

28 February 2021

Hon Poto Williams
Minister for Building and Construction

Dear Minister Williams

Since our meeting with you, Minister Clark and Grant Robertson (Wellington Central MP) on 14 December 2020, Inner City Wellington (ICW) has continued to research the issues with the earthquake prone building legislation for multi-unit, multi-owner residential buildings. This letter sets out six questions we would like your response to.

Evaluation of the Earthquake Prone Buildings System 2019

MBIE's website states that the report on this evaluation is due out in early 2021. This is now a year later than initially expected, and we believe it that officials should have a date for release by now.

Question 1: When will the report on the outcomes of the evaluation be released?

Proposed remediation service

The MBIE briefing for the 14 December 2020 meeting noted that the Government is considering a proposed Earthquake Prone Building Remediation Service, subject to Budget considerations. This service was also referred to in a statement released to Georgina Campbell on 9 February regarding an [article](#) she was writing on tax breaks for seismic strengthening costs. The statement said 'we are committed to additional practical support to help residential unit owners who don't have experience in vertical infrastructure developments through a proposed remediation scheme'.

ICW is interested to hear the detail of this scheme and how it will be implemented. Our experience with the Residential Earthquake Prone Buildings Financial Assistance Scheme demonstrates that the implementation details are critical to whether the scheme will deliver the expected outcomes.

Question 2: When are the details on the proposed remediation service being released?

Response to owners 'Seismic requirements a feature of regulatory standards since 1935'

At the 14 December meeting I responded to your letter to Hannah Fredricson that 'seismic requirements have been a feature of regulatory standards for buildings since they were first introduced to NZ in 1935'.¹ ICW does not dispute that there has been the ability to identify buildings as earthquake prone. The issue is that the statement does not present the full picture of the fundamental shift in approach and there is a lack of transparency on the lack of data and engagement with affected owners.

The key points are restated:

¹ A similar paragraph appears in responses to Hazel Kirkham, Carol Brown, Suzie Luddon. I provided a copy of my oral speaking points to your office on the 14 December 2020.

- The Building Bill 2003 removed the constraint of just applying to unreinforced masonry or concrete buildings to allow territorial authorities to assess and require work to reinforce buildings built of any material. This policy change was developed by the Building Industry Authority with advice from a study group of the NZ Society of Earthquake Engineers.
- No data on the number of buildings, the types of buildings (eg, residential, commercial, public) or the likely groups of owners affected was provided in the Cabinet paper that proposed this change.²
- The explanatory note for the Bill did not refer to this amendment at all – when it was positioned by the Minister in the Cabinet paper as being the minimum change being recommended.
- This omission meant that Parliament, the media and the general public would not be aware of the change unless they undertook their own research. As a result there was no media coverage and affected home owners could not have been aware of it – until it was too late.

At the very least the response drafted by officials should refer to the fact that there was a substantive change made when the Building Act 2004 was introduced that extended the scope to all building types, but without any data on numbers, costs or owners that would be impacted, or the ability for potentially affected apartment owners to be aware of the change to make submissions.³

Question 3: Will you direct your officials to provide a fuller and more transparent explanation of the history of the current policy?

Definition of ‘moderate earthquake’ in Regulation 7 creates uncertainty and risks⁴

There is a lack of clarity around the definition of a ‘moderate earthquake’ in regulation 7 and how it will work in practice. I’ve endeavoured to clarify this with MBIE officials but their answers do not provide any real clarity about how this definition will be applied and what happens when standards change.⁵ I would expect that this was considered and documented at the time of creating the definition.

MBIE’s Departmental Report to the Select Committee⁶ states that the moderate earthquake definition in the regulations was amended to tie it to the commencement date of the Amendment Act. This would mean the earthquake prone building threshold [ie, the one third or 34%NBS] would not change as building standards change over time, unless the regulations are amended. This was to provide greater certainty to the building owners and increase transparency around the process for incorporating new knowledge into the moderate earthquake definition.

However, the definition in the regulation (see box on next page) seems to tie the threshold for earthquake shaking to the standard ‘that would be used to design a new building at that site if it were designed on the commencement date’. In this case, the commencement date is 1 July 2017.

² Minister of Commerce to Cabinet Policy Committee (2002-2003) Application of the Building Act to existing buildings.

³ I requested the communications strategy for the Bill. ‘Codeword’ was used, but this is a regular communication channel for the building sector, not residential home owners. I also checked all the individual submissions on the Bill and only one referred to the earthquake prone provisions, and that was from an engineer.

⁴ In Building (Specified systems, change the use, and earthquake-prone buildings) Regulation 2005.

⁵ MBIE DOIA 2021 – 1340 and follow-up email of 25 February 2021.

⁶ Para 37, 30 April 2015; the paragraph in the letter substantively repeats what is in the Departmental Report.

moderate earthquake means, in relation to a building, an earthquake that would generate shaking at the site of the building that is of the same duration as, but that is one-third as strong as, the earthquake shaking (determined by normal measures of acceleration, velocity, and displacement) that would be used to design a new building at that site if it were designed on 1 July 2017

If a new standard was issued, it could not be used in a detailed seismic assessment to determine a building to be earthquake prone under this regulation. If a new standard was issued, a separate regulation would be required and the current regulation 7 retained. This is the only way to provide certainty for owners who are complying or have complied with the legislation.

There is uncertainty if the interpretation is as the Departmental Report implies – that the moderate earthquake definition of ‘1/3 of the shaking’ remains constant as building standards change. It means the building could be assessed again against new (ie, tougher) standards, which will lower the %NBS for the building if another detailed seismic assessment is required. It is not difficult to see this occurring: insurers and bankers demanding an updated detailed seismic assessment against new standards before issuing a policy or setting the premium, or approving a loan for potential purchasers. If the assessment against a new standard resulted in a %NBS below the threshold (ie, below 34%NBS), it would result in the building being deemed earthquake prone, again. Even a reduced %NBS from that achieved through strengthening will effectively decrease the value of the strengthened buildings.

There are frequent references to ‘if the regulations change’. Engineers, scientists and politicians telling owners to strengthen as high as they can (ie, over the 67%NBS) to avoid being caught by changing regulations is irresponsible when the costs are uneconomic, the risks too high and with long-term financial consequences for owners when the safety benefits do not support the costs imposed on owners. The policy is putting this group of home owners on a treadmill of repeated expenditure that is not imposed on any other group of home owners.

Question 4: Is the earthquake-prone threshold (ie, the one third) tied to the standard in place as at 1 July 2017?

Question 5: If it isn't, what does this mean for owners of buildings:

- a. that have been strengthened and removed from the earthquake prone list?*
- b. deemed potentially earthquake prone and subsequently removed from the earthquake prone building list following the submission of evidence (such as a detailed seismic assessment report) that the building is not earthquake prone?*

During the consultation process in 2012-2013 there was talk from owners who had already strengthened their building and were going through a second round of strengthening. There was talk about providing certainty for owners.

The Departmental Report and the Select Committee report for the moderate earthquake definition referred to ‘providing certainty for owners’ and ‘unless the regulations change’; these statements are in conflict with each other. There is no certainty under this policy.

Officials noted in the OIA response that changes to regulations would only be made following public consultation. This process is unlikely to provide much assurance to residential owners.

Question 6: What certainty is being provided to owners who are progressing projects or have strengthened their buildings to comply with legislation?

MBIE Briefing and reference to ICW survey cost data

Page 8 of the briefing provided for the 14 December 2020 meeting stated that ‘MBIE would be interested in seeing a detailed breakdown of the costs that Innercity Wellington have, to inform our understanding of likely costs’.

ICW provided a copy of the survey report to MBIE in August 2020, including Part 2: survey data and analysis. MBIE did not engage with ICW to discuss the survey results or obtaining this data. We would consider a request for the cost data, but would need to consider the privacy of respondents before releasing any detailed data.

I look forward to receiving your responses to our questions.

Yours sincerely



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