



13 May 2005

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TO THE CHAIRPERSON AND MEMBERS OF THE REGULATORY COMMITTEE

**NOTIFIED LAND USE CONSENT APPLICATION – ANDELYNE TRUST,
438 PEAKE ROAD, CAMBRIDGE**

APPLICANT:	Andelyne Trust
PROPERTY ADDRESS:	438 Peake Road, Cambridge
LEGAL DESCRIPTION:	Part Allotment 96A Hautapu Parish (DP 361) and Allotment 95 Hautapu Parish (SO 96/1) (CT SA40/229)
SITE AREA:	22.4645 ha
ZONING – DISTRICT PLAN:	Industrial – Mars Factory Site (Planning Maps 3 and 7)
PROPOSAL:	Land use consent to establish and operate a horse training and agistment operation, including a sand training track, stables/barn and new house.
CLASSIFICATION OF ACTIVITY:	Non-Complying Activity
CONSULTANT:	Cantab Management Ltd

1 PURPOSE OF REPORT

1.1 The purposes of this report are to assist the Regulatory Committee in coming to a decision on the application by:

- ♦ Outlining any further information or clarification that has been obtained so that all parties have a clear understanding of the proposal;
- ♦ Outlining the statutory framework of the Resource Management Act 1991 (RMA) and the policy framework of the District Plan and any regional planning documents under which a decision is to be made;
- ♦ Independently “auditing” the reports submitted by the applicant in support of the application to identify any deficiencies or areas where different interpretations should be applied;
- ♦ Identifying key issues that need to be considered by the Committee;
- ♦ Commenting on points raised in submissions; and
- ♦ Making a recommendation to the Committee for its guidance.

2 THE SITE

- 2.1 The subject site is located at 438 Peake Road, Cambridge. The site is located on the south-eastern side of the Bruntwood Road – Peake Road intersection, and is bounded by Peake Road to the west, Bruntwood Road and the Cambridge Industrial Railway Line along the north and eastern boundaries and rural zoned properties to the south. The subject site has an area of some 22.4645ha and is legally described as Part Allotment 96A Hautapu Parish (DP 361) and Allotment 95 Hautapu Parish (SO 96/1).
- 2.2 In general, the subject site is a triangular shape and the topography of the site is considered to be generally flat.
- 2.3 There are a number of existing buildings on the property. These include a dwelling and a detached garage located near the Peake Road boundary, and a milking shed and accessory buildings located towards the centre of the property. The existing buildings are accessed via two existing vehicle crossings on to Peake Road. Construction of the proposed horse training track has already commenced adjacent to the southern boundary of the site. The balance of the site is open pasture with the usual fencing and watering improvements associated with pastoral grazing.
- 2.4 The surrounding properties are zoned Rural, and are utilised for a mixture of rural and rural-residential activities. An aerial photograph of the area follows.



AERIAL PHOTOGRAPH

3 PROPOSAL

- 3.1 The application is to establish and operate a horse training and agistment operation, including a sand training track, stables/barn and new house, on Land Zoned 'Industrial – Mars Factory Site.' Full details of the application are provided in Appendix 1 to this report.
- 3.2 **Please note that the concept plan of the proposed training track site has been amended from that publicly notified. The concept plan was amended to satisfy the concerns by some submitters about the location and proximity of the training track to the southern boundary of the site. The amended concept plan now locates the training track parallel to the Bruntwood Road (eastern) boundary of the site, approximately halfway along the boundary.**

4 BACKGROUND

Mars Factory Site

- 4.1 The site specific zoning of the property ('Industrial – Mars Factory Site') was created originally through a plan change to the Transitional Waipa District Plan (Waikato Section) in 1992. The plan change allowed for Mars Incorporated to establish a factory to manufacture food products which use dairy products as a major ingredient. The stringent development standards associated with the site specific zoning were developed to ensure that only a factory similar to that sought by Mars Incorporated at the time of the plan change could be constructed on the property.
- 4.2 The property was never developed by Mars Incorporated and was eventually sold to other parties in December 2004.

Associated Resource Consent Applications

- 4.3 In addition to the land use consent currently being considered by Council's Regulatory Committee, a second resource consent application for the subject site has also been lodged with Council, and is currently suspended pending a request for further information pursuant to Section 92 of the RMA.
- 4.4 Mars Park Limited have lodged a two stage subdivision application (Council reference SP4693). Stage 1 comprises the subdivision of the site into two lots of 5.6660ha and 16.91ha. Stage 2 comprises the subdivision of the 5.6660ha lot created by Stage 1 into 12 industrial lots ranging in size from 2912m² to 5752m², a local purpose reserve of 5505m² to vest, and a road to vest.
- 4.5 The proposed horse training track and associated building that are the subject of this consent are proposed to occupy the 16.91ha Lot of the Stage 1 subdivision.
- 4.6 A legal opinion was obtained from Council's Solicitors (Gallie Miles) to clarify the approach for processing two separate resource consent applications lodged concurrently by two separate parties, but relating to a single site. They have advised as follows:

"... Where the applications – as in this case – are made by different persons then each person is entitled to have their application dealt with independently of the other. For these reasons we are of the opinion that the application by Andelyne

Trust must be processed and dealt with independently of the application by Mars Park Limited.”

4.7 Accordingly, this land use consent application must be assessed independently and without reference to the Mars Park Ltd subdivision consent outlined above.

5 PUBLIC NOTICE AND SUBMISSIONS

5.1 The application was publicly notified, with a public notice appearing in the Cambridge Edition on 16th March 2005. Notice of the proposal was also served on the owners and occupiers of those properties immediately surrounding the site.

5.2 A total of 21 submissions were received – 20 of which were received within the statutory time period. Of the 21 submissions received 19 are in support and two are in opposition. A summary of the submissions is included in Table 1 below. A copy of the submissions and a locality plan identifying the submitters’ properties is attached as Appendix 2.

Table 1: Summary of Submissions

Name	Address	Stance		Request to be Heard		Issues
		Oppose	Support	Yes	No	
PD & IM Armit	451 Peake Road		✓	✓		♦ Support rural activities on the property.
M & M Baker	29 Pickering Road		✓	✓		♦ Support rural activities on the property.
PG Cameron	346 Peake Road		✓	✓		♦ Support rural activities on the property.
GR & KE Discombe	162 Bruntwood Road		✓		✓	♦ Support rural activities on the property.
Environment Waikato	401 Grey Street, Hamilton	Not Stated		Not Stated		♦ Resource consents for earthworks, stormwater discharge and wastewater discharge may be required.
Fonterra Co-operative Group Ltd	Corner Bruntwood, Victoria and Hautapu Roads	✓		✓		<ul style="list-style-type: none"> ♦ Rural activity inappropriate in an industrial zone. ♦ Rural activity incompatible with adjoining irrigation activities of Fonterra (reverse sensitivity concerns). ♦ Potential for contaminants from irrigation activities affecting groundwater and then human/animal health. ♦ Odour from irrigation activities may cause nuisance complaints in future. ♦ Irrigation activities may startle horses.
D Govender	345 Peake Road		✓	✓		♦ Support rural activities on the property.
P & JA Hogan	Peake Road		✓	✓		<ul style="list-style-type: none"> ♦ Support rural activities on the property. ♦ Oppose industrial development and subdivision of the property.

JD & JC Howell	425 Peake Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property. ◆ Ensure training track is located away from southern property boundary. ◆ Require a hedge be planted along southern property boundary.
J MacDonald	373 Aspin Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property. ◆ Require a hedge be planted and maintained.
BH Morrison	156 Pickering Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property. ◆ Ensure location of training track and building does not adversely affect neighbours.
S Munthree	345 Peake Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property.
New Zealand Railways Corporation (Ontrack)	Bunny Street, Wellington	✓		✓		<ul style="list-style-type: none"> ◆ Wish applicant to agree to a reverse sensitivity covenant to protect rail corridor.
R Morris	Peake Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property.
G Rodger	180 Bruntwood Road		✓		✓	<ul style="list-style-type: none"> ◆ Support rural activities on the property. ◆ Ensure training track is located away from southern property boundary. ◆ Require a hedge be planted and maintained along southern property boundary.
G Sheehan	39 Pickering Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property.
B Stroobant & K Harley	414 Peake Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property. ◆ Ensure training track is located away from southern property boundary. ◆ Require a hedge be planted and maintained along southern property boundary. ◆ Require a sprinkler system be installed to moisten training track and reduce dust.
G Verberne & J West	66 Bruntwood Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property. ◆ Ensure training track is located away from southern property boundary. ◆ Require a hedge be planted running the length of the training track for visual and dust mitigation.
M West	387 Victoria Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property.
BG West	78 Church Road		✓	✓		<ul style="list-style-type: none"> ◆ Support rural activities on the property. ◆ Ensure training track is located away from southern property boundary.

