

*Minutes of a meeting the Regulatory Committee held on Monday  
25 February 2008 in the Council Chambers, 101 Bank Street, Te  
Awamutu commencing at 9.00am*

## **1 PRESENT**

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Councillor D Sharpe, Chairperson

### **Committee**

His Worship the Mayor A Livingston (9.05am) , Councillors EC Newlands  
(9.03am), BJ Taranaki,

Other

Deputy Chief Executive – G Dyet; Environmental Safety Manger – J  
McFarlane; Planner – J McLellan, Consultant Planner – E Makin; Planner –  
R Steenstra; Secretary – C Shaw

## **2 APOLOGIES**

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There were no apologies.

## **3 LATE ITEMS**

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There were no late items.

## **4 CONFIRMATION OF ORDER OF MEETING**

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File: 01-89-04

### **RESOLVED**

4/08/001

*That the order of the meeting be confirmed.*

Cr Sharpe/Cr Taranaki

## **5 CONFIRMATION OF PREVIOUS MEETINGS**

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File: 01-89-04

5.1 **Ordinary Meeting of Regulatory Committee held on  
27, 29 & 30 November 2007**

**RESOLVED**

4/08/002

*That the Minutes of the Regulatory Committee held on 27, 29 & 30 November 2007, be received.*

Cr Taranki/Cr Newlands

**6 WAIPA DISTRICT LIQUOR LICENSING AGENCY**

**6.1 Monthly Schedule of Liquor License Applications  
Considered by Staff Under Delegated Authority**

File: 01-85-10

**RESOLVED**

4/08/003

*That the monthly schedule of Liquor License Applications Considered by Staff Under Delegated Authority for December 2007 and January 2008 be received.*

Cr Newlands/Mayor Livingston

**7 GENERAL**

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**7.1 Matters Considered by Staff Under Delegated  
Authority – Resource Management Act 1991**

File: 01-52-01

**RESOLVED**

4/08/004

*That the schedule of Matters Considered by Staff Under Delegated Authority for December 2007 and January 2008, be received, a copy of which is attached to and forms part of these minutes.*

Cr Tarakaki/Mayor Livingston

**8 APPOINTMENT OF HEARING COMMISSIONERS TO REGULATORY  
COMMITTEE FOR THE PURPOSE OF HEARING RESOURCE CONSENT  
APPLICATIONS**

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**RESOLVED**

1/08/005

*That PURSUANT to Section 34 and Section 34A of the Resource Management Act the Regulatory Committee in exercise of the functions powers and duties delegated to it by the District Council **DOES HEREBY APPOINT** Grahame Webber to be Hearing Commissioners to sit with the Regulatory Committee to hear the following hearings:*

- 11.1 *Application to Establish a Second Dwelling for Dependent Relative*
- 11.2 *Application to Subdivide one rural-residential lot into two*
- 11.3 *Application to Subdivide pursuant to Rule 10.3.2.2(d) (Topographical Restraints) as a non-complying activity and concurrent Boundary relocation pursuant to Rule 10.3.1.3*

Mayor Livingston/Cr Taranaki

**9 APPOINTMENT OF HEARING COMMISSIONER(S) TO HEAR RESOURCE  
CONSENT APPLICATION FROM WAIKATO REGIONAL AIRPORT LIMITED**

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**RESOLVED**

1/08/006

*That Pursuant to Section 34A of the Resource Management Act 1991 independent commissioners Doug Arcus and Alan Watson be appointed as Hearing Commissioners for the purposes of:*

- (a) Hearing and determining in accordance with Clause 29(4) of Part II of the First Schedule to the Resource Management Act 1991 the Waikato Regional Airport Private Plan Change application No.57 as detailed in Schedule 1 below. This authority includes hearing and determining the submissions and further submissions lodged to the Plan Change;*
- (b) Hearing and making recommendations to the Requiring Authorities being Transit NZ and the Waikato Regional Airport Ltd on the Notices of Requirement for Alteration of Designations as detailed in Schedule 2 below. This authority includes hearing and making recommendations on the submissions lodged to the Alteration of Designation applications.*

