



Impacts of earthquake-prone legislation on apartment owners

Candidates meeting with ICW Committee, 30 August 2022

The key issues

- The compliance expectations on apartment owners are not proportionate, reasonable or affordable.
- The requirements compel owners in earthquake prone apartment buildings to take on complex, expensive, technical, high risk construction projects in multi-owner environments, with no effective support structures, with the stress and responsibility of this work being borne by a few owners on behalf of all owners.
- The 2012 cost-benefit analysis commissioned by MBIE concluded that the costs substantially exceeded the benefits, but this was ignored by Cabinet and Parliament. The costs are now much higher and the benefits cannot be measured. MBIE has decided not to undertake the five year review that is due in 2022.
- There needs to be a review of the policy informed by the reality of what is happening, at least with respect to residential apartment buildings. NZ is the only jurisdiction with a mandatory policy like this. There are changes to the Building Code scheduled for 2023 which will have impacts for existing buildings, including apartment buildings, and will result in more EQP buildings.
- There will be more earthquake-prone apartment buildings in Wellington. There is little assurance for apartment owners who have complied or are in the process of complying that they won't be impacted by further changes.

This is not just a central Government issue. These impacts started under WCC's Earthquake-prone Buildings Policy in 2007-2008 when it proactively established its policy under the Building Act 2004 without any cost-benefit analysis, any knowledge of who would be impacted or any implementation support.

Buildings affected and process

- Residential buildings of two or more levels and contain three or more households¹
 - Includes multi-owner buildings in unit title, company share, cross lease ownership structures
 - Predominantly residential (owner-occupier and landlord-investor) and generally with some commercial owners
 - Have complex decision-making processes; body corporate/management committees operate on behalf of all owners following decisions of the owners

¹ Also includes a hostel, boarding house or other specialised accommodation. These buildings are not the focus of ICW's advocacy as they generally operate as commercial-type operations. Commercial and public buildings are also out of ICW's scope.

- WCC identifies buildings as potentially earthquake-prone (EQP) and notifies all the owners. Owners must provide evidence that the building is not EQP within 12 months. Buildings assessed as less. WCC issues a notice to the owners with the deadline by when the building must be strengthened or demolished and adds the building to the Register of EQP Buildings. In high seismic risk areas like Wellington, owners of buildings on priority routes may have 7.5 years, rather than 15 years, to strengthen or demolish.

Compliance impacts

- Compliance costs of this legislation on apartment owners are excessive for a policy that was driven by public safety outcomes and the impacts on private home owners were not considered by Cabinet or Parliament
 - Risks of managing technical projects on behalf of all other owners:
 - A few owners take on the burden of the investigation to get to a solution and decision, and management of the professionals; in many cases alongside a fulltime job, running their businesses, looking after family
 - There is no support for these owners that is focused on helping owners get to the best decision/outcome for them
 - Home owners generally don't have the capability and relationships that commercial property owners have
 - Vulnerable clients in a sector where there is variability in quality of professionals, engineers withdraw services so process starts again, a knowledge imbalance, the unknowns of what will be found in an existing building
 - Getting competitive tenderers is difficult or impossible; fixed price contracts are unlikely or will have huge contingencies; the final cost can be quite different to what was expected (one building that has been strengthened was on budget because things were taken off the list and people managing had experience with project managing similar processes; another building had a \$1m increase)
 - Financial impacts on owners:
 - Loss of savings, particularly for retirees and those on fixed incomes with no ability to recover
 - Increased debt if loans are required to pay the strengthening costs
 - Value of apartment is reduced and any strengthening will at best recover the reduced value
 - Data from some owners who have sold post strengthening shows that sale prices only cover the original sale price and their share of strengthening (which includes the investigations costs)
 - Financial Assistance Scheme criteria and the level of interest is likely to drive owners to sell (post strengthening) sooner than they may have wanted to avoid the impacts of the debt they would have to repay; limits their options for future care options for older owners who are most likely to need this support; will lose accommodation supplement if currently receiving it
 - Owners in at least four buildings having to sell their apartments to a single purchaser (eg, development company) at a price that is below the rateable value
 - Wellbeing impacts on owners

