
REPORT 3
(1215/53/IM)

EARTHQUAKE PRONE BUILDING POLICY: REQUEST FOR EXTENSION OF TIME - 238 THE ESPLANADE

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 238 The Esplanade, Island Bay.

2. Executive Summary

The applicant is an agent acting on behalf of the owner, Haley Hyon-Sun Fenwick.

The potential for collapse in an earthquake, resulting in injury, death or damage to other property is high. The single storey un-reinforced masonry building has been operated as a commercial mechanics Garage in the past but currently appears to be disused. The building fabric is in poor condition. The front façade is proximate to the footpath and the accessway to the residential properties at the rear of the site. Facades may collapse onto the footpath and accessway in the event of a moderate earthquake.

Having been identified as earthquake risk buildings in the mid 1970's, the owner was served with an earthquake prone building notice under the Building Act 1991 which she failed to comply with by the stated date. The Council has not taken enforcement action in respect of these notices.

A second notice has been issued to the owner in accordance with the Earthquake Prone Building Policy requiring that the building be demolished, or strengthening begin, by 30 June 2008.

The owner has requested a time frame extension of 18 months to the end of 2009 because the redevelopment project she wishes to undertake is currently not viable. There is no supporting documentation to show how this situation is expected to change in the intervening period so that it becomes a more viable proposition within the extended time frame being sought.

3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Decline the request for an extension of time related to 238 The Esplanade, 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.

The applicant seeks an extension to the timeframe set in the policy, and embodied in the notice subsequently issued under s124 of the Building Act 2004.

Ms Fenwick has been an owner of the property since it was subdivided into unit titles in 1989. An earthquake prone building notice was issued under the Building Act 1991 in July 2002 requiring work to be undertaken by December 2002. Ms Fenwick failed to comply with the notice. Council has received several pieces of correspondence from 2002 onwards agreeing that the building needs replacement and stating the intention to redevelop a 2 storey building with residential accommodation above a commercial use. Correspondence dated 9 December 2003 advised that an application for resource consent would be submitted within 2 weeks and the building consent would follow when that was approved. There is no record of a resource consent application.

In October 2004 Council officers inspected the building to determine if it was a dangerous building as defined by the Building Act 2004. Although it was found to be in a bad state of repair it was not considered to reach the threshold to be determined to be a dangerous building. Dialogue with John Cuttance, acting on behalf of the owner at the time, indicated that Ms Fenwick was seeking approval from the body corporate for re-development at that time.

As no application for resource or building consent was received in the interim, a second notice was issued in 2006 to Ms Fenwick in accordance with the Earthquake Prone Building Policy requiring that the building be demolished, or strengthening begin, by 30 June 2008.

Ms Fenwick has requested an extension of time to the end of 2009 because she submits that the re-development project she wishes to undertake is currently not viable. There is no supporting documentation provided to show how this

situation is expected to change in the intervening period so that it becomes a more viable proposition within the extended time frame being sought.

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 appears to be unoccupied at present, but the owner has made no comment in her written submission guaranteeing that it will remain so. It has a low theoretical occupancy as a Garage of approximately 4 persons. The building is however proximate to the footpath and access to the residential units to the rear of the property, and there is real potential for the building to collapse onto the footpath and accessway in an earthquake.
2	Importance of ensuring that each building is durable for its intended use.	There are real concerns about the state of repair of the building. The owner has indicated their intention to demolish the building and re-develop the site.
3	Importance of recognising any special traditional and cultural aspects of the intended use of the building.	There are no identified special traditional or cultural aspects of any of the buildings.
4	Cost of the building (including maintenance) over its whole life.	The owner has provided no costings. Maintenance has been deferred for a long time. The cost of demolition of a single storey building of this size is expected to be modest.
5	Importance of standards of building design and construction in compliance with the building code.	<p>An initial evaluation (IEP) has been obtained to assess the current level of strength comparative to a new building built to NZS 1170. This is the methodology included in the Earthquake Prone Building Policy.</p> <p>This building has been assessed at only 17% new building strength. The main concerns are:</p> <ul style="list-style-type: none"> • State of repair of the building fabric • No gap with the building to the North with potential for pounding • Lack of an adequate roof diaphragm to transfer loads to structural elements.

