

**To:** Hon Poto Williams, Minister for Building and Construction  
Hon David Clark, Minister responsible for the Earthquake Commission

**Cc:** Grant Robertson, Deputy Prime Minister, Wellington Central MP

**From:** Geraldine Murphy, Spokesperson on Seismic Matters, Inner City Wellington

**Date:** 7 December 2020

**Subject:** **Understanding and addressing the impacts of the earthquake prone building legislation on apartment owners**

I am sending you this briefing in anticipation of the meeting at Parliament on 14 December 2020 between yourselves, the Deputy Prime Minister, Grant Robertson, and Inner City Wellington.

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## Introduction

Inner City Wellington (ICW) was founded in November 2008 to serve as a progressive and influential community voice, of and for the residents, organisations and property owners in the suburbs of Te Aro and Wellington Central.

Working at the interface between the inner-city community and the public authorities, we seek to:

- Promote sustainable development perspectives that advance the social, environmental and economic aspects of the inner-city and wider city as appropriate.
- Foster local advocacy by representing and acting as an advocate for the interests of the inner-city community.
- Build a community-driven organisation with the capacity to realise its mission

ICW's areas of interest include community resilience, earthquake strengthening, and inner city development. <http://www.innercitywellington.nz/>

## Impact on apartment owners of the Earthquake Prone Buildings provisions of the Building Act 2004

Since 2007, ICW has been working to bring the Government's attention to the negative impacts on apartment owners of the earthquake prone building (EPB) provisions of the Building Act 2004. Appendix 1 contains a list of ICW's work on behalf of affected apartment owners and links to material.

This legislation affects any building that is two or more levels and contains three or more households. There will be residential buildings that are likely to be identified as potentially earthquake prone, and then confirmed as earthquake prone, in Auckland, Tauranga, Hamilton, Christchurch, Wanganui, Dunedin, as well as Wellington.

Briefing on impacts of earthquake prone building legislation on apartment owners

ICW's early submissions focused on preventing an increase in the earthquake prone threshold to 67% New Building Standard (NBS), taking a pragmatic approach to the policy, preventing territorial authorities being given ability to increase the threshold, and the need for financial and advisory support for residential owners.

However, by 2018 ICW's view had shifted from simply 'How can owners get help with costs and help to comply?', to a realisation that the whole EPB regime as it affects apartment home owners must be reviewed, because it had become very clear that the impact on apartment owners was significantly greater than what any reasonable Government should expect.

After almost 13 years of listening to the often harrowing stories of apartment owners caught in the EPB regime, researching the policy background to the legislation, making submissions to Government and Wellington City Council consultations, conducting surveys, analysing data, and finding out what other countries are doing, ICW is confident in saying that as it affects home owners, the EPB legislation is unreasonable, unfair, harmful and morally indefensible.

## Petitions presented to Parliament

In September 2019 on behalf of ICW, Wellington Central MP Grant Robertson, presented two petitions to Parliament for:

- A review of the earthquake prone provisions of the Building Act 2004
- Comprehensive support for residential owners in earthquake prone buildings.

On 1 November 2019, ICW submitted a comprehensive submission<sup>1</sup> to the Governance and Administration Select Committee setting out the rationale for its demand that the Government:

- Commission an independent, comprehensive review of the impact on home owners of the EPB policy, legislation and implementation system.
- Put a moratorium on any further identification of potentially earthquake-prone MORBs, and requirements to provide Detailed Seismic Assessments.

A supplementary submission of owners' experiences was submitted to the Select Committee on 15 December 2019. On the 24 June 2020, ICW made an oral submission to the Select Committee. The Committee did not report back to Parliament prior to the election. ICW will be asking the new Select Committee to prioritise the petitions in its work programme.

## The heart of the matter

According to MBIE's own data (MartinJenkins, Indicative Cost Benefit Analysis, 2012), up to 25,000 buildings in New Zealand, amongst them apartment blocks, will eventually be found to be 'earthquake prone' and under the earthquake prone provisions of the Building Act 2004, their owners will be required to strengthen or demolish them at their own unlimited cost and risk.

The NBS rating scale and the assessment system to identify 'earthquake prone' buildings, designed and implemented by the building industry that has an interest in high rates of earthquake prone buildings, are contentious and results in a conservative approach by engineers. The owners bear the costs of this and the potential for false positives.

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<sup>1</sup> Links to the submissions are on page 8.

According to MBIE cost-benefit analysis, the benefit of the policy that forces the owners of between 15,000 to 25,000 buildings to pay for strengthening or demolition, is that over the next 75 years, 24 of these buildings that might otherwise have fallen down in that time as the result of a moderate or stronger earthquake, will remain standing, reducing the number of lives lost in earthquakes as a result of building damage, by 173 over the next 75 years across New Zealand. When residential buildings are considered, four lives are saved over the next 75 years across New Zealand.

