Decision following the hearing of three objections to additional charges under section 357B of the Resource Management Act 1991

Objection by Empire Capital Limited to additional charges sought by Auckland Council in relation to the processing of resource consents CST60337797 (Pine Harbour), CST60337798 (Bayswater), CST60337799 (Hobsonville).

This application is **UPHELD IN PART**. The reasons are set out below.

Application numbers:	CST60337797 (Pine Harbour), CST60337798 (Bayswater), CST60337799 (Hobsonville)
Site address:	Bayswater Marina, Hobsonville Marina and Pine Harbour Marina
Applicant:	Empire Capital Limited
Hearing panel:	David Hill (Chair) Robert Scott
Appearances:	For the Objector: David Hollingsworth, Empire Capital Craig Shearer, Planning For Council: Robert Andrews, Reporting Officer Rashida Sahib, Planner Sam Otter, Senior Hearings Advisor Sidra Khan, Hearings Advisor
Hearing commenced:	Tuesday 10 March 2020, 9.30am
Hearing closed:	Monday, 16 March 2020

Introduction

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners David Hill (Chair) and Robert Scott, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").

2. This decision contains the findings from our deliberations on the s357B RMA objection in relation to additional charges imposed on resource consent applications concerning three marinas (Pine Harbour, Bayswater and Hobsonville) by Empire Capital Limited (ECL or the objector), and has been prepared in accordance with section 113 of the RMA. The original applications were lodged concurrently on 26 April 2019.

3. Decisions by the Duty Commissioner on those applications were made as follows:

   (a) Bayswater marina – 6 September 2019;

   (b) Hobsonville marina – 6 September 2019;

   (c) Pine Harbour marina – 6 September 2019.

4. The s357B RMA objections were lodged and received by Council as follows:

   (a) Bayswater marina – 22 September 2019;

   (b) Hobsonville marina – 1 October 2019;

   (c) Pine Harbour marina – 22 November 2019.

5. The three objections were all lodged with Council within the statutory 15 working days following receipt of the relevant invoices (s357C(1) RMA) and set out the reasons as required (S357C(2) RMA).

6. A combined s42A RMA report on the three objections was prepared by Mr Andrews and distributed prior to the hearing. That report included a series of appendices including the notices of objection, correspondence on the matters, the original application and AEE for Pine Harbour as a representative example, Council's invoices and timesheets, Council's s95 notification and s104 decision reports, the combined Coastal Specialist report, and links to a number of Court authorities.

7. The s42A report noted that the processing fees (inclusive of GST) combined are **$52,509.74** of which **$12,000.00** was paid as three $4,000 fixed deposits at the time of lodgement. The overall balance of **$40,509.74** was invoiced and remains outstanding. This was detailed as follows:

Application	**Total cost**	**owing**	**Comment**
Pine Harbour CST 60337797	$21,668.38	$17,668.38	• Includes $1,233.38 duty commissioner covering the three decisions
Bayswater CST 60337798	$ 9,815.86	$ 5,815.86	• Subject to 3% late processing discount ($303.64)
Hobsonville CST 60337799	$21,025.50	$17,025.50	• No standard administration, document or monitoring fee charged
	$52,509.74	$40,509.74	

8. Mr Andrews recommended that the objections be upheld in part and that the additional charges be reduced by **$5,850** being the equivalent of 30 hours of planner reporting time and leaving an overall balance of **$34,659.74** to pay.

9. For the objector, Mr Hollingsworth produced a statement of submissions with 16 Attachments – being copies of relevant decisions on the marinas in question and their associated conditions; the three applications made; the debit note invoices and timesheets submitted by Council; Council's s92 RMA further information request; Dr Sivaguru's report of 20 August 2019; correspondence from Gulf Harbour Berth Holders Association Inc to Council's CE; copy of a s357 objection decision by Commissioner KRM Littlejohn; and Mr Andrews' s42A report on these objections.

