

**AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD
IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON WEDNESDAY, 14 AUGUST 2002, COMMENCING AT 9.00 AM.**

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1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) and (7A) of the Local Government Official Information Act and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the item is a minor matter; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting; and
- (iii) the Committee resolves to deal with the item.

No resolution, decision, or recommendation may be made in respect of the item except to refer the item to a subsequent meeting for further discussion.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



3 CONFIRMATION OF MINUTES

Ordinary - Wednesday, 24 July 2002

RECOMMENDATION

That the minutes of the Ordinary Meeting of the Hearings Committee held on Wednesday, 24 July 2002, as circulated, be taken as read and now be confirmed.



4 **OBJECTION UNDER SECTION 357 OF THE RESOURCE MANAGEMENT ACT 1991 BY 8 WALLACE ROAD LIMITED IN RESPECT OF ADMINISTRATIVE CHARGES ARISING FROM THE PROCESSING OF AN APPLICATION TO ESTABLISH 31 RESIDENTIAL UNITS AT 8 WALLACE ROAD, RANUI**

MASSEY WARD

NB This report sets out the advice of staff to the Hearings Committee in respect of the Section 357 objection. It is not the decision of Council. The decision will be made after consideration of the objection by the Hearings Committee.

INTRODUCTION AND BACKGROUND

The “objector” (8 Wallace Road Limited) applied for a resource consent to develop 31 residential units on land at 8 Wallace Road, Ranui.

The resource consent application was publicly notified and a hearing was convened to consider the proposal and the submissions that were lodged. After hearing all the evidence and other relevant matters, the Committee refused consent. On completion of the consent processing, the Council sent an invoice to the objector seeking full payment of the costs that had been incurred. The invoice was for \$13,716.37.

A1-A2 The objector subsequently objected to the administrative charges, under section 357 of the Resource Management Act. A copy of the objection is attached at pages A1 to A2.

Section 357(7) provides that after considering an objection, the consent authority may dismiss the objection or uphold it either partly or wholly.

STATUTORY REQUIREMENTS

A3-A6 Two sections of the Resource Management Act are relevant to the current objection, these being section 36 (‘Administrative charges’) and section 357 (‘Objections to certain decisions and requirements of consent authorities’). Copies of both of these sections are attached to this report for the information of the Committee is attached at pages A3 to A6.

Section 357(4) states as follows:

“Any person who has been required by a local authority to pay an additional charge under Section 36(3) shall have a right of objection to the local authority in respect of that requirement.”

Section 36(3) states that:

“Where a charge fixed in accordance with subsection (1) is, in any particular case, inadequate to enable a local authority to recover its actual and reasonable costs in respect of the matter concerned, the local authority may require the person who is liable to pay the charge, to also pay an additional charge to the local authority.”

Section 36 establishes two distinct types of administrative charges. Firstly, subsection (1) provides for ‘fixed charges’ which are those charges comprised within the published schedule of charges that the Council has adopted following a process of public consultation conducted under the provisions of the Local Government Act 1974. Secondly, subsection (3) provides for the Council to recover any ‘additional charges’ incurred, over and above the fixed charges that are required to be paid when an application for resource consent is lodged.

In this instance, the fixed charge is the deposit required for the lodgement of a notified application for resource consent. It is understood that this fee deposit has been paid when the application was lodged, and is not in dispute. The objection relates to the additional charge of \$13,716.37.

DISCUSSION

There does not appear to be any argument as to whether the administrative charge represents the Council's actual costs. The objector has been provided with a cost breakdown. They have not specifically challenged the amount invoiced on the basis that they have been charged for costs that were not actually incurred by the Council in the processing of the application.

Rather, the issue to be determined by the Committee is essentially whether the administrative charges that have been invoiced in relation to the resource consent application were reasonable in the circumstances. The objector claims that they are excessive, and not reasonable in the particular circumstances of this case.

The objector's reluctance to pay the invoice for the processing cost appears to be based on an assertion that they were misled by the professional advice that was provided by Council staff. The objector has contended that the reporting planner did not alert them at any time to problems with the application and, as such, they developed a degree of confidence that consent would be granted.

The objector's claim of staff support and encouragement for the proposal is not disputed. However, it is considered that this is irrelevant, and cannot be seen as valid justification for a subsidy of the processing costs that have been incurred by the Council.

This was a complex notified application that attracted 123 submissions in opposition. There can be no guarantee that consent will be granted in any circumstances, but particularly in a case of this nature. In this instance the Committee decided that consent should be refused. This is entirely the prerogative of the Committee, despite it being "at odds" with the reporting planner's recommendation. The objector is an experienced developer and would be well aware of the possibility of consent being refused. There is an element of risk associated with every resource consent application, and fees are required to be paid irrespective of the outcome.

The processing costs are simply the sum of the members meeting allowances, together with the costs of the administrative support, and staff time expended by technical staff. If the Committee were to uphold the objection to the extent that the objector was not required to pay the full processing costs, then the shortfall would need to be met by ratepayers. Such a situation would be inconsistent with the 100% cost recovery policy that the Council has adopted in relation to resource consent processing. It is considered that there is no compelling reason in this instance to depart from the Council's policy. The Council's Schedule of Fees and Charges makes it clear that all additional processing costs that are incurred by the Council will be recovered.

It is noted that this particular hearing should be focused on the issue of the administrative charges that were invoiced to the objector. The hearing is not an opportunity for the objector to re-litigate the merits of the development proposal for which resource consent was sought. The objector lodged an appeal in respect of the decision to refuse consent, but this appeal was subsequently withdrawn. That was the appropriate recourse available to the objector if they were dissatisfied with the decision, and they elected not to pursue it.

Overall, it is considered that the total charge of \$20,086.37 (the outstanding additional charges, together with the deposit paid at the time the application was lodged) is not unreasonable in view of the complexity and scale of the application, and the technical inputs that were required. Although the outcome from the objector's point of view was not favourable, this does not negate the need to recover the Council's costs. In addition, it is considered that the quantum of the charges would compare favourably with those of other territorial local authorities for the processing of similar applications.

RECOMMENDATIONS

That pursuant to Section 357 of the Resource Management Act 1991, subject to additional or contrary information being presented at the hearing, the objection made by 8 Wallace Road Limited be **dismissed** in respect of a request for the payment of fees arising from the processing of an application to establish 31 residential units on land situated at 8 Wallace Road, Ranui, for the following reasons:

1. The administrative charge invoiced in relation to the resource consent application represents the actual and reasonable costs incurred by the Council in processing the application.
2. The Council has a clear policy that requires the recovery of 100% of the costs incurred by it when processing resource consent applications.
3. There is no compelling reason why the administrative charge should be subsidised in this instance.

Report prepared by: Philip Brown, Service Manager: Resource Management & Building.

