



# Cabinet

CAB Min (15) 9/5A

Copy No: 34

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### System for Managing Earthquake-Prone Buildings: Additional Decisions

#### Portfolio: Building and Housing

On 23 March 2015, following reference from the Cabinet Economic Growth and Infrastructure Committee, Cabinet:

#### Background

- 1 **noted** that the Building (Earthquake-prone Buildings) Amendment Bill (the Bill) amends the Building Act 2004 (the Act) to give effect to reforms agreed by Cabinet and announced in August 2013 to improve the system for managing earthquake-prone buildings [CAB Min (13) 26/7 and LEG Min (13) 26/7];
- 2 **noted** that:
  - 2.1 the Bill is currently being considered by the Local Government and Environment Committee;
  - 2.2 the Ministry of Business, Innovation and Employment is due to provide its Departmental Report to the Committee by the end of April 2015;
- 3 **noted** that:
  - 3.1 many submitters on the Bill supported the intent of the proposed legislation;
  - 3.2 however, several submitters, including Local Government New Zealand and some territorial authorities (TAs), raised concerns about the potentially significant impacts of the Bill, particularly for rural and provincial New Zealand and regions of low seismic risk;
- 4 **noted** that to help address the concerns of submitters, additional Cabinet policy approvals are needed to refine the Bill;
- 5 **noted** that refining the Bill will involve rescinding some existing Cabinet decisions, which are incorporated in the Bill as currently drafted;



6 **noted** that:

- 6.1 in August 2013, Cabinet authorised the Minister for Building and Construction to approve changes, consistent with the agreed policy framework, on any issues that arose during the drafting process [CAB Min (13) 26/7];
- 6.2 in November 2013, the Cabinet Legislation Committee confirmed certain authorisations that the Minister for Building and Construction had made in accordance with the Cabinet approvals [LEG Min (13) 26/7];
- 6.3 certain elements of the above authorisations will be impacted by decisions made on the matters outlined below;

### **Excluding additional buildings from the system**

7 **noted** that most residential buildings are excluded from the existing system for managing earthquake-prone buildings in Part 2, subpart 6 of the Act;

8 **agreed** to include in the Bill an amendment to the Act to exclude certain additional buildings from the definition of an earthquake-prone building, along the lines of the following:

- 8.1 farm buildings;
- 8.2 retaining walls;
- 8.3 fences;
- 8.4 monuments that cannot be entered (e.g. statues);
- 8.5 wharves, bridges, tunnels and storage tanks (e.g. water reservoirs);

9 **noted** that:

- 9.1 the buildings listed in paragraph 8 above are covered by the current earthquake-prone building definition in section 122 of the Act but, in practice, TAs have not focused on them;
- 9.2 applying the pro-active earthquake-prone building provisions in the Bill to these buildings would likely to be either impractical or excessive, or both;

10 **agreed** that any notices that have been issued under section 124 of the Act requiring remediation in relation to buildings listed in paragraph 8 above will lapse upon the commencement of the legislation;

### **Initial investigations, engineering assessments, notification and disclosure of earthquake-prone buildings**

11 **noted** that on 5 August 2013, Cabinet agreed to amend the Act to require:

- 11.1 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 five years from commencement using a methodology specified and published by the Ministry of Business, Innovation and Employment;

- 11.2 TAs to prioritise for assessment, according to a framework to be specified and published by the Ministry of Business, Innovation and Employment:
- 11.2.1 buildings likely to have a significant impact on public safety (including buildings with high risk elements such as falling hazards); and
  - 11.2.2 strategically important buildings;
- (with both paragraphs 11.2.1 and 11.2.2 defined in regulations made under the Act);
- 11.3 TAs to provide the results of the assessments to the relevant building owner;
- 11.4 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;
- 11.5 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;

[CAB Min (13) 26/7, paragraphs 13 and 14]

- 12 **noted** that on 5 August 2013, Cabinet also agreed to amend the Act to 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) [CAB Min (13) 26/7, paragraph 15.2];
- 13 **rescinded** the decisions referred to in paragraphs 11.1 to 11.5 above; and instead
- 14 **agreed** to include the following proposals in the Bill to amend the Act to:
- 14.1 require TAs to undertake initial investigations to identify potentially earthquake-prone buildings within their districts using a methodology to be set and published by the Chief Executive of the Ministry of Business, Innovation and Employment (with no ability for the TA to recover the costs of doing so directly from the individual building owner), and notify owners by way of an outcome notice, within the following timeframes from commencement:
    - 14.1.1 five years in areas of high seismic risk;
    - 14.1.2 10 years in areas of medium seismic risk;
    - 14.1.3 15 years in areas of low seismic risk;
  - 14.2 define areas of high, medium and low seismic risk in connection with the Building Code (and associated approved solutions and verification methods), with reference to the seismic hazard factor (Z factor) as follows:
    - 14.2.1 high seismic risk (Z factor  $\geq 0.3$ );
    - 14.2.2 medium seismic risk (Z factor of 0.15 up to  $<0.3$ );
    - 14.2.3 low seismic risk (Z factor  $< 0.15$ );

