

**NOTICE OF MEETING**

**DISTRICT PLAN AND REGULATORY COMMITTEE**

**TO:** Penny Webster - Mayor  
Crs Gaye Harding (Chairperson)  
Michael Goudie  
Dave Parker QSM  
Grahame Powell  
Suzanne Weld  
Pat Delich (Alternate)  
June Turner (Alternate)  
Wayne Walker (Alternate)

The District Plan and Regulatory Committee will meet in the Committee Room, Centreway Road, Orewa on Wednesday, 9 September 2009 commencing at 9.00 a.m.

for: CHIEF EXECUTIVE  
Rodger Kerr-Newell

OREWA  
2 September 2009

\* \* \* \* \*

**PROGRAMME**

<u>Time</u>		<u>Page</u>
9.00 a.m.	Section 357 Objection to Fees charged for the processing of a Resource Consent Application to construct an American Barn and realign an Existing Flowpath within the 1:2 Plane along a Portion of the Eastern Boundary in the Low Intensity Zone at 51A Hibiscus Coast Highway, Silverdale  Objector: Robert L Berger	3
9.20 a.m.	Appeal Against Menacing Dog Classification – Emma Handley	16
9.40 a.m.	Section 357 Objection to Decision made under Delegated Authority by the Team Leader – Resource Consents  Applicant: P and GM Houghton	19

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	Hearing for a Resource Consent Application to Undertake a Trial Application of Biosolids to Forested Land.	
	Applicant: Watercare Services Limited	
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**CONFIDENTIAL**

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ITEM NO: 1

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**APOLOGIES**

ITEM NO: 2

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**REPORT**



**TO** District Plan and Regulatory Committee  
**ON** 9 September 2009  
**FROM** Valerie Coffey – Disputes Resolution Officer  
**APPROVED BY:** Rob Goldsbury – Chief Legal Officer  
**SIGNATURE**

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**SUBJECT** NOTIFICATION OF NEW APPEAL(S)

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In the event that there are matters to report on, these will be distributed as supplementary items prior to the meeting.

ITEM NO: 3

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REPORT



**TO** District Plan and Regulatory Committee  
**ON** 9 September 2009  
**FROM** Anne Hessel – Senior Planner  
**APPROVED BY** Carl Jenkins – Team Leader: Resource Consents  
**SIGNATURE**

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**SUBJECT** **APPOINTMENT OF COMMISSIONERS**  
**HEARING FOR A RESOURCE CONSENT APPLICATION TO UNDERTAKE A TRIAL APPLICATION OF BIOSOLIDS TO FORESTED LAND**

**APPLICANT: WATERCARE SERVICES LIMITED**

**FILE REF** L 54102

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**SUMMARY:**

The District Plan and Regulatory Committee has delegated authority to appoint Commissioners to hear resource consent applications.

The standing delegation is to the Resource Consents Hearings Panel. However, the District Plan and Regulatory Committee can consider specific appointments for any particular Hearing.

The above application is scheduled to be heard on Monday 14 September 2009.

The applicant has applied for consent to discharge approximately 120 tonnes (or approximately 160 m<sup>3</sup>) of dried biosolid fertiliser product from the Mangere Wastewater Treatment Plant to a commercial forest, north-west of Parakai in the South Head area. The application of the product will be done as part of a scientific trial to test the environmental, operational and agronomic performance of the product.

Having regard to the close association of Rodney District Council with Watercare Service Limited, it is considered prudent to avoid any conflict of interest issues by appointing two Independent Commissioners to determine the resource consent, instead of the Resource Consents Hearings Panel.

The application is to be heard by the rostered Independent Commissioner, Alan Watson. It is preferable that Commissioner Watson sits with another Commissioner to hear the application. To avoid any unnecessary delay associated with the processing of this application, it is recommended that the Hearing proceed on the specified dates with Independent Commissioners Alan Watson (Chair) and one other Independent Commissioner who is yet to be determined from either Commissioner Les Simmons, Harry Bhana or John Childs.

**RECOMMENDATION:**

**That pursuant to Section 34A of the Resource Management Act 1991 Alan Watson (Chair) and one other Independent Commissioner (either Les Simmons, Harry Bhana or John Childs) be appointed as the Independent Commissioners to hear this resource consent application. If for any reason they are not available alternative Independent Commissioners may be appointed by the Chair of the District Plan and Regulatory Committee.**

**9.00 A.M.**

**ITEM NO: 4**

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**REPORT**



**TO** District Plan and Regulatory Committee

**ON** 9 September 2009

**FROM** Nick McCool – Reporting Planner P2

**SIGNATURE**

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**FOR RELEASE** Steve Seager – Team Leader: Resource Consents

**SIGNATURE**

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**SUBJECT** **SECTION 357 OBJECTION TO FEES CHARGED FOR THE PROCESSING OF A RESOURCE CONSENT APPLICATION TO CONSTRUCT AN AMERICAN BARN AND REALIGN AN EXISTING FLOWPATH WITHIN THE 1:2 PLANE ALONG A PORTION OF THE EASTERN BOUNDARY IN THE LOW INTENSITY ZONE AT 51A HIBISCUS COAST HIGHWAY, SILVERDALE**

**OBJECTOR:** Robert L Berger

**FILE REF** RMA 55106

**WARD** EASTERN WARD

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**PART A:**

**LOCATION:** 51A Hibiscus Coast Highway, Silverdale

**ZONES:** Proposed District Plan 2000 Residential Low Intensity

**ACTIVITY STATUS:** Proposed District Plan 2000 Restricted Discretionary Activity

**TYPE OF APPLICATION:** Objection under Section 357 of the Resource Management Act 1991

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**EXECUTIVE SUMMARY**

An objection pursuant to Section 357, relating to processing fees, was received from Mr Robert Berger in relation to the resource consent application RMA 55106 to erect an American barn and realign an existing flowpath within the 1:2 plane along a portion of the eastern boundary of the property situated at 51A Hibiscus Coast Highway, Orewa. The grounds for the objection were that the charge incurred in processing the application was excessive and unreasonable.

## RECOMMENDATION:

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 Mr Robert Berger in respect of a request for the reduction of fees arising from the processing of an application to erect an American barn and realign an existing flowpath within the 1:2 plane along a portion of the eastern boundary of the property situated at 51A Hibiscus Coast Highway, Orewa, be dismissed.

## REASONS:

1. It is considered that the administrative charge invoiced in relation to the resource consent application represents the actual and reasonable costs incurred by the Council in processing the resource consent application.
  2. Section 36(3) of the Resource Management Act 1991 provides for the Council to recover the actual and reasonable costs for the processing of resource consents and it is the Council's policy to recover these costs from applicants. In this instance there is no evidence that the costs incurred are excessive or unreasonable.
  3. It is considered appropriate for the applicant to incur the costs for the processing of the application. Should any reduction or waiver be made to the invoiced amount, the ratepayer will have to cover these costs.
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## PART B:

### 1.0 Introduction and Background

- 1.1 The applicant applied for building consent to construct the proposed American barn. Through the building consents process it was identified that the applicant would also require resource consent as the erection, addition to or external alteration to and/or relocation of buildings in the Low Intensity Zone requires Controlled Activity consent.
- 1.2 The applicant applied for resource consent on 20 March 2009 to erect a barn on a two acre block. The processing planner undertook a site visit on 9 April 2009 when he found that the applicant had started the earthworks. The earthworks' volume was identified as being within the permitted activity criteria; however, the earthworks infringed Rule 18.10.3 Excavation and Unretained Filling of the Proposed District Plan - Operative in Part, and altered an overland flow path. A Section 92 letter was issued on 16 April 2009 requesting additional information and informing the applicant of the infringements. A response was received on 20 April 2009 via phone and email. Following conversations with the Council's Development Engineer, the application was amended to reflect the additional infringements and resource consent was granted on 27 April 2009 to erect an American barn and to realign an existing flowpath within the 1:2 plane along a portion of the eastern boundary.
- 1.3 The processing fees have been paid and the decision released.

### 2.0 Section 357 Objection

- 2.1 An objection pursuant to section 357(4) relating to the processing fees of the application has been lodged by Mr Robert Berger, the owner of 51A Hibiscus Coast Highway. A copy of the objection is attached as **Appendix 1** to this report.
- 2.2 The applicant has claimed that the costs associated with the processing of the application are excessive and inappropriate for the proposal. The applicant believes the application to be simple and that it should not have required input from the Council's Development Engineer with regard to drainage and overland flow paths.

2.3 The applicant has been provided with a detailed invoice of the processing costs, which are further clarified below:

ITEM	BREAKDOWN	AMOUNT (\$)
Administration	<ul style="list-style-type: none"> <li>• Section 88</li> <li>• Administration</li> <li>• Monitoring</li> <li>• Scanning</li> <li>• Photocopying</li> </ul>	100.00 150.00 330.00 30.34 4.00  <b>(614.34)</b>
Planning	<ul style="list-style-type: none"> <li>• Planning Processing:               <ul style="list-style-type: none"> <li>○ Correspondence</li> <li>○ Assessment and processing</li> <li>○ Travel</li> <li>○ Site inspection</li> <li>○ Vehicle running</li> </ul> </li> <li>• Tangata Whenua</li> <li>• Team Leader review</li> </ul>	1,275.00   37.50 45.00 22.50  332.39 58.00  <b>(1,770.39)</b>
Total		<b>2384.73</b>
Deposit received	-	1600.00
<b>Total due</b>		<b>784.73</b>

### 3.0 Statutory Requirements

There are two sections of the Resource Management Act 1991 that are relevant to the objection application; section 36 (administrative charges) and section 357 (objection to certain decisions and requirements of consent authorities).

Section 357(4) states that:

*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 357(7) provides that after considering an objection, the Council may dismiss the objection or uphold it either partly or wholly.

### 4.0 Assessment of Charges

The matters raised in the objection are discussed as follows:

4.1 The principal issue of contention identified by the applicant is the belief that the costs associated with the application were excessive for a proposal simply requesting the construction of a barn on a site zoned Residential Low Intensity. The applicant has provided the following comments in regards to the application:

*I first visited the office of RDC to find out if I could build this barn in this location and asked what I needed to have to build it. I was told that I only needed a building consent and that this consent would be simple. It would be simple as long as I stayed more than 3 metres from the boundary. As I did not need a resource consent and as I needed to get the site levelled before the rains came I started work. I also had a site inspection done by Peter Kibblewhite. The same day the diggers came on site and he*

*confirmed that, as the total volume of earthworks was under 200 cubic metres, I would not need a resource consent. Even when Erik visited he said it was a simple inspection for the building consent and would get it under way as I had already been in the system for 20 days.*

*Later he told me that I had to have a RC and I told him that I had been told I didn't need one. This was checked by someone in your office but miraculously the notes on your computer system said that I did need this RC. I am adamant that I was not told this. There was also no need for drainage people to be involved with a surface farm drain that is noted on your plans as "private" The head of the drain was diverted 30 degrees to the east to follow the boundary for 40 metres before it was turned back to the original farm drain. No adverse affects have been placed on the neighbours at all because the head of the drain was inside my property which is lower than their land. Yes I want to object to these fees.*

