

# S36AAA Resource Management Act charges analysis

## Purpose

This S36AAA analysis is required for the Bay of Plenty Regional Council's (Council) RMA charges. The Resource Management Act 1991 and Building Act 2004 form the foundation of the majority of our work. The Resource Management Act and Building Act Charges Policy ("Council Charges Policy") sets out our charges under these Acts.

The sole purpose of an RMA charge is to recover the reasonable costs incurred by the Council in respect of the activity to which the charge relates.

When fixing charges the Council must also have regard to the following criteria (RMA s36AAA(3)):

- Person(s) should only be required to pay a charge to the extent they obtained the benefit of the local authority's actions distinct from the community as a whole; or
- Person(s) should only be required to pay a charge where they created need for the local authority's actions;
- Person(s) should only be required to pay a charge in relation to monitoring where it relates to that person(s) activities or the likely benefit to that person(s) exceeds that to the community as a whole.

The application of these requirements can be subjective and Council must use judgement.

The following tables detail each of the main classes of charges and our analysis against the above criteria.

## How to read the analysis

RMA s36AAA/References	Considerations
<b>Type of charge</b>	<b>Type/name of charge</b>
Section of the policy	The part of the policy these charges can be found in.
Statutory basis for charge	Applicable section of the RMA.
The basis of the charge	Details on the basis of the charge.
Assessment of benefits obtained by person(s)	S36AAA(3)(a) The benefit of the local authority's actions to which the charge relates is obtained by those person as distinct from the community of the local authority as a whole. Consent applicants or holders benefit directly from the work.
Assessment of whether need for work relates from actions of person(s)	S36AAA(3)(b)The need for the local authority's actions to which the charge relates from the actions of those persons. Consent applicants or holders <b>occasion</b> the work (the council needs to do the work because of the actions of consent applicants or holders).
Assessment of monitoring functions (where applicable)	S36AAA(3)(c) Where the charge is in respect of the local authority's monitoring functions under section 35(2)(a) (which relates to monitoring the state of the whole or part of the environment),- i. To the extent the monitoring relates to the likely effects on the environment of those person's activities; or ii. To the extent that the likely benefit to those persons of the monitoring exceeds the likely benefit of the monitoring to the community of the local authority as a whole.
Approximate recoveries from charges	Estimated percentage of costs to be recovered from charges.

## Application charges

RMA s36AAA/References	Considerations
<b>Type of charge</b>	<b>General resource consent application deposits</b>
Section of the policy	2.1.2 Application charges for non-notified resource consents
Statutory basis for charge	S36(1)(b) charges payable by applicants for resource consents, for the carrying out by the local authority for 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)
The basis of the charge	<p><b>Pre-application activities</b> – we have a policy of funding the first hour of pre-application advice as we believe that it saves applicants time and money in the long run.</p> <p><b>General resource consent application deposits</b> - We have set deposit charges payable in advance with the balance of charges being charged/refunded in arrears at the completion of the consent process. They have been set in three tiers based on the type of consent application. We have based our tiers on the estimated average hours to process those consent types and believe that this provides consent applicants with a realistic expectation of the charge.</p>
Assessment of benefits obtained by person(s)	<p>Consent applicants benefit from the work Council undertakes directly. They will benefit from having the consent application considered and will particularly benefit if the application is approved e.g. processing and approving a consent enables development to proceed.</p> <p>Consent applicant receives 100 percent of the benefit.</p>
Assessment of whether need for work relates from actions of person(s)	The activities in the consent application process are predominantly caused by consent applicants. Council is required to do the work as a result of the consent being applied for.
Approximate recoveries from charges	80%-100% range

<b>RMA s36AAA/References</b>	<b>Considerations</b>
<b>Type of charge</b>	<b>Fixed consent application fees</b>
Section of the policy	2.1.2 Application charges for non-notified resource consents – Table 2
Statutory basis for charge	S36(1)(b) charges payable by applicants for resource consents, for the carrying out by the local authority for 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)
The basis of the charge	For consent applications which are generally routine we apply fixed application fees. Our fees are based on the estimated staff time to process each type of these consent applications.
Assessment of benefits obtained by person(s)	Consent applicants benefit from the work Council undertakes directly. They will benefit from having the consent application considered and will particularly benefit if the application is approved e.g. processing and approving a consent enables development to proceed. Consent applicant receives 100 percent of the benefit.
Assessment of whether need for work relates from actions of person(s)	The activities in the consent application process are predominantly caused by consent applicants. Council is required to do the work as a result of the consent being applied for.
Approximate recoveries from charges	80%-100% range

<b>RMA s36AAA/References</b>	<b>Considerations</b>
<b>Type of charge</b>	<b>Charges for limited and publicly notified resource consents</b>
Section of the policy	2.1.3 Charges for limited and publicly notified resource consents
Statutory basis for charge	S36(1)(b) charges payable by applicants for resource consents, for the carrying out by the local authority for 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)
The basis of the charge	<p>We charge actual and reasonable costs for processing limited or publicly notified resource consents.</p> <p>When an application is notified and proceeds to a hearing, a further charge is payable (this is payable when we proceed to a hearing as it is only then that further costs are incurred).</p> <p>These costs vary considerably and depend on a number of factors such as how well the applicant has consulted, how well the application is prepared, the number of submissions received and how difficult the issues are to resolve.</p>
Assessment of benefits obtained by person(s)	<p>Consent applicants benefit from the work Council undertakes directly. They will benefit from having the consent application considered and will particularly benefit if the application is approved e.g. processing and approving a consent enables development to proceed.</p> <p>Submitters may receive benefit from having the ability to have their say.</p>
Assessment of whether need for work relates from actions of person(s)	The activities in the consent application process are predominantly caused by consent applicants. Council is required to do the work as a result of the consent being applied for.
Approximate recoveries from charges	80%-100% range

<b>RMA s36AAA/References</b>	<b>Considerations</b>
<b>Type of charge</b>	<b>Charges for permitted marginal or temporary activities</b>
Section of the policy	2.1.5 Charges for permitted marginal or temporary activities
Statutory basis for charge	S87BB Activities meeting certain requirements are permitted activities. S36(1)(ae) charges payable by persons proposing to undertake an activity, for the carrying out by a local authority of its functions in relation to issuing a notice under S87BA or 87BB stating whether the activity is a permitted activity.
The basis of the charge	We charge actual and reasonable costs for processing a request to issue a notice stating whether an activity is a permitted marginal or temporary activity with the first hour being provided free. The actual costs of will vary depending on the nature and complexity of the request.
Assessment of benefits obtained by person(s)	The applicant benefits from the work Council undertakes directly. They will benefit from having the request considered and will particularly benefit if the notice is issued stating that an activity is a permitted marginal or temporary activity. Applicant receives 100 percent of the benefit.
Assessment of whether need for work relates from actions of person(s)	The activities in the process are predominantly caused by the applicant. Council is required to do the work as a result of the notice being applied for.
Approximate recoveries from charges	80%-100% range

<b>RMA s36AAA/References</b>	<b>Considerations</b>
<b>Type of charge</b>	<b>Charges for objections</b>
Section of the policy	2.3 Charges for objections
Statutory basis for charge	S36(1)(af) charges payable by a person making an objection under section 357A(1)(f) or (g), if the person requests under 357AB that the objection be considered by a hearing commissioner, for the cost of the objection being considered and decided in accordance with the request.
The basis of the charge	Costs may be recovered on an actual and reasonable basis. To ensure a fair process for the objector, Council may ask the commissioner(s) to make a recommendation as to whether it would be appropriate to remit (i.e. not charge) any of these costs.
Assessment of benefits obtained by person(s)	There is some uncertainty about who benefits from objections. In some cases the objector may benefit and in some cases it may be for the public good.  It is important to ensure people can exercise their right to object to decisions made by Council without being unduly discouraged or penalised, and without encouraging or incentivising a situation where vexatious objectors require us to hire commissioners unnecessarily.
Assessment of whether need for work relates from actions of person(s)	The objector creates the need.
Approximate recoveries from charges	0%-100% range

## Annual charges

<b>RMA s36AAA/References</b>	<b>Considerations</b>
<b>Type of charge</b>	<b>Administration charge</b>
Section of the policy	2.4.1 Administration charge
Statutory basis for charge	S36(1)(c) charges payable by holders of resource consents, for the carrying out by the local authority of its functions in relation to the administration, monitoring and supervision of resource consents (including certificates of compliance and existing use certificates), and for the carrying out of its resource management functions under section 35.
The basis of the charge	The administration charge is designed to cover activities such as consent computer database maintenance, consent file system maintenance, correspondence to consent holders, dealing with generic enquires. We have therefore based our administration charge on the costs of our co-ordinator team and our duty person. Council have elected to fund approximately 30% of our administration work through administration charges - we felt that while recovering 100% of these costs was allowed the resulting amount did not satisfy the principal of reasonableness and fairness.
Assessment of benefits obtained by person(s)	Consent applicants or holders benefit from this charge, however there is a public good element as well in keeping these records.
Assessment of whether need for work relates from actions of person(s)	Consent applicants or holders occasion a proportion of the administration work required – Council is required to keep databases, systems and correspond with consent holders as a result of their actions.
Approximate recoveries from charges	30% approximately

