INNER-CITY WELLINGTON Te Reo Pokapū o Pōneke
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Another living hell: case studies in living the earthquake prone building nightmare

Many apartment owners in Wellington, and across New Zealand, will have seen the PRIME documentary on Wednesday 14 April about the ongoing issues with multi-owner residential buildings across New Zealand: leaking, structural issues, non-compliant fire services in buildings completed as recently as five years ago. The financial, health and social impacts on the affected owners are substantial. This is not a new issue, yet still residential buildings are being built that are ruining owners' lives.

Another 'hell' that hundreds of apartment owners are living through was only briefly touched upon in the documentary. It comes to apartment owners who are told that their buildings have been deemed to be 'earthquake-prone' under the Building Act 2004 even though the buildings were fully compliant with the Building Act when they were built or last altered.

Inner City Wellington (ICW) is working with owners who wish to tell their story about the journey they have faced or continue on in response to the compliance burdens being placed on them by the Building Act. In the first case study, George Kanelos gives his experience of managing a project to try and find a viable way of complying with the legislation. When compliance proved impossible, the end result was the sale of all the apartments in the building to one buyer and the loss of his first and only home.

The leaky building fiasco and the identification of a building as earthquake-prone building are similar in tow ways: the problems are unexpected and there are dire consequences for apartment owners, even though the problems are not of the owners' making.

With leaky buildings, the leaks and their consequences can be seen by owners and the cause can be identified. The problems outlined in the documentary are not the result of a natural event such as an earthquake. They are the result of negligence by a person or persons, an organisation or a company, the builders or the council that signed off the work. There is a financial assistance package (a grant) available for owners. Or, there is the potential that owners can sue those who were negligent.

But with 'earthquake-prone' buildings, the 'proneness' to collapse in an earthquake is identified through a theoretical, pre-emptive process. There is no damage to the buildings caused by an earthquake. If the buildings were damaged in earthquakes, insurers would pay. Instead, owners are forced to comply with changing legislative requirements that are retrospectively applied to compliant buildings. The financial assistance scheme available to a restricted group of owners is a loan, where the interest rate includes a margin as the borrowers are considered by the government, which imposed the cost, as high risk.

The buildings are identified in a desk-based process run by a territorial authority that deems the building to be 'potentially earthquake prone'. The owners have to engage and pay engineers to assess their buildings using a methodology the engineers had a major role in developing to determine if the building is, in their view, earthquake-prone. Then, if deemed to be 'earthquake-prone', the owners fund further engineering advice to develop strengthening solutions to strengthen the building. Along with funding a raft of other costs from a variety of professionals incurred during the course of such a project. The alternative to strengthening is to demolish the building.

And completing one round of strengthening is no guarantee that another round will not be faced by apartment owners in that building in the future. The Minister of Building and Construction advised that

'earthquake strengthening costs can be considered part of the expenses of building ownership'. Like the defective buildings in the documentary, the scale of the work required to retrospectively strengthen existing buildings goes beyond general maintenance.[1] For most home owners, decisions on maintenance and capital improvements are their choices. For owners in apartment buildings that choice is removed if their building is deemed to be earthquake-prone.

While the Minister has advised she has no plans to change the current requirements, Cabinet could decide to do so if new information comes to light that increases the life safety risk. ICW has raised concerns about the MBIE-commissioned cost-benefit (ie, lives saved) analysis for the 2016 legislation changes. The conclusion of the cost-benefit analysis was that the costs of strengthening substantially exceeded the benefits. But this was ignored by Cabinet and Parliament.

Work is underway on a revision of the National Seismic Hazard Model (NSHM) which was issued in 2002 and had its last major update in 2010. This update has not been adopted into the Building Code (ie, the building standard). The NHSM review is expected to be completed by August 2022.

In a briefing released to ICW in response to an OIA request, officials advised the Minister that international best practice is for such models to updated on a five-yearly basis, and an update to New Zealand's NSHM is well overdue. The briefing notes that an out-of-date model means the Building Code performance settings may not be fit for purpose and buildings may be being constructed on unsuitable land. Given this, it seems inevitable there will be changes to the building standard.

The Minister says that owners have some certainty as the current regulations refer to the building standard in place as at 1 July 2017 and this cannot be changed without public consultation.[2] The consultation process on regulations is not as rigorous as a select committee process and the oversight of Parliament that would occur for an amendment to the Building Act. It is worth noting that the use of a regulation was driven by the industry advisory group because it would be easier to change a regulation than the primary legislation – and Parliament agreed. This process does not bode well for current and future owners in the event of any proposed amendment to the regulations.

Engineers and other professional advisors encourage their apartment owner clients to strengthen to the highest possible level, to avoid being caught out by future changes, making strengthening even less economic and even more risky. And what happens if they are caught out anyway?

ICW has lobbied central and local politicians for many years, highlighting the flaws in the legislation and the impact on apartment owners, showing that the real costs are around ten times higher than estimated in MBIE's original cost-benefit analysis that did not stack up, even in 2012.

Owners want to hear from politicians in all parties on what they propose to do to fix this long standing and ongoing problem and stop apartment owners having their lives ruined by the earthquake-prone buildings legislation.

ICW continues to call for the earthquake-prone legislation, as it relates to multi-owner residential buildings, to be reviewed to test it is fit for purpose, for an effective support service for owners who are currently trapped in the regime, and for compensation for owners who have incurred losses in complying or in selling when compliance was impossible.

[1] Interview with Roger Levie, Home Owners and Buyers Association Inc, on Sunday, RNZ, 11 April 2021

[2] See Building (Specified systems, change the use, and earthquake-prone buildings) Regulation 2005, regulation 7, definition of a moderate earthquake.

Home owners, who happen to buy an apartment in a multi-owner residential building, should not be faced with massive remediation projects, constant uncertainty, and risk losing their savings and their homes. This is affecting hundreds of owners now, and the number will only increase.

Link to ICW website and case study

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