

**REGULATORY COMMITTEE
MINUTES
29 OCTOBER 2008**

Minutes of a meeting of the Regulatory Committee held in the Council Chambers, Waipa District Council offices, 101 Bank Street, Te Awamutu on 29 October 2008 commencing at 10.04am.

1 PRESENT

Councillor D Sharpe, Chairperson

Committee

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

Public

Three

Others

Planning Services Manager, W Allan; Planning Officer, J McLellan; Planner, R Steenstra; Project Manager – Heritage Development & Reserves Planning, T Roxburgh; Committee Secretary, S King.

2 APOLOGIES

RESOLVED

4/08/77

That the apologies for non attendance from His Worship the Mayor and Councillor Newlands be received.

Cr Taranaki / Cr Hoverd

3 LATE ITEMS

There were no late items.

4 CONFIRMATION OF ORDER OF MEETING

File: 01-89-04

RESOLVED

4/08/78

That the order of the meeting be confirmed, subject to Items 8 & 10 being taken before Item 5.

Cr Newlands / Cr Taranaki

5 CONFIRMATION OF PREVIOUS MEETINGS

File: 01-89-04

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5.1 Ordinary Meeting of Regulatory Committee held on 29 September 2008

RESOLVED

4/08/79

That the Minutes of the Regulatory Committee held on 29 September 2008, be received.

Cr Taranaki / Cr Newlands

5.2 Decision of Hearings Commissioners - Proposed Plan Change Number 57

RESOLVED

4/08/80

That the Decision of Hearings Commissioners - Proposed Plan Change Number 57, be received.

Cr Taranaki / Cr Newlands

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

4/08/81

That the monthly schedule of Liquor License Applications Considered by Staff Under Delegated Authority for September 2008 be received.

Cr Taranaki / Cr Newlands

7 GENERAL

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

File: 01-52-01

RESOLVED

4/08/82

That the schedule of Matters Considered by Staff Under Delegated Authority for September 2008, be received, a copy of which is attached to and forms part of these minutes.

Cr Newlands / Cr Taranaki

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

RESOLVED

4/08/83

- a) *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 LWE Hoverd to be a Hearing Commissioner to sit with the Regulatory Committee to hear the following hearings:*

1. *Hearing 10.2*
2. *Hearing 10.3*

- b) *That Councillor Newlands assume the Chairperson's role for Hearing 10.3 due to the non attendance of Chairperson Sharpe.*

Cr Newlands / Cr Taranaki

RESOLVED

4/08/84

That an independent Hearings Commissioner from Environment Waikato and three Councillors from the following (Jull, Newlands, Sharpe, Webber) hear the Highgate Application.

Cr Taranaki / Cr Newlands

9 ENVIRONMENTAL COURT APPEALS & ENFORCEMENT PROCEEDINGS

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

RESOLVED

4/08/85

That the information be received.

Cr Taranaki / Cr Newlands

10 HEARINGS

10.1 Hearing Deferred.

**SECTION 357 OBJECTION TO RESOURCE CONSENT PROCESSING
CHARGES LEVIED PURSUANT TO SECTION 36 OF THE RESOURCE
MANAGEMENT ACT 1991**

Applicant

N Kumarich (36 Hall Street Limited)

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This hearing was deferred.

10.2 10.15am to 11.15am

**APPLICATION TO SUBDIVIDE TWO RURAL LOTS INTO THREE
BY WAY OF LANDUSE CONSENT LOT AND BOUNDARY
RELOCATION**

**DECISION OF REGULATORY COMMITTEE ON A LIMITED NOTIFIED
RESOURCE CONSENT APPLICATION TO SUBDIVIDE TWO RURAL LOTS INTO
THREE BY WAY OF A LANDUSE CONSENT LOT AND BOUNDARY
RELOCATION IN THE RURAL ZONE PURSUANT TO SECTION 113 OF THE
RESOURCE MANAGEMENT ACT 1991**

1 THE HEARING

The hearing held on 29th October 2008 was attended by the following:

Applicant	<i>HM & DJ Varcoe</i>
Appearing for Applicant	<i>Andrew McFarlane – Bloxam Burnett and Olliver</i>
Appearing for Council	<i>Rebecca Steenstra (Planner)</i>
Submitters in Opposition	<i>Nick Dinan - Perry Aggregates Limited Michael Lord - Perry Resources</i>

2 SITE VISIT

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

3 THE RELEVANT STATUTORY PROVISIONS

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

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

4 OTHER RELEVANT PROVISIONS CONSIDERED

4.1 Operative Waipa District Plan

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The following provisions in the Operative Waipa District Plan (District Plan) were considered in the assessment of the application.

- Rule 2.4.2 Protection of Prime Agricultural Land – where any land not associated with residential or lawfully established land is considered to be a non-compliance with this rule. This is considered to be a **discretionary activity**.
- Rule 2.4.6(g) Number of Dwellings on a Site – where no dwelling shall be constructed closer than 500m to a site used for mineral extraction. This is considered to be a **discretionary activity**.
- Rule 10.6.1.1(d) Boundary Relocation - the subdivision is located within 500m from the boundary of a site used for mineral extraction. This is considered to be a **non-complying activity**.

