



NOTICE OF MEETING

HEARINGS COMMITTEE

I hereby give notice that an Ordinary Meeting of the Hearings Committee will be held on:-

DATE: **Thursday, 16 October 2003** **TIME:** **9.00 am**

VENUE: **Civic Centre, 6 Waipareira Avenue, Lincoln, Waitakere City**

to consider the business as set out herein and to take any necessary action connected therewith.

9 October 2003

Owena Schuster
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8864

MEMBERSHIP:

Councillors	GE	Nash, JP (Chairperson)
	DA	Yates, JP (Deputy Chairperson)
	DQ	Battersby, JP
	BA	Brady, JP
	PA	Hulse
	VS	Neeson, JP

Ward Representative

Mr RE Taylor (Waitakere Community Board)

Alternate Representative

Ms DJ Goodley (Waitakere Community Board)

(Quorum 4 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

WAITAKERE CITY COUNCIL



AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD
IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON THURSDAY, 16 OCTOBER 2003 COMMENCING AT 9.00 AM.

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**AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD
IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON THURSDAY, 16 OCTOBER 2003 COMMENCING AT 9.00 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, 11 September 2003

RECOMMENDATION

That the minutes of the Ordinary Meeting of the Hearings Committee held on Thursday, 11 September 2003, as circulated, be taken as read and now be confirmed.



4 OBJECTION UNDER SECTION 357 OF THE RESOURCE MANAGEMENT ACT 1991 BY JUDERON FAMILY TRUSTS IN RESPECT OF AN APPLICATION FOR SUBDIVISION CONSENT AT 23 MUDGEWAYS ROAD, BIRDWOOD

WAITAKERE WARD

N.B. This report sets out the advice of staff to the Hearings Committee in respect of a 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

A1 The objector, Juderon Family Trusts, lodged an application for subdivision consent in relation to the development of land at 23 Mudgeways Road, Birdwood. The subdivision sought to develop the land into five residential lots. A plan of the subdivision is attached at page A1.

A2-A10 The application was processed on a non-notified basis by staff acting under delegated authority. Consent was granted to the application on 20 December 2002, subject to conditions. A full set of the conditions of consent, as attached at pages A2 to A10.

Juderon Family Trusts lodged an objection to the subdivision consent (RMA 20021908) seeking the modification of a number of the conditions. While several of these issues have been resolved to the satisfaction of the objector, two of the conditions of consent remain subject to the objection. These issues have been referred to the Committee for consideration and determination.

A11-A17 A copy of the amended objection, dealing with the two outstanding issues, as attached at pages A11 to A17.

STATUTORY REQUIREMENTS

The relevant provisions of the Resource Management Act are comprised in Section 357 ('Objections to Certain Decisions and Requirements of Consent Authorities').

Section 357 allows consent holders to lodge objections to any conditions that are imposed on a non-notified resource consent. Objections of this nature are generally considered and determined by staff acting under delegated authority. However, if the staff's response to the Section 357 objection is not accepted by the consent holder, the matter is referred to the Hearings Committee for determination.

Section 357(7) provides that after considering an objection, the consent authority may dismiss the objection or uphold it either partly or wholly. If the person who lodged the objection is dissatisfied with the consent authority's decision, they have the right of appeal to the Environment Court.

BACKGROUND

The objector is in the process of subdividing a 4.6 hectare parcel of land into five lifestyle blocks ranging between 6000m² and 1.56 hectares in area.

There are no outstanding Environment Court references (appeals) that challenge development that is in accordance with the Birdwood Structure Plan. This has paved the way for landowners to lodge applications for subdivision consent that coincide with the development opportunities that arise from the Structure Plan. The objector's subdivision proposal is one of the first to receive a subdivision consent under the provisions of the Birdwood Structure Plan.

Subdivision in the Birdwood Structure Plan area will give rise to a particular range of environmental effects. The Council has formulated various conditions to mitigate each of these anticipated effects. As the current development proposal is likely to raise similar issues to future subdivision consent applications in the Birdwood Structure Plan area, any decision in relation to the current objection may have implications for the nature of conditions that would be imposed on future applications that are processed by the Council. The Committee should be aware that their decision in respect of the objection is likely to set a precedent.

DISCUSSION

The objection relates to two conditions imposed on the subdivision consent, both of which seek the payment of financial contributions. Condition FC5 requires a contribution for the upgrading of roads, and condition FC6 requires a financial contribution for reserves purposes.

A discussion and recommended determination in respect of each of these aspects of the objection is set out below:

Condition FC5

Condition FC5 states as follows:

"Pay to the Council pursuant to Section 407 of the Act the sum of \$20,000 (being \$5,000 per additional lot, inclusive of GST at 12.5%) towards the cost of road improvements such sum being not more than half the estimated cost thereof."

A18-A19

The calculations used to determine the extent of the contribution are attached at pages A18 to A19.

It is noted that the developers' proportion of the upgrading contribution has been capped at 20% of the total cost. It is considered that the Council has adopted a fairly generous approach, in setting developers' maximum contribution at this level. Arguably, a higher proportion of total cost could have been justified. In addition, it is also noted that all the contributions have been rounded down to favour the developer.

Financial contributions that are taken specifically to avoid, remedy or mitigate adverse effects on the environment. In adopting the Birdwood Structure Plan, the Environmental Management Committee anticipated that financial contributions for road upgrading would be required in order to mitigate the effects of increased development. When referring to roading constraints in its decision notice, the Committee noted that:

"It is likely that an increase in residential development in the structure plan area will require some road upgrading. However, it is considered that this can be addressed at the time of subdivision and suitable financial contributions made by landowners seeking subdivision."

