

Mayor and Councillors
COUNCIL

28 SEPTEMBER 2017

Meeting Status: **Public**

Purpose of Report: For Decision

FEEES FOR NEW APPLICATIONS UNDER THE RESOURCE MANAGEMENT ACT 1991

PURPOSE OF REPORT

- 1 This report seeks Council's approval for public consultation on new resource management fees arising from the Resource Legislation Amendment Act 2017.

DELEGATION

- 2 Council has the authority to consider this matter.

BACKGROUND

- 3 The Resource Legislation Amendment Act 2017 (RLAA) obtained Royal Assent on 18 April 2017. The RLAA includes amendments to the Resource Management Act 1991 (RMA) and aims to provide a streamlined resource consent process, stronger national direction, a more responsive planning process and better alignment with other legislation.
- 4 The changes introduced to streamline resource consent processes have introduced two new types of applications – boundary activities and exemptions for activities with temporary or marginal effects and alters the processing timeframe for certain resource consents (10 working days). These applications along with further amendments come into effect on 18 October 2017 and are outlined further in attachment 1.
- 5 As with other applications made to Council under the RMA, the Council has the ability to set fees to recover costs of processing applications. In accordance with Section 36 of the RMA, these fees need to be set as per the Local Government Act 2002 consultation processes. Normally resource management fees are consulted on as part of the FutureKapiti Annual Plan 2017/2018 process, however due to the timing of the amendments, this has not been possible.

ISSUES AND OPTIONS

Issues

- 6 The Council is required to process the new resource consent application types created by the RLAA changes. No fees for these processes are included in the current resource management fees schedule approved by Council on 25 May 2017. Consistent with other categories of applications for resource consents, the processing of these applications is a private benefit for the person making the

application, and as such it is considered appropriate for establishment of fixed fees to be considered now.

- 7 Section 36(3) of the Resource Management Act 1991 allows Councils to fix charges for applications only—
 - (a) in the manner set out in section 150 of the Local Government Act 2002; and
 - (b) after using the special consultative procedure set out in section 83 of the Local Government Act 2002; and
 - (c) in accordance with section 36AAA.
- 8 Section 83 of the Local Government Act states that the local authority must prepare and adopt a statement of proposal and if considered necessary to enable public understanding of the proposal, a summary of the information contained in the statement of proposal. A statement of proposal is attached to this report. The statement of proposal and details of how the local authority will provide persons interested in the proposal an opportunity to present their views in accordance with section 82(1)(d) must be publicised and provide a period of not less than one month from the date the statement is issued for people to express their views.
- 9 Section 36AAA of the Resource Management Act outlines the criteria for fixing administrative charges including that the sole purpose of a charge is to recover the reasonable costs incurred by the local authority.
- 10 There are two options for setting fees for the new processes. Option 1 is to use the special consultative procedure to set new fees. Option 1 is the recommended option. Option 2 is to recover costs on a hourly rate once processing has been completed.

Option 1 (Recommended)

- 11 Use the LGA special consultative procedure to notify new deposit fees for the three new types of applications.
- 12 The RLAA sets about streamlining the resource consent process. To give applicants certainty around the costs associated with the processing of their application, requiring an upfront deposit is considered to be in accordance with the aim of the amendments. It is also administratively efficient as it provides surety of payment for the Council.
- 13 If this option for setting new fees is chosen, then based on the anticipated work required to process the new applications, the following fees are considered appropriate for the new applications:
 - Boundary (deemed permitted) activities – a fixed fee of \$300.00 which covers two hours of processing time
 - Fast track consents (land use controlled activities) – a \$1125.00 deposit which covers the first seven and a half hours of processing time and the ability to charge for additional time
 - Exemptions – a \$150.00 deposit which covers the first hour of processing time and the ability to charge for additional time

- 14 The fee proposed for boundary (deemed permitted) activities is consistent with or less than those proposed other neighbouring Councils and those in the wider Wellington Region. Upper Hutt City has set a fixed fee of \$275.00. Staff understand that Wellington City Council and Hutt City are both proposing a fee of \$465 (based on 3 hours at hourly rates of \$155), and that PCC is proposing a fee of \$475.50 (also based on 3 hours).
- 15 The fee for fast track consents is higher than the current deposit for a non-notified land use consent. Staff feel a higher fee is appropriate as the same amount of work is involved but it has to be undertaken in a shorter timeframe (10 working days). Unless they choose to opt out, applicants are getting priority over other applications and there will be a need to carefully manage workloads to ensure the timeframes are met. If an applicant opted out of the fast track process, the current \$900.00 deposit for a non-notified land use consent and the 20 working day processing timeframe would apply.
- 16 The lower fee for an exemption reflects that it is not an application that can be applied for; rather it is a determination which can be made by Council. Staff anticipate the majority of exemptions processed will be in relation to building consent applications that would otherwise require resource consent. This could be for such things as minor exceedances of site coverage. As an hour fee is already charged for the District Plan check on building consents, staff considered a lower fee is appropriate as we will have already undertaken the majority of the work. Upper Hutt City have set a fixed fee of \$275.00.
- 17 The current fixed fee of \$210.00 for home occupation consents (land use controlled) will remain and will be processed within the fast track timeframe (10 working days) unless the applicant requests otherwise.
- 18 Setting fees requires consultation under the LGA by way of the special consultative procedure. Given the short timeframe from Royal Assent to 18 October 2017 when the consent changes come into effect there is the risk that the deposit fees may not be set in time due to the one month requirement for submissions, followed by assessing submissions and scheduling hearings if required.
- 19 If approved, the consultation on proposed fees will be notified to the public on 2 October 2017 and be open to submissions until 2 November 2017.
- 20 This option is the preferred method to set the new application fees as it provides more certainty to applicants and is in line with the aims of the RLAA to streamline processes. Prior to the special consultative procedure being complete, time spent processing the new applications will be cost recovered. Applicants will be invoiced at the end of the process and staff will monitor time spent on applications to ensure that charges are in line with the fees proposed to be set.

Option 2

- 21 Use the cost recovery method of invoicing costs at current hourly rates set in the resource management fees schedule for time spent processing the new types of applications.
- 22 This option could be used without the need for consultation and the fees could be set as part of the 2018/2019 Annual plan review. While not the preferred option, this could also be used as an interim measure as the Special Consultative Procedure will not be completed by 18 October.

- 23 This option results in much more uncertainty for applicants as they won't know the costs associated with their application until processing is completed and the costs are accrued. This lack of certainty is considered to be inconsistent with the aim of the RLAA amendments.
- 24 This option also leaves Council open to risk for non-payment by applicants, and potentially needing to rely on debt collection for recovery of unpaid charges. This makes it less administratively efficient.

CONSIDERATIONS

Policy considerations

- 25 Once set, any fixed fees would form part of the Resource Management fee schedule. There are no relevant prior or existing Council policies.
- 26 There will not be any impacts on future Council policies.

Legal considerations

- 27 This paper has been reviewed by Council's legal counsel.

Financial considerations

- 28 Under the Local Government Amendment Act 2012 the local authority must "demonstrate prudent management of its revenues, expenses, assets, liabilities, investments, or general financial dealings."
- 29 The special consultative procedure will not require funding as promotion will be undertaken electronically, via the council website and emails to our stakeholder contact list.
- 30 The fees proposed to be fixed are estimated to cover the actual costs of processing the new applications. These fees will be reviewed as part of the Long Term Plan process and can be adjusted if needed based on data of the actual time spent processing the applications.

Tāngata whenua considerations

- 31 There are no issues for consideration relating to iwi, or Treaty of Waitangi issues.

SIGNIFICANCE AND ENGAGEMENT

Significance Policy

- 32 This matter has a low level of significance under Council policy.

Consultation already undertaken

- 33 No consultation has been undertaken.

Engagement planning

- 34 Council is required to consult on the proposed fees in accordance with the provisions of the Resource Management Act 1991 and Local Government Act 2002 as outlined previously in this report.

Publicity

- 35 A statement of proposal has been prepared (attachment 2) and will be released publicly to consult on the preferred option.

RECOMMENDATIONS

- 36 That the Council agrees to use the special consultative procedure to publicly notify the Statement of Proposal for resource management fees as set out in attachment two to report RS-17-323.

Report prepared by



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Approved for submission

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Approved for submission

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ATTACHMENTS

- Appendix 1 Details of new applications
Appendix 2 Statement of Proposal

Appendix 1**Boundary ‘deemed permitted’ Activities**

Where a rule is breached in relation to a boundary, such as a setback or height in relation to boundary, an Applicant can apply to Council for a written notice. The written approval from all owners of the affected boundary must be supplied along with the application form and plans detailing the encroachment. A boundary activity cannot be applied for when the encroachment is along a public boundary such as a road or reserve. Council does not have to undertake an effects assessment and if all the information is supplied (there is no ability to ask for further information), must issue a written notice deeming the activity to be permitted within 10 working days.

Council must keep records of applications and the written notice lapses within five years unless given effect to prior.

