



# Cabinet

CAB Min (13) 26/7

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## Minute of Decision

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### Improving the System for Managing Earthquake-Prone Buildings

**Portfolio:** Building and Construction

On 5 August 2013, following reference from the Cabinet Economic Growth and Infrastructure Committee (EGI), Cabinet:

#### Background

1 **noted** that:

- 1.1 on 26 March 2012, Cabinet noted the terms of reference for the earthquake-prone building policy review (the review) [CAB Min (12) 10/7A];
- 1.2 the review seeks to ensure earthquake-prone building policy settings and standards adequately balance life and safety against economic, heritage and other considerations, and are effectively implemented and administered;

2 **noted** that on 5 December 2012, EGI:

- 2.1 agreed to the release of a consultation document on *Building Seismic Performance: Proposals to Improve the New Zealand Earthquake-Prone Buildings System* which sought the public's view on a series of proposals developed as part of the review, as well as views on matters recommended by the Royal Commission of Inquiry into Building Failure Caused by the Canterbury Earthquakes (the Royal Commission) in Volume 4 of its final report that differ from the review proposals;
- 2.2 invited the Minister for Building and Construction to report back to EGI in April 2013 on the outcome of the review, following the completion of the public consultation process;
- 2.3 directed the Government Property Management Centre of Expertise, in consultation with the Ministry of Business, Innovation and Employment, to report back on progress in identifying the number of Crown owned buildings that are earthquake-prone, and the indicative strengthening costs to the Crown, as part of the April 2013 report;

[EGI Min (12) 28/15]

- 3 **noted** that the reports referred to in paragraph 2 above were subsequently deferred until 31 July 2013;
- 4 **noted** that on 10 June 2013, the Cabinet Strategy Committee noted an item on the outcome of the consultation, and invited the Minister for Building and Construction to include in the EGI report referred to above proposals and options around upgrades to access and facilities for people with disabilities, timeframes for strengthening earthquake-prone buildings, and dealing with earthquake-prone heritage buildings [STR Min (13) 3/2];
- 5 **noted** that:
- 5.1 both the Royal Commission and the review identified problems with the current system for managing earthquake-prone buildings;
- 5.2 a clear view has emerged that from a societal perspective the current system for managing earthquake-prone buildings is not achieving an acceptable level of risk (many earthquake-prone buildings are not being dealt with in a timely and cost-effective manner);

### Outcome of consultation

- 6 **noted** that 535 submissions were received on the consultation document, with most of the proposals generally supported by submitters, albeit with some concerns;
- 7 **noted** that cost/affordability was seen as a key barrier to strengthening earthquake-prone heritage buildings, and that there is a risk of significant loss of heritage as a result;
- 8 **noted** that many submitters believed heritage buildings should have different consideration to other buildings;
- 9 **noted** that the Royal Commission recommendations that extend beyond the proposals in the consultation document were either not supported or there was no clear majority view, with the exception of one recommendation relating to upgrades to access and facilities for people with disabilities;
- 10 **noted** that the Ministry of Business, Innovation and Employment intends to publish a summary of submissions received on the consultation document on its website once Cabinet decisions have been made;

### Improving the system for managing earthquake-prone buildings

- 11 **noted** that the proposals outlined below move to a system that has a significantly greater role for central government, particularly in providing leadership and direction;
- 12 **agreed** to amend the Building Act 2004 (the Act) to remove the requirements in sections 131 and 132 for territorial authorities (TAs) to have policies in relation to their powers regarding earthquake-prone buildings;

### Better information and disclosure

- 13 **agreed** to amend the Act to require:
- 13.1 TAs to undertake a seismic capacity assessment of all non-residential and multi-storey/multi-unit residential buildings (as currently defined under section 122 of the

Act) in their districts within 5 years from commencement, using a methodology specified and published by the Ministry of Business, Innovation and Employment;

13.2 TAs to prioritise for assessment, according to a framework to be specified and published by the Ministry of Business, Innovation and Employment:

- (i) buildings likely to have a significant impact on public safety (including buildings with high risk elements such as falling hazards); and
- (ii) strategically important buildings;

(with both (i) and (ii) defined in regulations made under the Act);

13.3 TAs to provide the results of the assessments to the relevant building owner;

13.4 owners who are notified that the outcome of the seismic capacity assessment is that their building is earthquake-prone to strengthen (or demolish) their building within the statutory timeframe;

14 **agreed** to amend the Act to provide that an owner will be able to provide an engineering assessment of a type to be specified and published by the Ministry of Business, Innovation and Employment, should they disagree with the outcome of the seismic capacity assessment undertaken by the TA;

15 **agreed** to amend the Act to:

15.1 provide for a national register of information on earthquake-prone buildings to be established, held and maintained by the Ministry of Business, Innovation and Employment;

15.2 require TAs to enter the results of each seismic capacity assessment into the national register (as well as updated information if this becomes available to the TA);

15.3 provide the circumstances in which the national register may be updated being where there is new information (e.g. remediation or demolition) or if there is an error or mistake;

15.4 provide that the national register contain information identifying each building, its location, and the outcome of the seismic capacity assessment;

15.5 provide that the national register may also include other information as specified in regulations made under the Act (if any);

15.6 provide that the purpose of the register is to enable members of the public to know information about the seismic capacity of buildings (including their location) and other related information;

15.7 provide that members of the public will be able to search the register, but that certain information may not be publicly available if not considered appropriate by the Ministry of Business, Innovation and Employment;

15.8 provide that the Ministry of Business, Innovation and Employment may provide the full range of information available on its register to TAs, government departments, and State sector monitoring agencies;

### Earthquake-prone building definition and strengthening level required

- 16 **agreed** to amend the definition of an earthquake-prone building in the Act to clarify that:
- 16.1 it applies to parts of buildings as well as whole buildings;
  - 16.2 the requirement in section 122(1)(b) that the building be “likely to collapse causing” injury, death or damage to other property is about the possible consequence of building failure, not the likelihood of collapse, as the likelihood of failure is addressed by the test in section 122(1)(a);
- 17 **agreed** to amend the Building (Specified Systems, Change of Use, and Earthquake-prone Buildings) Regulations 2005 so that the definition of “moderate earthquake” is fixed at a set point in time and does not change as building standards change over time (unless the regulations are changed), to increase transparency;
- 18 **agreed** to amend the Act to clarify that the level of strengthening required for earthquake-prone buildings is only so that the building, or the affected part, is no longer earthquake-prone;
- 19 **noted** that decisions on strengthening buildings above the earthquake-prone building threshold will be driven by a better informed market;

### Timeframes for addressing earthquake-prone buildings

- 20 **noted** that the consultation document proposal that earthquake-prone buildings be strengthened (or demolished) within 15 years of the legislation taking effect (i.e. assessment by TAs within 5 years, strengthening within 10 years of assessment) was not supported by submitters, with key concerns relating to workforce capacity and capability, and costs/affordability;
- 21 **agreed** to amend the Act to require buildings to be strengthened so they are not earthquake-prone (or demolished) within 20 years of the legislation taking effect (i.e. assessment by TAs within 5 years, strengthening within 15 years of assessment);
- 22 **agreed** to amend the Act to:
- 22.1 provide that TAs can require (i) buildings likely to have a significant impact on public safety (including buildings with high risk elements such as falling hazards) and (ii) strategically important buildings, to be strengthened (or demolished) more quickly than other earthquake-prone buildings (with both (i) and (ii) defined in regulations made under the Act);
  - 22.2 require TAs to set a framework for dealing with these buildings after consulting with their communities (using the special consultative procedure in section 83 of the Local Government Act 2002), for transparency;

### Exemptions from strengthening timeframes

- 23 **agreed** to amend the Act to provide that owners of earthquake-prone buildings are able to apply to the TA in their district for exemptions from strengthening timeframes where the consequence of failure of the affected building is low;

- 24 **agreed** that detailed criteria for providing exemptions be defined in regulations made under the Act;
- 25 **noted** that while exempt from strengthening timeframes, affected buildings will still be identified as earthquake-prone on the national register;

### Heritage buildings and strengthening timeframes

- 26 **agreed** to amend the Act to provide that:

- 26.1 owners of buildings on the National Historic Landmarks List to be established under the Heritage New Zealand Bill, and category 1 historic buildings listed on the register of the historic places under the Historic Places Act 1993, may apply to the TA in their district for an extension of time to strengthen their building;
- 26.2 the extension of time is to be agreed by the TA and the owner on a case by case basis;
- 26.3 as a condition of being granted an extension of time, the owner will be required to manage/reduce the risk their building presents to users of the building, passers-by, and other property, to the satisfaction of the TA (e.g. by placing warning notices on the building, restricting use, and/or interim securing of high risk elements such as falling hazards);

- 27 **noted** that including a maximum limit to the extension of time that can be granted by the TA would help owners manage costs while still ensuring affected buildings are dealt with in a timely manner nationwide, and would reduce the risk of demolition by neglect;
- 28 **agreed** to amend the Act to provide that the extension of time referred to in paragraph 26 above is limited to a maximum of an additional 10 years;
- 29 **noted** that while being provided more time to strengthen, affected buildings will still be identified as earthquake-prone on the national register;

### Upgrades to access and facilities for people with disabilities

- 30 **noted** that the government has made several previous commitments both nationally and internationally to improving the accessibility of the built environment, and in relation to the Canterbury rebuild;
- 31 **noted** that upgrade requirements for access and facilities for people with disabilities under section 112 of the Act can be an impediment to the required earthquake strengthening works being carried out;
- 32 **noted** that because the upgrade provisions involve a test of what is “reasonably practicable”, there is some flexibility in how building consent authorities (BCAs) can apply the provisions;
- 33 **noted** that the Royal Commission recommended that the Act be amended to enable BCAs to issue building consents for earthquake strengthening works without requiring upgrades to access and facilities for people with disabilities;

- 34 **noted** that while views on the Royal Commission's recommendation (paragraph 33 above) were polarised in submissions on the consultation document, that recommendation was supported by a majority of submitters;
- 35 **agreed** to amend the Act to enable TAs (that are BCAs) to issue building consents for earthquake strengthening works on buildings that are earthquake-prone without triggering requirements for other upgrades;
- 36 36.1 **agreed** to include a regulation making power in the Act that may be used to specify criteria for TAs to apply when making decisions about whether or not to require other upgrades to help address uncertainty issues for owners;
- 36.2 **invited** the Minister for Building and Construction to report back to EGI in due course on the proposed criteria to be specified in the regulations;

### Role of central government

- 37 **agreed** to amend the Act to extend the functions, duties and powers of the chief executive of the Ministry of Business, Innovation and Employment to include:
- 37.1 providing direction and guidance to TA owners, and the public in relation to managing earthquake-prone buildings;
- 37.2 monitoring overall performance of the earthquake-prone building system;
- 37.3 specifying and publishing a methodology for seismic capacity assessments, including a framework for prioritisation of buildings for assessment, which may include other requirements and guidance for TAs on how to carry out their earthquake-prone building functions;

### Transitional provisions

- 38 **agreed** to amend the Act to recognise building assessments already undertaken where they have been undertaken using a methodology consistent with, or recognised by, that methodology to be specified and published by the Ministry of Business, Innovation and Employment;
- 39 **agreed** to amend the Act so that notices issued under section 124 for earthquake-prone buildings remain in force where the time remaining on the notice is shorter than the timeframe referred to in paragraph 21 above;
- 40 **agreed** to amend the Act so that notices issued under section 124 for earthquake-prone buildings be reissued by the TA where the time remaining on the notice is longer than the timeframe referred to in paragraph 21 above;

### Other Royal Commission recommendations on earthquake-prone buildings

- 41 **agreed** that the Royal Commission's recommendations that extend beyond the proposals outlined above be addressed by guidance, information, and education, rather than by regulatory change;

**Legislative implications**

- 42 **noted** that the Building (Earthquake-Prone Buildings) Amendment Bill has a category 5 priority (to be referred to a select committee in 2013) on the 2013 Legislation Programme;
- 43 **invited** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals;
- 44 **authorised** the Minister for Building and Construction to approve changes, consistent with the policy framework outlined in the paper under CAB (13) 424, on any issues that arise during the drafting process;

**Crown owned/leased buildings that may be earthquake-prone**

- 45 **noted** that since January 2012, the Government Property Management Centre of Expertise has been undertaking a co-ordinating function in relation to the seismic assessment of buildings across 160 State sector agencies;
- 46 **noted** that the latest information received from agencies (as at 11 April 2013) is that of the 4,775 buildings assessed to date, 536 have been identified as requiring further assessment;
- 47 **noted** that indicative costing of impacts to the Crown with a degree of accuracy is not possible at this time, and that officials will provide on-going updates on the impacts to the Crown as a building owner/occupier to relevant Ministers;

**Communications**

- 48 **noted** that the paper under CAB (13) 424 will be published on the Ministry of Business, Innovation and Employment's website as part of the material to be released in support of the announcement of Cabinet's decisions.

Reference: CAB (13) 424