- 14.3 require TAs to prioritise for identification those buildings defined as a priority building (within half the timeframe for identification of other buildings);
- 14.4 require building owners to provide an engineering assessment to their TA within 12 months of being advised in an outcome notice that their building is potentially earthquake-prone (using tools and methods specified in the methodology set and published by the Chief Executive of the Ministry of Business, Innovation and Employment), unless they can provide conclusive evidence that their building is not earthquake-prone;
- 14.5 provide TAs with a limited discretion to extend the 12 month period for assessment (for up to a further 12 months), for example where there is insufficient engineering resource available to undertake assessments;
- 14.6 provide TAs with discretionary powers to undertake an engineering assessment using tools and methods specified in the methodology set and published by the Chief Executive of the Ministry of Business, Innovation and Employment (with the ability for the TA to recover the costs of undertaking assessments from the building owner);
- 14.7 provide that where an owner either advises the TA that they do not wish to undertake an engineering assessment, or fails to provide an engineering assessment, the building is designated as 'potentially earthquake-prone (not assessed)', and:
- 14.7.1 it is automatically categorised with earthquake-prone buildings that have the lowest level of performance;
- 14.7.2 notices issued requiring work to be carried out and the register will record the fact that the building is potentially earthquake-prone and an assessment has not been undertaken;
- 14.7.3 remediation to ensure that the building is no-longer earthquake-prone will be required as if the building was an earthquake-prone building;
- 14.8 provide that the methodology for initial investigations to identify potentially earthquake-prone buildings and engineering assessments is risk-based, and require the methodology to specify:
- 14.8.1 the tools and methods to be used to identify potentially earthquake-prone buildings;
- 14.8.2 the tools and methods to be used to determine whether or not a building is earthquake-prone, and its rating;
- 15 **noted** that the Minister for Building and Housing will be bringing the proposed methodology to Cabinet, because it will have an important effect on how wide the net is cast to determine those buildings that will need engineering assessments, including buildings in the public sector (such as buildings in the health and education sectors);
- 16 **noted** that it is intended that the methodology will be heavily focused on unreinforced masonry buildings, with most timber framed buildings unlikely to require engineering assessments;

- 17 **agreed** to include in the Bill amendments to the Act to require TAs to monitor and report their progress on identification of potentially earthquake-prone buildings to the Chief Executive of the Ministry of Business, Innovation and Employment:
- 17.1 annually in relation to areas of high seismic risk;
  - 17.2 every two years in relation to areas of medium seismic risk;
  - 17.3 every three years in relation to areas of low seismic risk;
- (with the shortest relevant reporting timeframe applying for those TAs that cover more than one area of seismic risk);
- 18 **agreed** to include in the Bill amendments to the Act to:
- 18.1 provide TAs with residual discretionary powers to apply their earthquake-prone building powers to those buildings not initially identified as potentially earthquake-prone;
  - 18.2 enable TAs to exercise the powers outlined in paragraph 18.1 above after the relevant identification period if necessary;
- 19 **agreed** to include the following proposals in the Bill to amend the Act to:
- 19.1 amend the register provisions in the Bill so that the register only includes details of buildings that have been determined by the TA as being earthquake-prone following consideration of an engineering assessment (and those designated as potentially earthquake-prone (not assessed)) rather than including details of all buildings;
  - 19.2 clarify that the register includes relevant details where only part of the building is earthquake-prone;
  - 19.3 change the name of the seismic capacity register to the earthquake-prone buildings register;
  - 19.4 amend the register provisions in the Bill so that the register also includes details of an earthquake-prone building's percentage of new building standard (NBS) range or specific percentage NBS or, in the case of a potentially earthquake-prone building where no engineering assessment has been undertaken, a statement that it has not been assessed;
  - 19.5 change the names of the seismic capacity assessment and seismic work notice to engineering assessment and earthquake-prone building notice, and amend the relevant provisions in the Bill so that:
    - 19.5.1 notices issued requiring work to be done for earthquake-prone buildings will specify whether the building is a priority building, and will also specify its percentage NBS range or specific percentage NBS or, in the case of a potentially earthquake-prone building where no engineering assessment has been undertaken, a statement that it has not been assessed;
    - 19.5.2 the form of the earthquake-prone building notice be set in regulations (using a grading scheme to help differentiate earthquake-prone buildings and incentivise action);

