



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	Additional Policy Decisions for the Building (Climate Change Response) Amendment Bill	<b>Date to be published</b>	27 June 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
May 2023	Additional Policy Decisions for the Building (Climate Change Response) Amendment Bill	Office of the Minister for Building and Construction
May 2023	Appendix One: Proposed Energy Performance Rating Organisation Recognition Scheme	Office of the Minister for Building and Construction
May 2023	Appendix Two: Annex to Regulatory Impact Statement: Proposed Building for Climate Change amendments to the Building Act 2004	Ministry of Business, Innovation and Employment
May 2023	Appendix Three: Proposed Amendments to Cabinet Decisions made in September 2022	Office of the Minister for Building and Construction
10 May 2023	Building (Climate Change Response) Amendment Bill: Additional Policy Decisions DEV-23-MIN-0072 Minute	Cabinet Office

### 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 reason of Confidential advice to Government.



# Cabinet Economic Development Committee

## Minute of Decision

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*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

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### Building (Climate Change Response) Amendment Bill: Additional Policy Decisions

Portfolio                      Building and Construction

On 10 May 2023, the Cabinet Economic Development Committee (DEV):

#### Background

- 1        **noted** that in September 2022, DEV approved proposals to amend the Building Act 2004 (the Act) to require owners of certain building types to hold valid energy performance ratings, construction, and demolition waste minimisation plans for certain building projects, and clarify that the Act's purposes and principles include emissions reduction and climate resilience [DEV-22-MIN-0216];
- 2        **noted** that further decisions are required to establish an energy performance rating organisation recognition scheme to enable the public to trust and view the energy performance ratings system as credible, and provide them with assurance on the accuracy, comparability and reliability of these ratings;
- 3        **noted** that Cabinet decisions are required to better align the energy performance rating offences with the decisions in the paper under DEV-23-SUB-0072, and better align the building and construction waste minimisation plan offences and information provision offences with offences in the Building Act 2004;

#### Establishing an energy performance rating organisation recognition scheme

- 4        **agreed** to include an energy performance rating organisation recognition scheme in the Building (Climate Change Response) Amendment Bill;
- 5        **agreed** that energy performance rating documents must be provided by a recognised energy performance rating organisation;
- 6        **agreed** to require a recognised energy performance rating organisation to, on application of the owner of a building to which the energy performance rating requirements apply, issue the building owner an energy performance rating document for their building;
- 7        **agreed** that regulations may prescribe the information that must be included in an application for an energy performance rating document;

- 8 **agreed** to require building owners to supply recognised energy performance rating organisations with the information required to produce an energy performance rating document;
- 9 **agreed** to enable the chief executive to appoint an energy performance rating recognition body (which may be the chief executive of the Ministry of Business, Innovation and Employment (MBIE));
- 10 **agreed** to give the energy performance rating recognition body the role of recognising energy performance rating organisations and auditing them;
- 11 **agreed** that regulations may prescribe:
- 11.1 criteria and standards for recognition, including the policies and processes that must be in place for an applicant to be recognised;
  - 11.2 requirements for the manner and content of applications for recognition;
  - 11.3 the minimum frequency of audits;
  - 11.4 the provisions for audit for cause;
  - 11.5 the fees an energy performance rating recognition body may charge an energy performance rating organisation for recognition and audits;
  - 11.6 any other matters the chief executive considers necessary and appropriate for the performance of the functions of the recognition body;
- 12 **agreed** to enable the energy performance rating recognition body to charge recognised energy performance rating organisations the prescribed fee (if any) for an audit or for recognition;
- 13 **agreed** to require the energy performance rating recognition body to be satisfied that an applicant meets the prescribed criteria and standards for recognition before granting that applicant recognition;
- 14 **agreed** to enable the chief executive to set requirements for the form of applications for recognition;
- 15 **agreed** to enable the chief executive to set competency and training requirements, which will supplement the recognition criteria and standards;
- 16 **agreed** to require the chief executive to publish notification in the New Zealand Gazette of the competency and training requirements set;
- 17 **agreed** to enable the energy performance rating recognition body or the chief executive to suspend and/or revoke the recognised status of an energy performance rating organisation, and set the conditions in which this can occur;
- 18 **agreed** to require the energy performance rating recognition body to notify the chief executive of any grant, suspension, lifting of suspension, or revocation of recognition;
- 19 **agreed** to require the chief executive to hold a public register of recognised energy performance rating organisations;
- 20 **agreed** to enable energy performance rating organisations to suspend or revoke an energy performance rating;

- 21 **agreed** to require a recognised energy performance rating organisation to notify the chief executive when it does any of the following:
- 21.1 issues an energy performance rating document;
  - 21.2 issues a reassessed energy performance rating document;
  - 21.3 suspends or revokes an energy performance rating document;
- 22 **agreed** to include an ability for a building owner to have their rating independently reviewed;
- 23 Confidential advice to Government

### **Introducing offences and penalties for non-compliance with energy performance rating organisation recognition requirements**

- 24 **agreed** that it will be an offence for persons to perform the functions of a recognised energy performance rating organisation if they are not a recognised energy performance rating organisation, with the following penalties:
- 24.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
  - 24.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;

### **Amendments to Cabinet decisions made in September 2022 to better operationalise the energy performance rating proposals**

- 25 **agreed** to:
- 25.1 note that as part of the decisions taken in September 2022, DEV agreed to require owners of buildings of a type, size, or with other characteristics specified in regulations to hold a current energy performance rating for each building they own [DEV-22-MIN-0216];
  - 25.2 recommend that Cabinet rescind the agreement referred to in paragraph 25.1 above;
- 26 **agreed** to require owners of commercial, public, industrial, and multi-unit residential buildings of a particular sizes and characteristics specified in regulations to hold a valid energy performance rating document for the building;
- 27 **agreed** that regulations may specify different energy performance rating requirements that apply to commercial, public, industrial, and multi-unit residential buildings of different sizes and characteristics;
- 28 **agreed** that regulations may prescribe the requirements related to the process, procedures, and timeframes for energy performance ratings for commercial, public, industrial, and multi-unit residential buildings of particular sizes and characteristics, including the period for which ratings are valid;
- 29 **agreed** to enable the chief executive to set requirements for the form of energy performance rating documents;

- 30 **agreed** that regulations may prescribe requirements for the manner and content of energy performance rating documents;
- 31 **agreed** to:
- 31.1 note that as part of the decisions taken in September 2022, DEV agreed that regulations may identify any existing programmes that meet the prescribed the methodology that must be used for a valid energy performance rating [DEV-22-MIN-0216];
- 31.2 recommend that Cabinet rescind the decision referred to in paragraph 31.1 above;
- 32 **agreed** that regulations may prescribe the methodology that must be used for a valid energy performance rating;
- 33 **agreed** to enable the chief executive to establish and maintain a public register of energy performance ratings;
- 34 **agreed** to:
- 34.1 note that as part of the decisions taken in September 2022, DEV agreed to require building owners to display energy performance ratings in a place in the building to which users of the building have ready access [DEV-22-MIN-0216];
- 34.2 recommend that Cabinet rescind the decision referred to in paragraph 34.1 above;
- 35 **agreed** to:
- 35.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for building owners to intentionally not prominently display the energy performance rating of a building in a place in the building to which users of the building have ready access when it is required, with the following penalties:
- 35.1.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
- 35.1.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;
- [DEV-22-MIN-0216]
- 35.2 recommend that Cabinet rescind the decision referred to in paragraph 35.1 above;
- 36 **agreed** to:
- 36.1 note that as part of the decisions taken in September 2022, DEV agreed to require an infringement offence for when the building owner fails to prominently display the energy performance rating of a building in a place in the building to which users of the building have ready access when it is required, with a fee of \$250 [DEV-22-MIN-0216];
- 36.2 recommend that Cabinet rescind the decision referred to in paragraph 36.1 above;

- 37 **agreed to:**
- 37.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for building owners to intentionally not hold a current energy performance rating for a building when it is required, with the following penalties:
- 37.1.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
- 37.1.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;
- [DEV-22-MIN-0216]
- 37.2 recommend that Cabinet rescind the decision referred to in paragraph 37.1 above;
- 38 **agreed to introduce an offence for building owners to not hold a valid energy performance rating for a building when it is required, with the following penalties:**
- 38.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
- 38.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;
- 39 **agreed that building owners will have a defence against the offence to not hold a valid energy performance rating when it is required, where the failure to comply was due to circumstances beyond the building owner's control (e.g. an act or omission by the recognised energy performance rating organisation);**
- 40 **agreed to:**
- 40.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for building owners to intentionally not provide the energy performance rating of a building to persons specified in regulations in circumstances set in regulations, with the following penalties:
- 40.1.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
- 40.1.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;
- [DEV-22-MIN-0216]
- 40.2 recommend that Cabinet rescind the decision referred to in paragraph 40.1 above;
- 41 **agreed to introduce an offence for building owners to not provide information on the energy performance rating of their building to persons specified in regulations, with the following penalties:**
- 41.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
- 41.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;
- 42 **agreed to introduce an offence for building owners to not provide information on the energy performance rating for their buildings in other circumstances required by regulations:**
- 42.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
- 42.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;

- 43 **agreed to:**
- 43.1 note that as part of the decisions taken in September 2022, DEV agreed to an infringement offence for building owners failing to provide the energy performance rating of their building to persons specified in regulations, in circumstances set in regulations, with a fee of \$250 [DEV-22-MIN-0216];
  - 43.2 recommend that Cabinet rescind the decision referred to in paragraph 43.1 above;
- 44 **agreed that the following will be infringement offences:**
- 44.1 for building owners for failing to provide information on the energy performance rating of their buildings to persons specified in regulations, with a fee of \$250;
  - 44.2 for building owners failing to provide information on the energy performance rating for their buildings in other circumstances required by regulations, with a fee of \$250;
- 45 **agreed to:**
- 45.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for building owners to knowingly make a false or misleading statement about the energy performance rating for a building, with the following penalties:
    - 45.1.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
    - 45.1.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000; [DEV-22-MIN-0216]
  - 45.2 recommend that Cabinet rescind the decision referred to in paragraph 45.1 above;
- 46 **agreed to introduce an offence for persons making a false or misleading statement or representation about the energy performance rating for a building, with the following penalties:**
- 46.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
  - 46.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;
- 47 **agreed to:**
- 47.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an infringement offence for when the building owner makes a false or misleading statement about the energy performance rating for a building, with a fee of \$1,000 [DEV-22-MIN-0216];
  - 47.2 recommend that Cabinet rescind the decision referred to in paragraph 47.1 above;
- 48 **agreed that it will be an infringement offence to make a false or misleading statement about the energy performance rating for a building, with a fee of \$1,000;**
- 49 **agreed that the chief executive will enforce energy performance rating requirements;**

**Amendments to some Cabinet decisions made in September 2022 to improve enforcement of building and construction waste minimisation plan requirements**

50 **agreed to:**

50.1 note that as part of the decisions taken in September 2022, DEV agreed to require building owners to provide a Waste Minimisation Plan to the relevant territorial authority before demolishing a building, unless the type of demolition is exempt from requiring a Waste Minimisation Plan by regulations [DEV-22-MIN-0216];

50.2 recommend that Cabinet rescind the decision referred to in paragraph 50.1 above;

51 **agreed to:**

51.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for owners to intentionally not provide a Waste Minimisation Plan when a building consent is sought for building work before carrying out that building work, unless that building work is exempted by regulations, with the following penalties:

