) Amendment Bill as detailed in Appendix 1 of Report CS-14-1164.subject tp any changes made by the meeting.

Report prepared by:

Approved for submission by:

Claire Stevens

Tamsin Evans

Building Control Manager

Group Manager Community Services

ATTACHMENTS:

Appendix 1 - Submission to the Local Government and Environment Committee
Appendix 2 - Previous submission to Ministry of Business Innovation and Employment

Appendix 1

Secretariat
Local Government and Environment Committee
Select Committee Services
Parliament Buildings
WELLINGTON 6160

The Kāpiti Coast District Council submission on the Building (Earthquake – Prone Buildings) Amendment Bill

Thank you for the opportunity to make a submission on this Bill.

We have previously submitted to the Ministry of Business Innovation and Employment on the development of this legislation and the Council's position remains similar to that submission. We want to take this opportunity to restate our position in a number of areas. Overall the Bill presents a reasonable position for making New Zealand's building stock more resilient however we do not support some aspects of it.

The overall aim must be to set a realistic baseline which, as a country, we can move buildings across as quickly as possible to minimise the life and economic risk of these events. The Bill must enable building owners and local authorities to make realistic and robust decisions on whether buildings should be strengthened or replaced.

While we consider that the Bill achieves this, we also think that the successful implementation of the Bill is reliant on the Government considering the wider implications of the Bill and assisting building owners and Councils in implementing its provisions. We consider that there is a significant role for central government in this area to ensure that the strengthening of buildings is facilitated and not just regulated.

Definition of Building

The current definition of building in the Building Act 2004 includes such structures as bridges, retaining walls and monuments. To provide certainty for people wanting to know if they can continue to use such buildings an amendment to the definition to remove such structures would be more effective than regulations that allow them to apply for exemptions. The Council supports structures such as bridges, retaining walls and monuments being excluded from the definition of a building for the purposes of assessment and placing in the building register.

Timeframes and Seismic Strength

In principle, the Council supports the introduction of a consistent national approach to earthquake prone building assessment, the 33% baseline level of assessment and the faster timeframes proposed. However, the timeframes will be challenging for those councils like Kāpiti Coast with limited access to engineering resource.

Some building owners will struggle to meet these timeframes. They may not have the financial capacity to address this issue within the 15 year timeframe and in some cases the strengthening costs will outstrip the value of the building.

The blanket level of 33% new building standard (NBS) sets expectations that this is sufficient. Community resilience is a key concern beyond life safety, which has not been taken into account in setting the level at 33%.

The Council has previously supported the public availability of consistent building information on a national basis so that there is a good understanding of the quality of NZ's building stock. It may be more realistic for this database to be of earthquake prone buildings only given the significant volume of records to be maintained

Priority Buildings and Heritage

The Council supports the option to have shorter strengthening timeframes for priority buildings, with the proviso that their community also agrees or supports this as a public safety and resilience issue.

The Council agrees with owners of Category 1 Heritage Buildings being able to apply for an extension due to the cost and complexity in strengthening some of these buildings.

This does raise a question about local autonomy and being able to decide which buildings a community might like to allow more time to strengthen. The options set out in the Bill only apply to Historic Places Trust Category 1 buildings and not, for example, to heritage buildings in a District Plan. There are currently seven category 1 buildings in the Kapiti Coast District where this option would apply.

A National Building Database

We continue to support the public availability of consistent building information on a national basis so that there is a good understanding of the quality of NZ's building stock.

For this database to be effective, the data will need to be refreshed regularly as building work happens. This will impose a cost on any Council and will be new work that will be required on an ongoing basis to maintain its currency

It may be more realistic for this database to be of earthquake prone buildings only given the significant volume of records to be maintained. We believe that ultimately this database should be linked with the National Building Consent System.

Decoupling Fire Safety and Accessibility provisions

This Council's previous submission stated that in some cases projects can trigger wider provisions of the Act, such as fire safety and accessibility and this can be a barrier to earthquake strengthening. However, the Council continues to maintain its position and does not support the proposal to separate these provisions on the basis that other obligations on building owners e.g. fire safety should not be excused or avoided.

