
**ADDITIONAL INFORMATION RELATING TO THE
DEVELOPMENT CONTRIBUTION REMISSION
APPLICATION FOR VOGEL CAMPUS (16 KATE
SHEPPARD PLACE AND 7-17 MULGRAVE STREET,
THORNDON)**

1. Purpose of Report

The purpose of this report is to provide additional information to the Development Contributions Subcommittee (“the Subcommittee”) on the development contribution fee remission application received by the Wellington City Council (“the Council”) from Capital Properties (Wellington) Limited (“Capital Properties”) for stage 1 of Vogel Campus.

2. Executive Summary

The application for remission of the development contributions fee for stage 1 of Vogel Campus was heard by the Subcommittee on the 17 March 2010. Following this, the Subcommittee requested that the Council’s officers (the officers) undertake further work on the issues raised by the applicant in respect of the remission application.

This report sets out the response to this request. No change has been made to the recommendations as set out in the 17 March 2010 report to the Subcommittee.

3. Recommendations

It is recommended that the Subcommittee:

1. *Receive the information.*
2. *Agree to grant a remission of the stormwater components (\$52,533.20¹) of the development contributions fee and invoice Capital Properties a revised and final fee of \$929,604.02.*

¹ Note that all monetary figures used in this report are inclusive of GST unless otherwise stated.

4. Discussion

4.1 Development contribution assessment

On 17 March 2010 the officers recommended that a final development contributions fee of **\$929,604.02** should be paid based on the following:

| Development Contribution based on 1 July 2007 Policy | Original fee | Adjustment after any remission | Revised fee |
|--|---------------------|--------------------------------|---------------------|
| 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 | \$52533.20 | \$929,604.02 |

As the Stage 1 Vogel Campus building will not result in an increased level of stormwater run-off from the site it has been recommended that the stormwater components of the development contribution be remitted.

4.2 Additional Information

Section 4.3 of the report provides additional information on the purpose and effect of development contributions fees. Further information has also been provided as requested by the Subcommittee as follows:

- 1) notification and approval of resource consent application;
- 2) loss of airspace resulting from setback;
- 3) roading, transport and reserves;
- 4) positive contribution to built heritage; and
- 5) the Waterloo Hotel decision (judicial review).

4.3 Purpose and Effect of Development Contribution Fees

Policy Assessment of Applications for Remissions

The Vogel Campus resource consent application was received on 10 April 2006. The development has therefore been assessed under the 2006 version of the Development Contributions Policy (the Policy).

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 Policy also 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.

Infrastructure Provision for Growth

Infrastructure provision is planned and designed based on the best information of current usage and predicted growth over many years. This information is based on:

- projections provided by Statistics New Zealand on population and employment growth and household formation; and
- the Council's own research, planning and infrastructural developments as set out in the LTCCP.

The provision of water, roading and wastewater infrastructure, and the planning and design of infrastructure must provide for growth demand often in excess of fifty years. The capital costs of building capacity to meet the demands placed on infrastructure by a growth is then recovered from each new growth related development.

The Policy is based on 10% growth in the residential population and an 11% increase in full-time employment over the next 10 years. These growth assumptions underpin considerations relating to the provision of network and community infrastructure.

For non-residential uses, a gross floor area (GFA) based approach to calculating development contributions is used. Under the 2006 version of the Policy, the standard was 65m² of GFA per equivalent household unit (EHU), based on 1 person per 25m² of GFA multiplied by 2.6 persons. However, this has been altered to 55m² of GFA per EHU in the latest version of the Policy (2009). The new standard is based on 1 person per 21m² multiplied by 2.6 persons. This recognises that the majority of Wellington's non-residential buildings are offices and that this office space is being rationalised to accommodate more workers. This standard was based on the most up to date information on floorspace usage in Wellington in 2008.

4.4 Notification and Approval of Resource Consent Application

As previously stated in the 17 March Subcommittee meeting, most of the contribution to built heritage costs claimed by Capital Properties relate to changes to the proposal that were made in order for the resource consent application to be processed and approved on a non-notified basis. This claim is reaffirmed because the costs disputed by Capital Properties are costs that are typically associated with resource consent applications of the nature of Vogel Campus (i.e. a new Central Area building).

It was also previously noted by the officers that there was no guarantee that the initial design iteration (i.e. the proposal before the 'contribution to built heritage' changes were made) would have gained resource consent through a notified process. Furthermore, if it had been decided that the initial design iteration would proceed through a non-notified resource consent process, the resource consent application may have been declined; this is explained later in this report.

Capital Properties submit that heritage matters were outside of the matters of discretion that the Council were limited to in considering the resource consent application. In their self-assessment application, Capital Properties identified that in the Council's Notification Report, it is stated 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".

However, the point to be made is that the activity was assessed as a Discretionary Activity (Restricted) under Rule 13.3.2 of the District Plan for the construction of a building. Under this rule, section 13.3.2.17 allows discretion of design, external appearance and siting. Specifically, section 13.3.2.17.2 allows discretion to be exercised over the extent to which a proposal meets the provisions of the Central Area Design Guide (CADG) – operative as of 27 July 2000. The relevant provisions of the CADG to the proposal are as follows:

- *General Design Guidelines*
 - **G2** Relationship to the Surrounding Environment: The overall context of a building should be taken into account in its design. New developments should not occur in isolation. Their design should recognise the place that they occupy within the street and within the Central Area as a whole.
 - **G3** Overall Building Composition: The design of any building should derive from a coherent overall compositional idea. The development of this idea should reflect all the relevant design criteria set out in this Design Guide.

- *Guidelines For Street Context*
 - **G1** New or refurbished buildings should provide visual links to adjacent frontages. These should strengthen the cohesiveness of the existing street frontage.

- *Guidelines for Neighbourhood Context*
 - **G1** New buildings should establish visual links with neighbouring buildings. These connections should occur whenever groups of buildings will be experienced as an ensemble. Visual links between neighbouring buildings are also important within defined sub-districts of the Central Area which possess a distinctive local character.
 - **G2** Neighbouring buildings should appear "in scale" with one another. This occurs where neighbouring buildings share some key observable dimensions

- **G3** The shape and position of new buildings should conform to any existing compositional pattern established by neighbouring buildings.
- **G10** Side boundary setbacks should be employed to provide:
 - light and outlook from neighbouring buildings

The Council's discretion included the provisions identified above. The position of the Council's Resource Consent Planning team regarding the initial proposal (i.e. the proposal prior to the design changes being made) was that the proposal was inconsistent with these provisions and that, therefore, the resource consent application would definitely have been notified unless design changes were made. This view was based on an assessment that the proposal was inconsistent and had a poor relationship with the context of the surrounding environment. The Thistle Inn formed a part of the surrounding environment. Notification would have been due to urban design considerations (not heritage considerations) based on an assessment of the proposal against the relevant provisions of the CADG, as well as the extent of the development's environmental effects and its non-compliances with the District Plan.

If Capital Properties had objected or sought judicial review of the notification decision and succeeded, and the resource consent application was processed on a non-notified basis, there is a distinct possibility that resource consent would have been declined as the proposal would not have been supported by the Council on a number of fronts:

- urban design considerations based on an assessment of the proposal against the relevant provisions of the CADG;
- the extent of the development's environmental effects; and
- its non-compliances with the District Plan.

Therefore, the design changes made by Capital Properties cannot be seen as a voluntary contribution to built heritage. The design changes were made for the proposal to gain resource consent on a non-notified basis. Had the design changes not been made, the development would not have received the Council's support and would have been either notified or possibly declined on a non-notified basis. In addition, it is reiterated that 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 resource consent application or the requirement for an amended design.

4.5 Loss of Airspace Resulting from Setback

At the Subcommittee meeting on 17 March 2010 it was suggested by Councillor Foster that the figure Capital Properties had supplied in terms of the 'cost of development foregone' did not recognise that producing the extra GFA that was foregone would have involved a cost. Capital Properties provided information to the officers following the Subcommittee meeting about the level of this cost and its impact on their proposed remission as follows:

- Previously submitted 'cost of development foregone' - \$783,750.00
- Revised 'cost of development foregone' - \$653,580.00 (including the cost of developing and building the extra GFA foregone)

Capital Properties are claiming a remission on 50% (or \$65,085.00) of the difference between their previously submitted and revised figures. Therefore, they claim a revised total remission as follows:

- Previously submitted total remission - \$544,128.05
- Revised total remission - \$479,043.07

Therefore, Capital Properties are claiming a revised development contribution to pay as follows:

- Previously submitted development contribution to pay - \$438,009.17
- Revised development contribution to pay - **\$503,094.15**

4.6 Rooding, Transport and Reserves

Rooding and Transport

Based on the 2007 version of the Policy approximately 10% of the growth related CAPEX expenditure on traffic and rooding infrastructure is paid for by development contributions. This contribution provides for new or extended roads, footpaths, walkways, cycleways, parking and public transport access and shelters etc.

