

A free lunch or a fair deal?

*A good practice guide for charging
for resource consent processing*

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for Local Government New Zealand

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FOREWORD

Almost weekly, we hear about the costs of complying with the Resource Management Act 1991 (RMA). Charges for resource consent processing have been criticised by some businesses, members of the community and resource consent applicants. This is at a time when, increasingly, local authorities are being required to adopt a broader range of functions and services. Local communities are demanding more involvement in decision-making and clear accountability of public funds. There are also increasing demands, from the public, for better environmental outcomes.

Acceptance that some costs are a legitimate part of resource use and development has yet to be fully achieved. We could be forgiven for wondering whether some resource consent applicants are looking for a free lunch!

Those of us in the local government sector, know that local government is working hard to apply the administrative charge provisions of the RMA in a transparent and accountable manner. Councils aim to charge what is fair and reasonable for resource consent processing. Overall we think a good job is being done.

This *Local Government New Zealand* good practice guide provides practical suggestions as to how we can enhance quality practice. We need to ensure that resource consent applicants are getting a fair deal and that we can justify why our charging policies have been implemented in certain ways. We trust that this good practice guide will provide you with some positive guidance in relation to charging for resource consent processing.

Peter Winder
Chief Executive
Local Government New Zealand

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Disclaimer:

Please note that information and advice provided in the template is intended as a guide and should not be taken as providing a definitive interpretation of the RMA or case law. Every effort has been made to ensure that the information provided in the template is accurate and complies with the law. However, the information and advice are, by necessity, generalised and councils should bear in mind that it may not be appropriate to follow the guidelines in every case.

EXECUTIVE SUMMARY

The purpose of this report is to:

- raise awareness of the key issues regarding the costs of resource consent processing as raised in previous studies
- provide good practice advice on administrative charging for resource consents under the Resource Management Act 1991 (RMA).

This report is intended for local authority managers and staff responsible for applying the administrative charge provisions set out in section 36 of the RMA. Karen Bell of Enviro Solutions New Zealand Limited prepared this report for *Local Government New Zealand*.

Key findings of the report

Key issues raised in part studies of RMA compliance costs

- the practical application of administrative charges by councils has led to public criticism
- a lot of issues about administrative charges are anecdotal
- there is limited quantitative information on administrative charges
- all studies on compliance costs stress the need for transparency and accountability
- the percentage of total costs that are administrative charges is increasing. (MfE, 1999)
- local authorities are in a monopoly supply situation and, in some cases, are perceived to be inefficient in resource consent processing. Time delays can be costly to businesses
- variations in charging policies and amounts have been criticised
- sometimes there is uncertainty regarding the total costs for a resource consent and unexpected additional charges are added towards the end of the process
- there has been debate about what is regarded as “reasonable” and the appropriate division of public/private benefits (and related charges).

General principles for administrative charging

Charges must be:

- legal
- reasonable
- equitable and justified
- uniformly applied
- simple and easy to understand
- transparent
- predictable and certain.

Good practice ideas for administrative charging for resource consent processing

- develop a simple, transparent and fair charging policy
- ensure that your charging policy is simple and able to be understood by someone not familiar with the RMA
- consult affected people (such as resource users) when you are developing the charging regime
- review the charging regime regularly (every three years)
- throughout the resource consent process, have a system of continuous improvement. Create an environment in which suggestions for improving processes and reducing costs are welcomed
- develop a quality management system to ensure your systems are effective and efficient
- educate all people involved in the resource consent process (applicants, staff, councillors, consultants, etc)
- tell the resource user what to expect in terms of time and costs as early as possible in the process (preferably pre-application). Use previous similar consents as a guide for cost estimates.
- if the processing of a consent goes over the statutory timeframe, provide applicants with a discount (if the delays were through no fault of the applicant – eg if they were due to a vexatious submitter)
- where holding and/or opportunity costs are high, consider offering a faster, more expensive service
- encourage resource users to take on more directly the costs of processing and monitoring the consent – eg if a surveyor is required, encourage the resource user to deal with and pay the surveyor directly rather than doing this through the council
- seek feedback from customers on whether they think they got good value for money
- consider lowering compliance costs for those who consistently meet or exceed resource consent requirements, or consider making environmental awards that provide public recognition

- ensure user charges relate to the level of private benefit and that any monitoring costs relate to the level of environmental risk
- be clear and transparent about administrative charges when invoicing for the costs of the resource consent application. Have itemised invoices.

PART I

1 INTRODUCTION

Purpose of this report

This report has been prepared to provide good practice advice on resource consent charging under the Resource Management Act 1991 (RMA). The aim is to raise awareness of the potential and actual compliance costs among all parties involved in charging for resource consent processing.

There have been a number of studies of the compliance costs associated with implementing the RMA, but few of these studies have focused specifically on charges for resource consent processing. There have also been a number of guides produced on related topics, such as preparing (and auditing) assessments of environmental effects for resource consents. In 1994 the Ministry for the Environment (MfE) published a guide on charging for resource consents. *Local Government New Zealand* held a workshop in 1997 with regional council senior managers on their charging policies.

The aim of this *Local Government New Zealand* report is to draw out the key issues relating to the costs of resource consent processing, update some of the guidance material and provide good practice ideas on how to address these administrative charging issues.

The audience for this report is local authorities (regional, district and city councils) who are responsible for applying the administrative charge provisions of section 36 of the RMA. The particular target is managers and leaders of resource consent teams.

Methodology

Karen Bell of Enviro Solutions New Zealand Limited was commissioned to prepare this report for *Local Government New Zealand*. Her brief was to raise awareness of the issues and to provide good practice advice on administrative charging for resource consents.

The preparation of this report did not involve any primary research or interviews with councils (due to cost restrictions) but was limited to an analysis of all previous work on or relating to charging for resource consent processing, followed by a peer review by Wellington-based practitioners.

This report builds on a workshop run by *Local Government New Zealand* in July 1997 with the regional councils' Resource Managers Group. The purpose of that workshop was to assist regional councils design robust resource consent administrative charging policies and processes, in line with the financial management procedures of the Local Government Act 1974, as amended in 1996 (LGA (No.3) 1996). This report also draws on reports and case studies of RMA compliance costs and best practice guides developed in relation to administering the RMA. These reports and guides are listed in the references list (Appendix 1) and are further outlined in Appendices 2 and 3.

Further questions about the issues raised in this report or good practice ideas should be provided to:

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Background to and reasons for this report

Local government reform in 1989 introduced annual planning. More recently, the LGA (No.3) 1996 introduced requirements for comprehensive and integrated financial management across all functions of a local authority.

This change in focus (towards providing long-term financial strategies and “user pays”) caused a shift in who should carry the costs of some RMA administration from ratepayers to resource users. It also introduced the principle of polluters paying the costs related to their pollution. Councils were therefore required to be more specific about levels of cost recovery for resource consent processing. As a result of these legislative changes some resource users have faced increased charges for their resource consents. This is because the costs of the effects of their activities on the environment are charged directly to them. This is the principle of internalising environmental costs.

In a briefing to the new Minister for the Environment (Hon Marian Hobbs) in December 1999 *Local Government New Zealand* had the following to say in relation to the costs of implementing the RMA:

Local government shares concerns [with some complainants] about the costs of implementing the RMA.

The 1996 amendments to the Local Government Act provided an incentive for many local authorities to review their charging regimes.

Both individuals and companies will always seek processes and systems that provide certain, risk free and least cost decisions for themselves. The introduction of the Act entrenched a shift in the burden of cost from ratepayers to resource users and the application of the principle of ‘polluter pays’. Acceptance by resource users that these costs are a legitimate part of resource use and development has yet to be fully embraced.

Local Government New Zealand is currently embarking on a study designed to raise awareness of issues associated with the costs of implementing the RMA and to develop good practice examples for sharing among all councils.

(Local Government New Zealand Briefing to the Minister for the Environment)

The Resource Management Act 1991 provides access to a comprehensive range of funding tools – including the administrative charging regime set out in section 36. This provision is outlined in chapter 2 of this report.

