



## COVERSHEET

<b>Minister</b>	Hon Chris Penk	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	Earthquake-prone building system – Proposed review, extension of remediation deadlines and other matters	<b>Date to be published</b>	15 May 2024

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
March 2024	Earthquake-prone building system – Proposed review, extension of remediation deadlines and other matters	Office of Minister for Building and Construction
29 March 2024	Earthquake-prone building system – Proposed review, extension of remediation deadlines and other matters ECO-24-MIN-0043 Minute	Cabinet Office
25 March 2024	Regulatory impact statement - Extension of remediation deadlines for earthquake-prone buildings	MBIE

### **Information redacted**

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of confidential advice to Government and protection of legal privilege.

# Regulatory Impact Statement: Extension of remediation deadlines for earthquake-prone buildings

## Coversheet

Purpose of Document	
Decision sought:	<i>Cabinet agreement to extend all non-lapsed remediation deadlines for earthquake-prone buildings by four years, with an option to extend by up to a further two years, if required.</i>
Advising agencies:	<i>Ministry of Business, Innovation and Employment</i>
Proposing Ministers:	<i>Hon Chris Penk, Minister for Building and Construction</i>
Date finalised:	<i>25/03/2024</i>
Problem Definition	
<p>The Minister for Building and Construction intends to review the management of seismic risk in existing buildings (the Review) in 2024, as a response to growing concerns from earthquake-prone building owners<sup>1</sup> and territorial authorities about the feasibility of meeting and enforcing the current deadlines for remediating earthquake-prone buildings (by seismic strengthening or demolition).</p> <p>While the scope of the Review is yet to be agreed, it will likely signal to building owners, territorial authorities and other stakeholders that there will be possible changes to the remediation requirements and deadlines for existing earthquake-prone buildings. The Review and any subsequent regulatory changes are expected to take until the end of 2027.</p> <p>While the Review is necessary to address the overarching concerns about the system and ensure effective and efficient seismic risk management in existing buildings, <b>awareness of the Review, and the expectations it raises, causes a lack of clarity and certainty for building owners and territorial authorities in the short-term.</b> This may have the following impacts:</p> <ul style="list-style-type: none"><li>• Building owners face remediation deadlines, many of which fall within the next few years (471 fall between April 2024 and the end of 2027), but some may be reluctant to take action in case their obligations may be removed or altered after the Review. However, if these buildings miss their remediation deadlines, their owners will have committed an offence under the <i>Building Act 2004</i> (the Act), and territorial authorities will likely face a significant enforcement challenge. This risks undermining the intent of the system and inhibiting remediation in the longer-term.</li><li>• While building owners choosing to take remediation action is generally a good thing, if owners and territorial authorities are forced to invest their limited resources to remediate and/or enforce deadlines for earthquake-prone buildings whose status or</li></ul>	

<sup>1</sup> Unless otherwise specified, reference to building owners or owners refers to earthquake-prone building owners throughout this regulatory impact statement.

deadlines could potentially be changed following the Review, this could lead to a sub-optimal use of those resources.

Intervention is needed to provide certainty and clarity to building owners and territorial authorities about what actions they should take and to prevent sub-optimal use of resources during the period of the Review and any subsequent changes.

## Executive Summary

### **A Review of the earthquake-prone building system is likely to begin shortly**

The earthquake-prone building system aims to protect life-safety in the event of an earthquake by identifying and requiring the remediation (by seismic strengthening or demolition) of New Zealand's most vulnerable buildings. The system was intended to adequately balance the need to protect life-safety against the costs of remediation, and set requirements and timeframes for remediation that were, at the time, expected to be achievable. However, indications are emerging that the system is not achieving these outcomes, including that it is not enabling effective remediation of earthquake prone buildings in the timeframes intended.

In response to these concerns, the Minister for Building and Construction intends to bring forward a review of the management of seismic risk in existing buildings (the Review) to 2024 (originally planned for 2027). This review will likely include exploring potential issues with earthquake-prone building system settings and considering whether updates to these settings would be appropriate. This could affect building owners' obligations (for example, changes to which buildings are considered earthquake-prone and how long they have to remediate). Announcement of the Review will likely set expectations for change.

### **Awareness of the review and its possible outcomes will create lack of clarity and certainty about what actions buildings owners and territorial authorities should take in the interim to address current earthquake-prone buildings.**

This lack of clarity and certainty risks undermining the intent of the system and is expected to lead to some owners pausing their remediation efforts while awaiting the outcome of the Review. It could also lead to sub-optimal investment of resources, for example by:

- building owners that proceed with remediation to meet current regulatory obligations, but find that afterwards their obligations would have been changed following the Review and they could have addressed their building's seismic risk in a more efficient way
- territorial authorities being required to address large scale non-compliance by those building owners who elect to await the outcomes of the Review before proceeding with any remediation and whose deadlines lapse during, or shortly after, that time.

*Extending remediation deadlines will address the lack of clarity and certainty and help prevent sub-optimal use of resources*

This regulatory impact statement recommends extending remediation deadlines for all non-lapsed earthquake-prone buildings by four years (and up to two additional years by Order in Council) to provide clarity and certainty to both building owners and territorial authorities about their obligations while the Review and any subsequent changes take place.

The option to extend deadlines by a further two years by Order in Council, which can only be done once and only if required, mitigates the risk of earthquake-prone building deadlines

expiring before the Review and/or any subsequent legislative amendments are completed, if unforeseen events mean either process takes longer than anticipated.

*Extending all remediation deadlines by four years will provide the most clarity and certainty to building owners and territorial authorities*

A blanket extension of four years for all buildings (with non-lapsed deadlines) will provide certainty across the system, ensure ease of implementation for territorial authorities and clarity for building owners, and will also keep the current risk-based order of deadlines.

An option to extend deadlines for a subset of building owners (such as by building use or type) was considered but would not meet the objectives as well as a blanket extension, and would create additional complexity, such as determining which buildings were eligible.

An option to extend only the most imminent deadlines was also considered. However, this could lead to greater clustering of deadlines (than already exists) in future, which can lead to bottlenecks in the system and place strain on sector capacity to undertake remediation work.

Discounted options included removing statutory remediation obligations, non-regulatory options such as pausing enforcement of current deadlines without extending them (which would be unlawful), and options to support or influence greater compliance, or to mitigate particular risks.

*The analysis in this regulatory impact statement assumes that the Review takes place*

Extending remediation deadlines will only address the immediate problems caused by awareness of the Review. It will not address the concerns about the appropriateness or effectiveness of the system and its settings; the Review will examine these further and make recommendations for improvement.

### **Life-safety risk will increase somewhat if deadlines are extended**

The key risk of extending remediation deadlines is that life-safety risk in earthquake-prone buildings remains unmitigated for a longer period of time than it would under the current remediation deadlines.

Buildings on the Earthquake-prone Building Register (the EPB Register) in high seismic risk areas can be categorised as those that:

- 1) will be remediated within the extension period regardless
- 2) are unlikely to be remediated by the current deadlines, even without an extension
- 3) would likely have been remediated by the current deadlines, but the building owners decide to wait as a result of being granted the extension.

Any additional life-safety risk due to an extension only results from the inaction of building owners in the third category. While it is not possible to estimate how many buildings are in each category, it is clear additional risk will not be posed by all buildings that receive an extension.

Technical experts advise that the likelihood of a damaging seismic event happening at any given time is very low (albeit with potentially very high consequence). In a system with a lifespan of approximately 50 years, the additional risk of extending remediation timeframes by up to six years is expected to be marginal.

Other risks include: possible owner disengagement or loss of consensus between owners in multi-unit buildings; a loss of credibility for the earthquake-prone building system; and expectation of future deadline extensions.

Proactive communications can be used to encourage those with well-advanced plans for mitigation to continue despite the extension and the Review. There are also other drivers, such as market demand for buildings with better seismic performance and insurance prerequisites, that may influence building owners to manage their seismic risk by remediating to a higher seismic rating in the meantime.

## Limitations and Constraints on Analysis

### Limitations on consultation

With 19 remediation deadlines in 2024, and a total of 471 deadlines by 2027, the Minister has expressed a desire to begin a Review swiftly and provide certainty and clarity about current deadlines to building owners and territorial authorities as soon as possible. Therefore, there has been limited time for broad stakeholder engagement.

MBIE's options analysis has been informed by direct stakeholder engagement with between officials or the Minister, with a number of building owners and representative groups.

MBIE has also undertaken limited, targeted engagement with some owners of Importance Level 4 buildings (buildings that are essential to post-disaster recovery or associated with hazardous facilities), including Te Whatu Ora and Fire and Emergency New Zealand. It has also undertaken departmental consultation with a range of government agencies that are earthquake-prone building owners, targeted consultation with six territorial authorities (from both cities and regional areas), a representative group of engineers and Property Council New Zealand.

Further stakeholder engagement would be needed to:

- ensure the extension will deliver clarity and certainty to building owners during the Review
- fully understand the costs and administrative burden to implement the extension
- identify any unintended consequences.

### Quality of data and assumptions

It is assumed that the Review will commence in 2024 and that any subsequent legislative changes can be made and implemented in 2027 (with a buffer of up to two years, if needed).

