



## COVERSHEET

<b>Minister</b>	Hon Jenny Salesa	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	<b>Proposal to amend the Earthquake-prone Buildings Substantial Alterations Regulations</b>	<b>Date to be published</b>	12 August 2019

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
30/07/2019	<i>Proposal to amend the Earthquake-prone Buildings Substantial Alterations Regulations</i>	<i>Office of the Minister for Building and Construction</i>
30/07/2019	<i>Minute of Decision – Earthquake-prone Buildings Substantial Alterations Regulations: Proposed Amendments [DEV-19-MIN-0171]</i>	<i>Cabinet Economic Development Committee</i>

**Information redacted**

**NO** (please select)

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.

In Confidence

Office of the Minister of Building and Construction

Cabinet Economic Development Committee

## **Proposal to amend the Earthquake-prone Buildings Substantial Alterations Regulations**

### **Proposal**

1. This paper seeks agreement to amend the prescribed criteria for a 'substantial' alteration to an Earthquake-prone Building (EPB) in regulations (the Regulations) under EPB legislation in the Building Act 2004 to prevent unintended consequences for rural and provincial areas.

### **Executive Summary**

2. On 1 July 2017, a new system for managing EPBs came into force. This new system requires owners of identified EPBs to remediate their buildings within set time periods.
3. Under the new system, a building consent cannot be granted by a territorial authority for a 'substantial' alteration to an EPB unless that alteration also includes the necessary seismic work to ensure the building is no longer earthquake-prone. The current definition of a 'substantial' alteration is any building work (other than seismic work) that has an estimated value of at least 25 percent of the building's value aggregated as the total value of the alterations over the prior two years. The threshold is GST inclusive.
4. The Regulations are having a disproportionate impact on provincial and small town New Zealand due to the number of buildings with low building values in those areas. This is discouraging modest building work that is progressive and positive (such as fit-outs for tenancies) from being undertaken.
5. I propose that the prescribed criteria for a 'substantial' alteration in the Regulations be amended to include a minimum dollar value of \$150,000 as a qualifier to the current threshold. This will mean that a 'substantial' alteration to an EPB is an alteration (other than seismic work) that is more than 25 percent of the building's value, but only if the value of the building work is greater than \$150,000 (all GST inclusive).
6. This change addresses the disproportionate impact of the Regulations on provincial and small towns, maintains the integrity of the EPB system, and allows for a degree of future-proofing in regards to needing fewer inflationary adjustments over the long-term life of the EPB system. Change was largely supported through targeted consultation with affected parties.

## Background

*A new system for managing EPBs came into force on 1 July 2017*

7. The new system for managing EPBs requires owners to take action within set time frames. It divides New Zealand into 3 seismic risk areas (high, medium, low) for the purpose of setting timeframes for the identification and remediation of EPBs. The system targets buildings and parts of buildings that pose the greatest risk to public safety or other property in a moderate earthquake.
8. An EPB, or part of a building that is earthquake prone, is one that will have its ultimate capacity exceeded in a moderate earthquake, and if it were to collapse, would do so in a way that is likely to cause injury or death to persons in or near the building or on any other property, or damage to any other property. An engineering assessment of less than 34 percent of New Building Standard (NBS) is an important consideration in determining whether a building is earthquake-prone.

*If a 'substantial' alteration to an EPB is undertaken, seismic strengthening must be done at the same time*

9. Part of the new system applies when 'substantial' alterations are made to EPBs. The purpose of the 'substantial' alteration provisions is to promote positive and progressive upgrades of EPBs within the statutory timeframes.
10. A 'substantial' alteration to an EPB, as [defined in Regulations](#), is building work (other than seismic strengthening) that has an estimated value of at least 25 percent of the building's value, aggregated as the total value of the alterations over the preceding two year period. The threshold is GST inclusive.
11. Under section 133AT of the Building Act 2004, a building consent must not be granted by a territorial authority for a 'substantial' alteration unless the alteration includes the necessary seismic work to ensure the building is no longer earthquake-prone.

*Current Regulations capture work that is not 'substantial' if building values are low, and this is having a disproportionate impact on provincial and small towns*

12. The current Regulations are seen as having a disproportionate impact on provincial and small towns, due to the number of buildings with low building values in those areas. They are discouraging modest building work that is progressive and positive.
13. Based on information about 530 potential EPBs in rural and provincial areas, there are a significant number of buildings in these areas with very low values. The median building value of these buildings is \$103,000. This means approximately half of these buildings will trigger the 25 percent 'substantial' alterations threshold with building work of approximately \$25,000 or less.
14. Owners of low-value buildings who are altering their buildings are likely to have the current settings triggered by work that is not really 'substantial'. The information referred to in paragraph 13 reflects the specific social and economic contexts that affect the building values in the rural and provincial areas where the

information was sourced. This information is considered to be indicative of building values and the distribution of values in provincial and rural New Zealand<sup>1</sup> as a whole.

## Proposal

15. The current Regulations are capturing work that is not 'substantial'. The Regulations should allow modest building work to be done to an EPB (such as fit-outs for tenancies) without triggering the requirement to carry out strengthening immediately.
16. I seek agreement to amend the EPB substantial alterations regulations to include a minimum dollar value as part of the definition of 'substantial' alteration.
17. The likely costs of different types of alterations need to be considered in setting a minimum dollar value of building work as a qualifier to the current definition of 'substantial' alteration. Material and labour costs are key factors in the overall cost of these alterations irrespective of the underlying value of the building.
18. My officials undertook targeted consultation on the options of \$100,000 and \$200,000. There was a risk that a minimum dollar value of \$100,000 would not adequately address the sectors concerns, particularly in the case of larger or multi-tenanted low-value EPBs. It would also need frequent inflationary adjustments over time to keep pace with cost changes. In the case of the \$200,000 option, there is a risk it would allow 'substantial' work to be undertaken without addressing the need for seismic work.
19. Adding \$150,000 as a minimum dollar value to the current definition of 'substantial' is the most appropriate amendment to the Regulations. This value best allows for modest, positive and progressive improvements to an EPB, such as fit-outs for tenancies, without triggering the requirement to carry out earthquake strengthening at the same time.
20. I consider that the \$150,000 value addresses the disproportionate impact of the Regulations on small and provincial towns while maintaining the integrity of the EPB system. It also allows for some future-proofing of the Regulations by requiring fewer adjustments for inflation.

*Targeted consultation showed widespread support for the proposal.*

21. Targeted consultation on a possible amendment to the EPB regulations to address the disproportionate impact on provincial and small towns took place from 8 January 2019 to 15 February 2019, with TAs, Local Government New Zealand (LGNZ), engineering industry groups and Property Council New Zealand (PCNZ). The engineering industry groups consulted were Engineering New Zealand (ENZ), New Zealand Society of Earthquake Engineers (NZSEE), and the Structural Engineering Society New Zealand (SESOC).
22. Submitters generally agreed that the regulations are having a disproportionate impact on provincial and small towns, and that adding a minimum dollar value to the Regulations would address the issue. This option was seen as easy and consistent to apply across New Zealand.

---

<sup>1</sup> MBIE does not have detailed information on the number of buildings that are not being upgraded due to these Regulations, or the flow on implications of this work not being undertaken.

## **Consultation**

23. The following agencies were consulted on the proposals in this paper: Ministry for Culture and Heritage, Ministry for the Environment, The Treasury, Department of Internal Affairs, Department of the Prime Minister and Cabinet, Land Information New Zealand, Te Puni Kokiri, and WorkSafe New Zealand.

## **Financial Implications**

24. There are no financial implications for the Crown associated with this proposal.

## **Legislative Implications**

25. The proposal in this paper will amend the Building (Specified Systems, Change of Use, and Earthquake-prone Buildings) Regulations 2005.

## **Impact Analysis**

26. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Summary prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Summary meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

## **Human Rights, Gender Implications and Disability Perspective**

27. This paper has 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.

## **Publicity**

28. I intend to issue a media statement accompanying the release of this discussion paper. This paper and Regulatory Impact Statement will be made publicly available on MBIE's website.

## **Proactive Release**

29. 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 on 1 July 2017 the new earthquake-prone building (EPB) system came into force, which sets timeframes for the identification and remediation of EPBs in New Zealand;
2. **note** that if a 'substantial' alteration is carried out to an EPB, owners must do the required seismic strengthening work at the same time;
3. **note** that a 'substantial' alteration to an EPB is [defined in the regulations](#) under the Building Act 2004 as building work (other than seismic strengthening) that has an estimated value of at least 25 percent of the building's value, aggregated as the total value of the alterations over the preceding two year period;
4. **note** that current EPB regulations are capturing work that is not 'substantial' due to low building values, and they are having a disproportionate impact on provincial and small towns where there are many low value buildings;
5. **agree** to add a minimum dollar value of \$150,000 to the existing threshold defining a 'substantial' alteration to an EPB i.e. a 'substantial' alteration is an alteration (other than seismic work) that is more than 25 percent of the building's value, but only if the value of the building work is greater than \$150,000;
6. **invite** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to give effect to the amendment of the substantial alterations regulations; and
7. **authorise** the Minister for Building and Construction to make decisions on any minor and technical matters, consistent with the intent of the regulations.

Authorised for lodgement

Hon Jenny Salesa  
Minister for Building and Construction