

Stage 2 Cost Recovery Impact Statement Building Consent Authority Accreditation Scheme

Agency Disclosure Statement

This Cost Recovery Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (MBIE). It provides analysis of the proposal to increase the fees charged for the accreditation of building consent authorities, to ensure cost recovery. Sections 249 and 250 of the *Building Act* authorise fees to be charged for any application for building consent authority accreditation and audits. These fees are prescribed in Schedule 2 of the Building (Accreditation of Building Consent Authorities) Regulations 2006 and were last set in 2017 on a cost recovery basis.¹ International Accreditation New Zealand (IANZ) is the national building consent accreditation body.

MBIE's analysis has focused on ensuring that the Accreditation Scheme (Accreditation Scheme) fees are set at a level that ensures full recovery of the costs incurred by IANZ in delivering accreditation services. The analysis has also focused on how well the proposal aligns with the objectives of the building regulatory system which includes providing assurance to building owners and users that buildings are well-made, safe, durable and healthy, and ensuring the effective and efficient functioning of the building consent system.

In considering cost recovery levels for the accreditation body, MBIE is satisfied that IANZ's significant experience in accrediting building consent authorities, and other similar schemes, provides reasonable insights to determine cost recovery and that over- or under-recovery of costs will be minimised. Further, IANZ operates on a not-for-profit, cost recovery basis only.

MBIE has analysed financial information from IANZ and considered how the proposed fees relate to other schemes under the Building Act involving accreditation (CodeMark and BuiltReady which had accreditation fees set in regulations in 2022). Based on this, MBIE is satisfied that the proposed fees levels for the Accreditation Scheme are appropriate.

The proposed fee changes are intended to reset the Accreditation Scheme fees to ensure they reflect full cost recovery to meet Treasury guidance and to ensure the ongoing viability of IANZ as the national accreditation body. Consequently, only one option for fee changes has been developed.

The proposed fees were developed assuming that existing service levels will be retained, the proposed fees will take effect from early June 2024, and will be reviewed again in accordance with the timeframes set out in the Treasury Guidelines for setting fees (i.e. every three to five years).

Suzannah Toulmin, Manager Building Policy, Ministry of Business, Innovation and Employment

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¹ Schedule 2 of the Building (Accreditation of Building Consent Authorities) Regulations 2006 – Fees
<https://www.legislation.govt.nz/regulation/public/2006/0399/latest/DLM7325242.html#DLM7325242>

Executive summary

This CRIS maintains a cost recovery approach for the review and updating of the fees for the accreditation and audit of building consent authorities (and other entities that have been accredited) under the Building Act. These proposed revised fees reflect rising costs for International Accreditation New Zealand (IANZ), the national building consent accreditation body, which is a trading entity of, and provider of accreditation services for the Accreditation Council.²

IANZ undertakes all accreditation assessments against the requirements set out in the Building (Accreditation of Building Consent Authorities) Regulations 2006 (the Accreditation Regulations). Accreditation audits usually occur every two years.

IANZ charges building consent authorities a fee-for-service for accreditation assessments. These fees for accreditation and audit are set out in Schedule 2 of the Accreditation Regulations and have not been adjusted since 2017. The Treasury's guidelines for setting fees and charges in the public sector recommends that cost recovery fees are reviewed every three to five years.

IANZ has advised MBIE that it is now making a substantial loss on the provision of accreditation services on current fee levels Confidential information entrusted to the Government IANZ has advised MBIE it cannot continue to operate based on these fees.

Cost recovery is essential for the national building consent accreditation body to continue this role, as a not-for-profit Crown entity. The proposed revised fees for the accreditation of building consent authorities are part of a package of changes to the Accreditation Regulations which are being progressed together (see accompanying RIS).

The proposed revised fees do not change the structure/components of the fees under the Accreditation Regulations. The proposed changes only adjust the fee levels. The revised fees assume existing service levels are retained.

MBIE undertook targeted consultation (including with all building consent authorities and other key stakeholders directly affected) on proposed changes to the Accreditation Regulations including the proposed increase in fees, at the end of 2022.

Feedback from stakeholders on the proposed fee increase was mixed with twenty-nine out of forty-six submitters raising concerns about the proposed fees. The common reasons for these concerns were the cost impact to building consent authorities and building consent applicants.

