

The Treasury

Treasury Advice Related to Modernising the EQC Act Information Release

December 2021

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Treasury Report: Coverage of mixed-use buildings under the Earthquake Commission Act: Policy proposals

Date:	16 January 2020	Report No:	T2019/4015
		File Number:	TY-2-1-17-2

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance Minister Responsible for the Earthquake Commission	Agree to the development of a Cabinet paper for your consideration, recommending amendment to the EQC Act definition of 'residential building' to include some common areas in the 50% test.	30 January

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Danijela Tavich	Analyst, Earthquake Commission Policy Team ^[39]	n/a (mob)	✓
Craig Fookes	Acting Manager, Earthquake Commission Policy Team	^[35]	

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: No/Yes (attached) OR Yes (iManage links)

Treasury Report: Coverage of mixed-use buildings under the Earthquake Commission Act: Policy proposals

Executive Summary

You have asked that amendments to the Earthquake Commission Act 1993 (the EQC Act) be introduced in 2020, focusing on the Act's definition of 'residential building', which sets out a test for determining whether a building is residential. A building must be residential to qualify for Earthquake Commission cover for the whole building.

The test involves calculating the total floor area of a building's dwellings as a proportion of the total building. If that proportion amounts to at least 50%, the building is deemed residential. We call this the "**50% test**".

We expect the amendments to cause a small number of mixed-use buildings multi-unit buildings (MUBs) that currently do not qualify as residential buildings, to qualify. The amendment should also ensure the 50% test is clear.

The lack of clarity and understanding around how the current 50% test applies and its effect for EQC cover can lead to MUB owners not understanding whether their building is fully insured by EQC until after a natural disaster event – depriving them of the opportunity to secure appropriate private insurance cover proactively.

We have completed stakeholder consultation and considered alternative options...

Our previous advice (T2019/3015) focused on amending the residential building definition to include **all common areas** used for residential purposes in the 50% test, as well as dwellings and their appurtenant structures. This would include areas such as lobbies and residents' car parking.

In effect, including all common areas would make more of a building's floor space 'residential', increasing the likelihood that a building will pass the 50% test. Further analysis has found that this approach may be difficult to implement due to ambiguity around how to define those common areas, for example, how to treat a roof that residents can walk on.

Stakeholder consultation has informed the assessment of alternative options, which include:

- **Aligning the treatment of common areas in the 50% test with the statutory definition of areas the EQC covers:** Including 'appurtenant structures' insured by EQC in the 50% test. This approach would include both the areas of the dwellings and residential areas outside of the dwellings, like storage lockers and residential car parks. Those areas would then be compared with the floor area of the whole building, to determine whether it passed the 50% test. It would be similar to including all common areas but slightly less complex, and aligned with existing EQC practice.
- **Removing common areas from the calculation:** Removing common areas from the 50% test completely, and comparing residential unit floor space directly with commercial unit floor space. This would remove the complexity of defining common areas, and removes them from the calculation.

...we now recommend aligning the 50% test with the areas EQC currently covers

We recommend that aligning the 50% test with the areas EQC currently covers would be the most effective way forward. This approach is preferable because it uses all of the EQC insured floor area in the 50% test, rather than just the area of the dwellings. Any outstanding

risks and ambiguity around implementation can be mitigated by the provision of detailed non-statutory guidance by EQC to support implementation.

If you agree, we will begin drafting a Cabinet paper on this proposal for your consideration.

Stakeholder consultation has also raised an interaction between the residential building definition in the EQC Act and the Fire and Emergency New Zealand levy. The Department of Internal Affairs will advise the Minister of Internal Affairs on whether the Fire and Emergency transitional regulations will adopt the amended EQC 'residential building' definition.

Recommended Action

We recommend that you:

- a **agree** that the EQC Act should be amended to align the 50% test in the 'residential building' definition with the areas of a building that EQC covers.

Agree/disagree.

- b **agree** to the Treasury developing for your consideration a draft Cabinet paper recommending amendments to the EQC Act based on this proposal.

Agree/disagree.

- c **agree** that the Cabinet paper should be lodged for consideration by the Cabinet Economic and Development Committee on 19 February 2020.

Agree/disagree.

