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**Christchurch City Council – Draft Annual Plan 2009/2010
Draft Fees and Charges**

Submission by: Canterbury Branch of the New Zealand Planning Institute

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We submit that the draft Fees and Charges for processing of resource consent applications are set at a level that may disadvantage some applicants and discourage participation in the planning process.

We recognize that it is appropriate for Councils to recover costs when processing resource consents and private plan change applications, however section 36(4)(a) Resource Management Act 1991 requires that these fees must be based on the

“reasonable costs incurred by the local authority in respect of the activity to which the charge relates”

We consider the fees proposed in the draft LTCCP are not reasonable and have concerns about

- the high level of hourly charging
- that there has been no consideration of the community benefit from consideration of resource consents and private plan changes,
- that the disbursement charges are unreasonable; and
- the high level of fees that have to be paid upfront as a deposit.

We now address these concerns.

Charge Out Rates

An initial minimum application fee is charged for all resource consent and private plan change applications. This fee is a deposit, with the overall fee charged based on the number of hours taken by staff to process the application. Except for some very minor applications, the total fees charged nearly always exceed the deposit. In the instances where the hours charged are less than the deposit then the applicant receives a refund. So the key component in fees is the hours worked and more importantly the rate at which those hours are charged.

The current and proposed charge out rate is:

$$\frac{\text{Staff salary} \times 2.25}{1267.5 \text{ hours}}$$

This rate is very high, and in most cases is higher than consultant planners on the equivalent salary. For example a commonly used formula in private practice is:

$$\frac{\text{Staff salary} \times 2.3}{1450 \text{ hours}}$$

Using examples of planners with five and ten years experience on a salary of \$67,500 and \$80,000 respectively (based on NZPI 2008 Salary Survey), the difference in charge out rates is:

Salary	CCC Charge out rate	Private Consultant Charge out rate
\$67,500	119.82 + GST	\$107.06 + GST
\$80,000	142.01 + GST	\$126.89 + GST

The top line of the formula seeks to capture the overall cost of employing that staff member i.e. salary plus overheads. The bottom line is the overall cost divided by the number of chargeable hours anticipated over the year. The charge-out rate therefore reflects the ability to recover all the costs (and in private practice includes profit) of employing that staff member. The bottom line in the LTCCP formula (1267.5 hours) appears to be unusually low, presumably in acknowledgement that staff spend a fair amount of time engaged in non-chargeable activities such as responding to general telephone and counter enquiries, pre-application meetings and the like. The formula proposed in the LTCCP means that Council planners with 10 years experience are being charged out at similar rates to Commissioners with some 30 years experience, and administration time is being charged out at some 25% more than administration time is charged by both the private sector and other Territorial Local Authorities in the Canterbury Region.

There are two main reasons why the charge out rates cannot be a "reasonable" charge under section 36(4) of the Act. Firstly, and very obviously the Council are not running a business and therefore do not need to make a profit. For this reason alone Council hourly rates should always be lower than the rates typically charged by private sector planners with equivalent experience. With such a high charge out rate one can only conclude that it is the intention to make a profit. This is not acceptable from a local authority serving the community.

Secondly it seems that the multiplier must be taking into account costs which could not be reasonably included in a charge out fee for a specific function such as resource consent processing. Any multiplier should not include overheads which relate to non-resource consent matters such as the health and safety initiatives, information centres, general staff training, council wide depreciation, council secretariats, financial services, IT recovery etc. The Quality Planning website provides guidance as to best practice in setting fees (see attached) and states that:

Each council overhead item or category should be passed through a two-stage test before being included in the charge out rates for consents staff. The first test is:

'is the overhead occasioned by the applicant or consent holder'

and the second is

'does the overhead activity benefit the consent applicant or holder distinct from the community as a whole'.

This will enable decisions to be made and recorded on which council overheads (and what proportion of them) should be included in the overhead component of the charge out rates for consent processing staff. This will determine what actual overhead costs should be added to a staff member's base salary cost.

Given that Council is only able to recover reasonable costs, rather than make a profit, that these costs should be directly associated with processing applications, and that overheads should only be those directly associated with processing applications, it is submitted that

Council charge out rates for planning staff should be lower than the average rates charged by the private sector planners of similar experience. A suitable formula could therefore be:

$$\frac{\text{Staff salary} \times 2.20}{1450 \text{ hours}}$$

It is important to emphasise that the Branch is not in any way criticising the number of hours worked on specific applications by Council Officers, or the worth of Council staff. Rather the Branch is simply raising a concern that the formula upon which charge out rates are based, as proposed in the draft LTCCP, does not meet the s.36 RMA tests of 'reasonableness'.

Public vs Private Benefit

Both the Resource Management Act 1991 and the Local Government Act 2002 require the Council to always consider the public and private benefit gained from activities provided by the Council and to distribute the benefits accordingly. This is found in section 101 of the LGA

- The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,—
 - (a) in relation to each activity to be funded,—
 - (i) the community outcomes to which the activity primarily contributes; and
 - (ii) **the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and**

and Section 36(4)(b)(i) of the RMA which states that:

- 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 obtained by those persons as distinct from the community of the local authority as a whole; or**

By definition a district plan is only concerned about benefits to the environment or community and so any requirements for consents must have a public element to them. The City Plan provisions, which require resource consents in certain situations, have been developed for the public good and people who require resource consent are not always doing so to obtain financial advantage but rather can be carrying out relatively straightforward development or development that meets the social and economic needs of the community in some way.