Any initiative to allow section 112 of the Act to be suspended for earthquake strengthening will require very clear guidance to ensure that this is used appropriately and cannot be used to avoid required building improvements and obligations to address accessibility or fire safety.

Processing Timeframes

The Council does not support the establishment of an imposed timeframe (20 working days) for regulatory staff to process seismic performance reports. Processing will require working with owners to clarify seismic reports. The availability of both the owner's and the territorial authority's engineering advisors and the criticality of their input may it difficult to achieve in the proposed timeframe.

Strengthening of Parapets and other parts of Buildings

The Council supports prioritising the strengthening of parts of buildings such as parapets that do not perform well in earthquakes. This can improve the life safety outcomes and can be relatively inexpensive to achieve

Wider issues for Central Government to Consider

The successful implementation of the provisions in the Bill is reliant on a number of wider issues also being considered.

The Bill by itself will not fully address the earthquake resilience of buildings in New Zealand. The following factors were included in our previous submission and we would recommend that the Select Committee consider these factors in their advice to Parliament.

- We would like to see an increased focus on information initiatives that assist building owners strengthening buildings rather than merely informing them of their current status. The largest issue that owners will face is how to address the strengthening issues, particularly if they own a heritage building.
- We consider that the relationship between the Building Act 2004 and the Resource Management Act 1991 (RMA) needs to be reviewed. These two Acts need to work together and a balance needs to be found between the wider provisions of the RMA and the life safety provisions of the Building Act. The relationship between these two pieces of legislation is key for the management of, in particular, earthquake prone heritage buildings where the most sensible outcome, on all accounts, is that the building is either demolished or potentially significantly modified through earthquake strengthening methods.
- There needs to be a proactive financial environment for owners to take action, either as incentives or the removal of financial barriers. Our view remains that there is public benefit from ensuring New Zealand can quickly recover from an earthquake and central government, on behalf of the public, should be prepared to invest to ensure that the country has the capacity to withstand these events. This could include;
 - The tax deductibility of earthquake strengthening with strengthening work to be completed within a set year timeframe; for instance;
 - A greater tax benefit could be weighted to strengthening to above 70% NBS which provides economic resilience;
 - A tax rebate or other financial incentive for seismic strengthening work on residential (private owner occupier) property classes.
 - Considering financial products that bridge gaps in the banking sector's risk and security requirements to allow better access to finance for property owners, particularly focussing on the period while buildings are being strengthened.

While we consider this Bill provides a realistic and acceptable baseline level, taking a national standards approach will remove local engagement on the issue. Community consultation has a place in ensuring a community has a clear understanding of the values of their area, both economically and also culturally in heritage buildings. This enables the community as a whole to make an informed decision about their priorities for earthquake strengthening. This approach could have enabled a community to set policies that would move beyond this baseline and consider the wider issues of economic resilience.

The proposed bill is aimed at a setting a life-safety benchmark and does not focus greatly on the resilience of local economies and the speed of recovery post event.

We need to recognise that the significant cost of strengthening buildings is diverting capital which might otherwise be invested in New Zealand's business sector and we need to create a financial environment which supports these businesses to do both – strengthen their buildings and also continue to reinvest in the business to provide long term growth in the economy.

Ross Church BCA, JP

MAYOR, KĀPITI COAST DISTRICT

Appendix 2

Relevant Sections of the Kapiti Coast District Council Submission to the Ministry of Business Innovation and Employment on Building Seismic Performance-March 2013

Compulsory seismic capacity assessment of buildings

Should local authorities be required to assess the seismic capacity of all buildings covered by the earthquake-prone building system in their areas and to issue seismic capacity ratings to owners?

In principle, Council is supportive of the introduction of a consistent, national approach to earthquake prone building assessment, the 33% baseline level of the assessment and the faster timeframes proposed in the consultation document.

It agrees that as a first step towards mitigating the risk of social and economic loss from a moderate earthquake, a complete assessment of the seismic capacity of the current building stock, must be completed.

It also agrees in principle that there is merit in the proposed new assessment process sitting within local authorities, as part of the implementation of processes under the Building Act.

The Council is concerned however that the consultation document is silent on who should pay the increased costs for undertaking the new assessment process; and the potential increased risk and liability for local authorities, especially in relation to the accuracy of information that will be held on the publicly accessible national database (and the reliance on this the public may have).

