

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 IGC objection.
2. This Charter should be read in conjunction with Watercare's IGC Terms and Conditions contained in the customer contract.
3. The ability to object under this process is available irrespective of whether a customer has sought 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 developer cannot challenge the methodology used to calculate IGCs, nor the IGC price.
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 DC or a Financial Contribution has already charged by a legacy Council for water/wastewater services for the same development;
 - c. incorrectly calculated, assessed or applied the IGC Terms and Conditions to the objector's development; or
 - d. relied on, recorded or used information that was incomplete or contained errors when assessing the contribution required against its IGC Terms and Conditions.

Process for lodging an objection

6. Objections must be lodged with Watercare within 15 working days after notice of the IGC 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 notice of objection must be in writing, on a standard form requiring the following information, at a minimum:
 - a. the objector's details;
 - b. the address or IGC notice to which the objection relates, and the grounds and reasons for objection;
 - c. the relief sought (eg recalculation, cancellation of the IGC, or partial relief);
 - d. whether the objector wishes to be heard; and
 - e. a declaration by the objector 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 pre-paid post.

Selection of IGC Commissioners

9. The objection will be determined by one to three Commissioners drawn from a register of Commissioners. The Commissioners appointed to the register are persons who have:
 - a. knowledge 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.
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).
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 objector.

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 resignation of the Commissioner.

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 effectively with the objection 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 written or electronic means 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, Watercare and the objector.

Hearing procedure

18. A hearing on an objection need not be held if the objector 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.
19. 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 objector 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

20. If no hearing is held, a Commissioner may direct that Watercare and the objector 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 objector.

Criteria that Commissioners must have regard to when deciding objections

21. 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.
22. The Commissioners' decisions will be binding on all parties. However, objectors can lodge a complaint with the Ombudsman.

Decisions on objections

23. Commissioners must give a decision on an objection in writing, irrespective of whether a hearing is held.
24. 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.
25. 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 the requirement for an IGC.
26. Written copies of the Commissioners' decision must be served on the objector 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

27. 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.
28. Irrespective of whether a hearing is held, a Commissioner may direct that briefs of evidence be provided within a specified period ending not 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.
29. A Commissioner may waive or extend any period in relation to the objection determination process, if satisfied that exceptional circumstances exist.
30. A Commissioner may either on their own initiative or application from the objector make an order prohibiting communication/publication of any information supplied to the Commissioner 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 IGC objection decision

31. 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 requirement for the IGC that is the subject of the decision as if the decision had been made by Watercare.

Withdrawal of an objection

32. An objector 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.
33. A person who has withdrawn an objection may lodge another objection on the same or different grounds in relation to the same IGC requirement, provided that the original 15 working day timeframe under which their first objection was lodged, has not expired.

Fees

34. The cost for services of selecting, engaging and employing Commissioners, secretarial and administrative support of the objections process and preparing for, organising and holding the hearing will be paid by the objector, 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 the IGC objection is upheld.
35. 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 an IGC hearing must be paid by the party on whose behalf the witness is called.
36. Independent Commissioners for the IGC objection process charge a standard fee of \$150/hour.