

BUILDING PERFORMANCE



Territorial authorities issue EPB notices for earthquake-prone buildings

This information sheet provides process information for territorial authorities on the approach to apply when issuing an EPB notice for an earthquake-prone building. It also includes the recommended approach (with examples) for issuing EPB notices in a range of different scenarios, eg for interconnected structures with multiple titles or tenancies.

See the information sheet *Earthquake-prone buildings: notices* for a more general overview of EPB and EPB exemption notices.

Forms of notices

Section 133AL of the Building Act 2004 sets out the specific situations when territorial authorities are required to issue EPB notices. This includes when a territorial authority determines a building or part to be earthquake prone using the EPB methodology. Other situations include:

- revoking an exemption
- revoking an extension
- changing the earthquake rating.

The Building Act also sets out what information needs to be contained on the EPB notice.

The form of each EPB notice is set in the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (as amended), including for a:

- building or part in earthquake rating category of 0% to less than 20%
- building or part in earthquake rating category of 20% to less than 34%
- building or part to which clause 2 of Schedule 1AA of the Act (which is a transitional provision) applies (earthquake rating unknown).

An EPB exemption notice must be issued in place of an EPB notice if a territorial authority has granted a building owner an exemption from remediation. The requirements for an EPB exemption notice differ to an EPB notice and are set out in section 133AN of the Building Act 2004.

Issuing EPB notices for earthquake-prone buildings

EPB notices must be issued and copies provided to the owner(s) of the earthquake-prone building or part, certain interested parties, relevant statutory authorities, and to Heritage New Zealand Pouhere Taonga if the building is a heritage building.

An EPB notice creates a legal obligation to undertake necessary seismic work so that the building is no longer earthquake prone.

The new system that commenced on 1 July 2017 enables part of a building to be earthquake prone. It also introduced a new concept called priority buildings in high and medium seismic risk areas, which shortens the time frames for remediation of certain earthquake-prone buildings.¹

Approach for issuing EPB notices to buildings with different ownership arrangements

Issuing EPB notices needs to be approached consistently across a range of possible scenarios that may arise due to the introduction of parts of buildings and priority buildings to the new system. Buildings are distinguished by lot for this purpose (note that the engineering assessment will consider the structure as a whole, whether or not it spans more than one lot).

Scenarios could include an earthquake-prone building or part that may be:

- either a standalone building, interconnected building (ie where the structure spans multiple lots), or a unit title development
- a priority building, or one which has a priority building part.

EPB notices need to be given to the owner of the earthquake-prone building. Who the owner is will depend on how the property is owned:

- a. For a fee simple title this will be the owner listed on the certificate of title.
- b. For a cross lease this will be all owners listed on the certificate of title, whether or not they hold the lease for the particular property affected.
- c. For a unit title property this will be all owners of the stratum estate of the affected units and the body corporate.
- d. For a company share property this will be the company which owns the property.

For interconnected buildings, each lot should be treated as a separate building unless there is a certificate under section 75 of the Building Act.

MBIE recommends using the following approach for issuing EPB notices. Also see the examples at the end of this information sheet.

Contents of notice

The notice should comply with section 133AL of the Building Act, and identify:

- all affected buildings (by lot) that are part of the shared structural form, ie that are part of the same interconnected structure (where the primary structure is earthquake prone)
- all affected buildings (by lot) that have a shared structural element or part spanning common property that is earthquake prone (where one of the affected titles is the subject of the EPB notice)
- any additional specific earthquake-prone parts isolated to only the title to which the EPB notice is being issued.

¹ More information on priority buildings is available on the MBIE website:

<https://www.building.govt.nz/building-code-compliance/b-stability/b1-structure/priority-buildings-earthquake-prone/>



Two remediation time frames can apply to the same building

In some circumstances, two time frames can apply to one building. This can happen if a building is earthquake prone and part of it is also identified as a priority building (so has a shorter time frame for remediation).

