

Regarding the Building and Construction (Small Stand-alone Dwellings) Amendment Bill

Submission to the Transport and Infrastructure Committee

June 2025



Submission of Taituarā – Local Government Professionals Aotearoa regarding the Building and Construction (Small Stand-alone Dwellings) Amendment Bill

Taituarā — Local Government Professionals Aotearoa (Taituarā) thanks the Transport and Infrastructure Committee for the opportunity to submit in respect of the Building and Construction (Small Stand-alone Dwellings) Amendment Bill ('the Bill').

We wish to be heard in respect of this submission.

What is Taituarā?

'Taituarā' is Aotearoa New Zealand's leading membership network for professionals working in and for local government. As an independent, apolitical organisation, Taituarā works proactively on the professional, technical, and practical aspects of policy, legislative, and regulatory change. Active, genuine, and early engagement with Taituarā ensures the Government gets the best advice to make its policies work effectively and ultimately results in quality policy, legislation, and implementation.

Introductory comments

Taituarā has worked with Building Managers, through our Regulations and Bylaws Reference Group, to review the Bill and to develop this submission. We have identified several matters that need resolution.

Taituarā appreciates the rationale for this Bill and is concerned to ensure that no liability should rest with territorial authorities and that the Bill protects public infrastructure through the payment of any required development contributions (or financial contributions or their successor).

We consider that some of the functions should be given to Licensed Building Practitioners (LBPs) rather than the owner, as there is a disciplinary framework which can be initiated for any breaches by LBPs.

Other limitations should be considered to minimise risks with these small stand-alone dwellings. Suitable ground conditions, wind loads, ground slope and specific engineering design of structural components (unless carried out by a Chartered professional Engineer (CPEng)) should all be added to Schedule 1A.

We also urge you to ensure the provisions of this Bill exactly mirror the proposed "NES for Granny Flats" with respect to the permitted activity provisions for the NES and the performance standards for the Building Act.

Roles for territorial authorities

The Bill sets out the role of a territorial authority (TA) in relation to dwellings constructed under the provisions of this Bill.

1. TAs accept notification by homeowners of their intention to build a small stand-alone dwelling through a Project Information Memorandum (PIM)
2. When issuing a PIM, TAs must advise:
 - a. whether the proposal meets the conditions of the exemption
 - b. whether the land is subject to a natural hazard
 - c. whether there are any bylaws that may have an impact on the design
3. A TA may attach a development contribution notice to the PIM for any charges owing in relation to the proposed work
4. The TA is required to receive records of work provided by homeowners for all work associated with a consent-exempt small stand-alone dwelling (within 20 working days). The records are to include all certificates, records of work, and a set of final plans for building, plumbing and drain laying work. Any development contribution is also payable within 20 working days.
5. The TA is required to hold these records for the life of the building.
6. The TA cannot assess the information for compliance with the building code.

In addition to the roles prescribed in the provisions of this Bill, the TA will also:

7. Process and issue approvals where applicable for connecting to three waters services – wastewater, drinking water and stormwater.
8. Take action in relation to a building which is dangerous and insanitary.

And inevitably, *despite* the intent of the Bill,

9. TAs will find themselves the first port of call where there are complaints, albeit the intent of the Bill is to limit the TA's role in relation to these dwellings.

We have identified some "process matters" that need further work to ensure the legislation can be implemented and the territorial authority is able to carry out its prescribed functions as the Bill intends. Specifically, there are several issues with the clauses relating to the "completion process" and some fixes are needed to ensure development contributions are actually paid.

We are also aware there will be a substantial education component with respect to the implementation of this Bill – to ensure TAs are aware of their limited role in respect of these exempt buildings and that owners understand the limited role of a TA, i.e. the TA will not be able to become involved if there are any issues with these dwellings. TAs will simply hold the paperwork.

Interpretation - "Simple design" clause 4

"Simple design" is referred to in Schedule 1A Section 2 (1)(h)(i) but is not defined in Section 7 or in the Building Regulations 1992 A3. Without clear specifications of what "simple design" is or what "simple design" is not, it is open to interpretation.

Clause 4 and/or Schedule 1 should be amended to specify that small stand-alone dwellings are only those being added on a site with an existing residential unit. Using the minor and principal residential unit terminology of the NES would also assist with this distinction.

Recommendation

Include a comprehensive definition or specifications of what "**simple design**" is for the purposes of these amendments.

Amend **Clause 4** and **Schedule 1A** to specify that a small stand-alone dwelling is one added on a site with an existing residential unit.

Issue of Project Information Memorandum clause 8

The Bill proposes to reduce the time allowed for a TA to issue a PIM from the standard 20 working days to 10 working days where it is related to a small stand-alone dwelling. However, the amendments also require a TA to carry out more tasks in relation to a PIM for a small stand-alone dwelling.

