



COVERSHEET

Minister	Hon Chris Penk	Portfolio	Building and Construction
Title of Cabinet paper	Terms of Reference for the review of seismic risk management in existing buildings	Date to be published	30 July 2024

List of documents that have been proactively released

Date	Title	Author
23 May 2024	Terms of Reference for the review of seismic risk management in existing buildings	Office of the Minister for Building and Construction
29 May 2024	Review of Seismic Risk Management in Existing Buildings: Terms of Reference ECO-24-MIN-0087 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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Some information has been withheld for the reason of Confidential advice to Government.

In Confidence

Office of the Minister for Building and Construction

Cabinet Economic Policy Committee

Terms of Reference for the review of seismic risk management in existing buildings

Proposal

- 1 This paper seeks agreement to the attached Terms of Reference for the review of seismic risk management in existing buildings.

Relation to government priorities

- 2 The proposal aligns with Government priorities as set out in the Speech from the Throne, including the assessment and quality improvement of new and existing legislation and regulation.

Background

- 3 The current earthquake-prone building system was introduced in 2017 in response to recommendations from the Canterbury Earthquakes Royal Commission. It aims to mitigate life-safety risk during a moderate earthquake by requiring the identification and remediation (strengthening or demolition) of earthquake-prone buildings.
- 4 Building owners, territorial authorities and technical experts have raised concerns about the feasibility of meeting and enforcing the upcoming earthquake-prone building deadlines, as well as other issues with the current system, including:
 - 4.1 Workability – remediation by building owners and enforcement by territorial authorities if deadlines are missed may not be feasible or affordable.
 - 4.2 Proportionality – is the regulatory burden imposed by the system proportionate to the risks being mitigated.
 - 4.3 Effectiveness – the above concerns risk the integrity of the earthquake-prone building system, and its ability to effectively achieve its objectives.
- 5 In response to these concerns, Cabinet agreed to extend non-lapsed remediation deadlines and bring forward a review of the system and I was invited to report back to the Cabinet Economic Policy Committee by 31 May 2024 with proposed scope and terms of reference for the review [ECO-24-MIN-0043 and CAB-24-MIN-0109 refer].

Purpose of the review

- 6 I propose that the purpose of the review of seismic risk management in existing buildings (the Review) is to ensure seismic risk in existing buildings is managed effectively.
- 7 To achieve this, I propose the Review:

- 7.1 consider society's expectations for mitigating the risk of injury and death in the event of an earthquake, and for improving the resilience of new buildings over time
- 7.2 recommend regulatory responses for managing seismic risk in existing buildings that are workable, equitable, and balanced to the risk posed – balancing life safety risks against the costs of regulation, enforcement and impact on property owners
- 7.3 identify barriers to meeting regulatory requirements and the types of support or incentives that would help building owners to better manage seismic risk
- 7.4 consider how outcomes from seismic risk requirements align with broader Government objectives, such as going for housing growth and rebuilding the economy.

Scope of the Review

- 8 The proposed scope of the Review is set out in the Terms of Reference (attached as Annex 1). It is broad in nature, as I want to ensure the Review is comprehensive and effective in achieving the objectives above.
- 9 The Review will take a pragmatic approach to deliver comprehensive findings and high-level recommendations by June 2025. It will do this by prioritising the most pressing questions and problems, and by procuring the right technical and other expert input, allowing multiple, significant workstreams to be carried out in parallel.
- 10 The Review will gather information and consult widely to understand the current state, define problems, gauge public expectations and identify options for change. The Review will report on its findings and provide high-level recommendations.
- 11 The examination of the current state will include a robust analysis of the costs and benefits of current earthquake-prone building regulations, using updated information, for example the latest data estimating seismic hazard (National Seismic Hazard Model) and the remediation costs building owners have experienced.

Review approach

Review governance and stakeholder engagement

- 12 I propose that the Review be carried out by the Ministry of Business, Innovation and Employment (MBIE), with several key elements procured externally (for example, the cost-benefit analysis). This approach will enable the Review to be carried out more quickly and cost-effectively than options such as an independent review.
- 13 Multiple stakeholders have called for an independent review due to perceived biases (by MBIE) or to ensure impartiality. These concerns will be managed through:
 - 13.1 external representation on the MBIE-chaired steering group, including representatives of regulated/impacted parties and co-regulators
 - 13.2 extensive stakeholder engagement, including through external reference groups representing a broad range of perspectives, including earthquake-

prone building owners with a range of viewpoints, territorial authorities and other impacted parties (such as sector practitioners)

- 13.3 external peer Review of the final report.
- 14 MBIE officials will work with other agencies (eg Ministry for the Environment, Ministry for Culture and Heritage, Ministry for Housing and Urban Development, Department of Internal Affairs) in relation to broader government goals, such as housing affordability and addressing heritage-related issues faced by territorial authorities and building owners, as well relevant policies such as managing risk from natural hazards.

Staged approach to policy change

- 15 The Review is the first of a three-stage policy development process:
 - a. **Stage 1 – Review of current state (including a revised cost benefit model), resulting in findings and high-level recommendations.**
 - b. Stage 2 –Detailed development and assessment of options to deliver on the recommendations accepted by the Government at Stage 1.
 - c. Stage 3 – Legislative process for any legislative changes and implementation of non-legislative changes.
- 16 I intend to bring a paper to Cabinet Confidential advice to Government sharing the findings and high-level recommendations from the Review and seeking decisions on next steps.
- 17 Following this, Stage 2 will commence, where my officials will:
 - 17.1 engage in detailed policy design of options
 - 17.2 assess options, including undertaking a detailed cost-benefit analysis of proposed changes, developing relevant scenarios and using other applicable analysis tools
 - 17.3 develop a discussion document and engage in public consultation on detailed proposals (subject to Cabinet agreement)
 - 17.4 finalise proposals for final policy decisions by Cabinet (during Confidential advice to Government).
- 18 Non-legislative proposals would then be implemented, and the legislative process for any legislative changes will begin (Stage 3 – Confidential advice to Government).