If this occurs, issue one notice that identifies both applicable time frames, ie:

- the priority building time frame, eg for part of a URM building on a priority building thoroughfare that meets the definition of priority building and to which a priority building time frame for remediation applies, and
- the applicable time frame for the remainder of the building if the structure as a whole is also earthquake prone but does not meet the definition of priority building, to which the standard time frame for remediation applies.

The information required to inform the above approach will be contained in the engineering assessment for the building, provided it meets the requirements of the EPB methodology. In particular, look out for information on:

- any parts that score less than 34%NBS and therefore pose a significant life safety hazard
- if the building comprises a shared structural form or shares structural elements with any other adjacent titles, and the extent to which low scoring elements (ie those scoring below 34%NBS) affect the structure as a whole.

At the stage when an EPB notice is being issued, territorial authorities in high and medium seismic risk areas will have already considered whether the earthquake-prone building (or part) is a priority building.

Using the notice templates

MBIE has provided a template for each form of EPB notice, including an additional template for an EPB exemption notice. These templates are available to territorial authorities via the EPB Register secure login. The templates contain prompts to ensure all the information required by section 133AL or section 133AN (when an exemption from remediation is granted) is contained in the prescribed format.

To use the templates, start by selecting the appropriate template, then:

- follow prompts within the templates
- populate information prompted using [\[blue text\]](#)
- delete any sections that are not relevant, indicated by the use of 'Or' between sections, or where flagged as 'Optional additional text'
- delete any *advisory text*.

Attaching notices to earthquake-prone buildings

The requirements for attaching notices to earthquake-prone buildings are set out in section 133AP of the Building Act 2004.

As soon as practicable after issuing a notice, territorial authorities must either attach the notice in a prominent place on or adjacent to the earthquake-prone building or part, or require the building owner to do this.

A prominent place is somewhere on or adjacent to the building that is visible to regular occupants of the building and any visitors, for example the main entrance.

Notices must stay attached until the territorial authority authorises removal of the notice. Making sure the notice stays attached requires it to be durable. To make notices durable, think about:



- attaching the notice in a location on or adjacent to the building that is protected from weather, including sun, **as long as this is still prominent**
- laminating the notice, or printing the notice on more durable material than paper, such as corflute.

A variety of fixing methods may be suitable to attach the notice. An appropriate method can be decided between the territorial authority and the building owner, and will be dependent on the surface to which the notice is being attached, such as a notice board, glass, or a wall. Some fixing methods may include durable tape, nails or screws, Velcro strips or magnets.

Building owners are required to advise their territorial authority if the notice becomes illegible or is no longer attached. In these circumstances the territorial authority will need to issue a replacement notice. If a building owner does not advise their territorial authority of these circumstances, penalties will apply. Territorial authorities are also recommended to check the condition of the notices if they are visiting the premises for related or other reasons.

Examples

These examples illustrate the approach for issuing EPB notices in different scenarios, eg for interconnected structures, where there are multiple titles, and/or if a building has an earthquake-prone (priority building) part.

Example 1: Row of 1900s shops with five separate fee simple titles

Lot 1	Lot 2	Lot 3	Lot 4	Lot 5
15%NBS	15%NBS	15%NBS	40%NBS	40%NBS

This row of 1900s shops spans five lots, each with its own freehold title. Each shop in the row was built onto the last using the existing boundary wall as a party wall, so they have a shared structural form. This structure should be treated as five buildings.

The engineering assessment, which considered the whole structure (ie all five buildings) has assessed the shops on Lots 1-3 at 15%NBS (New Building Standard). However, the owners on Lots 4 and 5 have previously strengthened their shops to 40%NBS. This strengthening took into account any weight/mass forces placed on them by the other shops (ie those on Lots 1-3).

Any shared structural elements, such as the party walls, have also been strengthened so the portion of the structure which has been strengthened would not be affected by collapse of the adjoining shops below 34%NBS on Lots 1-3. This is supported by statements in the engineering assessment that provide assurance to the territorial authority that certain portions of the structure are not earthquake prone, and are not affected by the adjoining portions.

