



Hastings District Council

*Civic Administration Building
Lyndon Road East, Hastings 4156*

Phone: (06) 871 5000

Fax: (06) 871 5100

www.hastingsdc.govt.nz

OPEN MINUTES

HEARINGS COMMITTEE

Meeting Date: Wednesday, 6 September 2017

**And Continued, in Public Excluded
Session, later on 6 September and
also on Tuesday, 19 September 2017**

(J and P Campbell)

**(Section 357A (1)(g) and (2) Resource Management Act
1991 - Objection to Decision on Resource Consent
RMA20170172, 209 Horonui Road, Poukawa)**

HASTINGS DISTRICT COUNCIL

**MINUTES OF A MEETING OF THE HEARINGS COMMITTEE
HELD IN THE COUNCIL CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION
BUILDING, LYNDON ROAD EAST, HASTINGS
ON WEDNESDAY, 6 SEPTEMBER 2017 AT 10.00AM**

***[AND THEN CONTINUED IN PUBLIC EXCLUDED SESSION
ON WEDNESDAY, 6 SEPTEMBER 2017 AND RECONVENED IN PUBLIC
EXCLUDED SESSION IN THE GUILIN ROOM , GROUND FLOOR
ON TUESDAY, 19 SEPTEMBER 2017]***

**WITH THE DECISION BEING RELEASED ON MONDAY, 9 OCTOBER 2017
(FOLLOWING A RESOLUTION TO PROCEED IN OPEN SESSION
IN ORDER TO RELEASE THAT DECISION)**

PRESENT: Chair: Councillor Lyons
Councillors Heaps and Redstone

IN ATTENDANCE: Environmental Consents Manager (Mr M Arnold)
Team Leader Environmental Consents/Subdivision (Mr C
Sutton)
Senior Environmental Planner Consents (Mrs C Boulton)
Committee Secretary (Mrs C Hilton)

ALSO PRESENT: Mr J and Mrs P Campbell (Objectors)
Ms Lara Blomfield, Sainsbury Logan and Williams – Legal
Counsel for the Objectors
Mrs Janeen Kydd-Smith, Director and Principal Planner,
Sage Planning - Planning Consultant for the Objectors

1. APOLOGIES

There were no apologies.

2. SECTION 357A (1)(g) AND (2) RESOURCE MANAGEMENT ACT 1991 - OBJECTION TO DECISION ON RESOURCE CONSENT RMA20170172, 209 HORONUI ROAD, POUKAWA (J AND P CAMPBELL)

(Document 17/850)

The Chair introduced the members of the Committee and the Council Officers present. He made his opening comments and outlined the process that would be followed at the hearing, together with addressing “housekeeping” issues. It was explained that the planning report had the same status as any other evidence being considered at this hearing.

The Chair also advised that the Committee had been on a site visit that morning, prior to the start of the hearing.

Ms Blomfield, Legal Counsel circulated evidence from both herself and **Mrs Kydd-Smith**, Planning Consultant, on behalf of the Objectors.

Ms Blomfield read her circulated Submissions of Counsel (56083#0045), interpolating as appropriate. The main points / paragraphs that were highlighted in her Submissions or matters that were addressed included:

- Paragraph 5.2 - the existing uses on the property would not change as a result of the proposed subdivision.
- Paragraph 8 – both the Council’s Reporting Officer and Mrs Kydd-Smith consider that the proposal passes the first gateway test under RMA section 104D(1)(a).
- Paragraphs 23 to 25 – there were two possible alternative scenarios of future development referred to (as permitted or controlled activities) and these would be further detailed when Mrs Kydd-Smith presented her evidence.
- Paragraph 25.2 – this showed that a significant amount of development could occur on the balance site, under the second proposed scenario.
- Paragraph 27 – section 104(2)(a). If there is a permitted activity rule in force on a site that is 20ha or more in size, that should be taken into account and the effects that could result in a less desirable outcome and greater fragmentation of the property should be disregarded.
- Paragraph 30 – whether or not section 104D(1)(b) was relevant. Ms Blomfield felt the Reporting Officer appeared to misunderstand when and how the gateway tests in section 104D should be applied.
- Only one of the two gateway tests have to be met and this has plainly been achieved in this case.
- Neither the Reporting Officer nor the Hearings Committee need to consider the second gateway test, as the Planner has done in this case. This did not form grounds to decline the application or to dismiss this objection.
- Paragraph 42 – she had noted three considerations that the Environment Court had felt important when deciding whether consent should be granted to a non-complying activity. These three considerations were applied almost interchangeably by the Environment Court and divisions of that Court – i.e:
 - 1) Was the activity in question an exception to the general run of cases; or
 - 2) Did the activity have an evidence unusual quality; or
 - 3) Did the activity have distinguishing or special circumstances.
- Ms Blomfield felt the Hearings Committee would be familiar with examples of this type of application, but had referred to one case in her Submissions as a reference – *Hutchings v. Western Bay of Plenty DC*.
- Paragraph 45 – the Hearings Committee would have seen the homestead and gardens on the site visit that morning, prior to the hearing. Ms Blomfield highlighted that there were heritage aspects involved in this situation.
- Paragraph 55 – while no two proposals are exactly the same, it was certainly correct in this case where there were truly unique aspects.