4.2 Council's Processing Planner Erik Oosthuizen has provided the following feed back on the application:

- *I cannot comment on the applicant's discussions at the Council prior to lodging the application.*
- *The Building Consents department has confirmed that they indicated to Mr Berger right from the start that he would require land use resource consent for a controlled activity to construct the barn in a Low Intensity Zone. This was also set out to Mr Berger in the approval documentation for his building consent.*
- *From an initial assessment the application appeared to be simple, especially given the fact that building consent was granted for the erection of the barn. I conducted a site visit and finalised the report for consent for a controlled activity after spending about roughly 5 hours working on the application.*
- *If the application was purely for the barn within a Low Intensity zone it would have been finalised in this manner, at that stage. However, following on from the site visit it became apparent that earthworks had already been done. I have discussed the situation with Paul Howes. Paul, as well as the senior stormwater engineer, has expressed concerns regarding the re-alignment of the stormwater drain, as the fill could divert/dam stormwater onto the up-stream and adjacent properties.*
- *The applicant was concerned when I told him that I was awaiting an engineering comment before we could finalise my report, given the fact that that the stormwater drain was a private drain, which has nothing to do with the Council. He was also concerned as this would cost him additional money.*
- *After input from Paul, further information was requested from the applicant and a short response was received. After that it was decided that we could accommodate the various concerns by imposing conditions on the consent, rather than insisting on additional information and an assessment of the impact of the works already done. We have included work in 1:2 plane as part of the consent.*
- *The important issue here was that the construction of the 450mm stormwater line, notwithstanding the fact that it is private line, had not been approved by the Council; it either required a building consent or an engineering plan approval.*

4.3 It is concluded that the original resource consent application was for a seemingly basic controlled activity to erect a barn. Through the processing of the application, in particular the site visit, additional infringements were identified. The additional infringements were then addressed and resulted in a change of the activity status of the application to a Restricted Discretionary Activity to authorise the construction of a barn and to realign an existing flow path within the 1:2 plane along a portion of the eastern boundary.

Iwi consultation of \$332.39 has also been invoiced. The Council has a Memorandum of Understanding (MoU) with Manuhiri Omaha Kaitiakitanga Ora (MOKO) Charitable Trust on behalf of Ngati Manuhiri hapu. The MoU provides for a clear understanding of the basis and ongoing conduct of the relationship between the Council and Ngati Manuhiri. During the processing of Resource Consent L55106, consultation was undertaken with MOKO, who screened the application, decided to undertake a site visit and provided the Council with a Kaitiaki assessment report. The report concluded that Ngati Manuhiri would not require further involvement and recommended that an archaeology discovery condition be imposed.

Following Mr Berger's objection MOKO provided further justification for the Kaitiaki Assessment Report, which is detailed below:

*Archaeology Discovery Conditions were recommended by Ngati Manuhiri as a precautionary measure. This was to ensure that if Koiwi or human remains, historical artefacts and or middens were unearthed during excavation, then the proper authorities would be notified. Failure to do so and or damages incurred can result in Court action.*

*Coastal areas in this region, including the Weiti River, do have important cultural and historic values. There have been numerous archaeological survey reports ranging from small scale to comprehensive regional surveys. Many of the sites recorded in the area relate to both historic Maori occupation and early European settlement. The concentration of archaeological remains in the general area reflects the importance of the Orewa and Whangaparaoa Bay. Ease of access to marine resources, navigable waterways and arable alluvial flats were elements favoured by Maori and early European settlers. Archaeological sites recorded in this area on the National data base include a Pa site, middens and terraces. An adze of Tahanga basalt, several pieces of chert and obsidian, charcoal and shell have been collected for dating from this area. The results yielded that the charcoal dated back to the 14th and possibly late 13th Century, and the shell dates were from the early to late 16th Century.*

*The traditional history of the Whangaparaoa and Orewa areas is associated with the great voyages of tribal waka from the late 1400s to the time of European contact in the 1820s. This is an area rich in Maori history, a taonga we have the responsibility to protect and preserve for all future generations.*

*The fee MOKO charged for this site visit is justified as we continue to work within the framework of our Memorandum of Understanding with RDC.*

*Kia Ora Koutou  
Ringi Brown  
Site Officer for MOKO Trust*

- 4.4 The initial fee payable on lodgement for accessory buildings and structures was \$1,600; the additional fee charged to cover the Council's cost was \$784.73. Overall, it is considered that the fees charged in processing the application were fair and reasonable in relation to the application and there is no basis or evidence to suggest that the application was inappropriately assessed, or that the fees incurred were inappropriate.

## 5.0 Conclusion

Overall, it is considered that the total charge of \$2,384.73 is not unreasonable in view of the additional infringements that were required to be addressed. Although the applicant believes the fees are excessive, no specific reasons for this view have been offered other than that the nature of the application should warrant limited processing costs.

The objection has not raised any matters that would result in a change to the fees charged for the processing of this application and it is therefore recommended that the objection be dismissed.

**APPENDICES:**

**Appendix 1:** Copy of the applicant's objection to the fees under section 357 of the Act

**Appendix 2:** Copy of the Processing Planner's comments

**Appendix 3:** Copy of the section 93 and 94 report prepared for the proposal

**9.20 A.M.**

**ITEM NO: 5**

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**REPORT**



**TO** District Plan and Regulatory Committee  
**ON** 9 September 2009  
**FROM** Wayne Knightbridge – Animal Control/Bylaws Manager  
**APPROVED BY** Lloyd Barton – Director: Customer Service  
**SIGNATURE**

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**SUBJECT** **APPEAL AGAINST MENACING DOG CLASSIFICATION –  
EMMA HANDLEY**  
**FILE REF** DC/9/2

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**PURPOSE OF REPORT:**

<input type="checkbox"/> Information only	<input type="checkbox"/> Strategic decision	<input type="checkbox"/> Policy decision	<input checked="" type="checkbox"/> Statutory process
<input type="checkbox"/> Community issue	<input type="checkbox"/> Contract decision	<input type="checkbox"/> Delegation	<input type="checkbox"/> Appointment
<input type="checkbox"/> Administrative matter			

