



STAFF REPORT

TO: Environment & Planning Committee

FROM: Carl Cheeseman, Co-Ordinator Compliance Monitoring

REFERENCE: F104

SUBJECT: **PROPOSED CHARGES FOR COUNCIL INVESTIGATIONS INTO ENVIRONMENTAL INCIDENTS AND COMPLAINTS – REPORT ON CONSULTATION - EP06/11/07** – Report Prepared for 22 November 2006 Meeting.

1. REASON FOR REPORT

This report presents to the committee the results of a public consultation programme seeking submissions on the proposed charges for Council investigations into environmental incidents and complaints.

2. BACKGROUND

A policy paper outlining the proposed charging was presented to the Environment & Planning Subcommittee on the 30 May 2006 as report EP06/05/19. Following discussion the committee agreed to amend the policy to clarify that charges would apply only on the second and subsequent visits if non-compliance remained unresolved. The Committee then moved that:

The Environment & Planning Committee receives Report EP06/05/15, proposed charges for Council investigations into environmental incidents and complaints;

Agrees to the implementation of a charging policy on incident inspections as set out in Attachment A to that report and resolves to notify this policy using the special consultation procedures under Section 83 of the Local Government Act 2002.

Subsequently the draft policy was advertised widely in the local media with submissions closing on 9 October 2006.

3. FEEDBACK

Public response to the call for submissions was mute. At the time of closing council received only three written submissions and two verbal communications. Of these three supported the proposal and two were in opposition. Of those only one in opposition wishes to be heard. The five submissions received are contained in the following table.

Those who submitted in writing, particularly those in opposition, raised a number of matters that are discussed below. Unfortunately due to the wide-ranging and somewhat disjointed nature of the objections some paraphrasing has been required in order to provide staff comment. The following was generally

Name	Particular provision	Other comments	Staff comment
Lew Metcalf - Fonterra	Supports in general		Verbal response. Agreed with the intent of policy
Federated Farmers	Supports in general		Verbal response. No problems provided the trigger was second visit
Bob Haswell - Best of NZ Wines Ltd	Supports All	Recommends applying charging to vexatious complaints also	
B and J Butts as Port Tarakohe Limited	Opposes all parts	Suggests better staff training in communication and dispute resolution	
J and C McLellan	Opposes in general. No specifics.		

Those who submitted in writing, particularly those in opposition, raised a number of matters that are discussed below. Unfortunately due to the wide-ranging and somewhat disjointed nature of the objections some paraphrasing has been required in order to provide staff comment. The following was generally raised:

3.1 There is already a cost recovery system in existence for consent monitoring and council has more than adequate power to recover its costs.

Those submitters in opposition alluded to the fact that an ability to cost recover was already built into consent fees and therefore costs of inspection can be charged under the RMA without the need for additional powers.

Staff comment

Cost recovery under the RMA relates entirely to matters fixed by section 36 charges. Currently offences committed by individuals or companies operating as permitted activities leave the local authority no mechanism for charging for costs of investigation and follow up and costs incurred are borne by the Council and ultimately the rate payers. This presents some inconsistency bearing in mind that consent holders in non compliance can be charged investigation/inspection fees yet those under permitted activity in similar position bear no cost. As most non-compliance is relatively low-level the use of infringement fines or enforcement orders is often not a proportionate response. While monitoring fees will continue to apply for consent monitoring, the purpose of this policy is entirely aimed at the recovery of investigative costs outside the consent framework.

3.2 Use the existing infringement fine process and readjust the fine schedule to cover severity of offence.

Reference was made to the infringement fine process as a tool that already exists and should be used instead of implementing this proposed policy. In order to make it functional the submitter suggests that the fine schedule be redefined to recognise the severity of breaches.

Staff comment

As stated the intent of this policy is not to provide another enforcement tool but to allow the ability to off set a cost which is otherwise unreasonable to expect the ratepayer to cover, particularly the increasing cost of inspections associated with continuing non compliance. While infringement fines are clearly an important mechanism for providing punishment and a deterrence to those committing offences in appropriate circumstance, they were never intended as a means of recovering operating costs.

As the infringement fee schedule is fixed by regulation made by the Governor General pursuant to section 360 (1) (bb) of the Resource Management Act, council does not have the authority to amend this as it see fit.

3.3 This is a form of double dipping

Comment was made in one submission that this policy was intended as a form of double dipping. Although the submission was not entirely clear reference was made to the infringement fines process.

Staff comment

As commented above, this policy is solely designed to provide a mechanism for off setting some cost associated with day to day investigations of a relatively minor, but repetitive, nature. It is not intended as a penalty or form of punishment for more serious offences. To that extent it is separate from the fines process and one is unlikely to accompany the other except in those circumstances where reinspections identify new or increased offending sufficient to warrant the issue of an infringement fine alongside the fee.

3.4 Investigating breaches of the TRMP/RMA is what compliance staff are already employed to do. This policy is just about increased power.

One submission made reference to a belief that this was not about cost recovery but increasing power for Council staff undertaking compliance. In essence the submitter asserts that what can be charged for under section 1.1 of the proposed policy is simply a job description of compliance staff already paid to undertake this work.

Staff comment

Again this reflects a misunderstanding of the intent of this policy. Council's powers are already enshrined in the RMA and this policy introduces no additional power. It needs to be remembered that if the transgressor chooses to comply with the directive no charges will ensue.

3.5 Rural communities will be penalised from implementation of this policy through excessive travel charges.

One submitter raised concerns that rural people will be unfairly penalised by this policy by default of living away from the Richmond offices. Further to this they assert that it is not unreasonable to expect Council to provide inspection services to ratepayers including rural ratepayers regardless of locality.

Staff comment

This point was discussed at the May when the policy was first presented. As the intent of this policy is not to unfairly penalise any one group, particularly those distant from the urban areas, it was agreed that any travel included in the fee would be calculated from the nearest service centre. This will avoid excessive fees being incurred for investigations in rural areas such as Golden Bay or Murchison.

Secondly the duty to provide a monitoring and inspection service is fundamental to Council's obligations under the RMA and under this proposed policy that basic premise remains a core principal. It is for that reason all initial investigation into offences will still be provided at no cost to the individual or company at fault. The trigger for charges under this policy will at the point of reinspection if it is found that the offence continues or there was a failure to remedy or mitigate as directed. In these instances all costs associated with the offence will be charged for, backdated to the first inspection date.

3.6 Standard of proof essential for this policy to work therefore Council needs strong guidelines.

Submitters raised the need for Council to adopt clear and strong policies and guidelines.

Staff comment

Staff are required to follow the procedures in the existing enforcement manual when conducting investigations. The Environment & Planning Manager has asked that this manual be reviewed with a view to presenting it to Council early in 2007.

3.7 This policy is adversarial and will alienate people

Both submitters who opposed this policy saw it as being adversarial and not in the interests of good relations with ratepayers.

Staff comment

It is not considered that this policy is adversarial and in fact was intended to make it fairer on the ratepayers by ensuring that they are not left to foot the bill for those in breach of the rules and regulations. It could also be argued that the general lack of response to this policy from the public is an indication that there is an acceptance of the polluter pays principal. Comments from the two verbal submitters were to this effect.

3.8 Consider extending the scope of this policy to include complainants who are vexatious or time wasting.

One submitter in favour suggested that Council extend the scope of this policy to include those complainants who make vexatious or frivolous complaints that waste staff time.

Staff comment

Attempting to extend this policy to include cost recovery for time involved in unfounded complaints would take it out of what is provided for under section 150 of the Local government Act 2002. Likewise it would be considered as an undue infringement of people's basic right to raise concerns to perceived rule breaches.

4. SUGGESTED POLICY AMENDMENT OR ADDITIONS

A number of small amendments to the Charges for Incident Inspections Policy are suggested. These amendments are suggested in order to provide clarity to the policy document.

4.1 1.1 - *Circumstances in which a charge may apply and charges applicable*

In order to clarify the policy on travel it is recommended that the end of paragraph three stating - '*The Council will only charge for time spent which exceeds 30 minutes. Travel time will be included in the calculation of this time*' insert the following:

'Travel will be calculated from the nearest Tasman District Council office and includes the Takaka, Motueka and Murchison service centres'

4.2 1.5 – *Goods and service tax*

In order to make it clear that all charges are GST inclusive it is recommended that the section be amended to read

'All charges made under this policy are inclusive of GST.'

