

*Minutes of a Regulatory Committee Meeting held on Monday 30 October 2006 in the Council Chambers, 101 Bank Street, Te Awamutu, commencing at 9.00am*

## **1 PRESENT**

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File: 01-89-04

Councillor D Sharpe, Chairperson

### **Committee**

His Worship the Mayor A Livingston, GC Flay, EC Newlands, BJ Taranaki, GRP Webber

### **Other**

Planning Services Manager – W Allan; Senior Planner – T Kelly (items 8.2 and 8.3 only); Consultant Planner – K Drew (item 8.1 only); Secretary – C Shaw

## **2 APOLOGIES**

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There were no apologies.

## **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**

4/06/71

*That the order of the meeting be confirmed with the Plan Change 45 Bond Road being deferred until 27 November 2006 and item 7.2 being taken at 1.00pm.*

Cr Webber/Cr Flay

## **5 CONFIRMATION OF PREVIOUS MEETINGS**

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File: 01-89-04

**Minutes of meeting held on 27 September 2006**

**RESOLVED**

4/06/72

*That the minutes of the Regulatory Committee held on 27 September 2006, having been circulated, be taken as read and confirmed as a correct record.*

Cr Webber/Mayor Livingston

**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**

4/06/73

*That the monthly schedule of Liquor License Applications Considered by Staff Under Delegated Authority for September 2006 be received.*

Mayor Livingston/Cr Flay

**7 GENERAL**

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

File: 01-52-01

**RESOLVED**

4/06/74

*That the schedule of Matters Considered by Staff Under Delegated Authority from 1 – 30 September 2006, be received, a copy of which is attached to and forms part of these minutes.*

Cr Taranaki/Cr Newlands

**Item 7.2 was taken at 1.00pm when Mr Jim Mylchreest from the Ecological Island Trust was in attendance.**

**7.2 Maungatautari Ecological Island Trust – Transferable Development Rights for Property Owners**

Mr Mylchreest addressed the meeting and provided a list of property owners, the options for transferable development titles and the rationale for how he came around to the amounts.

Mr Allan commended the Trust for bringing this matter together in one document and it was his view that it is important that the matter be dealt with as a whole rather than dealing with each of the property owners.

**RESOLVED**

4/06/75

*That the draft document prepared by the MEIT be received and that the Planning Staff review this proposal and bring final recommendations to the committee in November 2007.*

**8 HEARINGS**

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**8.1 9.15am**

**Application to Construct, Operate and Maintain a Packhouse and Coolstores within the Rural Zone: W Sexton, 153 West Road, Ohaupo being Lot 1 DPS 34038**

File: 04581/462.00

**DECISION OF REGULATORY COMMITTEE ON A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION TO CONSTRUCT, OPERATE AND MAINTAIN A PACKHOUSE AND COOLSTORES WITHIN THE RURAL 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> October 2006 was attended by the following:

<b>Applicant</b>	<i>Warren Sexton Mr Sextons children Glen &amp; Leanne</i>
<b>Appearing for Applicant</b>	<i>Lucy Smith – Environmental Management Services</i>
<b>Appearing for Council</b>	<i>Kathryn Drew – Consultant Planner, Lawrence Cross Chapman &amp; Co Ltd.</i>
<b>Submitters in Opposition</b>	<i>Geoff &amp; Helen Monckton</i>

<b>Submitters in Support</b>
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<i>None</i>
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## **2 SITE VISIT**

The Regulatory Committee did not undertake a site visit as they were either familiar with the site, or had undertaken a site visit individually.

## **3 THE RELEVANT STATUTORY PROVISIONS (RMA Section 113(1) (aa))**

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 (RMA Section 113(1) (ab))**

### **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.

The relevant objectives and policies:

Objectives RU1, RU2,

Policies RU39, RU40, RU47, RU48, RU63.

The relevant Rural Zone Rules:

- Rule 2.4.2 – Protection of Prime Agricultural Land
- Rule 2.4.9 – Size of Activities
- Rule 2.7.10 – Activities which Limit the Future Use of Rural Land.

### **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:

- Concern with monitoring of the operation, and compliance with consent conditions upon a possible on-sale of the property by the Sexton's.
- Concern over transparency in the processing of the application, and concern over discrepancies in application documentation relating to the volume of nashi to be processed.
- Concerns with noise, dust, the extent and duration of the activity, landscaping and retention of shelterbelts.

**6 SUMMARY OF THE EVIDENCE HEARD**  
*(RMA Section 113(1) (ad))*

**Evidence on behalf of the applicant was given by:**

**Warren Sexton**

Mr Sexton outlined the details of his current operation on the site and the reason for expansion.

A key point summary of the main points from Mr Sexton's statement of evidence is contained below.