**IMPLICATIONS:**

(i)	Is this matter significant in terms of Council's Policy on Significance? No
(ii)	Implications in terms of Vision Rodney? No
(iii)	Implications in terms of Long Term Plan/Annual Plan? No
(iv)	Implications in terms of other Council Strategic documents or Council Policy? No
(v)	Is a budget amendment required? No
(vi)	Have the views of affected or interested persons been obtained and is any further public consultation required? No
(vii)	Does a decision on this matter require Auckland Transition Agency approval? (yes / no / advice being sought?) No

## FINANCIAL IMPLICATIONS:

Capital cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding source of capital costs	Not applicable
Ongoing operational cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding & rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

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## SUMMARY:

Emma Handley is the co-owner of a 2 year 4 month old neutered male Boxer-cross named Archie. Ms Handley has appealed under section 33B of the Dog Control Act 1996 against the classification of her dog as a menacing dog under section 33A. The Council may either uphold or rescind the menacing dog classification.

## RECOMMENDATION:

**That the menacing dog classification under section 33A of the Dog Control Act 1996 against the dog known as Archie, be upheld.**

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### 1.0 Background

Section 33A of the Dog Control Act 1996 states:

“This section applies to a dog that –

- (a) has not been declared a dangerous dog under section 31; but
- (b) a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of –
  - (i) any observed or reported behaviour of the dog; or
  - (ii) any characteristics typically associated with the dogs breed or type”.

Section 33B states:

- “(1) If a dog is classified as a menacing dog under section 33A, the owner
- (a) may within 14 days of receiving notice of the classification, object in writing to the territorial authority in regard to the classification; and
  - (b) has the right to be heard in support of the objection.
- (2) The territorial authority considering an objection under subsection (1) may uphold or rescind the classification, and in making its determination must have regard to
- (a) the evidence which formed the basis for the classification; and
  - (b) any steps taken by the owner to prevent any threat to the safety of persons or animals;
  - (c) the matters relied upon in support of the objection;
  - (d) any other relevant matters.

The territorial authority must, as soon as practicable, give written notice to the owner of

- (a) its determination of the objection; and
- (b) the reasons for its determination.”

On 7 June 2009, the complainant was walking in Hammond Avenue, Hatfields Beach when the dog known as Archie rushed at him. The dog was barking aggressively at the complainant and lunged at him several times, baring its teeth. The complainant slowly backed away from the dog. Some time passed before the dog eventually crossed the road and ran back to its property. The complainant went home and later returned to identify the property he saw the dog enter. The property is occupied by Ms Handley.

Archie has a total of 18 complaints registered against it since November 2007. Of these complaints, two involve rushing at a person, one involves an attack on another animal, six are about the dog roaming, two are welfare issues and seven involve barking complaints. Thirteen of these complaints have been received since March 2009.

Ms Handley appealed against the classification within the statutory time frame.

## **2.0 Issues**

Archie has a history of roaming at large. On three of those occasions Archie was involved in incidents of aggression towards people or other animals.

The first of the other two incidents of aggression occurred on 21 March 2009 when Archie attacked another dog being walked along the street. The other dog was bitten on the stomach. The second incident occurred on 4 May 2009 when Archie acted aggressively towards a woman collecting her mail.

The Dog Control Act 1996 has placed a greater emphasis on ensuring that people and their animals can go freely about their business without feeling endangered or at risk of a dog attack. In this case a dog not under adequate control at the time of the incident acted in an aggressive manner towards a person in a public place.

This followed a history of aggression towards people and other animals along with a poor record of being kept under control by its owner.

It would seem reasonable that similarly aggressive behaviour could be expected from the dog when placed in a similar situation in future.

## **3.0 Options**

The Council has the following options:

- (a) uphold the menacing dog classification; or
- (b) rescind the menacing dog classification

## **4.0 Conclusion**

The dog known as Archie rushed at a person in a manner that caused the person to feel threatened. This followed two other incidents of aggressive behaviour of the dog over a four month period.

Based on the previous history of the dog, it would seem warranted to impose a menacing dog classification on the dog and it is recommended that the menacing dog classification be upheld.

**9.40 A.M.**

**ITEM NO: 6**

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**REPORT**



**TO** District Plan and Regulatory Committee  
**ON** 9 September 2009  
**FROM** Laura Christian – Reporting Planner

**SIGNATURE**

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**APPROVED BY** Denise Grandfield – Team Leader Resource Consents

**SIGNATURE**

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**SUBJECT** **SECTION 357 OBJECTION TO DECISION MADE UNDER  
DELEGATED AUTHORITY BY THE TEAM LEADER – RESOURCE  
CONSENTS**

**APPLICANT: P AND GM HOUGHTON**

**FILE REF** R55193

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**PART A:**

**LOCATION:** **326 JV Grant Road, Port Albert**

**LEGAL DISCRIPTION:** South Western Portion Allotment 7 Parish of Wharehine (CT NA587/164) & Part Middle Portion Allotment 7 Parish of Wharehine (CT NA18D/465)

**ZONING** Operative District Plan as amended  
by Plan Change 55: General Rural  
Proposed District Plan 2000: General Rural

**ACTIVITY STATUS** Operative District Plan as amended  
by Plan Change 55: Non-Complying  
Proposed District Plan 2000: Restricted Discretionary

**TYPE OF APPLICATION:** Objection under Section 357 of the Resource Management Act 1991

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**EXECUTIVE SUMMARY**

The applicant has objected to Condition 2 of Resource Consent R55193, granted 02 June 2009. This resource consent application sought to undertake a boundary realignment and to create three rural residential lots through the protection of bush and wetland areas, with road to vest.