The Committee then asked questions of Ms Blomfield. The main points that were raised or addressed in response to the questions included:

- Paragraph 8 – the point had been noted that only one gateway test needed to be satisfied. Officers had raised the issue of “other matters” e.g. precedent.
- Was Ms Blomfield saying that “other matters” should not or can’t be considered at all?
- In relation to precedent and plan integrity – “like” situations should be treated as like. Section 104D(1)(b) was referred to.
- Precedent depends on whether or not there are truly similar situations – Ms

Blomfield did not believe there were similar situations in this case.

- The Reporting Officer would be able to speak to her view of this matter later in the hearing.

Mrs Kydd-Smith read her previously circulated evidence (56083#0046), interpolating as appropriate and with some sections taken “as read” with the agreement of the Hearings Committee. The main points / paragraphs that were highlighted in her evidence or matters that were addressed included:

- Paragraph 25 – it was not possible for Council to impose conditions on controlled activity subdivisions that would change lot shape and location or dimensions.
- Paragraph 26 – Attachment 1 was a map illustrating the First Controlled Activity Scenario outlined in her evidence. This map was not exactly to scale.
- Paragraph 27 – she emphasised that the development details outlined in this paragraph could be undertaken on a permitted activity basis.
- Paragraph 29 - Attachment 2 was a map illustrating the Second Controlled Activity Scenario outlined in her evidence.
- The location outlined in the first sentence of Paragraph 29 referred to the area by the gate near the woolshed near the road.
- Paragraph 31 – There would be no opportunity to undertake any other development without a non-complying activity consent.

The Committee then asked questions of Mrs Kydd-Smith. The main points that were raised or addressed in response to the questions included:

- Had the Objectors considered a possible third alternative activity – i.e. to reduce the size of the lifestyle block and increase the size of the balance lot so that it was more acceptable.
- Would the implement shed be part of the balance lot?
- Mrs Kydd-Smith confirmed that this option had been considered early on. However, it was considered that the area of the balance lot should include the donkey paddock.
- The implement shed stored equipment which was used for the area of productive grazing and the gardens. There was a lot of work involved in the garden areas.
- The implement shed was located in the far corner of the site but if the balance lot was sold off, this would not be the best place for the shed.
- The area on the other side of the lower driveway towards the lakes – had that been considered to be included in the balance site?
- Mrs Kydd-Smith confirmed that this had been considered but this was a very limited narrow area.
- The Alternative Scenarios 1 and 2 were only two of several examples that could be considered. How did they compare to what had originally been proposed?
- Were buildings permitted on the balance lot?
- Currently there were no limits on the scale of the main residential building. The limit on the size of a supplementary building was a total of 100m².
- Was development likely on the balance lot? Nothing had been offered by the Objectors to limit any such future development.
- Mrs Kydd-Smith did not see any difference in regard to effects when comparing what could be undertaken under the First Controlled Activity Scenario and what could be done on the balance land as of right.
- Under the First Controlled Activity Scenario the Objectors could still have visitor accommodation and an implement shed on the property. So you would need to look at the details of this scenario compared to what would be permitted.

At this point, Mr J Campbell responded to an earlier question. He advised that the

secondary road also gave access to their house. Trucks used the rear access. If that was subdivided off Lot 1, the boundary would separate the road access and the water supply from the house, and that course of action was not a priority for them.

Mr J and Mrs P Campbell circulated four lots of evidence which took the form of:

- Written evidence (56083#0047).
- A copy of an article published in NEXT magazine in August 1992 – titled “Old Horonui” (56083#0044). This had been published prior to the fire which destroyed the original homestead on 25 May 1998.
- A reference from John Vickers “Homestead Architecture Tours” dated 30 August 2017 (56083#0048).
- A photograph of the current dining room and gallery set up for a fund-raising dinner in August 2013 – titled “New Horonui” (56083#0049).

