

Minutes of a meeting of the Regulatory Committee held in the Council Chambers, 101 Bank Street, Te Awamutu on Monday 30 November 2009 commencing at 9.00am

1 PRESENT

Councillor D Sharpe, Chairperson

Committee

Councillors EC Newlands, BJ Taranaki, GRP Webber Cr B Thomas (Item 12.1)

Others

Planning Services Manager – W Allan; Environmental Safety Manager – J McFarlane; Governance Support Manager – C Shaw

2 APOLOGIES

RESOLVED

4/09/71

That the apology for non attendance by His Worship the Mayor A Livingston be received.

Cr Taranaki/Cr Webber

3 LATE ITEMS

There were no late items.

4 CONFIRMATION OF ORDER OF MEETING

File: 01-89-04

RESOLVED

4/09/72

That the order of the meeting be confirmed.

Cr Newlands/Cr Webber

5 CONFIRMATION OF PREVIOUS MEETINGS

File: 01-89-04

5.1 Ordinary Meeting of Regulatory Committee held on 28 October 2009.

RESOLVED

4/09/73

That the Minutes of the Regulatory Committee held on 28 October 2009, as circulated be confirmed as a true and accurate record.

Cr Webber/Cr Newlands

- 5.2 **Plan Change 61 to the Waipa District Plan relating to the proposed Lakeside Reserve Zone at Lake Karapiro.**

RESOLVED

4/09/74

That the Decisions of the Independent Hearings Commissioner in the matter of Proposed Plan Change 61 to the Waipa District Plan relating to the proposed Lakeside Reserve Zone at Lake Karapiro be received.

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

4/09/75

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

Cr Sharpe/Cr Taranaki

7 GENERAL

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

File: 01-52-01

RESOLVED

4/09/76

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

Cr Newlands/Cr Webber

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

RESOLVED

4/09/77

*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** the following persons to be Hearing Commissioners to sit with the Regulatory Committee to hear the following hearings:*

Item 12.1 Commissioner B Thomas

Cr Sharpe/Cr Webber

9 ENVIRONMENTAL COURT APPEALS & ENFORCEMENT PROCEEDINGS

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

Planning Services Manager stated that Mr Findlay had been to Auckland for the hearing of the issues around his plan change and the Hamilton City Council. He was awaiting the Court's decision.

In response to a question, Environmental Services Manager said that the Redoubt had not appealed to the Authority for the decision of the Agency but had submitted an application for a fundraising event for the evening of 24 December 2009. She was awaiting the Police response at this stage.

RESOLVED

4/09/78

That the information be received.

Cr Sharpe/Cr Taranaki

10 MYSTERY CREEK PROPOSED EVENTS CALENDAR 2010

Proposed Events Calendar 2010 was included in the agenda

Environmental Safety Manager presented the calendar and said that there were no significant changes over previous years. She said that Parachute Music Festival had consent for the use of fireworks this year due to their anniversary but would be advising residents accordingly.

RESOLVED

4/09/79

That

- a) *The report of the Environmental Safety Manager, Jennie McFarlane dated 10 November 2009 be received; and*
- b) *The Regulatory Committee approve the Mystery Creek Exhibition Centre Zone Events Calendar 2010 attached to and forming part of this report.*

Cr Taranaki/Cr Newlands

11 MEETING DATES FOR 2010

The Chairperson reminded the Committee that while the Committee would be disbanded due to the requirements of the Local Government Act, Commissioners could still meet to determine Hearings if required.

RESOLVED

4/09/80

That in accordance with the Local Government Act 2002, Schedule 7 Clause 19(6)(i) Council adopts the following schedule of meeting dates for 2010 (generally being the last Monday of each month except for January) –

22 February 2010

29 March 2010

26 April 2010

24 May 2010

28 June 2010

26 July 2010

30 August 2010

29 September 2010 due to Competitions Society*

Cr Taranaki/Cr Webber

12 HEARINGS

12.1 9.30am – 10.17am

Application for Land Use Consent to Establish and Operate a Liquor Store and a Grocery Store (Retail Activity) in the Industrial Zone

File Reference – 04370/434.00 LU/0212/09

DECISION OF REGULATORY COMMITTEE ON A NON NOTIFIED RESOURCE CONSENT APPLICATION TO ESTABLISH AND OPERATE A LIQUOR STORE AND A GROCERY STORE (RETAIL ACTIVITIES) IN THE INDUSTRIAL ZONE PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991

1 THE HEARING

The hearing held on 30th November 2009 was attended by the following:

Applicant	Colert Investments Ltd
Appearing for Applicant	Bob Dyer David Latham
Appearing for Council	Kim Sullivan - Planner

2 SITE VISIT

The Regulatory Committee did not undertake a site visit as they were already familiar with 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 **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.