This report is timely for a number of reasons:

- there has been a large amount of anecdotal evidence cited and concern expressed about variation in RMA administrative charges for the same or similar activity in different parts of the country. A frequently quoted figure is a difference of 13–100 percent in cost recovery sought by councils
- the application of resource consent charging by councils has led to public criticism (for example of the costs of compliance reports)
- to date there has been limited quantitative data available on administrative charges for resource consent processing across the country. Local government has been subject to criticism of variable administrative charging policies but cannot always assess whether the variability is well justified or not (without the ability to compare with other council's approaches)
- all of the studies on RMA compliance costs stress the importance of transparency and accountability in the way publicly provided services are costed, delivered and paid for. It is timely to reflect on the ways in which local authority services can be made transparent and accountable
- there is an expectation by resource users and resource consent applicants that they will receive reasonable costs for a good service in regard to resource consent processing (Mallett, MfE, *pers comm*, 2000)
- the percentage of total project costs that are administrative charges under the RMA is increasing, as is the number of resource consents being applied for nationally each year (MfE, 1999)
- charging provisions relate to more than one piece of legislation and this may have led to some confusion or difference in application of charging regimes.

The resource consent application process is, for many people, their only experience of the RMA, and it can be a major influence on their perception of the quality of service provided by local authorities. Some resource users and consent applicants appear to resent the fact that they are required to pay for resource consents at all. Overall, it can be concluded that people seek quality service and hope to be charged as little as possible.

What is fair in terms of charging for resource consent processing and associated administrative costs? Do people want a free lunch or a fair deal? What is the basis of the concerns documented in the media, in reports on the costs of compliance with the RMA, and the complaints heard by councils? What does constitute good practice in administrative charges under the RMA? These considerations underlie the good practice guidelines developed and presented here.

Structure of this report

The body of this report is structured as follows:

- outline of the administrative charge provisions of the RMA
- the issues raised in previous studies of RMA compliance costs
- the issues related to administrative charges for resource consent processing
- good practice ideas for administrative charging
 - general principles to follow for administrative charging
 - a good practice checklist (for each stage of the resource consent process)
- conclusions and recommendations.

The appendices include references and a summary of previous studies and guides.

2 THE ADMINISTRATIVE CHARGE PROVISIONS OF THE RESOURCE MANAGEMENT ACT

Administrative charging under section 36 of the RMA

Section 36 of the RMA sets out the provisions under which local authorities may fix administrative charges relating to the council's functions and responsibilities under the Act. The matters for which a council may charge are shown in the figure on the next page. There may be a direct recovery of the actual and reasonable costs of the council fulfilling its duties and functions. This applies to all council duties and functions, but the focus of this report is on the administrative charges for processing resource consents.

Section 36 of the RMA should be considered in relation to the requirements of the LGA (No.3) 1996. In broad terms, the respective Acts provide for the following:

Local Government Act (Amendment No.3) 1996

- what services the council will deliver (accountability)
- how it will fund them (transparency).

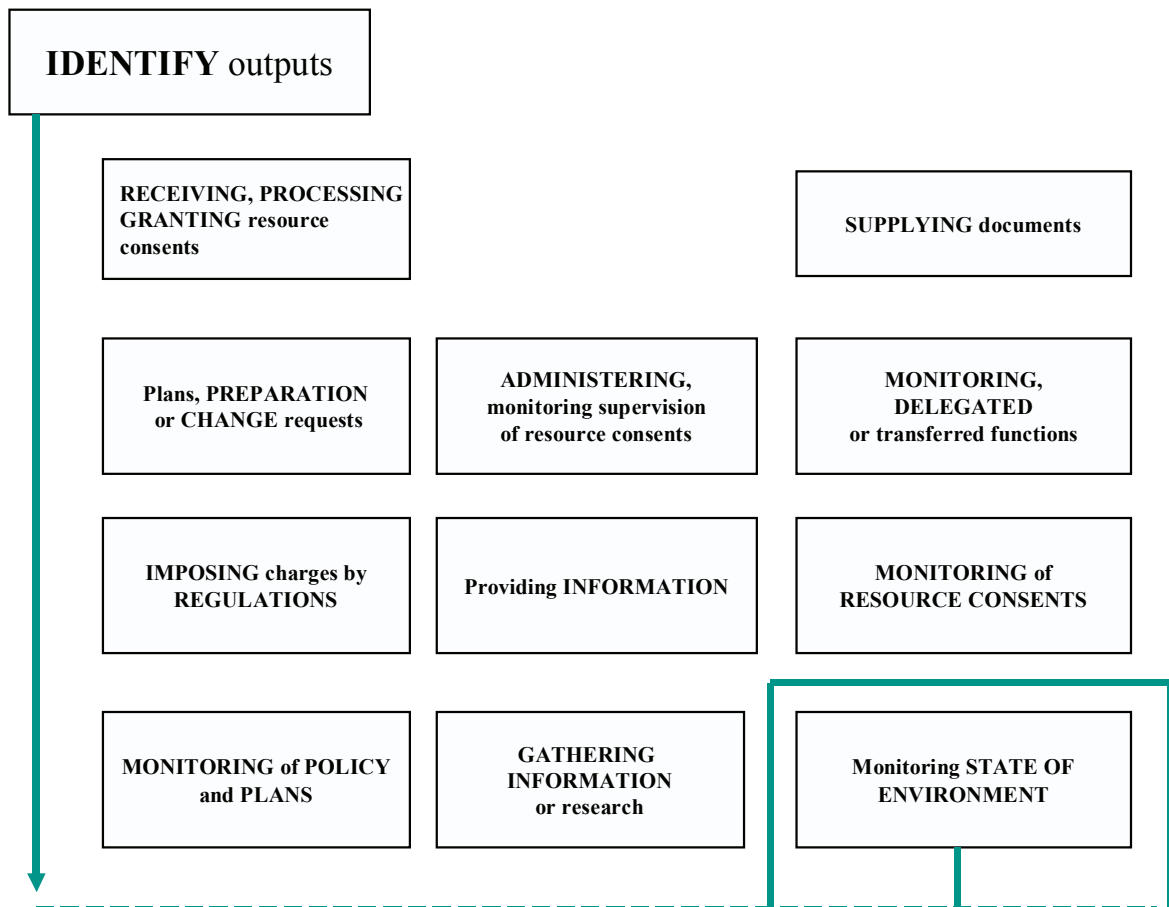
Local authorities (like other organisations in the public sector) are now required to carry out long-term financial planning. The LGA (No.3) 1996 provides the overall framework for financial management across all activities of a local authority and, accordingly, covers all council functions under the RMA.

Resource Management Act 1991

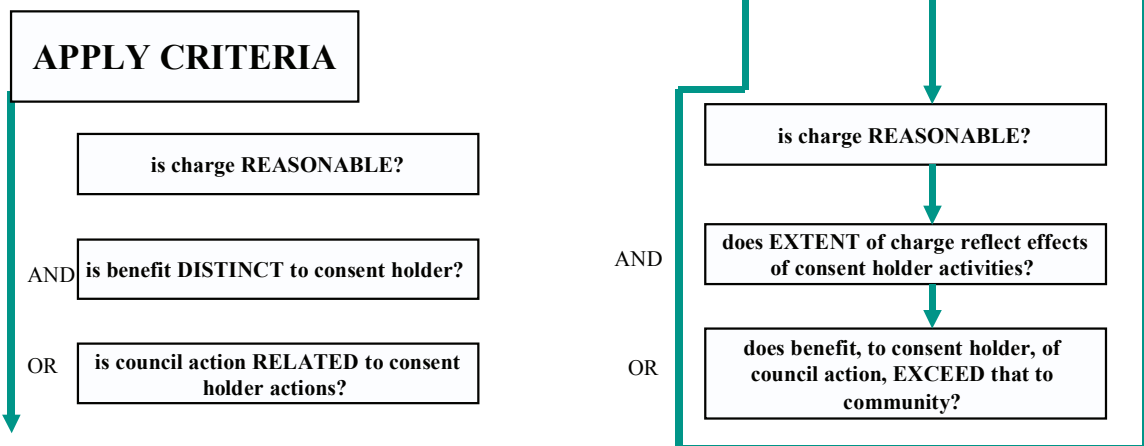
- the provisions for charging relate to mandatory duties and functions of a council
- local authorities must have regard to the component of public good in applying administrative charges. The question to ask is – what is the extent to which there are benefits accrued to and costs imposed on the individual compared to the community as a whole?
- Sections 32 and 36 of the Act specify the processes to follow: to consider alternatives, assess benefits and costs, etc and to apply administrative charges to (amongst other things) resource consent processing
- the RMA tends to apply greatest discretion to the financial management of areas that require forward planning and a match in supply and demand (such as the provision of urban infrastructure).