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 of contention were the reverse sensitivity effect imposed on the sand mining operation, as a result of the additional rural-residential sized allotment. It was confirmed that the quarry was a sand mining operation (no sand processing on the site) which has a lesser intensity than that expected in most other quarries.

It was determined that a 'no complaints covenant' could be something that is registered against a title if the two parties agree (Perry Aggregates Limited and Mr and Mrs Varcoe), however Council would in no way be a party to it. A consent notice has been imposed in the conditions ensuring that any future purchasers are aware that the property is located within 500 metres of a site used for mineral extraction. That consent notice also has other requirements to reduce the adverse effects associated with the quarry, which will need to be instigated when a dwelling is built upon the new lots.

6 SUMMARY OF THE EVIDENCE HEARD

Evidence on behalf of the applicant was given by:

Evidence on behalf of the applicant was given by Mr Andrew McFarlane, from Bloxam Burnett and Olliver Limited. Mr McFarlane first gave the applicants, Mr David and Mrs Ree Varcoe, and opportunity to speak to their application and

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explain some background issues relating to their land. Mr Varcoe stated that they had purchased the land, as well as the existing nursery, in August 2002. He stated that a resource consent was applied for and granted in July 2007 for the existing nursery, on the understanding that a landuse consent lot could be obtained at a later date. Following this neighbours made Mr and Mrs Varcoe aware that the sale of their property had fallen through as a result of the 'no complaints covenant' registered on the title. Mr Varcoe then stated that several meetings took place between the Kaipaki Road neighbourhood and Perry Aggregates Limited, in which the 'no complaints covenant' was discussed. He stated that he had several further lengthy discussions through his solicitor to come to some arrangement with Perry Aggregates Limited, however Mr and Mrs Varcoe were uncomfortable with signing a document relating to 'future' or 'additional' consents.

Mr McFarlane then stated what the application was for and how they qualified for the lots. He also stated that he agreed with Council's Planner, Miss Rebecca Steenstra, in that the activity was Non Complying. He also stated that the activity was in accordance with the objectives and policies and in particular Policy SU16A regarding the subdivision of a site within 500 metres of a site used for mineral extraction. Mr McFarlane also stated that he agreed with Miss Steenstra, that given the nature and scale of the sand wining operation, one additional rural residential sized allotment is unlikely to compromise or limit the existing extraction operations. It was noted that the resource consent granted for the quarry was processed as a limited notified application, in which no submissions were received. He stated that the adverse effects associated with the application included character and visual amenity, increased traffic movements, loss of productive land and reverse sensitivity in association with the quarry. Mr McFarlane confirmed that the adverse effects were no more than minor and that the application was in accordance with Part II of the Resource Management Act 1991. He concurred with the conditions recommended by Council's Planner, and did not propose any amendments.

Evidence on behalf of the submitters was given by:

Mr Nick Dinan and Mr Michael Lord, from Perry Aggregates Limited (Perry's), spoke to their submission. Mr Lord stated that they don't disagree with the subdivision, but rather that they are protecting their commercial rights to undertake sand wining operations in the future. He stated that the quarry held a landuse consent to extract the sand, and that needed to be acknowledged for the entire ten year duration of the consent. Mr Lord stated that everyday residential living would be affected by the noise, vibration and dust generated from the quarry.

Mr Dinan and Mr Lord both confirmed that the intensity associated with the sand wining operations, which have not yet started, are anticipated to be greater than that which has been undertaken at the same site in the past. Mr Lord used the example of Valley Sands and how they are not able to extend the

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quarry as the matter had been taken to the Environment Court. Mr Lord stated that the sand wining operations at Kaipaki Road would be completed in the next six to seven years.

When questioned about the intent of the 'no complaints covenant' by Councillor Diane Sharpe, Mr Lord confirmed that it would be worded to include the current consent that the quarry holds as well as any other consent required to undertake the current sand wining operations. He later stated that the scale, intensity and nature of the sand wining operations will remain the same.

Evidence on Behalf of the Waipa District Council:

Evidence on behalf of the Waipa District Council was given by Council's Planner, Rebecca Steenstra. She stated that they application was to be undertaken pursuant to the landuse consent lot and boundary relocation provisions within the District Plan. She also stated that the application was considered as a Non-Complying Activity, as it was within 500 metres of a site used for mineral extraction. Miss Steenstra said that the application was processed as a limited notified application as the approval of Perry Aggregates Limited could not be obtained. One submission was received. She confirmed that the application complied with the objectives and policies of the operative Waipa District Plan and that it had adverse effects no more than minor. She then confirmed that the application could pass the threshold test within section 104D of the Resource Management Act 1991, therefore could be granted. Miss Steenstra stated that the application should be approved for the reasons stated in the planner's report.

7 THE MAIN FINDINGS OF FACT:

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.

- Council does not accept that an emissions easement, no complaints or reverse sensitivity land covenant can be imposed on the consent holder, as requested by Perry Aggregates Limited in their submission. Such a document needs to be agreed upon between the two parties, exclusive of Council;
- The quarry in close proximity to the subject property is a sand wining operation, with no processing on site, which is considered to have less effects in comparison to other types of quarries;

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- The effects on the environment have been assessed fully within the Council's planner's report. That concluded that the adverse effects, in particular reverse sensitivity and rural amenity, are considered to be no more than minor;
- The activity is considered to be able to pass the threshold test included within section 104D of the Resource Management Act 1991 whereby the proposed activity must have adverse effects no more than minor or that it must not be contrary to the objectives and policies of the operative Waipa District Plan. This application can meet the objectives and policies and the adverse effects are considered to be no more than minor;
- A condition is required to be registered to ensure that any future dwellings on the site have appropriate mitigation measures to avoid adverse effects from the quarry including noise, vibration and dust.

8 RESOLVED

No 4/08/86

Date 05/11/08

That

- a) The report from Rebecca Steenstra, Planner for the Waipa District Council, dated the 8th October 2008 be received; and*
- b) That in consideration of Section 104, and pursuant to Sections 104B, 104D and 108 of the Resource Management Act 1991 and the Operative Waipa District Plan the Waipa District Council grants landuse and subdivision consent to David and Helen Varcoe to:-*
 - *construct one dwelling within each Lot 1 and Lot 2, within 500 metres of a site used for mineral extraction ; and*
 - *subdivide pursuant to Rule 10.6.1.4(g) – Land Use Consent Lots and Rule 10.6.1.1(d) - General Standards of Allotments (boundary relocation);*

at the property located at 277 and 283 Kaipaki Road, legally described as Lot 1 DP 329389 and Lot 2 DP329389, as shown on the plan of subdivision SP/0173/08 subject to the following conditions; and
- c) That Council signs a certificate pursuant to Sections 243(e) of the Resource Management Act 1991 cancelling easement instrument 6070150.3.*

Cr Taranaki / Cr Newlands

General

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1. That the Land Transfer Plan to give effect to this subdivision consent must be generally consistent with the approved plan prepared by Bloxam Burnett and Olliver reference 1400 dated 10th July 2008 submitted with application SP/0173/08, unless otherwise altered by the consent conditions. A copy of the approved plan is attached.

Power

2. The consent holder must arrange with a local network electricity operator for the reticulation of electricity to serve all lots and pay all costs attributable to such work. The consent holder must submit to the Council written confirmation from the local network operator that satisfactory arrangements have been made for the reticulation of the service to all lots in the subdivision. This is to include if necessary the resiting, repositioning or removal of any electric power lines which exist on the land being subdivided.

Where electric power lines are crossing the boundary of any lots registered easements must be created for such services.

Telephone

3. The consent holder must arrange with a telephone company for the reticulation of telephone cables to serve all lots and pay all costs attributable to such work. The consent holder must submit to the Council written confirmation from the telephone company that satisfactory arrangements have been made for the reticulation of the service to all lots in the subdivision. This is to include if necessary the resiting, repositioning or removal of any telephone cables which exist on the land being subdivided.

Where telephone cables serving any lot are required to cross the boundary of any other lot or lots registered easements must be created for such services.

Vehicle Entrances

4. That the consent holder must construct a figure 3 type rural-residential vehicle entrance to Lot 1 and Lot 2. The entrances are to be constructed as a double width vehicle entrance and be located at the common boundary of Lot 1 and Lot 2. The entrance is to be constructed to Council's standards as set out in the Code of Practice for Land Development and Subdivision. All work is to be completed to the satisfaction of Council's Engineering Manager and must be at the consent holder's expense. The following issues must be addressed:
 - The entrance must be sealed from the edge of the road to the property boundary.

5. That the consent holder must upgrade as required the existing vehicle entrance to Lot 3 to a figure 4 medium commercial rural vehicle entrance complying with Council's standards as set out in the Code of Practice for Land Development and Subdivision. All work is to be completed to the satisfaction of Council's Engineering Manager and must be at the consent holder's expense. The following issues must be addressed:
 - The entrance must be sealed from the edge of the road to the property boundary.
6. The existing entrance to Lot 1 must be permanently closed to vehicular traffic. The existing entrance shall be permanently fenced and the drainage shall be reinstated at the consent holder's expense to the satisfaction of Council's Engineering Manager.

Consent Notice

7. That for subsequent development of Lot 1 and Lot 2 an effluent disposal system must be designed, installed and continually maintained to the satisfaction of Council's Building Control Manager.

Reason: The site contains soft soils.

This being a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners, before the deposit of the survey plan the Council must issue a consent notice pursuant to Section 221 of the Resource Management Act 1991 specifying the above conditions.

Such consent notice must be either prepared or checked at the cost of the subdividing owner by the Council's solicitors and must be registered against the titles to Lot 1 and Lot 2.

8. That for subsequent development of Lot 1 and Lot 2 a suitably qualified and experienced Geotechnical Engineer will be required to inspect the site and submit to Council for approval, at the time of building consent, design details on the foundations of the buildings.

Reason: The site contains soft soils.

This being a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners, before the deposit of the survey plan the Council must issue a consent notice pursuant to Section 221 of the Resource Management Act 1991 specifying the above conditions.

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Such consent notice must be either prepared or checked at the cost of the subdividing owner by the Council's solicitors and must be registered against the titles to Lot 1 and Lot 2.

9. Lot 1 and Lot 2 are wholly located within 500 metres of a site used for mineral extraction. To mitigate adverse effects associated with the mineral extraction site, any future dwellings located within Lot 1 or Lot 2 are to be appropriately acoustically treated to the satisfaction of Council's Environmental Health Officer, at the property owner's expense. The acoustic treatment must be undertaken no later than six (6) months after the issue of building consent, or before a Code of Compliance Certificate is issued, whichever ever occurs earlier. The acoustic treatment must include the following:-

- Double glazing or minimum 6mm glass on all windows and doors; and
- 9.5mm gib board internal lining and ceiling; and
- An acoustic fence must be designed by a suitably qualified and experienced acoustic engineer and approved by Councils Regulatory Engineer, and constructed along the eastern and southern sides of all outdoor living areas associated with any dwellings located on the site;

OR

An earth bund is to be designed by a suitably qualified and experienced engineer approved by Councils Regulatory Engineer, and constructed along the eastern and southern sides of all outdoor living areas associated with any dwellings located on the site. The earth is to be compacted and planted in either grass or dense vegetation, and be designed with a batter slope of no more than one in four.

This being a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners, before the deposit of the survey plan the Council must issue a consent notice pursuant to Section 221 of the Resource Management Act 1991 specifying the above conditions.

Such consent notice must be either prepared or checked at the cost of the subdividing owner by the Council's solicitors and must be registered against the titles to Lot 1 and Lot 2.

Water Supply

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10. The consent holder must arrange for Council to change the flow of the water restrictor to Lot 3. The consent holder must meet all costs incurred.
11. The consent holder must submit to Council written and signed confirmation that, either, there are no water supply pipelines crossing boundaries between lots or, that all pipelines, that do exist, have been severed on a permanent basis to the satisfaction of the Council's Engineering Manager.

Reasons for Decision

- a. *The quarry in close proximity to the subject property is a sand wining operation (with no onsite processing) which is considered to have less effects in comparison to other types of quarries.*
- b. *The effects on the environment have been assessed fully within the Council's planner's report. That concluded that the adverse effects, in particular reverse sensitivity and rural amenity, are considered to be no more than minor.*
- c. *Pursuant to section 94 of the Resource Management Act 1991 the application was processed on a limited notified basis as written approval was not able be obtained from the quarry operator (Perry Aggregates Ltd) as the single affected party.*
- d. *The activity is considered to be able to pass the threshold test included within section 104D of the Resource Management Act 1991 whereby the proposed activity must have adverse effects no more than minor or that it must not be contrary to the objectives and policies of the operative Waipa District Plan. This application can meet the objectives and policies and the adverse effects are considered to be no more than minor.*
- e. *Condition 7 and 8 require consent notices regarding the effluent disposal systems and geotechnical foundations, as the site contains soft soils.*
- f. *Condition 9 requires a consent notice to be registered to ensure that any future dwellings on the site have appropriate mitigation measures to avoid adverse effects from the quarry including noise, vibration and dust.*
- g. *Council does not accept that an emissions easement, no complaints or reverse sensitivity land covenant can be imposed on the consent holder, as requested by Perry Aggregates Limited in their submission. Such a document needs to be agreed upon between the two parties, exclusive of Council.*

Advisory notes

Building Consent

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

Earthworks

- All earthworks associated with any subdivision or development of land must be undertaken in accordance with the following matters :
 - a) All earthworks must be carried out so as to provide sound foundations as required under NZS 4431:1989 and avoid any hazard to persons or property;
 - b) All earthworks must 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
 - c) The existing landform must 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
 - d) All earthworks must be carried out in accordance with the Waipa District Council Code of Practice for Land Development and Subdivision for formation and construction standards.

Discovery of Archaeological or Culturally Significant Finds

- Where during earthworks, any archaeological features, artefact or human remains are accidentally uncovered or are suspected to have been discovered, the following protocol must apply:
 - (i) All works within the vicinity must cease immediately.

In cases other than suspected human remains:

- (ii) The contractor must immediately secure the area and advise the NZ Historic Places Trust of the occurrence.
- (iii) The consent holder must consult with a representative of the relevant iwi authority and the NZ Historic Places Trust to determine what further actions are appropriate to safeguard the site or its contents.

Where human remains are suspected:

- (iv) The contractor must take steps immediately to secure the area in a way that ensures human remains are not further disturbed.

