



Hastings District Council

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OPEN

MINUTES

(Recorded in the form of a Procedural Note)

COMMISSIONER HEARING

Meeting Date: Thursday, 20 February 2020

(Limited Notified Resource Consent Application to establish Seasonal Workers Accommodation at 97 York Road, and for a subdivision to create two lots at 97 York Road and involving amalgamation with 9 Maultsaid Place, Hastings 4120 - Jara Family Trust)

HASTINGS DISTRICT COUNCIL

MINUTES OF A MEETING OF A COMMISSIONER HEARING HELD IN THE LANDMARKS ROOM, GROUND FLOOR, CIVIC ADMINISTRATION BUILDING, LYNDON ROAD EAST, HASTINGS ON THURSDAY, 20 FEBRUARY 2020 AT 9.30AM

- PRESENT:** Chair: Commissioner Bill Wasley
- IN ATTENDANCE:** Environmental Consents Manager (Mr M Arnold) –
present for part of hearing
Team Leader Environmental Consents/Subdivision (Mr C Sutton)
Environmental Planner (Consents) (Ms R Jarman)
Democracy & Governance Advisor (Mrs C Hilton)
- AS REQUIRED:** Mr J and Mrs R Roil – representing applicant (Jara Family Trust)
Mr M Lawson – Legal Counsel for applicant
Mr M Holder – Planning Consultant, Development Nous Limited (appearing for applicant)
Ms R Blunden – Legal Counsel, T & G Global Limited
Mr M Windle – Labour Manager, T & G Global Limited

1. **APOLOGIES**
2. **LIMITED NOTIFIED RESOURCE CONSENT APPLICATION TO ESTABLISH SEASONAL WORKERS ACCOMMODATION AT 97 YORK ROAD, AND FOR A SUBDIVISION TO CREATE TWO LOTS AT 97 YORK ROAD AND INVOLVING AMALGAMATION WITH 9 MAULTSAID PLACE, HASTINGS 4120 - JARA FAMILY TRUST**

Council's Document Reference: Covering report (20/69) and planning report (54413#0136) together with associated agenda documentation had been circulated prior to the meeting and put onto the council's website. Written evidence (*original version 54413#0168 and renumbered version 54413#0178*) and associated attachments (*54413#0171 to 54413#0176*) from the applicant's planning consultant had also been pre-circulated to the Hearings Commissioner and council officers. Additional evidence and legal submissions were tabled and circulated at the hearing, as detailed in these minutes.

In the lead up to this hearing a large number of emails had been exchanged between the applicant and council officers, to determine whether this application would be addressed by the council's hearings committee or by an independent hearing commissioner and then to set an agreed hearing date.

Commissioner Bill Wasley introduced himself, outlined the process to be followed at the hearing and "house-keeping" matters were also addressed.

It was noted that **Council's Development Engineer, Projects, Mr N Bruin**, would be available to join the hearing if needed to respond to any questions from the Commissioner.

The Commissioner said he had undertaken a visit to see the site and the context of the site that morning prior to the hearing, accompanied by Mr D Bishop, Project Manager, who was not connected to this hearing. No other parties had been present on the site visit.

Mr M Lawson, Legal Counsel for the applicant, circulated and read his "Synopsis of Submissions" (54413#0180), interpolating as he considered relevant. As appropriate, he also referred to slides in a power point presentation that would be given later in full at the hearing, to illustrate points in his submissions. He highlighted the main points in his submissions, including the soil types on the land and how the location of the Irongate Stream and associated marginal strips affected the use of the site/extent of planting.

Mr Lawson made the point that this application did not involve a subdivision, but rather involved de-amalgamation and re-amalgamation of land. There was no intention to divide section 66, this would be transferred in its entirety. In contrast to a subdivision process, there were no resultant additional titles or added development rights arising from this proposal.

Mr Lawson advised that **Mr Roil**, representing the applicant, would provide evidence as the principal of a construction company specialising in the production and siting of transportable buildings. The applicant proposed to use land that was not highly productive/planted for seasonal workers' accommodation which was integral to plains production activity.

Mr Lawson advised that no work was proposed at all in relation to the bed of the Irongate Stream and that **Mr Holder** would provide planning evidence addressing that aspect, including provision of a bridge to provide access.

Mr Lawson responded to a number of questions and points of clarification sought by the Commissioner, including how the proposed de-amalgamation and re-amalgamation of land could possibly be addressed as a separate administrative function, via the Registrar of Land, rather than as part of this RMA process. Mr Lawson considered that this application was for a land use consent.

In response to another question of clarification sought by the Commissioner, Mr Lawson confirmed that prior to construction of the "expressway", this land was part of an area on the other side of that roadway and accessible from Stock Road – it was a severance from that original land.

The hearing adjourned at 10.45am for morning tea
and resumed at 11.05am

At this time the Commissioner gave an indication that he would require a written copy of the legal counsel's Right-of-Reply in due course, but at the hearing session today the latter could provide an oral overview. There may be

some points on which the Commissioner may need to issue a written direction around process and timeframes.

Mr Lawson then responded to extensive questions from the Commissioner, reconfirming a number of his earlier comments – as well as addressing the aspects making this site/situation unique; Policies PPP3 and PPP5 (Agenda Pages 69 and 70); and whether the accommodation could be located elsewhere on the site. The current plan provisions were also compared to those proposed as part of the Variation 7 “Seasonal Workers Accommodation” hearing (held on 18 February 2020) – at which Mr Roil had been a submitter. This application had been made prior to the public notification of Variation 7.

There was no intention to extend the proposed worker accommodation at this stage. The no-complaints covenant offered by the applicant had been on the basis that this was an “augier” process.

Ms R Blunden, Legal Counsel, and Mr M Windle, Labour Manager, from T & G Global Limited then addressed the hearing in support of the application.

Ms Blunden circulated and read a statement (54413#0181). She and Mr Windle then responded to questions from the Commissioner – including numbers of trees planted; that T & G Global was very reliant on RSE workers for 3 to 6 months each year; and purpose built accommodation was preferred over housing/motels. They were looking for larger blocks to accommodate more workers, preferably out of town with access to transport routes – larger blocks enabled the best management practices to be set up (this aspect was T & G’s responsibility). MBIE guidelines need to be met.

Mr J Roil representing the applicant (Jara Family Trust), displayed and addressed a power point presentation (54413#0184) and circulated three A4 pages including a site plan and development layout plan (54413#0182). He spoke about - the proposal; the work he had done with the pipfruit industry on a modular system for RSE worker accommodation; and the model he had developed to meet fire code and noise regulations. He estimated the Irongate take-up was now 5 years.

Mr Roil responded to a number of questions and points of clarification sought by the Commissioner, including the size of the RSE accommodation modules and how they compared to those proposed as part of the earlier noted Variation 7 hearing; and how the production of the accommodation would come together with the work of T & G Global regarding their management of the site.

It was suggested the Commissioner consider undertaking a visit to view the site at 291 Springfield Road, which had been shown in the power point slides. A decision had been made in that case before Variation 7 was notified.

Mr M Holder, Planning Consultant for the applicant spoke to his pre-circulated evidence which comprised:

- Written evidence – (this version had numbering corrected, but content unchanged 54413#0178) (original version submitted 54413#0168)
- Six attachments:

- Report for HBRC dated 14 June 2011 – “Versatile Soils – Productive Land” (Dan Bloomer, Page Bloomer Associates Ltd) (54413#0171)
- Record of Title HBF1/19 (54413#0172)
- Record of Title 748603 (54413#0174)
- Soil Report from AgFirst dated 21 May 2019 (54413#0173)
- Colour A3 plan from Development Nous Limited [H20190051-Scheme-R3] (54413#0175)
- Colour A3 plan from Development Nous Limited [H20190005-Scheme-S002-R1] (54413#0176)

Mr Holder highlighted the main points in his evidence, interpolating as he considered relevant. As appropriate, he also referred to slides in the power point presentation that had been shown earlier, to illustrate points in his evidence.

The main points Mr Holder addressed included the unique situation regarding the site and alternate locations considered; use of this site would protect more valuable plains land; proximity to transport routes was needed; if proposal not considered a subdivision then not contrary to Plan objectives and policies.

Mr Holder responded to a number of questions and points of clarification sought by the Commissioner, including aspects making this site unique; the soil quality on the site; and which policies or objectives that the Commissioner should give particular regard to.

Mr Lawson advised that the presentation of evidence on behalf of the applicant was now completed.

The Commissioner asked the reporting planner, Ms Jarman, to respond to the matters raised in Mr Lawson’s legal submissions regarding subdivision, de-amalgamation and re-amalgamation as well as the appropriateness of considering the proposal as a land use activity when she addressed the hearing following the lunch adjournment.

The hearing adjourned at 12.45pm for lunch
and resumed at 1.50pm

Environmental Planner (Consents) (Ms R Jarman), the reporting planner spoke to her agenda report and recommended conditions as well as addressing some of the issues that had arisen as part of evidence presented at the hearing. She referred to the issue of subdivision, explaining there had been discussions between the parties regarding how this type of application could work, the technical issues involved and what mechanisms could be utilised.

Ms Jarman advised that an application would need to be made to the council in regard to de-amalgamation rather than that being a purely administrative process. If this was granted, the next step was to apply to the Registrar of Lands to check that a separate title can be issued in accordance with 226(e). She felt the issuance of a certificate in this situation may be a complicated process due to factors such as access and the smaller site size not meeting plan requirements.

Ms Jarman reiterated the difference of opinion between the applicant and officers regarding whether or not this proposal involved a subdivision. If a section 241 determination needed to be made it was suggested the Commissioner may need to consider legal advice as to whether or not he had the scope to make such a determination on this application.

Consideration needed to be given as to whether this was a land use consent involving de-amalgamation; it was suggested that the Right-of-Way needed to be addressed under section 348 by way of a separate Local Government Act process; and the process involved if parcels were to then be amalgamated. Split zoning was also referred to and the effect of the marginal strip and width of the stream.

Ms Jarman disagreed with the evidence and felt that Lot 2 would have additional development rights. Given site coverage issues, any development on Lot 2 would need consent regardless. She still supported the recommendation in her agenda report to decline the application.

The Commissioner noted that so much turned on whether or not this was a subdivision. If another plan was to be presented by the applicant that did not indicate subdivision, but showed section 66 SO plan 38108 and de-amalgamation and re-amalgamation and whether that became the basis of legal advice or further consideration of "where to from here". This work could be undertaken at this stage as all the lots were legally defined.

The Commissioner also requested a joint set of draft conditions from the parties prepared on the basis that would apply if he was to approve the amended plan, with any areas of disagreement to be highlighted. It was intended as an "augier" type condition to require the amalgamation.

The Commissioner advised that Mr Lawson could undertake a partial oral Right-of-Reply at this point in order to assist the process and that other further information be produced as earlier noted, so he can see where the parties agreed or disagreed. The Commissioner could then decide if he needed to reconvene the hearing or make a decision "on the papers".

Mr Lawson then undertook a partial oral Right-of-Reply on the basis that the hearing would be adjourned in order for the Commissioner to receive that other information to be provided in due course. He reserved the Right-of-Reply as discussed. *(A written copy of the Reply Submissions (54413#0185) was received on 1 April 2020 and forwarded to the Commissioner and council officers at that time).*

Mr Lawson did not believe that section 226 was relevant as the proposal did not involve a subdivision or an additional title with associated additional development rights. Regarding the scheme plan, including the old/existing legal descriptions would assist the Commissioner. A covering note would be included to formally amend the application and withdraw the subdivision component. An updated Form 9 addressing the section 241 RMA proposal (de-amalgamation/re-amalgamation) (including amended conditions under a section 241 scenario) would be forwarded to the Council.

Mr Lawson advised that the difference between the proposal and Variation 7 was the scale demanded by the horticultural industry, with T & G currently managing workers on 19 different sites.

The Council was then asked by the Commissioner to provide a revised section 42A report with addendum comments and commentary on the amended plan and amended proposed conditions.

In regard to legal input in terms of the Commissioner's ability to deal with section 241, he would work through that aspect and advise on this in due course. Mr Lawson was asked to focus on that issue if there were some amended legal submissions he wished to forward. Then the Council would have that relevant information to consider matters involved and the Commissioner would then consider that further.

As noted earlier, the Commissioner reiterated he would reserve his determination at this point and leave open the alternatives of reconvening the hearing or making a decision "on the papers". He asked that, in the Council's response they address the amended conditions and that the information he was sent should clearly show the areas of agreement and disagreement between the parties.

With regard to timeframes – the Commissioner requested that the amended proposition be forwarded to council officers by Friday, 28 February 2020. This information was to be passed onto the Commissioner at that time, so he can consider legal issues while officers are working on the information requested from them – with that information to be provided by Friday, 6 March 2020.

The Commissioner would be available for clarification of any of the above points.

The Commissioner advised that he would undertake a visit to view the site at 291 Springfield Road as had been suggested during the hearing.

The wording in italics below was a more detailed summary list prepared after the hearing by the Democracy and Governance Advisor for reference, if required by the parties:

At the Jara Family Trust hearing on 20 February 2020 the following oral directions were given by the Commissioner, Bill Wasley. With the parties' agreement, the Commissioner did not feel he needed to issue a formal written direction to the parties.

By Friday, 28 February 2020

The Applicant to provide to Council (and to also be forwarded to the Commissioner at that time):

- *An Amended Plan including legal descriptions – clarification of the scheme plan including any old/existing legal descriptions that can help clarify.*

- *A covering note that formally amends the application and withdraws the subdivision component.*
- *Suggested amended conditions.*
- *Amended Legal Submissions to focus on the issues addressed.*
- *An updated Form 9 addressing the section 241 RMA proposal (de-amalgamation/re-amalgamation).*

The Applicant's Right-of-Reply has been reserved at this stage – and when it is provided it is to be in written form.

By Friday, 6 March 2020

The Hastings District Council to provide (to the applicant and to the Commissioner):

- *A revised 42a report (addendum comments would be acceptable).*
- *Comments on the applicant's amended plan and associated covering note.*
- *Comments on the applicant's proposed amended conditions (and highlighting the points of agreement and disagreement between the two parties) – so a joint set of draft conditions results.*

The Commissioner will then consider the information forwarded and will also work through the legal issues of whether he can deal with the section 241 RMA proposal.

He will reserve that determination at this stage and then make a decision in due course as to whether he will reconvene the hearing or make a decision "on the papers".

The meeting adjourned at 2.30pm

At this point in the hearing process, the following evidence or further information was subsequently received (in the order shown below) and was forwarded to the Commissioner and also sent to the council officers and applicant as directed:

- On 20/2/20 – Officers provided copy of a decision referred to at the hearing – (being 97127#0028 RMA20190336 Seasonal Workers Accommodation). (54413#0190).
- On 28/2/20 (directed by Commissioner to be received by this date] – Covering email and attachments from M Holder, planning consultant for applicant (54413#0209) consisting of:
 - A fully updated application (AEE and Form 9) reflecting discussed changes (to be read alongside the submissions of Mr Lawson - Counsel for Jara Family Trust);
 - An updated scheme plan reflecting the plan originally submitted with the application, which reflects existing record of title references (*also saved separately under 54413#0216*);
 - Draft conditions of consent / including suggested 221 decision wording for consideration and additions as required.
 - A note advising that Legal Counsel, Mr Lawson, would provide a separate covering letter on 2/3/20.

- On 2/3/20 – a separate covering letter from M Lawson (54413#0211) to accompany the above attachments provided by M Holder on 28/2/20.
- On 5/3/20 – email forwarded to Commissioner (54413#0212) on behalf of reporting planner seeking an extension to the timeframe set for the provision of Addendum to s42a report and other further information requested from officers (as detailed below, which was required by 6/3/20 and later sent on 13/2/20) – due to the late receipt of letter from M Lawson (which formed part of the further information directed to be received by 28/2/20 from the applicant, but actually received after close of business on 2/3/20) and still waiting for response/clarification from Land Information NZ (LINZ).
- On 6/3/20 – Email received from Commissioner agreeing to extension of time requested by the reporting planner to provide the further information required from officers – due to reasons outlined above. Extension of time given until close of business on 13 March 2020. (54413#0213).
- On 6/3/20 – Email to applicant advising of extension of time given by Commissioner to reporting planner for provision of further information requested from officers. (54413#0214).
- On 13/3/20 – Email from Council officers as directed by the Commissioner (54413#0208) providing the following information (*Information from LINZ not received by this date*):
 - Addendum s42a Report Comments;
 - Comments on Applicant's Amended Plans and Covering Note;
 - and four attachments (Recommended Decision; Recommended Conditions; Subdivision Consent Decision RMA20160138; and Legal Advice letter)
- On 1/4/20 – Right-of-Reply received from M Lawson, applicant's Legal Counsel. (54413#0185).
- On 4/5/20 – Covering email and three attachments from M Lawson, applicant's Legal Counsel regarding HBRC Approval for Bridge Resource Consent Decision – for a bridge over Irongate Stream (54413#0201; 54413#0205; 54413#0206: and 54413#0207).
- On 20/5/20 – First covering email and Contract and Signed Easement document from M Lawson, applicant's Legal Counsel, relating to Bridge Easement over DOC land and Irongate Stream – forming part of documents submitted as part of hearing process. (54413#0194 and 54413#0195).
- On 21/5/20 – Email query sent to M Lawson, applicant's Legal Counsel, asking if further information was to come regarding the Contract and Easement, to address the marginal strip on left bank of stream. (54413#0196).
- On 26/5/20 Second covering email and Amended Signed Easement document from M Lawson, applicant's Legal Counsel, relating to Bridge Easement over DOC land and Irongate Stream. (54413#0197 and 54413#0198).
- On 29/5/20 – Covering email and memo sent by M Lawson, applicant's Legal Counsel, (following phone call to council from applicant on 28/5/20) querying why HDC officers were seeking information from LINZ (54413#0199 and 54413#0200).
- Closure of hearing by Commissioner on 11 August 2020 (as stated in signed decision 54413#0217).

- Signed Decision issued by Commissioner (signed on 12 August 2020 and issued on 13 August 2020 and circulated on that date) (54413#0217).

The meeting was subsequently formally closed
on Tuesday, 11 August 2020

Confirmed:

Chairman:

Date: