

Kia Ora Councillor

Wise Water Use Hawkes Bay (WWU) will be presenting the following petition to council on 30 August 2023.

We, the undersigned, believe that Hawke's Bay Regional Council has been negligent in not collecting the annual science charges due from Water Holdings Hawkes Bay since 2020 and that this private company should not be receiving special treatment.

We strongly urge Regional Council to levy the full amount owed of \$382,956. If Water Holdings Hawke's Bay is unable to make immediate payment then they must surrender the water consents they hold.

WWU understands that conflicting legal advice has been received by council which is why a decision on this issue has been kicked down the road. Payment has already been reneged on for 3 years and according to a decision of council in August 2022 payment in full was due 30 June 2023. This has not happened.

The wording of our petition is self-explanatory; however, we wish to flesh out our arguments so that you have a better understanding of how we have reached the conclusions we have.

1) Why Legal Impediment should not be seen as an argument to forgive payment of Science Charges by Water Holdings HB Ltd (WHHB)

- a) WHHB were well aware that they did not have access to the 22 ha. of DOC land when they purchased the IP for the RWSS from HBRIC;
- b) WHHB contractually accepted "all ongoing costs associated with the IP and assets" when they purchased the IP and assets in 2018; and
- c) WHHB did not dispute the science charges when they were paid in 2018/2019 & 2019/2020 (funded by CHB ratepayers). This is a very important point and makes any subsequent claims about non-payment because of impediment vexatious.

Overview of Terms

5. The terms agreed, for Council consideration, see WHCHB purchase all of the IP and assets associated with the RWSS on 29 June 2018 [REDACTED] including GST.
6. At the time of settlement HBRIC will grant a vendor loan to WHCHB for [REDACTED], payable September 1st, with security over the IP and assets until such time as the loan is paid.
7. The price offered provides a market value based on a public competitive process and is consistent with the value that HBRIC would need to reflect in its year end current financial statements, irrespective of whether the sale proceeds.
8. The sale is unconditional with no warranties or indemnities offered by HBRIC.
9. Council management has confirmed it is satisfied with the environmental consent conditions to be transferred.
10. [REDACTED]
11. The Purchaser acknowledges and agrees that the Council may continue to explore water storage or other water scheme solutions to support the Central Hawke's Bay region.
12. The purchaser accepts all ongoing costs associated with the IP and assets, including consent charges.
13. [REDACTED]

Purchaser Overview

14. WHCHB is a newly formed company registered with the Companies Office 26 June 2018.
15. Equal shareholders are Gavin Streeter, Hugh Ritchie and Tim Gilbertson. These parties (with the support of CHBDC) advise they represent a wide cross section of the CHB community.
16. Directors are the above shareholders.

Extract from council paper SALE OF RWSS ASSETS (27 June 2018), obtained under LGOIMA

2) Why payment of Science Charges of \$382,956 is fair and reasonable

- a) WHHB was advised that the way in which the science charges were going to be calculated was changing in the 2021-31 LTP;
- b) WHHB were advised to submit on the LTP. They did not avail themselves of this opportunity;
- c) The consultation document was clear as to how the changes were going to affect consent holders so there was no excuse for WHHB not to get out a calculator and work out what changes were going to be made to their science charges;
- d) The public has every expectation this will happen. Everyone has to pay their rates and charges in a timely manner so why is WHHB an exception?
- e) Regardless of whether WHHB is able to make use of the consents or not, council staff have to assume that they will be actioned whilst planning for future resource use in Central Hawke's Bay. This puts council staff in the position being unable to move forward and adequately plan for the needs of all of Central Hawke's Bay water users.

From: James Palmer
Sent: Wednesday, 3 March 2021 10:48 am
To: Tim Gilbertson
Cc: Angus Mabin
Subject: RE: Waterholdingshb fees and charges

Hi Tim, I have discussed your request with Council. They are unwilling to agree to a loan for the charges given the precedent this would set for other consent holders. However, they did note the consultation on methodology changes to science charges that will occur during the LTP consultation and they would welcome a submission from WHHB when these proposals are leased for comment at the end of this month.

The councillors expressed interest in hearing from the WHHB directors on your plans for Makaroro and would welcome a presentation to a Council or Council committee meeting. They did indicate that any such presentation would need to be in public.

Regards,
 James

Email correspondence between James Palmer (then HBRC-CEO) and Tim Gilbertson, Angus Mabin (then-directors of WHHB), obtained under LGOIMA

Water takes:

The charges for water take consents will be based on the consented weekly volume of take (not actual use), at the proposed 2021-22 rates set out in table 3 below.

Table 3

Charges to consent holders for Freshwater Management Research/Investigations & Monitoring: WATER TAKES		
	Annual variable charge rate (excl GST)	
	\$	Units
Minimum charge	\$205	Per consent
Volume up to 100,000 m ³	\$0.065	Per m ³ deemed weekly volume
Volume from 100,000 to 1,000,000 m ³	\$0.045	Per m ³ deemed weekly volume
Volume from 1 million to 2 million m ³	\$0.022	Per m ³ deemed weekly volume
Volume above 2 million m ³	\$0.006	Per m ³ deemed weekly volume

For example, if your consented weekly take is 110,000 m³, then your charge will be based on the following: 100,000m³ @ \$0.065 per m³ = \$6,500 plus 10,000 m³ @ \$0.045 = \$450 **Total charge (exc GST) = \$6,950**

Extract from 2021 – 2031 LTP Consultation Document

RC72/22 **Resolutions**

That Hawke's Bay Regional Council:

1. Receives and considers the *Freshwater Science Charges - Water Holdings HB* staff report.
2. Agrees that the decisions to be made with regard to the previous years' outstanding charges and current years accruing charges are not significant under the criteria contained in Council's adopted Significance and Engagement Policy, and that Council can exercise its discretion and make decisions on this issue without conferring directly with the community or persons likely to have an interest in the decision.
3. To defer collection of current outstanding charges until the end of the current financial year and that all outstanding science charges will be due and liable in total.

Lambert/Taylor

5 for: Lambert, Foley, van Beek, Foss, Taylor

4 against: Williams, Barker, Kirton, Ormsby

CARRIED

Extract from council minutes 31 August 2022

3) Where to from here?

- a) HBRC's own collection processes have to be followed if the system is to maintain integrity in the eyes of all ratepayers;
- b) Failing payment within 120 days steps should be taken to place WHHB into liquidation, or Regional Council should accept the surrender of the consents;
- c) As evidenced by the petition we have presented today there is significant public demand that these monies be paid in full.

Finally, council made the decision to collect payment in full of all science charges in August 2022. Overturning this decision will be of significant public interest when seen against the background of increasing rates bills.

For more information Wise Water Use has posted a [FaQs](#)

PS: As someone who worked in the debt collection industry for 10 years I have yet to see a more clear-cut case for taking expedient action against a debtor. The three directors of WHHB have no excuses for non-payment.

Paul Bailey
Lead advocate, Wise Water Use HB
Wise Water Use

Monday 28th August 2023