

Supplementary Submission

By



to the

**Local Government and Environment Select
Committee**

on the

**Building (Earthquake-prone Buildings)
Amendment Bill**

July 2015

PO Box 1925
Wellington
Ph: 04 496 6555
Fax: 04 496 6550

**BUILDING (EARTHQUAKE-PRONE BUILDINGS) AMENDMENT BILL
SUPPLEMENTARY SUBMISSION BY BUSINESSNZ¹**

1.0 INTRODUCTION

- 1.1 BusinessNZ welcomes the opportunity to make a supplementary submission on the Building (Earthquake-prone Buildings) Amendment Bill (“the Bill”).
- 1.2 It is pleasing that the Select Committee has closely listened to the submissions on the original Bill, and has suggested making improvements to the Bill to more closely reflect the levels of risk associated with earthquake-prone buildings.
- 1.3 BusinessNZ supports the comment made in the Summary of Officials Report on the Bill: *“Officials recommendations for amendments to the Bill...take a more focused approach, by reducing the scope of buildings covered by the Bill and prioritising those areas and buildings (and parts of buildings) that pose the greatest risk. A key change recommended includes lengthening the timeframes for earthquake-prone building identification and remediation to better align with the different levels of seismic risk around New Zealand.”* (p.10)
- 1.4 It is understood that the new proposals for earthquake strengthening will almost halve overall strengthening costs while prioritising key buildings for strengthening sooner than originally proposed. Overall, the new policy proposals represent a much more realistic approach to the risk management of building upgrades.
- 1.5 Notwithstanding its support for the general thrust of the proposed changes (a significant improvement on the original Bill), BusinessNZ is concerned that many key issues raised in its original submission have not been adequately addressed. These include:
- The failure of the cost/benefit analysis to stack up
 - The inconsistent regulatory approach taken to risk management
 - That insurance markets are already re-pricing risk
 - That minimal account is taken of local community preferences
 - That there is no compensation for deemed “regulatory takings”
 - The potentially significant effects of regulations yet to be developed.
- 1.6 These issues were addressed in our original submission so are not repeated here other than to stress that BusinessNZ continues to question the rationale for additional specific earthquake-prone buildings legislation.

¹ Background information on BusinessNZ is attached as Appendix 1.

- 1.7 The Select Committee has now asked submitters to focus on the proposed changes (outlined below) and these are considered in the balance of this submission.
- 1.8 In particular, the Select Committee's interim report indicates a specific interest in the following issues:
- The timeframes for the identification and remediation of earthquake-prone buildings to be based on the seismic risk of the areas and with reference to Z factors.
 - Reducing the scope of buildings to be covered by the bill, such as excluding farm buildings, bridges, and tunnels, and whether to include only buildings determined as earthquake prone on the public register (instead of all buildings) and their earthquake rating.
 - The prioritisation of certain buildings in areas of medium and high seismic risk, including hospitals, schools and emergency facilities and halving the applicable timeframe for their identification and remediation.
 - The proposed new section 133AX (2) requiring the upgrade of earthquake-prone buildings when substantial alterations are undertaken. Criteria for assessing whether an alteration is substantial would be set out in regulations.
 - The proposed new section 133AX(3) providing territorial authorities with a discretion, where building alteration is undertaken for earthquake strengthening purposes, not to require means of escape from fire or access and facilities for disabled persons.
- 1.9 BusinessNZ believes the above, and two other fundamental issues, need to be examined more closely. These issues are discussed below.

2.0 DISCUSSION ON THE 5 ISSUES RAISED IN THE INTERIM REPORT

1. The timeframes for the identification and remediation of earthquake-prone buildings to be based on the seismic risk of the areas, and with reference to Z factors

- 2.1 BusinessNZ does not have expertise in the technical aspects of "Z factors" but the proposal to divide the country into areas of high, medium, and low seismic risk would appear to be much more balanced than the original Bill's "one-size-fits-all" approach. No doubt even with extended timeframes there will be building owners in low risk areas who will question the rationale both for assessment and for possible upgrades, given that in some cases, the Bill is based on unknown risks. But the compromise position now reached probably represents an acceptable trade-off between risk on the one hand, and the cost of and length of time for upgrades on the other.

