

Determination 2024/063

The authority's request to a building owner for an engineering assessment of a residential building identified as potentially earthquake-prone

48 Manor Place, Dunedin

Summary

This determination considers the territorial authority's request, under Section 133AH of the Building Act 2004, to the building owner to provide an engineering assessment of a residential building identified as potentially earthquake-prone. The determination discusses section 133AA and the types of residential buildings that the earthquake-prone building provisions of the Building Act apply to.



Figure 1. View of 50, 48, 46 and 44 Manor Place from the street

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”).

The Act is available at www.legislation.govt.nz. Information about the legislation, as well as past determinations and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).¹
- 1.2. The parties to the determination are:
 - 1.2.1. S McKay (“the owner of 48 Manor Place”), the owner of the property at 48 Manor Place who applied for this determination.
 - 1.2.2. Dunedin City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
 - 1.2.3. CP Jordan (“the owner of 46 Manor Place”), the owner of the property at 46 Manor Place.
 - 1.2.4. Otaaagoo Limited (“the owner of 50 Manor Place”), the owner of the property at 50 Manor Place acting through its director.
 - 1.2.5. DJ Wakerley and V Wakerley (“the owners of 44 Manor Place”), the owners of the property at 44 Manor Place.
- 1.3. This determination arises from the authority’s identification of the building at 48 Manor Place as potentially earthquake-prone and the authority’s subsequent request under section 133AH for an engineering assessment. The owner of 48 Manor Place considers the building is outside the scope of buildings that the earthquake-prone building provisions² apply because their property contains only two residential units, satisfying exclusions for residential buildings set out in section 133AA. The authority considers the ‘extent’ of the building includes 50, 48, 46 and 44 Manor Place as interconnected structures.
- 1.4. The matter to be determined³ is the authority’s decision under section 133AH to issue a request to the owner of 48 Manor Place for an engineering assessment of a building identified as potentially earthquake-prone. In deciding this matter, I must consider whether the building is a building to which earthquake-prone building

¹ The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

² Subpart 6A — Special provisions for earthquake-prone buildings.

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

provisions apply, specifically whether the building satisfies the exclusions set out in section 133AA.

- 1.5. The determination is limited to the authority's request under section 133AH to the owner of 48 Manor Place. The authority's letters sent to the owners of 50, 46 and 44 Manor Place are outside the scope of this determination. However, I have included the owners of 50, 46 and 44 Manor Place as parties to this determination on the basis that the outcome of my decision may affect the owners.
- 1.6. I have not considered any other aspect of the authority's identification of the building as potentially earthquake-prone, or any other aspect of the authority's request under section 133AH (other than that set out in paragraph 1.4).

2. The building and background

- 2.1. The parties have submitted different views about the construction of the building. The authority's records show 48 and 50 Manor Place were constructed together as one building between 1879 and 1880, and 46 and 44 Manor Place were constructed as one building between 1881 and 1882. The owner of 46 Manor Place believes 44, 46, 48 and 50 Manor Place were constructed at the same time as one building, pointing to the construction methods used, the continuous plaster work of the façade, and the inscription of the building name spanning the boundary between 48 and 46 Manor Place.
- 2.2. I accept 44, 46, 48 and 50 Manor Place were constructed between 1879 and 1882, from masonry (possibly block or stone). The properties at 44, 46, 48 and 50 Manor Place are adjoining and connected together, sharing party walls. The owner of 48 Manor Place has confirmed their property is connected to and shares party walls⁴ with 50 and 46 Manor Place. Given the construction date and methods, it is reasonable to expect 44 and 46 Manor Place share a similar party wall.
- 2.3. Combined, the building is residential in use,⁵ is at least two-storeys (50 Manor Place) and in parts three-storeys (44 Manor Place). I understand 48 Manor Place contains two household units, 50 Manor Place has one household unit, 44 Manor Place may contain up to six units and 46 Manor Place may consist of seven units.
- 2.4. On 8 September 2023 the authority sent a letter⁶ to the owner of 48 Manor Place titled 'Potentially Earthquake-prone Building (or part)' stating the authority had identified the building at 48 Manor Place as potentially earthquake-prone, using the 'EPB Methodology'.⁷ The letter stated (in summary):

⁴ Registered on the Record of Title in 1924 for 48 Manor Place. Records of Title prove the ownership of land and the rights and restrictions that apply to the land under the Land Transfer Act 2017.

