SUBMISSION ON THE BUILDING (EARTHQUAKE-PRONE BUILDINGS) AMENDMENT BILL

To : The Local Government and Environment Committee
From : Property Council New Zealand

PROPERTY COUNCIL NEW ZEALAND (at the address for service given below) makes the following submission on the Building (Earthquake-prone Buildings) Amendment Bill.

INTRODUCTION

Property Council considers it essential that the Government takes steps to address affordability concerns associated with undertaking strengthening work. If not, implementation of the Bill has the potential to result in significant unintended detrimental consequences - including the economic decline of businesses and entire local communities.

Property Council further submits that without a robust understanding about the extent of the building stock which will be required to be replaced or strengthened, and measures to deal with the costs and resources associated with this, the Bill/Government policy is unlikely to strike an appropriate balance between safety and managing affordability concerns. In this respect, it would be risky and remiss to implement some of the Bill provisions without fully understanding their implications (i.e. thorough detailed cost/benefit analysis) and having mitigation measures in place to deal with adverse consequences.

Property Council acknowledges that the issues the Bill seeks to address are important and complex and that there are no easy solutions. In this respect, we support the intention under the Bill to deal with earthquake-prone buildings in a timely and cost-effective manner, and to strike an appropriate balance between protecting people from harm in an earthquake and managing the costs of strengthening or removing buildings.

In terms of ensuring safety, Property Council considers it important to rely on the advice of experts (we note there is conflicting expert analysis on tackling this issue). As such, at this stage, Property Council’s submission mainly focuses on the costs and affordability component, which have significant implications for the outcome and effectiveness of the proposals under the Bill. We also comment on specific sections of the Bill.

As building owners and tenants, affordability is a key issue for both small and large Property Council members. It is our view that, as yet, the Government does not have a robust enough
picture on the implications and costs to the economy which may arise from earthquake strengthening; and that analysis needs to be urgently undertaken to ensure that the enactment of the Bill will not result in substantial negative externalities. For instance:

- It is clear that the benefits associated with strengthening buildings are widely dispersed but the costs fall disproportionately on building owners. These costs are substantial and it is likely many building owners will struggle to afford them – resulting in the closure of buildings, the loss of premises (particularly for small businesses), job losses, and the flight of capital from local communities across New Zealand.
- We have strong concerns around territorial authorities’ resources and capacity to fulfil the requirements under the Bill in a timely and robust manner. Inaccurate assessments can result in dire consequences for building owners, for example, if it leads to a loss of tenants. A lack of adequate resources will also have flow on adverse impacts on territorial authorities’ ability to fund and undertake their other important functions.
- The availability of technical and professional resources to assess and undertake strengthening work will impact on costs and timescales for completion – detrimentally where resources are scarce.

As such, we consider that a detailed cost/benefit analysis for each local area, taking into account the above and other relevant factors, is required in order to undertake a proper assessment of the proposals under the Bill, understand the trade-offs which need to be made, and implement policies to mitigate adverse outcomes. This will ensure that the subsequent legislation is resilient and effective and will not result in undue negative externalities. This is vital, particularly given that the current high-level cost/benefit analysis which has been undertaken indicates substantial levels of costs for much lower levels of benefits (as per the Regulatory Impact Assessment and Martin Jenkins analysis).  

To help limit negative externalities, and in acknowledging the social benefits of earthquake strengthening, Property Council strongly advocates for changes to the current tax regime along with a suite of other appropriate measures to mitigate the impacts of the affordability issues (which are described in more detail below). In addition, this will assist with achieving the appropriate balance between public safety, economic and other public good considerations such as heritage.

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An optimal public policy setting must be found between these three drivers:

The negative consequences potentially arising from the Bill need to be properly identified and urgently assessed by the Government, and robust mitigation measures put in place.

Background

Property Council is a not-for-profit organisation representing the country's commercial, industrial, retail, listed and unlisted property funds, local government, not for profit organisations and multi-unit residential property owners, managers and investors – including thousands of New Zealanders with retirement savings in listed property entities, unlisted funds and KiwiSaver.

Our 600 member companies have billions of dollars invested in commercial property. They range from leading institutional investors, listed and unlisted property entities and financial organisations to private investors and developers.

As building owners, developers, consumers, taxpayers and ratepayers, Property Council’s members want to live and work in a built environment which is economically viable, sustainable, vibrant, and a desirable place to be. A vibrant and prosperous built environment, which evolves through better urban design, will attract more economic activity and investment (domestic and foreign), which in turn improves financial returns.

Property Council’s public policy interests fall into three primary areas of analysis: urban strategy and infrastructure; compliance and legislation; and capital markets. Property Council supports the implementation of statutory and regulatory frameworks that enhance (and do not inhibit) productivity-driven economic growth and prosperity. Property Council is also a proponent of urban sustainability and heritage outcomes, which are realised through the active governance and management of the urban environment.
AFFORDABILITY

Post Canterbury earthquakes, a combination of Government policies and market forces are driving up earthquake strengthening costs for businesses and building owners – resulting in economic and financial losses - causing serious concerns around affordability. If strengthening costs are uneconomic/unaffordable, and therefore buildings are abandoned, there will be negative impacts on the ratings base and the viability of some of our towns and cities.

It is clear that assessing and strengthening earthquake-prone buildings must be affordable for territorial authorities and building owners. Significant detriment may eventuate if this is not the case, including the loss of a substantial portion of New Zealand’s building stock. Older buildings are of particular importance to small businesses and organisations. As such, their loss may:

- threaten business viability, resulting in consequent job losses
- lead to the demolition or abandonment of heritage and other old buildings which comprise a significant part of the tax rating base, and are of considerable value - particularly for local communities
- result in a loss of economic activity having adverse impacts on tax revenue for the Government.

In this respect, the impacts on smaller towns and older regions could be particularly disastrous, for instance in Oamaru and Wanganui where there are a large number of heritage buildings and limited capacity to afford strengthening.

As with many regional cities and towns in New Zealand, the commercial property sector in areas such as Tauranga/the Bay of Plenty is largely characterised by:

- fragmented property ownership
- a passive investor profile
- low yields
- low rental growth
- a relatively old building stock
- a lack of national tenants.

The combination of these factors, coupled with obligations to undertake seismic strengthening works, will mean there is a significant risk of ‘capital flight’ - and decreased investment in townships that are already struggling economically - if appropriate measures are not put in place to address affordability concerns.

Property Council believes that one of the worst possible outcomes would be where owners lock up and walk away from their properties because earthquake strengthening is simply
uneconomic, leaving communities with derelict buildings and the local authority with the clean up job – at cost to ratepayers.

Factors increasing earthquake strengthening costs

Tenants’ demands

Whilst, under legislation, building owners are only required to strengthen if their buildings fall below the level of 34% of NBS, many tenants (including local government and central government tenants) are already demanding that their premises are 70%-100% of NBS.

In almost all situations the cost of earthquake strengthening both to 34% of NBS and above 34% of NBS is simply uneconomic, in the sense that undertaking this work does not necessarily enable building owners to increase rents. This is because many tenants’ expectations around earthquake risk/safety have changed but their unwillingness to pay for this has not.

As well as the costs of work undertaken on the actual building, there are also costs associated with decanting tenants to other buildings whilst the strengthening works take place. As such, the case for earthquake strengthening will, in many cases, be unaffordable. In addition, businesses and building owners will struggle to obtain finance to undertake the work.

A number of Property Council’s members have had to significantly write-down the value of buildings due to these being either below the earthquake-prone building threshold of above 33% NBS or below the market strength threshold of 70% NBS (as is currently being established by tenants and banks). The quantum of these write-downs reflect the earthquake strengthening cost that will need to be incurred to bring the buildings to above 33% NBS and in many cases to at least 70% NBS.

An example of the cost of earthquake strengthening is Kiwi Income Property Trust’s (the “Trust’s”) strengthening programme at the Majestic Centre in Wellington. The Trust has embarked on a $53 million strengthening programme to lift the Centre’s NBS rating which the tenants considered to be unacceptably low. The building value was immediately written down by $53 million to reflect the cost of strengthening. The loss of value will be restored as the $53 million is spent, but no additional rental income will be generated from the expenditure. Recent rental agreements negotiated with tenants in the Centre support this, as tenants simply expect the building to have an acceptable NBS rating and, at this stage, are not prepared to pay more for a higher rating.
Insurance

Insurance premiums have increased substantially since the Canterbury earthquakes as insurers seek to recoup their losses. There are number of insurance related issues, which are compounding difficulties associated with the affordability of earthquake strengthening:

- Anecdotally our members advise that premiums for buildings which are 67% NBS have increased by up to 100%, whilst buildings below this standard have been subject to increased premiums ranging from 500% - 800%. In some cases, building owners have simply been unable to afford insurance.
- Heritage buildings have been hit particularly hard by high insurance premiums, regardless of the standard to which they have been strengthened.
- At the same time, insurers have significantly increased the levels of deductables (“excesses”), particularly for Wellington and Christchurch properties which can now be as high as 10% of the property value, meaning that owners are uninsured for 10% of the building value.
- Insurers now commonly require that buildings be strengthened to 67% of NBS, given that any building under this threshold is more likely to be demolished after an earthquake whilst those at or above 67% NBS may only require repair. The cost of strengthening a building to above 67% NBS is typically substantially higher than the cost of strengthening to 34% NBS (and is almost always uneconomic). To be clear, the 34% of NBS level provides a degree of public safety. However, insurers are concerned with the long term viability of the asset itself and expect building owners to upgrade to 67% of NBS over time, in order to maintain insurance cover.
- Businesses and building owners face a vicious cycle with strengthening, insurance and bank finance. In order to comply with bank debt covenants and some leases, and obtain finance, the building must be insured. In order to obtain insurance, the building must be strengthened to a standard where the building (as opposed to the public) might survive a moderate earthquake. This leaves many businesses and building owners in a potentially ruinous situation where they face the completely uneconomic prospect of strengthening to 67% NBS.
- The situation outlined above is exacerbated under strata titled buildings. Bodies corporate, in particular, struggle with this under the unit titles structure.

Health and safety legislation

Property Council members have advised that many tenants (including Government tenants) are demanding that buildings are brought up to a standard of at least 67% of NBS due to requirements of the Health and Safety in Employment Act. Their legal advice has been that employers need to ensure staff premises are considered “Low Risk” in the event of a moderate earthquake i.e. be at a level of at least 67% of NBS.
There is clearly an inconsistency between requirements under the Building Act (where buildings should be least 34% of NBS) and what employers view their responsibility is under the Health and Safety in Employment Act (at least 67% of NBS). We note that the Ministry is doing work in this area to reassure building owners around their obligations in this respect – however, Government delays in resolving this issue has led to market uncertainty and still driven up costs.

*We advocate for legislative changes to make it absolutely clear that compliance with Building Act strengthening obligations will suffice from a health and safety perspective.*

**Heritage**

The New Zealand Historic Places Trust (NZHPT) advise that heritage buildings may have to be strengthened to 67% of NBS so that the building itself may survive an earthquake. The costs associated with this will be substantial, and potentially ruinous, especially for smaller towns with a large number of heritage buildings.

**Possible ways to help address affordability issues**

It is clear that the factors described above are driving up costs for businesses and building owners and have the potential to result in significant negative externalities, if seismic strengthening simply becomes unaffordable. Below, we discuss potential ways to help address some of the affordability concerns. It is essential that these issues are addressed with speed.

*Impact of the current New Zealand taxation system – seismic maintenance*  

Earthquake strengthening costs have historically been considered a capital expense for tax purposes – i.e. an improvement to the building structure. However current experience shows that, once an earthquake occurs, the market value of buildings is drastically undermined due to changes in views around, and acceptance of, earthquake risk. The expenditure required to remedy this will not increase the value of the building, on the basis that earthquake strengthening will not qualitatively change the function of the building (i.e. will generally not result in a higher rental stream). This is exemplified in our earlier case study on the Majestic Centre which illustrated that strengthening expenditure is required to restore that building’s economic value to the pre-Christchurch earthquake assessment of the value following tenants’ (and the wider market) re-evaluating their minimum criteria for earthquake/life safety.

In short, expenditure on earthquake strengthening is largely made to mitigate a loss in economic value, not enhance to the value of a building. This, in our view, is in the nature of maintenance
of the income earning condition of a building, not an improvement to its income earning capacity or a capital expense.

Maintenance expenditure would normally be deductible for tax purposes, when incurred. However, this is currently not the case with buildings in New Zealand where earthquake strengthening is concerned. Under the current taxation regime, the costs associated with seismic maintenance of a building will not be deductible either immediately or spread over the economic life of the building (i.e. depreciated). When international comparisons are made, this is an anomaly. This is also in contrast to the taxation treatment of almost all other New Zealand business assets, where there is explicit recognition for loss in economic value, through tax depreciation and the costs of maintenance to the asset, through a deduction for maintenance expenditure.

The present tax rules therefore create a significant tax disadvantage for commercial, industrial, retail and heritage property owners (and exacerbate affordability issues) when faced with the requirement to bring buildings above the earthquake prone building threshold, or indeed to the minimum level of earthquake safety expected by the Government and the “market” (i.e. tenants, insurers and the banks). Amending these rules is a way of creating a more level playing field in how assets are treated, and assisting building owners with meeting strengthening costs.

