

# **EPA policy for recovering costs for COVID-19 Recovery Fast- track Consenting applications**

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**Environmental  
Protection Authority**  
Te Mana Rauhi Taiao

New Zealand Government

## Background

1. The Environmental Protection Authority (EPA) has a number of functions and powers under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the Act).
2. The Minister for the Environment has delegated to the EPA, his functions, powers and duties related to the recovery of costs, as set out in clauses 14 and 15 of Schedule 5, to the Act.
3. Clause 13 of Schedule 5, to the Act provides the EPA may recover from:
  - a. A person, the actual and reasonable costs incurred by the EPA in providing assistance to the person prior to a consent application or notice of requirement or an application for a certificate of compliance being lodged with the EPA (whether or not the application or requirement is subsequently lodged).
  - b. A consent applicant or requiring authority (an applicant), the actual and reasonable costs incurred by the EPA, or a panel, in exercising its functions and powers under Schedule 5 and Schedule 6 including –
    - i. the cost in respect of support and advice provided to a panel by the EPA; and
    - ii. the costs incurred in gathering information from a local authority (see clause 7 of Schedule 6); and
    - iii. the costs charged by a local authority in giving advice (see clause 11(2) of Schedule 5).
4. The Act also states the following criteria that apply to recovering costs:
  - a. The sole purpose is to recover the reasonable costs incurred in respect of the matter to which the costs relate.
  - b. An applicant should be required to pay for costs only to the extent that the benefit of the actions of the EPA and the panel to which the costs relate is obtained by the applicant, as distinct from the community as a whole.
  - c. The extent to which an activity undertaken by an applicant reduces the cost to the EPA of performing and exercising its functions, duties, and powers.
5. The purpose of this policy is to outline how the EPA will apply the allowable cost recovery.

## Principles underpinning this policy

### Authority to charge

6. The EPA will only recover costs as provided for in the Act. We will do so taking into account the criteria specified in clause 13 of Schedule 5 to the Act.
7. As a starting point, all the costs for processing and determining resource consent applications, certificate of compliance applications and notices of requirement are considered to benefit the applicant.

### Efficiency

8. In accordance with section 10 of the Act, the EPA, and an expert consenting panel, are required, when performing functions and exercising powers under the Act, to take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised. Additionally, clause 8(3) of Schedule 6 to the Act, requires that the EPA, in performing and exercising functions, duties and powers under that schedule, as far as reasonably practicable, minimise the costs and avoid delay.

- 9. The EPA is committed to continuous improvement of our business practices, efficiency and process improvements. Our practice is that we will use staff who are appropriate to the task to be undertaken, and their time will be cost recovered at the appropriate charge-out rate. When we are required to use contractors, we will follow our procurement policy, and ensure charge-out rates are reasonable.

**Transparency and simplicity**

- 10. The Act allows the recovery of actual and reasonable costs incurred. This policy states our charge-out rates which vary depending on the staff member involved in undertaking our functions under the Act. It also notes the fees payable to expert consenting panel members.
- 11. This policy also states our approach to actual and reasonable costs.
- 12. In accordance with clause 13(3) of Schedule 5, to the Act, the EPA will, upon request by an applicant, provide an estimate of the costs likely to be recoverable, including on behalf of the Minister.

**Equity**

- 13. The equity test is that cost recovery is seen as fair and just. We will apply the same processes to every person and applicant who may be charged for our work under the Act. This policy includes a process for resolving disputes or objections to costs invoiced. It also states our approach to procurement.

**Recovery of costs**

**Staff charge-out rates**

- 14. The EPA will recover the costs of staff time at the following charge-out rates per hour, excluding GST:

Administrator	\$95.00
Advisor	\$115.00
Senior Advisor/Analyst	\$140 00
Team/Project Leader	\$170.00
Principal Advisor/Analyst and Manager	\$200.00

- 15. These charge-out rates are based on the mid-points of the EPA salary bands effective 1 July 2019, an allowance of 2.5 that covers EPA indirect costs, and an assumption of 1680 hours worked per year.
- 16. An analysis of the ratio of the EPA’s direct costs to indirect costs over the period 2014/15 to 2018/19 shows a ratio of 40:60 which supports the hourly charge-out rate being calculated as the mid-point of the salary scale multiplied by 2.5.
- 17. The charge-out rates were set by the EPA Board on 13 July 2020.

### Panel convener, chair and members' fees

18. The EPA<sup>1</sup> will recover the costs of the expert panel chair and the members as set out below. If the panel convener sits on a panel, then the EPA will recover the costs of the panel convener to the extent required for their role on the panel.

