

Earthquake-prone Buildings New Law Passed

The Building Act has included provisions to manage earthquake-prone buildings for some time. After the Canterbury earthquakes the Government instigated a Royal Commission¹ that recommended changes to these provisions. The changes initially promoted by Government were contentious and have been significantly amended via the Select Committee process. These amendments have now been passed on Tuesday 10 May 2016 as the Building (Earthquake-prone Building) Amendment Act 2016. The Amendment Act establishes different timeframes, dependent on earthquake risk, for the upgrade of "earthquake prone buildings". This Amendment Act does not commence until May 2018. The two year period enables the Chief Executive of the Ministry of Business, Innovation, and Employment to make the "EPB methodology" that will specify how an earthquake rating is calculated².

An earthquake-prone building is currently defined as being 1/3 or below of the Building Code as it applies to a new building³. Currently, it does not matter what parts of the Building Code are not met; it is simply a percentage measure. Each district or city council must have a policy that specifies the timeframe for earthquake-prone buildings being brought up to at least 34% of Building Code⁴. This system has been criticised because the timeframes for upgrade have been so variable throughout the country⁵. There has also been some confusion over whether or not a council can require compliance in excess of 34% of Building Code⁶.

The Government issued a consultation document in December 2012 in response to the Royal Commission Investigation Report. Following this, the Building (Earthquake-prone Buildings) Amendment Bill ("the Bill") was introduced into Parliament on 9 December 2013.

The Bill as introduced contained very short timeframes for strengthening of earthquake-prone buildings⁷. 535 Submissions were received. The Southern Councils made a joint submission focused on longer timeframes for building upgrades, and a more targeted approach to timeframes. These councils did not consider that the proposed timeframes in the Bill would be adequate for changes to be delivered in a sustainable and enduring manner. If the shorter timeframes remained, the proposed accountability measures would create an inevitable liability for councils not meeting the tight timeframes alongside a major financial burden for property owners.

Because the timeframes in the Bill as introduced were considered by many councils to be far too short there has been considerable work that has resulted in significant changes by the select committee.

¹ The main recommendations arising from the report were for earthquake-prone buildings to be upgraded to at least 34% of Building Code, with timeframes for unreinforced masonry buildings being within 7 years, and other buildings within 15 years. New section 133AA excludes residential buildings except where they are 2 or more storeys and either are a hostel/boardings house or contain 3 or more household units. Farm buildings and various structures are also excluded.

² Section 133AV

³ Standalone homes are not affected by the new (or previous) legislation.

⁴ Clause 7 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 defines a moderate earthquake as one that "would generate shaking at the site of the building that is of the same duration as, but that is one-third as strong as, the earthquake shaking that would be used to design a new building at that site. Section 122 Building Act in turn defines "earthquake prone" as a building that would have its ultimate capacity exceeded in a "moderate earthquake" and cause injury or damage. This section 122 is repealed by section 13 of the Amendment Act and replaced with section 133AB which is a similar definition but provides for "part of" a building to be earthquake prone. Section 124 gives remedial powers to a council if satisfied that a building is dangerous or earthquake-prone.

⁵ In 2013 the Government estimated that the average policy required upgrade within 28 years.

⁶ See *The Insurance Council of New Zealand Incorporated v Christchurch City Council, University of Canterbury and Body Corporate 423446* [2013] NZHC 51 where the High Court held that a Council could not require upgrades in excess of 34%.

⁷ The most important of these requirements were: councils to assess all buildings and identify those which are potentially earthquake-prone within a 5 year timeframe; owners to carry out strengthening works to 34% of Building Code or demolish the building (extension of 10 years for Category One heritage buildings) within 15 years, and certain buildings to require strengthening in a shorter timeframe if near an important transport route or include unsafe parts.

The major changes to timeframes that the new Act introduces are⁸:

1. Timeframes for councils identifying potential earthquake-prone buildings are calculated according to the seismic risk of the area. Section 133AD defines the different areas, as low, medium, or high.
2. Section 133AG requires councils to identify (by investigation) potential earthquake-prone buildings or parts of buildings within:
 - (a) 5 years for areas of high seismic risk;
 - (b) 10 years for areas of medium seismic risk; and
 - (c) 15 years for areas of low seismic risk.
3. If a building is identified as potentially earthquake-prone, the council requests the owner of the building to provide an engineering assessment within 12 months⁹. Based on the assessment, the council decides whether the building (or part of the building) is earthquake-prone. A new term is used being "earthquake rating". This means the degree to which the building meets the building code. This will be determined by the "EPB Methodology" that the Chief Executive must publish within a month of this Act commencing (e.g. June 2017). This approach is much more sophisticated than the current blunt test of simply being less than 34% of building code.
4. If the building is assessed as earthquake prone the Council promptly requests an Earthquake Prone Building ("EPB") notice under new section 133AL¹⁰. The council is required to attach an EPB notice in a prominent place on or adjacent to the building¹¹. In particular, the EPB notice must: specify the building, or part of the building identified as earthquake-prone; say whether it is a priority building; state the earthquake rating; state that the owner must carry out the remedial seismic work required and the deadline for doing so; and state the option for the owner to apply for an extension if the building is a heritage building, or apply to be exempt from undertaking seismic work (if requirements are met).
5. The timeframe for completing remedial seismic work upon receiving the notice depends on what risk area the building is located in.
6. Section 133AM provides for the calculation of final dates for the completion of seismic work on an earthquake-prone building, following investigation and the issuing of an EPB notice. The work, to raise the building to at least 34% of Building Code¹², must be completed within:
 - (a) 15 years for a high seismic risk area;
 - (b) 25 years for a medium seismic risk area;
 - (c) 35 years for a low seismic risk area;after the date of the first EPB notice issued by the council under section 133AL.

⁸ Note that the timeframes have changed during the Parliamentary process from when the initial Bill was introduced. For example, one of the major concerns was with the proposal for councils to undertake seismic assessments of all buildings within 5 years (old clause 23 deleted section 133AF of the Bill). This requirement has since been deleted and timeframes have been extended.

⁹ New section 133AH (inserted by section 24 of the Amendment Act).

¹⁰ The council is also required to record the details of that decision in the EPB register (new section 133AK(3)(b) inserted by section 24 of the Amendment Act).

¹¹ New section 133P (inserted by section 24 of the Amendment Act).

¹² The requirement for buildings to be at least 34% of the code (more than one-third) in clause 7 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 is unchanged by the Building (Earthquake-prone Buildings) Amendment Act. Part 2, section 45 of the Act retains this requirement.

7. The Council can also choose to fence off or restrict access to a building that is earthquake prone¹³.
8. Timeframes are halved for "priority buildings" being buildings in areas of high or medium seismic risk that include hospitals and emergency service facilities; most educational facilities; parts of an unreinforced masonry building such as parapets that could fall onto busy thoroughfares; and buildings identified by the council as having potential to impede strategic transport routes after an earthquake. The council must use a special consultative procedure to identify unreinforced masonry buildings and those on strategic routes.¹⁴

Some examples of how the new timeframes will affect earthquake-prone buildings include:

Auckland and Dunedin both are defined as being in a low seismic risk area. This means that council investigations must be done within 15 years, and remediation must be completed within 35 years of the EPB notice (i.e. potentially a total of up to 50 years for upgrades for some earthquake prone buildings).

Christchurch and Queenstown are both in a high seismic risk area. This means that council investigations must be done within 5 years, and remediation must be completed within 15 years of the EPB notice.

To read more about the legislation please go to the Parliament Counsel Office [website](#).

If you want legal advice on the implications of these changes please contact our Earthquake Prone Building legal experts, [Rachel Brooking](#), [Mike Kerr](#) or [Michael Garbett](#).

¹³ Section 133AU.

¹⁴ Section 133AE and 133AF.