

*Minutes of a Meeting of the Regulatory Committee held in the Council Chambers, 101 Bank Street, Te Awamutu on 30 June 2008 commencing at 9.00am*

## **1 PRESENT**

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Councillor D Sharpe, Chairperson

### **Committee**

His Worship the Mayor A Livingston, Councillors EC Newlands (from 9.17am), BJ Taranaki, GRP Webber.

### **Other**

Deputy Chief Executive G Dyet; Senior Planner T Kelly (until item 10.1), Consultant Planner E Makin (Item 10.2); Consultant Planner 10.3 G Moran (item 10.3); Planner J McLellan (items 10.4 and 10.5); Council Secretary C Shaw

## **2 APOLOGIES**

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### **RESOLVED**

4/08/38

*That the apology for lateness from Cr Newlands be received.*

Mayor Livingston/Cr Taranaki

## **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**

4/08/39

*That the order of the meeting be confirmed.*

Cr Webber/Cr Taranaki

## **5 CONFIRMATION OF PREVIOUS MEETINGS**

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File: 01-89-04

5.1 **Ordinary Meeting of Regulatory Committee held on 28 April 2008**

**RESOLVED**

4/08/40

*That the Minutes of the Regulatory Committee held on 28 April 2008, be received.*

Cr Taranaki/Cr Webber

**RESOLVED**

4/08/41

*That due to no Regulatory Committee Councillors attending the Local Government Conference, the next meeting of the Regulatory Committee be held on Monday 28 July 2008.*

Cr Taranaki/Cr Webber

**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**

4/08/42

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

Cr Taranaki/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**

4/08/42

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

Mayor Livingston/Cr Webber

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

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No changes were made to the Hearing Panels for 30 June 2008.

## **9 ENVIRONMENTAL COURT APPEALS & ENFORCEMENT PROCEEDINGS**

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An update on the status of Appeals and Enforcement proceedings will be provided at the meeting.

**RESOLVED**

4/08/43

*That the information be received.*

Cr Sharpe/Cr Taranaki

## **10 HEARINGS**

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**10.1 9.15am – 9.48am**

**Application for Remission of Financial Contributions Levied Pursuant to the Development Contribution Policy and the Local Government Act 2002 (LGA)  
File: 04570/226.00**

Applicant	E & H Pidduck
Appearing for Council	Terrena Kelly – Senior Planner

**RESOLVED**

4/08/44

*That:*

- a) The report from Terrena Kelly, Senior Planner dated 1 May 2008 be received; and*
- b) The application for remission of the Development Contribution DC/0051/2008 be dismissed, and the Development Contribution of \$11,340.00 (gst inclusive) be upheld.*

*Cr Webber/Cr Newlands*

### **Reason for Decision**

In order for a Development Contribution to be levied, the Local Government Act 2002 (Section 197) and Council's Development Contribution Policy first requires Council to make an assessment on whether the proposal is a 'development'. The second assessment to be made is whether the proposal generates a demand on Council's infrastructure; that is, does it require the Council to incur capital expenditure on new assets or assets of increased capacity?

In this case, the Committee considers that the additional dwelling (on one Certificate of Title) does generate a demand on Council's infrastructure. Current or future residents of the dwelling will use Council's Roading and Transport infrastructure, parks and reserves, and community infrastructure. Development Contributions for these 'activities' are collected on a District wide basis, as they provide widespread public benefits across the whole District.

The Committee does not accept the applicant's argument that the additional dwelling will not generate a demand on Council's infrastructure due to its location near the Hamilton City boundary; or due to the habits of the intended resident of the dwelling. Neither the applicant, or Council is able to restrict a residents movements; and furthermore, Council is unable to require contributions at a later date if circumstances were to change.

The Committee therefore considers that the Development Contributions which have been levied are not manifestly excessive, and that the Development Contribution of \$11,340.00 (GST Inclusive) should not be remitted.

**10.2 9.52am – 10.05am**

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

File: 045560/111.00

[The Committee adjourned for morning tea at 10.12am and reconvened at 10.30am]

**DECISION OF REGULATORY COMMITTEE ON A SECTION 357 OBJECTION TO RESOURCE CONSENT PROCESSING CHARGES LEVIED PURSUANT TO SECTION 36 OF THE RESOURCE MANAGEMENT ACT 1991.**

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**1 THE HEARING**

The hearing held on 30<sup>th</sup> June 2008 was attended by the following:

Applicant	Richard Neville
Appearing for Council	Ella Makin – Consultant Planner

**2 SITE VISIT**

As this was an objection to costs, the Regulatory Committee did not undertake a site visit.