Review timeframe and milestones

Timing	Stage	Activities/Milestones
June 2024	Commence	Cabinet approves terms of reference.
Quarter 3 2024	Discovery	Workstream commencement, including commissioning of key inputs. Establishment of steering group. Initial engagement with stakeholders.
Quarter 3 2024 to Quarter 1 2025	Analysis and testing	Consolidate findings to establish current state, problem definition and root causes. Milestone One: Update report to Minister(s).

		Identify options and explore opportunities to support other Government goals. Test options through high-level assessment to inform recommendations.
Quarter 1 2025	Develop recommendations and final report	Milestone Two: Update report to Minister(s). Develop high-level recommendations. Draft and finalise report.
Quarter 2 2025	Report	Final Milestone: Deliver final Review report to Minister(s).
Confidential 2025 Government	Next steps	Advice to Minister for Building and Construction. Report back to Cabinet.

Financial Implications

- 19 The Review will primarily draw on existing resources for MBIE policy and technical staffing inputs, with some components being procured externally (eg cost benefit analysis, specialist technical/engineering advice). Contracted services will support a timely and robust review and ensure a degree of independence for relevant aspects of the review.
- 20 These costs will be managed as far as possible within MBIE’s baseline, however, I note that drawing on the surplus in the building controls memorandum account (subject to Minister for Finance approval) will likely be necessary to supplement existing funding sources as the review progresses and costs are tested with the market.
- 21 Any financial implications of future stages of the process or subsequent regulatory changes will be considered at the appropriate time.

Legislative Implications

- 22 There are no legislative implications of this Cabinet paper. Any legislative change proposed by the Review will be considered as part of future decision-making processes.

Impact Analysis

Regulatory Impact Statement

- 23 There are no regulatory proposals in this paper, and therefore Cabinet’s impact analysis requirements do not apply. For any regulatory proposals that arise from the Review, a Regulatory Impact Statement will be completed as appropriate.

Climate Implications of Policy Assessment

- 24 The Climate Implications of Policy Assessment (CIPA) team has been consulted on the Terms of Reference and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 25 The Review proposed in this paper would not have any direct population impacts. Any proposals that result from the Review will undergo analysis to identify any population implications.

Human Rights

- 26 The Review proposed in this paper would not have any direct population impacts. Any proposals that result from the Review will undergo analysis to identify any human rights implications.

Use of external resources

- 27 No external resources were used directly in the preparation of this paper. Some external resources will be used to carry out the Review.

Consultation

- 28 MBIE carried out targeted consultation on the proposed Terms of Reference with:
- 28.1 the Joint Committee for Seismic Assessment and Retrofit (representatives from the engineering sector, alongside MBIE and EQC Toku Tū Ake)
 - 28.2 a mix of metro and regional territorial authorities from low, medium and high seismic risk areas
 - 28.3 Local Government New Zealand
 - 28.4 government property owners: Ministry of Education, Fire and Emergency New Zealand, New Zealand Defence Force and Department of Corrections
 - 28.5 Property Council New Zealand
 - 28.6 Inner-City Wellington (central Wellington resident advocacy group).
- 29 Most themes and concerns raised by stakeholders fit with the key questions identified as within scope and will therefore be considered as part of the Review, even if not explicitly reflected in the Terms of Reference document itself. Several stakeholders, including Inner-City Wellington and Wellington City Council, called for the Review to be fully independent. These concerns are addressed in paragraph 13 above.
- 30 Consultation to date with non-government building owner representatives has been limited to Inner-City Wellington and the Property Council. Input from other affected parties and relevant sectors (eg finance, insurance) has also been limited. However, I am confident that the proposed Terms of Reference are representative of the broad expectations for the Review.
- 31 MBIE also consulted with officials from the Ministry for the Environment, Ministry for Culture and Heritage, Ministry for Housing and Urban Development, Department of Internal Affairs, Te Whatu Ora, WorkSafe, Ministry of Justice, National Emergency Management Agency, Kāinga Ora, Ministry for Regulation, Treasury, Department of Corrections, and Land Information New Zealand.
- 32 MBIE will continue to engage with officials from relevant agencies as the Review considers the impact of other regulatory systems on the outcomes of the earthquake-prone building system, and opportunities for supporting the Government's broader goals.

Communications

- 33 I intend to publicly announce the Review and publish the Terms of Reference once decisions are confirmed by Cabinet. Recent media coverage on these issues will likely continue or grow as the Review commences and seeks stakeholder feedback.

Proactive Release

- 34 This paper will be proactively released within 30 business days of decisions being confirmed by Cabinet, in accordance with the Cabinet Office Circular CO (18)4, with any appropriate redactions.

Recommendations

The Minister for Building and Construction recommends that the Cabinet Economic Policy Committee:

- 1 **agree** to the objectives, scope and process for the Review of seismic risk management in existing buildings, as set out in the proposed Terms of Reference.
- 2 **agree** that the Review will be led by the Ministry of Business Innovation and Employment, supported by the procurement of technical and other expert input.
- 3 **authorise** the Minister for Building and Construction to make decisions consistent with the overall objectives on any issues which arise during the Review process, including minor, technical and timing changes as required.

Authorised for lodgement

Hon Chris Penk

Minister for Building and Construction