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New Zealand Insurance Law
Property Law Conference

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Content

Insurance Property Issues

- Unit Titles Act and amendment Bill

- Multi Unit Buildings (MUB) with no body corporate
  - Cross Leases
  - Fee Simple

- Insurance and Resilience in higher seismic risk areas like Wellington

- Climate Change Risk thoughts

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Unit Titles Act

Current Act doesn't understand insurance

- Section 135 (1) *"The body corporate must insure and keep insured all buildings and other improvements on the base land to their **full insurable value.**"*

- Section 137 (2) (b) *"Despite Section 135 (1) **indemnity** cover is permitted **if full replacement cover is not available** in the market."*

- "Full insurable value" ≠ "Full replacement cover"

- "Full replacement" implies an open sum insured, but insurers do not offer this to BCs. Private cover is offered at a specified sum insured added onto EQC cover.

- So, current law is confusing, inconsistent and inaccurate – must change to reflect the intent

- But what is the intent? To require all risk to be transferred to insurance no matter what the price? What if it's not available? not affordable? Don't like the price?

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UT Amendment Bill

Let's get the insurance wording right

- Amendment Bill's intent to improve governance, professionalism and transparency for BCs is good.
- But it does not address insurance wordings; these should allow BCs to insure to a value they and their insurer agree to
  - base-isolated and more resilient structures can retain more risk, flexibility should permit this
- Drafters should be aware:
  - 'indemnity' value? if this means depreciated value, then on a pre 1945 structures (in Wellington) will be significantly below replacement value. This signals a weak structure to insurers who will prefer to accept risk on more resilient buildings. Will insurance be available?
  - of the complexity of dual insurance which arises when a BC insures common areas and individual unit owners insure their own units.

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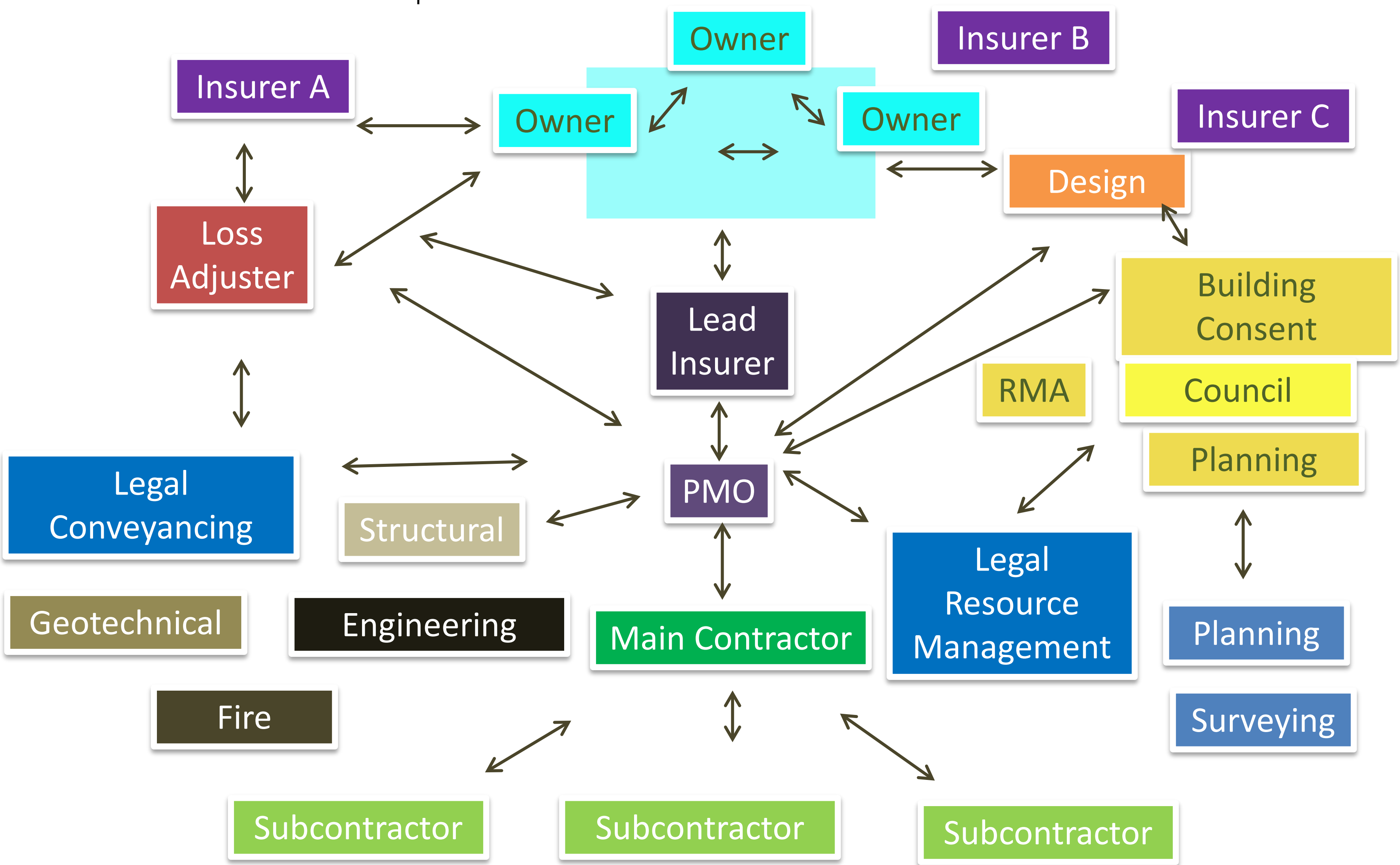
Complexity of Cross Leases – Canterbury EQ

