REPORT 2
(1215/52/05/IM)

DEVELOPMENT CONTRIBUTION REMISSION - 'VOGEL CAMPUS' (16 KATE SHEPPARD PLACE AND 7-17 MULGRAVE STREET, THORNDON)

1. Purpose of Report

The purpose of this report is to evaluate the development contributions remission application received by the Wellington City Council ("the Council") from Capital Properties (Wellington) Limited ("Capital Properties") for stage 1 of Vogel Campus and provide a recommendation to the Development Contributions Subcommittee ("the Subcommittee").

2. Executive Summary

The remission application relates to stage 1 of Vogel Campus. The development contributions fee for stage 1 of Vogel Campus was originally assessed by the Council at $982,137.22[1]. Capital Properties are seeking a remission of $544,128.05 leaving a development contribution fee of $438,009.17. Capital Properties has not applied for self assessment or remission of development contribution fees for any other stages of Vogel Campus.

The Council's officers consider that there are grounds to consider the application under the remission provisions in the Development Contributions Policy ("the Policy"). The recommendation is that the Subcommittee should remit the stormwater components of the development contributions fee ($52,533.20) and invoice Capital Properties a revised fee of $929,604.02. Council officers consider that the stormwater component of the development contribution fee is the only grounds for remission under the Policy.

3. Recommendations

It is recommended that the Subcommittee:

1. *Receive the information.*

2. *Agree to grant a remission of the stormwater components ($52,533.20) of the development contributions fee and invoices Capital Properties a revised and final fee of $929,604.02.*

Note: The Policy states that applications for remission of development contributions fees will be considered on their own merits and that any decision of the Subcommittee will not be regarded as creating precedent or expectations.

[1] Note that all monetary figures used in this report are inclusive of GST.

4. Background

4.1 Proposal

This remission application relates to “the construction, use and maintenance of two new Central Area buildings with frontages to Kate Sheppard Place and Mulgrave Street, the construction, use and maintenance of a new atrium building linking the existing Vogel building and the new Central Area buildings, additions and alterations to the existing Vogel building, the reconfiguration of site access, on-site car parking and on-site servicing as well as associated site works, including earthworks”. The remission applicant is Capital Properties (Wellington) Limited. Capital Properties are seeking to pay a development contribution fee of $438,009.17 for stage 1 of Vogel Campus. This represents a remission of $544,128.05 from the original assessment of $982,137.22. The application for remission was received by the Council on 28 July 2009. A self assessment process did not take place as discussions between the applicant and the Council’s officers concluded that an application for a reduction of the development contribution fee would not be supported. The applicant indicated that they would apply for remission directly to the Subcommittee. In normal circumstances, a self assessment process would occur initially; however, this was an unusual circumstance. This is also why the recommendation for remission of the stormwater components of the development contribution fee has been made to the Subcommittee; this matter would normally be dealt with in a self assessment process.

4.2 The Policy

The Policy allows for the Subcommittee to remit or postpone payment of development contribution fees at its complete discretion. The Subcommittee will only consider exercising its discretion in exceptional circumstances.

As the application for resource consent for Vogel Campus was received on 10 April 2006, the development has been assessed under the Policy that the Council adopted on 28 June 2006. The Policy provides that any proposal associated with an application for subdivision of land, building consent, land-use consent or unit title development, or a service connection on or after 1 July 2005 will be required to pay a development contribution (see clause 1.4.2 and clauses 3.2.1-3.2.10 of the Policy).

The relevant provisions of the Policy relating to remissions are as follows:

2.6 Remission and postponement

> *2.6.1 The Council may remit or postpone payment of a development contribution at its complete discretion. The Council will only consider exercising its discretion in exceptional circumstances. 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.*
> *2.6.2 Remissions will only be granted by resolution of the Council (or a Committee or Subcommittee acting under delegated authority).*

2.6.3 An application for remission must be applied for before a development contribution payment is made to the Council. The Council will not allow remissions retrospectively.
2.6.4 An application must be made in writing, and set out the reasons for the request.

Section 8.1 of the Policy is also relevant as it states that growth projections for Wellington City over the next ten years (which is related to the Long Term Council Community Plan) are based on a 10% growth in the residential population and an 11% increase in full-time employment. The growth assumptions underpin considerations relating to the provision of network and community infrastructure.

Under the Policy, any non-residential development is assessed for a development contribution on the basis of new gross floor (GFA) area created by the development. Paragraph 2.2.1 of the Policy states that development contributions are payable for the number of equivalent household units (EHUs) created by a development. For a non-residential development, an EHU assessment is based on 65m^2 of GFA being equal to 1 EHU (note that amendments to the Policy in 2009 have reduced this to 55m^2).