- Stress associated with managing the projects
- Stress from the uncertainty of what the final cost will be and making decisions on technical, complex matters that have major impacts on their lives
- Feeling trapped as owners cannot move on: may wish to sell but no offers or offers create other financial issues

What's needed

- A review of the legislation, with respect to residential buildings, is required.
 - The Cabinet recommendation that expectations 'are generally reasonable and affordable' is wrong
 - apartment owners are expected to take on technical, expensive, risky construction projects in a multi-owner environment with no support frameworks
 - costs and risks are having significant impacts on all affected owners
 - The policy objective of promoting life safety in proportionate balance with costs is not being delivered
 - Evidence of the costs and impacts faced by apartment owners have been provided to MBIE and ministers; the cost benefit analysis did not support the policy
 - MBIE's own review of the Financial Assistance Scheme found that it is not economically viable for some buildings to be strengthened, even to the minimum of 34% NBS, but that owners favoured strengthening rather than demolition or on selling to a developer – this is because it's their homes and these are not the same decisions that commercial property owners would make
 - The 2016 amendments built on policy changes driven by the NZ Society of Earthquake Engineers for the Building Act 2004 without any data being provided to Parliament on the impacts.
 - Prior to 2004, the legislation only applied to unreinforced masonry and concrete buildings.
 - The 2004 Act removed that restriction and applied the earthquake-prone policy to any construction type without advising Parliament that this change was being made.
 - Lack of certainty
 - Minister Woods has said that that *in the short term*, owners who have strengthened would not be required to re-strengthen if the Building Code is updated, and she has no plans to change the current reference to the building standards in place at 1 July 2017. We asked for this to be clarified to include owners who have provided further information that confirms the building is not earthquake-prone and been removed from the Register of EQP Buildings. We also asked that the Minister communicate this to sector, but the letter is silent on both. 'In the short term' and the lack of clarity about which buildings are covered provides limited/no certainty.
 - Mayor's feedback from meeting with MBIE said 'Buildings that have already been assessed will not need to be reassessed'.

- The lack of consistency between the two views does not provide certainty or clarity.
 - Impacts of the forthcoming review of the Building Code
 - The forthcoming review of the Building Code B1 Structure Clause, including taking into account the review of the National Seismic Hazard Model, is likely to make the test of whether a building is earthquake-prone or not tougher. ICW expects that a Regulatory Impact Statement (ie, who pays, who is impacted, and who benefits) will be required to inform that change. A review of the current policy is needed to inform the impacts of a revised (and likely tougher) Structure clause

Some Key Data

- WCC data
 - 110 (residential (92) and mixed use (estimated 25% with residential (101) – 2020 data
 - Out of around 40 buildings ICW has identified as residential on the Register of Earthquake-prone Buildings (EPB), 26 buildings are in multi-owner structures: unit title, company share, cross lease
 - 40 residential buildings have 2027 deadline
- ICW 2020 survey:
 - estimated 40 multi-owner residential buildings in Wgtn (using the EPB Register, QV data) but neither WCC nor Government know the number of affected apartments in EQP bldgs
 - 668 apartments, with estimated 1,068 owners – WCC should be able to provide reasonably accurate numbers as owners pay residential rates compared to commercial rates²
 - Majority of owners in 41-64 years; 65—80+ years
 - Majority of owners were owner-occupiers, or had and were now renting the apartment; majority renting had not been able to sell the apartment
 - Majority of apartments were not in EQPB, or owners were not aware that the building could become EQP, when they bought the apartment
 - 15 owners had tried to sell but had received no offers
 - Majority of owners said they would sell after strengthening (note: owners are unlikely to fully recover the financial impacts of the strengthening work)
- Average cost of compliance including interest and GST \$400,000 (based on data provided by owners)
- Average cost of compliance excluding interest \$384,200
- Midpoint of valuations of buildings \$435,000 (2018)
- Penalties for non-compliance is up to a maximum of \$1.5m for a body corporate, if convicted

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² WCC has previously said that some owners do not pay the rates and this was the reason why the data could not be provided.