

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of the hearing by Waipa District
Council's Regulatory Committee of
an application for resource consent
for a Comprehensive Development
Plan at Raynes Road, Rukuhia (Ref
LU/0129/18).

STATEMENT OF EVIDENCE OF IAN JOHNSON
on behalf of
Meridian 37 Ltd

1. INTRODUCTION

- 1.1. My name is Ian Johnson. I am an Environmental Consultant in the Hamilton office of Mitchell Daysh Ltd.
- 1.2 I hold a post graduate Diploma in Urban and Regional Planning and have been a corporate Member of the Royal Town Planning Institute since 1989 and a Member of the Resource Management Law Association since 2007. I have substantial experience in policy and plan development and in the preparation and processing of applications for resource consent throughout New Zealand and in the Waikato Region in particular. My experience includes representing the interests of both public and private sector clients. I am familiar with the statutory planning framework that is relevant to the current proposal, having represented Meridian 37 ('M37') and a number of other clients in respect of informal feedback, formal submissions and expert evidence presented in relation to the Proposed (now Operative) Waipa District Plan.
- 1.3 My statement sets out expert planning evidence on behalf of M37 which seeks resource consent to establish a Comprehensive Development Plan as a precursor to future industrial development on the company's own land and adjacent land owned by others within the Industrial Zone. I was responsible for the preparation of the application for resource consent.

1.4 While the hearing is not bound by the “Code of Conduct for Expert Witnesses” contained in the Environment Court Consolidated Practice Note 2014, I have nevertheless prepared my evidence in compliance with that Code and I agree to comply with it throughout the hearing process. Unless I state otherwise, my evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

2. SCOPE OF EVIDENCE

2.1. I have read the Planning Officer’s report which also includes reference to the outcomes of a pre-hearing meeting held on 11 April 2019¹. This records that all off-site effects associated with the CDP have been agreed by all parties. The only matter raised in submissions that remains unresolved relates to concerns raised by landowners within the CDP area regarding the provision of access to Meridian Drive for future industrial development.

2.2. On the basis of the conditions proposed by M37, the Reporting Planner recommends² that consent is granted. I concur with this recommendation.

2.3. In that context, my evidence explains the background to the proposed consent conditions and the reasons why consent should be granted. To avoid repetition, I will refer to relevant sections of the Section 42A Report where appropriate.

3. OPERATIVE DISTRICT PLAN REQUIREMENTS

3.1. Section 6 of the s42A report identifies District Plan Rule 15.4.2.89 as establishing the requirements to be addressed through a Comprehensive Development Plan. Essentially, these include:

- a requirement for a Broad Integrated Transport Assessment identifying and addressing effects on the local and state highway network, having regard to

¹ Section 5, s42A Report

² Section 14 s42A Report

planned growth within the Airport Strategic Node and long term changes to the road network (Southern Links);

- access from internal roads rather than from Raynes Road or Airport Road;
- Proposals for the management of wastewater, water supply, stormwater management and fire-fighting water supply;
- Consistency with plan provisions relating to the operational requirements of Hamilton Airport; and
- Landscaping of the Airport Road and Raynes Road frontages to the CDP area.

3.2. Proposals made under these provisions are to be processed as a Restricted Discretionary Activity. Rule 15.4.1.1x identifies the specific matters over which Council has reserved its discretion as:

- Traffic effects; and
- Water supply, wastewater treatment and disposal and stormwater management; and
- Landscaping and visual treatment; and
- Consistency with District Plan provisions relating to the operation of Hamilton Airport.

3.3. The scope of these matters is important as Section 104C(1) of the RMA states that:

When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which –

(a) A discretion is restricted in national environmental standards or other regulations;

***(b) It has restricted the exercise of its discretion in its plan or proposed plan.** (My emphasis)*

3.4. The Section goes on to say that the same restrictions apply in respect of the scope of conditions which may be imposed. In my evidence which follows I will explain that the outstanding matters of concern to the submitters are beyond the scope of the matters over which Council has reserved its discretion but are, in any event, addressed through conditions which have been proposed by M37.

3.5. It is important to understand that the CDP itself does not enable industrial activity; it simply provides a broad framework within which all future development will still require resource consent. The range of potential future industrial activities is more restrictive than elsewhere in the Industrial Zone but can be consented as a Controlled Activity where it is demonstrated that it is consistent with the approved CDP. Therefore, this second stage of consenting provides a further opportunity to address the detailed aspects of infrastructure and service provision.

4. DEVELOPMENT OF THE CDP

4.1. The District Plan requires the approval of a single CDP for the entirety of the Raynes Road Industrial Zone. Currently the 19.8ha (approximately³) area is owned and occupied by five separate parties⁴:

- Meridian 37 Ltd, extending to approximately 8.445ha (42.6% of the total);
- Joint ownership between the Hunter Trust and Clyde Trust, extending to 4.029ha (20.3%);
- John and Christine Erkkila, extending to 4.569ha (23.1%);
- Satish Prasad, extending to 1.57ha (7.9%); and
- Blair and Rebecca Hughes, extending to 1.206ha (6.1%).

4.2. While one of the M37 Directors (Mr Hermann, having a 25% share) is also a Trustee of the Clyde Trust, M37 has no other interest or control beyond its own land ownership. (Mr Schramm, also a 25% shareholding director of M37, was formerly a professional trustee to the Hunter Trust, with no financial or other interest in the Trust or its assets). I am not aware of any other ownership interests extending over property boundaries.

4.3. Consequently, the preparation and ownership of a consent for a CDP must either be via a collaborative arrangement between all landowning interests, or else a body or assembly of bodies must take the lead. In that regard, I approached each of the landowners in December

³ The precise northern boundary of the CDP in respect of the M37 owned land is determined by the boundary of the Southern links designation. A site survey and accurate measurement has not yet been undertaken to determine the precise site measurement.

⁴ Rather than the four parties referenced in paragraph 11.09 of the s42A Report.

2016⁵ with a proposal for stakeholder involvement in the preparation of an application for a CDP. The proposal set out anticipated costs based on fee estimates from the required technical disciplines and invited participation on the basis of cost apportionment based on the size of each landowning interest. (At that time, the Prasad property was in different ownership).

- 4.4. No response was received from the (then) owners of the Prasad property and Mr and Mrs Hughes stated that their intention was to hold their land long term as the family home⁶. While there was support from the Hunter Trust and Clyde Trust and from Mr and Mrs Erkkila for the preparation of an application, no agreement was reached on a cost sharing arrangement. Accordingly, M37 proceeded on the basis of being the sole applicant. In March 2018, a full consultation draft version of the application was provided to the landowners within the CDP area, the New Zealand Transport Agency (NZTA) and Waikato Airport (WRAL). (The landowners were also provided with a draft Heads of Agreement (HoA) which did not form part of the proposal but was intended to address private property issues in respect of the provision of M37 owned assets.) The aim of the consultation process was to invite feedback on changes that would enable the parties to provide written approvals to be submitted with the application.
- 4.5. Mr Hughes reaffirmed his position that he did not want the CDP⁷. While feedback was received from WRAL⁸ and on behalf of Mr and Mrs Erkkila⁹, no other party responded and the only written approval was on behalf of the Hunter Trust and Clyde Trust. Separately to the draft application, no agreement was reached on the draft HoA.
- 4.6. The application was lodged in May 2018 and notified to each of the parties in July 2018. Table 1 of the s42A Report sets out the submissions received and the matters raised.

5. ADDRESSING THE SUBMISSIONS

- 5.1. Since August 2018, M37 has worked its way through each of the matters raised in submissions and has proposed changes that have enabled agreement with all parties on all matters except

⁵ Letter from Mitchell Daysh dated 20 December 2016

⁶ Response dated 16 March 2017

⁷ Response dated 15 May 2018

⁸ Response dated 25 May 2018

⁹ Response dated 4 May 2018

in respect of submissions from the landowning parties within the CDP area regarding the provision of access to Meridian Drive.

- 5.2. Key issues raised by all submitters related to off-site traffic effects and the need for improvements to the road network, including potential major investment in the improvement of the State Highway 21/Raynes Road intersection. At this stage, NZTA is unable to confirm what level of improvement might be necessary and what level of mitigation or cost contribution would be expected associated with development within the CDP area. Nevertheless, consent conditions have been prepared which will enable some development to proceed, based on traffic management, monitoring and reporting (Proposed Conditions 35, 36 and 38). Proposed Condition 37 also provides a process (private development agreement) that will eventually enable full development based on an as yet undetermined financial contribution towards the State Highway 21/Raynes Road intersection upgrade. In the event that development results in unanticipated effects, the proposals also provide the opportunity for additional controls or mitigation through proposed review Condition 40.
- 5.3. As the consent holder, M37 will hold sole operational and financial responsibility for compliance with all conditions. Whilst all future development within the CDP area will require additional resource consent, such consents (which may be held by other parties within the CDP area) will not supersede or replace the obligations that M37 will face in respect of ongoing compliance with the CDP conditions. The CDP therefore represents a significant ongoing investment by M37 and it is important that the associated conditions retain a focus on the key strategic matters.
- 5.4. In respect of the matters over which Council has reserved its discretion, the suite of conditions will ensure that development within the CDP area will not result in unacceptable effects on the wider environment. The outstanding matters of concern to the submitters within the CDP area are private property matters concerning the arrangements between landowners to enable access across adjoining properties. These issues are not uncommon to development areas in multiple ownership. Acceptable solutions are invariably found through negotiation and the normal operation of the market.
- 5.5. The requirement of the District Plan is that all industrial traffic utilises internal roads to access the external road network. The CDP proposes that this can be achieved through connections via Meridian Drive. No party has signalled an intention to invest in the construction of an

alternative and the Site Layout Plan depicts an internal road layout specifically sought by the respective landowners. While M37 does not own or control land to the east of Meridian Drive, it has designed the internal road layout to meet the requirements of the landowners, including the engineering design of the intersection with Meridian Drive.

- 5.6. Although internal access and private property arrangements are not matters that Council has any discretion over, M37 has proposed Condition 39 to explain that the proposed internal road to the east of Meridian Drive will be constructed within a 12m wide corridor to be protected by easements. How that is achieved is a matter to be negotiated between the affected landowners. The trigger for any specific actions to be taken will clearly be when proposals are made for development in areas affected by the proposed internal roads. All future development within the CDP area will require consent and this will provide the appropriate time and process to ensure that internal access issues are addressed.
- 5.7. As explained in the s42A Report¹⁰, M37 previously proposed a more detailed suite of conditions that also included a dispute resolution process where agreement could not be reached between affected parties. These provisions were not supported by the landowners and have been replaced by proposed Condition 39 to provide a focus on the outcome that is expected through subsequent consent processes and development. On reflection, I consider that to be a more appropriate approach than a suite of process related conditions. The approach is exactly the same as is set out in proposed Conditions 28, 29 and 30 in respect of service provision and stormwater and wastewater discharges. How these matters are negotiated between the respective parties is entirely a private property matter.
- 5.8. The District Plan requirements in respect of the CDP are for it to provide an enabling framework subject to the mitigation of adverse effects. In situations where land is in multiple ownership, it is inevitable that there will be differences between parties in respect of their development intentions, anticipated timeframes and financial expectations. For example, while the Hunter Trust, Clyde Trust and Mr and Mrs Erkkila have expressed intentions to undertake industrial development at some stage, Mr and Mrs Hughes have previously requested that their land is removed from the CDP, and Mr Prasad is currently seeking resource consent for additional residential development.

¹⁰ Section 11 s42A Report, pg 32

5.9. The CDP does not compel any party to develop industrial activity and it will not frustrate any party from seeking resource consent for alternative development, or an alternative CDP. It simply provides a framework within which all future development will still require additional consent. The normal operation of the market will determine when development occurs and where costs should fall. Accordingly, I consider that the proposed conditions appropriately address the submitters' concerns and provide an appropriate basis for future resource consent processes.

6. CONCLUSIONS

6.1. I agree with the Reporting Planner's assessment that the proposal is consistent with the objectives and policies of the Operative Waipa District Plan, the Waikato Regional Policy Statement and Part 2 of the RMA. Having regard to the matters over which Council has reserved its discretion and is therefore able to exercise control, the proposal addresses all of these matters through proposed consent conditions. Moreover, M37 has proposed conditions that go further, and provide increased certainty regarding the future provision of internal roads.

6.2. The CDP provides an appropriate framework for future development, noting that all development will require further resource consent and the provision of further detail at that stage to demonstrate consistency with the CDP.

6.3. Accordingly, I respectfully request that the Committee grants consent for the proposed CDP on the basis of the conditions set out in Schedule 1 to the s42A Report.

Ian Johnson

9 August 2019