The conclusion in the MBIE-commissioned cost benefit analysis of the policy is that 'on a probability basis, costs are well in excess of benefits ... even under extreme sensitivities, this relationship does not change'. This conclusion was ignored by the Government. But the burden of compliance with the policy was passed to owners, and perhaps for the first time in New Zealand history, private home owners are being forced to pay for a policy that is intended to deliver a public benefit.

Our analysis of survey data on the full costs of the strengthening project showed the average was \$400,000 per apartment. If the costs are not financially or practically viable, the penalties for non-compliance are \$200,000 fines per owner and compulsory demolition by the council at owners' cost. Unlike commercial and public building owners, residential owners cannot reclaim GST, set costs against income, or pass on costs to users.

The stark reality of what the EPB legislation means for apartment owners in Wellington has only become clear in the past four years. As councils in lower seismic risk areas of the country begin to issue EPB notices in other centres, the true dimensions of this scandal will become ever more apparent. Wellington is the canary in the mine.

We believe that MBIE (and its predecessor, the Department of Building and Housing) has persistently relied on unreliable data and unsubstantiated assumptions, ignored Treasury guidelines in relation to benefit to cost ratios, ignored Government guidelines for Good Regulatory Practice.

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## **What we want Government to do**

We think the Government should have, and be prepared to share with the public, a clear and compelling rationale for the compliance burden the EPB legislation imposes on a selected group of private home owners.

Hence we are asking the Government to do the following:

1. Accept there is a problem, on the basis of the evidence we have provided.
2. Commission a comprehensive, independent review of the EPB policy, legislation and implementation system to consider:
  - a. Exempting multi-owner residential buildings from the EPB provisions of the Building Act
  - b. Providing a scheme to compensate owners for losses incurred due to the legislation

- c. Providing owner-centric transition measures to assist owners already in the EPB regime.
3. Impose a moratorium on issuing of EPB notices and requiring owners to obtain Detailed Seismic Assessments pending the outcome of the review.

The review needs to determine how we got to this position and what the future direction should be. The *Evaluation of the System for Managing Earthquake-prone Buildings* undertaken in late 2019 (and still not available) will not go far enough, as it is only evaluating the EPB system since it came into effect in 2017.<sup>2</sup> The EPB system extends back to the policy development that led to the introduction of the Building Act 2004.

The review needs to ask, amongst many other questions:

- a. What cost-benefit analysis and regulatory impact assessment informed the substantive policy changes that led to the earthquake prone building provisions in the Building Act 2004?
- b. Did MBIE appropriately consider and report to its Minister on the conclusion of the cost benefit analysis it commissioned in 2012 that the costs substantially exceeded the benefits?
- c. Did MBIE appropriately consider and report to its Minister on the critical feedback on the proposed policy, cost-benefit analysis and regulatory impact assessments?
- d. What role did the earthquake engineering and building and construction sectors play in developing the EPB policies in 2003-2004 and 2012-2016 considering the benefits both sectors would gain in response to the policy?
- e. How were the risks and impacts of the policy change on the different property owner groups, particularly residential property owners, identified and addressed in the policy development process?
- f. Whether the compliance burdens and removal of property rights of residential property owners are unreasonable given the public safety drivers of the policy?<sup>3</sup>
- g. On what basis was the Minister of Building and Construction advised, despite ample evidence to the contrary, that costs were balanced by safety benefits, and that owners would make capital gains from the policy?
- h. What evidence does MBIE have to show that ICW's conclusions are flawed?

## 12 good reasons the Government must act

Our November 2019 submission to the Select Committee presented 12 good reasons why the Government must take urgent action to address apartment owners' situation:

1. The policy attempts to externalise responsibility for public safety, a core purpose of government, to private individuals.
2. Implementation of the policy amounts to extortion.
3. The system does not recognise home owners.

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<sup>2</sup> Participants in the evaluation were advised it would be released in January 2020. In mid-February a requestor was advised the report was in progress and expected to be online February-March 2020. The release date became late 2020, and a recent media release now says early 2021.

<sup>3</sup> A comparison with the gun buyback policy is included in Appendix 2.

4. The policy is based on unreliable data and weak analysis.
5. Real costs are 10x higher than the 2012 estimates.
6. Strengthening rarely meets the critical criteria of financially viable, practically feasible, and low risk.
7. Including multi-owner residential buildings in the EPB regime has almost no impact on public safety.
8. Remediating existing buildings is much more complicated than has been acknowledged.
9. Emerging issues increase the risks.
10. Overseas experiences were misrepresented but offer solutions.
11. The implementation system is flawed and needs to be tightened if owners are to have confidence in it.
12. The current policy is creating a no-win situation for owners and territorial authorities.

