



New Zealand  
Institute of Architects  
Incorporated

## BUILDING (EARTHQUAKE-PRONE BUILDINGS) AMENDMENT BILL

### SUBMISSION TO THE LOCAL GOVERNMENT AND ENVIRONMENT SELECT COMMITTEE

#### Name of submitter

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#### New Zealand Institute of Architects (NZIA)

1. The New Zealand Institute of Architects, which was founded in 1905, is the professional body that represents more than 90 per cent of New Zealand's registered Architects, as well as hundreds of architecture graduates and students. The Institute promotes high standards of building design and professional performance. It produces material essential to architects' practice, operates design and technical programmes to educate its members, and runs a rigorous, peer-reviewed awards programme that sets the benchmark for New Zealand architecture. The Institute seeks to collaborate with central and local government, other professional organisations and the wider construction industry in order to achieve its goal: to give New Zealanders the best spiritual, spatial, and sustainable qualities to our built environment in which to live their lives.
2. The NZIA considers its interest in architecture and the Amendment Bill to be greater than that of general public interest. This position is supported by the NZIA Rules, which specifically states among other things that, the Institute seeks:
  - 2.1 To promote excellence in architecture, the acquisition and dissemination of knowledge relating to architecture, ethical conduct in the practice of architecture and the interests of the profession of architecture in New Zealand and overseas.
  - 2.2 To advance the study and practice of architecture.
  - 2.7 To bring before government authorities, public and other bodies any matters affecting architecture and architects.A full copy of the Rules can be found at <http://www.nzia.co.nz/the-nzia/rules.aspx>
3. The NZIA welcomes this important opportunity to comment on the Building (Earthquake-Prone Buildings) Amendment Bill [**the Bill**].



4. The NZIA is keen to assist and discuss the content of this submission further with Government and officials, particularly the detail of supporting regulation and guidance provided to industry professionals, building owners and the public. Whilst the Institute is supportive of the Government's overall intention to address weaknesses in New Zealand's earthquake-prone building stock we have concerns with the proposed regulatory regime, its workability in practice and the costs and benefits of implementation.

#### **NZIA submission – general comments**

5. This submission has been prepared by the NZIA Resilience Working Group (RWG) whose role is to provide the NZIA with review, reflection, critique and guidance in respect of policy, regulatory and operational setting and practices that are of relevance to the design community involved with the building and construction sector.
6. There is a significant role for Architects in the delivery of pragmatic and affordable earthquake prone building solutions. The Institute and its members look forward to working with Government, engineers and TLAs on this issue and the detailed guidance and advice to be developed.
7. The NZIA considers there there are a number of issues with the Bill that require resolution or refinement in order to ensure that it is practicable and aligned with other relevant legislation such as the *Health and Safety Reform Bill*, *Employment Relations Act 2000* and the *Resource Management Act 1991*. It is important that the Bill provides consistency across other legislation and hierarchial interrelationships are clear.
8. Whilst supportive of the proposed changes that seek to improve the nation's building stock, the NZIA is primarily concerned with the Bill in regard to:
  - the evidence supporting the legislative provisions being a broad catch all rather than a risk-based framework, focusing on high risk buildings and/or dangerous features of buildings. NZIA understands that IPENZ has previously recommended to the Ministry of Business Innovation and Employment (MBIE) a risk based approach to the regulatory environment. The Institute is supportive of the development of risk based approach.
  - the ease and consistent implementation of the provisions by the professionals involved (e.g. Building Consent Authorities).
  - the availability of engineering resources to undertake the prescribed assessments.
  - the affordability to building owners and local communities.
  - the potential for significant effects on the nation's heritage.
  - the relaxing of a key part (section 112) of the Building Act, when other financial options are available from Government to assist owners in carrying out improvements.