Grounds of Objections

10. The grounds for objection were similar for the three consents concerned. From his email to Council dated 22 November 2019 concerning Pine Harbour marina, Mr Hollingsworth stated the following concerns:

- *We have been charged Administration at $192 per hour. According to the Council website, Administration work for a resource consent should be levied at $111 per hour. This is the rate after 1 July 2019, so presumably a lesser rate applied before then.*
- *Work carried out by the Planner was charged at $192 per hour up to 1 July 2019, and then $195 per hour. According to the Council website, Planners should be charging $168 per hour from 1 July.*
- *The rate of $195 per hour is listed as being carried out by a Senior, Intermediate, Principal, or Team Leader. The Planner used in the consent application – Rashida Sahib – would appear to be very inexperienced, particularly in coastal matters, had probably never processed a coastal consent before, and should actually be charged at a much lower rate than $168. It became apparent over a number of meetings and conversations that Rashida had no knowledge of any matter or issue relating to this application. The Planner spending 84 or so hours processing the application, and also needing the advice of a specialist who allocated 13 hours to the application reinforces the junior nature of the processing Planner. Not only is this double dipping, we are in effect paying for the Planner's education;*
- *There is no justification for an Engineers assessment, or a review of the application by Parks - there was no engineering or parks component to the consent application;*
- *This application was in essence an extension of an existing consent. It was non-notified, resulting in the extension by around 8 years of the existing occupation consent provisions. This was not a major application - to have spent some 84 hours by the Planner, and around 13 hours by a Specialist, is not acceptable.*
- *It would appear we were charged less than $5,000 for a similar consent granted to Hobsonville Marina in 2014;*
- *Council elected to have the three applications processed by three separate Planners. It is therefore unacceptable to have incurred several hours, and it would appear to have been at least 500 minutes, meeting and discussing the applications across these different Planners, in effect charging treble;*
- *A very long time appears to have been spent on preparing the S. 92 questions, including up to 120 minutes attending a meeting with two other planners on the 26th of July on s92;*

- *Given all the meetings with other planners and the specialist, is 290 minutes on a peer review appropriate? Who was the peer? What qualifications and experience did they have? I would query 170 minutes discussing the peer review with the team leader and amending report.*

In respect of Specialist Input, I am querying:

- *90 minutes Assessment and writing on 17 May - I note we are also charged assessment and writing by the Planner;*
- *90 minutes to print and review an application – it was not that substantial an application, and also duplicates the work carried out by the Planner;*
- *90 minutes to recreate a map and some writing on 17 May?*
- *What is 60 minutes on advice on 31 May, plus 50 minutes meeting with Planners? Was 330 minutes spent in total, or was it 110 minutes charged to three entities?*
- *Please explain the 210 minutes by the Specialist to draft the memo?*

In summary, we will end up being charged three times what we should be, for example, did the Specialist spent 450 minutes on the 14th and 15th of August drafting the tech memos? And if so, why are we then charged for 260 minutes for assessment and report writing on the 23rd of August? We have been told that all three staff were novices in this field, therefore a three times learning process at our expense. This is a grossly inefficient way to deal with the same applications, and has added considerably to the cost. The heavy dependence on a "specialist" confirms their inexperience and inappropriateness for this job.

11. While the time and dollar cost numbers varied across the three marina consents, and the exclusive occupation extension was slightly different – 8 years for Pine Harbour and 5 years each for Bayswater and Hobsonville, to bring all into line with an expiry date of 2054 – the objection issues identified were quite similar.

12. As we understood the key issue it was, essentially, why it cost $52,509.74 to determine a 5 year extension to existing exclusive occupation consents in the case of Bayswater and Hobsonville (which current consents expire in 2049) and an 8 year extension for Pine Harbour (which consent, not being for exclusive occupation[1], expires in 2046) – and, if it did, why that cost in whole should be passed onto the applicant.

13. We note that Mr Hollingsworth indicated in his evidence[2] that he considered that staff time charges of $5,000 for each application would be reasonable in the circumstances - and sought remission of charges accordingly. In part we understood that sum to be a reflection of the cost charged by Council for the more complex 2014 consent for Hobsonville marina (which included the added issue of maintenance dredging).

