



# A G E N D A

## **REGULATORY HEARINGS COMMITTEE MEETING**

**Monday, 08 May 2023, 9.00am**

Council Chamber  
Hauraki House  
1 William Street  
Paeroa



## Membership

### Committee Members:

Cr P A Milner (Chairperson)  
Cr A Rattray (Deputy Chairperson)  
Mayor D A Adams  
Cr A Spicer  
*Commissioners (if required)*

### Staff

P Thom  
A de Laborde  
E Kroukam  
K Moore  
M Matich  
D Hannah  
A Harris  
Council Secretary

### Chief Executive

L D Cavers

## Regulatory Hearings Committee

Membership	<p><i>All members of this Committee must be trained (or undertaking training) in accordance with section 39B the Resource Management Act 2002.</i></p> <p>Deputy Mayor (Chairperson)          One Councillor (Deputy Chairperson)          One Councillor          The Mayor          Approved Independent Commissioners (appointed by the Council)</p>
Meeting frequency	<p>Monthly meeting (if required) on [the second or fourth to last] Mondays of each month, commencing at 9.00am.</p>
Purpose	<p>This committee is responsible for resource management and regulatory hearings.</p>
Delegations	<p>All delegations made to this Committee are to be exercised within the framework of the Council's adopted regulatory policies, plans, strategies, policies and bylaws.</p> <p>The Council delegates to the Regulatory Hearings Committee the following powers, duties and responsibilities:</p> <ul style="list-style-type: none"> <li>• Implementation of the Resource Management Act, the Operative District Plan and other regulatory Acts and Regulations in terms of regulatory responsibilities.</li> <li>• All powers, duties and discretions under the Resource Management Act 1991 to allow the above matters to be undertaken, other than:             <ul style="list-style-type: none"> <li>○ The consideration or hearing of any application where the Council is the applicant.</li> <li>○ The making of a recommendation on a requirement for a Designation or a Heritage Order where the Council is the Requiring Authority.</li> <li>○ Exercising the power of delegation.</li> </ul> </li> </ul> <p>Provide governance oversight of the Council's regulatory service delivery functions, including: :</p> <ul style="list-style-type: none"> <li>• Powers, duties and discretions vested in the Council by the Crown Minerals Act 1991.</li> <li>• Powers, duties and discretions in respect to the Dog Control Act 1996.</li> <li>• Powers, functions and discretions under Building (Pools) Amendment Act 2016.</li> <li>• Powers, duties and discretions pursuant to section 232 of the Building Act 2004 with the exception of the power to set fees and charges.</li> <li>• Determining any appeals to a determination made by the Chief Executive under the Council's Bylaws.</li> <li>• The Council's Compliance, Monitoring and Enforcement Policy and activity.</li> <li>• Approval of legal action taken by the Council in relation to the Council's Bylaws made under the Local Government Act 2002 or any other legislation.</li> <li>• Reviewing and deciding on objections to development contributions payment requests in relation to the Council's Development Contributions Policy.</li> <li>• Determine and grant of Territorial Authority consents under s100 of the Gambling Act 2003 (as it relates to Class 4 Gambling Venues) and s65C of the Racing Act 2003 (as it relates to Board Venues).</li> </ul> <p>In accordance with section 34 of the Resource Management Act 1991 and clause 32 of Schedule 7 of the Local Government Act 2002 the Council directs that:</p> <ul style="list-style-type: none"> <li>• Commissioners appointed to deal with all other matters shall be the Chairman of the Hearings Committee together with not less than one other elected member.</li> <li>• Commissioners, except the Chairperson of the Regulatory Hearings Committee, shall attend to applications as far as practicable on a rotational basis.</li> </ul>

<p>Specific delegations</p>	<p>The Council delegates to the Regulatory Hearings Committee the following powers, duties and responsibilities in respect to the:</p> <p>Resource Management Act:</p> <ul style="list-style-type: none"> <li>• Pursuant to section 34A, approve applications where delegated staff acting under delegated authority do not consider they can approve an application.</li> <li>• Section 87E: Decision to return, defer, decline or grant a request to transfer an application for resource consent or application for a change or cancellation of consent condition to the Environment Court.</li> <li>• Section 132: Change conditions of resource consent on a review. Cancel a resource consent following a review.</li> <li>• Section 189: Give notice of a requirement for a heritage order.</li> <li>• Where no agreement can be reached with staff, sections 357 &amp; 357D: Authority to consider any objection (pursuant to this section) to an officer's decision when the objection cannot be wholly upheld by staff or agreement is reached with applicant on partial upholding of the objection.</li> </ul> <p>Dog Control Act 1996:</p> <ul style="list-style-type: none"> <li>• Section 22: Hear and determine an objection to classification as a probationary owner.</li> <li>• Section 25: Specify period of disqualification.</li> <li>• Determine whether the circumstances are such that disqualification is not warranted, or the person should instead be classified as a probationary owner.</li> <li>• Section 26: Hear and determine an objection to disqualification.</li> <li>• Section 28: Extend period of disqualification.</li> <li>• Section 31: Hear and determine an objection to classification of any dog as a dangerous dog.</li> <li>• Section 33B: Hear and determine an objection to classification of a dog as a menacing dog.</li> <li>• Section 33D: Hear and determine an objection to classification of a dog as a menacing dog.</li> <li>• Section 55: Consider and determine an objection to a notice to abate a barking dog nuisance.</li> <li>• Section 70: Determine an application for return of a dog – barking.</li> <li>• Section 71: Determine an application for return of a dog – danger.</li> <li>• Section 71A: Determine that a dog shall be sold, destroyed or otherwise disposed of.</li> </ul> <p>Building Act 2004 to:</p> <ul style="list-style-type: none"> <li>• Sections 107(3)(b) and (c): Hear and determine submissions on proposed amendment to a compliance schedule.</li> <li>• Section 109: Hear and determine submissions on a recommendation made by a licensed building practitioner under section 108(3)(d) for a compliance schedule to be amended.</li> </ul> <p>Food Act 2014:</p> <ul style="list-style-type: none"> <li>• Section 355(2) &amp; (3): Determine a request for reconsideration of a decision to which section 354(4) applies.</li> </ul>
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## REGULATORY HEARINGS COMMITTEE

### AGENDA

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**Monday, 08 May 2023 – 9.00am**

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#### **ORDER OF BUSINESS**

Pages

Karakia timatanga (*opening of meeting*) Cr Spicer

#### **Procedural**

1. Apologies
2. Declarations of Late Items
3. Declarations: Members Interests
4. **Confirmation of Minutes**
  - 4.1 Regulatory Hearings Committee Minutes – 20-02-23 **6**
5. **Reporting (for decision)**
  - 5.1 Enforcement Action to be taken in relation to managing Earthquake Prone Building (EPB) breaches under Section 133AU of the Building Act 2004 (the Act) **14**
  - 5.2 Enforcement action to be taken in Relation to Overdue/Expired BWOFF (Building Warrant of Fitness) and/or not displaying a current BWOFF **22**

Karakia whakamutunga (*closing of meeting*)

**HAURAKI DISTRICT COUNCIL**  
**REGULATORY HEARINGS COMMITTEE**

MINUTES OF A MEETING OF THE REGULATORY HEARINGS COMMITTEE HELD IN THE COUNCIL CHAMBERS, WILLIAM STREET, PAEROA ON MONDAY, 20 FEBRUARY 2023 COMMENCING AT 9.10AM

**PRESENT** Cr P A Milner (Chairperson), His Worship the Mayor D A Adams and Cr A Rattray – via Zoom

**IN ATTENDANCE** P Thom (Planning & Environmental Services), A Harris (Animal Control Administrator), M Matich (Team Leader Regulatory Services), D Hannah and C Hannah (Dog Control Officers – via Zoom) and C Black (Council Secretary)

Karakia timatanga

Cr Milner opened the meeting with a karakia

**APOLOGIES**

**RESOLVED**

THAT the apology of Cr Spicer be received and sustained.