- 19.6 provide owners with the ability to provide an engineering assessment to the TA (in accordance with the tools and methods to be specified and published in the methodology) at any time after the issue of an earthquake-prone building notice, and in the event the TA considers that this changes the outcome of the earthquake-prone building notice to require the TA to reissue (or revoke) the notice and update the register;
- 20 **agreed** to remove the requirement in the Bill (which restates the current requirements in section 125 of the Act) for TAs to provide copies of earthquake-prone building notices to occupiers of the building, as this is an unnecessary compliance cost as:
- 20.1 there will be a requirement for earthquake-prone building notices to be sent to owners and placed on the buildings;
- 20.2 information about earthquake-prone buildings will also be on a publicly accessible register available on the internet;

### Timeframes for remediating buildings determined as earthquake-prone

- 21 **noted** that on 5 August 2013, Cabinet 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 five years, and strengthening within 15 years of assessment) [CAB Min (13) 26/7, paragraph 21];
- 22 **rescinded** the decision referred to in paragraph 21 above; and instead:
- 22.1 **agreed** to include in the Bill amendments to the Act to set the timeframe for remediation of earthquake-prone buildings at:
- 22.1.1 15 years for areas of high seismic risk;
- 22.1.2 25 years for areas of medium seismic risk;
- 22.1.3 35 years for areas of low seismic risk;
- (with timeframes for remediation running from when buildings are determined as earthquake-prone (or designated potentially earthquake-prone (not assessed)));
- 22.2 **agreed** to define areas of high, medium and low seismic risk in connection with the Building Code (and associated approved solutions and verification methods) with reference to the seismic hazard factor (Z factor) as follows:
- 22.2.1 high seismicity risk (Z factor  $\geq 0.3$ );
- 22.2.2 medium seismic risk (Z factor of 0.15 up to  $<0.3$ );
- 22.2.3 low seismic risk (Z factor  $< 0.15$ );

### Priority buildings

- 23 **noted** that on 5 August 2013, Cabinet agreed to amend the Act to:
- 23.1 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);

- 23.2 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;

[CAB Min (13) 26/7, paragraph 22]

- 24 **rescinded** the decisions referred to in paragraphs 23.1 and 23.2 above; and instead:

- 24.1 **agreed** to include the following proposals in the Bill to amend the Act to define priority building within primary legislation in areas of high and medium seismic risk as follows:

- 24.1.1 'hospital buildings' – those components of a hospital necessary for it to be able to maintain essential services in the event of a significant earthquake, but excluding administration buildings and aged residential care facilities;
- 24.1.2 'school buildings' – all buildings regularly occupied by 20 persons or more in an early childhood education centre, primary, secondary, or tertiary education facility, including registered private training establishments;
- 24.1.3 'emergency service facilities' – emergency service facilities such as fire stations, police stations and emergency vehicle garages; and designated emergency shelters, designated emergency centres and ancillary facilities;
- 24.1.4 'corridor buildings' – those buildings identified by the TA, after consulting their communities (using the special consultative procedure in section 83 of the Local Government Act 2002) that could, if they were to collapse in an earthquake, impede transport routes of strategic importance in an emergency. The use of this provision would be optional for TAs;

- 24.2 set the timeframe for remediating priority buildings at half the timeframe for other earthquake-prone buildings (after a building is determined as being earthquake-prone or designated as potentially earthquake-prone (not assessed));

#### **Additional 'substantial alterations' trigger for upgrading earthquake-prone buildings**

- 25 **noted** that to help further ensure that earthquake-prone buildings are remediated in a timely manner nationally, a further trigger in the Bill for upgrading earthquake-prone buildings is recommended;

- 26 **agreed** to include the following proposals in the Bill to amend the Act to:

- 26.1 add a further trigger for remediating earthquake-prone buildings so that where 'substantial alterations' are to be carried out, a building consent will not be granted unless building work is undertaken so that the building (or the affected part) is no longer earthquake-prone;

- 26.2 specify criteria in regulations that TAs must apply when considering whether an alteration is a substantial alteration, e.g. in connection with the value of the building work in the building consent as a ratio of the value of the building or some other criteria as is determined;

