

**WELLINGTON CITY COUNCIL
DEVELOPMENT CONTRIBUTION POLICY**

IN THE MATTER of the Local Government Act 2002
AND
IN THE MATTER Of an application for a partial remission
of the standard development contribution
on Building Consent SR162022 for the
Vogel Campus development on the
property known as 16 Kate Sheppard
Place and 7-17 Mulgrave Street
BY **CAPITAL PROPERTIES
(WELLINGTON) LIMITED.**
Applicant

**APPLICATION FOR PARTIAL REMISSION OF
THE STANDARD DEVELOPMENT CONTRIBUTION**

Introduction

1. Capital Properties (Wellington) Limited ("Capital Properties") developed the new building on the property known as 16-28 Kate Sheppard Place and 7-17 Mulgrave Street. The development was carried out pursuant to Resource Consent SR 143739 dated 26th May 2006 and Building Consent SR162022.
2. The Council in its letter 12th September 2007 advised Capital Properties that the Development Contribution for the development would be ~~\$982,137.22~~ including gst. That Development Contribution was assessed by the Council under the Council's Development Contribution Policy made pursuant to section 198 Local Government Act 2002. 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.

3. This is an application by Capital Properties for partial remission of the Development Contribution. The application is made *under* the Council's Development Contribution Policy, it is *not against* that Policy.
4. The Development Contribution Policy provides that the Council may remit payment of a development contribution at its complete discretion and it will only exercise its discretion in exceptional circumstances. There are in this case 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.

Grounds for application

5. The Council has properly reserved a discretion to remit development contributions in individual cases since a blanket policy cannot provide for exceptions. It should exercise the discretion in appropriate cases so that it is acting in accordance with its Policy.
6. Capital Properties contributed \$1,088,256.15 to the City'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.
7. 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.

District Plan and Resource Consent 143739

8. The property is in the Central Area under the District Plan. It was not subject to any Special Area Requirements or designations or heritage requirements.
9. The resource consent was granted before District Plan Change 48 was publicly notified. Consequently, the provisions in DPC 48 which require design/mass to

take into account adjacent heritage buildings was not in force at the time. This is clear from the Council's Notification Report and its Decision Report.

10. The resource consent was processed as a restricted discretionary activity and the Council's Notification Report on page 3 and its Decision Report on page 4 records that the Council's discretion was limited to;

(a) Rule 13.3.1.5, vehicle parking, servicing and site access;

(b) Rule 13.3.2.7, wind;

(c) Rule 13.3.2.17, design external appearance and siting;

(d) Rule 13.3.3, movement of vehicular traffic to and from the site.

11. The Council's Notification Report on page 7 in the context of a request by New Zealand Historic Places Trust to publicly notify the application states unequivocally;

*In relation to the concerns raised, it is noted that the proposal is not subject to the heritage provisions of the District Plan as no works are proposed to the neighbouring heritage building. **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.** The heritage rules in the District Plan apply to listed items (e.g. buildings) only. While the District Plan rules required resource consent for any physical works to the heritage item (other than repair and maintenance work which is permitted), the control does not extend to the setting of the heritage item beyond the item itself and there are no limits or specific controls impacting sites adjoining heritage items. (Emphasis added.)*

12. Consequently there was neither any obligation on Capital Properties to provide heritage protection for the Thistle Inn nor could anyone require it to do so.

Thistle inn

13. The Thistle Inn was constructed in 1866. New Zealand Historic Places Trust has classified it as a category 1 building. It is a significant building and measures to protect it were unquestionably in the public interest and the public should share the cost of doing so.

Wellington's Built Heritage

14. Council's policy is that it is in the public interest to protect the City's built heritage. It clearly wants to encourage landowners to recognise and provide for protection of built heritage.
15. The Council has sought to encourage heritage protection in a number of ways over the years. When the District Plan used plot ratio to control developments, owners of historic buildings could sell surplus plot ratio which was then transferred to another site. Now that the District Plan does not contain plot ratio controls the Council's Built Heritage Policy provides for a fund to compensate owners.
16. Thus it is consistent with Council policy to recognise in a meaningful way contributions by landowners to the City's built heritage. The difficulty faced by the Council is that it has limited means to do so by making payments, but the power to remit development contributions is a meaningful method by which it can provide an incentive for protection of built heritage. 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.

Capital Properties contribution to built heritage

17. Capital Properties made a substantial contribution to protection of the Thistle Inn by altering the design of the façade of its development, by setting its

development back from the Thistle's site and by making direct payments for improvements to the Thistle Inn. This contribution has been a significant benefit to the public realm.

18. The cost to Capital Properties of this contribution is \$1,088,256.15 comprising;

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 for a new canopy for the Thistle Inn	\$42,006.15
"Cost" of development foregone (see following paragraph)	\$783,750.00
Total (excl GST)	\$1,088,256.15

19. Capital Properties in the public interest voluntarily set its development back from the Thistle Inn to protect the heritage building. This resulted in a loss of 180m² of floor space in the new building (over levels 3-7). This loss of floor space "cost" \$783,750.00. This forbearance from developing the site to the extent allowed in the District Plan was a real and meaningful contribution to the City's built heritage.

Conclusion

20. 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.

21. Capital Properties requests that the Council remit the sum of \$544,128.05 so the
development contribution payable is \$439,009.17

DATED this 28th day of July 2009.

Mr A K Robinson