



Report of the Governance and Administration Committee

Petition of Geraldine Murphy for Inner City Wellington: Comprehensive support for residential owners in earthquake- prone buildings

Petition of Geraldine Murphy for Inner City Wellington: Review the earthquake-prone building provisions of the Building Act 2004

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Contents

Recommendation.....	2
About the petitions	2
An explanation of earthquake-prone building provisions	2
Comments from the petitioner	2
The costs of compliance are unfair for residents of apartments	3
The approach in other jurisdictions	4
Solutions to address the issues faced by apartment residents.....	5
Comments from the Ministry of Business, Innovation and Employment.....	5
Financial assistance is available for apartment residents	5
Balancing public safety against private property	6
The role of insurance in earthquake-prone buildings	7
Our response to the petition	7
Appendix.....	8

Petitions of Geraldine Murphy

Recommendation

The Governance and Administration Committee has considered the following petitions of Geraldine Murphy for Inner City Wellington:

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

The committee recommends that the House take note of its report.

About the petitions

Both petitions were presented to the House on 10 September 2019. They respectively request:

That the House of Representatives provide comprehensive financial, technical and advisory support interventions for residential owners in earthquake-prone buildings facing significant financial costs and personal stress to comply with the current earthquake-prone building legislation.

That the House of Representatives review the earthquake-prone building provisions in the Building Act 2004 to take account of significantly higher costs, stretched sector capacity, and to focus resources on public safety priorities.

The Governance and Administration Committee of the 52nd Parliament began consideration of both petitions. It received submissions from the petitioner and the Ministry of Business, Innovation and Employment (MBIE). We resumed consideration in the 53rd Parliament.

An explanation of earthquake-prone building provisions

The Building Act 2004 sets out the framework for regulating building work on new and existing buildings. The Building Code sets out the functional requirements and performance standards that all building work must meet. The Code is updated annually to ensure that it reflects developments in construction methods and improvements in the understanding of structural performance. The Act only requires that existing buildings achieve compliance with the current Code if they are considered dangerous or earthquake-prone. For a building to be considered not earthquake-prone it must meet 34 percent of the building requirements a new building would be required to meet. This is determined by the territorial authority.

A number of amendments to the Act came into force in 2017 to address the management of earthquake-prone buildings (EPBs) and provide a consistent approach. The new system is set out in sections 133AA to 133AY of the Act.

Comments from the petitioner

Inner City Wellington is a residents' association representing those who live in Te Aro and Wellington Central that works to improve community well-being through civic engagement.

The petitioner presented this petition on behalf of the association. She believes that the EPB provisions in the Act are unfair on residents of apartments, or “multiple-ownership residential buildings” (MORBs). She maintains that these residents face a higher burden for compliance than other property owners. Residents are responsible for their individual unit but also have to work together with other residents to ensure that the entire building is compliant. Residents in apartment buildings may also need to consider the heightened risk to public safety that their building may pose.

The costs of compliance are unfair for residents of apartments

The petitioner stated that the costs of strengthening to the minimum 34 percent standard are higher than what was initially assumed. According to the petitioner, the total cost of strengthening per unit (at May 2019) could be as high as \$440,000.¹

She explained that if apartment homeowners fail to meet the compliance requirements within the allocated time frame they face a penalty of \$200,000 and compulsory demolition of their homes at their own cost.

The financial costs might also negatively affect the health and wellbeing of residents. Residents are expected to manage expensive and complex building projects in a high-risk environment, with significant financial penalties should they fail to comply. Many residents would rather sell and take a financial loss than deal with the stress of living in an EPB and bringing it up to standard.

The petitioner noted that many residents were willing to take on the costs to become earthquake compliant when the costs seemed reasonable. She said this makes it more disappointing that the Government has not offered sufficient financial help to residents as the costs have steadily grown over time.

Financial assistance from the Ministry of Business, Innovation and Employment

The petitioner noted that MBIE administers a loan scheme to help owner-occupiers with the costs of strengthening. (We describe the scheme in more detail later in this report.)

However, Ms Murphy suggests that the scheme does not offer enough support for most residents. The scheme is essentially a loan that residents must apply for and pay back over time. She states that the scheme is flawed in a number of ways. One example is that only owner-occupiers can apply for the loan, meaning that people who own an apartment but do not live in it are ineligible.

