Local Government and Environment Select Committee

Submission on the Building (Earthquake-prone Buildings) Amendment Bill, Interim Report

INNER CITY ASSOCIATION

Representing Wellington Inner City Residents and Businesses

This submission is made by the Inner City Association (ICA) and supported by the Body Corporate Chairs' Group (BCCG).[1]

Executive Summary

The Inner City Association submission focuses on those matters of particular importance to our members. Many owners are facing large debts, loss of retirement savings or having to sell their homes at basement prices through changes to legislation driven by public good outcomes and societal risk concerns. Our focus through our submission is to ensure effective:

- support structures are in place to enable our members, through their bodies corporate, to effectively progress large, complex, technical, expensive seismic strengthening projects
- financial support mechanisms to enable projects to progress to achieve the government's public safety goals
- protection for residential and small business owners against unreasonable demands to deliver on public good outcomes and societal risk concerns.

Some owners will be unable to raise funds, repay loans or be able to sell their apartments. This will stop strengthening projects from progressing. The only option is for Bodies Corporate to pass special resolutions forcing those owners to sell, creating downstream social harms. The loss of savings and home is untenable, particularly for retirees. Bodies Corporate require 'enablement options' for those few owners who cannot meet their seismic strengthening contribution and to progress complex projects in multi-lender, multi-owner environments.

Summary of ICA's key submissions

Our submissions begin with the two key barriers to progressing seismic strengthening projects: lack of support and targeted financial assistance mechanisms. These are followed by our responses to the recommendations in the Interim Report. Background information on each of the key submissions follows, with the page numbers in brackets.

On enablement through support structures (p4)

The legislation must require that government establish an:

- advisory service in MBIE to provide a toolkit for Bodies Corporate on how to start and manage large technical construction project. A centrally-provided kit needs to address the information imbalance that currently exists and ensure consistency.
- independent, low-cost, mediation service to manage disputes between Bodies Corporate representing all owners and

[1] Appendix 1 provides background on ICA and BCCG.

  - councils: eg, on refusal to issue building consents for a strengthening proposal, unreasonable requirements for further reports
  - professional technical contractors: eg, poor quality reports, misleading/incomplete information
  - individual owners: eg, the financial thresholds for the current review process through the Unit Titles Act will result in cases almost certainly going direct to the High Court, adding further costs to the process.

On enablement through financial assistance mechanisms (p5)

- The Government and Parliament must provide financial assistance mechanisms to Bodies Corporate to enable them to progress seismic strengthening projects without having to force owners who are unable to pay out of their homes and create downstream social impacts. These include:
  - Realistic borrowing arrangements for Bodies Corporate doing seismic strengthening
  - Guaranteed suspensory loans attached to the property, collected through rates for owners that cannot fund from other sources
  - Consistent escrow or other arrangements across all banks for seismic strengthening projects.

Topics raised in the Interim Report

On providing certainty to owners (p7)

- ICA does not support the blanket provision to reassess buildings if definitions change (section 133 AZC) as this does not provide certainty
- a minimum period be included in the Bill (in new section 133AB(3)) of, for example, 25-30 years (being a generation) or the concept of a specified number of years (eg, 50) for the life of a building, before requiring a building to be re-assessed under a new definition of a moderate earthquake or ultimate capacity
- that section 133AZC be amended to include a minimum period from the completion of the last seismic remediation work
- ICA supports that parts of buildings are adequately and clearly covered to make it clear when only a part of the building has been determined as EQP, and that this be clearly set out on notices and the seismic register.

On clarifying definition of seismic work (p8)

- to allow for demolition as an option to address the remediation required in response to a EQPB notice and that local requirements (such as District Plans) should not over-ride primary legislation
- state that owners can strengthen to any level above 33% NBS
- clarify the interface between the life safety standard threshold and the health and safety in employment obligations.

