



COVERSHEET

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

List of documents that have been proactively released

Date	Title	Author
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.

In Confidence

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

Additional Policy Decisions for the Building (Climate Change Response) Amendment Bill

Proposal

- 1 This paper seeks agreement to additional policy proposals for the energy performance rating scheme and building and construction waste minimisation requirements agreed to by Cabinet in September 2022 [CAB-22-MIN-0390 refers].

Relation to government priorities

- 2 The proposals in this paper support:
 - 2.1 the Climate Change Response (Zero Carbon) Amendment Act 2019 (the Zero Carbon Act) which requires all sectors of the economy to contribute to New Zealand reducing net emissions of all greenhouse gases, except biogenic methane, to zero by 2050;
 - 2.2 New Zealand's first Emissions Reduction Plan (ERP), published in May 2022; and
 - 2.3 New Zealand's first National Adaptation Plan (NAP), published in August 2022.

Executive Summary

- 3 In September 2022, Cabinet agreed to amend the Building Act 2004 (the Act) to require mandatory energy performance ratings for owners of buildings of a type, size, or with other characteristics specified in regulations, require 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 [CAB-22-MIN-0390 refers]. These proposals will encourage the building and construction sector to reduce emissions and build climate resilience.
- 4 Energy performance ratings will provide building owners, tenants, and consumers with comparable information about a building's energy performance. Ratings help to inform consumer decisions and incentivise building owners to invest in making their buildings more energy efficient and have lower emissions. Rating systems can also contribute to reducing energy use, resulting in lower energy bills for owners and tenants.

- 5 To achieve greater trust and confidence in energy performance ratings, I am seeking Cabinet approval to specify who is competent and approved to conduct energy performance ratings of buildings.
- 6 I propose to establish a scheme to recognise energy performance rating organisations to provide the public with assurance on the accuracy, comparability, and reliability of these ratings. The proposal aligns with stakeholder expectations that energy performance ratings be conducted by appropriately competent people and is consistent with energy performance regimes in other jurisdictions.
- 7 There may be some additional implementation costs for Government that were not identified in the original cost benefit analysis, depending on the specific design of the organisation recognition requirements and audit functions. However, the Ministry of Business, Innovation and Employment (MBIE) administers several similar functions and has existing systems that it can leverage to provide economies of scale and minimise costs.
- 8 Regulations will be required to implement the proposed scheme and any additional implementation costs will be identified in the Regulatory Impact Statement for these regulations. MBIE will seek to minimise implementation costs for recognised organisations by prescribing fees in regulations on a cost recovery basis. The cost outputs for recognising organisations will likely be similar to cost outputs to recognise other building system organisations. I therefore expect the fees charged to be similar to other schemes under the Act, which are relatively modest.
- 9 Note that regulations will be designed in consultation with key building and construction sector stakeholders and relevant sector groups.
- 10 I am also seeking amendments to some Cabinet decisions made in September 2022. This will better align the energy performance rating offences with the proposals in this paper, and better align the building and construction waste minimisation plan offences and information provision offences with offences in the Act. The proposed amendments are listed in Annex Three and include:
 - 10.1 specifying in primary legislation that the energy performance rating requirements will apply to owners of commercial, public, industrial, and multi-unit residential buildings of a size and type specified in regulations;
 - 10.2 requiring owners of commercial, public, industrial, and multi-unit residential buildings of a particular size and characteristics specified in regulations to hold a valid energy performance rating document;
 - 10.3 enabling the chief executive to set requirements for the form of energy performance rating documents; and
 - 10.4 enabling the chief executive to establish and maintain a public register of energy performance ratings.

Background

- 11 In September 2022, Cabinet agreed to amend the Act to require mandatory energy performance ratings for certain buildings, require 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 [CAB-22-MIN-0390 refers].

- 12 Cabinet decisions in September 2022 did not specify who is competent and approved to conduct energy performance ratings of buildings. The process of refining and developing the detail of these policies has highlighted the need to ensure public trust and confidence in the energy performance rating system. I propose to do this by setting out specific requirements for who is recognised or approved to conduct a valid energy performance rating for buildings.
- 13 Cabinet decisions in September 2022 also included agreement to a number of offences for construction and demolition waste minimisation plan and information provision requirements. I propose some amendments to these to improve enforcement and better align with existing offences in the Act.

An organisation recognition scheme is needed to support the implementation of the agreed energy performance ratings requirements

- 14 Getting the energy performance ratings requirements right is important because:
 - 14.1 providing building owners and tenants with information on their building's energy performance can incentivise them to invest in improvements that increase the building's energy efficiency. This is because a higher rating can increase the building's value or improve its rentability.
 - 14.2 a lower rating could potentially have a downward influence on the value of a building.
 - 14.3 building energy performance rating systems can also contribute to reducing energy use, resulting in lower energy bills for owners and tenants.
 - 14.4 energy performance rating systems can also give decision-makers system-level information about building performance and carbon emissions. This can inform work towards achieving our emissions reduction goals.
- 15 It is crucial to achieving the benefits of the energy performance ratings system that the public trusts and views the ratings as credible. Current Cabinet agreement does not specify who can assess a building's energy performance. This would likely result in some building owners using energy professionals while others self-assess their building's energy performance. As a result, the ratings could risk being inaccurate, difficult to compare, and seen as less reliable by consumers. This would undermine the policy intent of the energy performance rating system.
- 16 To build trust, we must set how energy performance ratings should be calculated and who can conduct these ratings. Doing this will provide the public with assurance on the accuracy, comparability, and reliability of the ratings.

Evidence from overseas shows organisation recognition schemes can be effective supports for mandatory energy performance rating systems

- 17 In other jurisdictions, the following schemes support longstanding energy performance rating systems:
- 17.1 the United Kingdom has required mandatory energy performance certificates since 2008. A mixture of approaches is used to approve and accredit organisations: organisations are accredited by the Secretary of State (England, Wales) or the Department of Finance and Personnel (Northern Ireland) and organisations approved by Scottish Ministers (Scotland).
- 17.2 Australia has had mandatory energy performance rating requirements for certain building types since 2010. Individual assessors are accredited by the Commercial Building Disclosure Program based on criteria in the Building Energy Efficiency Disclosure Act 2010.
- 17.3 the European Union has had energy performance measurement and minimum requirements for buildings since 2010. Assessors are certified by an accredited conformity assessment body.
- 18 I propose adopting an approach like the United Kingdom’s energy performance ratings scheme. The United Kingdom model accredits at the organisation or body level.
- 19 The model I am proposing is like other schemes operating in New Zealand both in the Act and under other legislation. This model would build on existing voluntary energy ratings schemes. Organisations with expertise in building energy performance assessments could be recognised to continue to provide their current services if they meet the prescribed criteria for recognition.

The benefits of an organisation recognition scheme outweigh the costs

- 20 Attached to this paper is an Annex to the Regulatory Impact Statement: Proposed Building for Climate Change amendments to the Building Act 2004 (Annex Two). It examines the options to ensure that the public and building owners have trust and confidence in energy performance ratings and their associated costs and benefits.
- 21 The analysis identifies the most effective option to achieve public trust and confidence in the energy performance rating system: amend the Act to enable organisations to be recognised to provide energy performance rating documents through their members. This approach incurs lower administrative cost when compared to other options.¹
- 22 Implementing this proposal will not materially alter the costs and benefits of energy performance ratings identified in the original Regulatory Impact Statement and cost benefit analysis that supported the proposals considered by Cabinet in September 2022. Building owners will not face additional costs to obtain an energy performance

¹ Other options considered were to accredit individual energy performance rating assessors, and to enable building owners to self-assess their buildings energy performance.

rating document from these proposals, because the costs incurred by building owners from implementing this system were factored into the original cost benefit analysis.

- 23 The implementation costs calculated in the original cost benefit analysis included:
- 23.1 policy implementation costs of \$500,000 per year for the first two years;
 - 23.2 ongoing monitoring costs of \$219,000 per year; and
 - 23.3 compliance and enforcement costs of 5 FTE with 50 per cent on-cost loading.
- 24 There may be some additional implementation costs for government that were not identified in the original cost benefit analysis. These costs will depend on the specific design of the organisation recognition requirements and audit functions. Regulations will be required to implement the system and any additional implementation costs will be identified in the Regulatory Impact Statement for these regulations.
- 25 MBIE will seek to minimise implementation costs by prescribing fees in regulations on a cost recovery basis to minimise costs on recognised organisations. The cost outputs for recognising organisations will likely be similar to cost outputs to accredit other building system organisations. I therefore expect the fees charged to be similar to other schemes under the Act, which are relatively modest.
- 26 There may also be additional costs to organisations paying recognition fees that were not identified in the original cost benefit analysis. These fees are intended to recover costs of the scheme. The specific design of the scheme as set in regulations will inform the detail of these fees, which will be included in the Regulatory Impact Statement for regulations.

Proposed amendments to the Act to establish an energy performance rating organisation recognition scheme

- 27 I propose to establish a scheme for recognising energy performance rating organisations. This scheme will ensure ratings have been calculated by competent or trained providers, using a reliable and credible methodology, that produces consistent outputs and enables meaningful comparison between ratings.
- 28 Annex One outlines how the scheme would work. In practice, the scheme would involve:
- 28.1 MBIE, or another appointed body, would recognise organisations to provide energy performance rating documents and would be able to suspend or revoke this recognition under certain conditions.
 - 28.2 Recognised organisations would be responsible for approving individual assessors and for ensuring that assessors meet required competency standards.
 - 28.3 Regulations that specify the criteria and standards which organisations must meet to be recognised. This may include, for example, criteria around training and development processes for assessors, and dispute resolution processes the organisation has in place to provide consumer protection.

- 28.4 MBIE would publish a public register of recognised organisations.
- 29 At present, there are approximately 106 individual energy performance assessors in New Zealand who have completed NABERSNZ Accredited Assessor training.
- 30 It is unlikely that existing energy performance assessors will be significantly impacted by these changes. Individual assessors will need to be approved by a recognised organisation and follow that organisation's procedures to conduct assessments under the energy performance rating scheme. An organisation would need to demonstrate how it meets the prescribed requirements for recognition.
- 31 Officials anticipate that existing organisations providing assessments may be able to meet the requirements through minor adaptations to their current procedures and practice (such as their dispute resolution and record keeping processes). This is providing they meet the prescribed criteria for recognition and utilise methodologies consistent with those prescribed in regulations. Officials will work with the sector to develop recognition criteria to ensure that compliance costs are minimised and there is adequate capacity in the sector.
- 32 I propose that the Act be amended to:
- 32.1 require energy performance rating documents to be provided by a recognised organisation in order to be considered valid;
 - 32.2 enable the chief executive to appoint a body (which may be the chief executive of MBIE) to recognise organisations that can provide energy performance rating documents;
 - 32.3 give the recognising body the role of recognising and auditing organisations;
 - 32.4 provide for the process for recognition (including the application process);
 - 32.5 provide for the process for building owners to obtain an energy performance rating document from a recognised organisation;
 - 32.6 include an ability for a building owner to have their rating independently reviewed; and
 - 32.7 require the chief executive to hold a public register of recognised organisations.
- 33 I also propose to enable the chief executive to set requirements relating to the qualifications, specific knowledge, training, experience, and other competency requirements that the assessors of a recognised organisation will be required to have. The notification that they have been set will be published in the Gazette. This will supplement the high-level prescribed recognition criteria and standards. Given these will be subject to frequent change as the training and qualifications available increase or develop over time, it is appropriate for this technical detail to be in a notice rather than in regulations. The requirements will be secondary legislation for the purpose of the Legislation Act 2019.

Introducing offences and penalties for non-compliance with organisation recognition requirements

- 34 I also propose to introduce a new offence to ensure that recognised organisations comply with the recognition scheme requirements. I propose an offence for persons to perform the functions of a recognised organisation if they are not a recognised organisation, with the following penalties:
- 34.1 on conviction, an individual is liable for a fine not exceeding \$20,000; and
 - 34.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000.