It is not clear that consideration has been given to this aspect of resource management when the fees and charge out rates have been determined, especially given that it is understood that Council staff are expected to recover 100% of the costs of processing resource consent and private plan change applications.

Consent Fee

We consider these fees, which are deposits only, should be set in accordance with the criteria in section 36(4) of the Resource Management Act 1991 and should preferably be set to avoid dissuading potential applicants. In some cases a resource consent may require

public or limited notification over a relatively minor technical matter. In these circumstances a **minimum** fee of \$10,000 for publicly notified and \$5000 for limited notified applications is a significant upfront cost that may be beyond the financial means of some applicants as a single initial payment. If the relief sought above regarding a reduction in the hourly charge out rates to the point that these rates meet the test of 'reasonableness', a consequence will be that the deposit sums will be able to be reduced by a commensurate amount.

Consideration should also be given to the ability to reduce the initial deposit and to stage payments throughout the processing period. This would assist applicants to manage cashflow, would mean that fees are only charged once those costs have been incurred, and will enable applicants to be kept abreast of costs being incurred rather than receiving a single large invoice at the end of the process.

In these difficult economic times the fees for consents have become a more important, and potentially critical factor when a landowner is deciding whether to pursue a development. Therefore the Council should think very carefully about the amount required as a deposit and staging of fee payment throughout the application process.

Disbursements

We note that the Council is now charging for \$50 fee for file management and a further \$25 for file recovery, presumably for files which are now stored off site. The fee for file recovery is high especially as this is not a same day service. Many consultants use retrieval services for archived files and the common rate is \$10 for same day retrieval. From experience with the Council system the correct file is not always retrieved so further delay and cost is involved.

It is also proposed to charge \$25 to simply view electronic property files, both residential and commercial. This fee applies to any person wanting to view the files whether or not for a resource management purpose. This fee is listed on page 156 of the draft Plan and is item 4 under the Regulatory and Property Information Services fees. We do not consider it is reasonable to charge the public for what is in essence a core Council function to make publicly held records available to property owners and the general public.

Summary

In summary, we consider that the Council fees proposed in the LTCCP are too high and do not meet the requirements of S.36(4) of the RMA. The Council needs to be careful in setting such fees as it runs a real risk in a depressed economic climate of driving development away from the City. We note that the fees of adjoining and nearby Territorial Authorities are significantly lower and that in an economic recession it is inappropriate to be increasing and introducing new fees.

We seek the following

That Council gives consideration to:

1. Reassessing the fees for processing of resource consents and private plan changes, preferably to a level which is affordable and which will not discourage participation in planning processes. In particular the Council could consider adopting a fees scale based purely on staff salaries and overheads that relate specifically to their resource management function to ensure that the fees charged by Council meet the tests of reasonableness set out in s.36 RMA. A suggested formula is:

Staff salary x 2.20
1450 hours

2. Providing for payment of resource consent processing fees in a staged manner to enable payment to occur throughout the process rather than requiring payment of a substantial deposit at the time of lodging.
3. To not charge for the provision of publicly held information contained on property files.

We wish to talk to this written submission

A handwritten signature in black ink, appearing to be 'P. White'.

Signed on behalf of the Canterbury Branch of the New Zealand Planning Institute

Date 15 April 2009

From Quality Planning Site

Staff overheads

It is important that a council's method of allocating overheads and setting staff charge out rates ensures that the costs charged to consent applicants are transparent, justified and lawful. In that regard caselaw illustrates that it is appropriate to charge a "proportion of the overhead costs associated with running the Council's Resource Consents Division" (*Barfoote Construction Limited v Whangarei District Council*, A80/01). Any organisational or corporate costs included in staff overheads that are not relevant to the consents activity will need to be separated out and recovered elsewhere.

The recommended best practice starting point for determining staff charge out rates is to use an annual number of chargeable hours that exclude annual leave, sick leave and general staff training. A commonly used number is 1560 hours based on a 40-hour week. The staff member's salary is then divided by this number of hours to derive a base hourly rate. Appropriate overheads are then added to the base rate.

Section 36(4)(b) provides that a council's overhead costs can only be recovered from consent applicants if they either occasion them, or they receive benefit from them **distinct from the general community**. For example, the lodging of a consent application causes a council to have to employ consent processing staff and provide office space, office equipment and other resources to enable those staff to do their job. These are legitimate overhead costs that are sanctioned by s36(4) of the RMA. However, other overhead costs generated by a council that are not caused by consent activities do not fall within the bounds of s36(4). It is difficult to list such overhead activities with precision, as they will be many and varied and described differently in different councils.

Some examples of activities that should not generally be included in consent staff overheads would include:

- Council secretariats
- Cost of democracy
- CEO support sections
- Financial services and financial management planning (non consent related)
- LTCCP and annual plan development
- Information centres
- Copy centres (non consent related)
- Records management (non consent related)
- Library (non consent related)
- Customer service centres (non consent related)
- Community or public relations
- General environmental education (non consent related)
- Human resource management activities such as leadership training

- Health and safety initiatives
- Business practice improvement initiatives
- Information technology management and development
- General staff training
- Council wide depreciation.

Each council overhead item or category should be passed through a two-stage test before being included in the charge out rates for consents staff. The first test is:

'is the overhead occasioned by the applicant or consent holder'

and the second is

'does the overhead activity benefit the consent applicant or holder distinct from the community as a whole'.

This will enable decisions to be made and recorded on which council overheads (and what proportion of them) should be included in the overhead component of the charge out rates for consent processing staff. This will determine what actual overhead costs should be added to a staff member's base salary cost.