



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



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# Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Amendment Order 2018

**Engagement document**

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# Engagement document: Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Amendment Order 2018

**This document explains the need to amend the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 to provide an extension for building owners who have taken reasonable steps towards completing securing work**

This document has been produced pursuant to section 9 of the Hurunui/Kaikōura Earthquakes Recovery Act 2016 (the Recovery Act) to support the engagement process on the proposed Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Amendment Order 2018 (the amendment Order).

It includes an explanation of what the proposal is intended to achieve, a description of its proposed effect, and an explanation of why the Minister for Building and Construction (as the relevant Minister) considers the amendment Order is necessary.

## Background

### **The Hurunui/Kaikōura earthquake sequence**

A magnitude 7.8 earthquake occurred northeast of Culverden, New Zealand at 0002 NZDT on 14 November 2016. Strong to severe shaking was felt throughout New Zealand and lasted for over two minutes in some locations.

The main impacts of the Hurunui/Kaikōura earthquake sequence have been felt in Canterbury (Kaikōura and Hurunui Districts), Marlborough (Blenheim), and the Wellington central business district. There was loss of life in Kaikōura, and significant damage to land, infrastructure and buildings in Kaikōura, Hurunui, Wellington and Marlborough.

### **Parts of New Zealand face an increased probability of a damaging earthquake**

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).

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.

Updated GNS Science forecasts in November 2017 suggest 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.

### **URM buildings can threaten life safety in an earthquake**

Falling unreinforced masonry (URM) parapets and façades present significant risks to life safety. The facades of URM buildings can include a range of attached components such as verandahs, balconies, decorative features, chimneys and signs. Some of these components may also be attached to parapets. In an earthquake, parts of masonry can break away from a URM building, and entire parapets or other features can collapse onto the ground.

These risks to life safety have been demonstrated in New Zealand and internationally. URM building failures endangered lives in the 2007 Gisborne and September 2010 Canterbury

earthquakes. Thirty-nine people lost their lives and 110 people were injured when URM buildings failed during the Christchurch earthquake on 22 February 2011. The August 2016 earthquakes in central Italy caused widespread failure of URM buildings, and nearly 300 people lost their lives.

**A requirement to secure vulnerable features of URM buildings in areas with heightened earthquake probability was introduced in February 2017**

Securing URM parapets and façades is a cost effective way to reduce risks to life safety from URM buildings in an earthquake. 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.

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.

The Order enabled territorial authorities to require owners of certain URM buildings in areas with a heightened earthquake probability to have their street-facing URM parapets and facades secured within a 12-month period. This requirement applies only to certain streets that were identified as having high pedestrian and/or vehicular traffic.

Alongside these regulatory modifications, a fund was established to help building owners meet the costs associated with the new requirements. The \$4.5 million Unreinforced Masonry Building Securing Fund (URM Fund) supports building owners to 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.

**Many buildings have not been secured**

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. Over a quarter have since been secured or proved to be secure; however, over 100 are still to be addressed. Some building owners have work in progress; others are yet to start.

Affected councils and engineers continue to proactively assist building owners to meet the requirements. Despite this support, building owners face 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
- engineering and contracting capacity is stretched or committed to other projects.

These constraints were identified as risks at the time the Order was developed; however, at that time it was unclear how significant these issues would be.

Under the Order, building owners who 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 the date of non-compliance to begin prosecution proceedings. The use of this step would be a last resort, since it may diminish a building owner's capacity to undertake securing work.

Councils have discretion as to whether they prosecute for non-compliance; however, 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.

While the probability 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.

### **Decisions to better support building owners, further encourage compliance, and incentivise owners to continue work in progress have been made**

Securing work remains the most effective means of managing the life safety risks during this period. Building owners should be encouraged to continue work that is in progress, especially where they may be unable to meet the current deadline due to practical constraints.

The Government, therefore, has decided to extend the time for building owners to complete mandatory securing work before an offence is committed. This extension would apply to enable building owners to complete work that is already in progress. This decision strikes a balance between the need to secure URM buildings during the period of heightened risk, and ensuring there is reasonable time to get the work done.

The Government and affected councils have also made changes to the URM Fund to better support building owners complete this work.

### **What the proposal is intended to achieve**

The proposed amendment is a minor change to the existing Order. It is consistent with the Recovery Act's purpose of assisting earthquake-affected areas, councils and communities to respond to the impacts of the Hurunui/Kaikōura earthquake sequence.

Specifically, it is intended to achieve safety enhancements to, and improvements to the resilience of, URM buildings in areas where they present an increased risk to life safety due to the heightened probability of a damaging earthquake.

The proposed amendment is intended to encourage building owners to continue the securing work necessary to achieve the above objectives, particularly where practical constraints beyond building owners' control have delayed the securing process.

### **The proposed effect of the amendment Order**

The proposed amendment amends clause 10 of the Order, which provides that the offence provision in section 128A of the Building Act 2004 will apply if a person fails to comply with a notice that requires work to be done. This could mean a fine not exceeding \$200,000.

The effect of the amendment is that an offence is not committed under section 128A of the Building Act until 18 months after the date of the notice issued by the Council in the case of a person who, despite having failed to comply with a notice, has taken reasonable steps towards complying with the notice. Councils continue to retain existing powers under the Building Act to manage public safety risks (such as restricting access).

A person is treated as having taken reasonable steps if the design of the building work has been, or is being, carried out or reviewed by a chartered professional engineer. In practice, the design process is usually lengthier and more complex than the 'building work' phase. It is reasonable that building owners who have done as much as possible within their control in the process (i.e. engaged an engineer) not become immediately liable for an offence for reasons beyond their control (i.e. limited engineering or contracting capacity).

In all other cases, section 128A will continue to apply on the date that is 12 months after the date on which the notice was issued.

The additional time before the offence provisions are triggered will 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 projects that are in progress before the end of March 2018, and balances life safety and practical considerations. Approximately 50 buildings are anticipated to be secured within the extension period.

### **The amendment Order is considered necessary or desirable**

The amendment Order is considered necessary and reasonable to ensure work to address the increased risk to life safety from certain URM buildings in areas that are affected by the heightened probability of a damaging earthquake is completed within a reasonable time, while recognising practical constraints.

The proposal to amend the Order is considered to be a proportionate response that will provide greater certainty for building owners who have commenced but not completed work by the March 2018 deadline.

For these reasons, and other considerations canvassed in this document, the Minister for Building and Construction considers the proposed amendment Order is necessary or desirable for the purpose of the Recovery Act.