

**Chairperson and Committee Members**  
 APPEAL HEARINGS COMMITTEE

18 NOVEMBER 2014

Meeting Status: **Public**

Purpose of Report: For Decision

## **DEVELOPMENT CONTRIBUTIONS – L F MANNING**

### **PURPOSE OF REPORT**

- 1 The purpose of this report is to facilitate a decision on an objection lodged by Lowell Manning to the requirement for the payment of Development Contributions with respect to a subdivision of land at 5 Westridge Court, Paraparaumu.

### **SIGNIFICANCE OF DECISION**

- 2 This report does not trigger Council's Significance Policy.

### **BACKGROUND**

- 3 The site has a complex history of development, with four dwellings already erected on the property. At the time these four dwellings were established, the appropriate development contributions were paid.
- 4 Payment of \$2,869.00 against Building Consent number BC060753 was received from Letmor Construction (L F Manning) on 25 October 2006. This was payment of the Development Contribution of \$1,434.50 for each of the two most recently constructed dwelling units. The other two older dwellings appear to have been constructed in the late 1990's, prior to Council requiring payment of Development Contributions when additional units of demand were established. The following table sets out the details of the relevant invoices and receipts:

Date	Project reference	Invoice/Receipt ref	Amount	Payment received
20-09-06	BC060753P	31216	\$2,869.00	
25-10-06	BC060753P	190435		\$2,869.00
14-02-08	RM070077	57601	\$2,869.00 transferred from BC060753P to RM070077	

- 5 A subdivision of the land at 5 Westridge Court into three allotments and land use consent for three additional dwellings on one of the resulting allotments was granted consent under delegated authority by the Resource Consents and Compliance Team on 28 January 2014 (Council reference RM130200). A copy of the applicant's plans showing the proposed development is attached as Appendix 1 to this report.

- 6 The development would then, if the consent was implemented, consist of one allotment with two existing dwellings (Lot 3 – the 1990's dwellings) and two allotments with one existing dwelling on each (Lots 1 and 2), with three further dwellings on Lot 1 in addition to the dwelling already in existence.
- 7 Two previous applications for subdivision had been granted consent in 2007 and in 2012 but for various reasons, the developer elected not to implement the consents. The most recent consent being issued in 2014 under Council's reference of RM130200 is the subject of this report. No development contributions were paid with respect to the unimplemented consents, but were paid at the then applicable rate in relation to the building consents issued with respect to each of the dwellings which have been erected on the land.
- 8 The advice notes attached to the decision issued under RM130200 initially stated that there was to be a credit against the consent of the dollar amounts which had previously been paid with respect to the existing dwellings and required payment of the difference with respect to the two additional allotments being created by the subdivision. This approach to the acknowledgement of credits for contributions previously paid was in accord with Council's previous Development Contributions Policy, but inadvertently did not take into account the change in approach incorporated into the policy which was current at the time of the application. This issue, together with several other aspects of the decision were the subject of discussions with the developer over some months following the issue of the initial decision. A corrected decision was ultimately issued under section 133A of the Resource Management Act 1991 on 20 June 2014. A copy of the corrected decision is attached as Appendix 2.
- 9 In the corrected decision, there was an acknowledgement that no development contribution was required with respect to the subdivision of the land as a full credit for the existing dwellings in accordance with Council's current Development Contributions Policy was incorporated into the subdivision consent. The land use consent for the establishment of three additional dwelling units included an advice note informing the developer that a payment of \$11,886.40 with respect to each of the proposed new dwellings would be required in accordance with the Development Contributions Policy as it applied at the time of the application.
- 10 It appears that the developer may have been confused by the issue of a credit note document which effectively transferred the previous payment of development contributions which had been made against BC060753, to the subdivision consent to ensure that the previous payment was formally acknowledged. This accounting device is a way of ensuring that there is no double charge in cases where multiple consents are issued with respect to any development. It appears that he has taken the credit note as a "credit against future development", rather than a simple transfer of fees which had already been received, to the current consent. Copies of the relevant invoices, receipts and credit note are attached as Appendix 3.
- 11 It appears that the developer has the impression that Council somehow is holding additional funds in trust for his benefit against future developments. No such unused funds are held by Council. The developer's request for a hearing and the reasons for it are contained in the email string which is attached as Appendix 4. A description and analysis of the situation to the developer is also contained as part of this email record.
- 12 At the request of the developer, an independent assessment of the circumstances around the objection to the Development Contributions was undertaken. In a letter dated 15 August 2014, Council's Environmental Policy

Manager, Mr Lew made a determination that the objection to the development contributions for RM130200 should be declined. A copy of Mr Lew's letter is attached as Appendix 5.

## CONSIDERATIONS

### Issues

- 13 The Local Government Act 2002 Amendment Act 2014 does not apply to this objection against the imposition of Development Contributions because the consent to the development was issued and the objection to the decision was received prior to the Amendment Act coming into effect on 8 August, 2014.
- 14 While no rights of objection were provided for in the Local Government Act 2002 with respect to the imposition of Development Contributions, the Kapiti Coast District Council had voluntarily decided to provide this facility in the interests of fairness and transparency of operation.
- 15 As a response to the Local Government Act 2002 Amendment Act 2014, Council revoked the authority of the Appeals Committee to hear such objections.
- 16 A transitional provision to address pre-existing objections which were received prior to 8 August 2014 was approved at Council's meeting of 16 October 2014.

### Financial Considerations

- 17 Apart from ensuring that the correct amount of contribution is made with respect to the additional units of demand which will be created if the consent is given effect to, the financial implications to Council as a result of this development relate solely to the liability to pay development contribution at the time of the establishment of additional units of demand. If the developer's argument is accepted, a remission of 1 Household Unit Equivalent (HUE) will be granted against the further development of Lot 1 of the 5 Westridge Court subdivision which was granted consent under Council's reference of RM130200. The dollar value of this remission is \$11,886.40.

### Legal Considerations

- 18 Consideration of this appeal is not a statutory process and has no legal implications for Council. No rights of appeal were legally available to any developer in relation to any developments which were granted consent prior to 8 August 2014.

### Delegation

- 19 The Appeals Committee authorities are contained in section B.6 of the current Governance Structure and Delegations and at clause 7.5 the Committee has the authority *"to hear and determine objections to development contributions received prior to 8 August 2014."*

### Consultation

- 20 No other agency has been consulted on this matter as it relates solely to the payment of development contributions with respect to a specific development.

### Policy Implications

- 21 Council's current Development Contributions Policy is contained in the Long Term Plan 2012-32 and, as required by the Local Government Act 2002 includes a number of controls around the circumstances in which contributions

may be sought. These controls are set out in section A.6 of the Development Contributions Policy, which is attached to this report as Appendix 6.

- 22 The credited contributions were set out in the final bullet point in the advice notes to Decision 1 of RM130200 and clearly state that full contributions for the existing dwellings have been credited against the subdivision component of the development. This approach is fully in accord with Council's Development Contributions Policy.
- 23 This request for reconsideration of the Development Contributions is a standalone application and the decision on it will have no implications with respect to the application of Council's Development Contributions Policy.

### Tāngata Whenua Considerations

- 24 There are no considerations which impact on local iwi with respect to this appeal.

### Publicity Considerations

- 25 There do not appear to be any publicity implications with respect to this appeal.

## RECOMMENDATIONS

- 26 It is recommended that the Appeals Hearings Committee dismiss the objection lodged by L F Manning to the requirement for the payment of Development Contributions for each of the three additional dwellings authorised by decision 2 of RM130200.

#### Report prepared by:

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#### Peer Reviewed by:

Andrew Guerin  
Resource Consents and Compliance  
Manager

#### Approved for submission by:

Sharon Foss  
Acting Group Manager, Regulatory  
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## ATTACHMENTS:

- Appendix 1: Aerial Photograph and Developer's plans of the proposed development.  
Appendix 2: Decision RM130200 related to both the Subdivision and Land Use Consents for 5 Westridge Court, Paraparaumu.  
Appendix 3: Invoices and Receipt related to the payment of the Development Contributions.  
Appendix 4: Emails between Developer and Council related to objection.  
Appendix 5: Letter from Environmental Policy Manager dated 15 August 2014.  
Appendix 6: Extract from Council's Development Contributions Policy.