

**BUILDING
PERFORMANCE**

Discussion paper – Building Levy Review

April 2023



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government



Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

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Information, examples and answers to your questions about the topics covered here can be found on our website: www.mbie.govt.nz or by calling us free on: **0800 20 90 20**.

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Summary

Applicants for building consents, which are granted and are above a threshold, pay a building levy (the levy). The levy funds the Ministry of Business, Innovation and Employment's (MBIE) chief executive (CE) functions under the Building Act 2004.

The proposals set out in this discussion paper address five issues with the current levy:

- the current levy rate has generated a significant surplus which is undesirable in terms of good practice
- the current levy threshold does not reflect current building costs – it has not been adjusted for inflation in some 30 years
- MBIE's digital and other engagement channels do not fully meet the needs of their stakeholders
- MBIE is facing increasing costs in delivering better compliance pathways to the building sector
- MBIE is facing increasing costs in delivering building for climate change regulation.

WE WANT STAKEHOLDER'S FEEDBACK ON THREE PROPOSALS

1. Increasing the levy threshold.
2. Increasing investment in MBIE's services.
3. Changing the levy rate.

The choice of a preferred levy rate is dependent on the choices made in respect of matters one, two and three above.

THESE PROPOSALS WILL HELP MBIE MEET THE PROJECT'S FOUR OBJECTIVES

The proposals being considered as part of the building levy review intends to meet the following objectives:

- ensure the balance of the levy memorandum account trends to zero over time as reflected in Treasury and Office of the Auditor-General guidance
- reduce the volume of lower value building consent applications paying the levy
- improve the building and construction regulatory services MBIE delivers to levy payers and the building sector
- ensure that MBIE's building and construction regulatory services have a sustainable funding base going forward.

Regulation of the building system

Buildings and the built environment are an integral part of society. The design and quality of buildings affect people's health, safety and happiness, material wealth and the natural environment.

The building and construction industry is a significant employer and contributor to our economy. To continue producing good outcomes for all of New Zealand, the building system must be equipped to respond to future change. While New Zealand's building system has many strengths, it also faces long-standing, complex challenges.

THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT'S ROLE IN THE BUILDING REGULATORY SYSTEM

A good regulatory environment is fundamental to growing New Zealand for all. It enables businesses to thrive and keeps people safe.

As the central regulator, MBIE manages the regulation of building work and is the lead policy advisor to government on building regulation. MBIE is responsible for but not limited to:

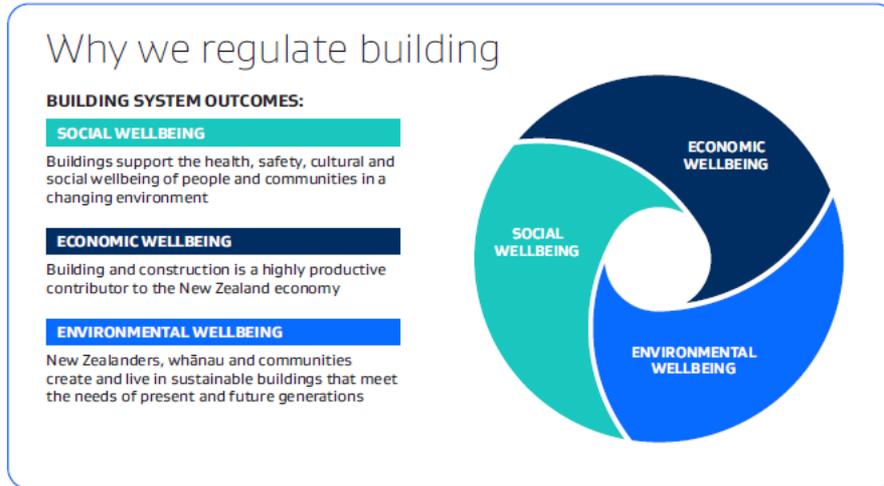
- policy advice on legislation and regulations, including the Building Code
- reviewing and maintaining the Building Code
- producing documents that show ways to comply with the Building Code
- monitoring the performance of district and city councils in the building regulatory system
- investigating complaints about alleged breaches of legislation
- making determinations about disputes on building matters
- administering occupational regulation of some building professions, including licensed building practitioners.

