
Thursday, 1 September 2022

Te Hui o Te Kaunihera ā-Rohe o Heretaunga

Hastings District Council: Hearings Committee Meeting

Ngā Minitī

Minutes

Te Rā Hui:

Meeting date: **Thursday, 1 September 2022**

Venue

**Council Chamber
Ground Floor
Civic Administration Building
Lyndon Road East
Hastings**

Time start - end

9.30am – adjourned at 1.50pm (Thursday, 1 September 2022)
Deliberations were undertaken (in Public Excluded Session) on several subsequent dates
Hearing was formally closed on Friday, 30 September 2022 at 10.00am

(Limited Notified Resource Consent application for Residential Development, 1012, 1014, 1018 Grove Road and 1015-1023 Sussex Street, Hastings 4122 - Kāinga Ora - Homes and Communities (RMA20210495))

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Kua Tae ā-tinana: **Chair:** George Lyons (Commissioner Chair – External appointee)
Present: **Commissioners:** Councillors Alwyn Corban and Wendy Schollum

Kua Tatū: Caleb Sutton - Environmental Consents Manager, HDC
In attendance: Tom Hosford - Consultant Planner, Mitchell Daysh
Christine Hilton - Democracy & Governance Advisor, HDC
Michelle Waldron – Planning Technician, HDC

“Applicant”

Natalie Summerfield - Legal Counsel, Buddle Findlay
Kate Graham - Senior Planner, WSP, Napier
Gemma Guilford - Landscape Architect, Development Nous Limited
Brendon Liggett - Manager, Development Planning, Urban Planning and Design Group, Kāinga Ora – Homes and Communities
Wayne Hodson – Senior Principal Civil Engineer, Stantec NZ

Kei Konei:

Also present: *The following representatives from Kāinga Ora – Homes and Communities (not giving evidence, but present as observers to answer any questions if needed):*
Jonathan (Jono) Gulland – Development Manager, Construction and Innovation
Gurv Singh – Team Leader
Claire Moore – Senior Development Planner
Neda Akbarzadeh – Intermediate Development Planner

“Submitters”

Ian and Emma Wilkinson – (appearing for himself and his wife, Emma)

1. APOLOGIES & LEAVE OF ABSENCE – NGĀ WHAKAPĀHATANGA ME TE WEHENGĀ Ā-HUI

There were no apologies from hearing panel members.

An apology was received from Emma Wilkinson, Submitter.

2. KĀINGA ORA - HOMES AND COMMUNITIES – LIMITED NOTIFIED RESOURCE CONSENT APPLICATION FOR RESIDENTIAL DEVELOPMENT, 1012, 1014, 1018 GROVE ROAD AND 1015-1023 SUSSEX STREET, HASTINGS (RMA20210495)

Council's Document Reference: Covering report (22/293) and planning report (12380#0081) together with the following associated agenda documentation and evidence agendas (containing Evidence In Chief from Expert Witnesses) had been circulated prior to the meeting and put onto the council's website.

- *Agenda and two attachment documents – CG-16-8-00302, CG-16-8-00303 and CG-16-8-00304.*
- *Pre-circulated Applicant evidence and attachment document – CG-16-8-00305 and CG-16-8-00306.*

Legal submissions and summary statements of evidence for the Applicant were circulated and presented at the hearing, as detailed in these minutes. Other written or oral evidence was also presented by the parties and the submitter. (Note: Reference numbers in these minutes in italics and brackets show the Council's record system number for a particular document).

The Chair introduced himself and the other members of the Hearings Committee. The Chair also outlined the process that would be followed at the hearing and addressed “housekeeping” matters. The other parties present introduced themselves.

The Chair advised that the Hearings Committee had been on a site visit that morning, prior to the start of the hearing. The panel had viewed the subject sites and surrounding area. The members had also visited another development currently under construction by Kāinga Ora in nearby Jellicoe Street – this enabled them to view the types and heights of fencing being used there and any possible resultant shadowing/shading that may occur if they were used on the subject sites.

Addressing Late Submission from Ian and Emma Wilkinson

The hearing addressed and formally accepted the submission from Ian and Emma Wilkinson as a Late Submission.

George Lyons/Councillor Wendy Schollum

That pursuant to section 37 of the Resource Management Act 1991, the Hearings Committee resolves to extend the timeframe for lodging submissions in relation to the Limited Notified Application for Resource Consent: Residential Development, 1012, 1014, 1018 Grove Road, 1015-1023 Sussex Street HASTINGS 4122 – Kāinga Ora – Homes and Communities (RMA20210495) from the closing date of 3 May 2022 to 11 May 2022, to enable the late submission from Ian and Emma Wilkinson to be accepted.

CARRIED

Presentation of evidence

Legal Counsel for the Applicant, Natalie Summerfield presented her Legal Submissions (12380#0119) highlighting and expanding on the main points in the Submissions and interpolating as appropriate. She responded to questions from the Committee.

Ms Summerfield circulated and referred in some detail to a “clean” copy (12380#0102) of the original draft conditions which formed part of Kate Graham’s pre-circulated evidence (12380#0088 – Pages 41 to 57). The main points Ms Summerfield highlighted included:

- this document incorporated the Applicant’s proposed tracked changes so the suggested wording was clearer.
- it had been separated into two parts (“Subdivision and NESCS” and “Land Use”).
- repetition wording had been removed where considered appropriate.
- some conditions had been moved to sections considered more appropriate.
- landscaping and fencing requirements to be secured via Section 1)b) under “Land Use”.
- there would be no overland flow path onto other properties.

It was proposed that the existing dwelling/s would be removed first, then earthworks and services installation would occur; buildings would be constructed; titles rearranged; and subdivision would occur at the end of the process.

Ms Summerfield referred to the wording highlighted in the circulated draft conditions document:

- wording in yellow under “Subdivision Consent” [Section 9, on Page 2].
- wording in blue under “Land Use” [Sections 2a) and 2b), on Pages 9 and 10].
- wording in yellow under “Land Use” [Section 11, on Page 11] – (covering areas of bare earth) *she felt this addressed a concern in the Wilkinson submission regarding soil becoming airborne.*

The yellow highlighted wording reflected the result of discussions with Council officers and the blue highlighted wording reflected discussions with the submitters, Mr and Mrs Wilkinson.

Ms Summerfield understood that council officers had no issues with the blue highlighted wording.

Brendon Liggett - Manager, Development Planning, Urban Planning and Design Group, Kāinga Ora – Homes and Communities summarised his pre-circulated evidence (12380#0085) which had been included (on Page 19) in the Applicant evidence document (CG-16-8-00305) and put onto the website prior to the hearing. He responded to questions from the Committee.

Some of the main points Mr Liggett highlighted in his evidence included:

- 80% of households needed public housing want 1 or 2 bedrooms, rather than 2 or 3 bedrooms.
- in June, informal mediation had taken place between Kāinga Ora and the Submitters.
- Paragraph 7.1 of the evidence set out the Submitters’ concerns, including privacy. Kāinga Ora had offered fixed louvres, landscaping/screening options as mitigation measures.
- he supported the earlier points made by Ms Summerfield regarding moving some proposed conditions to other sections of the document that Kāinga Ora considered as more appropriate.
- subdivision was ancillary to this proposal. It was mainly an administrative function as Kāinga Ora was “not driven” to build and sell housing.

The hearing adjourned for morning tea at 10.45am and resumed at 11.00am

Wayne Hodson, Senior Principal Civil Engineer, Stantec NZ summarised his pre-circulated evidence (12380#0086) which had been included (on Page 37) in the Applicant evidence document (CG-16-8-00305) and put onto the website prior to the hearing. He responded to questions from the Committee.

Some of the main points Mr Hodson highlighted in his evidence included:

- how wastewater, stormwater and water supply would be managed during the construction phase, together with sediment levels, to avoid uncontrolled discharge to the street.
- modelling work had been undertaken so both the Council and Applicant could understand and consider the effects of wider development on the wastewater catchment.

- in wet weather there were some existing wastewater capacity issues in this area.
- The Applicant was proposing to connect into existing network and to have a separate agreement with Council regarding future upgrade work in this area.
- good water supply/pressures available and access had been provided for fire-fighting.
- the work creating the joint access lot and controlling the resultant water flow will be staged.

Gemma Guilford, Landscape Architect, Development Nous Limited summarised her pre-circulated evidence (12380#0084) which had been included (on Page 3) in the Applicant evidence document (CG-16-8-00305) and put onto the website prior to the hearing. She circulated and addressed an A3 colour landscape master plan of the proposed development (12380#0094) (*being Version 7 of Page 68 of Agenda Attachment document Vol 1, superimposed onto an aerial view of the site*). She also referred to the “clean” copy (12380#0102) of the original draft conditions which Ms Summerfield had circulated earlier in the hearing.

Ms Guilford responded to questions from the Committee. Some of the main points she highlighted in her pre-circulated evidence and the information circulated at the hearing included:

- neighbours would be consulted about fencing between their property and the subject site.
- Mr Liggett had earlier outlined the mitigation offered by the Applicant to address the Submitters’ concerns – being fixed louvres and obscure glass, as well as fencing options. He was asked to comment further on how these measures had been used successfully elsewhere.
- these mitigation measures were addressed in the circulated draft conditions (12380#0102) and would be binding on any future owners of the housing - so would remain “active” as an enforcement mechanism for Council.
- she commented on the existing fence height and what was being sought by the Submitters.
- the Applicant would discuss landscaping and planting mitigation with the Submitters.

The pre-circulated evidence (12380#0088) from **Kate Graham, Senior Planner, WSP, Napier** had been included (on Page 3) in the Applicant evidence document (CG-16-8-00306) and put onto the website prior to the hearing. At the hearing she circulated and read a Summary Statement (12380#0095), together with three A3 colour sheets (12380#0096) – showing photos of existing and proposed street views; and the proposed site plan (*being copies of Pages 61, 99 and 100 of Agenda Attachment document Vol 1*) and responded to questions from the Committee. She also referred to the “clean” copy (12380#0102) of the original draft conditions which Ms Summerfield had circulated earlier in the hearing.

Some of the main points Ms Graham highlighted included:

- a lot scheme layout was considered the best approach and had been reviewed by an internal Kāinga Ora design panel, internal urban designers, planning team and engineers.
- this layout and the mitigation measures proposed would help to ensure the least adverse effects on neighbouring properties.

It was noted that informal mediation session/s had taken place between the Submitters and the Applicant’s representatives prior to the hearing date. **Mr Liggett** advised the hearing that, to date, the Submitters had not responded (either orally or in writing) to offers the Applicant had made regarding possible fencing or landscaping mitigation measures.

Mr Liggett further advised that Kāinga Ora was ready to liaise “off-line” with Mr and Mrs Wilkinson – i.e. outside this hearing process - so that landscaping options and the range of fencing types/heights that could be erected between their property and the subject site could be further discussed. This landscaping/fencing work would be constructed at the Applicant’s cost. In order

to undertake these discussions, the Applicant would double check with Mr and Mrs Wilkinson regarding the best way to contact them.

Submitter, Mr Ian Wilkinson addressed the hearing on behalf of himself and his wife. He did not present a formal statement, but responded to questions of clarification from the Committee regarding the submission and the points raised at the hearing by those appearing on behalf of the Applicant. Fencing matters/options along the Submitter's boundary with the subject site were discussed in some detail at the hearing.

Mr Wilkinson was asked whether he and his wife were happy with the mitigation measures that had been proposed by the Applicant's representatives - e.g. fixed louvres, obscure glazing and the proposed boundary fencing. He noted the following points as being among their concerns:

- the Submitters had concerns about soils on the subject site and in an area on their own site – the Applicant had advised it was very experienced in dealing with contaminated soils on sites, but was unable to address soils on the Submitters' own property.
- vehicles moving to and from the subject site and visitor parking overflow – the Submitters didn't want vehicles to encroach onto their property.
- Mr Wilkinson did not recall the Applicant having made offers to himself or his wife, regarding possible fencing or landscaping mitigation measures.

The hearing adjourned for lunch at 12.20pm and resumed at 1.00pm

The Reporting Consultant Planner, Tom Hosford, spoke to the agenda report and summarised the approach that had been taken in considering matters including amenity, character and visual effects, traffic, parking, noise, dust and some lead contamination in one area. He responded to questions from the Committee. Mr Hosford acknowledged that while he considered the effects of the proposals on the Wilkinson property would be no more than minor, there would be a large change in the streetscape in that area.

He explained that the application had been notified, on a limited notified basis. A late submission had been received and informal mediation, initiated by the Applicant and facilitated by the Council, had been undertaken with the Submitters in early June 2022.

The Applicant had advised that the "clean" copy (12380#0102) of the original draft conditions circulated at the hearing had been pre-circulated to Mr Hosford earlier in the week and initially discussed with him. However, Mr Hosford said that he'd not had time to fully compare this "clean" document against the initial proposed conditions in the agenda report or against the tracked changes in Ms Graham's pre-circulated document (12380#0088 – Pages 41 to 57). He had also been comparing conditions in previous consents, of a similar nature, in order to ensure a level of consistency as there appeared to be some departure from standard practice in this case.

The Environmental Consents Manager, Caleb Sutton, advised that officers had been looking closely at the Applicant's proposed deletion of consent notices and their reliance on land use conditions. When the pre-circulated evidence exchange had taken place, some legal issues had become evident. He offered that a Memorandum could be provided setting out the reasons and legal basis for Council's proposed use of consent notices as part of the draft conditions, if this would assist the Committee. With the Chair's agreement, a copy of the Memorandum (12380#0105) was subsequently circulated to the Committee and the parties on 2 September.

It was highlighted that evidence had been given earlier in the hearing, on behalf of the Applicant, that Kāinga Ora was not looking to build housing stock for the purpose of on-selling it. Therefore, the Applicant felt the use of consent notices - which restricted future development of a site and informed a future landowner of that fact - were not needed in this case. However, Council officers noted that local social housing had been sold off in the past, in Hastings and Flaxmere, so using consent notices in the proposed conditions would put that aspect to the forefront.

Mr Hosford responded to questions from the Committee advising that the key determining factor for addressing combined subdivision and land use developments was to rely on consent notice conditions to secure the outcome being sought. The scale and type of the proposed development was not common in Hastings and Council needed some certainty that the neighbouring property owners' amenity would be protected. If the general residential zone provisions were loosened to allow more intensive development, then having a consent notice on the title was a way to control the density and parties would be advised if that consent notice was to be removed. He expanded on these and other comments.

While the Chair had directed the Applicant's Legal Counsel to provide written Closing Submissions by 5 September 2022, **Ms Summerfield** was given the opportunity to make some initial oral comments at the hearing session today. The main points that she highlighted in response to points raised during the hearing included:

- land use consent conditions were needed to ensure land use types of activity were appropriately located as part of a land use consent, as opposed to a subdivision.
- she felt the approach taken by the Applicant regarding earthworks, landscaping and fencing and maintenance etc in the proposal was appropriate, addressing some of the proposed conditions and how they could be used in this situation.

The Committee sought further information regarding a number of other smaller scale Kāinga Ora developments in Hastings and the differences between these and the current proposal. Ms Summerfield advised that she was happy for this information to be provided, but asked for clarification as to why this would be necessary, as there had already been considerable delays for Kāinga Ora to work through and each case should be treated on its own merits.

The Committee was advised that during the lunch break there had been some discussion between Kāinga Ora and Mr Wilkinson and several steps had been agreed upon regarding moving forward and communication between the two parties. It was noted that Mr Wilkinson was now saying that a 1.8 metre high fence around their property was not what they were seeking and a process to assist mitigation had been agreed.

Ms Summerfield advised that a new bespoke condition was proposed but this needed to be forwarded first to the Submitters for their consideration.

The Chair thanked the parties for their attendance at the hearing and for the Legal Submissions and oral and written evidence that had been presented.

It was noted that the hearing would now be adjourned and the Committee would move into Public Excluded Session to undertake its deliberations.

Mr George Lyons/Councillor Alwyn Corban

That the public be excluded from the deliberations in relation to the hearing of the Limited Notified Resource Consent Application for Residential Development 1012, 1014, 1018 Grove Road and 1015-1023 Sussex Street, Hastings 4122 - Kāinga Ora - Homes and Communities

(RMA20210495). 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 1.50pm
and would reconvene in Public Excluded Session
for the Committee to undertake its deliberations

**WITH THE DECISION BEING RELEASED ON MONDAY, 3 OCTOBER 2022
(FOLLOWING A RESOLUTION TO PROCEED IN OPEN SESSION
IN ORDER TO RELEASE THAT DECISION)**

Limited Notified Resource Consent Application for Residential Development 1012, 1014, 1018 Grove Road and 1015-1023 Sussex Street, Hastings 4122 - Kāinga Ora - Homes and Communities (RMA20210495)...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, associated conditions under each part and the overall advice notes and reasons, as well as the relevant attached plans and detail sheets (Figures One to Twelve) is contained in a separate document (12380#0114).

DECISION

Mr George Lyons/Councillor Wendy Schollum

Part 1 of Decision

(Land Use):

Pursuant to Rules GR23, GR28 & TP2 of the Hastings District Plan (Now made part Operative as of the 11th of March 2020), and Sections 104, 104B & 104C of the Resource Management Act 1991, and Clause 10 of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 consent as a Discretionary Activity is **GRANTED** to Kāinga Ora - Homes and Communities to disturb soil associated with the construction of twenty-four (24) dwellings on land located at 1015-1023 Sussex Street and 1012-1014, 1018 Grove Road Hastings, 4122, being legally described as LOTS 125-129 DP 9139 (RT HBH2/636) – 640), LOTS 135-136 DP 9139 (RT HBH2/642-643), and LOT 138 DP 9139 (RT HBH2/644).

Part 2 of Decision

(Subdivision and NESCS):

Pursuant to Rule SLD25 of the Hastings District Plan (Now made part Operative as of the 11th of March 2020) and Sections 104, 104B & 104D of the Resource Management Act 1991, and Clause 10 of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 consent as a Non-Complying Activity is **GRANTED** to Kāinga Ora - Homes and Communities to undertake a residential development involving the construction of twenty-four (24) residential dwellings and a corresponding subdivision at 1015-1023 Sussex Street and 1012-1014, 1018 Grove Road Hastings, 4122, being legally described as LOTS 125-129 DP 9139 (RT HBH2/636) – 640), LOTS 135-136 DP 9139 (RT HBH2/642-643), and LOT 138 DP 9139 (RT HBH2/644).

Together with the associated conditions under each part and the overall advice notes and reasons, as well as the relevant attached plans and detail sheets (Figures One to Twelve).

CARRIED

The following evidence or further information was subsequently received (in the order shown below) and was forwarded to the Hearings Committee and also sent to the council officers, Applicant and Submitters:

- On 5/9/22 – Email (12380#0103) from Ms N Summerfield, Applicant’s Legal Counsel seeking extension of time for provision of Closing Legal Submissions (due 5/9/22) to enable addressing of points raised in Legal Memorandum circulated by Council on 2 September.
- On 5/9/22 – Email from Chair (12380#0104) agreeing to extension of time requested by Ms Summerfield – (*timeframe extended until 6/9/22*).
- On 6/9/22 – Written Closing Legal Submissions were received from Applicant’s Legal Counsel. (12380#0107) – appended to this document was a copy of updated Draft Conditions showing tracked changes.
- On 30/9/22 – Email from Chairman, formally closing the Hearing on Friday, 30 September 2022 at 10.00am (12380#0111).
- Signed Decision, dated Monday, 3 October 2022, was circulated on that date (12380#0114).

The Signed hearing Decision is saved in the Council’s records system (under 12380#0114). This decision is circulated with these minutes as part of the record of this hearing.

The full Decision wording also includes narrative which summarises details of the hearing process and the evidence that was presented to the Committee for its consideration, in regard to the application.

The meeting was subsequently formally closed
On Friday, 30 September 2022 at 10.00am

Confirmed:

Chairman:

Date: