17 April 2014

To: Secretariat
Local Government and Environment Committee
Parliament House
Wellington

Submission of the Christchurch City Council on the Building (Earthquake-prone Buildings) Amendment Bill

Introduction

1. The Christchurch City Council would like to thank the Committee for the opportunity to make submissions on the Building (Earthquake-prone Buildings) Amendment Bill (the Bill).

2. The Council wishes to appear in support of its submission and will be represented by Mayor Lianne Dalziel, Councillor Ali Jones and appropriate expert staff.

3. The Council requests that the Select Committee conduct a hearing in Christchurch for the purpose of hearing the Council's submission, and other Canterbury submitters. This amendment legislation is of particular importance to the Canterbury region to ensure that the events of the Canterbury earthquakes in 2010 and 2011, and their effect on buildings, are never repeated anywhere else in New Zealand.

4. The Council can provide the Select Committee with facilities in its building for the Select Committee hearing, if desired.

Submission: Making sure lessons are learned

5. The Council supports the majority of the Bill. The Council acknowledges that it is designed to improve the system of managing earthquake-prone buildings in New Zealand, and also provides the framework to support many of the recommendations of the Canterbury Earthquakes Royal Commission. The Council also supports the greater role that central government intends to take in helping territorial authorities manage earthquake-prone buildings.

6. The Bill seeks to strike a balance between protecting people from harm in an earthquake and the costs of strengthening or removing buildings but the Council believes that a key recommendation of the Royal Commission, if fully adopted in the Bill would strike an even better balance.

7. The Council strongly urges the Select Committee to give further consideration to the Royal Commission recommendation on unreinforced masonry buildings (URM) buildings and their hazardous features. Addressing hazardous features of buildings needs to happen in a short timeframe and will achieve maximum benefit, in terms of protection, against the dollars spent. The Council also believe there are local variations and risks which justify a risk based approach being taken.

8. The Council has four key points it wishes to make on the Bill. These are discussed below and then other submissions and suggestions for amendments to the Bill are included in the following section.

Key point 1: URM's and buildings with hazardous features must be included as Priority Buildings in the primary legislation, and the legislation must require strengthening of hazardous features to 50%NBS. This will allow territorial authorities, in higher risk areas, to require higher strengthening of hazardous features, as recommended by the Royal Commission. The Council draws the Select Committee's attention to the submission of Anne

Brower, a victim of the collapse of a URM Building and its hazardous features, in the Canterbury Earthquakes.

9. The Canterbury Earthquakes Royal Commission considered the remediation or strengthening of URM buildings and hazardous features of such buildings to be a priority. Their recommendation for URM buildings included faster timeframes for assessment than are found in the Bill (within two years) and faster strengthening (within seven years). They also suggested higher strengthening levels (to 50 per cent of ultimate limit state (ULS) for a building) for hazardous features of URM buildings (chimneys, parapets, ornaments and external walls). We believe URM Buildings and hazardous features in higher risk areas of New Zealand, have already been identified as "Priority Buildings" by the Royal Commission and they need to be expressly included in the Building Act. Other priority buildings ie those on major arterial routes and non URM Building hazards ie unsafe veranda's, can be further considered and defined by regulation.

10. The Royal Commission specifically stated (see Volume 4: Section 1.4 of their report) that "*[i]t is important that territorial authorities are able to address appropriately buildings that pose a danger in an event such as an earthquake*". The specific recommendation regarding higher strengthening was that "*in the case of unreinforced masonry buildings, the out-of-plane resistance of chimneys, parapets, ornaments and external walls to lateral forces shall be strengthened to be equal or greater than 50% ULS within seven years of enactment*".

11. The Council notes that the Bill provides for work on "priority buildings" (which are to be defined in regulations) to be completed more urgently. Territorial authorities will be able to require priority buildings or parts of these buildings to be strengthened, or parts demolished, within a shorter timeframe than is otherwise provided for in the Act (section 133AC(2)(b) and section 133AZ).

12. If URM buildings and hazardous features of URM buildings are defined as priority buildings in the primary legislation, it gives greater clarity, assigns greater importance to these buildings/features and enables shorter timeframes for strengthening to be applied by the Council immediately.

13. The Council also needs the ability to provide input into the regulations that will define other priority buildings. Section 403 of the Building Act needs to be amended to make it quite clear that territorial authorities must be consulted on any regulations to be made under new section 401C.

14. The Council also submits that the priority buildings provisions need to provide the Council with power to require a higher strengthening level for hazardous features. It was the Council's experience in the Canterbury earthquakes that buildings with critical structural weaknesses - URM's and buildings with hazardous features (verandas, parapets, ornamental features etc), failed and this led to many deaths. The Council reinforces the submission it made in 2013 on the Ministry of Business Innovation and Employment's Building Seismic Performance consultation document that these types of buildings/features must be a priority.

15. The Council agrees that shorter timeframes for assessment and strengthening of URM Buildings and hazardous features on buildings is essential. The Council submits that these buildings/features must be included in the Act as a priority building in new section 133AC.

