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17 April 2025

Whare Kaupapa Atawhai | Conservation House
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PO Box 10420, Wellington 6140
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Ref: OIAD-5060

Tēnā koe [REDACTED]

Thank you for your request to the Department of Conservation, received on 25 March 2025.

You have asked for written statements of reasons and copies of any documents that support or justify the Department's decisions connected to a series of specific steps taken by the Department in the course of its process for determining the concession offer 107337-OTH (107337-OTH) made to Dalefield Water Supply Society Incorporated (DWS).

We have considered your request under the Official Information Act 1982 (OIA).

Context

The topics connected to the series of specific steps taken by the Department have been raised by you and responded to by the Department, both in a face-to-face meeting and in recent correspondence.

The questions you have continued to ask focus on the process of how the easement and its conditions were determined. As we have previously advised, these matters can be addressed through a concession reconsideration process to which DWS is welcome to apply.

We note that the OIA is not an avenue for engagement, consultation or dialogue. It was not enacted for this purpose. Your requests, while containing a number of questions, include statements outlining your perspective regarding how the Department may approach the concession offer made to DWS. They also appear to seek the Department's reconsideration of the decisions it has made without applying through the channel offered for this purpose.

We believe we have been generous in our approach to your requests where they seek explanation or opinion. As we have previously advised the Department is not obliged to respond in that manner, but does so to assist and inform requestors and the broader public where misinformation and misunderstanding exist.

At the same time, our approach to this request has borne in mind the nature and extent of information already supplied to you in response to earlier requests OIAD-4617 and OIAD-4939 – and outside of the OIA responses, in the normal course of business exchanges concerning the

concession offered to DWS. The responses, including under the OIA, incorporated fulsome information and copies of the Department's operational policies that provide guidance for Permissions staff, and links to relevant pages on the Department's website.

The documents released to you also included:

- the Decision Support Document for permission number 107337-OTH (refer to Item 20 in Table 1, appended to the Department's letter dated 19 December 2024 (OIAD-4617)); and
- the decision memo (refer to Item 21 in Table 1, appended to the Department's letter dated 19 December 2024 (OIAD-4617)), signed by the then Commercial Manager, setting out the recommended annual fees to the decision-maker, and the rationale for this.

We note the decision-maker did not provide written reasons for their decision as the decision to grant the permission aligned with the recommendations (including the annual fees) presented to them in the Decision Support Document.

We have provided you and/or other members of DWS with the following information during or after the processing of this concession application:

- a copy of the internal pricing calculation spreadsheet that outlined the fee based on our internal guidance for pricing easements;
- a copy of the instruction details and the assessed fee directly from the valuation report;
- a summary of the valuation report; and/or
- a table outlining the fees set for other water supply easements in gross in the past twelve months.

Consequently, we will refer to documents provided earlier rather than supplying a further set with our response to this request.

Concessions

Certain activities require approval (that is, 'permission') from the Minister of Conservation (Minister), or the Director-General of Conservation (DG or appropriate delegate(s)). 'Permissions' is the umbrella term for statutory authorisations granted under various Acts.

A concession is a type of permission - a statutory authorisation to undertake an activity on public conservation land (PCL) or water managed under the Conservation Act 1987 (Conservation Act), National Parks Act 1980, or Reserves Act 1977.

The concession regime is a way that the Department is able to monitor and manage the effects of activities on PCL and waters, ensure safety of users of the land, balance competing uses and demands of users, and create a return to conservation and the economy. In doing so, the concession regime also aligns with the priorities outlined for the Department outlined by the Minister.

Undertaking an activity without a valid permission is an offence under the relevant piece(s) of legislation, which can lead to prosecution and criminal conviction.

When a concession expires (but preferably prior to expiry), the concessionaire (or concession holder) is required to apply for a new concession to continue the activity. Each application for a concession received by the Department is a fresh application to be considered on its merits.

Over time, the activities or uses proposed to be undertaken on PCL and the costs associated with undertaking those activities or uses change as society and the environment evolve.

Applications are assessed and decisions are made in accordance with the statutory tests set out in Part 3B (sections 17Z – 17ZJ) of the Conservation Act.

Material facts

Prior to the expiry of its active concession, DWS applied to the Department for a new concession.

The Department considered the application on its merits and in accordance with the policies, guidance and processes in place for Permissions to follow.

Concession offer 107337-OTH was made to DWS on 27 September 2024.

DWS is yet to formally accept, reject or seek reconsideration of concession offer 107337-OTH.

On 31 March 2025, notice was given to DWS by the Department to make a decision by 30 April 2025 on concession offer 107337-OTH, given the time that has elapsed since the offer was made.

Failure to accept or seek reconsideration within the timeframe notified will result in the cancellation of the concession offer. Should this occur, DWS will be able to continue operating under their existing concession until it expires on 6 July 2027, but will not be able to make any changes to the infrastructure.

If DWS do not have an executed replacement concession by 6 July 2027, it will be required to cease all activity and remove the infrastructure from the land.

Reason(s) and supporting information for specific steps taken

Difference between easements in gross and appurtenant easements, and effect on the pricing methods

Appurtenant easements benefit the land and have a "benefited land" specified in the concession agreement, while easements in gross benefit the holder. In this case, DWS has been offered an easement in gross as they operate a water supply scheme on behalf of the community it supplies, not as a landowner, much like territorial authorities might.

While there is no "benefited land" with an easement in gross, there are parties who benefit from the easement, in this case through membership to the water supply scheme. Our pricing model considers the benefits to DWS and its members when pricing an easement in gross. This is

consistent with our pricing methodology outlined on the Department's website and the treatment of similar concessions.

In making decisions on applications for easements, we are guided by policies that apply to decision-making on concession applications in general. These documents were released to you – refer to Items 1 to 11 in Table 1, appended to the Department's letter dated 4 December 2024 (OIAD-4617).

As noted before, there is no presumption that a peppercorn or nominal fee will be charged when determining an appropriate activity fee for an easement. Our policy is to proceed on the basis that a market fee will be charged. Sometimes, independent valuations are commissioned to assist us to calculate a market fee. We may then consider discounting or waiving the activity fee charged, in line with our policies.

Number of benefiting properties when summarising the fee

The fee calculation for this concession, including the determination of the number of benefiting properties, used the information provided in the concession application DWS completed and subsequent communications between the Department and DWS.

The Department's external valuer determined a concession fee of \$15,600.00 plus GST per annum for this application. The amount of the assessed concession fee was relayed to DWS on 10 September 2024.

At that time, we communicated that the fee equates to around \$150.00 per benefiting lot, based on the information provided directly from DWS. The reference to the 100 benefiting lots was to demonstrate the affordability of this fee when passed onto each water supply scheme member. It also accounts for the potential variability, over the life of the concession, of the number who will benefit and the resulting changes in infrastructure required to support benefiting lots and the pressure on the water supply source (and flow on effect to its surrounding environment).

At \$150.00 per user, this is a significant discount compared to the standard rate of \$500.00 each benefiting lot would expect to pay if each individual user had to obtain a concession for this activity (\$400.00 plus a 25% environmental premium) from the Department – as well as supply, establish and maintain the necessary infrastructure.

Consideration of section 17ZH of the Conservation Act

We do not consider that section 17ZH applied to the calculation of the easement activity fee for 107337-OTH. Section 17ZH requires the Minister or the Department to be providing a community service, benefit, or facility for the benefit of concessionaires.

As noted previously, an example of where the Department has applied section 17ZH is Aoraki Mt. Cook Village. The Department provides concessionaires services similar to what a local council would provide (such as rubbish collection), and concessionaires are charged a separate fee for this

service. We commonly refer to these as “Community Service” and “Community Service Contribution” fees.

An extract from our Price Book sets out our policies regarding section 17ZH and cases where it is currently applied. This has been supplied to you - refer to Item 19 in Table 1, appended to the Department’s letter dated 4 December 2024 (OIAD-4617).

Section 17ZH has not previously been applied to making decisions in respect of easements and their fees in the context of concessionaires providing a service, benefit or facility for the benefit of others. Non-commercial activity does not of itself equate to such activity being a community activity. Consequently, there is no basis for section 17ZH to be applied to a concessionaire providing a service for the benefit of private landowners.

Further, the Department does not provide any services or facilities to DWS to support its operation of the water supply scheme. The Department granted a concession (and more recently made a concession offer), by way of an easement, to DWS to use the land for the purpose granted.

Non-commercial activity fees

As noted above, each application for a concession received by the Department is a fresh application to be considered on its merits. This applies whether the application is new, or is from a concession holder who is seeking to continue the activity for which they hold a concession beyond their current expiry date.

The calculation in the Easement Fee Calculator document (refer to Item 19 in Table 1, appended to the Department’s letter dated 4 December 2024 (OIAD-4617)), was supported by information on the Department’s website on non-commercial easement fees and Items 7 to 8 in Table 1, appended to the Department’s letter dated 4 December 2024 (OIAD-4617).

As noted on the Department’s website:

- Easement activity fees may be calculated at different rates depending on the number of beneficiaries.
- The RTCW – Water supply Fee refers to a right to convey water for supply. A non-commercial easement for this purpose is charged at a starting rate of \$400 + GST.
- The RTCE – Overhead/Underground Cables Fee refers a right to convey electricity through underground and overhead cables. A non-commercial easement for this purpose is charged at a starting rate of \$335 + GST.
- Environmental Premiums are applied to various types of applications.

In brief, for DWS’s purposes:

- The RTCW – Water supply Fee has a starting rate of \$400 + GST. This rate was multiplied by 100 benefitting properties to arrive at the recommended fee of \$40,000 + GST.

- The RTCE – Overhead/Underground Cables Fee has a starting rate of \$335 + GST. Again, this rate was multiplied by 100 benefitting properties to arrive at the recommended fee of \$33,500 + GST. This fee was then discounted by 50%, based on the cables being co-trenched with the water pipes, to arrive at a recommended fee of \$16,750.00 + GST.
- An Environmental Premium of 25% (being \$14,187.50 + GST) was added on top of the above fees, due to the proposed easement's location in a Wildlife Management Reserve.
- This brought the overall calculation to a total of \$70,937.50 + GST.

Obtaining a valuation

There are several reasons why the Department seeks independent advice from a qualified external valuer, when determining fees applicable to a concession. These reasons include, but are not limited to:

- if the internal calculation of the annual fee is greater than \$10,000.00 plus GST per annum;
- if the activity applied for is bespoke or unusual;
- where we have little internal pricing guidance or comparative concession to refer to; and/or
- where an activity is highly commercial (for example, a hotel in a national park or a hydroelectric scheme on a reserve).

In this case, the application of our internal pricing guidance resulted in the DWS fee being estimated in excess of \$10,000 plus GST per annum (see above total calculation for DWS) – one of the reasons noted above for obtaining a valuation.

The calculated fee was also considered against DWS's current concession fee, which we note has never, in its almost 30 years of existence, been subject to a legislative rent review that would have resulted in a fee being charged.

It was determined that in the circumstances a market valuation from an experienced and qualified external valuer was the best option to accurately determine the 2023/24 market rate for this activity.

We advised DWS on 29 August 2023 that, due to the nature of this application, being an easement for a residential water supply scheme, a valuation would be required.

On 14 March 2024, the Department provided a cost estimate for the valuation work and sought DWS's confirmation and agreement for DOC to proceed with this process. We also informed DWS that the costs would form part of the processing fees of the application and that access for the valuer would be arranged as required. On the same day, DWS responded, acknowledging the costs and agreeing that the Department should proceed with the valuation.

DWS was notified and informed of this requirement throughout the process and at no point during the processing of this application did DWS raise any questions or concerns about the requirement for a valuation or the need to pay an activity fee.

Given that no concerns about the potential ongoing concession fees were raised at any point, it was understood that DWS was aware of the requirement to pay a concession fee as envisaged and required under sections 17X and 17Y of the Conservation Act.

In an effort to provide some information relevant to the valuation report, a summary of the third-party valuation was provided to you in my email of 14 February 2025. This “summary of valuation” outlines the methodology used by the independent third party valuer. It does not reflect the Department’s methodology.

As advised previously, we have also consulted with our external valuer, who advised that their assessment considered the wider infrastructure owned and operated by DWS and they have reasserted that the final fee was a fair measure of the benefit DWS derives from PCL.

Further steps taken by the Department

We have also met with you to try and resolve your issues and spoken to other representatives of DWS regarding this matter. We acknowledge that this fee increase is substantial, and as an incorporated society, you need to provide notice of any fee increase to allow time to pass it on to the users of the water supply.

In this respect, our proposal to delay the implementation of the concession fee and phase it in over the first three-year period still stands.

Please note that this letter (with your personal details removed) and referenced documents (as considered appropriate) may be published on the Department’s website.

If you would like to discuss this response with us, please contact me by email at kcameron@doc.govt.nz.

Nāku noa, nā

A handwritten signature in dark ink, appearing to read 'Kameron', enclosed within a faint circular outline.

Kirsty Cameron
Commercial Manager
Department of Conservation | *Te Papa Atawhai*