

**MAYOR AND COUNCILLORS
COUNCIL**

7 MARCH 2013

Meeting Status: **Public**

Purpose of Report: For Decision

**SUBMISSION TO THE MINISTRY OF BUSINESS, INNOVATION
AND EMPLOYMENT ON BUILDING SEISMIC PERFORMANCE**

PURPOSE OF REPORT

1. The purpose of the report is to seek approval for the submission (Appendix 1) to the Ministry of Business, Innovation and Employment (MBIE) on its proposals to improve the New Zealand earthquake-prone building system.
2. The submission is due to be received by MBIE on 8 March 2013.

SIGNIFICANCE OF DECISION

3. The Council's Significance Policy is not triggered by the report.

BACKGROUND

4. The Royal Commission on the Canterbury earthquakes made a number of wide ranging recommendations, including bringing residential buildings within the scope of earthquake strengthening requirements, prioritising strengthening of unreinforced masonry buildings, and allowing councils, in consultation with their communities, to require shorter timeframes or higher seismic defined classes of buildings.
5. The Government has reviewed the Royal Commission's recommendations and released a consultation document which proposes to increase the seismic strengthening requirements in the Building Act 2004 but does not go as far as the recommendations of the Royal Commission.
6. The consultation document will form the basis of both the Government's response to the Royal Commission and the changes it will subsequently introduce to the earthquake prone building provisions of the Building Act 2004. No timetable has yet been publicly given for this legislative change.
7. The key proposals the Government is considering in the consultation document are that:
 - local authorities would be required to make a seismic capacity assessment of all non-residential and multi-unit, multi-storey residential buildings in their districts within five years of the legislation taking effect, using a standard methodology developed by central government, and to provide the resulting seismic capacity rating to building owners. An owner could have their building's seismic capacity rating changed by commissioning their own engineering assessment;

- assessments and strengthening would be prioritised faster for certain buildings (eg, buildings on transport routes identified as critical in an emergency);
 - building information would be entered onto a publicly accessible register maintained by MBIE;
 - the current national earthquake-prone building threshold (one-third of the requirement for new buildings, often referred to as 33% of the New Building Threshold (NBS) would not be changed. However, it is proposed to establish a mandatory national requirement for all buildings to be strengthened to above the current threshold, or demolished, within a defined time period;
 - all earthquake prone buildings would be strengthened or be demolished, within 15 years of the legislation taking effect (up to five years for local authorities to complete seismic capacity ratings, followed by 10 years for owners to strengthen or demolish buildings);
 - owners of buildings assessed as earthquake-prone would have to submit a plan for strengthening or demolition within 12 months;
 - certain buildings could be exempted or be given longer time to strengthen, eg, low-use rural churches or farm buildings with little passing traffic;
 - central government would have a much greater role in guiding and supporting local authorities and building owners, as well as in public education and information;
8. The consultation document also asks for feedback on some of the Royal Commission recommendations that differ from the government proposal and other matters that the Royal Commission raised. These include:
9. Royal Commission Recommendations
- *That local authorities be able to require strengthening of hazardous elements in residential buildings. Most residential buildings are not currently covered by the earthquake prone building system.*
 - *That local authorities be given the option of requiring strengthening to be done faster and/or to a higher standard than those set by central government, after consulting with communities under the Local Government Act.*
10. Other matters that are currently outside of the earthquake-prone system
- *Whether the current Building Act fire escape and disability upgrade requirements are, in practice a barrier to building owners deciding to carry out earthquake strengthening work. Whether those provisions in the Building Act should be decoupled from the earthquake strengthening requirements.*
 - *How important heritage buildings can be preserved, while also being made safe.*
11. The draft submission on the proposals (Appendix 1) responds directly to the questions MBIE asks in its consultation document. In some areas the consultation document is silent on an issue (e.g. funding for implementing and resourcing the changes) or has very little detail. The draft submission reflects the issues this raises.

CONSIDERATIONS

The underlying policy setting of the MBIE document

12. The MBIE consultation document covers a range of interrelated issues that seek to balance different community objectives. This includes the need to strengthen buildings to avoid the economic and social costs that Christchurch has incurred, while also balancing the community and building owner's ability and willingness to pay.
13. The proposed setting of a national assessment methodology, timeframe and strengthening standard strikes a reasonable balance between protecting people from injury, building owners incurring strengthening costs disproportionate to the risk of earthquake and reducing the national and local economic costs that future earthquakes could incur. It will provide for consistent national assessment and rating of similar buildings and hazards in areas of similar seismic risk.
14. The establishment of a 33% strengthening baseline for earthquake prone buildings is consistent with the approach currently taken by Council. This is the level related to the risk of injury or harm in a moderate earthquake.
15. A higher baseline for all earthquake prone buildings would incur significant costs to the national and local economy and is supported in principle in the draft submission. Experience from Christchurch has shown however, that setting a higher level of 67% for buildings which have strategic importance for emergencies and post recovery is more likely to reduce the social and economic costs of an earthquake to the local and national economy.

