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**REPORT 1**  
*(1215/53/IM)*

## **EARTHQUAKE PRONE BUILDING POLICY: REQUESTS FOR EXTENSION OF TIME –**

- **16 FETTES CRESCENT AND**
  - **240-242 CUBA STREET**
- 

### **1. Purpose of Report**

To consider a request for an extension of time to comply with the Council's Earthquake Prone Building Policy.

The buildings are located at

- 16 Fettes Crescent, Lot 9, Lot 14 and Part Lot 8 Deposited plan 51930
- 240-242 Cuba Street, Lot 1 deposited plan 53939

### **2. Executive Summary**

The applicants, in both cases, are new owners of the buildings:

- 16 Fettes Crescent was transferred to Peter Jackson and Frances Walsh on 21 December 2007
- 240-242 Cuba Street was transferred to Ratilal Patel and Naginbhai Patel on 7 May 2008

The potential for collapse in an earthquake is high. Although the building at 16 Fettes Crescent is currently unoccupied and the building at 240-242 Cuba Street has few occupants at present, there remains potential for harm to both current and future occupants and members of the public passing by.

Earthquake prone building notices are disclosed on Land Information Memoranda, and both new owners bought the buildings in the full knowledge of the need for urgent seismic strengthening.

The owners of 16 Fettes Crescent, through their engineers acting as agents, have requested a six month extension to commence the work to strengthen the building on site. Given the heritage listing of the building and the potential need for an amendment to resource consent if there is an alteration to the proposal, officers believe that the requested time frame is optimistic and may not be feasible.

The owner of 240-242 Cuba Street has requested a 7 year extension, indicating that this will allow him sufficient time to carry out major construction work to re-develop the site. There is no stated intention to strengthen the existing building in the meantime.

### **3. Recommendations**

It is recommended that the Committee:

1. *Receive the information.*
2. *With regard to 16 Fettes Crescent, approve an extension of time to reduce or remove the danger for two years from the date of purchase.*
3. *With regard to 240-242 Cuba Street, approve an extension of time to reduce or remove the danger, for two years from the date of purchase.*

### **4. Background**

The Council's Earthquake Prone Building Policy was adopted in May 2006. It provides for buildings to meet minimum performance standards, set under the Building Act 2004, in the event of a moderate earthquake. The objective of the policy is to advance public safety and minimise potential injury, loss of life and damage to other property. The policy provides for the Council to consider applications for extensions of time to comply with the Act and the Regulatory Committee holds delegated authority to decide on applications that are lodged with the Council.

The applications for an extension of time on behalf of the new owners seek extensions to the timeframe set in the policy, and embodied in the notice subsequently issued under s124 of the Building Act 2004.

#### **16 Fettes Crescent**

The building is known as the Star of the Sea, or Stella Maris chapel, is listed as a heritage building in the District Plan and has a NZ Historic Places Trust classification (11) C. The building has had only intermittent use for a number of years, and the owner has advised that the building has no current use, is unoccupied, and will remain so until the strengthening work is complete. The building is a one storied structure comprised predominantly of brick walls, with a significant basement under the eastern side. The former owners were issued with an earthquake prone building notice under the previous building Act 1991 in June 2004. Wellington City Council funded a seismic strengthening feasibility report in 2001. The strengthening work has not yet been undertaken. Resource consent was however granted on 24 September 2004 and remains live. The Historic Places Trust was consulted with regard to the proposed strengthening work prior to granting resource consent. The present owner acquired the property on 21 December 2007. A firm of engineers experienced in seismic structural design have confirmed that they have been engaged to prepare a strengthening scheme. They have requested a six month extension to commence the work to strengthen the building on site.

## 240-242 Cuba Street

This un-reinforced masonry and timber single storey building is located immediately adjacent to the footpath on the corner of Cuba and Abel Smith Streets. The building has had 2 changes of ownership since the building was first identified as an earthquake risk building in 1972. An earthquake prone notice was issued under the former Building Act 1991 in July 2002. A scheme to add an additional floor and strengthen the building was proposed in 2003 but did not proceed. The present owners acquired the property on 7 May 2008. The owner has requested a 7 year extension, indicating that this will allow him sufficient time to carry out major construction work to re-develop the site. There is no stated intention to strengthen the existing building in the meantime.

The current earthquake prone building notices were issued on 30 June 2006 in line with policy<sup>1</sup> requiring the property owners to demolish their building or start work to reduce or remove the danger by 30 June 2008.

## 5. Discussion

Attachment 2 of the Earthquake Prone Building Policy lists fourteen points to consider after receiving an application for an extension in time to complete strengthening work.

| Extension Consideration<br>(per Council Policy) |  | Analysis and Comment   |
|---|--|--|
| 1   | Whether people who use the building can do so safely.                      | <p>16 Fettes Crescent:<br/>The owners have advised that the building is currently unoccupied and have given an undertaking that it will remain so until strengthening work is complete. The building is on private property and not adjacent to public thorough fares.</p> <p>240-242 Cuba Street:<br/>The building is currently used by a dry-cleaning business of many years standing. The number of people currently employed in the building and the numbers of customers expected at any one time is low. The building does, however, have street front facades that could collapse in an earthquake posing a threat to the public.</p> |
| 2   | Importance of ensuring that each building is durable for its intended use. | <p>16 Fettes Crescent:<br/>There have been no durability issues identified.</p> <p>240-242 Cuba Street:<br/>The building is in a poor state of repair. The current owner has advised his intention to re-develop the site which is likely to include demolition of the building.</p>   |

<sup>1</sup>Wellington City Council's Earthquake prone buildings policy

| <b>Extension Consideration<br/>(per Council Policy)</b> |   | <b>Analysis and Comment</b>  |
|---|---|--|
| 3   | Importance of recognising any special traditional and cultural aspects of the intended use of the building. | <p><b>16 Fettes Crescent:</b><br/>This building is an ecclesiastical building long associated with the Sisters of Mercy and was associated with a boarding school for boys from 1909 until 1976. The chapel is visible on the skyline on the hill above Seatoun.</p> <p><b>240-242 Cuba Street:</b><br/>There are no identified special traditional or cultural aspects of this building.</p>  |
| 4   | Cost of the building (including maintenance) over its whole life.   | Neither applicant has provided costings of possible strengthening works.   |
| 5   | Importance of standards of building design and construction in compliance with the building code.           | <p>Initial evaluations (IEPs) have been obtained to assess the current level of strength comparative to new buildings built to NZS 1170. This is the methodology included in the Earthquake Prone Building Policy.</p> <p><b>16 Fettes Crescent:</b><br/>This building has been assessed at 17 % new building strength. The main concern is the lack of roof diaphragm with high un-reinforced masonry walls.</p> <p><b>240-242 Cuba Street:</b><br/>This building has been assessed at 6% of new building strength. The main concern is the irregular nature of the building with walls at the rear of the site but open to the two street frontages.</p> |