See the figure on the next page for a depiction of services, which can be charged for under section 36 of the RMA.

STEP ONE:



STEP TWO:



The administrative charges provisions of section 36 provide for a cost recovery regime with the purpose of recovering reasonable costs incurred by local authorities.

Section 36(1) states that charges *may* be set for (see step 1 in the previous figure):

- a) *...the preparation or change of a policy statement or plan, for the carrying out by the local authority of its functions in relation to such applications:*
- b) *...resource consents, for the carrying out by the local authority of its functions in relation to the receiving, processing and granting of resource consents (including certificates of compliance):*
- c) *...resource consents, for the carrying out by the local authority of its functions in relation to the administration, monitoring, and supervision of resource consents (including certificates of compliance), and for the carrying out of its resource management functions under section 35 [the duty on a local authority to gather information, monitor and keep records]*
- d) *...requiring authorities and heritage protection authorities, for the carrying out by the local authority of its functions in relation to designations and heritage orders:*
- e) *...providing information in respect of plans and resource consents, payable by the person requesting the information:*
- f) *...supply of documents, payable by the person requesting the document:*
- g) *any kind of charge authorised for the purposes of this section by regulations.*

Costs may be recovered by way of fixed and additional charges:

- fixed charges are set through a public process and there is no right of appeal by resource consent applicants
- local authorities may charge additional charges if the fixed charges are insufficient to recover costs. Applicants are able to challenge additional charges.

An issue in managing the resource consents process is the consequent need to monitor compliance and monitor the state of the environment. This is where the issue of who pays – the public or the individual – is most relevant.

The use of fixed charges for resource consents

Section 36(2) of the RMA prescribes the manner by which charges are fixed. These charges must be either specific amounts or determined by reference to scales of charges or a formula fixed by the local authority. These scales or formula are the key component of a typical RMA charging policy. Section 36(2) sets out that charges may be fixed. These are:

- a) *In the manner set out in section 690A of the Local Government Act 1974; and*
- b) *Either after adopting the special consultative procedure set out in section 716A of the Local Government Act 1974, or by special order under section 716B of that Act; and*
- c) *In accordance with subsection (4).*

The special consultative procedure requires a proposal (which is a draft plan or policy) of the council to be publicly notified, written submissions called for and the opportunity provided to be heard in support of submissions. The special order procedure requires a resolution of council to be publicly notified, without provision for submissions or the opportunity to be heard. In either case, once fixed charges are approved there is no right of appeal concerning them.

Section 36(4) of the RMA states the aspects to which local authorities **must have regard** in fixing charges (see step 2 in the previous figure). Key aspects are:

- for cost recovery only
- benefit received/cost imposed: people should only pay to the extent that –
 - they benefit as an individual, as distinct from the community as a whole eg what percentage charge is reasonable for a resource consent for land use change where much of the benefit is for the community rather than the individual?
 - their actions occasioned the costs incurred by the local authority
 - there is a case for the charge to be imposed in respect of the local authority’s monitoring functions under section 35(2)(a) – monitoring the whole or part of the environment.

This provision also states that:

- different areas and classes of consents may be required to pay different charges (refer to section 36(4)(c))
- those activities that serve to reduce a council’s costs may be eligible for a different charge (refer to section 36(4)(d)).

Many local authorities require a ‘deposit’ with the lodging of both notified and non-notified resource consent applications.

Additional charges and refunds

Local authorities can charge additional costs if the fixed charge (including any ‘deposit’) was an insufficient fee (under section 36(3)). Additional charges may cover the actual and reasonable costs of processing the resource consent application, including administrative charges (see below for what is seen as a reasonable administrative charge).

Refunds can be given if the total cost of processing the consent was less than the deposit.

There is a right of objection to the council (see section 357 of the RMA) for additional charges and then a subsequent right of appeal to the Environment Court (see section 358 of the RMA) for additional charges. This is outlined in section 36(6).

Administrative charges

Both fixed charges and additional charges can cover the actual and reasonable costs of things such as:

- administration (postage, photocopying, administration officers' time)
- planning and report preparation (including planners, engineers and scientists' time)
- advertising
- site visits (including kilometres travelled)
- monitoring
- hearing costs (including the general costs of Commissioners)
- specialists (including advice and design fees and research).

(MfE, 1994.)

Under section 36(5) of the RMA the local authority may, in a particular case, at its discretion, remit the whole or part of any charge of any kind referred to in section 36.

3 THE ISSUES RAISED IN PREVIOUS STUDIES OF THE COSTS OF COMPLYING WITH THE RESOURCE MANAGEMENT ACT 1991

Some of the key issues raised in studies of the costs of compliance with the RMA relate to the following:

- **Perceived inefficiencies**

Some people have negative perceptions of the efficiency of the public service and do not support the philosophy of user/polluter pays on the grounds they will pay for the authorities' inefficiencies.

A 1997 study by the Wellington Regional Council on customer satisfaction in relation to the performance of the Consents Management Department showed that businesses often overestimate the time and costs associated with the processing of their resource consent application compared with the actual time and charges shown in council records. (WRC, 1997)

Having said that, previous studies raise the point that time delays in resource consent processing can lead to increased costs for all involved in the process (the resource consent applicant/resource user and the council). Approximately a quarter of resource consents are processed outside of the statutory timeframes. The reasons for this vary, and may relate as much to the quality of the resource consent application as to the efficiency with which the consent is processed.

Resource consent applicants expect action from the day they send in their resource consent application. Previous studies show that many councils do not acknowledge and provide receipt of a consent application, or check it for completeness on or near the day it is lodged.

Some concerns raised relating to perceived inefficiencies in resource consent processing include:

- councils not making adequate use of information supplied as part of the assessment of environmental effects (AEE) therefore duplicating reporting requirements
- reported 'excessive demands' for additional information (two or more further requests) although we note that requests for further information are often made because of the poor quality of information provided on the resource consent application form
- councils commissioning detailed reviews of AEEs prepared by consultants, with little apparent regard for cost to applicants, and not informing applicants of the cost implications of such reviews
- unnecessary supervision of consents (where they are demonstrably routine in nature) and unnecessarily expensive monitoring
- not using the powers of delegation.

- **Variations across the country in charging policies and amounts**
 Cost recovery policies for resource consent processing remain variable. The “Annual Survey of Local Authorities 1997/98” reported that cost recovery rates for resource consent processing ranged from 13.7 percent to 100 percent (MfE, 1999). Councils have been subject to public criticism due to variations in both charges applied and in charging policies. In practice, the variations may be the result of valid differences (such as higher charges in areas of greater potential environmental risk, etc). The annual survey figures may also be misleading because:

 - different councils have different policies about the appropriate level of cost recovery (the question asked of councils did not distinguish between income from general rates and from user charges – so some figures reported in the annual survey will include rates and others may not)
 - a number of local authorities noted that their accounting systems did not enable them to sufficiently distinguish costs and income elements.
- **Uncertainty/council discretion**
 There is often uncertainty regarding the total costs for a resource consent (which is similar to the uncertainty of visiting a doctor or dentist – an hourly rate will be paid and the total cost will depend on the nature of the ‘work’ required). About half the councils in New Zealand provide a cost estimate for the resource consent at the beginning of the process and some estimates are very approximate (MfE, 1999).
- **Unpredictability of additional charges**
 Sometimes additional costs are imposed at the end of the process due to requests for further information. This adds to the uncertainty of unexpected costs. Requests by councils for further information are often necessitated by the quality of the application from the resource user. These additional costs fall on both the applicant and the council.
- **Imposing unreasonable costs**
 There is a ‘grey area’ between what is considered a benefit to an individual/business or to the region/district/city as a whole. There have been claims of unreasonable costs being imposed on individuals and businesses.