What the implication of the main Government proposals will be for the Council's current policy

16. Under the current system, the Building Act 2004 gives local authorities the power to identify and require strengthening or demolition of earthquake-prone buildings. The earthquake prone building system covers all non-residential buildings and multi unit, multi storey apartment buildings that are two or more stories and have three or more household units. Local authorities must develop their own policies for dealing with earthquake prone buildings.
17. Council's existing policy on Earthquake Prone Buildings was developed in 2006 (and was due for renewal in 2012). An initial assessment of Kāpiti's earthquake prone building stock, undertaken after the policy was developed, identified approximately 600 buildings that were likely to fall within the scope. While the district is identified as a zone of high seismic activity, the building stock is either relatively modern or consists of older timber framed buildings (pre 1976) up to two storeys in height. In the initial assessments carried out to date, no buildings were identified as likely to be at catastrophic risk of collapse.
18. Under the current Building Act and Council policy, building owners of identified buildings are then required, once notified, to carry out detailed assessments of their seismic capacity and then to either undertake strengthening or demolition.
19. The failure of a number of 'modern' buildings in the Christchurch earthquakes, raised issues of both the importance of understanding the structural performance

of all existing buildings and whether the existing seismic capacity and strengthening requirements needed to be reassessed.

20. Council decided to wait for the outcomes of the Royal Commission before reviewing its policy, undertaking more detailed assessments and reviewing whether additional buildings might now be subject to the Building Act requirements. This has been prudent, as the issues raised by the Royal Commission show that the risk assessment standard and methodologies local authorities have used have not been consistent. The Commission recommended the need for the development of national standards and methodologies to address this. The Government proposal picks up these recommendations.
21. If adopted, the government proposals will mean that local authorities, will now be required to carry out a *seismic capacity assessment* of all potential earthquake prone building stock, (using a methodology to be developed by government) within 5 years of the legislation taking effect. Building owners will only be able to have this changed by commissioning their own engineering report. All assessments will be entered by Council into a national register kept by MBIE. Once a building has been assessed, building owners will have 12 months to submit a plan to the Council, for strengthening or demolition of the building and any strengthening work (or demolition) must be carried out within ten years.

Implementation of a national register

22. The proposal to have a MBIE managed, publicly accessible, national register of all earthquake prone buildings is supported in principle. However, much of the detail to go on the register and the frequency with which a council must maintain its information has yet to be worked out. It is also not clear whether it is the most appropriate tool to deliver some of the intended outcomes. The level of risk and cost to Council of entering and maintaining data in the proposed public database will depend on detail.

Areas recommended for inclusion in the government proposals

23. The consultation document focuses on proposed changes to the regulatory framework. It is largely silent on other complementary measures and tools that might assist building owners to undertake strengthening works. These include advice on specific strengthening techniques and options, and consideration of financial instruments to facilitate access to cost effective finance and insurance.
24. Without consideration of some of these wider tools, building owners in the district may struggle to come up with economically viable options to strengthen within the proposed timeframes. If as a result, they consider demolition to be their only other option, there could be a significant impact on both the local economy and visual amenity of the townships that make up the district.

Other issues MBIE is seeking comment on

That local authorities be able to require strengthening of hazardous elements in all residential buildings.

25. Under the existing earthquake prone building system, multi unit, and multi storey apartments buildings that are two or more storeys and have three or more household units are the only residential buildings covered by the earthquake prone building system. The focus to date has been on those buildings that have the potential for high numbers of occupants. To include the hazardous elements (e.g chimneys) of all residential buildings would be a shift of the Government

policy focus, and would require that individual homeowners strengthen or remove these aspects.

26. Staff do not believe the known risk of injury and harm warrant the mandatory inclusion of all residential buildings in the Building Act earthquake prone building provisions, at this stage. Council staff believe that rather than extend the regulatory provisions, central government should provide the public with information on these hazards and strengthening options. Owners can then choose whether they wish to reduce any potential risk on their own residential properties.
27. It is also noted that Council's resources (and strengthening experts) will be fully stretched implementing the proposed new methodology and timeframe to the requirements for the existing earthquake prone buildings without extending the provisions to residential buildings.