Mr and Mrs Campbell jointly presented the earlier circulated evidence. They read the written evidence (56083#0047) interpolating as appropriate. The main points / paragraphs that were highlighted in their evidence or matters that were addressed included:

- The Horonui garden had many trees over 100 years old and had been landscaped in a similar way over the years, just as it looked today.
- This was reflected in photos in the Billiards Room.
- The copy of an article published in NEXT magazine in August 1992 – titled “Old Horonui” (56083#0044) was referred to.
- Over recent years Horonui had been included in Homestead Architecture Tours led by John Vickers. The focus of these tours was “heritage”. A reference from John Vickers had been circulated (56083#0048).

The Hearings Committee did not ask any questions of Mr and Mrs Campbell in regard to their evidence.

At this point a break was taken to give the Reporting Planner time to consider the evidence that had been presented before addressing the hearing.

The hearing briefly adjourned from 11.20am to 11.55am

The Council’s Reporting Planner, Mrs Boulton, addressed the points that had been raised as part of the evidence presented by Mr and Mrs Campbell; Ms Blomfield and Mrs Kydd-Smith. Mrs Boulton also addressed the respective responses by Ms Blomfield and Mrs Kydd-Smith to questions from the Hearings Committee. The main points that were addressed by Mrs Boulton included:

- She clarified that a compliant lifestyle subdivision around an existing dwelling was a Controlled Activity within the Rural Zone.
- If a subdivision was not able to comply with one or more of the relevant Subdivision Site Standards in 30.1.6 it was considered to be a Non-Complying Activity.
- It was difficult to achieve a Controlled Activity such that it also takes into account the site area, the substantial grounds and plantings on the site that have been established over 117 years.
- In order to encompass the plantings etc in the area permitted for this type of activity the subdivided area would end up being greater in size than what was

- allowed under the Controlled Activity requirements.
- A 4,000m² area was restrictive to the extent that the complying intensive development could only spread out to that maximum area, although there would be yard setbacks to take into account.
 - In comparison the proposed balance site could create further fragmentation of the land as there was no limit as to where development could occur. Development in that case did not have to be within a restricted site size.
 - Suggested Alternate Scenario 2 could result in less land fragmentation, as site sizes were at the edge of the property.
 - The scenario, as outlined in Mrs Kydd-Smith's evidence, could only be achieved with at least a three year period after the first Rural Lifestyle lot was created.
 - Paragraph 18 of Ms Blomfield's Submissions – this referred to the effect of reducing the proposed balance site and stated that Mrs Boulton had indicated this reduction would be a direct challenge to the minimum area requirement set for any Rural subdivision.
 - Regarding objectives and policies in the District Plan, Mrs Boulton believed that this came down to scale. The proposed lifestyle lot was significantly over sized and the balance lot was significantly under sized. This did not differ much from the minimum Plains site size.
 - The scale of a resultant lifestyle lot and the balance site have to be taken into consideration on a case by case basis.
 - Precedent and integrity matters.
 - Section 104D gateway test. The fact that an application may pass the threshold gateway test did not eliminate the need to consider the Plan provisions, based on the creation of undersized balance lots.
 - The first matter was not in contention in regard to adverse effects.
 - Section 104D(1) – Council to have regard to the relevant Plan provisions.
 - Heritage nature of this situation – the heritage runs with the land. This proposal separates the heritage from the land.
 - The dwelling or gardens were not listed in the Heritage Section of the Plan nor were they listed with Heritage New Zealand.
 - There was no clear reason why subdivision was needed in this situation.
 - There was no reason why this proposal can't have a complying balance site as per Suggested Alternate Scenario 2.

Mrs Boulton advised that she believed there were numerous situations within the district where balance lots of 13ha were acceptable. She did not readily have the total number of such situations available but she could find that out if the Hearings Committee wished to know.

Mrs Boulton then responded to questions from the Hearings Committee. The main points that were raised or addressed in response to the questions included:

- The evidence in regards to what can occur now as a permitted activity, as opposed to the development and buildings that could occur on that site as of right.
- Balancing the above point against what would occur if this proposal was approved, including a balance site.
- In regard to precedent – Mrs Boulton was asked whether it was being suggested that this would be set because of the site sizes involved or was the matter of precedent in relation to productivity.
- She advised that it was because of the site sizes involved.
- She explained that precedent set via site sizes had a direct relationship to

productivity and further fragmentation of the land. This further restricts the potential capacity for productivity and flexibility for it to be used for productive purposes. So these factors were all linked.

At this point a break was taken to give the Objector's Legal Counsel time to consider the evidence that had been presented and to discuss some issues with her clients.

The hearing briefly adjourned from 12.06pm to 12.13pm

Ms Blomfield exercised a brief Right-of-Reply on behalf of the Objector. She made the following points:

- Ms Blomfield responded to the points made by Mrs Boulton.
- It was accepted that the Horonui homestead and gardens were not listed in the Heritage Section of the District Plan. The old homestead had been listed.
- Heritage matters can be worthy of recognition whether or not they meet the threshold of being included in the Plan.
- When making its decision, it was important that the Hearings Committee keep in mind the two scenarios outlined in Mrs Kydd-Smith's evidence. It seemed that Council's Reporting Officer had accepted that these two scenarios were possible and feasible and were not fanciful.
- The Committee was being asked to grant consent to a one-off subdivision which will possibly bring opportunity for buildings to be erected on the balance lot in the future.
- A compliant lifestyle lot could be subdivided from the site as of right.
- Another main dwelling, implement shed, visitor accommodation were all permitted on that site and if the proposal was not granted, development could be more intensive and the Council would have no control over what was built on the site. The proposal would be a less intrusive option.
- The Objectors had said that it was not about making money. In fact if that was their aim they would be better to go with Scenario 2.
- The Objectors had thought very carefully about where the proposed boundary should be located so that it made sense on the ground. It would also protect and reflect existing land use.
- The homestead with its heritage aspects and property with large garden needed to be considered as a whole picture. On this basis, she did not feel that this would cause a precedent.

The Hearings Committee did not ask any questions of Ms Blomfield in regard to her Right-of-Reply.

It was noted that the hearing would be adjourned and the Committee would then start its deliberations.

At this point the Committee went into Public Excluded Session to undertake its deliberations.

Councillor Lyons/Councillor Redstone

That the public be excluded from the deliberations in relation to the hearing of the Objection To Decision On Resource Consent RMA20170172, 209 Horonui Road, Poukawa (J and P Campbell). The reason for passing this Resolution in relation to this matter and the specific grounds under Section 48(2)(a) of the Local Government Official Information and Meetings Act 1987 for the passing of this Resolution is as follows:

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:

- a) **Any proceedings before a local authority 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.**

CARRIED

The Hearing adjourned at 12.19pm
and would reconvene in Public Excluded Session
for the Committee to undertake its deliberations

**WITH THE DECISION BEING RELEASED ON MONDAY, 9 OCTOBER 2017
(FOLLOWING A RESOLUTION TO PROCEED IN OPEN SESSION
IN ORDER TO RELEASE THAT DECISION)**

**SECTION 357A (1)(g) AND (2) RESOURCE MANAGEMENT ACT 1991 -
OBJECTION TO DECISION ON RESOURCE CONSENT RMA20170172, 209
HORONUI ROAD, POUKAWA (J AND P CAMPBELL)...*Continued***

The Committee then confirmed its decision in Open Session so it could be publicly released. The Substantive Wording is set out below. The full decision wording, including narrative, the associated conditions and advice notes are contained in a separate document as noted in italics below.

Note: During the deliberations, the Hearings Committee had asked for further information from the Objectors, via their Legal Counsel. The Committee asked if the Objectors would be prepared to offer a condition for consideration during the Committee's deliberations. The wording that was offered was passed onto the Committee and it was discussed and considered when the Committee was making its decision.

SUBSTANTIVE DECISION

Councillor Lyons/Councillor Heaps

Pursuant to section 357D of the Resource Management Act 1991 the Hastings District Council **upholds** the objection and grants consent for the following reasons, and the reasons contained in the Findings section of this decision:

- (a) The adverse effects on the environment are no more than minor.
- (b) The proposal is not contrary to the overall direction of the relevant Objectives and Policies of the Operative and Proposed District Plans.
- (c) The site has sufficient distinguishing characteristics in the form of historic heritage values that set it apart from other similar sized sites and therefore the proposed subdivision will not set an adverse precedent and will not undermine plan integrity of either the Operative or Proposed District Plan.

CARRIED

(Note: The full wording of the signed hearing decision, including the associated conditions and advice notes, is attached as a separate document. The full decision is circulated with, and forms part of these minutes – the signed decision is saved under 56083#0060 in the Council's system.

That full decision wording also includes the narrative which summarises details of the hearing process and the evidence that was presented to the Committee for its consideration, in regard to the objection).

The meeting was formally closed at 2.50pm
On Tuesday, 19 September 2017

Confirmed:

Chairman:

Date: