

*Minutes of a meeting the Regulatory Committee held on Monday 14 July 2008 in the Council Chambers, 101 Bank Street, Te Awamutu commencing at 9.00am*

**1 PRESENT**

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Councillor D Sharpe, Chairperson

**Committee**

EC Newlands, BJ Taranaki, GRP Webber, GH Jull

**Others**

Planning Officer, A McLellan; Committee Secretary, S King

**2 APOLOGIES**

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**RESOLVED**

4/08/50

*That the apology from His Worship the Mayor A Livingston, be received.*

Cr Webber / Cr Taranaki

**3 LATE ITEMS**

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There were no late items.

**4 CONFIRMATION OF ORDER OF MEETING**

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File: 01-89-04

**RESOLVED**

4/08/51

*That the order of the meeting be confirmed.*

Cr Taranaki / Cr Webber

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

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**RESOLVED**

4/08/52

*That PURSUANT to Section 34 and Section 34A of the Resource Management Act the Regulatory Committee in exercise of the functions powers and duties delegated to it by the District Council **DOES HEREBY APPOINT** Councillor GH Jull to be a Hearing Commissioner to sit with the Regulatory Committee to hear Application to Establish and Operate a Childcare Centre in the Residential Zone (Cambridge Residential Character Area), 36 Hall Street, Cambridge.*

Cr Taranaki / Cr Webber

**6 APPLICATION TO ESTABLISH AND OPERATE A CHILDCARE CENTRE IN THE RESIDENTIAL ZONE (CAMBRIDGE RESIDENTIAL CHARACTER AREA), 36 HALL STREET, CAMBRIDGE**

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Consent: LU/0269/07	<b>PUBLICLY NOTIFIED CONSENT TO ESTABLISH AND OPERATE A CHILDCARE CENTRE FOR 50 CHILDREN.</b>
File No: 04351/540.00	
Date: 14 <sup>th</sup> July 2008	

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**1 THE HEARING**

The hearing was held on the 14<sup>th</sup> July 2008 and was attended by the following:

<b>Applicant</b>	36 Hall Limited
<b>Appearing for Applicant</b>	Robert Scott – Planner for Blakey Scott Planning Limited Bryce Hall – Traffic Planning Consultants Limited Joe McCambridge – Project Architect – MC <sup>2</sup> Architects Limited Nev Grgicevich – Representative for 36 Hall Street Limited
<b>Submitters Appearing in Opposition</b>	R D Clark of Cooney Law on behalf of Anne & Christopher Curtis and Jason & Gillian Trower. Anne Curtis Jason Trower Allan Gould Philip Caldwell Alastair Martin
<b>Appearing for Council</b>	Anna McLellan – Planner

**2 SITE VISIT**

The Regulatory Committee undertook a site visit on 14<sup>th</sup> July 2008 to familiarise themselves with the site and surrounding area.

**3 THE RELEVANT STATUTORY PROVISIONS**

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

It was assessed as a **non-complying** activity and thus was considered in accordance with sections 104, 104B, 104D and Part 2 of the RMA.

#### **4 OTHER RELEVANT PROVISIONS CONSIDERED**

The application was considered under the following relevant provisions.

##### **4.1 Operative Waipa District Plan**

The following provisions in the Operative Waipa District Plan were considered in the assessment of the application:

- Section 3.0 - Residential Zone Rules;
- Objective RS1, Policies RS1, RS3, RS4, RS5, RS13, RS14, RS78, RS30, Objectives TR1, TR4, Policies TR3 TR6, Objective NS1, NS2 & Policies NS1 & NS2;
- The following assessment criteria:
  - Rule 3.6.3 - Reduction of Separation Distance from Internal Site Boundaries
  - Rule 3.6.4 - Variation in Parking Requirements
  - Rule 3.6.9 - Sale or Hire of Goods and Services

##### **4.2 Other Legislation**

No other legislation was applicable in the assessment of this application.

##### **4.3 Other Policy Statements**

No provisions in any National Policy Statement, New Zealand Coastal Policy Statement, Waikato Regional Policy Statement or Proposed Regional Policy Statement were applicable to the assessment of this application.

#### **5 THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:**

The principal issues that were in contention were:

- The potential traffic effects of the activity on the safety and functioning of Hall Street and nearby State Highway One;
- The number of traffic movements to and from a residential site;
- Failure to provide all required carparking onsite;
- Appearance of the development and potential effects of the activity on visual amenity of Hall Street;
- Potential noise effects;
- Failure to comply with multiple aspects of Rule 3.4.31 – Residential Character; including landscaping requirements and vehicle access width; and
- The location of a commercial activity within Hall Street and the Cambridge Residential Character Area.