That local authorities be given the option of requiring strengthening be done faster and/or to a higher standard than those set by central government, after consulting with communities under the Local Government Act.

28. The draft submission recommends that a higher national standard should be considered for those buildings critical in emergencies or for post recovery functions.
29. It also supports Council being given the discretion to consult with the community about whether there are local circumstances which warrant Council consideration that a higher standard also be applied to other buildings. For example, after the Gisborne quake, the Council implemented a 67% standard in response to community concerns. Council support of the discretion is consistent with Local Government New Zealand and other local authorities who have stated that this option should be included in the proposed changes especially where earthquake risk is high. It should be noted that some finance companies and banks already will not lend money for earthquake strengthening works for some buildings unless they meet standards up to 80%.
30. The key issue for communities that seek a higher standard or tighter timeframe is that while the desire for a higher safety standard comes from the wider community, the costs of undertaking this work lies with the building owner. As a result, a higher standard may increase the number of building owners who choose to demolish rather than strengthen.

Whether the current Building Act fire and disability upgrade requirements are, in practice, a barrier to building owners deciding to carry out earthquake strengthening work and should be decoupled.

31. Within the 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.
32. Staff are aware that some building owners see the current fire and disability upgrade requirements as a barrier to them altering buildings (regardless of whether this is triggered by earthquake strengthening or other work). The current upgrade requirements however, were implemented for equally important safety and accessibility reasons. Decoupling or discretion to decouple these provisions, should not be considered without also revisiting and consulting on these reasons and establishing agreed criteria as to when it may be appropriate for strengthening works to be given priority.

How important heritage buildings can be preserved while also being made safe.

33. There is a large range of issues when considering how to strengthen and retain different types of heritage buildings. One of the key issues is that the 33% strengthening standard is a safety standard related to potential risk of injury or harm. It has no linkage to the preservation or retention of heritage features. Even buildings that meet the 33% strengthening standard may suffer substantive structural or heritage damage in a moderate earthquake. Damage that could result in the heritage building or its features, being demolished.
34. While each heritage building is unique, many of the structural strengthening and material concerns are similar. The draft submission suggests that central funding of joint projects between organisations such as the Building Research Association of New Zealand (BRANZ) and the Historic Places Trust to develop and share information would assist building owners.
35. The draft submission also notes that Council has recently included flexibility in the proposed district plan heritage rules to facilitate strengthening and retention of those buildings that are earthquake prone.

Financial considerations

36. The proposed MBIE policy would extend the regulatory functions of Council. The Council would be required to undertake new seismic capacity assessments for all buildings that fall under the earthquake provisions of the Building Act, as well as providing for tighter controls and timeframes around strengthening.
37. If the proposals proceed to legislation, this will signal increased regulatory obligations for local government. Obligations which will not be popular with some of the affected building owners.
38. The document is also silent on who funds these increased obligations. Unless central government agrees to invest to reduce the risk for future national economic losses, the cost will fall on local ratepayers. This is likely to be unpopular with ratepayers.
39. At this preliminary stage, much of the implementation details for the proposed changes are yet to be developed and the extent of the additional resources that Council will require cannot be fully assessed.
40. In the absence of an agreed national standard, we can only estimate the costs at this stage based on current hourly rates for staff and consultants. A preliminary assessment of the additional regulatory processing costs for Kāpiti of raising the existing Kapiti assessment to an assessment methodology equivalent to the Wellington City Council system)
41. The notification of building owners and the receiving of seismic strengthening plans would be done progressively. After the first 12 months there would also be additional costs for engineering input into the assessment of engineering plans, compliance costs and administrative costs related to the proposed reporting requirements

Estimate of costs over a 5 year period (conservative)

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|--|--------------------|
| • Seismic Capacity Assessment (over 5 years) ¹ : | |
| 90% of 550 properties [\$1,000 per assessment] | \$495,000 |
| 10% of 550 properties [\$6,000 per assessment] (includes administration, building staff, engineering staff and provision and updating of basic information provided to MBIE for national database) | \$ 330,000 |
| • Dispute resolution (2-3% of total assessments) | \$ 90,000 |
| • Engineering assessment of strengthening plans | \$200,000 |
| [received within 12 months of Seismic capacity assessment so will be over 5 years from years 1-6 – assumes that 60% will choose to strengthen rather than demolish and each assessment requires 2 days engineering advice i.e 2.5 days per week of an FTE @\$155K (inc OH) for 5 years | |
| <u>Total</u> | <u>\$1,115,000</u> |

