

**AGENDA FOR A HEARING BY COMMISSIONER TO BE HELD AT WAITAKERE CENTRAL, 6
HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON FRIDAY,
21 AUGUST 2009, COMMENCING AT 9.30 AM**

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**1 OBJECTION UNDER SECTION 357B OF THE RESOURCE MANAGEMENT ACT 1991
BY MELISSA MABEY AND TONY HAWKE IN RESPECT TO FEES ASSOCIATED
WITH A RESOURCE CONSENT APPLICATION LUC 2009-0102, AT 74 RAUHUIA
CRESCENT, PARAU.**

Ward: Waitakere

NB: This report sets out the advice of staff to the Commissioner 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 Commissioner.

INTRODUCTION

The objectors lodged an application for resource consent to build a new dwelling and separate garage, which would replace the existing dwelling on the site. The proposal was a non-complying activity under the Waitakere District Plan. Consent was required for infringements relating to natural hazards, building location-natural landscape elements, building height, vegetation alteration, earthworks, and impermeable surfaces under the Operative Plan, and an infringement to building coverage under Proposed Plan Change 26.

A1-A42 The application was received by the Council on 2 February 2009. The application was assessed by Council officers. A request for further information was made by Council. Consent was granted on 30 March 2009. A copy of the approved resource consent is attached at pages A1 to A42.

A43-A44 Council received the section 357B objection to the fees on 12 May 2009. A copy of the objection is attached, at pages A43 to A44.

STATUTORY REQUIREMENTS

A45-A48 The relevant provisions of the Resource Management Act 1991 are contained in section 357B (right of objection in relation to imposition of additional charges or recovery of costs). A copy of this section of the Act is attached at pages A45 to A48 for the information of the Commissioner. This section is explained below.

Section 357B allows the applicant to lodge an objection against the fees imposed by the 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, in this instance the objectors requested that the matter be referred to a commissioner for determination, as they were not satisfied with the officer's findings in response to the objection.

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

BACKGROUND

The objection relates to processing fees amounting to \$2,444.60.

A49-A57 Council officers acting under delegated authority considered the objection, and decided to accept it in part. This acceptance in part provided a reduction of the fees by \$272.00 (11% reduction). A full copy of the letter containing the interim decision (dated 26 May 2009), and the relevant invoice documentation that provided the analysis of the fees and the acceptance in part of the objection, is attached at pages A49 to A57.

Following receipt of the interim decision letter outlining the acceptance of the objection in part, the objectors met Council officers on 10 June 2009. The objectors indicated that the contents of the letter were not accepted. At that time they requested an independent review of the matter. They were advised that the steps of the s357 objection process would have to be exhausted before an independent review could be sought.

Officers issued the final officer interim decision on 15 June 2009 in email format and also via a mailed letter. Subsequently by email the objectors indicated that they could not accept the final officer interim decision. The objectors requested an independent commissioner hearing as they considered that this was the most suitable option for them.

A58 A copy of the email requesting the s357B objection hearing (dated 8 July 2009) is attached to this report at page A58.

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 a consent (refer section 36(1)(b)).

The consideration and conclusions of the reporting officer in relation to this objection are set out in the Council's letters dated 26 May 2009 and 15 June 2009.

The objector has not provided any further written information directly in response to Council's letter. Consequently the staff recommendation has not changed since that time.

A brief summary of the conclusions from the 15 June 2009 letter are as follows:

- The Council has a legal mandate to charge fees for processing resource consent applications;
- The objector seeks to reduce the overall outstanding fees for this resource consent from \$2,172.60 to nil (previous total of \$2,444.60 minus the proposed deduction of \$272.00);
- The objection relates to an assertion of poor customer service such that the high hourly rates are not warranted for the staff involved, that the Council did not provide sufficient resources to assist with understanding resource consent processes, and that the Council did not provide information about costs related to resource consent processing fees;
- The fees charged equate to costs incurred by the Council in processing the application; and
- The costs incurred in the processing of this resource consent application are considered to be actual and reasonable.

These conclusions address the criteria in section 36(4) of the Act that relate to the payment of administrative charges. In particular, it is considered that (subject to the proposed reduction) the charges are actual and reasonable, the benefits of processing the consent accrue to the objectors rather than the community as a whole, and the need for the charge was occasioned by the actions of the objectors (in lodging the application).

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 the fees associated with the following processes and actions:

- Planner, arborist and landscape architect fees;
- The relationship of fees being charged while staff demonstrated perceived inadequate levels of customer service; and
- The level of duty of the Council to provide information relating to resource consent processes and the potential costs of resource consent processes.

The non-complying resource consent application contained a number of infringements and required further information. Several aspects of the application required assessment from internal experts. The fees levied by the processing planner and the internal experts were (for the most part) fair and reasonable. There appeared to be some time incurred by the landscape architect that was over and above that required for the processing of the application, and accordingly this has been proposed to be deducted from the outstanding invoice.

It is considered that matters related to customer service are most appropriately addressed through internal performance review processes. In any event, issues in relation to customer services performance would only be of relevance if they had a direct and significant impact on the fees that were charged. There is no evidence to support such an assertion in this case. It would not be appropriate to propose a reduction in fees in order to compensate a consent holder for claims of poor customer service.

With regard to the availability of information relating to the potential costs of various types of resource consents, this information is currently being collated within the Council for dissemination.

For the reasons set out above, it is concluded that the objection should be upheld in part, to the extent indicated in this report. It is considered that the interim decision made by the Council and recorded in its letter dated 15 June 2009 was valid and was accurate in its assessment of the fees associated with this resource consent application.

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 Melissa Mabey and Tony Edward Hawke in relation to RMA 2009-102 **be accepted in part** to the extent that the invoice for this application is reduced by \$272.00 from \$2,444.60 to \$2,172.60.

Report prepared by: Senior Planner, Policy Implementation: Carolyn McAlley.