Regulations will specify the requirements for the organisation recognition scheme

- 35 The proposals will require the development of regulations before they are implemented. Any such regulatory requirements will be brought to Cabinet for consideration in due course following engagement with the sector and other interested parties and stakeholders. I intend regulations to specify the:
- 35.1 manner and content of applications for recognition and the information to be included in applications;
 - 35.2 criteria and standards for recognition, which could include, for example, training required or requirements for recognised organisations to have policies, procedures, and systems that ensure:
 - 35.2.1 their assessors have the skills and competencies required to conduct energy performance ratings;
 - 35.2.2 transparency around how they charge building owners for the services they provide and ensure fees charged are reasonable;
 - 35.2.3 that the organisation has and maintains professional indemnity insurance;
 - 35.2.4 the appropriate receipt and handling of complaints, and resolution of disputes; and
 - 35.2.5 an up-to-date list of their assessors is maintained and made available to clients.
 - 35.3 fees that a recognition body may charge a recognised organisation for recognising and auditing those organisations; and
 - 35.4 requirements in relation to audits of the recognised organisation (including the frequency and any other necessary matters).

Proposed amendments to Cabinet decisions made in September 2022

- 36 I propose a number of amendments to proposals agreed to by Cabinet in September 2022. These amendments are listed in the tables at Annex Three.

- 37 I am proposing these changes to better operationalise the energy performance rating system, improve the enforcement of the construction and demolition waste minimisation plan requirements, and align the information provision offences with other offences in the Act.

Specifying building types that energy performance ratings will apply to

- 38 In the proposals brought to Cabinet in September 2022, I indicated that regulations would specify the types of buildings to which these requirements would apply. Being explicit about this in the Bill will provide greater certainty for small residential building owners that the energy performance rating requirements will not apply to them. For this reason, I propose to amend the Act to require owners of commercial, public, industrial, and multi-unit residential buildings to hold a valid energy performance rating document.

- 39 In the building system:

- 39.1 public buildings include buildings intended for public use, or premises where the public can enter on payment of a fee;
- 39.2 commercial buildings include buildings in which any natural resources, goods, services or money are developed, sold, exchanged, or stored;
- 39.3 industrial buildings include buildings where people use material and physical effort to extract or convert natural resources, produce goods or energy from natural or converted resources, repair goods, or store goods ensuing from the industrial process; and
- 39.4 multi-unit residential buildings include buildings that comprise two or more storeys and either is a hostel, boarding-house, or other specialised accommodation, or contains three or more household units.

- 40 I intend regulations to specify the size and types of commercial, public, industrial, and multi-unit residential buildings to which requirements apply. This will enable stakeholder consultation to inform the detailed design of the requirements. It will also ensure the requirements are practicable for building owners and recognised organisations, and maximise the benefits and cost-savings of increased energy efficiency of buildings.

Clarifying validity requirements for energy performance ratings

- 41 When Cabinet agreed to the proposed package of changes in September 2022, I signalled my intent that owners of buildings to whom these requirements apply should have a current rating. However, the Cabinet paper agreement did not specify what constituted a current rating or whether there would be any requirements for renewal.
- 42 To provide additional clarity, I am proposing to require building owners to have a valid energy performance rating and to enable regulations to specify the renewal period for a rating. Requiring that building owners renew an energy performance rating at a regular interval will better deliver the policy intent of the energy performance rating scheme. Compared to a one-off rating, it will provide more

accurate and up-to-date information for prospective building owners and tenants, and greater incentives for building owners to improve energy performance over time. Requiring a renewal period is consistent with the Carbon Neutral Government NABERS NZ requirements, existing voluntary ratings schemes, and practice in other jurisdictions.

- 43 Analysis in Annex Two indicates that requiring building owners to renew their energy performance ratings within a period set by regulations would generate greater net benefits than a one-off rating without a renewal period. Benefits include energy savings, emissions reduction, and improvements in occupant health, productivity, and wellbeing. Analysis in Annex Two indicates that the ratio of benefits to costs (BCR) is more positive when energy performance ratings are renewed regularly. When a 3-year renewal period is incorporated into a revised model, it has a BCR of 1.70 (i.e., \$1.70 in benefits for every \$1 in costs). In contrast, the original cost benefit analysis which did not model renewal periods has a BCR of 0.96. The cost benefit analysis will be updated to reflect this new information.
- 44 I consider that it is appropriate for the validity requirements for ratings to be specified in regulations. This will enable greater levels of flexibility to:
- 44.1 reflect what is appropriate for different types of buildings. For example, it may be appropriate for office buildings of a particular size and characteristic to have a different renewal period from multi-unit residential buildings, or for buildings that are new or have a high rating to have a different renewal period from older, lower rated buildings; and
- 44.2 reflect changes in building types and characteristics over time. For example, to reflect technological changes to rating assessment methods.
- 45 I intend to conduct stakeholder and industry consultation as part of the regulations making process to determine what validity requirements are appropriate for different buildings.
- 46 In setting the validity period for ratings, relevant factors will be taken into account to decide what the appropriate requirements are (e.g. building typology, age and size, as well as history of energy performance ratings).
- 47 When setting the validity period, the additional costs to building owners to renew their rating will be balanced with the benefits of reduced energy bills and emissions that come with renewing an energy performance rating. Note that costs to individual building owners from ratings renewals are likely to reduce as the supplier market develops when energy performance ratings become mandatory. The number of buildings is expected to increase from around 100 NABERSNZ rated buildings to around 1,200 buildings that require a rating.
- 48 While New Zealand data is limited, evidence from the NABERS programme in Australia shows the benefits of conducting ratings on an annual basis. For buildings that rate annually, the average energy saving per square metre (MJ/m²) was 4 per cent after the second NABERS rating. The energy saving increased to 22 per cent after the eighth rating and 44 per cent after the fourteenth rating.

- 49 The changes also include a proposal to enable the chief executive to set requirements for the form of energy performance rating documents. The package agreed by Cabinet in September 2022 did not include approvals for the form in which an energy performance rating was to be produced. I seek the Cabinet approval required for this to better implement the energy performance rating scheme and provide the public with clarity on how to comply with incoming requirements.
- 50 I also propose to enable the chief executive to establish and maintain a public register of energy performance ratings documents. This will help achieve the policy intent of the scheme by enabling the public to compare the energy performance of buildings. I have made a decision within the authority delegated to me by Cabinet to enable this, but seek Cabinet agreement for avoidance of doubt.

Amendments to construction and demolition waste minimisation plan proposals

- 51 I propose to amend some of the construction and demolition waste minimisation plan proposals brought to Cabinet in September 2022. These amendments include improvements to the enforcement of the waste requirements.
- 52 For example, I propose to extend the obligation to carry out building work in accordance with an approved waste plan to persons carrying out work onsite. This adds a deterrence for non-compliance where they are most likely to occur (i.e. onsite), and is more consistent with other provisions in the Act that apply to persons carrying out building work.
- 53 I also propose that Cabinet rescind agreement to some offences which guard against conduct that is already covered by other existing offences. For example, the offence for building owners to intentionally not make their Waste Minimisation Plan available on the building or demolition site. The policy intent is for people producing waste on site to comply with the approved waste minimisation plan. To do this, the existing agreement to require that the approved plan be provided to persons specified in regulations is sufficient. I intend regulations to specify the persons on site who must be supplied with a copy of the plan.
- 54 I also propose that Cabinet rescind agreement to require building owners to provide a Waste Minimisation Plan before demolishing a building. In September 2022, I proposed to require building owners to provide a Waste Minimisation Plan before demolishing a building, even if building consent is not required for this building work. However, further policy work has highlighted that this approach is inconsistent with the building consent process and would add unnecessary red tape to the building consent system.

Amendments to information provision proposals

- 55 I propose some minor amendments to the information provision proposals agreed to by Cabinet in September 2022. The full list of amendments is listed in the tables at Annex Three. In addition to these minor amendments, I propose to enable regulations to 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 proposals. Existing Cabinet approvals did not include provision for collecting information from building consent authorities. This

would help inform, monitor, evaluate, and implement policies, programmes, and regulations that support building-related emissions reduction, climate resilience, and adaptation. It would also enable consumers to assess and compare the emissions, climate resilience, and adaptation of buildings.

56 The full list of amendments is listed in the tables at Annex Three.

Consequential changes to the role of the chief executive

57 If the recommendations of this paper are approved, consequential changes will be needed to align the chief executive's functions (in section 11 of the Act) with the new powers and enabling provisions in relation to the energy performance rating organisation recognition scheme. These consequential changes will be set out in the Cabinet Legislation Committee paper for this Bill.

Implementation

58 This paper proposes enabling legislative changes to progress the energy performance rating requirements agreed by Cabinet in September 2022 [CAB-22-MIN-0390 refers]. Operational detail such as the scope of requirements, a transition approach to phase in requirements, and the expected cost of compliance will be provided for in regulations. This approach has been proposed to make the legislation more enduring by allowing for future-focused flexibility. The legislative framework is purposefully designed to be high-level and enabling because the emissions reduction space is long-term and changeable. Flexibility is required to ensure that policies can respond and apply to what emissions reduction looks like in New Zealand decades from now, through to 2050.

59 The regulations will set the recognition requirements that organisations must meet, the fee structure, and other operational details including the disputes and audit processes. Regulations will be brought to Cabinet for consideration in due course following engagement with the sector. This will enable detailed consideration of potential trade-offs between up-front costs for consumers and the building industry, and long-term emissions, wellbeing, and productivity benefits.

Financial Implications

60 Organisations seeking to be recognised will be required to pay the recognition body the prescribed fee for recognition and once recognised, any ongoing fees.

61 Owners of buildings to which the energy performance ratings requirements apply will be required to have their buildings assessed by a member of a recognised organisation to comply with requirements to hold a valid energy performance rating document.

62 The costs of recognition fees are likely to be passed on to building owners and reflected in the costs of an energy performance rating. However, these costs were factored into the original proposals. The original cost benefit analysis was based on NABERSNZ costs which has a similar regime to the recognition regime I am proposing (i.e. where assessors are required to do competency training costing \$2,830 plus GST, the cost of which is recouped through fees charged to customers for a rating). The cost of an initial energy performance rating was factored into the original

cost benefit analysis. However, ratings renewals will represent an additional cost for building owners.

63 Confidential advice to Government

Legislative Implications

64 Confidential advice to Government

65 Following drafting by Parliamentary Counsel Office, a draft Bill will be provided to Cabinet Legislation Committee for consideration prior to introduction.

66 Regulations will be required to deliver the detail of these proposals.

Impact Analysis

Regulatory Impact Statement

67 MBIE's Regulatory Impact Analysis Review Panel has confirmed that the information and analysis summarised in the Impact Summary Annex meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

68 Future Regulatory Impact Analysis on detailed regulatory requirements will provide a fuller picture of benefits balanced against costs.

Climate Implications of Policy Assessment

69 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this package of proposals as the likely emissions impact is indirect and unable to be accurately quantified at this time.

70 The proposals seek to set the framework in which ratings are calculated, the qualifications and competencies of organisations, and oversight of the scheme to provide greater confidence and trust in the ratings. The proposals will have a greater impact on emissions reduction once specific requirements are set in secondary legislation. MBIE will work with the CIPA team to disclose the emissions impacts of proposals to Cabinet at the appropriate time.

Population Implications

71 Depending on their scope and other requirements, the introduction of energy performance ratings requirements may have disproportionate implications for owners of older and less energy efficient buildings in regional centres. These population implications and distributional impacts will be considered, outlined, and where relevant mitigated when developing regulations for these proposals.

- 72 It is intended that regulation development includes transition planning and support to mitigate negative impacts on the building and construction sector, which is already stretched. This will help enable the benefits of the proposals to be realised without creating undue cost, stress, or other impacts on the sector. Regulations will be brought to Cabinet for consideration in due course.

