



## STAFF REPORT

**TO:** Environment & Planning Committee

**FROM:** D C Bush-King, Environment & Planning Manager

**REFERENCE:** T202

**SUBJECT:** **BUILDING CONSENT AUTHORITY ACCREDITATION FEES - REPORT EP06/11/09** - Report Prepared for 15 November 2006 Meeting

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### 1. INTRODUCTION

The Department of Building and Housing released a discussion paper on Building Consent Authority Accreditation Fees in October. Staff have reviewed the document and prepared the attached submission. The DBH report is available for Councillors to view and will also be available at the meeting where I will give a summary of its contents.

Attached is a letter to the Department of Building and Housing submitting on the proposed Building Consent Authority Accreditation Fees.

### 2. RECOMMENDATION

That this submission be endorsed.

D C Bush-King  
**Environment & Planning Manager**

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8 November 2006

Building Consent Authority  
Accreditation and Registration Project  
Regulatory Compliance Business Unit  
Department of Building and Housing  
PO Box 10729  
**WELLINGTON 6143**

Dear Madam / Sir

## **BUILDING CONSENT AUTHORITY ACCREDITATION FEES**

Tasman District Council is a unitary authority having both regional and territorial functions. It has made application to be registered as a building consent authority (BCA) in terms of the Building Act 2004. The Council wishes to make the following points in relation to the discussion paper that has been released on building consent authority accreditation fees.

### **1. Cost Recovery Approach**

It is acknowledged that given the Act has set in place a requirement for building consent authorities to be accredited by 30 November 2007, that costs will be incurred in order to achieve this status. The Minister has appointed a Building Consent Accreditation Body (BCAB) to undertake the task of accreditation and these costs must now be met. The discussion paper is premised on recovering the full costs of the BCAB undertaking this work.

The power to make regulations setting accreditation fees however contemplates the prospect that there may not be a fee. And in any event we would question whether it is fair to introduce a full cost recovery approach to a regulatory function that is required by law. The justification for accreditation suggests there must be some public good in setting up this regime and to this end should we consider it is a cost that the Crown should cover.

Without having seen the legal advice that the DBH has received, we can accept that the levy is "for, or in connection with, the performance of the Chief Executive's functions" under the Act. Under Section 248 of the Building Act the Chief Executive "may appoint a person as a building consent accreditation body". Notwithstanding the fact that regulations can set accreditation fees (if any), and given the discretionary nature associated with the appointment of a BCAB and the resulting contractual relationship between the Chief Executive and BCAB, we would have thought it was entirely competent for the Chief Executive of the DBH to meet some or all of the costs of the BCAB from within the operating budget.

While the \$3Million assistance package is on the face of it, positive and helpful, it does not go to offset the actual costs that BCAs will incur in having to pay the accreditation fees. These costs are separate from the set up and implementation costs that councils have to absorb in order to become a BCA. In the case of Tasman District Council, the application fee has not been budgeted and we are having to contemplate an additional change to our fees and charges schedule to cover the likely invoice from the BCAB. Given Tasman District Council, like other local authorities, has already increased its fees substantially since the inception of the Building Act 2004, further significant increases will not be well received from prospective applicants.

On the basis that BCAs have to be accredited in order to carry out their functions as required by the Building Act 2004, we consider that Central Government should absorb these regulatory costs. Local authorities can continue to absorb the internal costs associated with the accreditation process.

## **2. Amount of the Fees**

Notwithstanding our opposition to the feed, the report is helpful in disclosing how the fees have been calculated. While there may be little that can be done relating to the \$160.00 hourly charge out rate (which many a tradesperson and building control official will look at with some envy) we wonder about the 10% contingency provided for reassessment. Does this presume there will be in all cases a follow-up visit over and above the clearance of findings charge?

We are also extremely nervous about the suggestion that additional costs over and above the fee schedule might be incurred (note 3 on page 20 and 21 refers). This raises questions about whether the fee is a fixed charge or whether it is simply an estimate. Bearing in mind that you expect territorial authorities to pay fees before an audit commences, how do we know that additional charges will not be incurred and if they are, how are these to be recovered? While the Building Act has a permissive regime for fixed building consent fees, many local authorities use the Special Consultative Procedure to fix charges and it is not easy to make retrospective changes.

The report includes costing details from other accreditation agencies in other countries. While that shows that International Accreditation New Zealand (IANZ) is competitive with overseas counterparts, in itself it is not a justification for the costs that BCA applicants will have to pay. Accreditation agencies are often involved in assessing products, or professional or trade groupings. The use of an external accreditation agency to assess local government in the performance of regulatory functions mandated by law is not something that has parallel in too many, if any, other jurisdictions. Given the uniqueness of the accreditation approach to such regulatory agencies, and the fact that Parliament has provided for this option in the legislation, which the Government has chosen to initiate, we would have thought the Government should have borne the cost of this process rather than BCA applicants and ultimately building consents applicants.

### **3. Special Assessment Fees**

We are also most concerned about the Special Assessment category charges. To charge \$5,180.00 in relation to any changed conditions, including the loss of “any critical building control capability or capacity where no contingency arrangements are in place” or a similar magnitude to deal with “a complaint about a building consent authority”, are unjustified and unsustainable costs. While the BCAB is unlikely to be in a position to have resources to respond on a regular basis around all 85 local authorities plus the private BCAs (if any), exposure to such costs is entirely unreasonable. We do not believe you could come up with a definition that would satisfy the test of administrative certainty and would not attempt to do so. This category of charge should be deleted in its entirety. If the BCAB has cause to initiate a review of an accredited BCA, it should at its own cost.

### **4. Allowing for BCA Differences**

What ever fee system is decided upon, there may be inequities between local authorities in what they have to pay. Under the current proposal, the cost per building consent processed would be much higher for small BCAs and regional councils than for those BCAs processing more building consents. While value of building consents is a good a proxy measurement of the complexity of development proposals that a BCA has to manage, DBH should consider using some equalisation factor based on the number of consents processed to try and smooth out the per capita differential between BCAs. While no tax system is fair to all, it is suggested that DBH should try to make any charging system as fair and as consistent as it can. Why should a building consent applicant in the Chatham Islands pay more towards the costs of the BCAB than an applicant for a similar building consent in Auckland?

The inconsistency and unfairness of the current proposal is accentuated when you compare territorial authority fees with those payable by private BCAs. In the absence of any proven track record, an estimate is all that could be used in order to set a charge. However allowing private BCAs to do so and not territorial authority BCAs, highlights an important difference. Particularly for those territorial BCAs who are on the margin of one charging band to another, do they have the opportunity to negotiate an estimate for the following year’s activity?

### **5. Transfer of Powers**

While Section 233 provides for the transfer of BCA functions to another territorial authority, it does not automatically follow that costs to the territorial authority would be reduced. There may well have to be a consideration paid by the transferring territorial authority to that authority that is going to take on the BCA functions. This cost would have to be met from somewhere and is unlikely to be totally recovered from the applicants for building consent. It seems to us that much more work needs to be done on the whole concept of transferring functions. There is an obvious mismatch between the theory and what is most likely to happen.

The paper promotes transfer of functions as a means of cost reduction to particular local authorities. We are unconvinced that this is a plausible defence of the proposed charging system.

## **6. Assistance Package**

The \$3Million Assistance Package is welcomed, although Tasman District for one has already incurred relatively significant costs in our involvement in the Mainland Cluster and in making our own preparations for reviewing systems and procedures in order to demonstrate our capabilities in the building control function. While we will explore further opportunities to make application for new and innovative tools and systems that we might employ, the assistance package comes too late unless of course retrospective applications will be contemplated?

If financial assistance is available to fund staff attendance at training events and workshops then that would be most welcome. Because we are in a high growth area, our problem will be keeping up with the work flow while internal staff attend such training. If the financial assistance is available to off-set some of these costs then that too would be most welcome.

The offer of support and advice to help local authorities achieve accreditation standards is also a good suggestion. The improved codification of procedures is something that seems to be expected and being able to employ external assistance to achieve this, or to engage consultant assistance while internal staff are taken off their current duties to prepare such systems, would be off assistance.

## **7. Review Cycle**

The proposal is that there will be an initial accreditation application and assessment and then two years later a full technical reassessment will be undertaken, and thereafter reviews occur on two yearly cycles. This is an improvement on earlier proposals, but our concerns regarding the quantum costs and the justification of costs still remains. We consider the review cycle should fixed at a five year interval. The transaction costs associated with a more regular cycle are not warranted, particularly if systems are in place to get accredited in the first place.

We are happy to be involved in any further discussions on this matter.

Yours faithfully

Dennis Bush-King  
**Environment & Planning Manager**