



Guidance in relation to Schedule 1(k) exemptions and issuing building infringement notices Technical Review of Wellington City Council

July 2012

Contents

1. OVERVIEW	3
1.1 PURPOSE	3
1.2 REASONS FOR THE REVIEW	3
1.3 THE COUNCIL	3
1.4 STATISTICAL INFORMATION PROVIDED BY THE COUNCIL.....	4
<i>Table 1: Statistical information</i>	4
2. PROCESS	5
3. EXEMPT BUILDING WORK UNDER SCHEDULE 1(K)	7
<i>Table 2: Examples of Schedule 1(k) exemptions</i>	12
4. BUILDING ACT 2004 INFRINGEMENT NOTICES	19
4.1 PURPOSE	19
4.2 BACKGROUND.....	19
4.3 FINDINGS	19
4.4 CONCLUSION AND RECOMMENDATIONS	21
<i>Table 3: Examples of the use of infringement notices</i>	22

1. Overview

1.1 Purpose

This report sets out the findings and recommendations from a technical review of some of the building control operations of Wellington City Council (the Council). The on-site stage of the review process was undertaken by the Ministry of Business Innovation and Employment (the Ministry), Building and Housing Group on 26-27.01.12.

The review focused on how the Council was undertaking some of its statutory responsibilities under the Building Act 2004 – specifically in regard to its territorial authority functions relating to determining whether to exempt building work from the requirement to obtain a building consent under Schedule 1(k)¹ and issuing infringement notices for building offences.

1.2 Reasons for the review

The Ministry's 2010/11 technical review programme² indicated that some councils were not using Schedule 1(k) exemptions and/or issuing building infringement notices.

The Ministry undertook this review as part of its ongoing performance monitoring function, to highlight good practice and to encourage other councils across the country to strengthen and improve their territorial authority building control functions in relation to the use of Schedule 1(k) exemptions and infringement notices for building offences.

1.3 The Council

Wellington, with an estimated population of 200,100³ is New Zealand's third largest city after Auckland and Christchurch. It is New Zealand's centre of government and the world's southernmost capital city. The 290 square kilometre area under the jurisdiction of the Wellington City Council extends as far as Ohariu, Linden, Takapu Valley and Horokiwi, and bounded on the south and west by Cook Strait and by Wellington Harbour on the east.

Wellington is a leading centre for creative industries, such as film and computer technology, and it is home of the New Zealand Stock Exchange.

¹ The Ministry's guide to exempt building work (published December 2010) has some important information, including possible criteria for building officials to consider when applying Schedule 1(k). The document is freely available on-line at <http://www.dbh.govt.nz/bc-no-consent> .

² Technical reviews were undertaken of Southland District, Invercargill City and Nelson City Councils. The reports are freely available on-line at <http://www.dbh.govt.nz/technical-reviews> .

³ Sub-national population estimates as at 30.06.11 by Statistics New Zealand as posted on Wikipedia.

1.4 Statistical information provided by the Council

The following statistical information was requested and provided prior to undertaking the technical review.

Table 1: Statistical information

#	Subject	Total
1	Schedule 1(k) exemptions issued between 31.03.05 and 15.10.08.	220
2	Schedule 1(k) exemptions issued between 16.10.08 and 22.12.10.	65
3	Schedule 1(k) exemptions issued between 23.12.10 and 31.12.11.	30
4	Total value of building work for Schedule 1(k) exemptions issued between 31.03.05 and 31.12.11.	\$14,445,503 (total = 315 exemptions)
5	Infringement notices issued between 01.07.08 and 31.12.11.	56 (47 building warrant of fitness/compliance schedule related offences, 9 for other offences)

2. Process

2.1 Purpose of technical reviews

The Ministry carries out technical reviews as part of its function to monitor and review the performance of building consent authorities, territorial authorities, and regional authorities of their functions under the Building Act 2004.

The purpose of this technical review is to highlight good building control practice in relation to the use of the territorial authority's discretionary powers to exempt building work from requiring a building consent under Schedule 1(k) and the effective use of infringement notices for building offences.