Human Rights

- 73 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 74 In October 2021, government consulted on proposals to include in New Zealand's first Emissions Reduction Plan, including energy performance and waste minimisation requirements.
- 75 MBIE received largely positive feedback from stakeholders and industry participants following the announcement of the Cabinet decisions on energy performance ratings requirements in December 2022. MBIE also received positive feedback through consultation with a discussion group of sector representatives convened following publication of the Emissions Reduction Plan to advise on the specific policy proposals.²
- 76 MBIE considers the proposals in this paper to be non-controversial. The proposals align with stakeholder expectations that appropriately competent or trained people conduct energy performance ratings. These proposals set the framework in which the original proposals will apply, rather than significantly changing the requirements or how different groups will be impacted.
- 77 As part of the development of the original policy proposals, the following agencies and Crown entities were consulted: Ministry for the Environment; Ministry for Primary Industries; Ministry of Justice; Ministry of Education; Ministry of Health; Treasury; Te Puni Kōkiri; Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development; Ministry of Transport; Department of Corrections; Department of Internal Affairs; the Privacy Commission; Kāinga Ora; and the Energy Efficiency & Conservation Authority. The Construction Sector Accord was also consulted in developing this paper.

Communications

- 78 I may issue a media statement once Cabinet decisions have been made. This paper, and the Regulatory Impact Statement, will be made publicly available on MBIE's website through proactive release.

² This discussion group was comprised of representatives from Wellington City Council, Selwyn District Council, Institute of Architects, BRANZ, Property Council New Zealand, Certified Builders, Registered Master Builders, New Zealand Green Building Council, Kāinga Ora, and the Ministry for Environment.

Proactive Release

- 79 This Cabinet paper and associated minute will be published on MBIE's website, subject to any necessary redactions.

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** that in September 2022 Cabinet approved proposals to amend the Building Act 2004 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 [CAB-22-MIN-0390 refers];
- 2 **note** that further Cabinet 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 **note** that further Cabinet decisions are required to better align the energy performance rating offences with the proposals in this paper 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 **agree** to include an energy performance rating organisation recognition scheme in the Building (Climate Change Response) Amendment Bill;
- 5 **agree** that energy performance rating documents must be provided by a recognised energy performance rating organisation;
- 6 **agree** 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 **agree** that regulations may prescribe the information that must be included in an application for an energy performance rating document;
- 8 **agree** to require building owners to supply recognised energy performance rating organisations with the information required to produce an energy performance rating document;
- 9 **agree** to enable the chief executive to appoint an energy performance rating recognition body (which may be the chief executive of MBIE);
- 10 **agree** to give the energy performance rating recognition body the role of recognising energy performance rating organisations and auditing them;

- 11 **agree** 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; and
 - 11.6 any other matters the chief executive considers necessary and appropriate for the performance of the functions of the recognition body.
- 12 **agree** 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 **agree** 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 **agree** to enable the chief executive to set requirements for the form of applications for recognition;
- 15 **agree** to enable the chief executive to set competency and training requirements which will supplement the recognition criteria and standards;
- 16 **agree** to require the chief executive to publish notification in the Gazette of the competency and training requirements set;
- 17 **agree** 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 **agree** 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 **agree** to require the chief executive to hold a public register of recognised energy performance rating organisations;
- 20 **agree** to enable energy performance rating organisations to suspend or revoke an energy performance rating;

21 **agree** to require recognised energy performance rating organisations 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; and

21.3 suspends or revokes an energy performance rating document.

22 **agree** 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 **agree** 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; and

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 **agree** to rescind Cabinet agreement 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 [CAB-22-MIN-0390 refers];

26 **agree** 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 **agree** 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 **agree** 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 **agree** to enable the chief executive to set requirements for the form of energy performance rating documents;

30 **agree** that regulations may prescribe requirements for the manner and content of energy performance rating documents;

IN CONFIDENCE

- 31 **agree** to rescind Cabinet agreement that regulations may identify any existing programmes that meet the prescribed methodology that must be used for a valid energy performance rating [CAB-22-MIN-0390 refers];
- 32 **agree** that regulations may prescribe the methodology that must be used for a valid energy performance rating;
- 33 **agree** to enable the chief executive to establish and maintain a public register of energy performance ratings;
- 34 **agree** to rescind Cabinet agreement to require building owners to display energy performance ratings in a place in the building to which users of the building have ready access [CAB-22-MIN-0390 refers];
- 35 **agree** to rescind Cabinet agreement 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 on conviction, an individual is liable for a fine not exceeding \$20,000; and
- 35.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].
- 36 **agree** to rescind Cabinet agreement to 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 [CAB-22-MIN-0390 refers];
- 37 **agree** to rescind Cabinet agreement 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 on conviction, an individual is liable for a fine not exceeding \$20,000; and
- 37.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].
- 38 **agree** 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; and
- 38.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000.
- 39 **agree** 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);

IN CONFIDENCE

- 40 **agree** to rescind Cabinet agreement 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 on conviction, an individual is liable for a fine not exceeding \$20,000; and
 - 40.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].
- 41 **agree** 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; and
 - 41.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000.
- 42 **agree** 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; and
 - 42.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000.
- 43 **agree** to rescind Cabinet agreement 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 [CAB-22-MIN-0390 refers];
- 44 **agree** 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; and
 - 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 **agree** to rescind Cabinet agreement 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 on conviction, an individual is liable for a fine not exceeding \$20,000; and
 - 45.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].

46 **agree** 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; and

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

47 **agree** to rescind Cabinet agreement 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 [CAB-22-MIN-0390 refers];

48 **agree** 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 **agree** 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 **agree** to rescind Cabinet agreement 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 [CAB-22-MIN-0390 refers]

51 **agree** to rescind Cabinet agreement 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 on conviction, an individual is liable for a fine not exceeding \$20,000; and

51.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].

52 **agree** 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; and

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

53 **agree** 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;

IN CONFIDENCE

- 54 **agree** 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; and
 - 54.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000.
- 55 **agree** to rescind Cabinet agreement 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 on conviction, an individual building owner is liable for a fine not exceeding \$20,000; and
 - 55.2 on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].
- 56 **agree** to rescind Cabinet agreement 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 [CAB-22-MIN-0390 refers];
- 57 **agree** to rescind Cabinet agreement to introduce an offence for building owners to intentionally not implement their submitted Waste Minimisation Plan, with the following penalties:
- 57.1 on conviction, an individual building owner is liable for a fine not exceeding \$20,000; and
 - 57.2 on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].
- 58 **agree** to rescind Cabinet agreement to introduce an infringement offence for when the building owners fails to implement their submitted Waste Minimisation Plan, with a fee of \$1,000 [CAB-22-MIN-0390 refers];
- 59 **agree** to rescind Cabinet agreement to require building owners to make their Waste Minimisation Plans available on the building or demolition site [CAB-22-MIN-0390 refers];
- 60 **agree** to rescind Cabinet agreement 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 on conviction, an individual is liable for a fine not exceeding \$20,000; and
 - 60.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].

- 61 **agree** to rescind Cabinet agreement 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 on conviction, an individual is liable for a fine not exceeding \$20,000; and
 - 61.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].
- 62 **agree** 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; and
 - 62.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000.
- 63 **agree** to rescind Cabinet agreement 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 [CAB-22-MIN-0390 refers];
- 64 **agree** to rescind Cabinet agreement 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 [CAB-22-MIN-0390 refers];
- 65 **agree** to rescind Cabinet agreement 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 [CAB-22-MIN-0390 refers];
- 66 **agree** 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; and
 - 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 **agree** 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 proposals;

68 **agree** to rescind Cabinet agreement 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 on conviction, an individual is liable for a fine not exceeding \$20,000; and

68.2 on conviction, a body corporate is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].

69 **agree** 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; and

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

70 **agree** to rescind Cabinet agreement 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 on conviction, an individual building owner is liable for a fine not exceeding \$20,000; and

70.2 on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000 [CAB-22-MIN-0390 refers].

71 **agree** 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; and

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 **note** that if the recommendations of this paper are approved, 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 **authorise** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy proposals in this paper;

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

75 Confidential advice to Government

76 **note** that the legislative proposals in this paper will require further stakeholder engagement, consultation, and the development of regulations to operationalise; and

Communications

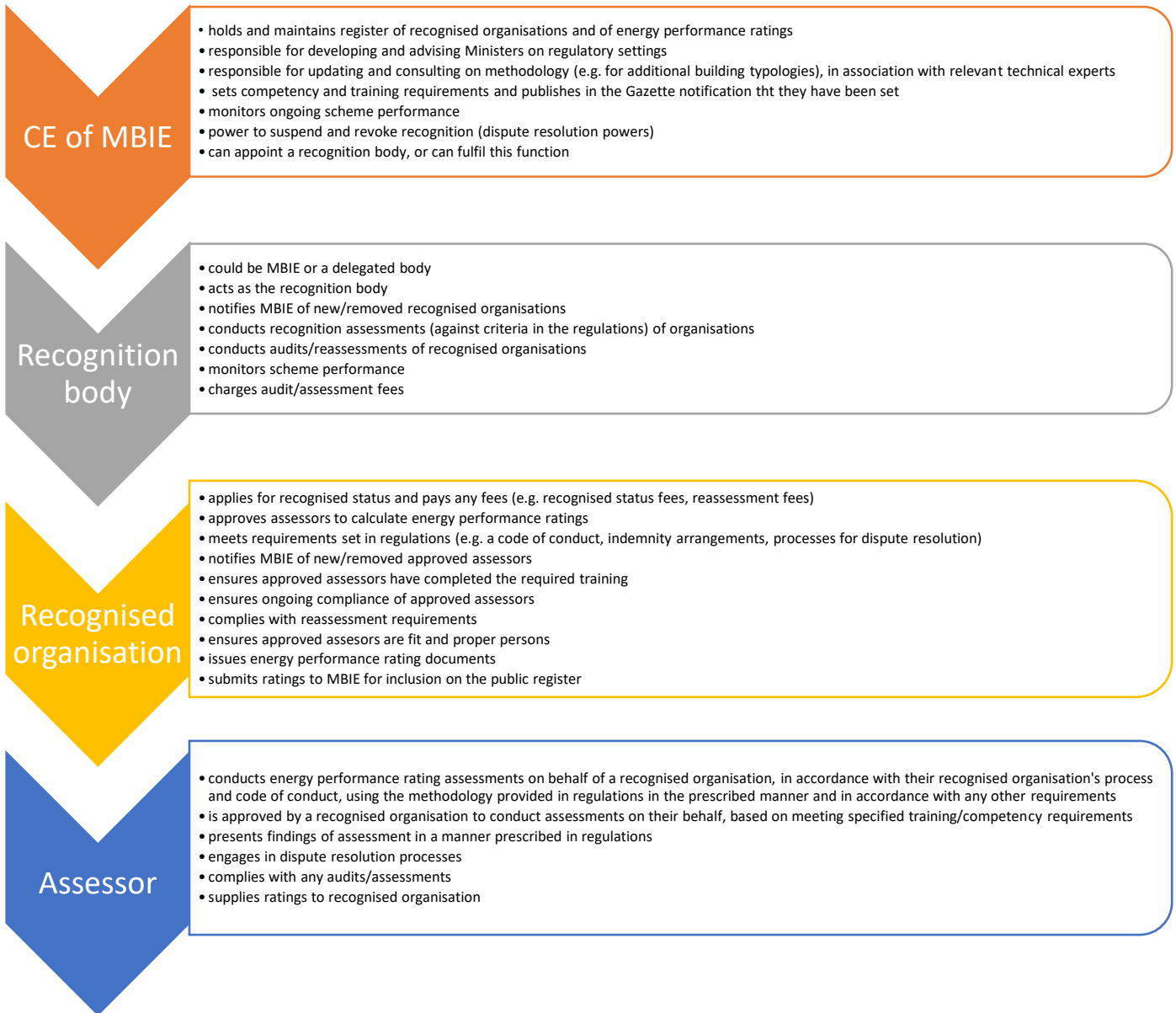
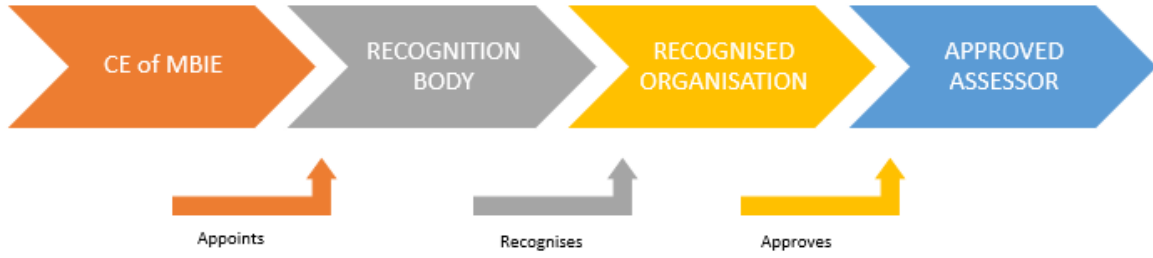
77 **agree** to proactively release this Cabinet paper package and associated Cabinet minute within 30 business days of Cabinet decisions.

