



Hastings District Council

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OPEN MINUTES

(Recorded in the form of a Procedural Note)

COMMISSIONER HEARING

Meeting Date: Tuesday, 19 February 2019

**(Originally scheduled on 22
January and on 11 February
2019)**

**(Notice of Requirement to designate land for road corridor
with associated infrastructure for water, waste water, and
stormwater; and stormwater corridor - Howard Street)**

HASTINGS DISTRICT COUNCIL

**MINUTES OF A COMMISSIONER HEARING
HELD IN THE COUNCIL CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION
BUILDING, LYNDON ROAD EAST, HASTINGS ON
TUESDAY, 19 FEBRUARY 2019 AT 9.00AM**

PRESENT: Commissioner Paul Cooney

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

ALSO PRESENT: **“For the Requiring Authority (HDC)”**
Environmental Policy Manager (Mr R Wallis)
Senior Environmental Planner, Policy (Mr C Scott)
Transportation Development Engineer (Mr S Kuruwita)
Stormwater Manager (Mr M Kneebone)
Legal Counsel for the Requiring Authority (Ms Asher Davidson)

“Submitters addressing the hearing”

Marcus Hill, General Manager, Trace Group – appearing for T W Property Holdings Limited (representing owners of 1239 Howard Street)

Johan Ehlers – appearing for T W Property Holdings Limited

Andrew Hill, Consultant Planner, Beca - appearing for Ministry of Education

Alan Dibley - appearing for Ministry of Education

Mark Gifkins – Principal of Parkvale School

Dr Karen Cooper

Allison Arthur-Young, Russell McVeagh - Legal Counsel, appearing for Woolworths New Zealand Ltd

Kay Panther Knight, Consultant Planner, Forme Planning - appearing for Woolworths New Zealand Ltd

Brady Nixon - Property Development Manager for Woolworths New Zealand Ltd

Barry and Lynne Keane

Some other members of the public were also present as observers.

1. APOLOGIES

The following submitters who had initially advised that they wished to speak, subsequently gave their apology as they were unable to attend the hearing:

- Mr and Mrs Burns (55505#0299).
- Late Submitter – Mr G Russell, Chair of the Board of Trustees for Parkvale School. The Principal of the School, Mr M Gifkins, would attend as an observer) (55505#0310).

2. NOTICE OF REQUIREMENT TO DESIGNATE LAND FOR ROAD CORRIDOR WITH ASSOCIATED INFRASTRUCTURE FOR WATER, WASTE WATER, AND STORMWATER; AND STORMWATER CORRIDOR - HOWARD STREET

Council's Document Reference: Covering report (18/1225) and Planning Report (55505#0145) together with associated Agenda documentation were circulated prior to the meeting and put onto the Council's website. Evidence from the Requiring Authority and Expert Submitter evidence, including supplementary evidence from some witnesses, had also been pre-circulated to the hearings commissioner and all parties. Additional evidence was tabled and circulated at the hearing, as detailed in these minutes.

Commissioner Paul Cooney introduced himself. He had undertaken a site visit the afternoon before the hearing (on 18/2/19), with the Environmental Consents Manager, Mr M Arnold. The commissioner advised that he had walked over a large area of the subject property.

The commissioner outlined the process to be followed at the hearing and "house-keeping" matters were addressed. Cross-examination was not permitted but the commissioner would permit the other parties to the hearing to ask points of clarification of a witness or submitter, through him, as the chair.

The commissioner further advised that he had read all the submissions and the pre-circulated evidence prior to the hearing. Therefore, he asked the expert witnesses to summarise and highlight the key points they wished to address in their respective evidence. He further advised that, if they wished, the submitters addressing the hearing may read out their submissions in full when presenting their evidence.

The commissioner noted the extensive procedural matters which were minuted for the record below: (*Note: the numbers in italics and brackets are the references for evidence saved in the council's records management system*).

Background: In the lead-up to this commissioner hearing the date had been rescheduled several times; a large number of emails and evidence had been received - pre-circulated to the hearings commissioner and all parties and put onto Council's website as appropriate, in the order shown below:

- 7 December 2018 - Agenda documents on website and link sent to all parties (55505#0161) (initial hearing date on 22 and 23 January 2019).
- 7 December 2018 – Confirmation that HB Regional Council had made an informal submission by way of a letter (55505#0170 and 55505#0202).
- 14 December 2018 - Applicant evidence due but the Requiring Authority (55505#0187) advised that no further information would be provided in addition to what was in the original agenda documentation.