Multi-units – shared property

- » any properties with shared floors, roof structure, walls, drives, fences, retaining walls
- » challenges arise with different insurers covering different units in the same complex + mix of over, under cap damage in each unit, different assessments etc
- » multiple non-insurance problems (100% agreement needed in cross-lease situations, neighbours at war, mental health problems, single elderly in multi-units, non and under insurance issues, titles may be defective where alterations not updated on title)
- » claims require careful management and multi-headed agreements between the parties (property owners, insurers, PMOs, EQC, assessors, lawyers, CERA etc)
- » Owners not understanding memorandum of lease obligations and may not apply settlement money to meet those obligations

A recipe for delayed recovery



Today, Fee Simple MUBs will recreate the same mess

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Nothing done 11 years of Canterbury EQ

- In 2017, ICNZ submitted on the Review of the UTA seeking:
  - Enhanced governance and more accessible dispute resolution
  - Single insurer/single policy
  - Reinstatement pathway based on majority not 100% consent
  - Enhanced education and disclosure obligations to purchasers and unit owners

Fee Simple MUBs

- Denser urban housing/marketing promotes no BC costs
- People desperate for cheaper housing making snap purchases
- No governance, but shared foundations, walls, roof etc…
- Insurers increasingly disinclined to accept the risk
- Must have a governance/BC type structure

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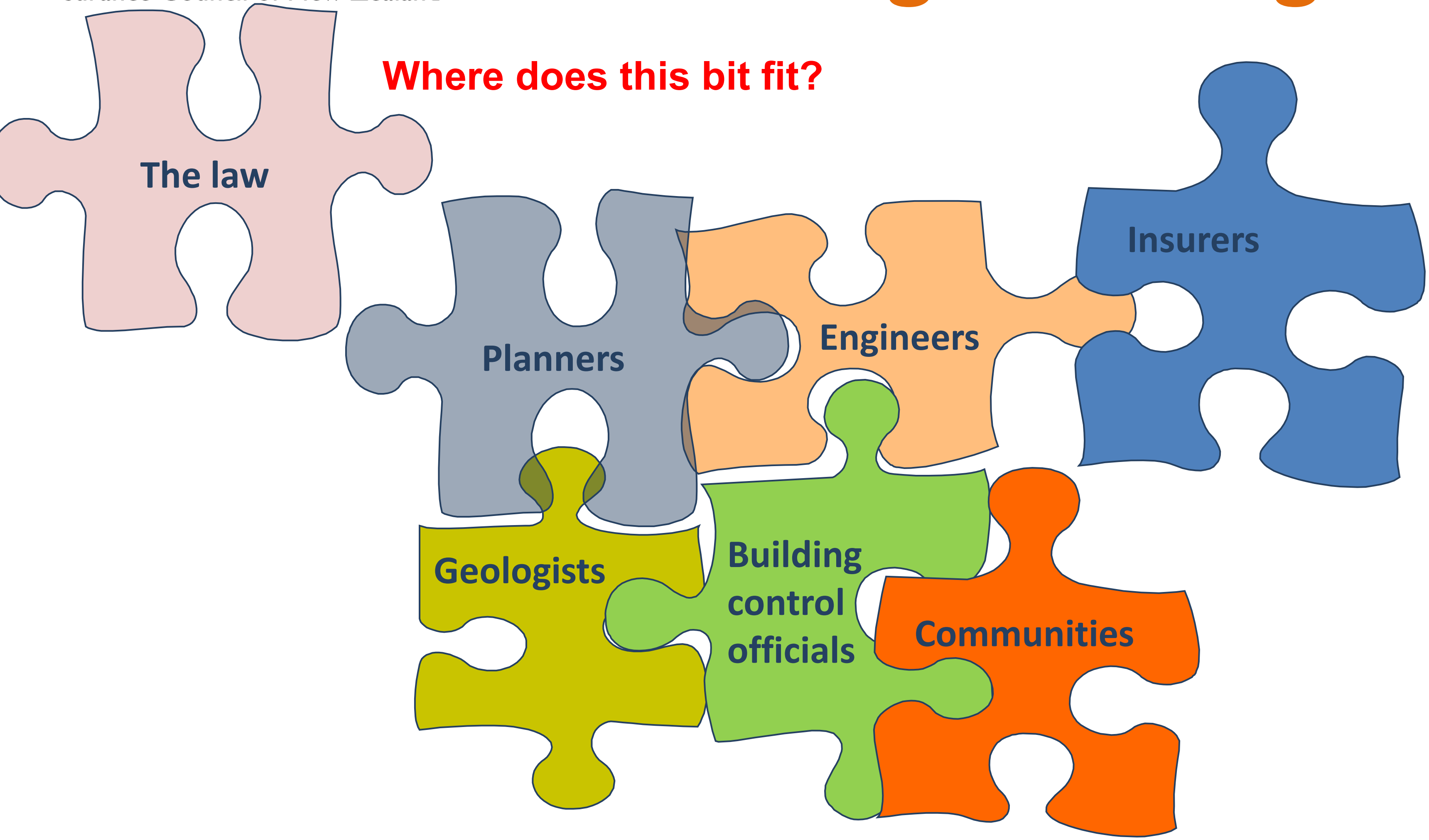
Risk Management Jig-saw



Accountability for the risks that lie between boundaries

After Cowan (2021)

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Managing Risk

- NZ is a high risk country; Wellington one of the highest risks
- Risk to property is created by
  – where we choose to build
  – how we choose to build
- There are 4 ways to manage risk –
  - **Avoid** it
  - **Control** it
  - **Transfer** it (insurance)
  - **Accept** it (BCs and the UTA)
- We have built on soft soil/reclaimed land and our building codes don't sufficiently address the property risk, so Avoid and Control is poor, <u>nor</u> is NZ's risk appetite explicitly stated
- We rely heavily on Transfer; better understanding of risk affects capital availability and pricing of that risk

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Kaikōura EQ
Failure of new builds

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Wellington

- Better understanding of risk from Canterbury (e.g. liquefaction, hillside risks) and Kaikōura (100% plus NBS became total losses)
- Wellington's CBD located on reclaimed land/soft soil
- Wellington's building stock generally older
- Wellington less resilient than Christchurch
- Wellington property owners lobbied to be subsidised by the rest of the country to mask insurers' pricing of risk
- a Mayoral Taskforce was put together to review the situation

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Wellington Mayoral Taskforce

- Did not quantify the affordability problem and thus the proportionality of any response
- Had more recommendations on risk Transfer than Control, Avoid or Accept combined
- Advocated for a very large increase in the EQC cap and extending it to all commercial property
- <u>Appropriately</u> sought urgent upgrading of the National Seismic Hazard Model, consistent compliance with non-structural building elements, provide better risk information and use it to inform land use decisions, and review building regulation to ensure more resilient structures, and constrain development in inherently risky areas.

Christchurch de-risked

- All the old stock destroyed
- CBD not built on reclaimed land, though soft soil issues
- New builds incorporated best practise:
  - base isolation (a few, but should be more)
  - steel braced framing with seismic joints easily replaced in a quake
  - laminated timber frames (ductility)
  - 2012-16 builds were to “above standard”
  - deep piling
  - surface soil removal, fill with compacted material/ground strengthening
- Height restrictions on new builds lowers risk

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More of this please

Reduce risk (Avoid and Control)

- Make new buildings more resilient e.g. base isolators, deep piles
- Change building code (NBS) to increase resilience, not just life risk
- Invest in low cost retrofits to make current stock more resilient
- Look at where we build
- Invest in infrastructure

Retain more risk with owner (Accept)

- More resilient buildings retain more risk via a higher excess
- Higher risk buildings address affordability in the same way
- Amend Unit Titles Act (as detailed earlier), noting insurers will not accept risk where the sum insured sought is grossly (approx 70%) below replacement value

Reduces costs (Transfer)

- Remove the fire and emergency levy from insurance - uncapped on commercial property and increases as property values increase

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Climate Change, Property Rights and Retreat

A few thoughts for the future:

- 675,000 New Zealanders live in areas prone to flooding and 72,000 potentially impacted by sea-level rise
- If seas rose 1m, 125,600 buildings worth $38 billion would go

Sea level rise of its own is uninsurable

- Climate Change Adaptation Act to manage retreat ex Randerson – how? Transition may need public-private pathway
- Californian revolving loan so counties **buy** property, **rent** it back to repay the loan used to purchase, finally **retreat**

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Climate Change, Property Rights and Retreat

THANK YOU

NGĀ MIHI NUI