Who gets an EPB notice?

The territorial authority issues three separate EPB notices: one each for the shops on Lots 1-3.

No EPB notice is needed for the shops on Lots 4 and 5 because these are not considered earthquake prone.

What should the notice identify?

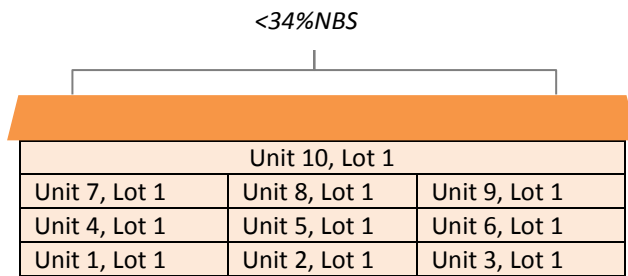
The EPB notice for Lot 1 should list Lots 1-3, as the structure spanning these lots has a shared structural form.

The same goes for the EPB notices for Lots 2 and 3.

Note: if the owners of Lots 4 and 5 are 'interested parties' (as listed in section 133AL of the Building Act), they should receive copies of the three EPB notices for their information only.



Example 2: Four-storey office block – converted to apartments under the Unit Titles Act



A four-storey office block was converted to shops on the ground floor without evidence of structural upgrades to meet change of use requirements. It is on one lot. This should be treated as one building.

The primary structure of the building is earthquake prone.

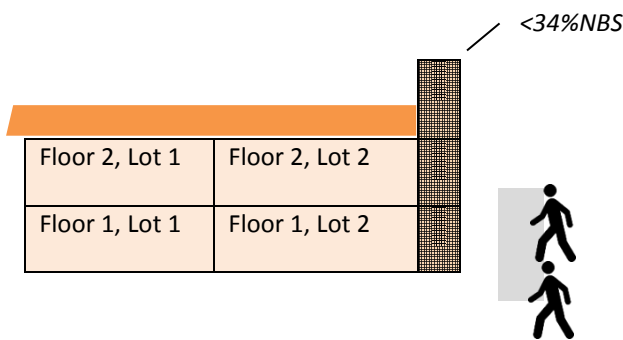
Who gets an EPB notice?

The territorial authority issues an EPB notice for the building. It gives this notice to the owner of each title, the body corporate, and any interested parties under section 133AL(5).

What should the notice identify?

The EPB notice should list the units and lot numbers affected (ie all units in the building plus their lot number).

Example 3: 1950s Timber-framed structure with an unreinforced masonry chimney on two titles



This two-storey, timber-framed structure spans two lots. It is divided into two shops on the ground floor and two apartments above. It has an unreinforced masonry (URM) chimney on one end of the structure that is next to a public footpath. This structure should be treated as two buildings.

A previous engineering assessment, under the territorial authority’s prior screening programme and meeting the criteria in the EPB methodology, identified the URM chimney as earthquake prone. This assessment excluded the shop and apartment at the far end (ie on Lot 1) from any effects of the falling chimney.

Who gets an EPB notice?

The territorial authority issues an EPB notice to the shop and apartment adjoining/incorporating the URM chimney (ie Floors 1 and 2 of Lot 2).

It does not issue a notice for Floors 1 and 2 of Lot 1 as they are on a separate lot/title and as that part of the structure is not earthquake prone. Floors 1 and 2 of Lot 1 would receive a copy of the notice issued to Lot 2 if they are interested parties under section 133AL(5).

What should the notice identify?

The EPB notice identifies the part of the structure – the chimney – that is earthquake prone. It lists both Floor 1 and 2 of Lot 2.

Note: the territorial authority should also check if the URM chimney is located on a priority route identified as part of the Building Act’s priority building provisions. If it is, a reduced time frame for remediation applies.

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