*Doug Arcus is appointed as the Chairperson and is accorded a casting vote.*

**Schedule 1**

**Applicant :** *Waikato Regional Airport Ltd*

**Plan Change No.** *57*

**Proposal :** *To rezone 117 hectares of land currently zoned Rural and Airport Industrial to Airport Business Zone.*

**Address of Site:** *The overall site is bounded by State Highway 3 on the western side, State Highway 21 (Airport Road) on the eastern side, Raynes Road along the northern boundary and farmland along the northwest boundary.*

**Schedule 2**

**REQUIRING AUTHORITY:**

*Waikato Regional Airport Ltd (DN/0016/07)*

**The requirement is for:**

*Additional land to be included in the existing Hamilton Airport Operational Area designation for Airport operations, maintenance and expansion (DN71).*

**The site to which the requirement applies is as follows:**

*Hamilton International Airport, Airport Road, Rukuhia.*

**REQUIRING AUTHORITY:**

*Transit New Zealand (DN/0017/07)*

***The requirement is for:***

*Alteration to the designation of State Highway 21 (Airport Road), to enable future access improvements to the Hamilton Airport.*

***The site to which the requirement applies is as follows:***

*Land adjacent to State Highway 21/Lochiel Road intersection, on the eastern side of Hamilton International Airport.*

**REQUIRING AUTHORITY:**

*Transit New Zealand (DN/0018/07)*

***The requirement is for:***

*Alteration to the designation of State Highway 3, to enable future access improvements to the Hamilton Airport.*

***The site to which the requirement applies is as follows:***

*Land on the western side of State Highway 3 opposite Hamilton International Airport.*

*Mayor Livingston/Cr Taranaki*

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**10 ENVIRONMENTAL COURT APPEALS & ENFORCEMENT PROCEEDINGS**

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Deputy Chief Executive Garry Dyet informed the Committee of matters currently before the Environment Court.

**RESOLVED**

4/08/007

*That the information be received.*

Cr Newlands/Mayor Livingston

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**11 HEARINGS**

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**11.1 9.37am – 10.15am**

**Application to Establish a Second Dwelling (180m<sup>2</sup>)  
for a Dependent Relative in the Special Landscape  
Character Area: S & A Harris, 2237 Maungatautari  
Road, Cambridge  
04652/030.00**

**DECISION OF REGULATORY COMMITTEE ON A NON-NOTIFIED RESOURCE  
CONSENT APPLICATION TO ERECT A SECOND DWELLING FOR THE  
PURPOSE OF A DEPENDENT RELATIVE IN THE RURAL ZONE PURSUANT TO  
SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991**

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## **1 THE HEARING**

The hearing held on 25<sup>th</sup> February 2008 was attended by the following:

<b>Applicant</b>	Angela Harris Mr Morsley (Applicant's Father)
<b>Appearing for Council</b>	Anna McLellan

## **2 SITE VISIT**

As the main consideration of the Regulatory Committee was a policy issue they did not undertake a site visit.

## **3 THE RELEVANT STATUTORY PROVISIONS**

The application was considered under the provisions of the Resource Management Act 1991 (RMA).

It was assessed as a **discretionary** activity and thus, was considered in accordance with sections 104, 104B and Part 2 of the RMA.

## **4 OTHER RELEVANT PROVISIONS CONSIDERED**

No other documents or structure plans were considered relevant in this instance.

### **4.1 OPERATIVE WAIPA DISTRICT PLAN**

The following provisions in the Operative Waipa District Plan (District Plan) were considered in the assessment of the application.

- Objectives RU1 & RS1
- Policy RS68, RS69, RU9 & RU10
- Rural Zone Rules 2.0
- Assessment Criteria Rule 2.7.13 Number of Dwellings on a Site
- Assessment Criteria Rule 2.6.1 Special Landscape Character Area

### **4.2 OTHER LEGISLATION**

No other legislation was applicable in the assessment of this application.

#### **4.3 OTHER POLICY STATEMENTS**

No provisions in any National Policy Statement, New Zealand Coastal Policy Statement, Waikato Regional Policy Statement or Proposed Regional Policy Statement were applicable to the assessment of this application.

#### **5 THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:**

The principal issue that was in contention was the degree of non compliance with the maximum size requirement for a dependent relatives dwelling as per District Plan Rule 2.4.6 – Number of Dwellings on a Site (a 185m<sup>2</sup> dwelling is proposed, which is 115m<sup>2</sup> in excess of the permitted size of 70m<sup>2</sup>).

#### **6 SUMMARY OF THE EVIDENCE HEARD**

##### **Angela Harris - The Applicant**

Evidence in support of her application was provided by Mrs Harris. Mrs Harris addressed visual issues and why she believed these would be no more than minor in this instance. She provided a detailed background of the personal circumstances of the dependent relatives to occupy the dwelling and the justification for allowing an additional 115m<sup>2</sup> of floor area above the permitted 70m<sup>2</sup>.

##### **Anna McLellan – Council’s Planner**

Evidence on behalf of Council was given by Anna McLellan. She presented her report and outlined the relevant rules of the Operative Waipa District Plan and the relevant statutory framework under the Resource Management Act 1991. She identified the actual potential effects of the activity, including traffic, visual amenity, loss of productive land and rural character and amenity. She concluded that the actual and potential effects arising from the proposed activity will be no more than minor, subject to compliance with conditions of consent. She also noted that the Objectives and Policies specifically provide for two dwellings on a rural site, providing that one of those dwellings is used by the dependent relative of the occupier of the principal dwelling.

She identified that main issue of contention was the degree of non compliance with the maximum size requirement for a dependent relatives dwelling as per District Plan Rule 2.4.6 – Number of Dwellings on a Site. In regard to this matter she stated that granting consent for a 185m<sup>2</sup> (exclusive of garaging) dependent relatives dwelling would set an adverse precedent effect, in that Council would have difficulty declining consent in the future to similar applications. She also noted that there were no unique characteristics or special circumstances that would set this application apart from others in the Rural Zone and therefore warrant approval for an additional 115m<sup>2</sup>.

## **7 THE MAIN FINDINGS OF FACT:**

The Regulatory Committee have considered the application, the evidence and submissions presented at the hearing, the planning assessment report prepared by the planner, the relevant statutory and planning provisions and the principal issue that was in contention. The main findings of fact determined by the Regulatory Committee, which have led to the following decision and the reasons for that decision are as follows.

- There were no unique characteristics or special circumstances that would set this application apart from others in the Rural Zone. Approving the proposal for a 185m<sup>2</sup> dependent relatives dwelling would set a precedent and would adversely affect Council's ability to administer the District Plan, specifically Rule 2.4.6 – Number of Dwelling on a Site.
- Granting consent for a dependent relatives dwelling and accessory buildings of 90 and 45m<sup>2</sup> respectively is consistent with previous resource consent decisions. Furthermore, a dwelling of 90m<sup>2</sup> (rather than the permitted 70m<sup>2</sup>) will provide additional space for the dependent relatives to meet their mobility needs and maintain their current living arrangement.
- Subject to conditions of consent, in particular the restriction of floor area of the dwelling and accessory buildings, the actual and potential effects arising from the activity will be no more than minor and the proposal is not contrary to the Objectives and Policies of the District Plan.

## **8 RESOLVED**

4/08/008

*That:*

- a) The report of A McLellan, Planner for the Waipa District Council, dated 5<sup>th</sup> February 2008 be received; and*
- b) In consideration of Section 104, and pursuant to Sections 104B & 108 of the Resource Management Act 1991, the Waipa District Council grants consent to S & A Harris to construct a second dwelling for a dependent relative at the property located at 2237 Maungatautari Road, legally described as Section 1S Hora Hora Settlement, subject to the following conditions:*

Mayor Livingston/Cr Taranaki

### **General**

- 1. The proposed activity must proceed in general accordance with the application prepared by S & R Harris and the plans prepared by Platinum Homes, reference WKO066, dated 26/11/08, unless altered by the conditions of consent.*

### **Monitoring**

2. *The consent holder must pay all reasonable costs associated with monitoring of this consent.*