- *Objectives IN5, CO1 and CO5, and Policies IN8, IN11, IN12, CO4A, CO3 and CO18.*
- *Rules 7.0 – Industrial Zone*

4.2 OTHER MATTERS

Waipa District Council has prepared a Growth Strategy and is currently in the process of preparing Draft Town Plans for Cambridge. However as these are not yet recognised in any statutory documents, they could be given little weight.

4.3 OTHER POLICY STATEMENTS

No provisions in any National Policy Statement, New Zealand Coastal Policy Statement or Waikato Regional Policy Statement were applicable to the assessment of this application. Environment Waikato's Proposed Change No 2 (Futureproof) to the Regional Policy Statement was considered relevant to the proposal. However as the change has only recently been notified and submissions have not yet closed, it could be given no weight.

5 THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:

The principal issues of contention were:

- Retail activities, such as a liquor store and a grocery store, are not expressly provided for in the Industrial Zone;
- The proposed signage did not comply with Rule 7.4.12 – Signs, as the proposed signage was greater than 5m² in area;
- Council's Planner considered the proposal to be a significant deviation from the intent of the relevant objectives and policies of the District Plan; and
- The exclusion of particular retail activities from the Industrial Zone is already compromised due to existing retail creep along the State Highway.

6 SUMMARY OF THE EVIDENCE HEARD

David Latham on behalf of the Applicant:

Mr Latham produced written evidence which included an overview of the proposal, an assessment of effects, and an assessment of the relevant objectives and policies.

Mr Latham concluded that the effects of the proposal were no more than minor, and that the proposal was not inconsistent with the relevant objectives and policies. He suggested that the outcomes relating to retail activities in the Industrial Zone (and for signage) were already severely compromised along Albert Street, therefore it would be unreasonable for consent to be withheld for the applicant's proposal.

Bob Dyer on behalf of the Applicant:

Mr Dyer answered questions from the Councillors. Mr Dyer offered to introduce landscaping to the site should Council require it. When questioned about proposed clientele, Mr Dyer said he envisaged the majority of business being derived from Cambridge North as a result of the significant amount of residential development taking place in that area. He also said he may get some customers passing through town (State Highway), but more likely from the existing businesses in Carters Flat.

Mr Dyer noted that there are currently 21 retail businesses, 2 offices, a funeral parlour, and only 4 industrial businesses on Albert Street. As a result, he considered his proposal to be an extension of the existing retail activities already established in Carters Flat.

Kim Sullivan – Planner for Waipa District Council

Ms Sullivan gave a summary of her report. She considered the actual and potential effects generated by the proposal to be no more than minor. However her assessment of the objectives and policies found the proposal to be inconsistent with all of the relevant objectives and policies of the District Plan.

She also considered FutureProof, and Waipa 2050 to be of relevance to the proposal, although they could be given little weight.

Overall, Ms Sullivan considered the subject site to be inappropriate for the proposed activities. She also believed that should the application be approved, Council would have difficulty declining similar future applications, which may result in a cumulative effect. Therefore she recommended the application be declined.

David Latham on Behalf of the Applicant – Right of Reply

Mr Latham did not have anything new to add but wanted to confirm that the effects have been clearly demonstrated as being no more than minor. He considered the proposed upgrades to be an improvement to the site, which would result in an overall enhancement to the gateway corridor into Cambridge. Mr Latham also suggested that the existing environment and the retail creep must be taken into consideration, and on this basis the application should therefore be granted.

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 Council's 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 actual and potential adverse effects of the proposed activity will be no more than minor subject to mitigation. In particular, compliance with the consent conditions will ensure that the visual amenity of the area will be enhanced, and that safe traffic practices are adhered to;
- The proposed signage is considered to be consistent with that in the surrounding area;
- The subject site is considered somewhat unique as it is separated from existing 'legitimate' industrial activity in Carters Flat;
- The Waipa District Growth Strategy (Waipa 2050) identifies that there is demand for additional commercial land within Cambridge, which suggests that there is currently little available space within Cambridge CBD for commercial activity;
- The exclusion of particular retail activities from the Industrial Zone is already compromised due to existing retail creep along the State Highway; and
- The proposed activities are anticipated to service the Cambridge North Residential Zone, in addition to existing businesses in Carters Flat.

8 RESOLVED

4/09/81

That

- a) The report of Kim Sullivan dated 06 November 2009 be received; and*
- b) That in consideration of Section 104, and pursuant to Sections 104B and D, and 108 of the Resource Management Act 1991 and the Operative Waipa District Plan the Waipa District Council **grants** consent to Colert Investments Ltd to establish and operate a liquor store and a grocery store (retail activities) from an industrial site and dispense with Rule 7.3.1 – Categories of Activities and Rule 7.4.12 – Signs, at the property located at 30 Albert Street Cambridge, legally described as Lot 2 DPS 49831, subject to the following conditions:-*

Cr Webber/Cr Taranaki

CONDITIONS

General

1. The activity shall be carried out in general accordance with the plans and details submitted with the application LU/0212/09, received 25th September 2009, and the further information prepared by Cogswell Surveys, received 19th October 2009.

Monitoring

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

Signage

3. The total area of signage associated with the proposed activities must not exceed 64m². The signs must not protrude above the eaves or the parapet of the building, and must not be internally illuminated or incorporate fluorescent or moving materials.

Vehicle Entrances

4. The existing northern vehicle crossing must be permanently closed to vehicular traffic. The concrete crossing must be removed and the verge reinstated to the satisfaction of the Council's Development Engineering Manager and must be at the consent holder's expense.
5. That the consent holder must construct an urban vehicle crossing to the subject site, to an industrial standard. The crossing is to be constructed to 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 Development Engineering Manager and must be at the consent holder's expense. The following issues must also be addressed:
 - The entrance must be formed with concrete from the kerb of the road to the property boundary.
 - The location of this crossing must be located at least 30 metres from the intersection of Albert Street and State Highway One.
6. The consent holder must erect permanent "No Exit" signs within the site, adjacent to the existing southern vehicle entrance. The signs must comply with the NZ Transport Agency's Traffic Sign Specifications – GA1-1 Intersections 'No Exit'. All work is to be completed to the satisfaction of the Council's Development Engineering Manager and must be at the consent holder's expense.
7. The consent holder must permanently remove all existing sealed and metal areas where located, adjacent to the property frontage, within the Albert Street road reserve and reinstate the verge to the satisfaction of Council's Development Engineering Manager. A mountable kerb must be constructed on the road boundary between the proposed and existing vehicle crossings. All work is to be completed to the satisfaction of the Council's Development Engineering Manager and must be at the consent holder's expense.

Carparking Area

8. The consent holder must upgrade the existing carparking area to 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 Development Engineering Manager and must be at the consent holder's expense.
9. 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 carparking area and the second must cover the construction of the carparking area. In addition the Confirmation form ROW 1 and Confirmation form ROW 2 must be filled out and submitted to Council prior to the commencement of trading from buildings 3 and 4.

Landscaping Plan

10. Prior to the commencement of trading from buildings 3 and 4, the consent holder must submit a landscaping plan for approval by the Council's Parks and Reserves Manger. The landscaping plan must provide for the planting of individual trees and/or shrubs on the site and/or on the road verge, subject to approval by NZTA and Council's Development Engineering Manager, to enhance the amenities of the area. The landscaping plan must be implemented within 12 months of approval and must be maintained to the satisfaction of Council's Senior Enforcement Officer.

Reasons for Decision

- a. 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 has been processed on a non notified basis.
- b. 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 conditions.
- c. The subject site is considered somewhat isolated as it is surrounded by General Zoning, and is separated from existing 'legitimate' industrial activity in Carters Flat by two Primary Roads;
- d. The Waipa District Growth Strategy (Waipa 2050) identifies that there is demand for additional commercial land within Cambridge. This suggests that there is currently little available space within Cambridge CBD for commercial activity.

- e. The Regulatory Committee note the extent of retail development in the surrounding Industrial Zone, in particular along the State Highway. This proposal is not inconsistent with these surrounding landuse activities.
- f. It is anticipated that the proposed activities will service the Cambridge North Residential Zone, which will allow residents to purchase day to day items without having to cross the State Highway.
- g. Conditions 5 and 6 satisfy the request of the NZTA regarding the construction of a new vehicle entrance, and traffic signage.
- h. The landscaping plan, requested by condition 10, will aid in improving the visual amenity of the site.

Advisory Notes

Building Consent

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

The Chairperson closed the meeting at 10.17am and adjourned the meeting for morning tea. The meeting reconvened at 10.32am

There being no further business the meeting closed at 11.13am

CONFIRMED AS A TRUE AND ACCURATE RECORD

CHAIRPERSON: _____

DATE: _____