

**AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD
IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON WEDNESDAY, 17 APRIL 2002, COMMENCING AT 9.30 AM.**

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1	APOLOGIES	1
2	URGENT BUSINESS	1
3	CONFIRMATION OF MINUTES	1
4	OBJECTION UNDER SECTION 357 OF THE RESOURCE MANAGEMENT ACT 1991 BY HAMPSTEAD ORATIA LIMITED IN RESPECT OF ADMINISTRATIVE CHARGES ARISING FROM THE PROCESSING OF A CONSENT TO SUBDIVIDE LAND AT 9 PHILLIP AVENUE, GLEN EDEN	2

**AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD
IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON WEDNESDAY, 17 APRIL 2002, COMMENCING AT 9.30 AM.**

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 - Thursday, 21 March 2002

RECOMMENDATION

That the minutes of the Ordinary Meeting of the Hearings Committee held on Thursday, 21 March 2002, as circulated, be taken as read and now be confirmed.



4 **OBJECTION UNDER SECTION 357 OF THE RESOURCE MANAGEMENT ACT 1991 BY HAMPSTEAD ORATIA LIMITED IN RESPECT OF ADMINISTRATIVE CHARGES ARISING FROM THE PROCESSING OF A CONSENT TO SUBDIVIDE LAND AT 9 PHILLIP AVENUE, GLEN EDEN**

NEW LYNN WARD

N.B. 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 consent holder, Hampstead Oratia Limited, has obtained a subdivision consent in relation to land at 9 Phillip Avenue, Glen Eden. The civil works associated with the subdivision have been completed, and houses are soon to be constructed on those sections that have been sold.

The subdivision consent application was publicly notified and a hearing was convened to consider the proposal and the submissions that were lodged. Once the processing of the consent was complete, the Council sent an invoice to the consent holder seeking full payment of the costs that had been incurred. The invoice was for \$16,760.50.

A1-A5 The consent holder subsequently objected to the administrative charges, under Section 357 of the Act. A copy of the objection is attached at pages A1 to A5.

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

A6-A9 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 A6-A9.

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 \$16,760.50.

DISCUSSION

There does not seem to be any argument as to whether the administrative charge represents the Council's actual costs. The consent holder 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 were reasonable in the circumstances. The consent holder claims that they were not reasonable.

The primary concern raised in the objection relates to the costs incurred by the Council in the preparation of the planning report. The consent holder's objection to paying this part of the invoice stems from an assertion that the reporting planner made "errors of interpretation and judgement in the planning report", and further that the "planning report was misguided and wrong in its Resource Management Act advice".

It is noted that the objection also raises more general issues relating to the overall amount of the invoice, and suggests that the Committee charge is excessive.

In respect of the Committee charge, these costs are simply the sum of the Elected Members' meeting allowances, together with the costs of the administrative support. If the Committee were to uphold the objection to the extent that the consent holder was not required to pay the hearing costs, then such costs 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 to depart from the policy. The Council's Schedule of Fees and Charges clearly states that hearings (for staff, elected members, commissioner or consultant costs) will be "charged at cost".

The consent holder's reluctance to pay the invoice for the reporting planner's cost appears to be based on an assertion that the professional advice provided was wrong at law. The consent holder has contended that the reporting planner advised the Committee that consent could not be granted, on the basis that there was a jurisdictional issue.

However, a review of the report prepared by the Council's consultant planner reveals that this is not the case. In fact the report clearly states, on more than one occasion, that "jurisdiction to grant consent has been established". There is no suggestion in the report that consent cannot be granted due to some jurisdictional barrier. Due to the particular circumstances of the case, which included the existence of an unresolved appeal to the zoning of the land, the planner recommended that the consent be refused. There is nothing in the approach taken in the report that can be identified as being "wrong in its Resource Management Act advice".

It has also been suggested that the advice of the planner was wrong in that the format of the unresolved appeal was flawed and, as such, there was effectively no appeal. It is hard to view this as a credible argument, given that the Environment Court routinely allow lay appellants to remedy flaws in official documents after service has occurred and there is nothing to suggest that the same approach would not have happened in this case.

Furthermore, the consent holder has suggested that legal representation would not have been necessary at the hearing if the recommendation had not been negative. The extent of legal or technical assistance that an applicant deems necessary at a hearing is entirely the decision of that applicant, and should not be based on the planner's recommendation. This particular application was a substantial and complex notified subdivision consent application, which attracted 140 submissions, and was complicated by concurrent district plan variation processes. In such circumstances, it is considered that legal representation and comprehensive planning evidence would have been prudent, notwithstanding the recommendation of the reporting planner.

Overall, it is considered that the total charge of \$16,760.50 is not unreasonable in view of the complexity and scale of the application, and the technical inputs that were required. The quantum of the charges would be comparable 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 Hampstead Oratia Limited be dismissed in respect of a request for the payment of fees arising from an application for subdivision consent relating to land situated at 9 Phillip Avenue, Glen Eden, for the following reasons:

1. The administrative charge invoiced in relation to the subdivision consent 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.

