

Minutes of a meeting of the Regulatory Committee held on Monday 28 April 2008 in the Council Chambers, 101 Bank Street, Te Awamutu commencing at 9.00am

1 PRESENT

Councillor D Sharpe, Chairperson

Committee

His Worship the Mayor A Livingston, Councillors EC Newlands, BJ Taranaki, Cr GRP Webber (appointed to sit on Resource Consent Hearings by resolution at the meeting on 25 March 2008).

Other

Planning Services Manager, W Allan [items 1 – 9.6]; Environmental Safety Manager, J McFarlane [items 6 & 9.1]; Senior Planner, T Kelly [items 9.2 & 9.3]; Planner, R Steenstra [items 9.4 & 9.6]; Planner, J McLellan [item 9.5]; Planner, D Murphy [item 9.6]; Environmental Health Officer, K Tutty [items 9.4 & 9.5]; Consultant Engineer, J Kendall [item 9.6]; Council Secretary, C Shaw.

2 APOLOGIES

RESOLVED

4/08/22

That the apology for non attendance from Mayor Livingston be received.

Cr Newlands / Cr Taranaki

3 LATE ITEMS

There were no late items.

4 CONFIRMATION OF ORDER OF MEETING

File: 01-89-04

RESOLVED

4/08/23

That the order of the meeting be confirmed.

Cr Taranaki / Cr Sharpe

5 CONFIRMATION OF PREVIOUS MEETINGS

File: 01-89-04

5.1 Ordinary Meeting of Regulatory Committee held on 25 March 2008

RESOLVED

4/08/24

That the Minutes of the Regulatory Committee held on 25 March 2008, with the inclusion of the remission of financial contribution, be received.

Cr Newlands / Cr Taranaki

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

4/08/25

That the monthly schedule of Liquor License Applications Considered by Staff Under Delegated Authority for March 2008 be received.

Cr Newlands / Cr Sharpe

6.2 Liquor Licensing Report

File: 01-85-10

The issue of people congregating outside premises at night was debated. It was noted that with the upgrade of the CBD, it is possible to implement environmental design relating to outside tables and chairs. The example of Hood Street in Hamilton was raised, where the Council have widened footpaths. The Police have indicated that connecting people outside to the premises is a cause for concern. Discussion surrounding possible mitigation was held, including the possibility of the introduction of a liquor ban.

RESOLVED

4/08/26

That

a) the report of Jennie McFarlane, Environmental Safety Manager dated 16 April 2008 be received; and,

b) the Environmental Safety Manager produce a report for Council regarding the possibility of a liquor ban bylaw for the District.

Cr Taranaki / Cr Newlands

Cr Sharpe left the meeting at 9.20am. Item 9.1 was taken before Items 7.1 & 7.2 due the applicants arriving.

7 GENERAL

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

File: 01-52-01

RESOLVED

4/08/27

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

Cr Newlands / Cr Taranaki

7.2 Change of Meeting Date and Venue

File: 01-89-04

RESOLVED

4/08/28

That due to the Local Government Conference, the meeting set down for Monday 28 July 2008 be changed to Thursday 31 July 2008. And due to a booking request from the Te Awamutu Competitions Society, the meeting scheduled for Monday 29 September 2008, be changed to Wednesday 1 October 2008.

Cr Taranaki / Cr Newlands

RESOLVED

4/08/28

That Councillor Thomas sit with the Regulatory Committee for the Bain Liquid Disposal hearing and the DJC & PA Armstrong hearing.

Cr Sharpe / Cr Newlands

8 ENVIRONMENTAL COURT APPEALS & ENFORCEMENT PROCEEDINGS

Planning Services Manager, W Allan provided a verbal overview of the supporting documentation.

The Transit New Zealand case has been referred to mediation and it was noted that the mediation is paid for by all sides bearing their own costs. The Court has not made a decision on the residential property of Willis. The Watters case went to the Environment Court who issued an Enforcement Order which was subsequently not complied with. This has gone back to the Environment Court. There is no update available for the Atkinson case. The appeal has been withdrawn by Taylor and will enter into negotiation. The Kenny childcare centre appeal is awaiting court of appeal processes.

RESOLVED

4/08/29

That the information be received.

Cr Newlands / Cr Taranaki

Item 9.3 was taken after Item 8 due to the arrival of the applicant.

9 HEARINGS

9.1 9.15am

**Objection to Dangerous Dog Classification,
Christopher Kurth: Dog named "Maz"**

32-12-01

Appearing for

Applicant: Mrs Kurth

Appearing for

Council: J McFarlane – Environmental
Safety Manager

J McFarlane – Environmental Safety Manager

J McFarlane reported on the incident which had taken place on 31 January 2008, resulting in the destruction of one dog. It was noted that "Maz" was not the attacker, although she was identified as the trigger. Previously Council staff investigated complaints in May 2007, and at time a low level enforcement approach was taken.

