

**AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD
IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON TUESDAY, 6 JULY 2004, COMMENCING AT 1.00 PM.**

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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 - Thursday, 10 June 2004 at 9.30 am
Ordinary - Thursday, 10 June 2004 at 11.00 am

RECOMMENDATION

That the minutes of the Ordinary Meeting of the Hearings Committee held on Thursday, 10 June 2004 at 9.30 am and the Ordinary Meeting Held on Thursday, 10 June 2004 at 11.00 am, as circulated, be taken as read and now be confirmed.



4 **TODD AVENUE, NEW LYNN - CREATION OF PEDESTRIAN MALL OBJECTION BY VAULT INVESTMENTS, REGISTERED PROPRIETOR OF 8, 10, 12, 14 TODD AVENUE, NEW LYNN OBJECTION BY ACACIA CAFÉ, TENANT OF 4 TODD AVENUE, NEW LYNN LOCAL GOVERNMENT ACT 1974: SECTION 336 - CREATION OF PEDESTRIAN MALLS SECTION 716B - SPECIAL ORDERS**

NEW LYNN WARD

BACKGROUND INFORMATION

The proposal for Todd Avenue to be converted to a pedestrian mall is part of a larger concept known as the Todd Triangle Reserve Development Concept Plan.

An ongoing challenge to improving amenity and access in the New Lynn Town Centre is the domination of vehicles. The town centre is intersected by busy streets carrying high numbers of cars. Todd Triangle Reserve is particularly problematic, being a small reserve, bounded by busy roads on three sides. It is currently little more than a traffic island, and it is difficult for the community to use as a recreational space. Nevertheless it is used by a significant number of local residents and workers for casual meeting, sitting and eating, and meeting people.

Improving pedestrian links to the reserve and shopping area, and increasing foot traffic to the western edge of the town centre, has the potential to enhance business in the town centre.

At its 26 May 2004 meeting, Council resolved, under Minute 854/2004, to proceed with the creation of a pedestrian mall by way of a Special Order under Section 336 of the Local Government Act 1974 and pursuant to Section 716B of the Local Government Act 1974. Council further resolved, under Minute 854/2004, to receive any submissions through the Hearings Committee.

A1 A plan showing the proposed modification of Todd Triangle is attached at page A1.

LEGISLATIVE REQUIREMENTS

The Local Government Act 2002 did not repeal all of the legislation comprised within the Local Government Act 1974. Section 336 of the 1974 Act, which relates to the creation of pedestrian malls, is a part of the Roading sections of the Act, which have not been repealed. Section 336 incorporates a requirement to follow the Special Order process of Section 716B of the 1974 Act.

More specifically;

• **Local Government Act 1974 - Section 336 Pedestrian Malls**

[opportunity to object & be heard]

- (2) ...any person likely to be affected by the proposal contained in the resolution may, by writing under his hand addressed to the [principal administrative officer], and received at the office of the council not later than 14 days after publication of the notice, object to the proposal and that any such person will be given the opportunity of being heard by the council.
- (3) Where any person objects to the proposal in accordance with subsection (2) of this section, the council shall appoint a day for considering the objection and shall give notice to the objector of the time when and place where the objection is to be heard. Any such time shall be not earlier than 7 days after the date on which the notice of objection was received at the office of the council.

[procedure at the hearing]

- (4) The council shall, at the time and place stated in the notice referred to in subsection (3) of this section, consider the objection, and after hearing any submissions made by or on behalf of the objector, may either dismiss the objection or decide not to proceed with the proposal or make such modifications to the proposal to which the objection relates as it thinks fit.
- (5) Where there are more objectors than one, the council shall, as far as practicable, hear all objections together and give each objector an opportunity of considering and being heard in respect of all other objections.

[subsequent Council meeting, public notice & right of appeal]

- (6) No resolution under this section shall be confirmed until the council has considered all the objections of which notice has been given in accordance with this section.
- (7) Where the council makes a special order under subsection (1) of this section in any case where one or more objections to the proposal were received -
 - (a) The council shall give public notice of the making of the special order and of the general purport thereof specifying in the notice the right of appeal conferred by subsection (8) of this section; and
 - (b) The special order shall not take effect until the expiration of the time for appealing and, in the event of any appeal, shall be suspended until all appeals against the special order have been determined.
- (8) Any objector aggrieved by the decision of the council making a special order under subsection (1) of this section may, within one month after the giving of the public notice by the council under subsection (7)(a) of this section of the making of that special order, or within such further time as the [Environment Court] may allow, appeal to the [Environment Court] against that decision, [and the appeal shall be made and determined by that [Court] in the manner prescribed by the Resource Management Act 1991 and any regulations made under that Act].
- (9) On any such appeal, the [Environment Court] may cancel or confirm the special order or confirm it subject to modification, and the decision of the [Environment Court] shall be final.
- (13) Any special order made under subsection (1) of this section (including such an order modified as aforesaid) may, by subsequent special order, be revoked or varied. In making any such subsequent special order, the procedure to be followed shall be the same as for the making of the original special order.

• **Local Government Act 1974 - Section 716b Special Orders**

- (3) The resolution shall be confirmed at a subsequent meeting (either ordinary or special) held not later than the 70th day after the day of the meeting at which the resolution was passed.
- (4) A copy of the resolution to be confirmed shall be deposited at the offices and libraries of the local authority and shall be open for inspection by the public during office hours at those offices and libraries.
- (5) Public notice of
 - (a) The place, date, and time fixed for the subsequent meeting; and
 - (b) The purport of the resolution and of the times when and the places where a copy of the resolution may be inspected, -shall be given twice before the date of the subsequent meeting, the first such notice being given not less than 21 days before that date and the second being given not more than 14 nor less than 7 days before that date.

- (8) Notwithstanding anything in subsections (1) to (7) of this section, a confirming resolution may modify the resolution to make the special order to such extent as the local authority considers necessary by reason of any representations made to it before the date of the meeting at which the resolution to make that order is confirmed.

VAULT INVESTMENTS' OBJECTION

A2-A6

Vault Investments are the Registered Proprietors of 8, 10, 12, and 14 Todd Avenue, New Lynn. These properties are in two titles, being Lot2 DP55644 and Lots 1 & 2 DP44215. Vault Investments' objection was received by Council at 4.43 pm on 23 June 2004, immediately prior to the closing of the submission period, as attached at pages A2 to A3, and further correspondence relating to Vault Investments' objection is attached at pages A4 to A6. Vault Investments intends to be heard at the Hearing.

Vault Investments' objection relates to two matters:

1. The company objects to the loss of some 19 car-parking spaces immediately adjacent to the properties under its ownership, as part of the creation of the pedestrian mall. It believes the loss of such car parking spaces will have a negative effect on the value of these properties, and the company's ability to lease them.
2. The creation of the pedestrian mall, including planting and the erection of a fence will, in the company's opinion, limit the visibility of its properties, negatively affecting the commercial viability of these properties, and the company's ability to lease them.

The company has suggested actions which could be taken by Council to mitigate its objection, namely;

Either to provide no less than eight angled car-park spaces on the eastern side of Todd Avenue, while maintaining one-way traffic flow from Great North Road to Totara Avenue;

And/Or to provide parking sufficient to replace the 'lost' parking spaces, for free and unrestricted use by the tenants and customers of Vault Investments' properties, at a location no more than 100 metres from its properties;

And

Either to compensate the owner and tenants of Vault Investments' properties for the loss in value and business turnover arising from the creation of the pedestrian mall;

And/Or to make 'such alternative or consequential amendments to the concept plan and provide alternative parking arrangements' with the possible dispensation of car parking requirements for Vault Investments' properties, to the satisfaction of Vault Investments.

Council's Resource Consent Manager advises that Vault Investments currently has a resource consent application (RMA 20031239 - made on 23 June 2003) to increase the floor area of 8 Todd Avenue from 92 m² to 130m², for which an issue is the parking shortfall of three spaces. The consent application is presently 'on-hold', due to this issue. The applicant is of the opinion that there is adequate parking in the area, both at the front and rear of the property. An officer from Council's Resource Consents section will be present at the Hearing to answer questions.

