



*caring about you & your environment*

## **Report 01.807**

16 November 2001

File: WGN020065

[Report 2001.Env01807.NCmm]

Report to Environment Committee  
from Nigel Corry, Account Manager, Consents Management

### **Te Runanga o Raukawa – Request to Waive Consent Application Fee and Processing Charges**

#### **1. Purpose**

To allow the Committee to consider a request from Te Runanga o Raukawa to waive a resource consent application fee and processing charges.

#### **2. Background**

Te Runanga o Raukawa lodged an application with the Wellington Regional Council on 12 October 2001 to use all available unallocated water in the Otaki river system (above the environmental baselines as set in the Regional Freshwater Plan) for a period of 35 years. It is worth noting that a declaration from the Environment Court is currently being sought by the Regional Council as to whether or not the Regional Council has jurisdiction to consider this issue.

Included in this application (**letter attached**) was a request by Te Runanga o Raukawa that the Wellington Regional Council waive the application fee associated with this application, and any subsequent processing charges.

The application goes on to state that should the above option be unacceptable to the Wellington Regional Council, then Te Runanga o Raukawa would accept as an alternative that all costs be deducted from entitlements it is owed from unpaid gravel extraction "royalties".

#### **3. Power to Waive Charges**

Section 36(5) of the Resource Management Act 1991 (The Act) gives the Regional Council absolute discretion to remit all or part of any charge for consent processing. The Act states under Section 36(5) that, "A local authority may, in any particular case

*and in its absolute discretion, remit the whole or any part of any charge of a kind referred to in this section which would otherwise be payable”.* This ability given to remit charges under the RMA has been duly delegated to the Environment Committee by the Wellington Regional Council.

#### 4. **Gravel Extraction Royalties**

The issue of gravel extraction royalties is not one over which Consents Management has any jurisdiction, and represents a broader issue relating to the treaty relationship between Ngati Raukawa and the Crown. Furthermore, the power to fix administrative charges under Section 36 of the RMA does not vest any authority with the Regional Council to consider charges in relation to gravel royalties or fees. As such, a report is **attached** for your information from Geoff Dick, Manager, Flood Protection (Operations) which outlines the issues in relation to gravel extraction and royalties.

#### 5. **Matters the Committee may wish to Consider in reaching a Decision**

In reaching a decision on this matter The Committee needs to consider a number of issues, primarily:

- The Te Runanga o Raukawa application states that they have applied for the waiver of consent application and processing fees based on the *“Principle of Active Protection as referred to under the heading of the Principle of the Essential Bargain in our Memorandum of Understanding”*. In referring to active protection, the Memorandum of Understanding states that *“Active Protection requires that the Crown duty of protection of tangata whenua interests in resource management is not simply a passive one but is in all senses active to the fullest extent practicable.”* While the meaning of ‘active protection’ may be open to interpretation, the Memorandum of Understanding between the Council and Te Runanga o Raukawa does recognise the special relationship between Iwi and Council. There is also the outstanding issue of gravel "royalties" which the Committee should bear in mind, although this issue is not strictly speaking related to the processing costs of a resource consent.
- The Committee needs to consider the precedent it would be setting. There are a large number of individuals and organisations who would consider, for whatever reasons, that consent application and processing charges should be waived in their particular instance. If the Committee grants this request, then it can expect further requests from other groups and individuals.
- Because there is no provision in the Consents Management Department budget for remitting charges, there will be a flow on effect to our revenue line and our overall financial position. This situation will be exacerbated if future requests from this or other similar organisations are granted. Given the high profile nature of this case, and the complexities of the issues involved, it is possible that costs associated with making a decision on this application (including any potential appeals) could be substantial. It is worth noting that the recent Otaki Pipeline application from the Kapiti Coast District Council cost about \$65,000.

- The Committee should consider the effect on ratepayers and other consent applicants. The Council's Funding Policy requires that the full direct costs of processing resource consents is to be recovered from applicants. While the sum of money may not be great in the context of the Council's overall rate take, there is an equity issue. Is it fair for ratepayers to be subsidising the application and fair to other applicants who pay all their processing charges?.
- It may also be of interest to note that a similar request was made in September 2000 by the Eastern Bays Little Blue Penguin Foundation to waive some of the costs incurred during a notified consent process. In this instance, the Environment Committee chose to waive the Commissioners' fees. This was due to the fact that the Wellington Regional Council was a submitter on the application and, as such, Commissioners were used to hear the application rather than Councillors, incurring an unforeseen expense to the applicant.

## 6. **Communication**

The Committee's decision will be communicated to Te Runanga o Raukawa.

## 7. **Recommendation**

*That the Committee consider the report and determine whether or not to waive the application fee and processing charges for Te Runanga o Raukawa's application to use water from the Otaki River.*

Report prepared by:

Approved for submission:

NIGEL CORRY  
Account Manager, Consents Management

JANE BRADBURY  
Divisional Manager, Environment

### **Attachments:**

1. Letter from Te Runanga o Raukawa dated 11 October 2001
2. Report from Geoff Dick, Manager, Flood Protection (Operations) dated 19 November 2001