The Committee were also advised that when WDC officers visited the property to take photos, "Maz" exhibited aggressive behaviour. There was no dog proof fencing visible at that time.

Mrs Kurth – Appearing for the Applicant

Mrs Kurth advised that her son, Christopher Kurth was attending a doctor's appointment. At the time of the May 2007 incident, "Maz" was unregistered and accompanied by another dog living at the property, which was also unregistered. "Maz" was registered after the May 2007 incident and the other dog has since been removed from the property. She felt that the photo incident was a natural behaviour as no one was home at the time.

Mrs Kurth also advised that when the dogs were fighting, Christopher could not assist as Mrs Milicich prevented access to the property and he was hampered by the presence of the fence. She then stated that Mrs Milicich was hitting the dogs with a spade in an attempt to separate them and this may have caused some of the injuries.

Mrs Kurth advised that she would be happy to fence “Maz”, however she did not want “Maz” to carry the title of ‘dangerous dog’ for the rest of her life. Mrs Kurth had nothing else to say when offered the right of reply following Mr Milicich’s statements.

Mr I Milicich – Appearing in Favour of Classification

Mr Milicich advised that the dog was allowed to run over the 2 acres with Mr Kurth, however Mr Kurth would often go indoors leaving his dog unsupervised. Also, when collecting the mail or putting the rubbish out, the dog was often out on the roadside. Mr Milicich provided photos which show this to occur.

Mr Milicich advised that twice his dogs have escaped the property, once was when the power board cut trees which damaged the fence. He noted that when he had five dogs, he let three out together and then two dogs together. He advised that since the hearing notification “Maz” has stopped coming across the road.

Mr D Milicich – Appearing on behalf of B Garrett in Favour of Classification

Mr Milicich read a letter authored by Brent Garrett. Mr Garrett advised that he has rung Council to complain about “Maz”.

RESOLVED

4/08/30

That:

- a) *The report of Jennie McFarlane, Environmental Safety Manager dated 4 April 2008 be received; and,*
- b) *The Notice of Classification of Maz as a Dangerous Dog dated 27 February 2008 issued to Christopher Kurth be upheld.*

Cr Taranaki / Cr Newlands

Reasons for Decision:

1. Some of the behaviours exhibited by “Maz” are natural to dogs, however they are not acceptable. The control of the dog is the reason behind this classification and this would allow Mr Kurth to retain his dog, with conditions.
2. The next level would be prosecution and possible destruction and it was felt that this was not appropriate in this instance and avoidable in the future providing action was taken to contain the dog now.
3. It was clear that if the dog had been under control, these incidents would not have happened.
4. The main issue is the containment of the dog. The classification of

'dangerous dog' requires fencing or adequate kennel and run. Other requirements are that the dog be microchipped for identification purposes, neutered (if applicable), and muzzled in public.

Meeting adjourned for morning tea at 9.55am and recommenced at 10.12am when Items 7.1 & 7.2 were taken.

9.2 10.15am

**Application for Remission of Financial
Contributions Levied Pursuant to the Development
Contribution Policy & The Local Government Act
2002 (LGA)**

04605/137.01

Applicant	MMM International (NZ)
Appearing for Council	T Kelly – Senior Planner

T Kelly read the reasons for the remission request, the matters that Council shall take into account when considering the remission request and summarised the general comments.

Gave the history of MMM International which began in Australia. MMM stands for Mobile Mission Maintenance. Opportunity and need for organisation in New Zealand was identified and a nationwide service has been established and subsequently they moved into property in Pirongia, which is leased. Many staff are mobile, however some live onsite at Pirongia. Money comes from donations and subscriptions, garage sale so they don't have a large source of income. The fund to build the house has taken around 10 years to gather \$40,000. Staff are being used to build the house as and when they are available from other jobs. When fund began, they were unaware of the development contribution policy.

They work in the local community and believe that they are making a contribution. Some staff are sent overseas to the Pacific, however they pay their way.

Cr Sharpe questioned how large the unit is that the couple are currently living in. 58/60 metres squared. Cr Taranaki questioned how long they have been in Pirongia. 1995. Have worked at the Harvest Centre, Otorohanga. Glow Centre, Cambridge. Bible College in Cambridge. Missionary in Cambridge. Baptist in Te Awamutu. Cr Sharpe questioned how many buildings on title. Split in three titles. On one title is a four bedroom house. Main administration and dormitory for staff, including the staff how are moving into house. The new house is on the same title as this. They could have put the house on the spare title but this would be too far away from the administration building and they graze animals on this title.

Because the staff work away working the units are only usually used over the weekend, and sometimes there is no one there for several weeks at a time. The current newsletter was provided for Councillors.

T Kelly advised the Committee of the possibility of a partial credit.

RESOLVED

4/08/31

That

- a) *The report from Terrena Kelly, Senior Planner dated 3 April 2008 be received; and,*
- b) *The application for remission of the Development Contribution DC/0139/2007 be dismissed, and the Development Contribution of \$16,998.00 (GST inclusive) be upheld.*

Reasons for Decision

- 1 The development contributions have been levied in accordance with Council's Development Contribution Policy and are entirely appropriate. The proposal is for an additional household unit on one Certificate of Title, and there is no valid reason for Council to reduce the Development Contributions for these activities.

Cr Newlands / Cr Sharpe

Item 8 was taken after item 9.2 due to a wait before the applicants appeared for Item 9.3.

9.3 11.00am

Application for Remission of Financial Contributions Levied Pursuant to the Development Contribution Policy & The Local Government Act 2002 (LGA)

And

Section 357 Objection to Additional Resource Consent Processing Charges levied pursuant to Section 36 of the Resource Management Act 1991

04552/262.00

Applicant	A Baker
Appearing for Council	T Kelly - Senior Planner

RESOLVED

4/08/32

That:

- a) *The report from Terrena Kelly, Senior Planner dated 3 April 2008 be received; and,*

- b) *The application for remission of the Development Contribution DC0031/2007 be dismissed, and the Development Contribution of \$21,596.00 (GST inclusive) be upheld; and,*

Note: The Committee is statute barred from considering the objection as it is out of time and does not meet the section 37 criteria.

Cr Newlands / Cr Taranaki

Reasons for Decision

1. The development contributions have been levied in accordance with Council's Development Contribution Policy and are entirely appropriate. The proposal is for an additional household unit on one Certificate of Title, and there is no valid reason for Council to reduce the Development Contributions for these activities.
2. In relation to the resource consent processing fees; these were appropriately charged and the objection period has been exceeded.

Meeting adjourned for the lunch break at 11.53am. The meeting recommenced at 12.21pm.

9.4 12.15pm

Application to Create one additional Rural Allotment Under the Subdivision Provisions for Land with Little or no Productive Value and Topographical Restraints: Bain Liquids Disposal, Payne & Hairini Road
04495/132.00

DECISION OF REGULATORY COMMITTEE ON A NON-NOTIFIED RESOURCE CONSENT APPLICATION TO IN THE RURAL ZONE PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991

1 THE HEARING

The hearing held on the 28th April 2008 and was attended by the following:

Applicant	<i>BAIN LIQUIDS DISPOSAL</i>
Appearing for Applicant	<i>David Latham (CKL Surveying and Planning), Mr and Mrs Bain, Richard Chapman</i>
Appearing for Council	<i>Rebecca Steenstra (Planner), Karl Tutty (Environmental Health Officer)</i>

2 SITE VISIT

The Regulatory Committee undertook a site visit on 28th April 2008 to consider the productive capacity of the land, the extent of the topographical restraint (Mangaohoi Stream) and the possibility of amalgamation to the adjoining property to the east.

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

The operative Waipa District Plan (District Plan) and the Resource Management Act 1991 (RMA) were the only relevant provisions considered against this application.

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.

- *Rule 2.0 Rural Zone*
- *Rule 10.0 Subdivision – particularly Rule 10.6.1.4(d)*

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:

- The actual productive capacity of the land;

- The ability of the subject land to be usefully amalgamated with the adjoining property to the east;
- The potential contamination of the site.

6 SUMMARY OF THE EVIDENCE HEARD

Applicant

Evidence on behalf of the applicant was given by David Latham (CKL Surveying and Planning), Mr and Mrs Bain, and Dr Richard Chapman (Soil Expert). Mr Latham gave an overview of the application and the reasons behind the application. He outlined that there was no dwelling on the site, only a cow shed and yards, and that the land was currently being used for dry stock farming. It was pointed out that a drain was located on the eastern boundary for approximately 18 metres, therefore Lot 1 could be amalgamated with land owned by S Woodward but not in a useful manner.

Mr Latham stated that the two vehicle entrances from Payne Road would be closed, and that the entrance on Hairini Road approximately 35 metres from the corner would be upgraded. He accepted there would be no further subdivision for 10 years under the same provision.

Due to the size, fragmentation and soil characteristics the applicants believe that the land is unproductive. There is a physical barrier between the two lots – the Mangaohoi Stream. The applicant outlined reports provided as part of their application including those from Frasier Farm Finance and Russell Easton.

Cr Sharpe questioned Dr Chapman regarding the soil classification between Councils, and the variances were explained to her. Cr Webber then questioned the drain on the eastern boundary of the property, and was told by the applicant that it is often dry and acts as a supplementary drain. Cr Webber suggested growing maize on the site could be an appropriate use of the land. Mr Latham reminded the Councillors of the definition in the District Plan regarding Class I, II and III soils, and that there was approximately 3 ha productive land but fragmented into 5 areas. He claimed this would prevent cropping 5.6ha in a productive manner.

Dr Chapman's stated that 50% of the land is productive class II soils, and an additional 25% which was marginally Class III soils. He stated that the productive land was separated between other parcels of unproductive land, and some of the land was low lying and flood prone. He also stated the site was constrained by the two roads and the stream that run through the property.

Cr Sharpe questioned why the applicant wanted the land in a separate title, and Mr Bain replied that he wished to purchase Lot 1 from Mr Pyper the current owner of the property. Cr Taranaki asked what was going to be the future use of the land and Mr Latham responding by discussing the Environment Waikato discharge consent recently granted. Mr Latham confirmed that Lot 1 is extremely unlikely to have a dwelling located on it and Lot 2 will be retained by

the current owner who was not present at the Hearing and whose intentions are unknown. It was noted that the Environment Waikato resource consent requires that all dwellings are located further than 150 metres from the discharge area.

Council's Planner

Council's Planner, Miss Steenstra, read a summary of the application and briefly went over the main findings in the planner's report. Council's Environmental Health Officer, Karl Tutty, provided a verbal report on information Council had been given by a member of the public on the cadmium and other metals contained in the soils on the site. He said the report stated that Cadmium was at a level of 1.1mg per kg. Miss Steenstra explained that the additional information would mean that before the application could be approved there would need to be further investigation undertaken on the site. Dr Chapman responded to this and stated that this was at a level that exceeded the current guidelines which was attributed to the use of super phosphate as a fertilizer on the property. Mr Latham also stated that further investigation would hold up this consent and that he believed there was sufficient information not to require further testing to be undertaken.

Cr Newlands questioned Mr Tutty regarding the flagging of a site as potentially contaminated. He stated that the one level taken could be at a low spot on the site and that further investigation would need to be undertaken.

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, the principal issues that were in contention and visited the site. 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 main findings of the application were:-

- The Committee considered the subject land is able to be usefully amalgamated with an adjoining property. It is possible that the drain separating the two properties could be piped to overcome the separation;
- The Committee considered all Class II and III soils on the property to be productive land. This amounted to approximately 75% of the subject property according to Dr Chapman's report, which would amount to the land being more than 'little productive value';
- The Committee did not consider the application to meet the criteria for a discretionary activity within Rule 10.6.1.4(d) of the operative Waipa District Plan, regarding the useful amalgamation and productive value of the property, and was therefore considered to be a Non-Complying subdivision;

- The possible contamination of the site was not considered to be an issue as a dwelling could be constructed on the land as of right currently, and any remedial works could be sorted through the building consent process.

8 RESOLVED

4/08/34

That

- a) *The report of Rebecca Steenstra dated 11th April 2008 be received.*

Cr Webber/Cr Sharpe

RESOLVED

4/08/35

- b) *That in consideration of Section 104, and pursuant to Sections 104B, and 104D of the Resource Management Act 1991 and the Operative Waipa District Plan the Waipa District Council declines consent to Bain Liquids Disposal to subdivide by way of a dwelling on land with little or no productive value and topographical restraints at the property located at Hairini Road Te Awamutu, legally described as Lot 1 DPS 35164 & Pt Allot 18 Puniu Parish.*

Cr Webber/Cr Sharpe

REASONS FOR DECISION

- a. The Committee considered the application could not meet the objectives and policies of the Waipa District Plan, especially Policy SU22, regarding the subdivision for rural-residential land which is not prime agricultural land and cannot be farmed as part of a holding.
- b. The application could not comply with subdivision Rule 10.6.1.4(d) of the operative Waipa District Plan as the Committee considered the subject property able to be usefully amalgamated with the adjoining property to the east, over an existing drain. The Committee considered the subdivision application to be of a Non-Complying activity status.
- c. The Committee considered the land to be 75% productive in accordance with Dr Richard Chapman's evidence and reports, as 75% of the land was Class II and III soils. The land was considered to have more than 'little productive value' as specified in the provisions of Rule 10.6.1.4(d) of the operative Waipa District Plan.

- d. The Committee considered that approving the subdivision application would undermine the consistent administration of Policy SU 22 and Rule 10.6.1.4(d) of the Waipa District Plan by:
- authorising productive land to be subdivided from a farm holding when this policy and rule do not provide for this;
 - authorising the subdivision of land which is able to be used in conjunction with the adjoining farm property.

Accordingly the Committee were of the view that the subdivision application should be declined.

- e. Issues surrounding the possible contamination of the site (possible increase of cadmium and other metals) were considered not relevant as a dwelling could be erected on the site currently as of right and any potential issues could be sorted through a building consent process.

9.4 12.15pm

Application to Construct a Dwelling within 500 metres of a site used for Mineral Extraction: DJC & OA Armstrong, 282 Kaipaki Road, Ohaupo
04581/517.02

DECISION OF REGULATORY COMMITTEE ON A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION TO CONSTRUCT A DWELLING WITHIN 500 METRES OF A SITE USED FOR MINERAL EXTRACTION IN THE RURAL ZONE PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991

1 THE HEARING

The hearing held on 28 April 2008 was attended by the following:

Applicant	<i>Digby John Colville Armstrong Prudence Ann Armstrong</i>
Appearing for Council	<i>Jaime McLellan (Planner) Karl Tutty (Environmental Health Officer)</i>
Submitters in Opposition	<i>Michael Lord appeared on behalf of Perry's Aggregates.</i>

2 SITE VISIT

The Regulatory Committee did not undertake a site visit as each member was already familiar with the locality, having gained an appreciation for the topographical characteristics of the site.

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

4.1 OPERATIVE WAIPA DISTRICT PLAN

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

- Objectives RS1, RU1, NS1 & NS2
- Policies RS69, RS69B, RS73, RU56, NS2 & NS3
- Rule 2.0 Rural Zone – In particular Rule 2.4.6, 2.4.24 & 2.7.17

No Plan Changes to the 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:

- Noise effects: and,
- Reverse sensitivity.

6 SUMMARY OF THE EVIDENCE HEARD

Mr & Mrs Armstrong - Applicants

The applicant's presented their application to the Committee. Mr & Mrs Armstrong each noted the relevant background matters and in particular, the

prior correspondence and communication between themselves, the quarry operator and Council, respectively.

It was noted that no covenants had been imposed since the Clayton's (prior quarry operators) began quarrying on the adjacent site. Furthermore, a potential buyer of the Armstrong's property was provided with the Easement Instrument from Perry Group Limited and subsequently pulled out of the sale and purchase agreement. They had not requested a Land Information Memorandum ('LIM') report from Council, prior to entering into the agreement.

Mr Armstrong requested permission to table a letter by W & D Williams as evidence in support of their application. W & D Williams own the adjoining property to the south of the site. Permission was by the Chairperson. Mrs Armstrong read this report.

Mr & Mrs Armstrong in their right of reply, Mrs Armstrong noted that the dwelling located at 287 Kaipaki Road was recently constructed and did not require double glazing, and acoustic treatment to extent that has been recommended. It was noted that the recommended conditions are considered unnecessary.

Michael Lord - Submitter

Evidence on behalf of the submitter was given by Michael Lord (Operations Manager – Perry Aggregates Ltd ("Perrys")). Mr Lord noted that Perrys intention is to begin extracting sand from the quarry once sand from their Raynes Road quarry has been exhausted.

Perrys concurred with the planner's report, noting that the proposed dwelling will introduce a sensitive land use, which may contribute to reverse sensitivity issues.

Mr Lord contested the assessment of the adverse effects in the planner's report. In particular, he noted that conditions recommended in the planner's report inferred that the scale and intensity of the adverse effects are not likely to be minor.

Mr Lord provided clarification as to the mitigation measures sought by Perrys. In particular, he noted that Perrys seek that either an emissions easement or a 'no complaints encumbrance' land covenant be registered on the title to avoid the effects of reverse sensitivity on Perry's as the quarry operator, rather than the caveat mentioned in the Planner's report.

Jaime McLellan - Planner

Mr Jaime McLellan presented the Council planner's report. He noted the site was within the Outer Control Boundary of the Hamilton Airport and the Quarry

Buffer Zone, according to Council's Special Features maps. The principle matters of contention was the potential adverse effects of noise generated by the adjacent quarry operation. This was a matter raised by the submitters. He noted that the proposal failed to comply with the rules for the 'Number of Dwellings' in the Rural Zone of the Operative Waipa District Plan. Matters of discretion included the design and siting of the dwelling. The key recommendations imposed restrictions on the siting of the dwelling, acoustic treatment.

Mr McLellan noted that the application did not contain specific design details of the proposed dwelling. The site plan showed that the proposed building site had been setback to a complying position mid-point along the eastern boundary. This suggests that the application sought a general consent to introduce residential activity onto the site.

