



**Local councils
play an active
role in keeping
our communities
safe.**

Building (Earthquake-prone Buildings) Amendment Bill

Local Government New Zealand submission to the Local Government and Environment Select Committee

17 April 2014

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Introduction

Local Government New Zealand (LGNZ) welcomes the opportunity to submit on the Building (Earthquake-prone Buildings) Amendment Bill. LGNZ represents the national interests of local authorities in New Zealand. We provide advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

LGNZ is a member based organisation representing all 78 local authorities. Our governance body is the National Council, the members of which are:

- Lawrence Yule, President, Mayor, Hastings District Council
- John Forbes, Vice-President, Mayor, Opotiki District Council
- John Carter, Zone 1, Mayor, Far North District Council
- Penny Webster, Zone 1, Councillor, Auckland Council
- John Tregidga Zone 2, Mayor, Hauraki District Council
- Jono Naylor, Zone 3, Mayor, Palmerston North City Council
- Adrienne Staples, Zone 4, Mayor, South Wairarapa District Council
- Richard Kempthorne, Zone 5, Chair, Tasman District Council
- Tracy Hicks, Zone 6, Mayor, Gore District Council
- Len Brown, Metro Sector, Mayor, Auckland Council
- Dave Cull, Metro Sector, Mayor, Dunedin City Council
- Stuart Crosby, Metro Sector, Mayor, Tauranga City Council
- Brendan Duffy, Provincial Sector, Mayor, Horowhenua District Council
- Stephen Woodhead, Regional Sector, Chair, Otago Regional Council
- Fran Wilde, Regional Sector, Chair, Greater Wellington Regional Council.

LGNZ makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand. Reflecting the widespread concern about the proposals in this Bill, many councils have also chosen to make individual submissions. The LGNZ submission in no way derogates from these individual submissions.

This submission was prepared following an analysis of the proposed amendments, discussion and feedback from local government officials and technical experts, and analysis of feedback from councils on a draft submission.

Local Government New Zealand wishes to appear before the Local Government and Environment Committee to present this submission.

Summary of key issues and recommendations

1. Local authorities support a more finely tuned approach to the management of buildings that are a risk in an earthquake. For many communities, the consequences of the proposals in the Bill outweigh the potential consequences of an earthquake. Keeping people safe is important, however the emphasis of the present proposals on life safety (as required by the Building Act), in the absence of broader economic and social factors, is too narrow.
2. Rural and provincial New Zealand, where business districts are dominated by older buildings, carries a disproportionate burden of the economic and social impact of these proposals. Resources to upgrade these buildings (engineers, builders and funds) are limited and the users of the buildings may be more concerned to retain the convenience of services in their town than the risk of personal harm in an earthquake.

3. The building code currently addresses the probability of an earthquake. We believe that the legislation could equally address the variability of the potential impact around the country, similar to the dam safety policy regime i.e. a risk based approach taking into account both the potential for an earthquake and the potential consequences of an earthquake.
4. LGNZ supports prioritising parts of the country where the seismic risk is greatest, Wellington for example, where the consequences to life and the economy, of a damaging earthquake would be significant locally and nationally.
5. Prioritising parts of buildings that are least likely to perform well in an earthquake such as parapets and verandahs is widely supported by territorial authorities. Rather than dispersing effort across all buildings everywhere, focus on the parts of buildings that pose the greatest risk to life; the collapse of parapets and verandahs which in turn down facades. Excluding the PGC and CTV buildings the majority of other deaths in Christchurch were caused by the failure of parts of buildings.
6. LGNZ also seeks clarification of the definition of a building (as applied to earthquake-prone building policy) to exclude structures that are not meant for occupancy by people. Clause 133AS enables building owners to apply for an exemption from seismic work on a building “where the consequence of a failure of the affected building is low¹”. We believe the application for exemption is intended for low use buildings eg rural churches. An amendment to the definition of building (as it pertains to earthquake prone buildings) would be more efficient in providing certainty for people wanting to know if they can continue to use such buildings.
7. The aim should be to maximise the overall fitness and resilience of communities to handle disruption from earthquakes viewed from both a local and national scale.

Recommendations:

- a) AMEND the definition of a building as it applies to earthquake prone buildings policy, to exclude structures not intended for occupancy by people.
- b) LGNZ recommends that the responsibility for carrying out seismic assessments should fall on the owners of the building, including Government, with an obligation to provide that information to Territorial Authorities and the National Register.
- c) AMEND Clause 133 AF (2), new clause (c) “the territorial authority may impose a fee to recover reasonable costs of seismic assessments” to make provision for cost recovery of seismic capacity assessments.
- d) LGNZ SUPPORTS the provision for consultation with territorial authorities before the seismic capacity methodology is set (or amended).
- e) LGNZ recommends that assessments undertaken under the current methodology, the Initial Evaluation Procedures (IEPs) and Detailed Engineering Evaluation (DEE) are deemed compliant with the methodology and no further assessment of these buildings is required.
- f) LGNZ recommends the addition of a clear statutory obligation for the Chief Executive to undertake (and make available), an assessment of the likely costs and practicality of implementing any methodology or amendments to the methodology.
- g) LGNZ strongly recommends that the regulations for the Bill are developed as soon as possible to enable the Select Committee to consider the implications (for building owners, local authorities and communities) of the Bill in its entirety, before reporting.
- h) Funding for the implementation and on-going costs of the national register must be met by central government.
- i) SUPPORT Clause 133AE (1)(a) the application of territorial authority powers and functions to a part of building that is earthquake-prone.

¹ Cabinet Minute of Decision (13) 26/7: Improving the System for Managing Earthquake-prone Buildings.

- j) AMEND Clause 133AO(1) to read the owner of an earthquake building or a building where parts of the building are deemed earthquake prone must complete seismic work before the deadline specified in this section.
- k) AMEND Clause 133AO with the addition of another clause for parts of buildings to read the owner of a building must complete seismic work on parts of buildings on or before the expiry of 5 years after the date of the outcome notice for main centres and no later than 10 years for other areas.
- l) Provide a greater distinction between priority buildings and parts of buildings.
- m) LGNZ supports Clause 133 AX which provides territorial authorities with the power to grant consent for the alteration of buildings, while noting that this decision making role is not consistent with the majority of proposals in the Bill which remove the local decision making role.
- n) LGNZ supports proposals in the Bill enabling territorial authorities to manage life safety risk and the potential loss of valued heritage buildings through exemptions.
- o) LGNZ supports Clause 133 AS (2) which provides for fee setting for exemption applications.
- p) LGNZ supports the new penalty of \$20,000 for failing to display a seismic work notice or exemption notice.
- q) LGNZ recommends that an infringement regime also be established in respect of these offences.
- r) LGNZ supports retaining the current threshold for earthquake prone buildings at 34%.

Introduction

8. The intention of this Bill (as stated in the Regulatory Impact Statement) is to ensure earthquake prone building policy settings and standards that:
 - adequately balance life and safety against economic, heritage and other considerations; and
 - are effectively implemented and administered.

Local authorities do not agree that this will be achieved by enacting the current proposals.
9. Regardless of whether you use the common definition of risk (probability x consequence) or the AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines definition (the effect of uncertainty on objectives), for many communities, the consequences of the proposals in the Bill outweigh the potential consequences of an earthquake.
10. Keeping people safe is important but individual's factor many things into a decision that involves the potential for harm. To use the analogy used in the 2012 consultation document², the decision people make to own and use a car is not just about how safe the car is. It includes other factors such as convenience, cost of the car compared with their income, how many will use the car, distances travelled, the need for travel, driver experience, road conditions, and the cost of alternatives where available. Outside the main centres, lower density living and lower pedestrian numbers means the risk is lower.
11. The emphasis of the present proposals on life safety (as required by the Building Act), in the absence of broader economic and social factors, seems too narrow. This is particularly relevant in the regions where local populations are shrinking and/or changing to be dominated by the elderly on fixed incomes.
12. There may seem to be a range of local authority's views on this Bill but this is simply a reflection of the risk (of an earthquake and the scale of the impact or consequences) local authorities are confronting. Wellington, sited on a fault line with a large population and infrastructure investment, is justifiably very proactive in managing seismic risk. They have a totally different scale of potential impacts to a small rural community. Consider the impact, both locally and nationally, of the seismic events in Eketahuna and Seddon compared with Christchurch for example.

² MBIE Dec 2012. Building Seismic Performance consultation document.
LGNZ submission – Building (Earthquake-prone Buildings) Amendment Bill

13. Rural and provincial New Zealand carries a disproportionate burden of the economic and social impact of these proposals. Business districts are dominated by older buildings and even where there are the resources to upgrade these buildings (engineers, builders and funds) it may not be economic to do so within the 20 year timeframe proposed (five years for assessments and 15 years for the upgrade work). The strength of the local economy drives business opportunity and tenancy demand. These will be key factors in determining the fate of buildings and outcomes for community services and amenities if these proposals are translated into law. Users of the buildings may be more concerned to have the convenience of the services and businesses than the risk of personal harm in an earthquake.
14. From a national perspective, the consequences to the economy of a like-sized earthquake is also highly variable depending on the community affected; the population that is exposed, the impact on the local economy, and the role of that community in the New Zealand economy. Wellington as the centre of Government and Christchurch as the gateway for South Island tourism, are examples of where national vulnerability is high.
15. The RIS outlines key learnings from overseas. The type of approach to upgrade varies between performance based and prescriptive systems.

Of the jurisdictions' policies analysed that have mandatory requirements for upgrading, these requirements tend to be based on either building use, for example, school, hospital; building profiles/type, for example, URM buildings; or triggered by an intention to undertake a major alteration or change of use.

In addition to mandatory requirements for upgrading based on building profiles, San Francisco, California has an ordinance requiring facades to be periodically inspected and repaired if necessary.

New Zealand and Italy are the two countries for which the requirements for earthquake-prone buildings are not restricted to a particular building use or construction type (e.g. masonry buildings).

16. The proposed Bill fails to target actual areas of risk and the desired safety benefits could be achieved more cost-effectively. The building code currently addresses the probability of an earthquake. It dictates how 'strong' a new building must be to meet structural performance requirements, (Clause B1 Structure) and therefore how 'strong' a strengthened building must be (as this is set at 34% NBS - new building standard). This varies around the country, recognising that the probability of an earthquake is different throughout the country. We believe that the legislation could equally address the variability of the potential impact around the country. Targeting parts of buildings that are least likely to perform well in an earthquake also makes sense.
17. With so many variables that are locally referenced, it is easy to see why the responsibility for earthquake prone building policy currently lies with Territorial Authorities. This was also acknowledged in Volume 4 of the Canterbury Earthquakes Royal Commission report.

Recommendation 89 states that:

Guidance should be provided by the Ministry of Business, Innovation and Employment to territorial authorities on the factors to be considered in setting discretionary policies under the amended legislation. These factors should include the nature of a community's building stock, economic impact, numbers of passers-by for some buildings, levels of occupancy, and potential impact on key infrastructure in a time of disaster (e.g. fallen masonry blocking key access roads).

18. The aim should be to maximise the overall fitness and resilience of communities to handle disruption from earthquakes viewed from both a local and national scale. This requires a comprehensive understanding of the factors which influence an individual's and community appetite for risk. This includes the influence of legislation, such as Health and Safety in Employment Act, the availability of insurance, the property market, the state of the local economy as well as the seismic hazard and state of buildings.