9. At a general level, the NZIA does not consider the Bill able to achieve the following outcomes:
- a) Enable or promote the sustainable management of resources or achieve the purpose of the RMA. The Bill requires alignment with the RMA 1991 to enable the social, economic and cultural well-being of the people of New Zealand; and
  - b) Provide clarity on whether “life safety” under the Building Act 2004 (and/or the Health and Safety Reform Bill or Employment Relations Act 2000) takes precedence in law, or whether preserving historic heritage under the Historic Places Act 1993 and the RMA 1991 for future generations takes precedence. At present there is no clarity for local government, the New Zealand public, or professional consultants on balancing the priorities and the interrelationships. The NZIA considers the outcomes, unworkable in law, as they seek remediation which in many instances cannot be funded by a party but also enable that party to be prosecuted or bankrupted due to the inability to fund the remediation.
  - c) Currently the RMA 1991 and Historic Places Act 1993 oblige owners to fund the majority of costs to preserve New Zealand's significant heritage largely for the benefit of the public and local communities. Acknowledging that many historic buildings around New Zealand are earthquake prone, means that the private landowner is often funding public good outcomes and consequentially having their private property rights restricted.
  - d) The goal of seismic rehabilitation is not clearly stated. The goal must include, above all protecting human life in future earthquakes, protecting property, investment, lengthening a building's usable life, reducing demands on post-earthquake search and rescue resources, protecting historic structures, shortening business interruption time, maintaining inventories and customers of those businesses and reducing relocation needs and demands.
  - e) Achieving an appropriate balance between life, safety and affordability is complex and has far reaching effect on both local, regional and national economies.
10. The NZIA welcomes outcomes under the Building (Earthquake-Prone Buildings) Amendment Bill which provide clear policy direction, pragmatic implementation and a priority on areas of identified risk. In its current form the Bill is considered to be an unaffordable regulatory regime, with significant information limitations. The NZIA would strongly advocate for the legislative response to be built upon improved seismic information of New Zealand's multi-storey building stock and be risk based focusing on high risk buildings and dangerous building features.



### **Definition of ‘earthquake prone’**

11. The definition of what constitutes ‘Earthquake Prone’ is arbitrary and potentially misleading to the general public. A building that is not considered earthquake prone can still pose a significant hazard in an earthquake. The word ‘prone’ indicates to much of the public, that the building is either safe or unsafe, whereas this is not the case.
12. The most important issue to address is ‘earthquake risk’ and those buildings and/or features of buildings which are identified as high risk. It is the Institute’s view that the critical definitions are that of ‘earthquake risk’ and ‘high risk buildings’ and ‘high risk building features’.

### **Recognition of non-structural elements**

13. There are no clear or currently adopted rules around non-structural elements (eg glass facades) that are potentially equally life threatening in seismic events. The Bill includes non-structural elements under the loose definition of it applying to parts of buildings as well as whole buildings.
14. The Institute would strongly support the development of clear industry guidance on the risk assessment of non-structural elements.

### **Effect of multiple strengthening requirements**

15. The Bill fails to consider the many building owners whom have recently (starting in the ‘70’s and ‘80’s to the change in code) strengthened their buildings to the full or partial extent of previous seismic codes and now find themselves facing another round of strengthening before the previous one has paid itself off. There is no guarantee that, if they strengthen their building to this code, they won’t be asked to do the same again in another 10 or 20 years when further information emerges around better ways of determining what will and won’t work in an earthquake event.

### **Impact on commercial rental rates**

16. The Bill could potentially result in a combination of less available commercial rentable space and where buildings have been strengthened, more expensive rental space. This is coupled with a rise in new build commercial rentals (especially in Christchurch) driven by expensive structural changes in foundation and structure design. As a consequence, this will increase the average rental prices significantly, putting inflationary pressures on business and the community.

### **Definition of “strengthening work” and “building improvements”**

17. The NZIA believes the Bill in its current form will create a number of ‘grey areas’ in regard to interpretations and implementation. The continual argument will be, ‘when does structural strengthening work stop and building improvements begin’. For example, you need to remove the roof to insert the new structural steel - what an opportune time to replace the roofing/asbestos lined ceiling that’s been damaged during the building work.



How would the TAs interpret this - 'new building work' or 'structural strengthening'? As currently drafted, if it was 'new building work', then the provisions of section 112 of the Building Act would also be triggered (eg. access/fire, etc.).

## **Seismic Assessment**

**Should local authorities be required to assess the seismic capacity of all buildings covered by the earthquake-prone building system in their areas, and to issue seismic capacity ratings to owners?**

18. A national database of assessed buildings should be established by Central Government. All existing available Initial Engineering Procedures **[IEPs]** or (preferably) Detailed Seismic Assessments **[DSAs]** by IPENZ Structural Engineers should be lodged in the database by Local Council's from building consents as they are issued.
19. Central Government legislation could be used to mandate Engineers to provide all IEP's undertaken on any property to the Local Council to be lodged on the database. In this way, privately funded IEPs are captured in the one system. Additionally, this would ensure that the IEPs and Detailed Seismic Assessments undertaken in the private sector would be entered in the database and recorded for future generations.
20. This in turn would serve to reduce Territorial Authority costs (ratepayer costs) in assessing buildings unnecessarily and provide a degree of certainty to the public. Central Government should provide a "single" nationwide assessment standard so that seismic assessment are consistent for the information obtained in respect to such assessments.
21. TAs undertaking a "Seismic Assessment" including an "evaluation of building plans, location and easily observable characteristics". This assumes the building is constructed as is described in the Council Property File documentation and drawings (alterations predating the Building Act 2004 are often not recorded); the critical details are not easily observable. TAs have typically undertaken assessments which are less "scientific" than IEPs undertaken by structural engineers, and these IEPs importantly measure buildings as a percentage of New Building Standards **[%NBS]**, but are not robust assessments of seismic resilience, but more accurately are indicators of those buildings warranting more detailed structural analysis.
22. Building stock seismically below the 100% NBS may include any structure built prior to 2008. Typically any building built between 1976 and 2008 may fall in the 70-80% range, but it is not uncommon for buildings of this period to fall below 67% NBS and some will be less than 33% NBS. The NZIA would strongly encourage Government to engage with NZIA, IPENZ/Society of Earthquake Engineers and Heritage New Zealand to develop an improved appreciation of the seismic risks that exist for heritage buildings or pre -1976 structures as well as contemporary structures.