Mr McLellan noted that acoustic treatment is required for any new dwelling sited within the Hamilton Airport's Outer Control Boundary. This mitigation will ensure that the noise levels achieved inside the dwelling do not exceed 45 dBA_(Ldn). Notwithstanding, the outdoor living areas will also be exposed to potential adverse noise effects. Earth bunding or acoustic fencing has been recommended to mitigate the adverse effects of noise for outdoor living areas. The appropriate acoustic treatment has been recommended having considered the size, scale and intensity of the quarry with respect to the siting of the proposed dwelling.

Mr McLellan concluded that the noise, generated by the quarry and received by the occupants of the site, could be avoided and mitigated such that the adverse effects would be no more than minor. Accordingly, conditions of consent has been recommended to achieve external and internal noise levels that are consistent with the amenity elsewhere in the rural one.

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, the principal issues that were in contention and visited the site. 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.

- Emission easements and Land Covenants must be agreed between individual parties.
- The application can be approved subject to compliance with the appropriate mitigation measures to ensure that the quarry operations in the future will not be unduly restricted. The appropriate measures include:
 - Noise attenuation in the dwelling; and,
 - Earth bunding or acoustic fencing; and,
 - Determination of the location and siting of the dwelling.

- Private covenants and easements are not shown in a LIM report as these are covenants agreed between third parties.
- The proposed land covenant does not address the potential adverse effects. Council must address the potential adverse effects, with regard to the future occupiers of the dwelling, and the expected 10-year (projected) lifetime of the quarry, rather than rely solely upon the landowners approval. Accordingly, Council may either approve the proposal with condition to mitigate the potential adverse effects or decline the application.
- The scale and intensity of the adjacent sand winning operation will have a lower impact compared to quarries which involve blasting, screening and on-site processing.
- The acoustic treatment required for dwellings located within the Hamilton Airport's outer Control Boundary is considered to be appropriate mitigation.
- The acoustic fencing or earth bund will provide appropriate mitigation to address the adverse noise effects on outdoor activities associated with the proposed dwelling. These might otherwise form an attractive addition to a property, with appropriate design and/or plantings.

8 RESOLVED

4/08/36

That

- a. The report from Jaime McLellan dated 7th April 2008 be received; and,*
- b. The late submission by Perry Aggregates be received by Council, pursuant to Section 37 of the Resource Management Act 1991.*
- c. That in consideration of Sections 104 and 104B of the Resource Management Act 1991, the Waipa District Council Regulatory Committee grants consent for the application by D.J.C & P.A Armstrong, to construct a dwelling within 500 metres of a mineral extraction area, at 282 Kaipaki Road, being Lot 2 DP 370813 shown on site plan and details submitted with the land use application LU/0026/08, subject to the following conditions:*

Cr Taranaki/Cr Thomas

- 1. The proposed dwelling must be located no closer than 32 metres from the eastern boundary and no closer than 10 metres from the western, northern and southern boundaries.*
- 2. Either; an earth bund or an acoustic fence must be constructed and maintained along the eastern and southern sides of all outdoor living areas associated with the proposed dwelling. The acoustic treatment shall be constructed to the satisfaction of the Council's Environmental Health Officer.*

All works shall be at the consent holders' expense. All works must be completed: no later than six months after the issue of building consent for the proposed dwelling; or, prior to Council issuing a Code of Compliance Certificate for the proposed dwelling, whichever is earlier. The following issues must be addressed:

- *If the acoustic fence option is elected, then:
 - a. *It must be designed by a suitable qualified and experienced acoustic engineer; and,*
 - b. *installed to the manufacturers and/or designers specifications; and,*
 - c. *must be no less than 3 metres in height above ground level.**
 - *Alternatively, if the earth bund option is elected, then
 - a. *It must be designed by a suitable qualified and experienced engineer; and,*
 - b. *shall be designed with batter slope of no greater than 1 in 4*
 - c. *it must be a minimum height of 3 metres.*
 - d. *must be compacted and planted in either grass or dense vegetation.**
3. *The consent holder must pay all reasonable costs associated with monitoring of this consent.*
4. *The dwelling must incorporate appropriate acoustic treatment and must include the following:*
- *double glazing or minimum 6mm glass on all windows and doors;*
 - *alternative ventilation system or air conditioning;*
 - *9.5mm gib board internal lining,*
 - *9.5mm gib board ceiling,*
 - *recessed lighting up to 150mm;*

The doors and window framing must be constructed and installed so that they close tightly, to the satisfaction of the Building Control Manager.

Reasons for Decision

- A. Sand extraction requires a less intensive operation compared to other forms of quarries. The effects have been envisaged in the District Plan. The scale and intensity of the adjacent sand winning operation does not include blasting, screening or washing. The potential adverse effects on the proposed dwelling will be minor considering other dwellings recently consented, in the vicinity.
- B. The Council having reviewed the submissions consider that 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.
- C. The decision has been made having considered: the nature of the receiving environment; and, the number of other dwellings in the quarry buffer area in close proximity to the quarry operation.

- D. Subject to the above conditions the proposal is not contrary to the relevant objectives and policies of the Operative Waipa District Plan.
- E. The appropriate acoustic treatment has been imposed ensuring compliance with internal noise standard, pursuant to Rule 2.4.24 of the Operative Waipa District Plan. This will mitigate the adverse noise effects on the occupants of the proposed dwelling and would otherwise be required for any new dwelling constructed within the Outer Control Boundary for the Hamilton Airport (Waikato Regional Airport Limited).
- F. Condition 2 will ensure that any residential activity conducted in the outdoor living areas, associated with the dwelling, are not exposed to undue noise. The proposed mitigation will ensure that the potential adverse noise effects are no more than minor.
- G. Condition 4 will ensure a noise level of no more than 45dBA (Ldn) in all habitable areas of the proposed dwelling to achieve compliance with Rule 2.4.24.2 (Activities in Special Noise Areas) of the Operative Waipa District Plan.
- H. Council does not accept that it can impose on the applicant an emission easement or land covenant, pursuant to Section 108 of the Resource Management Act 1991, as requested by Perry Aggregates Ltd. Such a document needs to be agreed between the parties.

Advisory Notes

Quarry Buffer Zone

- A resource consent must be obtained pursuant to Rule 2.4.6 (Dwellinghouses in Relation to Mineral Extraction Areas) of the Operative Waipa District Plan for the construction of any subsequent dwellings constructed on the site, as it is within 500 metres of a site for which resource consent has been granted for mineral extraction.

Building Consent

- The consent holder shall obtain the necessary building consents prior to the commencement of works on site.

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

- 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.

Cr Sharpe left the meeting at 4.04pm. Cr Webber became Chairperson.

- 9.6 **Section 357 Objection to Roading Conditions imposed on a Subdivision in the Rural-Residential Policy area: CW & SM Hickey, 74 Lowe Road, Hamilton**
04581/112.00

DECISION OF REGULATORY COMMITTEE ON AN OBJECTION TO ROADING CONDITIONS 7 AND 8 IMPOSED ON SUBDIVISION CONSENT SP/0320/07 TO SUBDIVIDE IN THE RURAL ZONE PURSUANT TO SECTION 357 OF THE RESOURCE MANAGEMENT ACT 1991

1 THE HEARING

The hearing held on Monday 28th April 2008 was attended by the following:

Applicant	<i>Christopher Wayne HICKEY Sharon May HICKEY</i>
Appearing for Applicant	<i>C W Hickey – Applicant</i>
Appearing for Council	<i>D Murphy – Planner J Kendall – Council Engineer</i>
Submitters in Opposition	-
Submitters in Support	-

2 SITE VISIT

The Hearings Committee did not undertake a site visit; being familiar with the area due to a recent subdivision on a neighbouring property.

3 THE RELEVANT STATUTORY PROVISIONS

The objection was considered under the provisions of the Resource Management Act 1991. Specifically section 357 A (i) (e) provides the right of objection to a resource consent decision made under delegated authority. This decision on the objection is made in accordance with section 357 D of the Resource Management Act 1991.

An objection to conditions seven (7) and eight (8) of this consent was made pursuant to s357 of the RMA. The following is a report in accordance with s113(1) and s113(1)(a) RMA stating the decision and reasons for the decision.

4 OTHER LEGISLATION AND NON-STATUTORY DOCUMENTS

4.1 Operative Waipa District Plan

This application was deemed a non-complying activity under relevant provisions in the Operative Waipa District Plan (District Plan), and pursuant to sections 104, 104B, 104D and Part 2 of the Resource Management Act 1991 (RMA).

The relevant District Plan provisions include:-

- Subdivision Objectives and Policies (Part 1, Section 8)
- Subdivision Rules (Part 2, Section 10)
- Rural Activities Objectives and Policies (Part 1, Section 2)
- Rural Zone Rules (Part 2, Section 2)
- Definitions (Part 2, Section 13)

4.2 Other Legislation

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

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 PRINCIPAL ISSUES OF CONTENTION

The principal issues that were in contention were:

- Condition 7 which requires sealing the vehicle entrance to 74 Lowe Road;
- Condition 8 which requires sealing the right of way (ROW);
- The requirement for the open drain to be identified as a potential hazard, and marked with a suitably designed safety barrier.

6 SUMMARY OF THE EVIDENCE HEARD

Evidence on behalf of the applicant was given by Christopher Wayne Hickey. Mr Hickey's evidence related to:

- Planning inconsistencies relating to neighbouring subdivisions and the requirements for sealing vehicle entrances and ROW's;
- Reasons for the objection to roading conditions;
- Reasons for the objection to require a safety barrier installation to identify an open drain adjacent the ROW.

Mr Hickey considered that an appropriate surface for the right of way was gravel, rather than the requirement to seal the right of way as included in condition 8 of the subdivision consent. Mr Hickey noted four neighbouring subdivisions, dating back to 2002 and commented that the outcomes failed to indicate a 'consistent administration' of the District Plan.

He stated that most recently, the Waddell's at 86 Lowe Road were required by Council to seal a 70m section for amenity (noise) reasons that would otherwise adversely affect Mr Hickey's dwelling at 74 Lowe Road. Mr Hickey clarified that his submission against the Waddell subdivision regarded adverse effect from noise that could be "clearly heard" from "the elevated site of our residence" (p.4). Mr Hickey does not believe a precedent has been set by the Waddell subdivision. Mr Hickey further explained the Waddell's opted to seal the driveway in excess of Council's requirement for property marketing purposes.

In Mr Hickey's opinion, the dwellings located at 60/2, 62 and 86 Lowe Road are a substantial distance from the ROW at the subject site, therefore exposure of these properties to noise and dust would constitute a "negligible or minimal concern" due to the existence of vegetation and restricted clear view of the ROW (p.5). Mr Hickey explained that further vegetative planting would be undertaken on site at the end of the driveway. It is Mr Hickey's opinion that dust is not a significant issue for 74 Lowe Road due to site specific "minimal wind disturbance" (p.4).

Mr Hickey suggested that a sealed entrance onto the unformed part of Lowe Road is not appropriate, if Lowe Road is not to be upgraded and sealed. According to Mr Hickey, drainage from the road is often poor and runs through their property via culvert or driveway. Mr Hickey suggests the road level may need adjusting when Lowe Road is upgraded and sealed, therefore sealing the entrance between the property and road boundaries would be "technically difficult to undertake and maintain" (p.5).

Mr Hickey suggests Council consider basic safety barrier indicators appropriate for the drain at the culvert instead of a suitably designed safety barrier. *"Mr Kendle [sp.] advised that the drain constituted a "hazard"... Overall, I do not consider that the existing drainage system represents an "unreasonable risk" for a driveway situation with low vehicle speeds"*.

7 THE MAIN FINDINGS OF FACT:

The Regulatory Committee have considered the objections to conditions 7 and 8, the evidence 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 imposition of conditions 7 and 8 relating to sealing the vehicle entrance and ROW are entirely appropriate

Council are in the process of upgrading all unformed roads District wide. Council have placed higher importance on this upgrade process; allocating

\$1.5m in the upcoming financial year from \$1m spent in the last financial year. Council are continually reviewing requirements based on the current Code of Practice principles. It is Council's current practice to require the sealed formation to any new rural residential subdivision development.

Council consider current surrounding land users and future owners of the Hickey development as affected parties; and therefore must appropriately mitigate adverse effects caused by noise, dust and visual nuisance.

Council's Engineer John Kendall is satisfied that Mr Hickey is now aware of the requirements for an appropriate and suitable indicator for the open drain.

Council accept liability for any damage caused to the entrance way resulting from any initial future upgrade to Lowe Road and resolve to undertake any remedial works to the entrance way caused by damage at construction, at no further cost to the applicant.

8 RESOLVED

4/08/37

That;

- a) *The report of Demelza Murphy dated 11 April 2008 be received.*
- b) *Pursuant to Section 357 of the Resource Management Act 1991, the Waipa District Council dismiss the objection to conditions 7 and 8 from the consent holder and accept the staff decision to approve the subdivision for CW & SM Hickey being Lot 2 DP 331519.*

Cr Webber/Cr Taranaki

REASONS FOR DECISION

1. Granting consent for an activity which does not comply with the relevant rules, and for which there are no unique or special circumstances, conflicts with the policies the rules are to implement and could impair public confidence in the consistent administration of the Operative Waipa District Plan.
2. Failure to seal an entranceway off Lowe Road and Right of Way to Lots 1-4 would contravene the purpose and principles of the Resource Management Act 1991 through an inadequate mitigation response to adverse amenity effects.
3. Failure to seal the Right of Way would have an adverse effect on the amenity values of the Rural Residential Area in particular, creating noise and dust effects inconsistent with those anticipated.

4. The proposed lots are suitably provided for to ensure that they can accommodate future residential development in accordance with relevant Objectives and Policies of the Rural Residential Policy Area.

There being no further business the meeting closed at 5.27pm

CONFIRMED AS A TRUE AND CORRECT RECORD

CHAIRPERSON: _____

DATE: _____