Authorised for lodgement

Hon Dr Megan Woods

Minister for Building and Construction

Annex One: Proposed energy performance rating organisation recognition scheme



Annex to Regulatory Impact Statement: Proposed Building for Climate Change amendments to the Building Act 2004

Coversheet

Purpose of Document	
Decision sought:	Seeking additional policy decisions to strengthen the effectiveness of energy performance ratings that owners of certain types of buildings will be required to hold under proposed changes to the Building Act 2004 (the Act).
Advising agencies:	The Ministry of Business, Innovation and Employment
Proposing Ministers:	The Minister for Building and Construction
Date finalised:	03 May 2023
Background/ Context	
<p>This is an Annex to the Regulatory Impact Statement (the RIS): Proposed Building for Climate Change amendments to the Building Act 2004, available at: https://www.treasury.govt.nz/sites/default/files/2022-12/ria-mbie-pbccca-ba-aug22.pdf</p> <p>In September 2022, Cabinet [CAB-22-MIN-0390 refers] gave policy approval to require owners of certain buildings to hold a current energy performance rating for each building they own. This progresses Action 12.3.2 in the Emissions Reduction Plan (ERP).</p> <p>Since obtaining Cabinet approval, officials from the Ministry of Business, Innovation and Employment (MBIE) identified that policy approvals for energy performance ratings (recommendations 4 to 11 in the above Cabinet paper) did not specify who is qualified, competent and approved to conduct energy performance rating for buildings.</p> <p>Cabinet decisions also set out that owners of buildings to whom energy performance requirements apply should have a current rating but did not specify whether there would be any requirements for renewal of these ratings. To provide additional clarity, it is proposed to require building owners to have a valid energy performance rating, and to enable regulations to specify the renewal period for a rating.</p>	
Problem Definition	
<p>Consumers (those who own, lease, or rent building space), currently have limited information about their building’s energy performance making it difficult to understand or compare the energy efficiency or running costs of the buildings(s) they may wish to rent or buy, or to make improvements to the energy performance of a building they rent or own.</p> <p>Access to better information about a building’s energy performance will unlock consumer potential to make informed decisions about the energy they use in buildings. It may also incentivise building owners to invest in lowering the energy usage of their building, which could lead to reduced emissions.</p>	

For this policy to be effective in improving the energy efficiency and reducing emissions of a building(s):

- the public and building owners need to have trust and confidence in the energy performance ratings that have been calculated for their building. Trusted ratings are more likely to lead action(s) that improve the energy performance of buildings.
- energy performance ratings need to be renewed regularly to provide consumers with useful and up to date energy performance information and drive improvements in energy efficiency over time by reflecting changes in technology and energy efficiency management.

Executive Summary

This Annex provides a high-level summary of the problems being addressed to ensure that the public and building owners have trust and confidence in energy performance ratings. It outlines the options proposed to achieve this and their associated costs and benefits, and the proposed arrangements for implementation and monitoring.

The objectives of the proposals in this Annex are to support:

- **Objective 1 (Energy performance rating):** Enable consumers (those that lease or rent building space), the Government, and investors to access better information on the energy performance of existing buildings to improve energy efficiency across the building stock.
- **Objective 2 (Trust and confidence in energy performance ratings):** Enable consumers (those that lease or rent building space), the Government, investors and building owners to have trust and confidence in energy performance ratings.

In Part A of this Annex our analysis identifies that the most effective option to achieve our objectives is to amend the Act to enable MBIE or another appointed body to recognise organisations to provide energy performance ratings (recognised organisations)¹.

Recognising energy performance rating providers will provide the public with trust and confidence in energy performance ratings and in doing so improve a buildings' energy efficiency and reduce energy costs and emissions.

In Part B of this Annex, our analysis indicates that to improve energy efficiency across the building stock, energy performance ratings need to be regularly renewed.

Limitations and Constraints on Analysis

The following limitations and constraints on this RIS have been identified:

- The costs and benefits outlined in this RIS are indicative and based on the best available estimates for the preferred option.
- The proposals in this RIS would require regulations to be developed before they are implemented. Any such requirements would be brought to Cabinet for consideration in due course following engagement with the public and building and construction sector, and be accompanied by a separate Regulatory Impact

¹ The proposal is to create a scheme that recognises the competence of organisations to provide energy performance rating services. We describe this as an organisation recognition scheme, rather than an accreditation scheme. Accreditation schemes often involve compliance with international standards which is not a feature of this scheme.

Statement, Stage 2 Cost Recovery Impact Statement, and a Climate Implications of Policy Assessment.

- The impact of energy performance ratings on the behaviour of consumers and building owners is unknown, at this stage.

Responsible Manager(s) (completed by relevant manager)

Suzannah Toulmin
Manager, Building for Climate Change
Ministry of Business, Innovation and Employment



03 May 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	MBIE's Regulatory Impact Analysis Review Panel (RIARP)
Panel Assessment & Comment:	Assessed as meeting all requirements

Section 1: Diagnosing the policy problem

Context and background of the problem

In September 2022, Cabinet [CAB-22-MIN-0390 refers] gave policy approval to require owners of certain buildings to hold a current energy performance rating for each building they own. The current policy approval:

- does not specify who is qualified, competent, and approved to produce energy performance ratings. Without this, it will be difficult to guarantee the accuracy and credibility of the rating and to enable the drafting of legislation to process.
- specifies that owners of buildings to whom energy performance requirements apply should have a current rating but did not specify whether there would be any requirements for renewal of these ratings. To provide additional clarity, it is proposed to require building owners to have a valid energy performance rating, and to enable regulations to specify the renewal period for a rating.

The September 2022, Cabinet decisions [CAB-22-MIN-0390 refers] progress action 12.3.2 in the Emissions Reduction Plan, which aims to enable consumers to compare buildings they wish to purchase or tenant and make informed decisions about how to invest or take additional actions to make their buildings more energy efficient.

Consultation and engagement have informed the options being considered (Cost Recovery Impact Statement) (CRIS)

Public consultation has informed the objectives and proposals in this Annex. The proposal to make energy performance ratings mandatory was consulted on by the Climate Change Commission and during the Emissions Reduction Plan consultation process.

Further targeted stakeholder engagement was also undertaken prior to the original Cabinet decision, with the Building Advisory Panel and a Legislation Discussion Group² made up of key stakeholders from the building and construction sector and government agencies. These engagements helped MBIE identify that trust and confidence in the ratings was key to the success of an energy performance rating scheme and supported the concept that ratings would be renewed regularly.

What is the policy problem?

Consumers currently lack access to accurate, comparable, and credible energy performance information about their buildings.

To address this information gap, Cabinet [CAB-22-MIN-0390 refers] agreed to require building owners to hold an energy performance rating which provides an assessment of how well a building or tenanted space is using energy. In addition, building owner(s) are to be required to display their buildings' rating when advertising their building and provide it to tenants, investors or other people specified in regulation.

Access to this energy performance information is intended to unlock consumer potential to make informed decisions about the energy they use in buildings. This could incentivise building owners to invest to improve the energy efficiency of their buildings, which could lead to reduced emissions.

For this policy to be effective in improving energy efficiency and reducing emissions:

- consumers and building owners need to have trust and confidence in the energy performance ratings of their building(s). Trusted energy performance ratings are more likely to provide incentives for building owners to invest in improving the energy efficiency of their buildings.
- ratings need to be reviewed at regular intervals to provide consumers with useful and up to date energy performance information and drive improvements in energy efficiency by reflecting changes in technology and energy efficiency management over time.

Current state

There is no requirement within the Act to assess the energy performance of a building.

Owners of office buildings can participate in a voluntary energy performance rating scheme, NABERSNZ. NABERSNZ is an adaptation of the National Australian Built Environment Rating System (NABERS), which is administered by the New South Wales government and is mandatory for large office buildings in Australia.

This NABERSNZ programme is licensed to the Energy Efficiency Conservation Authority (EECA) by the New South Wales government and administered by the New Zealand Green Building Council (NZGBC). Ratings are carried out by trained assessors and are valid for 12

² This discussion group was comprised of representatives from Wellington City Council, Selwyn District Council, Institute of Architects, BRANZ, Property Council New Zealand, Certified Builders, Registered Master Builders, New Zealand Green Building Council, Kāinga Ora and the Ministry for Environment. This discussion group was comprised of representatives from Wellington City Council, Selwyn District Council, Institute of Architects, BRANZ, Property Council New Zealand, Certified Builders, Registered Master Builders, New Zealand Green Building Council, Kāinga Ora and the Ministry for Environment.

months. There are currently around 100 commercial office buildings that have a NABERSNZ rating.

To qualify as NABERSNZ Accredited Assessors individuals are required to complete specific training, pass examinations, and carry out supervised ratings. It currently costs \$2,830 + GST to complete the training to be a NABERSNZ assessor. The training is developed in conjunction with NABERS in Australia.

All Accredited Assessors need to pay a \$850 biannual accreditation fee to be considered an active assessor. Inactive assessors must attend a NABERSNZ event/refresher training to keep up to date. Currently, 106 people have completed NABERSNZ Accredited Assessor training and there are 61 current assessors.

Since January 2021, the Carbon Neutral Government Programme (CNGP) has required specified government agencies that occupy large office space (over 2,000m²) to have a NABERSNZ rating. In particular, the CNGP requires agencies:

- that own/lease office accommodation at or above 2,000m² to get a NABERSNZ rating by December 2025
- entering a new lease or renewing an existing lease to target a rating above 5 stars, and achieve a minimum of 4 stars
- who have achieved their target rating to re-rate their building every three years. If the target rating has not been met, an agency must implement a work programme within 12 months to achieve the target rating and re-rate the building annually until the minimum star rating is achieved.

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

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

The following criteria are used to assess the options, which broadly align with the common dimensions of regulatory system effectiveness, as outlined by the Treasury.

- **Effective:** to what extent does the option deliver the intended outcomes of this policy .
- **Efficient:** to what extent does the option minimise unintended consequences and undue costs and burdens.
- **Durable and resilient:** to what extent is the option future proof and allow to for different types of assessments and buildings in the future.
- **Fair and accountable:** the extent to which the option delivers a fair and good process for energy performance ratings.

What scope will options be considered within?

The scope of these options fall within the previous Cabinet policy decisions that has given policy approval to require owners of certain buildings (new and existing commercial, public, industrial, and large-scale residential buildings over a certain size threshold) to hold a current energy performance rating for each building they own.

This Annex will consider feasible options that enable the public to have trust and confidence energy performance ratings. To support these options, there will need to be assurance mechanisms for building owners and the public that could include:

- the persons assessing a rating are appropriately qualified and assess against an accepted method or standard³
- building owners and consumers being able to challenge their building's rating and have access to independent dispute resolution, where appropriate
- there is the ability to check on whether buildings are being assessed correctly through an audit function.

This Annex will also consider feasible options for when to require building owners to renew the energy performance rating for their building. Part B considers whether energy performance ratings need to be renewed regularly.

PART A – Recognising who can conduct energy performance ratings

This part of the Annex sets out the cost and benefits of options for recognising who can conduct energy performance ratings.

International and New Zealand examples

Set out below are international examples of approaches to accreditation in energy performance ratings programmes and New Zealand examples of other accreditation functions in legislation.

International examples of energy performance ratings programmes

Mandatory energy performance ratings programmes have been successfully implemented overseas, in the United Kingdom (since 2008), Australia (since 2008) and the European Union (since 2010).

