

# PROJECTS AND REAL ESTATE NEWS

NOVEMBER 2022



## WELCOME

to Issue No. 16 of  
Projects and Real Estate News,  
Bell Gully's monthly digest on  
regulatory developments,  
together with cases and news  
of interest in the **projects and  
real estate** sectors.

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#### Need more information?

Projects and Real Estate News is a monthly digest on regulatory developments, together with cases and news of interest in the projects and real estate sectors.

For more information, please contact [Sonia Ng](#), or your usual [Bell Gully contact](#), or visit our [website](#).

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## REGULATORY UPDATES

### \* REAL ESTATE

#### Expiry of temporary COVID-19 related amendments to the Property Law Act



As part of its response to the COVID-19 pandemic, the New Zealand Government made various amendments to the Property Law Act 2007 (PLA) in 2020 and 2021 which were principally designed to provide relief to mortgagors and commercial tenants who were subject to lockdowns at the time. Last month, as the government signalled moving on from the emergency phase of its COVID-19 response, the various amendments to the PLA are also set to expire.

The amendments to the PLA were specific to the COVID-19 situation, and were dependent on the Epidemic Preparedness (COVID-19) Notice 2020 (**Notice**) being in force. The Notice expired on 20 October 2022. As a result of the expiry of the Notice:

- from 20 April 2023 (being the end of six months after the Notice expired), the minimum period that must be given to defaulting mortgagors to remedy their default reverts back to 20 working days (this was temporarily changed to 40 working days under the Notice);

- from 20 April 2023 (being the end of six months after the Notice expired), the minimum grace period for arrears and the minimum period that a landlord must give to a defaulting tenant under a commercial lease to remedy the default reverts back to 10 working days (this was temporarily changed to 30 working days under the Notice); and

- an implied covenant (which was implied in certain commercial leases, requiring the parties to agree on a “fair proportion” of rent to be reduced where the tenant was unable to access the premises due to health or safety reasons related to the epidemic) will no longer apply to any leases entered on or after 21 October 2022.

The covenant will continue to be implied in any qualifying leases that were in force during the period 18 August 2021 to 20 October 2022. Any agreements made between the parties, and any disputes arising, under the implied covenant are also unaffected by the expiry of the Notice.

It is important to note that parties to a lease that contain the implied covenant can voluntarily exclude or vary it, provided they agree to it after 18 August 2021. In addition, leases on the unamended Auckland District Law Society (**ADLS**) form do not contain the implied covenant, as these leases already contain a clause providing for a rent abatement in periods of inaccessibility during an emergency.

#### Commencement dates for unit titles amendment law



An order that the government issued late last month will bring significant changes to unit titles law into force earlier.

The [Unit Titles \(Strengthening Body Corporate Governance and Other Matters\) Amendment Act 2022 \(Amendment Act\)](#), passed in May this year, will introduce significant changes aimed at improving (1) the information disclosure regime for prospective buyers of units, (2) governance arrangements for bodies corporate, (3) performance standards for body corporate managers, and (4) the planning and funding process for long-term maintenance projects.

We previously listed the notable changes in the [May issue of Projects and Real Estate News](#). The changes were set to come into force on 9 May 2024, unless the government elected to bring this date forward – which the government has done, by recently issuing an order confirming that certain changes will come into force earlier.

As a result of the government’s order, the following changes are set to come into force on the following dates:



### Changes commencing on 9 December 2022

There will be more flexibility for body corporate members to remotely participate in meetings. Body corporate members, and body corporate committee members, are expressly allowed to attend and vote at general meetings and committee meetings respectively, by audio/audiovisual means or other remote access facility, despite any limitations in the body corporate operational rules.

A body corporate committee meeting can also be conducted by audio/audiovisual link or other remote access facility.

### Changes commencing on 9 May 2023

The majority of the changes come into force on this date. This includes the significantly revised disclosure regime that applies when an owner sells their unit title, along with the majority of the changes aimed at improving how bodies corporate are run (e.g., requiring body corporate committee members and body corporate managers to comply with a code of conduct and disclose conflicts of interest).