**Impact of the current New Zealand tax system - depreciation**

Prior to 1 April 2011 building owners could, for tax purposes, depreciate the cost of their buildings over 50 years. Therefore, while earthquake strengthening costs were not immediately deductible, these costs were at least depreciable as structural upgrades. This allowed some tax recognition for earthquake strengthening costs, albeit spread over a 50 year period.

However, the ability to claim tax depreciation on buildings was removed with effect from the 2011-12 tax year as part of the Government’s 2010 Budget. Property Council recognises that the tax decisions made in the 2010 Budget were part of a wider re-balancing of the tax system. However, Property Council does not agree with the view that commercial, industrial and retail property does not, on average, depreciate in value. The current extent of the structural obsolescence of New Zealand’s building stock has come into sharp focus since the events in Christchurch, and the fact that buildings values have had to be written down either for non-compliance with the earthquake-prone building threshold or the market factoring an earthquake safety risk higher than 34% NBS, suggests that:

- there is the need for appropriate building maintenance to mitigate such economic loss (in which case earthquake strengthening costs should be treated as normal maintenance costs which are normally deductible, for tax purposes – see above); or
- that there is technological obsolescence with the building structure (which should be reflected by way of tax depreciation).
The effects from the lack of tax depreciation/deductibility is exacerbated as, currently, there is a general prohibition on claiming a loss, for tax purposes, if a building is sold for less than its tax book value or is demolished. There are very limited exceptions to this general rule. One exception was for losses on buildings damaged/destroyed by the Canterbury earthquakes (which suggests Officials and Government are not uncomfortable with the general proposition of allowing losses on buildings).

This has the odd result that, under current tax settings, if remedial work is undertaken on a building, and it is strengthened, the costs are non-deductible. However, if such work is not undertaken and the building collapses or is irreparably damaged as a result of an earthquake or other natural disaster, a tax deduction will be available for the loss (as existing Government policy is to allow a deduction for a loss when a building is irreparably damaged as a result of events outside a taxpayers’ control such as natural disasters).

This is a contradiction that creates perverse incentives. Building owners should not be incentivised by the tax system to defer earthquake strengthening, not least because of loss of life/public safety risk.

*Why changes to the tax regime are required*

These changes are needed to create a level playing field for building owners – enabling them to be treated similarly, tax-wise, to other asset owners who suffer an economic loss on their productive assets; and to upgrade their building in a feasible way.

Earthquake strengthening also has important societal benefits, and one way of recognising this is through changing the tax regime to assist with affordability. This is essential given that there will generally be little or no investment return on the capital outlaid to undertake strengthening and many building owners will therefore struggle to finance the upgrading cost. If strengthening is not undertaken, the inability to insure, and the flow on impact from this including potential loss of bank funding, and low tenant demand for buildings that are perceived to be high earthquake risk, will make the maintenance of the building uneconomic, posing a “catch 22” situation for building owners. Many may be forced to demolish or abandon earthquake prone buildings. This risks serious disruption to businesses, from a shortage of suitable building stock (and higher rents in the medium to long term), and the New Zealand economy. The negative implications for our cities and towns will be self-evident.

At the same time, Property Council recognises the potentially large fiscal cost if earthquake strengthening costs are made immediately tax deductible (notwithstanding the fact that a large portion of this cost could be offset by additional tax revenues from the related construction works and flow-on effects in the NZ economy). We are conscious that any feasible policy change in this area has to take into account the fiscal constraints for Government and, in
particular, the Government’s desire to return to surplus at the earliest possible opportunity. We strongly believe that collaborative work between the Government, Officials and the private sector can achieve an appropriate solution that meets the requirements of all stakeholders. This could include integrating any changes to the tax regime with other appropriate non-tax measures (such as streamlined consents, etc.).

*The need for a suite of measures or tools*

In addition to changes to the tax regime, we suggest that the Government establishes a suite of tools which building owners can choose from to assist with earthquake strengthening costs and minimise negative externalities. This could include transferrable development rights, incentives, waiving resource consent fees, the provision of effective grants and loans, rates relief etc. We consider this vital to ensure the effectiveness of the strengthening requirement and resilience of local communities. For some charities and other not-for-profit organisations, only non-fiscal tools will assist compliance with the Building Act, NZHPT requirements and health and safety requirements. These non-fiscal tools may include:

- creation of transferrable development rights
- direct subsidies for capital works to charities equivalent to fiscal tools for tax paying entities
- more flexible planning rights at the site that assist value creation or the ability to demolish and/or redevelop
- compensation based on the principals of injurious affection

Incentivising owners through this type of approach, to obtain their own seismic assessments and undertake strengthening work, would take much of the burden off territorial authorities and the Ministry in administering and policing the regime. In addition, it will help ensure that proper account is taken of the economic losses to businesses and their capital, and that the community benefit from earthquake strengthening is appropriately accounted for in the regulatory regime (it is clear that if the community benefits from strengthening it should contribute to the costs).

*Insurers and tenants are effectively demanding that buildings be strengthened to around 67% of NBS. Currently, there is no level playing field in the tax regime for undertaking strengthening works – the costs are not tax deductible and they do not qualify for depreciation - nor do strengthening works necessarily enable building owners to increase rents.*

*There is only so much that property owners can absorb in costs - and buildings will have to be abandoned, leading to declining business and economic activity throughout New Zealand, if fiscal policy tools and other measures to assist with affordability are not speedily deployed.*

*No one wants a situation where communities are left with derelict buildings with local authorities having to clean up at significant costs to ratepayers. The Government cannot ignore these issues, they must be urgently provided for.*
HERITAGE

District plans tend to identify a range of buildings for heritage or character protection. At the upper end of the continuum are the most important buildings which are specifically identified for protection. These tend to include major public buildings such as churches, town halls, and relatively important period commercial buildings. They are structures that either have been upgraded to address seismic risk or would warrant major public expenditure to do so. It is appropriate that such buildings be retained and restored or upgraded as needed.

At the opposite end of the spectrum are large numbers of buildings that were not particularly impressive when constructed, but which may reflect their era. Examples include many of the unreinforced masonry structures in commercial areas. Unreinforced masonry construction was a technique that arrived in New Zealand largely unchanged from Great Britain. In practice, it is a technique that posed risks for New Zealand and that inherent incompatibility needs to be recognised. These buildings tend to be in private ownership and, from an economic perspective, do not warrant major expenditure on upgrading - as upgrading a period building typically costs more than demolition and replacement, and the costs (including insurance) and complexities associated with strengthening heritage buildings often exceeds the value of the building, making strengthening uneconomic/unaffordable for building owners. It is this category that will need to be reviewed carefully in terms of their listing and protection in district plans.