Extension Consideration (per Council Policy)		Analysis and Comment
6	Need to provide for the protection of other property from the risk of physical damage.	<p>This building is adjacent to a footpath and accessway to residential buildings at the rear of the property. It is a real possibility that any collapse of the facades would also endanger people and property on the footpaths and the roads. It would be possible for the Council to erect a hoarding to prevent entry to the building but closure of the footpaths and accessways is not feasible.</p> <p>The building has no gap between itself and the adjacent building to the north. There is therefore a potential for pounding to cause impact damaged to the adjacent building.</p>
7	Need to facilitate the preservation of building of significant historical, or heritage value.	This building is not listed on the NZ Historic Places register or as a heritage building in the District Plan.
8	Importance level of building.	This 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 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. More than 10 years have elapsed since the building was identified as earthquake risk. Ms Fenwick has owned the building and been aware of it's earthquake prone status for 19 years.
9	Building structure and strength ie the code that was used to design and construct the building	The building was built at a time before there were any structural design codes in New Zealand. The building has not been significantly altered since and the Council has no evidence that strengthening work has been undertaken. It is considered to be very significantly weak in comparison to new buildings and the type of construction and materials used means that it may be subject to sudden brittle failure.
10	Special characteristics of the building e.g. heritage or historic.	See above. No special characteristics have been identified.
11	Whether the building has already been strengthened along with the level it was	Although there was a building consent issued in 2003 for some temporary support for the gable wall, there has been no evidence provided that the

Extension Consideration (per Council Policy)		Analysis and Comment
	strengthened to and when the work was done.	work was carried out. No producer statement from the supervising engineer or application for a code compliance certificate has been provided to the Council. It is also noted that the work was of a temporary nature with an intended life of only 1 year. That time frame has past.
12	Financial Implications.	<p>The applicant contends that that the redevelopment project Ms Fenwick wishes to undertake is currently not viable. Ms Fenwick has informed the Council of her intention to demolish the building to re-develop the site over the last 6 years. There has been no supporting documentation provided to show why the project is less viable now than in the past, nor how this situation is expected to change in the intervening period so that it becomes a more viable proposition within the extended time frame being sought.</p> <p>Council officers believe the cost of demolition of this single storey structure to be modest.</p>
13	Ramifications if the building was to be demolished rather than strengthened e.g. loss of heritage for future generations.	The building has not been identified as being fabric worthy of preservation for future generations. Given the bad state of repair of the building the need to demolish this building is becoming urgent.
14	Availability of the appropriate people to do all the work.	The building pressure is easing in the city and contractors are likely to be available within a reasonable time frame.

5.1 Summary of Analysis against the Councils Policy considerations

Key matters for Councillor consideration of this application for an extension in timeframe to demolish the building are:

- This 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.
- There is no evidence that the building has been strengthened since it was built and the lack of maintenance over the years has left the building in a bad state of repair that is of concern.
- This 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 due to the bad state of repair, the potential for pounding and lack of roof diaphragm. The building has been assessed at 17% of new building strength.

Based on the above, and the knowledge that it is a relatively simple and quick process to obtain a building consent to demolish the structure, officers believe that an extension should be declined.

6. Conclusion

The building was identified as an earthquake risk in the mid 1970s. Ms Fenwick has owned the building for 19 years and was issued with an earthquake prone building notice under s66 of the Building Act 1991. This notice was not complied with. Further notices were issued in June 2006 under the Building Act 2004 in accordance with the Earthquake Prone Building Policy and the time to comply with the notice is due to expire on 30 June 2008.

Ms Fenwick has known of the situation for many years. She failed to fulfil her legal obligation to mitigate the danger posed by her building by not complying with notice issued under the Building Act 1991 by the stated date. Although there was a building consent issued in 2003 for some temporary support for the gable wall, there is no evidence that the work was carried out and no producer statement from the engineer or application for a code compliance certificate has been provided to the Council. It is also noted that the work was of a temporary nature with an intended life of only 1 year. That time frame has past. The danger to public and occupant safety has not been mitigated or removed, and the deferred maintenance on the building has allowed it to fall into a bad state of disrepair.

There are several pieces of correspondence with Ms Fenwick and her agents over the last 6 years where she has indicated her intention to demolish the building and re-develop the site. Her agents have in the past claimed that the reason the matter has not progressed is that the consent of the body corporate needs to be obtained. However, the matter appears to have stalled because of the re-development that Ms Fenwick proposes and not because of the demolition of the building itself. Officers believe that consent would be easily obtained from the body corporate to simply demolish the building.

Previous correspondence has indicated that Ms Fenwick is keen to retain the building until body corporate and resource consent is obtained for the re-development to protect existing user rights. The existing user rights relate to effects that are similar in character, scale and intensity. Re-development with a residential use would not be considered to fit this criteria and resource consent will be required for the proposed re-development. The user rights cease when the use is discontinued for a continuous period of more than 12 months. It is understood that there has not been a mechanics garage operating from the building for some time.

The demolition of the building does not require resource consent. The documentation needed for a building consent is very simple and could be provided in a matter of minutes. Officers are prepared to fast track the

processing of a building consent for demolition in order to facilitate Ms Fenwick meeting the time frames of the current notice.

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 should Ms Fenwick fail to demolish her building by 30 June 2008.