14. We note that the question of consent for live-aboards (which constituted part of the original applications) was formally withdrawn by ECL on 11 July 2019. All costs post 11 July 2019 therefore apply only to the matter of exclusive occupation. From

[1] But, as noted by Mr Shearer, that consent does authorise the consent holder to ”temporarily restrict public access for health and safety and security reasons” – condition 4.
[2] Hollingsworth, Submissions, para 43.

the timesheet costs provided, the actual costs up until 11July 2019 for each of the applications was as follows:

- Bayswater marina $3,136.25
- Hobsonville marina $5,753.50
- Pine harbour marina $6,633.75

Total **$15,523.50**

15. No indication was provided as to how much of that total up to 11 July 2019 is directly attributable to “live-aboard” matters as opposed to “exclusive occupation”.

16. At the hearing, Mr Hollingsworth also raised the matter of costs associated with what he referred to as the “Actions of Others” – being 28 May 2019 correspondence from Auckland Marine Users Association (AMUA) and subsequent meetings and correspondence with Councillors Watson and Walker (among others). He contended that the letter from AMUA had influenced the processing of the application and led to additional costs which were unfairly charged – particularly, as was later opined, as those matters came to naught with the eventual result of a non-notified decision.

Right of objection

17. The right of objection in section 357B of the RMA is to any additional charges "*incurred by the local authority in respect of the activity to which the charge relates*" (section 36AAA(2)), and the "activity" in question is each resource consent application (and the charges incurred by the Council in processing each). It is clear therefore that, in the ordinary course of events, we would not have jurisdiction to look at the "totality of cost" incurred in respect of three separate applications as if it were a single activity, even though the applications concerned similar subject matter.

18. However, in this instance, it is clear that Council itself treated the three applications as a totality, albeit distributed at the same time to three different planners to oversee as part of its spatial organisation into central, south and northwest “sections” and with a combined report from its coastal specialist, Dr Kala Sivaguru, and, as we were given to understand, common meetings, and comparable recommendation reports and decisions. We have therefore determined that, in those circumstances, we are able to consider the three effectively as one for the purpose of these objections.

19. Before doing so, we set out the statutory framework for the objections and the key caselaw principles.

Statutory provisions

20. Sections 36, 36AAA and 36AAB of the RMA entitle, and set out the procedure for, the Council to fix or set charges to recover costs of processing a resource consent application. The most relevant sections relating to the consideration of an objection are:

36 Administrative charges

(1) A local authority may from time to time … fix charges of all or any of the following kinds:

…

(b) Charges payable by applicants for resource consents, for the carrying out by the local authority of any 1 or more of its functions in relation to the receiving, processing, and granting of resource consents (including certificates of compliance and existing use certificates):

…

(2) Charges fixed under this section must be either specific amounts or determined by reference to scales of charges or other formulae fixed by the local authority.

21. Section 36 goes on to state that the Council is entitled to fix additional charges in order to recover the actual and reasonable costs of processing a resource consent application where these exceed the fixed charge:

(5) Except where regulations are made under section 360F, if a charge fixed under this section is, in any particular case, inadequate to enable a local authority to recover its actual and reasonable costs in respect of the matter concerned, the local authority may require the person who is liable to pay the charge to also pay an additional charge to the local authority.

(6) A local authority must, on request by any person liable to pay a charge under this section, provide an estimate of any additional charge likely to be imposed under subsection (5).

(7) Sections 357B to 358 (which deal with rights of objection and appeal against certain decisions) apply in respect of the requirement by a local authority to pay an additional charge under subsection (5).

22. In passing, we note that there was no evidence that the objector had availed itself of the opportunity provided by s36(6) RMA, despite the time taken (some 4½ months) to determine the three applications.

23. Section 36AAA Criteria for fixing administrative charges, sets out the criteria that the Council must have regard to when fixing charges:

(1) When fixing charges under section 36, a local authority must have regard to the criteria set out in this section.

(2) The sole purpose of a charge is to recover the reasonable costs incurred by the local authority in respect of the activity to which the charge relates.

(3) A particular person or particular persons should be required to pay a charge only -

(a) to the extent that the benefit of the local authority's actions to which the charge relates is obtained by those persons as distinct from the community of the local authority as a whole; or

(b) where the need for the local authority's actions to which the charge relates results from the actions of those persons; or

…

24. Section 36AAB Other matters relating to administrative charges, states:

(1) 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 section 36 that would otherwise be payable.