Under the current Building Act, Kāpiti Coast District Council has, to date, identified and undertaken only preliminary assessments of buildings. This does not include engineering assessment of the identified buildings. As such it is significantly less robust than the assessments undertaken by Wellington City Council, and is unlikely to constitute a *seismic capacity assessment or rating*.

The consultation document implies that the yet to be developed standardised rating methodology and scale will not be significantly different from the current assessment procedure undertaken by some local authorities. It also notes that this will be developed in consultation with relevant technical experts.

The term *seismic capacity rating* is not currently defined. We note that the Royal Commission recommendations on assessing existing buildings said the New Zealand Society of Earthquake Engineering initial evaluation procedure grading system is a generally sound process which should be considered in the development of the assessment methodology and grading system. That methodology requires expert knowledge of the underlying soil conditions and seismic engineering expertise which Council will need to obtain.

The ability to access engineering services will be challenging for Council when demand nationally is already high and the proposed tightening of compliance timeframes will mean these services may cost a premium.

Council agrees that resilient local building stock is essential for the local and national economy, but would be reluctant to see the total costs of identifying and rating earthquake prone buildings resting with ratepayers. The cost of the additional engineering, administrative and reporting functions Council is likely to incur under the proposals will in Council's opinion, place an additional and

unwelcome burden on local ratepayers. This comes at a time when government is proposing consideration of caps on rates and council service expenditure.

Do you think five years is a reasonable and practical time to require local authorities to carry out assessments in their districts?

The timeframe is supported for areas of high seismic risk such as Kāpiti and the greater Wellington region. The timeframe will however be challenging if additional resourcing is not available and if communities are unwilling to bear the costs.

It will require coordination, information sharing and leadership across councils, the provision of national information on risk and strengthening options for the public and building owners and a large pool of accessible engineering expertise.

Should unreinforced masonry buildings be assessed faster than other buildings?

Kāpiti building stock is relatively new compared to other areas and has considerably fewer unreinforced masonry buildings than some other older parts of the country. We agree with Wellington City Council, that given the scale of the risk of such buildings, this must be one of the building types that is given priority for areas of high seismic risk.

Other building types that Council considers need to be given priority are:

- those on strategic routes and essential for post recovery services after a moderate earthquake; and
- those where the Christchurch earthquakes have shown that particular hazardous elements are more likely to cause injury or death.

Public register

Do you agree that local authorities should be required to enter information on the seismic capacity of buildings into a publicly accessible central register to be managed by MBIE?

Council has assumed that a register would be to ensure national consistency of information recorded on earthquake prone buildings, and a centralised, publicly accessible database on the agreed seismic status of the buildings.

Subject to the previous comments on how seismic capacity assessment is funded, Council supports in principle having a national information registry of buildings that have been given a rating and have yet to have strengthening works undertaken. A national register, accessible by emergency response services, could facilitate more rapid information flows on the building stock both before and after a moderate quake.

However, whether a public register of information is the best tool to improve building resilience and public information about building risk, is less apparent. The areas Council believes need to be addressed before it can answer the question fully include:

- Will a public register change building owner behaviour about upgrading buildings?
- Would having a public register have an impact on the building valuation and how this may affect the financing available for strengthening works?

Council would be concerned if having a public register resulted in building owners not being able to access finance for upgrading and subsequently seeing demolition as the only viable option, especially in the case of heritage buildings.

