

Minutes of a meeting of the Regulatory Committee held in the Council Chambers, Waipa District Council, 101 Bank Street, Te Awamutu on Monday 27 July 2009 commencing at 9.59am.

1 PRESENT

Councillor D Sharpe, Chairperson

Committee

His Worship the Mayor A Livingston, Councillors EC Newlands, BJ Taranaki, GRP Webber.

Public

There were 24 members of the public present.

Staff

Planning Services Manager, W Allan; Project Planner, A McLellan; Planner, K Crockart; Senior Environmental Health Officer & Liquor Licensing Inspector, K Tutty; Committee Secretary, S King.

2 APOLOGIES

RESOLVED

4/09/43

That the apologies for non attendance from His Worship the Mayor, A Livingston, Councillors Newlands and Webber be received.

Councillor Taranaki / Councillor Sharpe

3 LATE ITEMS

There were no late items.

4 CONFIRMATION OF ORDER OF MEETING

File: 01-89-04

RESOLVED

4/09/44

That the order of the meeting be confirmed.

Councillor Sharpe / Councillor Taranaki

5 CONFIRMATION OF PREVIOUS MEETINGS

File: 01-89-04

Ordinary Meeting of Regulatory Committee held on 29 June 2009 were included in the agenda.

RESOLVED

4/09/45

That the Minutes of the Regulatory Committee held on 20 June 2009, be received.

Councillor Sharpe / Councillor Taranaki

6 WAIPA DISTRICT LIQUOR LICENSING AGENCY

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

File: 01-85-10

RESOLVED

4/09/46

That the monthly schedule of Liquor License Applications Considered by Staff Under Delegated Authority for June 2009 be received.

Councillor Sharpe / Councillor Taranaki

7 GENERAL

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

File: 01-52-01

RESOLVED

4/09/47

That the schedule of Matters Considered by Staff Under Delegated Authority for June 2009, be received, a copy of which is attached to and forms part of these minutes.

Councillor Taranaki / Councillor Sharpe

8 APPOINTMENTS

8.1 Appointment of Hearing Commissioners To Regulatory Committee for the purpose of Hearing Resource Consent Applications

RESOLVED

4/09/48

***That PURSUANT** to Section 34 and Section 34A of the Resource Management Act the Regulatory Committee in exercise of the functions powers and duties delegated to it by the District Council **DOES HEREBY APPOINT** Councillors **LWE Hoverd** and **BS Thomas** to be Hearing Commissioners to sit with the Regulatory Committee to hear item 10.1.*

Councillor Sharpe / Councillor Taranaki

8.2 Appointment of Hearing Commissioners – Private Plan Change No. 69- Waikato Regional Airport Ltd and related Alteration to Designation Applications

RESOLVED

4/09/49

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

- a) *Hearing and determining in accordance with Clause 29(4) of Part II of the First Schedule to the Resource Management Act 1991 the Waikato Regional Airport Private Plan Change application No.69 as detailed in Schedule 1 below. This authority includes hearing and determining the submissions and further submissions lodged to the Plan Change and dealing with any procedural issues prior to delivering a decision.; and*
- b) *Hearing and making recommendations to the Requiring Authority being the Waikato Regional Airport Ltd on the Notices of Requirement for any new designations or Alteration of Designations as detailed in Schedule 2 below.*

This authority includes hearing and making recommendations on the submissions lodged to the Alteration of Designation applications and dealing with any procedural issues prior to delivering a recommendation.

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

Schedule 1

Applicant : *Waikato Regional Airport Ltd*

Plan Change No. *69*

Proposal : *In respect of the Waipa District Plan, to amend the Air Noise Boundary and the Outer Control Boundary and to introduce a new Night Noise Boundary into the planning maps and to amend the associated rules relating to land use, subdivision and acoustic treatment and to introduce a 'Runway Protection Area' into the planning maps together with associated objectives, policies and rules.*

Address of Site: *Various*

Legal description: *Various*

Schedule 2

Requiring Authority: *Waikato Regional Airport Ltd*

The requirement is for:

Alterations to existing designations and new designations to authorise an extension to the main runway, amendments to Obstacle Limitation Surfaces, relocation of the VOR navigation installation, establishment of approach lights, changes to Runway End Safety Areas and realignment of the cross runway.

The site to which the requirement applies is as follows:

Hamilton International Airport, Airport Road, Rukuhia and adjacent land to the north and south of the main runway.

