



# Schedule 1(k) exemptions and issuing building infringement notices

## **Technical Review of Hastings District Council**

September 2012

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# 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 Hastings District Council (the Council). The on-site stage of the review process was undertaken by the Building and Housing Group of the Ministry of Business, Innovation and Employment (the Ministry) on 03-04.04.12.

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)<sup>1</sup> and issuing infringement notices for certain building offences.

## 1.2 Reasons for the review

The Ministry's 2010/11 technical review programme<sup>2</sup> indicated that some councils were not using Schedule 1(k) exemptions and/or not issuing building infringement notices.

The Ministry undertook this review as part of its ongoing performance monitoring function, to highlight current practices and to encourage 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 the use of infringement notices for building offences.

## 1.3 The Council

Hastings District Council has jurisdiction over an area of 5,229 square kilometres. According to the last census of 2006, the district had a population 70,842. The city of Hastings, Flaxmere and Havelock North are the three main centres of the Hastings District, which are surrounded by 38 rural settlements including Clive, Bridge Pa and Waimarama.

The Hastings District has an agricultural focus as evidenced by the many orchards, farms and vineyards. The district is commonly referred to as the 'Fruit Bowl of New Zealand'. The main industries are largely agriculturally based, with food processing plants and canneries being major local employers.

The Hastings District Council offices are located in the central business district of Hastings.

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<sup>1</sup> 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 [www.dbh.govt.nz/bc-no-consent](http://www.dbh.govt.nz/bc-no-consent)

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

## 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 current 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<sup>3</sup>.

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<sup>3</sup> The Building Act 2004 is available at [www.legislation.govt.nz](http://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 Hastings District 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 from the requirement to obtain a building consent 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

Since the Building Act 2004 came into force in 2005, the Council has been asked to approve an unspecified number of Schedule 1(k) exemptions. The Ministry was provided with a master list showing all Schedule 1 exemptions ((a) to (n)), but this list did not show how many of these related specifically to exemption (k).

The Council provided a sample of 10 examples of applications for Schedule 1(k) exemptions that it had approved and five examples of applications that had been rejected. A selection of these is noted below.

| Approved                               | Rejected  |
|--|---|
| Telecommunication mobile phone aerials | Alterations to an existing veranda and porch                |
| Frost fans                             | Wood storage construction (a canopy between two containers) |
| Upgraded fire exit doors               | Installing bi-fold doors                                    |
| Marquees for promotional events        | Installing additional residential sanitary fittings         |
| Closed circuit television poles        |   |
| Cycle pedestrian bridge                |   |
| Installing roof skylights              |   |

Although detailed information was often kept on file regarding the exemptions approved, none of the Schedule 1(k) exemptions that were assessed by the Ministry during the review were accompanied by a statement explaining the reasons for the Council's decision and setting out just how the applications had actually been assessed by the Council. At the time of the review, Council staff retrospectively created some information to explain the original decisions and provided this information to the Ministry. This additional information was found to appropriately justify the Council's decision-making.

The Council has recently developed a new version of its application form specifically for Schedule 1(k) exemptions<sup>4</sup>. The form is a technically sound, useful and practical tool, which will help provide a clear audit trail for the decision-making pathway for future Schedule 1(k) exemption applications. The form is on the Council's website along with other information for the public that explains when a building consent is needed and when a Schedule 1(k) exemption can be applied for. The Council has provided a link to the Ministry's national guidance on building work that does not need a building consent.

The Council's responsibility for approving an exemption under Schedule 1 extends only to (k). For all the other exemptions contained in Schedule 1, it is the responsibility of the building owner to decide whether an exemption applies to the proposed building work. The Council advised the Ministry that it does not accept information from building owners who have used these other exemptions (that is, other than (k)) and has decided not to keep such information on the relevant property file.

The Ministry does not agree with this position. There are clear benefits in the Council and building owner first discussing if an exemption could potentially apply before the owner makes a final decision and the Council including such information on the property file. This would clearly show the decisions taken by the owner and would provide an audit trail of what building work has occurred on the property without a building consent. The Ministry would encourage the Council to develop and use an owner's notification form for these other exemptions in Schedule 1 (that is, other than (k)). This could then be provided to the Council by the owner and kept on the property file, with any relevant documentation the owner chooses to provide. This is consistent with the approach outlined in the Ministry's good practice guidance document on exemptions.<sup>5</sup>

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<sup>4</sup> Council form: Application for Exemption under Schedule 1(k) refers. Available at [www.hastingsdc.govt.nz/building-consents-overview#Dolneedabuildingconsent?](http://www.hastingsdc.govt.nz/building-consents-overview#Dolneedabuildingconsent?)

<sup>5</sup> Refer to <http://www.dbh.govt.nz/bc-no-consent>

The Council has a documented policy and procedures for considering and approving Schedule 1(k) exemptions<sup>6</sup>. This was introduced on 02.04.12 and updated the Council's former policy. The current documentation clearly sets out the roles and responsibilities of the Council and building owner and the overall process for approving an exemption under Schedule 1(k). Supporting documentation has also been developed to assist with Council's decision-making. For example, template letters have been developed to communicate Council's decision to applicants. Further guidance to staff has also been developed around Schedule 1(k).

The Ministry supports this approach, but found that the policy could be clarified in one aspect. The policy currently lists a number of current 'blanket' exemptions that the Council has developed over time. However, a number of these examples are either already exempt under Schedule 1, or have never required a building consent. As such, these works do not have any relevance for a Council exemption decision under Schedule 1(k). For example:

- gas instantaneous hot water systems may be exempt under (ad) of Schedule 1
- frost fans may be covered under (gb) of Schedule 1
- service works to subdivisions often do not need building consents under the Building Act 2004 (there may be implications under Resource Management legislation)<sup>7</sup>

Additionally, the Ministry was advised by the Council that marquees greater than 100 square metres are eligible for a Schedule 1(k) exemption if certain pre-conditions are satisfied. The Council's policy does not, however, document this.

Collectively, the Council's application form, policy on Schedule 1(k) exemptions, and explanatory material on its website were a little unclear about the types of building work that the Council would view as appropriate for a Schedule 1(k) exemption. This material specifically mentions marquees, tents and farm buildings only, but does not provide other examples of building work that may be appropriate for a Schedule 1(k) exemption. It also does not set out any indicative criteria to communicate the key parameters that the Council will apply when making case-by-case decisions on proposed Schedule 1(k) exemptions.

At the time of the review, only the Building Team Leader (Processing) or a Senior Building Control Officer (BCO) were authorised to approve Schedule 1(k) exemptions. This position was demonstrated in the sample of exemptions the Ministry assessed. This position is likely to change in the future however. The Council advised that after appropriate training, it is intending all BCOs will be authorised to issue Schedule 1(k) exemptions – provided the proposed building work falls within their assessed competency.

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<sup>6</sup> Building Consent Exemptions under Schedule 1(k) Policy (T101) refers.

<sup>7</sup> These services are generally owned and operated by network utility operators and are not considered to be 'buildings' under section 9 of the Building Act 2004.

From 02.04.12, the Council began charging a fixed fee of \$150 for processing applications for Schedule 1(k) exemptions. Prior to this date, no fee was charged.

The Ministry was not aware of any exemption approval letters to the applicant which confirmed the basis for the Council's decision to waive the requirement to obtain a building consent. If the Council does this in the future, the Ministry believes it would be good practice to reconfirm previous discussions and agreements between the parties – for example, where a supervising chartered professional engineer has elected to provide a PS4 on completion of the building work, this should be noted and the Council should follow this up.