Plus estimated additional cost over the 15 year period

| | |
|--|--------------------|
| • Cost of establishing and maintaining internal Council systems for input into the national database – including to building warrant of fitnesses (or similar) [s10k to set Up, ½ FTE (\$70K pa for 5 years (incl OH) and 0.25 FTE for 10 years] | \$325,000 |
| Additional building inspection costs - engineering advice [confirming work carried out is in compliance with agreed consent – over 14 years] Assumes 60% of buildings will be strengthened rather than demolished. Of those 90% (297) are lower risk @\$1,000 per building and 10% (33) at \$6,000 per buiding] | \$495,000 |
| • Additional compliance costs (over 14 years) That work is being undertaken in accordance with timeframes in Act and agreed with council in the approved strengthening plans [1 FTE At 70K (inc OH) per annum] | \$1,000,000 |
| <u>Total</u> | <u>\$1,820,000</u> |

Total estimated additional regulatory processing costs \$2,935,000
(Over 15 years)

Indirect costs could include potential changes to council insurance liability premium costs.

42. What is also unknown at this point is the cost of implementing a national register if it requires more than basic information or frequent updates, and the impact if the scope of the Act is widened to include other buildings. If adopted these will

¹ NB: this excludes costs of landowners disputing the ground conditions that are shown on LIMs as hazard information is improved and updated (and subsequently used in individual seismic capacity assessments).

be also be managed and delivered by local government and costs are, again, likely to fall on ratepayers.

43. The economic and social impact of an earthquake is both national and local. Arguably the benefit of a resilient building stock would offset this impact. The draft submission suggests that national funding should be considered to realise this benefit.
44. If the proposals proceed without national funding, there will need to be changes to regulatory activity budgets to:
- cover the new seismic capacity assessment process;
 - manage the inputs to the national register; and
 - manage negotiations with building owners as they proceed through the strengthening requirement process.
45. When implemented, the final proposals will also apply to Council as a building owner. At this stage there is no immediate financial consideration or impact on the long term plan. Once any legislative change is initiated however, Council will need to complete seismic capacity assessments and reassess the timing of upgrading or replacing of any of its affected assets to comply with the new timeframes. This may have financial implications and require changes to Annual and Long Term Plans.

Legal Considerations

46. There are no legal implications arising from the approval of the draft submission.

Delegation

47. Council has the authority to make this decision.

Consultation

48. Experience in Kāpiti with earthquake prone buildings is limited and wide ranging consultation with property groups has not been undertaken in the time available. Other Councils who are more advanced in their knowledge and implementation of earthquake strengthening issues have shared their knowledge and experience with staff who have developed this submission.
49. Informal discussions were held with the Disability Reference Group about the Government suggestion to decouple some of existing requirements in the Building Act. They were not supportive of the Government proposal. This is reflected in the draft submission.

Policy Implications

50. If the proposals proceed they would require significant change to the Council's Earthquake Prone Building Policy. The policy was due for renewal in 2012 and has only been deferred pending the Government response to the Royal Commission of Inquiry.

Tāngata Whenua Considerations

51. There are no Tāngata Whenua issues arising from this report.

Publicity Considerations

52. Media nationally are showing an interest in the views of local authorities on the government proposal. A press release is being prepared on the Council response in anticipation that local media will pick up on the issue.

CONCLUSION

53. The proposals to improve the performance of the current earthquake prone building system seek to strike an acceptable balance between protecting people from serious harm and managing the huge economic cost of strengthening or removing the most vulnerable buildings. While nobody would disagree that keeping people safe is important, it comes at a price to the community. The changes proposed by MBIE would impose new costs on communities and further broaden the functions of local authorities.

54. The cost of doing business would also be increased through introduction of regulations, processes and administration.

RECOMMENDATIONS

55. It is recommended that Council *approve* the submission to the Ministry of Business, Innovation and Employment on “*Proposals to improve the New Zealand earthquake-prone building system*” contained in Appendix 1 of report CS-13-805, subject to any changes made by Council.

Report prepared by:

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ATTACHMENTS:

APPENDIX 1

Draft Submission to the Ministry Of Business, Innovation and Employment on “Proposals to Improve the New Zealand Earthquake-Prone Building System.”