

8. INSPECTIONS AND ENFORCEMENT UNIT: PROSECUTION UPDATE

General Manager responsible:	General Manager Regulation and Democracy Services, DDI: 941-8462
Officer responsible:	Inspections and Enforcement Manager
Author:	Gary Lennan

PURPOSE OF REPORT

1. The purpose of this report is to advise the Council through the Regulatory and Planning Committee, of the recent outcome of a prosecution undertaken by the Council's Inspections and Enforcement Unit.
2. The report also seeks the Regulatory and Planning Committee to receive this report advising of the Council's successful conviction for illegal building work and breach of the City Plan.

EXECUTIVE SUMMARY

3. In late 2007, the defendant in this case, Mr Chou, applied for building consent for a garage/workshop and a two-bedroom sleep-out at 26 Karamu Street, Riccarton. During this process it was identified at the Project Information Memorandum (PIM) stage that the initially proposed work would require resource consent. The defendant then resubmitted plans along with a letter advising the Council that he did not intend to use the premises for commercial purposes and he would not carry out the work initially indicated on the plans to convert the garage into two separate rooms.
4. On this basis the plans were approved and a resource consent was not required. The building work was completed as required and a Code Compliance Certificate was issued.
5. In September 2008, the Council received anonymous information that further building work had been completed on the site.
6. A site inspection revealed a further room had been added for a kitchen between the consented buildings. A dividing wall had been added to the garage and new walls had been constructed in the sleep-out, turning the consented two bedrooms into four.
7. A workman who was in the process of lining the garage at the time of inspection was advised to stop work.
8. The defendant was interviewed by Council officers a few days later and admitted to deliberately deceiving the Council.
9. Charges were laid under Section 40 of the Building Act 2004 and Section 338 of the Resource Management Act (RMA) 2009 for building work without a consent and a breach of the City Plan.
10. The defendant entered a guilty plea at the first hearing, and at the time of sentencing the defendant had already obtained a demolition consent and restored the property to the originally consented plans.
11. In sentencing, Judge Borthwick took into account the various aggravating and mitigating factors including the defendant's ability to pay a fine. He was duly convicted and sentenced to pay \$5,000 for the Building Act offence and 75 hours community service for the RMA offence, he was also ordered to pay solicitor fees of \$113 on each charge and \$130 court costs.

FINANCIAL IMPLICATIONS

12. Enforcement activity is rate-payer funded, with legal and prosecution costs being met out of the Inspections and Enforcement Unit budget. Section 389 of the Building Act 2004 provides for the Council to receive 90 per cent of any fine imposed by the Court upon conviction (90 per cent of \$5,000 is \$4,500). Total legal costs for this prosecution amounted to \$6,170.95, so the net cost to the Council for the legal advice is \$1,670.95.

LEGAL CONSIDERATIONS

13. All prosecutions are approved by the Inspections and Enforcement Manager, after consideration of evidence available to substantiate the charge/s and the public interest factors justifying the intervention of the law. All approved prosecutions are then reviewed by Council legal staff prior to charges being laid.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. This investigation and subsequent prosecution aligns with the Council's Regulatory Services activities.

ALIGNMENT WITH STRATEGIES

15. Not applicable.

CONSULTATION FULFILMENT

16. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee receive this report for information.