

BEFORE THE WESTLAND DISTRICT COUNCIL

IN THE MATTER OF

Combined resource consent proposal to subdivide land into 17 allotments (including amalgamation condition) and land use consent to erect a total of 12 dwellings, including no more than one dwelling per allotment on Lots 1 to 12, and to form an unformed legal road for residential access, resulting from the three stage subdivision of land legally described as Lots 8 to 29 DP 142, Part RS 1300, 1589 and 4363, and RS 1421, 1588 and 1602-1603 within the Rural Zone, 117 Arthurstown Road, Hokitika. RC220120 and RC230030

APPLICANT

Forest Habitats Limited

MINUTE NO. 6 OF INDEPENDENT COMMISSIONER

DATED 29 NOVEMBER 2024

Introduction

1. This minute responds to the latest memorandum received from the applicant's legal Counsel dated 28 November 2024 and also requests further information from the applicant.

Background

2. My Minute No. 5 dated 15 November 2024 responded to the initial unsolicited memorandum from applicant's legal Counsel dated 30 October 2024, which raised concerns with how the hearing was conducted. That minute stated that:
 - a. The memorandum was provided to the Council's lawyers who advised that they had reviewed the relevant records and were satisfied that natural justice had not been breached.
 - b. Council's lawyers have advised the applicant's legal Counsel that the hearing procedure was appropriate and fair in the circumstances, and as such, complied with s 39 of the Resource Management Act 1991.
 - c. I do not intend to respond to the concerns raised in the memorandum and neither will I be influenced by them.
3. Subsequently, I have received another unsolicited memo from the applicant's legal Counsel dated 28 November 2024. That memo requests information and records relating to the communication with Council's lawyer and an explanation as to why the parties to the hearing were not involved.

Response

4. In essence, the applicant's Counsel original memo questioned my independence, impartiality and objectivity as a decision maker. As such, I had a conflict of interest in addressing that matter. Consequently, Council engaged their lawyer to review the matter, being someone who is independent and capable of providing an objective and impartial perspective. They found there was no issue with how the hearing was conducted, which I subsequently advised the parties. Accordingly, this matter has been resolved to my satisfaction and will not consider any further discourse on it.
5. If the applicant wants copies of Council's communication with their lawyer, then that should be sought from Council directly through a request under the Local Government Official Information and Meetings Act 1987.

Further information

6. Notably since the last hearing, Variation 2 to the Te Tai o Poutini Plan has been publicly notified. I understand that the flood hazard layers associated with that variation have been revised and now show the coastal hazard alert (variation) overlay on only parts of the site. Accordingly, any modelling that informed the revised flood hazard overlays may be highly relevant to the subject application in which flooding is a key matter in contention.
7. On a related matter, the applicant's right of reply mentions the flood modelling report for the new Hokitika stop bank prepared by Land River Sea Consulting Ltd. Despite its relevance to the application, a copy of that report was not provided. I would like to see a copy of that report and would also like a full explanation from Mr. Challenger regarding his estimation about the potential displacement of flood water from the stop bank over the site.
8. Considering the scale and significance of the hearing, I have determined to exercise my power to request further information.

Directions

5. Pursuant to Section 41C(3) of the Resource Management Act 1991, please provide the following further information:
 - a. A copy of the subdivision plan overlaid by the coastal hazard alert (variation) overlay proposed in Variation No. 2 to the Te Tai o Poutini Plan.
 - b. A copy of the modelling report that informed the revised flood hazard layers in Variation 2 of the Te Tai o Poutini Plan.
 - c. A copy of the new provisions proposed as part of Variation 2 of the Te Tai o Poutini Plan.
 - d. Confirmation as to whether the reference in Rule NH-R10 of the Te Tai o Poutini Plan to the 1% AEP event includes the RCP8.5 scenario.
 - e. A copy of the flood modelling report for the new Hokitika stop bank prepared by Land River Sea Consulting Ltd.
 - f. A full explanation from Mr. Challenger regarding his estimations about the flood depths at the site resulting from the potential displacement of flood water from the Hokitika stop bank.

Mark Geddes

Independent Hearing Commissioner