

# Impact Summary: Earthquake-prone buildings substantial alterations regulations

## Section 1: General information

Purpose
<p>The Ministry of Business, Innovation and Employment (MBIE) is solely responsible for the analysis and advice set out in this Regulatory Impact Summary (RIS), except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:</p> <ul style="list-style-type: none"><li>• final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.</li></ul>

Key Limitations or Constraints on Analysis
<p>A key limitation of the analysis relates to the quality of information about earthquake-prone buildings (EPBs).</p> <p>While some Territorial Authorities (TAs) have provided MBIE indicative data about the numbers of low-value buildings that might be earthquake-prone in their districts, the exact number of EPBs is not known. This is because the statutory timeframes for identifying EPBs has not yet passed. It is also difficult to predict how building owners and users might change their behaviour in response to an amendment to the EPB substantial alterations Regulations.</p> <p>In terms of quantitative estimates, a full list of the assumptions behind, and limitations of, the Net Present Value (NPV) estimates in this RIS are outlined in the previous <a href="#">RIS published on 27 April 2017</a>. As part of these calculations, the default Treasury discount rate of 6 percent for regulatory proposals was used.</p> <p>Targeted consultation on a possible amendment to the EPB substantial alterations Regulations to address potential disproportionate impacts on provincial and small towns was carried out with Territorial Authorities, Local Government New Zealand (LGNZ), Engineering New Zealand (ENZ), the New Zealand Society for Earthquake Engineering (NZSEE), the Structural Engineering Society of New Zealand (SESOC), and the Property Council of New Zealand (PCNZ) from 8 January 2019 to 15 February 2019. These groups were consulted specifically due to the nature of the change being considered and because they are the key groups who will be affected by the proposal.</p> <p>Overall, MBIE is satisfied that the conclusions in this RIS provide a reasonable indication of the potential direction and significance of the effects of the options analysed.</p>
Responsible Manager (signature and date):
<p>Katrina Quickenden</p> <p>Building Policy</p> <p>Building, Resources and Markets</p> <p>Ministry of Business, Innovation and Employment (MBIE)</p>

## Section 2: Problem definition and objectives

### 2.1 What is the policy problem or opportunity?

**New Zealand has a new system for managing EPBs that includes specific provisions when substantial alterations to EPBs are carried out**

A new system for managing EPBs came into force on 1 July 2017. It requires owners of EPBs to take action within set timeframes. This system targets buildings and parts of buildings that pose the greatest risk to public safety or other property in a moderate earthquake event.

*Table One: New EPB system timeframes for identification and seismic work*

Seismic risk area	TAs must identify potentially earthquake-prone buildings by:		Owners of earthquake-prone buildings must carry out seismic work within (time from issue of EPB notice):	
	Priority buildings	Other	Priority buildings	Other
High	1 Jan 2020	1 July 2022	7.5 years	15 years
Medium	1 July 2022	1 July 2027	12.5 years	25 years
Low	N/A	1 July 2032	N/A	35 years

Section 133AB of the Building Act 2004 defines what an EPB is. In practice, an EPB is often referred to as a building that is 33 percent or less of the new building standard (NBS).

Part of the new system applies when substantial alterations are made to EPBs. The purpose of these provisions is to promote progressive upgrades of EPBs within the statutory timeframes.

If substantial alterations are carried out to an EPB, owners must do the required seismic work at the same time as the alterations (section 133AT of the Building Act 2004 refers). The level of strengthening required is so the building is not earthquake-prone (i.e. to bring the building to at least 34 percent of NBS).

In practice, this means a building consent must not be granted for a 'substantial' alteration to an EPB unless the alteration includes the necessary seismic strengthening work to ensure the building is no longer earthquake-prone. A substantial alteration is defined in regulations as building work (other than seismic strengthening) that has an estimated value of at least 25 per cent of the building's value, aggregated as the total value of the alterations over the preceding two year period.

Proposed regulations were consulted on prior to the new EBP system coming into force on 1 July 2017. During public consultation on the proposed definition for substantial alterations, there was no clear consensus on the best option. The current definition in the Regulations was recommended on the basis that it is the most consistent across the country and the easiest to apply. At the time the regulations were set, it was acknowledged that there may be situations in which alterations could be considered 'substantial' simply because the value of a building is low. However, it was not expected to have an undue impact as the building's value would likely influence the nature and cost of alterations being undertaken.

**There is evidence the EPB substantial alterations regulations are having a disproportionate impact in provincial and small towns, discouraging positive and progressive improvements to low-value EPBs**

In August 2018 the Minister for Building and Construction, Hon Jenny Salesa, met with a group of provincial TAs<sup>1</sup> (the Provincial TA Group) and LGNZ to discuss their concerns about the disproportionate impact of the substantial alterations regulations on provincial and small towns.

The Provincial TA Group considered that because of the way the regulations currently work, modest building improvements in provincial and small towns (such as fit-outs for tenancies) would also require seismic strengthening to be done immediately, creating significant affordability problems and preventing any work from being carried out in these areas. The Provincial TA Group considered that the regulations were having a disproportionate impact on provincial and small towns due to the large number of low-value buildings in these areas.

