

Repairing and rebuilding multi-unit residential buildings

Information for homeowners

April 16, 2014

Introduction

The Ministry of Business, Innovation and Employment (MBIE) has released technical guidance on repairing and rebuilding multi-unit residential buildings in Canterbury. The guidance applies to single or double-storey multi-unit buildings, constructed together in a row. Much of the guidance may be applicable to other multi-unit buildings, but some buildings may require alternative repair approaches.

The guidance will help engineers and designers to complete a multi-unit repair and rebuild, and ensure that this work meets the requirements of the NZ Building Code. The guidance will also help insurers, Project Management Offices and loss adjustors resolve multi-unit shared property claims.

The multi-unit building guidance is part of MBIE's ongoing technical guidance and support for the residential rebuild in Canterbury. The guidance is highly technical and challenging, and is aimed at engineers and building professionals, rather than homeowners. However, if you own a multi-unit home, there are a range of issues outside the Building Act that you need to understand before your unit or flat is repaired or rebuilt.

The Canterbury Earthquake Recovery Authority, Christchurch City Council, Earthquake Commission, Insurance Council of NZ and MBIE have jointly prepared this information to help you understand and resolve some of these issues. You should also seek external assistance if you need clarification on any of these issues. Contact details about where to find help are included at the end of this document.

Getting started

If you own a multi-unit property that needs to be repaired or rebuilt we recommend you:

- Read your insurance policy and talk to your insurer.
- Talk to your affected neighbours about damage across all of the units and how they are going to progress repairs; you need to work together.
- Look at the title to your property to check the ownership structure and to be aware of the particular matters noted on your title. Look at and understand your rights and obligations under your Memorandum of Lease or unit title constitution document. The legal and insurance steps to be followed depend on whether you are in a cross lease, unit title or other ownership arrangement.
- Seek legal advice if you do not understand your rights and obligations.
- Work with your neighbours and their insurers and EQC to understand what process is planned for the assessment and repair/rebuild of damaged units, and what decisions you may have to make.
- Contact the Residential Advisory Service (www.advisory.org.nz or 0800 777 299) if you have questions about your multi-unit repair or rebuild.
- Contact the Canterbury Support Line (0800 777 846) which will refer you to appropriate services.
- Read this information to find out more about the repair or rebuild of your property.

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Property law issues

Multi-unit buildings have shared property ownership structures which can be quite complex to understand. These ownership structures may apply to dwellings in a multi-unit building or to standalone or joined dwellings on the one site. In some cases, it may not be obvious that there is a shared property ownership structure in place, for example, where the external features (such as fences or driveways) of two dwellings give the appearance of two distinct properties.

Before proceeding with any repair or rebuild of your dwelling in a multi-unit ownership structure, it's important to be aware of your property arrangements and the documents that detail those arrangements.

You also need to be aware that changes from building work might cause the unit/flat footprint to change and, in some cases, the height, which might affect your property title and require the update of documents including:

- the lease and flat plan in a cross lease arrangement; or
- the redevelopment of the unit plan (via an amended or new unit plan) if you are part of a unit title arrangement.

1. What types of ownership arrangements do multi-unit buildings have?

Multi-unit ownership structures include:

- **Cross leases** where the owners jointly own the land and each leases a flat on the land from the joint owners, under a long-term lease. A memorandum of lease sets out the specific arrangements that apply.
- **Unit titles** where each owner owns their principal unit and has a shared interest in the common property, which is governed by a body corporate under the Unit Titles Act 2010.
- **Company lease** where the multi-unit building is owned by a company and each owner has the right to use a unit under a lease or licence through ownership of particular shares in that company.
- **Fee-simple** where each owner owns their unit and land, but may also have connections to other properties through easements or other legal interests.

2. How do I find out what type of ownership arrangement I have?

Look at your Certificate of Title¹. This will show the type of property interest you have. Examples of the way in which the Certificate of Title may record property interests are:

- A cross lease title will usually refer to, for example, "Lease of Flat 1 and Garage of Flat 1 with Flat 1 DP XXXX Term 999 years commencing on [date] Composite CT CBxxx/xxx issued" and "Lease of Flat 2 DP XXX Term 999 years commencing on [date] Composite CT xxx/xxx issued" under the Interests section on the title.

