

CONFIDENTIAL MEMORANDUM

TO: Council

MEETING DATE: 20 December 2021

TITLE: All Saints Resource Consent: Objection to Costs

PRESENTED BY: Chris Dyhrberg, Chief Customer Officer and David Murphy, Chief Planning Officer

APPROVED BY: Chris Dyhrberg, Chief Customer Officer
David Murphy, Chief Planning Officer

It is recommended that this report be considered with the public excluded, as permitted by the Local Government Official Information and Meetings Act 1987 under clause:

s7(2)(i) Negotiations - The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)

RECOMMENDATION FOR PUBLIC RELEASE

Once negotiations are complete and the objection is formally withdrawn by All Saints.

RECOMMENDATIONS TO COUNCIL

1. That Council agree to waive \$48,000 fees charged to the Anglican Diocese of Wellington on invoice 1161101, conditional upon the withdrawal of the Anglican Diocese of Wellington's objection to fees charged by the Council under invoices 1161101 (dated 25 May 2021), and invoice 1168810 (dated 28 June 2021).
 2. That the report and decision be publicly released once negotiations have been completed and the objection is formally withdrawn by All Saints Church.
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1. ISSUE

- 1.1 Council officers have negotiated an agreement in principle to waive \$48,000 of fees charged to the Anglican Diocese of Wellington ("the applicant") to resolve its objection to fees charged by the Council for processing its resource consent application. The Council's approval is required to confirm the agreement in principle, because the amount of the waiver agreed in principle is more than 1% of the specified sum in the Council's delegations

and is therefore beyond the delegation given to the Chief Executive to waive fees.

2. BACKGROUND

- 2.1 The applicant's resource consent applications to strengthen and add to the All Saints Church in Palmerston North were declined by independent commissioners in early 2021. The applicant was charged fees relating to the processing of the resource consent application under s 36 of the Resource Management Act 1991.
- 2.2 While the applicant has appealed the Commissioners' decision to decline its application, it has also (separately) objected to the fees it was charged, asking the Council to cancel all charges. These charges total \$ [REDACTED] s7(2)(i) Negotiations over two invoices.
- 2.3 The invoiced fees were for charges actually incurred by the Council for processing the resource consent application including, in summary:
- a) Invoices for the three independent hearing commissioners who prepared for and conducted the hearing and gave their decision;
 - b) Miscellaneous expenses associated with management of the hearing process by the Council's governance team;
 - c) A legal opinion by independent counsel in relation to issues raised during the hearing;
 - d) Invoices for legal counsel appointed to assist the hearing commissioners and s42A independent reporting officers;
 - e) Invoices for expert reporting officers on relevant heritage, urban design and planning topics.
- 2.4 While the objection had been set down for a hearing by an independent commissioner, Council officers decided to engage directly with representatives for the applicant, to discuss whether the objection could be resolved by agreement. An agreement in principle has been reached, subject to the Council's approval, to waive \$48,000 of the charges to the applicant.
- 2.5 The recommended waiver represents a reduction of approximately 24% of the fees charged in the invoices that have been challenged by the applicant. In exchange for this reduction, the applicant will withdraw its fees objection.
- 2.6 In the unique context of this case, there are two primary reasons why the Council officers considered it appropriate to settle the costs objection in this way.
- 2.7 First, the hearing before the independent commissioners was an unusually divisive hearing for the Palmerston North community. This resulted in

significant public interest and media reporting, often focussing on the contentious aspects of the application and hearing procedure, including the way in which the council conducted the hearing. While none of these complaints were upheld, the same complaints have, unfortunately, also been raised in the objection as reasons why the applicant should not have to pay its fees. While the Council officers disagree with the merits of the objection to costs and the reasons for them, they do not consider that the best interests of the community will be served by a further contentious and public argument about 'fees' that will inevitably focus on the conduct of all parties at the hearing a year earlier. It is in the best interests of the community to 'move on' without further public discord on these matters.

2.8 Second, a group of experts for the Council, the applicant, and Heritage New Zealand, are positively engaging with each other in the Environment Court appeal process. **s7(2)(i) Negotiations**

[REDACTED], the officers' understanding is that they have been very positive to date and may well lead to a good outcome for all parties. The Council officers consider this reduction is an appropriate recognition and goodwill gesture for the positive approach now being taken by the applicant in the appeal process.

2.9 While the Council Officers maintain that the fees charged to the applicant allow the Council to recover its actual and reasonable expenses, for the reasons given above, there are extraneous circumstances in this particular case that justify a reduction in those fees that are in the best interests of the All Saints Church and the Palmerston North community.

2.10 All Saints Church received \$300,000 funding via the 2018 Long Term (\$100,000 per year over three years).

3. NEXT STEPS

3.1 Should the Council give the recommended waiver, the Officers will communicate the outcome to the applicant, and the balance payment will be made. The applicant's objection to costs will then be discontinued.

3.2 Should the Council not give the recommended waiver, the applicants objective will need to be scheduled for a hearing before the appointed and delegated independent commissioner.

3.3 For the purposes of clarity, the discussions in the context of the Environment Court proceeding are ongoing and will continue regardless of the Council's decision on this issue.

4. COMPLIANCE AND ADMINISTRATION

Does the Council have delegated authority to decide?	Yes
If Yes quote relevant clause(s) from Delegations Manual	

Are the decisions significant?		No
If they are significant do they affect land or a body of water?		No
Can this decision only be made through a 10 Year Plan?		No
Does this decision require consultation through the Special Consultative procedure?		No
Is there funding in the current Annual Plan for these actions?		No
Are the recommendations inconsistent with any of Council's policies or plans?		Yes
The recommendations contribute to Goal 5: A Driven & Enabling Council		
The recommendations contribute to the achievement of action/actions in (Not Applicable)		
Contribution to strategic direction and to social, economic, environmental and cultural well-being	Not applicable	

ATTACHMENTS

Nil