

Tabled 006/1000(A)
Report 2.

**WELLINGTON CITY COUNCIL
DEVELOPMENT CONTRIBUTION POLICY**

IN THE MATTER of the Local Government Act 2002
AND
IN THE MATTER Of an application for 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

**SUBMISSION OF MR J D LYNCH IN SUPPORT OF
APPLICATION FOR REMISSION OF
THE STANDARD DEVELOPMENT CONTRIBUTION**

Introduction

1. This submission is;
 - (a) In support of the application by Capital Properties (Wellington) Limited ("Capital Properties"), and;
 - (b) In support of the recommendation in the officers' report dated 17th March 2010 that there be full remission of the stormwater component of the development contribution being \$52,533.20, and;
 - (c) In opposition to the other recommendations.
2. The statute allows development contributions to be claimed only if there is a real basis for them. They cannot be imposed simply as an additional tax. If the

- Council does so it can be challenged in the Courts. The Council's Policy and its implementation of it must be consistent with this principle.
3. This is an application by Capital Properties for partial remission of the Development Contribution claimed by the Council. The application is made under the Council's Development Contribution Policy which includes a power to remit, it is not against that Policy. The power to remit should be applied in a meaningful way otherwise the Policy will lack integrity.
 4. The Council's Policy in 2.6;
 - (a) Empowers it to remit *a development contribution at its complete discretion* so the Council has a very wide discretion which enables it to act fairly;
 - (b) Provides that the discretion will be exercised only in *exceptional circumstances*;
 - (c) Remission decisions do not create precedents so each case must be considered on its *own merits* so a decision in this case cannot be used by a later applicant.

Contribution to Built Heritage

5. The Council's duty is to provide for integrated management of resources. It does so under various statutes, including the LGA and the RMA. The policies under the different statutes must work harmoniously in an integrated manner. None of the policies should be applied on a stand-alone basis which may lead to policies contradicting each other.
6. The Council has a *Development Contribution Policy* and a *Built Heritage Policy*. They should be applied in an integrated manner to achieve an overall result. I refer you to the section in the application on *Wellington's Built Heritage*.

7. Capital Properties, NZHPT and the Council agree that the *Thistle Inn* is an exceptional heritage building. Contributions made to protect such a valuable building constitute an exceptional circumstance under the *Development Contribution Policy*. The public benefits are very real.
8. Protection of the *Thistle Inn* from the effects of development on a neighbouring site could not be achieved under the Plan at the time. Prior to DCP48 the design of a building did not have to take into account effects on neighbouring heritage buildings. Buildings could and were encouraged to cover 100% of a site up to the height limit. The Council did not have power to require setbacks to mitigate the effects of the Vogel development.
9. 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.
10. Furthermore the Council could take into account only those matters on both the notification decision and the consent decision.
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***

15. The statement in the officers' report that the costs were typical of applications of this nature is incorrect. The resource consent was granted before DCP 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.
16. The statement in the officers' report that there was no guarantee the earlier design iteration would have gained consent is incorrect. The Plan allowed Capital Properties to build over 100% of the site up to the permitted height. The design and external appearance criterion in the Plan related to the proposed building and did not require any regard to be had to the neighbouring heritage building.
17. The additional building costs were substantial, they were identified during consultation with the Council and in the public interest. Capital Properties did not derive any net benefit from them. Consequently they should be taken into account as requested.

Cost of Development Forgone

18. The cost of development forgone to protect the *Thistle Inn* was substantial and real.
19. The officers argue that without it the application would have been notified. This is irrelevant because;

(a) It was an RDA so consideration was restricted to the stated criteria.

The officers' statement that heritage values are a component of the assessment is incorrect. Also *building dominance, bulk and location* could not be taken into account in the way stated by the officers;

- (b) It was not in fact notified so speculation about what may have happened had it been should not be taken into account;
- (c) Even if it had been notified, consent would have been granted under the RDA provisions since no regard could be had to the effect on the neighbouring heritage building.
20. The officer's second argument that loss of GFA is not an opportunity cost is also incorrect. They say the GFA never existed with any degree of certainty. Under the Plan at the time it certainly did; it provided for 100% site coverage up to the full height allowed.
21. The officers' third argument that more GFA would have attracted a greater development contribution is unsound. It would have, but the value of the increased GFA would have far exceeded the extra development contribution and also Capital Properties is seeking a remission of only 50% which more than compensates for the extra development contribution which would have been paid on the extra GFA.
22. The officers' conclude this section by saying that the decision to forgo GFA was a business decision and not a contribution to Wellington's built heritage. This is not so. There was no business case to forgo the GFA. It was done in consultation with the Council to protect the *Thistle Inn* and it was undoubtedly a contribution to the City's built heritage. It is equitable that the contribution be recognised.

Water Supply

23. The officers' state the water supply must be designed to cater for peak demand and the development creates new floor space. This is correct.
24. However, the existence of these 2 points does not justify a development contribution for water supply. Such a contribution can be required only if the development results in a need for new investment in the water supply. The

development has not as a matter of fact resulted in the need for such new investment. Consequently the Council cannot require a contribution for a cost not being incurred.

Stormwater

25. The development will not result in any new expenditure for stormwater so the officers have recommended correctly that the development contribution required for it be remitted in full.

Traffic and Rooding

26. Contrary to the statement in the officers' report there will not be a significant increase in traffic generated by this development. There were 108 carparks on the site previously and there are 130 in the development. (The number of carparks on the Defence site was reduced by 20 which did not attract any credit.) The levy claimed is \$192,003.71 which is nearly \$9,000.00 for each of the 22 additional carparks. The addition of 22 carparks is negligible in the context of the traffic in the area. It will not result in any increase in traffic and roading infrastructure costs so the levy is unjustifiable and it cannot be imposed.
27. Also the officers' have overlooked provision by Capital Properties of the pedestrian link through the building. This has been provided at the cost of Capital Properties and it is a public benefit. It would not normally be provided in a commercial office building so it represents a contribution to create a public amenity which should be taken into account.

Wastewater

28. It is correct that the development will create additional demand for wastewater services, but it has not resulted in any need for new investment in wastewater. A contribution cannot be levied to pay for an expense which has not been incurred.

Reserves

29. It is incorrect to say the development will result in additional expenditure on reserves. That has not happened and it will not. A contribution cannot be levied for an expense which has not and will not be incurred.
30. Again in this context the officers have omitted to make any allowance for the cost to Capital Properties of creating the Aitkin Link for the public at the request of the Council's urban designer.

Conclusion

31. The Council should take into account that it is competing for investment with other cities not only in New Zealand but also in Australia. It should encourage investment in Wellington by treating investors fairly.
32. In this case Capital Properties in consultation with the Council made expensive contributions to protect the *Thistle Inn* and it is fair that they should be recognised in a meaningful way. Capital Properties has been more than fair by saying 50% should be remitted so the expense incurred should be shared 50/50 with the Council in recognition of the public benefit achieved.
33. In any event the levies claimed are not on analysis justifiable and should be remitted.

DATED this 17th day of March 2010.

Mr J D Lynch