The majority of the work MBIE delivers is funded via the building consent levy.

BUILDING FOR THE FUTURE STRATEGY

In 2020, the Ministry for Business, Innovation and Employment (MBIE) developed a regulatory strategy *Building for the Future*, which focuses on opportunities for building regulation in the next 10 to 15 years, to provide people with safe, healthy, durable, accessible buildings that support social, economic, and environmental wellbeing now and in the future. Figure one below displays the strategy's building system outcomes:

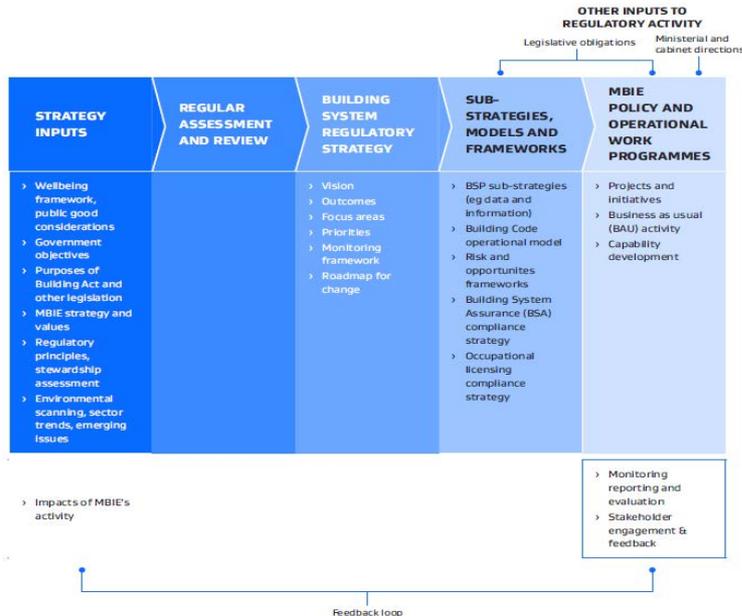
Figure one: Building System Outcomes



The *Building for the Future* strategy serves as a foundation document to inform MBIE’s planning and activity around building regulation. The strategy sets the direction of MBIE’s regulatory activity, and as a key part of a cycle of continuous system improvement.

Figure two below displays the role of the building system regulatory strategy in building system regulation.

Figure two: Role of the Building System Regulatory Strategy



MBIE’s policy and operational work programmes deliver the outcomes of the strategy. Most of these work programmes are funded via the building consent levy.

The building consent levy

WHAT IS THE BUILDING LEVY?

The building levy is a charge calculated on the cost of building work. The building levy is paid by building owners or developers on successful building consent applications for projects that are worth more than the prescribed threshold of \$20,444 (including GST). The building levy rate from 1 July 2020 is \$1.75 (including GST) per \$1,000 and part \$1,000.

The levy is set in the Building (Levy) Regulations 2019. Building consent authorities (BCAs) calculate the levy using the estimated value of the building work set out in a building consent application. If the value is over \$20,444, and if the consent is granted, owners or developers of residential or commercial buildings pay the levy on every \$1,000 of building work value. The levy must be paid when the consent is granted.

The building levy funds the chief executive's functions under the *Building Act 2004*

The revenue collected from the building levy is used to fund a range of MBIE functions and activities under the Building Act 2004 including:

- policy, technical rules and guidance, operational policy advice and service design
- information and education
- service delivery (compliance and enforcement)
- monitoring and reporting.

People who pay the building levy benefit from these functions and activities. Benefits include:

- improved building safety and longevity
- a better understanding of their obligations when building
- assurance for those who may purchase an existing building that it is safe.

From 8 June 2021, the Building Act 2004 allowed for the building levy collected after this date to be used to fund MBIE functions and activities related to the building sector in other Acts. These functions must be related to monitoring, overseeing, or improving the performance of the building sector or regulatory systems under that Act.

