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**ORDINARY MEETING**

**OF**

**REGULATORY PROCESSES COMMITTEE**

**MINUTE ITEM ATTACHMENTS**

Time: 1.00pm  
Date: Thursday, 6 August 2015  
Venue: Committee Room 1  
Ground Floor, Council Offices  
101 Wakefield Street  
Wellington

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**Business**

**Page No.**

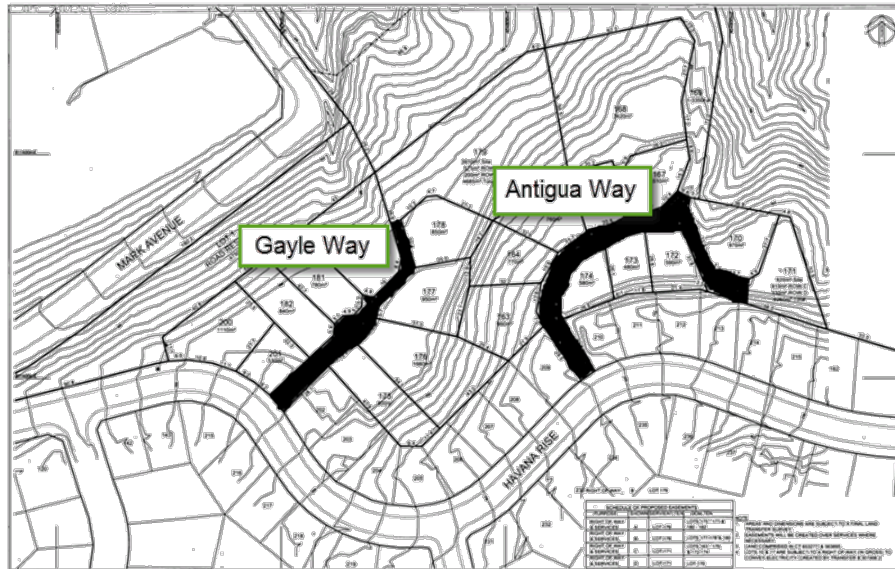
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**2.1 Approval of names for new Right of Ways off Havana Rise**

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|------------------------------------------------------------------------------|---|
| 1. Officers Amended Approval of Names for New Rights of Ways Off Havana Rise | 2 |
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**2.5 development contribution remission report for 175a cuba street**

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|-----------------------------------------------------------------------------------------------------|---|
| 1. Amended Development Contribution Remission Report for 175a Cuba Street (refer yellow highlights) | 4 |
|-----------------------------------------------------------------------------------------------------|---|
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**RIGHT OF WAYS TO BE NAMED**

**GAYLE WAY**

**ANTIGUA WAY**

F PLAN 3074

6 AUGUST 2015



REGULATORY PROCESSES COMMITTEE  
6 AUGUST 2015

DEVELOPMENT CONTRIBUTION REMISSION REPORT FOR  
175A CUBA STREET

**Purpose**

The purpose of this report is to evaluate the development contribution fee remission application received from Dayal Govan of D N Govan and Company of New Zealand Ltd (owner – DNG Co) for the conversion of a residential apartment into a commercial office space.

**Summary**

The Policy states that the onus is on the applicant to prove that the actual increased demand created by the development is different from that assessed by applying the non-residential unit of demand. As the remission request does not address the demand of the development on our infrastructure, but instead, is based on the neighbouring property making it unfit for use it has been referred directly to the Regulatory Process Committee for a decision.

1. The Policy allows for the Council to remit development contributions at its absolute discretion in exceptional circumstances under consideration of a remission application.
2. DNG Co has made an application for remission in respect of the development contributions assessment of \$10,910.45 for an office conversion at 175a Cuba Street.
3. Under the Policy, the development constitutes an increase of 2.18 additional household units and accordingly a development contribution is applicable. The owner contends that the 6-8 bed apartment became un-tenantable after the adjacent building, the San Francisco Bath House, became a music venue. Therefore at great cost to the owners (some \$50,000), they converted the residential flat into a commercial office. At the same time the building was seismically strengthened. Figures have been provided by DNG Co which show that they have lost \$167,307 to date and they state that the conversion will reduce income. They also state that the conversion will have a **smaller** impact on the infrastructure. They currently await the issue of their CCC for this work so the office is currently vacant.
4. Officers reject this argument on the basis that at the time of establishment the two uses were permitted under the then District Scheme, that no complaints were ever received from this apartment in relation to noise being emitted from the Bath House, and that the intensity of use increases as a result of the conversion.

**Recommendations**

That the Regulatory Processes Committee:

1. Receive the information.
2. Agree to decline the application for a remission of development contributions and confirm the development contribution of \$10,910.45 (GST inclusive) payable by the owner.

