

Additional Charges Excluded From Compulsion Measures Under The RMA

Section 36(7) of the RMA enables local authorities to refuse to undertake the processing of resource consent applications until administrative charges in relation to the applications have been paid. In a recent decision* the Environment Court has held that section 36(7) does not extend to 'additional charges' levied to cover the actual and reasonable costs of processing the application under section 36(3).

The decision concerned refusal by Auckland Regional Council ("ARC") to release its decision on applications for resource consent until such time as the applicant paid in full all charges levied under section 36. Having paid all the required fixed charges the applicant lodged an objection in respect of some of the additional charges levied under section 36(3). The applicant in effect sought a declaration that ARC could not withhold its decision because section 36(7) is narrow in scope and only applies to fixed charges under section 36(1).

The Court commented that section 36 as a whole makes provision for a user pays scheme and there is no presumption that all or any portion of the costs of processing resource consents should be absorbed by the Council as part of general overheads.

However, the Court considered that the wording of section 36(7) specifically referred to the charges levied under section 36(1) (fixed charges) which by implication excluded section 36(3) (additional charges). The Court considered that in the context of section 36 there is a distinction between fixed and additional charges. Fixed charges can be determined in advance by reference to a scale or formula through the process in the Local Government Act 2002, therefore the RMA does not provide a right to object and such charges can be required in advance. The Court considered additional charges on the other hand cannot be known in advance and will usually only be known once the task is completed. A right to object is therefore afforded to applicants in these circumstances. The Court concluded that if additional charges can be disputed through the objection process then such charges cannot be determined, in the sense of required, until the dispute is resolved.

Local authorities are therefore not able to compel payment by withholding their decisions pursuant to section 36(7). In line with the decision the practice of requiring payment of deposits for additional charges would not be lawful.

* *North Eastern Investments Limited v the Auckland Regional Council* [2010] NZEvC 104, 1 April 2010, Judge Thompson.



The Court suggested that it is open to local authorities to include as a condition of consent that the consent cannot be exercised until payment of 'additional charges' has been made. Alternatively local authorities can seek to recover the charges as a general debt.

In light of this decision local authorities may wish to review their 'terms of trade' in relation to additional charges, to ensure that they are not carrying the cost of additional charges for consent processing any longer than is absolutely necessary. We have some thoughts about how these issues might be addressed and invite you to get in touch to tease out these thoughts.

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