4.3 Other amendments

A number of other small editorial amendments have been made to improve readability.

5. RECOMMENDATIONS

- 1. That the Committee receives this report**
- 2. That the Committee adopts the attached policy on Charges for Council Investigations into Environmental Incidents and Complaints, incorporating the amendments list in Section 4 of this report.**

Carl Cheeseman
Co-Ordinator Compliance Monitoring

1. CHARGES FOR INCIDENT INSPECTIONS

Summary: The Council may charge people or organisations whose activities contravene the Tasman Resource Management Plan or Resource Management Act 1991 for costs it incurs in inspecting those activities and where those costs can not be reasonably met by other means.

1.1 Circumstances in which a charge may apply and charges applicable

Where a person (or persons) or organisation carries out an activity in a manner that contravenes the provisions of Section 9, 12, 13, 14, 15, 327, or 329 of the Resource Management Act 1991, the Council may charge that person (or persons) or organisation for the cost of any inspection it undertakes in relation to that activity. This cost may include:

1. time spent by Council officers identifying and confirming that the activity is taking or has taken place;
2. time spent by Council officers identifying and confirming the person(s) or organisation responsible for causing or allowing the activity to take place or have taken place;
3. time spent by Council officers alerting and informing the person(s) or organisation responsible of their responsibilities in relation to the activity, including any suggestions or advice relating to how any adverse effects might be avoided, remedied, or mitigated;
4. travel time from the Council's nearest relevant office;
5. Costs by way of disbursements (such as laboratory analysis costs).

The Council will only charge for time spent which exceeds 30 minutes. Travel time will be included in the calculation of this time. Travel time will be calculated from the nearest Tasman District Council office and includes the Takaka, Motueka and Murchison service centres.

Charges will apply when a second visit has shown that non-compliance remains.

Any charge will only be such as to allow the Council to recover its actual and reasonable costs, and will only be made to the extent that the Council's actions are occasioned by the actions of the person (or persons) or organisation responsible for the activity to which the charge relates.

1.2 Charges not Applicable to Consented Activities

Section 1.1 of this Policy does not apply to any activity to which a resource consent issued by the Council relates. Charges for inspections for resource consents are provided for in the Council's schedule of charges.

1.3 Authority to Charge

These charges are made under section 150 of the Local Government Act 2002.

1.4 Charge-out rate

The rate at which staff time shall be charged shall be the same as the hourly rate applicable at the time in the Council's Schedule of Charges. As at 1 July 2006, this is \$80 per hour (inclusive of GST).

1.5 Goods and Services Tax

All charges made under this policy are inclusive of GST..

1.6 Remission of Charges

The Council may remit any charge made under Section 1.1 above, in part or in full, on a case by case basis, and at its discretion.

1.7 When Due

Charges are due for payment within 28 days.

1.8 Relationship of Charges to Infringement Offences

Where an infringement notice under the Resource Management (Infringement Offences) Regulations 1999 is issued by the Council in relation to the activity, or for a related activity, the provisions of those Regulations to do with payment, further action, non-payment of fees, defences, and queries and correspondence will be relevant to the timing and payment of any charge made under Section 1.1 above.

For example, if one of the defences listed in the Regulations is accepted, then no charge will be made for Council inspections under Section 1.1.

1.9 Relationship of Charges to Enforcement Orders Under s.314 of the Resource Management Act 1991.

The Council may also seek reimbursement for any actual and reasonable costs it incurs in avoiding, remedying, or mitigating any adverse effect on the environment, by way of an enforcement order under s.314 of the Resource Management Act 1991.

2. RELATIONSHIP OF CHARGES TO THE MARITIME TRANSPORT ACT 1994

These charges do not apply to marine oil pollution incidents. These are provided for under the Maritime Transport Act 1994.

2.1 Date Charges become Operative

These charges will apply from 1 December 2006 and will continue in effect until amended or replaced under s. 150 of the Local Government Act 2002.