This regulatory impact statement uses data downloaded from the EPB Register as at 21 February 2024. It is expected that there will only be minor variations in the data between this date and Cabinet consideration of the proposal to extend deadlines.

There are limitations to what data is captured on the EPB Register – for example, it is not possible to filter buildings by current use – and there are some data inconsistencies.

We do not have accurate numbers about how many buildings would be affected by each option.

MBIE has been unable to meaningfully or accurately quantify the additional risk to life-safety under the various options considered. This is because:

- it is difficult to quantify the proportion of building owners who will decide not to remediate when they learn of the Review

- even without the Review, many building owners are unwilling or unable to meet remediation obligations. However, data about expected compliance rates of building owners is limited, and low-confidence, particularly for buildings outside of Wellington.

An annualised predicted loss of life was calculated as part of the cost/benefit analysis for introducing the current earthquake-prone building system. MBIE did not have the time or resources to complete such a model in the time available to develop this regulatory impact statement, and doing so would not proportionate to the scale of this policy decision. We anticipate that, if agreed by Cabinet, the Review will fully revisit the costs and benefits of the overall system and any proposed changes, leading to the development of an updated or new cost-benefit model.

#### *Assumptions about how knowledge of the Review will impact owner remediation decisions*

Current compliance rates (even without a review), can provide a baseline proxy for life-safety risk in the existing system. Additional life-safety risk arises when owners choose not to remediate as a result of the Review. With a Review underway, and without a compliance requirement (eg an imminent deadline) more building owners may choose not to remediate, further increasing the additional life-safety risk.

We have assumed:

- not all buildings with imminent deadlines will meet their regulatory obligations by their current deadline – though we cannot be certain until each building’s deadline passes that they have not complied, available evidence indicates likely substantial non-compliance (which is a key driver for the Review)
- some building owners who may have otherwise started remediation planning or work in the near future (ie intended to comply by their deadline or at least demonstrate some progress towards compliance) will not progress remediation of their buildings once the Review is announced. While this is not certain, it is believed to be likely as remediation is costly and the Review will signal possible future regulatory change that may change some owners’ obligations to remediate. Anecdotal evidence from the Residential Earthquake-prone Building Support Service pilot suggests that some of the 10 participating building owner groups are already slowing or halting their remediation planning in anticipation of the Review.
- market responses to seismic risk (eg tenant requirements, insurance prerequisites, and health and safety drivers) will continue to incentivise some owners to actively manage seismic risk in buildings during the extension period.

#### *Quantification of compliance rates*

Approximately 48% of earthquake-prone buildings with deadlines between 2024 and 2027 are in Wellington.<sup>2</sup> Wellington City Council reports that this includes 52 apartments, with 980

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<sup>2</sup> Note there are variances in data accessed from the EPB Register on 21 February 2024 and that reported separately by Wellington City Council at different points in time.

individual residential units, which can face particular challenges to remediation. We know that:

- even without a review, only 20 per cent of Wellington's 300 earthquake-prone buildings with deadlines in 2024-2027 (up to 60 buildings) are considered to be on target to meet current deadlines<sup>3</sup>
- therefore, 80 per cent of deadlines may lapse (approximately 240 buildings).

From engagement with other territorial authorities, we know that:

- non-compliance even without a review is also an issue in other regions, and
- compliance rates between areas is expected to be variable, as the barriers to compliance vary between regions (e.g. proportion of heritage buildings, access to engineering services, cost of work compared to value of building), although we do not have quantified estimates of compliance from any other territorial authorities.

If Wellington's ratio of anticipated non-compliance were applied to the total number of 471 imminent (2024-2027) remediation deadlines, approximately 377 buildings would be unlikely to be remediated by their current deadline. However, this ratio should not be used to estimate likely compliance with deadlines further into the future (see below).

#### *Anticipated non-compliance in the medium-to-long term*

Some earthquake-prone buildings have up to 35 years remaining to comply with their current regulatory obligations. This includes around 1500 buildings in Auckland (a low risk seismic area) that have deadlines between 2052 and 2059. It is not possible to anticipate what level of non-compliance might be seen in the 2030s through to 2050s. However, the Review will provide an opportunity to apply learnings and outcomes from the first series of deadlines in high and medium seismic risk areas to those buildings with deadlines further into the future.

#### **Responsible Manager(s) (completed by relevant manager)**

*Suzannah Toulmin*

*Manager, Building Policy*

*Building System Performance*

*Ministry of Business, Innovation and Employment (MBIE)*



25/03/2024

#### **Quality Assurance (completed by QA panel)**

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact

<sup>3</sup> Estimate provided in: *City Seismic Issues* – Councillor Briefing, Wellington City Council, 6 December 2023. Accessed via: <https://wellington.govt.nz/-/media/property-rates-and-building/rates-and-property/earthquake-prone-buildings/files/city-seismic-issues-councillor-briefing-6-december-23.pdf?la=en&hash=E42D9B540A35D85E62EFCBB9232E51BA3DBD6C07>.

Statement partially meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper. The Panel has given the RIS a partially meets on the basis that one option (Option C) involved a subset of options that would have benefitted from being assessed independently, and that the application of some criteria could have been more consistent.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

#### The introduction of the current earthquake-prone building system

1. New Zealand is highly seismically active due to its location on the boundary of two major tectonic plates. This means all buildings, regardless of their age, are subject to a level of seismic risk.
2. On 22 February 2011, the Canterbury region was struck by a 6.3 magnitude earthquake in which 185 people died and many were injured. Of the 185 fatalities, 177 people were killed due to building failure – 39 of those from falling debris from unreinforced masonry.
3. Following a comprehensive Government review, and in response to recommendations from the Canterbury Earthquakes Royal Commission, the *Building (Earthquake-prone Buildings) Amendment Act 2016* introduced the current earthquake-prone building system, which came into force on 1 July 2017.
4. The Royal Commission found there was wide variation in the approaches taken across territorial authorities and that the system at the time was not sufficiently managing seismic risk in existing buildings nationwide. The new system therefore introduced a nationally-consistent approach for managing earthquake-prone buildings to mitigate the life-safety risk associated with the most vulnerable existing buildings.<sup>4</sup>
5. To achieve this, the system requires earthquake-prone buildings or parts of buildings (as defined under section 133AB of the Act) across New Zealand to either be seismically strengthened to a minimum standard so it is not earthquake-prone (34% NBS<sup>5</sup>) or demolished by set deadlines. The process for the identification and remediation of earthquake-prone buildings, including the statutory timeframes, is contained in Annex 1.

#### Current earthquake-prone building deadlines for remediation

6. As at 21 February 2024, 1,916 buildings (of 7,240 total buildings designated as earthquake-prone across all seismic risk areas) had been removed from the EPB Register. This may be because they have been strengthened or demolished, or because further information has assured the relevant territorial authority that the building is not earthquake-prone.
7. However, 5,164 buildings<sup>6</sup> have yet to be remediated, including around 30 per cent with deadlines over the next decade. Many of those with imminent deadlines are

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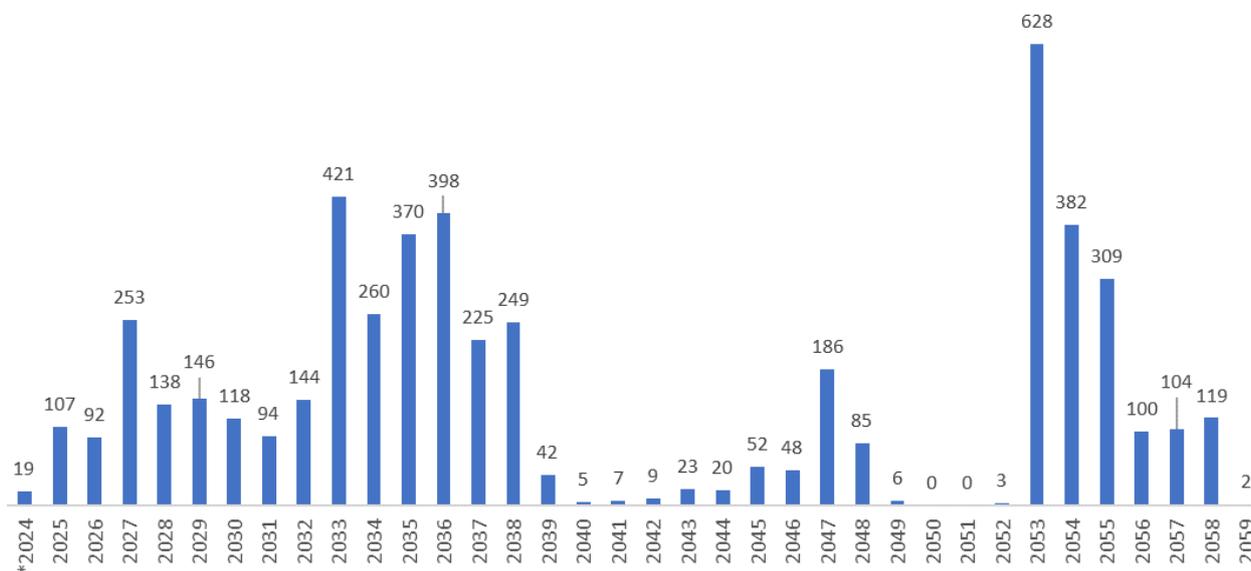
<sup>4</sup> The system particularly targets unreinforced masonry buildings, pre-1976 buildings that are either three or more storeys or greater than 12 metres high, and pre-1935 buildings that are one or two storeys. Residential buildings are excluded, except where they are two or more stories high and have three or more household units. Other types of structures are also excluded, such as farm buildings, retaining walls, certain monuments, bridges and tunnels.