## Background

### Proposal

5. The owner converted an existing residential apartment into a commercial office. There was no increase in gross floor area.

### The Policy

6. The building consent was lodged with the Council on 24 January 2012. The remission application has, therefore, been assessed under the 2009 Development Contributions Policy.
7. The Committee will only consider exercising its discretion upon consideration of a remission application as described under section 2.6 of The Policy below.

#### 1.6 Remission and Postponement

1.6.1 *The Council may remit or postpone payment of development contributions at its complete discretion. The council will only consider exercising its discretion in exceptional circumstance. Applications made under this part will be considered on their own merits and any previous decisions of the Council will not be regarded as creating precedent or expectations.*

1.6.2 *Remissions will only be granted by resolution of the Council (or a Committee or Subcommittee acting under delegated authority.)*

1.6.3 *An application for remission must be made in writing and set out the reasons for the request*

8. The Policy provides that any proposal associated with an application for building consent, resource consent or service connection lodged on or after 1 July 2005, will be required to pay a contribution under the Policy (see clause 1.4.2 of the Policy). In terms of the Policy non-residential development is assessed on the basis of the number of equivalent household units (EHUs) created by the development. Even though the gross floor area of the building did not increase the DC Policy is based on non-residential space being used more intensively than residential space, therefore a development contribution is payable. Development contributions are payable for the number of EHUs created by each development. EHUs are applied as follows:

Type of development	EHU assessment based on
Residential development	1 EHU per household unit 0.7 EHU per one bedroom household
Nonresidential development	1 EHU for every 55m <sup>2</sup> of gross floor area (gfa)

9. The conversion of the apartment increases the current number of EHU's from 1 to 3.18 EHUs.

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**Discussion**

**The Remission Application**

10. The owner's argument for a remission of development contributions is that by Council allowing the San Francisco Bath House to operate as a music venue Council made the apartment un-tenantable and resulted in lost rent of up to \$117,307.00. Therefore at great cost to the owners, they had to change the use of the building to commercial.
11. On this basis, the owner argues for remission of the entire development contribution of \$10,910.45.

**Officers Assessment**

12. The use of the premise's as the San Francisco Bath House (a venue for live bands) was a permitted activity at the time of its establishment around 2005-6. Prior to the establishment of San Fran, the first floor had a long established history as licensed premises.
13. Archives have provided the building permit for the establishment of these apartments being 1988. At this time this area was a Retail Shopping Zone under the Wellington City District Scheme, and commercial uses could make a higher level of noise than currently applies under the Wellington City District Plan. In addition, there were no sound insulation requirements for apartments as there is now (introduced in 2003).
14. Therefore, as the apartments were not insulated to the level that the District Plan currently requires occupants could not expect a residential level of amenity with regards to noise. It is also noted that Council holds no record of any noise complaints from this apartment, confirmed by the environmental noise team, and the liquor licence team has confirmed that no objections to San Fran's liquor licence have ever been received.
15. Noise complaints were however received from the apartments to the rear of the site and as a result San Francisco Bath House was made to undertake sound insulation to meet the Central Area noise limits on that particular boundary. As the noise officer was not aware of the issues that the apartment in question was having no mitigation measures were imposed in relation to this boundary.
16. In relation to the impact on infrastructure, the building permit for the apartment shows one kitchen and one bathroom. The plans for the office conversion show two toilet facilities and one kitchen. As documented above, the conversion increases the current number of EHU's from 1 to 3.18 EHUs and therefore, according to the Policy, results in a greater demand on infrastructure in terms of water and waste.
17. Council officers recommend that the Committee decline the application for a remission of development contribution payable in relation to 175A Cuba Street, and that the owner be invoiced a final development contribution fee of \$10,910.45.

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6 AUGUST 2015

Absolutely Positively  
**Wellington City Council**  
Me Heke Ki Pōneke

**Options**

18. The Policy enables remissions of development contributions to be granted in exceptional circumstances at the Council's discretion and states that these decisions will not be regarded as creating precedent or expectations.

**Next Actions**

19. The Committee is to notify Council officers of their decision and the owner will be invoiced accordingly.

**Attachments**

Attachment 1. Invoiced development contributions

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**SUPPORTING INFORMATION**

**Consultation and Engagement**

Not applicable.

**Treaty of Waitangi considerations**

Not applicable.

**Financial implications**

Not applicable.

**Policy and legislative implications**

This report is consistent with the Development Contributions Policy and with all other existing policies of the Council.

**Risks / legal**

The Council's lawyers have not been consulted during the development of this report.

**Climate Change impact and considerations**

This report has no direct impact on climate change.

**Communications Plan**

There is no communication plan.