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26 July 2022

Tasman District Council
Private Bag 4
Richmond 7050

Att: Phil Doole

By email: phil.doole@tasman.govt.nz

Dear Phil

Motueka Aerodrome OLS and District Plan Rules

1. As you are aware, I act for Ruru Building Ltd in relation to its consent applications RM210785 RM210786.
2. I am in receipt of your letters and emails to me of 15 and 22 July 2022 in relation to the above matter. I have also been copied into further email correspondence between you and Mr Huelsmeyer in relation to your above correspondence to me.
3. I note that you state that your correspondence is not a formal response to the provision of further information or my cover letter of 15 March 2022 in relation to the above applications. Therefore, to the extent that you discuss matters in your correspondence with me that may have consequences for these applications, I do not respond to them, but await the formal response from the Council to the provision of that information and my cover letter. I note that the repeated invitations to the s42A processing officer to meet and discuss the further information remain unanswered.
4. In the interim the extent to which the statutory timeframes under the Resource Management Act 1991 for consent processing that the Council is exceeding continue to run and the exceedances continue to become worse.
5. This letter addresses only your indication that you consider the Council can have the words “do not scale” removed as a minor correction. I assume you refer to the power in Clause 20A Schedule 1 RMA. Your view is, with respect, entirely incorrect and misplaced, as are your reasons for it. Specifically:
    a. Your explanations do not provide a legally permissible basis for interpreting the applicable rule, which remains void for uncertainty;

b. The Council cannot rely on clause 20A 1st Schedule RMA to remove the words "do not scale", as the amendment is not a "minor correction", as this would extend the rule triggered by the Schedule beyond what was first notified for submissions; and

c. By virtue of s88A RMA, any amendment cannot affect the activity status of any application lodged with the Council before such an amendment took effect.

Interpretation

6. *In Coalition of Residents Assns Inc v Wellington CC* EnvC W056/01 the Court held that the Interpretation Act 1999 is to be applied when interpreting District Plans. That Act has been replaced by the Legislation Act 2019, which therefore applicable to the interpretation of District Plans. Section 10(a) indicates that the meaning of an enactment is to be ascertained from its text and in the light of its purpose and its context. Subsections (3) and (4) add that indications, which include preambles, a table of contents, headings, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation, are part of the text.

7. While the history of a plan can be used as a factor in interpreting a provision thereof, it cannot override the text, purpose and context. The simple fact is that the text "do not scale" is in the plan, while you are endeavouring to ignore it. There is no authority for the proposition that one can use the history of the plan to lead to an interpretation that does violence to the actual wording in the plan. The text of the plan has an obvious implicit purpose, which is to avoid the absurd results that follow when scaling a plan not suitable for scaling. I **enclose** an email from surveyor Mr Ben Smith, identifying those absurd consequences. I also **enclose** an email from Mr Huelsmeyer that shows that you have misinterpreted the history, so that it actually demonstrates the contrary to what you believe it does.

8. Importantly, the lengths to which you had to go to find an interpretation of the applicable provisions, including relying on your qualifications as a surveyor, and the fact that you amended your views during the course of further correspondence with Mr Huelsmeyer, confirm that the provisions in question are void for uncertainty. They do not permit an interpretation that allows scaling, which would be contrary to the text, its purpose and its context.

Not Minor

9. From Mr Smith's email and Mr Huelsmeyer's further explanations, it is evident that a number of properties that were not identified as being subject to the height restrictions when the TRMP was first notified for submissions, would become subject to those restrictions if one were to scale the plan as you suggest. This cannot, by any stretch of the imagination, be a "minor correction".

10. Any amendment that has the effect of rendering persons or properties subject to the height restrictions, who were not obviously subject to those on the version first notified, would need to go through the full Schedule 1 process.

11. As will be evident from Mr Smith's email, the change would actually compound, not address the uncertainty problems. It would not be a "correction".

12. Please note that Ruru Building Ltd would take the necessary Court action to challenge any attempt to use Clause 20A to remove the words "do not scale" and reserves the right to rely on this letter should any costs issues arise from such proceedings.

Section 88A

13. Section 12 Legislation Act 2019 explicitly states that legislation does not have retrospective effect. This is confirmed by s88A RMA, which indicates that the type of activity for an application already lodged subsequently changes, it must continue to be processed and assessed as the type of activity that it was when the application was first lodged. That means that any rule breaches that might arise as a result of the removal of the words "do not scale" would not affect any application lodged prior to that removal.

14. I trust the above clarification is helpful. I await the formal response to the further information and cover letter provided for consent applications RM210785 RM210786 on 15 March 2022.

Yours Faithfully

Hans van der Wal
Barrister