51.1.1 on conviction, an individual is liable for a fine not exceeding \$20,000;

51.1.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;

[DEV-22-MIN-0216]

51.2 recommend that Cabinet rescind the decision referred to in paragraph 51.1 above;

52 **agreed** to introduce an offence for persons to carry out any building work except in accordance with an approved construction and demolition waste minimisation plan, unless exempted by regulations or the Act:

52.1 on conviction, an individual is liable for a fine not exceeding \$20,000;

52.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;

53 **agreed** that it will be an infringement offence for persons for failing to comply with the requirement that building work must be carried out in accordance with an approved construction and demolition waste minimisation plan, with a fee of \$1,000;

54 **agreed** to introduce an offence for building owners to not have an approved construction and demolition waste minimisation plan when required, with the following penalties:

54.1 on conviction, an individual is liable for a fine not exceeding \$20,000;

54.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;

55 **agreed to:**

55.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for building owners to intentionally not provide a Waste Minimisation Plan as required by regulations before carrying out demolition work:

55.1.1 on conviction, an individual building owner is liable for a fine not exceeding \$20,000;



55.1.2 on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000;

[DEV-22-MIN-0216]

55.2 recommend that Cabinet rescind the decision referred to in paragraph 55.1 above;

56 **agreed to:**

56.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an infringement offence for building owners failing to provide the relevant territorial authority with a Waste Minimisation Plan before demolishing a building for which a Waste Minimisation Plan is required by regulations, with a fee of \$1,000 [DEV-22-MIN-0261];

56.2 recommend that Cabinet rescind the decision referred to in paragraph 56.1 above;

57 **agreed to:**

57.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for building owners to intentionally not implement their submitted Waste Minimisation Plan, with the following penalties:

57.1.1 on conviction, an individual building owner is liable for a fine not exceeding \$20,000;

57.1.2 on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000;

[DEV-22-MIN-0261]

57.2 recommend that Cabinet rescind the decision referred to in paragraph 57.1 above;

58 **agreed to:**

58.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an infringement offence for when the building owners fails to implement their submitted Waste Minimisation Plan, with a fee of \$1,000 [DEV-22-MIN-0261];

58.2 recommend that Cabinet rescind the decision referred to in paragraph 58.1 above;

59 **agreed to:**

59.1 note that as part of the decisions taken in September 2022, DEV agreed to require building owners to make their Waste Minimisation Plans available on the building or demolition site [DEV-22-MIN-0261];

59.2 recommend that Cabinet rescind the decision referred to in paragraph 59.1 above;

60 **agreed to:**

60.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for building owners to intentionally not make their Waste Minimisation Plan available on the building or demolition site, with the following penalties:

60.1.1 on conviction, an individual is liable for a fine not exceeding \$20,000;

60.1.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;

[DEV-22-MIN-0261]

60.2 recommend that Cabinet rescind the decision referred to in paragraph 60.1 above;

61 **agreed to:**

61.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for building owners to intentionally not provide their Waste Minimisation Plans to persons as specified in regulations, with the following penalties:

61.1.1 on conviction, an individual is liable for a fine not exceeding \$20,000;

61.1.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;

[DEV-22-MIN-0261]

61.2 recommend that Cabinet rescind the decision referred to in paragraph 61.1 above;

62 **agreed to** introduce an offence for building owners to not provide their approved construction and demolition waste minimisation plan to persons as specified in regulations, with the following penalties:

62.1 on conviction, an individual is liable for a fine not exceeding \$20,000;

62.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;

63 **agreed to:**

63.1 note that as part of the decisions taken in September 2022, DEV agreed to an infringement offence for when the building owner fails to provide the relevant territorial authority with a Waste Minimisation Plan when a building consent is sought for building work, with a fee of \$1,000 [DEV-22-MIN-0261];

63.2 recommend that Cabinet rescind the decision referred to in paragraph 63.1 above;

64 **agreed to:**

64.1 note that as part of the decisions taken in September 2022, DEV agreed to an infringement offence for when the building owner fails to prominently make the submitted Waste Minimisation Plan available on the building or demolition site, with a fee of \$250 [DEV-22-MIN-0261];

64.2 recommend that Cabinet rescind the decision referred to in paragraph 64.1 above;

65 **agreed to:**

65.1 note that as part of the decisions taken in September 2022, DEV agreed to an infringement offence for when the building owner fails to provide the Waste Minimisation Plan to persons specified in regulations in circumstances set in regulations, with a fee of \$250 [DEV-22-MIN-0261];

65.2 recommend that Cabinet rescind the decision referred to in paragraph 65.1 above;

- 66 **agreed** that the following will be infringement offences:
- 66.1 for persons, for failing to comply with the requirement that building work must be carried out in accordance with an approved construction and demolition waste minimisation plan when one is required, with a fee of \$1,000;
  - 66.2 for owners, for each instance they fail to provide a copy of their approved construction and demolition waste minimisation plan to persons specified in regulations, with a fee of \$250;

**Amendments to some Cabinet decisions made in September 2022 to better align information provision offences with other offences in the Building Act 2004**

- 67 **agreed** that regulations may specify the information that a building consent authority or territorial authority must provide the chief executive for the purpose of facilitating the performance of chief executive's functions under these decisions;
- 68 **agreed** to:
- 68.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for persons to intentionally not provide MBIE with the information or documents requested under the new information provision requirements as specified in the written notice, with the following penalties:
    - 68.1.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
    - 68.1.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;[DEV-22-MIN-0261]
  - 68.2 recommend that Cabinet rescind the decision referred to in paragraph 68.1 above;
- 69 **agreed** to introduce an offence for persons to not provide MBIE with the information or documents requested under the new information provision requirements as specified in the written notice, with the following penalties:
- 69.1 on conviction, an individual is liable for a fine not exceeding \$20,000;
  - 69.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000;
- 70 **agreed** to:
- 70.1 note that as part of the decisions taken in September 2022, DEV agreed to introduce an offence for persons to knowingly provide false or misleading statements about the information or documents requested by MBIE under the new information provision requirements, with the following penalties:
    - 70.1.1 on conviction, an individual building owner is liable for a fine not exceeding \$20,000;
    - 70.1.2 on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000;[DEV-22-MIN-0261]
  - 70.2 recommend that Cabinet rescind the decision referred to in paragraph 70.1 above;

71 **agreed** to introduce an offence for persons to provide false or misleading statements about the information or documents requested by MBIE under the new information provision requirements, with the following penalties:

71.1 on conviction, an individual building owner is liable for a fine not exceeding \$20,000;

71.2 on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000;

### Consequential changes to the role of the chief executive

72 **noted** that, subject to these decisions being taken, consequential changes will be needed to align the chief executive's roles in section 11 of the Act with the new powers and enabling provisions in relation to the energy performance rating recognition scheme;

### Legislative process

73 **authorised** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

74 **authorised** the Minister for Building and Construction to make decisions, consistent with the above proposals, on any issues which arise during the drafting process;

75 Confidential advice to Government

76 **noted** that the above proposals will require further stakeholder engagement, consultation, and the development of regulations to operationalise.

Janine Harvey  
Committee Secretary

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#### Present:

Hon Grant Robertson (Chair)  
Hon Dr Ayesha Verrall  
Hon Willie Jackson  
Hon David Parker  
Hon Priyanca Radhakrishnan  
Hon Kieran McAnulty  
Hon Ginny Andersen  
Hon Barbara Edmonds  
Hon Dr Duncan Webb  
Hon Rino Tirikatene  
Hon Dr Deborah Russell  
Hon Rachel Brooking

#### Officials present from:

Office of the Prime Minister  
Officials Committee for DEV