- d **agree** to the Treasury beginning to work on drafting instructions for the Parliamentary Counsel Office.

Agree/disagree.

- e **note** that the Department of Internal Affairs will advise the Minister of Internal Affairs on whether the Fire and Emergency transitional regulations will adopt the amended EQC 'residential building' definition.

Craig Fookes

Acting Manager, Earthquake Commission Policy Team

Hon Grant Robertson

Minister of Finance

Minister Responsible for the Earthquake Commission

Treasury Report: Coverage of mixed-use buildings under the Earthquake Commission Act: Policy proposals

Purpose of Report

1. The purpose of this report is to:
 - Seek your approval to a proposed approach to amend the Earthquake Commission (EQC) Act 1993 definition of a residential building;
 - Seek your agreement to draft a Cabinet paper reflecting that that proposal, for your consideration.

Background

2. On 23 October, in a meeting with Treasury officials, you asked that amendments to the EQC Act be introduced in 2020, focusing on the definition of 'residential building'. You have submitted a request for an Earthquake Commission Amendment Bill 2020 to be included in the 2020 Legislation Programme (T2019/3531 refers).
3. We expect the amendments to cause a small number of mixed-use buildings (MUBs) that currently do not qualify as residential buildings, to qualify. The amendment should also ensure the 50% test is clear – a point that has been emphasised by stakeholders.

The EQC scheme provides cover to insured home owners

4. The EQC scheme provides a capped level of insurance to allow insured home owners to recover in the event of a qualifying natural disaster.
5. As the scope of the EQC Act is to cover residential buildings, the residential building definition is an important tool for ensuring EQC does not take on undue liability for commercial buildings that would not be consistent with the purpose(s) of the Act.

EQC covers dwellings, appurtenant structures, and services

6. Under the EQC Act, EQC cover has three components:¹
 - The dwelling(s);
 - Appurtenant structures used for household purposes;
 - Services (e.g., drainage, sewerage, etc).

A residential building must be made up of 50% dwellings

7. The Act's definition of residential building sets out a test for determining whether a building is residential. A building must be residential to qualify for Earthquake Commission cover for the whole building.
8. The test involves calculating the total floor area of a building's dwellings as a proportion of the total building. If that proportion amounts to at least 50%, the building is deemed residential. We call this the "**50% test**". An example is illustrated below. Note that

¹ See 'residential building' definition parts a, c and d in section 2 of the EQC Act 1993. Note part b refers to rest homes and is not relevant to this paper.

under the current definition the building depicted would not qualify as a residential building, as the dwellings make up less than 50% of the total area.

Figure 1: status quo approach to the 50% test



9. Non-residential buildings do not receive EQC cover for the entire building and may have less (or no) insured land. The areas covered by EQC for non-residential buildings with dwellings are limited to the dwellings themselves, structures appurtenant to the dwellings (both within and external to the building), and associated services. The area within a non-residential building not covered by EQC is subject to private insurance.
10. There is greater complexity in determining a repair strategy in cases where EQC only covers part of a building (i.e. in MUBs which fall below the 50% threshold). It can be difficult to reconcile who covers what between EQC and private insurers.

Problem definition

There is a general lack of clarity around how the 50% test applies to MUBs

11. Most MUBs are either clearly residential (>50%) or clearly non-residential (<50%).² It is only in the apparently few cases where MUBs fall either side of, and are close to the 50% threshold, where the 50% test appears to become problematic. This is due to two key factors:
 - lack of clarity about how the 50% test applies and its implications for EQC cover. This appears to be largely due to the fact that the 50% test only counts dwellings, whereas EQC cover includes dwellings, appurtenant structures, and services;
 - lack of understanding among brokers, insurers and residential property owners regarding the 50% test as it relates to MUBs.
12. Where a building is not clearly residential or non-residential, this general lack of clarity can lead to MUB owners not understanding whether their building is fully insured by EQC until after a natural disaster event – depriving them of the opportunity to secure appropriate private insurance cover proactively.
13. These issues were reiterated by stakeholders, and appear to have led to perceptions that MUBs are treated in an inequitable way by EQC when compared with standalone dwellings.

Policy intent and objectives

An amendment to the residential building definition should clarify the process

² Stakeholders emphasised that, although quantitative data is poor, their judgement is that fewer buildings will be affected as the majority of MUBs are clearly well above or below 50%.

14. Ideally, the chosen policy intervention should address the problems outlined above by ensuring 50% test is clear. To assist in designing a workable policy that fulfils this objective, we have used the following criteria as a basis for options analysis:
- Certain – creates certain outcomes, with affected owners able to understand what the outcomes will be.
 - Proactive – owners know whether a building is residential or non-residential prior to an event.
 - Equitable – treatment of MUBs is equitable compared with treatment of standalone dwellings, i.e., EQC cover should be proportionate for all residential building owners and consistent with the EQC Act.³
 - Efficient – low transactional and administrative cost.
 - Inclusive – can be operationalised for all forms of MUBs.
 - Robust – resistant to gaming, e.g., by developers of commercial buildings.
 - Aligned with existing legislation – as much as possible, align with the principles and methods of the current EQC Act.
15. We also expect the amendments to cause a small number of mixed-use buildings (MUBs) that currently do not qualify as residential buildings, to qualify.

Options analysis

16. Our previous advice focused on amending the residential building definition to include **all common areas** used for residential purposes in the 50% test, as well as dwellings. Stakeholder consultation has informed further options analysis, to test this approach as well as alternatives.
17. Consultation illustrated that there is no clear-cut solution or overall preferred option across stakeholders. The key message from stakeholders appeared to be that whatever the approach is, it should be clear so that people can understand their entitlements and source private insurance where necessary.
18. Overall, the options are:
- **Aligning the treatment of common areas in the 50% test with the statutory definition of areas the EQC covers:** Including ‘appurtenant structures’ insured by EQC in the 50% test. This approach would include both the area of the dwellings and residential areas outside of the dwellings, like storage lockers and residential car parks. Those areas would then be compared with the floor area of the whole building, to determine whether it passed the 50% test. It would be similar to including all areas, but aligned with existing EQC practice.
 - **Including all common areas in the 50% test:** Including all common areas such as lobbies, access corridors and residents’ car parking;
 - **Removing common areas from the calculation:** Removing common areas from the 50% test completely, and comparing residential unit floor space directly with commercial unit floor space. This would eliminate the complexity of defining common areas, and removes them from the calculation.

³ See section 18(1) of the EQC Act 1993 which states: “subject to any regulations made under the Act and to Schedule 3, where a person enters into a contract of fire insurance with an insurance company in respect of any residential building situated in New Zealand, the residential building shall, while that contract is in force, be deemed to be insured under this Act against natural disaster damage...”.

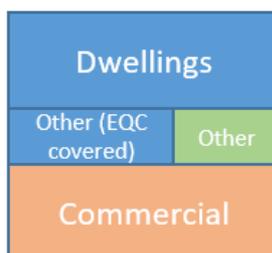
19. We also considered amending the residential building definition to focus on the ownership interest of a building rather than floor area. While this would be a simpler test, it would only work for unit title buildings, where residential to commercial ownership interest is assessed as part of determining ownership arrangements. We have discounted this option as a result.

Option 1: Aligning the treatment of common areas in the 50% test with the current statutory definition of areas the EQC covers

Alignment with EQC insured areas would improve the coherence of the 50% test

20. As noted above, EQC cover has three components:
- The dwelling(s);
 - Appurtenant structures used for household purposes;
 - Services (e.g., drainage, sewerage, etc).
21. Aligning the 50% test with EQC insured areas would address a key source of confusion regarding the 50% test by bringing the second component of EQC cover, appurtenant structures, into the test. We do not consider services to be appropriate for the 50% test as they account for little or no floor space in a MUB (these tend to be pipes and similar structures) and their inclusion would add significant complexity to the test.
22. We see aligning the 50% test with EQC practice as a major benefit as it will significantly improve the test’s coherence. In practice, this approach would likely add resident carparks, storage lockers, and similar areas to the 50% test in a MUB, and in some cases (depending on the building in question) would also incorporate shared lobbies (where appurtenant).
23. While this approach would closely match existing EQC cover entitlements, and would sometimes capture internal access ways to apartments, it would not reliably include internal residential access ways in the residential building test. The EQC Act’s treatment of access ways and other areas in a MUB is a separate issue that should be considered in the wider review of the EQC Act. We expect that including access ways for the purposes of the 50% test may raise MUB owner expectations that EQC cover will also extend to all access ways when this is not necessarily the case.