¹ This is held at Land Information New Zealand (LINZ). You can order this for a fee through the LINZ website – <http://www.linz.govt.nz/survey-titles>, or ask your lawyer, surveyor or other consultant to get this for you.

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- A unit title will often refer to, for example, “Unit A” and contain phrases referring to “Unit Plan” and “Supplementary Record Sheet” and “Unit Titles Act”.

These are examples only and there is a combination of information on the titles that define the legal ownership of a particular property. It’s advisable to ask your lawyer what kind of ownership arrangement you have. If you don’t have access to a lawyer, contact the Residential Advisory Service for assistance.

In Canterbury, cross leases are the predominant type of multi-unit ownership arrangement, followed by unit titles which typically comprise townhouse developments. Company share and fee-simple joined properties are less common forms of multi-unit ownership.

Further information about cross leased property:

3. What is a flats plan?

A flats plan is the subdivision or survey plan attached to a Certificate of Title for a cross leased property. It usually shows the building outline or footprint (eg, Flat 1 or Area 1) and often shows accessory buildings and other features (eg, decks) as well as any exclusive use areas and common property. Other than the flat, exclusive use areas often include an area surrounding and immediately adjacent to the flat, and may include other buildings such as separate garages. Areas of common property are parts of the building or land shared by the owners, such as a driveway or laundry. The flats plan is a formal survey document that is lodged with Land Information New Zealand (LINZ).

4. How accurate is a flats plan with respect to building layouts?

Some flats plans may have been prepared many years ago. Over the years, different methods of drawing and levels of detail have been used for these plans so they may not contain the same level of accuracy as would be applied today. In addition, accessory buildings (eg, sheds) or extensions (eg, conservatories) may have been added to the property over time resulting in a flats plan that is out of date. Technically, the flats plan should reflect the existing building layout and should have been updated to incorporate any amendments that have been made to the buildings or their arrangement on site.

5. When is a new flats plan needed?

Before any rebuilding or repair work on the site, you should check with a surveyor and/or lawyer on the status of any cross lease and implications for that repair or rebuild. They can advise if there are problems with the existing title and if it will become defective following the building work. Generally, if the footprint of the flat expands beyond the building footprint shown on the plan because of the rebuild or repair work, there will be a technical defect in the title. The only way to correct that defect is to update the flats plan. In some cases, this will also apply if the height of the flat increases.

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6. How does the flats plan get updated?

Updating a flats plan requires re-survey of the site and preparing a new flats plan, together with new lease documentation. Subdivision consent also needs to be obtained from Council (and the consent conditions met) before all of the documents can be lodged with LINZ to request a new title.

7. Who is responsible for updating a flats plan?

The owner is responsible for ensuring that the flats plan is correct and, if necessary, that it's updated. This includes any previous defects (for example, arising from the addition of a new structure before the earthquakes) and any changes to the building footprint from the repair or rebuild. In some instances, and depending on your insurance policy, your insurer may pay for some or all costs associated with the flats plan correction (ie, if it's due to the reinstatement methodology applied by the insurer for earthquake damage). You will need to get the consent of the other owners before you can carry out the process of updating the flats plan.

The costs for updating a flats plan include re-surveying the site to redefine the building outline, obtaining relevant Council consents, new lease documentation, completions certificates, LINZ registration fees and legal fees.

8. What happens if the flats plan is not updated?

If the flats plan is not updated, your title will be defective. The most common time that a defective title might become a problem is when one of the owners in the building wants to sell their flat. A defective title in this context usually means that the title does not apply to all of the buildings on the site. A defective title may mean that a bank will not lend to a potential purchaser.

You should talk to a lawyer about the implications if you decide not to update the flats plan following the repair or rebuild of your unit.

9. If my house has been earthquake damaged and will be repaired by my insurer or EQC, will they pay to update the flats plan?

Not necessarily, it will depend on what created the need to change the flats plan and whether the insurance policy covers this cost. For example, an insurer may not pay to update the flats plan if it was already defective and not due to the building work to repair earthquake damage.