ACACIA CAFE OBJECTION

A7

The Acacia Café is the tenant of 4 Todd Avenue, New Lynn. Despite the writer and a Solicitor from Council's legal section hand-delivering notices to tenants one day prior to the public notification, and an undertaking from the Café employee to pass the envelope to her boss forthwith, it appears that the owner of the café business did not receive said notice until much later. Acacia Café's objection was received after the closing date of the submission period, however the objection, together with a summary of a follow-up telephone conversation, as attached at page A7. The owner of the Acacia Café intends to be present at the Hearing and be heard, with the approval of the Committee.

The Acacia Café objection relates to the issue of 'lost' car parking, which the owner believes will be detrimental to business along Todd Avenue. The content of the written objection is quite brief, however a follow-up telephone conversation suggests that the owner of the café does not object to the creation of the pedestrian mall per se, provided the issue of 'lost' parking is dealt with.

FUNCTION OF HEARINGS COMMITTEE

Pursuant to Section 336 of the Local Government Act 1974 as set out above, the Hearings Committee is required to hear the person making any objection, if present, and to determine either:

- (a) To abandon the works proposed, or
- (b) To proceed therewith, with or without such alterations as the Hearings Committee thinks fit.

It is not the function of the Hearings Committee to determine any questions of compensation or other contentions which may arise, nor does this report attempt to definitively address such matters.

RIGHT OF APPEAL

If the Hearings Committee determines to proceed with the works proposed (with or without alterations) the objector may appeal to the Environment Court within one month of the giving of notice of the making of any Special Order. Pending the decision of the Court on any appeal, the Council shall not proceed with the works.

On the hearing of the appeal, the Court, whose decision shall be final, may confirm or amend or set aside any determination of the Hearings Committee.

ASSESSMENT

The proposed upgrading of Todd Triangle, including the creation of a pedestrian mall at Todd Avenue, is designed to improve the business environment at New Lynn.

While the question of 'lost' parking spaces may be considered as part of the overall concept plan, and 'replacements' for some or all of the 'lost' spaces be sought, it is noted that the creation of a pedestrian mall is undertaken with a view to restricting or curtailing traffic flow, to encourage and enable the development of foot traffic through an area presently dominated by vehicular traffic for the benefit of the community as a whole. It would therefore not be possible to create a pedestrian mall while meeting Vault Investments' proposal to allow traffic to continue to flow through Todd Avenue.

Parking spaces to be removed as part of the creation of the pedestrian mall have no legal connectivity with any of the properties along Todd Avenue, other than to create an opportunity for property owners to seek dispensation from District Plan liabilities on their sites when, for example, seeking to expand built floor area. Parking specifically associated with, and owned by, Todd Avenue properties is located at the rear of the properties. A significant amount of public parking is also available in the immediate area, for example along Great North Road, Totara Avenue and in the carpark at the rear of the properties along Todd Avenue. The creation of this pedestrian mall does not require acquisitions of private property under the Public Works Act, nor should it require consideration of private compensation associated with Council's restructuring of publicly-owned car parking spaces.

It is recommended that Council proceed with the creation of a pedestrian mall at Todd Avenue, subject to the 'relocation' of no less than eight public car parking spaces at convenient locations within the overall Todd Triangle redevelopment. At time of writing, officers are developing a plan proposing the location of these car parking spaces for distribution at the Hearing.

Officers from Council's City Development, Planning and Resource Consent sections will be at the Hearing to answer questions.

RECOMMENDATIONS

1. That the Todd Avenue, New Lynn - Creation of Pedestrian Mall Objection by Vault Investments, Registered Proprietor of 8, 10, 12, 14 Todd Avenue, New Lynn Objection By Acacia Café, Tenant Of 4 Todd Avenue, New Lynn Local Government Act 1974: Section 336 - Creation Of Pedestrian Malls Section 716b - Special Orders Report be received.
2. That the Committee hear and resolve upon the objection.
3. That the creation of a pedestrian mall at Todd Avenue proceed as proposed, having regard to legal requirements associated with the appeal period under Section 336 of the Local Government Act 1974, and subject to the inclusion of no less than eight car parking spaces within the overall Todd Triangle development.
4. That Vault Investments Limited and the Acacia Café be advised of their entitlement to appeal to the Environment Court against that determination, in accordance with Section 336 of the Local Government Act 1974.

Prepared by: Sharleen Grounds, Solicitor and Michael Riley, Project Manager: Strategic Property Projects.