To date, judgments regarding the listing of heritage or character buildings in district plans have been based on aesthetics and historical factors alone. The risk profile of the building and the economic implications of its upgrading in order to enable retention have been disregarded. In light of the significant costs involved in upgrading our building stock, there needs to be far more careful consideration of the extent to which district plans will seek to retain buildings - as unrealistic expectations on heritage and character may result in large areas of deserted earthquake-prone buildings that decay through abandonment and neglect. Annex 1 of this submission sets out some current case studies illustrating these complexities around heritage and strengthening.

In this respect, local authorities must refine their focus and only protect the most important and outstanding heritage buildings. The factors that should be taken into account when considering the balance of potential listings which are generally in private ownership should include:

- the costs involved with preserving the building, and whether the public bodies/local community are prepared to fund the marginal costs of those works (i.e. the costs over and above those involved in demolition and replacement) in full or in part. If the public bodies are expecting the owner of the building to fund that work unaided then the structure should not be protected
- whether the buildings are in a high quality heritage precinct with aesthetic integrity and coherence or, alternatively, are relatively isolated and do not contribute to a
wider character. Given the communal cost of preserving these buildings we need to identify those collections of buildings that provide the greatest public benefit and support their retention and upgrading

- how much information does the local authority have on the buildings’ heritage
- by how much the building has already been modified.

Where it is in the community’s interest to upgrade an earthquake-prone building, but it is not economic from the landowner’s perspective, the community (through the council or state entities) should be prepared to make a financial contribution to the owner so that upgrading is viable. In the absence of such a commitment, it is unreasonable for the regulatory regime to require uneconomic upgrading from landowners and demolition ought to be enabled and the building should no longer be classified as heritage. We note this contention has parallels with the fact that in the UK, where it can be shown that the land has become ‘incapable of reasonably beneficial use’ due to refusals for building consent or consent granted subject to unviable conditions, owners may serve a listed building purchase notice on the council – requiring it to purchase the interest in the land.2

There are community benefits which result from strengthening heritage buildings. Therefore it is reasonable that private owners of such building are provided assistance with costs of strengthening and preservation. Waiving resource consent fees, the provision of effective grants and loans, rates relief and possible changes to the tax system should all be seriously considered for seismic strengthening of heritage buildings. This will be particularly important to ensure that strengthening is affordable in smaller towns.

This is in line with the Contingent Valuation method, which could be one tool local authorities use to identify exactly what the community truly values and is willing to contribute to protect, and hence which buildings should be classed as heritage. Under this approach a hypothetical market is considered, and people are surveyed as to how much they would be willing to pay to preserve or improve a historic asset. This provides an indication of the community’s value for the building. Such an approach acknowledges that heritage is not something to be determined exclusively by “experts” – rather it is something that requires community participation as a basis for implementing protections – and gives weight according to the community’s preference. Such an approach, combined with other cost/benefit analysis and tools, would help ensure a more robust method for heritage identification and preservation.

In conclusion on this issue, we note that research undertaken by the Royal Institution of Chartered Surveyors (RICS) illustrates how changes to tax policies can materially assist with affordability. RICS found that

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“financial incentives offer an effective mechanism to encourage private investment in the repair and maintenance of the architectural heritage by owner-occupiers, owner investors, developers and investors…it appears that tax incentives are more effective in encouraging investment in heritage conservation in countries with higher levels of private ownership. Countries with a more limited use of tax advantages, such as the UK, usually have alternative funding mechanisms in place such as direct grant aid.”

The report goes on to note that encouraging systematic maintenance reduces the need for large-scale publicly funded repair projects in the long term and the

“far sighted system of income tax relief for maintenance expenditure on protected structures in Denmark (BYFO) is noteworthy, although it cannot be used for improvements that would add to the capital value of the property…In periods of budgetary constraint, many national governments find it difficult to justify financial incentives to support heritage conservation, on the basis that they represent a direct loss to the exchequer rather than being an investment likely to produce a return. While only limited research has been carried out internationally to dispel such views, studies in the UK and USA show that long-term conservation activities, involving the repair, maintenance and reuse of vacant and derelict architectural heritage, actually result in an increase in tax revenues for the government”.

It is vital that government addresses these concerns – otherwise heritage buildings will be unable to be strengthened or utilised as owners and territorial authorities debate the issues. Annex 1 sets out some case study examples of issues heritage building owners are currently facing.

THE BILL PROVISIONS

As a general comment, we suggest that guidance is produced by the Ministry, outlining best practice for areas where legislation provides for territorial authority discretion (e.g. regarding priority buildings and on the methodology for seismic capacity assessments).

In addition, Property Council would wish to comment on matters being provided for through regulations (e.g. priority buildings, criteria for granting an exemption, prescribing information that must be kept on a seismic capacity register etc.).

Please see below for comments on specific sections of the Bill.

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RICS, A review of fiscal measures to benefit heritage conservation, p4 http://nrl.northumbria.ac.uk/2478/1/fiscalmeasures.pdf.
RICS, A review of fiscal measures to benefit heritage conservation, p5 http://nrl.northumbria.ac.uk/2478/1/fiscalmeasures.pdf.
### Provision

**7 Section 11 amended (Role of chief executive)**

1. After section 11(d), insert:
   “(da) monitors, in accordance with section 169A, the application and effectiveness of subpart 6A of Part 2 (which relates to earthquake-prone buildings); and”.
2. After section 11(i), insert:
   “(ia) sets a methodology under section 133AG for seismic capacity assessments; and”.

**133AG Chief executive must set methodology for seismic capacity assessments**

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

### Property Council View

In principle, Property Council supports the Chief Executive of the Ministry setting the methodology for seismic capacity assessments. This should help ensure a robust and consistent approach across the country – helping avoid some of the confusion across different territorial authority areas in this respect.

In terms of process, Property Council submits that territorial authorities should be required to approach building owners before any assessment is carried out, to invite the owner to submit any engineering assessments already completed. The territorial authority should be allowed to accept these assessments (where they meet a required standard) thereby minimising both territorial authority costs (proper structural assessments can cost $15,000-$20,000) and the burden on national assessment resources.

In terms of practicalities, it is well recognised from current experience that Initial Evaluation Procedures (IEPs) often vary and can be inaccurate and misleading – having significant implications for building owners and tenants. This needs to be considered by the Chief Executive, when determining an appropriate methodology. However, we acknowledge that practically an IEP may be the only method territorial authorities are resourced to use.
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<tr>
<th>Provision</th>
<th>Property Council View</th>
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<tr>
<td><strong>133AH Consultation requirements for setting methodology</strong></td>
<td>Property Council would like to be consulted on the methodology, in accordance with clause 133AH, as an interested party.</td>
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<td>“(1) Before setting a methodology under section 133AG, the chief executive must do everything reasonably practicable on his or her part to consult territorial authorities and any other persons or organisations that appear to the chief executive to be representative of the interests of persons likely to be substantially affected by the setting of the methodology. “(2) The process for consultation should, to the extent practicable in the circumstances, include— “(a) giving adequate and appropriate notice of the intention to set the methodology; and “(b) giving a reasonable opportunity for territorial authorities and other interested persons to make submissions; and “(c) giving adequate and appropriate consideration to submissions. “(3) A failure to comply with this section does not affect the validity of a methodology set under section 133AG.</td>
<td>We also support the Ministry having a monitoring role. However, in undertaking this role, the Ministry must be aware of the cost implications of undertaking strengthening works – if measures are not taken to assist owners with undertaking strengthening the Ministry is likely to find a number of buildings will not be in compliance within the specified timescales and may even end up abandoned. This will make monitoring a huge and costly administrative task.</td>
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<tr>
<td><strong>133AI Notification and availability of methodology</strong></td>
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<td>“(1) As soon as practicable after the chief executive has set a methodology under section 133AG, the chief executive must— “(a) notify territorial authorities that the methodology has been set; and “(b) publicly notify that the methodology has been set; and “(c) make the methodology available on the Internet in an electronic form that is publicly accessible at all reasonable times; and “(d) make the methodology available in printed form for purchase on request by members of the public. “(2) A methodology set under section 133AG is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act</td>
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<td>26 New section 169A inserted (Chief executive must monitor application and effectiveness of subpart 6A of Part 2 (earthquake-prone buildings))</td>
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<td>After section 169, insert:</td>
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<td>“169A Chief executive must monitor application and effectiveness of subpart 6A of Part 2 (earthquake-prone buildings) The chief executive must monitor the application of subpart 6A of Part 2 and its effectiveness in regulating earthquake-prone buildings.”</td>
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<td>22 Section 131 amended (Territorial authority must adopt policy on dangerous, earthquake-prone, and insanitary buildings)</td>
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<td>(1) In the heading to section 131, delete “, earthquake-prone,”.</td>
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<td>(2) In section 131(1), delete “, earthquake-prone,”.</td>
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<td>23 New subpart 6A of Part 2 inserted</td>
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<td>After section 133, insert:</td>
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<td>“Subpart 6A—Special provisions for earthquake-prone buildings”</td>
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<td>“Interpretation and application”</td>
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<td>133AB Meaning of earthquake-prone building</td>
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<td>A building is earthquake prone for the purposes of this Act if, having regard to its condition and to the ground on which it is built, and because of its construction,—</td>
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<td>“(a) the building will have its ultimate capacity exceeded in a moderate earthquake (as</td>
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<td>defined in regulations); and</td>
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<td>“(b) if the building were to collapse in a moderate earthquake, the collapse would be likely to cause—</td>
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<td>“(i) injury or death to persons in the building or to persons on any other property; or</td>
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<td>“(ii) damage to any other property</td>
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<td><strong>133AC Meaning of priority building</strong></td>
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<td>“(1) In this subpart, priority building has the meaning given in regulations made under section 401C(a).</td>
<td>We support prioritising certain buildings. However, we submit that cost and resource implications must be considered, and steps taken (e.g. through amending the tax regime and implementing a suite of other measures), to ensure strengthening can take place within the requisite timescales. If not, this provision will be meaningless and result in abandoned buildings.</td>
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<td>“(2) If a building is a priority building, a territorial authority—</td>
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<td>“(a) must, in accordance with the methodology set under section 133AG, prioritise its assessment of the building’s seismic capacity; and</td>
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<td>“(b) may, in setting a time frame under section 133AZ, shorten the time frame within which seismic work on the building must be completed.</td>
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<td><strong>133AE Application of this subpart to parts of buildings</strong></td>
<td>Support, appears sensible and efficient.</td>
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<tr>
<td>“(1) If a territorial authority is satisfied that only part of a building is earthquake prone (within the meaning of section 133AB),—</td>
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<tr>
<td>“(a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and</td>
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<td>“(b) for the purpose of paragraph (a), this subpart applies with any necessary modifications.</td>
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<td>“(2) Nothing in this section limits or affects the application of a provision of this Act outside this subpart.</td>
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<td><strong>133AF Territorial authority must assess seismic capacity of existing buildings</strong></td>
<td>In many ways, territorial authorities might be viewed as being well placed to assess the seismic capacity of relevant buildings in their area. They have played an</td>
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<td>within the district of the territorial authority. “(2) A seismic capacity assessment—“(a) must be carried out using the methodology set under section 133AG; and“(b) must be completed not later than 5 years after the day on which this section comes into force.”“(3) For the purpose of subsection (1), a building is an existing building if,—“(a) before the day on which this section comes into force, a certificate is issued under section 95 for the construction of the building; or“(b) the building was constructed before 31 March 2005.</td>
<td>important part in determining, implementing and enforcing earthquake-prone building policy. However, there is also evidence of “considerable local variation in policy and significant practical difficulties for the majority of authorities who do not have relevant in-house expertise”.5 As such, territorial authorities must be supported and appropriately resourced to undertake such a complex and important task. In addition, attempts to comply with this timescale should not result in territorial authorities ceasing to be able to properly undertake their other important functions. We support the intention for timely assessments. However, given the extent of the task and a likely limited pool of skilled resources, completing robust desktop assessments in five years appears optimistic – particularly given that many engineers are likely to have commitments to the Canterbury rebuild and other clients.</td>
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### 133AJ Territorial authority must notify building owner of outcome of assessment

“(1) A territorial authority must, as soon as practicable after it has assessed the seismic capacity of a building, give the owner of the building a written notice of the outcome of the assessment (an outcome notice).“(2) An outcome notice must be dated and must—“(a) state whether the building is earthquake prone; and

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5 Tony Taig A Risk Framework for Earthquake Prone Building Policy.
### Provision

“(b) if the building is earthquake prone,—

“(i) state that the building requires seismic work; and

“(ii) state that the owner of the building may apply under section 133AS for an exemption from the requirement to carry out seismic work; and

“(iii) if the building is a Category 1 heritage building, state that the owner of the building may apply under section 133AT for an extension of time to complete seismic work; and

“(c) state that the owner of the building may provide alternative evidence of the building’s seismic capacity under section 133AR; and

“(d) explain the time frame (as set out in section 133AM) within which the territorial authority will—

“(i) record the outcome of the assessment on the seismic capacity register; and

“(ii) if the building is earthquake prone, issue a seismic work notice for the building.

### Property Council View

assessments (where they meet a required standard) thereby minimising both territorial authority costs and the burden on national assessment resources. Suggest amending this section in this respect.

### 133AN Requirements for seismic work notice

“(1) A seismic work notice for a building must—

“(a) be in writing; and

“(b) state that the building is earthquake prone; and

“(c) state that the owner of the building is required to carry out building work to ensure that the building is no longer earthquake prone (seismic work); and

“(d) state the deadline for completing the seismic work; and

“(e) be attached to the building in accordance with subsection (4).