By applying a risk-based approach to the use of Schedule 1(k), councils can realise benefits and efficiencies in its decision-making when used and applied appropriately. It is particularly valuable for building work where the Council's building consent processing and building inspection activities may not add value to the process if there are other more appropriate checks and balances that are being applied (eg, engineer designed and supervised).

Where applied appropriately, infringement notices can be used as a deterrent, which can result in prompt compliance at a reasonable cost, rather than costly, time-consuming court-based prosecutions.

A technical review is not a comprehensive audit. It is a performance review based on a snapshot in time of information about the building control activities of the territorial authority. It cannot be taken as a full and comprehensive assessment of the competency and quality of all of those activities.

2.2 Legislative basis

This review was initiated under sections 204 and 276 of the Building Act 2004. It is a function of the Chief Executive to monitor and review the performance of territorial authorities and building consent authorities to determine whether they have properly exercised their powers and performed their functions.⁴

⁴ The Building Act 2004 is available at www.legislation.govt.nz

2.3 Method

The Ministry used four broad approaches to gather information about the Council's building control activities. These were:

- observing staff undertaking work
- reviewing written material used and produced by staff (eg, policies, procedures, processing check-lists and records, manuals and approved consent documentation)
- interviewing staff about their use of material and their work
- assessing a random sample of building projects that were handled by the territorial authority.

2.4 Acknowledgement

The Ministry would like to thank Wellington City Council's building control management and staff for their cooperation and assistance during the review.

3. Exempt building work under schedule 1(k)

3.1 Purpose

To examine the Council's procedure for determining if building work is exempt under Schedule 1(k) of the Building Act 2004.

3.2 Background

Schedule 1 of the Building Act 2004 lists the types of building work for which a building consent is not required. Schedule 1(k) covers situations where a territorial authority (or, as the case requires, the regional authority) considers that a building consent is not necessary because the building work:

- (i) is unlikely to be carried out otherwise than in accordance with the Building Code; or
- (ii) if carried out otherwise than in accordance with the Building Code, is unlikely to endanger people or any building, whether on the same land or on other property.

3.3 Findings

At the time of the review visit (26-27.01.12), the Council was in the process of amalgamating two draft policy and procedure documents for issuing Schedule 1(k) exemptions. One of the drafts outlined the following criteria to qualify as a Schedule 1(k) exemption:

Exemptions will be considered for the following types of projects:

- *Repeat long term structures. Small, simple, low risk structures where a building consent has previously been obtained (eg, bus shelters, pedestrian shelters, telecommunication aerials/dishes, masts and flag poles)⁵.*
- *Short term structures. Usually promotional or event based. Structures may be more complex but have a short life, construction will be well monitored by reputable people (eg, chartered professional engineer), usually outside and are part of a well organised event (may have been consented for previous occasions and organisers have a planned people management). For example, Man in Black signage, supporting veranda for temporary use as a deck/grandstand.*
- *Permanent simple alterations where there are no changes to the safety of building user and no changes of use (eg, demolition of office partitions, ATM installation).*
- *Proprietary playground systems (see Guideline for approval of playgrounds).*

Exemptions will not be considered for any work that includes:

- *Long or short term changes to fire safety systems, egress routes etc.*
- *Changes to systems on compliance systems [sic schedules].*

⁵ The Ministry notes that some of these examples (telecommunication aerials/dishes and masts) may not be considered buildings under section 9 of the Building Act 2004.

It was noted by the Ministry that the draft criteria in relation to proprietary playground systems needs to be updated to reflect the Building Act 2004, specifically to align with the playground equipment exemption (ji) in the current Schedule 1.

The following statement was made under 1.2.5 of the Council's draft guidance instruction for Schedule 1(k): 'In some circumstances an inspection fee may be required'. The Ministry believes the Council should specify under what circumstances a site inspection would be undertaken (eg, inspection requested by applicant at the pre-application meeting), bearing in mind that Schedule 1(k) is the Council exercising its discretion to waive the requirement for a building consent and inspections. The Ministry's view is, that as part of good customer service, the Council could agree to carry out an on-site check of the exempt work. However, generally an inspection or on-site check would not form part of the Council's functions or services under the Building Act 2004, as it is not specifically required or authorised in the Act. The Ministry notes that a Council can only charge fees under the Building Act 2004 for the performance of its functions or services under that Act.

