



COVERSHEET

Minister	Hon Chris Penk	Portfolio	Building and Construction
Title of Cabinet paper	Fire Safety Review: Release of Issues Discussion Document	Date to be published	25 November 2024

List of documents that have been proactively released

Date	Title	Author
October 2024	Fire Safety Review: Release of Issues Discussion Document	Office of the Minister for Building and Construction
15 October 2024	Fire Safety Review: Release of Issues Discussion Document EXP-24-MIN-0053 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.

- Confidential Advice to Government.

In Confidence

Office of the Minister for Building and Construction

Cabinet Expenditure and Regulatory Review Committee

Fire Safety Review: Release of Issues Discussion Document

Proposal

- 1 This paper seeks agreement to release the discussion document *Building Code fire safety provisions* for public consultation, to seek feedback on building issues that may affect life safety or property and may be contributing to an inefficient building system.

Relation to government priorities

- 2 One of my key focus areas for the Building and Construction portfolio is enhancing fire safety in buildings. In May 2024, Cabinet noted I would return to ECO with a discussion document on the issues with the fire safety provisions in the Building Code.

Executive Summary

- 3 On 16 May 2023, a fire broke out at Loafers Lodge in Newtown, Wellington resulting in the deaths of five people.
- 4 In May 2024, I updated Cabinet on how I am responding to fire safety issues throughout the building and construction sector [ECO-24-Min-0066 refers]. As part of this update, I indicated that I expected to bring a draft discussion document on safety issues with the Building Code back to Cabinet.
- 5 There are concerns about the effectiveness of the current settings to protect people from fire. Fire safety provisions have not kept up with rapidly evolving building uses, materials and technologies, which add new complexities to fire safety in our homes and buildings, and to firefighting. That is why I have asked officials to review the fire safety provisions in the Building Code.
- 6 Issues with the fire safety provisions in the Building Code may also make it harder to build by creating uncertainty, complexity, and barriers to using building products from overseas. These issues cause delays in construction, spark disputes, increase the fire risk in buildings, and leave gaps in the regulatory system.
- 7 The aim of the review is to ensure that fire safety provisions in the Building Code are clear, effective and will enhance the safety of people using buildings.
- 8 I seek agreement to publicly consult on issues identified in the fire safety provisions of the Building Code. The purpose of consultation is to seek

feedback on the issues my officials have identified and build agreement on the fire safety outcomes that the Building Code should aim to achieve.

- 9 I seek agreement to release the issues discussion document on or about 23 October 2024. Public consultation will occur for a minimum of six weeks.
- 10 I intend to report back to Cabinet Confidential advice to Government depending on other new or emerging priorities. The report back will include findings from public consultation on the issues discussion document and potential options for new or revised fire safety provisions.

Background

- 11 On 16 May 2023, a fire broke out at Loafers Lodge in Newtown, Wellington resulting in the deaths of five people and injury to a further 20 people. Since that time, New Zealand Police have charged a man with arson and murder relating to the fire. The Police and Fire and Emergency New Zealand are investigating the circumstances of the fire. These findings will not be released until criminal proceedings have concluded.
- 12 In May 2024, I updated Cabinet on how I am responding to fire safety issues throughout the building and construction sector [ECO-24-Min-0066 refers]. As part of this update, I indicated that I expected to bring a draft issues discussion document on safety issues with the Building Code back to Cabinet for consideration in September 2024.
- 13 Alongside the review of fire safety provisions in the Building Code, I am also strengthening offences and penalties under the *Building Act 2004* relating to the building warrant of fitness scheme. This is because the Loafers Lodge fire raised concerns about compliance breaches with the building warrant of fitness regime and fire safety concerns in buildings with a similar profile to Loafers Lodge.

The importance of conducting this review now

- 14 The last substantive review of fire safety requirements in the Building Code concluded in 2012. However, this review did not resolve all the issues. The provisions in the Building Code still leave room for interpretation and are causing delays in the consenting system.
- 15 As Minister for Building and Construction, I am focused on ensuring that building homes in New Zealand is quicker, more straightforward and affordable. This needs to be done in a way that will maintain and protect life safety, including protecting people from the spread of fire.
- 16 Since the Loafers' Lodge fire, there has been public interest in the level of fire safety in buildings, including boarding houses similar to Loafers Lodge. There have also been ongoing frustrations in the sector over unnecessary costs and delays in the construction of buildings.

- 17 To support housing affordability and supply, it is essential that the relevant fire safety provisions in the Building Code achieve safe, healthy and durable buildings while also supporting timely building consent decisions and consistent decision-making.
- 18 The Building Code is secondary legislation under the *Building Act 2004*. This review of the fire safety provisions of the Building Code will aim to:
 - 18.1 Align objective and performance requirements in the Building Code with social expectations on the level of protection offered for differing types of building users and buildings.
 - 18.2 Ensure that the fire safety provisions in the Building Code are keeping pace with changes in urban design, modern methods of construction, and the ways in which buildings are being used.
 - 18.3 Ensure that the regulatory requirements in the Building Code are cost-effective and fit for purpose.
 - 18.4 Minimise gaps and longstanding inconsistencies in fire safety regulation to provide certainty, clarity, and consistency in decision making.

Identifying issues in the Building Code fire safety provisions

- 19 As the first stage of this review, my officials looked to identify issues in the Building Code fire safety provisions. This was informed by:
 - 19.1 lessons learned from Loafers Lodge in which 5 people lost their lives and historical fire events in New Zealand and overseas, such as the 2017 Grenfell Tower fire in London in which 72 people lost their lives
 - 19.2 feedback from organisations across the building and construction sector including designers, engineers, architects, councils, product suppliers, fire safety experts, disability advisors and advocates, public building asset owners, and other property owner groups
 - 19.3 items raised in a letter written to me by three fire safety industry bodies
 - 19.4 items raised through a recent complaint to the Regulations Review Committee relating to specific technical details in the fire safety provisions in the Building Code.
- 20 The discussion document invites feedback on the identified issues under three key themes:
 - 20.1 Effectiveness of fire safety measures in the Building Code.
 - 20.2 Keeping pace with new technologies and new fire challenges.
 - 20.3 Certainty, clarity, and consistency.

- 21 Stakeholders have largely supported the review and provided valuable feedback on the issues they are facing.
- 21.1 Designers, fire engineers, and council staff identified issues in the technical requirements in the Building Code which do not address specific fire safety hazards. They identified requirements that were vague or uncertain, which, in turn, can lead to costly delays or spark disputes in decision making.
 - 21.2 Fire and Emergency New Zealand raised concerns on weak provisions to protect people and firefighters which expose emergency responders to avoidable risks.
 - 21.3 Product suppliers identified uncertainties in bringing products to market in New Zealand and barriers to the use of products from overseas.
 - 21.4 Other parties raised concerns on the perceived low levels of fire safety being supplied to New Zealand buildings which may be failing to protect at risk groups, such as older people or people with disabilities from the effects of fire.
- 22 In comparison to other countries such as Australia, Canada, United States, and the UK, my officials also found that other building codes provide more certainty about when fire safety features are required in a building and more clarity about the level of performance they must achieve. Other building codes also show more consideration for the unique circumstances of each building so that the fire safety requirements are proportionate to the risk.
- 23 I am also focused on improving the consistency, certainty and efficiency of the consenting process through other work underway in my portfolio, such as building consent authority structural reform.

Proposal for public consultation

- 24 I propose to release the discussion document *Building Code fire safety provisions* for public consultation on or about 23 October 2024 for a period of six weeks. The discussion document is attached at Appendix 1.
- 25 I seek authorisation to approve the final release date of the discussion document, and to make minor and technical changes to the discussion document and supporting documents before they are released.
- 26 The purpose of this consultation will be to confirm the fire safety issues that have been identified and the direction of travel for further work. This step is important because a significant number of linked issues have been identified across the Building Code regulations, the documents used to comply with the Building Code and connections to other legislation.
- 27 Following consultation, MBIE will analyse the submissions and undertake further work to confirm issues and develop potential options for new or revised fire safety provisions.

- 28 This timeframe is intended to allow officials to work with the sector to address the significant number of issues with the fire safety provisions and achieve a clear and effective fire safety regime.

Cost-of-living Implications

- 29 There are no cost-of-living implications as a result of this Cabinet paper.

Financial Implications

- 30 There are no financial implications from the proposal to consult.

Legislative Implications

- 31 There are no immediate legislative implications from the proposal to consult on the discussion document.
- 32 The Building Code is secondary legislation under the *Building Act 2004*. I will report back to Cabinet seeking approval to further consult on policy options following the initial consultation on the issues discussion document.

Impact Analysis

Regulatory Impact Statement

- 33 There are no regulatory proposals in this paper, and therefore Cabinet's impact analysis requirements do not apply.

Climate Implications of Policy Assessment

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

Population Implications

- 35 The outcomes and issues in this issues discussion document are broadly focussed on finding ways to improve the fire safety settings in the Building Code; they are not directed at any one specific population group. Public consultation on the issues discussion document will seek to engage with population groups.

Human Rights

- 36 The proposals in this paper have no implications under the *New Zealand Bill of Rights Act 1990* or the *Human Rights Act 1993*. There are no gender or disability implications arising from this paper.

Use of external Resources

- 37 No external resources were used directly in the preparation of this paper.

Consultation

- 38 MBIE consulted with the following government agencies on the draft Cabinet paper and the draft issues discussion document: Department of the Prime Minister and Cabinet; The Treasury; Ministry for Regulation; Ministry of Housing and Urban Development; Ministry of Education; Ministry of Health; Ministry of Defence; Kāinga Ora; Te Puni Kōkiri; Department of Internal Affairs; Department of Corrections; Commerce Commission; Accident Compensation Corporation; WorkSafe New Zealand; Fire and Emergency New Zealand; Ministry of Disabled People – Whaikaha; Ministry for Pacific Peoples; Infrastructure Commission; Ministry of Foreign Affairs and Trade; Ministry for the Environment; Ministry of Justice; Ministry for Primary Industries; Te Whatu Ora; and Police.

Communications

- 39 I will be making a media statement to accompany the release of the issues discussion document, which I intend will coincide with the Fire NZ conference in Wellington from 23 till 25 October 2024. The issues discussion document will be made publicly available on MBIE's website.

Proactive Release

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

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** Cabinet has confirmed that my priority is to create an efficient, competitive building regulatory system and reduce overall building costs [CAB-24-MIN-0069 refers];
- 2 **note** that a significant number of issues have been identified with the fire safety provisions in the Building Code which may leave people and buildings at risk to a variety of fire hazards and are making it harder to build;
- 3 **agree** to the release of the attached issues discussion document *Building Code fire safety provisions*, for public consultation;
- 4 **authorise** the Minister for Building and Construction to make minor amendments and refinements to the issues discussion document and supporting documents before they are released;
- 5 **note** that the Minister for Building and Construction intends to release the issues discussion document on or about 23 October 2024 to coincide with the Fire NZ conference, and will be making a media statement on the release;

- 6 **note** that the Minister for Building and Construction intends to report back to Cabinet Confidential advice to Government on potential options for changes to fire safety provisions.

Authorised for lodgement

Hon Chris Penk

Minister for Building and Construction

Appendices

Appendix 1: Issues discussion document: *Building Code fire safety provisions*