Developments comprising 10 or more principal units (**Large Developments**) must engage a body corporate manager, unless the body corporate decides otherwise by special resolution.

There will be more flexibility in reassessing the utility interest assigned to each unit. This is intended to permit fairer division of utility costs between unit owners (e.g., people living on the upper floor of an apartment building can pay more for lift repairs than those living on the ground floor).

The jurisdiction of the Tenancy Tribunal to determine disputes relating to a unit title development will be extended.

### Changes commencing on 9 May 2024

The remaining changes come into force on this date. These include additional obligations on bodies corporate for Large Developments to keep a long-term maintenance plan covering at least 30 years (as opposed to 10 years for smaller developments).

The various new tools for the Tenancy Tribunal and the Ministry of Business, Innovation and Employment (**MBIE**) to enforce compliance with the law will also become available on this date. This includes the power for the Tenancy Tribunal to order a body corporate manager or the body corporate, or both, to pay pecuniary penalties to the Crown for certain breaches. MBIE can also issue improvement notices, and order a body corporate or its manager to produce documents that they are required to retain under the law (other than those subject to legal privilege) for inspection.

## Changes to rules on overseas investments in forestry



The [Overseas Investment \(Forestry\) Amendment Act 2022 \(Amendment Act\)](#) has been passed and came into force on 16 August 2022.

The main impact of the Amendment Act is that overseas investments in “sensitive land” (often farm land), which are being acquired with the intention of converting the land to forestry, are now subject to the more complex and rigorous “benefit to New Zealand” test. Previously, acquisitions of this nature could be considered under a more streamlined “special forestry test” under the Overseas Investment Act 2005 (Act).

The “benefit to New Zealand” test involves assessing a potential investment against seven broad factors, in order to determine if the investment is likely to benefit New Zealand.

On the other hand, the streamlined “special forestry test” does not require applicants to include a comparison between the benefits their investment will bring and those provided by the vendor or a New Zealand investor – instead, applicants are required to show that they will:

- use the land exclusively, or nearly exclusively, for forestry activities;
- replant after harvesting (unless they are exempt from doing so);
- not live on the land; and
- implement and maintain certain arrangements for the land, including:
  - public access
  - protection of habitat for indigenous plants and animals
  - protection of historic places
  - log supply arrangements.

Following the Amendment Act coming into effect, the streamlined “special forestry test” remains available only for overseas investments in sensitive land that is already being used, and will continue to be used, for forestry.

The Amendment Act also makes a number of other changes to the Act. For example, overseas investors currently do not need consent to acquire less than 1,000 hectares of forestry rights annually - the Amendment Act provides that forestry rights acquired pursuant to consents or another exemption under the Act are excluded when calculating this annual cap.

The changes enacted by the Amendment Act only applies to transactions and consent applications entered into or lodged (as the case may be) after 16 August 2022.



Our overseas investment team regularly assist with applications for consent for a wide range of projects and can provide advice and input at all stages of the application process.



## OTHER NEWS

## \* PROJECTS

## MBIE releases new seismic risk guidance for buildings



The Ministry of Business, Innovation and Employment (MBIE) has released [new seismic risk guidance](#) for building users, tenants, owners and their engineers. The document addresses a range of building types, from offices to post-disaster critical facilities. It is aimed at assisting readers to understand seismic assessments of their buildings, and make risk-informed occupancy decisions when the buildings have a low seismic rating.

Some of the key messages from the guidance are:

- a) The aim of the New Building Standard (NBS) metric is to provide a relative assessment of seismic risk. It is not a predictor of building failure in any particular earthquake.
- b) While a low NBS rating does indicate a heightened life safety risk if an earthquake occurs, it does not mean that the building is imminently dangerous.
- c) In most cases, seismically vulnerable buildings can be occupied while building owners plan, fund and then undertake seismic remediation work.
- d) There is no legal requirement to close a building based solely on a low NBS rating.
- e) Understanding the relative vulnerability of different building elements, and potential consequences of failure of these elements, is always more important than the overall NBS rating for a building.
- f) While planning seismic remediation work, building owners can mitigate risk to staff and other building users through emergency planning and training as well as restraining plant, services and contents within the building.
- g) It is best to communicate openly and honestly with building occupants about the information you have, what you don't know, your decision process, and measures you are taking to manage risk.



