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2 November 2021

Tasman District Council
Private Bag 4
Richmond 7050

Att: Paul Gibson

By email: paul.gibson@tasman.govt.nz

Dear Paul

**Further Information Request for Resource Consent Application No.s RM210785 & RM210786 –
Ruru Building Limited at 54 Green Lane, Motueka**

1. I act for RuRu Building Ltd (RuRu) in relation to the above applications. Ruru has provided me with a copy of your Request for Further Information (RFI) under s92 Resource Management Act 1991 (RMA) dated 11 October 2021. I am instructed to respond to that letter in accordance with s92A.
2. I note that at p6 of the RFA you set out the three options my client has under s92A in terms of its response to the RFA. I write to inform you that without prejudice to its position regarding whether all requests within the RFI are properly within the scope of the Council's powers under s92, my client wishes to exercise the option set out in s92(1)(b) (option 2 at p6 of the RFI). It agrees to provide further information.
3. Because my client has exercised that option, you are now obliged under s92A(2)(a) to fix a reasonable time within which my client is to provide the information and inform my client of that in accordance with s92A(2)(b). In that regard, I provide you with some indications that I consider are relevant to determining what that reasonable timeframe is.
4. I also address some other issues that arise from the RFI.

Reasonable Timeframe

5. As you will be aware, one of the key pieces of information requested by the RFI is a more detailed assessment of the noise effects of the proposal. Marshall Day advises that this further detailed assessment will require a period of in situ noise monitoring. As part of that it will need to assess ambient noise, including at a time during which my client is not operating. The monitoring period will end only on 20 December 2021. Due to the Christmas closure of Marshall Day, advises that it will be unable to complete its investigations or provide the resulting report prior to Mid January.

6. As you will also be aware, the RFI's request for an assessment of the flood hazard effects arises from the proposal to use bunding as noise mitigation. Part of Marshall Day's brief is to investigate the use of other noise mitigation measures that avoid those effects. On this basis a further two weeks are required once the Marshall Day report is completed, to assess whether this removes the need for bunding or if not, to assess its effects on flood hazards.
7. For this reason it is not reasonably possible for my client to comply with all the requirements in the RFI before The beginning of February 2022 at the very earliest. Providing a little bit of extra time for contingencies would result in a reasonably achievable date of mid February 2020. I respectfully suggest that that date is adopted as the reasonable timeframe you are required by s92A(2)(a) to fix. I await your earliest confirmation of that date in accordance with s92A(2)(b).

Other Matters

8. I note that the RFI identifies potentially adversely affected persons for the purposes of noise and purported effects on the operation of the Motueka Aerodrome. It actually requires what amounts to the written consent of the latter.

Affected Person Assessment

9. With respect, the determination of which persons are adversely affected in accordance with s95E is premature, given that the information regarding the magnitude of effects that the RFI requests will be directly relevant to whether those effects exceed the "less than minor" threshold in s95E on any other persons. This is not a determination that can be made at this stage, as that information has yet to be provided. It is for the Council to make its determination afresh, without any predetermination arising from the position adopted in the RFI, once it has the further information. That determination must assess whether the effects on any other person as modified by the RFI response would exceed the "less than minor" threshold on any such person.
10. Please confirm that the Council retains an open mind and unfettered discretion at this stage and remains open to finding that no person is adversely affected, if the further information that my client provides, demonstrates that it is more likely than not that any effects on other persons will be less than minor.
11. It is only once the Council has, with the benefit of all the further information provided, determined whether there are any persons on whom the effects are not less than minor, that it can indicate whose written consents would be required to avoid the need for limited notification. Of course, if the further information provided confirms that no person meets the legal test in s95E for affected person, then no written consents will be required.
12. You will be aware that the scope of s92 requests does not extend to requiring the written consents of potentially affected persons. In this regard I do not consider the comments on affected persons as part of the request.

Obstacle Limitation Surface (OLS)

13. I note that you request written or email confirmation from the Motueka Airport Manager and the Civil Aviation Authority that they are satisfied with the proposed OLS breaches. The RFI then goes on to state that "*The above information is requested in order to determine the potential effects of the proposal on aircraft activity*".

14. RuRu agrees to provide an assessment of the potential effects of the proposal on aircraft activity. That will be provided shortly. With respect, I disagree that providing the confirmation from the Motueka Airport Manager is reasonably necessary to ascertain the potential effects on aircraft activity, if an assessment of that matter is provided by a person better qualified than that Manger, to advise on those effects. In this regard my client has engaged Mr Mike Haines of Mike Haines Aviation Ltd, a highly experienced aviation expert.
15. I am instructed that the Motueka Airport Manager role is not a recognised Civil Aviation Authority (CAA) aviation safety role and that the Manager is not required to have specific expertise in aviation safety to take that role. In contrast, Mr Mike Haines has extensive experience and expertise in aviation safety and regulatory matters concerning civil aviation in New Zealand. As such he is better qualified to comment on the effects of the proposed activity on aircraft activity than the Motueka Airport Manager.
16. As indicated, his report will be provided shortly, along with a response from the CAA, which has also been provided with a copy of his report. This will be all the information the Council could reasonably and properly request regarding these particular effects within the scope of s92.
17. Once that further information on the effects on aircraft activity has been provided, the Council will then be in a position to make an assessment of whether the effects on the Motueka Airport are above or below the “less than minor” threshold in s95E. In the absence of a s95E determination that the Motueka Airport is adversely affected by the proposal to a degree that is not less than minor, there is no basis on which to suggest that the written response of the Motueka Airport Manager is required.

Noise Effects

18. As indicated above, further information will be provided on these effects. I note that these effects are taken as the basis for identifying a number of potentially adversely affected persons. As pointed out above, this identification is premature in the absence of the further information on the noise effects.
19. A key issue that appears thus far to have been overlooked by the Council in its assessment of noise effects overall and on other persons is the fact that this activity will take place in a receiving environment that has been modified in that it includes significant non-rural noise-generating activities, like a coolstore and the airport. The further noise assessment to be undertaken by Marshall Day will assess the level of the effect against the background of the ambient noise emitted by these and other existing activities within this receiving environment. It will also assess the actual noise emissions from the site and address mitigation measures to the extent that these would be appropriate or required.
20. I trust that it will be self-evident to you that the s95E determination cannot be made until that further assessment is provided.

Consequences

21. In view of the above I respectfully request the Council's:
 - a. Confirmation of receipt of this letter;
 - b. Confirmation in accordance with s92A(2)(b) of the reasonable timeframe within which the further information requested is to be provided, and

- c. Confirmation that the s95E assessment of affected persons and the s95D assessment of the overall magnitude of the adverse effects will only be undertaken once the further information has been provided, on the basis of the proposal as modified by that information, and that that determination will not be affected by the initial comments as to s95 in the RFI.

22. Thank you in advance for your assistance.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Hans van der Wal', written over a horizontal line.

Hans van der Wal

Barrister