



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

(In the form of a Procedural Note)

COMMISSIONER HEARING

Meeting Date: **Friday, 17 July 2020**

(Notified Land Use Consent Application from Hastings District Council for the installation and operation of a drinking water treatment plant, reservoir, bores and associated infrastructure in Frimley Park and surrounds (RMA20190545))

HASTINGS DISTRICT COUNCIL

MINUTES OF A COMMISSIONER HEARING HELD IN THE COUNCIL CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION BUILDING, LYNDON ROAD EAST, HASTINGS ON FRIDAY, 17 JULY 2020 AT 9.30AM

PRESENT: Chair: Commissioner Bill Wasley

IN ATTENDANCE: *“Consenting Authority (HDC)”*
Environmental Consents Manager - Murray Arnold
Team Leader Environmental Consents/Subdivision -
Caleb Sutton
Reporting Planner - Planning Consultant, Philip McKay
Democracy & Governance Advisor - Christine Hilton

ALSO PRESENT: *“Applicant” (HDC)*
Legal Counsel for the applicant - Asher Davidson
Planning Consultant - Grey Wilson
3 Waters Manager – Brett Chapman
Landscape Architect – Shannon Bray

“Submitter”
Frances Shotter, submitter, supported by her daughter,
Lesley, and her grand-daughter, Scarlett
John Maassen, Legal Counsel for Frances Shotter
Haldane Scougall, submitter

A number of others were present in the gallery as
observers

1. APOLOGIES

There were no apologies.

2. NOTIFIED LAND USE CONSENT APPLICATION FROM HASTINGS DISTRICT COUNCIL FOR THE INSTALLATION AND OPERATION OF A DRINKING WATER TREATMENT PLANT, RESERVOIR, BORES AND ASSOCIATED INFRASTRUCTURE IN FRIMLEY PARK AND SURROUNDS (RMA20190545)

Council's Document Reference: Covering report (20/455) and planning report (13818#0298) together with associated agenda documentation had been circulated prior to the meeting and put onto the council's website. Written evidence (13818#0314 to 13818#0317) from the planning consultant and others giving evidence on behalf of the applicant had also been pre-circulated to the Hearing Commissioner, council officers and the submitter who had advised they would be speaking at the hearing. Additional evidence and legal submissions were tabled and circulated at the hearing, as detailed in these

minutes. A site map of the area was displayed on the screen and referred to during the hearing.

A memorandum (13818#0328) from the applicant's legal counsel, Asher Davidson, had also been circulated prior to the hearing, dated 14 July 2020, in regard to the Commissioner's site visit. It suggested some areas that the Commissioner may wish to include on the site visit and contained an offer to have a Council officer (Matt Kersel, HDC's Drinking Water Manager), who was not involved with the hearing, available on-site to clarify any matters that the Commissioner may raise during the visit.

Commissioner Bill Wasley introduced himself, advising that he had delegated authority to hear and determine the application being addressed at this hearing. He then outlined the process to be followed at the hearing. "House-keeping" matters were also addressed.

The Commissioner said that he had undertaken a visit, on the previous afternoon, to see the site and the context of the site accompanied by Council's Environmental Consents Manager, Murray Arnold.

As noted above, Matt Kersel, HDC's Drinking Water Manager had met the Commissioner on-site to outline any matters of clarification requested regarding the proposal and the location/scale/extent of the buildings and work proposed. The legal counsel for the submitter who had advised they would be speaking at the hearing (Frances Shotter) had also been given the opportunity to forward a memorandum to the Commissioner highlighting matters for the latter to take into account on the site visit and to nominate a representative to be in attendance during the site visit.

A Statement of Evidence was tabled on behalf of one of the submitters, Haldane Scougall (13818#0326), who had advised that he would not be attending this hearing – *(Mr Scougall did in fact attend the hearing a bit later in the morning and addressed his statement)*.

The Commissioner advised that, as per the earlier noted memorandum from the applicant's legal counsel (13818#0328), one of the witnesses who had forwarded pre-circulated evidence, Bill Wood (Acoustics, Marshall Day Acoustics) (13818#0316), was not attending the hearing but would be available to answer questions by phone, if required.

The Commissioner also noted that it had been arranged that the submitter, Frances Shotter, and her legal counsel, John Maassen, would attend the hearing from 1.00pm. No expert submitter evidence had been received from that party prior to the hearing.

The Commissioner advised that, at the appropriate time in the hearing, he would be happy for the applicant's legal counsel, Asher Davidson, to make a verbal Right-of-Reply and to then forward a written version following this hearing session. He would address the matter of timing of the circulation of such evidence at the conclusion of the open part of the hearing.