						<ul style="list-style-type: none"> ◆ Require a hedge be planted running the length of the training track for visual and dust mitigation.
JA Wilson	376 Peake Road		✓		✓	<ul style="list-style-type: none"> ◆ Support rural activities on the property. ◆ Stable/barn not to exceed 4.5% coverage.

Late Submission

- 5.3 One late submission was received from GR & KE Discombe, one working day past the closing date. Council staff advised GR & KE Discombe that their submission was late, and requested that they provide detailed written reasons why a waiver to comply with the statutory timeframe should be granted. GR & KE Discombe have not provided a written response.
- 5.4 The Regulatory Committee has the power to waiver, and thereby extend the time period for receiving submissions under Section 37 of the RMA. However, for reasons of equity, a waiver should only be granted where a submitter can produce extenuating evidence to explain why their submission was lodged out of time. In this case, the submitters have not provided a written response to explain why their submission was late, and it is my view that the submission be declared invalid (and with it the speaking and appeal rights of the submitters).
- 5.5 For the Regulatory Committee’s information, the issues raised in the supporting submission of GR & KE Discombe are covered in the submissions of other submitters.

Irrelevant Issues Raised in Submissions

- 5.6 The majority of submissions also raised issues and/or requested outcomes that are not relevant to this resource consent application. That is, the majority of submissions requested that the property be re-zoned ‘Rural’, or that the Committee decline any future industrial based subdivision and/or development of the property. However, these issues/requests are separate to this resource consent application and can not be considered by the Committee in the course of this application. Accordingly, only those issues relating to this particular application will be addressed.

6 IWI CONSULTATION

- 6.1 A copy of the application was forwarded to Ngaa Iwi Toopu O Waipa (NITOW) in accordance with Council’s agreed notification procedure. NITOW responded that they have no concerns with the application.

7 OFFICER COMMENTS

- 7.1 Comments were sought from the various units of Council. Only the Environmental Health Unit had comments to make. Their comments were in respect of noise and dust and were to the effect that no complaints about either had been received in respect of horse training establishments in the rural area.

8 WAIPA DISTRICT PLAN – CLASSIFICATION OF THE ACTIVITY

- 8.1 The subject site is zoned ‘Industrial – Mars Factory Site’ in the Operative Waipa District Plan.
- 8.2 The proposal to establish and operate a horse training track and associated stables (barn) building on the property requires a non-complying resource consent in accordance with Rule 7.4.21.

9 STATUTORY FRAMEWORK – RESOURCE MANAGEMENT ACT 1991 (RMA)

9.1 Introduction – Sections 104, 104B and 104D

9.1.1 As a non-complying activity the land use consent application is to be considered under Sections 104, 104B and 104D of the RMA.

9.1.2 Section 104 sets out those matters that Council must consider when assessing an application for resource consent. The matters that are relevant to the consideration of this application (subject also to Part II, Purpose and Principles) are:

- “a) Any actual and potential effects on the environment of allowing the activity; and...
- b) Any relevant provisions of - ...
 - (iv) A plan or proposed plan; and
- c) Any other matters the consent authority considers relevant and reasonably necessary to determine the application.”

Each of the relevant matters are considered in the following sections of this report.

9.1.3 Section 104B defines the power of Council to grant a resource consent for a non-complying activity. Section 104B states:

“104B Determination of applications for discretionary or non-complying activities
– After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

- (a) may grant or refuse the application; and
- (b) if it grants the application, may impose conditions on the consent under section 108.”

9.1.4 Section 104D defines the particular restrictions for non-complying activities:

“104(D) – Particular restrictions for non-complying activities

- (1) Despite any decision made for the purpose of section 93 in relation to minor effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –
 - (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or
 - (b) the application is for an activity that will not be contrary to the objectives and policies of –
 - (i) the relevant plan.

9.2 Section 104(1)(a) – Any Actual and Potential Effects on the Environment of Allowing the Activity

9.2.1 The effects on the environment relevant to an evaluation of the application have been identified as:

- ◆ Dust;
- ◆ Traffic Impacts;
- ◆ Amenity Values;
- ◆ Earthworks;
- ◆ Reverse Sensitivity Effects.

Dust

9.2.2 A number of the submissions raised concerns regarding the potential for dust nuisance arising from a dry training track. The submissions are concerned that horses and/or the wind will create unacceptable dust nuisances.

9.2.3 In my view, the best measures to alleviate any potential for dust nuisance is the location of the track relative to adjoining sensitive land uses and the provision of plantings to both shelter the training track from the wind and to assist with the capture of airborne dust. In this case the applicants are proposing to locate the training track towards the eastern (or railway/Bruntwood Road) boundary away from the nearest neighbours and alongside existing landscape plantings. It is my view that these measures will ensure dust nuisance is no more than minor.

