

Building Act Amendment Bill

Submission to Transport and Infrastructure Select Committee

October 2018

Introduction

This joint submission reflects the views of SESOC and Engineering New Zealand.

Engineering New Zealand (formerly IPENZ) is New Zealand's professional home for engineers – and New Zealand's strongest and most influential voice on engineering issues. Engineering New Zealand has more than 22,000 members, from engineering students to practising engineers and members in executive leadership positions.

SESOC is a collaborating technical society of Engineering New Zealand with 2000 members, most of whom are practising structural engineers. Many members have inspected buildings after recent earthquakes, some as volunteers in the immediate safety evaluation phase, many more as part of detailed evaluations during the recovery phase. Many SESOC members have been signed up as Tier Two Rapid Building assessment inspectors by the Ministry of Business, Innovation and Employment (MBIE).

Engineering New Zealand and technical society members are critical for resourcing both aspects covered by the Bill, including:

- all aspects of managing buildings from response to recovery following an emergency, in particular, assessing affected buildings, and
- undertaking forensic investigations of building failure.

This gives us a strong stake in this legislation and in working with MBIE on its implementation.

The Building Amendment Bill covers two important areas:

1. Powers under the Building Act to improve the system for managing buildings after an emergency; and
2. Powers to investigate building failures.

We understand that the driver behind this proposed amendment is plugging current holes in the Building Act, which is silent on these issues. We also understand that there is a desire to place these powers in the Building Act because this is the legislative authority that controls building-related matters during business as usual.

In principle, SESOC and Engineering New Zealand agree with the proposed amendment and its intent. We agree with concept of trying to "create a system that is clear, has proportionate impacts on personal and property rights, and ensures that heritage values are appropriately recognised". We also agree that powers to investigate building failures are required.

We congratulate MBIE for moving to plug this significant hole in the Building Act.

Background

SESOC has previously submitted to the Canterbury Earthquake Royal Commission (CERC), in a document titled "Building Management after Earthquakes" and dated 27 July 2012, a copy of which is available on request.

We would like to acknowledge the valuable work done by both the CERC and MBIE that has resulted in this consultation document. It is important for public safety, the ability of communities to recover after an event

and protection of property rights that this Building Act amendment is passed.

Submission

Managing buildings after an emergency

This Bill proposes new powers that aim to address risks to people and property from buildings during and after an emergency. The proposed amendments seek to create a system that is clear, has proportionate impacts on personal and property rights, and ensures that heritage values are appropriately recognised. We would like to see more consideration of these aspects:

1 Methodology for the preparation of post-event assessments and signs on buildings

- Section 11 (db) & (dc) says the chief executive will have a role in approving a methodology and signs, notices, etc. Section 133BP (2) states that the post-event assessment must be prepared in accordance with the methodology (if any) approved by the chief executive and similarly 133BS (3) (a) says signs or notices on buildings must be in the form (if any) approved by the chief executive.

MBIE has published guidance for territorial authorities and assessors, which will need updating. Procedures for detailed damage assessments and targeted assessments have also been published by others, including SESOC. There needs to be a published methodology providing clear procedures and responsibilities for managing post-event assessments. It is also important this methodology can change in response to new knowledge.

- Responsibilities for central and local government agencies are outlined in the CDEM Plan. These also need to be incorporated into the methodology.
- Engineering New Zealand and its technical societies have the technical experience to assist in developing this methodology. We are keen to be involved because it will be our members who will be needed to undertake the assessments.
- The methodology also needs to address removal of red placard buildings. This was a significant issue following the Kaikoura earthquake, when red placards were been posted on houses early on, because of fear of landslides, but then further analysis and technical review have assessed this approach as overly conservative and the red placards needed to be removed.
- Further clarity is also required around the transition back to business as usual.

2 Responsible person

- Post-event assessments need to be carried out by responsible persons as per Section 133BP, which means assessors must be responsible persons. In a state of emergency or transition declared under the CDEM Act, this is clear, because they will be acting under the authority of the Controller or Recovery Manager (133BK). However, when no state of emergency or transition has been declared, the responsible person is the territorial authority or the Minister. In this situation, it is not clear how an assessor will be a responsible person. Will there need to be a resolution by Council, and if so could this slow any response?

3 Partial evacuation of building

- Section 133BQ provides for the evacuation of a building in a designated area. In the past, many buildings have been posted with yellow placards, which either allows for short-term supervised entry or entry to parts of the building only. Section 133BQ does not appear to provide for either of these cases.

4 Time extensions

- Section 133BH (2c), 133BP(9c) and 133BV (9c) all allow only one extension. While we agree with the maximum time frames, allowing only one extension encourages extensions to be given for the maximum permissible time to cover unforeseen events.
- It is not clear what happens to a building when the work required is not completed during the timeframe. In other words, what powers exist once the maximum timeframe expires. We believe

that a building subject to a notice should not have the notice removed until the work is completed.

This is a good addition to the Building Act. However, there are other Building Act issues that also need to be addressed in relation to response and recovery from earthquakes. In particular, the definition of dangerous buildings that excludes the occurrence of an earthquake, s121. After a significant earthquake, there can be heightened seismicity and aftershocks. This needs to be recognised and we do not believe that section 133BZ covers this adequately.

Investigation of Building Failures

Again, this is a good addition to the Building Act. We agree with the statement that “The Bill proposes amendments to the Building Act that provide the Ministry of Business, Innovation, and Employment (MBIE) with a clear set of legislative powers to investigate significant building failures to determine the circumstances and causes of those failures. The key focus of the proposed powers is to learn lessons in order to improve building regulation to help avoid similar occurrences in the future.”

However, it would be useful to be able to investigate in order to act before failure occurs. This may be as a result of evidence of practices being followed that could lead to failure in large events, or when new research shows that previously accepted practice is no longer appropriate and could present a critical risk. Additionally, we believe it would be useful for the Bill to require the Chief Executive to consider buildings of a similar type to one that has failed, to understand the extent of any issues. As such, we do not agree with the statement that “The Bill proposes that the powers of investigation can be used only when there has been a building failure that resulted or could have resulted in serious injury or death.” And we fully endorse the statement that “Significant building failures can occur as a result of deficiencies in design and construction.”

1 Report Findings

- 207P says the chief executive may publish a report of the investigation. As the purpose of the investigation is to learn from the failure, the findings must be disseminated.

Conclusion

SESOC and Engineering New Zealand fully endorse and support the purpose of the consultation document, and in principal agree with most of the proposals.

We are pleased to provide this joint submission to the Transport and Infrastructure Select Committee and would be happy to provide further information if required. We are also keen to provide input into the final legislation and to work with the regulator, MBIE, in its implementation.

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