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- (v) The consent holder must notify the NZ Police of the suspected human remains as soon as is practicably possible after the remains have been disturbed. The consent holder must notify the relevant iwi authority and the NZ Historic Places Trust within 12 hours of the suspected human remains being disturbed or otherwise as soon as practicably possible.
- (vi) Excavation of the site must not resume until the NZ Police, NZ Historic Places Trust and relevant Kaumatua have each given the necessary approvals for excavation to proceed.

Councillor Sharpe left the meeting at 11.21am and Councillor Newlands took the chair as resolved previously.

10.3 11.23am to 12.11pm

Application to Subdivide (EPL & Boundary Relocation)

DECISION OF REGULATORY COMMITTEE ON A RESOURCE CONSENT APPLICATION TO SUBDIVIDE (ENVIRONMENTAL PROTECTION LOT (EPL) & BOUNDARY RELOCATION) IN THE RURAL ZONE PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991

1 THE HEARING

The hearing held on 29 October 2008 was attended by the following:

Applicant	Rudolf Oettli
Appearing for Applicant	Michèle Schitko – CKL Surveying & Planning (Auckland) Gerry Kessels – Kessels & Associates Ltd
Appearing for Council	Jaime McLellan – Planner Tony Roxburgh - Project Manager: Heritage Development and Reserves Planning

2 SITE VISIT

Councillor Hoverd undertook a site visit on 29 October to consider the environmental effects of the proposal. Councillors Taranaki and Newlands were familiar with the site and did not undertake a site visit.

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 provisions:

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:

- Section 10.0 - Subdivision Rules,
- Subdivision Objectives: SU2, SU3 Subdivision Policies; SU2B, SU3, SU6, SU7, SU15A, SU16,
- Residential Policies; RS70,
- Rural Policies; RU5, RU22, RU37, RU37, RU38
- Heritage Policies; HG4.

4.2 OTHER LEGISLATION

The provisions of the Local Government Act 2002 are applicable to this proposal and have been considered in the assessment of the application. In particular, Section 197-212 have been considered imposing development contribution levies to off-set the increase in demand for; roading and transport, reserves, and community infrastructure.

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:

- Value of the indigenous bush stands to the community,
- Benefit of an ecological corridor between bush stands marked "A" & "B"; and,

- Suitability of the proposed lots for future potential development.

6 SUMMARY OF THE EVIDENCE HEARD

Michèle Schitko

Evidence on behalf of the applicant was given by Michèle Schitko. Ms Schitko read from written statement of evidence dated 28 October 2008. Ms Schitko outlined the background to the application, highlighting the areas on the location map. Ms Schitko raised objections to the conditions 6, 11 & 12 recommended in the Planner's report.

Gerry Kessels

Evidence on behalf of the applicant was given by Gerry Kessels of Kessels & Associates Ltd. Mr Kessels read from a written statement of evidence.

Mr Kessels noted that the ecological report ("report"), prepared by Mr Teal of Kessels and Assoc. Ltd. and submitted with the application, had only assessed the bush stand marked "A" (stand "A"), as shown on the submitted scheme plan. Mr Kessels noted that the report had recommended that a corridor could be established between the two stands marked "A" & "B", having considered the relatively small area contained within stand "A". Mr Kessels noted, however, that the application has since been revised to incorporate the bush stands shown on the scheme plan as "C" & "D", which has increased the total area proposed for protection to 1.9ha. On this basis, Mr Kessels advised the Committee that the corridor, recommended in both the Planner's Report and the Ecological Report, is no longer necessary having considered the collective benefit and value of the bush stands. Mr Kessels noted that, in this instance, all that is required is 'buffer' plantings around the stands to protect them from wind damage.

Mr Kessels noted that approximately 977 metres of perimeter fencing is required to stock-proof the bush stands. Mr Kessels added that possum control was also recommended in the report.

In response to questioning from the Chair, Mr Kessels confirmed that stand "B" had already been fenced and covenanted.

In response to further questioning from the Chair, Mr Kessels discussed the merits of having a corridor between stands "A" & "B" in terms of ecological 'value'. Mr Kessels advised that a corridor would only add ecological 'value' if the two stands were connected by a water-course. Mr Kessels noted that the these two areas of bush are not connected, and at present, bird life can hop between the two stands.

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Mr Kessels noted that any fence, constructed around stands “A”, “C” or “D”, should be positioned no closer than the drip-line of any tree situated on the fringe of the respective stands.

Jaime McLellan

Mr McLellan presented the main findings of the Planner’s report.

Mr McLellan noted that the area Building Control Officer report noted that the site contains natural hazards, which may affect future development. Mr McLellan added that the applicant had not submitted any technical information to support the proposal in terms of the suitability of the site for development. Mr McLellan concluded that all vacant lots should have a consent notice registered against the site that requires a geotechnical engineer’s report on the design of foundations.

Mr McLellan advised that the subdivision will create new lots, which, in turn, will permit subsequent development to occur. Mr McLellan noted that the natural hazards may pose a risk to any future potential development, and any implications should be brought to the attention of the landowners and any prospective landowners.