**3 THE RELEVANT STATUTORY PROVISIONS**

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

Pursuant to Section 357B of the RMA, there is a right of objection for a person required by a local authority to pay an additional charge under section 36(3) or costs under section 149B(2) to the local authority.

Section 36(3) of the RMA provides that where a charge fixed in accordance with subsection (1) is, in any particular case, inadequate to enable a local authority to recover its actual and reasonable costs in respect of the matter concerned, the local authority may require the person who is liable to pay the charge, to also pay an additional charge to the local authority.

## **4 OTHER RELEVANT PROVISIONS CONSIDERED**

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

Being an objection to costs, the provisions in the Operative Waipa District Plan (District Plan) are not considered relevant.

### **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 charge of \$5424.74 of Invoice No 2774, levied in relation to Subdivision SP0171/07.

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

### **Richard Neville- The Applicant**

Evidence in support of the objection to costs was provided by Mr Richard Neville. Mr Neville addressed the fact that as the subdivision was declined, he is unable to use the money which would have resulted from the subdivision if it had been granted, to pay Council's invoice. Mr Neville requested Council's Regulatory Committee reconsider the decision to decline Subdivision SP0171/07.

**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 statutory framework under the RMA. Ms Makin outlined the complexity of the original subdivision application, and summarised the time spent assessing the application in relation to the costs charged.

Ms Makin advised that in her opinion, the fees charged are actual and reasonable, and that should Council reduce or waive the fees, Council would bear the cost of processing the subdivision consent. In Ms Makin’s opinion, the fact that the application submitted by the Surveyor was not what the applicant required, resulting in the decline of the subdivision is not a matter that Council can take into consideration as this would appear to be a matter between the Applicant and their Surveyor.

**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.

- The resource consent processing fees were actual and reasonable and appropriately charged. The application was complex, requiring significant further details and revisions to be provided by the Surveyor to provide clarity which resulted in additional time spent assessing the application.
- Council assessed the application as submitted. Whether the application was, or was not, what the applicant requested of their Surveyor is a matter to be resolved between the Applicant and the Surveyor and has no bearing on Council’s processing costs.

**8 RESOLVED**

4/08/45

*That:*

- a) The report of Ella Makin, Consultant Planner for the Waipa District Council, dated 16<sup>th</sup> June 2008 be received; and*
- b) Pursuant to Section 357 of the Resource Management Act 1991, the Waipa District Council dismiss the objection to costs from R.F Neville*

Cr Newlands/Cr Webber

## Reasons for Decision

1. The resource consent processing fees were actual and reasonable and appropriately charged. The application was complex, requiring significant further details and revisions to be provided by the Surveyor to provide clarity which resulted in additional time spent assessing the application.
2. Council assessed the application as submitted. Whether the application was, or was not, what the applicant requested of their Surveyor is a matter to be resolved between the Applicant and the Surveyor and has no bearing on Council's processing costs.

The Committee requested that Council staff meet with the applicant's surveyor to explore a course of action that may achieve a result for this piece of land.

### 10.3 10.30am – 11.22am

**Application to Subdivide to Create Two additional Allotments (three in total) in the Rural Zone Pursuant to Rule 10.6.1 as a Non Complying Activity: ED and JM Lord, Corcoran Road, Te Pahu**  
File: 04560/415.07

## **DECISION OF REGULATORY COMMITTEE ON A NON-NOTIFIED RESOURCE CONSENT APPLICATION TO SUBDIVIDE TO CREATE TWO ADDITIONAL ALLOTMENTS (THREE IN TOTAL) IN THE RURAL ZONE PURSUANT TO RULE 10.6.1.1 (MINIMUM 25 HECTARE ALLOTMENT SIZE) AS A NON COMPLYING ACTIVITY, PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991**

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### 1 THE HEARING

The hearing held on 30<sup>th</sup> June 2008 was attended by the following:

<b>Applicant</b>	Murray Osmond – Applicant's Agent (Cantab Management)
<b>Appearing for Council</b>	Gareth Moran – Consultant Planner

### 2 SITE VISIT

In this instance the Regulatory Committee did not deem it necessary to 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.

- Rule 10.6.1.1 (25ha minimum allotment size)
- Objective SU3,
- Policies RU1, SU7, SU10, SU16A

### **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 reason the proposal was referred to Regulatory Committee for consideration was due to the following key issues:

- Failure to comply with the provisions of Subdivision Rule 10.6.1.1, Minimum Net Lot Area of the Waipa District Plan; and
- The application is contrary to a Consent Notice registered on the title.

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

### **Murry Osmond (Cantab Management) - The Applicant's Agent**

Evidence in support of the application was provided by Mr Murray Osmond. Mr Osmond introduced his argument by explaining how the proposal was not an application pursuant to Rule 10.6.1.1 of the District Plan as referred to in the Council Planners report, and it was never intended that the application could be granted under any specific provision of the District Plan. For this reason, Mr Osmond stated that the application does not require the cancelation/variation of the existing Consent Notice registered on the Certificate of Title in order for the application to be approved.

Mr Osmond also stated that potential precedent effects should not be taken into account in the final decision, as an application is required to be assessed on a case by case basis against the relevant objectives, policies and assessment criteria of the District Plan. A significant component of Mr Osmond's argument was that potential effects such as precedent, cumulative, land fragmentation and integrity of the District Plan are not technically environmental effects and cannot be taken into account under the first gateway test of Section 104D of the RMA. In terms of the second gateway of Section 104D (Objectives and Policies) Mr Osmond states that the Council Planner failed to mention all the relevant Objectives and Policies that the application is in accordance with (e.g Objective RU 1 and Policy RU3) and that subdivision within the Special Landscape Character Area is not prohibited but discouraged. Mr Osmond also refers directly to the de minimus principle.

Mr Osmond concluded his argument by stating that the application achieves both gateway tests of the Resource Management Act, as supported by case law and is therefore able to be granted.

#### **Gareth Moran – Council's Planner**

Evidence on behalf of Council was given by Mr Gareth Moran. Mr Moran presented his report and outlined the relevant rules of the Operative Waipa District Plan and the relevant statutory framework under the Resource Management Act 1991. Mr Moran identified the reasoning for the application being referred to the regulatory committee for decision, with the main basis of his arguments revolving around the key issues discussed above.

Mr Moran identified that as a Non-Complying Activity, the proposed subdivision is to be considered pursuant to Section 104D of the RMA. 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.

Mr Moran also identified the actual and potential effects of the activity, including traffic, effects on the Special Landscape Character Area, land fragmentation and integrity of the District Plan. From his assessment Mr Moran concluded that the actual and potential effects arising from the proposed activity can be considered more than minor.

Mr Moran advised that the proposed subdivision was contrary to Objective SU3 and Policies RU1, SU7, SU10, SU16A which relates specifically to the type of subdivision proposed.

In terms of section 104 of the RMA, Mr Moran concluded that the application fails both gateways of Section 104 D, plus other relevant factors relating to Section 104(1)(c) such as precedent effects.

Mr Moran concluded his report by re-emphasising the main points of contention being the applications failure to comply with Rule 10.6.1.1 of the District Plan, the existing Consent Notice and the property being located within the Special Landscape Character Area. For these reasons Mr Moran recommended that the subdivision be declined.

## **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 principle 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 proposal does not meet the requirements of Subdivision Rule 10.6.1.1 which specifically requires a minimum net site area of 25ha.
- There is a Consent Notice registered on the Certificate of Title for the property which specifically prevents further subdivision of the land pursuant to the District Plan Subdivision Rule 10.6.1.1. The applicant stated that they are not making application to vary the condition referred to in the Consent Notice. The “no further subdivision” restriction of the consent condition referred to in that Consent Notice is never the less relevant to the current application.
- As of the date of hearing no application had been made for a cancellation/variation to the Consent Notice.
- The proposal will result in an allotment density which has not been anticipated or provided for within the Special Landscape Character Area of the Rural Zone.

## **8 RESOLVED**

4/08/46

*That:*

- a) *The report of Gareth Moran, Consultant Planner for the Waipa District Council, dated 16<sup>th</sup> June 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 ED and JM Lord to subdivide the property located at Corcoran Road (Lot 2-3 DP 376798, comprised in Certificate of Title 308660), Te Pahu.*

Cr Newlands/Cr Webber

### **Reasons for Decision**

- a. A Consent Notice registered on the Certificate of Title for the property specifically prevents further subdivision of the land pursuant to District Plan Subdivision Rule 10.6.1.1.
- b. The proposal will result in an allotment density which has not been anticipated or provided for within the Special Landscape Character Area of the Rural Zone.
- c. The proposed subdivision fails both of the tests of Section 104D, as the potential effects are considered more than minor and the proposal is not consistent with all the objectives and policies of the District Plan.
- d. The precedent effects of approving this Non Complying Subdivision (that is void of unique or specific features to justify approval) could potentially lead to further undersized subdivisions in the Rural Zone.
- e. Approving a subdivision of this nature will comprise the integrity of the District Plan and its function of protecting the rural land resources.
- f. The likely level of development as a result of this proposal could result in adverse effects on the existing amenity and unique landscape of the Special Landscape Character Area.

### **10.4 11.30am – 12.22**

**Application to Construct an Accessory Building in the Front Yard: Central Group Limited, 215 Rutherford Street, Te Awamutu  
File: 04482/450.00**

### **DECISION OF REGULATORY COMMITTEE ON A NOTIFIED RESOURCE CONSENT APPLICATION TO CONSTRUCT A GARAGE IN THE RESIDENTIAL ZONE PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991**

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#### **1 THE HEARING**

The hearing held on 30<sup>th</sup> June 2008 was attended by the following:

<b>Applicant</b>	Central Group Limited
<b>Appearing for Applicant</b>	Claire Gallagher Len Hatwell
<b>Appearing for Council</b>	Jaime McLellan

## **2 SITE VISIT**

The Regulatory Committee undertook a site visit on 30<sup>th</sup> June to consider the potential adverse effects that the proposal may have on the residential amenity.

## **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 (District Plan) were considered in the assessment of the application.

- Residential Zone Rules (Part 2, Section 3)
- Objectives and Policies (Part 1, Section 3)

### **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 bulk and location of the proposed garage.

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

Evidence on behalf of the applicant was given by Len Hatwell and Claire Gallagher:

Mr Hatwell outlined the proposal and their reasons for siting the garage in the front yard. He explained that the site was being redeveloped in conjunction with the adjoining sites to the east and west. The former state houses on each site were being upgraded and would improve the overall amenity of the area.

It was noted that the garage was appropriate in the context of the overall development of the site and the garage had been designed to reflect the character of the existing dwellings. He added that Council had the discretion to approve the proposed if they saw fit.

Ms Gallagher read from her evidence. This clarified a few points regarding the design and dimensions of the garage. In particular the depth of the garage will in fact be 3.6 metres and the exterior finished in Hardie Plank.

Ms Gallagher noted that the proposal had the full support of the adjacent neighbours.

Ms Gallagher's evidence disputed the conclusions in the Planner's Report. In particular the effects on residential amenity were challenged. Ms Gallagher's evidence noted that careful consideration had been made to design and locate the proposed garage to best serve the dwelling whilst improving the standard of the area. Conversely, these mitigation measures would improve the residential amenity. On this basis, Council should approve the proposal and grant resource consent.

Councillor Sharpe (Chairperson) asked if the proposed garage would affect the daylight on the terrace of the adjoining property.

Mr Hatwell advised that the garage will comply with the internal yard setback. Moreover the sides of the garage will open out onto the deck of the adjacent dwelling.

Councillor Sharpe asked if the terms of the tenancy specifies where the tenants must park their vehicles.

Mr Hatwell said that there was no such provision. Although cars currently park along the side of the dwelling. This could be confirmed during a site visit.

Jaime McLellan presented the Planner's Report.

It was noted that the streetscape was open with minimal boundary treatment. The application had been referred to the Committee as the extent of the non-compliance would affect Council policy regarding buildings and structures within the front yard setback. Council has not approved a structure located within the 5.0 metres front yard setback in the vicinity. Furthermore the proposal would have more than minor potential adverse effects considering the extent of the non-compliance.

Councillor Taranaki noted that the existing streetscape appeared to have a variety of buildings each at various setbacks. She considered that there was no apparent continuity in the building setback along Rutherford Street.

Councillor Sharpe asked if the site had manoeuvring if the garage was located at the rear of the property.

Mr McLellan pointed out that the site comprised within Certificate of Title SA38C/82 had an area of 822m<sup>2</sup>. There is sufficient space to site a garage to the rear of the property with sufficient manoeuvring. However, there will be no room for manoeuvring should the subdivision consent under SP5135 proceed to completion.

## **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 design and finishing of the proposed garage is sympathetic with the design features and external finishing of the existing dwellings located at 197, 215 & 249 Rutherford Street.
- The siting of the existing dwelling and the recently constructed deck does not allow sufficient space within the front yard to locate a garage in a complying position.
- There is no alternative complying position to the rear of the site, accepting that the approved subdivision SP5135 will be completed as proposed.
- The proposal will have no more than minor adverse effects on the environment having considered the varied streetscape and the existence of garages located along Northleigh Place that are sited within the front yard setback.

## **8 RESOLVED**

4/08/47

*That*

- a) The report of Jaime McLellan dated 2 June 2008 be received.*
- b) That in consideration of Section 104, and pursuant to Sections 104B and 108 of the Resource Management Act 1991 and the Operative Waipa District Plan the Waipa District Council grants consent to CENTRAL GROUP LIMITED to construct a single garage at the property located at 215 Rutherford Street, Te Awamutu, legally described as LOT 21 DPS 770, subject to the following conditions:-*

Cr Newlands/Cr Webber

### **General**

1. The proposed activity must proceed in general accordance with the approved plans and details prepared by Ross McGowan dated 13/03/08 submitted with the application.

### **Monitoring**

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

### **Roading**

3. That the consent holder must construct a figure 14 type urban vehicle crossing. The crossing is to be constructed to the Council's standards as set out in the Code of Practice for Land Development and Subdivision. All work is to be completed to the satisfaction of the Council's Engineering Manager and must be at the consent holder's expense. The works must be completed within three (3) months of any building consent issued by Council for the said project. The following issues must also be addressed:
  - The entrance must be formed with concrete from the edge of the road to the property boundary.

### **Buildings**

4. The building must be sited in accordance with the further information and revised plans which accompanied the application for resource consent. In particular the building must be located no closer than 2.5 metres to the front boundary.
5. The consent holder must undertake minor earthworks and excavate the building platform for the proposed garage. The base height of the building foundations must be level with the adjacent concrete driveway.
6. The exterior of the building must be finished with either; Linea Weatherboard, or Hardie Plank cladding, and the roof tiled, to match the existing dwelling.
7. The building must be used for the purpose stated in the application i.e. garage / carport.

### **REASONS FOR DECISION**

- a) 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.
- b) Subject to the above conditions the proposal is not contrary to the relevant objectives and policies of the Operative Waipa District Plan.
- c) 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 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.

- d) Engineering requirements will ensure that the subdivision is adequately provided with services when the area is developed. In particular the roading conditions will ensure that the site has adequate provision for safe and convenient access
- e) Consent has not been granted to use the building for habitable purposes.
- f) The introduction of the garage 2.5 metres from the front boundary will have no more than minor adverse effects on the environment. Dispensation has been granted from the building setback from the front boundary having considered the streetscape which contains other accessory buildings within the front yard setback in the vicinity.

### **ADVISORY NOTES**

#### **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 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.

**10.5 1.08pm – 2.12pm**

**Application to Construct a 4-unit Multi-Unit Residential Development (4 units): Brumar Construction Ltd, 2 A & B Queen Street, Cambridge  
File: 04351/716.02**

**DECISION OF REGULATORY COMMITTEE ON A NON-NOTIFIED RESOURCE CONSENT APPLICATION TO CONSTRUCT A 4-UNIT MULTI-UNIT DEVELOPMENT IN THE RESIDENTIAL ZONE PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991**

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**1 THE HEARING**

The hearing held on 30<sup>th</sup> June 2008 was attended by the following:

<b>Applicant</b>	<i>Terry MacDonnell Joanne Ostler Stuart Ostler</i>
<b>Appearing for Applicant</b>	<i>Mark Dekker of Brumar Construction Limited Aaron Guerin of Lafferty Architectural Design</i>
<b>Appearing for Council</b>	<i>Jaime McLellan</i>

## **2 SITE VISIT**

The Regulatory Committee did not undertake a site visit. Each member was either familiar with the site, or had visited the site prior to the hearing.

## **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 application was considered under the following provisions:

### **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.

- Residential Zone Rules (Part 2, Section 3)
- Administration Rules (Part 1, Section 3)
- Objectives and Policies (Part 1, Section 3 & 7)

### **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: (RMA Section 113(1) (ac))**

The principal issues that were in contention were:

- Amenity Issues – Intensification of Use
- Traffic Safety - Non-complying sight distances
- Legal Matters - Buildings over boundaries

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

Evidence on behalf of the applicant was given by Mark Dekkers.

Mr Dekkers briefly outlined the proposed multi-unit development, the site and the target market. The units have been specifically aimed at the independent professionals rather than families. He also noted that there has been interest from the neighbouring landowner who may be a prospective buyer.

Mr Dekkers noted that the site contained unique topographical features, including a steep hillside to the rear of the property.

Mr Dekkers noted that the proposal sought to excavate the hillside and support the slope with retaining walls at the base and mid levels. He added that geotechnical investigation had been carried out by Mart T Mitchell Ltd that documented the soil structure and the slope stability. It also confirmed the suitability of the site for residential development, however further geotechnical investigation is required to specifically design the foundations and the retaining walls.

The Committee Chair, Dianne Sharpe, questioned the suitability of the living area noting that the separate living area provided for each unit would abut the adjoining unit. In response, Mr Dekkers noted that the living areas would be discrete and private with appropriate screening device, such as trellises or other appropriate fencing.

Mrs Sharpe raised the matter of visual amenity and the character of the development. In response, Mr Dekkes noted that the exterior will be clad with a combination of monotech and linear weather boards, or similar products. The materials will be modern and low-maintenance powder coat materials. The finishing will provide durability and weatherproofing through all elements considering the site has a southern aspect. In addition, the development will improve the appearance of the site and be in keeping with the streetscape.

Councillor Taranaki asked whether it would be possible to develop the site into separate unit-titles.

Mr Dekkers advised that the apartments would most likely be managed under a body corporate. In his opinion, the development is conducive to further subdivision in the future, as the discrete arrangement of each lot lends itself to the formation of unit-titles.

Councillor Taranaki noted that the hillside, to the rear of the property, appears to contain two levels. It rises up a bank and then flattens out before rising again. The question directed to the applicant, is where will the development first cut into the hillside?

Mr Dekkers noted, as a point of clarification, that the building would be set into the hillside with two retaining walls the first would be in line with the rear wall of the basement.

Councillor Webber asked the applicant if there is any concern with lighting.

Mr Dekkers noted that the outdoor living area would be shaded by the bank. This also served to shelter the outdoor living area from the wind. It was agreed that there would be some shading. However, Mr Dekkers noted that the indoor and outdoor living areas were elevated, being on the second level, which would improve the outlook and lighting compared with a single storey development.

Councillor Taranaki asked if the applicant would consider changing the design of the building to better suit the Cambridge colours and mitigate the bulk of the building.

Mr Dekkers noted that the building had been designed to meet the geotechnical requirements of the site. He noted, in particular, that the positioning of the retaining walls had been specifically designed. In addition, any changes to the roof-line may affect the recession planes. The proposal, in his opinion, was the most cost effective development for this site. The alternative to the proposed multi-unit development is to construct two detached dwellings, built on piles.

Any major revision that significantly altered the design could compromise the feasibility of the project given the particular constraints of the site. This being said, he may considered superficial changes to the exterior provided they could be worked into the design.

Evidence on behalf of the submitters was given by:

*(List the submitters names, describe the nature of the evidence i.e. noise, traffic, visual etc. and summarise the evidence).*

## **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 land contains topographical constraints, coupled with the corner frontage and the southern aspect, set this site apart from other residential sites.
- The elevation of the building will improve the outlook and daylight compared with the living area that was at ground level.

- The proposal will provide an integrated development that utilises two adjacent sites. The proposal will optimises the land available for residential living while improving the stability of the adjacent hillside.
- The single residential crossing place was favoured over two individual entrances that would otherwise be provide if the sites were developed separately.
- The surrounding residential streetscape does not contain any particularly historic or unique character.
- The site is a prominent corner property, being elevated and having dual frontage. Appropriate landscaping will soften the appearance of the building and break up the external walls. The landscaping coupled with appropriate design features will ensure that the bulk and location of the development does not detract from the residential amenity.
- The permitted baseline approach was accepted, in part. While it was accepted that one residential dwellings could be constructed on each site, it would not provide the same level of residential amenity in comparison with that which has been proposed. Moreover, any potential residential development would have to withstand topographical restrictions in order to provide adequate day-lighting and living space. Accordingly the bulk and location of the proposed development was accepted.
- The Committee wished to retain control over the external design of the building. Any ap would be subject to the applicant

## **8 RESOLVED**

4/08/48

*That*

- a) The report of Jaime McLellan dated 6 June 2008 be received.*
- b) That in consideration of Section 104, and pursuant to Sections 104B and 104D and 108 of the Resource Management Act 1991 and the Operative Waipa District Plan the Waipa District Council grants consent, with dispensation from Rules 3.4.1, 3.4.3, 3.4.6 and 3.4.15, to Brumar Construction Limited to construct 4-units at the property located at 2A and 2B Queen Street Cambridge, legally described as Lot 1 & 2 DP 314051, subject to the following conditions:-*

Cr Taranaki/Cr Webber

### **General**

- 1. The height, bulk and location of the proposed 4-unit apartment block shall be in general accordance with the site plans prepared by Lafferty Architectural Design (2007) Ltd submitted with the resource consent application. The following issues must be addressed prior to commencing any building development:*
  - *The applicant must submit revised plans for the approval of the Regulatory Committee, prior to commencing any works. The plans must specify:*
    - a. the exterior colour scheme; and*

- b. the exact construction material used for the cladding, fenestration, roofing, and doors, to the satisfaction of the members of the Regulatory Committee.*

### **Monitoring**

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

### **Power**

- 3. The consent holder must arrange with a local network electricity operator for the underground reticulation of electricity to serve all units and pay all costs attributable to such work. The consent holder must submit to the Council written confirmation from the local network operator that satisfactory arrangements have been made for the reticulation of the service to all lots in the subdivision.*

### **Telephone**

- 4. The consent holder must arrange with a telephone company for the underground reticulation of telephone cables to serve all units and pay all costs attributable to such work. The consent holder must submit to the Council written confirmation from the telephone company that satisfactory arrangements have been made for the reticulation of the service to all lots in the subdivision.*