The Provincial TA Group subsequently provided further information to MBIE about the building values of 530 potential EPBs in their districts. The information shows that there are a significant number of buildings in provincial and small towns with very low values. The median building value of the 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. Owners of low-value buildings who are altering their buildings are likely to have the provisions triggered by work that is not really substantial. While these districts do have their own unique social and economic contexts that impact the state and value of buildings, the information provided is considered to be indicative of building values and the distribution of values in provincial and rural New Zealand. MBIE does not have detailed information on the number of buildings are not being upgraded due to these regulations or the flow on implications of this work not being undertaken.

MBIE also tested the problem definition as part of a targeted consultation process in early 2019 with TAs, LGNZ, engineering groups and the Property Council. 18 (67 percent) submissions agreed that current regulations have a disproportionate impact on provincial and small towns when compared to urban centres. Five (18 percent) submissions had some agreement that this was an issue. Four (15 percent) submitters, mainly urban TAs, disagreed that this was an issue at all.

This issue needs to be addressed to mitigate any disproportionate impact of EPB substantial alterations regulations for provincial and small towns and allow owners of low value EPBs to carry out modest positive and progressive improvements without triggering the requirement to carry out seismic strengthening at the same time, consistent with the intent of the legislation.

**Objectives**

In addition to addressing concerns about the EPB substantial alterations in the most appropriate way (including future-proofing in regards to adjustments for inflation). MBIE is seeking to ensure that any amendment to the regulations:

- maintains the integrity of the EPB system by allowing for modest improvements to EPBs that are not 'substantial' without triggering the requirement to carry out seismic strengthening immediately
- mitigates any disproportionate impact of the EPB substantial alterations regulations for

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<sup>1</sup> Manawatu District Council, Whanganui District Council, Rangitikei District Council and Tararua District Council.

provincial and small towns.

## **2.2 Who is affected and how?**

Building owners, TAs and users of buildings are affected by the EPB substantial alterations regulations. Changing the regulations to mitigate their disproportionate effect on provincial and small towns will affect these stakeholders.

The proposed amendment to the regulations will enable modest upgrades to be made to low-value EPBs without triggering the requirement to carry out seismic strengthening at the same time.

The proposed amendment is consistent with the underlying intent of the provisions, which is to capture 'substantial' alterations while maintaining the integrity of the EPB system. A risk of the proposed amendment is that some low-value EPBs could remain earthquake-prone for longer than they would otherwise be within overall statutory timeframes for remediation, and may be more likely to be occupied. This could expose users of these buildings to additional risk. Engineering groups have raised some concerns about this. However, MBIE considers this risk to be low. There is evidence to indicate that the current regulations are preventing any upgrades to low-value EPBs being undertaken. EPBs will still need to be remediated within the required overall statutory timeframes. These timeframes will not be changed by any amendment to the Regulations.

## **2.3 Are there any constraints on the scope for decision making?**

The scope of options is limited by the scope of the regulation making power in section s401C of the Building Act, which allows for criteria to be prescribed for determining whether an alteration to a building is a 'substantial alteration' under s133AT of the Act. The option of revoking the Regulations has also been considered.

No non-regulatory options have been considered. The problems are caused by the current regulations. A regulatory solution is required.

# Section 3: Options identification

## 3.1 What options have been considered?

- Four high level options for amendment of the regulations were considered:
- a. Incorporating a dollar value into the regulations so earthquake strengthening work is triggered once a threshold of 25% of the capital value or a specified dollar value is met
  - b. Creating separate thresholds for large centres with high capital values, and regional centres and small towns with low capital values, so seismic strengthening work is triggered by different mechanisms depending on location
  - c. Changing the regulation to consider the type of building work being carried out, so seismic strengthening work is triggered only when certain types of building work is carried out
  - d. Revoking the regulations.

*Table Two: Advantages and disadvantages of high level options considered for EPB Regulation amendment*

Option	Advantages and disadvantages	
<b>Status quo</b>		
<b>Advantages</b> <ul style="list-style-type: none"> <li>• It is consistent across the country.</li> <li>• It is easy to apply.</li> </ul> <b>Disadvantages</b> <ul style="list-style-type: none"> <li>• It disadvantages owners of low-value buildings compared to owners of high-value buildings.</li> <li>• It disproportionately impacts regional towns because of the high number of low-value buildings compared to urban centres.</li> </ul>	<b>Evaluation against objectives</b>	
	Appropriately addresses concerns	× ×
	Maintains integrity of the system	✓ ✓
	Mitigates impact on provincial towns	× ×
<b>a. Adding a dollar value to the existing threshold</b>		
<b>Advantages</b> <ul style="list-style-type: none"> <li>• A dollar based threshold is widely supported by the local government sector<sup>2</sup>.</li> <li>• It is expected to be relatively easy to apply.</li> <li>• The change would be an adjustment to the Regulation rather than a fundamental change in policy.</li> <li>• It would allow owners of low value buildings to carry out modest building work without meeting the substantial alteration threshold.</li> <li>• It is a good fit with the objectives.</li> </ul> <b>Disadvantages</b> <ul style="list-style-type: none"> <li>• It may require more adjustments over time to adjust for inflation.</li> </ul>	<b>Evaluation against objectives</b>	
	Appropriately addresses concerns	✓ ✓
	Maintains integrity of the system	✓ ✓
	Mitigates impact on provincial towns	✓ ✓

<sup>2</sup> A remit, recommending the threshold be adjusted to be the greater of 25 percent of the capital value or \$200,000, proposed by Whanganui District Council, at the LGNZ Annual Conference in July 2018, passed with 95 percent support.

<b>b. Introducing a location based threshold</b>			
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>It would provide for different triggers to account for the significant difference between values in urban centres compared to small towns, so it would not have a disproportionate impact on provincial towns where building values tend to be lower.</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>The classification of areas as having high or low capital values is not clear cut as there are a range of capital values in all locations, and is likely to be complex to define.</li> <li>It may be complex to apply.</li> <li>The allocation of locations to the high or low capital value threshold may need to change over time, particularly given the long timeframes for EPB remediation.</li> </ul>	<b>Evaluation against objectives</b>		
	Appropriately addresses concerns	✓	
	Maintains integrity of the system	✗	
Mitigates impact on provincial towns	✓		
<b>c. Introducing a type of work based threshold</b>			
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>The threshold is unrelated to building value, so would not have a disproportionate impact on provincial towns where building values tend to be lower.</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>The definition of the type of building work is likely to be complex. Building work within defined categories can vary significantly and may lead to different scales of building work being triggered based on what a definition captures, rather than whether or not the work is significant.</li> <li>Owners of low-value buildings still may not be able to carry out some types of modest building work without triggering strengthening requirements if the building work is within the defined categories.</li> <li>The application may require a high level of judgment by TAs, and so it may be difficult to ensure consistent application.</li> </ul>	<b>Evaluation against objectives</b>		
	Appropriately addresses concerns	✓	
	Maintains integrity of the system	✗	
Mitigates impact on provincial towns	✓		
<b>d. Revoking the regulations</b>			
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>It may allow some owners to carry out building work without meeting the substantial alteration threshold.</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>Section 133AT(2)(c) of the Building Act would be without a definition and this could create doubt over how the whole of section 133AT(2) applied if there was no accompanying amendment to make it clear how that provision is to operate.</li> <li>Judgement of TAs may lead to inconsistent application in determining how or when the provisions apply.</li> </ul>	<b>Evaluation against objectives</b>		
	Appropriately addresses concerns	✗✗	
	Maintains integrity of the system	✗✗	
Mitigates impact on provincial towns	✓✓		
<b>Key</b>			
✗✗	✗	✓	✓✓
Strongly inconsistent with objective	Inconsistent with objective	Consistent with objective	Strongly consistent with objective
<p>Adding a dollar value to the existing threshold is MBIE's preferred high level option. It is strongly supported by local government. It is easy and consistent to apply and would be an adjustment to the regulations rather than a fundamental change in policy. It would allow owners of low value buildings to carry out modest building work without meeting the substantial alteration threshold.</p> <p>Three options were identified for the detailed design, in terms of how to appropriately incorporate a dollar value into the regulations:</p> <p>a(i) Adding a minimum dollar value as <b>a separate, second threshold</b>. This would</p>			

mean substantial alterations would be triggered by alterations that are the greater of 25 per cent of the building's value of the minimum dollar value – i.e. an alteration is a substantial if it is either 25% of the building's value **or** more than a minimum dollar value, whichever is greater.

a(ii) Adding a minimum dollar value as a **qualifier, retaining one threshold**. This would mean substantial alterations are triggered by alterations that are 25 per cent of the building's value, but only if the value of the work is greater than the minimum dollar value – i.e. an alteration is defined as a substantial alteration only when the work is 25% of a building's value **and** it is valued over a minimum dollar value.

a(iii) Adding **an exclusion for buildings below a minimum building value**. This would mean substantial alterations are triggered by work that is 25 per cent of the building's value, but only if the building value is greater than the minimum value.

*Table Three: Advantages and disadvantages of methods for incorporating a minimum dollar value into the EPB substantial alterations regulation*

Option	Advantages and disadvantages	
<b>a(i). Adding a minimum dollar value as a separate threshold</b>		
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>It is expected to be relatively easy to apply.</li> <li>It would be an adjustment rather than a fundamental change.</li> <li>It would allow owners of low-value buildings to carry out modest building work without meeting the substantial alterations threshold.</li> <li>The proposal is widely supported by the local government sector.</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>The change may make the Regulations less futureproofed, as the value would be subject to inflation. However, this may be resolved by periodic amendments to the Regulation to adjust for inflation.</li> </ul>	<b>Evaluation against objectives</b>	
	Appropriately addresses concerns	✓
	Maintains integrity of the system	✓
Mitigates impact on provincial towns	✓	
<b>a(ii). Adding a minimum dollar value as a qualifier</b>		
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>Consistent with the objectives of the proposal.</li> <li>Maintaining one threshold but with a qualifier, is a good fit with interpreting the term substantial. The qualifier rules out low-value work that is not substantial.</li> <li>It would allow modest building work to be carried out on all buildings, regardless of building value, or type of work.</li> <li>Adding a qualifier (rather than an additional threshold) requires the least amount of change to the current regulation.</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>The specific proposal is expressed differently to the local government sector proposal.</li> <li>As with option a(i), periodic amendments to the Regulation may be needed to adjust for inflation.</li> </ul>	<b>Evaluation against objectives</b>	
	Appropriately addresses concerns	✓✓
	Maintains integrity of the system	✓✓
Mitigates impact on provincial towns	✓✓	
<b>a(iii). Adding an exclusion for buildings below a minimum building value</b>		
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>The change would ensure beneficial building work can be carried out to the lowest value buildings without triggering seismic strengthening work.</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>There would be a blunt difference in treatment of buildings</li> </ul>	<b>Evaluation against objectives</b>	
	Appropriately addresses concerns	✓