In response to questioning from the Chair on the timing of the geotechnical report, Mr McLellan advised that the recommended consent notice will be discoverable on the title. Mr McLellan added that Council should take every opportunity to identify potential hazards before development occurs. Mr McLellan noted that it is appropriate to identify any potential hazards at the subdivision stage, rather than the building consent stage, as the subdivision will precede the building development.

Mr McLellan noted that part of the site was within the Special Landscape Character Policy Area (SLCA). Mr McLellan advised that the ‘condition 12’, as recommended in the Planner’s Report, refers to a rule that is contained within the Operative Waipa District Plan. Mr McLellan accepted that if this condition is deleted, then the planning regulations would require that any future development complies with the provisions relating to the SLCA.

Tony Roxburgh

Mr Roxburgh discussed the ecological significance of the bush stands. Mr Roxburgh noted that the corridor between stands ‘A’ & ‘B’ would link the two stands, provide greater ease of passage for bird life, and increase the ecological value of the stands. Mr Roxburgh qualified the statement, noting that the corridor is not a prerequisite for the protection of the bush stands.

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Mr Roxburgh concurred with Mr Kessels comments regarding the provision of a buffer area. Mr Roxburgh noted that the cost estimate for the protection and restoration of the bush stands was conservative.

In response to questioning through the Chair, Mr Roxburgh noted that the buffer plantings would suppress weeds inside the bush stands. Mr Roxburgh advised that the buffer area should provide enough space between the drip-line and the fence to allow a single row of trees to establish. This may be a nominal width.

Michèle Schitko

Ms Schitko presented a right of reply on behalf of the applicant.

Ms Schitko noted that her client had no objections to a consent notice relating to the effluent disposal, as her client anticipated that a specifically designed effluent disposal would need to be constructed for each lot.

Ms Schitko objected to any on-going condition that requires future owners to obtain a Geotechnical Engineer's Report prior to building on lots 1-4. Ms Schitko noted that the three existing titles do not have any consent notices registered against them, and could otherwise support residential development.

Ms Schitko advised that her client would prefer that the consent notice relating to the SLCA be deleted from the conditions and the included, instead as an 'advisory note'.

Ms Schitko noted that the application presented the Council with a well planned subdivision proposal. Ms Schitko concluded that the subdivision would rationalise the land use and protect the environment and enhance the landscape.

Rudolf Oettli

Mr Oettli objected to a consent notice being registered against the balance land, being lot 1.

In terms of the suitability of the site for development, Mr Oettli noted that the site contained a sandy-loam soil type, and did not contain peat soils.

7 THE MAIN FINDINGS OF FACT:

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, 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:

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- The Committee considered the evidence found that the proposed covenant areas contained stands of ecological and amenity value and warranted further protection, in terms of fencing and covenanting.
- The Committee found that the feature type merits two additional EPL's having considered the additional area (1.94 ha) to be protected, the value of feature type, and previous decisions.
- The Committee considered that a buffer should be provided around each of the stands, with the fenced area extended beyond the drip-line, to provide protection from wind damage and weed invasion, and to allow for low level plantings.
- The Committee found that the performance standards under Rules 2.5.2 of the District Plan will allow Council to regulate any future potential development within the State Highway 3 - Special Landscape Character Area.
- The Committee found that an engineer will be required to undertake a geotechnical assessment and prepare a site report for any future development of lots 2, 3 & 4 having considered the proposed lot sizes and the presence of soft soils in the vicinity. If the engineer finds that standard building foundations are suitable for any development, then no consent notice is required. However, if the report requires specifically designed foundations for any of the lots, then a consent notice will be placed on the relevant title(s) to advise future owners of the special and on-going requirements that relate to building.
- The Committee found that the balance of the titles, held in lot 1, has sufficient area to provide for future-potential rural development.

8 RESOLVED

No 4/08/87

Date 29/10/08

That

The report from Jaime McLellan dated 7th 2008 be received; and,

In consideration of Section 104, and pursuant to Sections 104B, 104D, 108 & 220 of the Resource Management Act 1991, the Waipa District Council grants consent to Rudolf and Sharon Yvonne Oettli to subdivide by way of a boundary relocation and to subdivide two additional Environmental Protection Lots, at the property located at 61 Narrows Road, legally described as Lots 9 & 10 DPS 14751 and Lot 1 DP 80038 and Lot 2 DPS 53192, subject to the following conditions:

Cr Taranaki / Cr Hoverd

General

1. That the Land Transfer Plan, to give effect to this subdivision consent, must be generally consistent with the approved plan prepared by CKL Surveys and

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Resource Management reference J3311:S11, dated September 2008 submitted with application SP/0047/08, unless otherwise altered by the consent conditions. A copy of the approved plan is attached.

Power

2. The consent holder must arrange with a local network electricity operator for the reticulation of electricity to serve all lots and pay all costs attributable to such work. The consent holder must submit to the Council written confirmation from the local network operator that satisfactory arrangements have been made for the reticulation of the service to all lots in the subdivision. This is to include if necessary the resiting, repositioning or removal of any electric power lines which exist on the land being subdivided.

Where electric power lines are crossing the boundary of any lots registered easements must be created for such services.