The guidance contains three parts:

**A. Obtaining and understanding seismic assessments**

This part covers the legal obligations of obtaining a seismic assessment, how to interpret such assessments, and the limitations of the NBS metric.

**B. Process for making occupancy decisions**

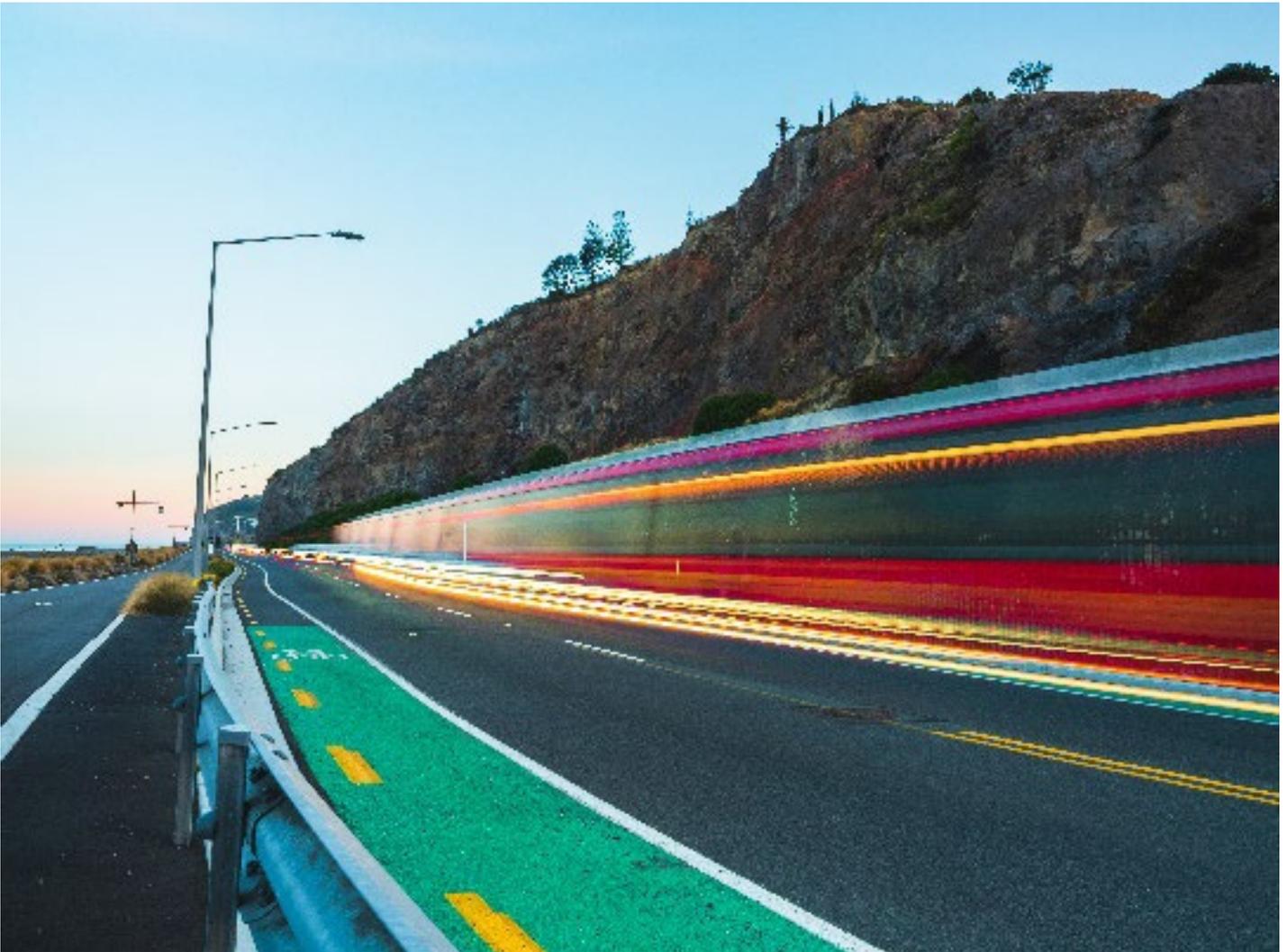
This part provides a set of questions that a building owner or tenant can ask themselves and their engineer as they make occupancy decisions for a seismically vulnerable building. The questions aim to assist with interpreting a seismic assessment, what it means in terms of life safety risk, assess the consequences of building closure and ensure the decision is a balanced assessment of risk.