The application was deemed a non-complying activity under the Operative District Plan as amended by Plan Change 55 and a restricted discretionary activity under the Proposed District Plan 2000. In accordance with the District Plan requirements and as part of this subdivision, all areas of 2.59 hectares of native bush and 3.96 hectares of wetland areas are to be covenanted as part of this subdivision.

Condition 2, which the Applicant objected to, relates to fencing of the covenanted bush and wetland areas prior to application for section 223 approval.

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## RECOMMENDATION:

That pursuant to Section 357 of the Resource Management Act 1991, the objection lodged by Houghton Family Trust to Condition 2 of RMA 55193, be declined.

## REASONS:

1. Fencing of the bush and wetland areas formed part of the Application lodged on behalf of the Applicant and the decision and associated conditions were based on the premise that these significant areas would be fenced.
2. It is not considered that the applicant has put forth reasons that sufficiently justify the need not to fence the perimeter of the bush and wetland areas.
3. It is considered that with this outcome, Council will be applying a consistent and thus fair approach to the processing of subdivision applications.
4. It is considered that this outcome will help to achieve the purpose and principles contained in Part II of the Resource Management Act 1991.

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### 1.0 Background

- 1.1 An application for resource consent R55193 was submitted on 22 April 2009 and was subsequently granted on 02 June 2009. It was proposed to subdivide the site, being South Western Portion Allotment 7 Parish of Wharehine (CT NA587/164) & Part Middle Portion Allotment 7 Parish of Wharehine (CT NA18D/465) to create three additional rural residential sites from the protection of bush and wetland areas.
- 1.2 The applicant's consultant (Lamb & Molloy Ltd) provided an assessment of the proposal as part of the application. This assessment assessed the proposal in terms of the rules under the Proposed Plan and noted in terms of Lot 1 that "at least 2 Hectares of bush is to be protected ... and the area of bush fenced and protected". In terms of Lots 3 and 4, this report noted that "the area of wetland is to be fenced and protected". Section 3.4 of the report goes on to state that "existing bush and wetlands to be fenced and protected as previously indicated". Section 3.6 of this report states "the proposal confirms that in excess of 2 Ha of quality native bush is to be fenced and protected as well as nearly 4 Ha of wetland and riparian margin".
- 1.3 This report under section 4.3 states that the application falls within the Boundary Adjustment/Bush Lot/ Wetlands Lot subdivision criteria as set out in the District Plans and is classified as a "Restricted Discretionary Activity" under these plans.
- 1.4 Subsequently the application was assessed by the Council's Processing Planner and consent was granted on the basis that the bush and wetland areas were to be fenced as part of this proposal (02 June 2009). It is noted that the balance lot (Lot 5) is currently used for pine forestry purposes and the current trees are at least 10 years from maturity.
- 1.5 The applicant has objected to one condition of the Resource Consent relating to fencing of the bush (Condition 2) (letter dated 06 July 2009 in **Appendix 1**).

## 2.0 S357 Objection

- 2.1 The reasons for the objection as set out in the letter from the Houghton Family Trust, dated 06 July 2009, are set out in the following points:

### **Condition 2. (fencing of bush)**

- 2.2 The main reasons for objecting to this condition are:

*Lot 5 (59.86ha) will be a pure forestry operation with no stock. The absence of stock means that there will be no adverse effects on either the bush or the wetlands as no stock will be entering the wetland. Neighbouring stock can't get into the area because boundary fence keeps them out. The forestry land is owned by our family trust & the next generation are enthusiastic about this situation continuing. Further, we are now entering into the Emissions Trading Scheme for carbon, which is further assurance that the forestry operation has to continue.*

- 2.3 The applicant, in the above stated letter, also advised that they have erected a stock proof fence around about two-thirds of the bush and wetland areas and that it is possible to keep stock out of the remaining wetland area by closing off a couple of paddocks so effectively the whole area was fenced.
- 2.4 The letter goes on to state that "to complete the fencing of the area with the forestry all around would be a daunting task, with difficulty both of access for equipment and of driving in posts in ground thick with tree roots". Therefore the applicant has requested that the requirement for fencing will be triggered if Lot 5 (containing the bush and wetland) reverts to pastoral use and is no longer used for forestry.

### Requested Relief

- 2.5 The objection states that the condition should be amended to read:

*That if the land in the future ceases to be a forestry operation, and is clear felled and returned to pasture, then the covenanted area of wetland & bush shall be protected by a stock proof fence.*

## 3.0 Statutory Requirements

- 3.1 Section 357 provides for an applicant to lodge an objection to a decision made under delegated authority by an officer of the Council within 15 working days after the decision being notified to that person. The subdivision consent was approved on 02 June 2009 with the objection letter dated 06 July 2009. As such the objection was not received within the 15 working day statutory period: however, it was received within a reasonable timeframe (24 working days).
- 3.2 Section 357(7) provides for the Council to either dismiss the objection or uphold the objection wholly or partly. Section 357(8) provides for any decision on the objection to be substituted for the earlier decision.

## 4.0 Assessment

### Site Observations

- 4.1 The properties that are subject to this application consist of South Western Portion Allotment 7 Parish of Wharehine (CT NA587/164) & Part Middle Portion Allotment 7 Parish of Wharehine (CT NA18D/465). The site is located at JV Grant Road, Port Albert and contains a large area of production forestry, as well as the bush and wetland covenant areas.
- 4.2 Below is an aerial photograph showing the site, the dark green areas being the existing pine forest, which is intersected by the wetland and bush covenanted areas.



