EQ Seminar 2: Questions, comments and answers provided on the night

1. Comment from Dr Peter Johnston.

A Section 124 (EQP) notice that has been issued via an IEP (Initial Evaluation Process) is the result of a coarse assessment and usually results in a low initial seismic assessment. What is required is a detailed seismic assessment (DSA). If the DSA comes in at or greater than 34%, that is all that is required to have the yellow sticker removed from the building. Owners may still choose to upgrade but it is not mandatory if the rating is greater than 34%. He advised:

- obtaining peer review of low assessments

- providing a comprehensive briefing (referring to his Seminar 1 presentation) to the engineer engaged to undertake a detailed seismic assessment, including providing the engineer with as much information on the building as possible.

In Peter's view some owners who received a s124 notice were spending money on repairs without first obtaining a DSA. Seeking a DSA after receiving a s124 notice very often gave a higher %NBS than the Council had stated (although it may not always be greater than 33%).

2. Attendee Question: What happens when there is an impasse between the engineer engaged by the body corporate and the Wellington City Council (WCC) and matters just keep going backwards and forwards between those two parties (which has the effect of increasing costs to the body corporate as well as delays)?

Geraldine Murphy (Inner City Association) responded that the Building Act has a determination process that can be used. The Act is overseen by the Ministry of Business Innovation and Employment (MBIE). Concerns have been raised over whether MBIE is able to give a determination given that it is responsible for the Building Act, under which s124 notices are issued including the current policy work. For further information see http://www.building.govt.nz/resolving-problems/resolution-options/determinations/

A determination has been sought on a similar issue (whether WCC used the right process to determine the seismic rating). MBIE found in favour of WCC and this is now going to the District Court. For information on this case see http://ebss.org.nz/earthquake-prone-building-test-case.

3. Comments from Alan Henwood (Director Stephens Lawyers, and Body Corporate chair) on points raised in Neil Cooper's presentation:

Escrow arrangements: Escrow arrangements are important for banks, when considering loan applications, as they want to know if all the money for the repairs has been collected from owners. This is a risk reduction consideration. Likewise, contractors also want to know, in order to reduce the risk of non-payment.

Common property, owner's private property and remediation agreements: there needs to be a good understanding of what are the body corporate's responsibilities/interests and owners' responsibilities/interests. The body corporate is responsible for the common area, infrastructure and

building elements. However, if the proposed strengthening involves the interior of a unit, the body corporate must get that unit owner's agreement. This can be done through a remediation agreement. There is no ability for the body corporate to go to court if the owner does not want to enter into a voluntary remediation agreement.

Remediation agreements achieve similar outcome to 'schemes' that are provided for under s74 of the Unit Titles Act, but which apply only to for repair of damage. Schemes under the Unit Titles Act are not available for earthquake strengthening work, unless there has been damage.

4. Comment from Sue Glyde, Body Corporate Chair on minority relief

Legal advice received indicated that the High Court was unlikely to agree to minority relief if the impact on that owner is small compared to the overall benefit of the proposed work for a building with a section 124 (EQP) notice (less than 34% New Building Standard (NBS)). The public safety drivers for the notice would over-ride the owner's objections.

The situation may be different if the Body Corporate was voluntarily undertaking further strengthening (eg, where the building was already greater than 34% but the BC wanted to undertake strengthening work to give an even higher %NBS).

5. Comment from Iona Pannett (Wellington City Councillor). She noted that the:

- Council was aware that affected owners were under huge pressure. There was limited Council assistance available for heritage designated buildings using the Built Heritage Incentive Fund (BHIF):

- in addition to BHIF, rates relief was available if the building was vacated during strengthening as well as once the strengthening was completed and the building removed from the Earthquake Prone Building List. This relief was based on the difference in valuation between the pre-strengthened value versus the post strengthened value. Rates rebates for a building being strengthened are considered in 12 month blocks. This means the owner has to reapply at the end of each 12 month period. The rebate is also available once the building is strengthened. This rebate is for a period of up to 3 years for a non- heritage building, five years for a heritage building, 8 years for Heritage NZ Category 2 building and ten years for a Heritage NZ Category 1 building.

- the heritage grant (BHIF fund) has recently been increased from $400,000 to $1m. A budget bid in the Annual Plan process is also being put up to provide an advisor to help affected owners.

- the Government needed to step up as the Council had limited resources. The Government has the resources if the matter is deemed to be a priority. So far, the Government has not taken the financial and other impacts on residential owners into account.

6. Response to Clr Pannett's question on audience views on WCC's support .

Their experience had been that the WCC had taken a long time to address concerns and when they did, the information received was 'sparse'. Any initiative that would enable owners to get advice would be a step in the right direction. At this point Councillor Pannett called for a straw poll which indicated that most people's experience with the WCC in relation to earthquake strengthening and requirements had been difficult and unhelpful. Councillor Pannett said that she would take that back to the Council.

7. Attendee Question: Would Council pay for legal and engineering costs associated with responding to WCC's notice of being a potentially earthquake prone building, when the seismic rating resulting from a detailed seismic assessment significantly exceeded the minimum 34% New Building Standard?

Councillor Pannett said that the WCC uses the existing Initial Evaluation Process (IEP) process. This gives owners a rough idea if there are problems with the building. A better assessment tool is being developed by Ministry for Business, Innovation and Employment. Meanwhile, the Council has a duty of care to identify earthquake prone buildings. The Council does its best within its limited financial capabilities.

8. Attendee Comment: A member of the audience commented that it cost $80m to earthquake strengthen a commercial building, none of which was tax deductible. The building is now valued at $110m.

Geraldine Murphy advised that the Inner City Association had made a submission on Inland Revenue's discussion paper on tax deductibility of detailed seismic assessments released on 24 December 2015. Inland Revenue's position was that the tax treatment would not change.

ICA's submission also raised:

- concern that an ad hoc approach had been taken to the policy work potentially resulting in inequitable treatment of commercial and residential buildings requiring earthquake strengthening. ICA is advocating equitable provisions must be available for both commercial and residential buildings. ICA's submission was subsequently referred to IRD's policy section.

- tax deductibility had come up in relation to Christchurch's strengthening work and the Government maintained its current policy line of no tax deductibility. and the

- the Regulatory Impact Statement that accompanied the Cabinet paper for legislative changes in 2015 did not address the financial impact on owners. Tailrisk Economics has done a number of submissions challenging the economic basis for the proposed changes.

- the legislation changes to the Building Act in 2003/2004 that resulted in the threshold of 34% and applying the threshold to buildings of all materials (not just unreinforced masonry and unreinforced concrete), did not get sufficient policy or media attention as the focus was the systemic failures that led to the leaky homes issue. Consequently, the public discussion

at the time was very limited, as most affected owners would not have been aware of the changes or implications, and there has not been a thorough analysis of costs borne by owners of residential buildings.

9. Comment from Helen Ritchie, commenting in a personal capacity as an affected owner (not as a Wellington City Councillor)

The Council had joined with the Commercial Property Owners' Association in making a submission to Inland Revenue. She said she will be speaking to the Council about residential owners of affected buildings. She noted that originally some 3,000 buildings had been assessed as being affected, but after later site inspection this had come down to about 600. Another area of concern was the time it would take for MBIE to implement the new legislation, said to be around two years, with current work underway on establishing criteria.

Geraldine Murphy said that Steve Cody, WCC's Building Resilience Manager, had advised in his presentation in Seminar 1, that the legislation could be implemented as early as April 2017. However, this is subject to the regulations being completed.