



FLETCHER VAUTIER MOORE
LAWYERS

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Attention: Clare Hadley

Dear Clare

TRAFALGAR CENTRE

1. You have asked me to summarise the advice given at the Works and Infrastructure Committee meeting held on 12 December 2013, and at our subsequent meeting on Tuesday.
 - (i) I agree with the recommendation to close the Trafalgar Centre for public use immediately. This was on the basis of recommendations contained in the Holmes Consulting Group (**HSG**) report dated May 2013, and the peer review by Paul Brimer of Dunning Thornton dated 25 October 2013.
 - (ii) I do not agree with the recommendation to carry out interim repair works to the building (once closed) to bring it up to 34% of NBS (which does not include remediation of the liquefaction prone land).
 - (iii) At the heart of this matter are the Council's obligations as building owner under the Health and Safety of Employment Act (**HSEA Act**) and Occupiers Liability Act. There is a need for the Council to address those matters in addition to its obligation to comply with any notice issued under section 124 of the Building Act 2004, which identifies the Trafalgar Centre as an earthquake prone building.
 - (iv) The obligation under section 16 of the HSE Act is to take all practicable steps to ensure that persons using the Trafalgar Centre are not harmed should an earthquake occur.¹ Mere compliance with a section 124 notice is unlikely on its own to satisfy a court that all practicable steps have been taken to ensure that persons using the Trafalgar Centre (once it has been re-opened) are safe.
 - (v) Relevant factors are that the Council has received advice that the Trafalgar Centre should be strengthened to a minimum of 67% of NBS, together with advice that component parts of the Trafalgar Centre are not robust structures in a seismic event.

¹ The most directly applicable provision is section 16(2).

(vi) Advice has been sought from HSG as to whether interim works can be carried out and a report prepared in October 2013 has been received by the Council. I saw this report only briefly shortly before the Council meeting on 12 December when I met with Alec to understand why he had recommended interim works to 34% of NBS. I have now read the report in full (together with the Tonkin & Taylor supplementary reports) and Alec has subsequently explained that HSG are unwilling to state what interim works would ensure that persons using the Trafalgar Centre were safe in a moderate earthquake. Rather, HSG has advised on remedial works to bring the building up to 34% of NBS by reference to provisions of the Building Act and the Council's Earthquake Prone Building Policy. I am not aware whether this report has been peer reviewed by Dunning Thornton.

(vii) The Council's Earthquake Prone Building Policy identifies a building at between 34% and 67% of NBS as an earthquake risk building. The definition states:

Resistance to earthquake attack is less than two thirds the standard of an equivalent new building (<67% of NBS). These are moderate risk buildings estimated to pose 5 to 10 times the risk of buildings complying with current building standards.

The proposed interim works to 34% of NBS appears on the face of it to be the minimum required to avoid classification as an earthquake prone building under the policy.

(viii) My current view is that where HSG are unwilling to state that the proposed interim works will ensure that persons using the Trafalgar Centre will be safe in a moderate earthquake, the Council's decision-making must proceed on the basis of the original recommendation by HSG, namely that the Trafalgar Centre should be strengthened to a minimum of 67% of NBS. This also corresponds with the recommendations contained in the New Zealand Society for Earthquake Engineering Guidelines dated June 2006.²

(ix) Important considerations are the following factors:

- (a) The building is for public events and public hire. Reasonably large crowds can be expected to use the Centre once re-opened.
- (b) The Council as building owner has detailed knowledge of the building's limitations in a seismic event, including the risk of liquefaction.
- (c) The Council as a local authority will be expected to have given serious consideration to the question of public safety before being satisfied that it was appropriate to re-open the Trafalgar Centre for public use. If it was shown that the Council had not accepted the recommendation to strengthen to a minimum of 67% of NBS (bearing in mind the advice that the component parts of the Trafalgar Centre are not robust

² New Zealand Society for Earthquake Engineering, Assessment and Improvement of the Structural Performance of Buildings in Earthquakes, June 2006.

structures in a seismic event), there is likely to be particular scrutiny on the reasons for not doing so.

- (d) If the advice from HSG is that they are unwilling to state whether the proposed interim works will ensure that persons using the Trafalgar Centre will be safe in a moderate earthquake, then the Council's decision-making should be guided by the original recommendation. Interim works that seek to achieve 34% of NBS so as to comply with minimum requirements under the Building Act and Council's Earthquake Prone Building Policy are likely to be insufficient if not accompanied by appropriate advice as to the safety of occupants in a moderate earthquake.
 - (x) As discussed at our meeting, I do not rule out the possibility that an interim works programme may be able to be designed and implemented, but I would need to have further discussions with both HSG and Dunning Thornton before being able to advise that an interim works programme would enable the Council to comply with its obligations under the HSE Act, and allow the Trafalgar Centre to be safely re-opened.
 - (xi) Matters for discussion would be what limitations HSG would place on the interim works programme, bearing in mind their original recommendation. The differences are summarised at pages 4-9, 4-16 – 4.17, 4-25 and 4-31 of the May 2013 HSG report.
2. I trust this is a sufficient summary. Please let me know if you require anything further.

Yours sincerely
Fletcher Vautier Moore



Julian Ironside
Partner