
REPORT 1
(1215/53/IM)

EARTHQUAKE PRONE BUILDING POLICY REQUEST FOR EXTENSION OF TIME – 25 HUTT ROAD

1. Purpose of Report

To consider a request for an extension of time to comply with the Council's Earthquake Prone Building Policy.

The building is located at 25 Hutt Road, Lot 1-2 deposited plan 4035

2. Executive Summary

The owners of 25 Hutt Road, through their lawyers acting as agents, have requested a two year extension to the notice to strengthen or demolish the building. The building owner has owned the building since 1985.

The potential for collapse of the building in an earthquake has been assessed as high. The building has facades adjacent to the Hutt Road and Sar Street that could collapse in a moderate earthquake posing a threat to the public around the building. The applicant has reduced the threat to people using the building by closing the function centre and takeaway bar that were operating in the building.

However no applications to the Council have been made regarding demolition and redevelopment of the site at this point of time. The property owner has previously requested a time extension with regard to the section 124 notice on the building and this was declined. A further request for a time extension was received by the Council on 27 June 2008.

3. Recommendation

Officers recommend that the Committee:

- 1. Receives the information.*
- 2. Declines the request for an extension of time to reduce or remove the danger.*

4. Background

The Council's Earthquake Prone Building Policy was adopted in May 2006. It provides for buildings to meet minimum performance standards, set under the Building Act 2004 (the Act), in the event of a moderate earthquake. The objective of the policy is to advance public safety and minimise potential injury, loss of life and damage to other property. The policy provides for the Council to consider applications for extensions of time to comply with the Act and the Regulatory Committee holds delegated authority to decide on applications that are lodged with the Council.

This two storey, un-reinforced masonry building was built in 1916 and bought by the current building owners in 1985. It is situated on the corner of Hutt road and Sar Street. Until recently it has been occupied by a function centre, takeaway bar and retail shop. The applicant advises that they have stopped operating the function centre and takeaway as at 30 June 2008. The retail shop tenant has been advised that the building is earthquake prone and the property owner has plans to demolish the building and that they need to seek alternative long term premises.

The applicants were notified in 1999 that the structural strength of the building was below the standard set in the Building Act 1991 for earthquake prone buildings and requested that work to reduce the danger be undertaken by May 2000. Correspondence continued during 2001, 2002 and 2003, including an offer from Council to provide monetary assistance to undertake a feasibility study. An earthquake prone notice was issued in June 2004 as there had been no progress made in resolving the issue. This notice was suspended pending setting of regulations establishing new thresholds for earthquake prone buildings under the Building Act 2004.

In June 2006 the owners were then issued with a section 124 notice under the Building Act 2004 requiring them to strengthen or demolish the building by 30 June 2008 in accordance with the Council's earthquake prone building policy. Council received an application for a three year time extension in September 2006 and this was considered at the Regulatory committee meeting on 15 November 2006. The Committee declined the application for an extension to the time period to comply with the notice.

Council received the current request for a time extension for a further two years on behalf of the current property owners on 27 June 2008.

The current request for a time extension is based on the following:

- That the property owners have taken steps to proceed with demolition of the building and redevelopment of the site.
- That the Council has released a draft of proposed changes for the Earthquake prone building policy that proposes to extend timeframes by 5 years.

The property owners have yet to apply for building consent or resource consent to demolish the building and /or redevelop the site. The proposed changes to the earthquake prone building policy do not alter the timeframes for buildings that were previously issued with section 66 notices under the Building Act 1991.

5. Discussion

Attachment 2 of the Earthquake Prone Building Policy lists fourteen points to consider after receiving an application for an extension in time to complete strengthening work.

Extension Consideration (per Council Policy)		Analysis and Comment
1	Whether people who use the building can do so safely.	The building owner advises that they are no longer operating a function centre or takeaway bar in the building. However the building is adjacent to the road and has street front façades that could collapse in an earthquake posing a threat to the public. Currently the only tenant is a retail shop with the theoretical occupancy number of 32 people during normal business hours.
2	Importance of ensuring that each building is durable for its intended use.	There are no particular durability issues identified with the building.
3	Importance of recognising any special traditional and cultural aspects of the intended use of the building.	No special traditional or cultural aspects have been identified.
4	Cost of the building (including maintenance) over its whole life.	No costings have been provided of possible works have been given. The property owner has indicated that they are proposing to demolish the building.
5	Importance of standards of building design and construction in compliance with the building code.	An initial evaluation (IEP) has been obtained to assess the current level of strength comparative to new buildings built to NZS 1170. This is the methodology included in the Earthquake Prone Building Policy. The building has been evaluated at between 5 and 10 % of new building strength.
6	Need to provide for the protection of other property from the risk of physical damage.	The building is situated on a corner site with frontage to Hutt Road, Sar Street and a service lane and adjoined in its northern side by another building. The collapse of this building in a moderate earthquake is likely to damage vehicles and the adjacent building.

Extension Consideration (per Council Policy)		Analysis and Comment
7	Need to facilitate the preservation of building of significant historical, or heritage value.	The building is not listed in the District Plan or NZ Historic Places Register.
8	Importance level of building.	The building is importance level 2 which is the level for most buildings other than those with crowd activities or post disaster functions. As such it has a moderate priority under the policy. While the current Earthquake Prone Building Policy primary mechanism is to require buildings to be upgraded when other significant building work is undertaken, there is a maximum 10 year time frame established for this priority building at this time.
9	Building structure and strength i.e. the code that was used to design and construct the building	The building was built in 1916 before there were any structural design codes in New Zealand. No strengthening of the original structure has taken place. The structure is very significantly weak in comparison to a new building. Being of un-reinforced masonry construction the building may be subject to sudden brittle failure.
10	Special characteristics of the building e.g. heritage or historic.	No heritage or historic aspects of the building have been identified as worthy of preservation.
11	Whether the building has already been strengthened along with the level it was strengthened to and when the work was done.	The building has not been strengthened.
12	Financial Implications.	The applicant has indicated that the current recession in the property market may mean that funding for the redevelopment of the site will be difficult to secure.
13	Ramifications if the building was to be demolished rather than strengthened e.g. loss of heritage for future generations.	The applicant has indicated an intension to demolish the building.
14	Availability of the appropriate people to do all the work.	The Council has recently been approached by structural engineers who have capacity to undertake the design work currently. The building pressure appears to be easing in the city and contractors are likely to be available within reasonable time frame.

5.1 Summary of Analysis against the Councils Policy considerations

Key matters for Councillor consideration of these applications for extension in timeframes to complete strengthening work are as follows:

- The original building was built at a time before there were any structural design codes in New Zealand. The building is significantly weak in comparison to a new building and the type of construction and materials used means that it may be subject to sudden brittle failure. The building has not been strengthened since it was built.
- The building is importance level 2 which is the level for most buildings other than those with crowd activities or post disaster functions. As such it has a moderate priority under the policy.
- The building has a high risk of collapse in a seismic event. The building has been assessed at 5-10% of new building strength.
- The current owner has owned the building for 23 years.

Based on the above, officers believe that an extension should be declined.

6. Conclusion

The current building owner has owned the building since 1985 and to date has not progressed the seismic strengthening of the building at 25 Hutt Road nor the redevelopment of the site.

While the property owners have made some progress by ceasing to use the building as a function centre and take away bar, this does not mitigate the risk to either adjacent property of the public around the building.

In the proposed changes to the earthquake prone building policy currently being consulted on, Council are not intended to change the timeframes for those buildings where a section 66 notice has been issued previously.

Under the Building Act, it is the owner of the building that commits an offence if a notice is not complied with. The effect of declining an extension of time would be to allow officers the option of using the enforcement tools provided by the Building Act 2004 to affect a resolution.

Contact Officer: *Claire Stevens, Team Leader Earthquake prone buildings and Structural Engineering, Building Consents and Licensing Services*

Supporting Information

1) Strategic Fit / Strategic Outcome

This activity primarily contributes to the outcome that “Wellingtonians will feel safe in all parts of the city”. It also contributes in part to the outcome that “Wellington will protect its heritage buildings and ensure that new developments are sympathetic to them.”

2) LTCCP/Annual Plan reference and long term financial impact

The project is contained in the LTCCP 1.4.1 “*Earthquake risk Mitigation*”. There are no financial impacts for Council as a result of this decision.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi implications.

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

Not required. However, the submission received from the owner is attached as Appendix A.

b) Consultation with Maori

Not required.

6) Legal Implications

Legal advice was received during the development of the policy. In relation to this particular application, no legal advice was considered necessary.

7) Consistency with existing policy

The recommendations in this paper are in accordance with the Earthquake Prone Building Policy adopted by Council on 31 May 2006.

