

# **Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill**

Submission to the Transport and Infrastructure Committee

August 2024



**Submission of Taituarā on  
Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill**

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**Thank you.**

Taituarā — Local Government Professionals Aotearoa thanks the Transport and Infrastructure Committee (the Committee) for the opportunity to submit regarding the Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill (the Bill).

**About Taituarā**

Taituarā — Our vision:

*Professional local government management, leading staff and enabling communities to shape their future.*

Taituarā — An incorporated society of approximately 1000 members drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation.

Taituarā – Our Regulations and Bylaws Reference Group (RBRG) provides practitioners’ perspective on building, consenting and environmental planning. We would like to thank them for their insight and input to this submission, along with the wider local government sector with an interest in this area that have also contributed.

## 1. General Comments

The focus of the Bill provides for amendments to the Building Act 2004 (the Act) to address earthquake-prone buildings. The Bill also includes minor amendments to the Act in other areas, and across other legislation. A number of these amendments will impact local government activities and resources, and its ability to meet compliance costs required; as well as compromise community health and safety. As such, we have provided comment on the following specific areas in the Bill:

- extending the remediation timeframe for earthquake-prone buildings by four years, with limited power to extend a further two years (*clauses 13-21*);
- preventing territorial authorities from imposing a fee for issuing an earthquake-prone building notice due to changes to the deadlines for completing seismic work made by the Act; and
- exempting small heated pools with a safety cover from the requirement for periodic inspections if they complied with the building code when installed or currently comply (*clause 23*).

## 2. Extending the remediation timeframe for earthquake-prone buildings

### *Overview*

The Government's key objective here is to reduce the burden on *all* building owners of earthquake-prone buildings (EPB) by extending the remediation timeframe for these buildings by four years (with limited power to extend a further two years). The instrument to give effect to this are via EPB notices issued by territorial authorities.

We understand it is unlikely that many EPB building owners with existing EPB notices will meet their deadlines. There are a significant number of EPB's right across the country where remediation works have not progressed, but where EPB notices have been in place for some time, or they have expired.

The amendment also allows for building owners that were unlikely to meet existing deadlines to no longer be deemed to have committed an offence under the Act.

### *General concerns about EPBs from local government*

- the ongoing and increased risks that EPBs impose on the community from a health and safety perspective;
- the ongoing responsibility on territorial authorities who are tasked with identifying EPBs;
- the ongoing burden on territorial authorities in monitoring EPBs and EPB notices; and
- the impact that these (more often than not) rundown and unsafe EPBs play in contributing to the (real or perceived) deterioration and aesthetic of a community.

### *High seismic risk areas are facing the most challenges with remediation*

Councils across New Zealand face a range of differing issues regarding EPB notice compliance.

Non-remediation by building owners is more prevalent in high seismic risk areas where there are shorter timeframes in EPB notices to remediate. For example, Hastings District Council, a high seismic risk area, has approximately 86 EPB notices (with deadlines from 2026 to 2039). Of these, there are currently 9 building consents in the system to strengthen. In Wellington, another high seismic risk area, a number of buildings have EPB notices due to expire. In these cases, the proposed four-year extension makes sense.

However, in Auckland, a low seismic risk area, the length of an EPB notice is around 35 years. The proposed four-year extension will not have a significant impact on these building owners - but will still adversely impact council compliance costs with the requirement to reissue notices through this amendment.

### *Ownership models can be a deterrent to compliance*

Some ownership models (e.g. body corporates) are not set up to easily address the matter of remediation. Reaching decisions about remediation in these situations is often fraught and long-winded due to the consensus needed by multiple occupants on how to remediate, and how to reach a fair cost-sharing model to do that. The range of management structures and personalities within these shared ownership models can significantly impact their ability to move towards a remediation solution.

### *Certainty is needed*

There is general concern that the deadlines for EPB remediation could simply be re-extended with another amendment (or similar) in four years' time. This 'kicking the can down the road' approach has resulted in constant and ongoing uncertainty for those councils keen to provide safe communities for their constituents; and to be relieved of the burden of constantly managing EPBs. Providing more certainty about when these buildings will be remediated is paramount.

We understand a Government review is underway that will focus on how well the current system is managing seismic risk in existing buildings, the barriers to remediation (e.g., ownership models as discussed above), with examples drawn from overseas approaches. We welcome this review and accept, in most part, that the four-year extension will allow for a full review. We are hopeful that such a review will lead to a more cohesive system of management and remediation of EPBs, and that it will provide options to those building owners in difficult circumstances to remediate faster.

We recommend that the amendment need not apply to those territorial authorities deemed low seismic risk with already-lengthy remediation timeframes and where a four-year extension will make little difference. The four-year extension may be more appropriate for (and hence limited to) those territorial authorities in high seismic risk areas. This approach will relieve the majority of councils from having to reissue updated EPB notices, and not be subject to the compliance costs resulting from that.

*Mitigating uncertainty by defining a pathway to remediation*

If the amendment stands and a four-year extension is provided for, we suggest that EPB building owners are obliged to develop a remediation pathway plan (within a given timeframe) and submit this to the territorial authority. This plan could simply and clearly set out a pathway to remediation within the timeframe set by the (new) EPB building notice. Having a plan lodged with the territorial authority (for a fee) will help councils understand the willingness and readiness of owners to undertake remedial works; and give territorial authorities and communities a level of reassurance that action will be taken.

**Recommendations**

a. That the amendment does not apply to territorial authorities in low seismic risk areas, but only apply to those territorial authorities in high seismic risk areas where remediation of EPBs is more imminent, and more urgent.

and

b. To provide certainty to territorial authorities and the community, that building owners of earthquake-prone buildings in high-risk areas are obliged to present a remediation pathway plan (within a given timeframe) to the territorial authority.

**3. Preventing councils from imposing a fee for reissuing earthquake-prone building notices**

We do not support this amendment as it prevents territorial authorities from imposing a fee for the reissuing of EPB notices.

In effect, this amendment will see the administrative and cost burden of reissuing all updated EPB notices imposed onto territorial authorities and the community, instead of onto the building owners. The actual cost to councils of this task does not appear to have been substantiated or clearly communicated. As this amendment stands, those councils with a significant number of EPB notices (e.g. Wellington) will have to find the funds and resources to carry out this work - costs that will be passed on to the community through rates.

Possible solutions to this are:

- (1) That the amendment provide for territorial authorities to impose actual and reasonable costs for reissuing updated EPB notices; or
- (2) That MBIE's \$71M excess building levy fund is used to pay territorial authorities (at an amount to be agreed in consultation with local authorities) for their efforts in reissuing EPB notices. Use of the MBIE levy in this situation would have the two-fold advantage: it would relieve councils from further compliance costs; and save

building owners from paying for the cost of the new EPB notices; (*preferred option*)  
or

- (3) That the amendment set a fee (to be agreed in consultation with local authorities) to reflect the administrative and cost burden on councils of reissuing updated EPB notices.

As discussed above, the number of EPB notices that need to be issued by some councils is significant. The council and communities (as non-owners of these earthquake-prone buildings) should not have to meet the burden of these compliance costs.

#### **Recommendations**

- a. That the amendment provides for territorial authorities to charge building owners 'actual and reasonable costs' for reissuing updated EPB notices.  
or
- b. That MBIE's \$71M building levy fund is used to fund territorial authorities (at an amount to be agreed in consultation with local authorities) to meet the compliance costs of reissuing the updated EPB notices (*preferred option*).  
or
- c. That the amendment set a fee (to be agreed in consultation with local authorities) to reflect the administrative and cost burden on councils of reissuing updated EPB notices.

#### **4. Exempting small heated pools with a safety cover from the requirement for periodic inspections.**

We do not support this amendment which exempts small heated pools with safety covers from the requirements for periodic inspection that either complied with the building code when it was installed, or currently does so.

We understand there may be reluctance from compliant pool owners to have their pools subjected to ongoing inspections by councils - they may believe that their pools do not require inspection.

However, if the aim of this amendment is to prevent small children from drowning should they gain unsupervised access to a pool, then the size of the pool (in this case "small heated pools") is irrelevant – the risk of drowning from a non-compliant pool exists regardless of the pool size.

*Pools can easily become non-compliant; or are sold as non-compliant*

Although these small heated pools may have been compliant when installed, or are currently compliant, the risk remains that these pools can easily become non-compliant (e.g., the cover could break, or blow away).

Additionally, there is evidence of small heated pools being supplied as non-compliant. Where a first council inspection fails, then councils work further with these pool owners to ensure compliance. Without regular follow-up inspections these pools could easily become non-compliant. A main issue is that some small heated pools have a lid-lifter which does not meet F9 of the Building Code as it is a climbable feature. These are being sold as compliant by retailers. We suggest that MBIE work with manufacturers and importers of these products to ensure they are aware of the requirement for small heated pools to be compliant when sold.

The liability on a council if there is an injury or loss of life resulting from a non-compliant pool is not clear and places an unfair burden on the council in this respect.

**Recommendation**

- a. That the amendment is deleted.
- b. That all small heated pools are required to be compliant, and have safety covers, and that all small heated pools are required to have periodic inspection to ensure they remain compliant.
- c. That MBIE is required to work with manufacturers and importers of small heated pools to ensure they are aware of the requirements for small heated pools to be compliant when sold.



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