While each jurisdiction takes a slightly different approach to energy performance ratings, these schemes have been shown to produce energy savings for consumers, reduce energy bills, and reduce emissions, more than making up for the cost or administrative process of obtaining a rating.

In Australia, the United Kingdom, and the European Union, energy performance ratings are required to be assessed by accredited assessors using a consistent method or standard, so that the public can have confidence in a building's energy performance rating.

In Australia, individual assessors are accredited by the Commercial Building Disclosure Program based on criteria in the Building Energy Efficiency Disclosure Act 2010. All assessors are required to undertake NABERS training to be eligible to be accredited.

In contrast, the United Kingdom and the European Union accredits and certifies at the organisation or body level. This enables organisations with expertise in building energy performance assessments to continue providing this service through utilising existing networks of energy performance assessors.

New Zealand examples of accreditation functions

Existing accreditation schemes in the New Zealand building system accredit organisations or bodies to perform certain functions. These include Building Consent Authority accreditation,

³ This approach is also used by Australia and the United Kingdom. This approach has found that there being trust and confidence in ratings is a key part of the ratings being effective at addressing the identified problem.

and the Product Certification and Modular Component Manufacturer accreditation schemes under the Act.

In other legislation, examples where organisations or bodies are accredited to perform certain functions include: the Accredited Employer Work Visa scheme through Immigration New Zealand, Accredited Employers Programme through the Accident Compensation Corporation, and Accredited Persons through Trade Standards New Zealand.

What options are being considered?

Options being considered to enhance public trust and confidence in energy performance ratings are:

Option 1: Enable building owners to self-assess their building's energy performance

This option allows building owners to self-assess the energy performance of their building. MBIE or another approved body would provide building owners with a standardised set of tools or templates that would be based on a published energy performance rating methodology.

Building owners would be required to complete an assessment and provide MBIE with the results of this. To ensure consistency of results, MBIE or an approved body could also develop an electronic system that would allow building owners to input data and generate a rating for the building.

The person doing the rating would not need any skill or qualification, although many building owners would likely engage a person they regarded as appropriately qualified to perform this assessment.

Option 2: Recognise organisations to carry out energy performance ratings

This option would enable MBIE, or an appointed body to recognise energy performance rating organisations to provide energy performance ratings.

Regulations would specify the criteria which energy performance rating organisations must meet to be recognised. This may include criteria around training and development processes for assessors, dispute resolution and code of conduct processes the organisation has in place.

Regulations would also specify an energy performance rating methodology that would need to be used by recognised organisations to carry out assessments.

Energy performance rating organisations would approve assessors to conduct energy performance ratings of buildings.

Option 3: Accredite individual energy performance rating assessors

This option allows for individuals to be accredited by MBIE or another approved body to undertake energy performance ratings.

Accredited assessors would be required to assess buildings using the energy performance rating methodology specified in regulations. They would also need to meet certain professional standards to be accredited, regularly renew their accreditation, and meet requirements for professional development or training.

Under this option, building owners would be required to use an accredited energy performance rating assessor to undertake their buildings' assessment. The accreditation body would also be responsible for resolving dispute or complaints and ensure that energy performance ratings are accurate. The Chief Executive would be able to appoint an accreditation body, and this could be MBIE or an approved body.

How do the options compare?

Objective: To provide the public trust and confidence in energy performance ratings.

	Option One: Enable building owners to self-assess their buildings energy performance.	Option Two: Recognise organisations to carry out energy performance ratings	Option Three: Accredit individuals to perform energy performance ratings
Effective	<p>+</p> <p>Would likely result in inconsistency between ratings because this would rely on unqualified individuals to input accurate data and apply tools/ calculators correctly, or it would rely on building owners identifying a person they view as qualified to do the rating, but with limited guidance about what expertise is needed.</p> <p>It will be harder to identify areas for improving a rating using a self-assessment approach because those doing the rating may lack expertise and this may result in less energy savings and higher emissions.</p> <p>The individual undertaking the energy rating will not always be independent and ratings compiled by people with a self-interest may be perceived as less credible.</p> <p>Prospective buyers/tenants may have less confidence in energy performance ratings when comparing buildings, since they may not be all completed to the same standard and the lack of independence may undermine trust in the assessor.</p>	<p>+++</p> <p>Provides the public with confidence that the rating has been measured using a fair and consistent approach and issued by an appropriately skilled, independent person.</p> <p>Would generate more complete and comparable information about building energy efficiency, and more consistent ratings which are more likely to drive action or investment by building owners to reduce emissions.</p>	<p>+++</p> <p>Provides the public with confidence that the rating has been measured using a fair and consistent approach and issued by an appropriately skilled, independent person.</p> <p>Would generate more complete and comparable information about building energy efficiency, and more consistent ratings which are more likely to drive action or investment by building owners to reduce emissions.</p>
Efficient	<p>++</p> <p>Lower ongoing administration costs, as standards tools, guidance, templates, and resources would be made available online, but higher costs upfront to develop and implement an online calculator or tool.</p> <p>Likely to be lower costs for building owners to self-rate rather than have a rating assessed by accredited assessor.</p>	<p>+++</p> <p>Lower upfront administration costs because the recognition body will have to accredit a smaller number of energy performance organisations.</p> <p>There will be upfront cost for the no development of online tools.</p>	<p>++</p> <p>Higher upfront administrative costs because the accreditation body will have to accredit a potentially larger number of individual assessors. There are currently 106 qualified NABERSNZ assessors.</p> <p>There will be upfront cost for the no development of online tools.</p>

	<p>It is harder for a building owner to determine if the person they ask to perform an energy performance rating is appropriately qualified.</p> <p>Information will be potentially inconsistent, as people doing self-assessments may have a range of skills and ability in accurately applying MBIE tools and/or templates.</p> <p>Likely to result in an inconsistent approach to measurement and varying results which may make ratings less credible.</p>	<p>More costs to building owners to obtain a rating through a recognised organisation compared to self-assessment.</p> <p>Recognised organisations would be responsible for setting policies and procedures in place to ensure energy performance ratings are robust and can withstand challenge.</p>	<p>More costs to building owners to obtain a rating through an accredited assessor compared to self-assessment. MBIE or another approved body would be responsible for setting policies and procedures in place to ensure energy performance ratings are robust and can withstand challenge.</p>
Durable and resilient	<p>+</p> <p>Could diminish trust and confidence in the energy performance ratings.</p> <p>Less accurate ratings may result in little/no action being taken by building owners to improve energy efficiency of their buildings.</p> <p>In the long term, inaccurate energy performance ratings could impact the overall understanding of energy usage for buildings in New Zealand.</p>	<p>+++</p> <p>Provides meaningful baseline data to MBIE and the recognition body which could be used to inform future policy.</p> <p>Aligns with international models and builds off the reputation, evidence base and success overseas.</p> <p>By setting assessment criteria, it is future-proofed if decision makers decide to expand into other building types in future.</p> <p>Ability for building owners to access professional / independent advice, and economic benefits from taking actions to improve their building's energy performance.</p>	<p>+++</p> <p>Provides meaningful baseline data to MBIE which could be used to inform future policy.</p> <p>Aligns with international models and builds off the reputation, evidence base and success overseas.</p> <p>By setting assessment criteria, it is future-proofed if decision-makers decide to expand into other building types in future.</p> <p>Ability for building owners to access professional/ independent advice, and economic benefits from taking actions to improve their building's energy performance.</p>
Fair and accountable	<p>+</p> <p>Consumers may have to rely on inconsistent energy performance ratings, since they may not be all completed to the same standard.</p>	<p>+++</p> <p>Provides assurances that the ratings have been conducted by a competent assessor and that there are checks in place if the rating is conducted incorrectly and to independently settle disputes.</p>	<p>+++</p> <p>Provides assurances that the ratings have been conducted by a competent assessor and that there are checks in place if the rating is conducted incorrectly and to independently settle disputes.</p>
Overall assessment	<p>+</p>	<p>+++</p>	<p>++</p>

Example key for qualitative judgements:

- +++ much better than doing nothing/the status quo
- ++ better than doing nothing/the status quo
- + slightly better than the status quo
- 0 about the same as doing nothing/the status quo

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

Option 2, which involves MBIE or an appointed body recognising organisations to carry out energy performance ratings is the preferred option. When rated against the criteria, it was assessed to provide the public with trust and confidence in energy performance ratings, in a way that will improve a buildings' energy efficiency and reduce energy costs and emissions.

Options 2 and 3 are similar because both propose to introduce requirements for who can carry out energy performance ratings. Option 2 is preferred because the recognising body will have to recognise a smaller number of energy performance rating organisations. In comparison, Option 3 has higher set-up costs, as it involves the accreditation of a larger number of individual energy performance rating assessors.

Both Option 2 and Option 3 when rated against the criteria are significantly better than option 1 because they:

- enable greater access to the services of energy performance assessors that could lead to greater trust and confidence in energy performance ratings
- provide the flexibility to extend into other building types in the future and give consumers certainty about how future energy performance ratings might apply to their buildings
- provide reliable, consistent, and comparable data to inform future policy decisions and align with international best practice
- increase trust in energy performance ratings, which will incentivise consumers and building owners to take actions to improve a building's energy performance.

Other option considered

We also considered expanding the scope of the Building Warrant of Fitness (BWoF) to include the assessment of energy performance rating of buildings.

The purpose of a BWoF (s108 of the Building Act 2004) is to ensure that specified systems in building (e.g. lifts, air conditioning and fire systems) are performing and will continue to perform to the standards set out in the Building Code. Currently, the BWoF for a specified system is completed by an independently qualified person, and annually sent to the territorial authority. The document is displayed for certain classes of buildings and includes offences for failing to comply.

This option is not favoured as it is not addressing the policy intent for energy performance ratings. A BWoF is focused on safety and provides a pass or fail outcome for a building's specified systems on an annual basis.

Energy performance ratings are focused on measuring the comparable energy performance of a building and identifying areas for energy performance improvement. A BWoF does not allow for building-to-building comparison and requires the identification of areas for improvement it would not help improve energy efficiency and reduce energy costs.

In addition, the independently qualified persons that conduct BWoFs do not need to have any specific training. The lack of specific training may lead to inconsistent assessments of a building's energy performance.

What are the marginal costs and benefits of the option?

In September 2022, Cabinet approved policy that made it mandatory for buildings owners to hold an energy performance certificate [CAB-22-MIN-0390 refers]. A RIS and Cost Benefit Analysis (CBA) on the proposed Building for Climate Change amendments to the Building Act 2004 were attached to this Cabinet paper.

This CBA found that energy performance ratings had a relatively neutral Benefit Cost Ratio of 0.96. The analysis was modelled to incorporate upfront implementation costs and fully implemented costs from 2023 to 2030 and the resulting benefits out to 2050. The analysis was based on the assumptions that:

- energy performance ratings would only apply to large commercial, public buildings over 2,000 sqm (e.g., large commercial, public, industrial, and residential apartment buildings etc.) which is same as the initial size threshold in the Australian Building Disclosure scheme
- there would be economies of scale because making energy performance ratings mandatory would increase the number of buildings with an energy performance rating from 182 certified NABERSNZ rated buildings to around 1,200 buildings that required a rating.

Based on these assumptions the CBA identified that the cost of obtaining an energy performance rating for a building owner would be \$3,000 for a first assessment and \$2,100 for a subsequent assessment (Table 17, in the CBA).

The costs of obtaining an energy performance rating need to be considered in the context that these will apply to large buildings. Large buildings consume a significant amount of energy on an annual basis. It is estimated by EECA that a 2,000 sqm commercial office building will:

- consume around 200 kWh / m² of electricity or around 400,000 kWh per annum (based on a NABERS NZ 3.5 star (average) building). For comparison, electricity statistics published by MBIE estimate the average home consumes, 7,261 kWh per annum.⁴
- have an average energy bill of around \$74,000 per annum (based on the annual average commercial price of 0.185 \$/kWh in nominal NZD for the year ended March 2022⁵). For comparison, MBIE statistics show that the average annual household energy bill was \$2,194 in 2022.

Marginal costs of preferred option

The setting up of an organisation recognition scheme for energy performance assessors as proposed in this Annex is not likely to significantly impact on the benefit cost ratio identified in the CBA because the CBA already:

- incorporates the costs of administering an energy performance programme (i.e., the voluntary NABERSNZ programme)
- incorporates the costs of the existing NABERS NZ training and biannual accreditation fee into the CBA

⁴ Sales-based Electricity Costs, December 2022, published on webpage [Electricity cost and price monitoring | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](#).

⁵ [Energy prices | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](#)

- models and incorporates the implementation costs to government arising from energy performance ratings.

The additional costs of implementing the preferred option from those identified in the CBA are specified in Table 1.

A further RIS will be presented to Cabinet when the regulations are developed to implement the organisation recognition scheme. This RIS will provide Cabinet with further detail on the costs of implementing an organisation recognition scheme modelled according to the final regulatory decision.

Table 1: Additional Costs from CBA preferred option to recognise organisations

Group	Cost Benefit Analysis from original CBA	Additional costs from preferred option
Government	<p>Identified implementation costs for government (Table 17, CBA) from:</p> <ul style="list-style-type: none"> Policy implementation (\$500,000 per year for 2 years) Ongoing monitoring (\$219,000 per year) Compliance and enforcement costs (5 FTE with a 50% on-cost loading) 	<p>Implementation costs for government could be greater than in the CBA but will depend on the specific design of the recognition requirements and audit functions.</p> <p>MBIE administers several accreditation functions and there are likely existing systems and economies of scale that can be used to minimise costs. The RIS for the regulations will provide further cost detail on the costs to government.</p>
Building owners	<p>Identified rating costs for the building owner (Table 17, CBA) of \$3,000 for a first assessment and \$2,100 for a subsequent assessment.</p>	<p>No significant additional cost for building owners to obtain a rating, as the costs to assessors are relatively minor and there is a competitive market offering energy performance ratings.</p>
Assessors	<p>Assumed assessors would have to be qualified (Table 3). It currently costs \$2830 + GST to complete the training to be a NABERSNZ assessor. All Accredited Assessors need to pay \$850 biannual accreditation fee to be considered an active assessor.</p> <p>Assessors currently set fees at a rate that is competitive in the market and that incorporates costs associated with their training and development.</p>	<p>No significant additional costs anticipated. There may be some administrative costs to meet new requirements (e.g. disputes process and compliance with a Code of Conduct). However, these are unlikely to be significantly different than the cost that assessors already face in achieving NABERSNZ accreditation.</p>
Energy performance rating providers	<p>The costs in the CBA included costs consistent with NZGBC administering the existing NABERSNZ scheme.</p>	<p>Fees charged by the recognition body to organisations that seek to be recognised as an energy performance rating provider. As shown in Appendix 1, these fees are typically comparatively modest (under \$20,000) but will depend on the specific design of the recognition requirements. The RIS for the regulations will provide further</p>

		detail on the costs to recognised organisations.
New Zealand	Identified energy performance ratings have a benefit cost ratio of 0.96 over the period 2023 to 2050	No significant cost impact on the over-all benefit cost ratio.

Fees regulation

The amendments to the Building Act 2004 will enable the recognition body (which could be MBIE) to charge fees to recognised organisations to recover the costs of administering the organisation recognition scheme for energy performance ratings. The fees for energy performance rating providers will be set in line with Treasury and Office of the Auditor General cost recovery guidelines.

There are several examples under the Act of accreditation fees being set by regulations. These fees enable accreditation bodies to recover their costs from organisations seeking to be accredited. Appendix 1 provides examples of fees that apply to organisations that seek to be an accredited certification body under the CodeMark⁶ scheme and the BuiltReady scheme⁷.

Enabling the recognition body (which could be MBIE) to charge fees to recognised organisations will not impact on the CBA, as the fees are comparatively modest and are set at a level to recover costs – see Appendix 1.

Policy Rationale: Why a user charge? And what type is most appropriate? (CRIS)

The establishment of an organisation recognition scheme will involve set-up costs and require ongoing administration (see above for details).

It is proposed that the organisation recognition scheme operates on a full cost recovery basis, in line with Treasury and Office of the Auditor General guidelines.

It is appropriate that the recognition body (which could be MBIE) recover these costs on a full cost recovery basis because participants in the organisation recognition scheme will benefit from being recognised because the Act will prescribe that energy performance ratings can only be conducted by an assessor approved by a recognised organisation.

Recovering costs through charging recognised organisations a fee, rather than a levy, such as the building levy, is MBIE's preferred approach because:

- being recognised is a direct benefit to the recognised organisation
- not all successful building consent applicants who are required to pay a building levy will benefit from energy performance ratings
- it is more administratively efficient to charge recognition and audit fees to recognised organisations, who can then choose to recover these costs through service fees,

⁶ CodeMark is a voluntary product certification scheme that provides a way to certify that building products or building methods are deemed to comply with the New Zealand Building Code.

⁷ BuiltReady is a voluntary scheme that certifies modular component manufacturers to produce designs (where applicable) and modular components that are deemed to comply with the New Zealand Building Code.

rather than charge a small levy for each energy performance rating that needs to be collected and passed on to the recognition body.

Setting recognition and audit fees at a level that recovers the costs of the services provided is consistent with other accreditation regimes in the building regulatory system that require organisations to be accredited to perform functions under the Act. These include:

- modular component manufacturer certification bodies who are registered with MBIE and accredited by the modular component manufacturer accreditation body
- product certification bodies who are registered with MBIE and by accredited by the product certification accreditation body
- building consent authorities that manage the building consent process for new building work.

High level cost recovery model (the level of the proposed fee and its cost components) (CRIS)

The amendments to the Act will include provisions that will enable a cost recovery model to be set in regulations which will enable the recognition body to recover its costs. The charge levels and the basis for imposing these fees will be set in the regulatory process.

A stage 2 Cost Recovery Impact Statement (CRIS) will be prepared as part of the regulations development process.

PART B – Renewal of energy performance ratings

This section of the Annex provides a high-level summary of the problems being addressed to ensure that energy performance ratings incentivise building owners to invest in taking actions that reduce energy bills and emissions from their buildings. It outlines the associated costs and benefits for renewing energy performance ratings at a regular interval compared to a one-off rating.

The proposed arrangements for implementation and monitoring are set out in Section 3. The options set out in Part B do not require a Cost Recovery Impact Statement.

Context and background of the problem

The package of changes Cabinet approved in September 2022 [CAB-22-MIN-0390 refers] set out that owners of buildings to whom energy performance requirements apply should have a current rating but did not specify whether there would be any requirements for renewal of these ratings.

To provide additional clarity, it is proposed to amend the Act to require building owners to have a valid energy performance rating, and to enable regulations to specify the renewal period for a rating. A rating that is valid for a specified period and then renewed is intended to provide more accurate and up to date information for prospective building owners and tenants than a one-off rating, and greater incentives for building owners to improve energy performance.

What is the policy problem

Energy performance ratings are intended to drive actions that will lead to lower energy usage, energy bills, and reduced emissions by providing comparable information on a building's energy performance.

If a building owner is only required to hold a one-off energy performance rating this would be less likely to drive longer term improvements in a building's energy performance. This is because a one-off rating:

- would provide less useful and comparable energy performance information for building purchasers and tenants over time, as the ratings would become more outdated
- not reflect changes in technology and improvements in the energy performance management of buildings over time
- create inconsistencies between more recently rated buildings and buildings that have a less recent one-off rating, which may lower trust and confidence in the ratings.

In contrast, there is evidence that regular re-rating of a building's energy performance leads to benefits in terms of energy savings and emissions reduction. For example, Australian data shows that for Commercial Building Disclosure programme (CBD) mandated buildings that had their rating renewed annually had an average energy saving per square metre (MJ/m²) of 4% after the second NABERS rating. The energy saving increased to 22% after the eighth and 44% after the fourteenth ratings.

For the above reasons, energy performance rating schemes in Australia, the UK, and the European Union require building owners to renew their energy performance ratings at a specified frequency.

International and New Zealand examples

In Australia, a Building Energy Efficiency Certificate (BEEC) is required for buildings or areas of buildings larger than 1,000 square meters when buildings are for sale, lease, and sublease. BEECs are only valid for 12 months.

By contrast the UK requires Energy Performance Certificates (EPCs) which are valid for up to 10 years. New EPCs are not required whenever there is a change in tenancy, or when the property is sold.

In the EU, Energy Performance Certificates have a maximum renewal period of 10 years, but member states can set the renewal period at a lesser frequency than 10 years.

In New Zealand we have a voluntary energy performance rating scheme (NABERSNZ) that has been in operation since the 2013/14 fiscal year. There are 117 buildings with NABERSNZ ratings and as scheme has matured more buildings are getting re-rated. NZGBC who administer the NABERSNZ scheme encourage participants to re-rate annually. In 2022/23, 57% of buildings in the NABERSNZ scheme were re-rated.

The Carbon Neutral Government Programme (CNGP) has required specified government agencies that occupy large office space (over 2,000m²) to have a NABERSNZ rating. Ratings are valid for 12 months. If the target rating has been met, a re-rating is required every three years. If the target rating has not been met, an agency must implement a work programme within 12 months to achieve the target rating and re-rate the building annually until the minimum star rating is achieved.

What options are being considered?

In examining the rationale for a renewal period compared to a one-off rating, we need to balance the lower costs of a one-off rating with the benefits of reduced energy bills and emissions that come with renewing an energy performance rating more regularly.

We have analysed the following options and will examine their pros and cons:

Option 1: Have a one-off rating for energy performance ratings

Under this option, a building owner would be required to hold an energy performance rating. This would be a one-off requirement to complete a rating, but there would be no requirement for building owners to renew the rating. As is the case under the current voluntary ratings scheme available in New Zealand, building owners would have the choice to update their ratings if they desired, for example to reflect improvements or investments that they had made in energy efficiency.

Option 2: A requirement for building owners required to hold a rating and to renew their energy performance rating over a specified period

Under this option, a building owner would be required to hold a valid energy performance rating and would be required to renew the rating in line with the period defined in regulations.

The cost benefit analysis conducted by Sapere on optimum renewal periods for energy performance ratings set out below has found that the net benefits were higher for renewal periods between 2 to 5 years and a 10-year renewal period had the lowest net benefits. This is because despite costing less than other options, the benefits of a less frequent renewal period are significantly lower.

This Regulatory Impact Statement therefore assumes that the renewal period set in regulations will be 2 to 5 years. A preferred renewal period would be set as part of the development of proposals for regulations.

In setting renewal periods within regulations, consideration would be given to the costs, benefits and trade-offs associated with different renewal periods, alongside feedback from impacted parties. Regulations could also specify different renewal periods for buildings with different characteristics (e.g. size, building typology, age) in order to maximise the benefits of the energy performance rating scheme.

How do the options compare?

The table below assesses the costs and benefits of having a one-off energy performance rating compared to a regular renewal period.

	Option One: One-off rating with no renewal	Option Two: Regular renewal of ratings
Effective	<p>+</p> <p>Will provide consumers with less up-to-date information on the energy performance of a building they are considering buying or renting. Some building owners might voluntarily renew their ratings, for example if they had made investments in energy performance that resulted in a better rating and wanted prospective buyers and tenants to know about this. However, many owners would choose not to re-rate, and therefore the overall information available to consumers would be less comprehensive and it would be harder to accurately compare different buildings.</p> <p>Does not provide building owners with a regular prompt to consider and address energy performance issues with their building.</p> <p>Ratings will become out-of-date and not reflect advances in technology and energy management over time. Ratings information will be less useful for future government policy making and building-related interventions.</p> <p>Likely to be lower energy efficiency, emissions, and health and wellbeing benefits from not having up-to-date ratings.</p>	<p>+++</p> <p>Provides consumers with up-to-date information on the energy performance of a building. Creates greater confidence and trust in the energy performance rating system, as consumers will find it easier to compare different buildings and make informed decisions.</p> <p>Building owners would have a regular prompt to consider the energy performance of their building and would be provided with information from assessments on measures they could take to improve it. This would be more likely to encourage building owners to consider energy efficiency measures and incorporate them into their general maintenance and investment plans.</p> <p>Ratings could be updated to reflect advances in technology and energy management over time. Information about the overall energy performance of New Zealand buildings would be more accurate, allowing better informed decision making about future government interventions.</p> <p>Likely to be higher energy efficiency, emissions reduction, and health and wellbeing benefits, driven by building owners taking more action to improve building energy performance.</p>

	Option One: One-off rating with no renewal	Option Two: Regular renewal of ratings
Efficient	<p>+</p> <p>Is low cost for building owners as it only requires them to pay a one-off energy performance assessment fee. May reduce benefits for prospective building owners and tenants who have less accurate information available to them at the point of sale or purchase.</p> <p>The requirement is simple for building owners to understand and has a low administrative burden, as it is only a one-off requirement.</p> <p>Less likely to drive improvements in a building's energy performance because the information will become out of date and be less trusted by the public, and there will not be a prompt on building owners to consider energy efficiency measures or an incentive to make improvements to address a low rating.</p> <p>Results in building owners having to meet one set rules on rating renewals for the CNGP and a different set of rules for buildings not tenanted by the public sector.</p> <p>Results in significantly less benefits from making energy performance ratings mandatory.</p>	<p>+++</p> <p>There are costs of requiring building owners to renew ratings, through the assessment fee.</p> <p>Is administratively simple and not complex, as the rating is only valid for a set period like many other government requirements (e.g., passport renewal)</p> <p>More likely to drive improvements in a building's energy performance because it provides up-to-date information that is trusted by the public, and a more regular prompt to building owners to consider improvements.</p> <p>Results in significantly greater benefits from making energy performance ratings mandatory.</p> <p>Avoids requiring building owners to meet one set rules on rating renewals for the CNGP and a different set of rules for buildings not tenanted by the public sector.</p>
Durable and resilient	<p>+</p> <p>Unlikely to be durable and resilient because a one-off rating will become out-dated and erode public trust and confidence that the rating is an accurate reflection of a building's energy performance.</p>	<p>+++</p> <p>Likely to be durable and resilient because information can be trusted as being accurate and comparable between buildings. Would align with approaches taken in Australia, which may make it easier to incorporate improvements into the energy performance ratings scheme over time.</p>
Fair and accountable	<p>+</p> <p>Will create inconsistencies between more recently rated buildings (e.g., a new building) and buildings that have a less recent one-off rating, which may lower trust and confidence in the ratings.</p> <p>There will be different rating requirements for buildings owned or leased by public sector entities will have to renew their rating due to CNGP requirements.</p>	<p>+++</p> <p>Will provide comparability between ratings as all buildings will have to hold a rating that is only valid for a period defined in regulations.</p> <p>As the specific renewal period would be set in regulations, enables some flexibility to set different renewal periods for buildings that have different characteristics. This could help target compliance effort towards those buildings that have lower energy efficiency buildings.</p>

	while buildings not tenanted by the public sector will only have a one-off rating requirement.	
Overall assessment	+	+++

Example key for qualitative judgements:

- +++** much better than doing nothing/the status quo
- ++** better than doing nothing/the status quo
- +** slightly better than the status quo
- 0** about the same as doing nothing/the status quo

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

Our preferred option is Option 2 which would require building owners to renew their energy performance ratings within a period set by regulations because it would generate greater net benefits in terms of energy savings, emissions reduction and health, productivity, and wellbeing.

Option 1, a one-off rating without a renewal period, while low cost would be less likely to drive long term improvements in energy performance of buildings than a system that required regular renewals of energy performance ratings. This is because ratings will become outdated which will lower public trust and confidence in the ratings.

What are the marginal costs and benefits of the option?

The intention is that renewal periods will be set in regulations. A preferred proposal for renewal periods will be developed as part of the development of regulations and will be subject to detailed regulatory impact and cost benefit analysis. We have provided some preliminary analysis here to support decision making on wider energy performance rating proposals.

To inform our initial thinking on the optimal renewal period, Sapere Research Group has conducted some modelling on the costs and benefits of different renewal periods.

The key assumption in Sapere’s model is that more frequent re-rating requirements provide greater incentive, engagement, and uptake of energy efficiency upgrades by building owners to improve the energy usage of their building.

The summary of results set out in Table 2 shows that all options produce a positive net benefit and a benefit cost ratio (BCR) greater than one, and that there is not much difference between options for a renewal period that is between 2 years and 5 years.

This is because the trend in terms of net benefits and BCRs between 2,3,4 and 5-year renewal periods is largely flat. For example, there is a 2.4% difference in net benefits between a 3-year renewal period that has the highest net benefits and a 4-year renewal period.

Table 2 Costs and benefits of different energy performance rating periods (\$m),

Renewal period	Total costs	Total benefits	Total net benefits	BCR
Annual	\$1,284	\$1,840	\$555	1.43
2 yearly	\$1,098	\$1,785	\$687	1.63
3 yearly	\$1,032	\$1,758	\$726	1.70
4 yearly	\$997	\$1,705	\$709	1.71
5 yearly	\$971	\$1,646	\$675	1.70
10 yearly	\$892	\$1,334	\$442	1.49

Source: Sapere Research Group modelling

The renewal costs in Table 2 are modelled to FY2050 to capture more renewal periods. However, this means that the figures are not directly comparable to the original present value

costs and benefits in the original CBA which modelled benefits to FY2050 and costs to FY2030.

While not directly comparable, the BCRs and net benefits in this analysis are higher than in the original CBA. This is because in modelling benefits of requiring regular rating renewals, changes were made to key behavioural change assumptions in the original CBA around the proportion of building owners which actively seek to reduce energy usage, the energy use intensity (EUI) of buildings due to efficiency upgrades, and investment in energy efficiency upgrades (cost).

Stakeholder Impact

Table 3 examines the impacts and benefits of regular renewal periods for different stakeholders including consumers, building owners, assessors, government, and New Zealand.

Table 3: Impacts of requiring energy performance ratings to be renewed

Group	Impacts
Consumers	<p>More up-to-date and comparable energy performance information on buildings</p> <p>More likely have trust and confidence in regularly renewed ratings</p> <p>More likely to take actions that take account of a building's energy performance in the buildings they rent, lease, or invest in.</p> <p>Benefits from savings in energy bills from improved energy performance of their building. Greater flow-on benefits in terms of occupant health and wellbeing.</p>
Building owners	<p>Increased cost of rating a building from more frequent ratings. The CBA identified a cost of \$2,100 to renew a rating. Exact costs would depend on the frequency of renewal requirements, which would be set in regulations.</p> <p>A larger more competitive market for ratings could lead to lower costs to building owners to renew a rating.</p>
Assessors	<p>More ratings will need to be conducted overall across New Zealand by approved assessors. This could support employment outcomes for assessors and provide opportunities to develop skills and expertise through carrying out more frequent ratings.</p>
Government	<p>Government buildings already have to re-rate on a 3 yearly basis under the CNGP, so there will be little additional costs from requiring a renewal period for ratings.</p> <p>Could provide greater consistency and clarity for tenants and building owners as there would be similar requirements between government and private buildings.</p>
New Zealand	<p>An increased contribution to New Zealand's emissions reduction and energy efficiency goals. Greater health, wellbeing, and productivity benefits. The total costs and benefits of re-rating are positive. For example, Sapere's modelling shows that for every \$1 in costs incurred in having a 3-year renewal period our analysis shows there are \$1.70 in benefits.</p>

Unquantified benefits

The CBA noted that there were significant unquantified benefits from energy performance ratings in relation to health, wellbeing, and productivity benefits. It cited an Australian review⁸ that suggested that including productivity benefits could increase net benefits of mandatory ratings for commercial buildings by two to three times the net benefits of the programme. However, due to the difficulty in estimating these benefits they were not quantified in the CBA.

As outlined above, without regular renewal periods the energy performance improvements to a building will likely be lower over time. This will lead to lower health, wellbeing, and productivity benefits, which while unquantified in the CBA are known to be significant.

Section 3: Delivering options set out in Part A and Part B

How will the new arrangements be implemented?

The additional policy proposals in this Annex are enabling provisions to be added into the Act. These enabling provisions for recognising organisations and specifying validity requirements and renewal periods for ratings will be implemented in regulations.

The development of regulations will involve:

- early engagement with key stakeholders in the design phase of regulations development to ensure the proposed regulations are effective, implementable, and cost effective
- public consultation on proposed regulations and transition timeframes
- Cabinet approval of regulations, including the completion of a Regulatory Impact Statement, a stage 2 Cost Recovery Impact Statement for the policy specified in Part A, and a Climate Implications of Policy Assessment to identify the costs, benefits, and emissions implications of the proposed regulations.

MBIE also intends to develop an implementation and behaviour change plan to support the development of policies and regulations contained in this Annex. This will align with ERP Action 12.5.3, which focuses on changing behaviours of households and the sector to reduce emissions.

In addition, complementary education, guidance information, and tools will be developed to assist with the implementation plan of this aspect of the policy.

Setting the requirements for a rating recognition scheme that is outlined in Part A in regulations will allow Government to change elements of the recognition scheme in the future without needing to amend the Act. This will ensure that recognition system can provide certainty in law while being durable, able to evolve to reflect changing circumstances and technologies, and be administered flexibly.

Comparable accreditation regimes have been successfully implemented internationally in the United Kingdom and Australia and we intend to use the implementation experience of these jurisdictions to guide the implementation of New Zealand's preferred approach.

Setting the renewal period in regulations, as outlined in Part B, will enable different requirements for buildings with different characteristics. This will help ensure the renewal

⁸ Commercial Building Disclosure Review, ACIL Allen 2015, P57. Cited in Energy Action and EnergyConsult (2018).

requirements can be implemented in a way that targets compliance effort, such as re-rating, to where it can have the greatest impact.

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

The amendments to the Act are part of MBIE's larger Building for Climate Change (BfCC) programme. This programme includes a Monitoring and Evaluation Workstream tasked with developing an overall approach to assessing the implementation of BfCC initiatives and their success at meeting the intended objectives.

In addition, recognised organisations that are described in Part A will be monitored and evaluated by the following arrangements:

- MBIE or the approved body will have the power in the Act to audit recognised organisations.
- The recognised organisations will also be required to conduct a minimum frequency of audits of energy performance ratings conducted by their assessors.

MBIE also intends to comply with Treasury guidelines which recommend that fees are reviewed every 3 to 5 years⁹.

Renewal periods for energy performance ratings that are discussed in Part B will be set as part of validity requirements in regulations. MBIE intends that the development of proposals for regulations will include further regulatory impact analysis, including analysing feedback from stakeholders.

Work to develop regulations will identify any arrangements for assessing and updating the renewal period. MBIE will monitor and evaluate effectiveness of renewal periods as part of monitoring the overall BfCC programme.

⁹ Guidelines for Setting Charges in the Public Sector, The Treasury 28 April 2017

APPENDIX 1 – Examples of fees charged to accredit organisations performing a function under the Act

Set out below are the fees charged to organisations that wish to apply to be a product certification body under the CodeMark scheme and organisations that wish to apply to be a modular component manufacturer body and a modular component manufacturer under the BuiltReady scheme.

Table 1 – Fees¹⁰ that apply for organisations that apply to be a product certification body

Activity	Matter	Fee
Accreditation of product certification body	1. Application for accreditation as product certification body	\$8,600
	2. Any additional time required after first 2 days to assess application for accreditation	\$2,000 per day, or part of day, per assessor or technical expert
	3. Expenses incurred as part of accreditation activities under items 1 and 2	Amount of reasonable expenses incurred
Registration of product certification body	4. Application for registration as product certification body	\$90.15 per hour up to \$1,803
Audit of accredited PCB	5. Audit of accredited PCB under section 262(1)(a) of the Act	\$2,000 per day, or part of day, per assessor or technical expert
	6. Expenses incurred as part of audit activities under item 5	Amount of reasonable expenses incurred

Table 2 – Fees¹¹ for applicants to be a modular component manufacturer certification body and a modular component manufacturer

Activity	Matter	Fee
Accreditation of modular component manufacturer certification body	1. Application for accreditation as modular component manufacturer certification body	\$8,600
	2. Any additional time required after first 2 days to assess application for accreditation	\$2,000 per day, or part of day, per assessor or technical expert
	3. Expenses incurred as part of accreditation activities under items 1 and 2	Amount of reasonable expenses incurred

¹⁰ As set out in Schedule 3 (Fees), Building (Product Certification) Regulations 2022

¹¹ As set out in Schedule 3, Building (Modular Component Manufacturer Scheme) Regulations 2022

Registration of modular component manufacturer certification body	4. Application for registration as modular component manufacturer certification body	\$90.15 per hour up to \$1,803
Audit of accredited MCMCB	5. Audit of accredited MCMCB under section 272K of the Act 6. Expenses incurred as part of audit activities under item 5	\$2,000 per day, or part of day, per assessor or technical expert Amount of reasonable expenses incurred
Part 1 Modular component manufacturer certification body		
Registration of modular component manufacturer	Application for registration as modular component manufacturer	\$90.15 per hour up to \$5,859.7

Annex Two: Regulatory Impact Statement Annex

Annex Three: Proposed amendments to Cabinet decisions made in September 2022

Table 1: Proposed amendments to energy performance rating proposals

Proposals agreed by Cabinet in September 2022	Proposed amendments	Rationale for changes
<p>A requirement that owners of buildings of a type, size, or with other characteristics specified in regulations hold a current energy performance rating for each building they own.</p>	<p>A requirement that owners of commercial, public, industrial, and multi-unit residential buildings of a particular size and characteristics specified in regulations must hold a valid energy performance rating document for the building.</p> <p>Regulations may:</p> <ul style="list-style-type: none"> • specify different energy performance ratings requirements that apply to commercial, public, industrial, and multi-unit residential buildings of different size and characteristics; and • 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. 	<p>In the proposals brought to Cabinet in September 2022, I indicated that regulations would specify the types of buildings to which these requirements would apply. Being explicit about this in the Bill will provide greater certainty for small residential building owners that the energy performance rating requirements will not apply to them.</p> <p>It will also enable stakeholder consultation to take place to ensure the detailed requirements around when and for how long a rating remains valid are appropriate for different buildings and maximise the benefits and cost-savings of increased energy efficiency of buildings.</p> <p>This approach will make the legislation more enduring by allowing for future-focused flexibility. I intend to conduct stakeholder and industry consultation to determine what validity requirements are appropriate for different buildings.</p>
<p>n/a</p>	<p>I propose that the chief executive set requirements for the form of energy performance rating</p>	<p>The package agreed by Cabinet in September 2022 did not include</p>

Proposals agreed by Cabinet in September 2022	Proposed amendments	Rationale for changes
	documents, and that regulations may prescribe requirements for the manner and content of energy performance rating documents.	approvals for the form in which an energy performance rating was to be produced. Providing this detail will improve implementation of the energy performance rating scheme and provide the public with clarity on how to comply with incoming requirements.
Regulations may identify any existing programmes that meet the prescribed methodology that must be used for a valid energy performance rating.	I propose that Cabinet rescind agreement to this.	Identifying existing programmes through regulations is no longer applicable because the recognition scheme will be used to approve energy performance rating organisations that are competent, qualified, and meet the specified requirements. However, I still intend for regulations to prescribe the methodology that must be used to calculate a valid energy performance rating.
<p>A requirement for building owners to display energy performance ratings in a place in the building to which users of the building have ready access.</p> <p>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:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and 	I propose that Cabinet rescind agreement to these.	I have made a decision within the authority delegated to me by Cabinet to enable the chief executive of MBIE to establish and maintain a public register of energy performance ratings as this will enable the public to compare the energy performance of buildings. For this reason, it is no longer necessary for energy performance ratings to be physically displayed in buildings.

Proposals agreed by Cabinet in September 2022	Proposed amendments	Rationale for changes
<ul style="list-style-type: none"> on conviction, a body corporate is liable for a fine not exceeding \$60,000. <p>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.</p>		<p>However, it is still my intention that owners be required to provide their ratings in circumstances and to persons prescribed in regulations. For example, when their property is advertised for sale or lease in print or online. This is to give effect to the policy intent that prospective purchasers or tenants have access to information about the building's energy efficiency.</p>
<p>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:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<p>An offence for building owners to not hold a valid energy performance rating for their buildings as required, with the following penalties:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. <p>A defence for building owners where the failure to hold a valid energy performance rating was due to circumstances beyond the building owner's control (e.g. information supplied by the energy performance rating organisation or an act or omission by the energy performance rating organisation).</p>	<p>The mens rea element of intent is proposed to be removed because the conduct is appropriate for a strict liability offence. I am also proposing a defence for building owners to provide for circumstances where they are unable to comply with the energy performance rating requirements for reasons beyond their control.</p>
<p>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:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and 	<p>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:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and 	<p>The mens rea element of intent is proposed to be removed because the conduct is appropriate for a strict liability offence, and the elements of the original proposed offence have been separated for clarity. The requirement</p>

Proposals agreed by Cabinet in September 2022	Proposed amendments	Rationale for changes
<ul style="list-style-type: none"> on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<ul style="list-style-type: none"> on conviction, a body corporate is liable for a fine not exceeding \$60,000. <p>An offence for building owners to not provide information on the energy performance rating for their buildings in other circumstances required by regulations.</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<p>has also been refined to ‘provide information on’ the rating rather than a physical copy to reflect that there will be a public register of ratings available.</p>
<p>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.</p>	<p>Infringement offences for:</p> <ul style="list-style-type: none"> 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; and 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. 	<p>The elements of the original proposed offence have been separated for clarity.</p>
<p>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:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<p>An offence to make a false or misleading statement or representation about the energy performance rating for a building, with the following penalties:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<p>The element of ‘knowingly’ is proposed to be removed to better align with offences in the Building Act 2004.</p> <p>It is also proposed that the obligation not to make false statements about energy performance ratings is not limited to the owner. This will cover other scenarios where false or misleading statements could be made about a rating.</p>

Proposals agreed by Cabinet in September 2022	Proposed amendments	Rationale for changes
That territorial authorities will enforce energy performance rating offences.	That the chief executive will enforce energy performance rating requirements.	In the package agreed to by Cabinet in September 2022, it stated that I intended energy performance rating offences to be enforced by territorial authorities. Following the refinements of the energy performance ratings scheme in this paper, it is more appropriate for the chief executive to enforce the energy performance rating requirements.

Table 2: Proposed amendments to construction and demolition waste minimisation plan proposals

Proposals agreed by Cabinet in September 2022	Proposed amendment	Rationale for changes
A requirement for 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	I propose that Cabinet rescind agreement to this.	To align the construction and demolition waste minimisation plan proposals with the building consent process by avoiding adding red tape for building work that is already exempted from requiring a building consent under Schedule 1 of the Building Act 2004.
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: <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	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, with the following penalties: <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	The mens rea element of intent is proposed to be removed because the conduct is appropriate for a strict liability offence. It is proposed that the obligation to carry out building work in accordance with an approved construction and demolition waste minimisation plan is not limited to the owner, but instead is extended to persons working

Proposals agreed by Cabinet in September 2022	Proposed amendment	Rationale for changes
	<p>An offence for building owners to not have an approved construction and demolition waste minimisation plan when required, with the following penalties:</p> <ul style="list-style-type: none"> • on conviction, an individual is liable for a fine not exceeding \$20,000; and • on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<p>onsite. The proposed amendment adds a deterrence for non-compliance where they are most likely to occur (i.e. onsite), and is more consistent with other provisions in the Act which apply to persons carrying out building work.</p>
<p>An infringement offence for owners failing 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.</p>	<p>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.</p>	<p>As above. This is the corresponding infringement offence.</p>
<p>An offence for building owners to intentionally not provide a Waste Minimisation Plan as required by regulations before carrying out demolition work, with the following penalties:</p> <ul style="list-style-type: none"> • on conviction, an individual building owner is liable for a fine not exceeding \$20,000; and • on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000. <p>A corresponding 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.</p> <p>An offence for building owners to intentionally not implement their submitted Waste Minimisation Plan, with the following penalties:</p> <ul style="list-style-type: none"> • on conviction, an individual building owner 	<p>I propose that Cabinet rescind agreement to these.</p>	<p>These are now covered by the proposed new offence for carrying out building work except in accordance with an approved construction and demolition waste minimisation plan.</p>

Proposals agreed by Cabinet in September 2022	Proposed amendment	Rationale for changes
<p>is liable for a fine not exceeding \$20,000; and</p> <ul style="list-style-type: none"> on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000. <p>A corresponding infringement offence for owners failing to implement their submitted Waste Minimisation Plan, with a fee of \$1,000.</p>		
<p>A requirement that building owners make their Waste Minimisation Plans available on the building or demolition site.</p> <p>An offence for building owners to intentionally not make their Waste Minimisation Plan available on the building or demolition site, with the following penalties:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<p>I propose that Cabinet rescind agreement to these.</p>	<p>The policy intent is for people producing waste on site to comply with the approved construction and demolition waste minimisation plan. To do this, the existing agreement to require that the approved plan be provided to persons specified in regulations is sufficient. I intend regulations to specify the persons on site who must be supplied with a copy of the plan.</p>
<p>An offence for building owners to intentionally not provide their Waste Minimisation Plans to persons as specified in regulations, with the following penalties:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<p>An offence for building owners to not provide a copy of their approved construction and demolition waste minimisation plan to persons specified in regulations:</p> <ul style="list-style-type: none"> on conviction, an individual is liable for a fine not exceeding \$20,000; and on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<p>The mens rea element of intent is proposed to be removed because the conduct is appropriate for a strict liability offence.</p>
<p>The following will be infringement offences when the building owner:</p> <ul style="list-style-type: none"> 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; 	<p>The following will be infringement offences:</p> <ul style="list-style-type: none"> 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 	<p>The proposed changes to these infringement offences correspond to the changes to the offences above to which they apply.</p> <p>As above, it is proposed that the obligation to</p>

Proposals agreed by Cabinet in September 2022	Proposed amendment	Rationale for changes
<ul style="list-style-type: none"> fails to prominently make the submitted Waste Minimisation Plan available on the building or demolition site, with a fee of \$250; and fails to provide the Waste Minimisation Plan to persons specified in regulations in circumstances set in regulations, with a fee of \$250. 	<p>minimisation plan, with a fee of \$1,000; and</p> <ul style="list-style-type: none"> 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. 	<p>carry out building work in accordance with an approved construction and demolition waste minimisation plan be extended to include persons working onsite. The mens rea element of intent is proposed to be removed because the conduct is appropriate for a strict liability offence.</p>

Table 3: Proposed amendments to information provision proposals

Proposals agreed by Cabinet in September 2022	Proposed amendment	Rationale for changes
n/a	<p>Enabling regulations to 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 proposals.</p>	<p>This is intended to complement the information provision requirements agreed by Cabinet in September 2022.</p> <p>Existing Cabinet approvals did not include provision for collecting information from building consent authorities. This would help inform, monitor, evaluate, and implement policies, programmes, and regulations that support building-related emissions reduction, climate resilience, and adaptation. It would also enable consumers to assess and compare the emissions, climate resilience, and adaptation of buildings.</p>
<p>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:</p>	<p>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:</p>	<p>The mens rea element of intent is proposed to be removed because the conduct is appropriate for a strict liability offence.</p>

IN CONFIDENCE

<ul style="list-style-type: none"> • on conviction, an individual is liable for a fine not exceeding \$20,000; and • on conviction, a body corporate is liable for a fine not exceeding \$60,000. 	<ul style="list-style-type: none"> • on conviction, an individual building owner is liable for a fine not exceeding \$20,000; and • on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000. 	
<p>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:</p> <ul style="list-style-type: none"> • on conviction, an individual building owner is liable for a fine not exceeding \$20,000; and • on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000. 	<p>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:</p> <ul style="list-style-type: none"> • on conviction, an individual building owner is liable for a fine not exceeding \$20,000; and • on conviction, a body corporate building owner is liable for a fine not exceeding \$60,000. 	<p>The mens rea element of intent is proposed to be removed because the conduct is appropriate for a strict liability offence.</p>