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

**Evidence on behalf of the applicant was presented by Mr Robert Scott (Blakey Scott Planning Limited) and Mr Bryce Hall (Traffic Planning Consultants Limited). Mr McCambridge and Mr Grgicevich were in attendance.**

### **Mr Robert Scott**

Mr Scott introduced Nev Grgicevich (on behalf of 36 Hall Street Limited). Mr Scott presented a revised proposal including a reduction in children numbers from 50 to 40, and read his Statement of Evidence.

Overall Mr Scott concluded that this proposal is a suitable use of the site within the Cambridge Residential Character Area and within the context of Hall Street. He stated that the proposal had been significantly reduced in scale and designed to be more sympathetic with the surrounding Cambridge Residential Character Zone.

The Committee questioned Mr Scott and Mr Grgicevich on matters relating to the layout of the building, parking demand for this type of activity and whether any other sites in Cambridge were considered for this activity.

### **Mr Bryce Hall**

Mr Hall presented his Statement of Evidence. He described the existing traffic environment and traffic related aspects of the proposal. Mr Hall concluded overall traffic and parking effects of the proposal could be accommodated on the surrounding roading network without compromising its function, capacity or safety.

The Committee questioned Mr Hall on peak traffic times, pick up and drop off times and the proposed off-street parking.

**Evidence was presented by R Clark on behalf of Anne & Christopher Curtis and Jason & Gillian Trower, Anne Curtis, Jason Trower, Allan Gould, Phillip Cauldwell and Alastair Martin in opposition to the proposal.**

### **Mr Clark of Cooney Law on behalf of Mr & Mrs Curtis and Mr & Mrs Trower**

Mr Clark presented a legal submission in opposition to the proposed childcare centre. Overall Mr Clark concluded that the activity does not satisfy either limb of Section 104D of the Resource Management Act 1991.

### **Mrs Curtis**

Mrs Curtis presented her Statement of Evidence. She commented on the high amenity values of Hall Street, surrounding Cambridge Residential Character Area and potential traffic and noise issues associated with the application.

**Mr Trower**

Mr Trower advised that he was in full support of Mrs Curtis' statements. Mr Trower commented on traffic and noise issues.

Mr Trower presented an email from Mark and Christina Rushworth (submitters in opposition). Mr and Mrs Rushworth stated via email that the revised proposal failed to address their concerns regarding commercial development in a Residential Zone.

**Mr Gould**

Mr Gould outlined his reasons for choosing Hall Street as his place of residence and agreed with Mr Trower's opinion that actively discouraging children to reduce noise would not be effective.

**Mr Caldwell**

Mr Caldwell stated that he purchased properties in Hall Street because of the character of the street, he did not agree with the applicant's statement that the proposed building could not easily be converted into a residential dwelling if the childcare venture should fail.

**Mr Martin**

Mr Martin stated that he fully supported the comments made by Mr Trower and Mrs Curtis and wished to make no further comment.

**Evidence on behalf of Council was provided by Ms Anna McLellan (Council's Planner).**

**Ms Anna McLellan**

Ms McLellan provided a review of the amended proposal against the relevant rules of the District Plan. Ms McLellan also identified that the carparking width had been reduced in order to provide additional landscaping along the internal boundaries adjoining the carpark. She stated that the activity may now fail to comply with Rule 3.4.14 - Manoeuvring Space.

Ms McLellan commented on the actual and potential effects of the activity and the relevant objectives and policies under the District Plan in light of the amendments presented by Mr Scott.

Ms McLellan highlighted key issues for the Committee to consider when determining whether to grant this application. In particular, she commented that consideration should be given to whether the activity will enhance and maintain amenity values of Hall Street and the Cambridge Residential Character Area and whether the site is of a suitable size to accommodate the proposed activity.

### **Mr Scott's Right of Reply**

Mr Scott stated that the applicant (Mr Grgicevich) is not a developer and has operated a child care centre that has been in business for 32 years. Mr Scott stated that childcare centres are allowed in the Residential Zone subject to compliance with relevant zone rules. Mr Scott considered that non-compliance with the 4m landscaping strip requirement due to an outdoor play area situated at the rear of the building was minor. He stated that traffic effects that had been highlighted by local residents in their submissions was contrary to expert evidence. He noted that this evidence was the only scientific, independent analysis provided on the issue. Mr Scott commented that onsite manoeuvring was sufficient. Overall Mr Scott stated that the proposal exceeds many development controls of the District Plan and would therefore enhance amenity values.

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

The Regulatory Committee have considered the application, evidence heard at the hearing, the report prepared by Council's Planner, relevant statutory and planning provisions, the principal issues that were in contention and have visited the site. The main findings of fact determined by the Regulatory Committee, has led to the following decision and reasons for that decision are as follows:

- Renotification of the amended application presented at the hearing was not required given the nature of the activity had not changed and non-complying aspects with the District Plan were minimised.
- There are no specific criteria for building design and appearance in Residential Zone (Cambridge Residential Character Area). The character house currently located on the site could be removed and two dwellinghouses of a modern design could be erected on the site as a permitted activity.
- The proposal fails to comply with key rules (Rule 3.4.31 – Residential Character and Rule 3.4.9 – Vehicle Parking) which seek to preserve amenity values of the Residential Zone, including provision of a four metre landscaping strip along all internal boundaries, a vehicle entrance wider than the permitted 3m and the maximum number of off-street carparks (four in this instance). These non-complying aspects of the proposal will adversely affect amenity values in the surrounding Cambridge Residential Character Area. Therefore the activity is considered contrary to key objectives and policies that seek to preserve this high level of amenity (Policies RS1, RS3, RS4, RS5, RS14 and Objective RS1).
- That the effects on efficiency and functioning of surrounding roading network will be no more than minor as confirmed by the expert evidence presented by Mr Hall. However, on-street carparking for a commercial activity is not a

desirable outcome in the Residential Zone and is not supported by Policy TR6 of the District Plan.

- The erection of an acoustic fence will ensure that the District Plan noise provisions for the Residential Zone are complied with.
- While the proposal meets the site area requirement for a childcare activity under Rule 3.4.1 – Minimum Site Areas, the activity as a whole cannot be accommodated onsite in a complying manner, including provision of landscaping setbacks required under Rule 3.4.31 - Residential Character and provision of all required carparking onsite. This indicates that the site is not of a suitable size to accommodate an activity of this scale and size and would be better suited to larger site or a site in a less restrictive zone.
- The proposed activity is considered to fail both limbs of Section 104D of the Resource Management Act 1991 which sets out restrictions for non-complying activities.
- The Committee have considered the activity as a whole and are of the opinion that the activity will not achieve the purpose of the Resource Management Act 1991 which is to promote the sustainable management of natural and physical resources.

## **8 RESOLVED**

4/08/53

*That:*

- a) The report of A McLellan, Planner for the Waipa District Council, dated 6<sup>th</sup> June 2008 be received;*
- b) That the late submission by R Greensheilds be dismissed and Council uphold compliance with the time limit for submissions, pursuant to Sections 37, 37A and 97 of the Resource Management Act 1991; and,*

Cr Newlands / Cr Webber

- c) In consideration of Section 104, and pursuant to Sections 104, 104B & 104D of the Resource Management Act 1991, the Waipa District Council declines consent to 36 Hall Street Limited to establish and operate a childcare centre for 40 children at the property located at 36 Hall Street, Cambridge, legally described as Lot 1 DPS 2604.*

Cr Taranaki / Cr Sharpe

## **Reasons for the Decision**

- a) The proposed childcare centre fails to meet the two part test under Section 104(D) of the Resource Management Act 1991 as actual and potential effects arising from the activity will be more than minor, in particular effects on residential amenity values within the Cambridge Residential Character Area,

and the activity will be contrary to objectives and policies of the Operative Waipa District Plan.

- b) The proposal fails to comply with key rules (Rule 3.4.31 – Residential Character and Rule 3.4.9 – Vehicle Parking) which seek to preserve the amenity values of the Residential Zone, including the provision of a four metre landscaping strip along all internal boundaries a vehicle entrance wider than the permitted 3m and maximum number of off street carparks (four in this instance). The effects of these non-complying aspects of the proposal will adversely affect the high residential amenity values of Hall Street and the surrounding Cambridge Residential Character Zone which have been identified in the objectives and policies of the District Plan as being worthy of protection. Therefore the activity is considered contrary to key objectives and policies that seek to preserve a high level of amenity (Policies RS1, RS3, RS4, RS5, RS14 and Objective RS1).
- c) The proposed activity is contrary to Part 2 of the Resource Management Act 1991. The proposal will not achieve the purpose of the Resource Management Act 1991 under Section 5 which is to achieve sustainable management of natural and physical resources. Section 7 sets out other matters that a consent authority must consider. The proposed childcare centre is contrary to Section 7; in particular the proposal is not an efficient use of resources and will not maintain amenity values of the surrounding area.
- d) Granting consent for an activity which does not comply with relevant rules, including Rule 3.4.31 – Residential Character, and for which there are no unique or special circumstances, conflicts with policies that the rules are to implement and could impair public confidence in the consistent administration of the Operative Waipa District Plan.
- e) The multiple transgressions with Residential Zone Rules of the Operative Waipa District Plan indicate that the site is not a suitable size to accommodate the proposed activity.

There being no further business the meeting closed at 2.12pm.

**CONFIRMED AS A TRUE AND CORRECT RECORD**

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

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