<sup>5</sup> %NBS (New Building Standard) refers to the degree at which the building or part of the building meets the requirements of the Building Code for a hypothetical new building built on that site as at 1 July 2017.

<sup>6</sup> This number excludes 151 lapsed EPB notices and four earthquake-prone building exemption notices.

priority buildings<sup>7</sup> in high seismic risk areas identified shortly after commencement, while some pertain to section 124 notices issued under the previous scheme that were re-issued as EPB notices. There are significant clusters of deadlines in certain years, including 107 coming up shortly in 2025 (66 of those in Christchurch, 33 in Wellington) and 242 in 2027 (178 of those in Wellington) (see Figure 1 below).

Figure 1: Number of EPB notice (including section 124 notices) deadlines, by year



\* The 19 EPB notices remaining in 2024 are anticipated to be included in an extension (see paragraphs 56-60 below).

### Challenges and potential issues leading to a review of seismic risk management in existing buildings

8. The *2021 Early Insights – Initial Evaluation of the Earthquake-prone Building System*<sup>8</sup> found that the system was working well overall and demonstrated multiple benefits in its policy design, but identified some areas for improvement. It also noted that residential multi-unit owners and heritage building owners face additional difficulties.
9. The Initial Evaluation was completed before the first clusters of deadlines began to approach and potential non-compliance was emerging as an issue. However, in the years since, some building owners, or their advocates, and territorial authorities have highlighted issues with the workability of the earthquake-prone building system, both in terms of the timeframes for remediation to be completed and the feasibility and cost of undertaken the required building work.
10. In response to these concerns, the Minister for Building and Construction is seeking Cabinet’s in-principle agreement to bring forward a review<sup>9</sup> of the management of

<sup>7</sup> Priority buildings are certain types of earthquake-prone buildings in high and medium seismic risk areas that are considered to present a higher risk because of their construction type, use or location. These are defined in section 133AE of the Act and include buildings such as hospitals, emergency services, early childhood education and care centres, schools, parts of unreinforced masonry buildings and buildings that could impede a strategic transport route. There has been some variation between territorial authorities in how this definition is applied.

<sup>8</sup> [Early insights – Initial Evaluation of the Earthquake-prone Building System \(mbie.govt.nz\)](https://mbie.govt.nz/early-insights-initial-evaluation-of-the-earthquake-prone-building-system)

<sup>9</sup> MBIE had earlier signalled its intention to comprehensively review the earthquake-prone building system every 10 years, with a review planned for 2027.

seismic risk for existing buildings (the Review) to ensure seismic risk is being managed efficiently and effectively.

### *Challenges for building owners*

11. The Review is likely to address, amongst other things, concerns raised by building owners in relation to remediation, such as remediation timeframes, limited access to funding, difficulty reaching a consensus with other unit owners, difficulty obtaining post-remediation insurance, and accessing and interpreting technical advice.<sup>10</sup>
12. Remediation is understood to be particularly challenging for:
  - multi-unit, multi-storey residential buildings due to collective decision-making barriers
  - buildings in small or regional towns due to limited resources and investment trade-offs
  - heritage buildings<sup>11</sup> due to cost, complexity and restrictions in district plans.
13. Building owners also report rapidly increasing insurance premiums, or that some buildings are unable to secure insurance at all, even for buildings that have already been remediated. Insurers are also reportedly requiring buildings to achieve a higher %NBS rating than the statutory minimum for earthquake-prone buildings (34% NBS) to maintain insurance.
14. The government also owns earthquake-prone buildings, some with unique challenges. For example, Importance Level 4 buildings<sup>12</sup> may need to remain operational at all times (eg hospitals and fire stations), and relocation during works is difficult due to the specialised nature of some of these facilities.

### *Challenges for territorial authorities*

15. Territorial authorities have identified that achieving compliance with deadlines is challenging, and they are concerned about the feasibility and costs of potential large scale enforcement. Small regional towns often have concentrated numbers of earthquake-prone buildings along main streets and in town centres and are concerned about the potential for a large proportion of buildings being abandoned or demolished, creating “ghost towns”.

### **How the status quo is expected to develop**

16. Under the status quo, some owners who may have been willing to remediate before learning of the Review will stop their remediation efforts to await the results of the

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<sup>10</sup> There is anecdotal evidence from owners and news articles on these issues, and MBIE has also gained useful insights into the barriers facing residential earthquake-prone building owners from the Residential Earthquake-prone Building Financial Assistance Scheme and the Earthquake-prone Building Support Service pilot.

<sup>11</sup> There are 1,089 current EPB notices for heritage buildings that are recorded as being either category 1 (99) or category 2 (218) historic places, national historic landmarks (5), within a historic area (7) or scheduled by territorial authority (760). This is a broad definition of ‘heritage building’.

<sup>12</sup> Importance Level 4 is defined in Building Code Verification Method B1/VM1 as buildings that are essential to post-disaster recovery or associated with hazardous facilities eg hospitals and other health care facilities having surgery or emergency treatment facilities; fire, rescue and police stations; and buildings intended to be used as emergency shelters. There are unlikely to be any Importance Level 5 earthquake-prone buildings (i.e. dams, extremely hazardous facilities).

Review, adding to the number of owners who were already unwilling or unable to remediate by their current deadlines.

17. Extrapolating from Wellington City Council's ratio of anticipated non-compliance, approximately 377 buildings with imminent (2024-2027) deadlines would be unlikely to be remediated by their current deadline. Based on this information, MBIE's assumption is that the number of remediation deadlines that lapse between now and 2027 will number in the hundreds.
18. Other owners who are willing and able to remediate will continue to do so, due to drivers such as:
  - market demand for a higher %NBS (particularly by commercial tenants, including Government agencies, and prospective buyers)
  - the risk of building material and labour costs increasing further
  - any relevant obligations under the *Health and Safety at Work Act 2015* (noting that compliance with the new deadlines would likely preclude WorkSafe NZ prosecution)
  - insurance or lending prerequisites
  - other work being undertaken on the building (such as voluntary upgrades) that make it more cost-efficient to undertake seismic strengthening concurrently.

### What is the policy problem or opportunity?

19. The Review is expected to lead to two key issues:
  - Public awareness of the Review will likely cause some owners to pause their remediation planning in case the outcome of the Review alters their remediation obligations.
  - Building owners who continue to remediate during the Review could expend significant resources to comply with their current remediation obligations, even though their obligations may change in future (noting that the scope of the Review has not been determined).
20. Territorial authorities are responsible for enforcement of earthquake-prone building requirements. Without intervention, the resulting non-compliance from owners who pause progress would pose a potentially significant enforcement challenge for territorial authorities, particularly in areas that have large clusters of deadlines expiring in 2025 (Christchurch) and 2027 (Wellington). Territorial authorities may also expend resources unnecessarily if the owner's obligations would have changed post-Review.
21. Owners whose deadlines lapse commit an offence under the Act and are liable for prosecution, facing a fine of up to \$300,000 for an individual and \$1.5 million for a body corporate. There is also an associated infringement fee of \$1,000 for failing to complete seismic work by the deadline. A territorial authority may also apply to the District Court for an order authorising it to carry out seismic work if a remediation deadline has not been met and to recover those costs from the owner – this process is likely to be lengthy and costly for territorial authorities.
22. Choosing not to take enforcement action could result in liability concerns for territorial authorities, particularly if an earthquake were to occur and people were injured or killed, or other buildings were damaged, by buildings with lapsed deadlines.

23. Maintaining the status quo during the Review, and implementation of any resulting changes, could result in sub-optimal use of resources where:
- owners remediate their buildings by their current deadlines, but would have taken a more efficient or cost effective course of action if their remediation obligations changes after the Review
  - enforcement action is taken against buildings where their deadlines lapse in the interim, but those buildings would have had more time to remediate, or may not even be required to remediate, under revised regulatory settings post-Review.
24. There is therefore a need for an immediate solution to provide clarity and certainty to building owners about their remediation obligations once the Review is publicly announced. This is particularly the case for:
- owners of the 471 buildings with imminent deadlines during the period of the Review and any subsequent changes (April 2024 and the end of 2027)
  - the 873 buildings (which includes the above 471 buildings) with deadlines by 2030, due to the length of time and cost involved in planning and undertaking remediation.

