

Report 03.673
Date 11 November 2003
File WGN030228

Committee Environment
Author Al Cross, Account Manager, Consents Management

Lyall Bay Reef Charitable Trust – request to remit consent processing charges

1. Purpose

To allow the Committee to consider a request from the Lyall Bay Reef Charitable Trust to remit resource consent charges.

2. Background

The Lyall Bay Reef Charitable Trust (The Trust) recently sought, and was granted, consents to construct an artificial surf reef in Lyall Bay¹. The consents required from Greater Wellington Regional Council (GW) are coastal permits broadly relating to the construction and maintenance of the reef structure.

The Trust recently wrote to us requesting that GW waive some of the costs associated with the consent process, citing limited finances as a primary reason for seeking a remit of charges. The request is attachment 1.

While the Trust's request for remitting charges was based on their interim invoice of \$23,577.15², final costs of \$33,617 have now been determined. We do not consider the costs to be excessive, given the complexity of the application and the extent of issues raised by the submitters.

The Committee should also be reminded that these consents are under appeal to the Environment Court. GW Harbours Department is one of the appellants and the Trust has raised the issue of their involvement in the process as a factor in elevating processing costs. This matter is addressed in more detail in Section 4 of this report.

¹ The Reef Trust is a registered charitable organisation set up to work towards the development of the artificial surf reef.

² Both interim and final cost expressed here exclude GST and have the application fee of \$3,500 deducted.

3. Power to waive charges

Section 36(5) of the Resource Management Act 1991 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. Matters you may wish to consider

The following matters are relevant to your consideration of the remit request.

4.1 Estimate discrepancy

GW provided three estimates of cost to the Trust. The cost details of those estimates are summarised in the following table.

Item	First Estimate (\$)	Second Estimate (\$)	Final Estimate (\$)
Photocopying			
Advertising costs	2,000	1,928.46	1,928.46
Independent tech. review			1,800
Officers time:			
- Initial assessment	1,050 (15 hrs)	2,100 (30 hrs)	1,767.50 (25.25 hrs)
- Submissions and organising hearing	1,540 (22 hrs)	1,400 (20 hrs)	2,222.50 (31.75 hrs)
- Pre-hearing & follow-up	1,680 (24 hrs)	1,750 (25 hrs)	
- Final assessment and report preparation	4,200 (60 hrs)	2,800 (40 hrs)	3,150 (45 hrs)
- Hearing attendance	2,240 (32 hrs)	2,240 (32 hrs)	1,680 (24 hrs)
- Post hearing	1,120 (16 hrs)	1,050 (15 hrs)	1,050 (15 hrs)
Commissioners costs	1,110	1,140	10,080
Total (excluding GST)	14,940	14,408.46	23,678.46
Total (also excluding \$3,500 application fee)	11,440	10,908.46	20,178.46

The Trust takes issue with the discrepancy between the estimates and interim invoice, noting that funding for the consents was sought on the basis of the first estimate.

The first estimate (\$14,940 excluding GST) was issued in August 2001, well before an application was lodged. There was some uncertainty about the processing requirements for the likely application. Importantly, the first estimate was based on 20 submitters, allowed little initial officer assessment time, and presumed a hearing committee of councillors rather than a panel of independent commissioners. The last point is critical to the differences between the estimates. The hearing charges are based on a councillor daily meeting rate of \$185 at the time, which differs substantially from the assumed commissioner

rate of \$120 per hour. Additionally, the first estimate didn't allow for hearing committee input in the decision writing.

A second estimate was issued upon notification on 2 May 2003 for \$14,408.46 (excluding GST), once again based on 20 submissions and a councillor hearing committee.

The final revised estimate for \$23,678.46 provided on 7 July 2003 followed the receipt of 55 submissions, but prior to officers completing their full assessment and report. Importantly, this estimate was also based on a commissioner hearing, required because the GW Harbours Department were a major submitter.

The final charge associated with these consent applications, and the costs details of the final revised estimate are as follows:

Item	Final Charge (\$)
Photocopying	1,630.95
Advertising costs	1,859.05
Independent technical review (DTec Consulting Ltd)	1,367.75
Officers time:	
• Initial assessment	3,325 (47.5 hrs)
• Submissions and organising hearing	2,292.50 (32.75 hrs)
• Report preparation	5,110 (73 hrs)
• Hearing attendance	2,642.50 (37.75 hrs)
• Post hearing	5,810 (83 hrs)
Commissioners costs	13,080
Total (excluding GST and \$3,500 application fee)	33,617.75

The difference between the revised estimate and the final invoice is due to:

- officer time, particularly in post hearing assistance, but also in the initial assessment, report preparation and hearing attendance;
- commissioners' hearing and post hearing work.

The Trust based funding for its consent process costs on an estimate issued two years before their application was lodged. While the disparity between the first estimate and the final charge may seem large, this type of situation is not uncommon. We provide consent applicants with estimates as a guide, and we are clear to state the underlying assumptions used in calculating them (e.g. number of submitters, independent hearing commissioners vs councillor hearing committee input). So it is important that applicants allow for significant flexibility, given that we can not provide precise predictions about the parts of the process we have limited control over.

4.2 Harbours Department involvement in consent process

The Trust claims that the GW Harbours Department involvement has elevated costs unnecessarily. The Harbours Department placed a submission opposing certain aspects of the application. These included issues of safety concerning the location of the proposed reef within a reserved area for water craft such as jetskis, determined through the Wellington Regional and Navigational Safety Bylaws³. Because of a potential perceived conflict of interest, the Harbours Department involvement required the application to be heard by independent commissioners as opposed to councillors, which did raise costs. However, it must be stressed that, as a major stakeholder with legitimate concerns, the Harbours Department had every right to enter this process.

4.3 Activities aligned with GW functions

Requests for remits from the Eastern Little Blue Penguin Foundation (report 00.677) and more recently Riversdale Rural Ratepayers Association (report 03.569) also involve community bodies. In both cases, the resource consents involved projects that led directly to environmental improvements, thereby representing the type of activity GW directly promote and encourages. While a completed reef would be a public facility, the key beneficiaries would be the regional surfing community and any future related-commercial interests. Strictly speaking, the reef development is not specifically aligned with GW's core functions. Therefore, it exists as an activity that the Council would neither necessarily encourage nor discourage.

4.4 Precedent being set

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

4.5 Fairness to other applicants and impact on ratepayers

The funding policy requires that the full and direct costs of processing resource consents are to be recovered from applicants. So there are also effects on other consent holders and ratepayers to consider. 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 the Trust and fair on other applicants who pay their processing charges.

5. Summary

The discussion in section 4 provides a number of points to support a case for charging the full costs of the consent process to the Trust. However, we acknowledge that there is a substantial disparity between the final estimate and the final costs which is not conducive to good customer service. While there are considerable difficulties in estimating costs, we do expect that the gap

³ The Committee should note that the public process for proposed changes to the Wellington Regional and Navigational Bylaws is currently underway. Submissions on the proposed changes will be heard by the Environment Committee on 27 November.

between the final estimate and the final cost to be closer and it usually is. Therefore, you may consider that it is appropriate to revise the final charge to a value mid way between the final estimate and final costs. The revised final charge would be \$26,898⁴, reduced from \$33,617.

6. Communication

No further public communication is necessary for this report.

7. Recommendation

That the Committee:

1. *receive the report; and*
2. *seek that a revised charge be set to a value mid way between that of the final estimate and the final charge.*

Report prepared by:

Report approved by:

Report approved by:

Al Cross
Account Manager

Luci Ryan
Manager, Consents
Management

Jane Bradbury
Divisional Manager,
Environment

Attachment 1: Request for remit of charges from Lyall Bay Reef Charitable Trust

⁴ It should be noted that this calculation deducts the \$3,500 application fee from the final estimate in order to provide a consistent basis for determining the mid point between the two numbers.