RMA s36AAA/References	Considerations
<b>Type of charge</b>	<b>Compliance monitoring charges</b>
Section of the policy	2.4.2 Compliance monitoring charges
Statutory basis for charge	<ul style="list-style-type: none"> <li>• S36(1)(c) charges payable by holders of resource consents, for the carrying out by the local authority of its functions in relation to the administration, monitoring and supervision of resource consents (including certificates of compliance and existing use certificates), and for the carrying out of its resource management functions under section 35.</li> <li>• S36(1)(cc) charges payable by a person who carries out a permitted activity, for the monitoring of that activity, if the local authority is empowered to charge for the monitoring in accordance with section 43A(8).</li> <li>• S36(3) Fixed charges</li> <li>• S36(6) Variable charges</li> </ul>
The basis of the charge	<p><b>Fixed fee compliance monitoring charges</b> - Some compliance monitoring activities are routine, involving a simple site inspection, auditing any monitoring information and occur anywhere from annually to every ten years. In these cases, we estimate the time involved to complete the inspection and charge annually in advance. This approach may also be applied for more “passive” activities or resource uses, where a lower annual fee is preferable to a higher one-off charge.</p> <p><b>All other consents</b> - more complex/variable consents are charged the actual and reasonable costs of carrying out their compliance monitoring programme.</p> <p><b>Permitted activities</b> - a specific schedule of charges will apply to recover the actual and reasonable costs of monitoring permitted activities where it is provided for under a National Environmental Standard</p> <p><b>Non-compliance</b> - the cost of dealing with any non-compliance, regardless of its fee regime, is recovered through actual and reasonable additional charges charged in arrears.</p> <p>All consents holders only pay the cost of compliance monitoring associated with their consent</p>
Assessment of benefits obtained by person(s)	<p>Compliance monitoring helps to both verify that consent holders are meeting the conditions of their consents, and ensure that any non-compliances are identified and actioned. There is an element of public good by encouraging and ensuring compliance, as consent conditions are put in place to protect the environment and the community from potential adverse effects arising from the resource use or development activity authorised by the consent.</p> <p>However, as the need for this type of monitoring only arises because of consent holders' activities, and the benefits of holding the consent accrue entirely to consent holders, we consider it appropriate for consent holders to bear the reasonable cost of this monitoring.</p>
Assessment of whether need for work relates from actions of person(s)	<p>The compliance monitoring activity is driven by resource use and/or discharges to the environment which require resource consents to proceed. The need for compliance monitoring is therefore occasioned by the consent holder.</p> <p>Non-compliance is caused solely by consent holder activity.</p> <p>Monitoring of permitted activities under a National Environmental Standard is driven by the specific activity taking place and is therefore occasioned by the person(s) carrying out the activity. The activities to which this pertains are explicitly outlined within the respective National Environmental Standard.</p>

RMA s36AAA/References	Considerations
Type of charge	Compliance monitoring charges
Approximate recoveries from charges	80%-100% range

<b>RMA s36AAA/References</b>	<b>Considerations</b>
<b>Type of charge</b>	<b>Data and science charge</b>
Section of the policy	2.4.3 Data and science charge
Statutory basis for charge	<p>S36(1)(c) charges payable by holders of resource consents, for the carrying out by the local authority of its functions in relation to the administration, monitoring and supervision of resource consents (including certificates of compliance and existing use certificates), and for the carrying out of its resource management functions under section 35.</p> <p>S36AAA(3)(c) in a case where the charge is in respect of the local authority's monitoring functions under section 35(2)(a) (which relates to monitoring the state of the whole or part of the environment),-</p> <ul style="list-style-type: none"> <li>i. To the extent that the monitoring relates to the likely effects on the environment of those person's activities; or</li> <li>ii. To the extent that the likely benefit to those persons of the monitoring exceeds the likely benefit of the monitoring to the community of the local authority as a whole.</li> </ul>
The basis of the charge	<p>The charge paid by consent holders is related to the effects of their activity on the environment. Consent holders only pay for a part of the monitoring. The regional community pays for the rest as it also benefits from the information gained.</p> <p>All Data and Science projects undertaken by Council were costed and assessed in terms of their relevance to consent holders</p>
Assessment of benefits obtained by person(s)	<p>Data and science monitoring activities are undertaken to gather information about resources to ensure they are managed on a sustainable basis. The information is used to determine the nature and state of a resource, to enable us to grant resource consents with confidence, and to check whether the management tools for resources in regional plans are working properly. A large amount of information is made publicly available.</p> <p>Both the consent holder and the regional community benefit from the monitoring undertaken.</p> <p>The consent holder benefits through the protection of resources through management, early warning of changes in resources, and information and data to aid business planning, exercising of their consent and the re-consenting process.</p>
Assessment of whether need for work relates from actions of person(s)	<p>Consent holders and the regional community.</p> <p>Where consents are in place, Council needs to understand and monitor resources to ensure consent conditions are set appropriately (e.g. water allocation limits) and to safeguard future access to resources. This requirement (and the associated charge) applies regardless of whether a consent holder fully exercises their consent e.g. the monitoring still has to take place even if a consent holder chooses not to take any or all of their consented water allocation.</p>
Assessment of monitoring functions	As there is a public good aspect to Data and Science Charges, Council will consider whether an activity has a zero, low, medium or high benefit to consent holders; or the extent it is occasioned by consent holder activity for each of the type of costs.
Approximate recoveries from charges	0%-30% dependent on the project