### **Affected populations and their views (or anticipated views)**

#### *Earthquake-prone building owners*

25. Earthquake-prone building owners are largely responsible for delivering the intended benefits of the earthquake-prone building system through remediation of their buildings and, as such, bear the most significant direct costs.
26. While many building owners have met their remediation obligations to date, a picture is emerging about those who haven't yet remediated, particularly where their deadlines fall over the next few years.
27. There is a subset that is simply unwilling to remediate, placing them at risk of enforcement when their deadline passes and they have not complied with their requirements. However, other building owners have found themselves in a position of being unable to remediate due to a range of barriers, including access to expert advice, difficulties navigating the complex and lengthy remediation process and access to finance.
28. MBIE has also heard that the following groups face additional or specific challenges:
- *Owners of multi-unit, multi-storey residential buildings* – as multiple unit owners need to make collective decisions about the timing and scope of remediation when all have different circumstances and financial positions.
  - *Owners in small or regional towns, including territorial authority-owned buildings* – remediation can be challenging due to financial or economic barriers, and may be more costly or difficult to remediate due to the lack of local engineering and construction expertise for this type of building work.
  - *Owners of heritage buildings* – heritage buildings are typically more costly and complex to remediate, and district planning rules can prevent demolition or make it a difficult option. Some heritage buildings are also residential buildings and there can be a high proportion of heritage buildings in smaller or regional towns, further compounding the challenges of remediation.

29. While many affected building owners will welcome the Review, they are also the most affected by the uncertainty it would create if their current deadlines are maintained. It is anticipated that many earthquake-prone building owners, particularly those with more imminent deadlines, would therefore welcome a deadline extension.

#### *Territorial authorities*

30. Territorial authorities have a key statutory role as co-regulators of the earthquake-prone building system. They identify potential earthquake-prone buildings, deem them as earthquake-prone if necessary, issue and enforce EPB notices and are responsible for enforcing deadlines. While some costs are recoverable, there is likely a cost to the vast majority of ratepayers in some way for this function.
31. As discussed above, there are substantial enforcement challenges, while many territorial authorities also own earthquake-prone buildings and face their own remediation challenges. Because they consider the current settings unworkable, there appears to be strong support from territorial authorities for the Review.
32. However, some territorial authorities indicated that they would not support an extension of remediation deadlines. Many have raised concerns about the unmitigated life-safety risk if deadlines are extended. They also indicated concerns around fairness for those who have already remediated, and a sense that remaining owners were simply unwilling to remediate and would be 'rewarded' for that complacency with an extension.

#### *Occupiers and passers-by*

33. Every New Zealander is a building user. Different people can be impacted in some way by earthquake-prone buildings, including not only the occupiers of these buildings (eg residential and commercial tenants, visitors and customers), but also those using neighbouring buildings and passers-by (including pedestrians, vehicles and vulnerable populations, such as people who are homeless).
34. The population is therefore exposed to life-safety risk from earthquake-prone buildings but those who are not the buildings' owners have no control over seismic risk management in these buildings. Many people also do not have control or options over entering such buildings, for example, where necessary services are provided or they are a place of work. Public opinions vary greatly as to the degree of risk that is considered acceptable; however, there was broad support for the current regulatory requirements following the Canterbury earthquakes.
35. While EPB notices displayed on earthquake-prone buildings provide some warning as to the risk to those who see them (which likely excludes many passers-by, including those using transport routes eg buses), they do not mitigate known vulnerabilities in the building. Some territorial authorities have also observed poor compliance by owners with the requirement to display EPB notices.

#### *The building and construction sector (including engineers, other technical experts, builders and tradespeople)*

36. MBIE engaged with a targeted group of engineers on a possible deadline extension, who were supportive of it and viewed it as a pragmatic response to the issues.
37. However, the group did note that there is a risk of a loss of momentum for remediation projects. If there is less seismic strengthening work undertaken as a result of the extension, there could be a loss of specialist seismic retrofitting skills and/or knowledge amongst engineers, builders and others in the sector.

38. The group also shared anecdotal evidence that some construction firms keep a base flow of seismic strengthening work/retrofitting to keep them 'ticking over'. If remediation work is delayed it could potentially affect these firms.

### **What objectives are sought in relation to the policy problem?**

39. The objectives are to:
- provide clarity and certainty to building owners and territorial authorities, as well as other stakeholders, while the Review (and any subsequent legislative changes) takes place
  - prevent sub-optimal use of resources on remediation and enforcement, given the potential for post-Review changes
  - ensure that any actions to provide clarity/certainty are adequately balanced against the need to mitigate life-safety risk in earthquake-prone buildings.
40. These objectives reflect the need for intervention to address the likely negative impacts of the Review, namely: uncertainty and a lack of clarity for building owners and territorial authorities as to their obligations and potentially some sub-optimal use of resources on remediation and enforcement.
41. The third objective ensures that life-safety risk is taken into consideration, given that the mitigation of life-safety in earthquake-prone buildings is the intent of the earthquake-prone building system.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

42. The options will be assessed against the following criteria:
  - Provides **clarity and certainty** to building owners and territorial authorities about what action they should take during the Review and any subsequent changes.
  - **Prevents sub-optimal use of resources** on remediation and enforcement in the short term.
  - Any additional **life-safety risk** (see below) is minimal.
  - **Ease of implementation**, particularly for territorial authorities.
43. The first three criteria reflect the objectives (above) and are weighted equally. The fourth criterion, ease of implementation, is weighted at half of the other criteria (0.5). This is because, while ease of implementation is important to consider, the other criteria are more important in determining whether the options will effectively solve the policy problems and meet the objectives.
44. All of the options will be given an overall rating based on their assessment against the criteria (the sum of their ratings, weighted as stated above).
45. There are trade-offs between some of the criteria. For example, an option that provides greater clarity and certainty to buildings owners and territorial authorities as to their obligations and better prevents sub-optimal use of resources may be more difficult/costly for territorial authorities to implement.
46. Conversely, an option that provides less clarity and certainty (eg to fewer owners) may be easier to implement.
47. While not an explicit criterion, MBIE has also given consideration to how an extension could impact greater clustering of deadlines in the future. This is because clustering will likely place additional pressure on sector capacity to undertake remediation work (including technical assessments, building consents, and seismic strengthening work), potentially creating a bottleneck and adding additional cost pressures. This issue would likely arise if only some deadlines are extended and others remain unchanged.

### Additional life-safety risk

48. The current regulatory settings seek to address life-safety risk in New Zealand's most vulnerable buildings by bringing them up to a mandatory minimum level of performance in an earthquake. There would still be a level of life-safety risk in all buildings, as that risk cannot be eliminated; however, life-safety in remediated earthquake-prone buildings was anticipated to be more broadly equivalent to the remainder of New Zealand's building stock.
49. The system was set up to address earthquake-prone buildings in a feasible and proportionate way. Because some buildings are in more seismically active areas than others, or have particular importance, the system sought to address these vulnerable buildings over a period of approximately 50 years, starting with priority buildings in high seismic risk areas. Therefore, current regulatory settings already involve the acceptance of a certain degree of risk as these buildings are progressively identified and remediated.

50. All of the options considered involve allowing life-safety risk in some buildings to remain unmitigated for longer than the current system allows. However, the overall increase in life-safety risk is expected to be marginal, because:
- the likelihood of a major seismic event is very low at any given time (although with potentially very high consequence), and
  - the increase in risk is only from those that would have been willing and able to remediate despite knowledge of the Review (which stakeholders including Wellington City Council indicate may be a small proportion), but choose not to because they have been given more time.
51. The system's appetite for risk was balanced against the assumption that the deadlines being set were achievable. There is growing evidence that this may not be the case. Given this, and based on direction from the Minister for Building and Construction, this regulatory impact statement assumes the Government's willingness to accept somewhat higher levels of risk in order to provide certainty and clarity to stakeholders and ensure optimal use of resources while a comprehensive Review is undertaken to fully identify issues and develop options to address them effectively.
52. The additional life-safety risk associated with the options in this paper is discussed in the 'Description and analysis' section below.

### **What scope will options be considered within?**

53. The scope of the Review has yet to be determined; however, the Minister has indicated an intention that it will be comprehensive in nature. Announcing a comprehensive Review will signal potential future change to obligations, creating uncertainty.
54. While current regulatory requirements are not usually adjusted in the short-term while reviews are undertaken, the nature of building remediation work means it is a significant and costly undertaking, and generally takes years to plan and complete. The Minister has expressed a desire to extend current remediation deadlines to address these factors.
55. All of the regulatory options therefore consider extending current remediation deadlines (for non-lapsed deadlines as at 2 April 2024) by a minimum extension length of four years. Four years was determined by MBIE to provide a sufficient degree of certainty that a comprehensive review and any resulting legislative changes could be completed within the extension period. The first three options also include a provision for an additional extension of up to two years by Order in Council. This is to address the risk that unforeseen events delay the completion of the Review and any subsequent changes.

#### *The treatment of deadlines that will fall between Cabinet policy decisions and legislation being enacted*

56. It is intended (subject to Cabinet agreement) that the extension period will apply retrospectively to the 19 earthquake-prone buildings with remediation deadlines that fall between the date of Cabinet policy decisions (expected to be 2 April 2024) and 1 January 2025 (legislation is expected to be passed by the end of 2024).
57. Following Cabinet policy decisions for the Review and deadline extension and public announcement of these decisions, some building owners are likely to pause their remediation efforts in anticipation of possible setting changes.

