

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a resource consent application by
Patrick Cullinan for breaches in site
coverage and traffic intensity.

CLOSING STATEMENT OF ADAM BOOTH

(Planning and Subdivision)

1 February 2022

1. Introduction

- 1.1 Following the public hearing of the resource consent application by Patrick Cullinan (Applicant) for District Plan (DP) breaches of a commercial activity on his property at 106 Moir Street, Mangawhai (Kaipara District Council's reference RM190094), the hearing commissioner requested a closing statement to be submitted to the Council before close of business on Tuesday 1st February 2022.
- 1.2 My name is Adam Booth of Pacific Coast Survey Limited who provided evidences in support of Mr Cullinan's resource consent application at the hearing.
- 1.3 In providing a credible statement, I consulted Mr Sasagi for assistance who subsequently reviewed all the materials and documents presented at the hearing and advised me on planning matters.
- 1.4 Mr Sasagi is a Principal Planner who has many years of planning consent experience in Local Councils, Central Government and the Environment Court. He is familiar with the Kaipara District Plan having worked as a Major Project Leader and Principal Planner for the Council for almost three years. He left Council in October 2020 to set up his private planning consultancy service. I attach a brief profile for Mr Sasagi in Exhibit 1 to this document.

2. The Application

- 2.1 Landuse consent was sought for the rule breaches of the Kaipara operative District Plan by the applicant's commercial activities operating onsite. These comprised – a gym, firewood processing and storage, bus storage, workshop for fence hire business and storage.
- 2.2 Rules breached by the activities include:
 - 12.10.8 – Permeable Surfaces
 - 12.10.18 - Traffic Intensity
 - 12.10.25 – Vehicle Access and Driveways
- 2.3 It is also noted that Rule 12.10.4 for 'Commercial and Industrial Buildings' is listed as being breached in the Council's s42A report of which I disputed. I will return to discuss this further in the latter part of my submission.

- 2.4 The application was supported by expert specialist reports including:
- Traffic Effects Assessment with focus on the Design of Access Upgrading by Engineering Outcome Ltd – October & March 2021;
 - Acoustic Assessment by Marshall Day Ltd – November 2019 & October 2021;
 - Stormwater Management Plan by PCS Ltd – August 2021;
 - Parking Plan by PCS Ltd – March 2019
 - Landscape and Visual Effects review of Traffic Effects on the Amenity and Rural Character by Simon Cocker – November 2021
- 2.5 The hearing was adjourned late last year and requested to obtain a full assessment of the proposal's effects on the amenity and character (LVA) of the surrounding area by a qualified landscape architect.
- 2.6 Simon Cocker, a qualified and experienced Landscape Architect, was engaged to provide an LVA which was tabled when the hearing was reconvened.
- 2.7 That report concluded overall that *"It is determine that the potential adverse rural character effect, and potential adverse visual amenity effect of the proposal will be (at most) low for all submitters. This equates to a less than minor adverse effect."*

3. s42A Report & Planning Assessment

- 3.1 The report confirmed the application was assessed as a "RESTRICTED DISCRETIONARY ACTIVITY" (RDA) of which I agreed and confirmed. As such, it is expected that Council has discretion restricted only to the rules breached by the proposal and the related objectives and policies.
- 3.2 The s42A report described the activities and subsequent rules breached by the proposal which include:
- 12.10.4 - Commercial and Industrial Buildings
 - 12.10.8 – Permeable Surfaces
 - 12.10.18 - Traffic Intensity

- 12.10.25 – Vehicle Access and Driveways
- 3.3 I submit that I disagree with the s42A report's inclusion of Rule 12.10.4 for 'Commercial and Industrial Buildings' being breached.
- 3.4 It is crucial to understand the philosophy under which the effects-based approach employed by the operative District Plan as stated in Part A Chapter 1, paragraph 1.3.1 *"The philosophy of this Plan is that it is the effects of an activity, rather than the activity itself, which will be managed. In response to this, the provisions of the District Plan seek to take an effects-based approach, particularly through the specification of Standards which are considered to define the acceptable level of potential environmental effect"*.
- 3.5 Based on the above approach, I consider the building under which the commercial activity is carried out in, is permitted. I therefore consider the only other elements of the onsite activity that breached the relevant rules, are traffic intensity and impermeable surfaces where Council's effects assessment are to be restricted to.
- 3.6 I agree with the s42A report's conclusion on effects assessment of the proposal as being minor overall.
- 3.7 However, I do not agree with the objectives and policies assessment and to an extent the officer's s42A assessment re-course to Part 2 matters to justify the recommended refusal of the consent application. I will return to discuss this further.
- 3.8 I noted the s42 report has outlined the principal issues in contention as being:
- Effects on rural character and amenity;
 - Noise, dust and other nuisance effects associated with use of the JOAL;
 - Noise effects from commercial activities;
 - Water supply for fire-fighting and other fire safety measures;
 - Stormwater discharges from commercial activity.
- 3.9 Regarding the first point – "Effects on rural character and amenity" being RDA, has a set of assessment criteria provided in the DP which would guide