- Site presently has 4.6 hectares of nashi, fully planted, plus approximately 1.2 hectares of grazing around the creek area. The balance of the property is lawn, yard and a grassed area.
- Currently leasing other, mostly smaller, nashi orchards. The Te Rore orchard is largest which is currently planted with 5 hectares of nashi and 1 hectare of kiwifruit.
- Major producer of a Waikato based brand being Red Ribbon Nashi.
- Currently we pack approximately 30% of the Waikato production at the existing West Road packhouse.
- During our season we employ up to 25 staff picking, depending on production volumes and 18 staff within the packhouse.
- Audited yearly by Eurogap Quality Assure.
- To be a viable business there is the need to keep up with the changes and movement within the fruit industry. Have to build own packing facilities, designed specifically for nashi.
- Family business with both Glenn and Leanne having roles in managing the Te Rore block, responsible for all aspects of production, packing, and overall management of the business.

**Lucy Smith – Environmental Management Services**

Ms Smith outlined the nature of the application, made comments regarding the submission received, comment on the planners report, and commented on the recommended conditions.

A key point summary of the main points from Ms Smith statement of evidence is contained below.

**Nature of Activity:**

- The current packhouse processes not only nashi grown on site, but also produce grown at other nashi orchards in the Waikato and elsewhere in the North Island. These activities were established prior to the Waipa District Plan becoming operative and have existing use rights.
- Of the 4,000m<sup>2</sup> site area identified most of this area is currently already used for the purpose of existing buildings, accessways and hardstand areas.
- 25 staff is an approximate number.

**Issues Raised by Submitter:**

- The Monckton's raise two particular concerns: Firstly, that the desire to optimise the use of the facilities will mean pressure on the consent holder to cater for (i) a progressive increased volume of product and (ii) out of season crop diversification. Secondly they have concerns that the proposed packhouse will generate significant concerns with regard to noise, dust the extent/duration of the Discretionary Activity, and landscaping and retention of shelterbelts.
- Optimisation of Facilities
  - The application seeks a capacity limit of approximately 1,000 tonnes per annum. There will be no crop diversification due to the other crops being incompatible with nashi packhouses.
- Noise
  - Packing activities are contained within the proposed new packhouse building. Coolstore fans will be located at the northern end of the building. Relatively few truck movements on and off the site. Noise effects will be no more than minor and addressed through the imposition of a condition restricting noise to the standard that applied in the Rural Zone.
- Dust
  - There is an extensive shelterbelt around the packhouse site, the entranceways will be upgraded to Council's standards, and accessways metalled. It is in Mr Sexton's business interest in keeping dust down.
- Extent/Duration of Discretionary Activity
  - Any change in the nature of the activity beyond the scope of the consent would need a change to consent or a new consent.

- Timing of packhouse activities is dependent on seasonal variation. The consent is typically granted in perpetuity.
- Landscaping
  - Shelterbelts are desirable and important part of the existing orchard. Proposed condition in the staff report requiring that the shelterbelt be maintained to at least 6m, and be replaced should it be removed.
- Review
  - A review condition is proposed, which gives Council the opportunity to seek a review of consent conditions for several purposes, including to address any adverse effect which has arisen resulting from the consented activity.
- Monitoring
  - The Monckton's are seeking that Council annually monitor and enforce performance standards in relation to their issues. Do not consider that this activity should justify more stringent monitoring conditions.
- Consent Notices
  - Monckton's are seeking that a consent notice be lodged against Mr Sexton's title to notify "the public at large" that (a) the packhouse may not be used other than in relation to packing processing of a quantified volume of nashi in any given season and (b) the facility is to operate within the guidelines set out in the "Resource Consent Application".
  - As identified in the staff report the imposition of a consent notice goes beyond the requirements of the Resource Management Act.
- Nashi Tonnage
  - 350 tonnes processed annually represents 35% of the North Island/Waikato crop.
  - Does not automatically follow that an increase to 500 or 1,000 tonnes per year represents 50% or 100% of the North Island/Waikato nashi crop.
  - The industry as a whole is expanding.

#### Consultation

- Agree with Ms Drew's comments on the validity of the notification process and potentially affected parties have had the opportunity to lodge a submission to oppose the change if they objected.

#### Staff Report

- Status of proposed activity appears to be unclear. Accept that part of the proposed activity cannot be defined as a 'farming activity' because it is not dependent on the fertility of the site. However, the component of nashi that are grown and packed on site falls under that definition.
- Produce that is grown off site and packed at West Road falls under the definition of 'factory farming'.

- Unsure why Ms Drew refers to Policy IN13, which is in relation to industrial activities.
- As clarification, whilst the proposed new activities will be utilising an area of approximately 4,000m<sup>2</sup>, the greater part of this area is already in place as part of the current packhouse operation. The new building is only 950m<sup>2</sup>, which is less than 2% of the total property area.

Proposed Amendments to Consent Conditions

- Concern that Condition 6 is worded to absolutely state that no works/activities associated with the packhouse and coolstores shall be undertaken outside the hours of 7.30am to 5.00pm, or on Saturdays, Sundays or Public Holidays.
- Condition 6 is requested to be amended as follows, to avoid the situation of Mr Sexton breaching his consent due to a truck pick up after 5pm, or a delivery of empty bins on a Saturday:

Condition 6

~~That all activities associated with the packhouse and coolstores~~ nashi grading and packing activities shall be undertaken within the following hours of operation.

Monday to Friday (inclusive)                      7.30am to 5.00pm

~~No works/activities shall be undertaken on Saturdays, Sundays or Public Holidays.~~

- Condition requires the upgrade of the existing vehicle entrances to a Figure 5 Rural Heavy Commercial type. Mr Sexton accept the entranceway upgrading to a justified standard, but this specific standard appears to apply only to sites of 20ha and greater. It would appear only a Medium Commercial entranceway is required.
- Condition 11 specifies the formation of at least 10 carparking spaces to a graded, metalled surface, to the satisfaction of Council's Engineering Manager. The need for this condition, both in the type of treatment and the number of parks has not been justified.
- Packhouse staff have been parking on the grass inside the orchard beside the packhouse for the past 15 years, with no adverse effects.
- Request condition 11 be deleted.

**Evidence on behalf of the submitters was given by:**

**Helen Monkton**

Mrs Monkton expressed that they regretting being here today, and would like to express how exemplary Mr Sexton's operation has been. Mrs Monkton outlined their concerns as being:

- The long-term perspective that there are no guarantees that the conditions of consent will be adhered to.
- Lack of transparency in this application. In particular discrepancies between the quantities of nashi circulated to the neighbours for written approval documentation (500 tonnes), and then what was applied for from Council (1000 tonnes).
- Seek that the entranceway be upgraded as recommended in Condition 10 of the planners report, to a Figure 5 Rural Heavy Commercial. Upgrading standard should not be based on size of property, but size of all properties from which the produce is coming from.

**Geoff Monkton**

Mr Monkton reiterated Mrs Monkton's comments about the current operation of the site by Mr Sexton and reiterated Mrs Monkton's concerns over future use, discrepancy in tonnage and transparency of processing the application.

Mr Monkton also expressed that he understood that to make the packhouse economically viable a large number of produce needs to come from off-site.

**Evidence on behalf of the Council was given by:**

**Kathryn Drew – Consultant Planner – Lawrence Cross Chapman & Co Ltd.**

Ms Drew read through her planners report, outlining the proposal, Councils assessment of the application, an assessment of the application against the Resource Management Act, and the operative Waipa District Plan, including an interpretation of the proposal against the operative Waipa District Plan Rules.

**7 THE MAIN FINDINGS OF FACT:  
(RMA Section 113(1) (ae))**

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 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 proposal is to construct, operate and maintain a packhouse and coolstore at a Rural Zoned site in Ohaupo. The proposal involves 4,000m<sup>2</sup> of a 6.07 hectare property. A resource consent for these activities is required because it cannot meet Rule 2.4.2 - Protection of Prime Agricultural Land and Rule 2.4.9 – Size of Activities of the

operative Waipa District Plan. Subdivision of the site has not being sought.

- The packhouse and coolstore is a farming activity utilising approximately half a hectare of prime agricultural land and that the adverse visual, traffic and noise effects are minor and/or could be mitigated by the imposition of conditions.
- The proposal is not inconsistent with the objectives and policies of the District Plan.
- The effects on the environment have been described and assessed in both the information supporting the application, the evidence presented at the hearing and the Planners Report. It is concluded that the adverse effects are minor and/or could be mitigated by the imposition of conditions.
- A consent notice has not been imposed as it is not considered appropriate on a land use consent. The conditions imposed on this consent are considered to be robust enough to ensure compliance through monitoring and enforcement.
- In conclusion, after having considered all the various matters of Sections 104 and 104B of the RMA, it is the Committee's view that the application be granted, subject to conditions to avoid, remedy and/or mitigate the identified potential adverse effects.
- The resource consent will remain with the property regardless of any changes in ownership. Resource consents are public information, and any Land Information Memorandum for the subject property would include a copy of the resource consent. Any changes in the activities undertaken on the site will require a further resource consent to be obtained.

## **8 RESOLVED**

4/06/76

*That*

- a) *The report from Kathryn Drew, Consultant Planner, Lawrence Cross Chapman & Co Ltd, dated 18<sup>th</sup> October 2006 be received; and*
- b) *That in consideration of Section 104, and pursuant to Section 104B, 108 and 220 of the Resource Management Act 1991, the Waipa District Council grants its consent to W Sexton to construct, operate and maintain a packhouse and coolstores at the property located at 153 West Road, Ohaupo, legally described as Lot 1 DPS 34038 SA30A/970), subject to the following conditions:*

**General**

1. That the packhouse and coolstore operation shall proceed in general accordance with the application prepared by Environmental Management Services Ltd, dated July 2006, and further information dated 26<sup>th</sup> July 2006 and plans accompanying the application (WDC reference: LU/0013/06), unless otherwise altered by the consent conditions.

**Review of Consent Conditions**

2. That the Waipa District Council may give notice pursuant to Section 128 (1) of the Resource Management Act (RMA) 1991, in the period of twelve months after the commencement date of this consent and every third year thereafter of its intention to review, at the consent holders expense, the conditions of this consent at the consent for the following purposes:
  - (a) To review the effectiveness of the conditions of this consent in avoiding or mitigating any adverse effects on the environment from the exercise of this resource consent and if necessary to avoid, remedy, or mitigate such effects by way of further or amended conditions; or
  - (b) To address any adverse effect on the environment which has arisen as a result of the exercise of this consent; or
  - (c) 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; or
  - (d) To review the adequacy of and the necessity for monitoring undertaken by the consent holder.

**Noise Generated by On-Site Activity**

3. All activities associated with the packhouse and coolstore shall be conducted and buildings located, designed and used to ensure that noise levels within the boundaries of any site which is zoned Residential or within the notional boundary of any rural dwelling shall not exceed the following limits:

Daytime	7.00am – 8.00pm	50 dBA (L10)
Night Time	8.00am – 7.00pm	40 dBA (L10)

No single event noise level  $L_{max}$  shall exceed 65dBA between 10:00pm and 7:00am.

**Note:** Notional Boundary referred to in condition 3 means a line 20 metres from the external walls of any rural dwelling outside the application site boundary or the legal boundary of the rural dwelling whichever is the closer to the rural dwelling.

4. *The noise levels shall be measured and assessed in accordance with the requirements of NZS 6801:1991 Measurement of Sound and NZS 6802:1991 Assessment of Environment Sound.*
5. *That the noise level from the works authorised by this consent shall comply with and be assessed in accordance with the provisions of New Zealand Standard NZS 6803:1999 "Acoustics – Construction Noise"*

### **Hours of Operation**

6. *That nashi grading and packing activities shall be undertaken during the following hours of operation.*

*Monday to Friday (inclusive) 7.30am to 5.00pm*

**Note:** *For the purpose of this condition transportation, truck movements, picking activities and bin movements are excluded from the restrictions of this condition.*

### **Traffic**

7. *That the maximum number of truck vehicle movements per day shall not exceed 12 (6 ingress and 6 egress).*

**Note:** *For the purpose of this condition a truck shall include a truck and trailer.*

8. *That the maximum volume of produce packed on the site shall be no greater than 1,000 tonnes per annum.*
9. *That the consent holder shall maintain a record of all truck movements, (including times, dates and volume of produce) leaving the site. At the request of the Waipa District Council, the consent holder will submit the recorded figures to demonstrate compliance with conditions 7 and 8 above.*
10. *Prior to commencement of the consent the consent holder shall upgrade the existing vehicle entrances (West Road and Norrish Road) to a Figure 5 Rural Heavy Commercial type, complying with Council's standards as set out in the Code of Practice for Land Development and Subdivision. The work shall be carried out and completed to the satisfaction of the Council's Engineering Manager, and shall be at the consent holder's expense. The following issues shall also be addressed:*

- *The entrance shall be sealed from the edge of the road to the property boundary.*

11. *Prior to the commencement of the consent the proposed access, and other vehicle manoeuvring areas (as demonstrated on the site plan) shall be constructed to a graded, metal standards to the satisfaction of the Council's Engineering Manager at the consent holder's expense.*

**Note:** *Staff carparking areas are excluded from the requirements of this condition.*

12. *The consent holder shall maintain the accessway to a graded, metal standard to the satisfaction of the Council's Engineering Manager at the consent holder's expense.*

13. *Any debris spillage onto West Road or Norrish Road as a result of the packhouse and coolstore operation shall be removed as soon as it is practical to the satisfaction of Waipa District Council.*

#### **Dust**

14. *That as a result of activities authorised by this resource consent, there shall be no discharge of dust to air that causes an objectionable or offensive effect beyond the boundary of that land defined by Lot 1 DP 34038 (SA30A/970).*

#### **Landscaping**

15. *The consent holder shall maintain the existing shelterbelt screening along the sites boundaries with Norrish Road and West Road to a maximum height of six metres. The following shall also be addressed:*

- *If the existing shelterbelt vegetation is ever removed, it shall be replaced as soon as practicable. Replacement trees shall be a fast growing evergreen species and positioned as close as possible to each other, for the specific species; be no less than 1.0m in height at the time of planting.*

#### **Administration and Monitoring Charges**

16. *In accordance with Section 36 of the Resource Management Act 1991 the consent holder shall pay all reasonable costs to the Waipa District Council for carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent.*

#### **Advisory Notes:**

- *Any signage for the site shall comply with Rule 2.4.22 of the operative Waipa District Plan.*
- *The consent holder shall obtain the necessary building consents prior to the commencement of works on site.*
- *In the event that bones or artefacts are discovered in the course of site excavation, the consent holder should cease works in that area and contact the New Zealand Police, New Zealand Historic Places Trust and Iwi to determine the appropriate method of recording and / or removal. Council's Planning Department also need to be advised. It is noted that all sites associated with human activity prior to 1900 have protection under the Historic Places Act 1993, regardless of whether the sites are registered.*
- *All earthworks associated with any subdivision or development of land shall be undertaken in accordance with the following:*
  - a) *Good engineering practice.*
  - b) *Any earthworks be carried out so as to provide sound foundations and avoid any hazard to persons or property.*
  - c) *Any earthworks 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.*
  - d) *The existing landform may 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.*

Reference should be made to the Waipa District Council Code of Practice for Land Development and Subdivision for formation and construction standards.

### **Reasons for Decision**

- (a) The application to construct, operate and maintain a packhouse and coolstore within the Rural Zone is considered by Council to satisfy Section 104 and 104B of the Resource Management Act 1991 in respect of the land use consent.
- (b) The application is not inconsistent with the objectives and policies of the operative Waipa District Plan.
- (c) Condition 1 is required to ensure that the proposed packhouse and coolstore proceeds in accordance with the information provided with the application.
- (d) 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.

- (e) The potential adverse effects of the activity will be able to be avoided, remedied or mitigated by the imposition of conditions 3, 4, 5 and 6. These conditions will ensure that the operative Waipa District Plan noise limits for the Rural Zone are complied with as well as limiting the hours of operation.
- (f) Conditions 7, 8 and 9 have been imposed to limit the size and scale of the processing operations carried out on the subject site. Condition 9 in particular will enable efficient and effective monitoring of conditions 7 and 8.
- (g) Condition 10 has been imposed to upgrade the existing entrances onto West Road and Norrish Road to a Figure 5 Rural Heavy Commercial type. This requirement is not based on the size of the property, but on the use of the property and in particular ensuring that the entrance is suitable to cater for the truck movements to and from the site.
- (h) Condition 11-13 have been imposed to ensure that the access, manoeuvring areas are constructed and maintained, and ensure that any debris on West Road or Norrish Road is removed as soon as practical.
- (i) No requirement for forming carparks has been imposed on the basis that all carparking will be on grassed areas, clear of all manoeuvring areas and will limit any potential dust generation. Additionally the frequency and duration of packhouse activities are such that it does not warrant the forming of carparks.
- (j) Condition 14 will ensure that dust from the site will not cause any level of discomfort to neighbours.
- (k) The proposed packhouse and coolstore has the potential to cause visual effects on the local environment. Condition 15 will ensure that the adverse visual effects of the activity are mitigated by ensuring screening is provided for along the property boundaries, as per the existing shelterbelt.
- (l) A consent notice has not been imposed as it is not considered appropriate on a land use consent. The conditions imposed on this consent are considered to be robust enough to ensure compliance through monitoring and enforcement.
- (m) The resource consent will remain with the property regardless of any changes in ownership. Resource consents are public information, and any Land Information Memorandum for the subject property would include a copy of the resource consent. Any changes in the activities undertaken on the site will require a further resource consent to be obtained.

8.2 11.00am

**Application for Remission of Financial Contributions Levied Pursuant to the Development Contribution Policy and the Local Government Act 12002 (LGA): G & J Allen, 3 Mansfield Street, Cambridge being Lot 17 DPS 1938**  
File: 04471/239.00

**DECISION OF REGULATORY COMMITTEE ON A APPLICATION FOR REMISSION OF FINANCIAL CONTRIBUTIONS LEVIED PURSUANT TO THE DEVELOPMENT CONTRIBUTION POLICY AND THE LOCAL GOVERNMENT ACT 2002**

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**1 THE HEARING**

The hearing held on 30 October 2006 was attended by the following:

<b>Applicant</b>	G & J Allen
<b>Appearing for Applicant</b>	Steve James
<b>Appearing for Council</b>	Terrena Kelly –Senior Planner

**2 RELEVANT POLICY PROVISIONS**

The application for remission was considered pursuant to Section 4.24 of the Development Contributions Policy.

**3 SUMMARY OF THE EVIDENCE HEARD**

Evidence on behalf of the applicant was given by Steve James. Mr James outlined the proposal and discussed why this particular application should be given special consideration due to Mr & Mrs Allen's unique situation, and the respite care provided by Mr & Mrs Allen to members of the community.

Mr James presented a letter from Elizabeth Brady (Clinical Psychologist) supporting the Allen's position.

**4 DISCUSSION OF THE ISSUE:**

The Regulatory Committee have considered the application for remission, the evidence presented at the hearing, the report prepared by the Senior Planner, and the Development Contribution Policy (DCP). The Committee felt that the Allen's provided a valuable service to the Community by providing respite care; and that this community service supported Council's wider objectives (a consideration under Section 4.24.6 of the DCP).

The Committee considered that notwithstanding the above, that the applicant's (or any future owner) should be required to pay the Development Contributions were the site ever to be subdivided.

In order to provide the Allen's the relief sought, and in recognition of their unique circumstances; the Committee considered that it would be appropriate to allow the application for remission in part by cancelling the Development Contribution Notice provided that the applicant enter into a Development Agreement with Council.

Such Development Agreement would allow the deferment of the payment of any Development Contribution to when the site is subdivided. The Development Agreement would be registered against the title, and would require the payment of the full Development Contribution amount at the rate applicable at the time of any future subdivision.

## **8 RESOLVED**

No: 4/06/77

Date: 30/10/06

*That*

- a) *The report of Terrena Kelly, Senior Planner dated 20 September be received;*
- b) *That in consideration of Section 4.24 of the Development Contribution Policy, the Committee allows the application for remission in part by cancelling the Development Contribution Notice DC/0017/2006, provided in all cases that the applicant enters into a Development Agreement with Council under the following terms:*
  - *The Development Agreement shall state that a Development Contribution amount of \$16,790.00 has not been imposed for this development, however that at any time the site is subdivided, the full Development Contribution amount payable at that time shall be paid by the owner of the site;*
  - *The terms of the Development Agreement shall be registered on the Certificate of Title as a memorandum of encumbrance;*
  - *That the Development Agreement shall be prepared by Council's Solicitors at the expense of the applicant.*

## **REASON FOR DECISION**

In terms of Section 4.24.6 of the Development Contribution Policy, the Committee considered that the applicant's situation was unique due to the respite care provided by the applicant's to the Community, and that this contribution to the community supported Council's wider objectives.

However, the Committee considered that the Development Contribution amount should be levied were the site ever to be subdivided, in order to capture the demand on Council services at that time. To facilitate this, the Committee resolved to allow the cancellation of the Development Contribution Notice, on the condition that the applicant enter into a Development Agreement with Council (to be registered on the title of the property) such that were the property ever to be subdivided, the Development Contribution amount payable at that time shall be paid.

**8.3 11.30 am**

**Application to Establish and Operate the Partially Completed  
Karapiro Health Spa, 1002 State Highway 1, Cambridge**  
File: 04660/209.01

**DECISION OF REGULATORY COMMITTEE ON A LIMITED NOTIFIED  
RESOURCE CONSENT APPLICATION TO ESTABLISH AND OPERATE THE  
PARTIALLY COMPLETED KARAPIRO HEALTH SPA IN THE RURAL ZONE  
PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991**

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**1 THE HEARING**

The hearing held on 30 October 2006 was attended by the following:

<b>Applicant</b>	<ul style="list-style-type: none"> <li>• David Blanchett -Beattie Rickman</li> </ul>
<b>Appearing for Applicant</b>	<ul style="list-style-type: none"> <li>• Vanessa Evitt –Buddle Findlay</li> <li>• Tanya Running- Environmental Planner</li> <li>• Chris Davies- Engineer</li> </ul>
<b>Appearing for Council</b>	<ul style="list-style-type: none"> <li>• Terrena Kelly – Senior Planner</li> <li>• Malcolm Brown – Development Engineer</li> </ul>

<b>Submitters in Opposition</b>	None present
<b>Submitters in Support</b>	None present

## **2 SITE VISIT**

The Regulatory Committee did not undertake a site visit as several of the Committee Members had been to the site previously; and photos were presented by the applicant which detailed the site and the surrounding environment adequately.

## **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.

- Part 1, Section 2- Rural Activities
- Part 2, Section 2.4 –Rural Zone Rule

### **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 principle issues that were in contention were visual amenities, precedent effect, reverse sensitivity and productivity/finite resources. These issues were raised by the submitter in opposition (written submission).

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

Evidence on behalf of the applicant was given by:

- Vanessa Evitt – Counsel
- Tanya Running – Environmental Planner

Ms Evitt presented written legal evidence which outlined the history of the site, the activity proposal, the assessment framework, effects on the environment, and policies and objectives in relation to the Resource Management Act 1991.

Ms Running presented written planning evidence which discussed the effects of the activity on the environment, relevant District Plan matters and the statutory framework.

The Committee noted that the submitters in opposition Mr & Mrs McGrath, who on their submission stated that they wished to be heard at the hearing, did not attend the hearing. The McGrath's were telephoned by Council staff prior to commencement of the hearing, and they advised staff that they would not be attending.

## **7 THE MAIN FINDINGS OF FACT:**

The Regulatory Committee have considered the application, the evidence presented at the hearing, the submission enclosed in Appendix 5 of the Council Planner Report, the planning assessment report prepared by the planner, the relevant statutory and planning provisions. 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 application will not be contrary to the Policies and Objectives of the Operative Waipa District Plan, and any adverse effects can be avoided, remedied or mitigated by Conditions imposed.
- The situation is a unique one, in that the application had previously been approved by the Committee, works had commenced on site, and then due to financial circumstances the resource consent lapsed. The site could no longer be considered prime agricultural land, and granting the consent would improve the visual amenities of the area, provided that recommended conditions were imposed.
- The applicant in agreement with all the conditions proposed in the Council Planner's report.