“(2) A copy of the notice must be given to—

“(a) the owner of the building; and

“(b) an occupier of the building; and

“(c) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and

“(d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and

### Property Council View

An IEP is too approximate to be the basis for a seismic work notice. As such, a seismic work notice should only be required to be put up if the building is found to be earthquake-prone post detailed assessment.
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<td>“(e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and “(f) the New Zealand Historic Places Trust, if the building is a heritage building. “(3) A notice attached to a building is not invalid by reason only that a copy of it has not been given to any or all of the persons referred to in subsection (2). “(4) As soon as practicable after issuing a seismic work notice for a building, a territorial authority must attach, or require the owner of the building to attach, the notice in a prominent place on or adjacent to the building. “(5) If the seismic work notice ceases to be attached in a prominent place on or adjacent to the building, or becomes illegible,— “(a) the owner of the building must notify the territorial authority of that fact; and “(b) the territorial authority must issue a replacement notice; and “(c) subsections (1) and (4) apply to that replacement notice. “(6) However, subsection (5) does not apply if the removal of the notice from the building is authorised by or under this subpart</td>
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<td>Without information on the exact size of the problem, and the available resource pool, it is difficult to comment on these timescales. As such, it would make sense that timescales may need to be revisited after the completion of the desk top assessments and full project planning and costing analysis. The Government is likely to require flexibility in this respect. Instinctively, the proposed timescales appear ambitious and meeting these timeframes will be costly. Various difficulties can arise, hindering progress. For example, where tenant approval is required under the lease, or</td>
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<td>133AO Deadline for completing seismic work</td>
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<td>“(1) The owner of an earthquake-prone building must complete seismic work on the building on or before the deadline specified in this section. “(2) For a priority building (subject to subsection (4)), the deadline is the earlier of— “(a) the expiry of 15 years after the date of the outcome notice; and “(b) the expiry of the period stated for that building or class of building in the time frame set by the territorial authority under section 133AZ, as measured from the date of the outcome notice. “(3) For a Category 1 heritage building (subject to subsection (4)), the deadline is the later of— “(a) the expiry of 15 years after the date of the outcome notice; and “(b) the expiry of the period of an extension in force under section 133AT (if any), as</td>
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Without information on the exact size of the problem, and the available resource pool, it is difficult to comment on these timescales. As such, it would make sense that timescales may need to be revisited after the completion of the desk top assessments and full project planning and costing analysis. The Government is likely to require flexibility in this respect. Instinctively, the proposed timescales appear ambitious and meeting these timeframes will be costly. Various difficulties can arise, hindering progress. For example, where tenant approval is required under the lease, or
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| measured from the expiry of 15 years after the date of the outcome notice.  
“(4) For a building that is both a priority building and a Category 1 heritage building, the deadline is the later of—  
“(a) the deadline calculated under subsection (2); and  
“(b) the expiry of the period of an extension in force under section 133AT (if any), as measured from the deadline calculated under subsection (2).  
“(5) For any other building, the deadline is the expiry of 15 years after the date of the outcome notice.  
We note that changing goal posts are likely to have detrimental impacts on costs and cause delays. |
| 133AQ What territorial authority must do if definition of moderate earthquake amended | |
| “(1) This section applies if the definition of moderate earthquake, as defined in regulations for the purpose of section 133AB (Meaning of earthquake-prone building), is amended or replaced.  
“(2) As soon as is reasonably practicable after the definition is amended or replaced, a territorial authority must—  
“(a) consider whether the outcome of any seismic capacity assessment completed by the territorial authority before the amendment or replacement was made (existing outcome) is likely to be incorrect as a result of the amendment or replacement; and  
“(b) if the territorial authority considers that an existing outcome is likely to be incorrect as |
| where one person causes problems for bodies corporate operating under a unit titles structure, and workers are not provided access for undertaking strengthening. It will therefore be vital for government to implement appropriate measures, in order to help ensure affordability and compliance – and help guard against unintended consequences, including businesses closing and slowing economic growth (see above affordability sections of our submission).  
Due to the difficulties faced by the commercial property sector in smaller local areas, such as Tauranga/the Bay of Plenty (as detailed above), the ten year timeframe may be particularly challenging – making it even more essential that measures are put in place to alleviate affordability concerns and guard against negative externalities. |
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<td>a result of the amendment or replacement, reassess the seismic capacity of the building concerned.</td>
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| 133AR Owner may provide alternative evidence of building's seismic capacity | “(1) The owner of a building may provide to the territorial authority alternative evidence of the building's seismic capacity.  
“(2) Alternative evidence must be derived from an engineering test specified in the methodology set under section 133AG.  
“(3) If a territorial authority considers, in accordance with the methodology, that the alternative evidence changes the outcome of the seismic capacity assessment, the territorial authority must—  
“(a) give the owner of the building a revised outcome notice; and  
“(b) comply with section 133AK or 133AU (as applicable); and  
“(c) if the building is not earthquake prone, remove, or authorise the owner of the building to remove, any seismic work notice already attached to the building; and  
“(d) if the building is earthquake prone, issue a seismic work notice in accordance with section 133AN.  
Support in principle, but note earlier comments in terms of process. Territorial authorities should consider assessments undertaken by building owners, prior to undertaking their own assessment. |
| 133AS Owner may apply for exemption from requirement to carry out seismic work | “(1) The owner of a building may apply to a territorial authority for an exemption from the requirement to carry out seismic work on the building.  
“(2) An application must be in writing and must be accompanied by any fee imposed by the territorial authority under section 219.  
“(3) If the territorial authority is satisfied that the building meets the criteria specified in regulations made under section 401C(b), the territorial authority may grant an exemption by issuing an exemption notice.  
“(4) An exemption notice must—  
Sensible to have this option – to account for specific circumstance and competing priorities. |
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<td>“(a) state that the building is earthquake prone; and</td>
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<td>“(b) state that the owner of the building is exempt from the requirement to carry out</td>
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<td>seismic work on the building; and</td>
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<td>“(c) give the territorial authority’s reasons for granting the exemption.</td>
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<td>“(5) As soon as practicable after issuing an exemption notice, a territorial authority must—</td>
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<td>“(a) attach, or require the owner of the building to attach, the exemption notice in a</td>
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<td>prominent place on or adjacent to the building; and</td>
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<tr>
<td>“(b) remove, or authorise the owner of the building to remove, any seismic work notice</td>
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<td>already attached to the building.</td>
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<td>“(6) If the exemption notice ceases to be attached in a prominent place on or adjacent to</td>
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<td>the building, or becomes illegible,—</td>
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<tr>
<td>“(a) the owner of the building must notify the territorial authority of that fact; and</td>
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<td>“(b) the territorial authority must issue a replacement notice; and</td>
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<td>“(c) subsections (4) and (5) apply to that replacement notice.</td>
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<td>“(7) However, subsection (6) does not apply if the removal of the notice is authorised by or</td>
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<td>under this subpart.</td>
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<tr>
<td>“(8) A territorial authority may, but need not, review an exemption at any time, and may</td>
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<td>revoke it if satisfied that the building no longer meets the criteria.</td>
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<td>“(9) An exemption stays in force until the territorial authority revokes it.</td>
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<td>“(10) As soon as practicable after revoking an exemption, a territorial authority must—</td>
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<tr>
<td>“(a) issue a seismic work notice in accordance with section 133AN; and</td>
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<tr>
<td>“(b) remove, or require the owner of the building to remove, any exemption notice already</td>
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<td>attached to the building.</td>
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| 133AT Owner of Category 1 heritage building may apply for extension of time to complete |
| seismic work |
| “(1) The owner of a Category 1 heritage building may apply to the territorial authority for an |
| extension of time to complete seismic work on the building. |