58. While some or all of the 19 deadlines will likely lapse prior to the bill being passed and the extension being applied retrospectively, applying the extension from the date of Cabinet decisions will provide certainty to all building owners with non-lapsed deadlines from that date. The date of Cabinet decisions is also more certain than, for example, the date of the bill's introduction or Royal Assent.
59. This approach may support compliance by giving these owners more time to remediate, while those who have commenced remediation planning and/or work can choose to continue with this, even with a deadline extension.
60. During departmental consultation, the Department of Internal Affairs raised a concern that territorial authorities would be exposed to liability risk if they chose not to enforce lapsed deadlines during the period between 2 April 2024 and the passage of the Bill and a damaging earthquake occurred during that period. MBIE balanced that concern against the fact that the probability of an event during that period is very small, and that territorial authorities generally do not take immediate enforcement action anyway – our understanding is that they are much more likely to work with building owners first and then consider enforcement action later if this has been unsuccessful.

### Discounted options

61. The permanent removal of statutory remediation obligations (for some or all building types) will not be considered as this would pre-empt the findings of the Review and the additional life-safety risk under such an option would very likely not be minimal
62. MBIE considered whether there were any viable non-regulatory options – for example, a pause of enforcement. However, following initial advice, MBIE concluded that any action to cause territorial authorities not enforce the law would not be lawful. Parallels can be drawn to the precedent established in *Fitzgerald v Muldoon*<sup>13</sup>, which is a 1976 Supreme Court case that found that the Prime Minister had effectively purported to suspend the law without consent of Parliament by directing people to act as though a law that was still in force had already been repealed.
63. During targeted stakeholder engagement, some territorial authorities raised concerns about unreinforced masonry buildings, as they can pose a particular risk to passers-by in an earthquake. Of the 185 lives that were lost in the Canterbury earthquakes, 39 of those were due to falling masonry.
64. However, a stand-alone option regarding interventions such as requiring owners to take actions during this time or providing financial support<sup>14</sup> were not explored here as it would:
  - not achieve the objectives of providing clarity and certainty, and preventing sub-optimal use of resources, during the Review and any subsequent changes

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<sup>13</sup> *Fitzgerald v Muldoon* [1976] 2 NZLR 615 (HC).

<sup>14</sup> Following the 2016 Kaikōura earthquake, in certain streets, parapets were required to be secured and building facades secured to the rest of the building within 12 months of being issued a notice to address the increased risk of further earthquakes occurring in the next 12 months in the Wellington City, Hutt City, Marlborough and Hurunui Districts. The requirements were set by an Order in Council made under the now repealed *Hurunui/Kaikōura Earthquakes Recovery Act 2016*. In recognition of the public and private benefits of these orders, the Government and affected councils established the Unreinforced Masonry Buildings Securing Fund (approximately \$4.5 million) to support building owners.

- pre-empt the findings of the review by pre-determining what interventions would best support compliance by building owners.
65. However, MBIE could consider issuing practical, risk-based guidance, for example on how to mitigate the risk posed by unreinforced masonry, in parallel with the delivery of any of the analysed options.

### **Matters that are out of scope**

#### *Position of lapsed notices on the EPB Register*

66. Lapsed notices – those whose deadline for completing seismic work has passed by 2 April 2024 without work being carried out – are not proposed to be extended. There are 151 such notices on the EPB Register.
67. These building owners do not require clarity and certainty as to their obligations during the Review, as they have already failed to comply with their statutory obligations, which is an offence under the Act. Extending these notices would retrospectively validate past non-compliance, which would undermine the operation of, and future compliance with, the earthquake-prone building system.
68. Extending these notices would also raise issues of unfairness for owners who have already remediated their earthquake-prone buildings, and owners who have faced enforcement action from territorial authorities for failing to remediate their buildings by their deadline.

#### *Earthquake-prone buildings identified during the Review period*

69. MBIE does not recommend changing the Act to stop buildings being identified and added to the EPB Register. Buildings may be identified that pose a significant life-safety risk; it is important for that information to be captured and building owners and users to be made aware of the risk so they can make informed decisions about managing that risk.
70. This approach may see territorial authorities and building owners expend resources identifying earthquake-prone buildings (including obtaining a costly seismic assessment) when some of these buildings may no longer have obligations following the Review. MBIE also acknowledges that being identified as earthquake-prone can impact the value and insurability of a building, and cause stress and costs to its owners.
71. However, due to the timeframes for identifying earthquake-prone buildings (see Annex 1), the buildings most likely to be identified during this period of time are non-priority buildings in medium seismic risk areas, and buildings in low seismic risk areas. These buildings have 25-year and 35-year timeframes for remediation, respectively, so building owners will not be unduly impacted by an imminent requirement to remediate. Timeframes for remediation will also likely be considered as part of the Review.

### **What options are being considered?**

72. There are four options being considered:
- a. Status quo – the Review proceeds with no change to current deadlines for remediating earthquake-prone buildings.

- b. Extend all non-lapsed deadlines by four years, with an option to extend deadlines by up to two years further, if the Review and any subsequent legislative changes are not completed within four years.
- c. Extend non-lapsed deadlines for a subset of buildings (eg heritage buildings only, or excluding Importance Level 4 buildings or priority buildings) by four years, with the option to extend deadlines by up to two years further (as for Option B).
- d. Extend all deadlines between 2 April 2024 and 2030 to 2030.

## Description and analysis of options

### Option A – Status quo (Review occurs with no extension of deadlines)

- 73. Without intervention, public awareness of the Review and its possible outcomes will create a lack of clarity and certainty about what actions buildings owners and territorial authorities should take in the interim to address current earthquake-prone buildings. This lack of clarity and certainty risks undermining the intent of the system and could lead to owners pausing their remediation efforts while awaiting the outcome of the Review.
- 74. It could also lead to sub-optimal investment of resources by building owners and territorial authorities if action is taken in relation to buildings whose obligations would have changed post-Review.
- 75. These problems and the status quo are discussed in more length in the ‘Problem definition’ and ‘Status quo’ sections earlier in this paper.
- 76. This option will have the least amount of additional life-safety risk and has no additional implementation costs. However, it does not meet the objectives for addressing the problems created by public awareness of the Review.

#### *Additional life safety risk*

- 77. Some additional life-safety risk will arise under the status quo, as there is expected to be an increase in the number of building owners who choose not to remediate once the Review, which could change their obligations, is announced.
- 78. Expected compliance rates without a Review or deadline extension provides a baseline estimate for the additional number of buildings that won’t be remediated, though this will vary across regions. That is, additional life safety risk under the status quo will be the sum of those buildings whose owners would not have complied without the Review plus those owners who will decide not to comply in light of the Review.
- 79. For Wellington, which has 48 per cent of all buildings with deadlines between 2024 and 2027, this means more than 80 per cent of these buildings will not be remediated under the status quo.

### Option B (preferred) – Extend all non-lapsed deadlines by four years, with an option to extend deadlines by up to two years further, if required

#### *Description*

- 80. Under this option, all non-lapsed remediation deadlines as at 2 April 2024 would be extended by four years from the current remediation deadline on the relevant EPB notice. This blanket extension would effectively shift each of the over 5,000 current

deadlines four years into the future, preserving the current risk-based order of deadlines without adding to any existing deadline clusters.

81. The blanket extension is uncomplicated, and simple to communicate. While territorial authorities would need to update EPB notices for buildings in their area and the EPB Register, they would not need to consider any applications or make any judgement calls about which buildings are eligible.

#### *Analysis*

82. This option rates most highly for delivering clarity and certainty to building owners and territorial authorities about what action they should take, and for preventing sub-optimal use of resources on remediation and enforcement, during the period of the Review and any subsequent changes.
83. Building owners would be able to plan their actions during the period of the Review and any subsequent changes based on a certainty of what their obligations will be during that period, and the knowledge that if they choose to wait for more information about the results of the Review their deadlines will not lapse and they will not have committed an offence and face possible enforcement action.
84. Territorial authorities would have clarity and certainty about what enforcement actions they should take during the period of the Review because there will not be additional deadlines lapsing during that time.
85. Building owners and territorial authorities would have the agency to choose the most appropriate action during the period in question, rather than being forced to take action now that may ultimately turn out to have been sub-optimal in light of later changes. While many building owners are expected to wait for any post-Review changes, they could still choose to remediate sooner if they were able to do so.
86. This option places an additional administrative burden on territorial authorities, who would have to update the EPB Register and reissue EPB notices for the greatest number of buildings. They would also need to communicate the change to owners. However, this option is straightforward to implement as no additional judgement would be required to determine which buildings were eligible for the extension.
87. This option involves the greatest additional life-safety risk as it extends the largest number of deadlines – however, MBIE views this risk as small. This risk and possible mitigations are further discussed below.
88. The additional life-safety risk arises as some owners who might otherwise have remediated under the status quo may pause their remediation plans due to the deadline extension. Outcomes for owners who are unwilling or unable to remediate, including those who are unwilling to remediate due to knowledge of the upcoming Review, would be unchanged.

#### *Risks and mitigations*

89. If an earthquake were to occur, buildings that were originally required to be remediated prior to that date may not have been remediated yet and may cause injuries, fatalities and/or damage to other buildings.
90. As noted in the 'Limitations and constraints on analysis' section on pages 4-5, MBIE has not been able to quantify the additional life-safety risk from this and the following two options in the time allowed – this is a complex piece of work that is anticipated to

form part of the Review. Technical experts have noted, however, that the additional risk from further remediation time of up to six years may be marginal in a system with a lifespan of 50 years, and where the risk of a seismic event happening at any given time is very low (albeit with potentially very high consequence).

91. It is important to note that any additional life-safety risk comes solely from buildings whose owners were willing and able to remediate under the status quo but would choose to instead delay remediation due to the extension being granted. This risk may be marginal, at least in high seismic areas, with an estimated up to 80 per cent of the 471 remediation deadlines from 2024-2027 unlikely to be met under the status quo, even before the Review is publicly announced. This reflects insights from some territorial authorities in high seismic risk areas that those owners who are able and willing to meet their obligations have already done so, and that the remaining building owners are either unable or unwilling to remediate by their current deadlines.
92. For buildings with longer remediation timeframes/deadlines, the change in remediation timeframes is less significant, as four (or up to six) years is a relatively small proportion of the total timeframe for remediation, and these buildings are generally non-priority buildings in medium and low seismic risk areas.
93. There are options for mitigating the additional life-safety risk that MBIE could explore in parallel to the Review, without pre-empting the findings of the Review. For example, MBIE could consider practical, risk-based guidance on temporary mitigation measures, how to identify certain building vulnerabilities, or particular risk factors that building owners could consider addressing in the short-term. For example, there are known incremental measures to mitigate the risk posed by unreinforced masonry buildings as a step towards full seismic strengthening.
94. Other risks include: possible owner disengagement or loss of consensus between owners in multi-unit buildings; a loss of credibility for the earthquake-prone building system; and creating the precedent and expectation for future deadline extensions during any future seismic-related reviews. MBIE has previously signalled the intention to review the earthquake-prone building system every 10 years.
95. Clear communication about the extension and Review may help to mitigate these risks. Proactive communications can be used to encourage those with well-advanced plans for mitigation to continue with such plans despite extension.

### **Option C – Extend non-lapsed deadlines for a subset of buildings by four years, and up to two years further if required**

#### *Description*

96. For this option, MBIE considered whether only a sub-set of remediation deadlines could be extended, to minimise any additional life-safety risk. For example, MBIE considered either:
  - limiting the extension to only heritage buildings, in acknowledgement of the specific challenges they can face to remediation
  - excluding priority buildings, which are considered to present a higher risk because of their construction type, use or location
  - excluding Importance Level 4 buildings, in acknowledgement of the important role those buildings can play in post-disaster recovery.

### *Analysis and risks*

97. This option would only provide clarity and certainty to owners and territorial authorities about what action they should take, and prevent sub-optimal use of resources, during the Review and any subsequent changes (as discussed in Option B above) in relation to a smaller sub-set of buildings.
98. The additional life-safety risk under this option is likely to be less than for Option B as some buildings would be excluded from the extension. However, the actual difference in additional life-safety risk posed by different options is very difficult to gauge, but appears to be small over the life of the system and given the high likelihood of some deadlines lapsing under the status quo, and the low likelihood of a seismic event occurring at any one time. The additional risks and mitigations noted in paragraphs 94 and 95 apply to this option.
99. This option would be easier to implement than Option B, as there would be a smaller percentage of EPB notices that would require reissuing, placing a smaller administrative burden on territorial authorities for the reissuing of EPB notices and updating the EPB Register.
100. However, depending on the sub-group in question, territorial authorities may also be required to undertake additional work to determine which buildings might qualify for an extension (ie whether they met the definition of the eligible building type(s)), adding to the administrative burden.

### **Option D – Extend deadlines falling between 2 April 2024 and 2030, to 2030**

#### *Description*

101. This option would mean limiting the extension to only those buildings with imminent deadlines and those in the first few years following the expected period of the Review and any subsequent legislative changes. All deadlines between 2 April 2024 and 2030 would be extended to 2030. This would increase the cluster of deadlines in 2030 to 873. As shown in Figure 1 (page 8), this would only slightly precede other substantial clusters of deadlines falling from 2033 to 2038.

#### *Analysis*

102. This option would provide some clarity and certainty to building owners and territorial authorities in relation to the sub-set of eligible buildings, and would likely entail lower additional life-safety risk than Option B.
103. However, its workability is compromised by the fact that it would mean a significant cluster of buildings (873) would have deadlines in 2030, and this would likely be beyond the capacity of the sector to remediate on time (assuming that all of these buildings have remediation obligations post-Review). Awareness of this cluster would create additional uncertainty about whether this problem will be addressed by the Review or how potential mass non-compliance as buildings struggle to meet the 2030 deadline would be addressed.
104. Owners could start remediation planning and work early to avoid workforce constraints and cost pressures introduced by the clustering of deadlines. However taking action during of the Review may result in prevent sub-optimal use of resources. On the other hand, if owners waited for any post-Review changes before taking action, there would be a significant risk of not being able to access the necessary expertise or sector capacity to meet their 2030 deadline.

105. This possible additional non-compliance would risk creating a need for territorial authorities to take significant additional enforcement action, much greater than that anticipated under the status quo, which can be costly and time-consuming.
106. Beyond the risks associated with a possible bottleneck from clustered deadlines, the life-safety and other risks are similar to those discussed for Option C above.
107. This option would be easier to implement than Option B, as there would be a smaller percentage of EPB notices requiring reissuing, placing a smaller administrative burden on territorial authorities. The additional burden is also likely to be smaller than for Option C, as no additional assessment would be required to determine which buildings were eligible, but this difference is likely to be marginal.

## How do the options compare to the status quo/counterfactual?

### Key for qualitative judgements:

- ++ much better than the status quo
- + better than the status quo
- 0 about the same as the status quo
- worse than the status quo
- much worse than the status quo

CRITERIA	Option A Status quo (assumes Review)	Option B (PREFERRED) Extend all non-lapsed deadlines by four years, with option of further up-to-2-year extension	Option C Extend non-lapsed deadlines for a subset of buildings, with option of further up-to-2-year extension	Option D Extend all deadlines between 2 April 2024 and 2030 to 2030
<b>Provides clarity and certainty</b> to building owners and territorial authorities about what action they should take during the Review and any subsequent changes	0	++	+	+
	<ul style="list-style-type: none"> <li>Knowledge of the Review and the possibility of subsequent changes is already causing uncertainty for owners and territorial authorities, who are calling for clarity about what they should do during this time.</li> <li>Many owners do not know whether they should remediate their buildings or wait for the results of the Review; some territorial authorities want more clarity about what enforcement approaches they should take to buildings with imminent deadlines, or whose deadlines lapse while the Review and subsequent changes are occurring.</li> </ul>	<ul style="list-style-type: none"> <li>All building owners could plan their actions during the period of the Review and any subsequent changes based on a certainty of what their obligations would be during that period, and the knowledge that if they chose to wait for more information about the results of the Review, their deadlines would not lapse and they would not have committed an offence and face possible enforcement action.</li> <li>Territorial authorities would have clarity and certainty about what action they should take during the period of the Review and any subsequent changes because there would not be additional deadlines lapsing during that time.</li> </ul>	<ul style="list-style-type: none"> <li>Would only provide clarity and certainty to owners and territorial authorities (as discussed in Option B) in relation to a sub-set of buildings.</li> </ul>	<ul style="list-style-type: none"> <li>Would only provide clarity and certainty to owners and territorial authorities (as discussed in Option B) in relation to a sub-set of buildings – however, these are the buildings with the most imminent deadlines, so other owners would still have time to wait and see what comes out of the Review.</li> <li>Owners and territorial authorities would be aware of a huge cluster of deadlines (over 800) approaching in 2030, and would be aware of possible sector capacity constraints. Uncertainty about whether this problem would be addressed by the Review would lead owners to be uncertain about whether they needed to take immediate action to avoid capacity constraints.</li> </ul>
<b>Prevents sub-optimal use of resources</b> on remediation and enforcement during the period of the Review and any subsequent changes	0	++	+	-
	<ul style="list-style-type: none"> <li>The scope of the Review is not yet known, however, it is possible that it could change the remediation obligations and timeframes for existing earthquake-prone buildings.</li> <li>If owners and territorial authorities are forced to invest their limited resources to remediate and/or enforce deadlines for earthquake-prone buildings whose status or deadlines could potentially be changed following the Review, this could lead to a sub-optimal use of those resources.</li> </ul>	<ul style="list-style-type: none"> <li>Building owners may not expend resources remediating buildings that are either not captured, or for which obligations or timeframes may change, once any post-Review changes are implemented.</li> <li>Building owners could still choose to remediate if they are able to do so.</li> <li>Territorial authorities are not required to take enforcement action against building owners whose obligations may change following the Review and any subsequent changes.</li> </ul>	<ul style="list-style-type: none"> <li>Would only prevent sub-optimal use of resources (as discussed for Option B) for a sub-set of buildings.</li> </ul>	<ul style="list-style-type: none"> <li>The creation of a substantial cluster of deadlines in 2030 would likely create bottlenecks of remediation work that the sector does not have the capacity to meet demand for. Owners could start remediation planning and work early but this may turn out to have been sub-optimal in light of any post-Review changes. But if they waited, they may not be able to access the necessary expertise or sector capacity to meet their 2030 deadline.</li> <li>There would be a risk of territorial authorities needing significant additional enforcement resources by 2030.</li> </ul>

CRITERIA	Option A Status quo (assumes Review)	Option B (PREFERRED) Extend all non-lapsed deadlines by four years, with option of further up-to-2-year extension	Option C Extend non-lapsed deadlines for a subset of buildings, with option of further up-to-2-year extension	Option D Extend all deadlines between 2 April 2024 and 2030 to 2030
Any <b>additional life-safety risk</b> is minimal	0 <ul style="list-style-type: none"> <li>There is no additional life-safety risk through additional intervention.</li> </ul>	-- <ul style="list-style-type: none"> <li>Any additional life-safety risk would only come from building owners who were willing and able to remediate under the status quo but choose to delay remediation due to the extension. Some owners may also choose to progress with remediation despite the extension.</li> <li>It is difficult to quantify any additional life-safety risk due to this extension being granted, but <b>it is likely to be minimal</b>. This is due to the very low probability of a seismic event at any given time, the relative shortness of the extension compared to the life of the system, and the fact that only a small sub-set of building owners would not remediate who would otherwise have done so (see point above). However, this option must be rated lower than the status quo, because the status quo does not include additional life safety risk added by new policy interventions and is rated lower than the other options as this option involves the most additional life safety risk.</li> </ul>	- <ul style="list-style-type: none"> <li>Any additional life-safety risk is likely to be lower than in Option B as some buildings would be ineligible for the extension. As with options B and D, any additional risk compared to the status quo would only be from those buildings with owners willing and able to remediate under the status quo who then choose to delay remediation due to an extension being granted, and is <b>likely to be minimal</b> as this group is likely to be relatively small. As noted in Option B, there is a very low probability of a seismic event at any given time. However, this option must be rated lower than the status quo, because the status quo does not include additional life safety risk added by new policy interventions.</li> <li>Some owners may also choose to progress with remediation despite the extension.</li> </ul>	- <ul style="list-style-type: none"> <li>Additional life-safety risk is likely to be lower than in Option B as some buildings would be ineligible for the extension, but any additional risk would only be from the building owners willing and able to remediate under the status quo who then choose to delay remediation due to an extension being granted and is <b>likely to be minimal</b>. However, this option must be rated lower than the status quo, because the status quo does not include additional life safety risk added by new policy interventions.</li> <li>Some owners may also choose to progress with remediation despite the extension.</li> </ul>
<b>Ease of implementation</b> , particularly for territorial authorities (weighted 0.5)	0 <ul style="list-style-type: none"> <li>Status quo – no additional implementation required.</li> </ul>	- <ul style="list-style-type: none"> <li>This option would have an administrative burden on territorial authorities as they would have to update the EPB Register and reissue EPB notices for the greatest number of buildings. They would also need to communicate the change to owners.</li> <li>However, this option is straightforward as no additional judgement would be required to determine which buildings were eligible for the extension.</li> </ul>	-- <ul style="list-style-type: none"> <li>This would depend on how large the sub-set of buildings would be, but there would be a smaller percentage of EPB notices that would require reissuing, placing a smaller administrative burden on territorial authorities for the reissuing of EPB notices and updating of register.</li> <li>However, depending on the sub-group in question, territorial authorities may also be required to assess the buildings in their area to determine whether or not they qualified for the extension (ie whether they met the definition of the eligible building “type”), adding to the administrative burden.</li> </ul>	- <ul style="list-style-type: none"> <li>There would be a smaller percentage of EPB notices that would require reissuing than for Option B, placing a smaller administrative burden on territorial authorities.</li> <li>The additional burden is also likely to be smaller than for Option C as no additional assessment would be required to determine which buildings were eligible, but this difference is not large enough to merit a different rating.</li> </ul>
<b>Overall assessment (total)</b>	<b>0</b>	<b>1.5</b>	<b>0</b>	<b>-1.5</b>

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

108. Option B – to extend all non-lapsed remediation deadlines by four years, with the option of a further extension of up to two years, if required – is the preferred option. It has the highest overall assessment score against the criteria and would best meet the objectives. The option for a further extension of up to two years would provide a buffer in the case of unanticipated delays.
109. This option would provide the greatest level of certainty and consistency for all earthquake-prone building owners (with non-lapsed deadlines as at 2 April 2024) and territorial authorities about what actions they should take while the planned Review and any subsequent changes take place. If building owners choose to wait for more information about the results of the Review, their deadlines will not lapse and they will not have committed an offence and face possible enforcement action from territorial authorities.
110. Option B would also best prevent sub-optimal use of resources on remediation and/or enforcement, given possible impending changes post-Review. Building owners could still choose to remediate if they are able and it is the right action at the time. However, they would also have the option to wait until the findings and decisions from the Review are known and plan optimal actions accordingly.
111. Some extended deadlines would fall soon after the end of the Review and any legislative amendments and may not be met if those owners pause remediation during the Review. However, it is expected that the Review and/or implementation of changes will likely consider and address this issue, as needed.
112. While this option may involve the greatest additional life-safety risk of all the options, this is difficult to quantify and is likely to be minimal (see paragraphs 87 to 88, above). Under the status quo, a substantial proportion of owners with the most imminent deadlines are unlikely to meet their current deadlines, and public announcement of the Review will likely result in some building owners pausing their remediation efforts. Any additional life-safety risk only comes from owners who were willing and able to remediate under the status quo but choose to delay remediation due to the extension being granted. The additional remediation time may also be marginal in a system with a lifespan of approximately 50 years, and the risk of a seismic event happening at any given time is very low (albeit with potentially very high consequence).
113. For buildings with longer remediation timeframes/deadlines, the change in remediation timeframes is less significant, as four (or up to six) years is a relatively small proportion of the total timeframe for remediation, and these buildings are generally non-priority buildings in medium and low seismic risk areas.
114. This option also maintains the current risk-based order of deadlines under the current timeframes for remediation.
115. MBIE will issue guidance/communication to encourage owners to take a risk-based approach and address known vulnerabilities/risks in earthquake-prone buildings. To mitigate the particular risk of extending deadlines for certain buildings (such as priority, unreinforced masonry and Importance Level 4 buildings), MBIE would ensure that communication and engagement with owners of these buildings is prioritised and that ongoing remediation planning and addressing known vulnerabilities is encouraged.

116. Extending all deadlines by the same amount of time also makes implementation (including updating EPB notices) relatively straightforward. Building owners will not be required to apply for the extension, as it is a blanket extension that will apply to all non-lapsed deadlines at the time the bill is passed –there are no further criteria to be applied. There will be administrative costs for territorial authorities to reissue updated EPB notices and update the EPB Register (see marginal costs and benefits, below). However, territorial authorities will not be required to assess whether buildings meet criteria for an extension.
117. A blanket extension also prevents the greater risk of bottlenecks and strain on sector capacity that would likely occur if all deadlines were extended to a certain date or if earlier deadlines were compressed, particularly as there are already large clusters of deadlines in some years.

### What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups (earthquake-prone building owners)	<ul style="list-style-type: none"> <li>Seismic strengthening costs may increase during extension period, making remediation more expensive by postponed deadline. However, it appears likely that many current deadlines will not be met under the status quo – and these owners would therefore have faced increasing remediation costs regardless.</li> <li>Insurance premiums are increasing, particularly as some insurers move to more risk-based pricing. There is also anecdotal evidence that some owners already cannot insure their earthquake-prone buildings.</li> <li>Building material and labour cost increases have eased recently but are likely to increase to some extent during the four-year extension period.</li> </ul>	Low-Medium	Low The level of impact cannot be accurately predicted as it is based on past experience and anecdotal reports.
Regulators	<ul style="list-style-type: none"> <li>Territorial authorities will need to issue new EPB notices with updated deadlines and update the EPB Register.</li> <li>Some of the territorial authorities MBIE engaged with estimated the time that might be required to update EPB notices (eg approximately 2 hours per notice). MBIE researched fees for various administrative tasks by territorial authorities online. From this, MBIE assumed an estimated cost of \$120-150 per EPB notice (for 5,164 notices, total).</li> </ul>	\$0.620m - \$0.775m (estimated total across all territorial authorities /EPB notices).	Medium Proxy data points and advice from territorial authorities has enabled a reasonable cost estimate to be made.