On the seismic capacity assessment process (p9)

- we support the 12 month timeframe for obtaining an engineering assessment, the prescribed methodology proposals, the seismic register only containing EQP and potentially EQP (not assessed)

  subject to:

  - allowance for resolution of disputes, negotiations over assessments to exceed the 12 month timeframe without the territorial authority declaring the building as 'potentially EQP (not assessed)'
  - discretion for further extension beyond 24 months if the resources are not available and there is evidence that the owner is attempting to obtain completion
  - explicit criteria for identifying the categories of buildings that would be excluded from being considered as potentially EQP
  - criteria that constrains the residual discretionary power for territorial authorities to assess buildings not initially identified
  - clause 1334ATB(3)(a) explicitly states that a building is removed from the EQP Building Register once the seismic work has been completed and is no longer EQP.
- ICA does not support
  - a grading scheme that distinguishes buildings below 20% NBS as it will not achieve the stated objective of incentivising action without substantive support structures to remove the barriers that exist for many residential and small business owners
  - the ability for territorial authorities to undertake engineering assessments and recover the costs, as proposed under rec 5.9, without clear criteria being established
  - the ability of territorial authorities to set their own criteria on strategic routes/priority buildings on the basis that this adds to uncertainty for owners, especially when territorial authorities may change their mind/the definitions after every election cycle.

On defining priority buildings and remediation timeframes (p11)

- supports in principle the concept of corridor buildings on strategic routes for emergency responses
- does <u>not</u> support the:
  - use of the special consultative process to achieve this
  - halving of the timeframes
- submits that the legislation must:
  - allow for an independent check of the identified strategic routes and properties
  - require that public funds be available to offset owners' costs in delivering this public good outcome if the remediation times are halved
  - provide a no-cost mediation process for owners to challenge a territorial authority's decisions on strategic routes.

On defining substantial alterations (p12)

ICA supports criteria to define substantial alteration and submits that:

- a general clause be included in the legislation stating that all affected owners directly and through representative organisations have a reasonable opportunity to access all consultation processes, and that
- the material is at least summarised in sufficient detail and non-technical language to set out the intent and implications of the proposals.

On fire and disabled access upgrade requirements (p13)

- ICA supports this proposal (as outlined in Rec 9.2) provided it applies to both interim work and the main seismic work, but the new section 133AX does not clearly reflect the intent of the commentary

On transitional provisions (p13)

ICA supports:

- decisions made under existing s124 notices remain valid and that the legislation explicitly states that there be no reassessment of a building unless the s124 notice has expired and remediation work has not begun
- owners may apply to the territorial authority to have the 15 year timeframe apply from the original date of issue for the s124 notice

ICA does not support

- existing s124 notices with shorter timeframes (10 years in Wellington) continuing to apply

ICA submits:

- any buildings with existing s124 notices that have shorter timeframes be automatically given 15 years from the original date of issue
- legislation must provide discretion for an extension beyond the 15 years provided that a work programme is in place to complete the seismic work.

Background to our submissions

The following section follows the order of our key submissions, beginning with the two primary barriers progressing seismic strengthening projects.

Requirement for advisory and mediation service (new section required)

The Regulatory Impact Statements (RIS) for the consultation document, the original Bill and this interim report refers to concerns about the lack of central guidance. The current proposals only refer to prescribing the methodology to identity potentially EQP buildings and for engineering assessments. Far more guidance is required if the government wants to achieve its goals.

Central government must be required to establish and maintain an advisory and mediation service to support residential and small business owners to complete the strengthening work as efficiently as possible. There is no process or technical guidance at all under the current legislation and residential and small business owners are wasting money and time.

Most residential and small business owners (or their bodies corporate) will not have the capacity or capability that will be available to larger commercial property owners to establish, identify and selection options, and manage seismic strengthening projects.

The implementation section of the RIS for the current Bill does not discuss the implementation challenges that are likely to be faced by different categories of owners (eg, in multi-owner buildings, residential, small business) which provides a skewed picture of the impact of the proposals for members of the Select Committee. Given this lack of acknowledgement of the implementation reality, officials must be directed through the legislation to provide the necessary support structures.

ICA submits that the legislation must require that government establish an:

- advisory service in MBIE to provide a toolkit for Bodies Corporate on how to start and manage large technical construction project. A centrally-provided kit needs to address the information imbalance that currently exists and ensure consistency.
- independent, low-cost, mediation service to manage disputes between a Body Corporate representing all owners and
    - councils: eg, on refusal to issue building consents for a strengthening proposal, unreasonable requirements for further reports
    - professional technical contractors: eg, poor quality reports, misleading/incomplete information
    - individual owners: eg, the financial thresholds for the current review process through the Unit Titles Act will result in cases almost certainly going directly to the High Court on the basis of the costs associated with remdiation, adding further costs to the process.