RHC23/01

Milner/Adams

**CARRIED**

**LATE ITEMS**

There were no late items.

**DECLARATIONS - CONFLICTS OF INTEREST**

There were no declared conflicts of interest.

**CONFIRMATION OF MINUTES**

Regulatory Hearings Committee Minutes – 14-11-22 - 3307685

**RESOLVED**

THAT the minutes of the meeting of the Regulatory Hearings Committee held on Monday, 14 November 2022 are received and confirmed as a true and correct record.

RHC23/02

Milner/Adams

**CARRIED**

**Matters to be taken with the Public Excluded****RESOLVED**

THAT the public be excluded from the following parts of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

<b>Item No.</b>	<b>General subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Ground(s) Under Section 48(1) for the Passing of this Resolution</b>
<b>1</b>	Dispensation Application to keep more than two dogs in the urban area – Thames Road, Paeroa	Section 7(2)(a) – Protect the privacy of natural persons, including that of deceased natural persons.	Section 48(1)(a) That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.
<b>2</b>	Dog Attack – Mill Road, Paeroa	Section 7(2)(g) – Maintain legal professional privilege.	Section 48(1)(a) That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

RHC23/03

Ratray/Adams

**CARRIED**

confidential pages 8-12 have been removed

**RESOLVED**

THAT the public be re-admitted to the meeting and that the business in committee discussed be confirmed.

RHC23/08

Milner/Adams

**CARRIED**

Karakia whakamutunga (close of meeting)

Cr Milner closed the meeting with a karakia at 10.06am.

CONFIRMED

Sworn

P A Milner  
Chairperson



# FOR DECISION MŌ TE WHAKATAUNGA




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TO	Regulatory Hearings Committee
AUTHOR	Michelle Matich Regulatory Services Team Leader
FILE REFERENCE	Document: 33733571 Appendix A: Section 133AU Building Act 2004 Appendix B: Infringement offences under Building Regulations 2007 Schedule 1.
MEETING DATE	08 May 2023
SUBJECT	<b>Enforcement Action to be taken in relation to managing Earthquake Prone Building (EPB) breaches under Section 133AU of the Building Act 2004 (the Act).</b>

## RECOMMENDATION | TE WHAIKUPU

THAT the report be received.

THAT Council Regulatory Hearing Committee make a decision on what option of enforcement action to be taken against building owners who breach the Act.

## 1 PURPOSE | TE ARONGA

The purpose of this report is to provide information regarding the management of Earthquake Prone Buildings in the Hauraki District, so a decision can be made in terms of what enforcement action to take against building owners who do not comply with legislative requirements.

## 2 BACKGROUND | TE KŌRERO Ā MUA

New Zealand is an earthquake-prone country.

To help us manage the risk to public safety, we have a national system that categorises New Zealand into high, medium and low seismic risk areas and sets time frames for identifying, assessing and doing seismic work on earthquake-prone buildings. Hauraki District is a medium risk area.

Understanding this system is important for everyone's safety.

It starts with local councils identifying buildings that may be earthquake prone and priority buildings which have tighter time frames for seismic work, then informing owners. **Priority**

buildings have a timeframe of 12.5 years to undertake seismic work, and **non-priority** buildings have a timeframe of 25 years.

Building owners are required to commission engineering assessment reports and give these reports to their council which checks the assessments and decides if the buildings are earthquake prone. Hauraki District Council sent letters in June 2022. There is a 12 month deadline from the date of 15 June to provide Council with an engineering assessment report, or apply for an extension. The deadline for applying for an extension was 15 April 2023. Owners can only apply for one extension for up to 12 months.

If the building is assessed as earthquake prone, the Council issues an EPB notice, which must be clearly displayed on the building and logs the details in the public EPB register. If building owners do not display an EPB notice, provide an engineering assessment or undertake seismic work within the time frames required, territorial authorities have powers to take action.

Owners strengthen or remove the buildings or parts, by set deadlines. If they don't, councils have powers to take action.