Legal description: *Lot 1 DP 407016, Lot 1 DP 357645, Pt Lot 1 DPS 17659, Allot 312 Parish of Te Rapa*

Councillor Sharpe / Councillor Taranaki

**8.3 Appointment of Hearing Commissioners – Private Plan Change
No. 67 – Meridian 37**

RESOLVED

4/09/50

That Pursuant to Section 34A of the Resource Management Act 1991 independent commissioners Doug Arcus and Alan Watson be appointed as Hearing Commissioners for the purposes of hearing and determining in accordance with Clause 29(4) of Part II of the First Schedule to the Resource Management Act 1991 Private Plan Change No. 67 –Meridian 37 as detailed in Schedule 1 below. This authority includes hearing and determining the submissions and further submissions lodged to the Plan Change and dealing with any procedural issues prior to delivering a decision

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

Schedule 1

Applicant : Meridian 37

Plan Change No. 67

Proposal : A “business park” area of approximately 65ha, a 12.7ha “rural residential” environment, and a “visitor accommodation” area of approximately 20.2ha providing opportunities for travelling accommodation and ancillary facilities (total of approximately 98ha)

Address of Site: 400 Raynes Road

Legal Descriptions: Lot 1 DP 357645 (29.113ha)

Part Lot 2 DP 357645 (Approx 68.1ha)

Part Lot 4 DP 357645 (Approx 0.75ha)

Allot 487 Te Rapa Parish (0.00183ha)

Councillor Taranaki / Councillor Sharpe

**8.4 Appointment of Hearing Commissioner – Council Plan Change
No. 61 – Lakeside Reserve Zone**

RESOLVED

4/09/51

That Pursuant to Section 34A of the Resource Management Act 1991 independent commissioner Alan Watson be appointed as Hearing Commissioner for the purposes of hearing and determining in accordance with Clause 10 of Part I of the First Schedule to the Resource Management Act 1991 Plan Change No. 61 – Lakeside Reserve Zone as detailed in Schedule 1 below. This authority includes hearing and determining the submissions and further submissions lodged to the Plan Change.

Schedule 1

Applicant:

Waipa District Council

Plan Change No: 61

Proposal:

A change to the zoning of the Karapiro Lake Domain, Lake Karapiro Reserve, reserve land along the margin of Lake Karapiro extending to the start of the rowing course, and a proposed reserve being developed by Council on a property known as 'Gecks Farm', from the Rural Zone to a proposed Lakeside Reserve Zone. The aim of the Lakeside Reserve Zone provisions is to better provide for the continued development of the Karapiro Lake Domain as a world-class training and competition venue and outdoor pursuits centre. The zone also provides for ongoing recreational use, visitor accommodation, camping, community facilities, and limited retail and administration offices within the Karapiro Lake Domain.

Within the Lake Karapiro Reserve, reserve land along the margin of Lake Karapiro extending to the start of the rowing course, and the proposed reserve on the 'Gecks Farm' property, only recreational activities, and facilities and buildings ancillary to recreational usage are provided for within the Lakeside Reserve Zone provisions.

Address of site: Karapiro Lake Domain & 749 & 899 Maungatautari Road, Cambridge.

Councillor Sharpe / Councillor Taranaki

9 ENVIRONMENTAL COURT APPEALS & ENFORCEMENT PROCEEDINGS

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

RESOLVED

4/09/52

That the information be received.

Councillor Taranaki / Councillor Sharpe

10 HEARINGS

10.1 10.13am – 11.54am

File Reference – 04380/329.05

DECISION OF REGULATORY COMMITTEE ON A NON NOTIFIED RESOURCE CONSENT APPLICATION TO SUBDIVIDE PURSUANT TO RULE 10.6.1.2, STANDARDS IN RURAL RESIDENTIAL AREAS FOR ALLOTMENTS, AND CREATE AN ADDITIONAL RURAL RESIDENTIAL ALLOTMENT AS A NON-COMPLYING ACTIVITY PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991.

1 THE HEARING

The hearing held on Monday 27th July 2009 was attended by the following:

Applicant	<i>Derek Mason</i>
Appearing for Applicant	<i>Joan Forret – Harkness Henry</i>
Submitters	<i>Steven & Joanne Pugh</i>
Appearing for Council	<i>Anna McLellan – Project Planner</i>

2 SITE VISIT

The Regulatory Committee undertook a site visit to familiarise themselves with the site and the surrounding area.

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 provisions of the Operative Waipa District Plan. No other statutory provisions were relevant in the assessment of 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.