### **Roading**

- 5. That the consent holder must construct a figure 14 type urban vehicle crossing to the access easement. The crossing is to be constructed to the Council's standards as set out in the Code of Practice for Land Development and Subdivision. All work is to be completed to the satisfaction of the Council's Engineering Manager and must be at the consent holder's expense. The works must be completed within three (3) months of any building consent issued by Council for the said project. The following issues must also be addressed:
  - The entrance must be formed with concrete from the edge of the road to the property boundary.**
- 6. The consent holder must construct the proposed private accessway to Lots A, B, C & D, to the Council's standards as set out in the Code of Practice for Land Development and Subdivision. All work is to be carried out and completed to the satisfaction of the Council's Engineering Manager and must be at the consent holder's expense. The works must be completed within three (3) months of any building consent issued by Council for the said project. The following issues must also be addressed:
  - The access way must be formed in concrete and have a minimum width of 3 metres.**

- *All drainage must be disposed on-site and directly to the ground.*
- *Two producer statements from a suitably qualified and experienced professional must be submitted to Council. The first must include pavement design and drainage of the access easement and the second must cover the construction of the access easement. In addition the Confirmation form ROW 1 and Confirmation form ROW 2 must be completed, in full, and submitted to Council.*
- *maintain sight-distances of at least 35-metres from the proposed vehicle crossing in both directions.*

### **Stormwater**

7. *The consent holder must submit design details for the stormwater disposal system for Lots A, B ,C & D with any building consent application associated with 2A & 2B Queen Street. The said stormwater disposal system must be prepared by a suitable qualified and experience engineer and be to the satisfaction of the Council's Building Control Manager. Any stormwater disposal system must be installed and continually maintained to the satisfaction of the Council's Building Control Manager. The works must be completed prior to Council issuing a Code of Compliance for any multi-unit apartment building. The following matters must be address:*
  - *The stormwater disposal system must be appropriate for the soil type and percolation rate and assessed on a rainfall event with a 1 in 10 year return period.*
  - *All stormwater must be disposed on-site.*

### **Water Supply**

8. *The consent holder shall arrange for Council to install separate water connections to each dwelling unit. The consent holder shall meet all costs incurred.*

**Note:** *The location of the water connection shall comply with all aspects of Waipa District Council Water Supply Bylaws 1995; Clause 1.3.3.*

### **Sewage**

9. *The consent holder shall provide separate sewer connections to units 1-3. these connections shall be constructed and recorded in accordance with the Councils standards as set out in the Code of Practice for Land Development and Subdivision. All work shall be to the satisfaction of Councils Engineering Manager and be at the consent holder's expense. An application and construction drawings shall be submitted for approval prior to any work being carried out. An inspection is required prior to any backfill being placed. As-built plans and information of all infrastructure assets, which are to be vested in Council, shall be provided prior to the final inspection.*

***Buildings***

10. *The consent holder shall submit a Geotechnical Report, prepared by a suitably qualified, experienced and registered geotechnical engineer in general accordance with the recommendations contained within the geotechnical report prepared by Mark T Mitchell Limited (dated 22 April 2002 reference W-6015) to show that an adequate investigation has been carried out into the subsoil conditions and bank stability at and around the site upon which any building is to be constructed. The geotechnical report is to be approved by Council, and must be to the satisfaction of the Council's Building Control Manager. The foundations of any such building and any required retaining walls shall be designed by a registered Engineer in accordance with the approved geotechnical report.*
11. *Prior to the issue of any building consents for works on the site, the consent holder must either:*
- a. *register an encumbrance on the Certificates of Title 55568 and 55569. The purpose of the encumbrance must be to ensure that the land contained within the Certificates of Title of 55568 and 55569 are not transferred, leased or otherwise disposed of except in conjunction with each other.*
  - or**
  - b. *obtain a certificate pursuant to Section 77 of the Building Act 2004 to require that none of the land held in the titles referred to in a) above may be transferred or leased except in conjunction with all other allotments referred to in a) above. The certificate must be recorded pursuant to Section 78 of the Building Act 2004.*
  - or**
  - c. *Amalgamate the Certificates of Title 55568 and 55569 and provide evidence that the proposed building will not cross any legal property boundary.*
  - or**
  - d. *Complete a unit-title subdivision. Any subdivision of the site will be subject to Council granting resource consent approval. Any subdivision to change the boundaries of the site must either:*
    - i. *Relocate the parcel boundary, between Lots 1 & 2 DP 314051, to a point that is at least 1.5 metres clear of the proposed building; or,*
    - ii. *create new boundaries in line with the proposed party walls between apartments 'A', 'B', 'C' & 'D', respectively. The parcel boundaries between the said apartments must not bisect any part of the proposed building other than the centre line of the party walls between each respective unit.*