Further information about unit titled property:

10. What is a unit title?

Unit titles arrangements, like cross leases, are used where more than one household unit is on the same piece of land. However, unit titles allow the freehold ownership of the residential unit and any accessory unit associated with it (eg, carport, garage and exclusive use area). The remaining areas on the site and the air space above the units are owned on a shared basis as common property. Each unit has a unit entitlement, which determines an owner's share in the common property, voting rights and contribution to the body corporate.

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11. What is a unit plan?

The unit plan is a survey plan that shows each principal unit, accessory unit and the common property. The unit plan is lodged at LINZ and is a formal document.

12. What does a body corporate do?

If your property is unit titled you will have automatically become part of a body corporate when you purchased the property. The body corporate is a bit like a company that looks after your property. Depending on the number of units on the site, there may also be a body corporate committee. Under the Unit Titles Act 2010, the body corporate has a range of powers and responsibilities, including owning, and being responsible for, maintaining the common property on the site and arranging replacement body corporate insurance for all units. The body corporate also has to hold meetings and/or pass resolutions before some steps can be taken. It collects levies (money) from unit owners to pay for costs such as common property maintenance, insurance and administering the body corporate.

Some insurance matters are the responsibility of the unit owner, such as chattels insurance and mortgage redemption insurance. Note also that specific insurance policies or covenants may apply in each agreement.

13. When is a new unit plan needed?

Any change to the physical shape of a unit will require the formal redevelopment process under the Unit Titles Act 2010 including the consent of the body corporate. This will require either an amended unit plan or a new unit plan, depending on the changes being made.

14. How does the unit plan get updated?

Any redevelopment under the Unit Titles Act 2010 will require survey work to be done. Depending on the extent of change to a unit, an amended or new unit plan will be required and specific requirements of the Unit Titles Act 2010 will need to be met. Subdivision consent from the council will also be needed, along with approval from, and involvement of, other affected unit owners and/or the body corporate. As is the case for updating a flats plan under a cross-lease, you will need the help of a surveyor and a lawyer to complete the preparation and registration work to amend or lodge a new unit plan.

15. Who is responsible for updating a unit plan?

If the changes due to the repair or rebuild only require an amendment to the unit plan, the owners of the affected units will need to lodge the application with LINZ. The body corporate will also be involved in this process, for example, by providing required certificates.

If a new unit plan is required, the body corporate is responsible for lodging the application. During that process, it needs to get approvals from owners and pass required resolutions. In some instances, and depending on the applicable insurance policy, your insurer may pay for some or all costs associated with the unit plan correction if the need to correct it is directly related to the repair or rebuild methodology applied by the insurer for earthquake damage.

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The costs for updating a unit plan include re-surveying the site to redefine the units and other defined areas (eg, common property), obtaining relevant Council consents, meeting the Unit Titles Act 2010 requirements, completions certificates, LINZ registration fees and legal fees.

16. What happens if the unit plan is not updated?

If the plan is not updated, the title will be defective. The most common time that a defective title might become a problem is when one of the unit owners wants to sell their unit, however the issue may arise at other times through the body corporate. A defective title may mean that a bank will not lend to a potential purchaser. Given obligations on the body corporate, it may insist on prompt rectification of this issue. You should talk to a lawyer about the implications if you decide not to update the unit plan.

17. If my house has been earthquake damaged and will be repaired by my insurer or EQC, will they pay to update the unit plan?

Not necessarily, it will depend on what created the need to change the unit plan and whether the insurance policy covers this cost. For example, an insurer may not pay to update the unit plan if the unit plan was already defective and not due to the building work to repair earthquake damage.

Insurance issues

18. What are the current insurance responsibilities for cross lease properties?

Generally, the Memorandum of Lease for a cross lease property will require the owners to have full replacement insurance and, if their unit is earthquake or fire damaged, to repair/rebuild to the satisfaction of their neighbour(s). This is a general position only and there may be differences as to each owner's obligations depending on the exact wording of the Memorandum of Lease. If you are unsure or uncertain, you should seek legal assistance.

19. What are the current insurance responsibilities for unit titled properties?

The body corporate is required to insure all units in the development on a replacement basis. The individual unit owners cannot contract out this liability and they need to satisfy themselves that their cover is adequate. Separate cover is required for chattels and personal effects. In addition, if a mortgage is needed, your mortgagee may require the owner to take out mortgage redemption insurance. This is an additional cover enabling the mortgagee to clear their mortgage in the event of damage or destruction. Mortgagee insurance is necessary because – except in some limited circumstances specified in the Unit Titles Act 2010 – the body corporate is bound by law to apply any funds received by it under its insurance policy toward replacing the units.

20. Why are some multi-unit insurance issues, particularly cross lease properties, so complex?

Most of the complexity comes from determining:

- who all parties are that have an interest in the building
- the extent of the damage, which may have affected adjoined multi-units in different ways (in the same building)

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- who is responsible for paying to repair or rebuild the earthquake damage to the building, (once the damage assessment is determined)
- establishing the extent of each respective owner's insurance cover for their unit (if any).

Most units in a cross lease multi-unit building have different owners and are often also insured separately through different insurers. In the course of the Canterbury earthquakes, different levels of insurance cover among owners has also been discovered – including uninsured, indemnity value, specified sum and full replacement cover.

Repair or replacement is often required to shared structural elements in the building, such as fire/party walls, foundations, external walls and roofs. Establishing how costs will be shared can be challenging, particularly if an uninsured or under-insured owner is involved. There is also extensive planning, regulatory and technical considerations needed before building work can start.

21. How is EQC working with the insurers to resolve multi-unit building issues?

Private insurers and EQC have established processes that allow engagement with one another to:

- know who else insures units in a particular earthquake damaged multi-unit building
- determine who is likely to incur the most cost in repairing or rebuilding the earthquake damaged multi-unit building. This is done by appointing an independent loss adjuster as required that will estimate the initial loss
- provide any information each party may already hold about the damage to their own individually insured unit/s
- agree which party (individual insurer or EQC) is best placed to use its resources to manage the repair or rebuild of the multi-unit building.

Following this assessment phase, the parties all agree who will manage the repair or rebuild. The party responsible is referred to as “taking the lead”. This means that party will arrange for the repair or rebuild to take place, working with the unit owners, insurers, the loss adjuster and other professionals.

MBIE guidance and building issues

22. How are technical decisions made on repairing a multi-unit residential building?

The assessment approach involves inspecting, measuring and recording the damage, applying the guidance criteria to each unit, then considering how the damage affects the whole building. Broad criteria are then applied to determine which units need to be repaired or rebuilt, or whether the whole building needs to be rebuilt.

23. When should a foundation be replaced in a multi-unit building?

If more than half of a unit's foundations are damaged, then the foundations to that unit are likely to be rebuilt.

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Under the MBIE technical guidance, the rebuild of, for example, one unit and the repair of the other units is a valid treatment for buildings where the damage varies along the building. Decisions like this need to be made within the context and terms of the insurance contracts relating to specific buildings.

24. Aside from the foundations, what other parts of multi-unit buildings are likely to require repair/rebuilding?

There may be a requirement to substitute “heavy” roofing or wall claddings with lighter materials if a unit needs to be rebuilt because of the performance of the land during earthquakes. If the floor of a unit requires re-leveling then that unit is also likely to need some associated superstructure repair (eg, crack repairs to linings). Firewalls between units may need rebuilding for fire, acoustic and/or structural reasons. It’s likely that all unit owners will need to agree on some of the changes required for rebuilding.

25. What is a firewall?

A firewall is a fire-resistant wall designed to prevent the spread of fire between units. It also provides acoustic (sound) screening between units. It may also be known as an inter-tenancy wall.

26. What if one unit has already been repaired without consideration of others in the building?

Repairs to other parts of the building may still be able to be carried out without affecting the repairs that have been completed to another unit. This will depend on the nature and extent of structural damage to the whole building. Advice from an engineer or other professional may need to be sought to determine whether this can be achieved.

Council consenting issues

27. What property information should I check when repairing or rebuilding my dwelling in a multi-unit building?

Look at your Certificate of Title, which will show the type of property interest you have (ie, cross-lease, body corporate etc), surveyed legal boundaries of your property, as well as any restrictions or interests over your property. Services such as the Residential Advisory Service or your lawyer can assist with this. Before you start any work, check that your title and surveying information is accurate and reflects the size, shape and location of your house.

