



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
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5

Discussion paper –
Building system legislative reform

Building levy

APRIL 2019



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Summary of Part 5: Building levy

The building levy should be set at an appropriate level; MBIE should be able to spend the money raised by the levy on stewardship of the building sector

Applicants for building consents which are granted, and which are above a threshold, pay a levy. The levy funds MBIE's work to regulate the building sector in connection with the functions of MBIE's chief executive under the *Building Act*.

The changes set out in this section address three problems:

- ✘ The current levy rate is higher than it needs to be. The rate was set in 2005 when there was significantly less building activity. The levy has generated a surplus that stood at \$43 million in July 2018.
- ✘ Different building consent authorities (BCAs) use different thresholds for the building levy. This is because the GST rate increased in 2010, which had the effect of increasing the threshold. Not all BCAs adopted this change.
- ✘ The *Building Act* sets out what the chief executive can spend building levy funds on in a way that could be expanded. The Act doesn't specifically allow money raised by the building levy to be spent on activities related to broader stewardship of the building regulatory system unless they're already functions of the chief executive under the Act.

We want stakeholders' feedback on three proposals

1	Reduce the levy rate from \$2.01 including GST to \$1.50 including GST (per \$1,000).
2	Standardise the levy threshold at \$20,444 including GST.
3	Amend the <i>Building Act</i> to enable MBIE's chief executive to spend the levy for purposes related to broader stewardship responsibilities in the building sector.

These changes will help deliver the programme's outcomes

The programme's three key goals are safe and durable buildings, an efficient building regulatory system, and a high-performing building sector.

The proposals set out in this section will help meet these goals by:

- reducing the costs of residential and commercial building consents that are subject to the levy
- supporting MBIE's role as the regulator, and help MBIE's wider stewardship of the building regulatory system
- supporting a high-performing building regulatory system.

The building levy

Proposed changes will reduce cost, standardise the levy threshold, and support stewardship of the building sector

The building levy funds the core regulatory functions of the chief executive under section 53 of the *Building Act*. The levy is paid by applicants who are granted a building consent for work valued above the specified threshold.

The levy and the threshold must be set at the right levels. MBIE relies on the levy for some funding, but applicants for building consents shouldn't pay more than is reasonable.

Changes to the levy rate and threshold will lower the cost of building consents for applicants and apply a consistent threshold across all BCAs.

MBIE proposes that the chief executive should be able to spend the levy on activities related to stewardship of the building sector. Stewardship requires MBIE to analyse the building environment, understand where the future might take us and assess whether the building regulatory system is equipped to cope with the future. 'Stewardship' in this instance means actively planning for and managing the medium to long-term development and improvement of the building regulatory system as a whole. The goal is cost effective, efficient, fair and easy to use regulation.

Providing MBIE's chief executive some flexibility to spend the levy on stewardship responsibilities will help MBIE to:

- be a more effective regulator by promoting a consistent all-of-system view on building sector regulation
- ensure that the building regulatory system is fit for purpose over the medium to long-term
- meet its broader stewardship responsibilities as specified by the Treasury and Cabinet.

Note: All figures related to levy rate and threshold in this section include GST.

The proposed changes to the Building Levy Order 2005 will lower the rate of the levy payable and adjust the levy threshold

MBIE proposes two changes to the Building Levy Order 2005 to:

- lower the rate of the levy payable on successful building consents, to \$1.50 from \$2.01¹
- standardise the levy threshold at \$20,444 including GST.

A change to the *Building Act* will enable MBIE's chief executive to spend the levy on broader building sector stewardship responsibilities

MBIE proposes a change to the *Building Act* to enable the chief executive to spend the levy on building sector stewardship.

¹ Note that the current Order refers to \$1.97 including GST of 12.5%. See regulation 4 of the Building Levy Order 2005 and section 78(3) of the Goods and Services Tax Act 1985.

Our regulatory assessment shows that a range of statutes contribute to the building regulatory system². The building regulatory system includes a broad range of participants, legislative tools and standards for regulating buildings, building work and occupational groups in the building industry.