## **Seismic Assessment & Heritage Buildings**

23. Many of the Earthquake Prone Buildings may have heritage values which are not currently formally recognised, but may warrant protection. The Heritage Buildings are defined (and their alterations are controlled) under a range of associated legislation including, but not limited to:

- Any building within any proposal to register, or registered place, historic area, wahi tapu or wahi tapu area under the Historic Places Act 1993.
- Any building or structure contained in the heritage register of a District Plan.
- Any heritage building or Actively Managed Historic Place listed in an Historic Resources Strategy or Conservation Management Strategy and Conservation Management Plan prepared under the Conservation Act 1987.
- Any heritage building listed in a reserve management plan prepared under the Reserves Act 1977.
- Any building established by the Maori Land Court under Te Turi Whenua Maori Land Act 1993 for historic and cultural purposes.
- Any building of importance to tangata whenua listed in an Iwi Management Plan
- Any structures or buildings associated with an historic cemetery or memorial.
- Any building managed for heritage purposes by agencies such as New Zealand Historic Places Trust, Ministry of Culture and Heritage, Department of Conservation or Local Authorities.
- Any building that is subject to a heritage order, heritage covenant or other protective covenant.
- Any building associated with human occupation before 1900 may be defined as an Archaeological site in accordance with Section 2 of the HPA 1993.

24. In regard to exemptions for buildings listed as Category 1 places on the register of historic places administered by the Heritage New Zealand the following comments are offered. The RMA has shifted the obligation for the recognition and protection of heritage from Heritage New Zealand to the responsibility TAs. Accordingly, the exemption afforded Heritage New Zealand Category 1 places is misplaced and should instead be linked to all Heritage Building-related legislation (above) and be consistent with Health and Safety Reform Bill and Employment Relations Act 2000 legislation.



## **New Zealand Building Code Approved Documents and Building Act 2004 compliance - Exemption**

25. There is false economy in proposing to exempt parts of the Building Act 2004 while structural strengthening is undertaken. Not requiring compliance at s112 of the Building Act for compliance with means of escape from fire or in terms of accessibility is a lost opportunity. These should be addressed to the highest level possible in the alteration but with a degree of flexibility to the requirement. If for instance it is not feasible to include an accessible ramp to the front of the building, then it seems irrelevant to require wheelchair accessible toilets within the building as part of an upgrade.

### **Alignment of associated legislation is Important**

26. Proposed Bill may be *ultra vires* (unworkable in law) as there is a misalignment between RMA 1991 particularly under s86B Heritage where s104 gateway tests are being raised in district plan provisions for all buildings for "*Heritage Protection zones*" (e.g. the Proposed Auckland Unitary Plan – Pre-1944 demolition overlay control) from *discretionary or restricted discretionary* to *non-complying*. Some have been passed over for Heritage New Zealand classification after being assessed in recent years yet then struggle to find new use because substantial alteration cannot be achieved without Resource Consent which is often declined around overlay rules, street character status or the like.
27. Under s16 of the *New Zealand Health and Safety in Employment Act 1992* a person who controls a place of work (for example, a person who owns, leases, subleases or occupies a place of work, or who controls plant or equipment used in a place of work), must take all practicable steps to ensure that no hazard harms people in the vicinity of the place (which may include members of the public) and people who are lawfully at work in the place. The owner of an earthquake-prone heritage (or non-heritage) building who leases the building knowing that in the event of an earthquake that it is reasonably likely experience collapse or partial collapse and may cause serious harm to occupants are unlikely to avoid prosecution.

### **Conclusion**

28. The NZIA appreciates the opportunity to make this submission and is able to provide further clarification if required.
29. We wish to appear in person before the Select Committee to speak to our submission.

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