<ul style="list-style-type: none"> <li>above and below the specified value.</li> <li>Alterations that are substantial, using a common meaning interpretation, would not trigger the substantial alteration threshold by virtue of the exclusion.</li> <li>The specific proposal is not widely supported by the local government sector (although this proposal would have the same effect as the proposal supported by the local government sector).</li> <li>As with the other options, periodic amendments to the Regulation may be needed to adjust for inflation.</li> </ul>	Maintains integrity of the system	×
	Mitigates impact on provincial towns	✓

**Key**

×	×	✓	✓✓
Strongly inconsistent with objective	Inconsistent with objective	Consistent with objective	Strongly consistent with objective

Adding a minimum dollar value as a qualifier is MBIE's preferred detailed option. It is consistent with the objectives of the proposal. Maintaining one threshold, but with a qualifier is a good fit with interpreting the term substantial. The qualifier rules out low-value work that is not substantial. It would also allow modest building work to be carried out on all buildings, regardless of building value or type of work. Adding a qualifier (rather than an additional threshold) requires the least amount of change to the current regulation.

Adding an exclusion for buildings below a minimum building value was not chosen because there would be a blunt difference in treatment of buildings above and below the specified value, and alterations that are substantial, using a common meaning interpretation, would not trigger the substantial alteration threshold by virtue of the exclusion. A separate dollar value for a threshold was not chosen because it is a more complex approach than the preferred option.

Two options for setting a minimum dollar value (\$100,000 or \$200,000) were identified as broadly consistent with the objectives. A further option of \$150,000 was identified following targeted consultation. The advantages and disadvantages of each option are outlined in the table below.

*Table Four: Advantages and disadvantages of different minimum dollar values*

Dollar value options	Assessment	Advantage	Disadvantage
Option 1: \$100,000	Addresses the disproportionate impact on provincial and small towns	Allows owners of low value buildings to carry out modest positive and progressive improvements to EPBs (such as fit outs for tenancies) without triggering the requirement to carry out earthquake strengthening at the same time. This is expected to help mitigate a risk that affected buildings will be abandoned and left to 'demolition by	There is a risk that this option would not adequately address concerns about the disproportionate impacts on provincial and small towns (e.g. in the case of larger or multi-tenanted low-value EPBs, it may not take much work to reach this limit).  This value may need adjustment in the short-term to account for inflation.
	Maintains the intent of the EPB system		



			neglect', which would negatively affect provincial and small towns.	
	Appropriately addresses concerns (incl. future-proofing)	-	This value was the most preferred in the targeted consultation.	
Option 2: \$200,000	Addresses the disproportionate impact on provincial and small towns	✓ ✓	Allows owners of low-value buildings to carry out positive and progressive improvements to EPBs (such as fit outs for tenancies) without triggering the requirement to carry out seismic strengthening at the same time. This is expected to help mitigate a risk that affected buildings will be abandoned and left to 'demolition by neglect', which would negatively affect provincial and small towns.	There is a risk that this option may allow 'substantial' work to be undertaken without addressing the need for any seismic work to be done, and so being seen as inconsistent with the current definition of 'substantial'.
	Maintains the intent of the EPB system	✓		
	Appropriately addresses concerns (incl. future-proofing)	✓ ✓	As the EPB system is a long-term programme, a \$200,000 option would require fewer adjustments for inflation over time.  This value was preferred by the Provincial TA group you met with last year.	

Option 3: \$150,000	Addresses the disproportionate impact on provincial and small towns	✓✓	Allows owners to carry out modest positive and progressive improvements to EPBs (such as fit outs for tenancies) without triggering the requirement to carry out seismic strengthening at the same time. This is expected to help mitigate the risk that affected buildings will be abandoned and left to 'demolition by neglect', which would negatively affect provincial and small towns.  As the EPB system is a long-term programme, a \$150,000 option would require fewer adjustments for inflation over time.	There may still be some risk that the option does not adequately address disproportionate impacts on provincial and small towns (e.g. in the case of larger or multi-tenanted low-value EPBs, it may not take much work to reach this limit).
	Maintains the intent of the EPB system	✓✓		
	Appropriately addresses concerns (incl. future-proofing)	✓✓		

Option 3 (\$150,000) is MBIE's preferred minimum dollar value because it better meets all the assessment criteria than either \$100,000 or \$200,000. It allows owners to carry out modest positive and progressive improvements to EPBs (such as fit outs for tenancies) without triggering the requirement to carry out seismic strengthening at the same time. This is expected to help mitigate the risk that affected buildings will be abandoned and left to 'demolition by neglect', which would negatively affect provincial and small towns.

As the EPB system is a long-term programme, a \$150,000 option would require fewer adjustments for inflation over time than \$100,000. It would, however, require more periodic review and adjustment than \$200,000.

### 3.2 Which of these options is the proposed approach?

MBIE considers that adding a minimum dollar value as a qualifier and retaining one threshold is the best option.