## 2020 report on ICW survey of affected apartment owners

In early 2020, ICW surveyed owners of apartments in buildings in Wellington deemed 'earthquake-prone'. We gathered data from over 100 owners and 23 buildings. In April 2020, ICW produced a report entitled *Earthquake prone building legislation based on flawed policy analysis: apartment owners bear the financial consequences*.<sup>4</sup>

### Our findings included:

- There were **40 multi-owner residential buildings** in Wellington that had been assessed as 'earthquake prone', and they contained around 668 apartments owned by a total of around **1,068** owners.
- To comply with the EPB legislation, apartment owners were faced with costs/losses of on average **\$400,000** based on full costs, and the inevitable lifetime consequences of that, for no purpose.
- Together, owners of apartments in the 40 buildings in Wellington stood to lose a total of **\$267.2 million** (not including price increases), as a result of strengthening their homes.
- The public safety benefit of strengthening those 40 buildings was, based on MBIE's own benefit estimates, a saving of **0.4 lives over 75 years in Wellington**. The public safety benefits of strengthening all buildings in 'residential areas' would result in a saving of **4 lives over 75 years across New Zealand**.<sup>5</sup>
- It is impossible for apartment owners to comply with the legislation without incurring financial losses and exposing themselves to financial, legal, housing, wellbeing and health risks so enormous that they will suffer short term and lifetime consequences out of all proportion to any benefits their sacrifice might achieve.

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<sup>4</sup> Links to survey reports are on page 8

<sup>5</sup> Based on our analysis of the MBIE-commissioned MartinJenkins cost benefit analysis.

Briefing on impacts of earthquake prone building legislation on apartment owners

- Grappling with life as the owner of an apartment in an ‘earthquake prone’ building was having an affect on people’s wellbeing and mental health.
- The laws that govern multi-ownership structures, (unit title, cross lease, company share), are not compatible with the requirements of the EPB legislation.
- The legislation forces private home owners to become de facto property developers, amateur project managers and co-operative finance managers, for complex, high-cost, high-risk construction projects.
- Unsubstantiated claims about the risks presented by EPB buildings, uncertainty about future standards, non-compliance penalties of \$200,000 fines and compulsory demolition, amounts to coercion.
- Compliance results in no discernible public safety benefits, or benefits to apartment owners or occupants.
- The EPB legislation and implementation system does not meet any of the Government’s guidelines for good regulatory practice.
- The actual cost of achieving the policy objectives is out of all proportion to the value of any benefits.
- Successive governments since 2003/04 have made decisions that affect private home owners based on unreliable data
- No overseas jurisdiction requires owners of existing residential buildings to strengthen them. Contrary to officials’ advice to Government, neither Italy nor California does this.

**Flawed assumptions**

Based on ICW’s research, the assumptions underlying the policy, legislation and implementation system are not substantiated.

ASSUMPTIONS	REALITY	
<b>MBIE assumption at the core of the policy</b>		
Buildings less than 34% NBS are likely to collapse in a moderate earthquake	Risk overstated  No evidence	No building with an s124 or EPB notice has collapsed in any earthquake including moderate and stronger earthquakes
<b>Assumptions in MBIE’s CBA modelling</b>		
There are between 15,000 and 25,000 buildings in New Zealand less than 34% NBS	The cost benefit analysis (CBA) model overstated the scale of the problem (as the problem is defined by the policy	MBIE’s latest estimates, suggest that by 2028, less than 10,000 EPBs will have been identified

ASSUMPTIONS	REALITY	
	assumption)	
The public safety benefit of the EPB policy would be 24 buildings not collapsing, saving 173.25 lives in earthquakes over 75 years	The CBA model overstated the benefits (even if the policy assumption was correct)	No matter how many buildings of less than 34% NBS there are, if they are not likely to collapse in a moderate earthquake, the predicted public safety benefit will not be realised.
Cost of strengthening work \$300 per sqm (excluding GST) (\$345 inc GST) for base policy position	The CBA model understated the costs	Current estimate of average cost of strengthening work is currently \$3,020 per sqm (inc GST) - 10 times the CBA estimate.  Current estimate of average cost of compliance is \$4,000 per sqm (inc GST) – 13 times higher than the CBA estimate for the cost of strengthening work.
<b>Assumptions amongst politicians</b>		
Apartments are mainly owned by investor owners	There is no evidence for this	Our survey shows that around 14% of owners (34) are investor owners, and of those 28 only own one apartment (ie 'mum and dad investors'.
Apartment occupants will benefit from reduction in life safety risk	There is no evidence for this  Never claimed by anyone in policy papers	Authors of the CBA did not consider any life safety benefit to occupants sufficiently large to measure, no matter how many buildings were strengthened to x % NBS.
Apartment owners will benefit from capital gains	There is no evidence for this	For most owners all costs will be net losses
Apartment owners will benefit from improved availability and affordability of earthquake risk insurance	There is no evidence for this	Insurance companies do not recognise % NBS as an indicator of earthquake risk