The Council provided no documented public information in relation to the criteria it used in determining Schedule 1(k) exemptions. On the Council's website (Building Consent – Guidelines) a link was provided to the Ministry's website but not directly to the guidance relating to building work not requiring a building consent. As a consequence of minimal Council public information, applicants for Schedule 1(k) exemptions are generally limited to building sector professionals who are familiar with Schedule 1 of the Building Act 2004. There are occasions when Council staff inform prospective building consent applicants at pre-application meetings⁶ that Council can consider granting an exemption under Schedule 1(k) where the building work fits within its previously-stated criteria. Although not included in the draft procedure, the Ministry was advised confirmation from a team leader was required before a decision was made to accept a Schedule 1(k) exemption application and it was the team leader's responsibility to calculate the processing time and determine the Council's fee for processing the application.

Council advised that several years ago it sought guidance from the former Building Industry Authority (BIA) in relation to what was an appropriate means of applying for an exemption under (m)⁷ of the Third Schedule of the Building Act 1991. Based on the BIA's advice given at that time, the Council has continued with its practice of accepting Schedule 1(k) exemption applications on Council's prescribed Form 2 (Application for project information memorandum and/or building consent). Such applications have the word 'exemption' written and highlighted at the top of the form. The Ministry notes that the Building Act 2004 is silent on how Schedule 1(k) exemptions are applied for, but the Ministry believes it would be good practice for the Council to develop and introduce an application form specifically for Schedule 1(k) exemptions.

The completed application form, along with a full set of plans and specifications (including calculations, design producer statements etc) will, when finally approved, provide a comprehensive record of the exempt building work undertaken on that given property. As it is

⁶ Council's policy requires mandatory pre-application meetings to be held for residential and commercial projects over a given value. For other projects, these meetings are optional only and are held at the request of the applicant.

⁷ Equivalent to Schedule 1(k) of the Building Act 2004.

stored on the Council's property file, this detailed building history may prove to be useful information to current/ future owners, and other interested parties.

The Council used its discretion to approve Schedule 1(k) exemptions on a case-by-case basis only. Since the Building Act 2004 came into force on 31.03.05, the Council has approved a total of 315 Schedule 1(k) exemptions worth almost \$14,500,000 in project value (for the period ending 31.12.11).

The Council's draft process of approval/refusal required the processing officer to assess and consider the following:

- compliance with the Building Code
- scope of building work
- risks if exemption approved
- assurances (eg, who is supervising the building work, are the practitioners known and trusted by Council)
- mitigating circumstances (eg, likelihood of failure versus consequence, temporary versus permanent).

In most instances, the processing officer's decision to approve or refuse the Schedule 1(k) exemption application was adequately recorded on Council's building consent worksheet including the reasons for the decision.

It was noted that the Council's draft policy and procedure documents required the processing officer's decision to be reviewed by a team leader before the exemption was issued. The Ministry supports such a requirement in the Council's procedure.

Statements confirming the basis on which the Council reached its decision to waive the requirement to obtain a building consent were often included in the Council's approval letter to the applicant. There were occasions where a construction review producer statement (PS4) was required to be supplied by the supervising chartered professional engineer on completion of the building work. However, from the files viewed by the Ministry, there were only two instances where a PS4 had been provided.

Generic statements were often included in the Council's approval letter to the applicant, such as requiring all building work to comply with the New Zealand Building Code or the need to mitigate the risk of site dangers and hazards as required by Building Code clause F5 (Construction and demolition hazards).

The Ministry is of the view that any statements included in the exemption approval letter should only confirm any agreements reached between the applicant and Council during the pre-application meeting and the processing phase. Therefore, where a supervising chartered professional engineer has elected to provide a PS4 on completion of the project, the Council may choose to follow this up, although the legislation does not require it.