This option addresses the disproportionate impact of the regulations on provincial and small towns in an easy to apply and consistent manner, while maintaining integrity of the EPB system.

It will allow owners of low-value buildings to carry out modest positive and progressive improvements to EPBs without triggering the requirement to carry out seismic strengthening at the same time. This is consistent with the intent of the legislation.

There was general agreement for this approach in the targeted consultation (see stakeholder views section).

MBIE recommends that a minimum dollar value of \$150,000 be added to the regulations. This value best allows for modest, positive and progressive improvements to an EPB without triggering the requirement to carry out earthquake strengthening at the same time, while mitigating the risks that 'substantial' work be undertaken. It also better balances the need for inflationary adjustment in the future – less frequent adjustments than \$100,000 although more frequent reviews than the \$200,000 option.

MBIE considers that this value addresses the disproportionate impact of the regulations on provincial and small towns, maintains the integrity of the EPB system and future-proofs the regulations in regards to inflationary adjustments.

## Section 4: Impact Analysis (Proposed approach)

### 4.1 Summary table of costs and benefits

In summary, the expected benefits of the proposal are that it will address the disproportionate impact the current regulations are having on provincial and small towns. There would be low, one-off costs for the regulated and regulating parties, particularly around becoming familiar with the adjusted regulations and the ongoing monitoring and adjustment to the regulations. Overall the benefits are expected to outweigh the costs.

Affected parties	Comment:	Impact
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#### Additional costs of proposed approach, compared to taking no action

Regulated parties	One-off costs for building owners to become familiar with the adjusted regulations. Given the nature of the proposals these costs are expected to be very low. MBIE intends to issue updated guidance to mitigate these costs.	Low
Regulators	There will be costs to MBIE associated with the ongoing monitoring and periodic adjustments to the regulations, as well as updating guidance materials.	Costs will be met within existing departmental baselines
	One-off costs for TAs to become familiar with the adjusted regulations. Given the nature of the proposals these costs are expected to be very low. MBIE intends to issue updated guidance to mitigate these costs.	Low
<b>Non-monetised costs</b>	Total	Low

#### Expected benefits of proposed approach, compared to taking no action

Regulated parties	Allows owners of low-value buildings to carry out modest positive and progressive improvements to EPBs without triggering the requirement to carry out seismic strengthening at the same time. This is expected to help mitigate a risk that affected buildings will be abandoned and left to 'demolition by neglect', which would negatively affect provincial and small towns.	Medium for affected owners/areas.
Regulators	Addresses disproportionate impact of the regulations on provincial and small towns in an easy to apply and consistent manner, while maintaining integrity of the EPB system.	Medium.
<b>Non-monetised benefits</b>	Total	Medium

## Quantitative estimates of impacts

The effect of the EPB substantial alternations regulation is to promote progressive upgrades to EPBs within the statutory timeframes, while not delaying strengthening work unnecessarily where 'substantial' alterations are being made to a building. This allows owners some flexibility to manage their assets within the EPB system. The proposed changes will reduce the frequency that the substantial threshold is triggered and the requirement to strengthen at the same time.

As part of the RIS for the current EPB regulations, a Net Present Value (NPV) analysis was carried out by MartinJenkins to estimate the marginal impact of EPB regulations compared to the NPV estimates prepared for the Building (Earthquake-prone Buildings) Amendment Act 2017.

The NPV calculated for the Amendment Act was -\$750 million (in 2012 dollars). The marginal impacts of EPB regulations (i.e. exemption regulations and substantial alterations regulations) were estimated to add \$67 million to these costs.

As part of the modelling it is was estimated that 48 EPBs would be expected to trigger the substantial alterations Regulations each year. The full set of assumptions behind the NPV calculations are outlined in the RIS published on 27 April 2017. As part of these calculations the Treasury discount rate of 6 percent for regulatory proposals was used.

*Table Five: Impact of Exemptions and Substantial alterations Regulations*

Point estimate results	2012 \$	2012 \$	2012 \$
	Costs NPV \$ million	Benefits NPV \$ million	Net NPV \$ million
Impact of exemptions (3.0%)	(26)	(1)	25
Impact of substantial alterations (17.0% of alterations over 25% of the rateable value of the building)	93	1	(92)
Marginal impact of Regulations	67	0	(67)

A sensitivity analysis was carried out as part of the analysis of the marginal impact of the Regulations. High/low sensitivities for substantial alterations were estimated at 14 percent and 19.8 percent of alterations being over 25 percent of the rateable value of the building respectively.

*Table Six: Impact of Exemptions and substantial alterations Regulations (with high substantial alterations scenario)*

	2012 \$	2012 \$	2012 \$
	Costs NPV \$ million	Benefits NPV \$ million	Net NPV \$ million
Impact of exemptions (3.0%)	(26)	(1)	25
Impact of substantial alterations (19.8% of alterations over 25% of the rateable value of the building)	109	1	(108)
Marginal impact of Regulations	83	0	(83)

*Table Seven: Impact of Exemptions and substantial alterations Regulations (with low substantial alterations scenario)*

	2012 \$	2012 \$	2012 \$
	Costs NPV \$ million	Benefits NPV \$ million	Net NPV \$ million
Impact of exemptions (3.0%)	(26)	(1)	25
Impact of substantial alterations (14.0% of alterations over 25% of the rateable value of the building)	77	1	(76)
Marginal impact of Regulations	51	0	(51)

In calculating NPV estimates, it was noted that the costing exercise had not allowed for the impact of any changes in behaviour that might arise when building owners see the impact of the regulations in action. As part of this review, MBIE has received anecdotal evidence from TAs that the substantial alterations regulations are preventing positive and progressive upgrades to low-value EPBs rather than triggering strengthening work.