As part of the planning for the building work, the professionals you are working with will need to check council planning requirements or other relevant rules or requirements that apply to your site and property. You can check out the planning restrictions/requirements at your site

by talking to the Council or by applying for a Land Information Memorandum (LIM) from the Council.

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28. Is a building consent required for the repair/rebuild of the multi-unit building?

Many types of repairs can be completed as exempt work in accordance with Schedule 1 to the Building Act (<http://www.dbh.govt.nz/bc-no-consent>), meaning no building consent is required. If a repair is complicated or a partial or full rebuild is required, then a building consent is needed. More information about exemptions can be found on the Christchurch City Council website.

29. Should a building consent be lodged for the repair/rebuild of the whole building

Yes – technical assessments involve consideration of impact on the overall building and so this information will have to be set out in the application so that the Council can make a decision on the future whole-of-building performance. It's therefore preferable for consent document to cover all the work that's to be done across all units. Consent applications can be lodged for the repair/rebuild of an individual unit, but are likely to take longer to process while additional information about the overall building performance is sought.

30. Is resource consent required for repairing/rebuilding a multi-unit building?

Whether or not resource consent is required for a particular property will depend on the particular rules for that site and the proposed work. The district plan rules for the particular site will need to be checked for compliance. For example, if the rebuilding of the multi-unit building involves reconfiguring the units on the site, extensions to the existing building profile, or raising the building to meet new floor level requirements, then there is a possibility resource consent may be required for boundary adjustments, encroachment into side yards, recession planes and non-compliance with other bulk and location requirements.

There are various other rules that will need to be checked too. If the flats plan or unit plan needs to be updated, subdivision consent will also be required and the specific subdivision rules for the site will need to be checked. Where a rule is not met, resource consent will be needed.

31. Where do existing use rights apply when rebuilding a multi-unit building?

Depending on the proposed building works, existing use rights may mean either that you will not have to obtain resource consent, or that you can rely on existing use rights to support your resource consent application. There are specific criteria that must be met to qualify for existing use rights, but if you are reinstating the same or similar building in the same location and footprint, it's likely that existing use rights will apply. However, this needs to be assessed on a case-by-case basis.

32. If I'm in a flood management area, will that affect how my unit will be repaired or rebuilt?

If the work does not involve a foundation replacement for the whole building, floor levels do not need to be raised. However, if the work requires a full foundation replacement, the floor levels will need to be raised to the 1:50 year flood level, which is the minimum to meet Building Code requirements.

In flood management areas, the Christchurch City Council has specified that higher finished floor levels may be required if the foundations are being replaced or a new dwelling being built.

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Reaching homeowner agreement

33. Should I talk to my neighbours about repairs or rebuilding?

Yes. The repairs to one dwelling are likely to impact the adjoining dwelling. The complex legal and ownership arrangements around cross leases and unit titles may place a legal requirement on owners to engage with one another before any repair/rebuild, or other type of settlement with their insurer or EQC can take place. For example:

- A home may be owned under a cross lease arrangement which obliges the owner to get the permission of the other cross lease owners to carry out structural alterations (including earthquake repairs) or additions to any building or improvement in a cross lease.
- If a home is owned as a unit title, the owner must notify the body corporate of proposed additions or structural alterations (including earthquake repairs), and get body corporate consent where other parts of the building are affected by those works.

34. What if my neighbour and I don't agree?

In some cases it may be difficult for unit owners to reach agreement and mediation or dispute resolution services may be needed to move forward. For cross lease owners, a 'Memorandum of Lease' document may also contain provisions that dictate how to resolve issues. For owners of a unit title property, the Unit Titles Act 2010 also contains some required processes for certain scenarios, as may the relevant body corporate rules. You should seek legal advice to assist you with this. The Residential Advisory Service at www.advisory.org.nz (phone 03 379 7027 or 0800 777 299) can help you find out more about the process you should follow to resolve these issues. This is a free service that offers independent help to residential property owners facing challenges getting their homes repaired or rebuilt after damage from the Canterbury earthquakes.