### **Dependant Relatives Dwelling**

3. *The second dwelling must not exceed **90m<sup>2</sup>** in gross floor area and accessory buildings (including garaging) associated with this dwelling must not exceed **45m<sup>2</sup>** in gross floor area. The dwelling must be occupied by a dependent relative of occupiers of the principal dwelling on the same site in accordance with Rule 2.4.6.1a) 'Number of Dwellings on a Site' of the Operative Waipa District Plan.*

*Note. The dwelling is not eligible for subdivision as a surplus dwelling under Rule 10.6.1.4 (b) - Surplus Dwellings.*

### **Special Landscape Character Area**

4. *The exterior of the structure must be finished in a colour, or combination of colours, which complies with Appendix 21 of the Operative Waipa District Plan (Special Landscape Character Area Colours). The colour of the brick is Lacebark (08 B 17) Toffee (04 B 27) of Appendix 21 as stated in the resource consent application. Any variation to these materials and/or colours must also comply with Appendix 21 of the Operative Waipa District Plan (Special Landscape Character Area Colours) and be approved by the Council's Planning Services Manager prior to the commencement of works on site. Compliance with this condition must be carried out within 6 months of the issue of building consent.*

### **Landscaping**

5. *The consent holder must retain the existing vegetation along the northern boundary, shown hatched on the approved plan, to the satisfaction of Council's Planning Services Manager.*

### **Reasons for Decision**

- a. Subject to compliance with the above conditions the proposal is not contrary to the relevant objectives and policies of the Operative Waipa District Plan.
- b. Granting consent for a 185m<sup>2</sup> dependent relatives dwelling (exclusive of garaging) would have an adverse precedent effect, in that Council would have difficulty declining consent in the future to similar applications. There are no unique characteristics or special circumstances of the application that warrant approval. Condition 3 has been imposed which restricts the size of the dwelling to 90m<sup>2</sup>, this will allow the additional floor area required to maintain current living

arrangements and assist in mobility of the dependent relative/s, while ensuring that the level of visual effects are no more than minor and are within the scope envisaged by the District Plan. Furthermore restricting the size of the dwelling to 90m<sup>2</sup> and any associated accessory buildings to 45m<sup>2</sup> will ensure that approving the proposal does not adversely affect Council's ability to administer the District Plan, specifically Rule 2.4.6 – Number of Dwelling on a Site.

- c. Any adverse environmental effects resulting from the proposal are deemed to be no more than minor, or can be mitigated by the imposition of appropriate consent conditions, specifically conditions 3, 4 & 5 will ensure that the visual effects are no more than minor and the view from State Highway One (Special Landscape Character Area) is preserved.
- d. Pursuant to section 94 of the Resource Management Act 1991 the application has not been publicly notified as the adverse effects of the proposal are deemed to be minor, subject to compliance with conditions of consent and all parties that were considered potentially adversely affected by the granting of this consent have provided their written approval. Accordingly, the application was processed on a non notified basis.

### **Advisory Notes**

#### **Special Landscape Character Area**

- Any driveways and/or tracks created in association with the construction of the dwelling and attached garage must be compliant with the guidelines in Appendix 21 of the Operative Waipa District Plan (Special Landscape Character Area Colours).
- Pursuant to Rule 12.3.1.3 of the Waipa District Plan, all reticulation of services such as power and telephone must be underground in the Special Landscape Character Area.

#### **Building Consent**

- All necessary building consents must be obtained prior to commencement of works onsite.

#### **Earthworks**

- All earthworks associated with any subdivision or development of land must be undertaken in accordance with the following matters :
  - a) All earthworks must be carried out so as to provide sound foundations as required under NZS 4431:1989 and avoid any hazard to persons or property;
  - b) All earthworks must be carried out so as to avoid or mitigate any detrimental effect on the environment particularly with regard to the

- unnecessary destruction of vegetation, the contamination of natural water or the diversion of surface or ground water flows
- c) The existing landform must not be altered in such a manner that adjoining properties will be detrimentally affected particularly through changes in drainage systems or abrupt changes in ground level
  - d) All earthworks must be carried out in accordance with the Waipa District Council Code of Practice for Land Development and Subdivision for formation and construction standards.

### **Discovery of Archaeological or Culturally Significant Finds**

- a) Where during earthworks, any archaeological features, artefact or human remains are accidentally uncovered or are suspected to have been discovered, the following protocol must apply:
  - (i) All works within the vicinity must cease immediately.

#### In cases other than suspected human remains:

- (ii) The contractor must immediately secure the area and advise the NZ Historic Places Trust of the occurrence.
- (iii) The consent holder must consult with a representative of the relevant iwi authority and the NZ Historic Places Trust to determine what further actions are appropriate to safeguard the site or its contents.

#### Where human remains are suspected:

- (iv) The contractor must take steps immediately to secure the area in a way that ensures human remains are not further disturbed.
- (v) The consent holder must notify the NZ Police of the suspected human remains as soon as is practicably possible after the remains have been disturbed. The consent holder must notify the relevant iwi authority and the NZ Historic Places Trust within 12 hours of the suspected human remains being disturbed or otherwise as soon as practicably possible.
- (vi) Excavation of the site must not resume until the NZ Police, NZ Historic Places Trust and relevant Kaumatua have each given the necessary approvals for excavation to proceed.

Morning tea at 10.15am and reconvened at 10.30am

11.2 10.33am – 11.12am

**Application to Subdivide one Rural-Residential Lot  
into Two: KN & M Jones, 886 Crozier Street,  
Pirongia  
04605/337.03**

**DECISION OF REGULATORY COMMITTEE ON A LIMITED NOTIFIED  
RESOURCE CONSENT APPLICATION TO SUBDIVIDE IN THE RURAL-  
RESIDENTIAL POLICY AREA OF THE RURAL ZONE PURSUANT TO SECTION  
113 OF THE RESOURCE MANAGEMENT ACT 1991**

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## **1 THE HEARING**

The hearing held on 25 February was attended by the following:

<b>Applicant</b>	<i>Kenneth Newton Jones Maisie Jones</i>
<b>Appearing for Applicant</b>	<i>Marlize Durandt (CKL Surveys) Ian Jones (Applicant's Son)</i>
<b>Appearing for Council</b>	<i>Jaime McLellan (Planner)</i>

## **2 SITE VISIT**

The Regulatory Committee did not undertake a site visit as they were all familiar with the area, and had gained an appreciation of the site having listened to the both the applicant and the Council planner present their evidence.

## **3 THE RELEVANT STATUTORY PROVISIONS**

The application was considered under the provisions of the Resource Management Act 1991 (RMA).

It was assessed as a **non-complying** activity and thus, was considered in accordance with sections 104, 104B, 104D and Part 2 of the RMA.

## **4 OTHER RELEVANT PROVISIONS CONSIDERED**

### **4.1 Operative Waipa District Plan**

The following provisions in the Operative Waipa District Plan were considered in the assessment of the application:-

- Objectives - SU2, SU2B, RU1 & RS1
- Policies - SU2B, SU3, SU10, SU14, RU52, RU63, RS53, RS57, RS63, RS65, RS78 & RS80.
- Rules - 10.6.2 'Subdivision in the rural-residential policy area' & 10.6.1.5(e).

No Plan Changes to the Operative Waipa District Plan were considered in the assessment of the application.

### **4.2 Other Legislation**

No other legislation was applicable in the assessment of this application.

### **4.3 OTHER POLICY STATEMENTS**

No provisions in any National Policy Statement, New Zealand Coastal Policy Statement, Waikato Regional Policy Statement or Proposed Regional Policy Statement were applicable to the assessment of this application.

## **5 THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:**

The principal issues that were in contention were:

- Visual amenity
- The integrity of the Operative Waipa District Plan.
- Proposed water supply to each lot.

## **6 SUMMARY OF THE EVIDENCE HEARD**

Marlize Durandt – CKL Surveying

Evidence on behalf of the applicant was given by Marlize Durandt. It was noted that the applicant's have applied for subdivision consent as they wish to downsize their property. The site is suitable for subdivision as the house is located at the rear of the property. The potential adverse effects on the rural residential amenity will be no more than minor considering the existing streetscape. The site is considered to be unique in its location as it is bordered by the residential zone to the south (opposite) and east (one property removed).

Ms Durandt noted, as a point of clarification, that Lot 1 would have a new access along the eastern boundary. It was further noted that any future potential dwellings on Lot 1 can collect rainwater via roof run-off. Accordingly, the revised proposal will not necessitate a new connection to Council's reticulated water supply, in the future. The applicants have agreed to a 'no-build area' to be imposed as a covenant over part of Lot 1 to help maintain the neighbours view.

Jaime McLellan – Planner

Mr Jaime McLellan presented the Council planner's report. Mr McLellan briefly described the site, including the area, modifications, improvements, services and vegetation.

Mr McLellan noted that the predominant size of the adjacent sections contained within the Pirongia Rural-residential Policy Area, is 1 acre in imperial measurement. The cadastre of the area has, by and large, remained unchanged since the original survey of Pirongia.

It was further noted that the proposed subdivision was deemed a Non-Complying Activity, due to its failure to meet rules for the minimum and average lot sizes, and the minimum shape factor circle. In addition, the proposal is considered to be contrary to the objectives and policies of the Operative Waipa District Plan.

It was noted that Council has not previously granted resource consent to subdivide, in the rural-residential policy area, to create additional lots of the size, scale and character that is proposed.

It was noted that the site does not contain any particular features that are considered to be unique. The introduction of lots of the size, scale and character that is proposed, into the Rural-Residential Policy Area, will influence Council's decisions throughout the Rural Zone and in particular the Rural-residential Policy Area. This, in turn, will undermine; the Council's decision making ability when assessing non-complying subdivision applications in the future, and the public's confidence in the consistent administration of the District Plan.

It was noted that the adverse effects on the rural-residential amenity were considered to be more than minor having considered the extent of the non-compliance with the aforementioned rules.

Mr McLellan outlined the principal issues raised by the submitters. In particular their concerns over the potential loss of rural-residential amenity.

Mr McLellan briefly discussed what provision had been made to supply lots 1 & 2 with water, and what effects this would have on Council's reticulated network.

## **7 THE MAIN FINDINGS OF FACT:**

The Regulatory Committee have considered the application, the evidence and submissions presented at the hearing, the planning assessment report prepared by the planner, the relevant statutory and planning provisions and, the principal issues that were in contention. The main findings of fact determined by the Regulatory Committee, which have led to the following decision and the reasons for that decision are as follows.

- The proposed subdivision does not accord with the objectives and policies of the Operative Waipa District Plan.
- The extent of the non-compliance will detract from the consistent administration of future non-complying rural subdivisions. This, in turn, will undermine the integrity of the Operative Waipa District Plan.
- The adverse effects on rural-residential amenity are considered to be more than minor.
- The proposed no-build covenant will not adequately avoid, remedy or mitigate the potential adverse effects.
- The proposal does not meet the test for Non-Complying activities, in Section 104D of the Resource Management Act 1991, as it is contrary to the objectives and policies of the Operative Waipa District Plan. Therefore, Council can not grant consent for the proposed subdivision.

## **8 RESOLVED**

4/08/009

*That*

- a) The report from Jaime McLellan, Planner, dated 11<sup>th</sup> February 2008 be received; and,*
- b) That in consideration of Sections 104, 104B and 104D of the Resource Management Act, the Waipa District Council Regulatory Committee declines its consent for the application to subdivision by K.N & M Jones at 886 Crozier Street being Lot 1 DPS 82701 shown on scheme plan of subdivision SP/0297/07, for the following reasons:*

Mayor Livingston/Cr Newlands

### **REASONS FOR DECISION**

- 1 The proposal does not accord with the purpose and principles of Part II of the Resource Management Act 1991. In particular, the proposal fails to maintain and enhance the amenity values of the rural-residential policy area.

- 2 Having regard to the criteria in Sections 104, 104B and 104D of the Resource Management Act 1991, it is considered that the proposed subdivision is inconsistent with the objectives and policies, and rules of the Operative Waipa District Plan.
- 3 The size, scale and character of the proposed lots will contribute to more than minor adverse effects on the environment.
- 4 The proposal fails the statutory test for non-complying activities.
- 5 The proposal does with Rules 10.6.1.2(a) & 10.6.1.2(d), of the Operative Waipa District Plan, which require minimum and average lot sizes and the provision of building platforms with a minimum 30-metre diameter circle.
- 6 The site does not contain any unique characteristics of specific features, that would set it apart from other rural-residential sites. Granting consent to the proposal would undermine the integrity of the Operative Waipa District Plan and public confidence in the consistent administration of that Plan.

**11.3 11.15am – 12.03pm**

**Application to Subdivide Pursuant to Rule 10.3.2.2(d) (Dwelling on Land with little or no productive value and Topographical Restraints) as a Non-complying activity and Concurrent Boundary Relocation Pursuant to Rule 10.3.1.3: Neville & Poland, Limeworks Loop & Fillery Roads, Te Pahu 0560/111.00**

**DECISION OF REGULATORY COMMITTEE ON A NON-NOTIFIED RESOURCE CONSENT APPLICATION TO SUBDIVIDE PURSUANT TO RULE 10.3.2.2(d) (DWELLING ON LAND WITH LITTLE OR NO PRODUCTIVE VALUE AND TOPOGRAPHICAL RESTRAINTS) AND CONCURRENT BOUNDARY RELOCATION PURSUANT TO RULE 10.3.1.3 AS A NON-COMPLYING ACTIVITY, PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991**

**1 THE HEARING**

The hearing held on 25<sup>th</sup> February 2008 was attended by the following:

<b>Applicant</b>	Murray Hislop – Applicant’s Agent Richard Neville Pat Poland
<b>Appearing for Council</b>	Ella Makin – Consultant Planner

## **2 SITE VISIT**

As the main consideration for the Regulatory Committee was a District Plan policy issue they did not undertake a site visit.

## **3 THE RELEVANT STATUTORY PROVISIONS**

The application was considered under the provisions of the Resource Management Act 1991 (RMA).

It was assessed as a **Non-Complying** Activity and thus, was considered in accordance with sections 104, 104B, 104D and Part 2 of the RMA.

## **4 OTHER RELEVANT PROVISIONS CONSIDERED**

### **4.1 OPERATIVE WAIPA DISTRICT PLAN**

The following provisions in the Operative Waipa District Plan (District Plan) were considered in the assessment of the application.

- Objectives SU2, SU3,
- Policies RU18, SU6, SU7, SU13, SU22, RC4,
- Rule 10.5 (Subdivision Standards for all Subdivision)
- Rule 10.10 (Construction Standards)
- Rule 10.3.2.2(d) Dwelling on Land with Little or No Productive Value and Topographical Restraints
- Rules 10.3.1.3 and 10.6.1.1(d) Boundary Relocations

### **4.2 OTHER LEGISLATION**

No other legislation was applicable in the assessment of this application.

### **4.3 OTHER POLICY STATEMENTS**

No provisions in any National Policy Statement, New Zealand Coastal Policy Statement, Waikato Regional Policy Statement, or Proposed Regional Policy Statement were applicable to the assessment of this application.

## **5 THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:**

The principal issue that was in contention was whether or not the proposed subdivision could be undertaken pursuant to Rule 10.3.2.2(d), (Dwelling on

Land with Little or No Productive Value and Topographical Restraints). Specifically, whether it had been established that the land could not be usefully amalgamated with the neighbouring allotment.

## **6 SUMMARY OF THE EVIDENCE HEARD**

### **Murray Hislop - The Applicant's Agent**

Evidence in support of the application was provided by Mr Murray Hislop. Mr Hislop addressed the fact that proposed Lot 1 is currently grazed in conjunction with Lot 1 DPS 30393 as it cannot be accessed by the balance of the lot. Mr Hislop advised that Mr Poland is not willing to purchase proposed Lot 1 unless they are able to gain another Title as a result of the purchase. Mr Hislop stated that a Transferable Development Right could be purchased by Mr Poland in order to create proposed Lot 3. In essence, the proposed subdivision is therefore a practical way of enabling Mr Neville to dispose of a section of land which he cannot practically use and for Mr Poland to obtain an additional Certificate of Title.

### **Ella Makin – Council's Planner**

Evidence on behalf of Council was given by Ms Ella Makin. Ms Makin presented her report and outlined the relevant rules of the Operative Waipa District Plan and the relevant statutory framework under the Resource Management Act 1991. Ms Makin identified the actual and potential effects of the activity, including traffic, visual effects, effects on natural values, loss of productive land, effects on natural hazards and esplanade reserves. Ms Makin concluded that the actual and potential effects arising from the proposed activity will be no more than minor.

Ms Makin identified that as a Non-Complying Activity, the proposed subdivision is considered pursuant to Section 104D of the Resource Management Act 1991. As such, consent can only be granted if the effects of the proposed subdivision are no more than minor, or the proposed subdivision is consistent with the relevant Objectives and Policies of the District Plan. Ms Makin advised that the proposed subdivision was contrary to Policy SU22 which relates specifically to the type of subdivision proposed.

Ms Makin identified that main issue of contention was whether it has been established that the land cannot be usefully amalgamated with the neighbouring allotment, as required in order to subdivide pursuant to Rule 10.3.2.2(d). In regard to this matter, Ms Makin advised that while the subdivision has been assessed as a Non-Complying Activity in order to fully assess the application, Council's interpretation of subdivision under this Rule is that it must meet all the criteria. As the proposed subdivision does not fully comply with the provisions of Rule 10.6.4.1(d), specifically not being able to be

usefully amalgamated with an adjoining property, Ms Makin considered that the subdivision could not be granted under this Rule.

## **7 THE MAIN FINDINGS OF FACT:**

The Regulatory Committee have considered the application, the evidence and submissions presented at the hearing, the planning assessment report prepared by the Council Planner, the relevant statutory and planning provisions, and the principal issue that was in contention.

The main findings of fact determined by the Regulatory Committee which have led to the following decision and the reasons for that decision are as follows.

- Given Lot 1 is currently used in conjunction with Lot 1 DPS 30393, it is capable of being usefully amalgamated with an adjoining property.
- It has not been proven that Lot 1 is capable of establishing a dwelling. Therefore In order to be consistent with previous decisions, the Councillors considered that the additional lot cannot be created pursuant to the Topographical Restraint Provisions.

## **8 RESOLVED**

4/08/010

*That:*

- a) The report of Ella Makin, Consultant Planner for the Waipa District Council, dated 8<sup>th</sup> February 2008 be received; and*
- b) In consideration of Section 104, and pursuant to Sections 104B and 104D of the Resource Management Act 1991, the Waipa District Council declines consent to R.J & K.J Neville and P.J & V.V Poland to subdivide the property located at Limeworks Loop and Fillery Roads, Te Pahu.*

Cr Newlands/Cr Sharpe

### **Reasons for Decision**

- a. Pursuant to Section 104B of the Resource Management Act 1991, as the proposed subdivision is a Non-Complying Activity, Council is able to grant or decline consent.
- b. Pursuant to Section 93 and 94 of the Resource Management Act 1991, the application has not been publicly notified nor limited notified as the adverse effects of the proposal are deemed to be minor and no potentially affected parties were identified.
- c. The proposed subdivision does not comply with all the criteria of Rule 10.6.4.1(d). Specifically that a lot being created under this Rule is not able to be usefully amalgamated with a neighbouring property. Lot 1 is capable of being amalgamated and farmed alongside Lot 1 DPS 30393

(Site 2). Therefore the proposed subdivision cannot be granted under this Rule.

- d. The site does not contain any unique characteristics or specific features that separate it from other rural residential sites which justify a departure from the Rules of the District Plan

There being no further business the meeting closed at 12.23pm

**CONFIRMED AS A TRUE AND ACCURATE RECORD**

**CHAIRPERSON:** \_\_\_\_\_

**DATE:** \_\_\_\_\_