## Appendix 1: ICW work on behalf of Wellington apartment owners affected by EPB legislation

- Research on the development of the Building Act 2004 leading to Wellington City Council developing its Earthquake-Prone Building Policy
- Submissions to Wellington City Council Committees on policy proposals that affect owners of earthquake-prone buildings, including Annual Plan and Long Term Plan processes calling for support mechanisms for affected owners
- Submissions to Select Committees on the Buildings (Earthquake-prone Buildings) Amendment Bill and Interim Report
- Submission to Inland Revenue on tax deductibility of seismic assessment costs 2016 for home owners
- Submissions to the Tax Working Group 2018 and 2019 on tax relief for all home owners facing seismic strengthening
- Proposal on lender of last resort in conjunction with the Body Corporate Chairs' Group in 2017 (this formed the basis of the Government's Financial Assistance Scheme)
- Proposals for advisory support in 2015 to WCC and 2017 and 2019 to central and local government politicians
- Media releases and engagement on the impacts on home owners of the EPB legislation
- Letters to Ministers (Williamson, Smith and Salesa) responsible for the EPB legislation calling for support for home owners facing mandatory seismic strengthening and requesting meetings with previous and current Ministers (which did not take place)
- Series of seminars for home owners in EPBs in 2012/13 and 2016, in conjunction with the Body Corporate Chairs' Group. Wellington City Council supported the 2016 seminars
- Survey of owners of homes in MORBs to collect strengthening cost and qualitative data
- Produced a strengthening cost calculator (verified by an independent quantity surveyor) to assist bodies corporate and owners to understand the full costs of strengthening (2019)
- Public meeting for owners with homes in residential earthquake prone buildings to provide results of survey (6 June 2019)

Material published by ICW on earthquake prone building legislation and impacts are available at the following links on <http://www.innercitywellington.nz/>.

- [Earthquake Submissions](#)
- [Earthquake seminars and meeting documents](#)

## Reports and submissions referred to in this briefing

Submissions on petitions to Governance and Administration Select Committee

- [Initial submission](#)
- [Supplementary submission](#)
- [Oral submission](#)

2020 Survey: Earthquake prone building legislation based on flawed policy analysis: apartment owners bear the financial consequences

- [Part 1: Analysis](#)
- [Part 2: Survey data and comments](#)



## Appendix 2: Comparison of gun buyback and earthquake prone policies

	<b>Guns</b>	<b>Earthquake prone buildings</b>
1	Parliament has taken the view that certain guns owned lawfully by private individuals have the potential to be used to kill people	Parliament has taken the view that certain buildings owned lawfully by public bodies, businesses and private individuals, have the potential to kill people in the event of a moderate earthquake
2	But as there is no way of knowing which guns, if any, will be used to kill people, all of them have to be removed to reduce the risk.	But as there is no way of knowing which building, if any, will kill people, all of them have to be strengthened or demolished to reduce the risk.
3	Every gun removed is a reduction in risk, but the full benefit claimed for the policy can only be achieved when all the guns are removed. This was done very quickly.	Every building strengthened or demolished reduces the risk, but the full benefit claimed for the policy can only be achieved when all the buildings are strengthened or demolished. This will take decades.
4	The legislation is predicated on the theory that by removing the guns (56,000+), the public safety benefit is - an unknown number of members of the public, in one or more unknown locations, at some time in the future, who may have been killed by someone using one of the guns, will not be killed.	The legislation is predicated on the theory that by strengthening or demolishing all 17,424 buildings, the public safety benefit is - an estimated 173 members of the public, in one or more unknown locations, at some time in the next 75 years, who may have been killed by a building collapsing in an earthquake, will not be killed.
5	The policy does not benefit the owners of the guns.	The policy does not benefit the owners of the buildings.
6	The owners bought the guns legally and until the change in the law, the guns had a monetary value.	The owners bought the buildings legally and until the change in the law, the buildings had a monetary value.
7	So the Government compensates the owners by buying the guns from them at market value.	The legislation has the effect of significantly reducing the value of the buildings and making building owners liable for the limitless costs and risks of compliance (or the losses of avoiding compliance by selling if they can).  The owners are not compensated in any way.
8	The owners no longer have use of those guns - no material effect on their lives.	Apartment owners experience a material effect on their lives through the financial, health and wellbeing consequences of the policy, and may even have to leave their homes.
9	Property rights were recognised	Property rights have been ignored.