Evidence "O"

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF Plan Change 26 to the Waimakariri District Plan

Applicant Westpark Rangiora Limited

CLOSING SUBMISSIONS ON BEHALF OF WESTPARK RANGIORA LIMITED

Dated 28 July 2015

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1 OFF-SITE FLOODING ISSUES

1.1 In opening submissions, it was highlighted that the natural hazard framework of both the higher order RPS and the subordinate District Plan (Chapters 18 & 8) refer in several policies respectively to avoidance or mitigation.

1.2 Avoid simply means to not allow. But what does "mitigate" mean? There is no explicit guidance to its meaning in the text of the District Plan, be it in the policies or elsewhere. Therefore, recourse should be had to the natural ordinary meaning of the word.

1.3 Mitigate is defined[1] as:

- *To make (something) less harsh or hostile;*
- *To lessen the seriousness of (something)*

1.4 The modelling evidence demonstrates that the potential off-site effects on flood levels associated with development of the Site in a 1:50 or 2% AEP flood level are essentially avoided. Further, in the lower probability 1:200 year event resulting from breakout of the Ashley River a potential increase in flood levels is avoided or ameliorated for a substantial area of the surrounding environment.

1.5 The focus of the first hearing day has however been on the modelled potential flood water increase on a number of adjacent properties in this 1:200 year event.

1.6 Commissioner Whyte asked whether or not "mitigation" had been adopted in respect of those properties?

1.7 Although in my submission, it would be more appropriate to consider the impact on flood levels within the surrounding environment in totality, the simple answer is that mitigation of effects on this small number of properties has been taken into account. Mr. Smith referred to these mitigation measures in his evidence, including the further measures suggested by Mr. Simpson on behalf of the Council.

1.8 Absent these measures, it is more likely than not (in my submission) that the flood levels on affected properties would be more significant than projected by the modelling. Accordingly, the fact that these measures have been taken into account and can be made to happen at final design stage via the subdivision consent process (Chapter 32 of the Plan) means that the mitigation component of the natural hazards policies of the District Plan are implemented or achieved. In other words, the measures that can be implemented are such that they will lessen the potential seriousness of an increase in potential flood levels to such an extent that adverse effects on identified properties will be minimal.

1.9 Again, it should be remembered that the modelled event we are considering is one of low probability and that the affected properties will suffer a degree of flooding even if the development of the Site did not proceed. In other words, the risk of natural hazard (flooding) already exists for these properties – it is not a risk created by the proposed development. Further, the evidence is that no new habitable properties will be affected.

Chapter 8: Natural Hazards

1.10 A number of questions of Mr. Allan raised the issue as to whether or not a balancing exercise is contemplated in the Natural Hazards policies of the District Plan. These questions centred around whether or not the potential positive effects on a significant area

[1] New Penguin English Dictionary 2000

of residential Rangiora to the east of the Site should be balanced against potential adverse increases in flood levels elsewhere.

1.11 In my submission, the concept of a balance is specifically recognised in the *Principal Reasons for Adopting Objectives, Policies and Methods* section of Chapter 8, where it is stated:

> *Policies 8.2.1.2 and 8.2.1.3 lead to regulation of land use. Although a natural hazard can be avoided through the total exclusion of humans and property from areas at risk, the benefits of land use need to be recognised. The District Plan provisions require specific consideration of the flooding risk on each subdivision or land use application, allowing the costs and benefits to be considered. The intention is to alleviate damage to property and protect human life and this may be accomplished through design.*
>
> ...
>
> *Policy 8.2.1.4 recognise the possibility of adverse effects on flood risk on-site, or elsewhere, arising from activities associated with subdivision and development, because floodwaters may be impeded or redirected. While most flood protection and mitigation measures are implemented by the Regional or District Council, benefits can accrue from private works that modify flooding.*

1.12 There are three propositions inherent in the above statements.

1.13 First, in a broad sense the avoidance of natural hazards should be balanced against the benefits associated with development of land. Second, the subdivision consent process is to be applied as a means of evaluation all associated costs and benefits, while at the same time achieving an expressed intention to alleviate damage to property. In this context alleviate should be taken as synonymous with mitigate, as it also means to lessen or reduce the consequences of something. Finally, the benefit of private works that modify flooding is a relevant factor to be taken into account.

1.14 Applied to the present circumstances therefore, there are undisputed benefits associated with the proposed development of the land, benefits that outweigh any potential costs to a small number of properties potentially impacted in a very minor way in a low probability 1:200 year Ashley River breakout event.

1.15 The measures to be adopted by the proponent at final design stage of the subdivision process will alleviate or lessen potential impacts. Lastly, the benefits associated with these measures should be taken into account, not least of which are the positive impacts on residential development to the east.

Submissions

Brittan

1.16 Mr. Brittan raised an issue regarding an existing problem of flooding on his property, his concern primarily related to the lack of Council maintenance of a drain on Lehmans Road adjacent to his property.

1.17 He suggested that a condition of approving Plan Change should be that it not proceed until a proposed secondary flow path south of Oxford Road is constructed.

1.18 This is entirely inappropriate for the simple reason that the flooding which has previously affected the submitter's property relates to overland flooding from rural land to the east i.e it is a different flood catchment (or source of flooding) to the Ashley River breakout flood scenario described by Mr. Smith. The development of the Site has no impact on the flood hazard referred to by Mr. Brittan.

1.19 The second matter identified by Mr. Brittan related to traffic movements. The expert evidence of Ms. Fosberry includes updated analysis which addresses the submitter's concerns, evidence which you can rely upon given the author's extensive experience and expertise.

Martin/ Larson – Impacts on Rangiora Aerodrome

1.20 Mr. Martin had concerns with respect to safety associated with the operation of the Aerodrome. He is not an expert on this matter and, in any event, the evidence of Mr. Larson suggests that the predominant or "Typical Circuit Pattern" on the main 07 runway is such that planes taking off from the Aerodrome will follow a path that is some significant distance from the Site. Mr. Martin did say that some 5% of planes may take off via the 010 runway, which on the information provided by Mr. Camp (via the Council) are likely to be small in number.

1.21 By any common sense measure therefore, there is wide margin for safety vis a vis the operation of the Aerodrome if the Plan Change is approved for residential use.

1.22 In respect of the issue of noise and potential reverse sensitivity, my simple submission is that the expert evidence of Mr. Camp must be preferred to anecdotal comments by Mr. Larson and Mr. Martin.

1.23 If relevant, in terms of the operation of flights from the Aerodrome, s 9(5) of the RMA states that the restrictions on use of land within s 9 applies to overflying by aircraft only to the extent to which noise emission controls for airport have been prescribed by a national environmental standard or set by a territorial authority.

1.24 Regulation and control of noise from flying aircraft is the subject of the Civil Aviation Act 1990 and regulations and rules made under it. – *Glentanner Park (Mt Cook) Ltd v Mackenzie District Council* W050/94 and *Aviation Activities Limited v Mackenzie District Council* EnvC C072/00.

G J Cleary

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