The remaining submitters either supported the changes (including some in part) or suggested that IANZ make greater use of remote technology through remote assessments, more desktop audits, and the use of local industry experts to improve efficiency and reduce the total costs of audits. MBIE agrees that better use of technology could help to reduce the total costs of audits, and has ongoing discussions with IANZ about ways to ensure efficient provision of services. However, this does not negate the need to increase the fees, which have not been reviewed since 2017 and have not kept pace with increased cost pressures.

² IANZ also operates several other accreditation schemes in New Zealand. See www.ianz.govt.nz

MBIE has analysed financial information from IANZ and considered how this compares to other similar schemes. MBIE considers that the proposed fees are appropriate to ensure cost recovery in light of the rising costs the accreditation body is facing, and on the basis that the fees will be reviewed again in accordance with Treasury guidelines (every three to five years).

MBIE notes that, based on information provided by building consent authorities, when considered as a whole package, the potential increased costs for building consent authorities arising from an increase in accreditation fees will be offset by other proposed changes to the Accreditation Regulations (e.g. reducing the frequency of competency assessments for building control officers). Therefore, there should not be a need for building consent authorities to increase consent fees. The accompanying RIS associated with the full package of changes to the Accreditation Regulations discusses this in more detail.

Status quo

Background

The building sector is vital to New Zealand's economic success and the health, safety and well-being of New Zealanders.

Work is underway to give effect to the Government's manifesto commitments to improve the building regulatory system streamline building consents, cut compliance costs, and boost housing supply and affordability. As part of this, work is underway on a review of the building consent system and to address recommendations of the Commerce Commissions residential building supplies market study.

In addition to work already underway, MBIE has undertaken a review of certain aspects of the Accreditation Regulations to improve workability and clarity (see accompanying RIS). A package of changes is proposed, including updating fees for accreditation to ensure they reflect cost recovery.

The Building (Accreditation of Building Consent Authorities) Regulations 2006

The Building Act established the legislative framework for building consent authorities as part of the response to leaky building issues and to improve the building regulatory system and the quality of consenting. Building consent authorities are responsible for assessing whether proposed building work complies with the Building Code, by issuing building consents that allow building work to start and assessing whether completed building work complies with the relevant building consent.

The legislative framework in the Building Act (referred to in this paper as "the accreditation scheme") requires building consent authorities to be accredited and registered in order to deliver their consenting functions.

The Accreditation Regulations give effect to the Accreditation Scheme in the Building Act, and sets out the minimum policies, procedures, and systems that a building consent authority must have to perform its building control functions and to maintain accreditation.³

³ The following website provide more information about how the accreditation system works for a new application for, and maintaining accreditation. This includes how to deal with disagreements about accreditation.

(<https://www.building.govt.nz/building-officials/bca-accreditation/>)

There are 66 territorial authority building consent authorities, one non-territorial building consent authority (Consentium) and several entities that have voluntarily been accredited (ComplyNZ Ltd, Farsight NZ LP, National Processing Limited, Professional Building Consultants Limited, and Solutions Team Ltd). There are also two regional authority building consent authorities which consent dams – Environment Canterbury and Waikato Regional Council.

IANZ has been appointed by MBIE as the national building consent accreditation body for building consent authorities since the inception of the scheme (Section 248 of the Building Act refers). Accreditation audits usually occur every two years.

Fees for the accreditation of building consent authorities

Sections 249 and 250 of the Building Act authorise fees to be charged by the building consent accreditation body for any application for building consent authority accreditation and audits.

Fees for the accreditation of building consent authorities have been prescribed in the Accreditation Regulations since 2006.

In 2016, MBIE carried out a review of the Accreditation Regulations. Several changes were made as a result, including introducing a fee for service regime to cover the cost of IANZ’s accreditation assessments of building consent authorities. This aimed to ensure that the fee regime is consistent with the Government’s fee principles, address issues with the cross subsidisation of fees and support continuous improvement in building consent authorities. Updated fees were set in 2017 on a cost recovery basis.

These fees are set out in Schedule 2 of the Accreditation Regulations.

Reviews of cost recovery charges

The current fee levels for the accreditation of building consent authorities set out in Schedule 2 of the Accreditation Regulations have not been adjusted since 2017.

IANZ has advised MBIE that it is now making a substantial loss on the provision of accreditation services on current fee levels Confidential information entrusted to the Government

[Redacted]

IANZ has advised MBIE it cannot continue to operate based on the current fee levels. Free and frank opinions

Free and frank opinions

[Redacted]

MBIE’s review of these fees and feedback from IANZ has identified that the current fee levels do not reflect the accreditation body’s current cost outputs and the business processes required to provide accreditation and audit services, and that IANZ is no longer operating on a cost recovery basis.

Free and frank opinions

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Cost Recovery Principles and Objectives

Principles

The Office of the Auditor General's *Good practice guide: Charging fee for public sector goods and services* and the Treasury's *Guidelines for Setting Charges in the Public Sector* have been considered and the following principles identified in setting these fees.

- **Authority:** A public entity must have legal authority to charge a fee and must operate within the scope of the empowering provision.
- **Efficiency:** The user charge should be no higher than necessary to produce a good or service to the desired level of quality. The design of the charge should incentivise efficiency i.e. keeping costs down and the quality of the service is high.
- **Accountability:** The user charge undergoes public consultation and can undergo scrutiny by the Regulations Review Committee.

Assessment criteria

The following assessment criteria have been applied in developing cost recovery proposals:

- **Equity** (also described as fairness) The user charge is being paid by the appropriate people. The beneficiary of the activity or service is paying for the relevant function to be carried out. Any cross-subsidy between different groups (particularly those with simple and complex applications) is minimised.
- **Certainty:** There is a reasonable level of certainty for the accreditation body and building consent authorities on the level of cost incurred by the services that are being paid for. Any uncertainty to prospective applicants as to the likely total amount of the fees they will be required to pay is minimised so that informed business decisions can be made.
- **Effectiveness:** Fees are set at a level that fully recovers, but does not over-recover the costs of carrying out functions. The accreditation body is paid to a level that will allow them to provide high quality services that contribute to a robust pathway for building consent authorities to be accredited. This contributes to safe, durable and healthy buildings for all New Zealanders.
- **Administrative efficiency:** Fees can be charged in an administratively efficient manner.

Rationale for cost recovery

The accreditation and audit of building consent authorities

Parliament has decided that a fee may be prescribed for the accreditation and audit of building consent authorities by including a regulation making power in the Act.

Under these circumstances, a fee must be prescribed in regulations if one is to be charged.

It is appropriate to regulate the cost recovery of these services because either MBIE will perform these functions, or a third-party accreditation body will perform the regulatory function on behalf of MBIE and that body will therefore have a monopoly role.

A fee is the most appropriate type of cost recovery for the accreditation and audit of building consent authorities because the applicant directly benefits from this service by participating in the building consent authority scheme and performing these functions under the Building Act.

The level of the proposed fee and its cost components

Following engagement with IANZ, the proposed revised fees to achieve cost recovery and enable the building consent accreditation body to provide effective accreditation services are outlined in Table 1 below.

This table summarises the options considered and provides the details of the current fees versus the proposed revised fees to be charged by the accreditation body.

Option 1: Status Quo

The status quo does not enable the building consent accreditation body (IANZ) to recover the costs of accreditation and audit services. The current fees have not been reviewed since 2017 and the costs associated with carrying out accreditation and audit fees have increased significantly.

Free and frank opinions

Option 2: Revised fees proposal

This option was developed in consultation with IANZ following MBIE’s analysis of their financial information. This option reflects the increase in costs for IANZ since 2017 in carrying out its accreditation function for building consent authorities under the Building Act (driven by an increase in salaries and overheads).

This option will allow IANZ to provide a viable and effective service consistent with its accreditation and audit functions under the Accreditation Scheme. It will also make it easier for IANZ to secure technical staff to undertake accreditation and audit activities if the fees are consistent with other similar accreditation schemes. For example, fees for accreditation under CodeMark and BuiltReady are set in the Building (Product Certification) Regulations 2022 and Building (Modular Component Manufacturer Scheme) Regulations 2022 respectively. Under these schemes the maximum daily rate for assessors or technical experts is \$2,000 per day or part of a day, per assessor or technical expert.

The proposed revised fees will ensure full cost recovery for IANZ. There would be no over-recovery based on the proposed fee increase.

The proposed fees were developed assuming that existing service levels will be retained, the proposed fees will take effect from early June 2024, and will be reviewed again in accordance with the timeframes set out in the Treasury Guidelines for setting fees (i.e. every three to five years).

The proposed revised fees do not change the structure/components of the fees under the Accreditation Regulations. The proposed changes only adjust the fee levels. For example, under the status quo costs for staff travelling are lower than assessment costs. This is consistent with IANZ’s operating model, and for the other accreditation schemes that they operate.

Table 1: Current accreditation fees vs proposed revised fees

Building (Accreditation of Building Consent Authorities) Regulations 2006	Option 1 - Status quo	Option 2: Proposed revised fees (effective from early June 2024)
<p>Schedule 2, Part 2, 3(1)</p> <p>Personnel Cost</p>	<p>The personnel cost is calculated in accordance with the following formula:</p> $(a \times \$215) + (b \times \$105)$ <p>Where -</p> <p>a is the sum of the number of hours (including part-hours) spent by each building consent accreditation body staff member performing the accreditation assessment or the audit (as applicable)</p> <p>b is the sum of the number of hours (including part-hours) spent by each building consent accreditation body staff member travelling for the purpose of performing the accreditation assessment or the audit (as applicable).</p>	<p>The personnel cost is calculated in accordance with the following formula:</p> $(a \times \$283) + (b \times \$141)$ <p>Where -</p> <p>a is the sum of the number of hours (including part-hours) spent by each building consent accreditation body staff member performing the accreditation assessment or the audit (as applicable)</p> <p>b is the sum of the number of hours (including part-hours) spent by each building consent accreditation body staff member travelling for the purpose of performing the accreditation assessment or the audit (as applicable).</p>
<p>Schedule 2, Part 2, 3(2)</p>	<p>However, the maximum amount of the personnel cost in respect of any one building consent accreditation body staff member for any one day is capped at \$1,720.</p>	<p>However, the maximum amount of the personnel cost in respect of any one building consent accreditation body staff member for any one day is capped at \$2,264.</p>
<p>Schedule 2, Part 2, 4(1)</p> <p>Technical Expert Cost</p>	<p>The technical expert cost is calculated in accordance with the following formula:</p> $(a \times \$156) + (b \times \$105)$ <p>Where -</p> <p>a is the sum of the number of hours (including part-hours) spent by each building consent accreditation body technical expert supporting the accreditation assessment or the audit (as applicable)</p> <p>b is the sum of the number of hours (including part-hours) spent by each building consent accreditation body technical expert travelling for the purpose of supporting the accreditation assessment or the audit (as applicable).</p>	<p>The technical expert cost is calculated in accordance with the following formula:</p> $(a \times \$240) + (b \times \$141)$ <p>Where -</p> <p>a is the sum of the number of hours (including part-hours) spent by each building consent accreditation body technical expert supporting the accreditation assessment or the audit (as applicable)</p> <p>b is the sum of the number of hours (including part-hours) spent by each building consent accreditation body technical expert travelling for the purpose of supporting the accreditation assessment or the audit (as applicable).</p>

Building (Accreditation of Building Consent Authorities) Regulations 2006	Option 1 - Status quo	Option 2: Proposed revised fees (effective from early June 2024)
Schedule 2, Part 2, 4(2)	However, the maximum amount of the technical expert cost in respect of any one building consent accreditation body technical expert for any one day is capped at \$1,248.	However, the maximum amount of the technical expert cost in respect of any one building consent accreditation body technical expert for any one day is capped at \$1,920.
Schedule 2, Part 2, 6(1) Administrative Cost Overhead	If the building consent authority has not had a previous audit, the administrative overhead cost is calculated in accordance with the following formula: $a \times \$106.25$ where - a is the number of whole months since the date that the building consent authority was originally granted accreditation.	If the building consent authority has not had a previous audit, the administrative overhead cost is calculated in accordance with the following formula: $a \times \$140$ where - a is the number of whole months since the date that the building consent authority was originally granted accreditation.
Schedule 2, Part 2, 6(2)	If the building consent authority has had a previous audit, the administrative overhead cost is calculated in accordance with the following formula: $b \times \$106.25$ where - b is the number of whole months since the date that the previous audit took place.	If the building consent authority has had a previous audit, the administrative overhead cost is calculated in accordance with the following formula: $b \times \$140$ where - b is the number of whole months since the date that the previous audit took place.

The two options are assessed against the assessment criteria in Table 2 below.

Table 2: Assessment of options against criteria

	Option 1: Status Quo	Option 2: Revised fees proposal
Equity	✓ Direct fee to applicant	✓ Direct fee to applicant
Certainty	✓ Accreditation and audits are prescribed with set daily maximum caps. Provides high level of certainty.	✓ Accreditation and audits are prescribed with set daily maximum caps. Provides high level of certainty.
Effectiveness	x Under-recovery of costs means accreditation body cannot perform its functions effectively.	✓ Reflects cost recovery so accreditation body can perform its functions effectively.
Administrative efficiency	✓ Fee structure/components align with accreditation body processes. Incorporates both hourly rates and maximum daily caps.	✓ Fee structure/components align with accreditation body processes. Incorporates both hourly rates and maximum daily caps.
Overall assessment	x The status quo is no longer fit for purpose because it involves a significant under-recovery of costs.	✓ This option satisfies all the assessment criteria and addresses the problems with the status quo.

The preferred option is **Option 2: Revised fees proposal**, because the revised fees are set at a level that fully recovers, but does not over-recover, the costs of carrying out accreditation and audit services. Option 2 will enable the building consent accreditation body (IANZ) to provide a viable and effective service, consistent with its accreditation and audit functions under the Accreditation Scheme. This supports the effective functioning of the building regulatory system and the quality of consenting.

Impact analysis

To illustrate the impact of the changes in personnel and technical expert rates and administration fees, IANZ have advised MBIE, Confidential information entrusted to the Government (an increase of around 35.9%).⁴

Estimated costs based on data provided by building consent authorities

Building consent authorities have indicated through targeted consultation on the proposed changes at the end of 2022 that the potential increased accreditation costs for building consent authorities could range from \$1,000-\$30,000 depending on the size of the building consent authority. Several building consent authorities also commented that an increase in fees would be felt most by smaller building consent authorities.

⁴ These figures assume personnel hourly rates, technical expert hourly rates and biennial administration fees as outlined in Annex 1. The figures assume 45 hours personnel time and 50 hours technical expert time. Note that for the purpose of this comparison, these totals assume no change in total disbursement costs (travel, meals and accommodation).

The latest biennial building consent authority accreditation review in 2021 found that most accreditation assessments cost between \$20,000-\$40,000.⁵ The review shows that there is not a strong correlation between the size of the building consent authority (by number of consents) and the cost of being accredited.

Table 2: Current accreditation assessment costs for building consent authorities

Cost distribution		
Cost of assessment	Number BCAs	%
\$10,000 - \$20,000	4	5%
\$20,000 - \$30,000	44	58%
\$30,000 - \$40,000	22	29%
Over \$40,000	6	8%

Building consent authorities indicated that the proposal could result in a flow on increase to building consent fees from \$5-\$50 per application depending on the size of the building consent authority. However, this assumes no other changes are made to the Accreditation Regulations offsetting the increase (see accompanying RIS).

While the proposed revised fees do represent a significant increase from their 2017 levels, the adjustment reflects the building consent accreditation body’s actual costs associated with undertaking its functions under the Building Act. MBIE is proposing increases because the existing fees have not been updated since 2017 and have not kept pace with increased cost pressures. The Treasury’s guidelines for setting fees and charges in the public sector recommends that cost recovery fees are reviewed every three to five years.

In comparison, JAS-ANZ which operates as the accreditation body under the product certification scheme (CodeMark), had a review of its fees in 2021. Regulations made in 2022 under the CodeMark scheme have significantly higher fees for technical experts compared to the current Accreditation Regulations.

Given that similar pools of contractors operate as technical experts for both the CodeMark scheme and the Accreditation Scheme, it is difficult for IANZ to be able to get the necessary staff at the rates set in the Accreditation Regulations. The proposed revised fees will also help to address this.

The proposed revised fees for the accreditation and audit of building consent authorities are part of a package of changes to the Accreditation Regulations which are being progressed together. MBIE notes that based on information provided by building consent authorities, when considered as a whole package, the potential costs for building consent authorities arising from the proposed increase in accreditation fees will be offset by other proposed changes to the Accreditation Regulations (e.g. reducing the frequency of competency assessments for building control officers). Therefore, there should not be a need for building consent authorities to increase consent fees. See the accompanying RIS for other elements of the package of changes to the Accreditation Regulations.

⁵ Building Consent Authority Accreditation Report: July 2019 - June 2021

Consultation

As part of the review of the Accreditation Regulations, MBIE undertook targeted consultation at the end of 2022 with all building consent authorities, including Consentium, and organisations that have been accredited, the Building Officials Institute of New Zealand (BOINZ), IANZ, Taituarā and Local Government New Zealand. These stakeholders were consulted on proposed changes to several aspects of the Accreditation Regulations, including the proposed increase to the IANZ accreditation fees.

MBIE received 49 submissions in total, with 42 out of 66 territorial authority building consent authorities submitting (including all the main metro building consent authorities including Auckland, Tauranga, Hamilton, Christchurch and Dunedin). Consentium (the non-territorial authority building consent authority that provides building consenting services for Kāinga Ora) also submitted.

Feedback from the targeted consultation on the proposed fee increase was mixed.

Twenty-nine out of forty-six submitters who commented on the fee proposals raised concerns about the proposed fee increase. The common reasons for this were the cost impact to building consent authorities and building consent applicants.

Six building consent authorities provided feedback that the increase would have a minor impact and/or supported the proposed change stating that it appears fair and should be reflective of what other consultants or contractors are getting across building consent authorities for building control functions. One of these building consent authorities also acknowledged that the fee increase would be offset by the reduced frequency of competency assessments for building control officers.

Five building consent authorities suggested that IANZ make greater use of remote technology through remote assessments, more desktop audits, and the use of local industry experts to improve efficiency and reduce the total costs of audits. MBIE agrees this could help to reduce the total costs associated with an audit e.g. by reducing total travel costs, and MBIE has ongoing discussions with IANZ about ways to ensure efficient provision of services. However, this does not negate the need to increase the fees, which have not been reviewed since 2017 and have not kept pace with increased cost pressures.

Three building consent authorities supported the proposed change in part or in principle.

No changes to the proposed revised fees for accreditation are recommended following feedback from stakeholders. The proposed fee levels are necessary to ensure that accreditation and audit continue to be undertaken on a cost recovery basis.

Conclusions and recommendations

For accreditation and audit activities, **Option 2: Revised fee proposal** is recommended.

It is a direct fee to applicants who benefit from the services provided and it will allow the accreditation body (IANZ) to recover costs and perform its functions effectively.

The proposed structure of the fees is the same as the current fee structure, while working within the fee-making powers in the Building Act. This allows for a reasonable degree of administrative efficiency.

MBIE has analysed financial information from IANZ and considered how this compares to other similar schemes. MBIE considers that the proposed fees are appropriate to ensure cost recovery in light of the rising costs the accreditation body is facing, and on the basis that the

fees will be reviewed again in accordance with timeframes in Treasury guidelines (every three to five years).

Implementation plan

The proposal is a rate adjustment for fees that are already being charged by the building consent accreditation body. MBIE has worked with the building consent accreditation body in developing the fee proposal. IANZ will implement the fee adjustment through their usual fee adjustment processes, including communication with building consent authorities.

MBIE will work with IANZ to ensure the prescribed fees are clearly communicated, workable and are complied with.

Monitoring and evaluation

MBIE has ongoing regulatory stewardship obligations and will work with IANZ to monitor the implementation of the proposed fees. Impacts will also be monitored through MBIE's Biennial Building Consent Authority Accreditation reports. The regime will be reviewed to ensure that it is operating efficiently and that under-recovery or over recovery does not occur. Ongoing feedback from the accreditation body will be key to this.

Review

MBIE proposes to review the proposed fees in accordance with the Treasury guidelines for setting fees and charges in the public sector which recommend that cost recovery fees are reviewed every three to five years.