



**Supreme Court of New Zealand  
Te Kōti Mana Nui**

**22 December 2014**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**UNIVERSITY OF CANTERBURY v THE INSURANCE COUNCIL OF NEW  
ZEALAND INC & ORS  
(SC 120/2013) [2014] NZSC 193**

**PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz)**

The appeal concerned the extent to which the Christchurch City Council was entitled, under the Building Act 2004, to require the strengthening of earthquake-prone buildings.

Section 122 of the Building Act stipulates that a building is earthquake-prone if it has two characteristics. The first is that the building will have its ultimate capacity exceeded in “a moderate earthquake”. Regulations defined this in such a way that it essentially means the building does not have seismic strength equating to one third (or approximately 34 per cent) of the building standards for new buildings. The second characteristic of an earthquake-prone building is that it would be likely to collapse causing injury or death to persons or damage to property.

Section 124 of the Building Act empowers the City Council to issue a notice that requires work to be carried out on an earthquake-prone building to “reduce or remove the danger” it poses.

The City Council’s Earthquake-prone, Dangerous and Insanitary Buildings Policy 2010 contemplated that the City Council would require work to be done

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to strengthen earthquake-prone buildings to 67 per cent of the building standards for new buildings. The 67 per cent standard was based on recommendations made by the New Zealand Society for Earthquake Engineering that this level of strengthening would reduce to a reasonable level the risk of collapse in an earthquake.

The Insurance Council of New Zealand Inc sought judicial review of the City Council's Policy. The Insurance Council said that the City Council was not entitled to require a building to be strengthened to a level greater than the 34 per cent standard set out in regulations. Strengthening a building to this extent would mean it was no longer an earthquake-prone building, because it would lack the first of the characteristics set out in s 122. The "danger" of earthquake-proneness would therefore be removed.

This interpretation of the Building Act was upheld by the High Court and Court of Appeal.

The University of Canterbury had an interest in this issue because it owned substantial properties that were damaged in the earthquakes. The University appealed to the Supreme Court, contending that the City Council was entitled to require buildings to be strengthened to a greater extent than the 34 per cent prescribed by regulations. According to the University, the power in s 124 of the Building Act allows the City Council to require work to remove the "danger" that a building might collapse in an earthquake, even one more serious than "moderate".

The Supreme Court has unanimously dismissed the appeal, rejecting the interpretation contended for by the University.

A majority, comprising McGrath, O'Regan and Blanchard JJ, has accepted the interpretation put forward by the Insurance Council. The majority has decided that, properly interpreted, s 124 of the Building Act is limited in its application to buildings that fail to meet the minimum standard set out in s 122. The power in s 124 is exercisable only to the extent necessary to bring a building up to that minimum standard, so that it is no longer earthquake-prone. The "danger" to be removed by exercise of the power is the characteristics of the building that make it earthquake-prone as defined in s 122. Once a building has been strengthened either to 34 per cent of the new building standards or to a strength that makes it not likely to collapse, it is no longer earthquake-prone for the purposes of the Building Act.

Although concurring in the result, Glazebrook and Arnold JJ have given separate reasons. Their view is that the "danger" to be removed by exercise of the power given to the City Council by s 124 is the likelihood of collapse in a moderate earthquake. The City Council may accordingly require a building to be strengthened beyond 34 per cent of the new building standard if that is necessary to reduce or remove that danger.

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