



**Report** 04.487  
**Date** 14 September 2004  
**File** WGN030036

**Committee** Environment  
**Author** Luci Ryan, Manager, Consents Management

## **Whitby Coastal Estates - objection to charges under s357 of the Resource Management Act**

### **1. Purpose**

To allow the Committee to consider a request from Whitby Coastal Estates to remit resource consent charges.

### **2. Background**

Whitby Coastal Estates Ltd (WCE) sought, and was granted, consents to complete a staged subdivision and carry out earthworks to create 24 allotments, as well as associated stormwater and sewage disposal services, at a proposed subdivision at the site of the former Duck Creek Golf Course, Whitby. WCE required three consents from Greater Wellington (GW) to discharge stormwater, construct stormwater outlets and place an aerial sewer pipe across a water course.

The application was notified and jointly heard by Porirua City Council (PCC) and Greater Wellington. PCC was the lead agency for this application.

WCE paid GW a fixed fee of \$3,500.00 (excl. GST) for the lodgement of a notified consent. GW then invoiced WCE for an additional \$21,219.06 (excl. GST) to cover the total cost of processing the consent, including staff attendance at hearing, commissioners' fees, writing the officer's report and granting the consent. WCE were invoiced separately by PCC for the costs incurred from processing PCC's consents.

WCE lodged an objection in March 2004 under section 357 of the Resource Management Act 1991 (the Act) requesting that GW waive some or all of the additional costs associated with the consent process (i.e. \$21,219.06), citing that the additional charges charged are unreasonable. A more detailed discussion of this can be found in Section 5 of this report.

### **3. Power to waive charges**

Section 36(5) of the Act gives the Committee ‘absolute discretion’ to remit all or part of any charge for consent processing. This means there is no legal impediment to you granting the request or to considering any other level of remit that you consider appropriate.

### **4. Reasons for the objection**

WCE has objected to the additional charge of \$21,219.06 for processing and granting the consents. WCE gave seven reasons as to why it considers that the additional consent charges are unreasonable. A full copy of their objection is appended to this report. However, the reasons can be summarised as follows:

- a) The scope of the applications
- b) The fact that the application was heard jointly, and the fact that the application was heard by Commissioners (not Councillors) as a result of a possible prejudice in respect of the application to PCC
- c) The hearing only took 2.5 days
- d) The Council determined that independent commissioners should be used
- e) The charge out rate for GW officers of \$70.00 (excl. GST) is excessive
- f) The time incurred by GW officers in processing the application was excessive
- g) GW has failed to take into account the extent of community benefit obtained from the notification process.

### **5. Matters you may wish to consider**

The following matters are relevant to your consideration of the remit request. An explanation of the charges and the reasons for them is laid out below.

#### **5.1 Notification of application**

GW determined that notification of the application was required because the discharge of storm water from the proposed earthworks could potentially have a significant effect on the receiving environment. Furthermore, WCE was unable to obtain the written approval from all affected parties. Therefore, the application was notified. In addition, because the consents sought by WCE from Greater Wellington could not be meaningfully separated from those sought from PCC the applications were considered jointly in accordance with s.102 of the Act.

#### **5.2 Advertising costs**

Under the Act, GW is required to place a public notice for notified consents in a newspaper circulating in the entire area likely to be affected by the proposed

works. The purpose of the public notice is to inform the general community about the consent application and to enable the public to participate in the process should they choose to do so.

The public notice must accurately reflect the activity for which the consent is sought. Consequently, preparing and checking the advertisement does take a significant amount of time.

The joint application was advertised in both the Dominion Post and the Kapi-Mana News. The charges passed onto WCE for payment amounted to \$2,710.09 (before GST) and comprise:

	\$
• Dominion Post	1,873.23
• Kapi-Mana News	836.86
<b>Advertisement costs</b>	<b>2,710.09</b>

WCE was given the opportunity to comment on the advertisement [in draft] before it was placed. Its agent Truebridge Callender Beach did so, and requested that some changes were made prior to the advertisement being placed. We consider that the cost of the advertisements is reasonable and comparable to other notified consent applications of a similar complexity.

### **5.3 Selection of hearings committee**

GW retained only one and a half Commissioners to hear the part of the application that related to GW consents. Jack Rikihana was retained to provide iwi representation and David Hutchison was retained to provide technical advice on the discharge of stormwater (PCC paid for half of David Hutchison's time). GW did not consider it appropriate to use a GW Councillor to hear this application because of the very technical nature of the consents.

PCC chose to use Commissioners to hear their part of the application because they considered that their Councillors had possibly prejudiced themselves by discussing the application in public. The charges for the Commissioners retained by PCC are not subject to this objection.

#### **David Hutchison – Commissioner**

In discussion with PCC, GW agreed to jointly appoint David Hutchison as a Commissioner i.e. PCC would invoice WCE for half of his time and GW would invoice WCE for the other half of his time. Mr Hutchison, an engineer, has a particular expertise in the management and mitigation of stormwater discharges for earthwork developments. PCC advised that they would have appointed a Commissioner with these skills independently. However, to minimise the costs to WCE, GW and PCC agreed to share the cost of Mr Hutchison's services.

Following the hearing we received an invoice from Mr Hutchison's employer, Works Infrastructure, for GW's share (half) of Mr Hutchison's costs. Mr Hutchison also provided a schedule, which shows that his charge for \$3,975.00 (before GST) was apportioned as follows:

<b>Description of task:</b>	<b>Hours</b>
Reading, site visit and meetings	4.0
Hearing	10.0
Making/writing decision	12.5
<b>Total charge</b>	<b>26.5 @ \$150 per hour \$3,975.00 (before GST)</b>

We consider that these charges are reasonable.

#### **Jack Rikihana – Iwi Commissioner**

GW appointed Jack Rikihana, as an Iwi Commissioner, recognising its obligations under the Resource Management Act 1991 and Local Government Act 2002. Furthermore, the appointment of Mr Rikihana was in accordance with GW's policy to undertake power-sharing with Iwi.

The GW policy to charge applicants for Iwi Commissioners is currently being reviewed. Therefore, as a gesture of good faith we are prepared to waive the charge for Mr Rikihana (\$6,840.00 before GST).

#### **5.4 Charge-out rate**

On 28 June 2001, the Council adopted the *Resource Management Charging Policy July 2001*, which took effect from 1 July 2001. The policy sets the charge-out rate at \$70.00 (before GST) per hour for staff involved with consent processing.

The rate takes into account the cost of labour, other costs of employment and overheads. The rate, to cover the true cost of staff time, is calculated by multiplying the cost of labour by a factor (usually between 2.5 and 3.5).

Although not required to by law, the Consents Management Department policy is to always provide customers with written estimates. Unfortunately, in this case we did not do so. Therefore, WCE had no opportunity to comment on the costs as they accrued.

#### **Notification**

The cost of notification covers an initial reading of the application, drafting of the advertisement, discussions with the applicant about notification and the advertisement and placement of the signs at the site. The Resource Advisor spent a total of nine hours on this process. This is similar to applications of this size.

#### **Processing and writing of report**

The underlying plans that supported the application for the proposed development were changed considerably during the application process. Further, Greater Wellington requested separately additional information, under s.92 of the Act, which covered the amount and management of sediment runoff from the proposed earthworks and related issues. As a result GW officers were in contact with WCE's engineers on several occasions to clarify how these aspects were to be mitigated.

The Resource Advisor spent a considerable amount of time writing the report because the applicant had provided a limited Assessment of Environmental Effects (AEE). Therefore, the Advisor had to spend time researching information that we would usually expect the applicant to provide.

Invariably, the staff time spent on this aspect of the application increased. We consider that these charges are reasonable.

### **Hearing**

I have reviewed the need for two officers to attend the hearing.

Previous experience has shown that it is important to have two officers in attendance at a hearing. This is to ensure specific questions and responses are recorded accurately. Such information is critical in the formulation of the hearing decision. In addition, officers are often asked to clarify and guide Commissioners on certain technical aspects.