Many of the studies on compliance costs do not clearly distinguish between compliance costs which arise from administrative charging for resource consents under section 36 and other costs (such as the costs of doing business, holding costs, opportunity costs, consultant costs to prepare the consent, etc). Previous studies show that many developers keep poor records of RMA compliance costs, and how they relate to the holding costs, and the general costs of doing business, and are reluctant to disclose information. It is, therefore, unclear how much of the cost that is said to be imposed by a council actively relates to council charging for resource consent processing.

There are also issues relating to whether or not councils can charge for a review of consent conditions (under sections 127 and 128 of the RMA) and in relation to objections under section 357.

Fixed charges can include the costs of monitoring the consent conditions. There have been complaints that monitoring charges on consents go up and the holder cannot object or challenge the increase because it is a fixed charge. Monitoring costs can be tens of thousands of dollars. (Mallett, MfE, *pers comm*, 2000).

Maori involvement in resource consent processing has cost implications. Resource consent applicants do not always view consultation with iwi as a reasonable cost.

These general concerns led to the proposal in the Resource Management Amendment Bill 1999 to have contestable resource consent processing. The Bill proposes that Commissioners be allowed to hear resource consent matters at the discretion of an applicant or submitter. This approach is not supported by *Local Government New Zealand* because (we) “...remain adamant that the final decision on how a resource consent application is heard must be that of the local authority, not the applicant or a submitter.” (*Local Government New Zealand* submission on the Resource Management Amendment Bill 1999).

4 INVESTIGATION OF THE ISSUES RELATING TO CHARGES FOR RESOURCE CONSENT PROCESSING

The Ministry for the Environment's "Annual Survey of Local Authorities 1997/1998" (published 1999) includes a section on good practice in resource consent processing. It gives us some clues as to why issues are raised in relation to charges for resource consent processing.

The 1999 report of the survey showed that a high percentage of councils are employing a number of good practices but:

- only 54 percent of local authorities had developed funding policy in 1997/98 that defined resource consent processing as a stand-alone function (that could be reported on in financial terms), so it is still difficult to assess practice in relation to charging policies
- of the nine councils required under the LGA (No.3) 1996, to develop a funding policy in 1997/98, five of them determined the public/private benefit split for resource consent processing as a stand-alone function. Three councils considered the private benefit was 100 percent and the other two set the private benefit at 50 percent and 85 percent. There is variation within a small group but the reasons for this variation are unclear
- only 51 percent of councils provided a cost estimate at the beginning of the consent process, which means there is uncertainty for many resource users regarding the total cost of the consent.

The previous chapter reported on the issues raised in studies of RMA compliance costs. Those general issues will now be considered in more detail, with particular regard to the cause and/or validity of perceived problems.

Imposition of 'unreasonable' increased costs

There has been resistance to administrative charges from resource users from the outset of the Resource Management Act. The user pays philosophy is not universally accepted and some people do not want to pay for the environmental costs of the effects of their activities. There is also resistance to the internalisation of true costs of resource use.

At the same time, many local authorities are under pressure to meet growing demands on their rates income (to update infrastructure, etc) and are as a result raising their cost recovery charges (MfE, 1999).

The question is whether these charging regimes are reasonable and fair.

Additional charges for resource consent administration, as distinct from fixed charges, are viewed as particularly unreasonable because of the resulting uncertainty of the total cost. A few councils have standard provisions for refunds or remissions of charges

where an activity costs less than the standard fee. Where standard fixed charges are relatively high, discretion over refunds may raise issues of fairness. There are objection and appeal rights in relation to additional fees. But there is variation as to whether councils charge for lodging objections (under section 357) and this is seen as unfair by some.

The division of costs according to the proportion of public vs private benefit is another concern. Individuals and businesses do not want to pay for anything they consider to have community benefit. In reality, analysis of the division between private and public benefit is complex and cost allocation is difficult.

Councils in a monopoly situation – perceived inefficiencies

“Best practice embraces the maxim that monopolies have the highest obligation to provide the best service.” (Ken Tremaine, Local Government Forum, 1998)

There are comments in previous RMA compliance cost studies and in the media regarding what is considered to be inefficient local authority practice. Local authorities are in a monopoly supply situation. There is a perception that, as a result of this lack of competition, councils do not have incentives to provide a high quality service and that the processing of resource consents could be carried out in a more efficient and cost effective manner by the private sector.

The contracting out of council services is provided for under section 247 D (1) of the Local Government Amendment No 3 Act. Contracting out of council services, such as resource consent processing, has been the subject of much debate in recent years. Some argue that such contestability would result in higher transaction costs and less accountability to the community. Others argue that it would make the process more efficient and quick.

Some councils, such as the Queenstown-Lakes District Council and Manukau City Council, are advocates of contracting out local authority regulatory functions, and believe that their processes are more efficient as a result of contracting out these services. We refer you, for example, to the report of the Controller and Auditor-General “Contracting out of Local Authority Regulatory Functions” (November 1999), which examines the Queenstown-Lakes District Council’s experiences. This Queenstown-Lakes report also includes checklists of things to consider if contracting out regulatory services.

Contracting out of services such as the processing of resource consent applications does not relieve a local authority (its politicians or staff) of the requirement to meet performance standards. Because the local authority remains liable for the outcome, there must be adequate measures in place to ensure adequate performance.

Justification of policies leading to council charges

There is a perception that resource users have no opportunity to comment on council charging policies. However, charging regimes are set through the annual planning process, where people **do** have opportunity to comment.

Another concern is that there are limited opportunities to object to or review any fixed charges. This raises complex issues about these charging regimes, such as:

- should resource consent holders contribute to annual plan development and the costs of monitoring consent conditions? At present there are different approaches taken to this issue around the country
- how can the division between private and public benefits (ie for the developer and for the general community) be determined accurately, and the accompanying cost division be made transparent, considering:
 - the need to justify the analysis of who benefits from the resource consent and who benefits from the council's action processing it
 - many councils take the view that all resource consent applicants should pay the total costs of receiving, processing and granting consent applications, ie there should be 100 percent cost recovery
 - other councils provide for some applications to be made without charge, or with lower charges, where the benefits are to the community as well as the applicant.
- some developers do not think that councils should be able to add any additional charges to the fixed price of a resource consent application because these additional charges are unpredictable

Unclear plan provisions increase costs

In some cases unclear provisions in plans have resulted in costly resource consent applications. Unclear plan provisions and those that do not take into account the degree of environmental effect, create uncertainty for applicants and can result in inefficient processes.

There have been some issues relating to the transitional nature of resource management planning and policy documents. This has made the processing of some resource consents a more onerous process or has meant that it is not always clear to resource users which provisions in plans they have to comply with.

Variation in practices and processes for administrative charging

Case studies of RMA compliance costs highlight that local authorities have widely differing practices and processes for administrative charging. This is confusing for those making resource consent applications across different regions and districts.

- Most local authorities require that a fixed ‘deposit’ be paid with the application and that additional costs may be charged if appropriate (or in a few cases there is provision for refunds).
- Some local authorities set fixed fees that are payable with the application.
- A few authorities invoice applicants at the end of the resource consent process for the full amount owing (MfE, 1999).

There is variation between councils regarding passing on the costs of councillors’ time, expenses and overheads, and the costs of servicing council political processes. These are commonly referred to as the ‘costs of democracy’. Some councils exclude these costs from charging regimes and others have fixed hearing fees, which may be more or less than the true costs.

There is potential for councils to pass on to resource consent applicants a portion of the costs of state of the environment monitoring. Councils set widely differing programmes for state of the environment monitoring, resulting in marked cost variations. Similar resource consent holders in different parts of the country can pay state of the environment monitoring charges that vary by many thousands of dollars.

The actual dollar amount of charges and the variation in amounts across different classes of consent applications are also issues of concern. A lack of consistency in style, cross-referencing methods or use of terminology (MfE, 1999) means that it is difficult for resource users who have applications in many different locations, to get consistent service and information. Some resource users have requested a more standardised approach and a format that is easier to follow.

Some councils use sliding scales of charges based on the size of the activity, eg charges for monitoring dairy farm discharges to water may vary with herd size or discharge volumes. Charges under section 36 of the RMA are about recovering the council related costs in proportion to the benefit received or the costs imposed. Compliance monitoring is primarily about the latter. A fee structure based on the size of the consent activity is not necessarily directly proportional to the costs of processing the consent nor does it always reflect the potential environmental effects.

Systems need development

In some cases it is the process of processing the resource consent application that could be improved to result in reduced administration charges. Having good administrative systems can make a big difference.

PART II PRACTICE GUIDE

Structure of this Practice Guide

The following pages list the principles of good practice in administrative charging under the Resource Management Act 1991. These general principles are followed by a practical checklist of good practice. These general principles and the good practice checklist are based on all available guidance material on administrative charging and related topics. This is a starting point only and your additional ideas are welcome.

General principles for administrative charging under the Resource Management Act 1991

Charges must be legal

Local authorities can only fix charges in accordance with the requirements of the Resource Management Act 1991 and the Local Government Act 1974 and its amendments. Any caselaw and legal principles should be taken into account. Caselaw is still developing but the following can be noted:

Wellington Regional Council v Aifric Developments Ltd [1996] NZRMA, 390 (HC)

- hearing costs, including Commissioners, can be charged to applicants
- the scope and nature of these charges is left open

Whangarei District Council v Northland Regional Council [1996] NZRMA, 44

- confirmed that s36(3) charges are subject to s36(4) criteria

CM Whitman and AA Whitman v Waipa District Council [1997] NZRMA, 62

- This case related to an objection to additional charges to the resource consent applicant (which the council charged to cover the costs of the applicant objecting (under section 357) to the refusal of their subdivision application).
- In this case the additional charge was cancelled, as it did not meet the criteria in section 36(4) in relation to fixing the charge under section 36(3).

In general, charges should:

- not be *ultra vires* the powers of the council
- be fair and relate to the activity that gives rise to the charges
- not create inequity
- not be unreasonable
- be for a purpose consistent with the administration of the RMA and not be imposed for ulterior purposes.

Charges must be reasonable

Fairness, equity, transparency and accountability are key principles for assessing what is a reasonable cost as well as who benefits from the resource consent. The sole purpose of an administrative charge is to recover reasonable costs incurred by the council in respect of the activity to which the charge relates (section 36(4)(a) of the RMA).

- The expression and application of charges should differentiate as much as possible between the relevant individual activities and scales of activities, and charges should be as individualised as possible.
- Additional charging should be used with discretion and in a transparent way, with as high a degree of certainty of final charges as possible.
- Charges should take account of any significant public benefit of the activity and not impose these directly on the consent applicant.
- It is reasonable to charge for:
 - staff time, including planning, engineering and other “in house” staff hours. This may include:
 - site inspections
 - meetings
 - report writing
 - research time
 - administration
 - consultants’ costs, where consultants are used to process consents
 - legal costs
 - the costs of reports commissioned to provide extra information
 - disbursements, including photocopying, postage, travel costs (km travelled) and advertising costs
 - hearing costs, including councillor and Commissioner costs.

(See MfE, 1994 and MfE, 1999.)

Charges must be equitable and justified

The setting of charges must take account of any significant public benefit from the activity being charged for and separate this, where possible, from any private benefits (the costs of which will be charged to the applicant). It would be inequitable, for example, to charge consent holders for resource management work undertaken in the interests of the community in the region/district/city. It is justified to charge for the costs incurred as a result of the resource consent holder’s activities if they benefit the individual or business and not the whole regional/district/city community (section 36(4)(b)(i) and (ii)).

- the assessment of how benefits accrue to individuals or the community should be rigorous, transparent and consistent

- the ‘costs of democracy’ should be charged to those who benefit from the democratic processes involved and this policy should be applied deliberately and consistently.

Charges must be uniformly applied

Charging regimes should not discriminate unreasonably between users, ie the council should provide the same service to people in all parts of the region/district/city (regardless of location). This means that, in some cases, travel costs will not be fully recovered by the council.

Charges must be simple to understand

Charging regimes should be simple and easy to understand by people unfamiliar with the process. The administration and collection of charges should be as simple and cost effective as possible.

Charges must be transparent

Charges should be calculated in a way that is clear, logical, and justifiable. The work of the council which will incur a charge to the consent holder should be clearly identified at the beginning of the resource consent application process.

When charging regimes are introduced, councils should explain to ratepayers and potential resource users the rationale involved. Transparency and understanding of charging regimes are important. The approach by councils should be deliberate and systematic. In establishing or reviewing a charging regime, it is important that:

- caselaw and legal principles are taken into account
- charges should be based on actual, reasonable costs.

Self-monitoring regimes can increase accountability and reduce costs. Self-monitoring should be limited to the minimum required and should be based on the assessment of environmental effects.

Charges must be predictable and certain

Consent applicants and resource users are entitled to certainty about the cost involved in their dealings with local authorities. The manner in which charges are set by a council should be clear enough to enable customers to evaluate the extent of their liability. Potential consent applicants should be involved, as much as possible, in the process of developing and reviewing charging regimes. This means:

- the special consultative procedure, rather than the special order procedure, should be considered for all significant charges or reviews
- to the degree that is practical, individually notify resource consent holders of significant changes to charging regimes

- explain fully the policies and the detail of the charges that will be applied
- charging regimes should be reviewed regularly. Contact other councils that have recently reviewed or are reviewing their charging regimes, such as Taranaki and Wellington Regional Councils, or Porirua City Council.

A GOOD PRACTICE CHECKLIST

This checklist provides ideas on what constitutes good practice at each step of the resource consent administrative charge process.

This list is not exhaustive and the Ministry for the Environment and *Local Government New Zealand* would value hearing from you with additional ideas for good practice¹ (see contacts in the “Introduction” to this guide).

Good practice in the resource consent application process with a focus on administrative charging under section 36 of the RMA

Stage in the resource consent application process	Suggested methods of good practice
Developing and reviewing charging regimes	<ul style="list-style-type: none"> • ensure the council has a fair, simple, transparent charging policy: <ul style="list-style-type: none"> – fairness relates to charging an individual only for reasonable costs and not for action that benefits the whole community – it means not discriminating between users – transparency is being clear about what will be charged for, before the consent application is formally lodged • have readily available a simple, easy to understand charging policy that outlines what will be charged for in relation to resource consent processing: <ul style="list-style-type: none"> – ensure that it is fair and reasonably relates to the activity and the effect of the activity that gives rise to the charge – base charges only on the actual and reasonable costs to the authority granting the consent – take into account any private and public benefits and account for these separately. (If in doubt about the public good component tend towards lower rates of cost recovery) – ensure that the charging regime is practical. (This means you must be able to recover what you say you state you want to – ie is 100% cost recovery a reality?) (Refer to MfE, 1994) • consult affected people (such as resource consent applicants) about the charging regime • compare your charges with those from other councils and see if you are cost competitive • monitor the effectiveness of the charging regime

¹ This table is written as if the council officer is processing the resource consent but similar advice will apply to a situation where these services are contracted out.

Throughout the process ensure high quality service to reduce costs

- review the charging regime regularly. You are required under the LGA No 3 1996 to review it every three years. Learn from others who have recently reviewed their charging policies
- develop good teams, reward people for good work, train staff and councillors in service provision and mediation, have performance measures in staff performance appraisals about quality service in resource consent processing. Also ensure that staff know how much is being charged for the consents
- delegate to the appropriate level, ie if the consent is complicated, involve management and councillors early in the process
- monitor the charging regime and consent processing to ensure the systems are working well
- have a culture of continuous improvement where suggestions to improve processes and reduce cost impacts are welcomed by management
- have a good computer-based database system and good backups. Time and money will be saved if it is a user friendly and effective system
- develop a quality management system. One example is to consider ISO qualifications or an audit of your consent processing system
- develop resources to ensure that there is consistency in interpretation and decisionmaking (such as a guide for staff with step-by-step examples of how certain decisions were reached)
- retain the integrity of the plan(s) by ensuring resource consent processing and decisionmaking is consistent with the plan(s). And ensure good links between environmental effects and the costs required to mitigate those effects
- keep people informed at each stage of the consent application process
- ensure that the resource consent applicant has clear contacts in the council to talk to about the application – preferably the names of two people who will know what is happening with the consent throughout the process
- actively manage the expectations of the resource consent applicant (see following sections).

Pre-application

- provide over-the-counter discussions with applicants – people often appreciate informal information exchanges
- ensure that the resource consent application form is simple and easy to understand for a layperson
 - produce pamphlets about the resource consent application process to educate people about the entire process
 - provide good, easy to read information about what information should be submitted with a resource consent application, ie legal description of the property, a map, an assessment of environmental effects, etc.

Application

- Include a checklist on the back of the application form (this is useful for the consent authority and the applicant)
- develop an inhouse set of examples of what constitutes good and bad applications – provide examples for the resource consent applicants
- educate and train all people involved in the process, ie council staff, councillors, etc. Run workshops for consultants on what needs to be included in a resource consent application, eg do not repeat sections of the RMA or the relevant plan verbatim
- tell the resource user what to expect – costs and timeframes for the resource consent application (ie provide estimates)
 - this may involve providing a simplified copy of the charging policy to the applicant to identify what costs will be charged for
 - likely costs and times can be based on average costs and timeframes for similar consents, ie for a culvert
 - provide clear advice to applicants on what will be notified or non-notified and who is potentially affected
 - hold pre-application meetings to share information. This can:
 - reduce the likelihood of needing to request further information
 - ensure that any potential constraints under the Plan are identified as early as possible.
 - provide applicants with any standard conditions that may be used
- check applications for completeness and formally notify receipt of applications within one full working day of an application arriving at the council
 - send out a formal letter of receipt telling people the application has been received and whether sufficient information has been supplied to process the application
 - phone applicants as well if there is anything to be clarified. Peoplelike informal contact and being kept informed
 - if further information is requested because the applicant has not provided sufficient information, tell them the cost implications of the request for further information
- check with other councils to see if applications can be dealt with in an integrated way, eg it may be that the regional council takes a lead because most consents relate to regional functions, or the district if most of the application relates to district functions – try to make the resource consent application process a one stop shop for the applicant. This will reduce costs
- send appropriate resource consent applications to local iwi for their comment, and provide a time limit within which they must respond – say five days OR have a memorandum of understanding about how you will inform them of resource consents if they do not wish to see all applications. This will reduce unexpected costs of consulting with iwi
- have a structured process (such as a checklist on the back of the

application form for staff and applicants) to check the assessment of environmental effects (AEEs). This will reduce the costs of asking for additional information

- have a checklist or an internal staff guidance manual to assist with the making of consistent decisions on notification and affected parties and to ensure institutional knowledge is retained
- have regular team meetings with consents staff to share experiences and ideas about good practice in resource consent processing. This will improve systems and reduce costs
- monitor consent processing performance (ie how long is the processing taking – daily, weekly, monthly). Provide this information to resource consent applicants on their invoice. Provide a refund if the resource consent application process cost less than the fixed price deposit paid
- have a clear lead ‘case manager’ dealing with the consent who coordinates the responses for all council departments
- provide a cost and time estimate for the resource consent (based on previous experience). If not at the pre-application stage, ensure this is done at the beginning of the application stage – be positive and proactive
- if you do run over time for processing the resource consent, ensure that:
 - the resource consent applicant is notified of the delays as early as possible
 - also tell affected parties the same information
 - inform people using section 37 of the RMA
 - consider providing the consent applicant with a discount for the inconvenience of the delays if they were for no fault of the applicant (such as if there was a vexatious submitter). Ensure that there is a policy about refunds in your charging policy
 - where “holding costs” are high, consider providing a higher consent fee for a faster resource consent application (which could be contracted out)
- hold pre-hearing meetings to clarify issues and resolve disputes in an informal setting. Use a trained facilitator to deal with difficult people and tense situations (an independent person can be beneficial):
 - pre-hearing meetings can actually reduce costs in the long run
 - pre-hearing meetings give people room to create mutually acceptable situations.
- encourage resource users to take on more directly the costs of processing and monitoring the resource consent, ie if advice is needed from a surveyor encourage the applicant to liaise directly with the surveyor and pay them directly
- seek feedback from customers to assist with continuous improvement of resource consent processing systems
 - ask customers their needs and listen to their responses. Customer

Hearings (for notified resource consent applications)	<p>satisfaction surveys can provide useful information</p> <ul style="list-style-type: none"> – ask customers if they think a quality service was provided and whether they think they got value for money <ul style="list-style-type: none"> • regularly train councillors in hearing resource consent applications, and about the RMA and plan provisions • have clear and pre-recorded meeting procedures; make these available to the resource consent applicants so they know what to expect. Try to avoid unnecessary formality • train staff in facilitation and mediation or hire professionally trained facilitators and mediators. This will ensure a streamlined process and may reduce costs • hold joint hearings whenever possible to reduce costs • ensure submitters are kept informed of progress of the processing of the resource consent and that they know what to expect in relation to the hearing and associated costs
Decisions and appeals	<ul style="list-style-type: none"> • have standards and guidance for staff on what constitutes good practice in written resource consent decision reports. Reports should: <ul style="list-style-type: none"> – be simple and easy to understand (minimise the use of jargon and legal phrases) – not contain lengthy and unnecessary additional information, ie lengthy quotes from the RMA and the plan (this unnecessarily adds to costs) – include information such as: <ul style="list-style-type: none"> consent granted or declined date application lodged date application formally received any further information requests made – listed number of hours/days to process the consent, etc. • try to use alternative dispute resolution techniques to resolve issues before going to the Environment Court (which will be costly) • ensure all parties are clear about the key issues in dispute – agree on the issues in dispute. This may involve site visits to understand what the decision means in practical terms • do not rely on the Environment Court to resolve differences which could be resolved through effective communication
Compliance and monitoring	<ul style="list-style-type: none"> • provide applicants with copies of any likely standard conditions at the pre-application stage if possible • ensure that council staff are trained in the practical application of consent conditions and monitoring – do they understand the cost implications of the conditions? • ensure there is consistency between the policies and rules in the plan, and

Charging for consent processing

the consent conditions

- ensure that consent conditions relate to potential or actual environmental effects
- encourage resource users to directly take on the monitoring of their resource consent and have the council play more of an audit role (see for example, the Otago Regional Council approach)
- the council should take an active role in the monitoring of compliance with consent conditions and should communicate with the consent holder to tell them a visit has been made to ensure compliance
- seek feedback from consent holders on the costs and benefits of the information gained from any monitoring required by consent conditions
- provide consent holders with documentation to show them you have assessed compliance with their resource consent conditions and that they passed the test (where they are meeting the requirements of their resource consent conditions)
- provide incentives for good environmental practices, such as:
 - resource management awards for excellent environmental practices
 - reduced compliance costs for a consent holder who consistently meets or exceeds the requirements of their consent conditions.
- ensure that user charges relate to the level of private benefit and that any monitoring costs relate to the assessment of risk to the environment
- be clear and transparent about administrative charges when invoicing for the costs of the resource consent application. This includes having itemised invoices. Things commonly itemised include:
 - staff time, including planning, engineering, scientific and other inhouse staff hours. In some cases particular tasks are listed/itemised, such as site inspections, meetings, report writing and research
 - administration, ie- the charge for the actual administration time (refer to ideas in earlier section)
 - consultants' costs, where consultants are used to process consents
 - legal costs
 - the costs of reports commissioned to provide extra information
 - disbursements, including photocopying, postage, mileage and advertising costs
 - hearing costs, including councillor and Commissioner costs(See MfE, 1994)
- resource consent charges should reflect the efficiency of processing, based on the consents staff knowledge of the issues. Resource consent applicants should not pay additional charges to train new council staff in consent processing.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Concerns have been raised about variations between local authorities in the charges made for the administration of resource consent applications under the Resource Management Act 1991 (RMA). Other related issues raised in previous studies of RMA compliance focus on transparency and the reasonableness of these charging regimes. These concerns have received media attention and claims have been made that the RMA is imposing unreasonable compliance costs on business.