All building sector participants contribute to the effective functioning of the building system. But system complexity means that opportunities are likely to emerge to make the system easier to use for the benefit of regulated groups, building consent applicants, BCAs and the wider public.

How the building levy works today

Building consent applicants pay the levy if a consent is granted

The levy is set in the Building Levy Order. BCAs calculate the levy using the estimated value of the building work set out in a building consent. If the value is over a threshold, and if the consent is granted, owners or developers of residential or commercial buildings pay the levy. The levy must be paid when the consent is granted.

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

The revenue from the levy is used to fund MBIE's functions under the *Building Act*. For the most part, these functions are specific and operationally focused. The Building Act does not specifically allow MBIE to use levy funds on overall stewardship of the building sector which is central to the development of integrated high quality regulation.

Currently, the levy is used to fund a range of functions and activities performed by MBIE. These include operational policy advice and service design, service delivery, information and education, compliance and enforcement and monitoring and education.

² These are the *Building Act*, the *Registered Architects Act*, the *Plumbers, Gasfitters, and Drainlayers Act*, the *Chartered Professional Engineers of New Zealand Act*, the *Weathertight Homes Resolution Act*, the *Electricity Act*, the *Construction Contracts Act* and the *Engineering Associates Act*.

The current levy rate is no longer appropriate and not all BCAs use the same levy threshold

The current levy rate is \$2.01 for every \$1,000 of the estimated value of the building work for which a building consent is issued.

Apart from a 2010 GST adjustment, the levy rate hasn't changed since the Building Levy Order 2005 came into effect in April 2005.

The current levy rate is no longer appropriate because it was set based on a lower level of activity in the sector and activity in the construction sector has increased.

The current levy rate has generated a surplus

The levy has generated a surplus of \$43 million as at July 2018 and this surplus is projected to rise further. The levy rate should be set at a level where it funds the costs of MBIE's functions under the *Building Act*. The current levy rate has been over-recovering for several years because of unprecedented levels of activity in the construction sector.

Not all BCAs use the same levy threshold

The levy applies to all projects above a specified value. The current threshold in the Building Levy Order is \$20,000 including GST. This threshold is used to decide which consents are subject to the levy.

In 2010 the GST rate increased from 12.5% to 15%. This had the effect of changing the threshold to \$20,444. We've found that BCAs are using different thresholds for the levy due to this change in the rate of GST.

The purposes for which we can spend the levy

The *Building Act* allows the levy to be spent to perform the chief executive's functions under the Act. These functions don't specifically include MBIE's broader stewardship of the building sector. The chief executive cannot generally spend levy funds in ways that might lift the full breadth of building sector skills, streamline common processes or hold different types of regulated practitioners to account fairly and consistently – unless the expenditure is for or connected with the chief executive's functions under the *Building Act*.

More generally, although reviewing the *Building Act* is one of the roles described for MBIE in the Act, the Act is silent on MBIE's role of reviewing how the building regulatory system as a whole is functioning. In short, the Act describes our expenditure of the levy in a way that is narrower than the broader role we play as an effective building sector regulator.

MBIE proposes three changes to the building levy

1

Reduce the rate of the levy from \$2.01 to \$1.50.

2

Standardise the threshold at \$20,444.

3

Amend the *Building Act* to enable MBIE's chief executive to spend the levy for purposes related to broader stewardship responsibilities in the building sector.

The objectives of these changes are to:

- reduce the surplus generated by the levy to Treasury best practice levels
- provide BCAs with certainty about thresholds, and make those thresholds consistent
- enable the chief executive to spend the levy on broader building sector responsibilities, and a system-wide view on building regulation.

1. Reduce the rate of the building levy

Proposal



Reduce the rate of the building levy from \$2.01 to \$1.50.

Reducing the levy rate is consistent with the objective of reducing a large and growing balance in the building levy memorandum account. A lower levy rate would result in revenue being more aligned to costs of the services that MBIE provides to levy payers.

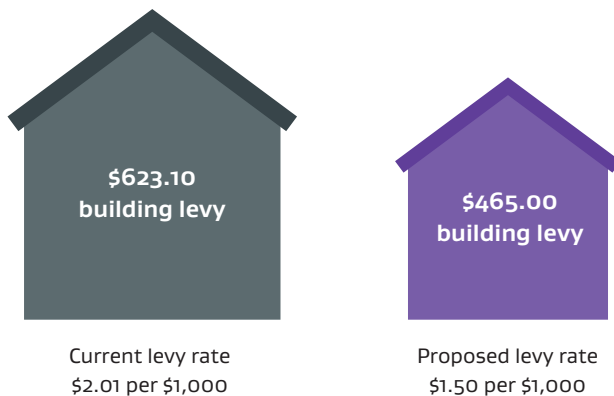
On a \$310,000³ private house development (the current average cost of a new-build in Auckland) the levy bill would reduce from around \$623 to \$465.

Questions for stakeholders



- | | |
|------------|--|
| 5.1 | Do you agree that the levy rate should be reduced from \$2.01 to \$1.50? |
| 5.2 | For building consent authorities:
What impact, if any, would a reduced levy rate have on building consent authorities? |
| 5.3 | Other than reduced building consent costs, what are the other impacts from reducing the current levy rate? |
| 5.4 | For building consent authorities:
How long would you need to implement the proposed change to the building levy and threshold? |

Impact of building levy rate on a \$310,000 private home build



³ This is the average cost of building work for a 150m², three or four bed, one or two bath home, in Auckland, at June 2018.

2. Standardise the threshold for the building levy

Proposal



Standardise the threshold for the building levy at \$20,444.

Standardising the threshold at \$20,444 means that building consents worth up to \$20,443 would not trigger the levy. Clarifying the threshold at the higher of the two amounts used by BCAs is also consistent with the objective of reducing a large and growing balance in the building levy memorandum account.

MBIE will monitor the impact of this change to inform a more substantive threshold review after a new levy rate comes into force.

Questions for stakeholders



5.5

Do you have any comments on standardising the threshold at \$20,444?

3. Amend the *Building Act* to enable MBIE's chief executive to spend the levy on for purposes related to broader stewardship responsibilities in the building sector

Proposal



Amend the *Building Act's* provisions to enable the chief executive to spend the levy on activities related to stewardship responsibilities in the building sector.

'Stewardship' is a term that sums up the Government's expectation that MBIE will actively plan for and manage the Crown's and the sector's medium and long-term interests.

In 2017, the Government updated its expectations for regulatory stewardship. These expectations include responsibilities for:

- monitoring, review and reporting on regulatory systems
- robust analysis and implementation support for changes to regulatory systems, and
- good regulator practice.

At a practical level, these stewardship expectations require MBIE to analyse the building environment, understand where the future might take us, and assess whether the building regulatory system is equipped to cope with the future.

In the context of the building regulatory system, 'stewardship' means actively planning for and managing the medium to long-term development of the whole building regulatory system, and related activities. The stewardship goal is that the system is easy to use, flexible, responsive for industry and BCAs, and fair across the range of different sector occupations.

As previously discussed, the building regulatory system is broad and complex. It involves a number of different laws and regulations, institutions and practices that can make the system challenging to navigate and use.

MBIE considers that amending the *Building Act* so the chief executive can spend the levy on activities related to stewardship responsibilities in the building sector will help MBIE to:

- take an all-of-system view
- plan and manage the medium to long-term development and improvement of the building regulatory system, and related activities
- monitor and oversee of the building regulatory system as a whole.

A framework will help guide decisions about how to spend the levy

MBIE has a range of checks and balances to help guide decisions about spending the levy. The Treasury has also released guidance on the use of levies.

Each stewardship initiative would need to be considered on a case-by-case basis to demonstrate links to the chief executive's functions under the *Building Act*. If this link cannot be made, then other funding sources, such as Crown funding or fees and charges, would need to be considered.

