

IN THE MATTER OF

The Resource Management Act 1991,

AND

IN THE MATTER OF

Application RM 220003 by /Paoanui Point Ltd to the
Central Hawke's Bay District Council

MINUTE NO. 3 / TE PĀNUI TUATAHI OF THE HEARING PANEL

Dated: 3 July 2023

Greetings Tēnā tātou katoa,

This Minute addresses an issue raised by the section 42A Reporting Officer, as a result of the recent notification of decisions on the Central Hawke's Bay Proposed District Plan, (the rules of which have an immediate effect). We have been provided copies of correspondence between the Reporting Officer and the Applicant¹, because they directly pertain to the matters about which we must make a decision. From that correspondence, along with our reading of the section 42A RMA Report and the Applicant's Evidence, we understand the situation regarding additional land use consent to be as follows:

- There appears to be agreement between the Reporting Officer and both the Applicant's Planner and the Applicant's Counsel that land use consent is required under the Proposed District Plan (para 2.16 42A Report, paras 13 and 14 C. Foster evidence and para 7 of the Letter of Response dated 20 June 2023);
- The Reporting Officer states that no land use consent has been applied for and that the communal spaces do not form part of the application (paras 2.8, 2.11, 2.12, 2.16 of the s.42A Report);
- The Applicant's Planner considers the application is for the proposal as a whole, including the communal spaces (C Foster evidence paras 102-106), and the letter of Response dated 20 June 2023 states that Mr Bridge will be "*arguing that the use of the lots as a community facility is part of the application*". However, at para 102 Ms Foster states "*I want to simply say that it is my opinion that the application was clear that the proposal was for subdivision and use of the resulting allotments for the various purposes described in the application*". We note that the application form states in the description of the activity "*proposed subdivision to create 48 allotments suitable for residential development, three shared open space areas, two shared access allotments, one utility (stormwater management) allotment, and a balance area, as described in the attached Assessment of Effects on the Environment*" i.e. it does include reference to 'land use'. At para 105 of her evidence C Foster says that she "*does not agree [presumably with the Reporting Officer] that a separate application is necessary at this stage.*"
- We cannot find that there is any statement in s.42A Report that says a separate application is "*necessary at this stage.*" We note however that it appears that the s.42A Report is silent on the matters raised in the correspondence other than to state that no land use consent is

¹ Email Ryan O'Leary to Quentin Davies and Josh Marshall dated 15 June 2023; Letter of Response Josh Marshall and Quentin Davies dated 20 June 2023.

currently sought, and does not indicate any specific opinions or recommendations in relation to the Letter of Response.

- Neither Expert Planner makes any statement regarding section 91 RMA, noting that the case is made by Applicant's Counsel in the Letter of Response dated 20 June 2023 that they do not consider that we can defer the hearing on any section 91 basis.

Regarding section 91 RMA, we are generally accepting of Counsel for the Applicant's case that no deferral of the hearing is required. We do not consider there is a need to delay the Hearing scheduled for 12 and 13 July as we consider that we are able to understand the effects of the activities for which additional consent may be required from the information already provided by the Applicant, and we would be able to make a decision on the Application. This is provided that we have confirmation as to what consents are being sought now and have a fulsome set of Recommendations from the Reporting Officer. Hence this Minute.

Given the current situation as we understand it, being that the Reporting Officer considers that additional land use consent is required but is not being applied for and the Applicant's position that additional land use is required but a separate application is not necessary at this stage, we invite both parties to provide any additional clarification regarding the positions summarised above so as to assist us in ensuring we correctly understand the issues.

Additionally, we direct that the Applicant and Reporting Officer respond to the questions below:

1. **For the Applicant:** Is land use consent being sought currently or not?
2. **For the Reporting Officer:** if land use consent is being sought, have all relevant matters been considered and assessed? In particular, we would need a specific recommendation about the land use consent.

In order to enable the Hearing to go ahead smoothly and without unnecessary delays, we direct parties to address the above, as a preliminary matter at the Hearing.

We recognise that depending on the Applicant's answer to Question 1, there may be the need for the Reporting Officer to issue an addendum to the s42A Report and/or prepare a supplementary statement of evidence. We will consider this once we have heard from both parties and invite any initial comments from the Reporting Officer regarding additional time required.

We note that we are also actively considering any implications for submitters that may arise in relation to the matter of land use consent. Our initial view is that this is essentially a process issue, albeit a substantial one, given the breadth of information already provided by the Applicant, but again will consider this further upon hearing from the Applicant and Reporting Officer in response to this Minute.

Hei kona ra,



Eileen von Dadelszen on behalf of the Panel