any effects assessment. As the building being contended as permitted, the only breach under which effects on amenity and rural character assessment is needed is Rule 12.10.18 for Traffic Intensity. The hearing was adjourned towards the end of last year and an LVA was commissioned. An assessment by Mr Simon Cocker, a reputable and a very experienced Landscape Architect was comprehensive and concluded overall that *"It is determine that the potential adverse rural character effect, and potential adverse visual amenity effect of the proposal will be (at most) low for all submitters. This equates to a less than minor adverse effect."* There is no other opinion challenging the conclusion and as such this issue can be concluded to be accepted and settled.

- 3.10 Regarding the second bullet point - Noise, dust and other nuisance effects associated with use of the JOAL; these matters can be addressed by consent conditions. With regards to noise, an assessment by Marshall Day confirmed that the District Plan standards is not breached and is considered permitted.
- 3.11 Noise as discussed above is permitted according to a reputable advice by Marshall Day acoustic engineers and there is no challenge on such opinion and assessment. It is therefore a non-issue.
- 3.12 Water supply for fire-fighting and other firefighting safety measures – is not an issue as the rule is not breached by the proposal i.e., Rule 12.10.26 Fire Safety. Moreover, the application is assessed as RDA and as such, Council does not have open discretion to consider matters outside its discretion.
- 3.13 With regards to "Stormwater discharges from commercial activity", although Council's Development Engineer had no issue with the proposal, the applicant is willing to improve the design of any stormwater discharge catchment in accordance with Council Engineering Standards. A condition of resource consent can resolve this matter.
- 3.14 Overall, I consider the matters listed as in contention are non-issues. I could not find any genuine and robust argument in the s42A report that justify the issues raised as contentious. Secondly, I responded in my main brief of evidence and additional information requested and provided to the hearing that these matters can be fully addressed and resulted in effects that are less than minor. This is further supported by a conclusion in the s42A of most, if not

all matters assessed under the Effects Assessment concluded to be 'less than minor'.

- 3.15 This raises a question of why the objectives and policies that are relevant in this instance being assessed to be inconsistent with the proposal.
- 3.16 It is important to understand the format in which each DP chapters, especially the Issues, the Objectives and Policies frameworks are written and interpreted. There is no hierarchical set of objectives and policies but rather pick and choose what best suited the issue in contention.
- 3.17 In this case, Issue 12.4.8 is considered best suited the application which states: *"Economic opportunities provide for prosperity in the district and have the potential to be adversely affected by incompatible neighbouring activities (e.g., residential). Without provision for these activities the social and economic well-being of the community has the potential to be adversely impacted. It is recognised that network utilities are constrained by locational, operational and technical factors"*.
- 3.18 The explanation attached to that issue states: *"A range of non-land-based activities, such as commercial activities (e.g., retail complexes), network utilities, and rural industry, can widen the income base of rural households, create employment in the area and provide essential services that are conveniently located for rural communities. It is recognised that network utilities are often constrained by locational, operational and technical factors. There is a need to accommodate a variety of activities in the Rural Zone to provide for the communities social and economic wellbeing, while avoiding or mitigating any adverse effects on the community, other activities and the environment"*.
- 3.19 The corresponding objectives and policies that must be assessed for this application are therefore:
- Objective - 12.5.6 - *To provide for a range of activities in the Rural Zone which are located, designed and operated in such a way as to avoid, remedy or mitigate reverse sensitivity effects on existing land uses in the vicinity.*
 - Objective - 12.5.7 - *To recognise farming, forestry, mineral extraction and processing, renewable energy generation, industrial and commercial activities and network utilities that enable people and communities to provide for their social, economic and cultural wellbeing.*

- *Policy 2.6.10 - By maintaining opportunities for the diversity of rural land use, without significant interference from adjacent residential, lifestyle or rural – residential activities.*
- *Policy 12.6.11 - By requiring activities locating in the Rural Zone to be sited and designed to avoid, remedy or mitigate reverse sensitivity effects on existing adjoining land uses.*
- *Policy - 12.6.14 - By providing flexibility for subdivision and development density, as well as for a range of activities (industrial, commercial and residential etc.) that can be appropriately located in the Rural Zone and meet the environmental conditions appropriate to that Zone.*

3.20 Having considered the above objectives and policies under a Restricted Discretionary Activity assessment, I form a view that the proposal supports them and is not inconsistent with. Commercial and Industrial activities in the Rural Zone are promoted in the District Plan as long as standards for bulk and location of buildings, noise, etc., are met.