Financial support mechanisms – an implementation issue

ICA members are not asking for the government to pay the costs; they are asking for assistance mechanisms that enable owners to pay. Some owners cannot pay: cannot obtain a loan or cannot service a loan; have insufficient savings or would have to use retirement savings; cannot sell for a price that would enable them to repay the mortgage owed or buy another property. Bodies Corporate cannot commit to contracts until the funds are available. The option for Bodies Corporate is to force the sale of the units where owners cannot confirm their share of the funds by the required date.

The Government has said there will be '… no or little money … what there is will be for heritage buildings … owners must maintain their properties'. (Minister for Building and Construction, Morning Report, 12 May 2015).[2] The government is likely to bear the costs of owners forced to sell through at basement prices or having to use retirement savings through increased demands on other benefits and societal upheaval.

This policy is driven by 'societal risks concerns': a public good. The proposal to halve the timeframes for private corridor buildings is to create an additional public good. For other public goods (eg, roading) government pays the market value of the property. For other legislation-created problems (eg, weathertight homes), government has established legislation to share the costs of remediation.

[2] ICA understands that the government is restricting funding support to Category 1 heritage buildings, which account for 18% of all Heritage NZ's listing.

For natural disaster and weather-related problems (eg, flooding, droughts), government provides assistance packages.

Yet, for EQP buildings there is nothing. The RIS for the original Bill stated that financial assistance/ incentives are out of scope and will be considered separately. When will this happen? The inability to pay is an obvious regulatory impact. The Select Committee requires this information to inform its report to Parliament.

The financial challenges facing members in buildings with s124 notices will expand to buildings that have seismic risk ratings of between 34 and 67%NBS. This is happening now through market pressures and will increasingly be an issue in mixed-use buildings where commercial owners cannot get tenants but residential owners cannot afford to fund the costs.

ICA supports the Property Council of NZ's position on financial supports.[3] Any financial support mechanisms must be equitable (but not necessarily the same) for commercial and residential property owners. The media coverage on the financial challenges generally talks about commercial property owners; 21% of the buildings assessed as earthquake-prone in Wellington as at 30 November 2013 are residential or mixed use. Residential owners must comply with the same legislation as commercial owners.

Options for residential and small business owners include:

- Effective loan arrangements for Bodies Corporate: Government needs to work with the banks to investigate options to allow a Body Corporate to take out long term loans, with agreement of their owners. Such an arrangement could allow owners not able to finance their share directly to contribute through Body Corporate levies that are spread across current and future owners
- ESCROW facilities: ICA and BCCG have already approached the NZ Bankers Association (NZBA) requesting the expansion of the ESCROW arrangement set in place for bodies corporate dealing with weathertightness issues. The NZBA agrees that seismic strengthening projects have the same need and it will investigate the expansion, but has not given a timeframe. Government needs to actively support that work to ensure it proceeds in a timely manner.
- Ability to obtain loans at reduced rates attached to the property, with the repayments collected via the rating system
- Loan guarantee schemes provided by central government, collected via the rating system
- Suspensory loans provided by central government
- Earthquake bonds offered by central government to fund guarantee schemes.

ICA submits that the Government and Parliament must provide financial assistance mechanisms to Bodies Corporate to enable them to progress seismic strengthening projects without having to force owners who are unable to pay, out of their homes and create downstream social impacts. These includes:

- Realistic lending arrangements for Bodies Corporate doing seismic strengthening
- Guaranteed suspensory loans attached to the property collected through rates for owners

[3] Proposals include ability to depreciate the cost of strengthening and tax relief to recognise the public goods. These would not be available to residential owners.

that cannot fund from other sources
- Consistent escrow arrangements across all banks for seismic strengthening projects.

Background on recommendations in Interim Report

Key issue: definition of earthquake prone building: lack of constraints on when the definition of a moderate earthquake can be amended continues uncertainty for building owners

ICA considers that the changes being proposed will result in an increased number of buildings that will be identified as earthquake prone. This is the intent of the NZ Society of Earthquake Engineers (NZSEE) and MBIE officials who have previously provided guidance to territorial authorities to align with the proposed changes rather than the two limb test that currently exists.

The justification in para 56 of the Interim Report for the addition of 'or near the building' further expands the scope of responsibility for private owners and reinforces the public safety aspects of this policy. In the CBD, the building nearly always takes up the whole property, so 'near' the building is public space. Furthermore 'near' is not defined.

Para 33 of the Interim Report states that '*…the EQP building threshold will not change as building standards change over time, unless the regulations are also amended. The purpose of this amendment is to provide greater certainty to building owners and to increase transparency around the process for incorporating new knowledge into the moderate EQ definition*'.

This continues the current situation and does not provide any certainty for building owners. It will be easy to change the regulations in an environment where experts are advocating that new building technologies and seismic knowledge must be reflected in both the building code and the regulations. The regulation process does not provide the scrutiny through the Select Committee process. Once the definition is changed, territorial authorities have the ability to re-assess buildings, including those that have completed strengthening. This compounds the uncertainty faced by current and prospective owners.

Para 41 states that the '… *solely AIFR (life safety target) approach does not adequately deal with societal risk concerns, ie, society's aversion to large losses of life from an individual earthquake event*'. The expert advocacy pressure described above, coupled with societal risk concerns, will over-ride views of the fewer private owners who, along with Crown-funded building owners, are paying for the public good to address those societal risk concerns.

ICA does not agree with the blanket provision for territorial authorities to reassess decisions if the definition of ultimate capacity or moderate earthquake are amended (new section 133AZC). Owners are endeavouring to strengthen as high as possible, but this is determined by their ability to finance the costs. They should not be penalised through a subsequent change to knowledge and definitions that could occur at any time. This provides no certainty for owners, and is not applied in other areas of risk (eg, changes to electrical wiring over time, which creates a fire safety risk).

ICA submits there must be some protections for owners, such as a timeframe (eg, 25-30 years being a generation or 50 years which used to be the 'life of a building') within which a building, having completed the strengthening work and been confirmed as no longer EQP, cannot be reassessed.

ICA submits that

- the changed definition (section 133AB) and removal of the two limb test means more buildings will be unnecessarily identified as EQP resulting in increased costs for private owners without necessarily saving additional lives or reducing injuries
- the inclusion of 'or near the building' (section 133AB(2)(b)(i)further expands the scope of responsibility for private owners reinforcing the public good and 'near' must be defined

ICA does not support the blanket provision to reassess buildings if definitions change (section 133 AZC)

- a minimum period before requiring a building to be re-assessed under a new definition of a moderate earthquake (eg, 25-30 years, being a generation; or the concept of a specified number of years (eg, 50) for the life of a building) be included in the Bill (in new section 133AB(3)) to provide more certainty for owners
- that section 133AZC be amended to include a minimum period from the completion of the last seismic remediation work.

ICA supports that parts of buildings are adequately and clearly covered to make it clear when only a part of the building has been determined as EQP, and that this be clearly set out on notices and the seismic register.

Key issue: definition of seismic work and level of remediation required needs to specifically allow the use of demolition

While ICA agrees with the recommendation 4 that no change be made to the level of remediation required and that it remain as '… *so that a building is not EQP (34% NBS)…*' (para 73), we want more clarity in new section 133AL(1) to remove any doubt, that:

- demolition is a remediation option
- owners are able to strengthen to any level over 34% NBS.

The current drafting removes the application of s127 of the Building Act (BA), which allows for demolition, as earthquake prone is being removed from s124 of the BA (clause 16 in the Bill). This proposed change removes demolition as an option for owners wishing to address the EQP status of their building. In some cases it is the only option as the strengthening costs against the value of the building make it uneconomic to strengthen. The only reference to demolition being an option is under section 133AW(5) 'Territorial authority may carry out seismic work', despite demolition being referred to as an option for building owners (para 92, 4th bullet). The legislation must explicitly state that demolition is also an option for building owners.

ICA has been told that an owner of a non-heritage building applied to WCC for resource consent to demolish and it was refused as the owner did not have a plan to show the Council what would replace it. This is driven by a District Plan restriction that is up to the discretion of individual officers, relies on owners having to challenge and escalate the issue, and puts unreasonable constraints on owners who are responding to a primary legislation-mandated requirement.

ICA has been told that an engineer would not provide advice on costs for strengthening options that do not achieve a high seismic rate (ie, as near as possible to 67% or higher). We suspect the reason for this is concerns over liability. In this instance, the engineer would only give advice on costs if the

owner promised not to ask them to build it. The concern over liability is fuelled by statements in the Regulatory Impact Statement (para 18) for the Bill about owners' additional responsibilities under the Health and Safety in Employment Act. This must be clarified as the current Act and the proposed amendment is stating that over 33%NBS meets life safety standard. The Regulatory Impact Statement on the original Bill stated that 'concerns about Health and Safety in Employment Act requirements being misaligned with requirements under the Building Act' are out of scope and is being considered separately. This has to be addressed in this legislation.