Temporary or Marginal Exemptions

Council has the discretion to determine if effects of a proposed activity are temporary or marginal and issue a written notice which exempts the requirement of a resource consent. There is no formal application process for public participation as Council determines what is temporary or marginal and there is no working day timeframe to assess temporary or marginal effects and make a determination. Sufficient information must be supplied for Council to be able to determine what the effects are and if they are temporary or marginal. Council must keep records of exemptions granted or declined. Written notices must be provided and lapse within five years if not given effect to within prior.

Fast-track Applications

Where a land use resource consent has been applied for in respect to a controlled activity, Council must process and issue a decision within 10 working days. Council has no discretion to decline controlled activity consents. There are currently 17 land use controlled activities in the Operative District Plan; this may change when decisions are released on the Proposed District Plan. The most common applications received for land use controlled activities are for home occupations and relocated buildings. Applicants in this instance are receiving a priority service, although they can opt out and pay a lower deposit fee if they wish.

Appendix 2**STATEMENT OF PROPOSAL****Resource Management Act – Fees and Charges****Boundary activities and marginal or temporary non-compliances****Reason for the Proposal**

Recent amendments to the Resource Management Act 1991 have created additional activities and processes which require associated charges. These include:

- Boundary 'deemed permitted' activities – Council must exempt 'boundary activities' from needing a resource consent if neighbour approval is provided.
- Marginal/temporary breaches – Council may exempt 'marginal or temporary' activities from needing resource consent.
- Fast track process – land use controlled activities must be processed within 10 working days

These activities come into effect on 18 October 2017, and in order for Council to recover costs for processing and deciding on these, fees need to be set. The fees are required to cover the reasonable costs of processing the applications.

Option One

Use the special consultative procedure to set fees. The proposed fees are two deposits and a fixed fee. The total cost of processing for marginal/temporary exemptions and fast track consents, will be determined at the end of the process. It is proposed that the existing hourly rates specified in the schedule of fees and charges are used if additional fees are to be charged. All fees include GST.

As these are new activities a deposit structure is considered appropriate to ensure that the fair costs associated with processing the application are paid.

- Boundary activities – fixed fee of \$300.00
- Marginal or temporary activities – deposit of \$150.00
- Fast track applications – deposit of \$1125.00

Given the short timeframe from Royal Assent to 18 October 2017 when the consent changes come into effect there is the risk that the deposit fees may not be set in time due to the one month requirement for submissions, followed by assessing submissions and scheduling hearings if required.

If approved, the consultation on proposed fees will be notified to the public on 2 October 2017 and be open to submissions until 2 November 2017.

This option is the preferred method to set the new application fees as it provides more certainty to applicants and is in line with the aims of the RLAA to streamline processes. Prior to the special consultative procedure being complete, time spent processing the new applications will be cost recovered. Applicants will be invoiced at the end of the process and staff will monitor time spent on applications to ensure that charges are in line with the fees proposed to be set.

Option Two

Use the cost recovery method of invoicing costs at current hourly rates set in the resource management fees schedule for time spent processing the new types of applications.

This option could be used without the need for consultation and the fees could be set as part of the 2018/2019 Annual plan review. While not the preferred option, this could also be used as an interim measure as the Special Consultative Procedure will not be completed by 18 October.

This option results in much more uncertainty for applicants as they won't know the costs associated with their application until processing is completed and the costs are accrued. This lack of certainty is considered to be inconsistent with the aim of the RLAA amendments.

This option also leaves Council open to risk for non-payment by applicants, and potentially needing to rely on debt collection for recovery of unpaid charges. This makes it less administratively efficient.

Legislation

The fees are made in accordance with section 36 of the Resource Management Act 1991.

Submissions

Written submissions may be made from 8am Monday, 2nd October 2017 until 5pm Thursday, 2nd November 2017.

Submissions can be lodged via one of the following methods of delivery:

- Emailed to resource.consent@kapiticoast.govt.nz and marked: Resource Management Act New Application Fees
- Dropped into the Paraparaumu, Waikanae or Otaki Libraries or any Council service centre
- Sent to Kapiti Coast District Council, 175 Rimu Road, Private Bag 60601, Paraparaumu 5254

Those who make a written submission may also make an oral submission. Hearings will be scheduled following the end of the submission period and will be held at the Council Chambers in Paraparaumu. Please indicate on your submission form if you wish to speak to your submission.

Further information

Further information, including a submission form, is available from the Paraparaumu, Waikanae or Otaki Libraries or any Council service centre, from the Council's website www.kapiticoast.govt.nz or you may request a copy to be emailed or posted to you by calling 0800 486 486. If you have any questions please contact Marnie Rydon, Resource Consents Planner.