Local Government and Environment Select Committee

Submission on the Building (Earthquake-prone Buildings) Amendment Bill

INNER CITY ASSOCIATION

Representing Wellington Inner City Residents and Businesses

Executive summary

The Inner City Association[1] of Wellington supports the intent of the Bill because it:

- Retains the current threshold of 34% of the New Building Standard as the minimum standard. This helps manage the significant financial impact on owners from strengthening their buildings to meet the current requirements. It prioritises strengthening for life safety purposes, and leaves it up to owners to determine how much they can afford to invest to strengthen to higher levels.
- Has the intention of providing certainty so that owners will not have to continue to strengthen as the legislation changes (eg, New Building Standard, definition of moderate earthquake). However, we have concerns about the lack of clarity about how this certainty will be legislated. The interaction with new section 133AQ appears to give territorial authorities (TA) the right to re-assess already strengthened buildings. There should be a minimum period before a building must be re-strengthened, eg 25-30 years, being a generation.
- Does not provide TAs with the ability to set higher strengthening standards and urge the Select Committee to maintain this stance. To do otherwise will result in ongoing uncertainty for owners and risk unjustifiable thresholds being set.
- Gives 15 years for owners to plan and financially prepare for the strengthening when the industry capacity is already stretched.
- Allows strengthening to progress without requiring compliance with other building requirements where it is not reasonably practicable to do so.
- Allows a part of a building to be identified as earthquake-prone (eg, parapet, verandas) which, provided the notice and the register makes this clear, minimises incorrect perceptions and misinformation about the building.

We do not agree with:

- The draft definition of priority buildings. The 'for example' reference to buildings on strategic transport routes and buildings of significance for public safety (eg, if parts may fall off them) is too open and does not provide sufficient direction as to how the provision must be applied, and how affected owners (who will be the smaller proportion of the community entitled to have a say) will have a voice. The outcome of shorter timeframes is purely for the public good and TAs must be ready to provide funding support for the affected private owners.
- Any proposal to re-assess buildings that have already been assessed under Wellington City Council's (WCC) process. This increases the costs and uncertainty for owners
- The proposal to revoke notices that have been issued for 20 years, under the WCC policy. This will create additional work and costs for WCC, when many owners are already working

[1] Incorporated as the Wellington Inner City Residents and Business Association in November 2008, and now uses Inner City Association or ICA.

towards an earlier timeframe, driven by the need to respond to market forces and reduce insurance premiums

We are concerned that there are no accompanying proposals from government on financial support mechanisms to recognise the public good aspects of strengthening. The Minister has said work is underway but nothing is forthcoming, leaving owners to bear the brunt of requirements that were implemented without true public consultation.

In summary, ICA members who are affected by this policy care about their buildings, their businesses, their homes and their community. We want our buildings to be safe. We want to make rationale investment decisions in our buildings, businesses and homes. We want a fair hearing as private owners being required to fund a large public good.

About the Inner City Association (ICA)

ICA represents residents and businesses in Wellington's inner city. The relevant objects of ICA are to:

- Promote, develop and improve the services and facilities for the residents and businesses and
- Represent the views of residents and businesses to the appropriate authorities.

The focus areas since our establishment in 2008 have been earthquake prone (EQP) buildings and anti-social behaviour that affects our community. We have had many meetings on the topic of EQP buildings and what it means for our members, engaged with the media, and made submissions to Wellington City Council and Ministry of Business, Innovation and Employment.

Our current membership is over 400, with approximately a 60/40% split between residents and businesses (generally small to medium enterprises). The draft submission was circulated to all members for feedback. The submission was supported by members and the final version reflects their feedback.[2]

Many of our members are directly affected by the provisions of this Bill. They either own property in a building that has been issued with a s124 notice (strengthen or demolish) under the current Building Act 2004 or their property falls under the definition of an EQP building and could be affected by any increase to the threshold through this process or future changes to the threshold.

Financial and personal impact on our members

While it varies between members, the following statements describe the real financial and personal impact on members affected by the current requirements.

- These requirements are affecting people's homes – it is not just about commercial property. This makes it a very personal impact. The few references to 'homes' and 'residential owners' in the First Reading debates shows how little thought is being given to who is impacted.

[2] Ten responses were received in support, representing 18 individuals and one Body Corporate. Two members did not support the retention of 34%, though both supported the submission for financial assistance mechanisms.

- Owners report known or estimated costs of between $30,000 - $350,000 for their share. These costs are not 'normal' building maintenance costs that owners must budget for as some in the engineering sector have stated at meetings.
- At least one owner has used retirement savings to fund their approximately $100,000 share of the strengthening costs, when they are a few years from retirement.
- Many owners are on fixed incomes; they cannot service a mortgage for their share of the strengthening costs.
- A number of retired owners are using savings to fund the increased insurance costs and are facing returning to work to save for strengthening costs.
- Owners are selling at reduced sale prices due to the looming strengthening costs, while others want to sell but are unable to, or find the likely sale price will mean they cannot buy elsewhere.

Specific comments

Clause 23 (section 133AB) and Clause 43 (section 7(1)) retention of current threshold – 34% of New Building Standard

We support the retention of the current definition for moderate earthquake (ie, buildings must be at least 34% of the New Building Standard (NBS). Our reasons for supporting this are:

- Owners generally want to strengthen to the maximum they can afford to protect themselves, their families, their investment, other building users and the public. Determining the strengthening option has to be done, in most cases, in a body corporate environment where owners will be in different financial situations and as a group must agree on what is affordable for all. [3]
- Many owners who have to strengthen their buildings are under significant financial pressures (ie, needing to save money for strengthening costs while also covering the very significant costs of escalated insurance premiums). Mandating a higher threshold of 67% would place even more financial burden on owners when the cost-benefit analysis does not support it.
- While owners support the retention of the current threshold, we believe that the 2003-2005 legislative process to establish the current threshold was not robust. The Building Bill 2003 doubled the threshold from approximately 16% of the New Building Standard to 33%, and extended the scope to cover all construction material for the buildings that met the criteria, without a transparent process and cost-benefit analysis similar to that completed for this Bill.
- The only cost-benefit analysis that is available to ICA was done by the NZ Society of Earthquake Engineers (NZSEE) who 'promoted the legislation' process.[4] There does not appear to be an independent assessment of the technical cost-benefit analysis done by the

[3] Owners in this submission refer to our members. 'Generally' is used in this point as some owners are prepared to accept the risks of living in a building that is less than 34% of the NBS, but do not have a choice.
[4] The role and position of the NZSEE is outlined in a paper presented by David C Hopkins and George F Stuart to the 13th World Conference on Earthquake Engineering, in 2004.

NZSEE.[5] WCC, when asked for a copy of the cost impact of its Earthquake Prone Building Policy, referred us to the Department of Building and Housing (DBH). When DBH was asked, it referred us back to WCC.

- The NZSEE has a valid role in promoting earthquake strengthening proposals and the paper refers to its role in 'informing the community of the risks'. The fact is that for the 2003-2005 policy process, which resulted in a substantial change, the affected community were not *all* informed and given an equal opportunity to participate; it was a targeted consultation process. The Ministry of Economic Development, Department of Building and Housing, the Ministers of Commerce and Building Issues, and the Select Committee process failed to ensure that due process was followed. [6]
- It is likely that most owners at that time, particularly residential apartment owners, would not have been aware of the proposals until around 2006 when WCC started consultation on its draft EQP Building Policy. This was not due to apathy; it was due to the lack of coverage of this part of the Bill, which was predominantly focused on addressing the leaky building issue and the targeted consultation process that did not include the general public.[7]

Clause 43 (section 7(2)) Providing certainty to owners who have completed strengthening

Although we agree with the general intent of this clause, in particular the addition of the words *'… if it were designed on the commencement date*', we are unclear how this works in relation to new section 133AQ. This section allows the TA to review the seismic capacity of any building if it considers that any seismic assessment completed prior to a change in the New Building Standard is likely to be incorrect. This perpetuates the current uncertainty and future financial burden for owners.

The discussion in the media after the first Christchurch earthquake was that building technology and the understanding of earthquakes and fault lines would continually increase, with 'experts' mentioning this could occur 'every 10 years'. But this does not necessarily mean the risk of an earthquake has increased. This level of potential change and associated re-assessments is unacceptable. Yes, there will always be new knowledge, technology and building systems – and owners may want to have the latest – but the reality is that most, if not all, owners will not be able to afford to continually re-strengthen. Engineers will say a building can continually be re-strengthened, but they ignore the fact that someone else is paying for it – and demolishing your home may not be an option.

There has to be some control over how frequently the New Building Standard or the definition of a moderate earthquake can be changed and applied to buildings that have already been strengthened.

[5] An OIA request to MBIE for information on the 2003/4 process did not produce any cost-benefit analysis. MBIE advised that it would cost a lot of money to review and extract the relevant papers.
[6] ICA's research of this process aligns with that outlined in the TailRisk Economics' submission, which raises questions that need to be answered to ensure a robust platform for future policy development.
[7] An OIA request to MBIE showed the communication from the Ministry of Economic Development was targeted at the building and construction sectors and local authorities. Only two media articles (June 2003, Nov 2004) were found that referred to earthquake-prone buildings as part of the Bill process. The consultation document on the regulations was emailed or posted to the groups involved in the process. The general public was expected to find it on a new website, and there was insufficient information in it to enable most owners to effectively participate.

MBIE must be directed to confirm how this legislation proposal is going to provide certainty for owners and how the financial impact of ongoing strengthening requirements is going to be managed.

For example, there used to be a 'life of the building' concept of 50 years but this does not appear to be in vogue now. Perhaps this needs to be reinstated. If the 'life of a building' concept is no longer valid, a period could be established within which owners will not have to re-strengthen previously strengthened buildings (eg, 25-30 years, so it is once in a generation). While it may not be the same owner funding the strengthening, the ongoing costs will continue to take money out of the wider economy and affect future owners' financial stability, as it is now.

If there are future changes to the New Building Standard, owners could opt to re-strengthen earlier if they (usually as a body corporate) decide that this is a worthwhile investment to retain or increase the value of their property in relation to other similar properties. This puts the investment decision where it appropriately lies – with the owners.

Clause 23 (Section 133AZ) TAs able to set time frames for priority buildings

We do not support this clause as it is currently drafted. There needs to be more guidance as to what would constitute a priority building.

Our reasons for not supporting this clause as drafted are as follows:

- The proposed clauses in the regulations (clause 37) uses 'for example – buildings on strategic transport routes or buildings of particular significance in terms of public safety'. It is not sufficient to leave this so open in the regulation-making process. The 'for example' should be removed to make Government's intent very clear.
- Without clear direction from government, TAs may include other buildings such as privately-owned heritage-listed buildings, which have particular challenges in terms of the costs associated with strengthening (severely impacting the economic sustainability of these buildings).
- The special consultative process provides an opportunity for the wider community to encourage the faster strengthening of buildings across an unknown set of criteria, when the owners who are bearing the costs, will be the smaller proportion of the community.
- The reduced time frames may not be realistic for owners who have to fund the strengthening. There has to be flexibility to allow for exemptions to a shorter time frame but the Bill does not require that impact to be specifically taken into account.
- There may not be industry capacity to complete the work within the shorter time frame if other strengthening work is already underway. Increased demand for strengthening work to be completed will drive prices up, and there is a risk that quality will suffer if the capacity and capability is inadequate.
- There is not an independent review process where affected owners can challenge the outcome of the special consultative process. Owners should not be required to fund a challenge through the courts system, incurring further costs.

The proposal to have faster time frames for priority buildings relates to public good objectives. Given this, private owners have a reasonable right to expect that this is accompanied with appropriate

tax/rate-payer funding (ie, why should private owners be expected to bear the full burden of the costs to provide wider societal benefits)?

The government has not proposed that TAs have the ability to set different (ie, higher) thresholds for strengthening earthquake-prone buildings. We support this approach and urge the Select Committee to maintain the current position as outlined in this Bill. Wellington City Council will submit that it should have the ability to set higher thresholds after following a special consultative process. This would just increase the uncertainty for owners.

In early 2012, prior to the outcomes of the Royal Commission of Inquiry and the Government's consultation process, WCC agreed that Council-owned buildings would be strengthened to exceed 67%. The proposed strengthening approach for the Town Hall doubled that to 140% of the New Building Standard (for $60m not the estimated $44m). Now, it is all being reviewed. This shows that this council will not take a pragmatic, cost-benefit-risk-based approach if they are given the ability to set higher standards.

Clause 23 other key provisions

We **support** the following sections:

- S133AO: that owners have 15 years after the date of the outcome notice. This recognises that the:
    - Industry capacity will be challenged by the volume of strengthening work that will be required. The capacity issue is exacerbated by buildings that are not currently earthquake prone (ie, have not been issued with s124 notices) undergoing strengthening because of market forces.
    - Owners need time to plan and save for the substantial strengthening costs.
- S133AX: that building consents for strengthening work will be granted without requiring complete compliance with all other building code requirements, specifically means of escape from fire, and access and facilities for persons with disabilities, where it is not reasonably practicable to do so.
    - This recognises the priority is on earthquake strengthening and that the owner may not have intended to do any work without this requirement. However, one owner reports being required to put 'proper' drainage systems in, at additional costs, which does not increase life safety for residents or public safety.
    - There is a risk that TAs will use the opportunity to require unnecessary compliance because they have the opportunity to do so, and can delay the process, require additional technical advice the owner must pay for, or refuse the resource consent.
- S144AE that allows for only part of a building to be determined to be earthquake-prone. This reduces the negative impact of a s124 notice applying to a whole building, when it is only part. The seismic work notice and the register must be clear that the EQP status only applies to specified parts of the building.

We **do not support** Section 133AG(2)(d) *specify …'how a TA will evaluate … engineering tests completed before the day on which this section comes into force*'.

- ICA does not support any proposal to reassess buildings that have already been assessed under WCC's process. ICA supports WCC's submission in this matter. A single owner of a building or the Body Corporate could opt to request a new assessment process if they wished to.
- Our reasons for this are:
    - The current provision is too open and continues the uncertainty for owners who want to progress with strengthening and their lives.
    - Additional and repeat costs for owners: repeat assessments will be conservative so buildings are more likely to be found to be earthquake-prone than not. Members indicate that an engineer's report to respond to a TA's initial determination will cost in the region of $10-15,000 as a minimum; for many owners these costs have been higher.
    - Lack of capacity in the sector: this has already led to delays for owners to complete the initial assessment process, with some waiting two years to get an engineer.
    - Ongoing uncertainty for owners: owners want to focus on getting the strengthening proposals agreed within a Body Corporate environment, tender the work and get on with it. It is unreasonable to force another round of assessment on owners.
    - Takes money away from the strengthening work and the wider economy.

We **have concerns** about the transitional provisions (New Schedule 1AA, section 2(2): ability to revoke notices that have been issued for 20 years, under WCC's policy.

- This will create additional work and costs for WCC, when many owners are already working towards an earlier timeframe, driven by the need to respond to market forces and reduce insurance premiums.
- ICA's support of the 15 year timeframe in this Bill is in response to the proposal of 10 years in the 2013 consultation document.

Financial support mechanisms

As discussed above, the current requirements in the Building Act 2004 are already placing pressure on many owners, when they had no opportunity to engage in the consultation process and the cost-benefit analysis of the change was inadequate. This pressure will be exacerbated by shorter time frames for those buildings identified as priority, and the uncertainty of future strengthening requirements, if this is not addressed through this Bill.

There is a large public good (public safety) from the strengthening work as well as a private good. The private good, however, is limited; many properties with s124 notices have already reduced in real value, and at best, strengthening will recover that lost value. In addition, the owners will bear the ongoing financial impact of reduced savings, having to work longer or return to work to recover savings, and/or service new or bigger mortgages at rising interest rates to fund the strengthening.

The public good component must be supported by central and/or local government. If local governments are given the ability to set reduced time frames (eg, to protect strategic transport routes) then the whole ratepayer community will have to provide some funding for this public good. It is unreasonable to expect private owners to carry the burden of all the public good benefits from this requirement.

WCC has been actively investigating financial support mechanisms to support ratepayers and endeavouring to progress these with Government. There has been nothing from the Government, and no calls for clarity on how this will be funded from Opposition parties. The Minister indicated in October 2013 that information on the financial mechanisms would be available at the same time as the legislative proposals were released.[8]

Any financial support mechanisms must be equitable for commercial and residential property owners. The media coverage on this generally talks about commercial property owners; 21% of the buildings assessed as earthquake-prone in Wellington as at 30 November 2013 are residential or mixed use. Residential owners must comply with the same legislation as commercial owners.

Options include:

- Depreciate the cost of strengthening
- Tax relief to recognise the public good aspects
- Ability to obtain loans at reduced rates attached to the property, with the repayments collected via the rating system
- Loan guarantee schemes provided by Councils or central government
- Suspensory loans provided by central government
- Earthquake bonds offered by central government

We are cautious about options that allow body corporates to obtain loans and recover repayments through body corporate fees. While this would appear to avoid the problem of each owner obtaining their own funds, it creates a risk for both owners and the body corporate committees from unintentional or intentional mismanagement.

[8] DominionPost, 12 Oct 2013, Minister's sympathy for owner's conundrum.