For these reasons, it is considered that condition FC5 imposes a financial contribution that is fair and reasonable. The condition should remain without alteration.

Condition FC6

Condition FC6 states as follows:

"Pay to the Council a financial contribution equal to 6% (plus GST at 12.5%) of Quotable Value market values to be obtained for Lots 1, 2, 3 and 5 as of the date of issue of this subdivision consent for reserve purposes pursuant to Section 407 of the Act for the allotments shown on the plan. Pay also Quotable Value New Zealand Ltd costs for obtaining the valuation at the time of application for approval under section 223 of the Resource Management Act."

The objector has sought that the reserve contribution be waived or considerably reduced, on the basis of a number of matters set out in the objection.

The condition imposes a financial contribution for reserve purposes, equivalent to 6% of the value of each additional lot that is created by way of subdivision of the site. The financial contribution comprises a cash payment only as there is no land within the subdivision that is to be vested with the Council as recreation reserve.

It is noted that the financial contribution provisions of the Council's District Plan are not yet operative. As such, the Council is forced to rely on the transitional provisions contained within section 407 of the Resource Management Act in order to impose a financial contribution for acquiring and/or developing reserves. Section 407 provides Council with a mandate to require a financial contribution under relevant provisions of the Local Government Act 1974, as if those provisions were still law.

It is important to recognise that the Council does not need to demonstrate a rational nexus between the demand for reserves and any particular subdivision of land in order to impose a reserve contribution. This principle has been established through a line of case law involving the Council and Housing New Zealand that addressed the issue of reserve contributions. Despite this, it is considered that clear justification exists for the quantum of contribution that has been sought in this instance, on the basis of the demands that would arise as a result of the subdivision of the objector's land.

The reserve contribution that has been imposed on the subdivision consent has been assessed in a manner that is consistent with Council policy. In particular, the Council's Parks Strategy (adopted April 1999) and the Reserves Standards Report (September 2000) are relevant in determining the quantum of the reserve contribution. These policy documents highlight an undersupply of reserve land in the wider Birdwood and Massey area, both in terms of quantity and quality.

Waitakere City has been divided into nine catchments for the purposes of assessing and collecting reserve contributions. The objector's site falls within Catchment 3 (Paremuka), which includes the suburbs of Ranui, Swanson, Sturges, Birdwood, and the western parts of Massey and Henderson. The geographical extent of each of the catchments has been derived through consideration of logical physical boundaries that provide a disincentive to movement beyond the local area - such as roads, streams and the North Auckland railway line. When the Council receives a reserve contribution, it spends 60% of the money within the particular catchment from which it was taken and the remaining 40% is used for Citywide parks acquisition and development.

In considering the appropriate level of reserve contribution to impose on subdivision, the Council needs to have regard to a number of factors, including the existing provision of local reserves in terms of quantity and quality, the anticipated demands from the proposed development, and future population growth in the catchment. In the Paremuka catchment, there are a number of reasons why it is appropriate to levy the maximum financial contribution for reserve purposes.

The Parks Strategy and the Reserves Standards Report both identify Birdwood and a number of other suburbs within the Paremuka catchment as being poorly served in terms of the quality and extent of reserves.

For example, the Parks Strategy states that parts of Massey have poor access to parks, and that Massey suffers from a significant lack of quality parks. In addition, the Strategy notes that the Paremuka catchment contains a number of growth areas that will be subject to substantial population growth between now and 2021, including Birdwood, Ranui and Sturges Road. Because these demand factors exist in the catchment, the Council would generally impose a reserve contribution at the maximum rate of 6%.

The Council's Reserves Standards Report also points out significant deficiencies in the ability of existing reserves in the Paremuka catchment to cater for growth related demand. In particular, the Report has identified that Swanson, Ranui and the Sturges Road area require the greatest area of additional parkland in the City, in order to meet an acceptable standard of 1.0 hectare of reserve per 1000 people.

Furthermore, it is noted that the Council would be entitled under section 285 of the Local Government Act 1974 to levy reserve contributions at a rate of up to 7¹/₂%. The Council has chosen to charge reserve contributions at a rate that is less than the maximum possible under the applicable legislation. It is considered that this indicates that the Council has assessed its needs in terms of revenue required to achieve a desired service level, rather than simply requiring the maximum level of contribution on an arbitrary basis.

It is also considered that there is no valid reason to reduce the reserve contribution on the basis of landscaping and ecological enhancement planting that will be undertaken by the objector. Reserve contributions are required for the acquisition and development of reserves. Planting and landscaping in new subdivisions does not reduce demand for reserves, and it is therefore considered that it is not appropriate to give a reserve contribution credit for any landscaping that is not provided on a recreation reserve.

Overall, it is considered that the financial contribution has been calculated and imposed appropriately, and the quantum fairly relates to the mitigation of effects that are likely to arise as a result of the subdivision proceeding.

CONCLUSION

A number of the issues raised in the section 357 objection have been resolved through negotiation between staff and the objector.

However, two aspects of the objection remain outstanding and require a decision. The conditions that require a determination are FC5 and FC6. For the reasons set out in relation to each matter, it is concluded that the conditions are appropriate and should remain unchanged.

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 Juderon Family Trusts **be dismissed** in respect of a request for the amendment of two conditions of subdivision consent (RMA 20021908) in relation to land situated at 23 Mudgeways Road, Birdwood, for the following reason:

1. The conditions imposed on the subdivision consent are considered to be fair and reasonable, and are necessary to avoid, remedy and mitigate potential adverse environmental effects.

Report prepared by: Philip Brown, Group Manager: Planning & Community Services.