2. Reducing the scope of buildings to be covered by the bill, such as excluding farm buildings, bridges, and tunnels, and whether to include only buildings determined as earthquake prone on the public register (instead of all buildings) and their earthquake rating

- 2.2 BusinessNZ considers the proposed amendments, excluding certain buildings where the risk to human life and health is relatively low, adopt a pragmatic approach. The inclusion of farm buildings, for example, would be largely unhelpful, considering the generally low risk involved and the potential cost of upgrades.
- 2.3 The exclusion proposals, however, raise the fundamental problem of what should be excluded from the provisions in the Bill. The fact that a range of exclusions can be justified raises the reasonable question of what else should be excluded from the regime and by definition the difficult “boundary” issues of what is in and what is out.
- 2.4 To take a practical example, why should a local church or hall in a rural area with services/activities perhaps once a month be included within the ambit of the Bill? What about the case of the vineyard where functions are occasionally held or where the “farm buildings” are sometimes used for wedding receptions and so on? BusinessNZ understands that rural halls and churches will fall within the ambit of the Bill, although officials have recommended some amendments. These would include a purpose statement in the regulation-making powers allowing exemptions to be granted from the requirement to remediate including on grounds of (but not limited to), location, age of building, construction type, building use and building occupancy. That will prove a very bureaucratic mechanism if every building owner covered must apply for an “exemption” through this regulatory process.
- 2.5 Therefore, rather than providing a broad exclusion provision such as ‘farm buildings’, (as officials have recommended) a greater degree of specificity is desirable. While the bill ought also to contain an exemption application process, greater specificity would mean less need to rely on a process of this kind with its inevitably uncertain outcomes. It should be made clear that the term ‘farm buildings’ encompasses not only farm buildings per se but vineyard storage sheds and buildings comparable to milking sheds, such as buildings where wine making takes place.
- 2.6 Further, it should also be clear that a farm building does not change its nature because it is occasionally used for other purposes such as social functions, including wedding receptions, 21st birthday celebrations and the like.
- 2.7 And to re-emphasise the point made in 2.4, a clear exclusion is also required for buildings where usage is infrequent.

3. The prioritisation of certain buildings in areas of medium and high seismic risk. These buildings would include hospitals, school and emergency facilities. The applicable timeframe would be halved for the identification and remediation of these buildings

- 2.8 Conceptually, BusinessNZ understands the logic for prioritising certain buildings for upgrades. This is consistent with the principle of focusing on buildings where the risk to lives and infrastructure services is potentially very real.
- 2.9 The difficulty BusinessNZ has with the approach is that it is not clear who will be paying the cost of upgrades given Territorial Authorities may have powers to require faster timeframes for strengthening than mandated by government for priority buildings. This opens the door to uncertainty – for the private sector in general, but also potentially for school boards, TEI councils and so on.
- 2.10 Subsequently this submission will consider the issue of “regulatory takings” but the question that must first be addressed concerns cost recovery. The cost of upgrading priority buildings may not be even partially recovered by private sector owners, while the potential benefits will be captured by wider community of interests. This suggests that some form of compensation should be provided to those private (and public) sector bodies required to upgrade priority buildings within tight time frames.
- 2.11 It is not clear from a reading of the Bill who will be responsible for paying for the upgrade of priority buildings e.g. in the case of schools, whether the cost will be funded via a school’s normal capital allocation or out of operational expenditure, or whether the Government will fund such upgrades out of the consolidated fund. The same applies to hospitals.
- 2.12 Potentially, therefore, some interesting incentive issues will undoubtedly arise, depending on who ultimately must pay for required upgrades.
- 2.13 For example, what if a school has recently upgraded its buildings and paid for the upgrade out of its capital budget? Compare this with a school that has not managed its assets so well and now finds its buildings earthquake-prone are identified as upgrade priorities. That will raise complex equity issues which need to be worked through.
- 2.14 In relation to education, that, however, is not the end of the problem. Here the “school buildings” definition, with its focus on registered Private Training Establishments (PTEs), is likely to cause difficulty since the definition overlooks the number of PTEs which are not registered.

- 2.15 A great many other organisations beside registered PTEs offer a myriad of professional development and training courses that do not come near NZQA and the NZQF.
- 2.16 Immigration NZ policy allows people on a range of visa types to undertake a single course of study of less than 12 weeks.
- 2.17 Many such organisations hold their classes in sometimes substandard accommodation and under the present definition can do so unchecked. But it is scarcely reasonable to expose learners at unregistered PTEs to more risk than those at registered PTEs.
- 2.18 Note there is no official data on the number neither of non-registered PTEs nor on the number of learners that study there (as they do not attract public funding).
- 2.19 Most registered PTEs lease their premises through commercial arrangements so will incur costs at some point. These costs will either be absorbed into the PTEs or passed on to students via fees.
- 2.20 But it is also the case that the incentive on public or private sector institutions to provide services may be compromised if buildings currently in use are identified as priority buildings. Depending on the nature of the tenancy arrangement, the building owner may seek to end the tenancy agreement if otherwise required to upgrade within a short time frame - particularly so if the building can be easily used for another purpose not covered under the priority building regime and the building owner must fund the entire upgrade for little, if any, direct benefit.
- 2.21 The purpose of the above comments is simply to flag to the Select Committee the need for further work to ensure the policy intent does not have perverse and unintended consequences.

