

Earthquake Prone Buildings

Earthquake Prone Buildings or EPB is becoming a popular phrase, but what is it?

It seems the 2011 earthquakes from Christchurch gave the construction industry a lesson or two, but have we taken this too far?

In May 2014, the New Zealand Herald published an article stating that a preliminary EPB register "released by Auckland Council lists 393 unreinforced masonry buildings in the former Auckland Council." For a link to the article, please [click here](#).

A more recent article in August 2014 refer to the proposed bill (Building (Earthquake-prone Buildings) Amendment Bill) and the critique that this bill could take away our heritage buildings, yet not make a difference. For a link to the article, please [click here](#). For a link to the bill, please [click here](#). To view the status of the bill through Parliament's process, please [click here](#).

Our current building legislation (Building Act 2004) sets out various definitions of "dangerous building", "earthquake-prone building" and "insanitary building" but the generalised classifications are generally left to each territorial authority. Each council has adopted policies regarding such buildings within its own district. Section 122 of the Building Act 2004 describes an EPB as being a building that would collapse causing injury or damage to other properties in a moderate earthquake so the definition of "moderate earthquake" is important. Regulations in turn set out what "moderate earthquake" is.

I previously wrote an extensive paper on this when presenting at a Lexis Nexis Construction Law conference in 2012, for a copy of the paper please [click here](#).

The issue of EPB was considered by the Royal Commission of Inquiry which then sparked governmental review. This does not cover residential houses or apartments that are two storeys or under. This new bill, if turned into legislation will override the previous policies produced by council. Auckland previously produced the Earthquake-Prone, Dangerous and Insanitary Building Policy (2011-2016) and categorised buildings into four categories:

- 1) critical buildings (hospitals, police stations, fire stations etc that will need to be strengthened in 10 years (end of 2021);
- 2) buildings that contain large crowds such as schools, universities, museums, airports etc that will need to be strengthened in 10 years (end of 2021);

3) heritage buildings - which will have 30 years to be strengthened (end of 2045);

4) other potentially EPB with a low degree of hazard to life that will be given 20 years (end of 2035).

However, the royal commission recommended all buildings to be strengthened or demolished within 15 years and the bill is proposing 20 years. The territorial authorities will have 5 years to make their assessment and then 15 years to carry this out making it 20 years under this bill.

The Minister for Building & Housing, Hon Maurice Williamson stated in the first reading of the bill in parliament:

"So, in a nutshell, I think this bill is good. I think it helps give some protection to our heritage buildings, but it makes sure that commercial building owners get out and get their buildings assessed. It makes sure the public can go to a register, look for their building, and find out. The bill will, in my view, ensure that earthquake-prone buildings are dealt with in a timely manner by way of a nationally consistent system. It will strike a balance between protecting the public from harm in an earthquake and managing the cost of strengthening or removing buildings, and it will ensure that information about earthquake-prone buildings is made available to the public. I commend this bill to the House."

There has been significant criticism to having a national system (when Christchurch, Wellington, Auckland and Invercargill will have different needs) and further applying this same standards to new commercial buildings as well as to heritage buildings over 100 years old. This may well cause heritage owners with the inevitable economic decision to demolish the heritage buildings instead of upgrading the building.

As stated in the NZ Herald article (see link here) building owners, especially the heritage owners will be in a catch 22 situation where upgrading the building to a nationally acceptable building standard for earthquake strengthening could cost millions, but the value of the building after the strengthening would not have changed. Commercial buildings will still have the same rentable area making the new rental returns (considering capital investment) either too low or even a negative return.

Auckland Council have assessed most commercial buildings and the NBS grades to most buildings will be available as public records on the property file or the LIM report. Investors should therefore be careful when considering purchasing property to ensure that they check the NBS code grading before making an offer to purchase as your investment could cost you more to strengthen than the purchase price. Current owners should be careful to respond to Council's Initial Evaluation Procedure (IEP) in the prescribed timeframe as you can appoint your own consultants to dispute the NBS given by council and ultimately change the grading of your building on public records.

Auckland Council has published a useful FAQ on EPB (including what NBS code means) and you can click [here](#) to review this.

Earthquake strengthening poses serious threats to peoples investments, finances, insurance, rental/capital returns, obligations to tenants, obligations to the public and so on so all building owners (current and prospective) should understand this process. However the difficult thing is that the current "law" remains challenged by this current bill which is not yet "law" or legislation. We will have to wait and see, but in the meantime, act prudently and seek legal advice from the expert QCL property law team that can assist you with your property needs!

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to matters dealt with in this publication.

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