Telephone

3. The consent holder must arrange with a telephone company for the reticulation of telephone cables to serve all lots and pay all costs attributable to such work. The consent holder must submit to the Council written confirmation from the telephone company that satisfactory arrangements have been made for the reticulation of the service to all lots in the subdivision. This is to include if necessary the resiting, repositioning or removal of any telephone cables which exist on the land being subdivided.

Where telephone cables serving any lot are required to cross the boundary of any other lot or lots registered easements must be created for such services.

Covenant - Environmental Protection Lots

4. That a Management Plan for the bush conservation area on Lots 1 marked 'A', 'C' & 'D' on the approved plan (reference: SP/0047/08) must be prepared by a suitably qualified person approved by Council's Planning Services Manager. The purpose of the Management Plan is to identify the means and measures proposed to protect, maintain and enhance the bush area in perpetuity by the owners of Lot 1. The Management Plan must include:
 - a) The measures proposed to restore the natural ecology and indigenous biodiversity to the bush area, inclusive of pest control, fencing, and replanting and reintroduction of flora and fauna.
 - b) A timetable for carrying out the restoration measures.
 - c) Detailed plans of the restoration works proposed.
 - d) The review measures proposed to ensure the on-going health and management of the bush area.
 - e) An estimate of costs for the restoration measures and works.

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5. The consent holder must undertake and complete the management plan (condition 4 of this consent), to the satisfaction of the Council's Planning Services Manager, and prior to applying for a certificate pursuant to Section 224(c) of the Resource Management Act 1991.
6. The areas marked 'A' 'C' & 'D' shown on the approved scheme plan SP/0047/08 must each be contained within a single perimeter fence, positioned at least 2.5 metres from the drip-line of the outer-most trees. The fence must be a substantial wire fence, having either;
- a)
- seven or eight wires and properly strained,
 - the posts are to be of durable timber, and not more than five (5) metres apart and be securely rammed and,
 - in hollows or where it is subject to lifting, the fence must be securely footed with timber, metal or plastic battens, being no fewer than three battens between posts,
 - The wires are to be galvanized and of 2.5mm high tensile steel or 4mm steel or its equivalent; and,
 - The bottom wire shall not be more than 125mm above the ground, the next three wires shall not be more than 125mm apart, and the top wire or rail shall not be less than one (1) metre above the ground; or
- b)
- A combination of wire (as above) with post and rails, in a 'stock-proof' manner.

The fence must be completed prior to applying for a certificate pursuant to Section 224(c) of the Resource Management Act 1991.

7. That the consent holder must enter into an agreement of an ongoing nature (being a legal instrument such as covenant, memorandum of encumbrance or consent notice pursuant to Section 221 of the Resource Management Act 1991) and register on the title of proposed Lot 1 to the following effect:
- a) That the bush area marked 'A', 'C' & 'D' (shown on the approved scheme plan SP/0047/08) on Lot 1 must be protected and preserved. The agreement must identify that every person who owns Lot 1 take every reasonable step to ensure that the native bush is protected and preserved in accordance with the Management Plan prepared under condition 4 above, that no person must carry out any activity in, on, under or over the native bush, or in the vicinity of the native bush that endangers or is likely to endanger it, or in any way detracts from the interest or significance of the native bush, unless so approved in the Management Plan prepared under condition 4 above; and

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- b) That the bush conservation covenant area on Lot 1, marked 'A', 'C' & 'D' and comprising no more than 3.0ha in total, must be fenced and the fence maintained to ensure that it is stock-proof.

Such an agreement must be prepared at the cost of the consent holder by Council's solicitors and be registered against the affected Lot 1.

Roading

8. That the consent holder must upgrade as required the existing vehicle entrance to Lot 1 to a figure 5 standard heavy commercial rural vehicle entrance complying with Council's standards as set out in the Code of Practice for Land Development and Subdivision. The work must be carried out and completed to the satisfaction of the Council's Engineering Manager and must be at the consent holder's expense. The following issues must also be addressed:
- The entrance must be sealed from the edge of the road to the property boundary.

Consent Notices – Effluent Disposal

9. That for subsequent residential development of Lots 2, 3 & 4 an effluent disposal system must be designed, installed and continually maintained to the satisfaction of the Council's Building Control Manager.

Reason: *The site has a high water table.*

This being a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners, before the deposit of the survey plan the Council must issue a consent notice pursuant to Section 221 of the Resource Management Act 1991 specifying the above conditions.

Such consent notice must be either prepared or checked at the cost of the subdividing owner by the Council's solicitors and must be registered against the titles to Lots 2, 3 & 4.

Consent Notices – Geotechnical

10. The consent holder must either:
- a) Submit a full geotechnical report, prepared by a suitably qualified and experienced Geotechnical Engineer, for any subsequent residential development of Lots 2, 3 & 4. The report shall confirm that Lots 2, 3 & 4 each lot contains a suitable building platform that is compliant with NZS 3604, to the satisfaction of Council's Building Control Manager. The report must be submitted prior to the Council issuing a certificate

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pursuant to Section 224(c) of the Resource Management Act 1991;
and/or,

- b) A suitably qualified and experienced Geotechnical Engineer will be required to inspect the site and submit to Council for approval, at the time of building consent, design details on the foundations of the buildings.

