

## NOTICE OF HEARING

# HEARING BY COMMISSIONERS

I hereby give notice that a Hearing by Commissioners will be held on:-

**DATE:**        **Monday,        28 September 2009**        **TIME:**        **9.30 am**

**VENUE:**        **Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere**

to consider an objection under Section 357B of the Resource Management Act 1991 in respect to fees associated with Resource Consent application LUC 2007-887 at 99 Parrs Cross Road, Oratia and to take any necessary action connected therewith.



18 September 2009

Maea Petherick  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8104

### **MEMBERSHIP:**

Commissioners: Cr VS Neeson, JP  
Cr DQ Battersby, QSM,JP  
Cr LA Cooper, JP

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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.)

**AGENDA FOR A HEARING BY COMMISSIONERS TO BE HELD AT WAITAKERE CENTRAL,  
6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON MONDAY,  
28 SEPTEMBER 2009, COMMENCING AT 9.30 AM**

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**AGENDA FOR A HEARING BY COMMISSIONERS TO BE HELD AT WAITAKERE CENTRAL,  
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**1 OBJECTION UNDER SECTION 357B OF THE RESOURCE MANAGEMENT ACT 1991  
BY ARTISAN INVESTMENTS LIMITED IN RESPECT TO FEES ASSOCIATED WITH  
A RESOURCE CONSENT APPLICATION LUC 2007-887 AT 99 PARRS CROSS  
ROAD, ORATIA**

**Waitakere Ward**

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

**INTRODUCTION**

*A1-A16* The objector Artisan Investments Limited ('Artisan') lodged an application for a retrospective resource consent for earthworks. These earthworks were undertaken to construct an area of impermeable surface at 99 Parrs Cross Road. This is the site upon which a 'Farmers Market' is held every Saturday. The application also sought resource consent for a grape packing shed. A copy of the approved resource consent is attached at pages A1 to A16.

The application was received by the Waitakere City Council (Council) on 24 May 2007. The application was assessed by Council officers and resource consent was granted on 13 August 2007.

Council received the Section 357B objection to the fees on 27 November 2007. Correspondence has been exchanged throughout 2008 and the first part of 2009, without achieving a resolution of the objection. Artisan requested a hearing of this objection on 7 July 2009.

**STATUTORY REQUIREMENTS**

*A17-A19* The relevant provisions of the Resource Management Act 1991 are contained in Sections 357A-D (right of objection in relation to imposition of additional charges or recovery of costs). A copy of these sections of the Resource Management Act 1991, are attached at pages A17 to A19 for the information of the Commissioners. The key elements of these sections are explained below.

Section 357B allows the applicant to lodge an objection against the fees imposed by Council under Section 36(3) for the processing of a resource consent application.

Objections under Section 357B are generally considered and determined by Council officers acting under delegated authority. However, the applicant indicated that they wished for the matter to be referred to the Hearing Commissioners for determination.

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

## BACKGROUND

A20-A24 Copies of the original objection and the subsequent letter (dated 7 July 2009) from the objector seeking a hearing are attached at pages at A20 to A24.

### Condition DE2(iii)

Council's Environmental Monitoring officer visited the site on 7 July 2009, to inspect the completion of conditions of consent associated with a previous subdivision of the site (SUB 2001-125). At that time the Monitoring officer discussed Condition DE2(iii) with Artisan. The planting required by Condition DE2(iii) has not been completed. During that discussion Artisan indicated that Condition DE2(iii) was to be included as part of their objection to Conditions DE 2(iv) and FC1.

This matter was addressed in the 7 July 2009 correspondence from Artisan. In that letter Artisan requested that the completion of Condition DE2(iii) be suspended pending the outcome of this Hearing.

The letter does not state that Artisan is formally objecting to Condition DE2(iii). The Council response to this matter (contained in the Discussion below) is, however, framed in terms of the correspondence being an objection to Condition DE2(iii).

### Conditions DE 2(iv) and FC1

Council received an objection under Section 357B to fees for LUC 2007-887 on 28 November 2007. The fee was included as part of Conditions DE 2(iv) and FC1, and required that the consent holder pay \$4,010.00 towards Project Twin Streams to provide partial storm water mitigation for 99 Parris Cross Road, Oratia.

A25-A49 Since the receipt of the objection, Council officers acting under delegated authority have considered the objection to Condition DE2(iv) and FC1. A meeting was held on site on 16 September 2008. The Council's view of the objection indicated to Artisan (in two letters entitled "interim decisions") that Council officers are not able to support the objection. Full copies of these letters and the responses from Artisan are attached at pages A25 to A49.

## DISCUSSION

Council has a 100% cost recovery policy in relation to the processing of resource consents and is empowered by Section 36 of the Resource Management Act 1991 to fix charges associated with the receiving, processing and granting of the consent (refer Section 36 (1)(b)).

### Storm Water Issues and Project Twin Streams

Council has identified a long standing issue of flooding associated with development in the Oratia catchment. In 2001/2002, the Council launched Project Twin Streams, which seeks to address adverse effects from storm water in the Oratia and Opunuku catchments. The Artisan site at 99 Parris Cross Road is located in the Oratia catchment.