4. Proposed new section 133AX(2), which would require the upgrade of earthquake-prone buildings when substantial alterations are being undertaken. Criteria of assessing whether an alteration is substantial would be set out in regulations

- 2.22 Both conceptually and practically, BusinessNZ opposes the above proposal. From a conceptual point of view, building owners will have a specific time in which to upgrade (or demolish) buildings based on known risk factors in particular regions. Whether building owners like it or it not, the legislation will be reasonably clear on the timeframes.
- 2.23 But a requirement to upgrade for earthquake strengthening purposes if a *substantial* alteration is undertaken is likely to be subject to particular uncertainty and gaming.

- 2.24 It is noted that officials consider that whether an alteration is to be designated “substantial” (therefore triggering a full upgrade) could be specified in regulations and be based, for example, on the value of the building work in the building consent in relation to the value of the building, or on some other criterion as determined. This would be problematic for a number of reasons.
- 2.25 First, the value of the building, like most other things, will be dependent on what other people are prepared to pay for it, based on a range of factors such as location, type of building etc. For some buildings in areas where demand is relatively low, a basic alteration could trigger a full upgrade whereas in areas where demand is significant, a major alteration might not trigger an upgrade at all. This would encourage building owners to try and game the system with perhaps multiple upgrades over time.
- 2.26 Second, and much more importantly, under the Bill, the cost of any upgrade is likely to be funded by building owner themselves, with little likelihood of recouping such added costs through higher rentals and the like. Therefore the cost will probably be very much a sunk cost.
- 2.27 Requiring building owners to undertake a full upgrade may in many cases be beyond their ability to finance over the short term, particularly given that an upgrade may not add significantly (if at all) to a building’s resale value.
- 2.28 BusinessNZ considers this proposal should not be considered further.

5. Proposed new section 133AX(3), in relation to disability access and fire safety

- 2.29 This proposal conflates two essentially different concepts, namely reducing the collapse risk of earthquake-prone buildings, and the issue of access and egress from any building. Put another way, requiring disability access and provision for fire safety has little or nothing to do with earthquake risk per se. Combining these disparate objectives in a single provision in a bill focussed primarily on earthquake risk potentially creates a number of unintended consequences. The biggest of these is that building owners may find it easier to divest than to invest. Their choices will be driven by issues of cost and who pays, as well as the practicality, and frequent difficulty, of making such alterations without, in many cases, seriously jeopardising floor space availability. BusinessNZ therefore seriously questions the rationale for this policy objective.

3.0 DISCUSSION ON 2 ADDITIONAL ISSUES

1. No compensation is provided for deemed “regulatory takings”

- 3.1 The first issue concerns potential compensation mechanisms for building owners required by legislation to upgrade. Requiring upgrades as such is a regulatory taking and a strong case exists for some form of compensation mechanism (this point is made in BusinessNZ's submission on the original Bill).
- 3.2 It is understandable that as greater knowledge of risk is acquired, building standards may be adjusted for new buildings. But it is also important not to place unreasonable burdens on current building owners by making changes to building codes which will adversely affect them. Building owners must have adequate time to make the necessary adjustments or be paid compensation for the significant costs imposed.
- 3.3 Appropriate compensation is payable when property is compulsorily acquired under the Public Works Act. But buildings in need of earthquake strengthening are not being compulsorily acquired; rather, they are being seriously reduced in value (in effect a regulatory taking).
- 3.4 An important aspect of the proposals is that the cost will fall almost exclusively on building owners, although the projected benefits (while very small in comparison) will apply to a significant number of people.
- 3.5 There is a strong case for paying compensation to building owners for required upgrades since the benefit is more to the public at large than to individual owners. Requiring “prioritisation” of certain buildings for upgrade in areas of medium and high seismic risk (e.g. corridor buildings) is a good example.

2. Consistency in earthquake-prone building assessments

- 3.6 The second issue relates to earthquake risk assessment. A number of our members have expressed concern at the apparent inconsistency of approach when determining earthquake-prone building risk.
- 3.7 Several instances have come to light where different engineers have come up with significantly different assessments when determining building risk. For example, there have been instances reported of a building being assessed as being close to 100% of the building standard (well above the 34% required for mandatory upgrading purposes) and also at less than 34% of code (i.e. requiring an upgrade). This inconsistency is of major concern given the very wide variations provided by reputable engineers. Indeed it is an issue which BusinessNZ understands is of significant concern to at least elements of the engineering profession itself. While some difference will always be part and parcel of any system, the degree of variation is currently

intolerable and makes a mockery of the process of identifying buildings for upgrade. The issue of consistency of approach will have to be addressed if building owners and the wider public are to have a degree of confidence in the proposed system. This is particularly so given the potential risks and costs involved in building upgrades.

APPENDIX 1

BACKGROUND INFORMATION ON BUSINESSNZ

BusinessNZ is New Zealand's largest business advocacy organisation.

Through its four founding member organisations – EMA Northern, BusinessCentral, Canterbury Employers' Chamber of Commerce (CECC), and the Otago-Southland Employers' Association (OSEA) – and 72 affiliated trade and industry associations, Business NZ represents the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and the Business and Industry Advisory Council (BIAC) to the Organisation for Economic Cooperation and Development.