



Determination 2020/020

Regarding the decision not to extend the deadline for completing seismic work for an earthquake-prone building at 144 to 148 Bridge Street, Nelson

Summary

This determination considers the decision of an authority to issue an earthquake-prone building notice for a building under the current provisions of the Act, but in doing so maintaining the deadline date by which the notice was to be complied with as described in the old notice issued under the former Act. The owners of the building had applied to have the deadline date extended which the authority had declined.

The determination considers whether the authority was correct to refuse the extension taking account of the transitional provisions of the Act and how the Act identifies and manages earthquake-prone buildings.

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 (“the Act”) made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2 The parties to the determination are:
 - Nelson City Council (“the authority”), who is the applicant for the determination, carrying out its duties as a territorial authority or building consent authority
 - C and J Fergusson Family Trust, and S and O Fergusson Family Trust, the owners of the building (“the owners”).
- 1.3 The authority issued an earthquake-prone building notice² (“the EPB notice”) (Notice number N003066 EQB0342-3) under section 133AL of the Act for a masonry wall on the western boundary of the building at 144 to 148 Bridge Street (“the masonry wall”). The authority had previously issued a notice under section 124(2)(c)(i) of the Act (“the old notice”), prior to the commencement of Subpart 6A of Part 2 of the Act on 1 July 2017.
- 1.4 The determination arises from the decision of the authority to issue the EPB notice subject to the deadline of 30 June 2020 stated in the old notice. The owners made an application under clause 2(5)(a) of Schedule 1AA of the Act to extend the deadline

¹ The Building Act and Building Code (Schedule 1 of the Building Regulations 1992) are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents and guidance issued by the Ministry, is available at www.building.govt.nz.

² EPB notice means an earthquake-prone building notice issued under section 133AL.

for completing the seismic work. However, the authority did not grant this application and preserved the deadline stated in the old notice.

1.5 Therefore, the matter to be determined³ is whether the authority correctly exercised its power of decision to issue the EPB notice, preserving the deadline of 30 June 2020 stated in the old notice, with reference to clause 2(5)(b) of Schedule 1AA of the Act.

1.6 In making my decision, I have considered:

- the submissions of the parties
- other relevant material including guidance information published by the Ministry and information the Ministry provided to the authority on the matter before the determination was sought.

2. The building

2.1 The building is located on a main street in the city's central business district ("CBD"), which is a busy pedestrian and vehicle area, surrounded by retail shops, cafes, bars and accommodation.

2.2 The building houses a number of premises including a café/retail outlet, shared office space, theatre and dance studio.

2.3 The building is a two-storey timber-framed building with vertical timber cladding. The structure of the first floor overhangs the ground floor walls on the street side of the building, and is supported by poles. The building has a two-storey masonry wall on the western boundary that projects above the building's roof, forming a parapet. The parapet section of the wall is stepped.

2.4 The masonry wall is of solid clay brick masonry construction. The wall is of 'two wythe' construction with bricks positioned in a mixture of 'in plane' and across the wall.

2.5 On the western boundary of the building there is an adjacent building ("the adjacent building"). The adjacent building is a cycle shop and a takeaway food outlet.

2.6 The adjacent building is a single storey structure, with a timber parapet at the first storey. The roof is clad in corrugated metal, with two skylights.

3. Background

3.1 On 11 July 2013, the authority issued the old notice (number EQB0342) under section 124 of the Act because it found the building was earthquake-prone under section 122 of the Act. It stated work was required to be carried out by 30 June 2020 to either:

- a. Strengthen the building to at least 67% New Building Standard (NBS)⁴; or
- b. Otherwise remove the danger.

(It is assumed the time in which to respond to the notice and the % NBS to be applied was taken from the authority's policy on earthquake-prone buildings that was in place at the time the old notice was issued.)

³ Under sections 177(1)(b) and 177(3)(fa) of the Act

⁴ The percent NBS is the rating given to a building as a whole expressed as a percent of new building standard achieved, based on an assessment of the expected seismic performance of an existing building relative to the minimum that would apply under the Building Code to a new building on the same site with respect to life safety.

- 3.2 On 11 March 2014, the authority reissued the old notice (number EQBD0342-2). It stated work was required to be carried out by 30 June 2020 to either:
- a. Strengthen the building to at least 34% New Building Standard (NBS); or
 - b. Otherwise remove the danger by ensuring the building will not collapse in a moderate earthquake causing injury or death to persons, or damage to other property.
- 3.3 On 27 November 2017, the authority wrote to the owners about the changes to the Building Act 2004 by the commencement of Subpart 6A of Part 2 of the Act. The authority noted it must revoke the old notice and issue a replacement EPB notice. The authority explained that:
- a replacement EPB notice will have the same deadline for completing work to ensure that the building is no longer earthquake-prone
 - there is an option to apply to have the deadline extended and if the owners applied for an extension to the deadline, the authority would consider the particular circumstances and any guidance issued by the Ministry before granting an extension.
- 3.4 On 18 July 2018, the authority wrote to the owners declining the owners' application for an extension under clause 2(5)(a) of Schedule 1AA of the Act. The authority noted the owners had responded to the authority's 27 November 2017 letter on 28 November 2017 applying for the extension, and pointing out that the masonry wall does not pose a hazard to the public footpath, and the part of Bridge Street where the building is located is unlikely to be a transport route of strategic importance.
- 3.5 In response to the owners' request, the authority noted it was required to take account of the particular circumstances of the case and any guidance issued by the Ministry under section 175. The authority set out the particular circumstances that applied to the building as follows:
- Previous regulatory input has led to risk reduction but has not been completely effective.
 - Letters and reporting 1985, 1987 to then owners advising under section 624 of the Local Government Act that the building should be strengthened or replaced within 10 years (by 1995).
 - Subsequent building consent ...included strengthening to 30% of NZS 4203⁵ requirements issued with agreed 10 year limited life expiring 30 Nov 2014.
 - Seismic grade E, less than 20%NBS (IL2⁶), established by Initial Seismic Assessment ... Bricks and mortar noted to be in very poor condition.
 - Unreinforced masonry (URM) unlikely to pose a significant hazard to public area (footpath) because it is perpendicular to street. Southern two thirds of wall is single storey.
 - Identifiable persons and other property are subjected to increased risk.
 - URM wall or parapet, if it collapsed, would fall more than 2m onto roof of neighbouring building below, likely penetrating the building (corrugated steel roofing and polycarbonate skylights).
 - The building is in the Nelson CBD or other high traffic (pedestrian or vehicle) area.

⁵ New Zealand Standard NZS 4203 Code of practice for general structural design and design loadings for buildings

⁶ Importance Level 2.

- 3.6 On 14 September 2018, the authority issued the EPB notice (Notice number N003066 EQB0342-3) under section 133AL of the Act with a deadline of 30 June 2020. A letter from the authority accompanied the notice.
- 3.7 On 25 January 2020, the owners wrote to the authority requesting an extension of 24 months to 30 June 2022. The owners noted they had been working hard to redevelop the site with a new building. The owners described the steps they had taken, and that they were in the process of finding tenants for the new development.
- 3.8 The Ministry received an application for a determination on 30 January 2020.

4. The submissions and the draft determination

- 4.1 The authority set out the background to the case, and noted:
- that it had sought comment from the Ministry in August 2017 and June 2018 with regards to guidance on considering requests for timeframe extensions, and that on both occasions the Ministry had advised that guidance under section 175 of the Act was not available
 - in mid-2018, the authority collated data on earthquake-prone buildings in its district that had section 124 notices issued prior to the commencement of Subpart 6A of Part 2 of the Act. This was used to identify all of the particular known circumstances that applied to the affected building stock and provide a benchmark against which consistent timeframe extension decisions could be made for each affected building, should the owners seek a timeframe extension
 - after issuing the EPB notice to the owners, the authority was kept informed of plans to mitigate the most significant earthquake hazards by the deadline, and that the owners intended to again seek an extension to the deadline, which the owners have done without first making any changes to the building or its circumstances.
- 4.2 The authority provided copies of:
- an extract of the property information from the authority's records
 - an email from the owners to the authority dated 25 January 2020
 - a photograph of the building dated 21 September 2018
 - the EPB notice issued under section 133AL of the Act dated 14 September 2018 and the accompanying cover letter from the authority to the owners
 - the 18 July 2018 letter from the authority to the owners setting out the authority's decision not to extend the deadline of 30 June 2020
 - correspondence from the Ministry dated 12 June 2018 about the application of clause 2 of Schedule 1AA of the Act
 - the 27 November 2017 letter about the need to issue an EPB notice to replace the existing section 124 notice
 - correspondence from the Ministry dated 23 August 2017 about the application of clause 2 of Schedule 1AA of the Act
 - the earthquake-prone building notice issued under section 124 of the Act dated 11 March 2014

- the earthquake-prone building notice issued under section 124 of the Act dated 11 July 2013
 - a copy of the authority's data for decisions on buildings with notices issued under section 124 of the Act.
- 4.3 The owners acknowledged the application on 31 January 2020.
- 4.4 On 7 February 2020, the authority responded to questions posed by the Ministry on the same day, noting:
- there was no dispute in relation to the seismic work required
 - the authority's understanding of the consequences of the masonry wall collapsing were:
 - minor damage to the roof cladding and structure to the building at 144 Bridge Street
 - damage to corrugated iron and polycarbonate skylight roofing (fall is over 2 metres) at 142 Bridge Street, with skylights likely to be penetrated by the falling masonry. One of the skylights is above the counter in a takeaway shop
 - it is likely that Bridge Street will be prioritised for remediation of unreinforced masonry hazards, however, the authority's assessment is that the masonry wall does not affect the footpath.
- 4.5 The owners made a submission dated 7 February 2020:
- noting the loose bricks that were on top of the masonry wall have been removed, and further bricks were unable to be removed without a mechanical hammer as they were so heavily plastered
 - agreeing with the authority's statements about the position of the skylights on the adjacent roof.
- 4.6 A draft determination was issued to the parties for comment on 1 May 2020.
- 4.7 The authority did not accept the draft determination in a response dated 12 May 2020. The authority:
- provided corrections for the description of the adjacent building and other minor corrections
 - requested the determination comment on whether a timeframe other than the deadline stated in the old notice or the deadline stated in section 133AM(2) of the Act could apply
 - requested the determination comment on whether a notice can be updated; for example, where a building was not a priority building but becomes a priority building after the notice is issued. The authority noted that the draft determination discussed that Clause 2 of Schedule 1AA only applies to transitioning section 124 notices to EPB notices, and the circumstances under section 133AL that a notice can be issued
 - noted that since the determination was applied for, the authority has identified areas for prioritisation under section 133AF of the Act, which includes the building and adjacent building. The authority requested the determination confirm the authority's interpretation that the interior of an adjacent building is

not a public thoroughfare, and so masonry with the potential to fall into the neighbouring building would not trigger the status of priority building.

4.8 The owners accepted the draft determination without comment on 13 May 2020.

5. Discussion

5.1 In order to determine whether the authority correctly exercised its power of decision to issue the EPB notice, preserving the deadline stated in the old notice, I must consider the relevant provisions of the Act including the transitional provisions relating to the commencement of Subpart 6A of Part 2 of the Act.

5.2 Subpart 6A of Part 2 of the Act⁷ came into force on 1 July 2017 and changed the way earthquake-prone buildings are identified and managed under the Act. Schedule 1AA of the Act (refer to Appendix A) contains the transitional provisions, including those for notices given for earthquake-prone buildings under section 124 before the commencement of the Subpart 6A of Part 2 of the Act.

5.3 There is no dispute between the parties that the masonry wall is earthquake-prone, and that the authority was correct to issue a section 124 notice for the building. The authority subsequently issued the EPB notice with reference to the transitional provisions set out in clause 2 of Schedule 1AA of the Act. I am of the view the authority has correctly applied clause 2(3)(d)(i) to determine that the old deadline applied, as it is earlier than the deadline calculated under section 133AM(2) applied retrospectively to the date of the old notice.

5.4 Nelson City is an area defined as “medium seismic risk” in terms of section 133AD of the Act. This means that under section 133AM(2) a notice issued under section 133AL of the Act an owner will have 25 years to complete seismic work on a building with a notice (or 12 years and six months for a priority building).

5.5 The owners sought an extension from the authority to the deadline for completing the seismic work to the masonry wall, as provided for by clause 2(5)(a) of Schedule 1AA. With reference to clause 2(5)(b) of Schedule 1AA, the authority did not grant this application and preserved the deadline stated in the old notice.

5.6 Therefore, the question this determination must address is whether the authority was correct to issue the EPB notice, preserving the deadline stated in the old notice.

5.7 Clause 2(5)(b) of Schedule 1AA states:

in deciding whether to grant the application, the territorial authority must have regard to the particular circumstances and any guidance issued by the chief executive under section 175 for that purpose;

5.8 The Ministry has issued the following guidance (“the guidance”) about reissuing existing earthquake-prone building notices⁸:

Territorial authorities who have previously issued section 124 notices should:

- check the scope of the new legislation and revoke any current section 124 notices on buildings this no longer applies to and notify the owners
- identify whether any of these buildings are now priority buildings (medium and high seismic risk areas only)

⁷ The Building (Earthquake-prone Building) Amendment Act 2016 inserted Subpart 6A of Part 2 of the Act, made amendments to the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005, and inserted Schedule 1AA of the Act.

⁸ <https://www.building.govt.nz/managing-buildings/managing-earthquake-prone-buildings/what-earthquake-prone-buildings-system-means-for-you/territorial-authorities-earthquake-prone-buildings/>

- reissue each section 124 notice as an EPB notice, noting whether the building is a priority building, and apply the relevant deadlines for seismic work. Note that earthquake ratings are not required for these notices if that information is not known, and
- update the EPB register with details of the new EPB notices.

The existing deadline from the original section 124 notice remains, unless either:

1. applying the relevant deadline under the new system, taken from the date the EPB notice is issued, would result in a shorter deadline. In this case, the shorter deadline applies, or
2. the owner is given a shorter period within which to complete seismic work under the section 124 notice than the period relevant to the building under the new system and the owner asks the territorial authority to have the longer period applied retrospectively to the date of the old notice. The territorial authority must have regard to the particular circumstances of the building before agreeing to that request.

5.9 Based on the relevant provisions of the Schedule 1AA and the guidance, a building owner wishing to have the deadline extended must make an application under clause 2(5)(a) to have the relevant period specified in section 133AM(2) applied retrospectively to the date of the section 124 notice. An authority must decide whether to grant the application, which has the effect of extending the deadline, or alternatively, if the application is not granted, the deadline would be the deadline from the section 124 notice. I am of the view that in respect of the deadlines, an authority is limited by Schedule 1AA to either preserving the deadline in the old notice, or applying the relevant period specified in section 133AM(2) retrospectively to the date of the section 124 notice.

5.10 The guidance does not provide more detail on what a territorial authority must consider when having regard to the particular circumstances under clause 2(5)(b), rather notes that the particular circumstances must be considered before agreeing to the request.

5.11 Given the required decision is about whether to preserve the deadline in an existing section 124 notice, or extend the deadline for completing the seismic work, I am of the view that particular circumstances should include:

- the extent of the magnitude of the hazard;
- the consequences of the hazard
- the extent of the mitigations in place; and
- the significance of the difference in the deadlines.

5.12 With respect to the magnitude of the hazard, this includes consideration of:

- the results of any seismic assessments carried out and information about the building, including the earthquake rating of the building and the extent to which the building or part is earthquake-prone, for example, whether the building has a low earthquake rating, or a higher rating whilst still being earthquake-prone
- the seismic risk area (high, medium or low)
- whether the building is a priority building.

5.13 With respect to consequences, this includes consideration of:

- the consequence of failure, based on

- the detail of the building and any earthquake-prone parts, and
 - the extent to which the collapse of the building or part, or failure of the elements identified in the seismic assessment would be likely to cause injury or death or damage to other property, and
 - and the likelihood and type of damage expected as well as the current and foreseeable occupancy of the building
 - if there are any adjacent buildings or property, their current and foreseeable occupancy, the proximity of these buildings, and whether the nature of the construction of adjacent buildings affords any level of protection from damage.
- 5.14 With respect to mitigations in place, this includes consideration of:
- if there are any measures in place, including temporary measures or interim securing, to reduce the likelihood of failure or the consequence of failure
 - any strengthening work and risk reduction already carried out, including under previous regulatory regimes.
- 5.15 The particular circumstances will need to be weighed up in order to reach a decision about whether to grant an application to extend the deadline for completing the seismic work. For example, if there is a significant difference in the deadlines, but the magnitude and consequences of the hazard is only moderately significant, or there are mitigations in place for a significant hazard, this may provide justification for granting an application to extend the deadline.
- 5.16 In this case, with respect to the hazard:
- a seismic assessment was carried out, which assessed the building as less than 20% NBS⁹ and noted the bricks and mortar of the masonry wall were in very poor condition. The masonry wall protrudes above the roof of the adjacent building. If the wall collapsed, masonry could fall more than two metres onto the roof of the adjacent building below and a portion of the masonry could fall onto the roof of the adjacent building's street veranda. The roof is vulnerable and subject to penetration of falling masonry because of its construction of corrugated iron with polycarbonate skylights. The area under the skylight is part of a takeaway food shop, where people work and visit,
 - the seismic risk area is medium
 - the building is not considered a priority building by the authority as the authority has not treated the interior of the adjacent building as an "other thoroughfare" when applying the priority building provisions under section 133AF(2)(a). The parties have not identified any issues with this treatment. I note that I do not disagree with the approach the authority has taken in this respect.
- 5.17 With respect to consequences, in this case:
- the building is a retail premises, and is likely to continue to be used for retail or similar due to the location in the city CBD

⁹ The percent NBS is the rating given to a building as a whole expressed as a percent of new building standard achieved, based on an assessment of the expected seismic performance of an existing building relative to the minimum that would apply under the Building Code to a new building on the same site with respect to life safety.

- the adjacent buildings are occupied by retail stores, including a takeaway food outlet where people work and visit, and are likely to continue to be used for retail, food service or similar due to the location in the city CBD.
- 5.18 With respect to mitigations, in this case:
- the owners have removed loose bricks from the masonry wall
 - some risk reduction has been carried out previously.
- 5.19 With respect to the differences in the deadlines, the difference is significant as the deadline stated in the old notice was 30 June 2020 and the deadline specified in section 133AM(2) applied retrospectively to the date of the old notice is 11 July 2038.
- 5.20 The authority identified the particular circumstances (refer to paragraph 3.5), and referred to:
- the history of regulatory actions and strengthening work carried out to the building, including previous notices issued, and that some risk reduction had been carried out
 - the earthquake rating of the building being less than 20% NBS and the condition of the bricks and mortar of the masonry wall being poor
 - the likely extent of the hazard to the footpath not being significant due to its location perpendicular to the street
 - the likely extent of the hazard to the adjacent buildings being significant because of the location of the parapet section of the wall above the adjacent roof, and the roof construction being corrugated steel and polycarbonate skylights
 - the location of the building being in a high traffic pedestrian and vehicle area.
- 5.21 The particular circumstances identified by the authority included an assessment of the magnitude of the hazard as well as the mitigations in place. I am of the view that although the difference in the deadlines is significant, the masonry wall represents a significant hazard with likely consequences and there are no significant mitigations in place.
- 5.22 I am of the view the authority has considered relevant factors (refer to paragraph 5.20) in its assessment. On the basis that the authority did not grant the application, I am of the view that the authority correctly exercised its power of decision to issue the EPB notice, preserving the deadline stated in the old notice. In coming to this view, I have also given regard to the purposes and principles of the Act set out in sections 3 and 4, specifically, section 3(a)(i) and section 4(2)(b). These relate to ensuring people who use buildings can do so safely and without endangering their health; and preventing or minimising harmful effect on human health resulting from the use of particular building methods.
- 5.23 Given my view that the authority has correctly exercised its power of decision to issue the EPB notice, preserving the deadline stated in the old notice, I note the provisions of clause 2 of Schedule 1AA only apply to transitioning section 124 notices to EPB notices, and do not provide for these decisions to be revisited. I also note the provisions of 133AL limit the circumstances when an authority can issue an EPB notice to determining a building or part of a building is earthquake-prone,

revoking an exemption or an extension, or determining that the earthquake rating is different from the rating stated in the EPB notice or EPB register.

- 5.24 I note that it is possible that there may be situations where an EPB notice needs to be reissued or updated by a territorial authority, however this would be as a change to the EPB notice that was issued under section 133AL, rather than reconsidering the decision made to transition the notice from a section 124 notice to an EPB notice under the Schedule 1AA transitional provisions.

6. The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the authority was correct to issue the EPB notice (Notice number N003066 EQB0342-3), preserving the deadline of 30 June 2020 stated in the old notice.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 11 August 2020.

Katie Gordon
Manager Determinations

Appendix A

A1. The relevant provisions of the Act include:

3 Purposes

This Act has the following purposes:

- (a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—
 - (i) people who use buildings can do so safely and without endangering their health; and

4 Principles to be applied in performing functions or duties, or exercising powers, under this Act

...

- (2) In achieving the purpose of this Act, a person to whom this section applies must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on that person by this Act:

...

- (b) the need to ensure that any harmful effect on human health resulting from the use of particular building methods or products or of a particular building design, or from building work, is prevented or minimised:

...

133AF Role of territorial authority in identifying certain priority buildings

- (1) This section applies to a territorial authority whose district includes any area of medium or high seismic risk.
- (2) The territorial authority,—
 - (a) for the purpose of section 133AE(1)(e) (prioritising parts of unreinforced masonry buildings), must use the special consultative procedure in section 83 of the Local Government Act 2002 to identify any part of a public road, footpath, or other thoroughfare in an area of medium or high seismic risk—
 - (i) onto which parts of an unreinforced masonry building could fall in an earthquake; and
 - (ii) that has sufficient vehicle or pedestrian traffic to warrant prioritising the identification and remediation of those parts of unreinforced masonry buildings; and
 - (b) for the purpose of section 133AE(1)(f) (prioritising buildings that could impede a strategic transport route),—
 - (i) may, in its discretion, initiate the special consultative procedure in section 83 of the Local Government Act 2002 to identify buildings for that purpose; but
 - (ii) must not identify buildings for that purpose other than in accordance with the special consultative procedure.

...

133AL Territorial authority must issue EPB notice for earthquake-prone buildings

- (1) This section applies if a territorial authority makes any of the following decisions:
 - (a) determining under section 133AK or 133AY or clause 2 of Schedule 1AA that a building or a part of a building is earthquake prone; or

- (b) revoking an exemption under section 133AN; or
 - (c) revoking an extension under section 133AO; or
 - (d) determining under section 133AQ or 133AY that the earthquake rating of a building or a part of a building that is subject to an EPB notice is different from the earthquake rating (if any) of the building or part that is stated in the notice or the EPB register.
- (2) The territorial authority must promptly issue an EPB notice for the building or the part of the building, which must—
- (a) be dated; and
 - (b) be in the prescribed form; and
 - (c) identify the building or the part of a building determined to be earthquake prone; and
 - (d) specify whether the building or part is a priority building; and
 - (e) specify the earthquake rating of the building or part (unless this has not been determined: see section 133AK(4) and clause 2 of Schedule 1AA); and
 - (f) state that the owner of the building or part is required to carry out building work to ensure that the building or part is no longer earthquake prone (seismic work); and
 - (g) state the deadline for completing seismic work (see section 133AM); and

...