Noting the difficulties in assessing the impact of the substantial alterations Regulations, MBIE considers it reasonable to assume that the marginal impact of the proposed changes to the substantial alterations regulations will shift the calculated NPV to the low sensitivity scenario estimate.

#### **4.2 What other impacts is this approach likely to have?**

A risk of the proposed amendment is that some low-value EPBs could remain earthquake-prone for longer than they would otherwise be within overall statutory timeframes for remediation, and may be more likely to be occupied. This could expose users of these buildings to additional risk. Engineering groups have raised some concerns about this. However, MBIE considers this risk to be low. There is evidence to indicate that the current regulations are preventing any upgrades to low-value EPBs being undertaken. EPBs will still need to be remediated within the required overall statutory timeframes. These timeframes will not be changed by any amendment to the Regulations.

# Section 5: Stakeholder views

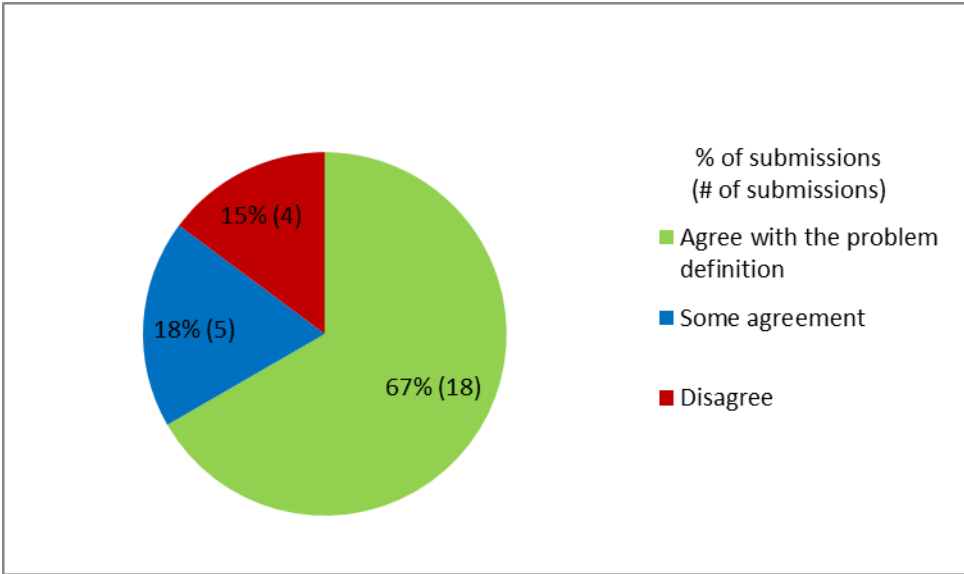
## 5.1 What do stakeholders think about the problem and the proposed solution?

Targeted consultation has taken place with TAs (who enforce the regulations), Local Government New Zealand, engineering industry groups and the Property Council of New Zealand from January 8, 2019 to February 15, 2019. 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). 28 submissions were received. Not all submissions addressed each question of the targeted consultation document (note: the submission from the Provincial TA Group was counted as one submission).

MBIE tested the problem definition, possible options to address the problem, and sought views on impacts as part of the targeted consultation process. There was general agreement to the problem and the option of using a dollar value as a qualifier on the current definition of a substantial alteration. A high level analysis of feedback is represented in the pie charts below, and specific issues raised during the consultation are discussed in Table Eight:

As illustrated in Diagram One, 18 (67 percent) submissions agreed that current regulations are having a disproportionate impact on provincial and small towns, when compared to urban centres. Five (18 percent) submissions had some agreement that this was an issue. Four (15 percent) disagreed that this was an issue at all. The submitters who disagreed were the Christchurch City Council, Ashburton District Council, the manager of the Tauranga City Council Earthquake-prone Building Register and the Tauranga City Council Building Consent Authority. Their rationale for opposing the view that current regulations were having a disproportionate impact on provincial and small towns was that the key difference in values between provincial and urban buildings is in land value. However, this is inconsistent with building value information provided to MBIE by the Provincial TA Group, which indicates that there are a significant proportion of low-value buildings in provincial and small towns. This view is also inconsistent with the bulk of submissions received.

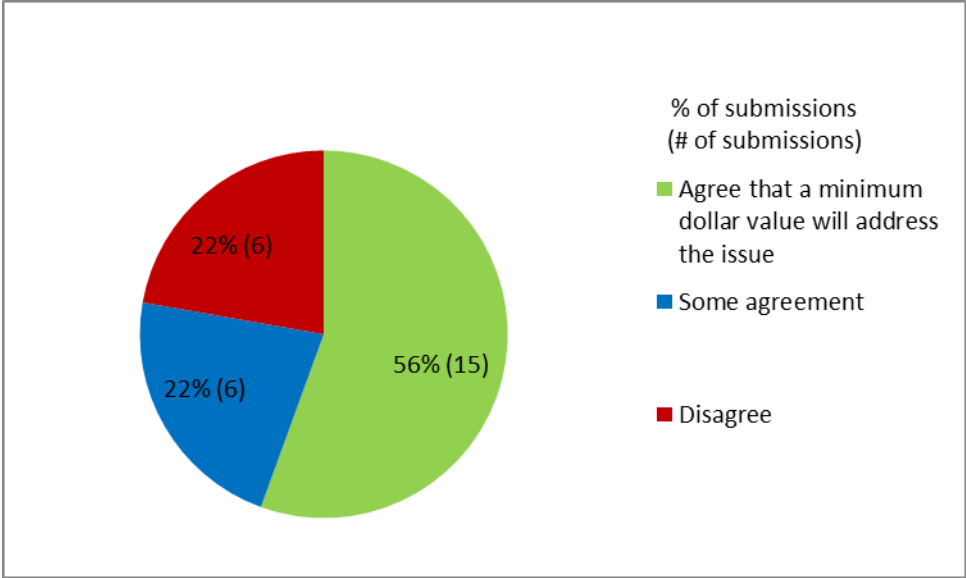
*Diagram One: Consultation results on problem definition – are current Regulations having a disproportionate impact on provincial and small towns?*



As illustrated in Diagram Two (page 16), 15 (55 percent) submissions agreed that a minimum dollar value would address the issue. Six (22 percent) submissions stated that they believed it would go some way to addressing the issue and Six (22 percent) disagreed. The six submitters who disagreed that adding a minimum dollar value would address the issue. They

were the manager of the Tauranga City Council Earthquake-prone Building Register, Tauranga City Council Building Consent Authority, NZSEE, Ashburton District Council, Christchurch City Council and ENZ. They considered that the proposal would undermine the EPB system.

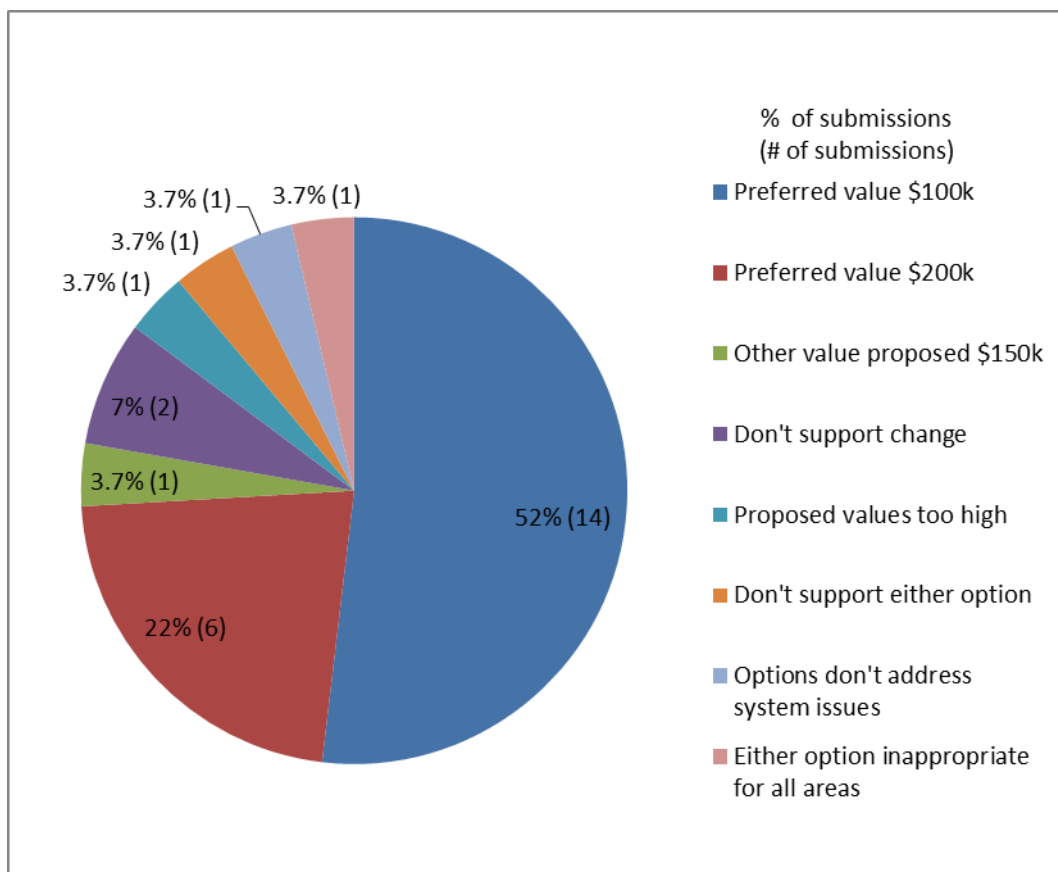
*Diagram Two: Consultation results on proposal to address the issue – will a minimum dollar value address the issue?*



As illustrated in Diagram Three, there are different views on the appropriate minimum dollar value. The most preferred minimum dollar value in submissions was \$100,000 – which 14 (52 percent) submissions selected as the most appropriate value. Six (22 percent) selected \$200,000 and One (4 percent) submitter thought a \$150,000 value would be most appropriate. Six (22 percent) submitters thought neither value was appropriate or didn't indicate a preference in their submission. The Provincial TA group recommended a \$200,000 minimum dollar value, but noted that either option consulted on (\$100,000 or \$200,000) is a vast improvement on current regulations.



**Diagram Three: Preferred minimum dollar value to be added to the Regulations**



While achieving the most support in submissions, MBIE’s view, following consideration of submissions, is that there is a real risk that a \$100,000 minimum dollar value may not adequately address the problems identified. The rationale for this is outlined in table 3, section 3 (page 7).

Important issues raised in the submissions are detailed in the table below.

**Table Eight: Specific issues raised in consultation and MBIE’s response**

Issues raised in consultation	MBIE’s response
<p><u>Alternative minimum thresholds</u></p> <p>It was suggested by the Kapiti Coast, Opotiki and Joint Provincial District Councils, alongside the Tauranga and Upper Hutt City Councils, that seismic risk was an added factor to take into consideration (i.e. in a high risk zone, the value would be \$100,000 and \$200,000 for a low risk area.) Also raised was the idea of using a variety of options as specific triggers that would necessitate seismic work to be done or perhaps which types of work could be exempted from the threshold. The options of specific qualifiers included: occupancy rates, building use, size (dollar value per metre squared) of a building.</p>	<p>MBIE does not agree with these suggestions because they add significant complexity to the regulations, making them more difficult to apply compared to the proposed approach.</p>

<p><u><i>Timeframe &amp; risk concerns</i></u></p> <p>The Kapiti Coast, Ashburton and Southland District Councils as well as the Christchurch and Dunedin City Councils and engineering groups (ENZ and NZSEE) considered that an outcome of the proposal would be the creation of long-term risk to building occupiers and the wider public due to building owners taking the longest possible time allowed under legislation to complete seismic strengthening upgrades.</p>	<p>Proposed changes to the Regulations will not amend the timeframes for remediating EPBs in the Act. They are also consistent with the intent of the legislation, which is about 'substantial alterations' triggering seismic work to be carried out immediately.</p> <p>There is also evidence that existing regulations are discouraging any work from being carried out on buildings creating a risk of 'demolition by neglect'.</p>
<p><u><i>Concerns about possible behavioural effects</i></u></p> <p>The Far North, Western Bay of Plenty, Wairoa and Waitaki District Councils as well as the Tauranga City Council raised concerns that this proposed amendment may create unintended behavioural patterns, such as people undervaluing either the value of buildings or the work (or both) or people not doing work at all.</p> <p>This may result in a need for greater enforcement efforts by TAs. Also raised was the possibility of owners making a series of minor continuous upgrades so as not to trigger any seismic work that would occur through one large upgrade.</p>	<p>The proposals will make the regulations more flexible and better reflect the term 'substantial'. The current regulations include provisions that reduce the potential for owners to split up work to avoid triggering strengthening. These provisions are retained under the proposals. Evidence MBIE has received from TAs is that the current regulations are discouraging positive and progressive upgrades to buildings in provincial and small towns, rather than delivering seismic strengthening ahead of schedule.</p>
<p><u><i>Concerns that the proposal is inconsistent with current legislation or does not support the intent of the Building Act 2004</i></u></p> <p>It was suggested by NZSEE, ENZ, Tauranga City Council, Upper Hutt City Council as well as the Waitaki and Ashburton District Councils that the proposed amendment undermines current policy intentions and creates inconsistencies where it is unclear what sections of the Building Act 2004 takes precedence over other sections. It was also described as not promoting the progressive upgrades of EPBs regarding seismic work that the Building Act itself does.</p>	<p>MBIE considers the proposed approach will mitigate any disproportionate impacts of the regulations on provincial and small towns and maintain the integrity of the EPB system. The proposal acts as a qualifier on the current threshold and provides a good fit for interpreting the term 'substantial'.</p>

## Section 6: Implementation and operation

### 6.1 How will the new arrangements be given effect?

The new arrangements will be given effect to by an amendment to the [Building \(Specified Systems, Change the Use, and Earthquake-prone Buildings\) Regulations 2005](#).

The amendment to the regulations is intended to commence 28 days after they have been gazetted (commencement is planned to occur in 2019). A transition period is not required.

MBIE intends to update its existing guidance on the current regulations as part of its implementation plan.

TAs will implement and enforce the regulations once they have been made. The proposals are an adjustment to the existing regulations and are expected to be relatively easy to apply. Ease of implementation was tested during targeted consultation with TAs and no significant concerns were raised.

## Section 7: Monitoring, evaluation and review

### 7.1 How will the impact of the new arrangements be monitored?

As part of the broader EPB implementation work programme, MBIE is developing a monitoring and evaluation programme to assess the implementation and impacts of the legislation and its regulations.

The monitoring and evaluation programme would determine whether the policy is working as intended (outcomes), help to understand any constraints impacting on implementation, and describe any unintended consequences.

### 7.2 When and how will the new arrangements be reviewed?

The broader EPB system evaluation by MBIE will include both qualitative and quantitative data collected over time. The evaluation will occur in distinct phases including baseline data collection, and process and early impact evaluation.

Data will be collected through:

- monitoring data provided by TAs, including the number of buildings identified and assessed, the number of buildings repaired or demolished, and the types of repairs undertaken
- cost data provided by TAs
- key stakeholder engagements
- analysis of a range of market data to determine the influence of the market.