

The Earthquake-prone Buildings System

Looking after New Zealanders,
or ripping them off?

**A commonsense case for repeal of the
earthquake-prone buildings provisions of
the Building Act 2004**

Hazel Kirkham, December 2023



About me

- I have first-hand experience of the Earthquake-prone Buildings regime as I owned an apartment in an ‘earthquake-prone’ building in Wellington. Since 2015 I have researched the EPB regime, especially how it treats apartment owners, and alongside Inner City Wellington I have been lobbying for an independent review of the Earthquake-prone Buildings policy, legislation, and implementation system since 2017.
- I have a wealth of material to support the points I make in this presentation.
- I also have a personal story to tell that illustrates the terrible consequences of being the owner of an apartment in an EPB.
- Please contact me if you have questions or would like to discuss anything in this presentation.
 - **021 383 226**
 - **hazelkirkham@xtra.co.nz**

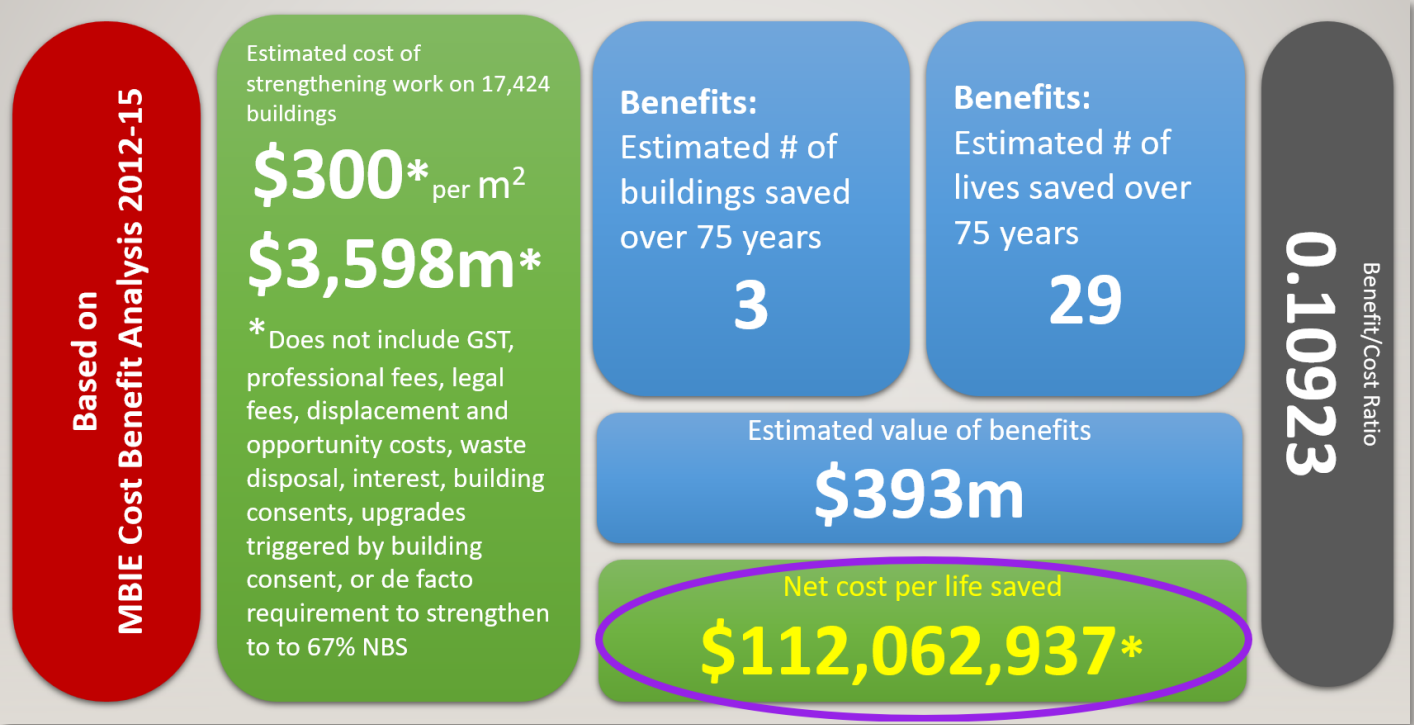


The implicit theory behind the EPB system design

Regardless of cost or consequences,
retro-engineer or demolish
up to **20,000** buildings
to **save 3 of them** from collapse,
which may **save 29 lives**
in a period of **75 years**

The theory does not balance life safety and cost

2017 scenario:



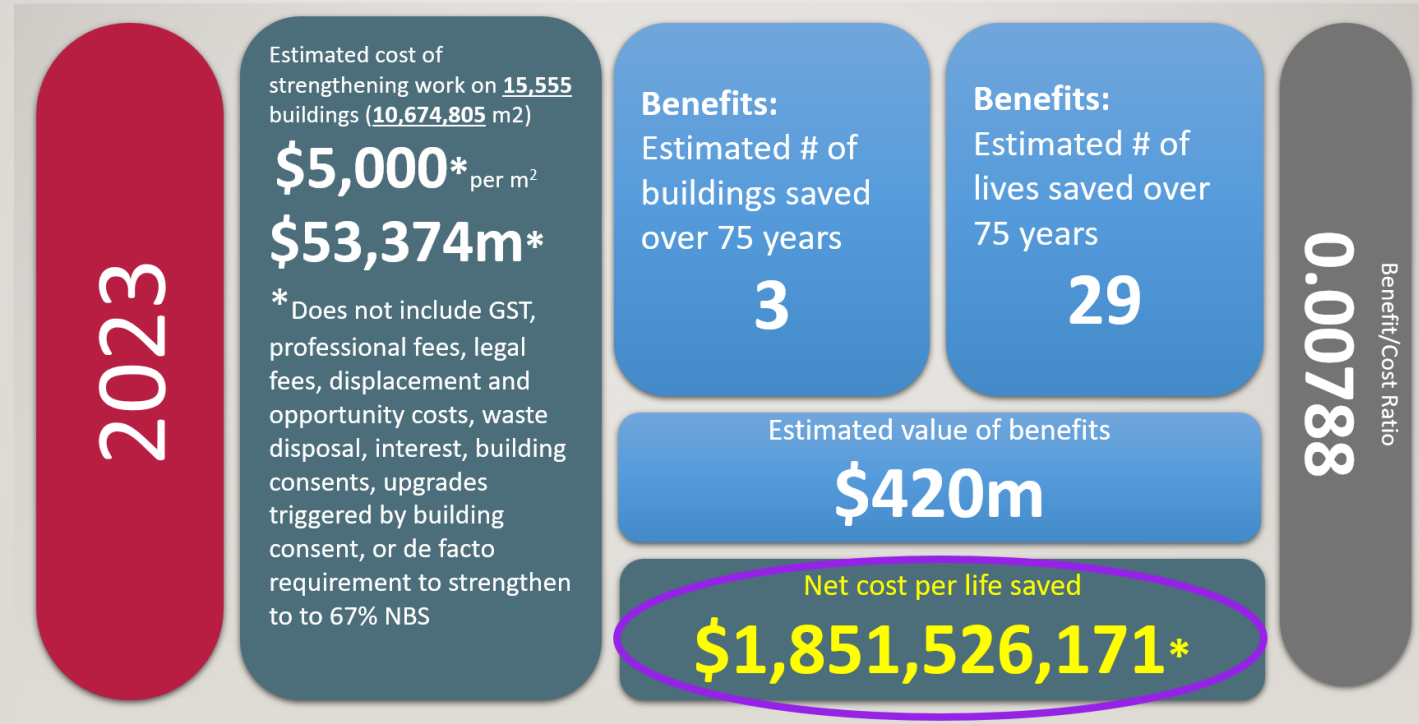
The benefit/cost ratio in 2017 was: 0.10923

*“It is the worst public policy pay-off
that I have ever seen”*

Dieter Katz, ex Principal Advisor at The Treasury, in a letter to the editor,
The Post, 14 December 2023, about the benefit/cost balance of the
Earthquake-prone Buildings system

6.5 years later, the reality is even more negative

Numbers adjusted to account for buildings already strengthened, demolished or removed from the register for some other reason, increased cost of strengthening, and increased value of benefits since 2017



It is impossible for the EPB system to deliver positive outcomes in excess of its costs or negative outcomes

Expectations for the design of regulatory systems

Government Expectations for Good Regulatory Practice, The Treasury, 2017

The government expects any regulatory system to be an asset for New Zealanders, not a liability.

By that we mean a regulatory system should deliver, over time, a stream of benefits or positive outcomes in excess of its costs or negative outcomes. We should not introduce a new regulatory system or system component unless we are satisfied it will deliver net benefits for New Zealanders. Similarly, we should seek to remove or redesign an existing regulatory system or system component if it is no longer delivering net benefits.

7

Who pays?

- Entities that own public buildings and the taxpayers and ratepayers who fund them
- Entities that own commercial investment properties and their shareholders
- Entities that own community and religious buildings
- Owners of apartments in multi-owner residential buildings in unit title, company share, and cross lease ownership structures, and their families
- Owners of units in mixed use unit titled buildings
- Owners of small business premises

Building owners cannot avoid losses or debts

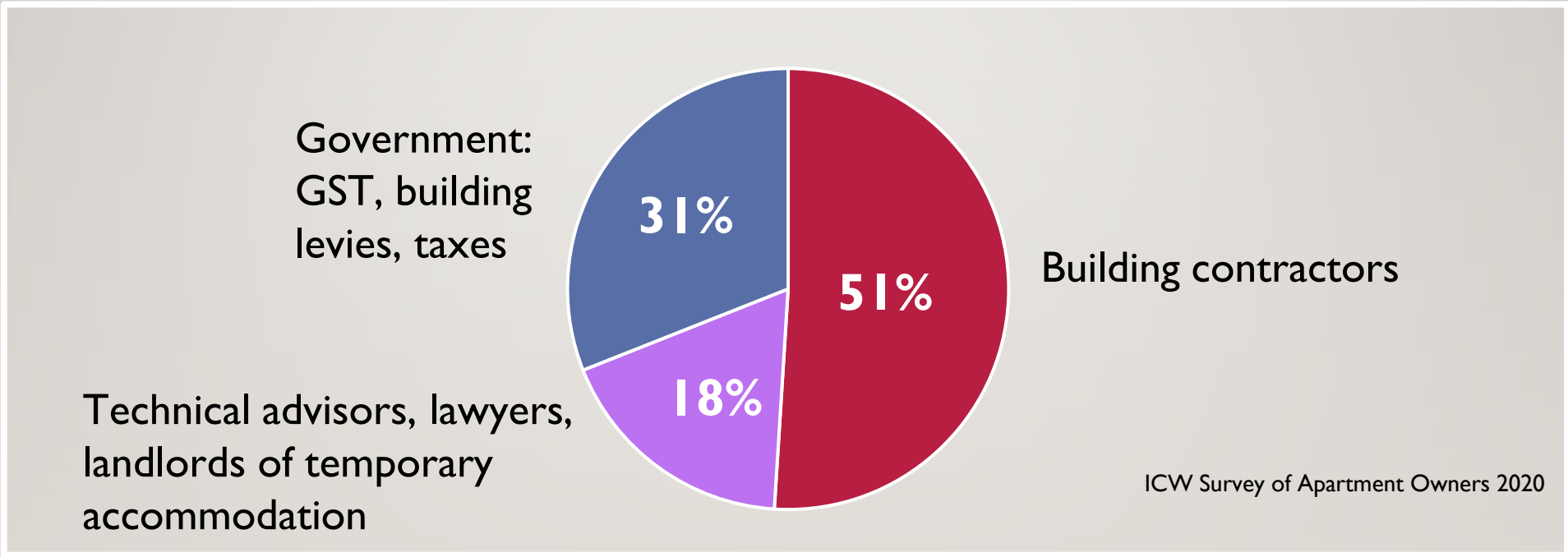
- Compliance is not financially/economically viable
- Some owners will comply, or try to comply, believing their building to be unsafe, or out of fear of the enforcement regime
- If compliance is not financially viable, many owners will not comply
- Some owners will sell their buildings to developers because they cannot comply
- Building owners who do not comply before the deadline on their EPB notice expires have committed a criminal offence
- Councils will prosecute building owners for non-compliance
- With a court order, a council can exclude owners and occupants from their buildings, and strengthen or demolish the buildings, then charge the owners for the work
- If owners do not pay, the council can take a charge over their property



Apartment owners are personally affected, for life

- There could be around **7,700** apartments in EPBs. The way the system treats these owners is unreasonable, disproportionate, unfair and inequitable
- They face life changing losses or debts in trying to do the impossible for no good reason
- Current average cost per apartment for strengthening work **\$500,000**
- They are deprived of their normal lives and their property rights are ignored
- Immediate and lifetime financial and non-financial harms are significant
- Nowhere else in the world are apartment owners expected to strengthen their homes at their own cost and risk

Who gains?



ICW Survey of Apartment Owners 2020

Wellington is the canary in the mine

- Wellington City Council has more experience with EPB regime than any other territorial authority
- First s124 (EPB) notices issued circa 2008. Some of those buildings still not strengthened or demolished
- Wellington is in a high seismic risk area which means it has the shortest timeframes
- Wellington has more multi-owner residential EPBs than any other city
- Inner City Wellington has more knowledge about the EPB system as it affects home owners than any other organisation
- Wellington is facing a tsunami of non-compliance as compliance deadlines expire and the Council will soon need to make decisions about prosecuting building owners, excluding them from their buildings, strengthening or demolishing their buildings, and taking charges over their properties if they cannot pay for the work



Wellington City Council EPB Expiry Dates Snapshot, June 2022 when the total EPBs was 600

EPB Notice Expiry Dates

There is a significant spike in 2027 when 216 notices expire, equating to 36 percent of the current total number EPBs.

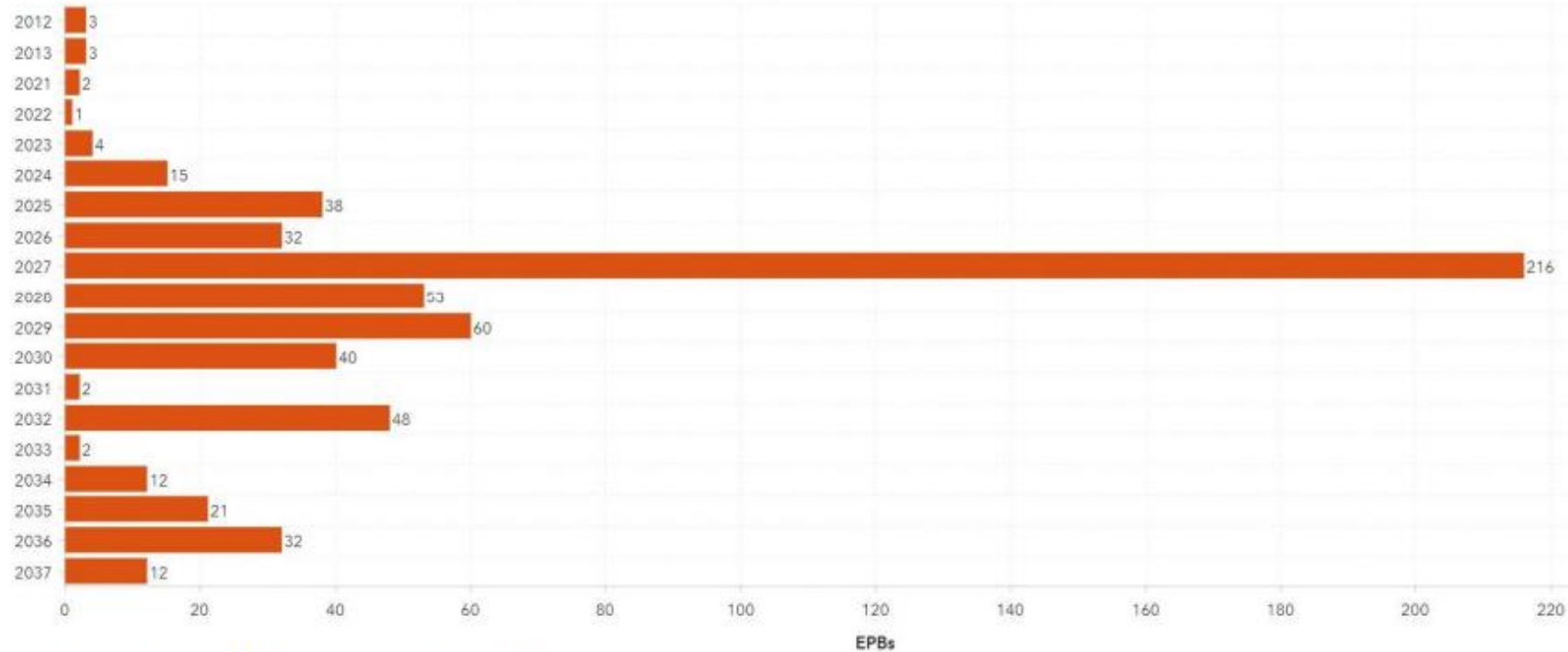


Figure 3. Total EPBs and their Expiry Year

Over 1,000 Wellington apartment owners are trapped in the system

- All Wellington EPBs currently on the EPB register : **571**
- Multi-owner residential EPBs : approx. **31 (5%)**
- Apartments in multi-owner residential EPBs : approx **669**
- Affected apartment owners (av 1.6 per apartment) : approx **1,070**
- A further 20+ buildings contain some apartments

The policy and the system are deeply flawed

- **Unworkable** – Compliance is impossible. Non-compliance is inevitable. Enforcement will make matters worse
- **Illogical and unreasonable** - Tries to force building owners to spend money, time and effort on achieving something that has negative outcomes for them and marginal if any benefits for the public
- **Perverse** – Building owners' losses become the gains not of the public, but of building sector business and their shareholders, and the government account
- **Coercive** – Forces building owners to make decisions not in their best interests, exposing themselves to harm
- **Harmful** – The imposition of limitless financial and non-financial liabilities on building owners can have significant harmful consequences for organisations and their stakeholders, businesses, and private individuals.
- **Disproportionate** – The costs and risk building owners are required to bear are not balanced by benefits or justified by risks
- **Unfair and inequitable** – The EPB policy requires building owners to mitigate the risk of buildings collapsing and killing people in earthquakes, at their own cost and risk, yet public money is used to buy out buildings affected or potentially affected by flooding, and buy back weapons that could be used to kill people.



Problem:

The EPB legislation is indefensible

- The benefits are marginal and are unlikely to be realised. The system will never deliver net benefits
- The costs of risk mitigation are not proportionate to the level of risk posed by EPBs, or to the value of the risk reduction benefits that mitigation might achieve
- The legislation does more harm than good. Building owners are required to comply at limitless cost and risk to themselves or the organisations, for no good reason
- A different approach is taken to other public safety risks eg flood damaged/flood risk homes
- The system has no redeeming features or benefits. A government would not fund it
- Even the architects of the system are having doubts now. The public may be losing confidence in the system

-
- A tsunami of non-compliance is coming because owners cannot comply. The system is likely to crash in the courts
 - The system does not balance life safety considerations against economic, heritage and other considerations
 - Building owners are forced by law to waste colossal amounts of money and take unnecessary risks, with significant adverse downstream consequences for them
 - The legislation gratuitously shifts capital from building owners to the building sector and the government account
 - The system is wrecking more lives (of apartment owners in particular) than it could possibly save

Solution:

Repeal the EPB provisions in the Building Act 2004

- Don't try to fix something for which there is no justification. Repeal the EPB provisions
- Establish a no-loss compensation scheme for building owners who have incurred losses as a result of being affected by the EPB legislation. (They were forced to do something for which there was no justification and which undermined their property rights.)
- Establish a scheme to assist apartment owners currently trapped in the system to exit the system without losses.
- Replace the EPB system with a regime that can achieve the same or better outcomes by limiting regulation to buildings with specific high risk structural components and incentivising voluntary improvements to building resilience
- Only require mandatory strengthening or demolition for individual buildings that have specific vulnerabilities that make them 'unsafe'
- Make earthquake insurance compulsory for all buildings (not just unit titled buildings)
- Ensure earthquake insurance is available and affordable



Time to listen to building owners

- If building owners do not comply with the EPB legislation, the system fails, yet building owners were invisible in MBIE's RISs between 2012 and 2017 and have not been genuinely engaged with since.
- For six years Inner City Wellington and individual building owners have produced evidence showing that the EPB system's treatment of apartment owners is unreasonable, disproportionate, unfair and inequitable. This evidence has not been accepted or investigated by MBIE.
- Successive Ministers of Building and Construction, advised by MBIE, have insisted that the EPB system balances life safety and cost, which it does not, and have dismissed the concerns of apartment owners facing the loss of savings, debts and the loss their homes
- Owners of buildings in other categories, and commentators, have raised concerns about the integrity of the system but no action has been taken to investigate those concerns



Action is needed now, not in 2027

- MBIE committed in an RIS to undertake a full review of the EPB system in 2022. It has pushed that back to 2027
- 2027 is too late.
- By then the completion deadlines of hundreds of EPBs in Wellington alone will have expired and the Council will have to begin enforcement.
- Action is needed immediately to commission a genuinely independent review the EPB system with a view to repeal before the middle of 2024. In the meantime some kind of interim/moratorium arrangement would be required that does not further disadvantage building owners

The EPB legislation is indefensible

The government must act with urgency



BACKGROUND NOTES

History of earthquake-prone buildings legislation

- Before the Building Act 2004, the only buildings in scope of earthquake-prone buildings legislation were those constructed wholly or substantially of unreinforced concrete or unreinforced masonry (URM).
- The Building Act 2004, which established an earthquake-prone policy with the intent of reducing death and injury in a major earthquakes, massively increased the reach of the EPB provisions by including all buildings, except residential buildings other than those of 2 or more storeys with 3 or more household units, irrespective of the materials from which they were constructed.
- Under the Building Act 2004, territorial authorities had considerable latitude in the way they approached ensuring buildings less than 34% NBS were strengthened to 34% NBS or demolished. Territorial authorities in low risk areas such as Auckland, did very little, but Wellington was much more proactive.



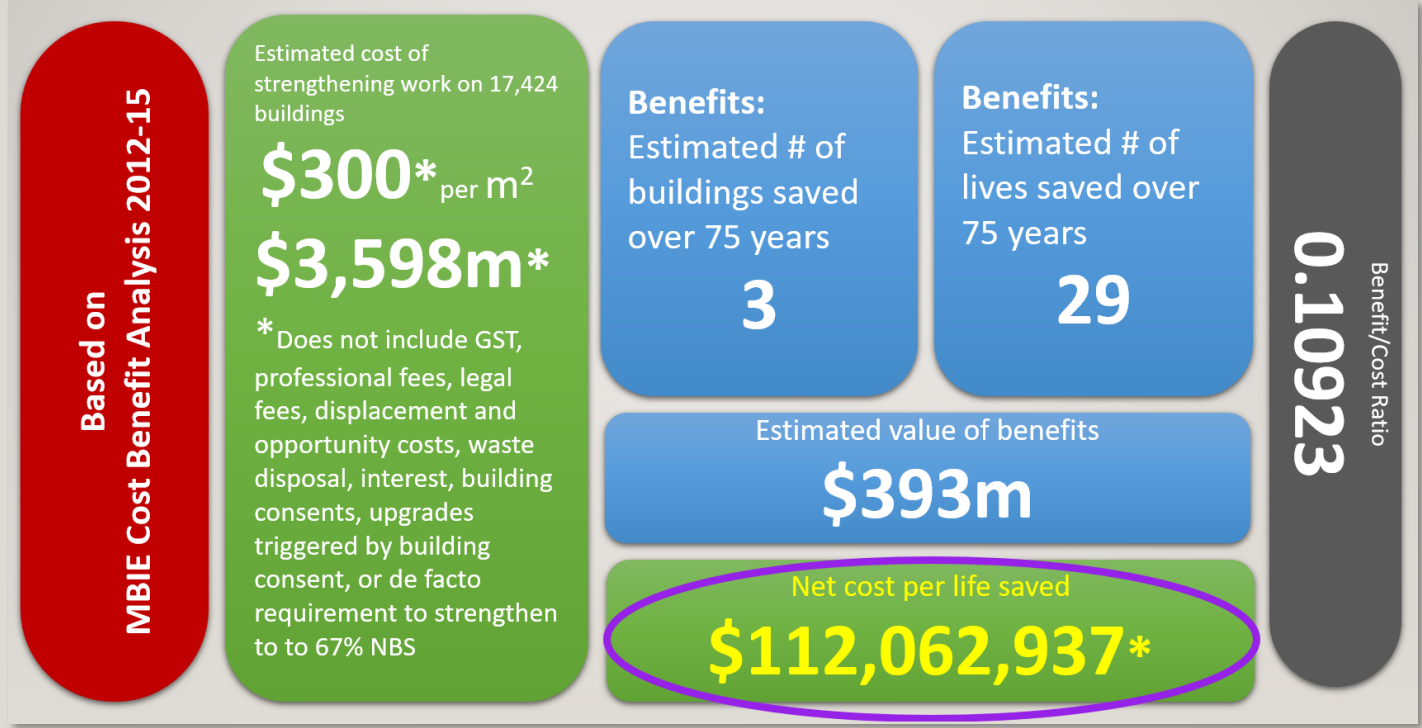
Earthquake-prone Policy Review 2012-15

Ministry of Business, Innovation and Employment (MBIE)

- Between 2012 and 2015 MBIE reviewed the Earthquake-prone Buildings Policy and developed proposals for amendments to the earthquake-prone buildings provisions of the Building Act 2004.
- MBIE's regulatory impact statements (RISs) were weak and largely ignored Cabinet's Requirements for Regulatory Impact Analysis (RIA). They did not include any analysis of the earthquake-prone building stock, regulated parties or the impact the system would have on them, stakeholders, economic or environmental impacts, building sector capability and capacity to meet demand for strengthening and demolition, or the enforcement regime.
- Cost benefit analysis work was done by an external firm. A CBA report was published in 2012. Working sheets and updates have been obtained under OIA.

What the CBA told MBIE

but MBIE didn't spell out to ministers and stakeholders



MBIE knew or should have known:

- The system design was inconsistent with Government Expectations for Good Regulatory Design
 - Had the funding been coming from government, the proposal would not have been accepted
 - The risks posed by EPBs were very small. Odds of collapse 1:5,808
 - Life safety benefits were marginal
 - Building stock data used for the CBA was unreliable and therefore the CBA could be unreliable
 - Costs were incomplete and therefore underestimated
 - The cost of risk mitigation was not proportionate to the level of risk posed by EPBs, or to the value of the risk reduction benefits that mitigation might achieve
- 25 • EPBs had not been analysed by type of use, ownership, ownership structure, construction, etc

-
- Building owners and their interests had not been identified or analysed
 - Impacts on building owners, the economy, and the environment had not been identified or analysed
 - Building owners' costs would be losses
 - Building owners would be forced by law to lose colossal amounts of money and take unnecessary risks, with significant adverse downstream consequences, for no good reason
 - Building owners would be treated disproportionately, unfairly and inequitably by the system
 - Some building owners would not be able or willing to strengthen or demolish their buildings
 - That the only incentive to comply was the threat of draconian enforcement measures



-
- The system did not balance life safety considerations against economic, heritage and other considerations
 - The legislation would gratuitously shift capital from building owners to the building sector and the government account
 - Perceptions of societal demand for safer buildings in earthquakes did not justify the costs and impacts that would be imposed on building owners

The Bill was passed in August 2016

- The Buildings (Earthquake-prone Buildings) Amendment Act 2016 was passed in August 2016, new regulations were approved in 2017, and the ‘new system for managing earthquake-prone buildings’ came into force on 1 July 2017

Ayes 120	New Zealand National 59; New Zealand Labour 32; Green Party 14; New Zealand First 12; Māori Party 2; United Future 1.
Noes 1	ACT New Zealand 1.

- Could it be that few MPs understood the impact of the legislation on building owners, including home owners, because the impact analysis was so weak, the risks had been played up, and the benefit/cost ratio had been played down?

The Earthquake-prone Buildings System

Looking after New Zealanders,
or ripping them off?

**A commonsense case for repeal of the
earthquake-prone buildings provisions of
the Building Act 2004**

Hazel Kirkham, December 2023