Project Twin Streams utilises funding from the former Infrastructure Auckland (IA) and the (then) Transfund. The shortfall in funding is met via financial contributions associated with development within the catchment. This financial contribution is calculated on the basis that flooding in the catchment is created by both pre-existing development and new development. Consequently, new development only pays a proportion of the full cost of mitigating flooding in the catchment. In the case of Oratia, that proportion is 40% of the cost.

A50-A52 Project Twin Streams also aims to bring economic, social and cultural benefits to the communities within its catchments. These benefits are expanded upon at pages A50 to A51. A public information brochure providing statistics generated by Project Twin Streams is attached at page A52.

### **Condition DE2 (iii)**

Council received correspondence that could amount to an objection to Condition DE2(iii) on 07 July 2009. Council has therefore treated this correspondence as an objection under Section 357A of the Resource Management Act 1991.

This objection falls outside of the statutory timeframe provided by Section 357C(1) of the Resource Management Act 1991. Council recommends that the Hearing Commissioners rule that this objection is almost 23 months out of time, and that it be declined as a consequence of its late arrival.

If, however, the Hearing Commissioners grant a waiver of time for this objection, the following analysis is provided.

A12-A16  
A53-A63 The applicant (Artisan) provided plans that indicated that 1,038 square metres of planting would be located in the southern part of the site. This plan, attached at pages A12 to A16, is accompanied by a document dated July 2007 entitled "Assessment of Environmental Effects on the Environment in Relation to an Application for Resource Consent for a Grape Packing Shed". This document was prepared by Mr Stewart, the applicant's Planner. This document responds to request from the Council for additional information under Section 92. The document is attached at pages A53 to A63.

A64-A65 The matter of the Twin Streams Contribution and the 1,038 square metres of planting is addressed on pages 3 and 4 of Mr Stewart's report. That report proposes the planting of 1,038 square metres as partial mitigation of the creation of impermeable surface. The report goes on to propose payment of \$4,010.00 to the Twin Streams Project to mitigate the effects of the area of impermeable surface not mitigated by the planting. This offer is re-iterated by Mr Stewart on the second page of correspondence dated 28 June 2007. This letter is attached at pages A64 to A65.

The applicant's offer of these proposed mitigation methods was accepted by Council's Ecowater staff. These proposals formed the basis of Conditions DE2(iii) and Conditions DE 2(iv) and FC1. The granting of the resource consent partly relies upon these two mitigation methods, as Council considers that the implementation of these two methods will not exacerbate flooding, or the risk of flooding (refer to paragraph 11.0 (iii) in the granted resource consent report).

The deletion of Condition DE2(iii) will result in adverse effects (or potential effects) on the environment (flooding, erosion) that will not be avoided or mitigated. There is no certainty that the resource consent would have been granted if these conditions were not applied to the resource consent.

### **Condition DE2(iv) and FC1**

A25-A49 The consideration and conclusions of the reporting officer in relation to the objection to Conditions DE 2(iv) and FC1 are comprehensively set out in the Council's letters dated 8 September 2008 and 23 April 2009. The Artisan contribution to the correspondence is contained in letters dated 28 November 2007, 18 February 2008, and 18 November 2008. These letters (and their attachments) are attached at pages A25 to A49.

The Council has not received a response, nor any new information in relation to its most recent letter dated 23 April 2009. Consequently the officer's recommendation to decline the objection to the financial contribution has not changed since that time.

A brief summary of the conclusions from the 23 April 2009 letter are as follows:

- The Council has a legal mandate to charge fees for processing resource consent applications;
- The objector seeks to remove the requirement to pay the Twin Stream financial contribution of \$4,010.00 for this resource consent;
- The Council does not accept the view that the permeability of gravel surface is 50%;
- The Council does not accept the view about the storm water mitigation achieved from grape vines / leaves;
- There is no technical nor policy basis for waiving the financial contribution; and
- A Section 127 application can be applied for to adjust the consent to reflect a different amount of impermeable surface.

### CONCLUSION

A number of issues have been raised in the Section 357B objection and they require a decision. The matters that require a determination are identified as Conditions DE2(iii) and DE 2(iv) and FC1.

For the reasons set out above and in the attached pages, it is concluded that the objections to the three Conditions should be declined.

The objection to Condition DE2 (iii) was received outside of the timeframe provided by the Resource Management Act 1991. If this matter is actually an objection (and that is not clear) the Commissioners are able to waive this timeframe. This Condition was offered by the applicant as a Condition of Consent, and is partly the basis of the decision to grant consent. It is considered that this Condition should not be deleted from the resource consent.

The objection to Conditions DE2(iv) and FC1 has been extensively assessed. The decision made by the Council and recorded in its letter dated 23 April 2009 was valid and accurate in its assessment of the objection (and its supporting material) to Conditions DE2(iv) and FC1 of this resource consent application. There is no policy or technical basis that enables these Conditions to be deleted. It is concluded that these Conditions should not be deleted from the resource consent.

### RECOMMENDATION

That pursuant to Section 357B of the Resource Management Act 1991, subject to additional or contrary information being presented at the hearing, the objection made by Artisan Wines Limited in relation to Conditions DE 2(iii), DE(iv) and FC1 of RMA 2007-887 **be declined.**

**Report prepared by:** Eryn Shields, Principal Planner.