Risk based approach

19. GNS have undertaken considerable work for Christchurch City Council and are better placed to explain risk and tolerability of risk than we are, but a central conclusion of a report prepared in 2011³ (GNS Consultancy Report 2011/319, T Taig, T Webb, C Massey) was that "in order to be tolerable, accident risks from specific hazards, must be small or modest in comparison with other risks that people face". Using a numerical assessment of probabilities (how likely it is that some event will happen) allows regulators and the community to determine an acceptable, tolerable and intolerable level of risk.
20. New Zealanders are living with a range of natural hazard (earthquakes, tsunami, volcanic, landslide/flood) with an annual individual fatality risk in the order of:
- 10^{-6} or more per year averaged over the whole population (1,000,000 years);
 - 10^{-5} or more per year for large numbers (tens or 100's of 1000's) of people and (100,000 years); and
 - 10^{-4} or more for significant numbers (100's or 100,s+) of people in high risk areas (10,000 years).
21. The Taig report⁴ "A Risk Framework for earthquake Prone Buildings" prepared for the Department of Building and Housing in 2012 reinforces the low risk:
- When the effects of earthquakes are averaged over long periods of time and the whole New Zealand population they appear much smaller in relation to other hazards. This applies to both life and economic outcomes, but to the former in particular.
22. Records from 1858-2011 show total fatalities from earthquake total 474, volcanic activity - 126, and landslide / flood - 340. When compared with health statistics, New Zealanders are 10 times more likely to die of heart disease or cancer than a natural hazard event.
23. Of course acceptability of risk depends heavily on the context. People are adverse to some risks e.g. a school or hospital building collapse, and scale is also a factor. Personal experience and how recent that is, also influences an individuals view of risk.
24. According to the report prepared for Christchurch City Council (2011), quantitative risk is increasingly used to inform government and private sector policy decisions of many kinds in New Zealand, but regulatory use of quantitative risk criteria is little developed. Undoubtedly a lack of data (in this case on the building stock) is a barrier to quantitative analysis but this would suggest focusing attention on the administration of the policy as against an overhaul of the policy per se.
25. There are of course many uncertainties in quantitative risk assessments but put simply (Dr Andrew King, GNS pers comm) describes the risk for people in an earthquake as follows. People are at risk when;
- People are present in or around buildings; AND
 - A damaging earthquake occurs; AND
 - The building (or parts thereof) collapse or fall.

³ GNS Consultancy Report 2011/319, T Taig, T Webb, C Massey. *Canterbury earthquakes 2010/11 Port Hills Slope Stability: Principles and Criteria for the Assessment of Risk from Slope Stability in the Port Hills, Christchurch*. March 2012 Final. GNS.

⁴ Tony Taig, TTAC Ltd & GNS Science, 2012. *A Risk Framework for Earthquake Prone Building Policy*. MBIE.

26. The relationship between shaking and risk is complex and, according to the Taig report not well characterised for New Zealand. The Taig report also outlines how risk is distributed amongst different people in a complex fashion.
- In smaller earthquakes economic risk is well aligned with building owners and users. But the wider social and economic impacts of major earthquakes are unlikely to be attributable to specific owners/users. Governments typically play a major part in addressing these issues (and bear significant share of associated costs).
 - Life risk is greater for neighbours and passers-by than for occupants of some older buildings.
 - Heritage conservation may be completely disconnected from building ownership and use.
27. In line with taking a risk based approach, local authorities support prioritising areas where the seismic risk is highest, Wellington being an obvious priority, and provisions in the Bill to reduce the potential for harm from the parts of buildings that do not perform well in an earthquake particularly parapets and verandahs to address life risk to neighbours and passers-by as they are unable to make a choice.

Discussion and detailed comment

28. The Bill proposes the development of regulations to support decision making on matters such as exemptions, priority buildings and seismic assessment methodology.
29. We acknowledge and strongly support MBEs commitment to work with local authorities in the development of regulations however it is not acceptable that territorial authorities have to submit on a Bill in the absence of crucial information that is to be developed in the regulations.
30. LGNZ strongly recommends that the regulations for the Bill are developed as soon as possible, to allow the Select Committee to consider the implications of the Bill in its entirety, before reporting.

Seismic capacity assessments

Recommendations:

- a) AMEND the definition of a building as it applies to earthquake prone buildings policy, to explicitly define structures the policy applies to.
- b) LGNZ recommends that the responsibility for carrying out seismic assessments should fall on the owners of the building, including Government, with an obligation to provide that information to Territorial Authorities and the National Register.
- c) AMEND Clause 133 AF (2), new clause (c) “the territorial authority may impose a fee to recover reasonable costs of seismic assessments” to make provision for cost recovery of seismic capacity assessments.
- d) LGNZ SUPPORTS the provision for consultation with territorial authorities before the seismic capacity methodology is set (or amended).
- e) LGNZ recommends that assessments undertaken under the current methodology, the Initial Evaluation Procedures (IEPs) and Detailed Engineering Evaluation (DEE) are deemed compliant with the methodology and no further assessment of these buildings is required.
- f) AMEND Clause 133AG (4) with the addition of a clear statutory obligation for the Chief Executive to undertake (and make available), an assessment of the likely costs and practicality of implementing any methodology or amendments to the methodology.
- g) LGNZ strongly recommends that the regulations for the Bill are developed as soon as possible to enable the Select Committee to consider the implications (for building owners, local authorities and communities) of the Bill in its entirety, before reporting.

31. Clause 133AF states that a Territorial Authority must assess the seismic capacity of all buildings.
32. The NZSEE reviewed guidelines for assessment of buildings includes an Initial Seismic Assessment and a Detailed Seismic Assessment. Engineers are currently being trained on how to do these assessments to improve consistency in assessment and communication with building owners. The need for engineering experience to do this work makes the assessment process costly and difficult to obtain.
33. The RIS identifies the costs of seismic performance and notification costs as “largely falling on local and central government.” Anecdotal evidence suggests there is a growing belief that this clause proposes that seismic assessments will be ratepayer funded. While some communities fund the existing Initial Evaluation Procedure (IEP), many require building owners to obtain and provide the IEP to the council.
34. Funding building assessments must continue to be at the discretion of Territorial Authorities and their community. This enables communities to understand the trade-offs between public and private good and make a considered decision on acceptable levels of risk. It also ensures that building owners are accountable for their property (in the same way car owners have to fund a WOF). The decision on who pays and why, is made through the Long Term Plan process and striking of rates. For the avoidance of doubt Clause 133 AF (2) should be amended with the addition of “the territorial authority may impose a fee to recover reasonable costs of seismic assessments.”
35. Seismic capacity assessments must be completed for existing buildings within five years of proposals in this Bill coming into force, including the regulations that will outline the methodology for seismic capacity assessments. There is no clear indication of when the methodology will be set. This leaves an unacceptable level of uncertainty for building owners and territorial authorities alike in responding to this Bill and progressing existing programmes of work.
36. Assurance is also sought that assessments undertaken under existing assessment methods, the Initial Evaluation Procedures (IEPs) and policies are deemed compliant with the methodology and no further assessment of these buildings is required.
37. Not only is it unclear what the prescribed assessment methodology will be but all existing buildings (excluding residential⁵) are defined in Clause 133AF as:
 - a) code compliance certificate is issued (under section 95) up to the date “ this section comes into force” or
 - b) the building was constructed before 31 March 2005;
38. This is a significantly wider range of buildings than are currently assessed for seismic capacity and the definition also captures structures that are not intuitively viewed as a building eg bridges, tunnels, and monuments.
39. Some of these structures will be low occupancy buildings and others on asset registers with a scheduled inspection and maintenance regime e.g. network utility operators, and Government agencies such as NZTA.
40. Other central government agencies have also undertaken extensive assessment of their buildings eg Ministry of Education and Ministry of Justice. Operating a parallel regulatory system is inefficient and an unnecessary burden on both ratepayers and tax payers alike.
41. Clause 133AG (4) makes provision for the Chief Executive to amend or replace the assessment methodology at any time. We support the provision for consultation with territorial authorities before the methodology is set. With so much uncertainty however, (scope, who pays, seismic capacity methodology, recognition of

⁵ Clause 133AD excludes residential buildings unless they are 2 or more storeys and contain 3 or more household units.

existing assessment processes), it justifies the addition of a clear statutory obligation for the Chief Executive to undertake (and make available), an assessment of the likely costs and practicality of implementing any methodology or amendments to the methodology.