Others (eg, wider govt, consumers, etc.)	<ul style="list-style-type: none"> <li>Occupants and passers-by may face life-safety risk from earthquake-prone buildings for a longer period. This risk is highest in high and medium seismic risk areas, as they carry the highest likelihood of an earthquake occurring.</li> <li>However, this is likely to at least some extent under the status quo as a substantial number of owners are not expected to meet current remediation deadlines.</li> <li>Engineering and construction firms may experience a decline in seismic remediation work.</li> </ul>	Low	Low-Medium  As noted, there are limitations on measuring life-safety impacts in the context of a short deadline extension, as well as for predicting non-compliance.
<b>Total monetised costs</b>		\$0.620m - \$0.775m	<i>Medium</i>
<b>Non-monetised costs</b>		<i>Low</i>	<i>Low-Medium</i>
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups (earthquake-prone building owners)	<ul style="list-style-type: none"> <li>Remediation obligations are delayed by at least four years for earthquake-prone building owners whose deadlines have not yet lapsed (as at 2 April 2024).</li> <li>Building owners have certainty as to their remediation obligations during the Review. Avoids potential sub-optimal use of resources if the Review changes timeframes or obligations.</li> <li>Building owners have more time to consider their remediation options and/or try to overcome challenges to remediation without risking non-compliance and potential enforcement action.</li> </ul>	Medium	High  The extension will provide these real outcomes.
Regulators	<ul style="list-style-type: none"> <li>Avoids potential enforcement challenges due to non-compliance with approaching deadlines (and associated costs) for territorial authorities (in the short-term).</li> <li>For example, Wellington City Council has reported that only 20 per cent of earthquake-prone buildings with 2024-2027 deadlines are on track to be remediated without further intervention.</li> </ul>	Medium	Medium  Though non-quantifiable, an extension will prevent short term enforcement costs.
Others (eg, wider govt, consumers, etc.)	<ul style="list-style-type: none"> <li>Government has time to undertake a comprehensive Review (without deadlines lapsing) and implement any subsequent change.</li> </ul>	Low	High  The extension will ensure this.
<b>Total monetised benefits</b>		n/a	n/a
<b>Non-monetised benefits</b>		<i>Medium</i>	<i>Medium</i>

## Section 3: Delivering an option

### How will the new arrangements be implemented?

118. Legislative amendment to the Act is required to give effect to the extension of non-lapsed deadlines for remediating earthquake-prone buildings.
119. Subject to Cabinet agreement and priority on the Legislation Programme, it is expected that this bill would be passed by the end of 2024. The extension would apply retrospectively to all non-lapsed remediation deadlines from the date of Cabinet approval (expected to be on 2 April 2024).
120. Territorial authorities will have responsibility for issuing EPB notices with updated deadlines for all eligible earthquake-prone buildings, consistent with their current role in the system. It is expected that this can be completed within three months.
121. Building owners will not be required to apply for the extension; it will be applied automatically to all eligible deadlines. There will be no fee charged for updating EPB notices as this would create a further cost for building owners.
122. The EPB Register will also need to be updated to reflect these amendments.
123. Communication and guidance would be provided to building owners and territorial authorities to support the implementation of the change. Information may be published on the MBIE and Building Performance websites, and territorial authorities would likely communicate directly with affected building owners.
124. To mitigate the risk of extending deadlines for certain buildings (such as priority buildings, unreinforced masonry buildings, and Importance Level 4 public buildings like hospitals and fire, rescue and police stations), MBIE would ensure that communication and engagement with owners of these buildings is prioritised and that a risk-based approach is encouraged.
125. MBIE could also use messaging and guidance to support a sensible, risk-based approach to seismic risk management across all buildings during the Review period.

### How will the new arrangements be monitored, evaluated, and reviewed?

126. The extension of remediation deadlines will be monitored throughout the extension period, including to:
  - ensure that the deadlines on EPB notices have been extended by territorial authorities in accordance with the changes
  - note, and respond to, any emerging risks
  - make initial observations/evaluation about any impacts of the extension, such as whether new earthquake-prone buildings are being identified and added to the EPB Register and whether buildings are being removed from the EPB Register during the period of the Review
  - inform the Minister's decision as to whether a further extension is required, and to what extent (for example, how the Review and any legislative amendments are progressing) (see criteria below).

### **The option for a further one-off extension of remediation deadlines**

127. As the end of the initial four-year extension nears, it will need to be determined whether a further one-off extension (of up to two years) to remediation deadlines will be required. It is expected that any further extension would apply to all buildings whose deadlines were originally extended.
128. A further extension would be enacted by an Order in Council, which could require the Minister to first consider relevant matters such as:
- whether the Review and any subsequent legislative amendments have been, or are appearing likely to be, made within the current extension period
  - what length of further extension is required (up to two years)
  - any other matters the Minister considers relevant.
129. The Review is expected to consider the timeframes for remediation and whether any further changes to timeframes are required, as well as broader questions that may affect owners' obligations moving forward.

# Annex 1: Information on the identification and remediation of earthquake-prone buildings

## The identification of earthquake-prone buildings

1. Under the earthquake-prone building system, territorial authorities are required to identify potentially earthquake-prone buildings (or parts of buildings) in their areas within a set timeframe (see Table 1 on the following page). Building owners must then provide territorial authorities with an engineering assessment, upon request, within 12 months.
2. The timeframes for identifying earthquake-prone buildings vary according to the level of seismic risk – in terms of both the seismic risk area (shown in Figure 1 below) and whether or not the building is a priority building<sup>15</sup>.

Figure 1: Map of seismic risk areas in New Zealand

### Seismic risk areas – Indicative only

Zones of risk are based on earthquake zone factor (Z factor), which represents the relative level of seismicity (a variety of factors that make up a region’s seismic activity) for the building’s location in New Zealand.

#### Risk of building damage

- Higher risk
- Less risk
- Least risk



Disclaimer: This map is based on the hazard factors contained in NZS1170.5:2004 – Earthquake actions – New Zealand and subsequent modifications made after the Canterbury earthquakes.

Source: EQC Toka Tū Ake <https://www.eqc.govt.nz/be-prepared/natural-hazards-where-you-live/earthquakes/>

<sup>15</sup> Priority buildings are certain types of earthquake-prone buildings in high and medium seismic risk areas that are considered to present a higher risk because of their construction type, use or location. These are defined in section 133AE of the Act and include buildings such as hospitals, emergency services, early childhood education and care centres, schools, parts of unreinforced masonry buildings and buildings that could impede a strategic transport route. There has been some variation between territorial authorities in how this definition is applied.

Table 1: Timeframes for territorial authorities to identify earthquake-prone buildings

	Building category (priority or other)	
Seismic risk area	Priority	Other
High	2.5 years	5 years
Medium	5 years	10 years
Low	N/A	15 years

3. A building is considered earthquake-prone if it is given a seismic rating of below 34%NBS when assessed using *The Seismic Assessment Guidelines for Existing Buildings*<sup>16</sup> and confirmed as earthquake-prone by the territorial authority (section 133AB of the Act). A rating of below 34% means that the building has a high or very high life-safety risk (see Table 2 below). The approximate risk to occupants or to neighbouring buildings is approximately 10-25 times greater than that of a new building built to the minimum performance standard indicated by clause B1 of the Building Code, as at 1 July 2017.

Table 2: Assessment outcomes (potential building status) – from *The Seismic Assessment of Existing Buildings*

Percentage of New Building Standard (%NBS)	Alpha rating	Approx. risk relative to a new building	Life-safety risk description
>100	A+	Less than or comparable to	Low risk
80-100	A	1-2 times greater	Low risk
67-79	B	2-5 times greater	Low to Medium risk
34-66	C	5-10 times greater	Medium risk
20 to <34	D	10-25 times greater	High risk
<20	E	25 times greater	Very high risk

4. The risk of an earthquake has potential consequences for injury and loss of life but has a low likelihood of occurring. Life-safety risks are often quantified in terms of the annual fatality risk for an individual. New buildings are designed with a 1 in 1,000,000 annual fatality risk due to earthquakes. An earthquake-prone building is estimated at 1 in 40,000-100,000 annual fatality risk. In comparison, flying in an aeroplane has an estimated fatality risk of approximately 1 in 700,000 and driving a car in New Zealand is estimated to carry a fatality risk of 1 in 20,000.
5. The likelihood of an earthquake occurring can be looked at specifically in terms of known fault lines. For example, recent studies have estimated a 75 per cent probability of a magnitude 8.0 seismic event striking the largest on-land fault – the Alpine Fault – within the next 50 years. Scientists have also estimated a 25 per cent probability of a major seismic event in the Hikurangi Subduction Zone within the next 50 years.

<sup>16</sup> The Guidelines can be accessed here: <https://www.building.govt.nz/building-code-compliance/b-stability/b1-structure/seismic-assessment-existing-buildings/>.

**Remediation of earthquake-prone buildings**

- 6. If the building is confirmed earthquake-prone by the territorial authority and assigned an earthquake rating and issued an earthquake-prone building note (EPB notice), building owners are then required to strengthen or demolish those buildings within a set timeframe (see Table 3 below). These timeframes vary according to seismic risk area, and whether or not the building is a priority building. The deadlines are displayed on the EPB notice, which must be attached on or adjacent to the building and recorded in the public online EPB Register.

*Table 3: Timeframes for completing remediation of an earthquake-prone building*

	<b>Building category (priority or other)</b>	
<b>Seismic risk area</b>	<b><i>Priority</i></b>	<b><i>Other</i></b>
<b>High</b>	7.5 years	15 years
<b>Medium</b>	12.5 years	25 years
<b>Low</b>	N/A	35 years

- 7. Some earthquake-prone building notices (EPB notices) were issued under the previous regime, which enabled territorial authorities to identify earthquake-prone buildings under section 124 of the Act (this section now only applies to dangerous, affected and insanitary buildings). These notices should have been formally replaced with EPB notices after the new system came into force on 1 July 2017, but some are still recorded as “Section 124 notices” on the EPB Register. These notices all pertain to earthquake-prone buildings and should be treated equally.
- 8. Building owners can also apply to territorial authorities for an exemption from undertaking remediation if the building has limited use, is expected to cause limited harm or damage in an earthquake, would not affect strategic transport routes and is unlikely to be required in an emergency.
- 9. Limited categories of heritage buildings can apply to the territorial authority for a 10-year extension to their deadline for competing seismic work under section 133AO of the Act.