Figure 2: Aligning the 50% test with areas EQC covers



Option 2: Including all common areas

24. Including all common areas in the 50% test was previously our preferred option (T2019/3015 refers). This approach would make more of a building’s floor space ‘residential’, increasing the likelihood that a building will pass the 50% test. This option was supported by Marion Square Body Corporate, the Body Corporate Chairs Group, and the NZ Institute of Valuers on the basis that is equitable when compared with EQC treatment of standalone dwellings, where equivalent ‘common areas’ in a house would all be considered part of the dwelling by EQC.

Including all common areas would be complex to implement

25. Further analysis has raised the potential for uncertainty around how more ambiguous common areas should be considered if all common areas are included in the 50% test – for example, how areas of a roof that residents can walk on should be treated. This would make including all common areas a complex approach to implement.
26. There is also a risk that including all common areas could enable some buildings to qualify as ‘residential’ where such a classification may be inappropriate. For example, hotels with some permanent residents could become eligible for EQC cover, if large shared spaces such as lobbies are counted as residential space. This could incentivise developers to add a few dwellings to a primarily commercial building, to help qualify it for EQC cover once all common areas are counted.

MUB owners may wrongly assume that EQC will cover all common areas

27. Consultation has suggested that the lack of clarity around the 50% test is largely due to the fact that the areas counted in the test (dwellings) do not match the areas covered by EQC (dwellings, appurtenant structures, and services).
28. If we include all common areas in the 50% test, in some cases the common areas counted would match what EQC covers, but in some cases they would not. This is because of EQC’s treatment of what is ‘appurtenant’. In practice, EQC takes appurtenant to mean having an ownership interest combined with use for household purposes. In the MUB context, whether common areas such as internal access ways to an apartment are considered ‘appurtenant’ will depend on the use and legal structure of the building in question.
29. As a result, including all common areas would likely lead to MUB owners thinking EQC covers all common areas when this may not necessarily be the case. We recommend that, where possible, the 50% test should match the areas in a building that EQC covers to avoid such confusion.

Figure 3: Including all common areas in the 50% test



Option 3: Removing common areas from the calculation

30. Removing common areas from the 50% test would result in a test that compared residential unit floor space directly with commercial unit floor space to calculate the proportion of residential to non-residential space in a MUB.

Removing common areas would be counterintuitive

31. While significantly simpler, this approach has been discounted primarily due to its counterintuitive nature, as we expect that this option would only add to confusion around the test. Stakeholders also raised concerns of perceived equity issues associated with not including common areas in the test. This was a point strongly expressed by the Body Corporate Chairs Group and Marion Square Body Corporate.

Figure 4: Removing common areas from the calculation



The Treasury recommends aligning the 50% test with areas EQC currently covers

32. We recommend that aligning the 50% test with the areas that EQC currently covers would be the most effective way forward. This approach is preferred because of its alignment with EQC policy and practice. This in turn means a reduced chance of counting areas as residential for the 50% test that are not covered by EQC and the resulting confusion this can cause – as could occur when all common areas are included as a blanket rule.

EQC operational improvements and guidance can support implementation

33. There are two main considerations for implementing an amendment to the 50% test to align it with areas covered by EQC:
- outstanding complexity for assessing buildings on the margins of the 50% test. As noted above, EQC practice takes ‘appurtenant’ to mean having an ownership interest combined with use for household purposes. However, there is no definition for what constitutes ‘household purposes’ in the EQC Act, or supporting case law.
 - the possibility of bringing inappropriate buildings, such as hotels, into residential status.
34. The first of these considerations can be addressed through the development of detailed non-statutory guidance by EQC. Improved guidance can support more certain outcomes by ensuring owners, brokers, and insurers are informed upfront of the EQC cover-related risks associated with purchasing an apartment in a MUB. This may encourage owners, brokers and insurers to take proactive measures to determine whether a building would meet the 50% test and purchase insurance accordingly. Guidance could include recommended processes for insurers for gathering and assessing information related to the 50% test at the time of policy inception or renewal.
35. This guidance can be developed by EQC during the Bill’s statutory process, to be published by 2021 to support the Bill’s commencement.
36. The second consideration, bringing in buildings such as hotels to residential status, cannot be mitigated through guidance as it is a regulatory issue which relates to the scope of EQC cover. However, we consider the effects of this risk will be minor, as less buildings are likely to become ‘residential’ as a result of aligning the 50% test with areas EQC covers, than if we were to include all common areas in the test. Further, as

most buildings are clearly residential or non-residential, we expect only those on the margins to be affected by the amendment.

37. EQC have also noted that there are a number of operational improvements that will improve clarity with the current 50% test, such as:
- increased educational outreach;
 - better partnering with insurers, including information sharing and supporting the underwriting process, and;
 - improved auditing to reduce ex ante errors in MUB classification.
38. EQC advise that these actions would likely be progressed as part of longer-term changes in EQC's interaction with insurers. It is unlikely that these measures alone would fully address the issues that an amendment to the residential building definition will target, but they can support implementation.

Risks

Affected building owners may consider that aligning the 50% test with EQC cover does not go far enough

39. Affected building owners may think that aligning the 50% test with areas covered by EQC does not go far enough to align the treatment of MUBs with standalone dwellings. This was expressed by the Body Corporate Chairs Group when discussing the options. This criticism would likely be on the basis that all common areas in a standalone dwelling should, in their view, be covered by EQC and thus should be counted in the 50% test.
40. This risk could be mitigated by publicly presenting this approach as an interim measure, and expressing that further consideration can be given to the residential building definition, including related issues that stakeholders are interested in such as whether 50% is the right threshold and the definition of 'self-contained', as part of the wider review of the EQC Act.
41. If you consider that aligning the 50% test with the areas covered by EQC does not go far enough, we recommend that including all common areas would be a preferable alternative in comparison to the other options that we have assessed. However, we do see risks in progressing this approach, as detailed above, and do not recommend taking this forward at this stage – though it could be considered as part of the wider review of the Act.

Public perceptions may call for prioritising more urgent matters facing multi-unit buildings

42. There is a risk that, once public, this work will provoke increased calls for the government to prioritise addressing the broader issues facing multi-unit buildings over what may be considered to be a minor issue.
43. These risks can be further mitigated by clear public communication that the Treasury has a parallel work stream underway on insurance markets, focusing on affordability and availability of insurance.

Consultation

44. We undertook targeted stakeholder consultation over December 2019 to early January 2020. Those consulted included EQC, Ministry of Housing and Urban Development (MHUD), Department of Internal Affairs (DIA), Insurance Council New Zealand, IAG NZ, AON NZ, the Body Corporate Chairs Group, Survey and Spatial New Zealand (formerly New Zealand Institute of Surveyors), New Zealand Institute of Valuers, Wellington City Council, Crombie Lockwood, and the Marion Square Body Corporate.⁴
45. Stakeholders presented a range of differing views on the topic and various options, however in the main were broadly supportive of the policy intent. A summary of feedback received is attached at Appendix 1.
46. Stakeholders took the opportunity to comment on related matters such as the definition of self-contained dwellings, and whether the bright-line 50% threshold was the right setting for the test. We advise these matters can be best explored through the wider review of the EQC Act.
47. Stakeholders also commented on the broader issues facing multi-unit buildings, particularly in relation to the UTA. We have advised MHUD of this feedback as the administering agency of the UTA.

DIA raised implications for Fire and Emergency New Zealand revenue

48. Through our consultation process we became aware of the interaction between the residential building definition in the EQC Act and the Fire and Emergency New Zealand (FENZ) levy. The current transitional FENZ levy regime uses the definition of 'residential building' in the EQC Act to calculate the FENZ levy.⁵ The levy regime is therefore linked to the EQC Act definition for the duration of the transitional period (currently, until 1 July 2024).
49. Unlike EQC, changes to the classification of a building from non-residential to residential will affect annual FENZ levy revenue. Any change to the residential building definition in the EQC Act which leads to an increase in residential buildings would reduce FENZ levy revenue.⁶ While the number of properties changing classification from non-residential to residential is expected to be quite low, the scale of the impact on FENZ's levy revenue is less clear. It may be that the commercial entities in these properties were contributing significantly to the FENZ levy.
50. There is also a risk that, should the FENZ regime preserve the current residential building definition rather than adopt the amendment, there will be two separate residential building tests. This could create administrative complexity for insurers, brokers, and building owners, as both tests will apply to a single building for different purposes.
51. DIA will advise the Minister of Internal Affairs on this matter. Should DIA choose not to adopt the amended EQC Act definition of residential building, an amendment to the Fire and Emergency New Zealand Act 2017 will be required.⁷

⁴ The Marion Square Body Corporate made a submission on the issue of non-residential mixed-use to the Select Committee that considered the Bill that became the Earthquake Commission Amendment Act 2019.

⁵ cl 24, Schedule 1, FENZ Act 2017

⁶ Residential buildings are subject to fire levy at a rate of 10.6c per \$100 insured, capped at an insured amount of \$100,000 per dwelling. Non-residential buildings are also subject to fire levy at a rate of 10.6c per \$100 insured, but no capped insured amount applies.

⁷ See Subpart 3 of Schedule 1

Next Steps

52. We recommend that the EQC Act should be amended to align the 50% test in the 'residential building' definition with the areas of a building that EQC covers.
53. If you agree, we will begin drafting a Cabinet paper. We propose the following Cabinet dates for the paper:
 - Cabinet Economic Development Committee (DEV) on 19 February 2020;
 - Cabinet on 24 February 2020.
54. We will also continue working with DIA to resolve FENZ interactions, and begin work on preparing drafting instructions for the Parliamentary Counsel Office (PCO).
55. Subject to your and Cabinet's agreement to the policy proposals, we aim to issue instructions to PCO by the end of February 2020. This is in line with Cabinet Office Circular CO (19) 7, which states that for a bill to be introduced before the election, instructions need to be provided to the PCO no later than by the end of March 2020.

Appendix 1 – Summary of feedback received through consultation

Crown

Stakeholder	Key points	Response
EQC	<p><i>Public education problem</i></p> <ul style="list-style-type: none"> There is a need for clarity on “whose problem” the current definition under the Act is. In 2019 EQC received around 300 queries to its EQC cover inbox. Around 10-15 percent of these were for mixed-use buildings, predominantly from brokers. The majority of these enquires would be taking place either when new policies are being written or if for some reason a review of the cover. The key themes included: <ul style="list-style-type: none"> Mixture of owner occupied and short-term rental scenarios (including Airbnb, etc) Residential shared spaces and the effect on the dwelling calculation over 50% of the building Number of EQC levies applicable – what constitutes a dwelling EQC cover on units not sold at time of placing the insurance This highlights the need for better education of residential property owners on the nature of the risks that they are entering into when buying a mixed-use building or a portion of one (i.e., an apartment). Similarly, there is an obligation on insurers and insurance brokers to advise and sell the most appropriate product to meet the needs of the insured parties. 	<ul style="list-style-type: none"> We agree that public education is one part of the problem, and agree that there are due diligence obligations on owners, brokers and insurers. We have incorporated this in our analysis. However, we consider this to be only one part of the problem – the 50% test is also challenging for brokers, insurers and those insured to understand as it does not match EQC cover. Better alignment between the two will significantly simplify the communication and understanding of the two.
	<p><i>Small scale of issue</i></p> <ul style="list-style-type: none"> In EQC’s experience it is extremely rare to need a surveyor to determine the 50% residential test following a claim. The majority of MUB’s are clearly <50% or >50% based on reasonably available and reliable information. It is only the few MUB’s which fall either side of and are close to the 50% threshold which we may need to consider a surveyor but only where it is unclear from the available information and material to the claim outcome. 	<ul style="list-style-type: none"> Agree. Incorporated in our analysis.
	<p><i>Alternative options</i></p> <ul style="list-style-type: none"> For completeness, there are two alternative options that could be considered. These are removing the 50% test (i.e. EQC would always only cover the residential dwelling area and any appurtenant buildings/structures) or increasing the 50% test (the issues relating to the 50% test would remain, but fewer buildings would become residential than under the current definition). Tighter controls on the information gathered by insurers in relation to MUBs is another option to reduce uncertainty and enable EQC to better support policy writing, rather than our current reactive technique. 	<ul style="list-style-type: none"> We agree that the proposed options exist for completeness but we see raising the 50% threshold to be out of scope. This can be considered further as part of the wider review on the EQC Act. Regulatory measures for tighter controls on information gathered by insurers is out of the scope of the Bill – which is focused on amending the definition only. Better guidance could be provided to insurers and homeowners about what information about MUBs should be gathered proactively to inform the residential building test in the event of a claim.
	<p><i>Preference for one test methodology</i></p> <ul style="list-style-type: none"> Whatever the considerations are, they should be the same for all residential building types under the EQC Act. 	<ul style="list-style-type: none"> Agree, reflected in recommendation against an approach based on ownership interest.
	<p><i>Risk transfer to EQC and effects on premiums</i></p> <ul style="list-style-type: none"> Qualitative analysis should be undertaken for each option on the risk transfer and how this should be reflected in EQC premiums. MUB owners are likely to benefit more than a standalone dwelling owner when compared against the same premium paid by both (acknowledging this may be different for land cover). The intention of the EQC Act is to cover residential buildings so any changes that may increase the cover for commercial areas of a building should be considered very carefully. 	<ul style="list-style-type: none"> In our view, our recommended option responds to these concerns, by aligning the 50% test with areas EQC cover, the test improves equity between treatment of MUBs and standalone dwellings. We agree there is a risk of increasing EQC’s liability for commercial units in a residential MUB, though this risk is low due to the expected small number of buildings that will become residential from a change in policy. We can revisit this as part of the wider review of the Act.

MHUD	<ul style="list-style-type: none"> On the whole MHUD are comfortable with Treasury’s analysis and recommendations. MHUD are not concerned that an approach based on UTA ownership interest would cause any strain for the UTA, and support measures to incentivise MUBs to be unit titles. The improved non-statutory guidance is important – especially given the UTA requirement for buildings to have full insurance. MHUD would strongly support addressing the treatment of access ways under the EQC Act as part of further policy work. 	Noted.
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Brokers and insurers

Stakeholder	Key points	Response
ICNZ	<ul style="list-style-type: none"> ICNZ see merit in an ownership interest based approach, but note there is a risk of confusion if the change is not well communicated. The number of residential units in a building should still be provided to the insurer for FENZ levy purposes. ICNZ agree it is important to consider alignment between the 50% test and what EQC actually covers in relation to MUBs. ICNZ also note that a more proportional approach to the residential building test might address inequity associated with the bright-line application of the test (i.e., whether a building is 49% or 51% residential has a significant impact on its EQC cover for all unit owners). Valuers are the only profession that should be able to determine the EQC 50% test with the provision of the property valuation that is received by the insurer. ICNZ aren’t aware that the existing system is the subject of much “gaming”. Brokers and body corporate managers do their best to supply accurate information. The implications of “Airbnb” type accommodation needs to be considered. There is the potential for misalignment with EQC cover should a unit change from residential to non-residential over the course of a year. Airbnb implications are currently being considered between ICNZ and EQC as part of a review of the EQC Guide for Insurers. 	Noted
Aon NZ	[26]	Noted.
IAG	<ul style="list-style-type: none"> It is a rare occurrence to mistake a commercial building for residential. Marion Square is a unique case given the design of the building, but most other unit titles are never really that close as a proportion and are usually clearly residential or commercial. Whatever the rule is, it just needs to be clear. Consistency of treatment between a MUB and residential homes seems like the right outcome. There is a need to consider FENZ legislation overlap. <p>[26]</p>	Noted.
Crombie Lockwood	<ul style="list-style-type: none"> Brokers do pay attention to the residential or non-residential status of a MUB as it has a massive effect on the premiums in respect of the Fire Levies. It does not affect the premiums in respect of the EQC levies. It is uncertain whether Insurers take this into account when setting rates – if a building meets the 50% test, then the EQC layer applies to the entire building, rather than just the residential portion, so this has an impact on how claims are managed and possibly how rates are set. It also impacts on how the EQC excess structure is implemented. Having clarity on this prior to a claim would be helpful for all parties. Customers do express concern and uncertainty about their status as residential or non-residential, as we are generally unable to get clarification from the EQC until after a claim has occurred. If we could get confirmation from the EQC at the time of writing a policy as to whether or not a building meets the 50% test then this would solve this problem. The 50% test in itself is fine as a benchmark, the issue is with the uncertainty of how this is calculated. Regardless of whatever benchmark is put in place, we need sound and clear guidelines as to what meets the benchmark and what doesn’t. And where a property is borderline, then we should be able to discuss this with EQC and agree where a property fits prior to placement. This then gives brokers, underwriters and clients some clarity of how a claim should be managed. 	Noted.

Affected building owners

Stakeholder	Key points	Response
Body Corporate Chairs Group (BCCG)	<ul style="list-style-type: none"> Issues around the residential building definition tend to only come up at claims time. BCCG have heard of buildings in a similar position to Marion Square but are not aware of details. BCCG favour either including all common areas or a value-based method, as these approaches appear to be the most fair, in particular as they provide the most fulsome calculation of the residential components in a building required to live there (such as carparks, storage lockers, etc). BCCG do not support including only some or no common areas on the basis that failing to account for such residential components outside a dwelling is seen as counterintuitive and unfair. 	Noted. The wider review of the EQC Act can consider whether access ways should be included in how the 50% is determined and in EQC cover.
Marion Square Body Corporate (MSBC)	<ul style="list-style-type: none"> MSBC are firmly of the view that the spaces which owners, and only owners, must use to access apartments must be included in the calculation of residential status. A common sense approach needs to be taken recognising the intent of the EQC legislation which is to ensure a level of protection for residential home owners in the event of a natural disaster. Owners see the UTA ownership interest as a good basis for determining if a building is residential. This is a logical way to understand the use of a building, linking to owners' understanding of what they are purchasing, cost shares, and how the building operates. MSBC strongly endorse this approach. Dropping shared spaces out of the test would likely not help the situation in Marion Square's case. It seems illogical to drop out areas that are needed by residents to access their dwellings. Any new system should be more certain and predictable, and knowable in advance of a claim, but should also be perceived as fair and reflecting the reality of a building's design (e.g. excluding public residential areas would not reflect the reality of the residential function of those areas). Residents and Commercial owners should not be forced to take private insurance on a building and not know what EQC will and won't cover and therefore not take the cover that best protects them. It's all about making informed decisions, no parties are able to do this right now. 	Noted. The wider review of the EQC Act can consider whether access ways should be included in how the 50% is determined and in EQC cover.

Practitioners

Stakeholder	Key points	Response
Survey and Spatial NZ (formerly institute of surveyors)	<ul style="list-style-type: none"> It is usually obvious whether a building is residential or not. Surveying tends to come in in areas of ambiguity. On the face of it removing common areas from the 50% test would reduce complexity, so would using the ownership interest as determined under the UTA. 	Noted.
NZ Institute of Property Valuers (NZIV)	<ul style="list-style-type: none"> A value-based method is not supported because it does not reflect the actual use of a building, which changes over time. Including all common areas is supported because it is most equitable when comparing this to the treatment of a standalone dwelling under the EQC Act. NZIV consider a way forward to be tying the test to the resource consenting process under the Resource Management Act 1991, to give more certainty about whether a building is residential by determining this at the consenting stage. NZIV consider that existing international measurement guidelines used for apportioning common areas (such as lobbies) can be applied in a methodology to support the change in the EQC Act. Issues not covered in existing guidelines can be worked through as part of developing EQC guidance. This would support standardisation and support consistency between a valuer's assessment of the 50% test in a given building and EQC's position on whether it meets the threshold at claims time. An option for building owners could be to ask a valuer to undertake the 50% test as part of the valuation process which must take place for the purposes of the FENZ levy. It is likely that adding the 50% test would increase the cost of the valuation the first time this occurs, but so long as building use does not change, the previous proportions would likely stay the same year to year. 	Noted.