25. Section 357B of the RMA provides applicants with the right to object to an additional charge:

There is a right of objection, -

(a) for a person required by a local authority to pay an additional charge under section 36(5) or costs under section 149ZD(1), to the local authority in respect of that requirement:

26. Section 357D of the RMA sets out the range of actions the Council may take when considering an objection to additional charges:

(1) The person or body to which an objection is made under sections 357 to 357B may —

(a) dismiss the objection; or

(b) uphold the objection in whole or in part; or

(c) in the case of an objection under section 357B(a), as it relates to an additional charge under section 36(5), remit the whole or any part of the additional charge over which the objection was made.

Relevant Caselaw

27. The 2010 decision of the High Court in *Hill Country Corporation v Hastings District Council* sets out the six-step process that a consent authority must follow in considering an objection to its charges levied under section 36 of the RMA. These steps were followed (and considered) by Mr Andrews in his report for the hearing of the objection. They are:

A What are the actual costs incurred in relation to the activity (including costs charged to council by external consultants)?

B Are those costs reasonable in relation to the activity – do they meet the section 36AAA(2) threshold?

C Are those costs satisfied by the fixed charge?

D If not, what "additional charge" charge should be levied to recover the balance of the actual and reasonable costs?

E Can the person who initiated the activity be required to pay that charge because they satisfy one of the criteria in section 36AAA(3)?

F Is this a case where, in the exercise of the local authority's absolute discretion under section 36AAB(1), either the whole or part of the additional charge should be remitted?

28. As will become apparent, we consider that only the enquiries identified in steps B, E and F above are engaged by the objections. No issue was taken with respect to the scheduled actual costs (A), nor that the costs exceeded the fixed costs of the three $4,000 = $12,000 deposit fee (C) – and (D) is effectively the final determination.

Caselaw principles

29. The following is a paraphrase of the caselaw principles (including from the cases attached to the s42A report) that apply to the issue of additional charges:

(a) "Reasonableness" involves a genuine and intelligent assessment of and decision about what resources are required to deal with the issue at hand, are necessary, and that will evolve as an application moves through the process.

(b) The obligation to pay only goes as far as the local authority's actions are directly instigated by or are in response to the actions of the applicant.

(c) The section 36AAB *absolute discretion* is a broad discretion to exercise in deciding whether to remit charges, and factors wider than the prescripts of section 36AAA(3) can be considered provided they are relevant.

Costs reasonable (B)?

30. In his s42A report Mr Andrews summarised but referred back to his analysis of issues raised by Mr Hollingsworth in email correspondence – copies of which he provided as Attachment D to his report. In summary, he noted:

1. *Allocating the applications that allowed the opportunity for separate reporting planners to process coastal consents, still involved co-ordinating combined meetings, the division of tasks and a single specialist report. These were all reasonable and typical means of processing such applications and therefore the charges associated with these tasks are not unreasonable. That said, as offered in my correspondence, removing 30 hours of the planners' reporting times would fully address the argued assessment and report duplication or any learning component.*

2. *The published planner hourly rates are set through a public process and are beyond the scope of an objection process.*

3. *The specialist assessment, meeting and reporting times are divided equally between the consents and are justifiable and reasonable.*

4. *The review costs by the engineer and parks officer were justifiable and generally quite minimal.*

5. *Where charged, the time associated with dealing with legal matters and third parties raising concerns over the proposed exclusive occupation were actions directly related to the applications being processed. The applicant was the sole*

beneficiary of the consent processing and not the council or third parties. In particular, the necessarily comprehensive notification reporting in part sought to ensure that the assessments were robust and beyond challenge. I consider it realistic that an applicant accepts the reasonableness of this approach when seeking applications to proceed without notice.

6. *That 50 minutes recorded as administration and charged at $192.00 and $195.00 (most likely by the Pine harbour senior planner) could be removed if there was doubt from the task description that it may have been undertaken by one of the administrators.*

31. Furthermore, Mr Andrews concluded that the length of reports reflected the type of application and matters that needed to be addressed; were not an over assessment or duplication; and the processing costs charged were not unusual for applications that raised issues with elected members.

32. Finally, Mr Andrews gave his opinion that the officer hours recorded were solely attributable to the applications made.

33. Mr Shearer, expert witness for ECL, considered this matter in his evidence through a series of self-posed, questions which included the following:

- Were the applications complex?
- How much time should have been allocated to dealing with opposition letters received by Council?
- Is there repetition in the three sets of report?
- Would it have been more efficient and reasonable for the Council to allocate the task of processing the consents to one person and if so, should that person be a specialist?
- The relevance of the specialist report?

34. Mr Shearer concluded that the applications were not complex – by and large simply time-extending an existing situation[3], with no additional adverse effects, within zones whose provisions have not materially changed since being granted, and all with a significant time yet to run (i.e. 27 years or 30 years to expiry respectively).

35. With respect to the opposition letters received and the involvement of councillors and local board members, Mr Shearer concluded that the matters raised were not relevant to the applications, as subsequently demonstrated by Council's recommendation and decision not to publicly or limited notify any of the applications.

36. Mr Shearer provided a marked up copy of the recommendation reports and duty commissioner decision illustrating the extent of repetition in the documents. In that light, and when cross-referenced to the timesheets for report writing, he concluded that the time recorded seemed to be "excessive".

[3] Acknowledging that, in the case of Pine Harbour, exclusive occupation was not formally consented.

37. On the matter as to whether it would have been more efficient to use one experienced coastal planning specialist rather than three “terrestrial” planners, Mr Shearer concluded that such would have significantly reduced the recorded meeting time for the three reporting planners - he estimated by at least a half, from 25 hours to 10 hours.

38. Notwithstanding the above, Mr Shearer queried the need for a coastal specialist report in light of the fact that, as he saw it, the resultant report disclosed no technical coastal issues but, rather, general legal / planning ones.

39. In concluding that the time allocations (and associated costs) were not fair and reasonable, Mr Shearer gave as a further example the time recorded spent determining the s92 RMA further information request. From the timesheets he calculated that time overall at 25 hours and 25 minutes, for 9 questions; a task he concluded should have taken no more than 2-3 hours. We note that his 9 page response with amended plans was dated 6 August 2019, only one week after the s92 request letter from Council was dated.

40. Mr Shearer concluded that the total staff time allocation should have been between 24-28 hours per application; a total of 72-84 hours rather than the c.258 hours actually charged (noting that he had charged some 108 hours only for actually preparing the three applications for lodgement).

41. Mr Hollingsworth endorsed and adopted Mr Shearer’s analysis and conclusions, adding comments on Mr Andrews’ s42A report. In his opinion, he concluded (among other things) that the s42A report failed to engage in any of the issues he had raised in correspondence; provided no evidence justifying the need for and extent of the resources committed to the applications; and disputed the proposition that the AUP(OP) planning framework had introduced considerable change (and therefore comparison with the costs for 2104 Hobsonville marina consent was specious).

Discussion

42. We accept that, regardless of whether the AUP(OP) introduced the same, similar or different provisions concerning coastal marine occupation, that issue needed to be properly considered because the overall Plan policy context had changed. In that respect we agree that the 2014 Hobsonville Marina consent does not provide a strictly appropriate comparator.

43. However, and we note from the timesheets that legal input was sought - presumably at that time for both the exclusive occupation and the live-aboard matters (respective timesheet references are to the period between 31 May and 24 June 2019) – is at odds with the conclusion drawn by Mr Andrews that the application did not raise matters of wider public benefit. While we do not have the benefit of whatever legal opinion was sought and obtained, and we did not understand that opinion to have been provided to the applicant, we assume that would have had general application to the matters then at hand – being exclusive

occupation of and living-aboard vessels within the CMA / CMCA – in terms of applying the AUP(OP) provisions.

44. That is not to say that no legal matters were directly attributable. Clearly checks of the respective empowering legislation and seabed licences were appropriate to establish that these were not impediments, for example, to an extension of term. However, the timesheets are simply not sufficiently disaggregated in terms of tasks for us to be able to determine that level of detail.

45. For Bayswater and Hobsonville marinas, with existing consents for exclusive occupation (and live-aboards), an extension for 5 years should have been a straight-forward task. In that, we agree with the objector. With respect to Pine Harbour marina we accept that the application was a fundamental change (notwithstanding the current consent's authorising of temporary restrictions and actual marina management practice) requiring closer examination.

46. We would have thought that there were three questions for Council to resolve:

    (a) Are there any legal impediments to granting the applications?

    (b) Are there any AUP(OP) policy impediments (recognising that the applications were for restricted discretionary activity consent)?

    (c) Do the applications give raise to any adverse effects on the coastal environment?

47. On the first question, any legal issues appear to have been cleared away relatively quickly since no s92 further information request (dated 30 July 2019) posed specifically legal questions (other than over the exact footprints sought).

48. On the second question, no specific policy matters were raised in the s92 further information requests.

49. On the third question, no specific adverse effects on the coastal environment matters were raised in the s92 further information requests, as confirmed subsequently in Dr Sivaguru's 19 August 2019 report conclusion that "*adverse effects on the environment will be no more than minor*".

50. Unsurprisingly, then, the s95 notification recommendations were to process the three applications non-notified, and the s104 recommendations were to grant with essentially the same common set of 6 conditions – the substance of which had been proposed by Mr Shearer in his applications. Those recommendations were adopted by the Duty Commissioner whose three decisions were released on the same day (6 September 2019).

51. In passing we note that we accept that Council was entitled to distribute the applications to those offices (and officers) within its structure responsible for the geographical areas in which the marinas are located. Whether that was efficient in terms of these particular applications is a matter that we discuss further below.

52. At this point we simply observe that we have no sensible basis upon which to determine whether one person processing all three applications would have reduced the actual time in question – because we cannot know the competence of an unidentified person, and neither do we know the tenor of the issues discussed "behind the scenes" that resulted in the time/costs charged. While our assumption is that those matters were unlikely to be complex for an experienced practitioner, we do not know that. In principle, three experienced practitioners are more likely to be more efficient in terms of narrowing the issues that actually need to be addressed than one person because of their combined "wisdom" and the fact they are focussed on the germane issues on their "patch".

Finding:

53. On the basis of the evidence before us – which was partial at best – we find that the time/costs charged are not reasonable. We may have been persuaded otherwise if the s92 further information requests disclosed significant matters of detail that, in some sense, justified the time spent getting to and from that point. However, having reviewed the request and the objector's 6 August 2019 response, delivered only 1 week following the formal request letter, we are unable to conclude such.

54. Because of the way in which the timesheet reporting is recorded we are unable to disaggregate what we might find reasonable from the unreasonable. As an illustration only, for example (and this was specifically raised by Mr Hollingsworth[4]), on 11 July 2019 is a 145 minute meeting noted on the Pine Harbour timesheet as "*meeting with the Coastal Team and other processing planners for Marinas*". From that summary line there is simply no way of determining whether all matters discussed at that meeting were on point or even whether that meeting was actually necessary. That is not to criticise the individuals concerned, since we have no factual basis for doubt. It simply illustrates the point. If future timesheet entries were made on the active *assumption* of a subsequent objection, that might assist an inquiry such as this.

Required to pay (E)?

55. Among other general matters raised by Mr Hollingsworth and Mr Shearer, was a specific concern about costs associated with the correspondence from the Marina Users Association(s). As noted above, that particular line of inquiry resulted in no further action being taken (in the sense of notification and issues raised in the s92 request). Accordingly, Mr Hollingsworth contended[5]:

> Council's time in meeting with members of the public making enquiries about potential resource consent applications on which they wish to express a view – whether it be by way of meeting or correspondence with them – is not (*sic*) a cost that results from third party actions, not the applicant's, and is therefore not payable by the applicant.

[4] Hollingsworth, Submissions, para 28.
[5] Hollingsworth, Submissions, para 36.

56. We agree that costs effectively instigated by third parties and that have no material or relevant result on an application should be carefully examined to see whether they satisfy the criteria of s36AA(3)(a) or (b).

57. While we accept the proposition that but for the application that inquiry would not have been occasioned, we do not accept that that is the end of the matter. We also accept that politicians / councillors / community board members are entitled to take an interest in such matters. That is not at issue. What is at issue is whether the "benefit" (if any such can be identified) of that interest and inquiry is "obtained" by the applicant in this instance or (since these are disjunctive criteria) the "need" resulted from the applicant's actions.

58. On both counts we find that the applicant is an innocent party in the matter.

59. There was no benefit solely to the applicant – matters raised in the correspondence and meetings added no evident or material advantage. Nor did the need for such derive solely from the applicant's actions. In that regard we suggest that an experienced planner applying their professional judgement would not have concluded otherwise.

60. To suggest, in effect, that clearing that matter out of the way lessened the prospect of notification or risk of judicial review, and that was the real benefit to an applicant, and therefore the charge is justified, seems to us a very slippery slope if it goes beyond a professional, technical assessment regarding, for example, special circumstance. Otherwise it risks setting the cost precedent of opening the door to erstwhile opponents politicising matters of little RMA relevance at applicants' expense.

Finding:

61. We find that the majority of the charges associated with the AMUA correspondence should not be required to be paid. We accept that an initial consideration of such correspondence is an appropriate charge – since it could not reasonably be assumed at that point that no relevant matter was raised.

62. As we have noted above, the timesheets simply do not provide sufficient information for us to be able to identify with any precision the time/cost component of this activity such that we can identify a specific sum to remit.

Absolute discretion (F)

63. From the timesheets provided we note the following aggregate costs for the three applications:

(a)	Administration	=	$257.00
(b)	Engineering	=	$136.50
(c)	Parks	=	$390.00
(d)	Planners	=	$41,074.00

(e)	Specialist RC	=	$8,386.50
(f)	Subdiv'n officer	=	$160.00
	Total	**=**	**$50,404.00**

64. Other incidental charges produced a final total of $52,509.74, less the $12,000 deposit, leaving $40,509.74 to pay. As noted at paragraph 8, Mr Andrews recommended a reduction of $5,850 leaving $34,659.74 to pay.

65. At the outset we note that we take no issue with the administrative, engineering, parks and subdivision costs. We agree that passing such an application across those desks for initial review is a routine matter and that those costs would be part and parcel of the expectations for a deposit fee. Those costs plus incidentals total $3,049.24.

66. In question therefore are the **$**49,460.50 timesheet charged for the planners / specialist.

67. We have found that not all activities charged were reasonable and not all charges are required to be paid. We therefore come to the mater of the difficulty of identifying with any precision those charges.

68. Mr Hollingsworth considers that a total charge of $15,000 less the deposit of $12,000, leaving $3,000 to pay, is reasonable.

69. Mr Andrews considers that $52,509.74 less the deposit of $12,000 and a further reduction of $5,850, leaving $34,659.74 to pay is reasonable.

70. As we are satisfied that the overall time taken to process these applications was in excess of what was required and that some lines of inquiry were not central to the matters at hand, and those time/cost matters cannot be identified with any precision from the record provided, we see little alternative but to determine a 50%:50% cost share of the **$**49,460.50 costs associated with the planners and coastal specialist. We consider that to be fair and reasonable in the circumstance.

Finding:

71. We find that we should exercise our absolute discretion and remit 50% of the cost charges associated with the planners and coastal specialist, being $49,460.50/2 = $24,730.25.

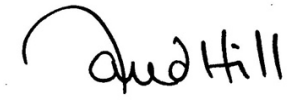
72. The overall charge of $52,509.74 is thereby reduced by $24,730.25 to $27,779.49 which, minus the deposit paid of $12,000 = **$15,779.49** to pay.

Decision

73. In exercising our delegation under sections 34 and 34A of the Resource Management Act 1991 and having regard to the foregoing matters, we determine that the s357B RMA objections by Empire Capital Limited in relation to the processing of resource consents CST60337797 (Pine Harbour), CST60337798 (Bayswater) and CST60337799 (Hobsonville) are upheld in part and that charges

of $24,730.25 in total should be remitted in relation to those three objections, per s357D(1)(b) & (c) RMA.

74. We find that the total actual and reasonable cost charged should be $27,779.49, and that, having paid the initial fixed charge of $12,000, Empire Capital Limited is to make final payment of **$15,779.49**.



David Hill
Chairperson

30 March 2020