Contact Officer: *Claire Stevens, Team Leader Bylaws, 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

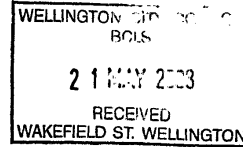
The recommendations in this paper are in accordance with the Earthquake Prone Building Policy adopted by Council on 31 May 2006.

Appendix A- Owners Submissions

Anton Fenwick, 1 Canfield House, Finchley Rd, London NW36LN, U.K. ph +44 207 482 8038 (wk) anton.fenwick@hia.co.uk

06 May 2008

Claire Stevens
Building Consents and Licensing Services
Wellington City Council
PO Box 2199
Wellington



Dear Ms Stevens

**RE Unit 7, 238 The Esplanade, Lot 2 DP 8333, (SRN 148687)
Earthquake re-strengthening 'Extension in timeframe'**

On behalf of Haley Fenwick, and as per our previous correspondence, please find attached drawings and images which outline the proposed redevelopment of the above site. This redevelopment would involve a change-of-use (to residential) which will require full compliance with the current building code, which would include structural integrity.

It would seem a preferable option, for all parties, if the building was upgraded to this higher level, rather than the minimum requirement of one third of the current regulations. However, the significant additional cost to carry out this proposal means the project is not currently viable, due to financial constraints. We are committed to developing the site, but need an extension of time for the appropriate level of funding to be reached. This is expected to occur within the next year, with a start-on-site date before end of 2009.

Any interim structural re-strengthening before this would delay the proposed development (due to loss of capital), and also be inadequate for the new scheme, which wouldn't be an efficient use of time or environmental resources for any party involved.

All things considered, we therefore request an 'extension in timeframe' for the structural re-strengthening on the grounds of 'financial implications' due to present financial constraints - with a commitment to start the proposed scheme by the end of 2009.

I would be more than happy to discuss this with you before any hearing, if you could let me know the best time to call.

Kind regards

Anton Fenwick

cc Haley Fenwick
39 Milne tce
Island Bay
Wellington

Appendix A- Owners Submissions

Anton Fenwick, 1 Canfield House, Finchley Rd, London NW35LN, U.K., ph: +44 207 482 2052 (wk), anton.fenwick@hfc.co.uk

23 May 2008

WCC Committee
Building Consents and Licensing Services
Wellington City Council
PO Box 2199
Wellington

Dear Sirs/Madams

**RE Unit 7, 238 The Esplanade, Lot 2 DP 8333, (SRN 148687)
Earthquake re-strengthening 'Extension in timeframe' Hearing Submission**

I would like to request an extension of timeframe, for the above mentioned building, to be considered on the grounds of 'Viability' and 'Costs of the building', as per appendix 2 of the Earthquake Prone Buildings Policy, May 2006.

For a number of years we have been committed to redeveloping and upgrading the current building to meet full building regulations and structural standards, but have been unable to do so to date due to financial constraints. A previous design was mooted in 2003 which involved building 2 units, and which would have allowed sufficient capital to be raised to commence construction, but this was rejected by the body corporate (which is made up by other residents of the same address) on the grounds of being too tall (somewhat dubiously, as it was within unit title height limits).

However, a new design was developed, which involved building one unit only. The relative increase in cost of building the one unit has lead to a consolidation period, between 2003 and the present, in order to raise sufficient capital to be able to carry out these works. This design has been sent to WCC for your information. It is estimated that work will be able to commence on site for this scheme by the end of 2009. Any interim strengthening work, which would only bring the building up to the minimum one-third current code requirements, would serve to delay the start date of the scheme until sufficient funds were raised once again. It is worth noting that this re-strengthening work will be invalid once work commences on the full development, which is not an efficient use of both environmental and financial resources.

I believe that allowing for an extension of time would be the most effective and efficient way for meeting WCC objectives of fully upgrading structurally unsound buildings to the current code. This will also save an enormous amount of personal resources in time, costs and materials for the owner.

I therefore request that an extension of timeframe to the end of 2009, by which time a full structural upgrade to current code requirements would have begun on site.

Yours sincerely



Anton Fenwick
On behalf of Haley Fenwick
(39 Milne Ave, Island Bay, Wellington)

Appendix B – Copy of Notices

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

To:

Owner;
Hayley Hyon-Sun
Fenwick
38 Milne Terrace
Island Bay
Wellington

Occupier;
The Occupiers of 240
The Esplanade
240 The Esplanade
Island Bay
Wellington

Occupier;
Anrus Four Limited
Formerly known as Country
Wide Banking Corporation
280 Queen Street
Auckland

Address: The building situated at [242 The Esplanade](#) and more particularly being described as [Unit 7 Deposited Plan 67242](#) and being all the land comprised in Certificate of Title [WN35C/637](#).

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.’

Appendix B – Copy of Notices

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 photograph of site at 238 The Esplanade



Photographs of building at 238 The Esplanade



Appendix C - Photos