What is not clear is how much of what is reported in relation to compliance costs relates specifically to the costs of charging for resource consent processing and associated administrative costs.

The real scope of these issues is also unclear as much of the information reported in media and in published studies is anecdotal. There is limited quantitative information on administrative charges.

It is also unclear how much the variation in charges for administration of resource consent applications reflects variation in the quality of councils' practice, or how much they reflect variation in environmental risk requiring different cost recovery levels.

Some of the studies examining compliance costs have been inconclusive or quite narrow in their focus. But some common threads have emerged.

It is clear that people want the following:

- certainty about the costs that are likely to be imposed on them
- a transparent and fair charging regime that allows the actual and reasonable costs of the resource consent application to be passed on to the applicant. Local authorities should account for the amount being charged. There is a need for clear invoicing and information records, and good estimates at the outset of the total cost anticipated for the consent application. People also want information on appeal rights
- a fair and reasonable system that allows for the actual and reasonable costs of processing the consent to be recovered, based on the benefits received and the costs imposed. This means people should only pay to the extent that they individually or corporately benefit, as distinct from the benefit to the community as a whole
- a service ethic from local government. The process of charging for resource consents should be fair, transparent and simple to understand. It should start with the development of robust administrative charging regimes and result in cost effective and high quality resource consent application processes.

Recommendations

It is recommended that councils:

- update or prepare a fair, simple and transparent charging policy for administration of resource consent applications. Councils should ensure that there is a public good component in these policies as well as a means of recovering the reasonable costs of processing resource consents
- consider the issues raised in this and previous studies on charging for resource consents and how best they can provide good value for money to resource users
- adopt the principles of good practice in applying the administrative charge provisions of section 36 of the Resource Management Act, as listed in this report
- adopt the best practice ideas (the checklist in this report) for administrative charging for resource consent processing
- be prepared to refund for poor service or provide discounts, to the fixed charges, if the administration of the consent did not cost that much
- waive and reduce fees for controls that benefit the community, eg tree protection controls
- link in with the Business Development Quality Awards or similar quality assurance processes to ensure good quality systems are being used to process resource consents
- educate resource users to ensure that they are aware of all steps in the consent process and understand the implications of not filling in forms, etc; and educate councillors in relation to their role as decisionmakers on resource consent applications
- provide any additional ideas to John Hutchings at *Local Government New Zealand* and Craig Mallett at the Ministry for the Environment.

It is recommended that *Local Government New Zealand* and the Ministry for the Environment:

- undertake some primary research and/or a case study of a range of councils, or embark upon a survey of all councils to add to information provided by the Ministry's annual survey on their charging policies
- carry out joint MfE/*Local Government New Zealand* workshops on administrative charging policies under section 36 of the RMA around the country, with the purpose of developing and reviewing best practice in charging for resource consent processing (based on the data provided in the above recommendations). This could tie in with a series of New Zealand Planning Institute workshops
- carry out a broader study of the costs of implementation of the RMA (based on quantitative data) and create a good practice guide based on the findings. This should be linked with a broader local government regulatory impacts study.

GLOSSARY OF ABBREVIATIONS

AEE	Assessment of environmental effects
BOMA	The Building Owners and Managers Association of New Zealand Inc
MfE	Ministry for the Environment
RMA	Resource Management Act 1991
LGAA	Local Government Amendment No 3 Act 1996

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Penny Nelson – Ministry for the Environment

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APPENDIX 2

BACKGROUND STUDIES OF THE COSTS OF COMPLYING WITH THE RESOURCE MANAGEMENT ACT 1991

There have been a number of studies of the costs of complying with the RMA, focusing on different aspects of the cost of compliance. A brief summary of these studies is provided here. For detailed analysis of the issues and the findings of these studies please refer to the original reports.

American Chamber of Commerce (1997) *The Resource Management Act: Survey on the Act's administration and its impact on investment*

The American Chamber of Commerce wanted to gain an indepth understanding of how United States companies operating in New Zealand perceive the effects of the RMA on their trade in New Zealand. This survey was sent to 690 companies to identify areas of concern about the RMA. It asked if members see the RMA as a barrier to investment, and if so, why. Forty two companies responded to the survey. Most of the companies that responded had over 100 employees.

All respondents supported the stated purpose of the RMA. Almost half of the respondents considered that compliance with the RMA was commercially advantageous because it enabled their companies to promote a clean, green image.

Respondents who provided examples of the RMA increasing costs for their businesses mostly highlighted delays as the major reason. Respondents also gave costs associated with obtaining resource consents as a reason.

When asked about problems with the consistency of decision-making by different local authorities, respondents claimed that additional charges for resource consents resulted in higher than expected costs for their business.

There are a number of limitations to this survey including a poor response rate (6.2 percent), a lack of objective data and failure to verify information.

The Building Owners and Managers Association New Zealand Inc (1997) *Time delays under the Resource Management Act*

The Building Owners and Managers Association of New Zealand Inc (BOMA) carried out a pilot study (1996/97) on the RMA and the cost of compliance.

Results of the study illustrated that RMA compliance costs are a significant component of the development equation. Delays associated with the processing of resource consents were found to be a significant part of these compliance costs. Results also showed that direct costs (including administrative charges) of the RMA make up a very small component of the total cost to developers.

Hutt City Council – comparative study (unpublished)

In 1997 Stephen McArthur (Group Manager, City Environment, at Hutt City Council) compared the fixed fees charged by 15 different councils for different categories of resource consents. The range of fees included:

- for noncomplying and discretionary activities the fee range was \$170–\$2500 for no hearing and \$300–\$2500 with a hearing
- for notified controlled activities the fee range was \$170–\$2500 and \$300–\$2500 with a hearing
- for non-notified activities:
 - \$65–\$500 for a non complying activity
 - \$65–\$550 for a review by a consent authority
 - \$65–\$500 for a controlled activity.

Other things to note are a range from \$60 an hour to \$200 an hour for special inspections; \$22.50–\$202.50 for a section 223 certificate and \$50–\$170 for a section 224 certificate; \$22.50–\$565 for a right of way and \$700–\$3500 for notice of requirements.

Ministry of Agriculture (now Agriculture and Forestry) (1997) *A Framework for Assessing Resource Management Act Compliance in Agriculture – Results of a Pilot Project Using Dairy Conversions as a Model*, prepared by Agriculture New Zealand

This project focused on collecting information about the direct cost of RMA planning requirements, including resource consents associated with significant land use change in agriculture. Conversions from sheep and beef operations to dairy were used as a case study. This case study was to be used to develop a model for collecting information about RMA planning requirements.

Costs incurred by farmers during the RMA process ranged from nothing to \$20,565. Costs were grouped into four phases: pre-application; application; decisionmaking; and implementation. The majority of costs recorded were in the application phase (these costs were variable and included application costs and consultancy fees) and the implementation phase (costs associated with complying with the council's conditions and monitoring). The total planning costs represented a small proportion of the total costs of converting from sheep and beef operations to dairy.

Ministry of Agriculture and Forestry (1998) *An Assessment of the Cost of Compliance with the Requirements of the Resource Management Act in the Pig Industry*, prepared by Agriculture New Zealand

This project considered the costs associated with consent applications for piggeries and was based predominantly on a survey of 31 piggeries in the Waikato, Manawatu and Canterbury regions.

The direct costs of obtaining a resource consent were reported in four groups:

- pre-application
- application
- hearing, prehearing and application
- Environment Court.

Excluding one resource consent that was subject to Environment Court proceedings, findings show that the majority of the costs were incurred in the hearing, prehearing and application grouping.

Other interesting findings included:

- half of the respondents indicated that they had budgeted for the cost of resource consent requirements
- the cost of compliance for smaller businesses increased proportionate to the business size
- the average cost of a resource consent was \$13,256.

Ministry of Commerce (1997) Case Study Assessment of the Impact of the Resource Management Act (1991) on Business, prepared by Ernst & Young

In 1997 Ernst & Young carried out a case study assessment of the impact of the Resource Management Act on business. One of the findings was that businesses have problems understanding the inconsistencies in charging.