**8 RESOLVED**

No 4/06/78

Date: 30/10/06

That

- a) *The report from Terrena Kelly, Senior Planner dated 25 September 2006 be received; and*
- b) *That in consideration of Section 104, and pursuant to Sections 104B & Section 104D of the Resource Management Act 1991 and the Operative Waipa District Plan the Waipa District Council **approves** the resource consent application by Beattie Rickman (for Balmoral Marketing Limited) in Receivership and Liquidation to establish, operate and maintain the partially completed Karapiro Health Spa at 1002 State Highway One, Karapiro, legally described as Lot 2 DPS 88925 & Lot 3 DPS 88925, subject to the following conditions:-*

**General**

- 1 *That the operation and development of the Health Spa proceed in general accordance with the application and plans, and further information accompanying the application (WDC reference: LU/0016/06), unless otherwise altered by the consent conditions.*

**Noise**

- 2 *That the noise level from all activities on the site shall not exceed the following levels when measured at or within the notional boundary:*

*Day Time (7am to 8pm): 50dBA (L<sub>10</sub>)*

*Night Time (8pm to 7am): 40dBA (L<sub>10</sub>)*

*No single event noise level L<sub>max</sub> shall exceed 65dBA between 10.00pm and 7am.*

*The noise level shall be measured and assessed in accordance with the requirements of New Zealand Standard NZS 6801:1991 "Measurement of Sound" and New Zealand Standard NZS 6802:1991 "Assessment of Environmental Sound" except for the requirements specifically stated in this control.*

*Noise levels shall be measured in accordance with the requirements of clause 5.3.3 of New Zealand Standard NZS 6801: 1991 "Measurement of Sound" and the duration of any measurement period shall not be less than 30 minutes.*

**Note:** For the avoidance of doubt Notional Boundary referred to in condition 2 means a line 20 metres from the external walls of any rural dwelling outside the application site boundary or legal boundary of the rural dwelling whichever is the closer to the rural dwelling.

### **Operation of the Health Spa**

- 3 Occupation and use of the Health Spa by paying customers shall not commence until conditions of this consent (LU/0016/06) 5, 6, 7 and conditions 10 to 14 have been complied with and completed to the satisfaction of Councils Planning Services Manager.
- 4 The consent holder shall ensure that the Health Spa is not permitted to be used as a drug and/or alcohol related centre.

### **Access Roads**

- 5 The consent holder shall construct and/or upgrade to a sealed standard, the existing access and entrance roadways and car parks as shown on the plan provided with the application. The access shall be constructed to the design provided by OPUS International Consultants typical cross sections dated 19/07/04. All work is to be carried out to the satisfaction of the Council's Engineering Manager and shall be at the consent holder's expense.
- 6 Two producer statements from a suitably qualified and appropriately experienced professional shall be submitted to Council.
  - The first producer statement shall cover the construction and/or upgrading of the access and entrance roadway and car parks.
  - The second producer statement shall cover the design and construction of the drainage associated with the access and entrance roadway and car parks.

### **Lighting and Glare**

- 7 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.

### **Outdoor Storage and Waste Disposal**

- 8 That all outdoor storage of material be located within the confines of a screened outdoor storage area, or be removed.

- 9 *That all waste from the operation be stored in suitable containers with appropriate lids and be removed from the site when full.*

**Landscape and Screen Planting**

- 10 *That, prior to the commencement of any construction works on site a detailed landscape, screening and planting plan shall be prepared by a landscape architect or similarly qualified professional and submitted to Council's Planning Services Manager for approval. The purpose of the planting plan is to screen and soften the buildings and activities from adjacent sites.*

*The landscape, screening and planting plan shall identify the areas of the site to be planted. These areas shall be generally consistent with the information submitted with the application, in particularly the draft Landscape Plan by Chow Hill dated 15/07/04. The landscape plan shall in particular address the following matters:*

- a) *The retention of the existing shelterbelt along the Western Boundary of the site, or the provision for the planting of suitable alternative trees for the purpose of screening the development.*
  - b) *Screen planting shall be extended along the entire length of the western boundary to the southern boundary.*
  - c) *Screen planting along the northern boundary of the site for a distance of at least 200m starting from the corner of the north-western boundary towards State Highway One (in a north-easterly direction).*
  - d) *Screen planting along the entire length of the southern boundary.*
  - e) *Provision for plantings along the Eastern Boundary to soften the appearance of the buildings.*
  - f) *Landscaping along the length of the accessway.*
  - g) *The retention of vehicular access to Lot 3 DPS 88925.*
  - h) *Provision for required stormwater retention areas (if required).*
- 11 *The landscape planting required by condition 10 may be undertaken in accordance with a phased planting program. The phased planting program shall be submitted to Council's Planning Services Manager prior to the commencement of construction works on site, and shall include the following matters:*
- a) *Screen planting along the northern boundary shall be undertaken in the first stage.*
  - b) *A time line for each phase of planting.*

*Provided that all planting and landscape works required by condition 9 shall be finished prior to the commencement of the operation of the Health Spa.*

*Note: For the avoidance of doubt, 'operation of the Health Spa' means that the Health Spa is being used by paying customers.*

- 12 *A detailed maintenance plan to support the planting plan shall also be prepared and submitted to the Council's Planning Services Manager prior to the commencement of the consent for approval. The maintenance plan shall include pruning and trimming procedures and shall identify that any plant(s) felled or lost are to be replaced by new plantings within the next planting season.*
- 13 *The landscape plantings shall be maintained and watered in accordance with the approved maintenance plan for the full duration of this consent. Should any shelterbelt/boundary screen planting be felled or lost, they are to be replaced by new plantings within the next planting season.*

### **Stormwater Management**

- 14 *The consent holder shall submit to Councils Development Engineer a Stormwater Management Plan for approval prior to the commencement of construction on site.*

### **Signs**

- 15 *Signage erected on site shall not exceed 1.2m<sup>2</sup> sign area visible in any one direction, with a maximum of 2.4m<sup>2</sup> in total, and shall not be internally illuminated, or contain moving parts.*

### **Easements**

- 16 *The consent holder shall ensure that any easements are secured for the supply of water to the site. Evidence shall be provided within 6 months of the commencement of this consent that suitable easements have been obtained, or are not required to the satisfaction of Councils Planning Services Manager.*

### **Administration and Monitoring Charges**

- 17 *That charges 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.*

### **Review of Consent Conditions**

- 18 *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 transportation, noise, 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 due to the warehousing activities and associated transportation activities; or*
  - (iv) to review the adequacy of and the necessity for monitoring undertaken by the consent holder;*

### **Advisory Notes:**

- An individual survey will be required on each building detailing any required remedial work (i.e. repairs and replacement of materials damaged due to prolonged exposure to the weather). This information must be submitted to Councils Building Control Manager for assessment and approval prior to any work commencing on any of the buildings on site.*
- This consent does not authorise the sale of liquor at the premise under the Sale of Liquor Act. A separate application will be required to apply for a liquor license under the Sale of Liquor Act. Please contact the Environmental Health Officer, Waipa District Council to discuss.*
- The consent holder shall obtain any necessary building consents prior to the commencement of works on site.*
- In the event that bones or artefacts are discovered in the course of site excavation, the consent holder should cease works in that area and contact*

*the New Zealand Police, New Zealand Historic Places Trust and Iwi to determine the appropriate method of recording and / or removal. Council's Planning Department also need to be advised. It is noted that all sites associated with human activity prior to 1900 have protection under the Historic Places Act 1993, regardless of whether the sites are registered.*

### **Reasons for Decision**

- 1 The application to establish, operate and maintain the Karapiro Health Spa is considered by Council to satisfy Section 104B and 104D of the Resource Management Act 1991 in respect of the land use consent.
- 2 The proposal is consistent with the policies and objectives of the Operative Waipa District Plan 1997, and any adverse effects of the activity on the environment are considered to be less than minor.
- 3 Review condition 18 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.
- 4 The potential adverse acoustic effects of the activity will be able to be avoided, remedied or mitigated by the imposition of condition 2. Condition 2 will ensure that the District Plan maximum noise limits for the Rural Zone are complied with.
- 5 The activity has the potential to cause adverse visual effects on the local environment. Conditions 10, 11, 12 and 13 will ensure that the adverse visual effects of the activity in the short and long term are mitigated.

### **9 MYSTERY CREEK EXHIBITION CENTRE ZONE ACTIVITY DAYS – PROPOSED 2007 CALENDAR**

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Environmental Safety Manager and Environmental Health Officer Bryan Faris spoke to the report and advised that they had not received any negative responses.

Mrs McFarlane advised that Council had received letters objecting to the use of fireworks during the Rally and said that as it is not a control through the District Plan, the letters had been passed on to the Mystery Creek Events Centre.

**RESOLVED**

4/06/79

*That*

- a) *The report of the Environmental Safety Manager, Jennie McFarlane dated 11 October 2006 be received.*
- b) *The Regulatory Committee approve the Mystery Creek Exhibition Centre Zone Activity Day Calendar 2007.*
- c) *The Regulatory Committee extend the hours of operation until 5.30pm on 27<sup>th</sup> and 28<sup>th</sup> of January 2007.*

Mayor Livingston/Cr Webber

**10 RECONVENE PLAN CHANGE 45: BOND ROAD**

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**This item was adjourned until the Regulatory Committee meeting on 27 November 2006.**

**There being no further business the meeting closed at 3.00pm**

**CONFIRMED AS A TRUE AND CORRECT RECORD**

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

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