Figure 1 – Subject site (highlighted in purple)

#### Matters raised in the Objection

4.3 Each of the matters raised in the objection is discussed below:

#### **Condition 2 (fencing of bush)**

#### Discussion and Recommendation

- 4.8 It was observed during the site visit that the subject property at JV Grant Road has a spine of native vegetation/wetland areas, which are surrounded in the most part with pines. The site has rolling topography with a large area of pasture on the south-western part of the site, where Lots 1, 2 and 3 are located.
- 4.9 It is noted that the Bush and Wetland assessments prepared by Better Living Landscapes Limited made no mention of fencing. These assessments were reviewed on behalf of the Council by AB Ecology Ltd, where it was recommended that:
- Fencing should be established to permanently exclude stock from the wetland and bush and required buffer areas. The backwoods within the 10m buffer area should also be removed.
- 4.10 The applicant's consultant (Lamb & Molloy Ltd) advised that the site is owned by a family trust that is "enthusiastic" about the forestry operation continuing, therefore it is "very likely that the land outside the covenant area will be reforested at some time in the future".
- 4.11 In their Objection, the applicant advised that they are "entering into the Emissions Trading Scheme for carbon, which is further assurance that the forestry operation has to continue". This Objection also highlighted that the activity of forestry is a permitted activity under the Plan, therefore can be undertaken as of right. The Council's concern in this instance is the associated effects to the covenanted area from subsequent logging activities.
- 4.12 Following the formal objection to the condition, the fencing was discussed with Council's Ecological Advisor (Rue Statham) who advised that the applicant will need to fence now as Council can not consider future land use activities, i.e. returning the pine forest areas back into pasture for grazing. Mr Statham also noted that no pines should be located within the buffer area; however, if they were the Council could give them up to five years to remove them, as per the Weed and Pest Management Plan.

- 4.13 Following this advice the writer met with Rex Malloy of Lamb and Malloy Surveyors Limited to discuss the Objection. At this meeting a plan was requested detailing the areas that were currently fenced (note that this plan was never provided). The use of demarcation posts was also discussed, to be in place until such time as the pines were to be removed. In an email following this meeting Mr Malloy provided photographs of the wetland area and he noted that there is a distinct bank/slope up the side of the wetland to the base of the planted pine forest, which has been planted out and contains some large specimens. He advised that this bank area would be provided as part of the 10m buffer required.
- 4.10 The matter was subsequently discussed with Mr Statham who on further investigation advised that as the trees were relatively young and would not be removed within 5 years time, the fencing should be required now to permanently protect the wetland, bush and buffer areas. Mr Statham advised that he is aware of several other forestry operations located directly adjacent to covenanted areas, where the process of logging has had significant adverse effects on the covenanted areas. For this reason the Council needs to ensure that the boundary of the covenanted areas are clearly defined and access into these areas is restricted via a fence.
- 4.11 It is also important to note that as discussed above the application for the creation of three residential lots was clearly based upon the covenanting and fencing of significant areas of bush and wetland. Case law base on Augier v Secretary of State for the Environment, has stated:
- Where an applicant for a planning consent gives an undertaking and in reliance of that undertaking a condition of consent in terms broad enough to embrace the undertaking is imposed, an applicant cannot later say that there is no power to require compliance with that undertaking.*
- 4.12 Augier is an English case, but it has been applied to resource management cases in New Zealand, in relation to an applicant proposing an undertaking and this being enforced through conditions, therefore an applicant can not later object to the conditions. As the decision of the subdivision of consent was based upon the application where it was clearly stated that the bush and wetland areas were to be fenced and covenanted, the applicant can not now object to fencing these significant natural areas.

## **5.0 Conclusion**

After reconsidering Condition 2 of Resource Consent R55193 and the matters raised in the objection from the applicant Houghton Family Trust, and based on the comments from Council's Ecological Advisor - Rue Statham, it is recommended that Council decline the Applicant's objection to conditions.

### **APPENDICES:**

**Appendix 1:** Section 357 Objection and Correspondence

**Appendix 2:** Copy of Application

**Appendix 3:** Conditions and Scheme Plan

ITEM NO: 7

REPORT



TO District Plan and Regulatory Committee  
ON 9 September 2009  
APPROVED BY Ian Dobson – Manager: Resource Consents  
SIGNATURE

A handwritten signature in black ink, appearing to read "Ian Dobson", written over a horizontal line.

SUBJECT **SCHEDULE OF DELEGATED DECISIONS ON RESOURCE CONSENT APPLICATIONS**  
FILE REF TP/1/6

*Note: Councillors should raise any queries they may have with the relevant director prior to the day of the meeting so that these may be responded to on the day.*

The schedule below summarises, for the Committee's information, recent decisions made by staff on delegated authority.

NORTHERN WARD

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
A	Land Surveyor	Vector Ltd R55151	2 Mahurangi East Road, Snells Beach	For consent to a Discretionary Activity for subdivision of Pt Allots 109-111 Village of Matakana for a network utility service.	Non-Notified Approved 18/08/09
A	Council Arborist	HA & SS Fletcher L54657	3 Whitmore Road Buckleton Beach	For consent to a Discretionary Activity to remove two Plane trees and trim a Liquid ambar and a Pin Oak.	Non-Notified Approved 18/08/09
A	Senior Planner Resource Management	K & A Wakelin L55495	229 Point Wells Road, Warkworth	For consent to a Restricted Discretionary Activity for earthworks for excavation.	Non-Notified Approved 19/08/09
G	Land Surveyor	B & D Schollum R55443	377 Pukapuka Road Pohuehue	For consent to a Restricted Discretionary Activity to subdivide Lot 1 DP 67154 and Lot 13 DP 198472 to effect boundary relocation.	Non-Notified Approved 20/08/09

