

## **Case studies: impacts of earthquake prone building legislation on residential apartment owners**

George Kanelos, Brooklyn

### *The beginning ...*

George purchased his apartment in 2005. As a single person on a single income, he chose an apartment as a way of living economically within his means. In 2013 George, along with his neighbours in the building, received a letter from Wellington City Council that his apartment (and therefore the building it was in) was potentially earthquake prone. In 2015, the building was deemed earthquake prone. And that is the start of six years of uncertainty, costs, stress, and high-risk decisions. There hasn't been an earthquake that has caused structural damage; the building did not suffer any damage in the 2013 and 2016 earthquakes that affected Wellington.

### *Trying to find a way out ...*

George is one of the two owners bearing the responsibility and personal stress of the investigative work as others do not have the capacity or their personal circumstances prevented them. This is a small block: 7 owners, historically with a split mix between owner-occupiers and investor-landlords, with half of the owners being retirement age. Neither George, nor the other owner working on the investigation, has experience in the engineering or construction sector to guide them on this journey. And no assistance was available from central or local government during their journey.

George and his co-owners had to pay for two detailed seismic assessments in 2013, and then again in 2017 at a cost of around \$77,000 in total. The second assessment was required because the first engineer passed away. However, this first engineer was under investigation by Engineering NZ for issues related to his seismic resilience engineering work at the time of doing the assessment and the report could not be relied on.

That the engineer was under investigation was known to the sector and at least one Wellington City Council Councillor and officer. Neither the councillor nor officer advised George, during their engagements with him, that the engineer being used was under investigation. Owners should have been advised.

At the time, access to structural engineers was difficult because of the demand. George was able to obtain the services of a semi-retired engineer to undertake the second assessment. His semi-retired status meant that a peer review would also be required by Wellington City Council from a registered engineer when a building consent was lodged.

In the meantime, insurance costs for the building increased by 290% over eight years, with the latest increase in 2019 bringing the cost to \$7,000 per owner, per annum. At that point, insurance was 80% of the building's annual operating budget.

George has also been raising concerns about the scale of the impacts of this legislation with his local councillors, his local MP, attending meetings with officials and politicians, and fronting to the media. In late 2019 he volunteered to participate in MBIE's Evaluation of the Earthquake Prone Buildings System 2019, which was due to be released in February 2020. Over a year later, George is still waiting to see the report.

### *Working through unpalatable options ....*

Following the engineer's assessment in 2019, the owners had to make decisions on next steps. Very rough estimate costs to remediate were around \$100,000 per owner, to get the building strengthened to around 70% New Building Standard (NBS).<sup>1</sup> However, to get better cost data, a concept solution had to be fully developed which was to cost a further \$25,000.

Being faced with ever increasing evaluation costs and no strengthening project anywhere in sight, the Body Corporate decided to pause to re-evaluate their options.

The option to do nothing and wait for WCC to prosecute and fine them up to a maximum of \$200,000 was not an option for the owners.

### *The decision ...*

In 2019, owners made the decision to sell the apartments to a single purchaser. Selling individual apartments is not a viable option, as there is no market.

While recognising that they would lose money, the decision was driven by a number of factors:

- Owners could not afford ongoing insurance cost increases and ongoing costs for seismic strengthening work.
- There are no funds available for deferred long-term maintenance as owners funded investigation work, further increasing the financial pressure on owners.
- Owners are ill-equipped to manage the project as no assistance has been provided and they feel at the mercy of costly advisors with no guarantees of quality of advice.
- Stress and anxiety for owners had become too much.
- Risks associated with remediation are too high as it was unlikely that a fixed price contract would be obtained, high uncertainty about the capacity, capability and reliability of the construction sector and lack of protection for owners engaging in these projects.
- There is high uncertainty about how future regulatory changes would be applied to those owners who had already spent substantial sums to strengthen their building to comply.

### *The sale ...*

After five months on the market, the building has recently sold. This was a stress-filled process. Several offers were made. But after completing the due diligence, the prospective purchasers withdrew their offer or dropped it, to figures below land value. The potential purchasers realised, as the owners had, the prospect to remediate is fraught with great risk and unknown cost variables.

The experience has highlighted for George how the Unit Titles Act provides poor support for body corporates making "hard decisions" such as selling all apartments to one vendor. There was agreement of 98% of owners to "sell-as-is" (ie, the complete building). Yet a double garage owner in the building, who has just over 1% of the vote, could not be "forced to sell". This prevented the building being a better proposition to potential purchasers. To force the double garage owner's hand, would have meant legal proceedings at a cost of

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<sup>1</sup> For those not familiar, the legislation requires the building to be strengthened to at least 34% NBS. But 70% NBS has become a default target for strengthening driven by insurers, engineers, councillors and officers, bankers and politicians and their officials.

around \$50,000, which owners would have had to fund, with no idea of timelines or success rate.

It has also highlighted the gap between politicians' talk of needing to increase housing in Wellington and the reality of what is possible now to contribute to that. For all the talk with regards to changes to the "spatial plan" for Wellington, curiously there were no increases in "height/size limits" allowed for the property, despite a 7/8 multi-storey property, built in the 1960s, behind the building. Also, there's parking behind the property for nine cars that also can't be built on. It should be a perfect spot for more housing.

#### *The impact is substantial ...*

For George, the experience has had a substantial financial and social impact. A 'sale price' of 74% of rateable value (RV) will make securing another property in the current market very difficult. He has avoided the potential of sharing a fine up to \$200,000, which was a weight he constantly felt. George's experience has put him off buying another apartment.

The stress and pressure of the looming compliance burden and investigation work, and dealing with other owners whose "individual" situations are never aligned with the "Group" in a body corporate environment, created a tension over the last 7 year that slowly eroded and ate away at the relationship between our community of owners. People became worn down, started to shut-down and at worst combative.

The decision to sell and the sale meant George avoided funding and managing a project that he felt ill-equipped to handle and where his share of the remediation cost would now be estimated at least around \$200,000, but there would be no certainty of the final costs until the end of the project.

George was unlikely to be eligible for the Government's Residential Earthquake Prone Financial Assistance Scheme. And the support measures for the project from Wellington City Council were too little, too late.

#### *George's message to the Government ...*

"Life is hard enough for us out here as it is with its day-to-day challenges, without the government deliberately destabilising things for us."

"Being in my 50s, I had a sharp reminder in terms of employment certainty in this phase of life, when last year I was made redundant due to COVID-19"

"It's unconscionable that given the current housing crisis, I had a perfectly liveable home, deemed not fit for purpose due to some "crap" legislation and now I'm moving in with family as I try to work out next steps. This is fact."

"I know I'm not alone and that people are having to make quite drastic financial decisions around all this - there needs to be a holistic rethink of the legislation's impacts."

"Something isn't right with this picture."

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Inner City Wellington is calling on the Government to review the legislation with respect to multi-owner residential buildings, provide compensation for those impacted by the legislation and provide effective support mechanisms to all apartment owners who are currently required to comply.

For further information:

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