### Clarification of some miscellaneous matters

- 27 **noted** that some miscellaneous matters have been raised by submitters on the Bill that require further clarification in the Act;
- 28 **agreed** to include in the Bill amendments to the Act to include:
- 28.1 injury or death to persons around the building in the definition of earthquake-prone building, to ensure that it covers people on the same property as the building as well as persons on other property;
- 28.2 a further 'carve-out' from the general residential exclusion for hostels, boarding-houses or other specialised accommodation, to clarify that earthquake-prone building provisions apply in relation to these buildings;
- 28.3 a regulation making power to define the term 'ultimate capacity';
- 28.4 a statement in the regulation-making power in clause 37 new section 401C(b) of the criteria for granting an exemption from a requirement to remediate an earthquake-prone building that will include but is not limited to:
- 28.4.1 location (including streetscape and seismicity);
- 28.4.2 the age of the building;
- 28.4.3 construction type;
- 28.4.4 building use;
- 28.4.5 building occupancy;
- 28.5 new provisions allowing TAs to recover the costs of undertaking assessments from the building owner as a debt due to the TA;

### Infringement offences

- 29 **agreed** to clarify that the infringement regime that currently applies in respect of earthquake-prone buildings in the Building (Infringement Offences, Fees, and Forms) Regulations 2007 continues to apply in the revised system for managing earthquake-prone buildings provided for in the Bill;
- 30 **agreed** to include in the Building (Infringement Offences, Fees, and Forms) Regulations 2007 that failures related to displaying earthquake-prone building notices and exemption notices on buildings under clause 23 new section 133AY(2) and (3) are infringement offences, and that the infringement fine for these offences be set at \$1,000;
- 31 **noted** that, if agreed to, changes to regulations to give effect to the proposals in paragraphs 29 and 30 above will be signalled in the Ministry of Business, Innovation and Employment's Departmental Report to the Local Government and Environment Committee, and changes made to the regulations after the Bill is enacted, but before it comes into force;



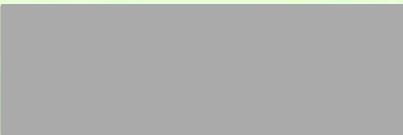
**Transitional provisions (not including excluded buildings)**

- 32 **noted** that on 5 August 2013, Cabinet 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 [CAB Min (13) 26/7, paragraph 38];
- 33 **noted** that on 5 August 2013, Cabinet also agreed to amend the Act:
- 33.1 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;
- 33.2 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;
- [CAB Min (13) 26/7, paragraphs 39 and 40]
- 34 **rescinded** the decisions referred to in paragraphs 33.1 and 33.2 above; and instead:
- 34.1 **agreed** to include the following proposals in the Bill to amend the Act to provide that:
- 34.1.1 decisions made by TAs that led to section 124 notices being issued for earthquake-prone buildings remain valid;
- 34.1.2 notices issued under section 124 for earthquake-prone buildings be reissued by the TA under the Bill to ensure there are consistent notifications on earthquake-prone buildings;
- 34.1.3 where the remediation timeframe remaining on the existing section 124 notices is less than the relevant timeframe referred to in paragraphs 22.1 and 24 above, then the original remediation timeframe will apply;
- 34.1.4 where the remediation timeframe remaining on the existing section 124 notices is longer than the relevant timeframe referred to in paragraphs 22.1 and 24 above, then the new timeframe referred to in paragraphs 22.1 and 24 will apply;
- 34.1.5 building owners may apply to their TA to have the relevant timeframes in paragraphs 22.1 and 24 above apply from the date of issue of their original section 124 notice, and the Ministry of Business Innovation and Employment is to provide guidance to TAs on the exercise of their discretion as to whether to grant these applications;

**Next steps**

- 35 **agreed** that decisions on the matters outlined in paragraphs 7 to 34 above be incorporated into the Ministry of Business, Innovation and Employment's Departmental Report to the Local Government and Environment Committee;

- 36 **noted** that the Ministry of Business, Innovation and Employment will also be recommending a range of other minor amendments to improve the workability of the Bill within the scope of existing Cabinet policy approvals as part of the Departmental Report in response to submissions on the Bill;
- 37 **noted** that as part of the implementation of the Bill, the Ministry of Business, Innovation and Employment is developing a monitoring and evaluation strategy to assess the implementation and impacts of Bill.



Secretary of the Cabinet

Reference: EGI Min (15) 5/5, CAB Min (15) 9/5

*Secretary's note: This minute replaces EGI Min (15) 5/5. A Cabinet minute has been issued for this item as it involves rescinding previous decisions (see paragraphs 13, 22, 24 and 34).*

---



Proactively released by the Minister for Building and Housing