Appendix A-Owners Submissions



To
Regulatory Committee of Council
Wellington City Council
PO Box 2199
Wellington

For
Claire Stevens
Building Consents & Licensing
Services

From
Tony Dellow
Sharyn Ryburn

By
Fax: 0-4-801 3100

Date
21 July 2008

Submission to Regulatory Committee: extension to Section 124 notice in respect of 25 Hutt Road, Thorndon, Wellington

1. We act for Mr and Mrs George, the owners of the building situated at 25 Hutt Road, Thorndon, Wellington.
2. On 30 June 2006, the Council issued a notice under section 124 of the Building Act 2004 declaring the building to be earthquake-prone. The notice required Mr and Mrs George to either begin work to strengthen the building to a sufficient degree so that it was not earthquake-prone or to demolish the building by 30 June 2008.
3. Mr and Mrs George intend to demolish the building, as it is uneconomic and impractical to strengthen it. Despite their best endeavours, it has not been possible to secure the funding to demolish the building and to redevelop the site by the time specified in the notice.
4. Accordingly, on 27 June 2008 we wrote to Wellington City Council officials to request an extension of time under the notice for a further 2 years (to 30 June 2010) to allow Mr and Mrs George the opportunity to complete this work. We advised the Council of the owners' plans to demolish the building and the steps they had undertaken to reduce the risk the building posed to the public until it was demolished.
5. On 11 July 2007 we were advised by officials that our request for an extension would be heard by the Regulatory Committee on 6 August 2008. Our submission to the Committee is set out below.

Previous hearing

6. Mr and Mrs George have already requested one extension to the notice, and were granted a hearing by the Regulatory Committee on 15 November 2006. At that hearing, their request for an extension to the timeframe in the notice was refused.
7. Since that hearing, the owners have taken considerable steps to reduce the risk that the building poses to the public and have taken steps to proceed with demolition of the building and re-development of the site. Furthermore, since the hearing, the Council has released a revised version of its Earthquake Prone Buildings Policy for consultation that proposes to extend all timeframes for buildings that have been issued with earthquake-prone notices by an additional five years.
8. In light of these changes, we consider it appropriate to request that the Committee reconsider its decision to refuse to grant an extension to the notice.

Matters the Committee may take into account when deciding whether to grant an extension

9. The Council's Earthquake Prone Buildings Policy attaches a hearing process that sets out the specific matters that may be considered by the Committee when deciding whether to grant an extension to a timeframe in a notice. Set out below is relevant information for the Committee's consideration relating to a number of those matters.

Safe use of the building

10. One of the matters that the Committee may consider under the Council's Earthquake Prone Buildings Policy is whether people who use the building can do so safely.
11. Mr and Mrs George acknowledge that the building does not meet current earthquake standards. As mentioned above, they intend to demolish the building and redevelop the site.
12. In the meantime, in response to the notice, and the subsequent hearing by the Regulatory Processes Committee, Mr and Mrs George have closed their two businesses in the building:
 - (a) the function catering business, *The Flamingo*; and
 - (b) the luncheon/takeaway shop.
13. The health licence in respect of those businesses lapses on 30 June 2008 and no renewal has been sought. Mr and Mrs George confirm that they will not reopen the function centre or luncheon bar in the building, or any new businesses in their place.
14. The building remains partially occupied by one tenant: *The Fabric Warehouse*. The warehouse is a wholesale fabric outlet shop that occupies part of the ground floor of the building. This tenant has been advised that the building is earthquake-prone,

that Mr and Mrs George have plans to demolish the building as soon as funding can be secured, and that they need to seek alternative long term premises.

15. The owners have taken considerable steps to reduce the risk that the building poses to the public. Given the extremely limited occupancy of the building we consider it is now lower risk than when the notice was issued.

Importance level of the building

16. Another matter that the Committee may consider under the Council's Earthquake Prone Buildings Policy is the importance level of the building.
17. The building has been classified by the Council as being of moderate priority under its Earthquake Prone Buildings Policy (Report 2, Regulatory Processes Committee, 15 November 2006).

Factual background

18. The building was issued with the section 66 notice on 11 June 2004. The owners contacted the Director of Building Controls at the time, Mr George Skimming, and noted that addressing the earthquake concerns with the building would not make sense until the changes to the Building Act in 2004 and the subsequent development and implementation of the Council's Earthquake Prone Buildings Policy established the level of strengthening required.
19. The Council agreed with their concerns and suspended the notice on 28 June 2004. The reason given for the suspension was that the new Building Act would change the way that earthquake-prone buildings were assessed, and accordingly until the new assessment criteria was understood "*deferring your proposal to strengthen the building does make sense*". (See attached letter).
20. Subsequently, the current section 124 notice was issued on 30 June 2006, once the Council had implemented its Earthquake Prone Building Policy.

Timeframe for remediation

21. The Earthquake Prone Buildings Policy specifies a 2 year maximum timeframe for remedial work for a building that was issued a notice under section 66 of the Building Act 1991 (as opposed to a 10 year timeframe for remedial work for a moderate priority building issued with a notice under the Building Act 2004).
22. The Council's proposed amendment to its Earthquake Prone Buildings Policy does not alter the 2 year time frame for buildings for which a notice was issued under section 66 because:

The proposals represent a moderate relaxation of the maximum strengthening timeframes for buildings identified since 2006 as earthquake prone, while ensuring an appropriate balance with public safety concerns by maintaining Council pressure on those building owners who remain in breach of long standing strengthening notices issued under the previous policy.

23. It appears that the policy intent behind the 2 year timeframe for buildings that were issued with notices under the Building Act 1991 was that the owners of the buildings have already had a significant period in which to undertake remedial work.

Application of the policy to our client

24. In our view, applying the 2 year timeframe to our clients is unfair. Our clients were never in breach of the section 66 notice that was issued to them. Furthermore, the section 66 notice was in effect for only 17 days. The owners' were prompt in addressing the section 66 notice and communicating with Council over their concerns.
25. It is difficult to see how the section 66 notice issued to our clients could qualify as a "long standing strengthening notice" (as described in the Council's discussion document about the proposed amendment to the policy). The policy intent for the 2 year timeframe does not apply to our client.
26. For these reasons, we consider the Committee should exercise some discretion in the application of the Council's policy to our client.
27. In our view, the building should be treated as if it were a building for which a notice was first issued under the Building Act 2004.
28. There is therefore a significant disparity between the time given to Mr and Mrs George for remedial work under the section 124 notice and the maximum timeframes for moderate priority buildings in the Council's Earthquake Prone Buildings Policy.
29. Under the Council's proposed amendments to its policy, timeframes for buildings that have been issued with earthquake-prone notices are to be extended by an additional five years (giving owners a total of 15 years to complete remedial work). In these circumstances, it would not be inequitable to give an extension to our clients.
30. Furthermore, giving our clients an extension would be in line with the stated policy intent of the proposed extension to timeframes. The Council's discussion document for the amended policy notes the policy reasons for the revision are:

"Council experience of implementing changes in earthquake strengthening standards since the 1970s has been that:

...

- *Shorter timeframes have often resulted in poor urban amenity outcomes such as demolitions and creation of ad hoc car parks, boarded up buildings or visually inappropriate forms of strengthening.*
- *Longer timeframes have generally resulted in strengthening to a higher structural and visual standard. The longer timeframes better allowed owners to make financial provision for strengthening costs. Technical analysis of the benefit cost ratios of strengthening requirements support this conclusion, indicating that longer retrofit time periods can have higher benefit cost ratios."*

31. The same policy rationale applies to our clients' situation, given that our clients are seeking to redevelop the site appropriately rather than to simply board up the site or demolish it, leaving an empty site with security risk for surrounding tenants.

Financial implications

32. Another matter that the Committee may consider under the Council's Earthquake Prone Buildings Policy is the financial implications of the remedial work.
33. As Councillors will no doubt be aware, the property market is in recession, and development of a site will be difficult in the current market. Therefore, significant time and effort will be needed to gain funding.
34. The owners are currently in the process of finding an anchor tenant that will enable them to secure the funding needed to proceed with the demolition of the building and the redevelopment of the site. They have met with David Fisher from CB Richard Ellis, and George Wilkinson and Richard Burrell from Building Solutions to progress this work. They are also meeting with representatives of Wellington Realty.
35. The owners have taken considerable steps to proceed with redevelopment. However, they need more time to gain the necessary funding to comply with the Council's notice.

Conclusion

36. We believe that the owners have acted reasonably in addressing the earthquake status of the building. They have taken considerable and costly steps to reduce the occupancy of the building and the risk it poses to the public. They are also actively proceeding with plans for demolition of the building and redevelopment of the site.
37. Furthermore, we believe the original 2 year timeframe given in the section 124 notice was not appropriate for our client's situation, and did not take into account the effect of the Council's suspension of the section 66 notice.
38. In these circumstances, we believe a request for an extension until 30 June 2010 for the current section 124 notice is reasonable.

Yours sincerely



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Solicitor

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Email: sharyn.ryburn@buddlefindlay.com

28 June 2004

Mr P George
25 Hutt Road
Thorndon
Wellington

Dear Mr George

Section 66 Notices, Building Act 1991 - Premises 25 Hutt Road, Thorndon

Thank you for your letter dated 22 June 2004. I have considered your request to suspend the Section 66 Notice.

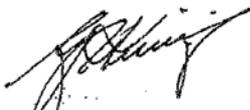
The new legislation, as proposed, will change the way that earthquake prone buildings are assessed and in the context of your building the need for the building to be strengthened will remain.

That said, until the implications of this new assessment criteria is fully understood deferring your proposal to strengthen the building does make sense.

I therefore agree to suspend the Section 66 Notice until the requirements of the new Building Act for earthquake prone buildings is determined in March 2005 or sooner should the assessment criteria for earthquake prone buildings be promulgated and released earlier.

I would expect at that time you take all immediate steps to comply with the earthquake strengthening requirements of this new Building Act.

Yours sincerely



George Skimming
Director
Building Consents and Licensing Services

Direct Dial 801-3271
Facsimile 801-3100
Email george.skimming@wcc.govt.nz
Website: <http://www.wcc.govt.nz/consents>

Appendix B-Copy of notice

Notice pursuant to s124 of the Building Act 2004 in respect of a building deemed to be earthquake prone

To:

Owner;
Chryso George
25 Hutt Road
Pipitea
Wellington 6001

Owner;
Peter George
25 Hutt Road
Pipitea
Wellington 6001

Occupier;
Flamingo Catering Service
25-27 Hutt Road
Pipitea
Wellington

Occupier;
The Fabric Warehouse
25 Hutt Road
Pipitea
Wellington

The National Bank
The Manager
PO Box 1393
Wellington

Address: The building situated at [25 Hutt Road](#), and more particularly being described as [Lot 1-2 Deposited Plan 4035](#), and being all the land comprised in Certificate of Title [WN8C/1256](#).

You are the owners of the building at the above address that has been classified by the Wellington City Council as earthquake prone in terms of s124 of the Building Act 2004. You are accordingly required by [30 June 2008](#) to either:

- (a) begin strengthening work to strengthen the building to a sufficient degree so that it is not earthquake prone; or
- (b) demolish the building.

A building consent must be obtained prior to strengthening or demolition work being undertaken. The building consent must be obtained and the work must begin before the expiry of the timeframe noted above.

Under s122 of the Building Act 2004, the meaning of earthquake-prone building is

(1) A building is earthquake prone for the purpose of this Act if, having regard to its condition and the ground on which it is built, and because of its construction, the building-

- (a) will have its ultimate capacity exceeded in a moderate earthquake (as defined in the regulations/below); and
- (b) would be likely to collapse causing-
 - (i) injury or death to persons in the building or to persons on any other property; or
 - (ii) damage to any other property.

Moderate earthquake has the same meaning as section 7 in the Building Regulations 2005 where-

‘...moderate earthquake means, in relation to a building, an earthquake that would generate shaking at the site of the building that is of the same duration as, but that is

one-third as strong as, the earthquake shaking (determined by normal measures of acceleration, velocity, and displacement) that would be used to design a new building at that site.'

The above mentioned building was issued with a notice under s66 of the Building Act 1991 classifying this building as earthquake prone. This s124 notice supersedes the former s66 notice. For further clarification see the 'Maximum Timeframe to Strengthen a Building' section of the Wellington City Council's Earthquake-Prone Buildings Policy.

If you disagree with the classification of this building as earthquake prone you may apply for a determination from the Department of Building and Housing under s177(e) of the Building Act 2004.

If you do not comply with the terms of this notice the Council can (but is not limited to) initiate a prosecution under the Building Act 2004 or put up a hoarding or fence to prevent access into the building pursuant to s124(1)(a) of the Building Act 2004.

Dated: 30 June 2006

**Katharine Wheeler
Building Permissions Manager
Building Consents and Licensing Services
Wellington City Council**

Appendix C-photos

Aerial photo of 25 Hutt Road



Photo of building

