

Hahei Beach Ratepayers Association Inc.

Minutes of Meeting

Meeting Date & Time	1st Meeting 2017, 4:00pm
Title of Meeting:	Special 100 Acres Mediation Debrief Meeting
Meeting Location:	Hahei Community Hall

Attendees:

Chair Bill Stead; Dep Chair John North, Anne Donovan, Catherine Baloghy, Ron Egan, Charlie Adams for Mike Wilkinson, Karen Blair (Part time), Penne Clayton (Part time)

HBRPA:

Apologies:

Mike Wilkinson, Brian Keucke, Shelley Osborne, Peter Harrison

Public Guests:

Graham Harsant, Alastair Sims, Christine Bannan

Distribution:

Attendees + Non-Attendees, HBRA Website,

		Actions by
1	<p>Welcome – Bill Stead welcomed the committee, Charlie Adams as representative for Lees Rd residents and guests. He explained that the purpose of the meeting was to update the committee on the mediation meeting to held on 24th February. He explained that the meeting would be divided into 2 parts</p> <ol style="list-style-type: none"> 1. Presentation from Alastair Sims to explain his plans for developing his property at the entrance to Hahei, “8 Acres” 2. Agree response to 100 Acres mediation meeting. 	
2.	8 Acres Presentation	

		Actions by
	<p>Alastair Sims explained that following mediation, TCDC had agreed to allow the subdivision of his property into 9 lots (Existing house plus 8 new lots). He presented a concept plan and referred to an email explaining his concepts. Copies are attached to these minutes.</p> <p>Cathie Baloghy asked if there would be a covenant on sub-division of the lots, and Alastair Sims said he had agreed 15 years with TCDC. A change would require a resource consent.</p> <p>When asked about schedule, Alastair said he hoped to have the lots on the market in about a year.</p> <p>Alastair Sims explained he was looking at various options for sewage treatment and will make recommendation to TCDC in due course.</p> <p>John North pointed out that in view of the recent fires, Hahei should look at suitable emergency firefighting water storage as part of our community plan.</p> <p>John North proposed that we should lobby for the 50km/h speed limit to be moved to above the s-bend at the entry to Hahei. This supported by all. Cathy Baloghy proposed motion to action this. Seconded: Karen Blair.</p> <p>The committee reviewed his documentation and no objections were raised</p>	<p>Make submission to TCDC to move 50k/m speed limit. John North</p>
3.	Mediation Update	
	<p>The Chair explained that no progress was made at the mediation meeting held on 24 February 2017. Key points were</p> <ul style="list-style-type: none"> • TCDC was not prepared to fund any planning activities for Hahei as recommended in the District Plan • TCDC agreed that the term “Interim Structure Plan” was meaningless – it was a Structure Plan and will allow the owner/developer and subdivide the land with no public review, provide the developer complies with the requirements of the Plan. • Owners were not prepared to allow further planning work. However, they did offer to work with the people of Hahei to incorporate local ideas, if possible. Disappointingly, they did not offer to include parking/commercial area, as we had told to expect • Owners stated they would not develop the land themselves. 	

		Actions by
	<p>Following the meeting, HBRPA lawyer. Asher Davidson prepared options advice note – See attached copy. The note was reviewed by the committee and the following points discussed and agreed.</p> <ol style="list-style-type: none">1. Withdrawal from further Environment Court Action – it was agreed that the HBRPA would withdraw immediately from further action in the Environment Court. Agreed that we would notify all parties and residents immediately.2. Negotiate with Owners – It was agreed that we would send a letter to the owners and invite them to a round table discussion which focusses on our key concerns. After some discussion, it was agreed that these were limited to<ol style="list-style-type: none">a. Commercial/tourist/concession management areab. Restrict ability to sub-divide large section. <p>It was agreed that the next meeting, there would be discussion about who would represent the HBRPA at future discussions, if they occur, with the owners of 100 Acres.</p>	
	Meeting closed at 6.00pm	
	Next meeting 3.00pm 17 March , 2017	

From: Bill Stead
To: ["bkeucke@gmail.com"](mailto:bkeucke@gmail.com); ["catherinebaloghy@hotmail.com"](mailto:catherinebaloghy@hotmail.com); ["donovan.contractors.nz@gmail.com"](mailto:donovan.contractors.nz@gmail.com); ["haheikaren@icloud.com"](mailto:haheikaren@icloud.com); ["j.t.north@xtra.co.nz"](mailto:j.t.north@xtra.co.nz); ["Mike Wilkinson \(wilkinsonm@mbas.ac.nz\)"](mailto:Mike.Wilkinson(wilkinsonm@mbas.ac.nz)); ["Penne Clayton"](mailto:Penne.Clayton); ["pkharrison@xtra.co.nz"](mailto:pkharrison@xtra.co.nz); ["ron@netaction.co.nz"](mailto:ron@netaction.co.nz); ["sosborne@xtra.co.nz"](mailto:sosborne@xtra.co.nz); ["Charlie Adams"](mailto:Charlie.Adams); ["Paul O'Regan \(paul@oreganlaw.co.nz\)"](mailto:Paul.O'Regan(paul@oreganlaw.co.nz)); ["Barbara Ritchie"](mailto:Barbara.Ritchie)
Subject: FW: 8 Acres
Date: Wednesday, 1 March 2017 1:36:00 PM
Attachments: [Concept Plan B&W.PDF](#)
[Concept Plan.pdf](#)

Hi All – I have just received this email from Alastair Sims. We will discuss it at our meeting this afternoon.

Regards

Bill Stead
Chairman Hahei Ratepayers Association
NZ Home Phone - +64 7 866 3758
NZ Mobile Phone - +64 21 025 22091

From: Alastair Sims [mailto:alastairsims@xtra.co.nz]
Sent: Wednesday, 1 March 2017 11:34 AM
To: 'Bill Stead' <chair@haheiratepayers.co.nz>
Cc: somcon@xtra.co.nz; 'Alastair Sims' <alastairsims@xtra.co.nz>
Subject: 8 Acres

Bill

Further to our phone conversation of Saturday morning, I undertook to forward to you a brief outline of what I intend for the area we refer to as "8 Acres".

You will be aware that I have been making submissions throughout the District Plan review process where I sought a rezoning of that land to achieve this end. I have reviewed my submissions and have also checked the application I lodged for an appeal and I am confident that all was done in a proper manner. The same can be said for the submissions and 274 party application of my partner William Somerville.

I attach two concept plans, both illustrating in general terms what it is we propose for the property. One is simply a line drawing scheme plan and the other is the same information laid over an aerial photo which I prefer to use as it seems to me to be easier to understand.

Our agreement with the TCDC is that, notwithstanding the zone rule as to lot size, there will be an average of not less than 3000m² sites with a minimum of 2500m².

As you saw when you visited last week I have substantially completed the planting that would be proposed with any application. But consistent with the approach I have taken with all my projects I still intend to, where appropriate, demark each of the lots with boundary planting the nature of which can't be fully described until the final boundaries are determined.

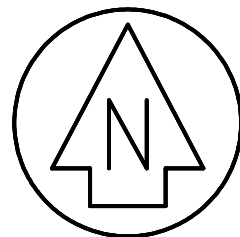
There will be various restrictions and limits placed on any buildings, this as a function of the low density residential zoning; such as a 15% site coverage rule. In addition we have supplied the TCDC with design criteria that we developed when the first application was made under the RMA about 6 years ago. We still intend that these guidelines be used for design criteria of buildings and be incorporated into the resultant titles. No one on our side has any intention of creating anything ugly. And I believe that I can claim to have had some success with this. That is not to say that there hasn't been a couple of problem sites but with experience I am getting better at spotting the potential problems.

In summary, we will create sites of an average of not less than 3000m² with a minimum of 2500m² finished in the same manner of low density living that I have produced over the last 25 years of subdivision activity here in Hahei.

I hope that it is alright that I attend the meeting this afternoon, understanding I have no right to speak but I would be able to answer any questions if it was considered appropriate.

Regards

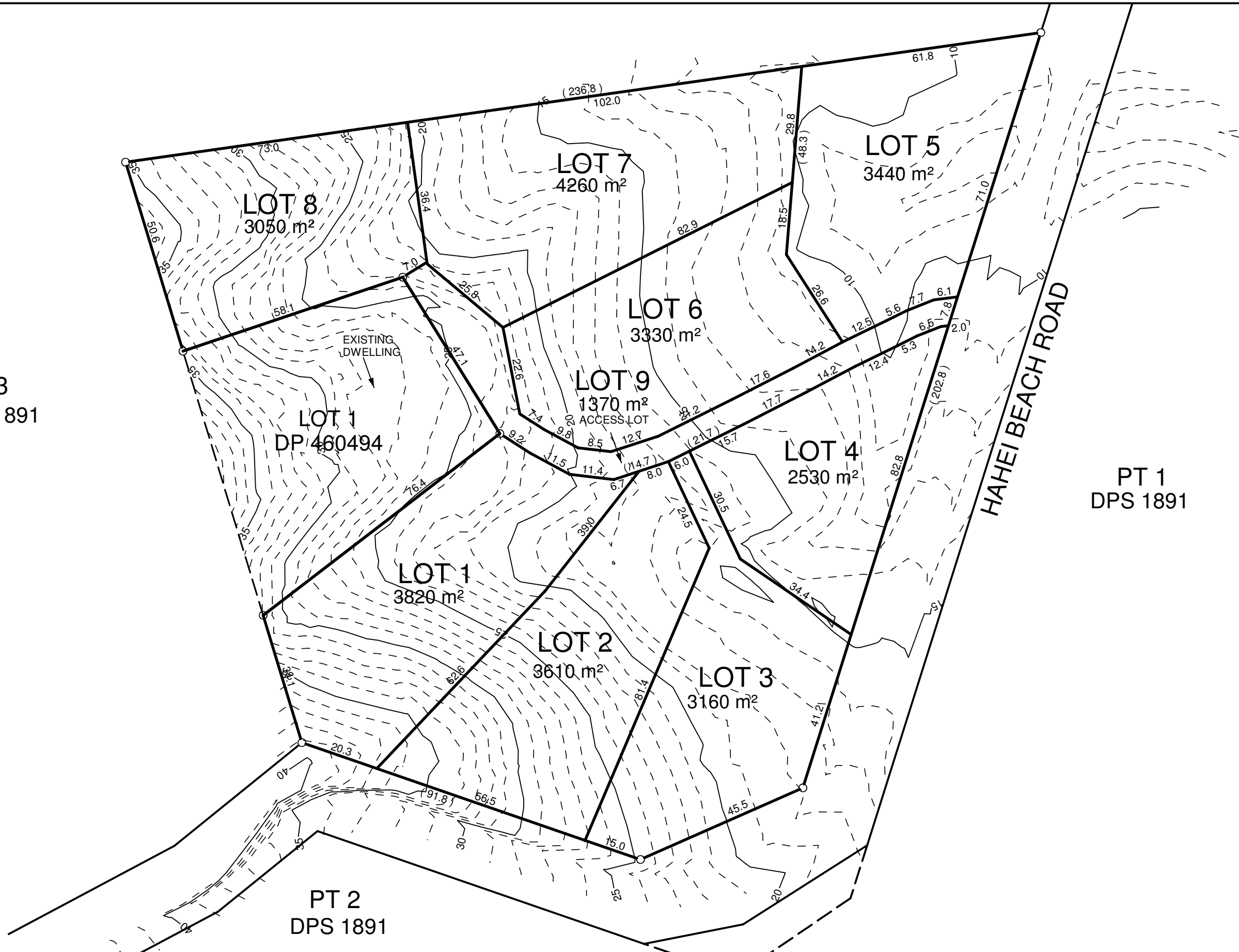
Alastair Sims



PT 3
DPS 1891

PT 1
DPS 1891

PT 2
DPS 1891



NOTE
AREAS & DIMENSIONS ARE
SUBJECT TO SURVEY

THIS PLAN HAS BEEN PREPARED FOR THE PURPOSES OF AN APPLICATION FOR A RESOURCE CONSENT UNDER THE PROVISIONS OF THE RESOURCE MANAGEMENT ACT 1991 AND MUST NOT BE USED FOR ANY OTHER PURPOSE WITHOUT CONSENT.

**CONCEPT PLAN FOR SUBDIVISION
OF LOT 2 DP 460494**
8 ACRES LTD - 122A HAHEI BEACH ROAD, HAHEI

DATE	INITIAL	AMENDMENT
03.06.08	SG	SCHEME

**DUNWOODIE & GREEN
SURVEYORS LTD**

LAND DEVELOPMENT SPECIALISTS
541 POLLEN ST THAMES
Ph (07) 868 7587 FAX (07) 868 8252

SCALE 1:1000 (A3)
DATE JAN 2017
SHEET 26
FILE: **5698**
MO 5698/Concept Plan

REGISTERED PROFESSIONAL SURVEYOR



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SHEET 26
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27 February 2017

Hahei Ratepayers Association Inc
C/- Bill Stead

Dear all,

North & Ors v Thames-Coromandel District Council – Hahei

1. It was nice to meet you all on Friday. As promised, I have considered the options available to you in terms of pursuing the appeal now that mediation has concluded. Obviously at this stage we do not have any expert advice, so I am unable to provide a definite view on the prospects of success, but I have offered some observations based on my participation in similar cases in the past.
2. I note that I have referred to “you” in the plural sense of the appellants, and s 274 parties including the Ratepayers Association, although my engagement is primarily through the Association.

Option 1 – Proceed to hearing

3. Should you decide to continue to oppose the insertion of the structure plan in the Proposed District Plan (PDP) outright, you will need to engage expert witnesses to support your position. As previously discussed, you would almost certainly require a planner, as well as experts to support your contentions that the development allowed by the structure plan will have adverse effects on the environment. At this stage, my understanding is that the effects complained of relate to traffic and infrastructure effects, and visual effects may also be an issue given the location of the structure plan at the entrance to Hahei.
4. There are a number of planning witnesses I could recommend. One I work with regularly is Renee Fraser-Smith of CivilPlan, who is very experienced with rezoning proposals and structure planning, and I would highly recommend her. I am happy to speak with her about assisting you, or could provide other options.
5. I understand that you may have contact with Brett Harries, of Traffic Design Group. He would be an excellent witness if he was prepared to assist. Traffic experts tend to be very busy and it would be important to engage one quickly.
6. If the matter proceeds to hearing, the indication from the Council at mediation was that it would be in late July. Based on that date, my guess is that your evidence would be due around mid-June.
7. A very rough estimate of legal costs for a full hearing would be \$30,000 - \$40,000 (excl GST and disbursements). This would be in addition to the experts' costs.
8. If you were successful in having the structure plan removed from the PDP, there is a chance that you would be able to recover some costs from the landowners (recovery from the Council is unlikely in plan appeals). Typically, the Court's “comfort range” for costs awards is one third of costs actually incurred. Costs incurred in relation to mediation are not recoverable.

9. Of course, there is the 'flipside' risk, that you would be exposed to costs if you were unsuccessful, and may be subject to an order that you pay costs to the landowners and/or the Council of around a third of their costs incurred. It is important that you understand this risk in making a decision as to whether to pursue the appeal. As principal appellants, and because the Ratepayers Association is likely to be harder to enforce any award against, John, Paul and Mary would be the likely targets of any costs application.
10. I have previously given an "off the cuff" estimate of success as being 50:50. Without the benefit of expert input, I cannot reasonably depart from that. I can say that a first impression of the structure plan is that it appears to be reasonably well thought out, with provision for open space and wetland areas etc, prepared on expert advice, as opposed to simply being a block rezoning with no urban design elements. The Court may therefore be sympathetic to the plan, unless you are able to identify clear adverse effects that will flow from its implementation.

Option 2 – Identify desired changes to structure plan, and offer to settle on that basis

11. Should you decide that proceeding to a hearing is not affordable / desirable, there is still the opportunity to identify particular issues with the structure plan with which the community is unhappy and seek changes to it. Any such changes sought would need to be internally consistent (i.e. not just a wishlist from various people which are mutually exclusive) and 'reasonable' in the sense that the landowners would consider them. Matters to consider might include whether the residential lot size should be slightly bigger, whether there should be a commercial component included and/or whether there should be staging such that one part is fully developed before the remaining part is developed.
12. Any such offer to settle should be in a letter headed 'Without Prejudice Save as to Costs' and should be provided to the landowners as soon as possible so that they can consider it, and before they incur too many costs on expert witnesses preparing evidence (so as to minimise the chances of them seeking wasted costs from you).

Option 3 – Get expert advice before committing to a position

13. A mid-way option would be to engage experts on a relatively confined basis to provide you with advice on the prospects of successfully opposing the structure plan's inclusion and/or identifying possible changes which might address some of your concerns. You could then decide, on the strength of that advice, whether to commit the funds necessary to proceed to a hearing.
14. The advice would have to be sought relatively quickly, as the other parties will be putting the pressure on to have a clear position by 17 March 2017 (the date by which an evidence exchange timetable is to be suggested). It would likely involve a desktop review of the structure plan and your submissions, and possibly a site visit (most experts insist on this in order to give proper advice). If the decision was to proceed to hearing, obviously the work already done would not need to be repeated, so the costs incurred would not be wasted.
15. In my view, this is a sensible first step if you are seriously thinking about proceeding to hearing. If the object is to obtain some changes to the structure plan and settle, this option is less likely to assist, although the planner's review of the structure plan may identify some useful changes.

Alistair Sims – Party Status

16. As briefly discussed on Friday, there are, at least on the face of things, grounds to apply to become a party to the Sims appeal. Because the period for joining appeals closed quite a few months ago, and because (we understand) the appeal has otherwise settled, you can expect any application to be quite strenuously opposed by Mr Sims and possibly the Council, and looked at carefully by the Court. It may even require a short hearing, although hopefully it could be done on the papers.

17. The grounds for your seeking to become a party out of time would be that you were misled by the relief sought (which refers to a zone which could not be understood without reference to the original submission) and the fact that the original submission was not attached to the appeal, so you could not have figured out that the zone now proposed was a possible outcome for this land.
18. In order to apply to become a party, you would need to lodge a section 274 notice, and an application for waiver of time, supported by an affidavit. Based on this taking 8 hours, the costs for my time would be at least \$2,500 (excl GST) (see below for further comment on my involvement). However there is potential for legal costs to escalate if the application is opposed and legal submissions and/or a hearing is necessary.
19. I note that a possible approach that may be taken is that the appeal refers to seeking Rural Residential zone which, in the structure plan, provides for 5,000m², so it may be held that readers of the appeal should at least have considered rezoning to provide for sites of that size to be a possible outcome of the appeal. The Court may order that your involvement is limited to arguing for sites of that size (rather than the site size of 2,500m² which appears to have been agreed between Council and Mr Sims), as opposed to arguing the relief sought should be declined outright.
20. In deciding whether to embark on this process, you will need to consider what outcome you would be seeking if you do obtain party status. This will depend on your position in respect of the North appeal. For instance:
 - (a) If you decide to proceed to hearing on the North appeal, then the course for opposing the zoning would be roughly as for Option 1 above. The costs would likely increase incrementally, but not be duplicated entirely, presuming the matters were run together.
 - (b) If you decide to settle the North appeal, or withdraw it outright, you may still choose to participate in the Sims appeal, but it would presumably be on the basis that the residential zoning for that land was incompatible with / not necessary because of the structure plan applied to neighbouring land. Again, the costs of participating in a hearing and calling expert evidence would be similar to those discussed above.
 - (c) If you do not genuinely wish to take the Sims appeal all the way to a hearing, I cannot see the benefit in seeking to join that appeal.
21. It is fair to say that if, following a hearing, you were unsuccessful in opposing the consent order, the risk of a substantial costs award against you would be relatively high. If you were unsuccessful with the application to join, there is also the potential for Mr Sims to seek to recover costs associated with his opposition.

Conclusion

22. I trust this gives you information sufficient to make a decision as to how to proceed. I note that the time allowed in my previous estimate for attending and following up the mediation has been exhausted, so any further work on my part will need to be charged on an hourly rate. Should you wish for me to stay involved, I would need to charge on my normal hourly basis, rather than to an estimate for discrete jobs as I have agreed to do to date, as per my letter of engagement dated 21 July 2016.

Yours faithfully



Asher Davidson

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Email: asher@casey.co.nz