CURRENT ISSUES

Building Levy Baseline Review

In December 2021, MBIE completed the Building Levy Baseline Review (the Baseline Review). The Baseline Review provided MBIE with an opportunity to:

- assess the performance of MBIE's building system regulatory function over the period following the 2017 review of the Building System Performance branch (BSP), which resulted in a programme of change and investment to support a substantial reinvigoration of the building regulatory system
- take stock of the current cost base of the system and likely future funding needs, to inform the building levy (the levy) review process scheduled to commence in early 2022.

The findings of the Baseline Review were that the changes made by MBIE since 2017 were efficient and effective. The review also recommended that there were further opportunities for continuous improvements in MBIE's efficiency and effectiveness.

In response to the Baseline Review's recommendations, MBIE has developed an uplift programme. The uplift programme will require additional investment in MBIE's regulatory functions leading to additional costs that should be funded through the building consent levy.

MBIE is facing additional costs that should be funded through the levy

MBIE has identified about \$6.3m worth of additional expenditure that could meet the costs associated with three areas of work, as outlined below.

MBIE's digital and other engagement channels do not fully meet the needs of its stakeholders

Under the Building Act 2004, MBIE has an obligation to provide information, education, and guidance on what the building sector needs to do to comply with building regulations. MBIE primarily does this through its digital channels, including websites such as www.building.govt.nz.

In 2022, MBIE conducted research to understand how well its digital channels are working for stakeholders and how they can be improved to best provide the information needed for a sustainable and capable sector.

The research found that the current channels and websites have multiple issues and limitations that present barriers to the access of information. The sector also noted that better information and education would increase capacity, capability, and improve confidence, as well as address an education vacuum and misinformation in the sector.

To strengthen the quality and volume of the information, education, and guidance provided, MBIE is now looking to progress a programme of work to lift its digital capability and better support its information, education, and operational policy functions to deliver through improved digital channels. Currently MBIE has a shortfall in funding to deliver all the planned outputs of the programme and considers the levy could be used to fund it.

MBIE is facing increasing costs in delivering better compliance pathways to the building sector

MBIE's regulatory reform programme is identifying a range of improvements that can be made to enhance the performance of the sector, including improving guidance to support greater compliance, and improving the safety and resilience of our built environment to the benefit of New Zealanders. For example, improving regulation in areas such as the Building Code, Acceptable Solutions and Verification Methods for things such as plasterboard substitution. As these reforms progress MBIE is identifying additional resourcing needs to enable us to effectively role out services/improved services. We consider these funding needs could be met by the levy.

MBIE is facing increasing costs in delivering regulation around building for climate change

MBIE is facing increased costs in supporting the provision of policy advice on regulatory changes and emissions caps. Presently, MBIE considers aspects of its climate change work can be funded through the levy account. These include supporting the provision of policy advice on regulatory changes and emissions caps.

[Proposed amendments to the Building Act](#) will allow for other costs associated with the building for climate change programme to be funded from the levy. The proposed amendments to the Building Act will:

- make it mandatory for new and existing public, industrial and large-scale residential buildings (such as multi-storey apartment buildings) to hold energy performance ratings
- require those intending to undertake certain building or demolition work to have a waste minimisation plan
- change the principles and purposes of the Building Act to clarify that climate change is a key consideration.

Once the amendments are passed, MBIE will consider the extent to which the above costs might be recovered as part of the next levy review.

Overtime a significant surplus in the levy account has accrued

As of 31 December 2022, the building levy memorandum account had a surplus of \$71.6m. This is despite the levy rate being reduced in 2019 via the Building (Levy) Regulations 2019 from \$2.01 to \$1.75 (a 12 per cent reduction) per \$1,000. The surplus has increased because of the unforeseen and unprecedented levels of building activity (see figure three) and cost increases (see figure four) that occurred across the building sector since this change. For example, increasing costs of plasterboard and the impact of COVID-19 and border restrictions on the availability of skilled labour.

Figure three: Number of building consents 2000 to 2022

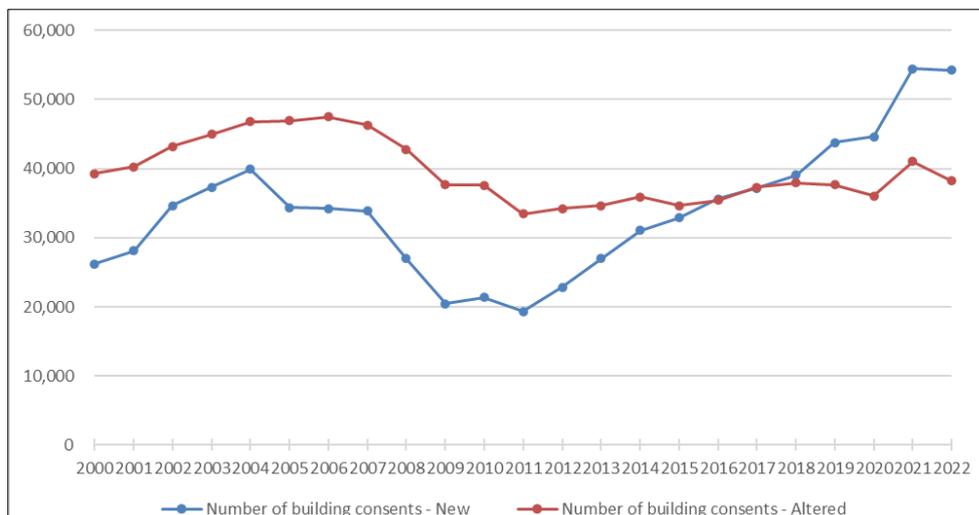
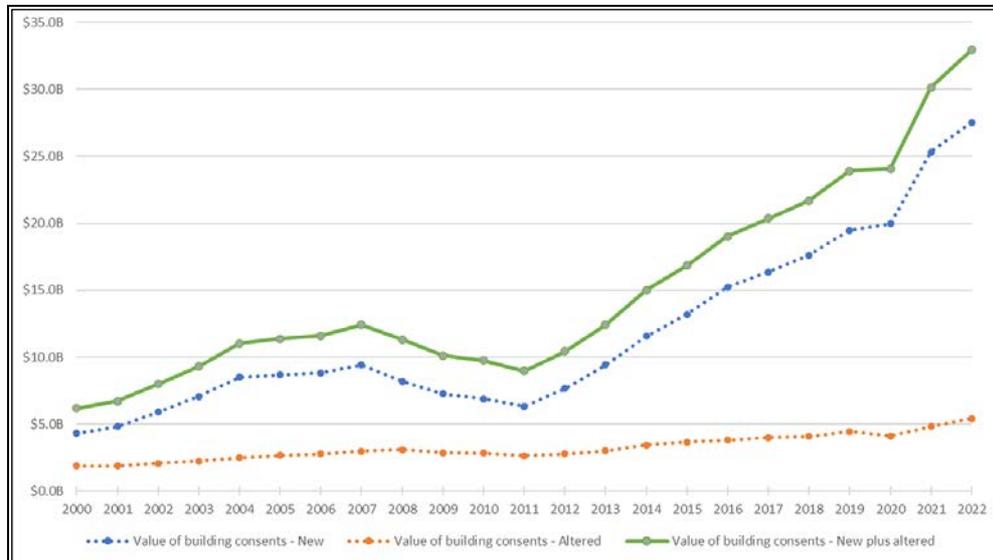


Figure four: Value of building consents 2000 to 2022 (\$B)



The current levy threshold has not been changed to reflect inflation in 30 years

In 2019, to account for the GST change from 12.5 to 15 per cent, the levy threshold was changed from \$20,000 to \$20,444. However, the levy threshold has not been changed to reflect changes to inflation, via the Consumer Price Index (CPI), in over 30 years. If the levy had been adjusted to reflect changes to the CPI, the current threshold would be closer to \$65,000 of building work.

MBIE proposes three changes to the building levy settings

To address the recommendations for continuous improvements in MBIE’s building regulatory system as well reducing the significant surplus in the building levy memorandum account, MBIE is proposing to make three changes to the building levy:

1. increase the levy threshold.
2. increase investment in MBIE’s building system services.
3. change to the levy rate.

These proposals will help MBIE meet the four objectives for this project:

- *Ensure the balance of the levy memorandum account trends to zero over time* – Office of the Auditor-General and Treasury cost recovery guidance are clear that memorandum account balances should trend to zero over time. MBIE is aware that the balance of the building levy memorandum account has been accumulating over some time, despite attempts to reduce this by lowering the levy rate in 2019.
- *Reduce the volume of lower value building consent applications paying the levy* – building consents worth less than \$65,000 make up 36 per cent of all consents. MBIE is keen to reduce costs on the public associated with low-value consents.

- *Improve the building and construction regulatory services MBIE delivers to levy payers and the building sector* – as part of its stewardship of the building regulatory system MBIE is keen to improve effectiveness through the delivery of fit-for-purpose services and support to the building sector in an effort to improve efficiency and lower costs for the sector and consumers.
- *Ensure that MBIE’s building and construction regulatory services have a sustainable funding base going forward* – like other parts of the economy, MBIE is facing cost increases associated with resourcing. If MBIE is to be an effective steward of the building system it must be properly resourced.

Understanding the trade-offs between choices

Ultimately the choice of preferred levy rate is dependent on the choices made in respect of matters one, two and three above.

The threshold chosen will determine the number and value of building consents upon which the levy is charged. However, the primary determinant of how much revenue is generated at a given levy rate is the value of consents, ie higher value consents generate more revenue than lower value consents. Therefore, even though the threshold may raise, the impact on levy revenue may be minimal, as is demonstrated below.

The level of investment is also a critical consideration as this determines MBIE’s ongoing costs. Usually a higher-level of investment would necessitate a higher levy rate to generate enough revenue to cover costs. However, MBIE is presently running a surplus, which enables additional costs to be temporarily offset. The extent of the offset and the impact on the rate is determined by the how quickly the surplus is run down, ie over one three-year levy cycle or two.

Hence, the change in rate is a function of the threshold at which the levy is set, the costs MBIE needs to recover and the timeframe over which the surplus is reduced.

1. INCREASE THE LEVY THRESHOLD

Proposal

The levy threshold can be adjusted at each three yearly review cycle. In 2019, to account for the GST change from 12.5 to 15 per cent, the levy threshold was changed from \$20,000 to \$20,444. However, the levy has not been changed to reflect changes in inflation, via the Consumer Price Index (CPI), in over 30 years.

MBIE has modelled the threshold to adjust it for inflation over that 30 year period. MBIE considered two options for raising the threshold in this modelling, \$40,000 and \$65,000. A threshold of \$40,000 was considered to be close to the midpoint between \$20,444 and \$65,000. Table one displays the impact of changing the levy threshold to either \$40,000 or \$65,000. If the levy had been adjusted to reflect changes to the CPI, the current threshold would be closer to \$65,000 of building work.

Table one: Impact of Changing the Levy Threshold. Data – all building consents (July 2021–June 2022)

Value of Threshold	Number of consents above this category	Portion of consents above the threshold	Revenue lost nationally from change in levy threshold (%)
\$40,000	54,897	72.38%	0.91%
\$65,000	48,299	63.69%	1.94%

As is shown in table one, modelling suggests there is minimal impact (0.91 per cent or 1.94 per cent) on levy revenue nationally from raising the threshold from the current \$20,444 to either \$40,000 or \$65,000.

Building consent authorities collect the levy on behalf of the government and retain a three per cent fee to cover the administrative costs to do so. We anticipate that there will be a minimal financial impact for councils and that the reduction of the fee should be offset by the reduced workload (see table two below for the reduction in consents). The impact for councils will vary depending on how many consents they process. There may be up-front administrative costs to update their systems and processes to reflect the new levy rate and threshold that the remaining fees are expected to cover.

Table two: Impact on building consents of the threshold being at either \$20,444, \$40,000 or \$65,000

Levy Threshold	Number of consents below the threshold (FY 21/22)	% of consents below the threshold (FY 21/22)
\$20,444	15,000	20%
\$40,000	21,000	28%
\$65,000	27,500	36%

As is shown in table two, increasing the threshold to either \$40,000 or \$65,000 would provide a cost benefit to more levy payers. This is because there would be an eight (\$40,000) to 16 (\$65,000) percentage point reduction in the number of levy payers that would be required to pay the levy under either a \$40,000 or \$65,000 threshold.

While adjusting the threshold to \$40,000 is a feasible option, MBIE does not consider this option achieves the policy intent of reflecting inflation over the period since the threshold was first set. We also note the minimal difference between a \$40,000 and \$65,000 on levy revenue and BCA revenue. For these reasons, we have not modelled potential levy rate changes associated with a \$40,000 threshold.

Moving forward, MBIE intends to review not only the levy rate but also the threshold at which it is payable as part of each three yearly review.

Questions for stakeholders

1. Should the threshold remain at \$20,444 or increase to \$65,000?

2. **For building consent authorities:** How will increasing the threshold to \$65,000 impact you (eg system changes and admin costs)?
3. What are the unintended consequences of changing the threshold? What would be the best way to minimise these?

2. INCREASE INVESTMENT IN MBIE'S BUILDING SYSTEM PERFORMANCE SERVICES

Proposal

As outlined above under *Current Issues* and *MBIE proposes three changes to building levy settings*, MBIE considers there is a case for increased investment in the following building system services:

1. digital channels and engagement.
2. compliance pathways to the building sector.
3. building for climate change.

Increasing investment in these services will lead to improvements in:

- the quality and volume of the information, education, and guidance delivered
- compliance pathways in areas such as the Building Code, and Acceptable Solutions and Verification Methods
- regulation of the building industry around climate change.

Initial costings suggest that this increased investment could be up to \$6.3m per annum. MBIE is suggesting that these costs should, in the first instance, be met from the surplus that currently exists rather than having the costs built into the levy rate. MBIE will track this spending to ensure that it is having its intended impact overtime through government performance and accountability processes.

Questions for stakeholders

4. Do you agree that MBIE should invest in regulatory service improvements?

TIMEFRAMES TO RUN DOWN THE SURPLUS

Proposal

The levy rate needs to be reduced to reduce the current surplus in the levy memorandum accounts. Two options have been identified for a time period to do this. The first option is three years (the length of time between reviews) and the second is six years.

Reducing the surplus over three years while keeping service levels and not increasing expenditure would require a significant rate reduction from \$1.75 to \$1.12 or \$1.15 (depending on the level of threshold agreed to). However, at the end of the three-year period, future levy payers would be meet with an equally significant rate increase.

However, if the service levels are kept the same and the surplus is run down over six years the level of change would not be as significant. In that instance, the levy rate would reduce from \$1.75 to \$1.39 or \$1.45 (again, depending on the threshold level). Under this scenario a greater number of levy payers will benefit from the rate reduction and future payers will not be subject to such a substantial rate increase.

Hence, if there is no additional investment in service improvement, MBIE's preference is for the surplus to be run down over six years.

If service improvements are provided for, then it will be possible to run the surplus down over three years with a reduction in the rate to either \$1.44 or \$1.48 (depending on the level of threshold).

However, if the levy is run down over six years under this scenario, the levy rate would need to increase to either \$1.99 or \$2.06 from 1 July 2023. This is because the surplus would need to be spread over a longer timeframe thus providing less of a subsidy in any given year than if it were run down faster (under the three year scenario).

3. CHANGES TO THE LEVY RATE

Decisions about proposals one and two above will determine the preferred levy rate.

Table three: Levy rate options to run down the memorandum account surplus

Investment/Memo account cost recovery scenario	Keep current service levels and reduce the memorandum account down within three years (June 2026)	Keep current services levels and reduce the memorandum account down within six years (June 2029)	Invest in service improvements over three years (June 2026)	Invest in service improvements over six years (June 2029)
Levy rates under a \$20,444 threshold	\$1.12	\$1.39	\$1.44	\$1.99
Levy rates under a \$65,000 threshold	\$1.15	\$1.45	\$1.48	\$2.06

MBIE thinks that the most benefits for the public will be achieved by increasing the levy threshold to \$65,000 and increasing investment in MBIE’s building and construction regulatory services (funded from the surplus) over three years. This would mean choosing to reduce the levy to \$1.48.

Under the preferred rate, the memorandum account would trend to zero over 3.5 years, providing sufficient funding until the rate can be reviewed in accordance with the Building Act 2004 in no more than three years following its commencement.

Impact on BCAs

As BCAs collect the levy, they may face up-front administrative costs to update their systems and processes to reflect the new levy rate and threshold. BCAs currently retain three per cent of the levy to cover administrative costs. MBIE expects that portion will cover these new costs.

Impact on building owners

The impact of reducing the levy would be to lower building consent fees, but the level of service that levy payers would receive would stay the same if not improve.

On a \$467,220 detached dwelling, the levy costs would reduce from around \$817.64 to \$677.47 under the preferred scenario of increasing the threshold at which the levy is payable while funding the approximate \$6.3m in service investment from the surplus.

On a \$20 million commercial build, the levy costs would reduce from \$35,000 to \$29,000.

The impact of increasing the threshold means that building consents valued between \$20,444 and \$64,999 would no longer be subject to the levy. Those affected would benefit from a minor reduction in the costs of construction.

The investments in service improvements that MBIE is proposing will mean that levy payers are more likely to receive building work that meets current regulations.

Questions for stakeholders

5. Do you agree with reducing the building levy rate to a \$1.48?

HOW THE PROPOSED CHANGES MEASURE UP TO MBIE'S ASSESSMENT CRITERIA

Does the proposal meet the objectives for managing the building levy memorandum account?

The proposed changes are consistent with the overall objective of reducing a large and growing surplus in the building levy memorandum account.

Does the proposal support the desired behavioural shifts in the building sector?

The proposed changes will support the desired behavioural shifts in the building sector by:

- reducing the costs of residential and commercial building consents that are subject to the levy
- improving knowledge of, and compliance with, building regulations.

Would the benefits of the proposal outweigh the risks and costs?

MBIE considers that the changes to the levy rate and threshold will confer only benefits to building consent applicants such as homeowners and developers.

BCAs will incur some administrative costs to recalibrate their existing business systems and to update websites and printed material. MBIE expects that these costs will be absorbed by retaining three per cent of levy revenues for administrative purposes, although the BCAs will also be operating off a smaller funding base. We welcome feedback on this.

Investing in improvements to MBIE's regulatory services will ensure that levy payers are more likely to receive building work that meets current regulations.

Is the proposal consistent with related government policy and regulations?

The proposal is consistent with both:

- Treasury best practice guidance on managing fees and levies
- Office of Auditor General good practice guidance on setting and administering fees and levies.

MBIE PROPOSES THAT THE LEVY CHANGES TAKE EFFECT ON 1 OCTOBER 2023 OR SHORTLY THEREAFTER

This date was chosen to take account of the proposals in this document being implemented. Attainment of this date is subject to the availability of Cabinet.

We welcome your feedback on any administrative impacts on BCAs to recalibrate their systems by this date.

Questions for stakeholders

- 6.** Do you agree with the proposed start date of 1 October 2023 for the changes to the building levy rate and threshold?
- 7. For building consent authorities:** How long would you need to implement the proposed changes to the building levy rate and threshold?

RECAP OF QUESTIONS

Increase the levy threshold

1. Should the threshold remain at \$20,444 or increase to \$65,000?
2. For building consent authorities: How will increasing the threshold to \$65,000 impact you (eg system changes and admin costs)?
3. What are the unintended consequences of changing the threshold? What would be the best way to minimise these?

Increase investment in MBIE's services

4. Do you agree that MBIE should invest in regulatory service improvements?

Changes to the levy rate

5. Do you agree with reducing the building levy rate to a \$1.48?

Levy changes take effect on 1 October 2023 or shortly thereafter

6. Do you agree with the proposed start date of 1 October 2023 for the changes to the building levy rate and threshold?
7. For building consent authorities: How long would you need to implement the proposed changes to the building levy rate and threshold?



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