



COVERSHEET

Minister	Hon Jenny Salesa	Portfolio	Building and Construction
Title of Cabinet paper	Building Consent Exemption for Ground Moisture Barriers	Date of release	19/06/2019

List of documents that have been proactively released

Date	Title	Author
01/05/2019	Cabinet Paper – Building Consent Exemption for Ground Moisture Barriers	Office of the Minister for Building and Construction
01/05/2019	Minute – DEV-19-MIN-0093	Committee Secretary of DEV

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 relevant sections of the Act that would apply have been identified and are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister for Building and Construction
Chair, Cabinet Economic Development Committee

Building consent exemption for ground moisture barriers

Proposal

1. This paper seeks Cabinet approval to amend the Building Act 2004 (the Act), through an Order in Council, to allow ground moisture barriers to be installed in existing buildings without a building consent.

Background

2. In December 2017, the Healthy Homes Guarantee Act 2017 was passed which enables standards to be made to make rental homes warmer and drier. One of these standards will be a requirement to have ground moisture barriers installed in enclosed subfloors, if it is feasible to do so.
3. Ground moisture barriers protect against rising damp and mould, making homes drier, warmer and easier to heat. The barrier is generally a non-permeable thin polythene layer that is placed under a timber subfloor and around the piles and edges of the foundations.
4. The installation of ground moisture barriers falls within the definition of building work in the Building Act 2004. This means that ground moisture barriers currently require a building consent before they can be installed.

The Act allows for some types of building work to be exempt from a building consent

5. Before commencing building work, a building owner must apply to a building consent authority (BCA) for a building consent. The consent application process checks that the designs for the building comply with the Building Code. This is a way to manage the risk that the completed building will not be dangerous to people or cause damage to other buildings.
6. All building work, whether or not it requires a building consent, must still comply with the Building Code. Building work must also comply with any other relevant legislation.
7. The Act recognises that some types of building work are considered low risk, so do not require a building consent.

8. Within the Act, Schedule 1 sets out three types of exemptions:
 - a. Some specified building work that anyone can carry out.
 - b. Some plumbing and drainlaying work that can only be done by an authorised person under the Plumbers, Gasfitters and Drainlayers Act 2006.
 - c. Some building work if it is designed or the design is reviewed by a chartered professional engineer.
9. Territorial or regional authorities may use their discretion to exempt any proposed building work from the requirement to obtain a building consent if the territorial or regional authority considers that:
 - a. the completed building work is likely to comply with the Building Code; or
 - b. if the completed building work does not comply with the Building Code, it is unlikely to endanger people or any building, whether on the same land or on other property.

Exemption for ground moisture barriers

10. I propose to add ground moisture barriers to Schedule 1 of the Building Act to exempt them from the building consent process.
11. The installation of ground moisture barriers is low risk building work. It is likely to comply with the Building Code without regulatory oversight.
12. Most building owners are probably not aware that installing a moisture barrier is building work and requires a building consent. Territorial and regional authorities have advised MBIE that when they are asked about a consent, they have been using their discretionary powers under the Act to exempt this work from the consenting process.
13. Exempting moisture barriers will allow building owners to install them without having to approach their territorial or regional authority for discretionary exemption, saving building owners' time, and reducing barriers to compliance and associated costs. This exemption would support all home owners to improve the healthiness of their homes, including rental properties.
14. It may also reduce queries to territorial and regional authorities allowing them to focus on high risk work.
15. Having an exemption specifically for moisture barriers would make it clear that a consent is not needed to undertake this work in the future.
16. If Cabinet agrees, I intend for the exemption to come into force on 1 July 2019. This is to coincide with the date that the Healthy Homes Standards regulations are

intended to come into force.

17. If people have already installed a ground moisture barrier without consent, I expect BCAs to take a pragmatic approach that reflects the low risk nature of the work. If concerned, homeowners may choose to apply to their BCA for a certificate of acceptance.¹

Consultation

18. MBIE has undertaken targeted consultation with a representative sample of BCAs, Confidentiality. The BCAs are supportive of the proposed change.
19. The following agencies have been consulted on this paper: Treasury, Department of Prime Minister and Cabinet (Policy Advisory Group), Ministry of Justice, Ministry of Housing and Urban Development, Ministry of Health, Ministry of Education, and Ministry for the Environment, Housing New Zealand and the Department of Internal Affairs.

Financial Implications

20. The proposal will have no fiscal impact.

Legislative Implications

21. An Order in Council is required to change Schedule 1 of the Building Act 2004.

Impact Analysis

22. The Treasury Regulatory Quality Team has determined that the decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements on the grounds that they will have no or only minor impacts on businesses, individuals or not-for-profit entities.

Human Rights

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

Gender Implications

24. There are no gender implications arising from these proposals.

Disability Perspective

25. There are no disability implications arising from these proposals.

¹ Any ground moisture barriers installed prior to the Building Act 1991 do not require a consent.

Publicity

26. A publicity plan will be developed to support the announcement of this decision.

Proactive Release

27. I intend to publically release a copy of this paper and associated decisions in accordance with Cabinet's proactive release policy, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982.

Recommendations

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

1. **agree** that ground moisture barriers should be permitted to be installed beneath an existing building without a building consent;
2. **agree** to add ground moisture barriers as an exemption under Schedule 1 of the Building Act 2004;
3. **note** a waiver to the 28-day rule will be sought at Cabinet Legislation Committee, to allow the exemption to come into force on 1 July 2019;
4. **invite** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to these recommendations through an Order in Council; and
5. **authorise** the Minister for Building and Construction to make further decisions on minor and technical matters consistent with the policy decision that arise during the drafting process.

Authorised for lodgement

Hon Jenny Salesa

Minister for Building and Construction