3.21 I submit therefore that the assessment and consideration of objectives and policies cited in the s42A report is flawed as they do not reflect the limitation of Council's discretion under RDA applications.

4. Statutory Decision-Making Framework of RMA

4.1 I contended that the recourses to RMA Part 2 matters in the s42A report to justify refusal of consent to the proposal is flawed.

4.2 In the context of this application (RDA) for a landuse consent where the objectives and policies of the relevant were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environment outcomes. They also provide a clear framework for assessing all relevant potential effects and there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.

4.3 Pursuant to Section 104(1)(a)-(b), I conclude as follows:

- 104(1)(a) any actual and potential effects: **the effects are less than minor;**

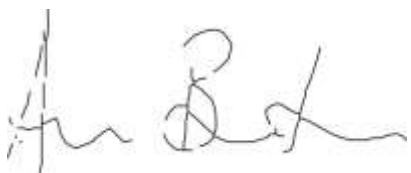
- 104(1)(ab) – offsets and/or compensation: **Not relevant**;
- 104(1)(b) – any relevant provision of:
 - (i) a national environmental standard: **NES-CS assessed as permitted**
 - (ii) other regulations: **Not relevant**
 - (iii) a national policy statement: **None**
 - (iv) New Zealand coastal policy statement: **Not relevant**
 - (v) a regional policy statement or proposed regional policy statement: **Consistent with the proposal**
 - (vi) a plan or proposed plan: **Consistent with the proposal**
- 104(1)(c) – **No other matter is considered relevant for consideration.**

4.4 In terms of submissions, it is considered that the concerns raised can be adequately be mitigated by conditions of consent.

5. Conclusion

5.1 Having reviewed all matters raised at the hearing and having sought professional planning advice from a planning expert, I cannot see anything else or any reason why a consent is refused for the breaches of the District Plan rules.

5.2 As such and pursuant to Section 104C(2), the commissioner shall grant consent for the proposal.



Adam Booth

Pacific Coast Survey Ltd.

Exhibit 1 – Mr Sasagi's Brief Profile



MAUALAIVAO UELIGITONE SASAGI (Ueli) Master of Regional and Resource Planning (Credit) - Otago University

Ueli has over 35 years of experience in resource management and planning in New Zealand and the Pacific. He has spent many years working on resource management functions as a statutory and policy planner for several local authorities and the public sector in New Zealand. Ueli is currently serving as a Director of the New Zealand Planning Institute Board and operate a private consultancy service under a company called SPD Consulting Ltd.

He worked as a Senior Advisor for the Ministry of Transport assisting in the development of its policy position on the Resource Management Act Phase II Reform; reviewed the New Zealand Coastal Policy Statement 2010 (NZCPS); National Environmental Standards for Plantation Forestry (NES-PF); and the National Policy Statement Biodiversity.

He also has experience with the European Union Sector Policy Support programs having worked for the European Union as a Senior Regional Monitor. He participated as a Pacific Expert in 7 Result Oriented Monitoring missions to the Pacific Island region monitoring, evaluating, and reviewing the European Union funded 'Integrated Water Resource Management Programme' and the 'Disaster Risk Reduction Project' amongst other specific targeted projects for 14 Pacific Countries between 2009 and 2011.

Recently, Ueli worked as a Senior Specialist Planner for Whangarei District Council and as Major Project Lead/Principal Planner for Kaipara District Council. Amongst his other planning specialist roles, he prepared s42A reports and recommendations for Commissioners and Environment Court hearings for complex landuse development and subdivision consent applications including brief of evidence for the Environment Court. Ueli has assisted with the development of Kaipara District's Spatial Plan. He managed the new Mangawhai Central Town Centre development, Community Housing Project at Dargaville, the Omamari Windfarm, and the Te Tai Tokerau water dam projects in the Kaipara District to mention a few.

Ueli is well grounded in his Samoan culture. He was bestowed the high chief title 'Maualaivao' under the Samoan custom and tradition. He was also heavily involved in pacific community's governance works for church communities, social and health services throughout New Zealand. He is therefore well positioned to assist the pacific community from a multicultural and different planning worldview perspective.

Contact: ueli.sasagi@spdc.co.nz - Mobile 021554158,