35. If I take a cash settlement from my insurer, do I have to use that money to repair or rebuild?

This will depend on what your neighbours would like to do. Cross leases are often separately insured. Many memorandums of lease require the flat owner to reinstate their flat and an owner may be able to require another owner to reinstate their flat.

Unit titles are required to be insured as a whole by the body corporate. Money paid by the insurer must be applied in or towards reinstatement of the unit title development unless the required resolution is made. There are also obligations for unit title properties in the Unit Titles Act 2010 and in some body corporate rules about the maintenance of the unit which could be enforced.

36. Can I repair/rebuild separately from my neighbour?

Generally, if you are carrying out any building works (repair or rebuild), you should let your neighbours know what you're doing and make sure they're in agreement with your plans. We strongly encourage everyone in a multi-unit building to be aware of what one another intends to do before repairing, rebuilding or taking some other form of settlement from their insurer or EQC.

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37. I am uninsured/under-insured, what do I do?

If your neighbours would like to repair or rebuild, then you may be legally required to contribute your share. If you are having financial difficulties, we recommend that you raise this with your neighbours and/or an advisory service to see if a compromise can be achieved.

Further information

38. Will homeowners have to move out while a repair takes place?

It's likely that many unit holders will have to move out of their unit while repair/rebuild work takes place. There will also be disruption while neighbouring units are being repaired. In some cases residents will have to move out while neighbouring units, or others, are repaired.

If the multi-unit building is to be totally rebuilt, all unit owners will have to move out. Your insurer may provide cover for temporary accommodation at that time or, alternatively, the Canterbury Earthquake Temporary Accommodation Service can assist with temporary accommodation options and financial assistance. Contact them at www.quakeaccommodation.govt.nz or phone 0800 673 227.

39. What social support mechanisms are in place to assist multi-unit building owners with their rebuild process?

It's recognised that a large number of people living in multi-unit residential buildings are elderly, have a disability, or belong to other vulnerable groups. These people are likely to find the process of dealing with rebuild issues and decision-making particularly stressful and may need additional support. Earthquake Support Coordinators are available to help people navigate their way through a wide range of services involved in repairing/rebuilding people's homes and lives. The assistance is free and they can be contacted on 0800 777 846.

40. Where can I get more information on issues around repairing/rebuilding multi-unit buildings?

- **The Canterbury Support Line** - will refer you to appropriate services which can help you navigate your way through the repair or rebuild process. For free assistance, phone 0800 777 846, 7 day a week, 9am to 11pm.
- **Community Law Canterbury** - will give free initial legal advice and help you find a lawyer. Contact them at www.canlaw.org.nz or phone 0800 CANLAW.
- **The Earthquake Commission**
 - information on the claims settlement process for multi-unit buildings - www.eqc.govt.nz/canterbury-earthquakes/progress-updates/complex-claims/multi-unit-buildings
 - FAQs on rebuild issues including multi-unit building claims www.eqc.govt.nz/canterbury-earthquakes/progress-updates/canterbury-faqs

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- **Insurance Council of New Zealand**
 - information on cross lease issues – www.icnz.org.nz/natural-disaster/canterbury/information-for-cross-lease-property-owners/
 - information for people with over-cap claims – www.icnz.org.nz/natural-disaster/canterbury/questions-and-answers-for-owners-of-houses-with-claims-over-the-egc-cap/

- **Ministry of Business, Innovation and Employment**
 - main residential guidance document including Part E on repair and rebuild of multi-unit residential buildings <http://www.dbh.govt.nz/guidance-on-repairs-after-earthquake>
 - general guidance on rebuilding homes in Canterbury for homeowners www.dbh.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/canterbury-rebuild-guide-for-homeowners.pdf

- **CERA/MBIE** – information on the residential rebuild – www.canterburyresidentialrebuild.govt.nz/

- **Christchurch City Council**
 - information on consent processing information for multi-units - www.ccc.govt.nz/homeliving/goaheadbuildingplannings00/buildingandplanningprojects-s02/building-s02s0301/multiresidential-s02s0301-03.aspx
 - Council's design guide for multi-unit buildings – http://resources.ccc.govt.nz/files/Homeliving/buildingplanning/forms/P332_UrbanDesignGuideL3Zones.pdf