- Would having a publicly accessible database be the most effective way to inform the wider public building status and what will it actually inform them of?
- Would those people who suffered injury or death in Christchurch have made different decisions if this register was available? In many cases, they were going about their daily business and a public register would not necessarily have changed the public's behaviour. Awareness and willingness to change behaviour may be high now but may diminish over time until public use of the register is minimal.
- Would the average member of the public have accessed the information had it been available? In practice, are individuals likely to access the register by smart phone application during an earthquake to gain information on their safety?
- Is the general public aware of what the earthquake prone strengthening threshold actually means even where a building has been strengthened to this level (i.e would they understand what the information on the register means? Are there more effective tools that would assist the public to understand the risks associated with specific buildings?
- What will the nature of the database be and how will it be administered to ensure quality and consistency of information? A national database will require standardised information – too much information and this could incur significant costs and regulatory burden on councils and too little and it may be of limited value for achieving the purpose that it is seeking to achieve.
- The timing of inclusion of information on any database. E.g. would seismic capacity information need to be entered once a building owner had been sent the information or at the point that they agreed with the assessment (and or any dispute resolutions was solved). That is, what is the correct balance between public safety and Council liability for not providing information on a register and the rights of building owners to seek independent review of the status of the assessment before it is on the public register?
- Whether it is the intention to remove buildings from the central register once they have been strengthened or for them to be retained on it? If they are to be retained, building owners may be concerned that this will still affect their ability to attract tenants once strengthening is done and it may inadvertently act as a disincentive for building owners to incur the cost of strengthening rather than demolition.

Should information other than the building's seismic capacity rating be entered into the register – for example, agreed strengthening actions or information from an agreed building ratings system?

Council's response to this again is dependent on what the purpose is of a publicly accessible central register and the extent to which it will inform public risk behaviour.

Different Councils have different seismic risk, resourcing and building stock. For smaller less well resourced Councils in high seismic risk areas, undertaking assessments and providing the basic information for any register will be challenging.

The more complex the information requirements, the more difficult it will be to maintain consistency, and the more costly it will be to maintain. For example, in practice, agreed strengthening actions may change over the course of a project, and having to enter all these changes into a national database will add to the administrative costs with limited (if any) benefit to reducing the level of potential public risk beyond that which has already been identified via the seismic capacity assessment.

Council also notes that if the register is public, any additional information would also be available to insurance and finance organisations. The type of information provided, its updating and removal may have unintended consequences for the insurance and financing of the buildings listed on it.

Council believes its focus will, and should be, on helping to facilitate strengthening of the local earthquake prone building stock to the agreed standards and not on complex or detailed reporting. Any additional information requirements beyond seismic capacity rating should only be considered for inclusion if there is clear demonstrable benefit to reducing public safety risk or incentivising building owners to undertake the work.

For potential building purchasers or occupiers requiring more detailed information to inform their decision making, building consents for agreed plans will be available on the individual property files and can be obtained through the existing Property Information or Land Information Memorandum processes.

Rather than a central register, should local authorities be responsible for both collecting and publishing this information?

A central register is preferred if the purpose is the provision of consistent national data on the status of earthquake building stock.

While we support the concept of Council's making information available to the public, for consistency the register needs to be managed by MBIE.

Should there be any other information disclosure requirements – for example, should building owners be legally required to display information on the building itself about the building's seismic capacity?

Council supports the consideration and assessment of all tools which may better inform the public of the risk related to earthquake prone buildings. As noted earlier however it should seek to focus on those that are actually likely to change public behaviour and awareness.

Council also notes that a single tool is unlikely to achieve this and unless consideration is given to how any new tools are implemented and the public educated about them, there is the potential for them to be misinterpreted and the risk misunderstood.

Other issues that we believe need to be considered as part of the information disclosure on buildings include:

- who is the intended audience of the information (occupants and visitors to the building or the general public walking past? - Where should the information be displayed?
- how often would this information need to be updated?
- what incentives are there for building owners to display a notice when it is not favourable for their building?

- should it become part of the Building Warrant of Fitness and be monitored by the council?
- if this information was displayed who would police it for accuracy? Who would pay for the compliance costs of ensuring that the information is displayed correctly?
- what if any enforcement tools may need to be made available to address persistent non-compliance?

What costs and other implications do you see resulting from the proposal to put seismic capacity information in a register?

As noted above, whether the purpose of a register is to ensure consistency of information or to inform public behaviour or is for other purposes will determine the actual cost and implications.

We believe most interest in the register is likely to come from commercial interests (banks, insurance and finance companies and the real estate industry) rather than the general public.

Who will use the register and how they will use it raises issues of:

- how often the register will need to be updated and the level and accuracy of the information held on it. Whether the cost of maintaining that level and accuracy of information justify the cost for the purposes it is being set up for;
- the potential risk and liability to local authorities undertaking the assessments and providing the information.