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
G	Independent Commissioner	Jutland Trust R54547	271 Takatu Road Omaha Flats	Section 93 & 94 Determination to undertake a subdivision with the existing site, Lot 9 DP 92986, to create a balance site of 19.9879HA and one new rural residential site of 1.10HA, by undertaking the following: <ol style="list-style-type: none"> <li>1. Protecting 2.53HA of young shrub land which includes the protection of a colony of plant listed as sparse by the Auckland Botanical Society and the habitat of a native centipede.</li> <li>2. Retiring a 4,900m<sup>2</sup> area of the site.</li> </ol>	Fully Notified 93/94 24/08/09
A	Team Leader Resource Management	M & E Cundy L55296	Leigh Road Whangateau	For consent to a Discretionary Activity to construct a dwelling and barn in a Leigh Special Character Activity Area/East Coast Rural zoned site, which is not an activity permitted as of right. The buildings construction will require 220m <sup>3</sup> of earthworks, which is greater than the 200m <sup>3</sup> amount permitted. A Kanuka greater than 3m in height will also require removal for the dwellings construction.	Non-Notified Approved 25/08/09
A	Team Leader Resource Management	T & J Cheer	66 Bawden Road Dairy Flat	For consent to a Discretionary Activity for additions and alterations to a shed infringing the 10m yard on the southern boundary by 7.8 metres	Non-Notified Approved 24/08/09
F	Team Leader Resource Management	Chorus (Telecom) R55499	Moirs Hill Road Pohuehue	Pursuant to Sec 1766A outline plan of works for the upgrading of 3 existing antenna.	Non-Notified Approved 27/08/09
G	Land Surveyor	RSS Plastics Ltd R55459	Lots 37 & 38 Gumfield Drive, Warkworth	For consent to a Discretionary Activity for a proposed boundary relocation between Lots 37 & 38 DP 355859.	Non-Notified Approved 26/08/09

#### WESTERN AND CENTRAL WARDS

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
G	Team Leader Resource Management	Gervin Trust R55127	113 Gervin Road, Wainui	For consent to a Non-Complying Activity for a subdivision, four lots, through re-vegetation of 18ha of existing farmland.	Non-Notified Approved 18/08/09
G	Land Surveyor	H J O'Leary R55344	110/112 Woodhill Park Road, Rewiti	For consent to a Discretionary Activity for a boundary relocation between two existing titles in a General Rural zone.	Non-Notified Approved 21/08/09
G	Land Surveyor	Vector Ltd R55135	11 Wyn Close Kaukapakapa	For consent to a Discretionary Activity to the subdivision of Lot 1 DP 159252 into two lots, for the purpose of creating a utility site.	Non-Notified Approved 21/08/09

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
G	Land Surveyor	B & G Liddle R55238	501 Fordyce Road Helensville	For consent to a Discretionary Activity to subdivide a 113.3 ha. property into three allotments through the protection of 2.27 ha of significant wetland. Lots 1 and 2 will be rural residential lots of 1ha. Lot 3 will be 111.3ha and contain the existing dwelling.	Non-Notified Approved 21/08/09
G	Team Leader Resource Management	Antrim Projects Ltd R54954	1057 Old North Road Waimauku	For consent to a Non-Complying Activity to subdivide the existing allotment into two Lots of 1,71ha and 1,35ha. A 0.68ha area is proposed to be covenanted as wetland area. Consent is also required for the construction of a vehicle crossing closer than 18m from the vehicle crossing situated on Lot 3 DP 64345.	Non-Notified Approved 28/08/09
A	Council Arborist	KC & SK Griffiths L54821	21 Cloverfields Drive, Waimauku	For consent to a Discretionary Activity to remove 4 dead Totara and 1 dying Totara.	Non-Notified Approved 28/08/09
A	Team Leader Resource Management	M & S Spence L55298	3 Gavinike Place, Waimauku	For consent to a Discretionary Activity for the construction of a new dwelling and earthworks.	Non-Notified Approved 31/08/09

#### HIBISCUS COAST WARD

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
A	Team Leader Resource Management	Eldamos Investments Ltd L52975B	40 hibiscus Coast Highway, Silverdale	For consent to a Discretionary Activity, a consent to vary Condition 1 of the consent variation 52975A relating to bulk earthworks of a proposed retail centre.	Non-Notified Approved 18/08/09
A	Council Arborist	P G Evans L55422	61 Hawaiian Parade Arkles Bay	For consent to a Discretionary Activity to thin, dead wood and general tidy of 2 Pohutukawa trees	Non-Notified Approved 18/08/09
A	Council Arborist Resource Management	A & R Vincent L55431	31a Cochrane Avenue, Arkles Bay	For consent to a Discretionary Activity to remove a kanuka tree and a macrocarpa tree.	Non-Notified Approved 18/08/09
A	Council Arborist Resource Management	V Maire L52906	7 Motuora Road, Manly	For consent to a Discretionary Activity to prune a liquid amber tree.	Non-Notified Approved 18/08/09
A	Council Arborist Resource Management	A S Doudney L54860	62 Scott Road Red Beach	For consent to a Discretionary Activity to remove a She oak on the Council road reserve.	Non-Notified Approved 21/08/09
A	Council Arborist Resource Management	M Richardson L55507	29 Rishworth Avenue, Stanmore Bay	For consent to a Discretionary Activity to remove a dying Pohutukawa and trim a Titoki.	Non- Notified Approved 21/08/09