⁵ Confirmed through the authority's rating database for the properties 44, 46, 48 and 50 Manor Place.

⁶ While the letter does not explicitly refer to section 133AH, given the content of the letter I accept this letter is a request to the building owner and made by the authority under section 133AH.

⁷ The *EPB [earthquake-prone building] methodology* is the methodology for identifying earthquake-prone buildings that is set by the Chief Executive of the Ministry under section 133AV of the Act.

- 2.4.1. The building was identified as falling into the profile category “Category A – Unreinforced masonry building” of the EPB Methodology.
- 2.4.2. The building shares a party wall with 46 and 50 Manor Place and a seismic assessment must consider interconnected structures and party walls, noting that a building may be established over more than one allotment boundary.
- 2.4.3. Outlined the process, relevant timeframes and the owner’s responsibilities in respect of the potentially earthquake-prone building provisions of the Act.
- 2.5. I understand the authority sent similar letters to the owners of 44, 46 and 50 Manor Place, but I do not have copies of this correspondence. The owner of 48 Manor Place and the authority then entered into correspondence regarding the identification and use of the building, which I also do not have copies of.
- 2.6. On 24th May 2024 the authority sent a letter, addressed collectively to the owners of 44, 46, 48 and 50 Manor Place, clarifying the authority’s reasons for identifying the building as potentially earthquake-prone. The letter stated (in summary):
 - 2.6.1. Two owners confirm their property is residential in use, with “less than 3 units in each part of their building”, a third owner stated they would not be undertaking their own earthquake-prone building assessment, and the fourth owner had not responded.
 - 2.6.2. The building has been identified as potentially earthquake-prone due to the “extent” of the building and therefore satisfies the parameters of section 133AA(2)(a) and (b). The authority’s information held on file show:
 - (a) 50 and 48 Manor Place was constructed as one building, between 1879 and 1880.
 - (b) 46 and 44 Manor Place was constructed as one building, between 1881 and 1882.
 - (c) The “units” are interconnected and have listed party walls on their Record of Title.
 - 2.6.3. For the purposes of the earthquake-prone building provisions, the assessment of buildings uses the EPB methodology. When engineers undertake their technical assessments under the methodology, they use “The Seismic Assessment of Existing Buildings – Technical Guidelines for Engineering Assessments”. These guidelines define ‘buildings with interconnected structures’.
 - 2.6.4. Concluded, based on information held by the authority and the above points, “the *building* incorporates all four interconnected terrace row properties” and meets the requirements of section 133AA(2)(a) and (b),

therefore the building must be assessed with the earthquake-prone building provisions of the Act.

3. Submissions

The owner of 48 Manor Place

3.1. The owner of 48 Manor Place disagrees with the authority. With their application for determination, the owner explained their view that their property at 48 Manor Place is exempt from the earthquake-prone building provisions because (in summary):

3.1.1. other provisions of the Act, such as Change of Use and Alterations, treat “the Building as that on the legal title”

3.1.2. “the less risk of smaller residential properties”, explaining that, in this case, the risk per property is not increased by the fact they are interconnected, “in fact it is less than if they were individual properties”.

3.1.3. it does not make sense to treat buildings with party walls differently than other residential properties that do not share party walls.

3.2. The owner further submitted (in summary):

3.2.1. To date, a significant amount of money has been spent installing new flooring, “side diaphragms along the party walls”, new roof trusses, fire rating between floors and “restoring and improving the building’s structural... integrity”.

3.2.2. The importance of deeming the property as “singular units as per the property titles” is not an attempt to avoid earthquake strengthening responsibilities. Rather, the primary reason is that 46 Manor Place has been a “derelict building for 22 years” and the owner of 46 Manor Place has indicated that they will not “participate in the earthquake strengthening process”. This will have ramifications for insurance, securing tenants and undertaking further work.

The owner of 46 Manor Place

3.3. The owner of 46 Manor Place provided a submission in response to the application for determination. The owner considers, in reliance on a number of sections of the Act, the building (44, 46, 48 and 50 Manor Place) is captured by the earthquake-prone building provisions and that authority is correct to require an engineering assessment. The owner considers “it is entirely reasonable and consistent [for the building] to be interpreted as the extent of a weathertight envelope, or the extent of a structure that can stand independently without the need for modification or alteration.”

- 3.4. In response to the views of the owner of 48 Manor Place, they noted that Parliament's intent for the provisions can't have intended "to exclude large multi household residential structures simply because they were in a terraced or individually titled structure". In disputing the views of the owner of 48 Manor Place, their submission canvassed a number of hypothetical examples to demonstrate the consequences of approach taken by the owner of 48 Manor Place and contend these consequences could not have been intended.
- 3.5. The owner of 46 Manor Place submits:
- 3.5.1. Section 8 of the Act leads to 44-50 Manor Place as one building. The authority must identify the building as potentially earthquake-prone under section 133AG given the unreinforced masonry construction.
- 3.5.2. The construction methods and plaster render finish are evidence the building (44, 46, 48 and 50 Manor Place) was built as one, rather than in two blocks. This confirms the building was not built or intended stand separately.
- 3.5.3. The authority has incorrectly requested "a single engineering report for the four terrace houses from the four owners, with a single earthquake rating for all four". In reliance of the use of 'building or a part of a building' and 'the owner of the building or part' in section 133AH of the Act, the authority must ask each owner of the part of the building to provide an assessment for their part of the building. Independent parts of the building could each be strengthened individually by each owner, and each could have its own earthquake rating (albeit sharing party walls).
- 3.5.4. "It would be illogical for a building element such as a chimney, turret or parapet on a non-adjointing building to be able to lower the rating to 'earthquake prone' on a subject building when the owner had no legal means to change or rectify or strengthen the earthquake prone element of the 'building' (which would be part of the non-adjointing building owned by another party and not covered by any party wall agreements)." "The logical solution is to require the rating only to be calculated on the part of the building that an individual owner asserts an ownership interest over - that being the building on their land and the party walls that they hold an interest in."

The owner of 50 Manor Place

- 3.6. The owner of 50 Manor Place provided a submission in response to the application for determination (in summary):
- 3.6.1. 'Building' is limited to the structure within the legal boundary. There is a specific reason why a differentiation is made in section 8(1)(c). If a building has no common set of ownership arrangements and is not managed as one

building, the building will be defined as “Buildings” and not “building”.. Given the exclusion in section 133AA, an earthquake-prone building assessment is not required for number 50 and 48 Manor Place.

- 3.6.2. Section 8(1) states ‘In this Act, unless the context otherwise requires, building means...’ and subpart 6A provides no further definition.
- 3.6.3. It is the intention of the Act that terrace houses should not be a building to which the subpart applies, but multi storeys and multi apartments should not be excluded.
- 3.6.4. The Act makes provision for dealing with separate parts of a property. In section 133AI, which concerns the obligations of owners, the territorial authority can ask the owner of a building or a part of a building to provide an assessment. This supports the view that ‘building’ is limited to the structure within the legal boundary.
- 3.6.5. The Act does not stipulate that because there is a party wall it is classified as one building. It should not be accepted that terrace houses that are connected increase the risk because of their connection. There is no common party wall that extends throughout the whole building.
- 3.6.6. The note in the Engineering Assessment Guidelines at Paragraph A4.3.3 has the effect that separate structures share only a common foundation and no other form of structural connection.⁸ Engineers can treat houses as being separate within the legal boundary of an individual property and this should correspond with the Act and ‘building’. House 50 is not interconnected by a party wall with 44 Manor Place.
- 3.6.7. Section 133AG(1), which concerns the identification of earthquake-prone buildings, there is a clear case that buildings can be regarded as being separate from each other even where they are connected. Each and every house should be regarded as a separate residential building and should be determined individually, and the assessment of one house should not be a blanket assessment for all the houses.

Other parties

- 3.7. The authority and the owners of 44 Manor Place did not make submissions in response to the application for determination.

4. Discussion

- 4.1. The matter to be determined is the authority’s request, under section 133AH of the Act, to the owner of 48 Manor Place for an engineering assessment of the building

⁸ The Seismic Assessment of Existing Buildings: Technical Guidelines for Engineering Assessments (July 2017) Part A Assessment Objectives and Principles.

identified as potentially earthquake-prone. The owner of 48 Manor Place is of the view that their property is not subject to the earthquake-prone building provisions because it satisfies the exclusions set out in section 133AA(1)(a). This is because the owner is of the view that the 'building' is limited to 48 Manor Place (which shares party walls with 50 Manor Place and 46 Manor Place) and given this limitation the building is residential in use and two storeys but contains only two household units.

4.2. This dispute turns on the application of section 133AA and whether the 'building' is

4.2.1. confined to 48 Manor Place, or

4.2.2. encompasses 44, 46, 48 and 50 Manor Place.

Earthquake-prone building provisions (Subpart 6A) overview

4.3. The legislative framework for managing earthquake-prone buildings is set out in Subpart 6A of Part 2 of the Act, specifically sections 133AA through to 133AY.

4.4. The framework targets buildings that pose the greatest risk to public safety or other property. A building (or part of a building) is 'earthquake-prone'⁹ if, taking into account the ground on which the building is built and because of its construction, the building will have its ultimate structural capacity exceeded in a moderate earthquake, and if it were to collapse, would do so in a way that is likely to cause injury or death to persons in or near the building or on any other property, or damage to any other property.

4.5. Sections 133AA to 133AY ('the earthquake-prone building provisions' or 'the provisions') set out the legislative process and requirements for territorial authorities, engineers and building owners. The process can be summarised as follows:

4.5.1. Territorial authorities must identify 'potentially earthquake-prone' buildings in their district using the EPB Methodology (section 133AG) and the 'profile categories'¹⁰ prescribed in the methodology, if a building falls into a profile category the territorial authority must identify the building as 'potentially earthquake-prone'.

4.5.2. Owners who are notified by their territorial authority (section 133AH) that a building is potentially earthquake-prone must obtain 'engineering assessments' of the building that comply with the EPB Methodology (section

⁹ The meaning of earthquake-prone building is set out in Section 133AB of the Act. The Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 defines 'moderate earthquake' and 'ultimate capacity'.

¹⁰ 'Profile categories' are based on the seismic risk of the district (Dunedin City is a Low Seismic Risk area) and the building's characteristics (such as construction date and materials). For example, unreinforced masonry buildings in all seismic risk areas fall into 'Category A'.

133AI, such as carried out by suitably qualified engineers) and provide this to the authority.

- 4.5.3. Territorial authorities then determine whether buildings are ‘earthquake prone’ in accordance with the EPB Methodology and, if so, determine the building’s earthquake rating in accordance with the EPB Methodology (section 133AK), issue earthquake-prone building notices (section 133AL) and publish information about the buildings in a public register (section 133AK(3)(b)).
- 4.5.4. Owners are required to display the earthquake-prone building notices on their building (section 133AP) and to carry out seismic work in set timeframes (section 133AM).

The EPB methodology and Engineering Assessment Guidelines

- 4.6. The EPB methodology, empowered by section 133AV of the Act, outlines the procedure for identifying earthquake-prone buildings. The EPB methodology incorporates, by reference, ‘The Seismic Assessment of Existing Buildings – Technical Guidelines for Engineering Assessments’ (‘the Engineering Assessment Guidelines’). These Guidelines form a mandatory part of the EPB methodology.¹¹
- 4.7. The EPB methodology and the Engineering Assessment Guidelines underpin the legislative framework for managing earthquake-prone buildings and provide the operational basis for managing earthquake-prone buildings. Territorial authorities, building owners and engineers *must* use the EPB methodology and the incorporated Engineering Assessment Guidelines, as outlined in paragraphs 4.5.1 to 4.5.4 above.

Buildings to which Subpart 6A applies

- 4.8. Section 133AA states:

133AA Buildings to which this subpart applies

- (1) This subpart applies to all buildings except the following:
- (a) a building that is used wholly or mainly for residential purposes (but *see* subsection (2));
 - (b) a farm building...
- ...
- (2) Despite subsection (1)(a), this subpart applies to a building described in that subsection if the building—
- (a) comprises 2 or more storeys; and
 - (b) either—
 - (i) is a hostel, boardinghouse, or other specialised accommodation;
 - or
 - (ii) contains 3 or more household units.

¹¹ Refer to sections 133AV(4) and 405(3)(b) of the Act.

- 4.9. Section 133AA(1) provides the earthquake-prone building provisions apply to “all buildings” with some exceptions (listed (a) to (k)). ‘Building’ is defined in section 8 of the Act and means ‘a temporary or permanent movable or immovable structure’. The term ‘structure’ is not further defined.
- 4.10. Section 9 defines what a building does *not* include. The building (either limited to 48 Manor Place or encompassing 44-50 Manor Place) does not fall into any of the categories set out in section 9 that would exclude it from being a ‘building’ for the purposes of section 8 of the Act.¹²
- 4.11. The effect of sections 133AA(1)(a) is that buildings that are mainly residential in use are excluded from the earthquake-prone building provisions. However, subsection (2) means that residential buildings of a certain size and scale are not excluded; meaning buildings that are residential, *and* two or more storeys, *and* contain three or more household units are subject to the earthquake-prone building provisions.
- 4.12. In forming the view that their property is exempt from the subject provisions, the owner of 48 Manor Place considers ‘the building’ is limited to the structure at 48 Manor Place. The difficulty in this case is that neither section 8 nor 133AA are explicit in defining the boundary or extent of a ‘building’. In lieu of any explicit definition in respect of the boundary or extent of a building for the purposes of Subpart 6A, the meaning of legislation must be ascertained from its text and in the light of its purpose and its context.¹³
- 4.13. The earthquake-prone provisions provide several indications as to the extent of the ‘building’ for the purposes of the provisions:
- 4.13.1. The meaning of earthquake-prone building (section 133AB, as summarised in paragraph 4.4 above), which says “the building... will have its ultimate capacity exceeded in a moderate earthquake”, and the definition of ultimate capacity assessed “by reference to the building as a whole and its individual elements or parts”, setting the requirement to consider all and some of a building.
- 4.13.2. Section 133AC defines ‘earthquake rating’ and includes terms such as “the degree to which the building or part meets...” and “how a building is likely to perform in an earthquake”.
- 4.13.3. The phrases “a building or a part of a building” and “building or part” are used throughout the remainder provisions.

¹² Section 8(1)(c) only applies to some provisions in the Act and does not apply to Subpart 6A — see section 8(3). An example of the type of building having a common use and ownership arrangements provided for in section 8(1)(c) is a school made up of a number of buildings.

¹³ Section 10 of the Legislation Act 2019.

4.14. It is appropriate to also consult the EPB methodology and the Engineering Assessment Guidelines, and whether any further meaning of ‘building’ in respect of the earthquake-prone building provisions can be ascertained from these.

4.15. The EPB methodology and the Engineering Assessment Guidelines set out the requirements of engineering assessments, including the required scope and extent of the assessment, and set the requirements for assessments of buildings comprising multiple interconnected structures. The main technical objective of any engineering assessment “is to come to an understanding of the expected behaviour of the building in earthquakes”.¹⁴ The guidelines describe important aspects to consider, including (but not limited to) “A holistic assessment of seismic performance should consider a wide range of events that the building may be subjected to”. The EPB methodology at paragraph 2.4 states:

An engineering assessment must:

....

iv. consider whether the potentially earthquake-prone building comprises a shared structural form or shares structural elements with any other adjacent titles, and, if this is the case, consider the extent to which the low scoring elements (ie those scoring below 34%NBS) affect or do not affect the structure as a whole, as described in the Engineering Assessment Guidelines

4.16. Paragraph 2.4 of the EPB methodology requires engineering assessments, no matter the type of assessment,¹⁵ to meet the requirements of Part A of the Engineering Assessment Guidelines. The Engineering Assessment Guidelines Part A, at Paragraph A4.3.3, states:

A4.3.3 Buildings with interconnected structures

For the purposes of seismic assessment the boundaries of a building extend to include all structurally interconnected structural forms/systems. The structural interconnection may be in the form of common members/elements/structural systems providing vertical or lateral support. In some cases the building or the boundaries of the individual structural systems may extend beyond legal (title) property boundaries.

Note: Separate structures that share a common foundation (as the only form of structural interconnection), and are not otherwise reliant on the interconnection for either lateral or gravity support, can be considered as separate buildings.

The approach taken to assessing a building comprising multiple interconnected structures crossing multiple titles is as follows:

- Ascertain the extent of the building perimeter by considering all structurally interconnected structural systems.

¹⁴ Engineering Assessment Guidelines Part A, at Paragraph A4.2.

¹⁵ Paragraph 2.3 of the EPB Methodology requires the engineer to determine the appropriate form of assessment, either an ‘Initial Seismic Assessment (ISA)’ or a ‘Detailed Seismic Assessment (DSA)’, required to be carried out in accordance with certain parts of the Engineering Assessment Guidelines.

...

The earthquake rating for a part of a building within particular property title boundaries, where the building extends beyond these boundaries, is the minimum of:

- the earthquake scores determined for all structural systems within the building
- any primary structural elements that cross between structural systems, and
- the scores determined for any [secondary structural and non-structural] elements that are considered to be a significant life safety hazard for the part/section of the building which is of interest.

4.17. I note however, once a building is determined earthquake-prone the earthquake rating must be determined. Paragraph A4.3.1 of the Engineering Assessment Guidelines states:

The assessment of an earthquake rating for a building is not intended to extend beyond those aspects that an owner or owners of a building (including across multiple titles) could reasonably be expected to be able to address.

This means that the assessment of the earthquake rating can be restricted to those issues that relate specifically to the site boundaries.

4.18. In summary, the EPB methodology and the Engineering Assessment Guidelines, in relation to engineering assessments for the purposes of the earthquake-prone building provisions, describe the boundaries of a building to include all 'structurally interconnected structural forms/systems'. The Engineering Assessment Guidelines acknowledge in some situations the boundaries of the structural systems may extend beyond legal property boundaries (set out on the Record of Title).

4.19. The EPB methodology and the Engineering Assessment Guidelines engineering assessments aim to understand how a building is likely to perform in an earthquake, as a whole and its individual elements or parts, and consider a wide range of events that the building may be subjected to, including shared structural forms or elements, and the effect of the building's collapse to life safety and other property in the event of a moderate earthquake. Given this, the main factor for considering the extent of the building in the earthquake-prone building provisions is the building's structural form, including shared and interconnected structural forms, which may extend across legal boundaries.

4.20. In this case, I conclude the extent of the building for the purposes of the earthquake-prone building provisions encompasses 44, 46, 48 and 50 Manor Place, as a building that shares interconnected structural forms, systems and/or elements. The shared party walls serve as interconnection for gravity support, so the note in paragraph A4.3.3 of the Engineering Assessment Guidelines is not applicable.

4.21. For completeness, I note the EPB methodology includes the requirement for engineering assessments to consider “a part of a building” as individual building element that would pose a significant life safety hazard.

4.21.1. The EPB methodology, at 2.4.1, states “A building part is an individual building element that would pose a significant life safety hazard if it is able to: i). lose support or fall, or ii). cause another building element to lose support or fall from the building, or iii). cause any section of the building to lose support or collapse”. The methodology refers to the Engineering Assessment Guidelines for further requirements.

4.21.2. The Engineering Assessment Guidelines define ‘part (of a building)’ as “an individual member or element or section of a building’s structure (as distinct from the building structure as a whole), or a non-structural element”.

4.21.3. Further, the guidelines define ‘building element’ as “any structural or non-structural component and assembly incorporated into or associated with a building. Included are fixtures, services, drains...”.

4.21.4. I consider ‘part’ may be used in some contexts to refer to a building element and in other contexts to refer to ‘section of a building’s structure’. I do not consider the requirements relating to assessing ‘parts of a building’ and the need to identify significant life safety hazards change my finding on the extent of the building for the purposes of section 133AA.

Submissions on other sections of the Act

4.22. The owner of 48 Manor Place considers ‘the building’ is limited to the structure at 48 Manor Place because other provisions of the Act, such as Change of Use (sections 114 and 115) and Alterations (section 112), “treats the Building as that on the legal title”.

4.23. I note, previous determination 2011/068 found:

[At paragraph 10.6.6] ... the term “building” is not defined by a particular form of building (which might distinguish the type of building from its parts and so exclude part of a building from the definition of ‘building’). Instead, “building” is defined by reference to whether it is a “structure”. The term “building” is broad enough to comprise different structures and a reference to a building could be reference to just one of those structures (a part of a building) or all of the structure (the whole building).

[At paragraph 10.6.7] ... the Act refer[s] to “part of a building” inconsistently and in my view little weight can be placed on the different approaches in [the Act] to the terms “building” and “part of a building.” ...

[At paragraph 10.6.8] As it is not possible to discern a consistent approach to the use of the terms “building” and “part of a building” in the Act, I consider the preferable approach is that the meaning of the term “building” and whether it includes “part of a building” must be ascertained from its text and in light of its purpose (section 5 of the Interpretation Act 1999).

[at paragraph 10.6.10] In my view, if a [notice for non-compliant building work] is issued to an owner of a building where different parts of a building are owned by different persons [the relevant section of the Act provides for a notice] to be issued just to the owner responsible for the non-compliant building work as long as the part of the building owned by the person is a ‘temporary or permanent moveable or immovable structure’.

- 4.24. The term ‘building’ is broad enough to comprise different structures and a reference to ‘building’ could be reference to part or all of the structure. The findings in determination 2011/068 are consistent with the Engineering Assessment Guidelines and the process set out for buildings with interconnected structures, which may extend beyond property boundaries.
- 4.25. I do not agree with the view of the owner of 48 Manor Place that the building is narrowed to their ownership as they suggest. In my opinion, the main factor for considering the extent of the building for the purpose of section 133AA is the building’s structural form, including shared and interconnected structural forms. However, the owner’s responsibilities and obligations under the Act are confined to their ownership.
- 4.26. Section 133AL(2) sets out the requirements for a territorial authority issuing EPB notices for a building or a part of a building that is earthquake-prone. Notices must identify the building or the part of the building, the earthquake rating of the building or part and 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. A copy of the EPB notice must be given to the owner of the building or the part of the building.
- 4.27. Similar to determination 2011/068 at paragraph 10.6.10, where different parts of a building are owned by different persons it follows that the Act provides for the issuing of EPB notices to an owner for their respective building or a part of a building that is earthquake-prone (according to the requirements in the Act) as long as the part of the building owned by the person is a ‘temporary or permanent moveable or immovable structure’
- 4.28. The Engineering Assessment Guidelines Part A, at paragraph A4.3.1 notes that the earthquake rating “can be restricted to those issues that relate specifically to the site boundaries” as the rating “is not intended to extend beyond those aspects that an owner or owners of a building (including across multiple titles) could reasonably be expected to be able to address”.

4.29. I note the authority's request to the owners under section 133AH is not the complete legislative process for managing earthquake-prone buildings (refer to paragraph 4.5 above). As I have found the building encompassing 44, 46, 48 and 50 Manor Place is captured by the earthquake-prone building provisions, I leave it to the parties to follow the process set out in the provisions.

Conclusion

4.30. The extent of the building in this case encompasses 44, 46, 48 and 50 Manor Place, as one building that shares interconnected structural forms, systems and/or elements.

4.31. As 44, 46, 48 and 50 Manor Place is residential in use, is two or more storeys and contains three or more household units, I conclude the building is captured by the earthquake-prone building provisions under section 133AA(2), and therefore is not excluded from the earthquake-prone provisions by way of section 133AA(1)(a).

5. Decision

5.1. In accordance with section 188 of the Building Act 2004, I determine that the special provisions for earthquake-prone buildings apply to 48 Manor Place, and I confirm the authority's exercise of its power of decision under section 133AH.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 18 November 2024.

Peta Hird

Lead Determinations Specialist