This must be complied with on a continuing basis by the subdividing owner and subsequent owners, before the deposit of the survey plan the Council must issue a consent notice pursuant to Section 221 of the Resource Management Act 1991 specifying the above conditions.

Any such consent notice must be either prepared or checked at the cost of the subdividing owner by the Council's solicitors and must be registered against the titles issued for any lots that do not comply with the above subsection. This shall include all or any combination of Lots 2, 3, & 4, as the case may be.

Reasons for Decision

- a. The proposed subdivision demonstrates compliance with the relevant objectives and policies of the Operative Waipa District Plan and Part 2 of the Resource Management Act 1991, which relates to the sustainable management of natural and physical resources.
- b. Overall, the adverse environmental effects of the subdivision, including loss of productive land, visual effects from residential development, and traffic effects, will be no more than minor.
- c. The proposal meets the statutory test for non-complying activities.
- d. The collective size of the bush stands 'A', 'B', 'C' & 'D' (2.24ha), and significance of this feature type to the community, warrants its preservation in the public interest. Therefore, two Environmental Protection Lot have been approved for the areas marked 'A', 'C', & 'D', in addition to the one EPL that was approved for the area marked 'B'.
- e. Pursuant to section 94 of the Resource Management Act 1991 the application has not been publicly notified as the adverse effects of the proposal are deemed to be minor and all affected parties provided their written approval. Accordingly, the application was processed on a non notified basis.
- f. Engineering requirements will ensure that the subdivision is adequately provided with services when the area is developed. In particular the

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roading conditions will ensure that the site has suitable provision for safe and convenient access.

- g.* The requirement to complete a Bush Management Plan and associated works will ensure the covenanted areas of bush are preserved, enhanced and protected for perpetuity.
- h.* Conditions 4 & 7 will ensure that the bush stands marked 'A', 'C' & 'D', shown on the approved scheme plan SP/0047/08, are protected in perpetuity, and the future owners are advised of the on-going requirements and restrictions.
- i.* Condition 9 will advise future owners of Lots 2, 3 & 4 of the special and continuing circumstances of the site with regard to the building consents for sites containing soft soils and a high water table.
- j.* Condition 10 will require that the consent holder submit a Geotechnical report or agree to register a consent notice against the relevant titles, to ensure compliance with Rules 1.7.1 & 10.5.1.2(c) of the Operative Waipa District Plan.

Advisory Notes

Entrances

- Prior to constructing a vehicle entrance for Lots 2, 3 & 4 you are required to make application to Council's Roading Department for a Street Opening Permit. Please find enclosed an application form.

Special Landscape Character Area

- The subject property is located partly within the State Highway 3 Special Landscape Character Area.
 - Pursuant to Rule 2.5.2 of the Waipa District Plan any future structures on the subject site may require a resource consent.
 - Any driveways and/or tracks created in association with the construction of the dwelling and attached garage must be compliant with the guidelines in Appendix 21 of the Operative Waipa District Plan (Special Landscape Character Area Colours).
 - Pursuant to Rule 12.3.1.3 of the Waipa District Plan, all reticulation of services such as power and telephone must be underground in the Special Landscape Character Area.

Earthworks

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- All earthworks associated with any subdivision or development of land must be undertaken in accordance with the following matters :
 - a) All earthworks must be carried out so as to provide sound foundations as required under NZS 4431:1989 and avoid any hazard to persons or property;
 - b) All earthworks must 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
 - c) The existing landform must 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
 - d) All earthworks must be carried out in accordance with the Waipa District Council Code of Practice for Land Development and Subdivision for formation and construction standards.

Discovery of Archaeological or Culturally Significant Finds

- Where during earthworks, any archaeological features, artefact or human remains are accidentally uncovered or are suspected to have been discovered, the following protocol must apply:
 - All works within the vicinity must cease immediately.

In cases other than suspected human remains:

- The contractor must immediately secure the area and advise the NZ Historic Places Trust of the occurrence.
- The consent holder must consult with a representative of the relevant iwi authority and the NZ Historic Places Trust to determine what further actions are appropriate to safeguard the site or its contents.

Where human remains are suspected:

- The contractor must take steps immediately to secure the area in a way that ensures human remains are not further disturbed.
- The consent holder must notify the NZ Police of the suspected human remains as soon as is practicably possible after the

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remains have been disturbed. The consent holder must notify the relevant iwi authority and the NZ Historic Places Trust within 12 hours of the suspected human remains being disturbed or otherwise as soon as practicably possible.

- Excavation of the site must not resume until the NZ Police, NZ Historic Places Trust and relevant Kaumatua have each given the necessary approvals for excavation to proceed.

There being no further business the meeting closed 12.52pm.

CHAIRPERSON _____

DATE _____

CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.