



Report 08.204  
Date 16 April 2008  
File ENV/10/08/04

Committee Council  
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## Building Act 2004: transfer of powers

### 1. Purpose

- To inform Council of the outcomes of the consultation undertaken as part of the Special Consultative Procedure required by the Building Act 2004 (the Act); and
- To seek approval to transfer selected functions, duties, and powers in Part 2 of the Building Act 2004 (excluding Subpart 7 – Safety of Dams); and, any other functions, duties and powers that are necessary to allow the transferee council to act as a Building Consent Authority.

### 2. Significance of the decision

The matters for decision in this report **do** trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

The transfer of selected Act functions, duties and powers is of **significance** as it will particularly affect a small number of individual residents or ratepayers. However, assessed in the wider context of the Wellington Region and the fact that a service will still be provided (albeit by another Regional Council), the decision is not of such significance that it would be **significant** in terms of Greater Wellington's significance policy and the Local Government Act 2002.

Although the decision is of significance (but not significant), section 245 of the Act required Greater Wellington to use special consultative procedure in section 83 of the Local Government Act 2002. The formal submission process undertaken by Council complied with the decision-making and special consultative procedures set out in sections 76-79 and 83-85 of the Local Government Act 2002. This report outlines the submission process and analyses the submissions that the Council received.

### 3. Background

In June 2007 report 07.373 (**Attachment 1 – excluding its attachments**) to the Policy, Finance and Strategy Committee outlined the requirements and implications of the Act with regard to providing building control services<sup>1</sup>.

The report recommended Greater Wellington consult via the special consultative procedure on the proposed transfer of selected functions, duties, and powers in Part 2 of the Building Act 2004 (excluding Subpart 7 – Safety of Dams); and, any other functions, duties and powers that are necessary to allow the transferee council to act as a Building Consent Authority.

Greater Wellington has been working collaboratively with the other regional councils on a national basis. Environment Waikato, Environment Canterbury and Otago Regional Council have each decided to become a Building Consent Authority (BCA) and are in the process of gaining accreditation. Environment Waikato has indicated they are willing to accept a transfer of functions, duties and powers from North Island regional councils provided terms of transfer can be agreed. Otago Regional Council is working on a transfer of functions, duties and powers with Environment Southland and West Coast Regional Council.

An amendment (in August 2007) to the Act now requires regional authorities to become accredited, or transfer their functions, duties and powers by 30 June 2008 (previously transfer/accreditation was required by 30 November 2007).

### 4. Submissions received as a result of consultation

At the beginning of July 2007, Greater Wellington publicly notified the proposal to transfer selected Building Act functions, duties and powers and sent letters to all dam owners and interested parties. Seven submissions were received; four in support of the proposed and three raised concerns relating to costs. One submitter indicated they wish to be heard, but has since withdrawn their right to be heard.

**Attachment 2** provides a summary of the submissions received.

The main concern raised by Federated Farmers, Capacity and Karori Wildlife Sanctuary regarded costs and whether the proposed transfer would result in those applying for building consents having to pay more to have their applications assessed. However, the submission from Genesis Energy took a contrary view and believed the proposed transfer would in fact reduce costs to consent applicants and ratepayers.

The amendment to the Act extending the accreditation/transfer deadline, allowed Greater Wellington and the other North Island regional councils to undertake further and more detailed work with Environment Waikato determine the likely costs and parameters of the proposed transfer. Once information relating to costs (section 5.3) was provided to Federated Farmers,

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<sup>1</sup> The assessment, processing, inspection and granting of building consents and certificates of compliance

they no longer wished to be heard. As Federated Farmers were the only submitter who wished to be heard, there is now no need to hold hearing.

## **5. Reasons why the transfer of functions, powers and duties is recommended**

### **5.1 Efficiency**

In a project undertaken on behalf of all twelve regional councils, Dam Watch estimated there would be in the order of 50 building consent applications for dams nationwide. Given the low number of applications, the regional councils collectively believe the most efficient way to meet the Building Act 2004 requirements is to have several councils accredited to process building consents and the remaining councils transfer their powers.

There is a significant amount of work required to meet the accreditation requirements and become a BCA.

### **5.2 Technical Capacity**

Part of the accreditation process requires a BCA to show it has the necessary skills, resources and expertise to assess building consent applications for dams. The assessment of dams is a highly specialised area and it is not feasible for each council to employ a dam expert. Therefore, consultants will be engaged to assess and inspect applications. As the type, nature and construction of dams can vary considerably, consultants will be selected for each individual application based on their area of expertise.

One of the proposed terms of the transfer ensures Environment Waikato will endeavour to use the most cost effective measures for both the transferring council and the applicant when processing an application. Where possible, they will use a consultant who is based in the area where the dam is being constructed.

