

New Rules for Strengthening of Earthquake Prone Buildings

A High Court decision released on 4 February, 2013 has changed the rules around the strengthening of earthquake-prone buildings. Anderson Lloyd Lawyers expert Mike Kerr offers some insight into the new regime. Property owners and insurers can now repair earthquake-prone buildings to 34% of the new building standards (NBS) rather than 67% as targeted by the Christchurch City Council.

This ruling reduces costs for insurers and building owners wishing to keep repairs to the minimum required. But property owners seeking quality tenants and good rental income may consider repairs to achieve 67% or more of the NBS as they compete against new buildings meeting 100% of the standards and even higher in the rebuilt Christchurch market.

The case was brought by the Insurance Council of New Zealand Incorporated (ICNZ) to challenge Christchurch City Council's Earthquake Prone Buildings Policy (the policy) which sets a target for structural strengthening of earthquake-prone buildings of 67% of the NBS. (The recent decision is *The Insurance Council of New Zealand Incorporated v Christchurch City Council, University of Canterbury and Body Corporate 423446* [2013] NZHC 51.)

Insurance policies generally require building repairs to be carried out to the relevant standard of the day. Therefore if the policy was valid, it would require insurance companies to spend significantly more money on claims to strengthen owners' buildings up to a target of 67% of the NBS. Submissions made in the case estimated the increased cost to insurers to repair buildings in Christchurch to that standard at several hundred million dollars.

Christchurch City Council policy

The policy was adopted by the council on 10 September, 2010.

The policy provided that for earthquake-prone buildings (generally those with a structural strength of less than 33% of the NBS) damaged in the recent earthquakes, owners must aim to strengthen the buildings to 67% of the NBS. Assessments would be made by the council on a case-by-case basis as to whether it is practicable for a particular building to meet that target.

The issues

The ICNZ argued that the policy was unlawful because it required strengthening to a higher level than regulations under the Building Act.

Under section 124(1)(c)(i) of the Building Act 2004, where a council is satisfied that a building is dangerous, earthquake prone or insanitary, it may give written notice requiring work on the building to "reduce or remove the danger".

An earthquake-prone building is defined by reference to s122 of the Building Act. If a building will have its ultimate capacity exceeded in a moderate earthquake and would likely collapse causing injury, death or damage to other property, it will be an earthquake-prone building.

A moderate earthquake is defined as one that would generate shaking one third as strong but of the same duration as shaking used to design a new building. Therefore, if a building's strength is one third or less of current building standards, it is considered "earthquake prone".

The arguments

In light of the above statutory regulations, the ICNZ argued that because a building is defined as earthquake prone if it fails to meet 34% of the NBS, the council can only require repairs up to that standard. Put another way, the ICNZ argued that once a building was brought up to 34% of the NBS, it was no longer "earthquake prone".

The council argued that s124(1)(c)(i) should not be read as limiting required strengthening of a building to 34% of the NBS, as the council's power is to require work to be carried out to reduce or remove the danger.

High Court findings

Justice Panckhurst found in favour of the ICNZ and determined that owners of earthquake-prone buildings may not be required to strengthen to a higher standard than that required to ensure they are no longer "earthquake prone" as defined in the current building regulations.

"It would be anomalous if territorial authorities could as a matter of policy utilise s124 notices to achieve a strengthening performance criteria higher than that used to define an earthquake-prone building."

However, the Judge noted that there is nothing to prevent the council encouraging earthquake strengthening of existing buildings to meet the 67% threshold. He also determined that where the only practicable method of strengthening a building to 34% of the NBS will in fact achieve strengthening to a higher level, then the council may insist on that method of construction.

Significance of decision

While this decision is advantageous to insurers, whose costs may be significantly reduced as a result of the lower standard which must be met, the decision may not find favour with some building owners.

For owners of earthquake-prone buildings with outstanding insurance claims, the insurers are now only obliged to strengthen the buildings to 34% of the NBS, and not aim for 67% under the policy. The council may not use section 124 notices to require strengthening to a level higher than 34% of the NBS and owners wanting to strengthen above this level will have to spend their own money to do so.

Owners without insurance claims only have to strengthen to 34%, thereby reducing their costs too.

As it is now discretionary for owners of earthquake-prone buildings to meet a building strength level above 34%, owners will need to weigh up potential benefits of higher earthquake strengthening levels.

The advantage of investing in rebuilding to a higher standard than the minimum required is the increased likelihood of tenancing the building, especially in a competitive market where there will be many new buildings built to 100% of the NBS or higher. Tenants are likely to be picky about their premises and enquire as to the NBS levels of a building in the post-quake environment.

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