



Report 05.471
Date 2 September 2005
File WAR 040089
WP/03/07/01
Committee Rural Services and Wairarapa
Author Stephen Thawley, Acting Section Leader, Consents & Compliance

Objection to Consent Processing Costs - Castlepoint Sea Wall

1. Purpose

To allow the Committee to consider an objection to consent processing costs made by Masterton District Council, in relation to resource consent applications processed for the construction of a sea wall at Castlepoint.

2. Significance of the decision

The matters in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

3. Background

In June 2004, Masterton District Council (MDC) applied for five resource consents including a restricted coastal activity for the construction of a sea wall at Castlepoint. The applications were notified and following the receipt of further information, the applications were heard by a Hearings Committee on 14-15 March 2005.

The Hearings Committee released their decision in early April 2005. The Committee resolved to grant Stage 1 of the application for a sea wall adjacent to a formed section of Jetty Rd. However the Stage 2 component of the application for a sea wall, traversing an unformed section of Jetty Rd and adjacent to a number of residential properties, was declined.

MDC was originally advised that the application fee payable was \$20,317.50 (incl. GST) for five notified resource consent applications, however in this instance it was agreed that an initial application fee of \$3937.50 (incl. GST) would be paid. Greater Wellington has discretion to only require one application fee when multiple applications are lodged relating to the same proposal. The Resource Advisor advised the applicant prior to the commencement of processing the applications, that consent processing costs were likely to be in excess of \$15,000.

Consent processing costs were determined in June 2005, and an invoice for additional consent processing costs (including a summarised breakdown of costs) of \$21,971.10 (incl. GST) was sent on 27 June 2005. The summary of consent processing costs is tabled in Attachment 1.

MDC lodged an objection to consent processing costs on 21 July 2005, under section 357 of the Resource Management Act 1991 (RMA). The objection was received within 15 working days of MDC being notified of consent processing costs and associated additional charges. A copy of the objection received is tabled in Attachment 2, however a summary of the objection is provided in section 4 of this report.

4. Nature of objection received

MDC believes that the time spent on the applications was excessive and out of proportion to the scale and effects of the proposed works. In particular the requested further explanation of costs associated with the following areas:

- Assessment and officers report (93.5 hours)
- Hearing arrangements (27.75 hours)
- Decision and post hearing follow up (69.5 hours)

Also, MDC believes that it is unreasonable to require it to pay the charge in light of section 36(4) of the RMA.

5. Fixed and additional charges

Greater Wellington staff believe that the fixed charges for processing applications relating to the Castlepoint sea wall project are \$20,317.50 (incl. GST) as five applications were made to the Council. Hence we believe that the objection can only be considered for the additional charge of \$5,591.10 (incl. GST), as section 357 only provides for objections made to additional charges made under section 36(3) of the Resource Management Act 1991.

6. Review of level and scale of charges

Following the receipt of the objection, a review of the level and scale of charges was completed in relation to the three areas identified above.

Assessment and officers report

In total 187.25 hours was accrued on this item but only 93.5 hours has been charged. Hence only half of the total hours spent on assessing the application and completing the officer's report has been charged.

Considerable time was required to assess the application and complete an officer's report due to the complex nature of the applications, particularly the Stage 2 component of the applications. This part of the applications attracted strong

opposition, and hence a robust and thorough assessment in completing the officer's report was required to be presented to the hearing.

Hearing arrangements

In total 42.5 hours was accrued on this item and 27.75 hours was charged. There was a significant amount of time required to arrange a suitable hearing date with the Hearings Committee, and arrange a DoC appointed representative to the Hearings Committee. Costs associated with the appointment of an iwi commissioner have not been charged, nor have disbursements for Cr Turver.

Decision and post hearing follow up.

In total 81 hours was accrued on this item and 69.5 hours was charged. The majority of this time related to work completed by Romae Duns (Opus International Consultants) who was contracted by Greater Wellington to assist the Hearings Committee in writing their decision. Normally this is completed by a Greater Wellington staff member, however due to a staffing shortage at the time it was decided to contract this work out to Opus. Costs for this were not charged to MDC and the work completed was only charged out at \$70/hour (normal staff charging rate) when Opus' charge out rate was in excess of that. Also some ancillary time charged by Opus for travel and preparation was not charged. The Hearings Committee spent considerable time deliberating on the decision and careful attention to their decision was required.

Greater Wellington staff have reviewed each item charged and believes that the level of consent processing charges made are fair and reasonable and not excessive.

The underlying philosophy in Greater Wellington's Resource Management Charging Policy, is that resource users (consent applicants) pay full costs (100%) of actual and reasonable costs associated with consent processing functions undertaken by the Council. As noted above, in some areas substantially less than 100% cost recovery has been undertaken when considering actual and reasonable costs for processing this resource consent application.

7. Community benefit of proposed works

The objection asks Greater Wellington to consider consent processing costs in light of section 36(4) of the RMA. Relevant part of Section 36(4) state:

“(4) When fixing charges referred to in this section, a local authority shall have regard to the following criteria:

- (a) *The sole purpose of a charge is to recover the reasonable costs incurred by the local authority in respect of the activity to which the charge relates:*
- (b) *A particular person or persons should only be required to pay a charge-*
 - (i) *To the extent that the benefit of the local authority's actions to which the charge relates is occasioned by the actions of those persons as distinct from the community of the local authority as a whole; or*
 - (ii) *Where the need for the local authority's actions to which the charge relates is occasioned by the actions of those persons;*
...”

MDC have expressed the view that the works were for the benefit of the Castlepoint residents and wider regional community, and of only minor benefit to MDC.

Greater Wellington staff do not entirely concur with this view provided by MDC that the works are for the benefit of Castlepoint residents and the wider regional community. It is accepted that for Stage 1 of the proposal, there is some benefit for the wider community arising from the proposed works, with the protection of existing roading infrastructure. However in relation to Stage 2 of the proposal, Greater Wellington staff believe that the proposed works are primarily for the benefit of a small number of landowners rather than the Castlepoint or wider regional community. A large proportion of consent processing costs arise solely from the Stage 2 part of the proposal, as Stage 1 by and large was not contested and therefore not subject to the same level of assessment.

8. Summary

A review of the consent processing costs has concluded that the consent processing costs are fair and reasonable and not excessive, hence it is recommended that the objection is dismissed and that consent processing costs of \$21,971.10 (incl. GST) be upheld.

It should be noted that following the review of the level and scale of charges and consideration of section 36(4) of the RMA, MDC were advised of the review by way of a letter on 17 August 2005. MDC have requested that the objection still be considered by the Committee.

9. Communication

The decision made by the Committee will be formally reported to MDC. No other communications are considered necessary.

10. Recommendations

That the Committee:

1. **Receives** the report.
2. **Confirm** the additional consent processing costs of \$21,971.10 (incl.GST).

Report prepared by:

Stephen Thawley
Acting Section Leader, Consents & Compliance

Report approved by:

Ted Taylor
Acting Manager, Planning & Resources

Colin Wright
Divisional Manager, Wairarapa