Panel Position	Daily fee (excluding GST)
Panel Convener as Panel Chair	Their equivalent daily fee as a District Court Judge or Acting District Court Judge  Note: There will be no double payments for performing both Convener and Chair roles in a single day
Judge as Panel Chair	Same as their equivalent daily fee as a judge at the time of appointment and does not exceed the daily fee of a High Court Judge
Non-judge chair	\$1200
All other panel members	\$850 - \$1100

### Costs that we will recover

#### Pre-lodgement costs

19. We will recover EPA staff time and any other costs associated with pre-lodgement of an application, including, but not limited to:

- meeting with a person who has the intention of lodging a consent application or notice of requirement, to assist their understanding of the process and lodgement requirements
- supporting the expert consenting panel appointment process
- determining the appropriate persons to be advised about the intended consent application or notice of requirement
- other pre-lodgement engagement including the review of draft applications, and any other assistance and correspondence associated with an intended fast-track consent application or notice of requirement.

#### EPA costs associated with consent applications, certificate of compliance applications and notice of requirements

20. We will recover EPA staff time and any other costs associated with the EPA's functions under Schedules 5 and 6, to the Act, including but not limited to:

- completeness assessments for consent application, certificate of compliance application and notices of requirement
- receipt, acknowledgement and setting up application and notices of requirement files
- secretariat support to the panel, including processing of panel members fees and disbursements claims

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<sup>1</sup> Formally, this is undertaken under delegation from the Minister for the Environment as provided by clause 15 of Schedule 5, to the Act.

- advice to the panel
- liaison and information sharing with local authorities
- inviting and distributing comments on the application or notice of requirement and draft conditions
- issuing and distribution of further information requests
- actual and reasonable travel and other expenses incurred in providing secretariat and advice support to a panel
- providing public information about an application or notice of requirement including maintenance of a web site
- administrative and support matters that are incidental or ancillary to the determination of applications and notices of requirement.

### Panel members' costs

21. The EPA will recover, on behalf of the Minister for the Environment, the costs associated with the functions of an expert consenting panel, including but not limited to:
- expert consenting panel chair fees
  - expert consenting panel members' fees
  - actual and reasonable travel and other expenses incurred by panel members in carrying out their duties.

### Other recoverable costs

22. The EPA will recover disbursement costs associated with the services and functions undertaken by the EPA and the panel on an actual and reasonable basis. Disbursement costs may include, but are not limited to:
- the cost of contractors
  - special advisers or technical advisers appointed by the panel
  - reports commissioned by the panel
  - costs incurred by a relevant local authority providing assistance at the request of the panel, or the request of the EPA, recovered by the local authority from the EPA
  - printing, postage, courier expenses
  - hireage and costs associated with hearing venue, or remote access facility (if a hearing is required), including recording and transcription services
  - document sharing platform/application costs.

### Cost estimates

23. If requested, the EPA will provide a cost estimate to an applicant. We will undertake to provide this in a timely manner. The EPA will also provide an estimate of costs recoverable by the Minister, on the Minister's behalf.
24. A person who intends to make an application may request an indication of the type of costs that might be incurred. An applicant may also request a costs incurred progress report on a reasonable basis.

## Costs that will be recovered if an application does not proceed

### Pre lodgement discussions

25. Where the EPA assists an intended applicant in accordance with paragraph 19 above and the matter is **not** lodged, the EPA will recover the actual and reasonable costs of providing the assistance as provided for in clause 13(1) of Schedule 5, to the Act.

### Completeness assessment

26. Where an applicant lodges an application or notice of requirement and the EPA assesses an application or notice of requirement as **not** meeting the completeness requirement, the EPA will recover the actual and reasonable costs, whether or not the application is resubmitted.

### Withdrawal of an application or notice of requirement

27. Where an application or notice of requirement is withdrawn by an applicant, the EPA will recover the costs incurred in processing the application up until the date written notification of withdrawal is received by the EPA, as well as any consequential costs including advising the expert consenting panel, and any person or group who has made comments or who has been contacted (if this is done on behalf of the applicant), and amending any public website. [clause 5 of Schedule 6, to the Act]

### Suspension of an application or notice of requirement

#### Suspension by the Minister

28. Where an application or notice of requirement has been suspended by the Minister under clause 22 of Schedule 6, to the Act, the EPA will recover, from the applicant, the costs incurred:
- up until, and including the date notice of the suspension has been sent under clause 22(2) of Schedule 6, to the Act
  - by the EPA liaising with the panel or applicant as necessary while an application is suspended.
29. The EPA will resume processing and incurring costs associated with a consent application or notice of requirement when (whichever occurs first):
- the EPA receives notice from the Minister withdrawing the suspension direction under clause 22(4) of Schedule 6, to the Act, or
  - consent applications have been lodged with the EPA for the further resource consents identified by the Minister.

#### Suspension by applicant or requiring authority

30. Where an applicant requests an application to be suspended, the EPA will recover the costs incurred up until, and including, the date the expert consenting panel grants a suspension, as well as any consequential costs including advising any person or group who has made comments or who has been contacted, and amending any public website. [clause 23 of Schedule 6]
31. Any costs incurred by the EPA liaising with the panel or applicant while an application is suspended will be recovered from the applicant.
32. Where an application or notice of requirement is returned to the applicant at the direction of the panel under clause 24(2) of Schedule 6, to the Act, the EPA will recover any further costs incurred up until, and including the date the EPA notifies the decision of the panel to return the

application.

## Procurement

33. The EPA will follow the Government Procurement Rules<sup>2</sup> and the EPA Procurement policy and guidelines as required when procuring any services required for the EPA and the expert consenting panel to carry out the functions under this Act.
34. In summary, the EPA's procurement policy has the following objectives:
  - a. gets value for money over the whole of life of the services or goods purchased
  - b. facilitates open and effective competition
  - c. acquires sustainably-produced goods and services wherever possible, while considering economic; environmental and social impacts over their life cycle
  - d. gets the best possible outcomes from the goods and services that it purchases
  - e. achieves the organisation's business priorities
  - f. provides full and fair opportunity for all suppliers
  - g. recognises New Zealand's international trade obligations and interests.

## Invoicing and Payment

35. The EPA will issue monthly invoices to recover costs in accordance with this policy.
36. Final invoices will be sent once an application has been determined or withdrawn.
37. Invoices are expected to be paid in full on or before the 20<sup>th</sup> of the month following invoicing.

## Quality assurance

38. Evidence of actual costs will be recorded in the following ways:
  - a. EPA staff will fill in weekly timesheets recording their time spent on an application.
  - b. The timesheets will be signed off in the EPA's financial system, Oracle, by the Team Leader for fast-track applications, and then the relevant manager
39. Staff will record all hours spent on a task, service or function associated with a particular application. It is the responsibility of the Team Leader, and/or the Manager, to identify what time can be reasonably on-charged in accordance with this policy.
40. EPA staff weekly timesheets will be annotated to identify the specific task, service or function carried out.
41. Staff will charge time in 15 minute blocks.

## Outstanding costs and debt due to the EPA

42. The EPA may suspend the processing of a consent application or notice of requirement where the applicant has not paid costs recoverable by the EPA that have been invoiced.
43. The EPA will give notice to the applicant of our intention to suspend processing a consent application or notice of requirement.
44. The EPA will resume processing an application for a consent application or notice of requirement

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<sup>2</sup> <https://www.procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-rules/>

once the outstanding costs have been paid to the EPA in full.

45. Under clause 13(6) of Schedule 5, to the Act, any outstanding costs not paid become a debt due to the EPA and may be pursued through the appropriate court.

## Dispute resolution

46. Clause 13(5) of Schedule 5, to the Act, provides that a person may object to a requirement to pay costs. The EPA also has a policy for considering complaints.
47. If an applicant has a concern with an invoice, the Manager Land and Oceans Applications should be contacted by telephone or email as soon as possible, and desirably no later than 15 working days after receiving the relevant invoice.
48. If the matter cannot be resolved through initial communication, the EPA will acknowledge and set out our understanding of the concern. The opportunity will be given to correct any misunderstanding of the concern.
49. The Manager, in consultation with the General Manager, will then consider the concern, with the aim of finding a resolution as soon as reasonably practicable, and in no more than 20 working days. A report detailing the concern, the matters taken into consideration and the recommended approach to resolution will be provided to the person who has raised the concern.
50. If the matter raised concerns a local government charge, the Manager Land and Oceans Applications will contact the relevant local authority for their input.
51. Our complaints policy is that if it takes longer than two working days to resolve a complaint, then we will give updates on progress to the complainant (and continue to keep them updated on progress).
52. If a resolution cannot be reached, the applicant may lodge a formal objection.

## Formal objection process

53. A formal objection must be in writing and lodged by the applicant with the EPA within 15 working days of the applicant receiving the disputed invoice, or being advised the dispute cannot be resolved if the dispute resolution process is used. The notice of objection must set out the reasons for the applicant's objection.
54. The EPA Board has delegated consideration of formal objections to the Chief Executive of the EPA (CE).
55. EPA staff and the objector (and the local authority, if applicable) will be given the opportunity to provide information relevant to the objection to the CE. EPA staff will provide to the objector any material provided to the CE for consideration.
56. The CE will provide the opportunity for a hearing and, if required, will give at least five working days' notice of the date, time and place of the hearing to the objector. If applicable, the local authority will also be advised.
57. The CE can dismiss or uphold the objection, either in whole or part. A copy of the decision on the objection will be provided in writing within 15 working days of making the decision to the objector (and the local authority, if applicable).
58. Where an objection to costs has not been resolved through the objection process, the objector has the right to appeal the decision to the Environment Court.