5. Discussion

5.1 The Remission Application

The applicant is seeking a partial remission of the development contribution fee due. The remission application (contained in Appendix 2) calculated that "the sum of $982,137.22 represents the maximum development contribution under the Development Contribution Policy and makes no reduction for the exceptional, individual circumstances of this case". The applicant believes that in this case, there are "compelling grounds for the Council to exercise its discretion and remit $544,128.05 leaving a balance of $438,009.17 to be paid by Capital Properties".

The application notes that Capital Properties has, in their opinion, contributed $1,088,256.15 to Wellington's built heritage by "voluntarily making provision to sustain the heritage qualities of the Thistle Inn which it was not required to do under the District Plan or any other planning instrument". The application provides a breakdown of these costs. It also states that "such a substantial contribution to the public good is an exceptional circumstance and it is equitable to recognise it by reducing the development contribution by 50% of that sum so the cost of sustaining the heritage qualities of the Thistle Inn are shared equally by Capital Properties and the public".

At paragraphs 8 to 12, the remission application examines the District Plan and Resource Consent Service Request Number 143739. The application notes the following points:

- The property is in the Central Area under the District Plan and was not subject to any special area requirements, designations or heritage requirements;

- Resource consent was granted before District Plan Change 48 was publicly notified, meaning that the provisions of this plan change requiring design and building mass to take into account adjacent heritage buildings was not in force;
- Page 7 of the Council's notification report states that "heritage impact is beyond the matters over which the Council has discretion and the Council is precluded from declining the application and/or imposing conditions of consent on the basis of heritage effects"; and
- That there was neither any obligation on Capital Properties to provide heritage protection for the Thistle Inn nor could anyone require it to do so.

The remission application goes on to consider the Council's Built Heritage Policy's fund as the key means to compensating owners for protecting built heritage. The application observes that the Council has limited means to make payments, and asserts that in place of this "the power to remit development contributions is a meaningful method by which it can provide an incentive for protection of built heritage". The application considers that "such a remission is consistent with Council's policies overall and it will provide a powerful incentive for landowners in the future to protect built heritage which can never be achieved by mandatory controls alone."

The remission application concludes that "it is entirely consistent with the Council's Development Contribution Policy and its Built Heritage Policy for the Council to reduce the development contribution by 50% of the amount Capital Properties has contributed to protection of the Thistle Inn so the cost is shared equally by Capital Properties and the public which benefits from this contribution to the public amenities of the City".

5.2 Assessment

The remission application makes reference to Capital Properties' contribution to built heritage. It states that the cost to Capital Properties of this contribution is as follows:

Contribution	*Cost*
Additional design fees for façade changes to provide a sympathetic interface between the new building and the Thistle Inn	$97,500.00
Additional building costs incurred to change the façade to provide a more sympathetic interface	$165,000.00
Payment to a new canopy for the Thistle Inn	$42,006.15
'Cost' of development foregone	$783,750.00
Total (excl. GST)	$1,088,256.15

Contribution to Built Heritage
The arguments in the remission application are acknowledged and it is accepted that the outcome for built heritage was desirable. However, these arguments are indirect and peripheral to the issue of development contributions, which are charged on the basis of growth-related costs that developments place on the Council's services and infrastructure.

Additional Building Costs
Much of the contribution cost claimed by Capital Properties in the table above relates to changes to the proposal that were made for it to avoid becoming a notified consent. These types of costs are typically associated with applications of this nature (i.e. large-scale Central Area developments). Notification of the development (either publically notified or limited notified) would have been at a substantial monetary expense and time delay to Capital Properties. It is also important to note that there is no guarantee that the earlier design iteration would have gained resource consent through a notified consent process.

Cost of Development Foregone
The argument around the 'cost' of development foregone is that Capital Properties voluntarily set back the development from the Thistle Inn to protect its heritage values and hence lost a certain amount of GFA. Firstly, if the development had not been set back and had design changes made to it, it would have been subject to notification because of the extent of its environmental effects and its non-compliances with the District Plan. The position of the Council's Resource Consent Planning team regarding the original proposal (i.e. the proposal prior to the changes being made) was that it would definitely have been notified. Notification would have been due to an overall assessment of the urban design considerations. Heritage values are a component of this assessment, but would not have been the only basis for this assessment (for example, other factors include building dominance, bulk and location).

Secondly, the 'loss' of GFA cost cannot be viewed as an 'opportunity cost' because it never existed with any degree of certainty. The outcome of a notified application may have been a rejection of the application or the requirement for an amended design.

Thirdly, if more GFA had been created by the development, it would have been subject to an increased development contribution fee as GFA is intrinsically linked to the fee charged by the Council for increased demand on infrastructure.

Ultimately, the amended design with its reduced GFA was a decision made by Capital Properties. This decision was in response to relevant planning considerations, including those to avoid notification, and can be seen as a normal and common part of the design process associated with any large-scale Central Area development. The decision cannot be seen as being based on Capital Properties making a voluntary contribution to Wellington's built heritage; rather, it was a business decision

Water Supply
The Council must design and construct infrastructure as provided for in the Code of Practice for Land Development and in the District Plan. Furthermore, infrastructure should be able to cater for peak demands, including fire fighting water, and it should also have storage facilities to store water for up to 24 hours use. It is recommended that no remission should be offered to the applicant in this component of the development contributions fee as a large amount of new non-residential floor space will be created.

Stormwater
It is recommended that there is a full remission to the applicant in both the residential and non-residential stormwater components of the development contributions fee. The reason for this is that the site was previously covered in hard-surfaces. Therefore, no additional stormwater will be generated when the development is completed.

Traffic and Roading
The development will result in the creation of a substantial amount of new non-residential floor area as well as a significant number of new car-parking spaces. There will be a significant increase in traffic generated by this development, which will impact on traffic and roading services. The Council must cater for peak traffic demands; therefore, it is recommended that this component of the development contributions fee should not be remitted.

Wastewater
There will be actual increased demand on wastewater services resulting from the development as a considerable amount of new non-residential floor space will be created. The Council must design its infrastructure and services to be able to cater for the disposal of wastewater at peak demand; therefore, it is recommended that this component of the development contribution fee should not be remitted.

Reserves
The Policy is based on the public being able to access reserves, rather than the use of reserves. There will be actual increased demand on reserves resulting from the development. It is recommended that no reduction should be offered to the applicant in this component of the development contribution fee.

6. Conclusion

The Policy requires that remissions of development contributions fees are only granted in exceptional circumstances. There is no definition of what might comprise such circumstances.

If the Subcommittee was to reach a view that the circumstances are exceptional, the Subcommittee is able to remit the application in full or in part.

The recommendation is that the development contributions fees payable are remitted in the following way:

Development Contribution based on 1 July 2007 Policy	*Original fee (GST incl.)*	*Adjustment after any remission (GST incl.)*	*Revised fee (GST incl.)*
DC Zone KS Non-Residential Reserves	$80,487.38	$80,487.38	$80,487.38
DC Zone KS Non-Residential Wastewater	$364,037.81	$364,037.81	$364,037.81

DC Zone KS Non-Residential Citywide - Reserves	$125,647.70	$125,647.70	$125,647.70
DC Zone KS Non-Residential Citywide - Roading	$192,003.71	$192,003.71	$192,003.71
DC Zone KS Non-Residential Citywide - Stormwater	$26,266.60	$0.00	$0.00
DC Zone KS Non-Residential Citywide - Wastewater	$77,415.35	$77,415.35	$77,415.35
DC Zone KS Non-Residential Citywide - Water Supply	$90,012.06	$90,012.06	$90,012.06
DC Zone KS Residential Citywide - Stormwater	$26,266.60	$0.00	$0.00
Total	$982,137.22	52,533.20	929,604.02

The recommendation is that the Subcommittee should remit the stormwater components of the original development contributions fee and invoice Capital Properties a revised and final fee of $929,604.02 for stage 1 of Vogel Campus.

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Supporting Information
1)Strategic Fit / Strategic Outcome *The Policy supports the Council's infrastructure-related activities, by ensuring those responsible for increased demand through growth contribute to the cost of providing infrastructure to service that demand.*
2) LTCCP/Annual Plan reference and long term financial impact *The Subcommittee decision has implications for the LTCCP and financial impacts where the cost of the growth-related portion of infrastructure development is paid for by those generating the additional demand on infrastructure. There is an expectation that development contributions will find infrastructure.*
3) Treaty of Waitangi considerations *This report has no direct impact on iwi.*
4) Decision-Making *Whilst the monetary figure involved is substantial, this is not a significant decision.*
5) Consultation **a)General Consultation** *As part of the remission process, the applicant has been provided with a copy of this report for their information.* **b) Consultation with Maori** *This report has no direct impact on iwi so consultation was not conducted.*
6) Legal Implications *The Council's lawyers have not been consulted during the development of this report.*
7) Consistency with existing policy *This report is consistent with the Development Contributions Policy and with all other existing policies of the Council.*

Appendix 1: Map showing location of development

Appendix 2: Copy of the application for remission of development contribution fees