

IN THE DISPUTES TRIBUNAL

[2014] NZDT 673

BETWEEN

**AX LIMITED
APPLICANT**

AND

**ZC LIMITED
RESPONDENT**

Date of Order:

27 February 2014

Referee:

Referee Luke

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that AX Limited is liable for the Infrastructure Growth Charge levied by ZC Limited as part of contractual provisions between AX Limited and ZC Limited.

Facts

[1] AX Limited purchased a section at Z Road. The property arose out of a subdivision in 2001. At some point a water meter was installed to the section, at which point ZC Limited started charging a fixed daily fee for wastewater. In 2013 AX Limited wanted water supplied to the property and applied for connection to the ZC Limited water and wastewater network. ZC Limited charged the company (after some negotiation) an Infrastructure Growth Charge (IGC) of \$4,477.50.

[2] AX Limited says it should not have to pay the IGC. AA on behalf of the company says a “financial contribution” was made to the Council in 2001 and the company is now being double charged. He also says that under the terms of the contract with ZC Limited the company can only charge an IGC on new accounts. As the account was opened when the meter was installed, the account is not new.

Issues

[3] Can ZC Limited levy an IGC on AX Limited?

[4] Was an IGC or equivalent contribution made in relation to the property in the past?

Decision / Law

Can ZC Limited levy an IGC on AX Limited?

[5] The issue is governed by the contractual terms between ZC Limited and AX Limited. BB for ZC Limited provided me a copy of those terms. The terms state:

3.4 Charges for other goods and services

Other chargers that we may require you to pay include:

- An infrastructure growth charge for new or existing customers who increase their demand on the water and/or wastewater networks;

[6] I agree with AA that AX Limited is not a new customer where it has had a water meter installed for some time and has been charged a daily fee for wastewater. ZC Limited is entitled to charge from this point and did charge. I do not accept the company can turn

around now and say “we charged by mistake and we want to treat you as a new customer.” It is too late.

[7] The question is then whether AX Limited can be treated as an existing customer who has increased its demand on the wastewater network. AA submitted that in establishing an account with ZC Limited and charging a fee there is a standard residential demand that is calculated and accepted as the demand for that account. He argues that that has not changed with the company now requesting connection to the network. He also argues that the increased demand provision is directed towards commercial activity which can change dramatically, unlike residential use which is reasonably confined.

[8] I do not accept AA’s argument. In real terms the account is going from putting no demand on the network to putting some demand on the network. That is literally an increase. The language in the term says nothing about standard residential demand and when that might be triggered. “*Increase*” is not defined in the contract and an ordinary plain meaning applies. The plain meaning is that zero demand to some demand is an increase.

[9] I find that the terms provide that ZC Limited may levy an IGC. That might be the end of the matter, but BB conceded that ZC Limited did not levy IGC’s where an equivalent contribution had been made in the past.

Was an IGC or equivalent contribution made in relation to the property in the past?

[10] AA provided a letter dated 17 July 2001, which recorded that a “Reserves Contribution” was to be made on the property by the gifting to the Council of a “*Esplanade Reserve*” with a value of \$20,000. AA submitted that this contribution included the then equivalent of the IGC.

[11] BB submitted that at the time of this “*contribution*” Council and Metro Water had separate responsibilities to collect contributions for different purposes. Council might collect a contribution for reserves and stormwater infrastructure but Metro Water collected water and wastewater infrastructure contributions, which were then passed on to ZC Limited.

[12] BB says there was occasionally an agreement along with a specific contribution to Council that it would include a water and wastewater infrastructure component. He says there is no indication the “*Reserves Contribution*” paid by the developer on Z Road in 2001 was partially for water or wastewater. He provided a letter from CC of Auckland Council, which appears to support this view.

[13] I accept BB's view on this. There is no evidence a contribution for water and/or wastewater infrastructure has previously been paid in connection with this property or development.

Conclusion

[14] For the reasons stated above, I find that ZC Limited is entitled under the terms of its contract to levy the charge and there is no basis to conclude that a like levy has been paid in the past.