If the 10-day requirement remains, the TA will be required to prioritise a PIM for a small stand-alone dwelling, and we question the justification for this.

Recommendation

Remove **clause 8** and retain the same timeframes for all PIMs.

Project Information Memorandum (PIM) clause 6

The Bill provides for TAs to advise the level of development contributions (DCs) that are payable when a PIM is applied for (clause 12), and that payment of DCs by the homeowner is at the time of lodging the documentation with the TA upon completion of the building (clause 15). The Bill also needs to refer to financial contributions (FCs), which are used by some TAs instead of DCs.

There is inconsistency in the Bill in relation to the PIM. New section 42B specifies that no building work on a non-consented small stand-alone dwelling may begin before a PIM has been issued under section 34. However, clause 6 amends section 32 (Owner *may* apply for a project information memorandum). The PIM process is critical to ensure TAs are enabled to levy DCs (and FCs) for the project and are enabled to advise whether the land is subject to a natural hazard. They are also the trigger for building work to commence i.e. under section 42B(3)(c) building work cannot begin until a PIM is issued.

A simple fix to ensure consistency between these provisions is to amend section 32 to **require** the owner to apply for a PIM, rather than make it voluntary.

Recommendation

Amend **clause 6** as follows:

Section 32 Owner ~~may~~ must apply for a project information memorandum

Territorial authority may issue development contribution notice clause 12

Clause 12 requires any development contributions to be payable after completion of the works. This incentivises owners not completing the building and not supplying completion materials to avoid payment of DCs. There is no timeframe for completion and without a Code of Compliance Certificate, the TA could be waiting for years for the completion paperwork.

We consider that the payment of DCs (or FCs) should be tied to the *issuing* of a PIM. There is useful precedent for this; Gisborne DC, for example, requires DCs for Kainga Ora projects to be paid on the *issuing* of a PIM.

The BCA would simply invoice the DCs at the issue of the PIM, and non-payment would follow the usual debt collection process, final recourse being the Disputes Tribunal.

Recommendation

Amend **clause 12** as follows:

Section 36(2B) amended (Territorial authority may issue development contribution notice and development contributions (or financial contributions) are payable within 20 working days of the issue of a project information memorandum)

Completion process clause 15

Clause 15 sets out the completion process for building work. This clause requires the owner of a non-consented small stand-alone dwelling to send the specified documents to the TA within 20 working days after completion of the building work. There are several issues with the completion process proposed.

1. There is no obligation for an owner to complete a building, only that work detailed in the PIM cannot continue after 2 years unless an extension is agreed with the TA. This allows for an owner to not quite complete a building to avoid the obligation to pay DCs (or FCs).
2. If the work does not proceed, a TA has no way of knowing this for their record keeping. The onus should *not* be on the TA to monitor the completion of work that they have no control over.
3. What happens if no extension is granted by the TA?

4. It is unclear how the TA will know when the building work is “completed” and therefore when to start the clock for 20 working days.

In order to incentivise the completion of the process, a provision should specify that the building must not be occupied until the completion process is concluded.

Recommendation

Amend **clause 15** Section 42B to provide for:

The building must not be occupied until the completion process is complete and any required development contributions (or financial contributions) are paid (clause 12).

Require the owner to notify the TA in writing if the work is not going to proceed, i.e. if it will not be carried out within 2 years of the issue of the PIM.

Include a prescribed form that an LBP completes on submission of information when a building is complete. The information described on that form as being supplied can be relied on in good faith by the TA to be within the package of information submitted.

Application for a determination clause 19

Clause 19 amends section 177 to specify when a determination can be made. This should be expanded to include the PIM process at a minimum. We are concerned that if a TA advises in a PIM that the natural hazard provisions apply, then it is seemingly no longer exempt building work under the new 42B(3)(d) (clause 15).

Recommendation

1. Amend **clause 19**

Section 177 (Application for a determination) to include a Project Information Memorandum issued under section 34(1)

Enforcement provisions clause 21

Related to this matter are the sanctions for non-compliance.

Clause 15 of the Bill requires the LBP to provide the record of works to the owner of a non-consented small stand-alone dwelling and clause 21 includes the grounds for discipline of an LBP.

New section 42B(5) specifies that \$1,000 is payable if the owner does not send the TA the records and documentation.

Taituarā is concerned that the low level of fine (\$1,000) for the owner to provide the records of work is unlikely to be sufficient to encourage the records to be lodged

with the TA. When compared with the level of DCs that could be payable, we foresee many situations where records will not be lodged with the TA.

A simple fix is to require the LBP to lodge the records with the TA rather than the owner. There is a disciplinary framework for LBPs and if the onus to lodge records sits with the LBP rather than the owner means it is more likely to happen.