Stage 1 of Vogel Campus was assessed as creating 18,051.3m² of GFA; this includes an existing GFA of 302m². Accounting for the existing credit of 302m², the additional GFA 17,749.3m² equates to 273.07 EHUs under the Policy. The development will increase demand on traffic and transport-related infrastructure which will place pressure on the traffic and rooding infrastructure in the CBD (and other infrastructure at peak times).

Counsel for Capital Properties Ltd submitted that the development did not cause any increased demand for rooding and transport because the redeveloped buildings have been occupied by tenants that have moved from existing buildings within the CBD; and therefore there is no growth related demand as they are already using the transport network.

This submission can not be accepted and shows a failure to understand the DC policy. The DC Policy uses floor area (converted to EHUs) as a proxy for growth. This is approved methodology and is consistent with the Local Government Act 2002. For these reasons no reduction has been proposed for the traffic and transport aspects of the development contributions fees.

Reserves

The 2006 DC Policy (and the current 2009 Policy) requires development contribution payments for non-residential developments within the inner city (catchment K) to provide for Waitangi Park and other inner city parks. The Policy is based on the public being able to access reserves, rather than the actual use of reserves. Reserves in the inner city and wider locality will be able to be accessed and enjoyed by workers accommodated in Vogel Campus. Reserves also provide passive ecological and landscape benefits that are enjoyed by people who live and work in the locality and the wider City.

The arguments put forward for traffic and transport are similar for reserves in that the large increase in the numbers of workers occupying these sites will

result in an increased demand on reserves as buildings vacated by workers moving to Vogel Campus will be used by other workers over the next 10 years.

4.7 Positive Contribution to Built Heritage

The officers accept that the outcome for the Thistle Inn's built heritage was desirable. However, this issue is not related to development contributions, which are charged on the basis of growth-related costs that developments place on the Council's infrastructure. Where a contribution to built heritage will reduce demand on infrastructure, the self-assessment process is the appropriate means to reduce development contributions. However, it has not been shown that Capital Properties' contribution to built heritage will reduce demand on the Council's infrastructure.

The Policy does not make any allowance for remissions of development contributions on the basis of either voluntary or involuntary contributions to built heritage. This is more appropriately considered using other financial and policy incentives such as the Built Heritage Policy and grants.

Furthermore, it is reasserted that Capital Properties did not make a voluntary contribution to Wellington's built heritage; rather it was based on a commercial decision to ensure the resource consent application would be granted on a non-notified basis.

4.8 The Waterloo Hotel Decision (Judicial Review)

The decision to approve the IRD building on Bunny Street as a non-notified resource consent application was judicially reviewed by the owner of the adjacent Waterloo Hotel. The decision related to whether it was appropriate to require design modifications to protect amenities (e.g. sunlight to adjacent buildings constructed to the boundary).

This is not relevant to Vogel Campus because, after some discussion, the Council agreed with Capital Properties that the owners of Kate Sheppard Apartments were not 'affected parties' as it was unreasonable for these apartment owners to assume an entitlement to the protection of certain amenities (such as views/sunlight) by restricting adjacent development. With Capital Properties and the Council taking a common position on this matter, the Waterloo Hotel decision is not relevant to the current application for remission.

5. Conclusion

Consistent with the report prepared for the Subcommittee on 17 March 2010, it is recommended that the Subcommittee should remit both the residential and non-residential citywide stormwater components of the original development contributions fee (a total of \$52,533.20) and invoice Capital Properties a revised and final fee of **\$929,604.02** (GST incl.) for stage 1 of Vogel Campus based on the following:

| Development Contribution based on 1 July 2007 Policy | Original fee | Adjustment after any remission | Revised fee |
|--|---------------------|--------------------------------|---------------------|
| DC Zone KS Non-Residential Reserves | \$80,487.38 | \$80,487.38 | \$80,487.38 |
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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 fund 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.