ICA submits that the Bill must explicitly:

- clarify the definition of seismic work to allow for demolition as an option to address the remediation required in response to a EQPB notice and that local requirements should not over-ride primary legislation
- state that owners can strengthen to any level that above 33% NBS
- clarify the interface between the life safety standard threshold and the health and safety in employment obligations.

Key issue: seismic capacity assessments, seismic capacity register, seismic work notices

ICA agrees with the 12 month period to undertake an engineering assessment, and we agree in principle with territorial authorities having a limited discretion to extend the 12 month period for up to a further 12 months. The experience of our members is that there can be a long period of negotiation with a territorial authority to agree on the seismic rating for the building. These disagreements could result in seeking a determination or going to court. There have also been situations where the owners were not happy with the quality of the engineer's report and advice and had to seek further advice from other engineers.

While the prescribed methodology should mitigate these risks, we do not believe it will remove them entirely. We want the Bill to be explicit that any provisions to declare the building EQP because an engineering assessment has not been completed, are not activated when the building is the subject of a dispute with the territorial authority, or where further investigation and advice has been necessary.

ICA agrees with the proposals to prescribe methodology to specify:

- Tools and methods to identify potentially EQP buildings
- Requirements for an engineering assessment of a potentially EQP building, including how evidence from engineering or other tests completed before the Act comes into force may be used in the assessment
- Tools and methods to determine whether a potentially EQP building is EQP and its rating.

We have concerns about the following:

- Why are post-1976 buildings excluded from the categories of potentially EQP buildings? In a future change to the building code and/or definition of a moderate earthquake, it would seem that the current range of buildings will be targeted again.
- The residual discretionary powers for territorial authorities to assess buildings not initially identified must have some constraints to avoid over-zealous officers and Councils having a

second attempt. This is particularly an issue where the territorial authority has the ability to recover costs. An ICA member has reported that WCC would not approve consent for a verandah to be strengthened without them inspecting the building, when the building was not on the EQP list.

ICA supports the proposal that the seismic register be renamed as EQP Buildings Register and only include details of buildings that have been determined as EQP and buildings designated as potentially EQP (not assessed), provided that once the seismic work is completed then the building is removed from the register as it is no longer EQP. New section 133ATB(3)(a) must specifically state that the building is removed from the register once it is no longer EQP.

ICA does not support the use of a grading scheme that distinguishes <20% NBS as a red notice, and 20-3% NBS as an orange notice. ICA does not consider that this will incentivise action to strengthen by owners. What would incentivise action by owners is some incentives and assistance to help each Body Corporate to progress projects in the most cost-effective manner to deliver what public good outcomes.

Bodies corporate are progressing seismic strengthening projects but these are large, complex, technical and expensive projects and take a long time to get off the ground. Multiple reasons lead to this:

- Lack of engineering knowledge or management capability within the body corporate to assess the various engineering companies and their proposals
- Lack of finance to even fund the initial investigatory phase, One medium-sized body corporate has recently faced quotes of between $100,000 to $600,000 just to mount an investigation – and each quoting company listed a multitude of other costs that may have to be included once the investigations actually started
- Different drivers for the 'need' for earthquake strengthening amongst body corporate owners – especially where there may be a large portion of commercial owners amongst the otherwise residential owners within the body corporate
- Inability to fund large remedial work where this may also include the need for owners to vacate the premises for extended periods during the remediation work.

These problems are compounded because there is no support from central or local government for residential or mixed-use bodies corporate. An example of one Body Corporate is: after 5 years of effort, they are still to get a building consent because of issues with engineers and WCC, heritage constraints, funding constraints for owners. We will address our concerns about the lack of implementation support later in this submission.

ICA does not support giving territorial authorities to undertake engineering assessments and to recover the costs of these without some criteria for when it would do this. The proposal is that buildings identified as potentially EQP that are not assessed within the timeframe will automatically go on the seismic register as potentially EQP with the lowest grade of seismic rating. An owner or owners that refuse to provide an engineering assessment would probably not pay the debt. A possible scenario where an engineering assessment by the territorial authority would be appropriate

is where the body corporate of a multi-owner building is dysfunctional and an owner(s) requests this to occur. The debt should be shared across the rateable units in the building, and be collected via the rates.

ICA supports the 12 month timeframe for obtaining an engineering assessment, the prescribed methodology proposals, the seismic register only containing EQP and potentially EQP (not assessed),

subject to:

- allowance for resolution of disputes, negotiations over assessments to exceed the timeframe without the territorial authority declaring the building as 'potentially EQP (not assessed)'
- discretion for further extension beyond 24 months if the resources are not available and there is evidence that the owner is attempting to obtain completion
- explicit criteria for identifying the categories of buildings that would be excluded from being considered as potentially EQP
- criteria that constrains the residual discretionary power for territorial authorities to assess buildings not initially identified
- the clause is updated in new section 1334ATB(3)(a) so that a building is removed from the EQP Building Register once the seismic work has been completed and is no longer EQP.

ICA does not support a grading scheme that distinguishes buildings below 20% NBS as it will not achieve the stated objective of incentivising action without substantive support structures to remove the barriers that exist for many residential and small business owners.

ICA does not support the ability for territorial authorities to undertake engineering assessments and recover the costs, as proposed under rec 5.9, without clear criteria being established for this.

Key issue: defining and remediation timeframes for priority buildings

ICA supports in principle the inclusion of 'corridor buildings' on transport routes of strategic importance (in terms of an emergency response) (new section 133AC(1)(d)), but we have reservations:

- the special consultative process to determine these buildings and strategic routes will not be a fair process as private owners of buildings identified through this process will be a very small proportion of the population that will be able to participate in the process
- there is not an independent review process to confirm that the identified strategic routes are reasonable for emergency response purposes (ie, identification has not gone beyond the intent of the legislation)
- WCC's resilience programme is focused on economic resilience as much as emergency responsiveness and there needs to be checks in the legislation to ensure that the intent of identifying priority buildings is maintained[4]
- the ability of territorial authorities to change their mind as to what constitutes a strategic route over time (potentially after every election) creates uncertainty for owners

[4] A 2012 WCC report included a map of 'strategic routes' that included all the roads identified in the road hierarchy for the CBD, including the 'Golden Mile'. This identified CD centres, GPs, hospitals, fire stations and the location of EQP and potentially EQP buildings. This raises concerns that a broad approach will be taken by WCC in the future.

- substandard road infrastructure could create an impassable route regardless of whether any buildings have collapsed onto it or negate the need for the priority strengthening work.

ICA does not support halving the remediation timeframes for the identified buildings unless there is public funding attached to it. Halving the timeframe will place even more pressure on private owners to manage and fund large projects to deliver a public good. Members' experience is that 7.5 years from being determined to be EQP to fund and complete a large strengthening project will not be achievable, particularly in the early period after the Act comes into force when the demand on engineering companies is markedly increased[5]. It removes the option of a body corporate saving the required amount and it is unreasonable to force owners into debt in this manner.

ICA supports in principle the concept of corridor buildings on strategic routes for emergency responses but does not support the use of the special consultative process to achieve this or halving of the timeframes.

ICA submits that the legislation must

- allow for an independent check of the identified strategic routes and properties
- require that public funds be available for a clear public good if the remediation times are halved
- provide a no-cost mediation process for owners

Key issue: setting the criteria for determining a substantial alteration

Rec 6.9 provides for a regulation making power to specify criteria that territorial authorities must apply when considering whether an alteration is a substantial alteration. ICA supports the intent of this provision, but it needs to be clarified to address the implications for buildings with multiple owners in a unit title development. Is a new kitchen or bathroom in an apartment a substantial alteration?

The consultation process for establishing the criteria needs to include private apartment owners and owners of single commercial units in a mixed-use building. Provisions must specify that consultation must include all stakeholder groups of affected owners.

Previous experience of the consultation process for the 2004 BA changes and related regulations demonstrated that officials will take a targeted approach with local government, engineers and building sectors through existing channels. Owners of residential apartments and small business units/buildings are not part of these channels. ICA has a general concern that where consultation is referred to in this Bill and the interim report, that it will be targeted to the building, engineering, local government sectors and in technical language without recognising that many residential and small business owners are not part of these communities.

[5] An example from one body corporate: 17 engineering companies were contacted in late January 2015 to give a quote on an initial investigation to determine the current level of earthquake resilience and give options for strengthening from about 45%NBS to over 70%NBS. More than five months later and after extensive follow up calls, only six companies were prepared to provide a quote. Several engineering companies didn't bother to respond at all while others gave reasons for not providing a quote such as "too busy"; "won't work for a body corporate"; and "probably no point in us quoting as we can't start anything for more than 10 months anyway".