Recommendations

1. Amend clause 15

Section 42B(4) ~~The owner~~ Licensed Building Practitioner providing the certificate of work under section 45AA in relation to ~~of a non-consented small stand-alone dwelling~~ must send to the territorial authority that issued the relevant project information memorandum within 20 working days

Liability clause 22

Clause 22 of the Bill (new Section 392A) provides that TAs will have no civil liability in relation to any of *the advice* provided by the TA.

Taituarā absolutely supports the principle of removing liability from TAs in relation to non-consented small stand-alone dwellings but considers this needs to go further and protect a TA for *everything* in relation to non-consented small stand-alone dwellings. The rationale is that it is the licensed building practitioner who holds the key role in relation to non-consented small stand-alone dwellings and the role of the TA is very circumscribed.

Recommendation

Amend **clause 22** Section 392A, *Territorial authority not liable:*

No civil proceedings may be brought against a territorial authority or any member, employee, or agent of that authority for anything ~~in good faith stated in, or omitted from, a statement or description required by section 35A in relation to~~ non-consented small stand-alone dwellings.

Schedule 1 Building work for which building consent not required

There is a gap in the existing legislation that should be amended through these amendments. Clause 50 should be amended to include all exempt building work.

Recommendation

1. Amend clause 50

Amend Schedule 1 **Building work for which building consent not required** to include all exempt building work.

Schedule 1A Other building work for which building consent not required

Characteristics of small stand-alone dwelling

The characteristics of a small stand-alone dwelling listed in Schedule 1A need to include that the dwelling is being added on a site with an existing residential unit.

They also need to specify it is a **single** small stand-alone dwelling not for additional/multiple small stand-alone dwellings.

Exemptions to minimise risks

The amendment bill provides that a site subject to a natural hazard does not meet the conditions for an exemption. Other limitations should be considered to minimise risks associated with small stand-alone dwellings including:

- Ground conditions.
- Wind loads
- Ground slope
- Specific engineering design of structural components unless carried out by a CPEng
- Limitation of eaves size (since this is not included in net floor area); eaves should be a maximum of 600mm and a minimum of 300mm

NB the minimum 300mm eaves is suggested as this aligns with the Hunn report into weathertightness issues which found that inadequate eaves contributed to the leaky homes issue.

Recommendation

Amend **Schedule 1A** Characteristics of small stand-alone dwelling to include:

- It is being added on a site with an existing residential unit
- It is a **single** small stand-alone dwelling

Amend **Schedule 1A** to redraft to include limitations for the following:

- Ground conditions
- Wind loads
- Ground slope
- Specific engineering design of structural components unless carried out by a CPEng
- Limitation of eaves size (since this is not included in net floor area).

Interaction with Schedule 1

There is a high probability that the new schedule 1A exemption will be combined with Schedule 1 exemptions, e.g. addition of carports, verandas, decks etc.

Recommendation

At a minimum, provide commentary on whether there are limitations on the combination of exemptions prior to the small stand-alone dwelling being complete

Other matters

1. *Net floor area* is used, which is consistent with other areas within schedule 1, but there is no definition of "net floor area".
2. Define where floor height is taken from – lowest/highest/average ground level?
3. "*At least 2 metres away...*" is not defined. Is this the minimum distance of any component of the building, for example the outer edge of the gutter, or to the external face of a wall? Without very clear definition this will be rife for misinterpretation
4. Clarify the ability in the Bill for a small stand-alone dwelling to connect to an existing on-site wastewater system

Recommendation

Amend **Schedule 1A Requirements for small stand-alone dwelling** as follows:

- Include a clear definition of Net Floor Area
- Include a clear definition of "At least 2 metres away" - the point of the building that this is measured from
- Clarify the ability in the Bill for a small stand-alone dwelling to connect to an existing on-site wastewater system

Alignment with NES for "Granny Flats"

The consultation on amendments to national direction is underway and this includes a new National Environmental Standard (NES) for Granny (!) Flats (Minor Residential Units). The NES and this Bill should mirror each other, and to this extent the following need to be addressed:

	Small Stand-alone Dwellings	NES for Granny Flats (Minor Residential Units)
Terminology	Small Stand-alone Dwellings	Granny(!) Flat Minor Residential Unit
Number per site	Silent	One

Relationship to principal residential unit on a site	Silent	One, held in common ownership with a principal residential unit on the same site, except where more lenient rules apply in existing district plans
Maximum floor area	70 m ² Silent re how calculated	The maximum internal floor area is 70 m ² . The maximum internal floor area is measured on the inside of the enclosing walls or posts and columns
Maximum coverage	Silent	50%
Minimum building setbacks	at least 2 metres away from any other building or any legal boundary	2m from boundaries and principal residential unit
Other specifications	"Simple design" and single storey	Silent



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