Other issues arising from a publicly accessible national register may include:

- that the public relies on the register as the sole source of information when making decisions around purchasing or tenancing a building, without more detailed understanding of the issues and risks;
- that insurers and financiers may begin to take greater account of the status of neighbouring properties and elevate how they determine the risks of neighbouring buildings that are not earthquake prone, e.g. increase the insurance premiums or require a greater level of security for financing on neighbouring buildings;
- for this database to be effective, the data may need to be refreshed on an ongoing basis. This will impose a cost on any Council. This Council sees this as being new work and we believe the level of enquiries will not diminish. Council believes enquirers will want to assure themselves that the data they need is absolutely current.

As noted above, we must consider who will have interest in such a register, whether the information can be maintained with sufficient accuracy to achieve the outcomes sought, and whether the cost of maintaining the information justifies this.

A mandatory national requirement

Does the current earthquake-prone building threshold (33 per cent of the requirement for new buildings) strike a reasonable balance between protecting people from harm and the costs of upgrading or removing the estimated 15-25,000 buildings likely to be below this line?

Yes, Council considers that if the focus of the proposed policy changes is aimed at a life-safety baseline, the national 33% baseline strengthening standard for earthquake prone buildings provides a reasonable balance between risk, cost and demolition.

The experience from Christchurch has shown that, if the focus is also on resilience of the local economy and speed of recovery post event, strengthening some strategic buildings to around 67% is prudent.

For this reason there are some strategically important buildings where Council believes that Government should be mandating a higher baseline, rather than giving the Council discretion to consult on setting a higher standard. These are buildings are those:

- located on transport routes identified as critical in an emergency; or
- with post earthquake recovery functions, such as civil defence centres and hospitals

The issues of the baseline standard for buildings on critical emergency routes or essential for post recovery functions is a national as well as local strategic issue. In Council's view the baseline for these types of building should nationally be raised to a 67% level.

By giving us the discretion rather than mandating, Government is passing the decision making (and potential public expectations on safety to council while avoiding the costs of doing this. For council's own assets our economy may recover faster if these assets are at 67%. Are ratepayers going to agree to a higher standard if it means higher rates to fund the works? They may be more likely to accept it if the national standard set for such assets is 67% than because Council says it is prudent.

Should the requirement for earthquake-prone buildings to be strengthened or demolished take precedence over all other legal, regulatory and planning requirements, such as those designed to protect buildings of heritage or local character?

Except where there is the possibility of catastrophic collapse, Council does not agree that strengthening or demolition of earthquake prone buildings should take precedence over all other legal and statutory requirements.

What is needed are legislative checks and balances to ensure that building owners are not allowed to undertake wholesale alteration or destruction of heritage buildings. Equally checks and balances to existing rules are needed to facilitate strengthening of key buildings as a viable alternative to demolition.

For example, Kāpiti District has recently proposed changes to our heritage rules that provide greater flexibility to undertake strengthening works.

Should local authorities have the power to require higher levels of strengthening than the earthquake-prone building threshold, or strengthening within shorter timeframes than the legally defined period?

Different communities have different strategic location, levels of seismic risk, and levels of earthquake prone building stock. Council believes that in addition to the baseline 33% standard (and 67% standard for strategic buildings as outlined in question 10) local authorities should have the discretion to introduce higher standards where communities seek this.

We understand that consumer demand, and market forces, are already driving higher strengthening standards for some buildings. e.g. financial institutions requiring strengthening to 80% for some buildings and some public agencies seeking at least 67% as part of tenancy requirements.

The situations where communities may want to seek higher standards include:

- buildings of higher importance or high- occupancy; or
- where public funding is to be contributed to building strengthening;
- where a heritage building has specific national or regional significance valued by the community and strengthening to 33% will not necessarily preserve the heritage values of a building in the event of a moderate earthquake.

This discretion would be addressed in the review of each council policy on the issue, in consultation with the wider community. For it to be effective consideration would also need to be given to the status the policy would have once implemented and the ability of local authorities to enforce it.

On the issue of whether local authorities should also have a discretion to seek shorter time frames for strengthening, Council's preference is that this be achieved through discussion and agreement with individual building owners.