Questions for stakeholders



5.6

Do you agree that the *Building Act* should be amended so MBIE's chief executive may spend the levy for purposes relating to building sector stewardship?

How the proposed changes measure up to the five 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 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.



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 expect that these costs will be absorbed by retaining 3% of levy revenues for administrative purposes, although the BCAs will also be operating off of a smaller funding base. We welcome feedback on this.

Expenditure under the levy has fallen significantly short of the amount of levy collected. Increasing the scope of levy expenditure will enable MBIE to increase the amount of levy funding used and apply the funding more effectively and across a wider range of complex building system issues. This will have benefits for those who are regulated and for those who need to use the building system.

In the medium to long-term, enabling MBIE's chief executive to consider broader stewardship responsibilities in the building sector, when considering the use of the levy, will help MBIE be a more effective regulator for the benefit of all New Zealanders.



Is the proposal consistent with other elements of the building system?

Enabling the chief executive to support building sector stewardship responsibilities is consistent with the all-of-system approach taken in other parts of the building legislative reforms.



Is the proposal consistent with related government policy and regulations?

The proposals are consistent with both Treasury best practice guidance to manage levies to within 10% of yearly levy revenue and the government's expectations for regulatory stewardship.

Potential impacts of the proposed changes



Building consent authorities

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 the appropriate threshold, if they haven't already adopted it. BCAs currently retain 3 per cent of the levy to cover administrative costs. MBIE expects that portion will cover these new costs.

The impact of standardising the levy threshold to \$20,444 means that the BCAs not currently using this threshold would adopt it. This change would lead to clarity and consistency for all BCAs and applicants on what is the correct threshold.

Most large BCAs already use the higher threshold of \$20,444. These BCAs would not need to make any operational changes.



Building owners and developers

The impact of reducing the levy would be lower building consent fees, but the level of service that levy payers receive would remain the same.

On a \$310,000 private house development (the current average cost of a new-build house in Auckland) the levy bill would reduce from around \$623 to \$465.

On a \$20 million commercial build, the levy bill would reduce from \$40,200 to \$30,000.

The impact of increasing the threshold means that building consents valued between \$20,000 and \$20,443 would no longer be subject to the levy. Those affected would benefit from a minor reduction in the costs of construction.



MBIE

Reducing the building levy revenue is in line with our objective of reducing a large and growing surplus in the building levy memorandum account.

The impact of enabling MBIE's chief executive to spend the levy on building sector stewardship activities, will mean MBIE can see the building regulatory system as an asset and:

- ensure the building regulatory system is well designed and remains fit for purpose over the medium to long term
- fulfil the government's broader stewardship expectations for the building regulatory system.

We propose that the levy changes take effect on 1 July 2020

If progressed, the proposed changes to the levy rate and threshold will come into effect on 1 July 2020. This date was chosen as the start of the first full financial year after final decisions on the levy rate and threshold are made.

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

Changes in the *Building Act* to support building sector stewardship will be included in the broader legislative reform programme. Timeframes for implementing this change are on a longer timescale.

Questions for stakeholders



5-7

Do you agree with the proposed start date of 1 July 2020 for the changes to the building levy rate and threshold?

Recap of questions

Part 5 – Building levy



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| 5.3 | Other than reduced building consent costs, what are the other impacts from reducing the current levy rate? |
| 5.4 | For building consent authorities:
How long would you need to implement the proposed change to the building levy and threshold? |
| 5.5 | Do you have any comments on standardising the threshold at \$20,444? |
| 5.6 | Do you agree that the <i>Building Act</i> should be amended so MBIE's chief executive may spend the levy for purposes relating to building sector stewardship? |
| 5.7 | Do you agree with the proposed start date of 1 July 2020 for the changes to the building levy rate and threshold? |

List of acronyms

BCA	Building consent authority
GST	Goods and services tax
MBIE	Ministry of Business, Innovation and Employment



Have your say

See **page 4** of the introduction (Part 1) for details on how to submit your feedback.



**Submissions close
on 16 June 2019**