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
A	Team Leader Resource Consent	Auckland Regional Council R55389	Whangaparaoa Rd Army Bay	For consent to a Discretionary Activity to 1.Outline Plan of Works to undertake works and erect a predator proof fence for the purpose of creating an Open Sanctuary at Shakespear Regional Park. 2. Erection of a predator proof fence and associated works as part of a Open Sanctuary at Shakespear Regional Park that requires resource consent for erection of a building, infringements to the front, side and shoreline yards, earthworks in excess of 200m <sup>3</sup> , earthworks within 10m of mean high water springs and removal of native trees up to 3m in height within 10m of mean high water springs.	Non-Notified Approved 21/08/09
A	Team Leader Resource Management	T & J Devlin L55337	8 Titan Place Silverdale	For consent to a Restricted Discretionary Activity to earthworks involving cut and fill of 1233m <sup>3</sup> , which exceeds the 200m <sup>3</sup> amount permitted within an Industrial zone. Some of the works will also take place within the 1 horizontal to 2 vertical control plane as measured from the western boundary of this site.	Non-Notified Approved 24/08/09
A	Team Leader Resource Management	J & B Storer L55324	118 Florence Avenue, Orewa	For consent to a Restricted Discretionary Activity for a garage infringing height to boundary and side yard rule.	Non-Notified Approved 25/08/09
A	Team Leader Resource Management	Anglican Diocese of Auckland L55404	24 Wainui Road Silverdale	For consent to a non-Complying Activity to make external additions to a scheduled heritage building for the installation of a sprinkler system within the Special 19 Zone.	Non-Notified Approved 25/08/09
A	Team Leader Resource Management	S Golder L55027	684 Kahikatea Flat Road, Dairy Flat and others	Section 93/94 report for Consent to erect advertising signs in various locations around Rodney.	Fully Notified 93/94 12/08/09
A	Team Leader Resource Management	Gremlin Properties Ltd L55460	155 Gulf Harbour Drive Gulf Harbour	For consent to a Restricted Discretionary Activity for infringing the 1:2 ratio with a proposed retaining wall of 0.7m in height and 0.3m from the boundary.	Non-Notified Approved 24/08/09

Type of Delegation	Officer	Applicant/ Owner	Address	Application	Decision/ Date
G	Team Leader Resource Management	WFH Properties Ltd R52625	Leigh and Bankside Roads Silverdale North	For consent to a Non Complying Activity for a Development Concept Plan (DCP) for Precinct 6 and subsequent subdivision and land use consent to develop Stages 1 and 2 of Precinct 6 at Silverdale North. The proposed subdivision/land-use application comprises of the following elements, -183 Residential Lots -Roads to vest -Jointly Owned Access Lots -Recreation, drainage and esplanade reserves. -Future Development Lots -Associated earthworks of approximately 22,590m <sup>2</sup> cut & 29,420m <sup>3</sup> fill -Retaining wall construction -Boundary Relocation to anticipate proposed alignment of Road 2	Non-Notified Approved 26/08/09
A	Team Leader Resource Management	W O'Leary L55496	751 Whangaparaoa Road, Stanmore Bay	For consent to a Restricted Discretionary Activity for a new dwelling infringing the front yard and slope requirements.	Non-Notified Approved 24/08/09
A	Team Leader Resource Management	VT & DM Macartney	166 Lakeside Drive Orewa	For consent to a discretionary activity for the proposed dwelling additions infringes into the 3 metre rear yard on the north eastern boundary	Non-Notified Approved 24/08/09
G	Team Leader Resource Management	C & G Bird R55371	18 & 20 Flounder Point Road, Stillwater	For consent to a Non-Complying Activity to amalgamate two adjoining, existing lots resulting in two dwellings on a single site and to undertake 552m <sup>3</sup> of earthworks.	Non-Notified Approve 28/08/09
A	Team Leader Resource Management	A Rhodes L55501	105G Newman Road, Stillwater	For consent to a Discretionary Activity To undertake approximately 1620m <sup>3</sup> of earthworks, being 640m <sup>3</sup> of cut and 980m <sup>3</sup> of fill, exceeding the maximum permitted volume of 200m <sup>3</sup> in order to create a building platform.	Non-Notified Approved 28/08/09
A	Team Leader Resource Management	G & J Munro L 55264	1/20 Roberts Road Hobbs Bay	For consent to a Discretionary Activity for the construction of a dwelling in the Residential Low Intensity zone and associated 974m <sup>3</sup> of earthworks, exceeding the max requirement of 200m <sup>2</sup> and infringing the 1:2 plane on the southern and western boundaries.	Non-Notified Approved 28/08/09

**RECOMMENDATION:**

**That the report on decisions relating to:**

- A Land Use Resource Consent Applications [s.88 of the Resource Management Act 1991] (Controlled Activity, Discretionary Activity, Non-Complying Activity, Preservation or Conservation of Landscape);**
- B Lapsing of Consents [s.125 of the Resource Management Act 1991];**
- C Change or Cancellation of Consent Conditions by Consent Holder [s.127 of the Resource Management Act 1991];**
- D Existing Uses [s.10 of the Resource Management Act 1991];**
- E Non-Conforming Buildings [s.10 of the Resource Management Act 1991];**
- F Any Other Decision Relating to Activities;**
- G Subdivision Consent [s.105 of the Resource Management Act 1991] and Development Plans [s.409];**

**made pursuant to delegated authority from the Council, be received.**

**SUBJECT PUBLIC EXCLUDED**

That the public be excluded from the following parts of the proceedings of this meeting, namely:

Agenda Item No(s). 9, 10, 11 and 12

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Grounds under section 48(1) for the passing of this resolution
Possible Prosecution	The disclosure of information would not be in the public interest because of the greater need to protect the privacy of natural persons, including that of deceased natural persons (section 7(2)(a) Local Government Official Information and Meetings Act 1987).	That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist, under section 6 or section 7 (except section 7(2)(f)(i) of the Act). (section 48(1)(a) Local Government Official Information and Meetings Act 1987.)
Appeals / Proposed District Plan 2000	Refer grounds	That the exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the Local Authority to deliberate in private on its decision or recommendation in any proceedings before it where: (i) a right of appeal lies to any court or tribunal against the final decision of the Local Authority in those proceedings; or (ii) the Local Authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings. (section 48(1)(d) Local Government Official Information and Meetings Act 1987.)

**CONFIDENTIAL**