42. LGNZ strongly supports collaboration with territorial authorities to develop regulations before the Select Committee report back on the Bill. Only this will enable the Committee to make decisions on the Bill in full knowledge of what is proposed in the Bill and the implications of those proposals.

National seismic capacity register

Recommendation:

- h) Funding for the implementation and on-going costs of the national register must be met by central government.
43. TAs must provide information to MBIE for a national seismic capacity register. The Bill proposes that the register must contain address information, date of outcome notice and the outcome of an assessment (ie is a building earthquake-prone or not.) If a building is earthquake-prone, then more detail is required, eg is it a priority building; is there an exemption in place; what is the deadline is for completing seismic work?
44. The seismic capacity register must also contain information, albeit limited, on new buildings. These are defined as buildings which are issued a code of compliance certificate on or after commencement of the Act.
45. We have to assume that proposals for seismic assessment of a wider range of the building stock, and the requirement for information on new buildings is to meet the need for data on New Zealand's building stock. The lack of data on the building stock comes up on a regular basis eg post Canterbury earthquakes when there was concern about access and cost of insurance for all New Zealanders and, within this Bill, the need to monitor the national policy regime (Clause 169A). Undoubtedly a lack of information is a barrier to accurate analysis of policy levers to address risk from earthquake prone buildings, but this suggests central and local government resources would be better focused on the administration of the policy as against an overhaul of the policy per se.
46. The reporting requirements outlined in the Bill are beyond the needs of territorial authorities to manage risk from earthquake prone buildings in their communities. Funding for the implementation and on-going costs of the national register must therefore be met by central government.
47. The integration of local authority information on earthquake prone buildings with a national database is also a key consideration for local authorities. Some territorial authorities have existing data and methodology for identifying buildings. Developing a unique identifier for a national dataset of buildings has considered before without conclusion. Any decision made to change the way buildings are identified should not impose cost on local authorities.

Priority buildings and parts of buildings (Clauses 133AC, 133AE and 133AZ)

Recommendations:

- i) SUPPORT Clause 133AE (1) (a) the application of territorial authority powers and functions to a part of building that is earthquake-prone.
- j) AMEND Clause 133AO(1) to read the owner of an earthquake building or a building where parts of the building are deemed earthquake prone must complete seismic work before the deadline specified in this section.
- k) AMEND Clause 133AO with the addition of another clause for parts of buildings to read the owner of a building must complete seismic work on parts of buildings on or before the expiry of 5 years after the date of the outcome notice for main centres and no later than 10 years for other areas.
- l) Provide a greater distinction between priority buildings and parts of buildings.

48. Clause 133AC states that territorial authorities must prioritise assessment of buildings that are deemed priority buildings and may set timeframes shorter than 15 years for completing seismic work (Clause 133AZ), within 12 months of the section coming into force. Clause 133AE allows territorial authorities to exercise their powers and functions to parts of buildings that are earthquake prone. Priority buildings are to be defined in the regulations (under Section 401C).
49. It is unclear how these provisions will work when Category 1 heritage buildings are also priority buildings.
50. It is equally unclear what real benefit there is in making a distinction between priority buildings and parts of buildings.
51. The detail of the regulations is again pivotal to successfully managing life safety risk but the lack of this information makes it difficult to submit to the Bill.
52. There are some clues on the direction of the regulations for priority buildings in the Cabinet Minute (Cab Min (13) 26/7) where they are described as “buildings that are likely to have a significant impact on public safety (including buildings with high risk elements such as falling hazards); and strategically important buildings.
53. The phrase strategically important building is elaborated on further in the Bills explanatory note where it suggests priority buildings could include buildings where:
 - a) collapse in an earthquake would impede a transport route of strategic importance in an emergency; and
 - b) buildings where parts may fall off and threaten public safety.
54. This could encompass many commercial buildings built on a CBD front boundary, almost to the extent that it defeats the purpose of defining priority buildings whereas a focus on parts of buildings could achieve the same outcome. There needs to be a clearer distinction between priority buildings and parts of buildings.
55. It is equally important that the outcomes of proposals in this Bill are integrated with other pieces of legislation. The CDEM Act (2002) sets out the duties of lifeline utilities eg road networks in an emergency. Every lifeline utility must ensure that it is able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency. Given the uncertainty of earthquake events and how any given building will perform in an event, it may be more cost effective to exercise the option of clearing a road after an event than it is to expect building owners to accelerate seismic strengthening.
56. Prioritising parts of buildings that may not perform well in an earthquake, particularly parapets, is widely supported by territorial authorities. Parapets collapse onto verandahs or canopies, which in turn can cause facades to collapse.
57. The Bill proposes that territorial authorities can set the timeframe for the completion of seismic work on priority buildings of less than 15 years after the date of an outcome notice. LGNZ recommends that the Bill is amended to include shorter timeframes for seismic work on parts of buildings - high risk features such as parapets. Again the timeframe for completion of this work should be set to reflect risk – 10 years for provincial and rural New Zealand and 5 years for main centres where there is the potential for more passers-by.

Fire and disability upgrades (Clause 133AX)

Recommendations:

- m) LGNZ supports Clause 133 AX which provides territorial authorities with the power to grant consent for the alteration of buildings while noting that this decision making role is not consistent with the majority of proposals in the Bill which remove the local decision making role.

58. Existing provisions mean that building owners face additional costs, sometimes prohibitive, when undertaking earthquake strengthening work. The RIS states that the new provisions should provide flexibility where a high standard of upgrade would not be practicable in the context of the whole alteration. Territorial authorities currently have discretion to waive these additional requirements in certain circumstances (but not in the case of earthquake strengthening work required under section 124).
59. Again we note a lack of integration between changes to building regulations (for other outcomes) and efforts to improve the seismic resilience of buildings. The changes to fire regulations in the New Zealand Building Code (NZBC) 'C' documents (effective from April 2013) have added significant further costs to building upgrades. While the proposed amendment to the Bill is to enable seismic upgrade, the complexity and challenges of the changes to the NZBC fire regulations provide justification for explicitly exempting seismic upgrade from triggering other section 112 upgrades.
60. LGNZ supports Clause 133 AX which provides territorial authorities with the power to grant consent for the alteration of buildings where the territorial authority is satisfied that the alteration is for seismic work, and the building will continue to comply with the building code (to at least the same extent as before the alteration for escape from fire and disability access). We note that provision of this decision making role is not consistent with the majority of proposals in the Bill which remove the local decision making role.
61. An amendment more consistent with the Bill, would suggest Clause 133AX is deleted and a specific exemption from fire and disability requirements is made when undertaking seismic upgrades.

Exemptions – Category 1 heritage and other buildings (Clause 133AS)

Recommendations: TBC – see query box.

- n) LGNZ supports proposals in the Bill enabling territorial authorities to manage life safety risk and the potential loss of valued heritage buildings through exemptions.
- o) LGNZ supports Clause 133 AS (2) which provides for fee setting for exemption applications.
62. Clause 133AS enables building owners to apply for an exemption from seismic work on a building “where the consequence of a failure of the affected building is low⁶” as defined in criteria prescribed in regulations. It is anticipated that regulations will describe low use buildings such as rural churches.
63. Clause 133AT provides for extensions of 10 years for seismic work for Category 1 heritage buildings. The application of this Clause to a narrow band of buildings again raises the question of local decision making in determining a communities appetite for risk Also, as previously noted, the application of an exemption under Clause 133AT could render Clause 133AC (shortening the timeframes for upgrade of priority buildings) ineffective.
64. Noting that the regulations outlining the criteria for exemptions are not yet developed, there may also be benefit in prescribing the format of an application for exemptions in collaboration with territorial authorities.
65. LGNZ supports proposals in the Bill enabling territorial authorities to manage life safety risk and the potential loss of valued heritage buildings through exemptions.
66. LGNZ supports Clause 133 AS (2) “An application must be in writing and must be accompanied by any fee imposed by the territorial authority under section 219.”

Notices to fix - Section 124 notices

Recommendations:

- p) LGNZ supports the new penalty of \$20,000 for failing to display a seismic work notice or exemption notice.
- q) LGNZ recommends that an infringement regime also be established in respect of these offences.

⁶ Cabinet Minute of Decision (13) 26/7: Improving the System for Managing Earthquake-prone Buildings.

67. The Bill includes an ability for territorial authorities to require building owners to attach notices to their earthquake-prone buildings to enable territorial authorities to better manage the issuing of seismic work notices and exemption notices. In order to enforce this requirement, a new offence provision has been included for a building owner that fails to display a seismic work notice or exemption notice when required to by their territorial authority.
68. LGNZ supports the new penalty and recommends that an infringement regime also be established in respect of these offences.
69. Further work is required on who is defined as having an interest in the building for the purposes of notification. The existing requirements are time and resource consuming in terms of identifying and locating those with interests in the building, particularly in large, multi-unit buildings with a large number of separate owners, mortgagers, and other interests. Notification to the landlord or body corporate, for unit titles, should be sufficient. Under subsection (4) the notice must be attached to the building meaning that any tenant will be informed of the earthquake-prone status.

Fixing the definition of moderate earthquake to time of commencement

Recommendation:

- r) LGNZ supports retaining the current threshold for earthquake prone buildings at 34%.
70. The definition of a moderate earthquake has been fixed to the Commencement date of the Act. This means that buildings will be required to strengthen to 34% of the current new building standard for the location and cannot be captured by the provisions of the Bill if the building standard changes.
71. Typical new buildings in New Zealand, e.g. a typical hotel, office building or apartment building, are designed for a one-in-500 year earthquake. New Zealand Society of Earthquake Engineering (NZSEE) guidelines suggest that buildings at the current earthquake-prone building threshold present about 10 times the relative risk to occupants compared to a new building. The RIS argues that strengthening buildings above 34% becomes more about preserving buildings or reducing the broader social and economic impacts associated with earthquake damage and that retaining the current threshold is consistent with the Royal Commission's recommendations.
72. LGNZ supports retaining the current threshold for earthquake prone buildings at 34%.

Conclusions

73. New Zealand Productivity Commission discusses regulations in their review of "Local Government Regulatory Performance."⁷

"When designed well and enforced efficiently and effectively, regulation can play an important role in correcting market failures and improving the efficiency with which resources are used. In doing so, regulation can help achieve broader economic, social and environmental goals that underpin wellbeing and that are unlikely to be achieved by market forces alone. Regulation is typically used to control or modify the behaviour of individuals or businesses and is justified in the interests of the wider public benefit. However, if regulation is used when it is not needed, or is poorly designed and executed, it can fail to achieve policy objectives and have negative consequences that harm the wellbeing of New Zealanders."

⁷ Productivity Commission, July 2012. *Local Government Regulatory Performance Issues Paper*.

74. Territorial authorities are concerned that the proposals outlined in the Bill will lead to regulation that could impede the broader economic and social goals of their communities.
75. The Building Act already has the risk based dam safety scheme which nominates 4 categories of effects (catastrophic, major, moderate or minimal) correlated with an estimate of the population at risk. LGNZ believes that a similar regime could be developed to address earthquake-prone buildings. The implications of the Bill are wide reaching, particularly for the regions, where the potential for catastrophic consequences such as those we saw in Christchurch, are less.
76. LGNZ encourages the Select Committee to request further clarification on the regulations that support this Bill before reporting.