ICA supports criteria to define substantial alteration and submits that:

- a general clause be included stating that all affected owners directly and through representative organisations have a reasonable opportunity to access all consultation processes, and that
- the material is at least summarised in sufficient detail and non-technical language to set out the intent and implications of the proposals.

Key issue: upgrade requirements

ICA supports the proposal to clarify the upgrade requirements as outlined in Rec 9.2, but this flexibility is not clear in the new section 133AX. Rec 9.1 (and para163) are not clear whether the exemptions apply only to interim work or also apply to the main seismic work. It would be unreasonable for an exemption to only apply to interim work.

ICA supports this proposal (as outlined in Rec 9.2) provided it applies to both interim work and the main seismic work, but the new section 133AX does not clearly reflect the intent of the commentary.

Key issue: transitional provisions

ICA agrees that decisions made by territorial authorities that have resulted in s124 notices being issued remain valid. The recommendation should also explicitly state that the building will not be subject to any re**a**ssessment unless the timeframe of the issued s124 notice has expired and seismic work has not started.

The discussion in the report leaves it too open with reference to:

- '… it is not intended that buildings will be subject to a *detailed* reassessment where they have already been strengthened under the current system, and are in compliance with the current system' (para 181)
- 'the methodology is expected to take into account recent building consents and code compliance certificates … to determine that a building is not EQP' (para 182).

ICA does not agree that shorter timeframes issued under existing s124 notices should continue to apply, when the proposed timeframe in Wellington will be 15 years after a plan has been agreed. The experience of our members is that it can take several years to progress the investigation and decisions on options in multi-lender and multi-owner environments for residential and mixed-use bodies corporate. Owners in multi-owner buildings all need to have funds confirmed before the Body Corporate can commit to contracts. Buildings with existing notices of 10 years should have the timeframes extended to 15 years.

There has to be recognition in legislation that it may take longer than 15 years despite the best efforts of the body corporate and owners. For example, work may have to be completed in stages due to the availability of finance from the owners.

ICA supports the recommendation that owners can apply to have the 15 years (for Wellington) apply from the date of issue of the original s124 notice. Guidance on how territorial authorities should exercise their discretion must take into account that many owners and their bodies corporate do not

have the necessary capacity and capability to manage these projects, and are doing so in technically difficult and complex multi-lender, multi-owner environments.

ICA agrees that

- decisions made under existing s124 notices remain valid and that the legislation explicitly states that there be no reassessment of a building unless the s124 notice has expired and remediation work has not begun
- owners may apply to the territorial authority to have the 15 year timeframe apply from the original date of issue for the s124 notice

ICA does not support

- existing s124 notices and shorter timeframes (10 years in Wellington) continuing to apply

ICA submits that legislation must provide discretion for an extension beyond the 15 years provided that a work programme is in place to complete the seismic work.

Appendix 1

About the Inner City Association (ICA)

ICA was incorporated as the Wellington Inner City Residents and Business Association in November 2008, and referred to as Inner City Association or ICA. ICA represents residents and businesses in Wellington's inner city. The relevant objects of ICA are to:

- Promote, develop and improve the services and facilities for the residents and businesses and
- Represent the views of residents and businesses to the appropriate authorities.

Many of our members are directly affected by the provisions of this Bill. They either own property in a building that has been issued with a s124 notice (strengthen or demolish) under the current Building Act 2004 or their property falls under the definition of an EQP building and could be affected by any change to the definition of an EQP building (ie, ultimate capacity or moderate earthquake) via regulation in the future.

About the Body Corporate Chairs' Group (BCCG)

The Body Corporate Chairs' Group (BCCG) was formed in 2012 to support body corporate chairpersons in their governance role with their respective body corporate through education, training, resources and sharing of information between chairpersons. The organisation has since grown to over 340 members in Auckland, Tauranga, Mt Maunganui, Taupo, Kawerau, Napier, Wellington, Christchurch, Tekapo and Queenstown. The organisation represents in excess of 16,000 owners.

The BCCG represents a number of bodies corporate facing earthquake strengthening issues with many others still under-going building evaluations. Uncertainty and financial difficulty, coupled with a lack of knowledge of what to do in these circumstances, have created major stress for owners.