Rather than giving blanket Schedule 1(k) exemptions for repeat long-term structures, Council initially required applicants to apply for a building consent for a single structure. If the Council was satisfied that the consented building work had been monitored and supervised by the design engineer in accordance with the approved building consent documents (including the

on-site quality assurance programme) and the Building Code, the Council was likely to allow future repeat building work to be exempt from requiring a building consent.

The Council's discretion has been applied across a wide scope of building work. At one end, there was the simple low-risk repetitive-type building work, such as bus shelters and street signage (examples shown below). At the other end of the scale, there was the chartered professional engineer designed and supervised construction of building work where Council's processing and inspecting would add little value to the overall process. Such engineered projects included complex temporary stage and lighting towers (Example 4 on Table 2 refers), and major infrastructure projects, for example, wind turbine foundations (Example 5 on Table 2 refers), electrical substations for the rail network (Example 6 on Table 2 refers) and substantial wharf repairs (Example 7 on Table 2 refers).



Photos (left to right): freestanding bus timetable, street signage, temporary tiered seating; street signage.

Due to the Government expanding the scope of Schedule 1 in October 2008 and December 2010, there has been a corresponding decrease in the number of Schedule 1(k) exemptions approved by Council. Prior to October 2008, Council, on average, was issuing 5.2 Schedule 1(k) exemptions per month, whereas since October 2008 the monthly average has dropped to 2.5 (k) exemptions.

The Ministry noted that between 23.12.10 and 13.03.12 the wind turbine foundations (Example 5 on Table 2 refers) may have qualified as exempt under exemption (gb). However, since 13.03.12 and the introduction of the Building Amendment Act 2012, wind turbines are no longer considered buildings under section 9(ac) of the Building Act 2004.

3.4 Conclusion and recommendations

Overall, the Council demonstrated that it was exercising good practice in its use of Schedule 1(k). The Council could enhance its current practice by implementing the following recommendations.

Recommendation 1
The Ministry recommends that the Council:
Finalise its policy around using Schedule 1(k) and communicate this to building control staff.
Update its guideline in relation to adventure playground structures to reflect the current Building Act (specifically the playground exemptions in the current Schedule 1).
Specify in its policy, under what circumstances a site inspection would be undertaken (eg, inspection requested by applicant at the pre-application meeting), bearing in mind that Schedule 1(k) is the Council exercising its discretion to waive the requirement for a building consent and inspections.
Provide easily accessible public information on the Council's website about exemptions generally and advise the potential benefits, circumstances where Schedule 1(k) may be appropriate to use, or the Council's information expectations for those proposing to apply for this exemption.
To develop and introduce an application form specifically for Schedule 1(k) exemptions.
Should confirm in the approval letter any agreements reached between the applicant and Council. Where a supervising chartered professional engineer has elected to provide a PS4 on completion of the project, the Council should follow this up for its records.

Table 2: Examples of Schedule 1(k) exemptions

Example 1

Scope of work:	Installation of domestic stair lift.
Project value:	\$2,162.00
Council fees charged:	\$402.75
Background:	Mail application on Form 2.
Documentation provided:	Drawings and specifications.
Assessment:	Decision recorded on the appropriate worksheet, no evidence of peer review.
Issuing:	Approval letter signed by processing officer (not peer reviewed or co-signed).
Any follow up:	Nil

Example 2

Scope of work:	Seismic strengthening to building, demolition of external chimney and replacement of internal linings.
Project value:	\$5,000.00
Council fees charged:	\$433.00
Background:	Mail application on Form 2 following a pre-application meeting.
Documentation provided:	Covering letter advising engineer monitoring. Drawings and specifications. PS1 Design Producer Statement for B1 (with calculations)
Assessment:	No record of processing officer's decision.
Issuing:	Approval letter peer reviewed and co-signed by team leader. Approval letter confirmed 1) work to comply with the Building Code 2) to be monitored and supervised by the engineer; (PS4 Construction Review Producer Statement to be supplied); 3) site safety.
Any follow up:	No paperwork sighted.

Example 3

Scope of work:	Reinforced concrete foundation for temporary Rugby World Cup (RWC) statue - intended life of 5 years.
Project value:	\$10,000.00
Council fees charged:	\$402.75
Background:	Mail application on Form 2.
Documentation provided:	Drawings. PS1 Design Producer Statement for B1 (without calculations). Previous correspondence with Council, including advice that a PS4 Construction Review Producer Statement will be provided on completion.
Assessment:	Assessed by structural reviewer (peer reviewed by team leader) and processing officer with decisions recorded on the appropriate worksheets.
Issuing:	Approval letter peer reviewed/co-signed by team leader. Approval letter confirmed 1) work to comply with Building Code; 2) to be monitored and supervised by engineer (PS4 to be supplied); 3) site safety.
Any follow up:	No paperwork sighted.



Photo 1: RWC statue

Example 4

Scope of work:	Temporary stage, canopy and lighting towers for pop music concert.
Project value:	\$100,000.00
Council fees charged:	\$1479.88
Background:	Mail application on Form 2.
Documentation provided:	Drawings. PS1 Design Producer Statement for B1 (without calculations) including advice that a PS4 Construction Review Producer Statement will be provided prior to the concert.
Assessment:	Assessed by structural reviewer (peer reviewed by team leader) and processing officer with decisions recorded on the appropriate worksheets.
Issuing:	Approval letter peer reviewed and co-signed by team leader. Approval letter confirmed 1) work to comply with the Building Code; 2) to be monitored by the engineer; 3) site safety.
Any follow up:	PS4 for B1 supplied to Council prior to concert.

Example 5

Scope of work:	Reinforced concrete foundation bases (27 No.) for wind turbines.
Project value:	\$207,000.00 per base
Council fees charged:	\$935.00
Background:	Following pre-application discussions, a mail application for a (k) exemption was made on Form 2 based on building consent (SR 173575) for the generic reinforced concrete foundations (16m diameter x 1.5m deep).
Documentation provided:	Covering email advising issue of PS4 Construction Review Producer Statement on completion of foundations. Nil drawings and specifications (note: comprehensive set of documents provided with SR 173575).
Assessment:	Based on previous building consent (SR 173575).
Issuing:	Approval letter signed by team leader (not co-signed). Approval letter confirmed agreement to provide a PS4 on completion.
Any follow up:	PS4 for B1/B2 plus supervising engineer's site inspection notes provided to Council for each turbine base.



Photos 2-3: Completed turbine and base under construction

Example 6

Scope of work:	Construct two stand alone precast concrete single room shells to house electrical equipment for re-electrification of the rail network.
Project value:	\$1,089,654.00
Council fees charged:	\$5,973.55
Background:	Mail application on Form 2 following pre-application discussions.
Documentation provided:	Covering letter advising construction monitoring by the design engineer with PS4 Construction Review Producer Statement on completion. Drawings including specifications for architectural, structural, building services, earthing and fire. PS1 Design Producer Statement for B1 and B2 (with calculations). Correspondence with Council.
Assessment:	No record of processing officer's decision.
Issuing:	Approval letter peer reviewed and co-signed by team leader. Approval letter confirmed 1) work to comply with the Building Code; 2) to be monitored and certified by the engineer; 3) site safety.
Any follow up:	No paperwork sighted.



Photo 4: Rail network substation

Example 7

Scope of work:	Structural upgrade to substructure of existing wharves.
Project value:	\$1,300,000.00
Council fees charged:	\$2,873.00
Background:	Mail application on Form 2 following a pre-application meeting.
Documentation provided:	Covering letter advising construction monitoring by the design engineer with PS4 Construction Review Producer Statement on completion. Drawings including specifications. Engineer's project features report. PS1 Design Producer Statement for B1 and B2 (with calculations).
Assessment:	Recording of processing officer's decision on Form 2.
Issuing:	Approval letter peer reviewed and co-signed by team leader. Approval letter confirmed 1) work to comply with the Building Code; 2) to be monitored and supervised by the engineer; 3) site safety.
Any follow up:	No paperwork sighted.



Photo 5: Wharf upgrade

Example 8

Scope of work:	Construction and removal of a 128m long temporary wharf for a period of 5 years maximum.
Project value:	\$3,000,000.00
Council fees charged:	\$4892.50
Background:	Mail application on Form 2 following a pre-application meeting.
Documentation provided:	Covering letter. Drawings (including specification notes). Engineer's design statement. PS1 Design Producer Statement for B1 (without calculations based on advice from Council). PS2 Design Review Producer Statement for B1. Previous email correspondence with Council.
Assessment:	Processing officer's decision recorded.
Issuing:	Approval letter signed by processing officer following discussions with team leader and director (not co-signed). Approval letter confirmed that a PS4 Construction Review Producer Statement was required on completion.
Any follow up:	No paperwork sighted.



Photo 6: Temporary wharf

4. Building Act 2004 infringement notices

4.1 Purpose

To examine the Council's procedures for issuing infringement notices and any required follow-up action.

4.2 Background

Sections 370-374 of the Building Act 2004 deal with the procedure for infringement offences, including the issue and content of infringement notices and the payment of infringement fees.

The infringement offences and fees are set under Schedule 1 of the Building (Infringement Offences, Fees, and Forms) Regulations 2007, Schedule 2 sets out the prescribed form of infringement notice and Schedule 3 sets out the prescribed form for the infringement reminder notice.

4.3 Findings

At the time of the review the Council had two documented policy and procedures for issuing infringement notices including work-flow and status diagrams. One specifically for building warrant of fitness (BWoF) or compliance schedule issues and the other for building offences other than for BWoF or compliance schedule matters (eg, undertaking building work without building consent or not obtaining a certificate for public use). The Ministry considers this documentation was appropriate. The Ministry's assessment of the Council's policy found that its procedural documentation was sound and largely modeled on the Ministry's published guidance documentation.⁸

Since adopting and implementing its infringement notice system in 2009, as at 31.12.11 the Council had issued a total of 56 infringement notices for various offences under the Building Act 2004. Initially for BWoF or compliance schedule issues only (47 No.), but in recent times this had been extended to include other building offences⁹ as provided in the Building (Infringement Offences, Fees, and Forms) Regulations 2007. However, the Council, in the first instance and depending on the severity of the offence, would try to gain willing compliance before resorting to the issue of an infringement notice.

Where the Council identified a non-compliance in relation to a BWoF and/or compliance schedule (eg, not receiving the BWoF and a Form 12A¹⁰ from each of the independent qualified persons (IQPs) responsible for the specified systems on the building's compliance schedule) the Council will initially issue a notice to fix (NTF). This NTF requires the owner (or their agent) to provide the necessary BWoF documentation to the Council by a given date. If this first NTF is not complied with, the Council will issue a second NTF. The second NTF will repeat the remedial action of the first NTF, with the additional requirement that Council will undertake an on-site BWoF audit before another given date. This is in order to establish the accuracy of the compliance schedule and wherever necessary the Council will amend it. An

⁸ Provided in the Ministry's guidance document: *Building Consent Authority Development Guide* available at: <http://www.dbh.govt.nz/bc-guide/index.html>

⁹ Refer to Example 3 in Table 3.

¹⁰ Certificate of compliance with inspection, maintenance, and reporting procedures.

infringement notice for failing to comply with the first NTF is issued with the second NTF. Refer to Examples 1 and 2 on Table 3.

In relation to issued infringement notices for BWoF/compliance schedule offences, the Council advised that a common theme has emerged. The theme shows that owners are achieving compliance to the Council's satisfaction in a relatively short timeframe when compared with the long timeframes generally associated with court prosecutions. The costs associated with the infringement notice process are also significantly less than costs incurred with lengthy court prosecutions.

Of the 47 infringement notices issued to 31.12.11 for BWoF/compliance schedule offences, only two have resulted in infringement fees being paid.¹¹ Since the remaining 45 infringement notices have achieved the desired outcome, that is, prompt compliance, the Council has elected to waive the payment of infringement fees. Although the payment of infringement fees had been waived, the Council recovered the costs it incurred pursuing the outstanding BWoF documentation, including any on-site audits and issuing NTFs.

Council advised that since the infringement notice process is now well embedded (since 2009) and building owners and their agents are more aware of the BWoF/compliance schedule requirements, the Council in the last 3 to 4 months has enforced the payment of infringement fees. Whereas in the past, when compliance was achieved the payment of the infringement was generally waived on the basis that the scheme was not yet widely understood.

Council credits the education of building owners and IQPs, plus the introduction of infringement notices for having a positive effect on BWoF compliance.

In relation to BWoF/compliance schedule offences, the Council advised it uses the site audit process to deal with continued non-compliance and the infringement process is the last resort. The Council believes the site audit process is the key to not having to collect the infringement fee, as 90 percent of the time it can achieve compliance by visiting the site. Since the Council will recover its actual costs incurred in relation to the site audit, generally it will not opt for the payment of the infringement fee unless the Council is being completely ignored.

A review of several issued infringement notices and infringement reminder notices identified, that in the main, the Council's notices satisfied the requirements set out in the Building (Infringement Offences, Fees, and Forms) Regulations 2007. The only omitted prescribed information related to the offender's date of birth and occupation. Infringement notices should include all the prescribed information - the Ministry considers that the Council should make all reasonable efforts to obtain the offender's date of birth and occupation and include it on the notices.

The Council monitored each infringement notice issued and sent out reminder notices when an infringement fee had not been paid 28 days after the notice was issued.

Those building officers issuing infringement notices had the necessary authority as they were authorised officers under section 229 of the Building Act 2004.

¹¹ In both instances since the payment of the infringement fees there has been ongoing compliance and Council was of the view that the infringement notice process had worked well in these particular cases.

The Council had an electronic system for tracking the status of infringement notices it issued.

The Council had no public information in relation to infringement notices. The Ministry suggests that the Council should, as a minimum measure, advise the public on its website of the Ministry's guidance document Building infringement scheme guidelines (published in June 2008) by providing a link to the Ministry's website.¹²

In most instances, the Council issued a NTF in conjunction with each of its infringement notices. The Ministry notes that NTFs and building infringement notices are two separate tools. They can be used separately or at the same time. This aspect of the enforcement process has largely been left up to each individual territorial authority to decide what works best for it. Following a review of the Council's infringement notices the Council's process was considered by the Ministry to be consistent, fair and well-documented.

4.4 Conclusion and recommendations

The Council has demonstrated that infringement notices when applied are a valuable and useful building control tool, which has resulted in prompt compliance at a reasonable cost, rather than costly, time-consuming court-based prosecutions.

Recommendation 2
The Ministry recommends that the Council:
Make all reasonable efforts to obtain the offender's date of birth and occupation, and include it in the infringement notice and the infringement reminder notice.
Provide public information on its website or provide a direct link to the Ministry's publication <i>Building infringement scheme guidelines</i>.

¹² Provided in the Ministry's guidance document: *Building infringement scheme guidelines* available at: <http://www.dbh.govt.nz/building-infringement-scheme-guidelines-index> .

Table 3: Examples of the use of infringement notices

Example 1

Building classified use: (layman's description in brackets)	Communal non-residential – assembly service ¹³ (cinema complex).
Non-compliance issue:	Owner not providing a building warrant of fitness (BWoF) and the supporting Form 12As for each of the specified systems on the compliance schedule.
Offence:	Failing to comply with a notice to fix (NTF) – section 168 of the Building Act 2004 refers.
Infringement fee:	\$1000.00
Background:	<p>Council initially wrote to the owner advising the BWoF was due for renewal in one month's time. The owner failed to provide the BWoF documentation to the Council.</p> <ul style="list-style-type: none"> • The first NTF was issued in relation to the owner not supplying BWoF documentation. The owner failed to comply with this NTF. • A second NTF was issued for the supply of BWoF documents, which included a requirement for the Council to undertake an on-site BWoF audit. An infringement notice for failing to comply with the first NTF accompanied the second NTF.
Outcome:	BWoF documentation was received by Council and this was followed by an on-site BWoF audit that confirmed compliance to the Council's satisfaction. The Council formally advised the owner that the second NTF had been 'uplifted' (complied with). Furthermore, the Council advised the infringement notice fee of \$1,000.00 had been waived.
Fees charged:	Council charges were incurred at an hourly rate of \$135.00 (GST inclusive) for the time spent pursuing the outstanding BWoF documentation, including the on-site audit and NTFs.

¹³ Classified Uses – Building Code clause A1.4.0.2 refers.

Example 2

Building classified use: (layman's description in brackets)	Housing – multi-unit dwelling ¹⁴ (unit-titled apartments).
Non-compliance issue:	Owner (body corporate) not providing a building warrant of fitness (BWoF) and the supporting Form 12As for each of the specified systems on the compliance schedule.
Offence:	Failing to comply with a notice to fix (NTF) – section 168 of the Building Act 2004 refers.
Infringement fee:	\$1000.00 per infringement notice (2 No.)
Background:	<p>Council initially wrote to the owner advising the BWoF was due for renewal in one month's time. The owner failed to provide the BWoF documentation to the Council.</p> <ul style="list-style-type: none"> • The first NTF was issued in relation to the owner not supplying BWoF documentation. The owner failed to comply with this NTF. • A second NTF was issued for the supply of BWoF documents, which included a requirement for the Council to undertake an on-site BWoF audit. An infringement notice for failing to comply with the first NTF accompanied the second NTF. • The owner provided some BWoF documentation to the Council, however, it did not fully satisfy the Council's requirements. • A third NTF was issued for the supply of BWoF documents only, along with a second infringement notice for failing to comply with the second NTF. Furthermore, an infringement reminder notice was issued in relation to the first infringement notice.
Outcome:	BWoF documentation compliance achieved to the Council's satisfaction. Council formally advised the owner the NTFs had been 'uplifted' (complied with) and the condition of having to carry out a BWoF audit of the building had been cancelled. Furthermore, the Council advised the two infringement notices of \$1,000.00 each had been waived.
Fees charged:	Council charges were incurred at an hourly rate of \$135.00 (GST inclusive) for the time spent pursuing the outstanding BWoF documentation, including NTFs.

¹⁴ Classified Uses – Building Code clause A1.2.0.3 refers.

Example 3

Building classified use: (layman's description in brackets)	Commercial ¹⁵ (multi-storey office tower with a two level shopping complex at street level).
Non-compliance issue:	Council's site visit (due to a complaint) revealed extensive unconsented building work being undertaken within the shopping complex without due regard for public safety.
Offences:	<ol style="list-style-type: none"> a. Failing to comply with the requirement that building work must be carried out in accordance with a building consent – section 40 of the Building Act 2004 refers. b. Using, or permitting use of building having no consent or code compliance certificate or certificate of public use (CPU) for premises for public use - section 363 of the Building Act 2004 refers.
Infringement fees:	<ol style="list-style-type: none"> a. \$750.00 b. \$1500.00
Background:	<p>Council visited the site and observed significant building work being undertaken without a building consent and a CPU.</p> <ul style="list-style-type: none"> • A NTF was issued to the building contractor instructing an immediate halt to building work until such time as a building consent and a CPU had been applied for and issued. An infringement notice for failing to obtain a building consent accompanied this NTF to the contractor. • A separate infringement notice was issued to the property facilities manager for failing to obtain a CPU.
Outcome:	The building contractor and the property facilities manager promptly paid their infringement fees of \$750.00 and \$1500.00 respectively. Applications for building consent and CPU were received and issued by the Council. Building work recommenced on site.
Fees charged:	Council fees were invoiced on an hourly rate for the actual time spent in relation to the infringement notice, including the on-site inspection and NTF.

¹⁵ Classified Uses – Building Code clause A1.5.0.1 refers.

Published in July 2012 by
Ministry of Business Innovation and
Employment – Building and Housing Group
PO Box 10-729
Wellington, New Zealand

This document is also available on the
Ministry's website: www.dbh.govt.nz

You can copy all or some of this document
only if you are using it for education or
public information, and you say it came
from us. You cannot copy any of this
document in any way for commercial use,
and you cannot keep it in a retrieval system
unless you ask us first.

ISBN: 978-0-478-39904-2 (website)