The parties present then introduced themselves. While no witnesses would be called to support the evidence of the reporting planner, the Council's Development Engineer would be available on call, if required.

The Commissioner asked that when the 3 Waters Manager, Brett Chapman, presented his evidence he particularly addressed the installation of the proposed bores and the associated timeframe needed for each bore. He also asked that Mr Chapman discuss the nature of the installation that would be required.

The applicant's legal counsel, Asher Davidson, then circulated and read her "Outline of Submissions" (13818#0322) with some interpolation. She responded to questions and points of clarification sought by the Commissioner. She noted that earlier tabled Statement of Evidence tabled on behalf of one of the submitters, Haldane Scougall (13818#0326), stating that the applicant had believed those concerns had been addressed but it now seemed that Mr Scougall was seeking for this application to be declined.

Ms Davidson also stated that Mayor, Sandra Hazlehurst, and the Council's Director: Major Capital Projects Delivery, Graeme Hansen, had met with Mrs Frances Shotter, submitter. Mrs Shotter had said that she would get back to the council regarding her concerns about this application but had not done so prior to the hearing.

Ms Davidson had also sent three letters to Mr Maassen, Mrs Shotter's legal counsel, seeking to discuss any issues on the phone but he had declined to discuss any possible mitigation measures or to expand on his client's submission.

In response to questions from the Commissioner, regarding Paragraph 2 of her Submissions, Ms Davidson commented on the status and enforceability of the Council's Water Safety Plan. She also confirmed that what was in the Council's District Plan (Network Utilities chapter) and in this proposal was entirely consistent with Part II of the RMA.

The 3 Waters Manager, Brett Chapman, addressed the main points in his pre-circulated statement of evidence (13818#0315) and also spoke to the matters that the Commissioner had earlier asked him to address. He backgrounded the situation and gave some context regarding how the local water supply had previously operated without any treatment; how the contamination situation that arose in August 2016 had been a reminder that groundwater systems were vulnerable and needed to have a multi-barrier approach (from catchment to the household taps); and the Council's initial response to the issue, being chlorination.

Mr Chapman spoke extensively in regard to the HDC's Drinking Water Strategy, March 2018, and expanded on this as a background to the application. He outlined how the various parts of the proposal would operate, to overcome the flat topography of the area; and how the larger number of bores in the recommended configuration could share the load and minimise the effect on the aquifer.

Mr Chapman responded to questions and points of clarification sought by the Commissioner, including providing information regarding the proposed timeframes involved; how long it would take to drill the bore holes (generally 2 to 3 weeks for each bore to a depth of approximately 85m); and the installation of the casings.

Landscape Architect, Shannon Bray, addressed the main points in his pre-circulated statement of evidence (13818#0314) with some interpolation. This pre-circulated evidence contained a number of A3 colour sheets and maps which were displayed on the screen and addressed. He addressed details of the proposal and how its location had been arrived at - with consideration of how it would fit into the park, with minimal "tree casualties". Further discussion with the parks team would be undertaken to help the water treatment plant to "disappear" into the shadows created by mitigation planting.

He responded to questions and points of clarification sought by the Commissioner - including the visual effects of removing the existing maintenance sheds.

The hearing adjourned at 10.35am for morning tea
and resumed at 10.50am

With the applicant's agreement, at this point in the proceedings, **Mr Scougall** (submitter) who had arrived and had asked to speak, addressed the hearing and his earlier circulated Statement of Evidence (13818#0326). He responded to questions and points of clarification sought by the Commissioner including the benefits that would arise from the removal of the existing maintenance sheds. He wanted to see more tables and chairs to help people use the park for relaxation as it had originally been intended.

The presentation of evidence on behalf of the applicant then continued.

Planning Consultant, Grey Wilson, addressed the main points in her pre-circulated statement of evidence (13818#0317) with some interpolation. She highlighted the reasons why the applicant had decided to address this application on a fully publicly notified basis.

Ms Wilson responded to questions and points of clarification sought by the Commissioner, especially regarding ways to reduce noise and effects of the bore drilling and Mr McKay's suggestion of moving bore FR4 further back from Frimley Road. Ms Wilson had drafted the Construction Noise Management Plan.

The Commissioner noted the statement in Paragraph 51 of Ms Wilson's evidence, that the evidence of Acoustic expert, Mr Wood, concluded by stating that "any non-compliance with the Construction Noise Standards ... can be appropriately mitigated via the CNVMP". She confirmed that therefore, she did not consider moving bore FR4 to be necessary and that course of action would not have a significant noise benefit.

