



Report 09.120  
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Committee Council  
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## **Building Act 2004: Fees, charges and infringement notices**

### **1. Purpose**

- To seek approval to set fees and charges for various services Greater Wellington will be providing under the Building Act 2004 (the Act).
- To seek approval to use infringement notices as an enforcement tool under the Act.

### **2. Significance of the decision**

The matters for decision in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

### **3. Background**

In July 2008 Greater Wellington transferred various Building Act 2004 functions relating to dams to Environment Waikato. The Building Consent Authority (BCA) functions transferred relate to the assessment, processing, inspection and granting of building consents and certificates of compliance.

Greater Wellington has retained some functions such as the processing and issuing of a project information memorandum, certificates of acceptance, building warrant of fitness' and the dam safety requirements. The Act allows Greater Wellington to impose fees or charges for performing these functions.

The Act also provides for an infringement regime similar to infringements under the Resource Management Act 1991 (RMA 1991). The Building (Infringement Offences, Fees and Forms) Regulations 2007 specify the building offence and corresponding fines. The regulations came in to effect on 1 July 2008.

#### 4. Ability to set fees and charges

Section 243 of the Act allows Greater Wellington to impose a fee or charge for performing functions and services under the Act. It also allows Greater Wellington to recover its costs from a dam owner should we need to carry out building work in respect of a dangerous dam.

In contrast to the RMA 1991, setting fees and charges under the Building Act 2004 does not require consultation under the Local Government Act 2002.

#### 5. Proposed fees and charges

The fees and charges proposed are consistent with Greater Wellington's resource management charges. The proposed deposits are also consistent with those required by Environment Waikato. Environment Waikato have already established a charging regime which is outlined in the communal set of brochures that Environment Waikato have issued to all North Island Regional Councils that have transferred their BCA functions (see **Attachment 1 – Dams – fees and charges brochure**).

As with the resource management charges, the proposed Building Act charges are actual and reasonable. The charge (in most cases) will be made up of a deposit and where required an additional charge when the cost of performing the function exceeds the deposit by \$20.00 or more. If the cost of performing the function is less than the deposit paid by \$20.00 or more, a refund will be given.

Table 1: Proposed Building Act 2004 fees and charges (all figures exclude GST)

Function	Deposit	Additional hourly charge
Project Information Memorandum	Large Dam (above \$100,000 value) \$1000 Medium Dam (\$20,000 to \$100,000 Value) \$750 Small Dam (\$0 to \$20,000 value) \$500	\$100 per hour
Lodge Building Warrant of Fitness	\$100	\$100 per hour
Amendment to compliance schedule	\$1000	\$100 per hour for officer time Actual and reasonable for expert advice
Building warrant of fitness audit		\$100 per hour
Certificate of Acceptance	Large Dam (above \$100,000 value) \$4000 Medium Dam (\$20,000 to \$100,000 value) \$2000 Small Dam (\$0 to \$20,000 value) \$500	\$100 per hour for officer time Actual and reasonable for expert advice

Function	Deposit	Additional hourly charge
Lodge dam potential impact category	\$100	\$100 per hour
Lodge dam safety assurance programme	\$100	\$100 per hour
Lodge annual dam safety compliance certificate	\$100	\$100 per hour

## 6. Infringement Notices

There are number of functions that Greater Wellington has retained where infringement notices could be used as an appropriate form of enforcement. The schedule of offences and corresponding fines are outlined in **Attachment 2**.

Procedures for implementing infringement notices within the Wellington Region will be developed to ensure that they are only used where they are considered to be the most appropriate enforcement tool, and that they are implemented in a consistent manner across the Region. The procedures will be similar to those developed for RMA 1991 infringement notices.

The main feature of these procedures will be that the decision to issue an infringement notice will only be made after all evidence and the circumstances related to the incident have been fully considered. Infringement notices are not issued instantaneously like a parking ticket. This is because, it is possible an infringement notice may end up with a court case. Greater Wellington needs to be sure that it has sufficient grounds to take a case to this ultimate conclusion before it issues an infringement notice.

## 7. Communication

Should Council approve the proposed fees and charges they will be included in the relevant Building Act forms and brochures.

A brochure outlining the various enforcement tools (including infringement notices) will be developed.

## 8. Recommendations

*That the Council:*

1. ***Receives the report;***
2. ***Notes the content;***
3. ***Approves the proposed Building Act 2004 fees and charges; and***
3. ***Approves the use of infringement notices as an enforcement tool under the Building Act 2004.***

Report prepared by:

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**Attachment 1:** Dams – fees and charges

**Attachment 2:** Schedule of Infringement offences and fees

## Infringement offences and fees

Provision of Building Act 2004	Description of offence	Fee (\$)
<i>General building offences</i>		
s 40	Failing to comply with the requirement that building work must be carried out in accordance with a building consent	750
s 42	Failing to apply for a certificate of acceptance for urgent building work as soon as practicable after completion of building work	500
s 101	Failing to comply with the requirement to obtain a compliance schedule	250
s 108(5)(a)	Failing to display a building warrant of fitness required to be displayed	250
s 108(5)(b)	Displaying a false or misleading building warrant of fitness	1,000
s 108(5)(c)	Displaying a building warrant of fitness other than in accordance with section 108	1,000
s 116B(1)(a)	Using, or knowingly permitting the use of, a building for a use for which it is not safe or not sanitary	1,500
s 116B(1)(b)	Using, or knowingly permitting the use of, a building that has inadequate means of escape from fire	2,000
s 124	Failing to comply with a notice, within the time stated in the notice, requiring work to be carried out on a dangerous, earthquake-prone, or insanitary building	1,000
s 128	Using or occupying a building, or permitting another person to do so, contrary to a territorial authority's hoarding, fence, or notice	2,000
s 168	Failing to comply with a notice to fix	1,000
s 363	Using, or permitting use of building having no consent or code compliance certificate or certificate for public use for premises for public use	1,500
s 367	Wilfully obstructing, hindering, or resisting a person executing powers conferred under the Act or its regulations	500
s 368	Wilfully removing or defacing a notice published under the Act or inciting another person to do so	500
<i>Dam safety offences</i>		
s 134	Dam owner failing to classify a dam	500
s 138	Dam owner failing to comply with a direction from a regional authority to have a classification re-audited and submitted	250

s 140	Dam owner failing to prepare, or arrange the preparation of, a dam safety assurance programme and submit it for audit	500
s 145	Dam owner failing to comply with a direction from a regional authority to have a dam safety assurance programme re-audited and submitted	250
s 150(4)(a)	Dam owner knowingly failing to display a dam compliance certificate required to be displayed	250
s 150(4)(b)	Dam owner displaying a false or misleading dam compliance certificate	1,000
s 150(4)(c)	Dam owner displaying a dam compliance certificate other than in accordance with section 150	1,000
s 154	Dam owner failing to comply with a notice, within the time stated in the notice, requiring work to be carried out on a dangerous dam	2,000