

01st April 2020

Mark Webb
Director General
Department of Biodiversity, Conservation and Attractions
17 Dick Perry Ave,
Kensington WA 6151

Re: Licence fee determination

Dear Mark,

WIPA has raised concerns on several occasions in regard to the process which has resulted in the fee structure for licensees at Wedge (and Grey) for the term 1 November 2019 to 31 October 2022.

We recall a conversation with you at a meeting on 28 June 2019 in which you stated that DBCA processes would be transparent and clearly show the justification for the licence fee proposals.

At the recent DBCA meeting with the association on 13 March 2020 the issue of licence fee charges, expenditure and proposed budget was again raised but no resolution was achieved to satisfy WIPAs understanding of levels proposed.

WIPA indicated that it was preparing a document to elaborate its understanding of the government guidelines for 'cost recovery' and relating that to what has been presented by DBCA since December last year.

However, our understanding of those guidelines makes it clear that consultation with the relevant receiver of the service to be charged for should occur before being implemented, and the process to establish such charges being robust.

We thank you for the opportunity to have ongoing discussions with the department, but they are still unable to explain to our members the justification of the fee structure based on a simple expenditure/budget table.

Jason suggested the we present our concerns to yourself, so the document is now attached.

We would appreciate your advice as to how to resolve this matter so energy can be redirected to resolve site management matters.

Sincerely,



Brad Glew
President

Wedge Island Protection Association
PO Box 152
North Beach WA 6920

cc: Jason Foster

Attachment: DBCA Licence Fee Approach and WIPA Input to the Process - March 2020

DBCA Licence Fee Approach and WIPA Input to the Process - March 2020

Background

During discussions between DBCA and the shack associations regarding the new licence conditions in the latter part of 2019, DBCA indicated that licence fees would rise significantly to reflect a 'full cost recovery' approach.

The details of how these costs were to be justified were not defined ahead of the agreement to proceed with a new 3 year licence being implemented. This agreement was on the basis that there would be full and transparent consultation on the fee model in early 2020.

Historic Fee Basis and Management by DBCA

Historically, since the Department took over the management of the Reserves in 1995, dedicated resources were engaged to deal with shack settlements and funded in part from the 'rent fee' income through the leases paid into the 'trust account'.

The original fee level was based on:

- projected costs for management over the six year lease term;
- expected costs for site rehabilitation; and
- an allowance to fund potential legal challenges at the expiry of the leases.

Fee increases were CPI based and continued until leases were replaced in 2014 with short term licences.

The original Shack Project Manager based in Perth was appointed but also performed the management role for the Shire of Dandaragan leased shack sites under its jurisdiction until those shacks were removed after the June 2001 expiry date.

A Lancelin based departmental ranger operated from the late 1990s (prior to Indian Ocean Drive opening) and his duties also included overseeing the Wedge and Grey settlements.

In 2011, the then Jurien District Manager declared that three full time staff were funded from the 'trust account' which included two standard ranger positions based at Jurien. Only the original Shack Project Manager position was a dedicated periodic appointed position relating to shack management.

Whilst the shack management function has remained essentially the same for the 25 years of Departmental control, the increased staffing resourcing has become more involved in compliance and policing, without resolving the long term strategic issues of the site use.

Purpose of This Document

This document serves to:

- Discuss the principles of cost recovery as they apply to Wedge
- outline WIPAs view on the broader issue of an equitable and sustainable basis for cost management and expenditure, and
- respond specifically to the opportunity provided by the Executive Director for feedback on the initial Expenditure/Budget table provided by DBCA

Cost Recovery

DBCA has clearly stated that the proposed licence fee increases are to achieve full cost recovery. However, WIPA is concerned that DBCA may be allocating expenses for cost recovery that are not justifiable expenses.

Both the Western Australian state and Commonwealth Governments have policies and guidance material in relation to cost recovery; each must adhere to relevant legislation.

The WA public service is primarily guided by the document titled *Costing and Pricing Government Services: Guidelines for use by agencies in Western Australian Public Sector* (Government of Western Australia, Department of Treasury, June 2015), as supported by the Public Sector Commissioner's Circular 2016-01 titled *Costing and Pricing Government Services*.

While this document does address full cost recovery, it focuses primarily on costing concepts and how agencies should compile and assess their costs. It does not address in detail how to define a service and how costs should or shouldn't be allocated to that service.