Another flaw is that applicants are charged a low-equity margin for the duration of the loan, meaning they must pay an extra percentage on top of the interest rate. The petitioner stated that in many cases owners are mortgage-free and should not realistically be classified as high risk. The petitioner thinks it is unreasonable that these residents are being asked to take on more debt to retain their homes despite a number of them being mortgage-free. This can have negative consequences for people who are considering the costs of their future and planning for retirement facilities or residential care.

¹ As calculated by the petitioner from a sample of thirteen buildings in Wellington.

Insurance premiums have increased

The petitioner noted that insurance premiums have steadily increased in recent years. Many insurers require a higher level of strengthening than the minimum requirement of 34 percent. The Unit Titles Act 2010 requires full insurance, which means that residents in apartments and body corporates have little choice but to agree to the demands of insurers. This creates further financial cost and stress for residents.

The approach in other jurisdictions

The petitioner said that New Zealand differs from other jurisdictions regarding earthquake-strengthening. She said that New Zealand is the only country taking a mandatory approach to upgrading all types of buildings. She suggests that the consultation regulatory impact statement prepared by MBIE in 2012 is potentially misleading in its consideration of other jurisdictions. The petitioner referred specifically to Italy and some US states.

Seismic strengthening in Italy

The petitioner said that Italy has been compared to New Zealand in its approach to EPBs because strengthening requirements are not restricted to a particular building use or construction type. However, the petitioner suggests that the approach is actually quite different. She explained that in Italy retrospective strengthening is only mandatory for “strategic buildings”, such as schools, hospitals, and police stations. Other buildings are only required to strengthen if there is:

- a change of use that would increase the total load on the foundations by 10 percent
- an extension to the building
- a structural intervention to transform the building substantially.

The petitioner said that private owners are also given tax incentives to encourage them to voluntarily strengthen their buildings. Payments under the tax incentive scheme increase based on the extent of the strengthening.

Seismic strengthening in California, Washington, and Oregon

The petitioner said that the approaches in California and some other US states have also been compared to New Zealand. She explained that California has a mandatory strengthening approach but only for specific construction types. This approach looks at the way different buildings are constructed and what building characteristics are more likely to result in a collapse in an earthquake. Some examples include unreinforced masonry buildings and soft storey buildings.²

The petitioner also referred to Washington and Oregon. Both states have been reluctant to enact a broad policy approach to strengthening and instead have looked specifically at mandatory strengthening of unreinforced masonry buildings. Both states are also considering providing financial support to owners who undertake seismic strengthening.

² A soft storey building is a multi-level building in which at least one floor has large openings, such as a ground floor with parking bays or commercial space.

Solutions to address the issues faced by apartment residents

The petitioner lists three steps she would like the Government to take to address her concerns. They include:

- commissioning an independent, comprehensive review of the effect of EPB policy, legislation, and implementation on homeowners
- putting a moratorium on any further identification of potentially earthquake-prone MORBs, and requiring Detailed Seismic Assessments to be provided to owners
- contacting all home owners who have been in the EPB system to inform them of the review and invite submissions from them.

The petitioner would also like amendments made to the Building Act to remove compliance requirements, and compensation for apartment residents who have experienced losses.

One concern shared by residents is that they see themselves as having to fund public safety outcomes even though they live in private buildings. This is because apartment buildings in areas frequented by the public could pose a threat in an earthquake. To reflect the public interest, the petitioner suggests that the financial burden could be shared between private owners and the general public. One suggestion is that financial incentives could be made available to owners who strengthen, to recognise the public safety benefit from doing so. Another suggested solution is for the Government to use taxpayer funds to financially assist residents undergoing strengthening who live in buildings that may pose a public risk.

National notes the firm commitment made by Hon Grant Robertson in 2017 to Wellington apartment owners that the earthquake-prone building regime would be reviewed but has not yet been actioned. The Government should deliver on the commitment it made to Wellington apartment owners.

Comments from the Ministry of Business, Innovation and Employment

We heard from MBIE that following the 2011 Canterbury earthquakes a comprehensive government review of the entire EPB system was needed. This resulted in a number of changes in both legislation and policy. Most significant was the Building (Earthquake-prone Buildings) Amendment Act 2016 which made numerous changes to the Building Act.

The changes mean that territorial authorities are now responsible for determining whether buildings are earthquake-prone. They are also responsible for issuing EPB notices. The owners of EPBs are given a time frame to bring the building up to a safe standard, depending on factors such as construction type, building use, or location.

Financial assistance is available for apartment residents

MBIE maintained that adequate financial assistance is available for residents through the residential earthquake-prone building financial assistance scheme. Budget 2019 appropriated \$23.3 million over four years for the scheme. The scheme is administered by Kāinga Ora and began in September 2020.