Support, however see above section on heritage. We contend that all heritage buildings (not just Category 1) will be expensive to strengthen. As such, if the community truly wishes to protect them, measures will
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<td>“(2) An application must be in writing and must be accompanied by any fee imposed by the territorial authority under section 219. “(3) The territorial authority may, by notice in writing to the owner of the building, extend by up to 10 years the deadline for completing seismic work on the building. “(4) If the territorial authority grants an extension, the owner of the building must— “(a) take all reasonably practicable steps to manage or reduce the risks associated with the building being earthquake prone; and “(b) comply with any conditions imposed by the territorial authority for the purpose of managing or reducing the risks referred to in paragraph (a). “(5) If the owner of a building fails to comply with subsection (4), the territorial authority may revoke the extension. “(6) As soon as practicable after granting or revoking an extension, a territorial authority must— “(a) issue a seismic work notice in accordance with section 133AN; and “(b) remove, or require the owner of the building to remove, from the building any seismic work notice already attached to the building.</td>
<td>have to be taken/provided to assist with costs and ensure strengthening takes place. Otherwise there is a real risk that the building will be abandoned and become a white elephant.</td>
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| 133AV Territorial authority may impose safety requirements | Need to guard against misuse or overuse of this provision – as it will have significant consequences for tenants and building owners. Should be amended to ensure powers only used where real danger – e.g. very low seismic strength. |
| “(1) If a territorial authority is satisfied that a building in its district is earthquake prone, the territorial authority may do either or both of the following: “(a) put up a hoarding or fence to prevent people from approaching the building nearer than is safe: “(b) attach in a prominent place, on or adjacent to the building, a notice that warns people not to approach the building. “(2) If, in relation to a building, a territorial authority has put up a hoarding or fence or attached a warning notice, no person may— “(a) use or occupy the building; or “(b) permit another person to use or occupy the building. |
### Provision

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

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

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

### Property Council View

Section 112(1) requirements can impose a significant cost on the building owner. Members have provided the following examples in relation to this:

- “upgrading for fire cost $50,000 for a project worth $300,000”
- “strengthening would have cost $15,000, while extra mandatory upgrades were going to cost $40,000, so we cancelled our consent application”
- “an additional fire exit cost approximately $150,000”
- “installing an access lift cost approximately $60,000”.

Many building owners will struggle to fulfill the new regulatory requirements as it is and, as such, it is important to ensure that costs are managed and implemented on a staged basis. Whilst it is important to eventually ensure fire escape and disabled access and facilities requirements are fulfilled, seismic strengthening requirements should not be a trigger for this.

### 133AZ Territorial authority must set time frame for completing seismic work on priority

We reiterate the affordability concerns discussed above.
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<td><strong>buildings</strong>&lt;br&gt;“(1) A territorial authority must, not later than 12 months after the day on which this section comes into force, set a time frame for the completion of seismic work on priority buildings within its district.”&lt;br&gt;“(2) The time frame—&lt;br&gt;“(a) must include the period of time, in relation to the date of an outcome notice, within which seismic work on priority buildings must be completed (the <strong>completion period</strong>); and&lt;br&gt;“(b) may include different completion periods for particular buildings or classes of building.”&lt;br&gt;“(3) A completion period—&lt;br&gt;“(a) may be a period of less than 15 years after the date of an outcome notice; but&lt;br&gt;“(b) must not exceed a period of 15 years after the date of an outcome notice.”</td>
<td>Where timeframes are made shorter, costs will rise. It will therefore be imperative for the Government to take steps to alleviate affordability concerns.</td>
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| **28 Section 177 amended (Application for determination)**<br>(1) In section 177(3)(f), replace “(which relate to dangerous, earthquake-prone, and insanitary buildings)” with “(which relate to dangerous, affected, and insanitary buildings)”.<br>(2) After section 177(3)(f), insert:<br>“(fa) any power of decision of a territorial authority under subpart 6A of Part 2, other than a power of decision under **section 133AW** (Territorial authority may carry out seismic work) or any of **sections 133AZ to 133AZC** (which relate to time frames for completing seismic work on priority buildings):” | There is significant disagreement between engineers on the seismic strength of particular buildings. This leads to uncertainty for owners and tenants alike, as well as increased transaction costs. The process for dealing with instances of professional disagreement over the strength of a building must be timely, efficient and cost-effective. It is well recognised from current experience that IEPs are too often inaccurate and misleading. It is essential that assessments are robust, as there are high costs (such as the loss of tenants) for building owners where their building has been inaccurately assessed and labeled. We believe a percentage of the territorial authorities’ assessments will need to be peer reviewed to ensure consistent standards and approach across the... |
Conclusion

The majority of Property Council’s 600 members are building owners and tenants. The effects of the Canterbury earthquakes have obviously made themselves felt from their onset and well in advance of any regulatory response. Most members are already sustaining significant costs and economic losses arising from the earthquakes (whether they are located in Canterbury or elsewhere) including dislocation and business interruption costs, costs associated with administering insurance claims and obtaining ongoing insurance, engineering assessment costs, actual earthquake strengthening costs, financial pressures from the requirement to write down the value of sub-standard buildings and the need to fund uneconomic strengthening expenditure, loss of income where tenants have vacated buildings due to concerns around earthquake strength, and so on. The proposed changes mean a continuation and escalation of the already present situation of additional business cost without economic return.

Given this context, it is essential to have a regulatory response that helps businesses deal with the inevitable economic loss that arises from the need to deal with structural obsolescence in New Zealand’s building stock. Affordability is a paramount consideration, which can only be effectively addressed if the Government works with the private sector to deal with this. Without addressing affordability concerns, significant detrimental consequences could arise from the Bill – affecting the viability of local communities. In this respect, implementation of some Bill provisions will be risky without detailed costs/benefit analysis and consideration of all influencing factors as well as mitigation measures.
In addition, the Bill has profound implications on owners of heritage buildings. Property Council has been in correspondence with a number of building owners affected by earthquake strengthening. **Annex 1 below sets out some specific examples of issues heritage building owners are facing which illustrate the various issues raised in this submission.**

Property Council is grateful for the opportunity to provide comments on this issue, and would like to be heard on this submission.

**DATED** 17 April 2014

_________________________________________
Connal Townsend, Chief Executive
On behalf of Property Council New Zealand
PO Box 1033, Auckland 1140

Please also note Annex 1 below, which sets out specific examples of issues affecting building owners.
ANNEX 1 – SPECIFIC EXAMPLES OF ISSUES AFFECTING HERITAGE BUILDING OWNERS

The Yates Buildings Auckland

The buildings: Early examples of reinforced concrete structures. However, they were not unique as the use of reinforced concrete structures became widespread from the 1900s.
Post-construction there had been substantial alterations done to the buildings, so they were significantly different from when they were first constructed.
The buildings had been mostly vacant over a 25 year period, which indicated there was no economically or practically feasible adaptive reuse of the buildings.

Category: Auckland Council sought Category A heritage status for the buildings. This would have prohibited demolition. Partial demolition, alteration or modification would be restricted discretionary.
The buildings were not on the NZHPT List.

Costs: Costs for strengthening and refurbishing the buildings - over $13,000,000.
The market value of the strengthened and refurbished buildings - approximately negative $16,000,000.
As such, it was clearly not financially viable for the owner to structurally strengthen and refurbish the buildings.

Outcomes: As well as being unaffordable, structural strengthening would conceal more than half of what remained of the internal heritage fabric and would compromise the adaptive reuse of the buildings. No lender would finance the structural upgrade and refurbishment in light of the potential likely rental returns.
Scheduling the buildings as Category A heritage would render them incapable of reasonable use (as strengthening is not feasible and it would make demolition prohibited). This would have effectively paralysed the owner leading to deterioration of the buildings and an unsafe, vandalized, unutilised site in Auckland’s CBD. Clearly an inappropriate outcome for the owner, and Auckland – where land is scarce.
Eventually determined through the court that the buildings were not Category A in terms of heritage status.
Neligan House Auckland

Owner: General Trust Board (“GTB”), a registered Charity, owns Neligan House, 12 St Stephens Avenue, Parnell.

Category: Neligan House is scheduled Category 1 by NZHPT.

The building: The house derives its name from Bishop Richard Moore Neligan and was planned and built during his episcopate (1903-10). The building is described as being a fine example of the English Domestic Revival Style. It contributes to the historic precinct of the Deanery and Selwyn Court and makes a strong impact with its brick facade.

Seismic rating: Initial assessment 21% of NBS. GTB was advised that, under current guidelines, it should be upgraded to at least 67%.

Costs: To achieve 67% NBS it would cost GTB $1.817 million or $2,320 psm. This is a similar cost to a new build project and takes no account of the current value of the land, or the current improvements. This cost cannot be offset by greater rents from the property. In fact, no additional income will be generated.

Outcomes: As a charity, no amount of fiscal incentives will facilitate the funding of these works. The GTB face a thankless choice:
- vacate the property, and let the building fall into dereliction
- sell the property “as is”, but at what value to a purchaser that faces the same liability?
- pay to have the works undertaken, but with no pay off, this risks the Trustees facing a claim from their beneficiaries that they have not acted as “prudent investors” as required under the Trustee Act.

In this situation only non-fiscal tools will assist compliance with the Building Act, NZHPT requirements and health and safety requirements. These non-fiscal tools may include:
- creation of transferable development rights
- direct subsidies for capital works to charities equivalent to fiscal tools for tax paying entities
- more flexible planning rights at the site that assist value creation or the ability to demolish and/or redevelop
- compensation based on the principals of injurious affection

Other issues: Charitable Trusts own a significant amount of NZ’s heritage property, much of it valued by the community. How many other semi-public, but privately, Charitable Trust owned properties will be similarly impacted? A broad suite of tools is needed to balance the competing demands of public safety, economic feasibility and the public good (in the form of the non-economic benefit to society of retention of heritage assets). See above Heritage section for further discussion on this.
26 The Terrace, Wellington

Owner: NZ Medical Association (NZMA), a not-for-profit organisation, located on this site since 1927. Current structure built by the NZMA in 1938.

Category: Heritage building on Wellington City Council (WCC) list
Not on NZHPT List

CV: 1 September 2012: $ 1.4 million Land value $1.25 million Improvements $150,000 (improvement value in 2007 was $625,000)

Seismic rating: Initial WCC review rated building at 40% of code
Detailed seismic assessment undertaken – assessed at 10% of code

Options: a) Partial demolition with facade retained and rebuild to existing 3 storey envelope. Consent obtained. Detailed costing priced the project at $4m against an estimated valuation of between $1.8m and $2m. NZMA is able to fund $2m which results in a loan to valuation ratio (LVR) of between 100 and 110%. This is well beyond what the banks will consider financing.

b) Partial demolition with facade retained and rebuild providing 3 additional floors to improve revenue generation of asset. Consent obtained. The total project cost (with retention of the facade) is $6.1m against a valuation of $4.95m. This results in LVR of 83% - again well beyond what the banks will consider financing.

c) Draft concept drawings completed with new facade retaining heritage elements. This was affordable, but not permitted by WCC. Would require a publicly notified consent process.

Outcome: Building vacated at beginning of 2012 – no income. Building has façade that is structurally rigid on footpath of The Terrace on a site that is liquefaction prone. Puts lives at risk.
The site’s heritage is first and foremost the NZMA itself, having occupied the site since 1927. Having to sell and relocate would end the Association’s long and cherished involvement with the area.

Rectify: WCC allowing facade replacement and a non-notified consent process. The result would be a 100% of NBS building, providing additional grade B+ office space on The Terrace and a safe environment for the general public frequenting the area.
Building prior to works

Current state of building

Proposed building post-works under option B
**Ombra, 199 Cuba Street, Wellington**

Paid: $1.2m (2011 post Christchurch quake) to buy and $1m to strengthen and upgrade

Value:
- **Pre-strengthening value 2009 = $1m**
- **Post-strengthening value 2012 = 1.85m**

Rental: Needed to obtain premium to make strengthening viable.

WCC: Received $18k grant to strengthen from WCC. Upon issuing code of compliance, annual rates increased by 13k.

Funding: Banks would only provide finance when building was up to 76% of NBS and Code of Compliance had been received. Project was therefore self-funded for 2 years.
- Banks will not lend on uninsurable property.

Insurance: Was only able to secure insurance as this property was part of a portfolio. Insurance would be expensive and difficult to obtain otherwise.