

## 9. EARTHQUAKE PRONE, DANGEROUS AND INSANITARY BUILDINGS POLICY



<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services, DDI 941-8549
<b>Officer responsible:</b>	Acting Environmental Services Manager
<b>Authors:</b>	John Buchan, Judith Cheyne

### PURPOSE OF REPORT

1. The purpose of this report is to report on the deliberations of the Earthquake Prone, Dangerous and Insanitary Buildings Policy Subcommittee and recommend the adoption of the policy by the Council to come into effect on 31 May 2006.

### EXECUTIVE SUMMARY

2. The Council is required under the Building Act 2004 to adopt a policy on earthquake prone, dangerous and insanitary buildings by 31 May 2006. The policy recommended by the Subcommittee will include the Banks Peninsula Ward.
3. The special consultative process was followed. It required the publication of the draft policy and the calling of submissions. There were 50 submissions to the draft policy and a hearing was called to hear the submissions.
4. Where appropriate, changes were made to the Earthquake Prone, Dangerous and Insanitary Buildings Policy and the legal issues raised have been addressed.
5. The proposed policy meets all of the Building Act 2004 provisions and is consistent with the Department of Building and Housing guidelines.

### FINANCIAL AND LEGAL CONSIDERATIONS

6. The legal considerations are the same as those discussed in the report on the adoption of the draft policy, considered by the Council on 15 December 2005. The amendments suggested to the draft policy, which arise out of submissions made on the policy, assist in demonstrating that the Council has properly consulted on the draft policy and considered the views of the community. This strengthens the Council's position, particularly in relation to any risk it might face if a judicial review application was brought in relation to its decision to adopt the policy.

### SUBCOMMITTEE'S RECOMMENDATIONS

It is recommended that the Council:

- (a) Adopt the Earthquake-Prone, Dangerous and Insanitary Buildings Policy to apply from 31 May 2006 as attached.
- (b) Advise all submitters of the adoption of the policy.

## BACKGROUND ON EARTHQUAKE PRONE, DANGEROUS AND INSANITARY BUILDINGS POLICY

7. The Building Act 2004 (the Building Act) requires territorial authorities (TAs) to adopt a policy on dangerous, earthquake-prone, and insanitary buildings by 31 May 2006. The policy must include:

- (a) The approach that the TA will take in performing its functions under the Building Act;
- (b) The TA's priorities in performing those functions; and
- (c) How the policy will apply to heritage buildings.

This policy must be adopted by a special consultative procedure. The policy must be reviewed every five years.

8. While the Building Act requires each TA to develop a policy on dangerous, earthquake-prone, and insanitary buildings, the legislation does not prescribe any particular policy form or approach. Rather, TAs and their communities must develop a policy approach that is appropriate to their district. The Council has considered this matter at seminars on 14 July and 5 October 2005 and a proposal for a draft policy was considered at the latter meeting. The Council at its meeting on 15 December 2005 adopted a draft policy for undertaking the required special consultative procedure and sought submissions between 19 December 2005 and 24 February 2006.

9. The preferred option set out in the draft policy was one which took into account the need to obtain further information on the extent to which buildings in the area need to be earthquake strengthened to meet the standard now required under the Building Act, priorities for dealing with dangerous and insanitary buildings, and considerations of applying the policy to heritage buildings.

10. The priorities proposed in the policy for the strengthening of identified earthquake-prone buildings is in accordance with the guidance provided by the Department of Building and Housing (DBH). An initial desktop study will be undertaken over four years and buildings will be categorised in accordance with AS/NZS 1170.2002. The desktop study will provide information on the likely number of buildings which will need more detailed assessment and strengthening. The information will then be used as the basis for the first review of the policy which has to take place within five years. During that review it is expected that timeframes for requiring action to strengthen or demolish earthquake-prone buildings will be set.

11. The adoption by the Council of the recommended policy does not of itself commit the Council to any financial expenditure on its own buildings or any other buildings (including heritage buildings) to meet the policy.

12. A similar policy was being recommended by BPDC for public notification, although submissions on the BPDC policy were heard by CCC after reorganisation took place in March 2006.

### Overview of Submissions

13. A total of 50 submissions were received (copies are attached as Appendix 1). The majority of these (72%) were from property owners. The next largest group was consultants in the building industry (14%). The categories are set out in Table 1 below.

**Table 1 presents a summary by source category.**

Category	Number of Submissions
Property Owners	36
Consultants	7
Heritage Organisations	2
Transit	1
NZ Fire Service	1
Community Boards	3
<b>Total</b>	<b>50</b>

14. The property owner submissions include submissions from the Property Council, Canterbury Health, Canterbury Museum and Arts Centre of Christchurch. The submission from Transit mainly relates to the need to consider roading structures such as bridges as a separate category from the general definition of buildings in the Building Act and to allow for a more suitable assessment criteria. The NZ Fire Service submission relates mainly to the section of the policy on dangerous buildings. Some of the submissions from consultants point out technical issues with regards to definitions which are in the Building Act and Regulations. These may not be able to be resolved except by changes to the Building Act and Regulations.

15. **Table 2: Key Themes in Submissions**

Key Theme	Sub-themes
Financial	<ul style="list-style-type: none"> <li>• Incentives sought for heritage buildings</li> <li>• Costs of proofing work</li> <li>• Costs associated with untenanted buildings</li> <li>• Costs of assessing buildings</li> <li>• Council funding for earthquake proofing, rates relief or similar</li> </ul>
Social	<ul style="list-style-type: none"> <li>• Possible demolition of heritage buildings</li> <li>• Business closures while proofing undertaken</li> </ul>
Technical Building Issues	<ul style="list-style-type: none"> <li>• Use of NZSEE standards for structures</li> <li>• Levels of protection required</li> <li>• Identification of building groups?</li> </ul>
Definitions	<ul style="list-style-type: none"> <li>• Significant alterations</li> <li>• As near as reasonably practicable</li> </ul>
Consultation	<ul style="list-style-type: none"> <li>• Inadequate pre consultation</li> <li>• Seeking joint development of policy</li> </ul>
Timetables for compliance	<ul style="list-style-type: none"> <li>• Too short for some buildings</li> <li>• Too long for pre 1950 buildings</li> <li>• Much too long for dangerous buildings (Fire safety issues)</li> </ul>

**Responses to Questions in Feedback Form**

16. Question 1. *Does the proposed Earthquake Prone Building Policy suit your ability to meet the requirements of the Building Act 2004? If not, why not and how could the policy better meet your needs?*  
On balance, submitters disagreed that the policy would help them meet their obligations and cost was often mentioned.
17. Question 2. *How do you propose that you and the Christchurch City Council could work together to meet the requirements of the EPB under the new Act?*  
Consultation between owners and the Council and provision of funding were the main themes in the response to this question.
18. Question 3. *The policy provides for timeframes of up to 30 years to complete the strengthening. Are these timeframes adequate, too short, too long? Give reasons.*  
There was almost an even split between those who agreed the timeframes were reasonable and those who disagreed. Of those who disagreed, some thought the timeframes were too short and some thought that the timeframe was too long, particularly for older unreinforced masonry buildings that were considered earthquake-prone under the previous legislation.
19. Question 4. *The policy proposes to catalogue for categories of buildings. Are these categories sufficient?*  
The majority of submitters agreed with the categories as proposed.
20. Question 5. *Should terms such as "significant alteration" be defined?*  
Most submitters felt that terms such as "significant alteration" should be defined in the policy. Some acknowledge the difficulty of precise definitions and suggested it could be done by way of examples.

21. The most common topic mentioned was the problem of cost for the owner. A number of suggested solutions were mentioned to overcome these problems. These included: low interest funds be provided by central or local government; grants be provided by the Council; rates reduction incentives be provided; planning rules be altered to provide incentives when strengthening is done; that consent fees be waived when work is done; and that the Government provide tax related incentives when strengthening work is done.

### Consideration of the Submissions

22. The Subcommittee met on 27 March 2006 to hear oral submissions from 13 submitters. A summary of the oral submissions is attached as Appendix 2. On 3 April 2006 the Subcommittee met to consider all matters raised by the submitters. Notes of the meeting are attached as Appendix 3. The submitters raised a number of matters about which the Subcommittee sought further input on from the officers in finalising the policy from the oral submissions. The legal issues included the following:
- The effect the policy might have on a long term lease.
  - Defining alteration/significant alteration.
  - Infrastructure with asset management plans/statutory requirements – should any exemption in the policy be wider than to cover Council and Transit?
  - If timeframes for strengthening different categories of buildings are removed will the policy still comply with Building Act requirements?
23. Advice was provided to the Subcommittee in a memorandum of 3 April 2006, a copy of which is attached as Appendix 4. The problems raised by long-term leases were considered valid as requirements for strengthening could lead to breaches of requirements that tenants have for the quiet enjoyment of the lease. It was considered that clarity was needed in the policy regarding the definition of significant alteration in light of the Building Act requirements. The submissions regarding exemptions for organisations that are required, or have, asset management plans was considered valid. It was considered a number of organisations, in addition to the submitter (Transit New Zealand) fell into this category and could be the subject of exemption. It was considered that, while removing timeframes would not result in non-compliance with the Act, some indication should be included as to the requirements. These have been addressed in suggested amendments to the policy which is now being recommended for adoption.
24. The following changes have been made to the policy as proposed, as a result of the submissions considered. The appropriate clause numbers refer to those in the policy.
- 1.2 - Definitions of *Earthquake-prone building*; *Moderate Earthquake*; and *Significant Alteration* added.
  - 1.3 - Paragraph 3 statement added regarding no guarantee of safety as a result of the policy. Paragraph 4 Initial study to get reliable data on buildings added.
  - 1.4 - Added types of buildings that will not require further assessment including post 1976 construction; isolated structures; residential buildings; and infrastructural assets. Added justification for doing initial study to provide data for first review. In category A added unreinforced masonry buildings.
  - 1.6 Taking Action - Under bullet-point 5 added that the Council will take into account previous strengthening and contractual or statutory obligations of the owner.
  - 1.9 Recording Status - Bullet-point 2 – *potentially earthquake-prone*, Bullet-point 3 – *likely to be earthquake-prone*, Bullet-point 4 - *earthquake-prone*.
  - 1.10 - second paragraph added advising that the economic impact will be assessed in more detail once the first review is undertaken and the database of buildings is available.
  - 2 Priorities - paragraph 4 will finalise the categories and time frames at the time of the first review of the policy.
  - 3 Heritage buildings - paragraph 3.1 matters to take into account added (c) including circumstances of owner and each building and whether previous strengthening work has been undertaken.