MBIE explained that eligible unit owners will be able to apply for a deferred payment loan. The interest rate is set at 60 percent of an average five-year fixed-term mortgage (plus a low equity margin of 1.25 percent). The financial cap is \$250,000 per unit, based on information from the Wellington City Council that most remediation work could be done for \$200,000 or less.

The scheme is for owner-occupiers of units in apartment buildings. If an entire building is designated as earthquake-prone, residents who own individual units will need to work together to bring it up to compliance. They will need to decide what percentage they want to remediate to, or whether they wish to sell to developers, and consider any other available options. MBIE said that the number of different considerations is part of the reason why Kāinga Ora had not received any applications to the scheme as at 17 March 2021. Options need to be addressed collaboratively by all owners and residents and this can take time to agree on. The loan is administered to individual unit holders, not the building as a whole. This means that different approaches may be taken by different EPBs and body corporates.

We asked whether the lack of applications under the scheme to date was to be expected. We were told that discussions about the eligibility criteria have been ongoing since February 2020 and the scheme has been in action since September 2020. MBIE reiterated that it will take time for body corporates and residents to decide the approach they wish to take. It can be a lengthy and complex process. We heard that expressions of interest have been received and MBIE expects that people will engage with the scheme. It also noted that this is a multi-year appropriation so the scheme will be there for applicants when they are ready to apply.

MBIE noted that Cabinet requires a 12-month review of the scheme from its launch date. This will allow it to analyse, among other things, the number of loans applied for and issued, the interest rates of the scheme, and changes in the costs of strengthening to compliance.

National members are concerned that none of the \$23.3 million provided over four years announced in May 2019 has been used two years into the scheme. We are concerned that more money has been spent on administrating the scheme than in support to any apartment owner. National members believe it is clear that the scheme is not working and the policy needs changing.

Balancing public safety against private property

We were curious to know how public safety is factored into requiring private property owners to strengthen their buildings. MBIE said that ensuring the safety of as many lives as possible in an earthquake is a foundational principle of EPB safety requirements.

First, the safety of occupants is in danger if buildings are not strengthened to the appropriate levels of compliance. But in many cases, non-compliant buildings can also pose significant threats to the lives of the general public. In Wellington, many apartment buildings are in areas which are highly frequented by the public. MBIE emphasised that these buildings pose a high risk to public safety in an earthquake. The unpredictable nature of earthquakes means that it is difficult to judge how things may go wrong. MBIE insisted that it is better to take a wide approach to safety.

The role of insurance in earthquake-prone buildings

We heard that some insurance companies may require owners to remediate their buildings to more than the 34 percent standard. Some companies set the requirement at 67 percent. MBIE explained that these decisions are based on the level of risk of assets for insurance companies, rather than being based on regulatory settings or building standards.

Our response to the petition

We thank the petitioner for raising this issue with us. We appreciate that the EPB system can be complicated and may seem inaccessible. We also acknowledge that New Zealand should continue to assess EPB legislation and policy if there are opportunities to improve our current approach.

We will be interested to see how applications progress as time goes on, particularly how many applications are received and approved. We also look forward to seeing what matters are discussed in the first 12-month review of the scheme.

Although not directly relevant to the petitioner's request, this consideration of EPBs raised concerns about the notification methods for EPBs. We are concerned that there does not seem to be any legal requirement for tenants to be informed if the building they reside in or intend to move to has been determined as earthquake-prone. This could particularly be a problem for people with English as a second language, or for people who are desperate to secure a rental property. We encourage MBIE to consider how this could be made clearer for new and prospective tenants.

Appendix

Committee procedure

The petitions were referred to the Governance and Administration Committee of the 52nd Parliament on 10 September 2019. The committee received written submissions from the petitioner and the Ministry of Business, Innovation and Employment. It heard oral evidence from the petitioner and MBIE.

On 26 November 2020, the petition was reinstated with the Governance and Administration Committee of the 53rd Parliament. We met between 17 March and 19 May 2021 to consider it. We heard oral evidence from the Ministry of Business, Innovation and Employment.

Committee members

Barbara Kuriger (Chairperson)

Rachel Boyack

Naisi Chen

Nicola Grigg

Tangi Utikere

Tim van de Molen participated in some of our work on this petition.

Evidence received

The documents we received as evidence in relation to this petition are available on the Parliament website, www.parliament.nz.