Should certain features of unreinforced masonry buildings, such as chimneys and parapets, be required to be strengthened to a higher level?

We support the strengthening of high risk features to a higher level than 33% especially where these overhang or are adjacent to public land, footpaths or roads. Both the Gisborne and Christchurch earthquakes have shown these higher risk elements are likely to have a greater failure rate even when strengthened to 33% and that many of the public injuries that occurred were caused by these failures.

These higher risk elements include: chimneys, veneers, gables, parapets, cornices, canopies and ornamentation, water tanks, fire escapes, lift wells and facades.

Council is aware that other Council's are considering alternative technical solutions for replacement of such features with safer materials. Sharing of such information through a central government level education and advice service would be an efficient way to improve public safety from these hazards and would potentially reduce the costs for individual building owners.

Exemptions and time extensions

Should the owners of certain specified types of earthquake-prone buildings be able to apply to local authorities for exemptions or time extensions to the requirement to strengthen or demolish?

If yes, what are your views on the following possible criteria:

- **The building is used only by the owner, or by persons directly employed by the owner, on an occasional or infrequent basis**

- **The building is used only occasionally (less than eight hours per week) and by less than 50 people at any one time**

AND in each circumstance above

- **All users are notified that the building is likely to collapse in a moderate earthquake**
- **The building is not a dwelling**
- **The building is not a school or hospital and does not have a post-disaster recovery function**
- **There is no risk of the building partially or fully collapsing onto a public walkway, transport route or a neighbouring building or public amenity**
- **Effective mitigation measures have been put in place to protect building users from the risk of collapse in a moderate earthquake?**

The Council supports in principle this proposal which would allow for buildings with low public safety risk to be exempted from the strengthening provisions. The strengthening criteria will otherwise be onerous for many community based groups which have irregular use of their facilities and lesser ability to finance the upgrade.

Part of the aim of the government proposals is for improved consistency and implementation by local authorities of how earthquake prone buildings are dealt with. If an exemption process is provided, there needs to be an agreed national standard for processing of exemptions and recording of them so that they can be periodically reviewed if the circumstances change.

Local authorities should be able to recover costs for the processing of exemptions, including site visits and periodic reviews of exemption circumstances.

The council supports the proposed criteria under which exemptions might be granted. Council suggests that word 'hospital' in third criteria be widened. Most smaller urban and rural communities do not have hospitals, but do have healthcare and health services facilities which provide.

Strengthening and other Building Act upgrade requirements

Are current requirements to upgrade buildings to “as nearly as reasonably practicable” to Building Code fire and disabled access requirements a disincentive or barrier to owners planning to earthquake-strengthen existing buildings?

Should local authorities be able to grant building consents for earthquake strengthening without triggering the requirement to upgrade the building towards Building Code fire escape and disabled access and facilities requirements?

Should any change apply to both fire escape and disabled access and facilities requirements, or to disabled access and facilities requirements only, ie, retain the current fire escape upgrade requirements?

Within the Kāpiti district there is insufficient experience with strengthening works to be able to comment on whether the current provisions are a real barrier to strengthening work being undertaken.

Staff are aware that some building owners see the current upgrade requirements as a barrier to them altering buildings (regardless of whether

this is triggered by earthquake strengthening or other work). They also believe that for some building owners with limited financial capacity the total cost of the fire and access improvement works triggered by earthquake strengthening requirements is likely to be a factor in their decision to demolish rather than strengthen.

Council does not support decoupling. The current Building Act upgrade requirements were implemented for equally important and justifiable safety and accessibility reasons. It considers that decoupling or giving local authorities discretion to decouple, should not be considered without government first revisiting and consulting widely with advocacy groups on these issues.

It is expected that advocacy groups will have strong views in this area as it could be seen to be trading their rights off against earthquake strengthening objectives. Should MBIE proceed with the decoupling of provisions for fire safety and access under Section 112 of the Building Act it may raise concerns about their rights under the Bill of Rights Act.

Notwithstanding Council's view, if government decides that it will give local authorities discretion on the issue, MBIE needs to:

- develop with advocacy groups, clear criteria and guidance for councils on when it may be appropriate for strengthening works to be given priority; and
- make it clear in the legislation that it cannot be used to avoid required safety and accessibility modifications:

What would be the costs and other implications of de-linking earthquake strengthening from current Building Code fire and disabled access requirements?