***Landscaping***

12. *The consent holder must plant a strip of vegetation in the area shown as hatched on the attached map. The following points must be addressed:*

- a) *A landscaping plan must be submitted for approval by the Councils Planning Services Manager within three (3) months of the date of the building consent being issued. The landscape plan must show the species, locations and expected heights of each proposed plant.*
- b) *All plants must be positioned as close as possible to each other, for the specific species, and be no less than 1.0m in height at the time of planting.*
- c) *Landscaping must be carried out within six (6) months of the approval of the landscape plan.*
- d) *Once the plants have grown to the final desired height, they must be maintained to ensure their screening qualities.*
- e) *All plants must be evergreen species.*
- f) *maintain sight-distances of at least 35-metres from the proposed vehicle crossing in both directions.*

### **Fencing**

13. *The frontages to Vogel and Queen Street must either:
  - i. remain without any boundary treatment; or,
  - ii. be fenced to a height of no more than 1.2 metres; or
  - iii. fenced with appropriate materials that allows at least 80% visual transparency; and,
  - iv. maintain sight-distances of at least 35-metres from the proposed vehicle crossing in both directions.*

#### *Reason:*

*Condition 13 will ensure that the visual amenity, of this prominent corner site, remains largely open. It will also provide motorists, exiting the proposed crossing place, with clear and uninterrupted visibility of traffic approaching from Vogel Street.*

### **Reasons For The Decision**

- 1 Any adverse environmental effects resulting from the proposal are deemed to be minor, or can be mitigated by the imposition of appropriate consent conditions.
- 2 Subject to the above conditions the proposal is not contrary to the relevant objectives and policies of the Operative Waipa District Plan.
- 3 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 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.
- 4 Engineering requirements will ensure that the subdivision is adequately provided with services when the area is developed. In particular the roading

conditions will ensure that the site has adequate provision for safe and convenient access and provision for on-site disposal of stormwater. The producer statements will ensure compliance with Rule 3.4.13 'Number of Dwellings on Rear Sites or to the Rear of Multi-Unit Developments' of the Operative Waipa District Plan.

- 5 Landscaping will assist with maintaining visual amenities in the Residential Zone. It is considered that the amenity planting will soften the appearance and mitigate the bulk of the development.
- 6 The utility conditions will ensure compliance with Rule 3.4.4 of the Operative Waipa District Plan.
- 7 Condition 12 will ensure compliance with Rule 1.7.15 'Buildings over boundaries' of the Operative Waipa District Plan.
- 8 Condition 13 has been imposed to ensure that the units have a suitably designed stormwater disposal system to the potential mitigate adverse effects.

### **Advisory Notes**

#### **Development Contributions**

- The development contributions notice must be paid prior to the commencement of this landuse consent. No building works may be undertaken until payment of the amount of \$xxxx, as stated in the development contribution notice XXXX, is receipted by Council.

#### **Building Consent**

- The consent holder shall obtain the necessary building consents prior to the commencement of works on site.
- Future development may be subject to Section 36 of the Building Act 1991.

#### **Earthworks**

- All earthworks associated with any 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:
  - All works within the vicinity must cease immediately.

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

- The contractor must immediately secure the area and advise the NZ Historic Places Trust of the occurrence.
- 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:

- The contractor must take steps immediately to secure the area in a way that ensures human remains are not further disturbed.
- 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.
- 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.

10.6 3.10pm – 3.34pm

**Application for remission of Financial Contributions levied Pursuant to the Development Contribution Policy and the Local Government Act 2002 (LGA)  
File: 04361/599.00**

Applicant M Mason  
Appearing for Council **Anna McLellan - Planner**

**RESOLVED**

4/08/49

That

- a) *The report from Terrena Kelly, Senior Planner dated 4 June 2008 be received; and*
- b) *The application for remission of the stormwater portion of the Development Contribution DC/0058/2008 be dismissed, and the Development Contribution of \$16,790.00 (gst inclusive) be upheld in full.*

Cr Newlands/Cr Webber

**Reason 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 allotment, and there will be a demand on Council's stormwater infrastructure as a result of this development. There is no valid reason for Council to reduce the stormwater Development Contribution.
- 2. The applicant's own engineering consultant (Maunsell) has stated that there will be overland stormwater flow, and that the preferred overland flowpath would be via the right of way to the road. The ROW has therefore been designed to provide this overland flowpath out to Thornton Road. Any overland flow of stormwater that does occur will generate a demand on Council's stormwater infrastructure.

There being no further business the meeting closed at 4.03pm.

**CONFIRMED AS A TRUE AND ACCURATE RECORD**

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

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