

In brief from  
**RAINEY COLLINS**  
LAWYERS

AGENT CARE

Summer 2009/10

**WELCOME** to the Agent Care edition of Rainey Collins' newsletter

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## Earthquake Prone Buildings Update

Wellington is located in one of New Zealand's most seismically active areas and according to commentators is well overdue for a reasonable sized earthquake. The Building Act 2004 set out the government's objectives for earthquake-prone buildings to be either strengthened or demolished. Each territorial authority is required to develop and enforce its own policy in relation to earthquake-prone buildings and Wellington City has recently updated its policy.

John and Sally purchased an apartment in a refitted heritage building in central Wellington. When they undertook their due diligence prior to purchase John and Sally looked at the Council records and title and discovered that the building had been earthquake strengthened when it was redeveloped, and that Council had contributed to this with a grant from its Heritage Incentive Fund. Based on this information, and having found nothing to worry them elsewhere, John and Sally purchased the apartment.

Having lived in their apartment for 3 years, they recently received a notice from Council advising that their building is considered Earthquake-Prone with moderate priority because theirs is an apartment building of less than 15 storeys and was built before 1965. John, Sally and many other members of their Body Corporate are both surprised and upset that their building does not meet Council's requirements, particularly as they feel Council had previously endorsed their building.

John and Sally feel trapped in that they can't sell their apartment for what they believed it to be worth before receiving the notice and they will need to come up with potentially tens of thousands of dollars to have their building meet Council's requirements.

They are also worried that even if the Body Corporate spends money now to upgrade their building, Council may require them to further upgrade the building sometime in the future, as has already happened.

The Earthquake-prone Buildings Policy 2009 has recently replaced Council's 2006 policy, which in turn replaced its 1998 policy. It is fair to expect that Council will review its policy on a similarly regular basis in future. The requirements will not remain static over time.

Council will continue to assess commercial buildings and residential buildings that comprise of 2 or more storeys and contain three or more household units. The determination for earthquake-proneness is, in general terms, less than 33% of the current seismic loading standard, meaning the building is likely to collapse in a moderate earthquake.

Once a building has been classified as earthquake-prone, strengthening work will be required, which will require a building consent. Council is encouraging building owners to strengthen beyond minimum requirements. Repairs beyond minimum requirements may future-proof a building against changes to Council's requirements, legislation or structural codes. Other benefits may include more favourable insurance premiums, increased marketability of the building, and general improved safety.

One of the significant changes in the 2009 Earthquake-prone Building Policy is extensions to the maximum timeframe to strengthen buildings. These timeframes are now between 10 and 20 years depending on the priority determined by Council. For many building owners or body corporate committees they will be able to budget such expenses into their mid to long term maintenance plans, and having a fund for such amounts may negate fears of potential purchasers.

For buildings that Council considers have heritage values there are grants available to building owners from the Heritage Incentive Fund to assist with repairs and maintenance.

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The grants can be used to pay for a conservation plan, which will give guidance on the best way to strengthen a heritage building without compromising its heritage values.

Sometimes with heritage buildings features like parapets and chimneys may increase the earthquake-proneness of the building. Council may be open to compromise and creative options to deal with such features. For example, the chimneys on Old Government House are made with polystyrene, so the building still appears authentic but the risk of the chimneys falling and causing injury or property damage during an earthquake is removed.

Council is checking 3800 buildings that it has identified as potentially unstable in a moderate earthquake, with 136 buildings so far confirmed as vulnerable. This process is not limited only to buildings in Wellington City. Hutt City Council

has also identified 88 buildings as requiring earthquake strengthening, and all Councils are required to have a policy in this area.

There are no easy answers available to John and Sally. The Body Corporate will have to undertake strengthening works, however they do have a reasonable amount of time to budget for the works and they may be able to obtain a grant from Council to help cover some costs. There may also be creative ways of retaining some of the building's heritage features and character. John and Sally would be well advised to lobby their Body Corporate to carry out works to the highest standard they can possibly afford to help future-proof the building and keep it attractive to purchasers.

## Agent Tip

Under the new Real Estate Agents Act that came into force on 17 November the rules make disclosure to both buyers and sellers of fundamental importance.

We recommend that agents ask all sellers whether they have been given any notices by Council in relation to earthquake-proneness.

For purchasers, agents should advise that appropriate enquiries should be made with Council with respect to buildings that contain more than three household units and are built before 1965, which may include a timber villa split into units.

## Christmas and New Year Settlement Dates

Both Agreements for Sale and Purchase are clear when settlement can take place.

- The **last day** to settle in 2009 is **23 December 2009**.
- The **first day** to settle in 2010 is **6 January 2010**.

We hope this is helpful. Please remember the days from 24 December 2009 and 5 January 2010 are not "working days" when writing up the special conditions for contract information.

Please also note that at Rainey Collins we will be closed from **5:00pm on Wednesday 23 December 2009** and will reopen to assist with your legal needs from **8:30am on Monday 11 January 2010**.

Need Help?

We are happy to field calls of a general nature to answer those little queries that come up from time to time, or to accept ideas for an issue you would like covered in our next edition.

We value your feedback and invite you to call us on 0800 RC AGENT (0800 722 4368) and ask for Fintan Devine, or email Sarah Blaney on sblaney@raineycollins.co.nz with any questions or ideas you may have.

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SARAH BLANEY