### 3 THE ISSUES | NGĀ TAKE

70 buildings have been identified as potentially EQP. From the 70 buildings, there are 15 buildings that have had assessment reports provided, 11 of these buildings have been assessed as EPB and have had notices sent out to be displayed on the building, and 4 that were assessed as not being earthquake prone. Getting this work done contributes to making Hauraki District a safer district for its citizens.

The Council has a legal obligation to ensure owners complete seismic work and will endeavour to do everything possible to minimise the consequences of an inevitable earthquake.

Hauraki District is a low socio-economic area, and some building owners may not have the knowledge, tools, or resources to undertake the seismic work required by the EPB notice and will be challenged by a looming deadline and no progress made. It can take years for building owners to raise funds and prepare, plan, and implement a seismic work programme.

The Council could face multiple building owners not meeting their EPB notice deadlines, resulting in retained seismic vulnerability and the potential need for enforcement action.

#### **Not displaying an EPB notice or an EPB exemption notice on a building:**

Building owners can be fined up to \$20,000 if convicted for failing to display an EPB notice on their building. (Offence under Section 133 AU(2)).

If an earthquake-prone building has a territorial authority notice restricting entry, and someone fails to comply with that notice, the building owner can be fined up to \$200,000, if convicted.

#### **Failure to notify Council that their EPB notice or EPB exemption notice is not legible:**

Failing to notify the territorial authority when a notice become illegible. (Offence under Section 133AU(3)).

### Failure to complete seismic work:

The Council can enforce the EPB notice deadline as a last resort. Penalties include putting up a hoarding, closing buildings, and prosecuting owners.

Building owners who fail to complete seismic work within the time frame on an EPB notice can be fined up to \$200,000, if convicted. Territorial authorities can also apply to the District Court for an order allowing them to carry out seismic work that has not been completed to deadline and recover the cost from the building owner. (Offence under Section 133AU(1)).

## 4 OUR OPTIONS | NGĀ KŌWHIRINGA A MĀTOU

Staff have identified the following options for the Council to consider:

In relation to building owners who do not;

- place an EPB notice on their building OR
- do not undertake seismic repairs to their buildings within legislative time frames;
  
- Council could undertake Court prosecution (Option 4.1)
- Council could issue infringement fines (Option 4.2)

These options and their advantages and disadvantages are outlined below.

### 4.1 OPTION 1: Council Undertake Court Prosecution

#### ABOUT THIS OPTION

*EPB notice not placed on building:*

Council could take court prosecution against building owners for breaching Section 133AU(2) of the Act, by laying a charging document.

*Seismic work not done by deadline:*

Council could take court prosecution against building owners for breaching Section 133AU(1) of the Act, by laying a charging document.

#### ADVANTAGES:

This option fits within the legislation.

#### DISADVANTAGES:

Prosecution in court would be a costly option for Council to take. This may be considered a harsh approach against building owners, considering Council does have the power to put up the EPB notice.

FINANCIAL COSTS	
Whole of life costs	Capital costs: Legal costs Ongoing annual operating: Legal costs One off operating cost: Legal costs
Budget source	Building control
Changes to budgets	In order to accommodate these costs there will/will not need to be changes to budgets. N/A
Impact on the Council's debt	There is no impact on the Council's debt The impact on the Council's debt is N/A

#### 4.2 OPTION 2: Council Issue Infringement Fines

ABOUT THIS OPTION	
<p><i>EPB notice not placed on building:</i> Council could issue infringement fines against building owners for breaching Section 133AU(2) of the Building Act 2004.</p> <p><i>Seismic work not done by deadline:</i> Council could issue infringement fines against building owners for breaching Section 133AU(1) of the Building Act 2004.</p> <p><b>Note:</b> Council cannot issue an infringement notice and prosecute for the exact same incident; you should choose one process or the other, depending on how serious the offending is.</p>	
<p><b>ADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• Many territorial/regional authorities already have established infringement systems (for example, parking or dog control infringement systems).</li> <li>• Infringement notices can be used quickly and easily.</li> <li>• Infringement notices are easily understood by the public and are simple to implement.</li> <li>• Infringement notices are a 'no surprises' way to encourage compliance.</li> <li>• Offenders can avoid time and association costs of court action, but will face significantly greater certainty of council enforcement actions (in the form of instance fines).</li> <li>• Aligns with MBIE guidelines.</li> </ul>	<p><b>DISADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• For the building owner – place further financial strain.</li> </ul>

FINANCIAL COSTS	
Whole of life costs	Capital costs: N/A Ongoing annual operating: BAU costs for infringements One off operating cost: N/A
Budget source	Building control
Changes to budgets	In order to accommodate these costs there will/will not need to be changes to budgets. N/A
Impact on the Council's debt	There is no impact on the Council's debt The impact on the Council's debt is N/A

## 5 PREFERRED OPTION | TE KŌWHIRINGA MATUA

Staff recommend proceeding with option 4.2 – Council issue infringement fines.

### 5.1 LINKAGES

STRATEGIC DIRECTION	The preferred option IS consistent with the <b>Council's strategic direction</b> , including community outcomes.	
LONG TERM PLAN / ANNUAL PLAN ALIGNMENT	The preferred option IS consistent with the <b>long term plan and/or annual plan programmes and budgets</b> .	
POLICIES, BYLAWS AND PLANS ALIGNMENT	The preferred option IS consistent with the Council's <b>other strategies, policies, bylaws and plans</b> .	
SIGNIFICANCE ASSESSMENT	The decision IS NOT <b>considered significant</b> under the Council's Significance and Engagement Policy 2020.	
IMPLICATIONS FOR MĀORI	The decision DOES NOT involve a significant decision in relation to land or a body of water.	Implications for Maori are the same for any other group of people.

### 5.2 ASSESSING THE RISKS

Staff have identified the following risks associated with the recommended option.

Description of risk	Level of risk	How we could soften the risk	Risk remaining
Building owners do not undertake seismic work by the deadline.	High	In relation to seismic work, provide incentives such as exemption of resource or building consent fees. Possibility of a Mayoral fund to assist building owners to undertake repairs.	Low
Building owners do not display EPB notice.	Moderate	Council could undertake putting notice on building.	Low

## 6 NEXT STEPS | TE ARA KI MUA

Timeframe	Action	Comments
30/06/23	Ensure infringement module is setup and active for issuing building infringements.	As per Council delegations manual.
30/06/23	Table a report to Council for consideration.	In relation to Council consideration of setting up a Mayoral fund in relation to assisting building owners undertake seismic repairs.
30/05/23	Ensure Quality system desk files / process is reviewed and updated to reflect enforcement process.	Regulatory Services Team Leader and Quality Officer to action.
30/05/23	Check Delegations Manual is accurate and up to date.	Regulatory Services Team Leader and Senior BCO.

## 7 Approval

<b>Prepared by</b>	Michelle Matich <b>Regulatory Services Team Leader</b>
<b>Approved by</b>	Peter Thom <b>GM Community Development</b>

## APPENDIX A – Section 133AU Building Act 2004

### 133AU Offences in relation to earthquake-prone buildings

#### *Failure to complete seismic work*

- (1) The owner of a building or a part of a building that is subject to an EPB notice who fails to complete seismic work on the building or part by the deadline that applies under [section 133AM](#)—
  - (a) commits an offence; and
  - (b) is liable on conviction,—
    - (i) in the case of an individual, to a fine not exceeding \$300,000;
    - (ii) in the case of a body corporate, to a fine not exceeding \$1,500,000.

#### *Failures relating to EPB notices and EPB exemption notices*

- (2) A person commits an offence if—
  - (a) a territorial authority requires the person to attach an EPB notice or an EPB exemption notice on or adjacent to a building under [section 133AP](#); and
  - (b) the person—
    - (i) fails to attach the notice in accordance with that section; or
    - (ii) attaches the notice otherwise than in accordance with that section.
- (3) A person commits an offence if—
  - (a) the person is required under [section 133AP\(2\)\(a\)](#) to notify the territorial authority when an EPB notice or an EPB exemption notice ceases to be attached on or adjacent to a building or becomes illegible; and
  - (b) the person fails to notify the territorial authority in accordance with that section.
- (4) A person who commits an offence under subsection (2) or (3) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$50,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$150,000.

#### *Failure to comply with safety requirements*

- (5) A person who fails to comply with [section 133AR\(4\)](#) commits an offence and is liable on conviction—
  - (a) to a fine not exceeding \$200,000; and
  - (b) in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues.

## APPENDIX B – Infringement Offences

### *Earthquake-prone building offences*

<a href="#">s 133AU(1)</a>	Failing to complete seismic work by deadline	1,000
<a href="#">s 133AU(2)</a>	Failing to comply with requirement to attach EPB notice or EPB exemption notice	1,000
<a href="#">s 133AU(3)</a>	Failing, when EPB notice or EPB exemption notice ceases to be attached or becomes illegible, to notify the territorial authority	1,000
<a href="#">s 133AU(5)</a>	Using or occupying an earthquake-prone building, or permitting another person to do so, contrary to a territorial authority's hoarding, fence, or notice	2,000



# FOR DECISION MŌ TE WHAKATAUNGA




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TO	Regulatory Hearing Committee
AUTHOR	Michelle Matich Regulatory Services Team Leader
FILE REFERENCE	Document: MDN: 3373563 Appendix A: Section 108 Building Act 2004 Appendix B: Infringement Offences under Building Regulations 2007 Schedule 1.
MEETING DATE	08 May 2023
SUBJECT	<b>Enforcement action to be taken in Relation to Overdue/Expired BWoF (Building Warrant of Fitness) and/or not displaying a current BWoF.</b>

## RECOMMENDATION | TE WHAIKUPU

THAT the report be received.

THAT the Council decide on what option of enforcement action to take against building owners for breaching the Building Act 2004 (the Act) in terms of Building Warrant of Fitness's (BWoF).

## 1 PURPOSE | TE ARONGA

The purpose of this report is to provide information to the committee in relation to building owners who have an overdue/expired BWoF and are therefore breaching section 108 of the Act, so that a decision can be made in relation to what enforcement action is to be taken against the building owner.

## 2 BACKGROUND | TE KŌRERO Ā MUA

A building warrant of fitness (BWoF) is a building owner's annual statement confirming the specified systems in the compliance schedule for their building have been maintained and checked for the previous 12 months, in accordance with the compliance schedule.

Once a compliance schedule is issued, the territorial authority undertakes all subsequent functions associated with a BWoF.

A building owner must supply a BWoF to the territorial authority on each anniversary of the issuing of their building's compliance schedule.

The Building Act 2004 requires that:

- the BWoF must state that the inspection, maintenance and reporting procedures of the compliance schedule have been fully complied with for the previous 12 months
- a copy of each certificate (Form 12A) issued by the IQP for each of the specified systems, along with any recommendations for amending the compliance schedule, must be attached to the BWoF provided to the territorial authority
- the owner must use the prescribed BWoF form in the Building (Forms) Regulations 2004, providing all the information and attachments required in that form

Council as a Territorial Authority (TA) has a role to review the BWoF and Form 12A's provided. The Act provides for the TA to proactively check a building to ensure a BWoF is correct and that IQP reports are correct.

Council has a responsibility to enforce any breaches under this Act.

### 3 THE ISSUES | NGĀ TAKE

It is the building owners' responsibility to ensure their building(s) are safe to use, and to provide all applicable documentation to Council.

As at March 2023, in the Hauraki District there were 22 BWoF's that had expired and not been provided by the building owners. Several of these have been expired for a number of years despite Council's attempt to engage with the owners.

Currently Council sends reminder letters in the first instance, then if no action is taken from the building owner, a Notice to Fix (NTF) will be issued. However, in some instances, the building owner still does not supply Council with a current BWoF.

The previous TA Performance Monitoring Assessment Report received from MBIE in December 2022, strongly recommended that Council issue a NTF in the first instance, and then if the NTF is ignored, proceed to issuing an infringement notice.

In some cases the issuing of an infringement notice is a good enforcement tool to use, it can be cost effective and efficient. The Council could always cancel the infringement if compliance was met by the building owner.

It is a breach of the Act (Section 108(5)(aa) – Appendix A) to not provide Council with a current BWoF, and is an infringeable offence which holds a fine of \$250 (Appendix B).

It is also a breach of the Act (Section 108(5)(a) – Appendix A) to not display a current BWoF on your building, and is an infringeable offence and holds a fine of \$250 (Appendix B).

Council could decide to take prosecutions, this would be a costly and un-timely process, but in serious breaches, this could be an option. This could be decided on a case by case basis.

### 4 OUR OPTIONS | NGĀ KŌWHIRINGA A MĀTOU

Staff have identified the following options for the Council to consider:

- Council undertake Court prosecution against building owners.
- Council could issue infringement fines to building owners.

These options and their advantages and disadvantages are outlined below.

#### 4.1 OPTION 1: Council Undertake Court Prosecution Against Building Owners

<p><b>ABOUT THIS OPTION</b> Council could take a Court prosecution against the building owner under Section 108(5)(aa) and 108(5)(a) of the Act.</p>	
<p><b>ADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• Could be an example to other building owners</li> <li>• May deter building owner from re-offending</li> </ul>	<p><b>DISADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• Is an expensive option for Council</li> <li>• Court ruling may not be successful</li> <li>• Not a timely option, would take many months to undertake</li> </ul>
<p><b>FINANCIAL COSTS</b></p>	
Whole of life costs	Ongoing annual operating: Legal costs One off operating cost: Legal costs
Budget source	Building control
Changes to budgets	In order to accommodate these costs there will/will not need to be changes to budgets. N/A
Impact on the Council's debt	There is no impact on the Council's debt The impact on the Council's debt is N/A

#### 4.2 OPTION 2: Council Issue Infringement Fines

<p><b>ABOUT THIS OPTION</b> Council could issue infringement fines against building owners for breaching Section 108(5) (aa) of the Building Act 2004.</p> <p>By putting in place an infringement system, territorial authorities now have an extra tool to encourage compliance with the Building Act. An infringement system can be chosen as the appropriate tool to use. (MBIE guidelines)</p> <p>Infringement notices are intended to be used as a deterrent, to encourage rectification and to reduce persistent re-offending.</p>	
<p><b>ADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• Many territorial/regional authorities already have established infringement systems (for example, parking or dog control infringement systems).</li> <li>• Infringement notices can be used quickly and easily.</li> <li>• Infringement notices are easily understood by the public and are simple to implement.</li> </ul>	<p><b>DISADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• It may not be enough to encourage compliance, especially in serious situations.</li> </ul>

<ul style="list-style-type: none"> <li>• Infringement notices are a 'no surprises' way to encourage compliance.</li> <li>• Offenders can avoid time and association costs of court action, but will face significantly greater certainty of council enforcement actions (in the form of instance fines).</li> <li>• Aligns with MBIE guidelines.</li> </ul>	
<b>FINANCIAL COSTS</b>	
Whole of life costs	Capital costs: N/A Ongoing annual operating: BAU costs for infringements One off operating cost: N/A
Budget source	Building control
Changes to budgets	In order to accommodate these costs there will/will not need to be changes to budgets. N/A
Impact on the Council's debt	There is no impact on the Council's debt The impact on the Council's debt is N/A

## 5 PREFERRED OPTION | TE KŌWHIRINGA MATUA

Staff recommend proceeding with option 4.2 – Council Issue Infringement Fines.

### 5.1 LINKAGES

STRATEGIC DIRECTION	The preferred option IS consistent with the <b>Council's strategic direction</b> , including community outcomes.	
LONG TERM PLAN / ANNUAL PLAN ALIGNMENT	The preferred option IS consistent with the <b>long term plan and/or annual plan programmes and budgets</b> .	
POLICIES, BYLAWS AND PLANS ALIGNMENT	The preferred option IS consistent with the Council's <b>other strategies, policies, bylaws and plans</b> .	
SIGNIFICANCE ASSESSMENT	The decision IS NOT <b>considered significant</b> under the Council's Significance and Engagement Policy 2020.	
IMPLICATIONS FOR MĀORI	The decision DOES NOT involve a significant decision in relation to land or a body of water.	No implications identified.

## 5.2 ASSESSING THE RISKS

Staff have identified the following risks associated with the recommended option.

Description of risk	Level of risk	How we could soften the risk	Risk remaining
Building Owner is surprised or feels fine is unfair.	Moderate	Making sure the process covers no surprises, is fair and consistent and is well documented.	Low
Building Owner still does not provide current BWoF	High	Discuss severity / risk, and if high risk recommend report to Regulatory Hearing Committee to consider Court prosecution	Low

## 6 NEXT STEPS | TE ARA KI MUA

Timeframe	Action	Comments
30/06/23	Ensure infringement module is setup and active for issuing building infringements.	As per Council delegations manual.
30/05/23	Ensure Quality system desk files / process is reviewed and updated to reflect enforcement process and allow for issuing of infringement notices.	Regulatory Team Leader and Quality Officer to action.
30/05/23	Check Delegations Manual is accurate and up to date.	Regulatory Services Team Leader and Senior BCO

## 7 Approval

<b>Prepared by</b>	Michelle Matich <b>Regulatory Services Team Leader</b>
<b>Approved by</b>	Peter Thom <b>GM Community Development</b>

## APPENDIX A – Section 108 Building Act 2004

### 108 Annual building warrant of fitness

- (1) An owner of a building for which a compliance schedule has been issued must supply to the territorial authority a building warrant of fitness in accordance with subsection (3).
- (2) The purpose of a building warrant of fitness is to ensure that the specified systems stated in the compliance schedule are performing, and will continue to perform, to the performance standards for those systems that are set out in the relevant building consent.
- (3) The building warrant of fitness must—
  - (a) be supplied on each anniversary of the issue of the compliance schedule; and
  - (b) state that the inspection, maintenance, and reporting procedures of the compliance schedule have been fully complied with during the previous 12 months; and
  - (c) have attached to it all certificates, in the prescribed form, issued by an independently qualified person that, when those certificates are considered together, certify that the inspection, maintenance, and reporting procedures stated in the compliance schedule have been fully complied with during the previous 12 months; and
  - (d) have attached to it any recommendation made by an independently qualified person that the compliance schedule should be amended to ensure that the specified systems stated in the compliance schedule are performing, and will continue to perform, to the performance standards for those systems; and
  - (e) be in the prescribed form; and
  - (f) contain the prescribed information.
- (4) The owner must publicly display a copy of the building warrant of fitness in a place in the building to which users of the building have ready access or, if the compliance schedule relates only to a cable car, publicly display the copy of the building warrant of fitness in or near the cable car.
- (5) A person commits an offence if the person—
  - (aa) fails to supply to the territorial authority the building warrant of fitness in accordance with subsection (1); or
  - (a) fails to display a building warrant of fitness that is required to be displayed under this section; or
  - (b) displays a false or misleading building warrant of fitness; or
  - (c) displays a building warrant of fitness otherwise than in accordance with this section.
- (6) A person who commits an offence under this section is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$50,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$150,000.
- (7) In subsection (3)(d), a reference to an independently qualified person is a reference to the independently qualified person or independently qualified persons who carried out or supervised the inspection, maintenance, and reporting procedures stated in the compliance schedule during the previous 12 months.

## APPENDIX B – Infringement Offences

<a href="#">s 108(5)(aa)</a>	Failing to supply territorial authority with a building warrant of fitness	250
<a href="#">s 108(5)(a)</a>	Failing to display a building warrant of fitness required to be displayed	250
<a href="#">s 108(5)(b)</a>	Displaying a false or misleading building warrant of fitness	1,000
<a href="#">s 108(5)(c)</a>	Displaying a building warrant of fitness other than in accordance with section 108	1,000