However, in this instance we consider that the 48 hours charged is excessive and we recommend that the time charged is reduced to 24 hours.

## **6. Mediation**

GW met with WCE on 2 August 2004, at GW's request, to discuss the outstanding objection. WCE stated at the meeting that it was prepared to pay a total of \$8,900. This appears to be based on the fact that Porirua City Council had agreed to charge WCE a total of \$8,500.

GW wrote to WCE on 16 August 2004 outlining the matters discussed and addressing issues raised by WCE. In addition, our letter detailed a revised charge that we consider to be a fair and reasonable amount.

GW contacted David Bradford of WCE on 20 August to confirm that our letter had been received and to request a formal reply by 27 August 2004. At the time of writing this report we have not yet received a reply.

## **7. Revised charge**

*Number of hours invoiced and revised hours*

<b>Activity</b>	<b>Hours invoiced</b>	<b>Revised hours</b>
Processing	42.25	42.25
Report	53.50	53.50
Hearing	48.00	24.00
Notification	9.00	9.00
<b>Total Hours charged</b>	<b>152.75</b>	<b>128.75</b>

*Costs invoiced to WCE and revised costs proposed by GW and WCE*

<b>Activity</b>	<b>Charge Invoiced</b>	<b>GW Revised Charge</b>	<b>WCE Revised Charge</b>
Processing	2957.50	2957.50	2,500.00
Report	3745.00	3745.00	3,000.00
Hearing	3360.00	1,680.00	1,200.00
Notification	630.00	630.00	200.00
Advertising	2,710.09	2,710.09	1,500.00
Photocopying	481.07	481.07	500.00
Postage and Courier	20.40	20.40	0
Commissioners	10,815.00	3,975.00	0
<b>Total Payable</b>	<b>24,719.06</b>	<b>16,199.06</b>	<b>8,900.00</b>
<b>Less: Application fees</b>	<b>3,500.00</b>	<b>3,500.00</b>	<b>3,500.00</b>
<b>Amount due (before GST)</b>	<b>21,219.06</b>	<b>12,699.06</b>	<b>5,400.00</b>

## **8. Statutory framework**

Section 357 of the Act provides for an applicant to object to certain decisions of the Regional Council. Any objection lodged by an applicant must be done so within 15 working days of the decision being notified to the applicant. WCE lodged an objection with GW on 26 March 2004, 14 days after they were notified of the decision.

## **9. Precedent being set**

Some precedent has already been set in regard to remitting consent processing charges. To date, the precedent set by the Eastern Little Blue Penguins review has not resulted in a deluge of similar requests.

### **9.1 Fairness to other applicants and impact on ratepayers**

The GW funding policy, which was decided through a public process, requires that the full and direct costs of processing resource consents be recovered from applicants. There is no provision in the Consents Management Department budget for remitting charges, and there would be a flow on effect on our revenue and overall financial position. The Committee should also consider whether it is fair for ratepayers to be subsidising WCE and fair on other applicants who pay their processing charges.

## 10. Summary

The discussion in section 5 provides a number of points to support a case for charging the full costs of the consent process to WCE. However, we consider that in this instance our customer service was not at the usual high standard because we did not follow our processing policy of providing the applicant with an estimate of costs. The applicant was therefore unable to comment of the accrual of charges at an earlier date. As a gesture of goodwill we feel that it is important to recognise that some of the customer's concerns were justified. Therefore, we recommend that the Committee reduce the overall charge to \$16,199.06 (excl. GST)

## 11. Communication

No further public communication is necessary for this report.

## 12. Recommendation

*That the Committee:*

1. *receive the report; and*
2. *seek that a revised charge be set to \$16,199.06 (before GST).*

Report prepared by:

Report approved by:

Report approved by:

**Luci Ryan**  
Manager, Consents  
Management

**Richard Waddy**  
Divisional Accountant,  
Environment

**Jane Bradbury**  
Divisional Manager,  
Environment

**Attachment 1:** Objection from Whitby Coastal Estates Ltd.