**C. Managing ongoing earthquake risk and communicating with staff**

This part provides guidance on determining how quickly to vacate a building if the decision is made to close it, ways to reduce risk while the building remains open, and communicating decisions to building users and others.

The guidance also contains examples (for illustrative purposes only) of temporary mitigation measures for buildings with low seismic ratings that could support ongoing occupancy before permanent seismic strengthening is done.

Read the MBIE Seismic Risk Guidance for Buildings [here](#).



## Government issues response to New Zealand Infrastructure Strategy



The government has [issued its response](#) to Rautaki Hanganga o Aotearoa, [New Zealand's Infrastructure Strategy \(Strategy\)](#). The Strategy was published by the Infrastructure Commission/Te Waihanga (**Te Waihanga**) in May 2022.

The Strategy outlines Te Waihanga's long-term vision for the country's infrastructure over the next 30 years, from 2022 to 2052, and incorporates 68 recommendations to the government to address current and future infrastructure challenges to achieve this vision. The recommendations span across five strategic objectives that Te Waihanga has identified in the Strategy:

- a) Enabling a net-zero carbon emissions Aotearoa.
- b) Supporting rural and regional areas and towns to flourish.
- c) Building attractive and inclusive cities.
- d) Strengthening resilience to shocks and stresses (e.g. by identifying and strengthening the country's critical infrastructure).
- e) Moving to a circular economy and improve the recycling and waste management issues that New Zealand is facing.

The Strategy also makes other recommendations across five key areas relating to: (1) decision-making, (2) funding and financing, (3) planning and consenting, (4) technology use, and (5) workforce capabilities.

The 68 recommendations that Te Waihanga has made in the Strategy are listed [here](#). The government has indicated support for the majority of them - with 22 recommendations receiving the government's full support, 21

recommendations receiving partial support, 15 recommendations being supported as to intent but the government will require further work to identify the best way forward, and 10 recommendations being acknowledged but will not be supported or is a lower priority than other work.

The Infrastructure Strategy is a significant roadmap that lays out the pathway for delivering major infrastructure initiatives for the country over the next 30 years. The government's response marks another step forward but also highlights the large amount of work required to achieve its objectives. As the government's response indicated, there is a busy pipeline of existing work that ties in with recommendations made in the Strategy.

Some of the response is dependent upon the success of other reforms and work programmes currently underway – for example, reforms in the resource management sector. The government's position on each recommendation is accompanied by a summary of the reasoning behind its position.

Some of the existing programmes already in the pipeline include the Construction Sector Transformation Plan, Emissions Reduction Plan, Three Waters reforms, Resource Management Act reforms, and Waste Minimisation Strategy. On 14 September the government also launched its [Digital Strategy for Aotearoa](#), which signalled (amongst other things) significant investment to improve connectivity for rural and remote communities. This is one of the key objectives proposed by the Strategy to support rural and regional areas to flourish.

The next steps are for the government to publish an action plan and reporting programme for the recommendations that it has agreed to support in the Strategy. The government has indicated that this will be published in the coming months.

Read the New Zealand Infrastructure Strategy [here](#), and the government's response to it [here](#).

#### **Bell Gully client publications:**

- [Bill introduced to progress Three Waters reforms](#) (Item in Projects and Real Estate News - June 2022)
- [Climate adaptation consultation sets the stage for managed retreat](#) (May 2022)
- [Reform set to progress, Working Group recommendations for Three Waters](#) (April 2022)
- [Resource management reform milestone – Environment Committee reports on NBA Exposure Draft](#) (November 2021)



Bell Gully's projects and real estate team is across the current developments and trends in the industry. If you have an issue related to real estate or construction law that requires attention, we would be happy to assist.



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