The Commissioner noted the high degree of alignment between the evidence of the reporting officer, Mr McKay, and that of Ms Wilson.

The Commissioner did not have questions to ask of Acoustic expert Mr Wood.

The Commissioner asked Ms Davidson to address the matter of timing of the removal of the maintenance sheds in the latter's Right-of-Reply. The Commissioner also requested that she address and attach a final set of draft conditions for him to consider, if he was of a mind to grant the application, complete with track change annotations from Mr McKay to highlight any differences between the parties.

The hearing adjourned at 11.25am for lunch
and would resume at 1.00pm
when Mrs Shotter and her legal counsel were scheduled to be present.

Frances Shotter, submitter and her legal counsel, John Maassen joined the hearing. Mrs Shotter was also supported by her daughter, Lesley, and her grand-daughter, Scarlett.

The Commissioner briefly summarised his opening comments regarding the site visit he had undertaken so that Mrs Shotter and Mr Maassen were aware of these details. He also advised that Mr Scougall had attended the hearing and had presented a statement.

Mr Maassen circulated and read his Submissions (13818#0325) addressing the main points on behalf of his client, with some interpolation.

Mrs Shotter circulated and read her statement of evidence (13818#0323).

The Commissioner asked questions of Mrs Shotter and Mr Maassen.

Mrs Shotter did not believe that removing the existing maintenance buildings would improve the park. It would not compensate for the loss of trees.

Mr Maassen responded to extensive questions and points of clarification sought by the Commissioner, regarding his Submissions.

Consultant Planner, Philip McKay who was the **reporting planner for the Consenting Authority (HDC)** spoke extensively to his report, summarising the main points regarding the effects of the proposal on Frimley Park. He also responded to matters that had arisen during the presentation of legal Submissions and evidence from parties presented earlier in the hearing.

Mr McKay stated he would be happy to adopt the more precise measurements in Mr Bray's evidence regarding the area that the proposal would occupy – (being 2,630m² and 1.4% of the overall park area - stated in Paragraphs 24 and 25 of Mr Bray's evidence).

Mr McKay clarified, in regard to Mr Maassen's Submissions, that a consent notice was only available if the proposal was a subdivision. Otherwise the appropriate approach would be via a covenant on the title (which it was noted would be an "augier" approach).

Mr McKay addressed the proposed conditions attached to the evidence of Ms Wilson in some detail, noting suggested amendments.

Mr McKay responded to questions and points of clarification sought by the Commissioner, including the proposed removal of the maintenance sheds and clarification of his suggestion to relocate bore FR4 – as it would have an effect on five dwellings during the 2 to 3 week drilling period for this bore.

Ms Davidson then undertook a partial oral Right-of-Reply on the basis that she would submit a written version, expanding on the points she raised at this hearing, following the adjournment of the hearing. She addressed matters and countered some comments that had been raised during the hearing, in some detail, including the need to identify an alternate site for the maintenance sheds before they could be moved.

Ms Davidson referred to a point made in Mr Maassen's Submissions, and said that it was unfair and inappropriate to decline a resource consent on the assumption that a judicial review will succeed. She also did not believe it was necessary for the applicant to offer an augier condition and did not believe it would assist his client, Mrs Shotter.

Ms Davidson confirmed that discussions would take place between the applicant and Mr McKay to prepare a set of conditions for presentation to the Commissioner as had been requested, showing where the two parties agreed/disagreed.

At this point, the Commissioner confirmed his request for the set of conditions to be forwarded, as had been acknowledged by Ms Davidson and Mr McKay. The Commissioner asked that these conditions be forwarded to him **by the end of business on Friday, 24 July 2020**.

The Commissioner thanked the parties for their attendance at the hearing and for the evidence and legal Submissions that had been presented.

The meeting adjourned at 3.25pm

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, applicant and submitter/s speaking at the hearing as appropriate:

- On 23/7/20 – Written Reply Submissions were received from Ms A Davidson, Applicant's Legal Counsel. (13818#0321) – appended to this document was a copy of the Draft Conditions (as agreed with the Reporting Officer).

- Hearing was formally closed by the Commissioner on Thursday, 6 August 2020 (as noted in the signed decision document 13818#0353).
- Signed Decision dated 22 August 2020 (issued by the Commissioner on Monday, 24 August 2020 and circulated on that date) (13818#0353).

The meeting was subsequently formally closed
on Thursday, 6 August 2020

Confirmed:

Chairman:

Date: