

Statement of Proposal – Greater Wellington Regional Council's Proposed Transfer of Functions, Duties and Powers under the Building Act 2004

1. Purpose

The purpose of this document is to inform the public and to seek comments regarding Greater Wellington Regional Council's (Greater Wellington) proposal to transfer functions, duties, and powers under Part 2 of the Building Act 2004 (excluding Subpart 7 – Safety of Dams) to another Regional Authority; along with any other functions, duties and powers under the Act that are necessary to allow the transferee Regional Authority to perform the functions of a Building Consent Authority (BCA) in relation to dams in the Wellington region.

2. Background

The Building Act 2004 (the Act) came in to force on 30 November 2004, with most of the substantive provisions of the Act taking effect from 31 March 2005. The Act provides that all building work must comply with the building code (contained in the First Schedule of the Building Regulations 1992) and provides generally for the building consent process, the inspection and certification of building work, and building practitioner licensing.

As a regional council, Greater Wellington is a 'Regional Authority' as defined in the Act.

The Act makes Regional Authorities responsible for performing the functions of a BCA in relation to buildings that are dams. The Act defines a dam as an artificial barrier that retains 3 or more metres depth and holds more than 20,000 or more cubic metres of water or other fluid.

BCA functions include:

- processing of applications for building consents;
- granting building consents;
- inspecting of building work during construction; and
- issuing of code compliance certificates on the completion of building work.

In order to perform the functions of a BCA, Greater Wellington must obtain registration as a BCA, unless it transfers its relevant functions, duties, and powers to another Regional Authority.

To obtain registration as a BCA, Greater Wellington must be accredited against prescribed standards and criteria set out in the Building (Accreditation of Building Consent Authorities) Regulations 2006. Accreditation will be assessed on areas such as documentation of procedures, guidance information for applicants, record keeping, competency of employees or contractors undertaking the work, training plans etc.

2. Proposal

Greater Wellington is considering transferring its functions, duties, and powers under Part 2 of the Building Act 2004 (excluding Subpart 7 - Safety of Dams) to another Regional Authority, along with any other functions, duties and powers that are necessary to allow the transferee Regional Authority to act as a BCA for dams in the Wellington region.

Part 2 of the Act contains functions that must be carried out by a BCA, which therefore require accreditation. However, not all functions relating to building consents are carried out by a BCA. Some functions need to be carried out by a Regional Authority. Within those functions required to be carried out by a Regional Authority, there are some functions that may be best retained by Greater Wellington. For example, the compilation and issue of project information memoranda. Other parts of the Act contain certain provisions that relate to and allow Part 2 functions to be carried out – e.g. section 242 requires a Regional Authority to provide information to the Chief Executive of the Department of Building and Housing. This is not a BCA function.

Under the Act, there is the ability to enable a full or partial transfer of functions, duties, and powers. Greater Wellington is considering a full transfer of BCA functions, duties and powers (as set out in the Building (Accreditation of Building Consent Authorities) Regulations 2006) and a partial transfer of other Regional Authority requirements.

3. Reasons for the Proposal

Greater Wellington has been working collaboratively with the other Regional Councils to determine the most efficient way to best meet its obligations under the Act. Given the number of building consent applications that are expected to be received nationally (between 20 and 50 per year), the preferred option is a collaborative model where three Regional Councils will take a lead role and become accredited and registered BCAs. The remaining Regional Councils would transfer their functions, duties and powers to the lead council(s). Environment Waikato, Environment Canterbury, and the Otago Regional Council have indicated they will, in principle, accept transfers in accordance with the Act from other Regional Councils.

Greater Wellington does not have a large number of dams in its region and over the last ten years has only received six resource consent applications that, if received now, would also require a building consent. The number of future dam applications requiring building consents is not expected to increase. For this reason, Greater Wellington is considering the option of transferring its powers, functions and duties to another Regional Authority.

3. Assessment of Options

There are other collaborative options available for Greater Wellington to meet its obligations under the Act (particularly those relating to the functions of a BCA). Those options, including a transfer under the Local Government Act (LGA), contractual assignment of functions and the establishment of a council-controlled organisation have been investigated. A report was commissioned from DLA Phillips Fox to assess the options and analyse the associated risks and liabilities.

The report recommended a full transfer of BCA functions under the Act as being the preferred option as it:

- is procedurally the most straight forward;
- removes the obligation to obtain accreditation;
- is flexible enough to allow for cost sharing arrangements; and
- legal liability can be divested to the transferee and any indemnity issues can be dealt with as part of the transfer agreement.

A transfer of functions, duties, and powers under the Act is also:

- desirable on the grounds of efficiency; and
- desirable for practical reasons, as Greater Wellington does not have the technical or special capability to carry out the functions, duties, and powers of a BCA in relation to dams.

4. Cost

If Greater Wellington was to become a BCA, the estimated cost of developing and implementing a new system to process building consents in accordance with the accreditation standards and criteria is in excess of \$50,000. The accreditation application fee of \$16,000 is not included in this estimate.

Greater Wellington's Environment Regulation Department is ISO registered. It is estimated that it costs around \$15,000 to \$20,000 per year to maintain the registration (included in this cost is the registration fee of \$6,000). A similar cost, if not higher, could be expected to run and maintain the accreditation system required for a BCA. There is a biennial accreditation fee of \$12,800.

If Greater Wellington pursues the transfer its functions to another Regional Authority, there will undoubtedly be a payment for services required. The amount of that payment has yet to be discussed and determined, however, it is not expected to exceed those cost Greater Wellington would incur should it carry out the functions itself.

4. Significance

The proposed transfer of functions, duties or powers under the Building Act 2004 will not result in a change to the mode of delivery of a significant activity, under Greater Wellington's Significance Policy.

5. Submission process

Comments and submissions on the proposed transfer are invited to be received by Greater Wellington by **5pm, 6 August 2007**. Submissions can be posted to PO Box 11-646, Wellington, faxed to 04 385 6960 or dropped in to Greater Wellington's offices at 142 Wakefield Street, Wellington or 34 Chapel Street, Masterton.

Submitters should indicate in their submission if they wish to be heard in person to support their submission. Submissions should include your name and contact details. Your submission may become publicly available if a request for it is made under the Local Government Official Information and Meetings Act 1987. If you are making a submission as an individual, Greater Wellington will consider removing your personal details if you so request in your submission.

If required, a hearing regarding the proposed transfer will be held on 28 August 2007.