### 3.4 Conclusion and recommendations

Since 2005, the Council has granted Schedule 1(k) exemptions for a range of building work. The Council's system for assessing and approving applications for Schedule 1(k) exemptions has recently been strengthened. However, there is potential for further improvement by implementing the following recommendations.

| <b>Recommendation 1</b>   |
|---|
| <b>The Ministry recommends that the Council:</b>  |
| Ensures it consistently records its rationale for approving or rejecting applications for Schedule 1(k) exemptions and include this information on the property file (the Council's new application form will readily enable this if it is consistently used and filled out properly).  |
| Develops a building owner's notification form which can be used for all other exemptions in Schedule 1 (other than (k)) and kept on property files.   |
| Amends its policy and procedures for approving Schedule 1(k) exemptions to correctly reflect the scope of building work that the Council would consider appropriate for a Schedule 1(k) exemption.  |
| Ensures staff assessing an application for a Schedule 1(k) exemption consider the following factors: <ul style="list-style-type: none"> <li>• compliance with the Building Code</li> <li>• scope of building work</li> <li>• risks if an exemption is approved</li> <li>• assurances (eg, who is supervising the building work, are the practitioners known and trusted by Council)</li> <li>• other mitigating circumstances (eg, the likelihood of failure versus consequence, temporary versus permanent).</li> </ul>  |
| Provide further direction to staff (and the public) about what types of building work would be appropriate for a potential Schedule 1(k) exemption. For example, this could include: <ul style="list-style-type: none"> <li>• repeat long-term structures including small, simple, low-risk structures where a building consent has previously been obtained (eg, bus shelters, pedestrian shelters and flag poles)</li> <li>• short-term structures such as promotional or event-based structures, which may be more complex but have a short life and construction is to be well monitored by reputable people (eg, chartered professional engineer)</li> <li>• short-term structures that are part of well organised events (may have been consented for previous occasions and organisers have a planned people management procedure) - for example, supporting veranda for temporary use as a deck/grandstand</li> <li>• permanent simple alterations where there are no impacts on the safety of building users and no changes of use (eg, cash dispensing machine installations).</li> </ul> |

## Table 1: Examples of Schedule 1(k) exemptions

The following examples of good practice have been selected from exemptions approved by other territorial authorities. They are not specific to Hastings District Council.

| Example 1                      |   |
|--------------------------------|---|
| <b>Scope of work:</b>          | Reinforced concrete foundation for temporary Rugby World Cup (RWC) statue - intended life of 5 years  |
| <b>Project value:</b>          | \$10,000.00   |
| <b>Council fees charged:</b>   | \$402.75  |
| <b>Background:</b>             | Formal written application for Schedule 1(k) exemption.   |
| <b>Documentation provided:</b> | Drawings.<br>PS1 Design Producer Statement for B1 (without calculations).<br>Previous correspondence with Council, including advice that a PS4 Construction Review Producer Statement will be provided on completion. |
| <b>Assessment:</b>             | Assessed by structural reviewer (peer reviewed by team leader) and processing officer with decisions recorded on the appropriate worksheets.  |
| <b>Approval:</b>               | Council's approval letter sent to applicant.  |

Photo 1: RWC statue



| <b>Example 2</b>               |   |
|--------------------------------|---|
| <b>Scope of work:</b>          | Installation of domestic stair lift.                    |
| <b>Project value:</b>          | \$2,162.00  |
| <b>Council fees charged:</b>   | \$402.75  |
| <b>Background:</b>             | Formal written application for Schedule 1(k) exemption. |
| <b>Documentation provided:</b> | Drawings and specifications.                            |
| <b>Assessment:</b>             | Decision recorded on the appropriate worksheet.         |
| <b>Approval:</b>               | Council's approval letter sent to applicant.            |

| <b>Example 3</b>               |  |
|--------------------------------|--|
| <b>Scope of work:</b>          | Temporary stage, canopy and lighting towers for pop music concert.   |
| <b>Project value:</b>          | \$100,000.00   |
| <b>Council fees charged:</b>   | \$1479.88  |
| <b>Background:</b>             | Formal written application for Schedule 1(k) exemption.  |
| <b>Documentation provided:</b> | Drawings.<br>PS1 Design Producer Statement for B1 (without calculations) including advice that a PS4 Construction Review Producer Statement will be provided prior to the concert. |
| <b>Assessment:</b>             | Assessed by structural reviewer (peer reviewed by team leader) and processing officer with decisions recorded on the appropriate worksheets.                                       |
| <b>Approval:</b>               | Council's approval letter sent to applicant.   |
| <b>Any follow up:</b>          | PS4 for B1 supplied to Council prior to concert.   |

| <b>Example 4</b>               |  |
|--------------------------------|--|
| <b>Scope of work:</b>          | Reinforced concrete foundation bases (27 No.) for wind turbines.   |
| <b>Project value:</b>          | \$207,000.00 per base  |
| <b>Council fees charged:</b>   | \$935.00   |
| <b>Background:</b>             | <p>Following pre-application discussions, a formal written application for a Schedule 1(k) exemption was made based on previously granted building consent for the generic reinforced concrete foundations (16m diameter x 1.5m deep).</p> <p><b>Note:</b> Since Schedule 1 was expanded on 23.12.10, this type of building work may have been exempt from the requirement to obtain a building consent (see clause (gb) of Schedule 1). Furthermore, since the Building Act 2004 was amended on 13.03.12, NUO (network utility operator) wind turbines are no longer considered to be 'buildings', therefore, a building consent is no longer required (s9(ac) refers).</p> |
| <b>Documentation provided:</b> | <p>Covering email advising issue of PS4 Construction Review Producer Statement on completion of foundations.</p> <p>Nil drawings and specifications (note: comprehensive set of documents provided with previously granted building consent).</p>  |
| <b>Assessment:</b>             | Based on previous building consent.  |
| <b>Approval:</b>               | Council's approval letter sent to applicant.   |
| <b>Any follow up:</b>          | PS4 for B1/B2 plus supervising engineer's site inspection, notes provided to Council for each turbine base.  |

**Photo 2 and 3:** Completed turbine and base under construction



| <b>Example 5</b>               |   |
|--------------------------------|---|
| <b>Scope of work:</b>          | Structural upgrade to substructure of existing wharves.   |
| <b>Project value:</b>          | \$1,300,000.00  |
| <b>Council fees charged:</b>   | \$2,873.00  |
| <b>Background:</b>             | Formal written application for Schedule 1(k) exemption, following a pre-application meeting.  |
| <b>Documentation provided:</b> | Covering letter advising construction monitoring by the design engineer with PS4 Construction Review Producer Statement on completion.<br><br>Drawings including specifications.<br><br>Engineer's project features report.<br><br>PS1 Design Producer Statement for B1 and B2 (with calculations). |
| <b>Assessment:</b>             | Processing officer's decision recorded.   |
| <b>Approval:</b>               | Council's approval letter sent to applicant.  |

**Photo 4:** Wharf upgrade



| <b>Example 6</b>               |   |
|--------------------------------|---|
| <b>Scope of work:</b>          | Construction and removal of a 128m long temporary wharf for a period of 5 years maximum.  |
| <b>Project value:</b>          | \$3,000,000.00  |
| <b>Council fees charged:</b>   | \$4892.50   |
| <b>Background:</b>             | Formal written application for Schedule 1(k) exemption, following a pre-application meeting.  |
| <b>Documentation provided:</b> | Covering letter.<br>Drawings (including specification notes).<br>Engineer's design statement.<br>PS1 Design Producer Statement for B1 (without calculations based on advice from Council).<br>PS2 Design Review Producer Statement for B1.<br>Previous email correspondence with Council. |
| <b>Assessment:</b>             | Processing officer's decision recorded.   |
| <b>Approval:</b>               | Council's approval letter sent to applicant.  |

**Photo 5:** Temporary wharf



## 4. Building Act 2004 infringement notices

### 4.1 Purpose

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

### 4.2 Background

Part 5 of the Building Act 2004 contains a system to aid enforcement of the Act whereby building officials can issue infringement notices. Sections 370-374 cover 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

Since adopting its infringement notice system, the Council has issued 17 infringement notices. In the main, these were issued for illegal building work – that is, failing to comply with the requirement that building work must be carried out in accordance a building consent (s40). Infringement notices were also issued for the following building offences:

- failure to display a building warrant of fitness (s108(5)(a))
- displaying a building warrant of fitness other than in accordance with s108 (s108(5)(c)).

The Council has a policy covering infringement notices issued under the Building Act 2004<sup>8</sup>. This was last updated in September 2011. The Ministry noted that the Council's policy included an example offence which stated an infringement notice could be issued for 'not complying with the consent documents'. The Ministry's view is that the policy should be clearer by referring to the language of the offence in section 40 of the Building Act 2004: 'A person must not carry out any building work except in accordance with a building consent'. The current wording in the policy may lead enforcement officers to think that the offence is broader than what is in the Act.

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<sup>8</sup> Building Infringements Policy 2009 (T124) refers.

Prior to issuing infringement notices, and depending on the severity of the offence, the Council will endeavour to gain voluntary compliance. This process usually involves one-on-one discussions with the building owner and a verbal notice to fix. If this does not resolve the issue then the Council will issue a written site inspection report. The next step involves either a formal written notice to fix or issuing an infringement notice. The Council's policy gives discretion to staff to use their professional judgement to decide whether to escalate compliance activity and issue an infringement notice at an earlier stage, if this is warranted, (for example, if public health and safety is at risk).

To-date, in the vast majority of cases where the Council has decided to issue an infringement notice, it has required payment of the infringement fees. Unless there is a good reason, it will not waive fees. The general intent of this policy is signal to the public that the Council will give people a reasonable opportunity to remedy the situation; however, if the problem remains unresolved then an infringement notice will be issued accordingly and monetary fines will inevitably result.

This policy was reinforced in a number of the examples the Ministry assessed. In one, the Council issued multiple infringement notices to three parties: the main contractor, the consulting engineer and to the building owner. In another example, the Council issued infringement notices to both the building owner and to the builder. From the evidence considered during the review, the Ministry considers that in each case the infringement notices were justified.

The infringement notices the Ministry reviewed were generally completed satisfactorily and met the requirements set out in the Building (Infringement Offences, Fees, and Forms) Regulations 2007. However, it was noted that some of the information fields of the prescribed form were not always populated (eg, date of birth and occupation). Where practicable, infringement notices should include all the prescribed information, even where the form states 'if known' – the Ministry considers that the Council should make reasonable efforts to obtain the offender's date of birth and occupation and include it on the notice.

Under the Council's policy, Team Leader (Building), Team Leader (Building Compliance), the Community Safety Manager, or Group Manager (Planning and Regulatory Services) can issue infringement notices. Council staff responsible for issuing infringement notices had been appropriately delegated such authority and provided with warrants as required by section 229 of the Building Act 2004.

The Council has not developed any specific guidance information for the public on its infringement notice system, although infringement notices are mentioned in some parts of the building section of the Council's web site as an example of what could happen if building owners did not comply with their responsibilities. When introducing the infringement notice system the Council notified the public via newspaper advertisements, etc.

The Council has an electronic system for tracking the status of infringement notices it issues. If the fee has not been paid by the due date, then an infringement reminder notice is generated. If the fee is still not paid, the Council refers the matter to the Courts.

#### 4.4 Conclusion and recommendations

The Council has added the Building Act's infringement notice system into its general tool-box of enforcement and compliance options. The Council's files show that infringement notices are a valuable enforcement tool, which has resulted in compliance being achieved. There are few relatively minor action points the Council could do to strengthen its infringement notice system as per the following recommendations.

| <b>Recommendation 2</b>  |
|--|
| <b>The Ministry recommends that the Council:</b>   |
| Clarify its policy by referring to the language of the offence in section 40 of the Building Act 2004: 'A person must not carry out any building work except in accordance with a building consent'.       |
| Makes 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.  |
| Develops information for the public on its infringement notice system (such information could link to or draw from the Ministry's guidance document Building infringement scheme guidelines). <sup>9</sup> |

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<sup>9</sup> Freely available to download at: [www.dbh.govt.nz/building-infringement-scheme-guidelines-index](http://www.dbh.govt.nz/building-infringement-scheme-guidelines-index)

## Table 2: Examples of the use of infringement notices

The following examples of good practice have been selected from infringement notices that have been issued by other territorial authorities. They are not specific to Hastings District Council.

| Example 1  |   |
|--|---|
| <b>Building classified use:</b> (layman's description in brackets) | Communal non-residential – assembly service <sup>10</sup> (cinema complex).   |
| <b>Non-compliance issue:</b>                                       | Owner not providing a building warrant of fitness (BWoF) and the supporting Form 12As for each of the specified systems on the compliance schedule.   |
| <b>Offence:</b>  | Failing to comply with a notice to fix (NTF) – section 168 of the Building Act 2004 refers.   |
| <b>Infringement fee:</b>   | \$1000.00   |
| <b>Background:</b>   | <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"> <li>The first NTF was issued in relation to the owner not supplying BWoF documentation. The owner failed to comply with this NTF.</li> <li>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.</li> </ul> |
| <b>Outcome:</b>  | 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.  |
| <b>Fees charged:</b>   | 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.   |

<sup>10</sup> Classified Uses – Building Code clause A1.4.0.2 refers.

| <b>Example 2</b>   |  |
|--|--|
| <b>Building classified use:</b> (layman's description in brackets) | Housing – multi-unit dwelling <sup>11</sup> (unit-titled apartments).  |
| <b>Non-compliance issue:</b>                                       | 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.   |
| <b>Offence:</b>  | Failing to comply with a notice to fix (NTF) – section 168 of the Building Act 2004 refers.  |
| <b>Infringement fee:</b>   | \$1000.00 per infringement notice (2 No.)  |
| <b>Background:</b>   | <p>The 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"> <li>• The first NTF was issued in relation to the owner not supplying BWoF documentation. The owner failed to comply with this NTF.</li> <li>• 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.</li> <li>• The owner provided some BWoF documentation to the Council, however it did not fully satisfy the Council's requirements.</li> <li>• 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.</li> </ul> |
| <b>Outcome:</b>  | BWoF documentation compliance achieved to the Council's satisfaction. Council formally advised the owner that 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.   |
| <b>Fees charged:</b>   | Council charges were incurred at an hourly rate of \$135.00 (GST inclusive) for the time spent pursuing the outstanding BWoF documentation, including NTFs.  |

<sup>11</sup> Classified Uses – Building Code clause A1.4.0.2 refers.

| <b>Example 3</b>   |  |
|--|--|
| <b>Building classified use:</b> (layman's description in brackets) | Commercial <sup>12</sup> (multi-storey office tower with a two level shopping complex at street level).  |
| <b>Non-compliance issue:</b>                                       | 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.  |
| <b>Offence:</b>  | <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol>   |
| <b>Infringement fee:</b>   | <ol style="list-style-type: none"> <li>a. \$750.00</li> <li>b. \$1500.00</li> </ol>  |
| <b>Background:</b>   | <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"> <li>• 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.</li> <li>• A separate infringement notice was issued to the property facilities manager for failing to obtain a CPU.</li> </ul> |
| <b>Outcome:</b>  | 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.  |
| <b>Fees charged:</b>   | 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.   |

<sup>12</sup> Classified Uses – Building Code clause A1.4.0.2 refers.

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