The federal government has released a document titled *Australian Government Cost recovery Guidelines* (RMG 304, July 2014). This provides more detailed guidance than the WA government guidelines on cost recovery principles as applied to a government's services, and is an important reference to fill the gaps in the WA guidelines.

The WA Government guidelines provide that:

1. unless approved otherwise, prices should be at levels that reflect the full cost of providing the services;
2. that prices should be "appropriate";
3. there should be adequate process to ensure costs are not over-recovered;
4. fees and charges should be fair and equitable;
5. increased fees must be submitted to the Economic and Expenditure Reform Committee for consideration where a fee/charge:
 - a. increases by greater than CPI to maintain full cost recovery;
 - b. is considered contentious; or
 - c. is new;
6. if a fee or charge is greater than 100% cost recovery, then it is considered a tax, and is subject to review by the Joint Standing Committee on Delegated Legislation;
7. there should be an unambiguous description of the service and/or process used to deliver the service as an essential pre-requisite;
8. cost recovery may be justified on allocative efficiency (resources not allocated inefficiently) and equity (public not paying for services they don't use);
9. the government service should be at a price and quantity outcome as if the service was provided competitively to prevent misallocation of resources

Within the WA Government guidelines, reference is made to the application of the Interpretations Act 1984 s45A where in the case for a fee or charge for a licence, cost recovery can include payment for improving or replacing an existing system, but does not include payment for systems unrelated to that to which the fee/charge relates.

WIPA's reading of the above is that while DBCA may charge a fee (prescribed in the CALM Act), if it wishes the fee to 'allow recovery of expenditure', then it may only do so for components directly relevant to the occupancy of shacks, and then only directly in relation to managing the shacks and other aspects so long as they relate directly to the occupancy of the shacks. It is clear from this clause that while DBCA may manage the reserve as a whole, their fee for shack occupancy can only relate to occupancy (the purpose of the licence). This would exclude for example infrastructure for general public access and amenities, establishment of camp sites or pro rata ranger costs for management of the public.

The Commonwealth Government's guidance material provides that:

1. cost recovery involves the charging of some or all of the efficient costs of a government activity;
2. a process guide for determining and allocating costs to be recovered, underpinned by a cost recovery model;
3. cost recovery is underpinned by three principles that must be applied at all stages, as follows:
 - a. efficiency and effectiveness;
 - b. transparency and accountability; and
 - c. stakeholder engagement;
4. highlights the key considerations in cost recovery as:
 - a. the nature of the activity;
 - b. who might be charged (identifiable individual, organisation, group that receives the service or creates the need for it); and,
 - c. the impact of cost recovery (is it efficient to recover the cost?);
5. distinguishes between:
 - a. fees, which are services to an individual or organisation, and reflect the unit cost of a specific good or service, such as licences, registrations and approvals; and,
 - b. levy's or taxes, which are on services to a group of organisations and individuals (rather than individuals), such as monitoring compliance, investigations and enforcement; and
6. charges should be minimised through efficient implementation of the goods/services to be recovered.

It is clear from the above that there should be significant diligence in assigning costs to be recovered, and that a cost recovery framework/model, in consultation with stakeholders, should be established that:

1. clearly defines the services provided and the range of users who use or benefit from the services, taking into consideration aspects such as public good, natural monopoly and positive externalities;
2. accurately defines and distinguish costs directly and indirectly attributable to the goods or service;
3. clearly defines individual(s)/organisation(s) that want/require/use the service;
4. clearly defines how costs should be allocated between the range of user groups;
5. clearly defines, and accurately and equitably allocates the costs of the goods or service to the appropriate users via fees (for individuals) or levy's (for groups of users);

6. should only allocate the efficient and/or competitively available portion of costs to users, for example;
 - a. not charge users for a service or action that benefits another user or group;
 - b. not charge for components in the public good, or to meet policy considerations in other areas
7. is developed with full and open stakeholder consultation.

The above guidelines outline a framework against which to justify fee increases attributable to cost recovery.

WIPA's View on Equitable And Sustainable Costs

In the interests of long term cooperation, it is WIPA's belief that any concept or agreement in relation to cost recovery needs to have an overarching agreement stating what the intention of the agreement is and what each party is responsible for within that agreement. This provides a basis for then reviewing appropriate costs.