| Extension Consideration<br>(per Council Policy) |   | Analysis and Comment  |
|---|---|---|
| 6   | Need to provide for the protection of other property from the risk of physical damage.            | <p>16 Fettes Crescent:<br/>The adjacent buildings are owned by the same owner and therefore do not constitute 'other property' as defined in the Building Act. The building is remote from public areas.</p> <p>240-242 Cuba Street:<br/>The building is located immediately adjacent to the footpath on the corner of Cuba and Abel Smith Streets which is a significant intersection for both pedestrians and vehicles. It is a real possibility that any collapse of the facades would also endanger people and property on the footpaths and the roads. It would be possible for the Council to erect a hoarding to prevent entry to the building but closure of the footpaths and roads is not feasible.</p> |
| 7   | Need to facilitate the preservation of building of significant historical, or heritage value.     | <p>16 Fettes Crescent:<br/>The building is known as the Star of the Sea, or Stella Maris chapel, is listed as a heritage building in the District Plan and has a NZ Historic Places Trust classification (11) C. The chapel is intimately associated with prominent ecclesiastical architect, Frederick de Jersey Clere. The architecture is Inter-War Gothic in style and is noted for the sculptural qualities of the masonry brickwork.<sup>2</sup></p> <p>240-242 Cuba Street:<br/>This building is not listed on either the NZ Historic Places Register or as a heritage building in the District Plan.</p>  |
| 8   | Importance level of building.   | Both buildings are importance level 2 which is the level for most buildings other than those with crowd activities or post disaster functions. As such they have a moderate priority under the policy.  |
| 9   | Building structure and strength i.e. the code that was used to design and construct the building. | Both these buildings were built at a time before there were any structural design codes in New Zealand. Neither building has been significantly altered since. They are very significantly weak in comparison to new buildings and the type of construction and materials used means that they may be subject to sudden brittle failure.  |
| 10  | Special characteristics of the building e.g. heritage or historic.                                | 16 Fettes Crescent:<br>The building's prominent location on the hill above Seatoun gives it considerable townscape value.   |

<sup>2</sup> Wellington City Council Heritage Inventory 1995

| Extension Consideration<br>(per Council Policy) |  | Analysis and Comment  |
|---|--|---|
|   |  | 240-242 Cuba Street:<br>The site is considered to be an important street corner in the Cuba Character Area. However this building as been identified as a “non-heritage” building in this area.   |
| 11  | Whether the building has already been strengthened along with the level it was strengthened to and when the work was done. | Neither building has been strengthened in the past.   |
| 12  | Financial Implications.  | Neither owner has supplied any evidence about the financial implications.   |
| 13  | Ramifications if the building was to be demolished rather than strengthened e.g. loss of heritage for future generations.  | 16 Fettes Crescent:<br>The building has been identified as fabric worthy of preservation. It could not be demolished or altered without resource consent. The current owner intends to strengthen the building.<br><br>240-242 Cuba Street:<br>The building has not been identified as being fabric worthy of preservation for future generations. The owner wishes to re-develop the site. The building has been identified as a “non-heritage” building in the Cuba historic precinct in the District Plan. |
| 14  | Availability of the appropriate people to do all the work.   | The Council has recently been approached by structural engineers who have capacity to undertake the design work currently. Engineers have already been engaged to work on 16 Fettes Crescent. The building pressure appears to be easing in the city and contractors are likely to be available within reasonable time frame.   |

## 5.1 Summary of analysis against the Council’s Policy considerations

Key matters for Councillor consideration of these applications for extension in timeframe to complete strengthening work, are as follows:

- These buildings were built at a time before there were any structural design codes in New Zealand. The buildings are significantly weak in comparison to a new building and the type of construction and materials used means that it may be subject to sudden brittle failure. The buildings have not been strengthened since it was built.
- Both buildings are importance level 2 which is the level for most buildings other than those with crowd activities or post disaster functions. As such they have a moderate priority under the policy.

In particular for the buildings concerned:

### **16 Fettes Cres**

- The building has a high risk of collapse in a seismic event due to the lack of roof diaphragm with high unreinforced masonry walls. This building has been assessed at 17 % new building strength.
- The heritage listing has identified the building fabric as being worthy of preservation. Demolition of the building is not proposed by the applicant. The engineering firm engaged is experienced in the seismic strengthening of heritage buildings.
- The current owners purchased the building on 21 December 2007. They intend to strengthen the building and have engaged a firm of engineers experienced in the seismic upgrade of heritage buildings.

Based on the above, officers believe that an extension of two years from the date of purchase should be granted without conditions.

### **240- 242 Cuba St**

- The building has a high risk of collapse in a seismic event due to the irregular nature of the building with walls at the rear of the site but open to the two street frontages. This building has been assessed at 6 % new building strength.
- The building is located immediately adjacent to the footpath on the corner of Cuba and Abel Smith Streets which is a significant intersection for both pedestrians and vehicles. It is a real possibility that any collapse of the facades would also endanger people and property on the footpaths and the roads.
- The current owners purchased the building on 7 May 2008. The property owner is proposing to redevelop the site and has not proposed any strengthening in the interim.

Based on the above, officers believe that the un-strengthened building poses a significant risk to building occupiers and the public, and that a 7 year time extension is not appropriate. An extension of two years from the date of purchase is recommended as a reasonable timeframe, in line with the rationale on which the Policy is based, to demolish or commence strengthening the building.

## **5.2 Options**

There are three options available to the Committee in regards to these applications for extension of time, which are to:

- Approve an extension, without conditions (recommended):
- Approve an extension, with conditions; and
- Decline the extension and enforce the notice.

## 6. Conclusion

Both owners have owned their building for a comparatively short time, but were aware of the structural status and urgent need for structural strengthening at the time of purchase.

When the Policy was being developed this subcategory of buildings were given special consideration because the buildings:

- were by definition un-reinforced concrete or masonry structures
- have very low seismic strength because of their construction
- represent a high risk to occupiers and those around the building in an earthquake
- had been identified as an earthquake risk in the mid 1970's, and previous notices served on the owners to effect strengthening work had not been complied with.

At that stage it was decided that two years was a reasonable timeframe to expect owners to mitigate the risk posed by their un-strengthened buildings, given that they were already aware of the urgent need to undertake the work.

Officers consider that it is therefore in line with the intent of the policy to grant new owners a similar timeframe on the basis that:

- the earthquake prone notice is a matter of public record that they should have been aware of when they purchased the property
- two years is a reasonable timeframe to undertake the design work and either demolish or begin to strengthen the building.

The owner of 240-242 Cuba Street has provided no specific evidence to support the request for a longer time frame.

*Claire Stevens*  
*Team Leader Bylaws*  
*Building Consents and Licensing Services*

## Supporting Information

### **1) Strategic Fit / Strategic Outcome**

This activity primarily contributes to the outcome that “Wellingtonians will feel safe in all parts of the city”. It also contributes in part to the outcome that “Wellington will protect its heritage buildings and ensure that new developments are sympathetic to them.”

### **2) LTCCP/Annual Plan reference and long term financial impact**

The project is contained in the LTCCP 1.4.1 “*Earthquake risk Mitigation*”. There are no financial impacts for Council as a result of this decision.

### **3) Treaty of Waitangi considerations**

There are no Treaty of Waitangi implications.

### **4) Decision-Making**

This is not a significant decision.

### **5) Consultation**

#### **a) General Consultation**

Not required. However, the submission received from the owner is attached as Appendix A.

#### **b) Consultation with Maori**

Not required.

### **6) Legal Implications**

Legal advice was received during the development of the policy. In relation to this particular application, no legal advice was considered necessary.

### **7) Consistency with existing policy**

The recommendations in this paper are in accordance with the Earthquake Prone Building Policy adopted by Council on 31 May 2006.

# Appendix A-Owners Submissions

## 16 Fettes Cres



Reference: 207 178L01/F2  
8 April 2008

M/s C Stevens  
Building Consents & Licensing Services  
Wellington City Council  
P O Box 2199  
WELLINGTON 6140

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Dear Claire

Stella Maris, 16 Fettes Crescent, Seatoun, Wellington

We understand that the property has a requirement on it, from the Wellington City Council for the building to be strengthened.

On behalf of our Client, who has recently purchased the property, we seek an extension of 6 (six) months to commence the on-site work.

Clendon Burns & Park Ltd have been commissioned to prepare suitable plans for the strengthening of the Chapel and are presently engaged on this work.

If you have any queries, please contact the writer to discuss.

Yours faithfully  
CLENDON BURNS & PARK LTD



Dr A G Park  
DIRECTOR

> Mr V Visser, Wingnut Films Ltd

240 - 242 Cuba St

**VISHNU TRUST**

314 Willis street, Wellington, P.O. Box No.10-591, Wellington, New Zealand  
Telephone & Fax: 0064-4-384-5053. E-mail: [global.immigration@xtra.co.nz](mailto:global.immigration@xtra.co.nz)

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**Claire Stevens**  
**Team Leader**  
**Building Consents and Licensing Services Wellington City Council**

**22 April 2008**

**Re: 240 – 242 Cuba Street, Te Aro, Wellington**

**Dear Ms. Stevens,**

Further to your letter dated 21 April 2008 we would like to request that you remove the designation of 'Earthquake Prone' from the 240 - 242 Cuba Street building. We feel that this designation is unwarranted for the following reasons:

- The property industry in New Zealand, and in particular Wellington, is currently experiencing very real difficulties. Requiring such extensive work to be carried out will force us to postpone, or possibly cancel, our future development plans. This action will only serve to assist the current trends instead of working against them.
- The current tenant of this property has been a valued and respected member of the local commercial and residential community for many years. It is unlikely that they would be willing to pay a substantially increased rent. Because of this we would be forced to find other tenants capable of paying an increase rent for the same essential property, depriving a family of a business and a community of a much needed service.
- The property is tenanted by a commercial business and is rarely occupied by more than two people. It is a single story building with an area of 87m<sup>2</sup>; exits are clearly marked and easily accessible.
- Considering the wooden materials of the property it is not surprising that it is not reinforced. The costs involved in carrying out construction at this time would far outweigh the benefits.
- Vishnu Trust has plans to carry out major construction work on the property in the mid term future. These plans are being made with the above points in mind so as to create the least disturbance to and the most benefit for our tenants, the community and the economy. Being forced to carry out construction at this time will severely reduce our ability to carry out this work at a later date.

We ask that this notice be revoked in light of the above, and if failing that a sufficient extension be granted, until 2015, to ensure the best for our tenants, the community and the economy.

Please confirm the above in writing as soon as possible.

If you have any questions please do not hesitate to contact us.

**Regards,**



**Naginbhai Neil G. Patel**  
**Managing Director**  
**Vishnu Trust**

## Appendix B-Copy of Notices

16 Fettes Cres

### Notice pursuant to s124 of the Building Act 2004 in respect of a building deemed to be earthquake prone

To:

Owner;  
McAuley Trust  
Sisters of Mercy General Administration  
15 Guilford Terrace  
Wellington

Occupier;  
Stella Maris and Star of the Sea Retreat  
and Conference Centre  
16 Fettes Crescent  
Seatoun  
Wellington 6003

**Address:** The building situated at [16 Fettes Crescent](#), known as the [Star of the Sea Chapel](#), and more particularly being described as [Lot 9, Lot 14 and Part Lot 8 Deposited Plan 51930](#), and being all the land comprised in Certificate of Title [WN25D/486](#).

You are the owners of the building at the above address that has been classified by the Wellington City Council as earthquake prone in terms of s124 of the Building Act 2004. You are accordingly required by [30 June 2008](#) to either:

- (a) begin strengthening work to strengthen the building to a sufficient degree so that it is not earthquake prone; or
- (b) demolish the building.

A building consent must be obtained prior to strengthening or demolition work being undertaken. The building consent must be obtained and the work must begin before the expiry of the timeframe noted above.

Under s122 of the Building Act 2004, the meaning of earthquake-prone building is (1) A building is earthquake prone for the purpose of this Act if, having regard to its condition and the ground on which it is built, and because of its construction, the building-

- (a) will have its ultimate capacity exceeded in a moderate earthquake (as defined in the regulations/below); and
- (b) would be likely to collapse causing-
  - (i) injury or death to persons in the building or to persons on any other property; or
  - (ii) damage to any other property.

Moderate earthquake has the same meaning as section 7 in the Building Regulations 2005 where-

‘...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.’

The above mentioned building was issued with a notice under s66 of the Building Act 1991 classifying this building as earthquake prone. This s124 notice supersedes the former s66 notice. For further clarification see the ‘Maximum Timeframe to Strengthen a Building’ section of the Wellington City Council’s Earthquake-Prone Buildings Policy.

If you disagree with the classification of this building as earthquake prone you may apply for a determination from the Department of Building and Housing under s177(e) of the Building Act 2004.

If you do not comply with the terms of this notice the Council can (but is not limited to) initiate a prosecution under the Building Act 2004 or put up a hoarding or fence to prevent access into the building pursuant to s124(1)(a) of the Building Act 2004.

**Dated: 30 June 2006**

**Katharine Wheeler  
Building Permissions Manager  
Building Consents and Licensing Services  
Wellington City Council**

**240 - 242 Cuba St**

## **Notice pursuant to s124 of the Building Act 2004 in respect of a building deemed to be earthquake prone**

**To:**

|   |   |   |
|---|---|---|
| Owner;  | Occupier;                                       | Mortgage;   |
| Bright Green Properties<br>Limited                              | Fifty Five Minute<br>Dry Cleaners &<br>Pressers | Bank of New Zealand<br>Lending services<br>PO Box 335<br>Wellington |
| Benn, Adam Creswell<br>7 Clive Road<br>Khandallah<br>Wellington | 242 Cuba Street<br>Wellington                   |   |

**Address:** The building situated at [240-242 Cuba Street](#), and occupied by [Fifty Five Minute Dry Cleaners & Pressers](#), and more particularly being described as Lot [1 Deposited Plan 53939](#), and being all the land comprised in Certificate of Title [WN23A/936](#)

You are the owners of the building at the above address that has been classified by the Wellington City Council as earthquake prone in terms of s124 of the Building Act 2004. You are accordingly required by [30 June 2008](#) to either:

- (a) begin strengthening work to strengthen the building to a sufficient degree so that it is not earthquake prone; or
- (c) demolish the building.

A building consent must be obtained prior to strengthening or demolition work being undertaken. The building consent must be obtained and the work must begin before the expiry of the timeframe noted above.

Under s122 of the Building Act 2004, the meaning of earthquake-prone building is

(1) A building is earthquake prone for the purpose of this Act if, having regard to its condition and the ground on which it is built, and because of its construction, the building-

- (a) will have its ultimate capacity exceeded in a moderate earthquake (as defined in the regulations/below); and
- (b) would be likely to collapse causing-
  - (i) injury or death to persons in the building or to persons on any other property; or
  - (ii) damage to any other property.

Moderate earthquake has the same meaning as section 7 in the Building Regulations 2005 where-

‘...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.’

The above mentioned building was issued with a notice under s66 of the Building Act 1991 classifying this building as earthquake prone. This s124 notice supersedes the former s66 notice. For further clarification see the 'Maximum Timeframe to Strengthen a Building' section of the Wellington City Council's Earthquake-Prone Buildings Policy.

If you disagree with the classification of this building as earthquake prone you may apply for a determination from the Department of Building and Housing under s177(e) of the Building Act 2004.

If you do not comply with the terms of this notice the Council can (but is not limited to) initiate a prosecution under the Building Act 2004 or put up a hoarding or fence to prevent access into the building pursuant to s124(1)(a) of the Building Act 2004.

**Dated: 30 June 2006**

**Katharine Wheeler  
Building Permissions Manager  
Building Consents and Licensing Services  
Wellington City Council**

# Appendix C – Photos

16 Fettes Cres



Photo of chapel building at 16 Fettes Cres



**240 - 242 Cuba St**



Photo of the building at 240 - 242 Cuba St