16. The Council also recommends that amendments be made to new sections 133AC, 133AZ, 401C (and other sections as may be needed), to provide that territorial authorities in higher risk earthquake zones can also require hazardous features of URM buildings to be strengthened to 50% of new building standards. This strengthening level also needs to be set by the Government in the primary legislation.

Key point 2: Territorial Authorities must be able to recover the cost of seismic assessments and associated work

17. Under the existing wording of section 219 of the Act territorial authorities *may* be able to recover costs from the owner in relation to carrying out a seismic capacity assessment, but it is not clear (particularly as section 219(2) anticipates Councils can refuse to carry out functions or services until any fees or charges are paid, but proposed new section 133AF appears to create a mandatory requirement for territorial authorities to complete an assessment). The cost of assessments is a matter the Council sought to have included in the Bill in its 2013 submission on the Building Seismic Performance consultation document.

18. It is unrealistic to expect territorial authorities (the ratepayer) to pay for the many assessments that may need to be done, when the assessment will be of benefit to the owner of the building. The cost of seismic capacity assessments of buildings and associated work should therefore be borne by the building owner. The Council asks the Select Committee to make it clear in new section 133AF that Council can recover the cost of the assessment from the building owner.

Key point 3: Better enforcement powers and cost recovery tools are required for territorial authorities when an owner does not comply with a seismic work notice

19. The Council submits that section 133AW should not require that territorial authorities must apply to the District Court before they can carry out any work, where the owner does not meet a seismic work notice deadline. The territorial authority should be required to give notice to the owner before carrying out any work, and then the owner could apply to the Court if they object to the Council carrying out the work, but if there is no such objection the Council should be able to proceed with the work.

20. Requiring applications to the Court increases costs unnecessarily for a Council, particularly if the Council has to deal with a large number of "failures" to comply at the same time. This seems likely, as the 15 year "end date" for strengthening will likely only be spread across a couple of years for most Councils

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21. In addition to being able to prosecute an owner for the offence of failing to comply with a seismic work notice (section 133AY), and to recover any of the Council's costs of carrying our seismic (strengthening or demolition) work as a charge on the land (section 133AW(4)(c)) provision needs to be made for a territorial authority to recover its costs more immediately. The Council submits that territorial authorities should be given similar powers as in the Local Government (Rating) Act 2002, to be able to sell the land where the costs incurred by the territorial authority are not paid

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22. The Council also recommends that central government consider whether a fund needs to be set up to assist Councils in paying the "upfront" costs of carrying out work on behalf of defaulting owners. As already noted, there could be a large number of buildings that arrive at the seismic strengthening deadline around the same time, and it can be expected that there will be a number of defaulting owners. Consideration should also be given to a fund being established in respect of heritage buildings; to assist either owners or Councils with strengthening these buildings.

Key point 4: Strengthening of buildings and access for people with disabilities, and means of escape from fire upgrading should both be achieved where possible

23. Section 133AX provides for territorial authorities to grant consent, in certain circumstances, without required upgrades for means of escape from fire and access for people with disabilities (if the building no longer being earthquake prone outweighs the detriment in not doing these upgrades). The Council notes that regulations are to be developed under section 401C(c) that will outline criteria that will apply. As noted above, it is crucial that Council has the ability to provide input on these regulations.

Section 403 of the Building Act needs to be amended to add regulations under section 401C as regulations that will be consulted on.

24. Within 20 years, 40% of the population will suffer from some sort of disability, Christchurch is seeking to enable all people with disabilities to have full access to services and facilities in the City. Upgrades of means of escape from fire and access for people with disabilities are important in any building upgrade and should be fully considered, while not restricting the ability to strengthen a building.

Submissions on other clauses of the Bill

Clause 2 (and new section 133AO) – Commencement – 15 years strengthening timeframe should be reduced

25. The Council submits that if the Act is not to come into force for some time (possibly not for 2 years) then the timeframes for strengthening of buildings should be reduced accordingly, so that the 15 year strengthening timeframe, which currently runs from the date of the outcome notice, can be reduced in that notice, by the time it takes for the Act to come into force. Owners who already know they have an earthquake prone building have had plenty of notice that they will need to strengthen their buildings and should not be given any longer because other regulations, etc need to be made before the Act can fully come into force.

Clause 22 – As well as amending section 131, amendments should also be made to section 132

26. Section 132 of the Act requires territorial authorities to use the special consultative procedure in section 83 of the Local Government Act 2002 to adopt or review Dangerous and Insanitary Buildings Policies. However, in light of the expected amendments to the Local Government Act 2002 currently before the Select Committee this requirement should be removed and replaced with a requirement to consult using the principles in section 82.

27. In addition, once the next review of these policies has been completed by territorial authorities (giving effect to the "affected building" changes made by the last amendment to the Act) the subsequent policy reviews should only be every 10 years which will align with territorial requirements in respect of Bylaws (see sections 158 and 159 of the Local Government Act 2002). Under the Local Government Act 2002 a bylaw must have its first review within 5 years but subsequent reviews are only required every 10 years thereafter (or earlier if the Council chooses). Section 132(4) will need to be amended accordingly.