9.2.4 The revised location of the track does not necessitate the planting of a screen hedge along the southern boundary given its distance to neighbours. Furthermore, there is no evidence to suggest that a condition requiring that the track be regularly dampened down is required. Council's Environmental Health Unit has no reports of dust being a nuisance from similar tracks.

Traffic Impacts

9.2.5 It is important to understand the traffic generation of the activity and the ability of the roading network to accommodate that traffic.

9.2.6 Transit New Zealand's Planning Policy Manual calculates that a single residential dwelling generates 9 daily traffic movements and a standard rural entrance generates 30 daily traffic movements. Thus, when established the activity will generate some 48 daily traffic movements. The application will therefore generate traffic of a scale which is similar to that generated by other rural activities in the locality and lower vehicles than that which would be generated by a complying industrial activity. Furthermore, the capacity of Peake Road is such that it can easily accommodate the increase in vehicle movements predicted.

9.2.7 The vehicle accesses to the site are in the locations approved for the Mars Factory. The vehicle crossings are also constructed to an approved Council standard.

9.2.8 From the information and site plan submitted, it is difficult to assess the suitability and standard of the on-site access, manoeuvring and parking areas. Nevertheless, the

site has ample room to accommodate such areas and conditions can ensure that they are formed and constructed to an approved standard.

Amenity Values

- 9.2.9 Amenity is defined in the RMA to be *“those natural or physical qualities of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”*
- 9.2.10 In this case, with the exception of the Hautapu Dairy Factory and associated activities, the area is predominantly rural. That is, it is characterised by open fields; mature specimen trees, hedgerows and riparian vegetation; livestock grazing; and low intensity development. It is also a working environment, characterised by machinery; odours; dust; and irregular (seasonal) working hours.
- 9.2.11 In my view the proposal is thus not that different from what occurs on both neighbouring properties and the site now. The proposal is simply seeking to extend the range of activities on the site and the intensity of those activities. In the main these additional activities can be accommodated on the site within the permitted activity standards of the Waipa District Plan for the Rural Zone.

Earthworks

- 9.2.12 The application will require earthworks to construct the training track, building platforms and vehicle access, parking and manoeuvring areas. Such earthworks is low intensity earthworks which if carried out in accordance with best practice by experienced contractors will have minimal effects on neighbours.

Reverse Sensitivity Effects

- 9.2.13 The submissions by the New Zealand Railways Corporation (NZRC) and Fonterra Co-operative Group Ltd (Fonterra) both oppose the application on reverse sensitivity grounds. NZRC are concerned that the activity will inhibit and/or restrict them from operating the adjoining Cambridge Branch Railway Corridor. Fonterra are concerned that the activity will be incompatible with its neighbouring irrigation farms in that the operators of the activity will complain about odour, groundwater contamination and noise from their irrigation farms.
- 9.2.14 With respect, I fail to see any merits in the submissions of NZRC and Fonterra. The concept of reverse sensitivity is one where an activity which causes nuisances beyond its site has legitimately established and activities sensitive to those nuisances propose to establish in close proximity, thereby having the potential to complain about the nuisances and effectively cause the activity to cease operations. In this case, the application does not propose any activities which could not be carried out either under existing use rights or under the permitted activity provisions of the zone.
- 9.2.15 The site has been utilised for livestock grazing/rearing purposes for many many years. Livestock grazing/rearing activities on the site, whether they be sheep, cattle, deer or horses are therefore protected under the existing use rights provisions of the RMA. Accordingly, the concerns expressed about, for example, noise from the irrigators or trains startling the horses is a relevant effect regardless of the outcome of this application.

9.2.16 Similarly, dwellings (where for security purposes) are listed as a permitted activity in the Industrial Zone. The effects of odour or groundwater contamination would thus also be a relevant effect for permitted activities such as dwellings constructed for security purposes regardless of the outcome of this application.

9.3 Section 104(1)(b) – Any Relevant Objectives, Policies, Rules or Other provisions of the Plan

Objectives and Policies

9.3.1 The operative Waipa District Plan contains a number of objectives and policies for the Industrial zone. Those that are relevant to this application include:

Objective IN1

To provide for the continuing development of industry in the District.

Objective IN2

To identify areas suitable for all types of industrial activities and effects (except the most noxious, which are provided for in a special zone in Hamilton).

Objective IN3

To identify areas where future industrial activity can occur without unacceptable adverse effects in or close to both Cambridge and Te Awamutu

Explanation

Industrial activities have important linkages with each other and with commercial areas (services) and residential areas (labour). There are therefore advantages for most types of industry in locating in or close to towns and cities.

Te Awamutu is presently able to offer serviced sites of all sizes for industry while in Cambridge there is a severe shortage of land immediately available for industry and limited additional capacity in the sewerage system. There would therefore be efficiencies, particularly in the utilisation of infrastructure, in concentrating immediate industrial expansion in Te Awamutu. This has to be balanced against the need to provide the widest possible choice of locations for industry and it is considered appropriate to also provide for new industry in the vicinity of Cambridge.

Location of industry within or close to both of the main towns in the District also minimises the need for employees to commute, with consequent energy saving potential. [Emphasis added].

Objective IN4

To promote efficient use of the natural and physical resources (including energy) required to provide, operate and maintain industrial areas.

Explanation

To operate efficiently and with acceptable environmental impact, industry generally needs to be concentrated in defined areas (zones) where properly engineered service infrastructure can be provided.

Objective IN5

To identify areas where industry can operate with the benefit of necessary services, and without interference from incompatible adjoining activities. [Emphasis added].

Explanation

While there is a primary concern for the potential impacts of industrial activities on other land uses and the physical environment generally, there is also a converse concern that the presence of sensitive activities in proximity to industry will create pressure for additional restrictions on industry. This can be avoided by reserving specific areas (zones) for industry and excluding other activities even though the likely direct impact on the physical environment of those other activities is not of concern. [Emphasis added].

Policy IN5

To provide clear indications in the District Plan of what activities are permitted in the Industrial zone and what performance standards are required. [Emphasis added].

Explanation

It is important to minimise uncertainty for both potential developers and existing land users in and around the Industrial Zones. While the emphasis is on regulating industrial activities according to effects produced, the Rules also distinguish between the types of industry, because in practice certain types of industry normally cause (or do not cause) particular environmental problems. There are practical difficulties and costs in monitoring activities which, even with the best of initial intentions, prove unable to meet standards. It is better to assess proposals for certain industries before they are established.

Policy IN6

To define 'baseline' performance standards so as to mitigate or avoid adverse environmental effects and secure desired environmental results.

Explanation

The 'baseline' standards define what is required of activities established as 'Permitted Activities' (i.e. established as-of-right). In some circumstances non-compliance may be justified by particular features of a proposed activity or features of the site concerned. This will be assessed on a case by case basis.

Performance standards are defined in the Rules for:

- a) *height of structures in relation to distance from Industrial Zone boundaries ('recession plane' control);*

- b) *separation of structures and industrial activities from Industrial Zone boundaries, street frontages, and watercourses;*
- c) *landscaping/screen planting;*
- d) *staff and visitor parking and vehicle access;*
- e) *access and manoeuvring of heavy vehicles;*
- f) *advertising signs and their impact on amenities and traffic safety considerations;*
- g) *noise, odour, dust, glare and air pollution effects; and*
- h) *storage and use of hazardous substances.*

Policy IN8

To permit non-industrial activities subject to appropriate criteria, in industrial areas where no adverse environmental impacts would occur.

Explanation

Some non-industrial activities such as indoor sports facilities may be located in Industrial Zones without significant adverse effects on industrial activities or neighbouring residential areas. Such uses may be allowed by resource consent as a Discretionary Activity, depending on location and size of activity.

Policy IN10

To take account of potential impacts on existing nearby land uses when assessing industrial activities requiring resource consent.

Explanation

It is not always technically and/or economically feasible to eliminate all adverse effects, but given the choice of sites available for industrial activity in the District it should not be necessary to allow residential amenities or the operating environment of existing industrial business to be degraded significantly.

- 9.3.2 The proposal to establish and operate a non industrial activity (a horse training track and equine training centre) on an Industrial zoned property clearly is inconsistent with the above Industrial Objectives and Policies. This assessment made however, it is also true that the activity will not compromise the use of the site for industrial development similar to that contemplated by the zone provisions given the low level development proposed, despite the fact that the development proposed and thus investment made would make it more difficult to use the site for industrial activities.

Rules

- 9.3.3 The **relevant** Industrial Zone land use and development standards for the application are assessed in Table 2 below:

Table 2: Assessment of the Industrial Zone Standards:

RULE	PROVISION	COMPLY	COMMENTS
7.4.6	<p>Site Layout Outdoor storage areas visible from any Residential Zone, road or other public place shall be screened by landscaping or solid walls or fences.</p>	✓	All outdoor storage areas associated with the activity can be screened by landscaping or fencing
7.4.9	<p>Off Street Parking and Loading</p> <p>1. General: Any change in use or intensification of activity shall provide off street parking and loading.</p> <p>3. Trade Vehicles: Off street parking and loading facilities shall be provided for trade vehicles associated with the activities carried out on each site; and shall be designed to accommodate the 99 percentile two-axled truck and designed so that vehicles are not required to reverse on or off Primary Roads.</p> <p>4. Car Parking: 1 space per 100m² floor space.</p>	✓	Although not specifically shown on the site plan, the site has significant areas in which to provide parking, manoeuvring and loading facilities. A condition requiring said facilities be provided will ensure compliance with this rule.
7.4.12	<p>Signs Signs shall be directly related to the activities on the site</p>	✓	A condition limiting the size and wording of any sign to be erected will ensure compliance with this rule.
7.4.14	<p>Odour Activities shall not produce any odour discernible without instruments from a Residential, General or Town Centres Zone.</p>	✓	The horse training establishment is a rural activity similar to neighbouring land uses. Any odour produced will thus be similar to those produced and experienced by neighbours.
7.4.15	<p>Smoke, Fumes and Dust No specific standards are included for this zone. Attention is drawn to the obligation under s15 of the Act to comply with Regional Council provisions.</p>	✓	The nature of the activity and the landscape screening will ensure dust emissions do not cause a nuisance to neighbours.
7.4.25	<p>Reserve Contributions Where one or more dwelling houses are erected on any allotment, a financial contribution for the provision of reserves shall be made to Council for each dwelling house. The value of the contribution shall be \$1,802 including GST</p>	✓	The proposed dwelling house will incur a reserve contribution of \$1,802 (GST inclusive). A condition requiring payment of this will ensure this condition is complied with.

Rule 7.4.21 Special Provisions, Mars Site at Bruntwood

In addition to the Rules applying to all Industrial Zones, the following special provisions apply to the Mars site at Bruntwood:

STANDARD	COMPLY	COMMENTS
1. only activities which use dairy produce as a major ingredient in the manufacture of food products are permitted, and residential accommodation is limited to accommodation provided primarily for security purposes;	<i>x</i>	The horse training establishment does not use dairy produce to manufacture food products. The proposed dwelling house is for the trainers/staff not primarily for security purposes.
2. the site shall be landscaped in accordance with the landscape plan approved by the Council prior to construction of the factory;	<i>x</i>	The landscape plan is attached as Appendix 3. The majority of the boundary plantings have been completed but none of the internal plantings.
3. any additional access points or relation of existing access points shall require approval;	<i>x</i>	While the two proposed access points are as approved, they are proposed to be entry and exit points rather than the approved entry only and exit only.
4. the maximum coverage by buildings as a percentage of site area shall be 4.5%;	✓	Approximately 1ha of the site is able to be built on. The stable are some 600m ² , leaving over 400m ² of site area able to be occupied by the dwelling house.
5. buildings shall be set back a minimum of 20.0 metres from the site boundaries;	✓	All buildings are set back at least 20m from the site boundaries.
6. buildings shall not exceed 12.0 metres in height except for minor intrusions for pipes, vents, silos and other similar structures up to a maximum of 15.0 metres; and	✓	The stables have a maximum height of only 5m.
7. all land uses and activities shall be conducted and buildings located, designed and used to ensure that noise levels at or within the notional boundary or property boundary of any dwellinghouse, public or community facility, do not exceed the following limits: Monday to Friday 7am-10pm: 50dBA (L10). Saturday 7am – 6pm: 50dBA (L10). At all other times including public holidays 40dBA(L10) 60dBA(Lmax). Prior to any building consent being granted for industrial buildings in the zone and acoustic report prepared by a suitably qualified professional shall be submitted to the Council	✓	The nature of the activities will ensure that the noise standards are not exceeded.

9.3.4 From Table 2 above the application cannot comply with the Industrial Zone standards for the site. This reinforces the earlier assessment that the horse training establishment is not an activity contemplated, as the Industrial Zone rules are the implementation method and the objectives and policies.

9.4 Section 104(1)(c) – Any Other Matters the Consent Authority Considers Relevant and Reasonably Necessary to Determine the Application

9.4.1 There are no other matters which have been identified during the assessment and processing of this application which are considered relevant and reasonably necessary to determine the application.

9.5 Part II – Purpose and Principles of the RMA

9.5.1 Part II is the purpose and principles of the RMA. The overall purpose of the RMA is to promote the sustainable management of natural and physical resources. “Sustainable management” is defined to mean managing the use, development and protection of such resources in a way that enables people and communities to provide for their social, economic and cultural well-being and their health and safety. At the same time they must:

- ◆ Sustain the potential of resources to meet the reasonable foreseeable needs of the future generations;
- ◆ Safeguard the life-supporting capacity of air, water, soil and ecosystems;
- ◆ Avoid, remedy or mitigate adverse effects on the environment of the activity.

9.5.2 In my view the approval of the horse training establishment of the size and scale proposed on an Industrial zoned site which has restrictive activity specific development provisions would be consistent with the sustainable management aims of the RMA.

9.6 Section 104D Matters

9.6.1 Section 104D(1) of the RMA states that a consent authority may only grant a resource consent to a non-complying activity if it is satisfied that either:

- (a) The adverse effects on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or*
- (b) The application is for an activity which will not be contrary to the objectives and policies of,*
 - (i) The relevant plan...*

9.6.2 A consent authority can only grant an application for the non-complying activity if one of the alternative conditions above is fulfilled. In the assessment of the land use consent it is my view that the application is able to satisfy subclause (a) of the test (ie; the adverse effects on the environment will be no more than minor), but not subclause (b) of the test (ie; the application is for an activity that is contrary to the objectives and policies of the Waipa District Plan).

9.6.3 However, even if one of the tests is able to be satisfied, the application still has to satisfy the Committee that it should be granted, having regard to the matters in Section 104. This approach is confirmed in *Hopper Nominees Ltd v Rodney DC*

(1996) NZRMA 179, where the High Court rejected an argument that if the effects are minor, significant weight ought not be attached to the plan provisions (such as policies and objectives).

- 9.6.4 Under Section 104D (b) of the RMA (contrary to policies and objectives), the Committee can consider the cumulative effects of allowing the application on the integrity of the Waipa District Plan. If the granting of this application would be likely to cause a proliferation of similar consents, the Committee can consider declining the application. It is my view that granting consent for this horse training establishment on a special Industrial Zoned site would be unlikely to cause a proliferation of similar non-complying applications. Furthermore the granting of this application would not prevent or hinder the future development of the site for the purposes for which it is zoned given the low level of development proposed.

10 CONCLUSION

- 10.1 The land use consent application is to establish and operate a horse training and agistment operation, including a sand training track, stables/barn and new house on land zoned Industrial – Mars Factory Site.
- 10.2 The application has been assessed against the relevant objectives, policies and rules of the Industrial Zone of the Waipa District Plan and found to be clearly inconsistent with these provisions.
- 10.3 The application has also been assessed in terms of its potential effect on the environment. This assessment has concluded that the application would have no more than minor effects on the environment.
- 10.4 In considering the merits of compliance with the District Plan provisions against minor environmental effects, I am of the view that weight ought to be attached to minor environmental effects in this case. The Industrial Zoning of the site resulted from a development proposed to establish a specific use (Mars factory) and the specific stringent set of District Plan development standards reflect this. The use is now no longer proposed, as evidenced by the sale of the property. The new owners now simply wish to utilise the property for a rural use consistent with activities which have always been carried out on the site and which is similar to activities carried out on neighbouring sites with little or no adverse effects on the environment. Furthermore, the application is of such a scale and intensity that it would not prevent the site being developed in accordance with the Industrial zoning at a future time if in fact such a use was considered viable.

11 RECOMMENDATIONS

That:

- (a) The report of SG Bigwood, senior planner for Bloxam Burnett & Olliver Ltd dated 13 May 2005 be received.
- (b) The submission by GR & KE Discombe be declared out of time pursuant to Section 97 of the Resource Management Act 1991 and ruled invalid.

- (c) That in consideration of Sections 104 and 104D, and pursuant to Section 104B and 108 of the Resource Management Act 1991, the Waipa District Council approves the application by Andelyne Trust to establish and operate a horse training and agistment operation at the Peake Road, Cambridge property, legally described as Allotment 95 and Part Allotment 96A Hautapu Parish (CT SA40/229), subject to the following conditions:

General

1. That the operation and development proceed in general accordance with the application and plans, and further information accompanying the application (WDC reference: RC 4518), unless otherwise altered by the consent conditions.

For avoidance of doubt, the training track shall be located as shown on the approved Concept Plan by Cogswell Surveys Ltd reference 3288 dated May 2005. A copy of the approval plan is attached.

Review of Consent Conditions

2. That the Waipa District Council may give notice pursuant to Section 128(1) of the Resource Management Act 1991 of its intention to review the conditions of this resource consent at any time for the following purposes:
 - (i) to review the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the environment from the exercise of this resource consent particularly dust and amenity effects, and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions; or
 - (ii) to address any adverse effect on the environment which has arisen as a result of the exercise of this consent; or
 - (iii) if necessary and appropriate, to require the holder of this resource consent to adopt the best practicable option to remove or reduce adverse effects on the surrounding environment.

Construction Noise

3. That the noise level from construction activities (ie. construction of the building, earthworks and construction of training track and any internal access roads) shall comply with and be assessed in accordance with the provisions of New Zealand Standards NZS 6803:1999 "Acoustics – Construction Noise".

Lighting and Glare

4. That outdoor lighting on the site shall be so selected, located, aimed, adjusted and screened as to ensure that glare resulting from the lighting does not cause any level of discomfort to any occupants of properties beyond the application site boundary which in the opinion of Council's Enforcement Officer is creating an unacceptable nuisance.

Traffic

5. That 17 parking spaces be provided on site, to be laid out and marked to the standards specified in the District Plan, and maintained as such.
6. That all access, manoeuvring and parking areas be formed and constructed to a hard standing metal surface generally in accordance with the Council's standards set out in the Code of Practice for Land Development and Subdivision.

Landscape and Screen Planting

7. That, prior to an application for building consent, the landscape screening and planting along the Bruntwood Road boundaries of the site identified on the "Mars Confectionery Factory – Bruntwood Landscape Concept" plan (drawing 270 CP1/I by LA4 Landscape Architects dated August 1992) shall be put in place and maintained.
8. That all areas of the site to be planted under condition 7 above shall be protected from livestock by a stock proof fence.

Dust

9. That as a result of activities authorised by this resource consent, there shall be no discharge of dust to air that in the opinion of Council's Enforcement Officer causes an objectionable or offensive effect beyond the boundary of the site.
10. That the existing training track adjacent to the southern boundary of the site be rehabilitated to pasture by the placement of topsoil and regrassing.

Signage

11. That on-site signage shall not exceed one sign giving the name, address, contact details and related information of the facility. The sign shall not exceed 1.2m² sign area visible in any one direction with an maximum of 2.4m² in total.

Financial Contribution

12. That a reserve contribution of \$1,802.00 (GST inclusive) be paid to Council for the proposed new dwelling at the time of lodging the Building Consent application.

Administration and Monitoring Charges

13. That changes set out in accordance with Section 36 of the Resource Management Act 1991 shall be paid to the Waipa District Council for carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent.

Reasons for Decision

- (a) The application to utilise an Industrial zoned site which was established to accommodate a specific activity (Mars Factory) that is now not to proceed for rural activities is considered unusual. Accordingly, the application will not have a

significant effect on the integrity of the Waipa District Plan. Furthermore, it is considered appropriate in the circumstances that the applicant property owner should enjoy some flexibility as to the way the property is used rather than be curtailed by activity specific objectives, policies and rules which are unique to the site.

- (b) The Resource Management Act is intended to provide flexibility to look beyond zone boundaries. The fact that an activity is not specifically mentioned within a zone will not always outweigh the more flexible approach of the effects of the activity on the environment. This application is considered to be a case in point whereby the effects on the environment are minor and the activity will not prevent or hinder the future development of the site in a manner anticipated by the zone.
- (c) Review condition 2 will ensure that any adverse effects that may arise from the exercise of this consent can be addressed by reviewing the adequacy of the conditions.
- (d) The potential adverse acoustic effects of the construction activities will be able to be avoided, remedied or mitigated by the imposition of condition 3.
- (e) Condition 4 will ensure that light spill and glare from the site will not cause any level of discomfort to neighbours.
- (f) An assessment of the traffic issues associated with this application has confirmed that the adverse effects of the activity will be minor on the local road network. Conditions 5 and 6 have nevertheless been imposed to ensure that adequate on site parking and suitable hard standing access and manoeuvring areas are provided.
- (g) The activity has the potential to cause adverse visual effects on the local environment. Conditions 7, 8 and 11 will ensure that the adverse visual effects of the activity in the short and long term are mitigated.
- (h) Conditions 9 and 10 will ensure that dust from the site will not cause a level of discomfort to neighbours.

SG Bigwood
Senior Planner – Bloxam Burnett & Olliver Limited

Approved for Regulatory Committee Agenda

Garry Dyet
Deputy Chief Executive

APPENDIX 1

APPENDIX 2

APPENDIX 3