133AM Deadline for completing seismic work

- (1) The owner of a building or a part of a building that is subject to an EPB notice must complete seismic work on the building or part on or before the deadline specified in this section.
- (2) The deadline is the expiry of whichever of the following periods, as measured from the date of the first EPB notice issued for the building or the part of the building (rather than any replacement EPB notice), is applicable:
 - (a) in an area of low seismic risk, 35 years for any building; and
 - (b) in an area of medium seismic risk, 12 years and 6 months for a priority building and 25 years for any other building; and
 - (c) in an area of high seismic risk, 7 years and 6 months for a priority building and 15 years for any other building.
- (3) However,—
 - (a) if clause 2 of Schedule 1AA applies to the building or the part of the building, the deadline is the deadline determined in accordance with that clause; and
 - (b) if the building or the part of the building is a heritage building for which an extension is granted under section 133AO, the deadline is the expiry of the period of the extension, as measured from the deadline that would apply under paragraph (a) or subsection (2) if no extension were granted.

Schedule 1AA

2 Notices given under section 124 before commencement date

- (1) This clause applies to a building or a part of a building if, before the commencement date, a territorial authority issued a written notice under section 124(2)(c)(i) (the **old notice**) requiring work to be carried out on the building or part, by a deadline stated in the old notice (the **old deadline**), to reduce or remove the danger associated with the building or part being earthquake prone (the **seismic work**).

- ...
- (3) If subpart 6A of Part 2 does apply to the building,—
- (a) the territorial authority is deemed to have determined that the building or the part of the building is earthquake prone; and
 - (b) the territorial authority need not determine the earthquake rating of the building or part; and
 - (c) the territorial authority must, as soon as practicable after the commencement date,—
 - (i) issue an EPB notice for the building or the part of the building under section 133AL; and
 - (ii) record the details of the building or the part of the building in the EPB register and update other information in the EPB register as necessary (but the territorial authority need not record the earthquake rating of the building or part); and
 - (d) the deadline for completing the seismic work is determined as follows:
 - (i) if the old deadline is earlier than the deadline calculated under section 133AM(2), the deadline for completing the seismic work is the old deadline (subject to subclause (5)); and
 - (ii) if the old deadline is on or after the deadline calculated under section 133AM(2), the deadline for completing the seismic work is the deadline calculated under section 133AM(2);
- ...
- (4) To avoid doubt, for the purpose of subclause (3)(d) the deadline calculated under section 133AM(2) is the expiry of the relevant period as measured from the date of the EPB notice and not from the date of the old notice.
- (5) If an old deadline is preserved by subclause (3)(d)(i) but the period given for completing the seismic work under the old notice is shorter than the relevant period specified in section 133AM(2) (for example, an old notice issued for a building in an area of medium seismic risk required the owner to complete seismic work within 20 years after the date of that notice, but the period specified in section 133AM(2) that is relevant to the building is 25 years),—
- (a) the owner of the building or the part of the building may apply to the territorial authority to have the relevant period specified in section 133AM(2) applied retrospectively to the date of the old notice (which would have the effect of extending the deadline for completing the seismic work); and
 - (b) in deciding whether to grant the application, the territorial authority must have regard to the particular circumstances and any guidance issued by the chief executive under section 175 for that purpose; and
 - (c) if the territorial authority grants the application, the deadline is the expiry of the relevant period specified in section 133AM(2), as measured from the date of the old notice and not from the date of the EPB notice.