- *Subdivision Objectives and Policies – Objectives SU2, SU3 and Policies SU2B, SU3, SU6, SU10, SU14 and SU17*
- *Rule 10.4 (General Subdivision Provisions)*
- *Rule 10.5 (Subdivisional Guidelines for all Subdivisions)*
- *Rule 10.6 (Subdivision Standards for Individual Zones)*
- *Rule 10.10 (Construction Standards)*

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:

- 8 Whether Stage 1 of the proposed subdivision should be classified as a Boundary Adjustment under Rule 10.3.1.1 (Controlled Activity) or a Boundary Relocation under Rule 10.3.1.3 (Discretionary Activity) of the Operative Waipa District Plan. Consideration of Stage 1 (as a separate application) under the Boundary Adjustment provisions may restrict Council's ability to impose a Section 221 Consent Notice on the balance area (>1ha), thereby allowing Stage 2 of the subdivision to proceed as a Controlled Activity.
- 9 The suitability of proposed Lot 2 (of Stage 1) for its intended residential purpose, including size and shape of Lot 2 and the ability to dispose of stormwater and wastewater including areas for duplication wholly within this lot.
- 10 Whether approval of the proposed subdivision would set a precedent that may change the density of this rural residential node to a level greater than anticipated by the District Plan and result in the degradation of the character and amenity of the Maungakawa Rural Residential Policy Area.

6 SUMMARY OF THE EVIDENCE HEARD

Dr Joan Forret on Behalf of the Applicant

Dr Forret provided written evidence in support of the application, including copies of the proposed scheme plan and also a copy of a scheme plan showing a possible subdivision layout where Lot 2 of Stage 1 could comply with the shape factor requirements of the District Plan.

Dr Forret discussed the issues raised by the submitters. She noted that many of the effects raised by the submitters are permitted under the District Plan as a dwelling could be established on Lot 4 DPS 82776 as of right. She also referred to the Geotechnical Report submitted with the application and commented that the site was suitable for residential activities.

Dr Forret commented on the activity status of the proposed subdivision. She stated that the application could have been lodged as two separate subdivisions. The first being a boundary adjustment between Lot 4 DPS 82776 and Lot 1 DPS 322290 which is considered to be a Controlled Activity under the District Plan, the second being a subdivision of the balance lot (which would be in excess of 1ha and therefore meet the averaging requirements for the Rural Residential Policy Area) as a Controlled Activity. Dr Forret stated that as this first subdivision would be a Controlled Activity then Council

could not impose a Section 221 Consent Notice on the balance to restrict further subdivision of this lot.

In this regard Dr Forret stated that approval of the proposed subdivision would not give rise to precedent issues nor would it be contrary to the objectives and policies of the District Plan.

Steve and Joanne Pugh – Submitters in Opposition

Mr and Mrs Pugh presented photos of the Maungakawa Rural Residential Policy Area and commented on the density of the area. Mr and Mrs Pugh raised issues of concern with the suitability of the building platform on Lot 2 (of Stage 1) and also commented that if the proposed subdivision was approved they would expect to be able to subdivide their own property of some 6000m².

Anna McLellan – Project Planner for Waipa District Council

Ms McLellan summarised her report including her assessment of environmental effects and the relevant objectives and policies.

Ms McLellan commented that her assessment was based on the application effectively being a boundary relocation of Lot 4 DPS 82776 and Lot 1 DPS 322290 and a two lot subdivision of the balance of Lot 1 DPS 322290. The applicant could potentially lodge the proposed subdivision as two applications, the first being a boundary relocation between Lot 4 DPS 82776 and Lot 1 DPS 322290 in order to create two allotments of 2500m² and 1.039ha and the second to subdivide the 1.039ha allotment into two and comply with 5000m² averaging requirement for the Rural Residential Policy Area.

Ms McLellan commented that in this event a consent notice pursuant to Section 221 could be imposed on the 1.039ha lot at the time of the boundary relocation to ensure that no further subdivision could occur.

Ms McLellan commented that given the substantial change in area of 15% and the significant change to the shape of allotment she considered the boundary change between Lot 4 DPS 82776 and Lot 1 DPS 322290 to be a boundary relocation rather than adjustment in accordance with the definitions of the District Plan.

Ms McLellan considered approval of this application would be contrary to the relevant objectives and policies of the District Plan. Furthermore she commented that approval of the proposed subdivision, for which there are no unique or special circumstances, could impair public confidence in the consistent administration of the District Plan and set a precedent that would result in a proliferation of small lots in the Maungakawa Rural Residential Policy Area which would ultimately compromise amenity values.

In this regard, she considered the proposal to be an inappropriate form of development and recommended decline.

Dr Joan Forret on behalf of the applicant – Right of Reply

Dr Forret commented on the concerns raised by the submitters and the photos presented at the hearing. Dr Forret also commented that they were seeking approval in principle to the subdivision and the lot arrangement was flexible. She also noted that the Geotechnical Report provided by the applicant confirms that Lot 2 of Stage 1 is suitable for development.

