

In Confidence

Office of the Minister for Building and Construction

Chair, Cabinet Business Committee

## **Improving the unreinforced masonry securing initiative**

### **Proposal**

- 1 This paper seeks approval to amend the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 to allow building owners more time to complete mandatory work to secure unreinforced masonry (URM) buildings, and to adjust settings of the URM Securing Fund to better support and incentivise building owners to undertake securing work.

### **Executive Summary**

- 2 Falling unreinforced masonry (URM) parapets and façades present significant risks to life safety. The risk of failure of URM buildings can be reduced by securing parapets and façades back to the main building structures.
- 3 The November 2016 Hurunui/Kaikōura earthquakes increased the risk of a significant earthquake occurring in areas between Lower Hutt in the north and Culverden in the south (the affected areas).
- 4 In response to the heightened level of earthquake risk, the Hurunui/ Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 (the Order) was made on 27 February 2017 under the Hurunui/Kaikōura Earthquakes Recovery Act 2016.
- 5 The Order enables affected councils to require building owners in Wellington, Lower Hutt, Hurunui and Marlborough to secure high-risk URM parapets and façades within a year, no later than 29 March 2018.
- 6 The \$4.5 million Unreinforced Masonry Building Securing Fund (URM Fund) supports building owners meet half of the expected securing costs. The URM Fund comprises a \$3 million contribution from the Government and \$1.5 million from affected councils. Due to fewer buildings requiring securing work than originally budgeted for, there is a projected underspend of up to \$1.4 million.
- 7 One hundred and thirty-four buildings still require securing work. Building owners may face a range of practical constraints that hinder their ability to get work done on time, such as affordability and sector capacity. Updated forecasting in November 2017 suggests the heightened seismic risk period is expected to continue at two times the usual risk for at least a further six months beyond the period initially identified.
- 8 I propose a series of changes to the securing requirement and URM Fund to respond to the practical constraints building owners are facing, further enable those building owners who have work in progress to continue the work, and encourage those who have not started to begin. Where building owners refuse to comply, or take no steps to secure their building, I expect affected councils to take appropriate enforcement action.

- 9 I propose to amend the Order to defer the time until a council can bring a prosecution until six months after the deadline for securing work, to refine the URM Fund to better support and incentivise building owners, and to redistribute the underspend to better support owners of large and complex URM buildings who face higher costs. The combination of these proposals is expected to increase the level of compliance. All changes to the URM Fund can be made within the existing appropriation.
- 10 I seek authorisation to issue drafting instructions to the Parliamentary Counsel Office to give effect to these changes, and seek delegated authority to make final decisions about the URM Fund together with the Minister of Finance. I intend to announce Cabinet's decisions before Christmas so that building owners have sufficient time to prepare.

### **High-risk URM buildings must be secured by 29 March 2018**

#### *URM buildings perform poorly in earthquakes*

- 11 Falling unreinforced masonry (URM) parapets and façades present significant risks to life safety; 39 people lost their lives and 110 people were injured when URM buildings failed during the Christchurch earthquake on 22 February 2011. The risk of failure of URM buildings can be reduced by securing parapets and façades back to the main building structures.
- 12 The November 2016 Hurunui/Kaikōura earthquakes increased the risk of a significant earthquake occurring in areas between Lower Hutt in the north and Culverden in the south (the affected areas).
- 13 In the month following the Hurunui/Kaikōura earthquakes, GNS Science assessed the risk of a damaging earthquake in the affected areas as being eight times the usual risk level. This was expected to decrease to two times the usual risk by the end of 2017.
- 14 Updated forecasting in November 2017 suggests the heightened seismic risk period is expected to continue at two times the usual risk for at least a further six months beyond the period initially identified. In the affected areas, there is a 53 per cent probability of a magnitude 6 earthquake occurring in the next year, and a 6 per cent chance of a magnitude 7 earthquake. The Kaikōura earthquake on 14 November 2016 was magnitude 7.8.

#### *Unreinforced masonry buildings must be secured by March 2018*

- 15 In response to the heightened level of earthquake risk, the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 (the Order) was introduced in February 2017 under the Hurunui/Kaikōura Earthquakes Recovery Act 2016 (the Recovery Act). The Order targets street-facing URM buildings in areas with high pedestrian and vehicular traffic.
- 16 The Order allows affected councils to issue notices requiring building owners in Wellington, Lower Hutt, Hurunui and Marlborough to secure high-risk URM parapets and façades within a year. The purposes of the Order are to:
- improve the performance of URM buildings during an earthquake and provide an immediate benefit by saving lives and preventing injury
  - contribute to the overall public confidence in the performance of URM buildings in affected districts
  - improve regional resilience by enhancing the likely ability of the affected areas to cope with, and respond effectively to, a significant earthquake.

- 17 In order to manage the short term heightened life safety risks, the Order only requires ‘securing’ of these most vulnerable features, rather than full earthquake strengthening. Securing solutions are generally quick and cost effective (estimated to be up to \$20,000 to secure a standard parapet, and up to \$30,000 to secure a standard façade), and can be used as temporary measures until full strengthening work can be done.

*Funding is available to help building owners get the work done*

- 18 The \$4.5 million Unreinforced Masonry Building Securing Fund (URM Fund) supports building owners to meet securing costs. The URM Fund comprises a \$3 million contribution from the Government and \$1.5 million from affected councils.
- 19 The URM Fund recognises the short timeframe to complete securing work, and the mix of public and private benefits that accrue. It provides half the costs of securing work, up to a maximum of \$10,000 for a parapet and \$15,000 for a façade. These funding caps are based on the estimated costs to secure a typical URM building with an eight metre wide frontage. Funding is available once securing work has been completed, so long as it is completed before the deadline.

*One hundred and thirty-four buildings still require securing work or other evidence to prove they are secure*

- 20 One hundred and eighty-nine buildings across Wellington, Lower Hutt, Hurunui and Marlborough were originally identified with URM to be secured, and were issued notices requiring work to be done. Fifty-five have since been secured or proved to be secure, with 134 buildings still to be addressed. Some have work in progress, others are yet to start. Table 1 shows the current status of the buildings yet to be secured.

*Table 1: Current status of building to be secured*

<b>Council</b>	<b>Work in progress, likely to meet deadline</b>	<b>Work in progress, unlikely to meet deadline</b>	<b>Not started</b>
Wellington	34	27	34
Hutt City	11	16	8
Hurunui	-	1	1
Marlborough	-	2	-
<b>Total</b>	<b>45</b>	<b>46</b>	<b>43</b>

- 21 Affected councils and engineers are proactively assisting building owners to meet the requirements. Hutt City and Wellington City councils have taken action to address engineering and other capacity constraints. In Lower Hutt, a group of building owners have pooled together to engage a single engineering company to coordinate securing work and engage contractors. This arrangement is efficient and means work will be progressively completed; however some may not be completed by March 2018.
- 22 In Wellington, the Council has introduced a direct project management role – a programme manager coordinates, prioritises and aggregates work to minimise costs and manage other issues such as traffic access. While this should speed up work in progress and may get new projects underway, a significant proportion of securing work is unlikely to be completed by March 2018.

*Practical constraints for building owners have emerged after the Order was issued*

- 23 Despite this support, building owners report facing a range of practical constraints that hinder their ability to get work done on time, such as affordability and sector capacity:
- some buildings are larger and/or more complex to secure than anticipated. The costs of securing larger/complex buildings can be higher than originally anticipated, and design solutions are proving more complex and time consuming to develop
  - while the costs of securing smaller URM buildings are generally low, some building owners have reported struggling to raise finance to undertake an initial engineering assessment to determine what work, if any, is required
  - it can be challenging for joint ownership structures such as body corporates to coordinate and agree on financing arrangements to get the work done
  - engineering and contracting capacity is stretched or committed to other projects.
- 24 In addition, there are minimal incentives for building owners to continue work in progress if they are unlikely to meet the deadline. The status quo does not effectively respond to practical constraints and would require clear communications from the affected councils about their enforcement strategy.

*There are consequences for non-compliance*

- 25 Where work is not completed or proceeding with reasonable speed, councils can apply to the District Court for an order enabling them to step in to carry out building work. This can be a lengthy process, and it may be several months before councils are given this authority. Councils can do this before or after the deadline. This power is intended to be used in situations where building owners have not taken any action.
- 26 Building owners that have not completed work by the March 2018 deadline will have committed an offence and be liable for a fine of up to \$200,000. Councils currently have six months from March 2018 to begin prosecution proceedings, and have discretion as to whether they prosecute for non-compliance. The use of this step would be a last resort, since it may diminish a building owner's capacity to undertake securing work.

*The status quo may produce unfair outcomes*

- 27 While councils have discretion as to whether they prosecute for non-compliance, this is an uncertain and potentially unfair outcome for building owners who have taken reasonable steps to comply, but have been unable to meet the deadline due to practical constraints.
- 28 Building owners who have taken reasonable steps to comply would be in the same position as those who have done nothing, and would not be eligible for funding under the current settings.

## **Regulatory and funding changes are required to respond to practical constraints and further encourage compliance with the requirements**

- 29 The following problems mean that the objectives of the Order (life safety, public confidence, and regional resilience) may not be fully achieved:
- practical constraints identified in paragraph 23, in particular affordability and sector capacity considerations, causing delays in securing work
  - minimal incentives for building owners to continue work in progress if they are unlikely to meet the deadline
  - building owners rely on clear communications from the affected councils about their approach to enforcement action.
- 30 While the level of risk of a significant earthquake has decreased since the Order was made, the heightened risk is nevertheless still present, and expected to continue for at least another six months. Securing work remains the most effective means of managing the life safety risks during this period.
- 31 I propose a series of changes to the securing requirement and URM Fund to respond to practical constraints that are hindering progress and further encourage compliance.
- 32 In summary, I propose to defer the ability for councils to prosecute building owners, to alter the parameters of the URM Fund to better support and incentivise building owners, and to redistribute the underspend to support owners of large and complex URM buildings.
- 33 The proposals aim to treat building owners in a proportionate, fair and equitable manner; and balance public and private interests, such as life safety and affordability. Enforcement action remains an important tool for managing those who fail to take steps to undertake securing work, and deterring non-compliance.

### **Modifying the offence provisions is the most effective regulatory option**

- 34 I propose to amend the Order to extend the time to complete securing work before an offence is committed.
- 35 I propose the additional time before the offence provisions are triggered be limited to six months, to reflect the extended period of heightened risk and the practical constraints that building owners face. This period is reasonable and sufficient for building owners to complete work that is in progress before the end of March 2018, and balances life safety and practical considerations
- 36 The effect of this approach would be that building owners who have taken reasonable steps, but who have not been able to complete the work by March 2018, would not have committed an offence under section 128A of the Building Act (and be liable for a fine of up to \$200,000) if they complete the work by 30 September 2018. In effect, providing an additional six months to complete the work. Councils retain existing powers under the Building Act 2004 to manage public safety risks (such as restricting access).
- 37 For those building owners who still do not comply by 30 September 2018, councils would then have six months, until 31 March 2019, to take enforcement action under the Building Act.

38 I propose that funding remain available for building owners who complete securing work within the extended timeframe for compliance.

*Other options have been considered and are not recommended*

39 Non-regulatory responses leave enforcement action at the discretion of the affected councils. There is a risk of unclear or inconsistent communication from the affected councils about their enforcement strategies, which does not as effectively respond to practical constraints.

40 I do not consider amendments to primary legislation to be appropriate in these circumstances, given the limited nature of the Order and low number of councils and building owners affected. The proposed amendment is a proportionate response that will provide greater certainty for building owners.

### **Making changes to the URM Fund will further encourage compliance**

41 A series of amendments to the URM Fund settings can be made to better support building owners, and further encourage compliance. All changes can be made within the existing appropriation. As fewer buildings than originally budgeted for require securing, there is a projected underspend of \$1,462,000 (comprising \$975,000 Crown contribution and \$487,000 affected councils' contribution) that can be reallocated to support these changes.

42 I propose to alter the scope of the URM Fund to better respond to the needs of building owners, and bring the fund closer in line with the policy intent. I also propose to redistribute the projected underspend of the URM Fund to better deal with large and/or complex URM buildings.

43 In addition to the objectives set out at paragraph 33, these proposals aim to:

- incentivise owners who have not started to take the first step to secure their buildings
- provide greater proportionality and recognition of the higher costs for owners of large/complex buildings
- support cost-effective work that achieves the public safety intent of the requirement.

44 The proposals maintain the principle that the URM Fund provides 50 per cent of the cost of securing work, up to a capped maximum in each case. The 50 per cent contribution reflects the balance of public and private benefits that accrue from securing work. Caps are necessary to ensure funding is provided only for necessary securing work, not more expensive work that goes beyond what is required.

*Remove the split between parapet and façade funding to free up the full \$25,000*

45 Currently, building owners can apply for up to \$10,000 funding for a parapet and up to \$15,000 for a façade. I propose removing these divisions so that building owners can apply for up to \$25,000 funding for either a single parapet or façade, or both.

46 The current funding assumes that all buildings will have both a parapet and a façade, and that securing work for these elements would cost up to \$20,000 and \$30,000 respectively. In practice, some buildings have large facades and no parapets, but the total cost of securing the façade is greater than \$30,000. This proposal acknowledges this situation, provides greater flexibility, and has no fiscal impact.

- 47 For example: a URM building has a four-storey façade and no parapet. The quote for work to secure the façade (including engineering fees) is \$45,000. Under current settings, the building owner would only receive the maximum \$15,000 from the URM Fund for securing the façade. Under this proposal, they would receive \$22,500, constituting a 50/50 split of total securing costs.

*Fund engineering assessments earlier in the process*

- 48 Currently, all funding is provided once securing work has been completed. I propose creating a separate first milestone payment, so that building owners can receive funding for obtaining an engineering assessment much earlier in the process (as soon as they receive an invoice from their engineer).
- 49 Providing funding at an earlier stage is intended to encourage building owners to take the first step in the securing process: to determine what work is required (if any), and how much it will cost. This proposal is a minor administrative change, as the total \$25,000 funding cap would remain in place.
- 50 This proposal has a minor consequential impact, expected to cost approximately \$20,000.<sup>1</sup> Some building owners have already obtained engineering assessments which have shown that no securing work is required; however, they are unable to recover the cost of these assessments. As a consequence of this proposal, building owners that have engaged engineers to prove their building is already secure should be reimbursed. This can be managed within the underspent portion of the URM Fund.

*Fund the removal of URM elements from non-heritage buildings*

- 51 Removal of URM elements is currently outside the scope of what can be paid for by the URM Fund. When the URM Fund was agreed to by the previous government in December 2016 [CAB-16-Min-0709 refers], emphasis was placed on the need to quickly secure façades and parapets. Removal was not considered at this time, substantially due to the underlying concern of protecting heritage values.
- 52 However, not all of the buildings under the requirement are heritage buildings, and feedback from Wellington City Council is that there are about 10 non-heritage buildings, where owners may take action to remediate their building if they receive financial support to remove these features.
- 53 This proposal meets the objective of protecting the public from the risks of falling URM, and would have no fiscal impact. Funding would only be provided to remove URM elements, not the demolition of the entire building.

*Redistribute the projected underspend to support securing work on large/complex buildings*

- 54 The current funding caps are based on a typical URM building that is eight metres wide. Feedback from the affected councils, particularly Wellington, is that many buildings are larger and more complex than the typical eight-metre wide URM building the funding caps were costed from. The cost of securing work for large and complex URM buildings can be far greater than originally estimated (in the region of \$100,000 or greater).

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<sup>1</sup> This estimate is based on advice from affected councils that up to 13 building owners have undertaken these assessments. Initial engineering assessments usually cost \$1,000 to \$3,000. The URM Fund would provide half the cost of these assessments, up to \$1,500.

- 55 There is an opportunity to provide more support to owners of large/complex buildings by redistributing the underspend outlined in paragraph 41. I propose to raise the funding cap for large/complex buildings as far as possible within the existing underspend, to better reflect the actual costs incurred. The 50/50 funding principle will still apply.
- 56 Further work is required to clearly define a threshold for large and complex URM buildings, and determine how much additional funding can be provided. Building width and height can be useful proxies for estimating likely securing costs, but other factors, such as the need to preserve heritage features, can increase costs. I propose to work with the affected councils and engineering experts to establish a suitable definition, and adjust the funding caps accordingly.
- 57 No retrospective payments are expected to be required for this proposal, as no funding applications have been made. I seek delegated authority to make final decisions on this matter with the Minister of Finance following further work to establish the threshold and revised funding caps.

## **Impacts and Risks**

*Compliance is likely to increase as a result of these changes*

- 58 The combination of modifying the offence provisions so that an offence is not committed if work is completed within six months of the deadline, adjusting the funding settings to better support building owners, and reallocating the projected underspend is expected to increase the level of compliance and provide greater clarity for building owners.
- 59 The changes are expected to support building owners to take the first step towards securing the building, recognise and respond to the practical constraints that may cause delays in getting work done, and better reflect the actual costs of meeting the requirements for large/complex URM buildings.

*The changes are likely to set expectations for how the building system is administered*

- 60 Even if all proposed changes are implemented, some building owners may still not comply. This may be due to significant practical constraints such as affordability, or refusal. Enforcement action taken after the extended timeframe against building owners who do not comply with the securing requirement is likely to set expectations for how the system for managing earthquake-prone buildings will be administered.
- 61 Where building owners refuse to comply, or take no steps to secure their building, I expect affected councils to take appropriate enforcement action.

## **Consultation**

- 62 The Department of Prime Minister and Cabinet (National Recovery Office and Ministry of Civil Defence and Emergency Management), Ministry for Culture and Heritage, Ministry for the Environment, Department of Internal Affairs, Ministry of Justice and the Treasury have been consulted in preparing this paper.
- 63 *[Information withheld consistent with s 9(2)(h) of the Official Information Act 1982]*

Once drafted, the proposed amendment will be subject to review by the Hurunui/Kaikōura Earthquakes Recovery Review Panel and Regulations Review Committee.



## Financial Implications

- 64 All of the proposals related to the URM Fund are considered to have either no fiscal impact, or can be funded through the projected underspend.
- 65 Allowing securing work to continue beyond the current deadline requires an in principle expense transfer of up to \$3 million from 2017/18 to 2018/19. I seek delegation to determine the final amount to be transferred, following completion of the 2017/18 audited financial statements, jointly with the Minister of Finance.

## Human Rights

- 66 I consider that this proposal is not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

## Legislative Implications

- 67 An amendment to the Order will be required to extend the time to complete securing work before an offence is committed. I believe this is consistent with the purposes of the Recovery Act, in particular, to promote regional resilience, and is no more than is reasonably necessary to respond to practical constraints.

## Regulatory Impact Analysis

- 68 Regulatory Impact Analysis requirements apply to the regulatory proposals in this paper. The Regulatory Quality Team has determined that a Regulatory Impact Assessment (RIA) is not required because there are minor marginal impacts over and above the requirements in the current Order. As a RIA was not prepared for the current Order it will be particularly important to undertake a post-implementation review.

## Gender Implications

- 69 There are no gender implications arising from these proposals.

## Disability Perspective

- 70 There are no disability implications arising from these proposals.

## Publicity

- 71 I propose to announce the changes following Cabinet agreement, to provide certainty and allow affected building owners sufficient time to prepare.

## Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** that falling unreinforced masonry (URM) parapets and façades present significant risks to life safety;
- 2 **note** that the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 allows affected councils to require building owners in Wellington, Lower Hutt, Hurunui and Marlborough to secure URM parapets and façades by March 2018, to manage the heightened level of earthquake risk following the November 2016 Hurunui/Kaikōura earthquakes;

- 3 **note** that building owners may face practical constraints in completing URM securing work, and many are unlikely to meet the March 2018 deadline;
- 4 **note** that changes to the URM securing requirement and the URM Fund can be made to further encourage compliance and better support building owners to meet the requirement;

#### *Regulatory change proposals*

- 5 **note** that notices that have been issued to building owners requiring securing work to be done remain in place after the Order is revoked on 31 March 2018;
- 6 **agree** to amend the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 to extend the time to complete mandatory securing work before an offence is committed;
- 7 **agree** that the extended timeframe referred to in recommendation 6 above be limited to six months, in line with the expected continued period of heightened seismic risk and no longer than necessary to complete work in progress;
- 8 **agree** that an amendment to the Order be developed, to give effect to recommendations 6 and 7 above;
- 9 **invite** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendations 5 and 6 above;
- 10 **authorise** the Minister for Building and Construction to approve changes consistent with the proposals in recommendations 6 and 7 above on any issues that arise during the drafting process;

#### *Funding change proposals*

- 11 **note** that the \$4.5 million Unreinforced Masonry Building Securing Fund (URM Fund) was established to contribute to the costs of the securing requirement, comprising a \$3 million government contribution and \$1.5 million contribution from affected councils;
- 12 **note** that the URM Fund provides half of the costs of securing work upon completion of securing work by the deadline, up to a maximum of \$10,000 to secure a parapet and up to \$15,000 to secure a façade;
- 13 **agree** to the following amendments to the URM Fund to respond to practical constraints in meeting the deadline for securing work, encourage owners to secure URM buildings, and provide greater flexibility and proportionality:
- 13.1 provide funding for engineering assessments as a first milestone payment, rather than after all securing work has been completed
  - 13.2 combine the currently separate \$10,000 parapet and \$15,000 façade funding caps into a single \$25,000 cap for either a parapet or a façade, or both
  - 13.3 provide funding to meet the costs of removing URM elements on non-heritage buildings as an alternative to securing work, excluding demolition
  - 13.4 raise the funding caps for large/complex URM buildings as far as possible within the current appropriation;

13.5 provide funding for securing work completed within the extended timeframe for compliance referred to in recommendations 6 and 7;

- 14 **note** that the definition of large/complex URM buildings will be determined in consultation with the affected councils;
- 15 **authorise** the Minister for Building and Construction and the Minister of Finance jointly to determine the revised funding cap for large/complex URM buildings once the definition has been developed;
- 16 **note** that the URM Fund was established to provide support to secure 200 URM buildings, but only 135 require securing work and will be eligible to apply for funding;
- 17 **note** that as fewer buildings require securing work than originally budgeted for, there is a \$1,462,000 projected underspend of the URM Fund, including \$975,000 government contribution;
- 18 **note** that the projected underspend will be reallocated to give effect to recommendations 13.1 to 13.5;
- 19 **note** that in December 2016, Cabinet agreed to establish the following new appropriation:

Vote	Appropriation Minister	Title	Type	Scope
Building and Housing	Minister for Building and Housing	Remediation of Facades and Parapets of URM buildings in at risk areas	Non-Departmental Other Expense	This appropriation is limited to the partial remediation of street-facing and parapets of URM buildings in at risk areas

- 20 **note** that extending the time to complete mandatory securing work before an offence is committed requires the in-principle transfer of up to the following maximum amount of operating from 2017/18 to 2018/19:

Vote Name	\$m – increase/(decrease)				
	2017/18	2018/19	2019/20	2020/21	2021/22 & Outyears
Minister of/for Portfolio					
Non-Departmental Other Expense: Remediation of Facades and Parapets of URM buildings in at risk areas	(3.000)	3.000	-	-	-

- 21 **authorise** the Minister of Finance and the Minister for Building and Construction jointly to determine the final amount to be transferred, following completion of the 2017/18 audited financial statements, with no impact on the operating balance and/or debt;

*Publicity*

- 22 **note** that the Minister for Building and Construction intends to announce the proposals following Cabinet Business Committee's decisions;
- 23 **note** that announcing the proposals at this time will provide clarity and certainty for the affected councils and building owners.

Authorised for lodgement

Hon Jenny Salesa

Minister for Building and Construction