Council has had insufficient time, information and resources to assess the costs prior to the closing date for submissions.

Heritage Buildings

When considering listing heritage buildings on district plans, what factors should local authorities consider when balancing heritage values with safety concerns?

Do heritage rules (for example, those in district plans) deter owners from strengthening heritage buildings?

Council has recently advertised its proposed District Plan. The likely need for earthquake strengthening of some of the heritage buildings listed in the plan was one of the factors considered in the development of proposed rules and as a result Council updated them to facilitate earthquake strengthening.

Some councils may argue for changes to the Resource Management Act 1991. In our view the Act does not need changing. If there is a need to address the type of consent required to strengthen a heritage building it could be done via a National Policy Statement within the existing Act framework - i.e government directed policy change

What assistance or guidance will be required for owners, local authorities and communities to make informed decisions on strengthening heritage buildings in their districts?

Council and building owners would be able to make more informed decisions if there is a national technical forum (including Historic Places Trust and BRANZ) that could develop and share national technical solutions and guidance on different building types, potential strengthening issues, solutions and suitable materials. It could also act as the source of advice on specific issues that arise during the seismic capacity assessment, and strengthening plan approval processes and could in future earthquake events assist with post earthquake decisions about specific heritage buildings.

Both organisations would need funding to undertake this, however the approach would be more efficient than individual building owners and territorial authorities having to source this information themselves.

What barriers deter heritage building owners from strengthening their buildings?

Council's experience in this area is limited, however it understands some of the key issues are:

- return on investment (cost of heritage/engineering advice and undertaking strengthening works) compared to rental return they would receive – especially when many heritage buildings have unique floorspace or other features which may limit their potential use.
- Complexity of currently recognised strengthening techniques which also retain the character/heritage features of the building.
- Ownership of buildings e.g. halls owned by community trusts who have difficulty accessing finance. These buildings may be used for more than 50 people so would not fit under the exemption criteria proposed

What are the costs and benefits of setting consistent rules across the country for strengthening heritage buildings?

Council is cautious about the idea of having one set of rules that would apply to all heritage buildings. Local variations in the built environment, building stock and heritage values form part of our cultural heritage. Setting of consistent rules could significantly affect this.

Dependent on the nature and type of consistent rules there would also potentially be a large cost to enact such provisions with uncertain benefits from a “one size fits all” policy, as opposed to individual councils and communities working through what is right for their specific built environments.

Council does support having a centralised source of information on strengthening heritage buildings as this would support building owners, communities and local authorities make informed and balanced decisions and could take some uncertainty and variability out of the process without the need to introduce specific nationwide rules.

Are you aware of any problems with current policy and practice around earthquake-prone buildings, other than those identified in this document?

The role of the Earthquake Commission.

We understand that the Government is undertaking a review of the Earthquake Commission (EQC) its function, funding and future role. The Government needs to consider whether the role of EQC should in part become preventative, assisting in the strengthening of buildings rather than funding insurance costs after the event.

The Foreword to the consultation document discusses striking an acceptable balance between protecting people from serious harm and managing the huge economic costs of strengthening or demolishing earthquake prone buildings. Council agrees with the approach but notes that changes to the regulatory framework alone will not improve the earthquake resilience of the building stock in New Zealand.

In parallel, consideration is also needed about what will encourage building owners to undertake work. Council understands that two of the barriers many building owners face is satisfying the current risk and security requirements lending institutions place on access to finance and difficulties obtaining cost effective insurance.

There are a range of provisions which complement the proposed changes to the earthquake prone building system which Council believes central government needs to give urgent consideration to if the outcomes are to be achieved.

These include consideration of:

- how to improve access to funds for strengthening works - including consideration of risk sharing models for the period of strengthening and alternative options for providing security to banks for lending
- alternative insurance options for property owners and banks during and after strengthening works,
- the tax treatment of strengthening works. e.g.
 - tax deductibility for strengthening works during and for a period after then have been done;
 - additional incentives being given for strengthening to higher standards;
 - options for spreading the tax for strengthening costs.