- 20 December 2018 - An email and First Memorandum received from Legal Counsel for Woolworths NZ Ltd (55505#0197 and 55505#0239) seeking a new hearing date to enable timely exchange of evidence, including evidence from the Requiring Authority.
- 21 December 2018 - The **First Commissioner Minute** dated was issued (55505#0193 and 55505#0255) setting new hearing dates of **11 and 12 February 2019** - Requiring Authority evidence due by 18 January 2019; and Expert Submitter evidence due by 1 February 2019.
- Briefs of Evidence were received by 18 January 2019 from the Requiring Authority, as directed in the First Commissioner Minute and put onto website as a compiled document.
 - Senior Environmental Planner, Policy - Craig Scott (55505#0215).
 - Transportation Development Engineer - Mr S Kuruwita (55505#0216) and an attachment to that evidence (55505#0218).
 - Stormwater Manager - Mr M Kneebone (55505#0217).
- The First Attachment to the above Brief of Evidence from the Stormwater Manager, Mr M Kneebone, (55505#0220) (being a document from Pattle Delamore Partners, Version 1.0 - dated 29 March 2018) was circulated on 21 January 2019 and put onto website as part of above compiled document.
- 22 January 2019 - The Commissioner issued a direction regarding a submitter request, received on 21 January 2019 from B and L Keane.
 - Mr Kneebone to provide further stormwater information (55505#0228) on 1 February 2019 to identify the stormwater runoff options at the Parkvale School end of the Howard Street Block.
 - Subsequent Expert Submitter evidence to be forwarded by 8 February 2019 or presented by the submitters via a reply at the hearing.
- 24 January 2019 - In response to a submitter request, from Dr K Cooper, the updated version of the First Attachment to Mr Kneebone's Brief of Evidence (being a document from Pattle Delamore Partners, Version 2.0 - dated 12 June 2018) was circulated (55505#0227) – (replacing 55505#0220) and was put onto website as a compiled document.
- 30 January 2019 - An email and Second Memorandum was received from Legal Counsel for Woolworths NZ Ltd (55505#0242) seeking that the hearing be put on hold until the Requiring Authority provides outcomes of modelling currently underway and any further stormwater reports.
- 30 January 2019 - A Memorandum was received (55505#0248) from the Legal Counsel for the Requiring Authority in response to the Second Memorandum from Woolworths NZ Ltd.
- 31 January 2019 - The hearings commissioner held a teleconference between himself and the respective Legal Counsels for Woolworths NZ Ltd and the Requiring Authority.
- 31 January 2019 - The **Second Commissioner Minute** was issued (55505#0254) following the above teleconference. This Minute set new hearing dates of **19 and 20 February 2019**.
 - The Requiring Authority to file modelling information and any Supplementary Evidence by 7 February 2019;
 - Submitters to file any Expert Submitter evidence by 15 February 2019.
 - The Requiring Authority could provide a further reply at the hearing if needed.
- 1 February 2019 - Further evidence from Mr M Kneebone "Assessment of the Options for the Tremain Service Connector" (55505#0261) - as per the

22 January 2019 direction from the commissioner (55505#0228) was put onto website as a compiled document.

- 7 February 2019 - Modelling work (55505#0281) and a Statement of Supplementary Evidence (55505#0237) from Mr M Kneebone - as set out in the Commissioner's Second Minute was circulated and put onto website as a compiled document.
- 7 February 2019 - Following circulation of Mr M Kneebone's Supplementary Brief of Evidence a submitter request was received from Dr K Cooper (55505#0265) seeking an assessment of potential drainage impact of the three road height options on her and other submitters' properties.
- 7 February 2019 - the commissioner sought to establish the extent of officer work involved in regard to the request from Dr K Cooper (55505#0270).
- 8 February 2019 - clarification was sought from the commissioner by the Legal Counsel for the Requiring Authority regarding the extent of the work Mr M Kneebone was to undertake in regard to Dr K Cooper's request (55505#0271).
- 8 February 2019 - the commissioner directed the Requiring Authority (55505#0273 and 55505#0274) to explain, by 11 February 2019, how the proposed design height of the road may impact on the ability of properties within the development area off Howard Street to have stormwater access to the road stormwater drainage system.
- 11 February 2019 - Additional stormwater / roading information was received from Mr M Kneebone (55505#0279) together with an associated Memorandum from the Requiring Authority's Legal Counsel (55505#0280) - as per the Commissioner's direction above and was circulated and put onto the website as part of the above compiled document.
- Expert Submitter Evidence was received on 15 February 2019 - as directed in the Second Commissioner Minute (dated 31 January 2019).
 - Andrew Hill for the Ministry of the Environment (55505#0288).
 - Cameron Drury, Planning Consultant on behalf of TW Property Holdings Ltd (55505#0295).
 - Johannes Ehlers, presenting engineering evidence on behalf of TW Property Holdings Ltd (55505#0294).
 - Kay Panther Knight, Planning Consultant appearing for Woolworths NZ Ltd (55505#0293).

19 February 2019 Hearing

Late Submission

The commissioner noted that a late submission had been received from Mr Grant Russell, as Chair of the Board of Trustees for Parkvale School. This late submission would be considered at the start of the hearing.

The commissioner then advised that he would receive the late submission – as no-one was considered to be prejudiced by the late submission.

Pursuant to section 37 of the Resource Management Act 1991, the timeframe for lodging submissions in relation to the Notice of Requirement To Designate Land For Road Corridor With Associated Infrastructure For Water, Waste Water, And Stormwater; And Stormwater Corridor - Howard Street, Hastings

is extended from the closing date of 23 October 2018 to 13 November 2018, to enable the late submission from Mr Grant Russell, made on behalf of the Parkvale School Board of Trustees, to be accepted.

The following plans/maps were displayed and addressed at various times during the hearing as appropriate by the various parties, during the presentation of their respective evidence:

- The Structure Plan (ENV-9-19-3-19-229)
- Land Requirement Overview Plan and various associated Land Requirement Plans – (55505#0103)
- Howard Street Land Requirement D162 (55505#0284)
- Howard Street Designation Land Owners (55505#0285)
- Howard Street Land Owners (55505#0286)
- LIDAR based flow arrows across Howard Street development site MWH Plan (ENV-9-19-3-19-230)
- Howard Street Development Flooding Extents and Flood Levels (ENV-9-19-3-19-231)

Senior Environmental Planner, Policy, Mr C Scott gave a brief overview of the proposed Notice of Requirement, on behalf of the Requiring Authority (HDC). He referred to the displayed Structure Plan and highlighted the proposed roading location and other areas shown in the legend on the plan. He responded to questions of clarification from the commissioner.

Legal Counsel for the Requiring Authority, Ms A Davidson, circulated the following four items of evidence:

- Outline of Submissions for Requiring Authority (55505#0354)
- Environment Court Consent Order - K Cooper v Hastings District Council (55505#0355)
- Track change version of the Draft Conditions of Designation (55505#0356)
- Copy of a noise assessment for the "Howard Street Development Area - Submitter Concerns - Traffic Noise Impact - Parkvale School" prepared by Malcolm Hunt, of Malcolm Hunt Associates (55505#0357).

Ms Davidson read her Outline of Submissions and addressed the other three items of evidence at appropriate points during the presentation of her submissions. She displayed the track change version of the draft conditions, highlighting the relevant points in response to submissions and / pre-circulated evidence forwarded from the submitters prior to the hearing. She responded to questions and points of clarification sought by the commissioner.

Stormwater Manager Mr M Kneebone's Brief of Evidence on behalf of the Requiring Authority (55505#0217) had been pre-circulated prior to the hearing. At the hearing he circulated and read his Summary of Evidence (Stormwater Engineering Evidence), on behalf of the Requiring Authority (55505#0358). He circulated and referred to A3 colour versions of the 21 sheets of cross-sections (55505#0281) which formed part of the stormwater modelling work he had undertaken and had pre-circulated prior to the hearing – as required by a number of directions issued by the commissioner in the lead up to this hearing.

Mr Kneebone responded to questions of clarification from the commissioner in regard to his evidence. He explained in detail the main differences between the three options that had been extensively modelled, noting the effects that would result on each of the submitter properties and advising why Option 3 was the preferred scenario. Mr Kneebone also referred to the earlier noted displayed Lidar based flow arrow plan (*ENV-9-19-3-19-230*).

A point of clarification was sought by submitter, Mr B Keane, with Mr Kneebone clarifying the route of the proposed stormwater corridor once it reached the boundary with the Tremain land to flow towards the Havelock Road. He explained that the route proposed through the Keane property was the most direct and effective route.

The commissioner allowed Mr K Gee, who was a landowner in the immediate area but who had not made a submission, to seek a point of clarification. Mr Kneebone commented on the fall of the land and the direction of flow and the ground levels that would result from the proposed NOR (as opposed to the existing ground levels).

The commissioner asked some questions of Mr Kneebone in regard to the modelling work and supplementary evidence the latter had prepared and which had been pre-circulated on 7 February 2019.

In response to further questions of clarification sought by the commissioner, Mr Kneebone explained there was a maximum difference of approximately 250mm in height between Options 1 and 3, in regard to the finished ground level. He also addressed the change in level at the top of the cul-de-sac head; the Lidar based flow arrow plan; the volumes of cut and fill required over the area; and the need for a comprehensive development plan so that the work undertaken on all the properties affected would result in consistency for the overall stormwater system.

Transportation Development Engineer, Mr S Kuruwita's Brief of Evidence on behalf of the Requiring Authority (*55505#0216 and attachment 55505#0218*) had been pre-circulated prior to the hearing. At the hearing Mr Kuruwita did not circulate any further evidence and was not asked any questions by the commissioner.

Senior Environmental Planner, Policy, Mr C Scott's Brief of Evidence on behalf of the Requiring Authority (*55505#0215*) had been pre-circulated prior to the hearing. At the hearing he circulated and read his Summary of Evidence (Planning Evidence), on behalf of the Requiring Authority (*55505#0359*). Mr Scott responded to questions of clarification from the commissioner in regard to his evidence.

Presentation Of Submissions

Mr M Hill, General Manager for Trace Group who was appearing for TW Property Holdings Limited made a verbal statement on behalf of his client. He confirmed support for Option 3 which had been earlier outlined by Mr Kneebone. Mr Hill explained that the reasoning for seeking that the

designation be split into two parts was to allow their land to be developed for housing.

Expert Planning evidence had also been pre-circulated on behalf of **TW Property Holdings Limited by Mr C Drury** (55505#0295). Mr Drury had been unable to attend the rescheduled hearing and had advised that he was not able to commit to being contactable to answer any questions the commissioner may have (55505#0307).

Mr J Ehlers, an Engineer appearing for TW Property Holdings Limited addressed his pre-circulated engineering evidence (55505#0294). Messrs J Ehlers and M Hill responded to questions from the commissioner.

In response to questions from the commissioner regarding roading levels, Mr Ehlers confirmed that it would be helpful for his client to know the road level at their property.

Ms Davidson and Mr Kneebone confirmed that the latter had started work on long-sections that would clarify the roading levels across the extent of the proposed NOR. They confirmed that this information could be presented as part of the reply submissions made by the Requiring Authority later in the hearing process.

Mr A Hill, Planning Consultant appearing for the Ministry of Education addressed his pre-circulated evidence (55505#0288). He advised that **Mr A Dibley, Ministry of Education** and **Mr M Gifkins, Principal of Parkvale School** were also present at the hearing.

The cross-section attachments to Mr A Hill's pre-circulated evidence were displayed and addressed at the hearing. While he noted that the Ministry supported the proposed NOR, Mr A Hill raised concerns in regard to a number of issues illustrated in the attachments to that evidence and sought a cross-section of what was proposed in order that some certainty was provided.

The commissioner asked **Ms Davidson, on behalf of the Requiring Authority**, to address, in her Reply Submissions, the matter of a cross-section and the certainty that had been raised by Mr A Hill.

Dr K Cooper circulated and addressed her Supplementary Submission (55505#0347). She also tabled a copy of the Joint Memorandum of Counsel for Appellant and Respondent regarding the Environment Court's Consent Order, dated 8 February 2019 – K Cooper v Hastings District Council (55505#0364).

Dr Cooper supported Option 3 and accepted the Council's offer to "reference" the area. She responded to questions from the commissioner, including clarification of the location of the "Plan K" roading corridor on the displayed Structure Plan – which the commissioner noted was "out of scope" at this hearing as this had been addressed by the tabled Environment Court Consent

Order. Dr Cooper withdrew her request to reduce the width of the road and the condition for a noise mitigating fence.

Dr Cooper sought reassurance that this roading corridor would remain in the agreed location - as per the undertakings recorded in both the earlier Consent Memorandum and the Draft Consent Order addressed by the Environment Court and also supported and referred to in the evidence of Messrs Scott and Kneebone who were appearing for the Requiring Authority.

Ms A Arthur-Young of Russell McVeagh circulated and addressed her Legal Submissions (55505#0344) as **Legal Counsel** appearing on behalf of **Woolworths New Zealand Ltd**. She responded to questions from the commissioner, noting her client's concerns regarding 1) the late introduction of Option 3 along with the resultant uncertainty regarding having a suitable corridor to convey and manage stormwater from all sites within the Structure Plan area; and 2) the wording of the proposed conditions.

Ms Arthur-Young advised that Mr B Nixon - Property Development Manager for Woolworths New Zealand Ltd and Ms K Panther Knight, Consultant Planner were also present.

Ms K Panther Knight, Consultant Planner, Forme Planning - appearing for **Woolworths New Zealand Ltd**, addressed her pre-circulated evidence (55505#0293) and referred to the proposed conditions which had been discussed prior to the hearing with the Legal Counsel of the Requiring Authority. She responded to questions from the commissioner, agreeing that the earlier noted long sections being prepared by the Requiring Authority would be an acceptable approach to her client.

Mr B and Mrs L Keane both addressed the hearing and made a verbal statement. They displayed and referred to four colour photos (55505#0314 to 55505#0317 and 55505#0365) and a short video (55505#0318). Mr and Mrs Keane expressed their concerns regarding amendments they perceived had been made to the TW Property Holdings Ltd site which meant it now drained towards their property as opposed to draining towards Howard Street. Mr Kneebone advised that this was not the case.

Mr and Mrs Keane responded to questions from the commissioner, noting the cost they had borne for work undertaken by a valuer.

Mr Keane sought clarification regarding an alternative plan of Lidar based flow arrows which he believed that he had seen which indicated a different direction of flow, from the plan shown by Mr Kneebone – i.e. with a 45 degree angle of flow in the top left corner of the plan. Mr Kneebone advised that he had not seen any such alternative plan for this area.

The hearing adjourned for lunch at 1.12pm
and resumed at 2.05pm

Senior Environmental Planner - Consents, Mrs M Hart, the Council's reporting officer addressed the hearing. She spoke to her agenda report and its recommendations and also addressed issues that had been raised, by each of the parties in turn, during the hearing.

Through the commissioner, clarification was sought from the officers appearing for the Requiring Authority.

- It was noted that any additional soil testing costs on the designated land would be entirely covered by the Requiring Authority and there would be no cost to the submitter or subsequent owner of the land, specifically in relation to the designated corridor.
- How could the general public be prevented from using this parcel of land so it could be solely used as an overland flow path for stormwater?

The meeting was advised that a copy of the Public Notice was included on Agenda Page 24, showing those landowners who were adjacent to or who were directly affected by the NOR.

Mrs Hart responded to questions from the commissioner.

The commissioner directed the Legal Counsel for the Requiring Authority, **Ms A Davidson**, to liaise with the representatives for Woolworths NZ Ltd in order to attempt to resolve, or at least significantly narrow, the differences between the parties regarding the proposed conditions. Ms Davidson was directed to file her written Reply Submissions together with the proposed conditions by end of the day on **Friday, 22 February 2019**.

As noted earlier, Mr Kneebone would produce long sections of the road and this would be included with Ms Davidson's Reply Submissions.

It was noted that the Requiring Authority was not advocating the split designation so that would not be addressed unless it was requested.

The meeting was adjourned at 2.20pm
On Tuesday, 19 February 2019

At this point in the hearing process, the following information was subsequently issued or received (in the order shown below) and was forwarded to the commissioner and also sent to the other parties as appropriate:

- On 22 February 2019 when Reply Submissions were due from Requiring Authority, a request was received from the Legal Counsel for an extension of time to file these submissions and to liaise with Woolworths NZ Ltd and finalise the associated proposed conditions (55505#0335).
- An extension of time for filing Reply Submissions and the proposed conditions by the Requiring Authority was granted by commissioner – now to be filed on 25 February 2019 (55505#0334).
- 25 February 2019 - Reply Submissions and associated appendices were filed by Legal Counsel for the Requiring Authority as per the extension granted by the commissioner (55505#0337).
- Closure of hearing by commissioner on 25 February 2019 (55505#0340).
- Signed Decision issued by commissioner on 28 February 2019 (55505#0322).