JGH BARRISTER

BEFORE HEARINGS COMMISSIONERS APPOINTED BY PORIRUA CITY COUNCIL AND GREATER WELLINGTON REGIONAL COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	applications for resource consent under Part 6
BETWEEN	**WELLINGTON REGIONAL COUNCIL**
	Local Authority
AND	**PORIRUA CITY COUNCIL**
	Local Authority
AND	**JAGGER NZ LIMITED**
	Applicant

MEMORANDUM OF COUNSEL DATED 3 MAY 2016

1. The Panel in its Minute #3 allowed the Applicant to provide final closing submissions two working days after the close of comments by submitters on the changes to the conditions in the "Planners' Version" of the conditions (produced following final conferencing). That two day period expires today.

2. This memorandum is effectively the Applicant's final closing. I do not intend to address every point made by submitters in their response to the Planners' Version of the conditions, but to respond briefly to the key matters arising in respect of the memorandums filed by Mr Wyatt, Mr Roberts, Mr Wyatt and Mr Johnstone (jointly), and Mr Johnstone.

3. The memorandums filed by Mr Wyatt, and Mr Roberts, Mr Wyatt and Mr Johnstone (jointly) suggest some unfairness in the procedure directed by the Panel, including the five working days given for submitters to review and comment on the Planners' Version of the conditions. There is nothing unfair about the Panel's process, which has given every reasonable opportunity for submitter to be heard. This follows from:

a. Submitters having had notice of the proposed five day allocation since 20 April 2016. The time to raise any concern was then, not at the close of their period.

b. While the full sets of conditions are lengthy (and suggest considerable rigour and thought has been given to managing the effects of the proposal), the changes in the Planners' Version from the previous version are relatively confined and are shown in mark-up. Additionally, the conditions generally in their current form have been available to submitters since the officer reports were produced 11 March 2016, and could have been the subject of detailed evidence and submission by submitters at the hearing.

c. The application was notified on 29 September 2015, with submissions closing on 28 October 2015. Submitters have had at least since that time (over 6 months) to co-ordinate themselves and their resources for participation in the proceedings.

d. In that context, providing for five working days to comment on final changes to conditions is not unreasonable. If a submitter was uncertain that they were looking at the right version, they could have easily clarified that with the helpful reporting officers or administrative staff.

4. There also appears to be a misunderstanding of the process. The ability to comment on changes to conditions is not an opportunity for submitters to re-raise issues that they had already drawn to the Panel's attention at the hearing, seek further information or explanation from PCC, or raise matters that could have been raised during the course of the hearing. Submitter comments on these matters (which comprise the majority of Mr Wyatt's memorandum, for example) should be put aside by the Panel and/or given little weight. In fact, the memorandums do not appear to raise any new concerns at all arising out of the changes to conditions (but simply reiterate previously stated ones).

5. The memorandums also raise allegations (or perceptions) that the PCC has breached a duty of care or acted unfairly in some way to submitters. Any suggestion that PCC has acted improperly is strongly rejected by the applicant – and again reveals a misunderstanding by the submitters of PCC's role, and that of the CDP and District Plan. The PCC has a duty to receive and process applications for resource consent that are put before it. By their very nature, a consent application seeks to depart in some way from what is permitted by the District Plan, and is to be assessed, objectively, on its merits. PCC appropriately appointed officers and independent consultants to process and asses the application (jointly with the GWRC consents), as well as independent Commissioners to hear and determine it. The CDP and the expectations it may have set (rightly or wrongly) is before the Panel, and has already been the subject of submission and evidence. The Panel will no doubt take these matters into appropriate account, and there is no need to revisit them again.

6. One matter of clarification can be made: Lots 1 to 6 were always shown in an area within the CDP as to have houses developed in that location.

7. In respect of the memorandum by Mr Johnstone (and putting aside that it essentially raises matters that were, or should, have already been raised by the submitter during the course of the hearing):

    a. The application has always proceeded on the basis that it will be "predominantly" single storied. That is quite different to being "entirely" single storied, which is what the submitter appears to seek. That would prevent some diversity of form, which could have beneficial effects from a visual amenity perspective. It would also diminish the ability to efficiently utilise some sections, which because of their typography, lend themselves to two story development. There is no need for the condition as the practical reality is that for sound commercial reasons, single storied development will be the "predominant" development form.

    b. A site coverage of 45% is appropriate in the circumstances, where the proposal incorporates such significant open space

and other planting aspects. It is also more consistent with what the market expects.

c. Any mitigation that might be required from a future change in the alignment or elevation of SH58 is a matter for consideration at that time, when there is a proposal and assessment of effects before the relevant consent authority. There is no suggestion that the current application might preclude changes being made to the SH58 configuration in the future – and NZTA, as road controlling authority, has not raised any concerns in this regard.

d. NZTA is also comfortable more generally with the traffic effects on SH58 – and there is the additional safeguard of the review condition agreed to by the Applicant and NZTA. The issues arising from the Winstone Aggregates' application were known to NZTA and do not arise in the same way or to the same extent in respect of the present proposal.

e. Condition 52 enables, from a *resource consent perspective*, the fill of land on third party property. It is intended as an optional benefit to those owners, but cannot be given effect to if they do not agree from a *property perspective*. On that basis, there is no need to delete or amend the condition. It is always possible that a land owner may change their mind (or that a new owner might have a different view).

8. The applicant requests that the Panel now close the hearing, as soon as possible. It also thanks the Panel for its assistance, and the submitters for their participation.

DATED 3 May 2016

James Gardner-Hopkins
Counsel for the Applicant