

# Charter for Commissioners

## Outlining the Objection process for infrastructure growth charges

### Preamble

1. This Charter establishes the procedure for lodging and determining an Objection to an infrastructure growth charge ("IGC"), levied by Watercare Services Limited ("Watercare"). It is intended to inform Commissioners in their adjudication of an Objection.
2. This Charter should be read in conjunction with Watercare's IGC terms and conditions contained in the Customer Contract <sup>1</sup>.
3. The ability to object under this process is available irrespective of whether a customer has requested a Reconsideration of an IGC for Watercare's determination. Once an Objection is lodged, no Reconsideration can be undertaken.

### Scope of an Objection

4. An Objection cannot be used to challenge the content of the IGC terms and conditions. For example, a customer cannot challenge the methodology used to calculate IGCs, nor the IGC price per development unit equivalent set out in the Customer Contract.
5. A customer may only object to an IGC where Watercare has:
  - a. failed to properly take into account features of the development which either alone or cumulatively with other developments would substantially reduce the impact of development on growth;
  - b. required an IGC where either a development contribution (under section 199 of the Local Government Act 2002) or a financial contribution (under sections 108(2)(a) or 409 of the Resource Management Act 1991) (or both) has already been charged for water/wastewater services for the same development;
  - c. incorrectly calculated, assessed or applied the IGC terms and conditions to the customer's development;
  - d. relied on, recorded or used information that was incomplete or contained errors when assessing the contribution required against its IGC terms and conditions; or
  - e. in the customer's view, failed to reach the correct decision on a Reconsideration.

### Process for lodging an Objection

6. Objections must be lodged with Watercare within 15 working days after notice of the IGC assessment (or Watercare's decision on a Reconsideration of that assessment) has been given by Watercare. Watercare may, in its discretion, allow an Objection to be served on it after the 15 working day period specified, if it is satisfied that exceptional circumstances exist.
7. The Objection must be in writing, and provide the following information at a minimum:
  - a. the customer's details;
  - b. the address or IGC assessment to which the Objection relates, and the grounds and reasons for the Objection;
  - c. the relief sought (e.g. recalculation, cancellation of the IGC, or partial relief);
  - d. whether the customer wishes to be heard; and
  - e. a declaration by the customer that the information provided in relation to lodging an Objection may be made available by Watercare to units of Auckland Council or approved contractors.
8. Acceptable methods of service to Watercare are in person, by fax, email or prepaid post.

### Selection of IGC Commissioners

9. The Objection will be determined by one to three Commissioners selected by Watercare from a register of Commissioners. Watercare will appoint Commissioners to the register who have:
  - a. knowledge of and experience in adjudication and mediation, including the conduct of hearings and inquiries; and
  - b. knowledge, skills and experience relevant to the subject matter likely to arise in an Objection to an IGC assessment.
10. Watercare may, by notice on its website, specify additional criteria for the appointment of its Commissioners (in addition to, but not inconsistent with, the criteria specified at paragraph 9 above).
11. Commissioners must not be:
  - a. employees or board members of Watercare;
  - b. elected members or employees of Auckland Council; or
  - c. board members, shareholders, owners, employees, or contractors of the customer.

<sup>1</sup> Read Watercare's IGC terms and conditions.

## Term of appointment of Commissioners

12. The term of appointment for a Commissioner on the register expires:
  - a. three years after the date on which their appointment takes effect; or
  - b. at the close of the term of their reappointment; or
  - c. at the close of the extension of his/her term; or
  - d. as soon after completion of their term of appointment or reappointment as is necessary to enable them to complete any outstanding work, but no later than the notification of his/her final decision; or
  - e. upon the Commissioner's resignation.

## Removal of Commissioners

13. Watercare may remove any Commissioners from the register but only because:
  - a. of criminal activity or other misconduct;
  - b. if the Commissioner is unable to perform the functions of office; or
  - c. if the Commissioner has neglected his or her duty.
14. Commissioners will have the ability to make decisions without holding a hearing, if they are satisfied that they have sufficient information to decide the Objection following the exchange of briefs of evidence.

## Commissioners' role in relation to evidence exchange and hearing process

### *Evidence exchange*

15. For the purposes of a hearing, the Commissioners may:
  - a. receive any evidence that, in their opinion, will assist them to deal with the Objection effectively, whether or not that is admissible in a court of law;
  - b. take evidence on oath or affirmation (as administered by any Commissioner); and
  - c. permit a witness to give evidence by any means, including in writing or electronically, and require the witness to verify the evidence by oath or affirmation.
16. Commissioners who have been selected to decide an Objection must give the parties notice of the date by which briefs of evidence relating to the Objection must be exchanged. The briefs must be exchanged no later than 10 working days before the commencement of a hearing, or if there is no hearing, a date fixed by the Commissioners.
17. Copies of the statements of evidence referred to in a brief of evidence must be provided to each Commissioner appointed to decide the Objection, as well as to Watercare and the customer.

### *Submissions*

18. The Commissioners may make directions requiring submissions in writing to be circulated in advance of a hearing.

### *Hearing procedure*

19. A hearing on an Objection need not be held if the customer has indicated they do not wish to be heard; or otherwise agreed no hearing is required; or the Commissioner is satisfied having regard to the nature of the Objection and evidence provided that they can determine the Objection without a hearing.
20. If a hearing is to be held, a Commissioner must fix the date, time and place of the hearing. Notice of the hearing must be served on Watercare and the customer at least 10 working days before the date on which the hearing commences. The Commissioners must also establish a procedure that is appropriate and fair in the circumstances, avoiding unnecessary formality.

### *Where there is no hearing*

21. If no hearing is held, a Commissioner may direct that Watercare and the customer provide written replies to each other's evidence and provide copies of those replies to the IGC Commissioners. A direction must be served on the Commissioners, Watercare and the customer.

## Criteria that Commissioners must have regard to when deciding Objections

22. The IGC Commissioners, in deciding an objection, must consider:
  - a. the outcome of every Reconsideration;
  - b. the grounds on which the Objection is made;
  - c. the purpose for which IGCs are charged; and
  - d. Watercare's IGC terms and conditions, as set out in the Customer Contract.
23. The Commissioners' decisions will be binding on all parties. However, customers can lodge a complaint with the Ombudsman.

## Decisions on Objections

24. Commissioners must give a decision on an Objection in writing, irrespective of whether a hearing is held.
25. A decision must:
  - a. clearly uphold or dismiss all or part of the Objection; and
  - b. be in writing and clearly state the reasons for the decision; a summary of issues in contention; the relevant provisions of Watercare's IGC terms and conditions; and summarise the evidence presented.
26. While Commissioners must not direct amendment of the IGC terms and conditions, they may make observations on those terms and conditions. Commissioners may quash the requirement for an IGC, or direct amendments to an IGC assessment.
27. Written copies of the Commissioners' decision must be served on the customer and Watercare not more than 15 working days after the end of the hearing, or if a hearing is not held, the last day of the Commissioners' consideration of the evidence.

## Additional powers of Commissioners

28. A Commissioner has the following powers when determining an Objection; namely, to direct:
  - a. the order of business at the hearing, including the order in which evidence is presented and parties heard;
  - b. that evidence presented at the hearing be taken as read or presented within a stated time limit; and
  - c. that evidence be limited to the matters relevant to the dispute.
29. Irrespective of whether a hearing is held, a Commissioner may direct that briefs of evidence be provided within a specified period ending no later than:
  - a. if a hearing is to be held, 10 working days before the hearing commences; or
  - b. otherwise, 10 working days before the date on which the Commissioner(s) intend to begin consideration of the Objection.
30. A Commissioner may waive or extend any period in relation to the Objection determination process, if satisfied that exceptional circumstances exist.
31. A Commissioner may, either on their own initiative or application from the objector customer, make an order prohibiting communication/publication of any information supplied to the Commissioners or otherwise obtained, if satisfied that the order is necessary to avoid the disclosure of a trade secret or commercial information that if released could be prejudicial to business operations of any party to the operation.

## Residual powers of Watercare relating to Objection decision

32. In relation to a Commissioner's decision, and notwithstanding the above powers of a Commissioner, Watercare retains all functions, duties, responsibilities and powers in relation to the IGC assessment that is the subject of the decision as if the decision had been made by Watercare.

## Withdrawal of an Objection

33. A customer may withdraw the Objection at any time, by serving notice on Watercare and any Commissioner who has been selected to determine the Objection. Watercare may still recover the actual and reasonable costs in respect of the Objection.
34. A customer who has withdrawn an Objection may lodge another Objection on the same or different grounds in relation to the same IGC assessment, provided that the original 15 working day timeframe under which their first Objection was lodged has not expired.

## Fees

35. The cost for services of selecting, engaging and employing Commissioners, secretarial and administrative support of the Objection process and preparing for, organising and holding the hearing will be paid by the customer, who indemnifies Watercare for the payment of all fees in connection with the Objection. As a general rule, costs will be waived in the event that the Objection is upheld.

36. Watercare may, in its absolute discretion, waive or remit the whole or part of any of those costs. Applicable fees and allowances for any witness appearing at a hearing must be paid by the party on whose behalf the witness is called.
37. Independent Commissioners for the Objection process charge a standard fee of \$235 per hour, plus GST and disbursements. Secretarial and administrative costs for the process are charged at a standard fee of \$50 per hour.