Responses from businesses, in relation to charging, indicated they wanted local authorities to:

- ensure that applicants are clear at all stages of the likely charges associated with the processing of their application
- provide detailed invoices (sent to the right people) for additional charges and explain any difference between fixed charges and additional charges
- examine ways in which costs for applicants can be minimised through more efficient processes.

This case study was a measure of business **perceptions**. The following industries and sectors were surveyed: energy; mining; retail; commercial/industrial; manufacturing; tourism; and telecommunications.

Ministry of Commerce (1998) *RMA Compliance Costs: A Case Study Assessment for the Ministry of Commerce*, prepared by KPMG

In 1998 KPMG carried out a study to identify costs to business of complying with the RMA in the agriculture, food, forestry processing and construction sectors. The study examined changes in business behaviour as a result of RMA requirements and processes. It also identified areas for improvement and provided some examples of good practice.

Findings were that:

- there were a range of costs – from \$550 to \$350,000 – for resource consent applications
- 87 percent of respondents believed RMA plans and policies had increased costs
- there was a wide range of costs and timeframes experienced in obtaining resource consents. Direct costs varied from \$150 to \$1.5 million and timeframes from one month to 4 years
- opportunity and holding costs were viewed as significant but are difficult to quantify. Holding costs were high for the construction sector and greenfield developments
- there were variations in the quality of advice, professionalism and consistency of advice.

It should be noted that some of the variations in charges listed in this study reflect variation in the size and complexity of the resource consents applied for, and so do not necessarily reflect poor practice in charging for the administration of resource consents.

Ministry for the Environment (1998) *Resource Management Act Practice and Performance: Time delays in processing resource consents – A case study of Telecom's applications*

The Ministry's investigation of council performance in resource consent processing timeframes aimed to identify:

- whether delays were occurring
- the extent of delays
- at what stages in the resource consent process delays occurred.

Resource consent applications for Telecom cell sites were selected for this case study because of their potential to provide consistent comparative information across the country. Eighty cell site applications were randomly selected from the Telecom database (from 1992-1997). Fifty five were non notified and 25 were notified.

Councils processed a significant proportion of these resource consent applications outside of the statutory timeframes (for both notified and non notified applications). However, the findings showed that these delays were often for good reason – for

example, that insufficient information was provided to process the consent quickly. Delays were for short periods. Overall, notified applications were processed more efficiently and were generally within the statutory timeframes. The study also reveals examples of efficient resource consent processing by councils.

Ministry for the Environment (1999) *Resource Management Act: Annual Survey of Local Authorities 1997/98*

In response to concerns over administrative charging, the Ministry included requests for information about costs of processing resource consents in its 1996/97 and 1997/98 annual surveys of local authorities' RMA practice.

Local authorities were asked to indicate the percentage of costs recovered by charges under section 36 in the 1997/98 annual survey. The survey found that there was a significant range of costs being recovered (13–100 percent) by local authorities.

In the 1996/97 annual survey each local authority was asked to attach a copy of its charging sheet to the returned questionnaire. Results showed there is variation in the way local authorities present their administrative charges under section 36 to the general public. Some charging sheets are complex and difficult to understand. Others provide little information about what applicants may be charged for different activities.

Fifty one percent of councils provided a cost estimate for the resource consent application at the beginning of the process, while 75.3 percent of councils itemised charges on invoices.

Ministry for the Environment (unpublished) *Resource Management Act Practice and Performance: Administrative charges - A case study of Telecom's applications, 1999*

This comparison of Telecom cell site applications sought to identify the total costs of administrative charging, local authority payment processes and the costs and nature of deposits and additional charges.

Findings included:

- the median total cost was \$260 for non notified and \$1011 for notified consents
- forty six of the 80 applications required payment of a deposit or minimum fee and no other payment
- the average cost of a deposit was \$250 for non notified and \$675 for notified applications
- 25 percent required additional charges and 4 percent received a refund
- the majority of additional charges were less than 50 percent of the deposit paid
- fifty four percent of additional charges were for planners' time and the cost of preparing reports

- rural local authorities generally charge less for cell site applications (because they are often less contentious)
- information records are sometimes incomplete (both the applicant's and the council's)
- administrative charging needs to be transparent and accountable.

The Ministry for the Environment was interested in obtaining data relating to opportunity costs as well as administrative charges in relation to this study on Telecom costs. But due to the sensitive nature of opportunity costs, Telecom declined to supply this information.

APPENDIX 3

GUIDELINES AND GUIDANCE

Local Government Forum (1998) *Best Practice Guide for Subdivision Consent Processing*, report prepared by Ken Tremaine and Justin Ensor

The aim of this best practice guide was to “identify best practice in the field of subdivision consent processing”.

Managing applicant expectations of charges is a topic addressed in the guide. The guide suggests that councils should actively manage applicants’ expectations by adopting the following techniques:

- informing the applicant up front what they can expect in terms of processing costs
- informing the applicant where the costs are likely to differ from their expectations
- ensuring that the invoice produced for the applicant clearly itemises the costs and states what they are and why they were incurred
- ensuring that charging policies for consent processing costs clearly state what costs are able to be charged, and circumstances when costs are not to be charged (eg where the council was at fault or work undertaken was redundant in the context of the process)
- addressing any issues relating to the cultural environment in which consents are processed and the management of consent processing.

Local Government New Zealand unpublished workshop report and comparative study 1997–98

In July 1997 *Local Government New Zealand* held a workshop with regional council managers on charging policies under section 36 of the RMA. The intention was to assist with the design of robust charging policies and processes.

The related study found that:

- the charges to consent holders for resource consent administration and compliance monitoring were increasing
- the consent application process was variable. There has been a lack of rigour in setting the charges and their administration. In the past, some councils dipped into ratepayer funds to top up shortfalls
- consent compliance monitoring showed variations. Most councils seek full cost recovery of environmental incidents, but recognise this is rarely possible without a prosecution. This may now change with the new instant fines provision under the RMA, although these fines are restricted to \$1,000.00.

The study also noted that the economically desirable result and what was practically feasible and just, could be far apart.

Ministry for the Environment (1994) *A Guideline to Administrative Charging Under Section 36 of the Resource Management Act*

In 1994 the Ministry for the Environment produced a guideline on administrative charging under section 36 of the RMA. The principles outlined in the MfE guide are detailed in the body of this report. In general terms they are as follows:

- the approach by the council should be deliberate and systematic
- councils should explain the rationale for the charging regime when it is introduced
- transparency and understanding of the charging policies is important
- the special consultative procedure, rather than the special order process, should be considered for all significant new charges or reviews of charging policy
- charging policies should be:
 - legal
 - reasonable
 - justified (in terms of public and private benefits)
- ‘costs of democracy’ should be charged according to who benefits
- scales and charges should be as individualised as possible
- additional charges should be used with discretion and should be transparent
- charging regimes should not discriminate unreasonably between users
- self-monitoring should be promoted where it will increase accountability and reduce costs but not compromise standards of resource management
- monitoring should be limited to the extent necessary and efficiencies should be sought
- councils should monitor the efficiencies of all activities which are charged for and regularly review charging regimes.

Ministry for the Environment (1998) *A Guide to Preparing a Basic AEE*

This guide explains what an assessment of environmental effects (AEE) is and describes the process of identifying the effects of a proposed activity on the environment. It covers:

- why resource consents are needed

- what an AEE is, why it is needed and how comprehensive it needs to be
- the process for preparing an AEE – how to go about it and how the AEE should be drafted
- tips for councils and applicants on how to keep application processing costs to a minimum
- an example of a basic AEE.

Ministry for the Environment (1999) *Auditing Assessments of Environmental Effects: A Guide to Good Practice*

This guide focuses on regional and district council auditing of assessments of environmental effects (AEEs). It aims to help new planning staff and others involved in the auditing of AEEs. It also contains reminders for experienced staff to assist them in establishing and reviewing audit procedures, and includes examples of case law and good practice. The guide is structured as a step-by-step process covering:

- what is the council's audit function?
- what does the audit process seek to achieve?
- pre-application good practice
- receiving the application
- allocating the application
- processing and evaluation
- when the decision has been made.