WIPA is aware of the general trend by government to '**cost shift**' where possible as opposed to genuine full cost recovery beyond statutory functions. An example is the increase in the ESL charges through LGA rate notices. The original intent of the ESL was an equitable collection to fund fire fighting and emergency services. However, a sea rescue component is now included but not targeted at the primary user group, rather loaded into an existing collection mechanism.

At Wedge for example, the waste transfer station is not used exclusively by only the recreational shack owners and there are informal arrangements for 'locals' to maintain its opening hours as well as tidiness and cost efficiency. There should be no costs paid for of any cost recovery agreement unless they are agreed in advance of incurring the expenditure.

Cost recovery in its strictest form would have both parties agreeing to what has to be done, DBCA engaging the provider and in the case of on-site works at Wedge, WIPA scrutinising the works and endorsing the payment of invoices.eg tip bin lifts

There is also the matter of '**legacy issues**' being added into the proposed full cost recovery process.

This is where previous decisions taken by government (or lack of decision), inaction or poor practice have subsequently generated increased costs for which DBCA is seeking funding from the current licensees. Examples include;

- Entry road construction (refer to specific budget item comments below)
- Shack removal and rehabilitation costs (refer to specific budget item comments below)

WIPA's Response to The Initial DBCA Expenditure/Budget table

This document outlines WIPAs response to the Expenditure/Budget table provided by DBCA to explain the Licence fee increases applicable to the 3 year period 1 November 2019 to 31 October 2022 and to satisfy the transparency commitment made by the Director General.

Documents relating to the Licence refer to licence fees which are to reflect actual costs.

- Fact Sheet #7 states the State Government expects that shack licensees will cover all management costs associated with their occupation and consequential impacts on these reserves.
- Fact Sheet #9 also identifies fee levels for the 3 years based on current budget estimates.
- In the Licence Conditions, Schedule 2, Definitions, it states Licence cost means the costs associated with the Licensee's use of the Shack, Occupancy Area and the Reserve and includes but not limited to administration costs, operational costs, waste removal costs associated with managing Shacks, Shack users, Shack licensees and anticipated removal costs of the Shack, its associated structures and site remediation.

Also Section 2.2 a) states, Any costs incurred by the Director General associated with the management of Shacks or Licensees will form part of the assessment of the Licence cost payable by the Licensee.

However, the process at the operational level to define, track and attribute actual specific costs as outlined in the above documents is not clear.

The current expenditure figures provided by DBCA are shown at Appendix 1

WIPA understands the figures relate to a financial year, not the licence year.

WIPA comments and clarifications sought follow the headings and explanations listed in the Attachment 1 table and baselines are from verbal advice from DBCA staff.

Salaries (YTD \$296,038, Budget 2019/20 \$435,437)

Figures provided by DBCA have been defined as 4 x Full Time Equivalent (FTE) staff performing tasks specific to the management of the shack communities and compliance with licence conditions, not necessarily of dedicated staff performing the relevant management functions.

It is generally accepted that costs of staff appointed for shack program management, through direct engagement and site visitation have valid cost implications. However all operational staff, including shack specific positions are required to undertake fire services tasks throughout the district and beyond and therefore salary associated with those functions should not be assigned to shack management function. Similarly, staff development and general management meetings should also not have costs assigned to the shack management function.

What is not clear is the role of rangers undertaking what appears to be anything other than their normal duties when visiting Wedge. There seem to be a standard circuit which extends to the north into the Wanagarren Nature Reserve, drive through the settlement, around South Bay and 'check in' at the tip. Little interaction is otherwise observed. The role of Aboriginal rangers is also unclear as some have been observed at the site.

Physically being at Wedge is not justification for claiming salary costs

WIPA requests advice of all positions being paid out of the trust fund including full time, part time and which positions have a percentage of their salary paid from the fund and what their role is

Access to the Job Description Forms for relevant staff involved in performing specific tasks assigned to the Wedge recreational shacks is also requested. We need time sheets or their cost allocation model.

We also need to know the classification level of each of the positions for review to make sure they are appropriate for the tasks required.

How can we expect to fund on behalf of our members 4 FTE when we haven't even agreed the scope of works required to be undertaken?

Fleet (YTD \$21,495, Budget 2019/20 \$50,563)

We need a record of trips undertaken in the last year from the log books kept by every Govt vehicle that is being charged against the trust account. Government fleet costs of the \$50k proposed budget probably represents at least 3 vehicles. Does DBCA need 3+ vehicles to service Wedge and Grey?

We understand there is now a Wedge and Grey specific vehicle within the fleet. How is this being used and is its cost being 100% funded from the trust account?

Regular ranger visits to Wedge appear to have a set program and way points, not specific to the management of the shacks or contained within the settlement area. Visits to KMAC and pro fishers are not related to recreational licensees therefore should not be included.

Staff costs (YTD \$5936, Budget 2019/20 \$50800)

How are costs such as travel, accommodation and meeting expenses attributed when for example District staff attend meetings in Perth but the purpose covers a range of DBCA or other business?

It would be expected that professional staff development costs would be excluded and travel for multiple purposes not be assigned as shack management expenditure.

Professional services (YTD \$27, Budget 2019/20 \$80,000)

Presumably the budget figure is to engage a water consultancy and a coastal engineer.

The water consultancy RFQ is understood to be more about evidence of ground water contamination from existing septic systems and future decisions on prescribed grey and black water management.

The coastal engineering consultancy is understood to monitor shacks within the designated 'coastal zone' high risk area and define removal timeframes.

It is expected that the associations will be involved, given expertise available, in the development of the scope for the RFQs and agreement with the costing proposals.

This would be consistent with WIPAs belief of how required work and costing agreements should be developed under a full cost recovery regime.

If DBCA want to seek other specific professional advice then similar discussion and agreement would be expected that confirm the requirement for the professional services based on need, priority, scope and costing.

The agreement referred to above should say that no professional services are to be engaged (assuming we both want them) unless both parties agree.

WIPA would not expect any further professional Asbestos management advice under this category, but testing and removal may be required and be done by licensed contractors. This would be shown under the Services and Contracts heading.

The DBCA Asbestos Register was produced to identify shacks suspected of containing ACM. External inspections were undertaken on all shack sites and some were tested to confirm presence of asbestos. This register should be consulted prior to any demolition action and unresolved ACM presence should be clarified before resorting to unnecessary demolition and site remediation costs.

Services and contracts (YTD \$5,538, Budget 2019/20 \$42,000)

This heading presumably should include all ongoing non-professional services and contracts, including asbestos removal and testing but excluding waste management which has its own heading

What activities is the estimated \$42,000 budget related to?

If this category contains the grading of the main entry and eastern tracks at Wedge then this is an example of poor definition of scope. What is the purpose and how was the standard of work agreed?

The result on both occasions has created another problem which has and will be encountered again this winter.

If the purpose was to allow better emergency traffic movement by filling holes, then it may have achieved the objective during the dry periods, but in winter these track become canals. Rather than crowning the tracks, they have been lowered each time, are flat and the shoulders are higher which traps the water.

This means more funds will be needed to rectify the work and WIPA cannot support a repeat of this waste.

Waste removal (YTD \$29,387, Budget 2019/20 \$230,000?)

Waste removal is now an item in its own right as expected. Originally amalgamated with Maintenance but the budget has not been amended between the two areas.

As outlined in the 'Purpose of this document' section (page 1) the Wedge waste transfer station is not used exclusively by only the recreational shack owners and there are informal arrangements for 'locals' to maintain its opening hours as well as tidiness and cost efficiency practices applied.

Due to the isolated location there has been evidence or observation of commercial dumping, DBCA giving approval for non-shack owners using the tip, day visitors, even people from neighbouring towns dumping due to costs at their local tip.

A cost recovery agreement needs to be clearly defined and costs agreed in advance of incurring ad hoc expenditure.

If we are to cover the costs of waste we need to be part of the proposed solution and not simply have DBCA determine how it will work and for recreational licensee to simply be liable for the costs.

The licence conditions identify waste disposal as a component of the licence fee. However that cost should not be 100 percent to licensees.

DBCA need to explain the projected annual cost based on the fixed contract and other expected periodic clean ups.

Maintenance (YTD \$35,185, Budget 2019/20 \$?)

Some of the maintenance and other activities mentioned in the explanation notes are news to WIPA and the projected annual cost needs to be defined.

Postage and consumables (YTD \$5,455, Budget 2019/20 \$3,800)

This should be easy to quantify and give specific detail. Expenditure increase is proportionally significant from the previous period

Shack removal (YTD \$0, Budget 2019/20 \$400,000)

The proposed expenditure WIPA assumes is based on a previous statement that DBCA was budgeting for \$40k per shack for shack removal and site restoration. Presumably this reflects 10 more shacks being removed in 2020.

WIPA cannot agree with this approach as it is regarded as a 'legacy issue' and has previously objected to the stated intention of DBCA to automatically regard all such sites as having asbestos contamination and requiring the highest level of soil remediation.

Shack removal may be related to;

- a) previously abandoned shacks that are now in DBCA possession,
- b) shacks which have been relinquished by the former licensee under the offer of not having to pay for the costs of removal or
- c) sites for which new licences have been issued, but in the case of those which are known by DBCA to potentially be within the Wedge Aboriginal heritage interest area, were approved without the licensee being informed of that possibility.

In relation to a), every shack owner has a licence which has a removal clause 3.3 (b).

Current licensees are not liable for the removal of shacks left by others. If DBCA is negligent in the way it conducts its business with licensees it is not for other licensees to cover the liability.

Similarly with scenario b), if DBCA has chosen not to enact clause 3.3 (b), the subsequent cost should not be borne by remaining licensees.

For category c) cases, DBCA should carry the responsibility for subsequent cost. The licensee has acted in good faith in accepting licence conditions, but information relating to their site has been withheld by DBCA which impacts on legal responsibility under contract law.

Additionally in category c) cases, these sites would most likely become transferred land under the SWNT settlement. ILUA agreement (Annexure J) define the process agreed which is based in land being transferred on an 'as is' basis. The agreement makes it clear that the land may be contaminated, not fit for purpose or have non-compliant structures thereon.

Therefore the implied need to clear shacks and remediate such sites is not necessary.

WIPA requires DBCA to fully document what is intended to be the nature of activity in this cost group and be prepared to discuss further with WIPA.

Road construction (YTD \$0, Budget 2019/20 \$300,000)

The proposed work at Wedge is another legacy issue.

MRWA construction of the spur road from Indian Ocean Drive in 2010 was intended to proceed into the area now proposed in the budget by DBCA during the current licence term.

Funding was included in the then project cost as part of the 'offset requirement'. DBCA (then CALM) relinquished that opportunity and now expects the shack licensees to fund it.

Again, unless this forms part of some heads of agreement then we should not have any liability. Shack owners are only part users and we are generally happy with tracks. If for some reason DBCA wants to improve the road network then it is up to them to cover the costs.

The stated gravel upgrade of the main entry track from end of spur road to helipad area at Wedge to a standard that minimises DBCA maintenance costs is not required by licensees. The track may need holes repaired as minimal maintenance has been allowed over the last decade, but the DBCA position is that as we use the road therefore we pay.

This is not acceptable to WIPA as DBCA is responsible for providing 2WD access for the general public as the spur road has now been open for ten years.

Conclusion

There is a need to have an annual agreement in some form of written document about who is responsible for what and some general principles underpinning such agreement.

DBCA seem to have no understanding at all about the principles and application of cost recovery. It is NOT simply 'we are planning on doing X and therefore we need \$Y.

If in fact the projected licence fee increases have been established through the relevant government guideline process, which currently WIPA has difficulty in accepting since no consultation has occurred, then release of that information would assist in understanding.

WIPA assumes that there must have been some endorsement through Treasury for fee levels to be published and that a robust transparent process should have been applied.

Attachment 1

Wedge and Grey Management Expenditure. Current as at 31 December 2019

Expenditure	YTD 30/10/2019	Budget 2019/20
Salaries	204,870	435,437
Fleet	15,066	50,653
Staff costs	4,018	50,800
Professional services	27	80,000
Services and contracts	3,291	42,000
Waste removal and maintenance	25,559	230,000
Postage and consumables	3,172	3,800
Shack removal		400,000
Road construction		300,000
Total	256,003	1,592,726

Expenditure	YTD 31/12/2019	Budget 2019/20
Salaries	296,038	435,437
Fleet	21,495	50,653
Staff costs	5,936	50,800
Professional services	27	80,000
Services and contracts	5,538	42,000
Waste removal	29,387	230,000
Maintenance	35,185	
Postage and consumables	5,455	3,800
Shack removal		400,000
Road construction		300,000
Total	399,061	1,592,726

Staff costs – travel/accommodation, meeting expenses

Services and contracts – asbestos sampling, coastal engineer, signage and monitoring.

Waste removal and maintenance – Materials for boarding up / general repairs (tip and gun club), increase due to hosting charges for staff in Jurien office, Tip sampling for the asbestos removal increased expenditure.

Professional services – consultants engaged e.g. – water sampling