### **5.3 Costs**

There is no doubt the cost of obtaining a building consent for a dam has increased as a result of the requirements of the new Act.

The North Island regional councils have been working with Environment Waikato to establish likely cost associated with establishing and running the building consent process. Environment Waikato has proposing that the costs be **equally apportioned** amongst themselves and the transferring councils.

The cost associated with meeting the building consent requirements of the Act can be divided in to three areas:

- The initial establishment of the system, processes and resources required to achieve accreditation and become a BCA.
- Ongoing costs associated with running and maintaining the BCA

- Costs faced by a building consent applicant.

As these are new functions for regional councils, Environment Waikato has provided Greater Wellington with **estimates** of the costs identified above. As a comparison, Greater Wellington has also estimated the likely costs of the process if it was to retain its functions, powers and duties.

Environment Waikato is proposing to establish a working group (made up of members of the transferring councils) to monitor the on-going cost of applications and annual budgets in relation to building consents.

### 5.3.1 Establishment costs

There is a considerable amount of work required to develop the documentation, systems and processes required to become accredited BCA. The initial setup costs include: staff time, legal costs, accreditation fee, consultancy costs to develop system documentation and technology software development/upgrades. Environment Waikato's estimate of establishment cost is 15% of Greater Wellington's estimate.

### 5.3.2 Ongoing costs

Ongoing costs, wherever possible, will be charged back to the applicant. However, there will be costs incurred that cannot be directly attributed to a particular applicant. On going costs include: staff time, accreditation fees, consultants, document management and maintenance of accreditation systems. Environment Waikato's estimate of on going cost is 45% of Greater Wellington's estimate.

### 5.3.3 Consent applicant costs

As indicated above, engineering consultants will be undertaking the majority of the building consent assessment and inspections. It is Environment Waikato's intention to recover the actual and reasonable costs incurred by the consultants along with disbursements associated with site work. Any legal advice required during the processing or decision making may also be charged to the applicant. If functions were retained, Greater Wellington would also use consultants and charge consent applicants actual and reasonable costs. The cost to consent applicants are therefore likely similar.

## 6. Summary of transfer terms and conditions

### 6.1 Insurance and indemnity

Environment Waikato will have insurance in place to cover against all actions made by a third party in respect of Environment Waikato performing its Building Act functions. Greater Wellington and the other North Island councils will pay a proportionate share to maintain such insurance.

Greater Wellington and the other North Island councils will also be required to indemnify Environment Waikato against all uninsured damages (except where Environment Waikato has been deemed to have acted negligently).

The insurance and indemnity provisions have been discussed with Greater Wellington's insurers, who are comfortable with the approach taken.

## **6.2 Costs**

Greater Wellington and the other North Island councils, including Environment Waikato, will pay an equal share of the costs incurred, where they cannot be passed on to applicants. Such costs are outlined in section 5.3.2 above.

## **6.3 Disputes**

Any disputes arising that cannot be resolved will be determined by an arbitrator. The arbitrator's decision shall be final and binding.

## **6.4 Review and Termination**

The transfer deed shall be reviewed after one year. Either party may terminate the transfer agreement by giving 12 months notice.

## **7. Conclusion**

The most efficient and cost effective approach for Greater Wellington to provide building control services is to transfer these functions to Environment Waikato.

## **8. Communication**

Should Council approve the transfer of functions, powers and duties there will be a number of communications required.

- Submitters will be sent a letter detailing the Council's decision and reasons for the decision.
- All current dam owners will be sent a letter informing them Environment Waikato will process any future building consents on behalf of Greater Wellington.
- Forms and brochures will be developed to explain the building consent process for dams. Forms and brochures are likely to have the logos of all North Island regional councils on them.
- Environment Regulation staff will be trained to answer initial queries regarding building consents for dams.
- As further parts of the Building Act 2004 come in to force, particularly around the dam safety regime (Greater Wellington is retaining these powers), further communication with dam owners will be required. Building consent requirements will also be included in these communications.

## 9. Recommendations

*That the Council:*

1. ***Receives*** the report
2. ***Notes*** the content
3. ***Approves*** the proposal to transfer selected functions, duties, and powers in Part 2 of the Building Act 2004 (excluding Subpart 7 – Safety of Dams); and, any other functions, duties and powers that are necessary to allow the transferee council to act as a Building Consent Authority; and
4. ***Delegates*** authority to the Chief Executive, Wellington Regional Council to sign the Deed of Transfer and the associated Memorandum of Understanding.

Report prepared by:

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**Attachment 1:** Report 07.373

**Attachment 2:** Summary of the submissions received