New section 133AB – Meaning of earthquake-prone building

28. The Council believes the definition improves and clarifies the existing definition by making it clear the collapse of the building likely causing injury, death or damage to property is linked to the collapse of the building in a moderate earthquake. It more clearly makes the second limb of the definition something which needs to be identified when deciding whether a building is earthquake-prone. The Council believes this aspect needs to be clearly covered in the seismic capacity assessment to be completed under section 33AF.

29. However, separating section 133AB and section 133AD (where the two are currently together in section 122 of the existing Act), means a residential building can technically be defined as an earthquake-prone building, but by virtue of section 133AD nothing in the new subpart applies to residential buildings (unless the residential building is 2 or more storeys and contains 3 or more household units.

30. Nothing may turn on this separation of the existing section, but it should be carefully checked as to whether there are any other parts of the Building Act, or any other

legislation, that means it would not be desirable for the definition of earthquake-prone building to include residential buildings.

New section 133AF

31. The Council notes that the requirement for seismic capacity assessments is in respect of "existing" buildings, and an existing building is defined in section 133AF(3) as a building that has a code compliance certificate issued under section 95, or the building was constructed before 3 March 2005.

32. There could be some buildings, constructed after 31 March 2005, which would fall outside this definition, because they either do not yet have a code compliance certificate or they cannot get a code compliance certificate and will only ever have a certificate of acceptance. It is likely to be only a handful of buildings in this category in each territorial authority district, but it is possible.

33. Although code compliance certificates are meant to be considered within two years of a building consent being granted there is the ability to extend this timeframe by agreement. Alternatively there could be matters that require fixing before a certificate can be issued, which may take some time to resolve. In addition, Councils are entitled to withhold code compliance certificates until development contributions are paid. If there are any lengthy disputes over the payment of development contributions then that could also mean there are some buildings that are without a code compliance certificate at the time the Act is in force.

34. It is less likely a non-residential building is built without consent, but it is not unheard of. It may be even more crucial for such buildings to undergo a seismic capacity assessment.

35. It may be better if section 133AF(3) simply refers to any building constructed before the day on which the section comes into force.

New section 133AG

36. The Council reiterates its comments above. The methodology for assessing the seismic capacity of a building must cover both limbs of the earthquake-prone building definition. It must assess whether the building will have its ultimate capacity exceeded in a moderate earthquake AND consider whether, if the building were to collapse in a moderate earthquake, it would be likely to cause injury or death to persons inside or outside the building or damage to any other property.

New section 133AY

37. The "lesser" offences relating to failure to attach notices or failing to notify when notices become illegible should also be made infringement offences, so the Council can issue fines if it chooses to instead of having to prosecute.

New section 133AZA

38. The same submission as made above in relation to section 83 and the use of the special consultative procedure also applies to this new section. Reference should be made to consultation using the principles in section 82 instead.

Other

39. The Council notes the difficult situation in the recent case of *Lambton Quay Properties Nominee Ltd v Wellington City Council* [2013] NZEnvC 238, where the Wellington City Council had issued the owner with an earthquake-prone building notice, and the owner proposed to demolish the building instead of strengthen. The Court did not agree that all avenues had been explored to allow a resource consent for demolition even though the owner had provided evidence of the effect of pounding by the building on the neighbouring building in the event of an earthquake. The Court noted the tension between the Building Act and the Resource Management Act.

40. This tension is an issue that central government needs to resolve, particularly in relation to whether a territorial authority needs to apply for a resource consent (if one is required under the District Plan) in the event that it has to do work on behalf of a defaulting owner (given that seismic work can include demolition of a building or part of a building).

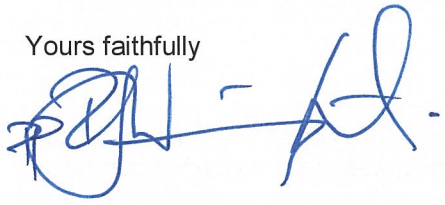
Conclusion

41. The Council is supportive of this Bill but believes further changes can be made to improve the Bill and better meet the recommendations of the Royal Commission, and to clarify other aspects of the legislation, as outlined in this submission.

42. If you require clarification of the points raised in this submission, or any additional information, please contact Robert Wright (Unit Manager, Operational Policy and Quality Improvement, ph 03 941- 6263, email: robert.wright@ccc.govt.nz or Judith Cheyne, (Solicitor, Legal Services Unit, ph 03 941-8649, email: judith.cheyne@ccc.govt.nz).

43. We look forward to expanding on the points above and providing further information to the select Committee when we make our oral submission. To arrange for the appearance of the Mayor, Councillor and staff at the Select Committee hearing please contact Aimee Bryant, Democracy Services Unit, ph 03 941 8536, email: aimee.bryant@ccc.govt.nz

Yours faithfully



Peter Sparrow
Director, Building Control and Rebuild
CHRISTCHURCH CITY COUNCIL