7 THE MAIN FINDINGS OF FACT:

The Regulatory Committee have considered the application and evidence presented at the hearing, the planning assessment report prepared by the Council 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:

- 11 In light of there being no evidence presented from a suitably qualified Geotechnical Engineer contrary to the report provided by the applicant (prepared by Grant Crook) together with the fact that Lot 4 DPS 82776 was previously deemed by Council to be suitable for subdivision and the subsequent land use, the Regulatory Committee consider in principle a dwelling could be established on Lot 2 of Stage One.
- 12 The reduction of Lot 4 DPS 82776 by some 500m² represents a change significant enough to warrant consideration as a boundary relocation rather than a boundary adjustment under the District Plan. Thereby giving the application an overall activity status of non-complying.
- 13 The Regulatory Committee do not oppose in principle a boundary relocation between Lot 4 DPS 82776 and Lot 1 DPS 322290. However the proposed lot layout of Stage 1, in particular the shape of Lot 2, cannot accommodate the Shape Factor Circle requirement under Rule 10.6.1.2.d of the District Plan and therefore does not facilitate optimum use of this lot for residential development.
- 14 Approval of a subdivision that fails to meet the averaging requirement of 5000m² within the Maungakawa Rural Residential Policy Area has the potential to set a precedent that would result in the proliferation of small allotments within this area and ultimately the degradation of rural residential amenity values.
- 15 Other Rural Residential Policy Areas in the District provide for a smaller lot size, in particular Pirongia and Ohaupo, where an average of 4000m² is required under the District Plan. Subdivisions failing to meet the 5000m² averaging requirements (as required under Rule 10.6.1.2.a) in the Thornton Road Rural Residential Policy Area have also been approved. In these instances there were a number of special and unique circumstances that warranted approval, including the availability of reticulated services (water) to these areas. In this instance however there are no unique or special

circumstances that differentiate this application from any other non-complying application to subdivide in the Maungakawa Rural Residential Policy Area, therefore approval of this application could set a precedent and impair public confidence in the consistent administration of the Operative Waipa District Plan.

8 RESOLVED
4/09/53

That:

- a) *The report of A McLellan, Project Planner for the Waipa District Council, dated 13th July 2009 be received; and*
- b) *In consideration of Section 104, and pursuant to Sections 104B, 104D, 108 & 220 of the Resource Management Act 1991, the Waipa District Council declines consent to Derek Mason to subdivide the properties located at 81 & 97 Maungakawa Road, legally described as Lot 1 DP 322290 & Lot 4 DPS 82776.*

Councillor Thomas / Councillor Hoverd

Reasons for Decision

- a) The reduction of Lot 4 DPS 82776 by some 500m² represents a significant change to lot size and shape. Accordingly Stage 1 of the application has been considered a Boundary Relocation in accordance with the definitions of the Operative Waipa District Plan.
- b) The application is contrary to the objectives and policies of the Operative Waipa District Plan which seek to control the effects of subdivision and to ensure that the lots created as a result of subdivision are suitable for their intended use. Approval of the proposed subdivision would change the density of the Maungakawa Rural Residential Policy Area to a level greater than that anticipated by the District Plan, furthermore proposed Lot 2 (Stage 1) fails to meet the minimum shape factor requirement (Rule 10.6.1.2.d) and is of a shape that does not facilitate optimum use of this lot for residential development.
- c) 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.
- d) In isolation, the effects of the proposed two stage subdivision are considered to be no more than minor. However, approval of the proposed subdivision will set a precedent that will result in the degradation of the character and amenity of the Maungakawa Rural Residential Policy Area and may compromise Council's long term plans including the provision of services to this area.

- e) Other Rural Residential Policy Areas in the District provide for a smaller lot size, in particular Pirongia and Ohaupo, where an average of 4000m² is required under the District Plan. Subdivisions failing to meet the 5000m² averaging requirements (as required under the District Plan) in the Thornton Road Rural Residential Policy Area have also been approved. In these instances there were a number of special and unique circumstances that warranted approval, including the availability of reticulated services (water). In this instance however there are no unique or special circumstances that differentiate this application from any other non-complying application to subdivide in the Maungakawa Rural Residential Policy Area.
- f) An application could be made proposing an alternate layout for boundary relocation between Lot 4 DPS 82776 and Lot 1 DPS 322290 that meets the requirements for subdivision in the Rural Residential Policy Area. This may allow the applicant to better utilise the redundant land area within Lot 1 DPS 322290.

There being no further business the meeting closed at 1.59pm.

CHAIRPERSON _____

DATE _____

CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.

Completed and Dispatched: 17th August 2009