

**BEFORE THE ENVIRONMENT COURT
AUCKLAND**

ENV-2021-AKL-

**I MUA I TE KOTI TAIAO O AOTEAROA
TAMAKI MAKAURAU ROHE**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under s 120 of the Act

BETWEEN **3MS OF CAMBRIDGE LIMITED PARTNERSHIP**

Applicant/Appellant

AND **WAIPA DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL ON BEHALF OF 3MS OF CAMBRIDGE LIMITED
PARTNERSHIP AGAINST DECISION ON APPLICATION FOR SUBDIVISION
CONSENT**

Dated 26 July 2021

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To the Registrar
Environment Court
Auckland

1. 3MS Of Cambridge Limited Partnership (**3MS**) appeals the decision by Waipa District Council (**Council**) to refuse an application for subdivision consent (SP/0179/20) (**decision**) to create an integrated urban development site comprising 242 - 276 residential lots, a school site, a 'super lot' for a retirement village, and associated lots for public assets, within the Cambridge C2 Growth Cell (**application**).
2. 3MS is the applicant for the subdivision consent.
3. 3MS received notice of the decision on 6 July 2021.
4. The decision was made on behalf of Council by Mr Greg Hill and Ms Tara Hills, both independent commissioners appointed by Council.
5. 3MS is not a trade competitor for the purpose of s 308D of the Resource Management Act 1991 (**RMA**).
6. The land affected is 1865, 1863, 1871, 1881 Cambridge Road, Cambridge. Legally described as Lot 2 DP 29023, Lot 1 DPS 75243 and Lot 1 DPS 31006, Pt Lot 1 DP 29023, Lot 1 DPS 85575, Lot 2 DPS 85575.
7. 3MS is appealing the decision in its entirety.

Reasons for the appeal

8. 3MS' reason for appealing the decision is that the decision contains the following series of errors which have led to an overall error in declining consent:

- a) A finding that the application is not 'in general accordance' with the structure plan contained within Council's Operative District Plan (**ODP**) (paragraph **12.46** of the decision);
- b) A finding that the structure plan is more than guidance or a broad framework to subdivision, use and development (paragraph **12.49** of the decision);
- c) A finding that the application is contrary to, or inconsistent with Objective 1.3.2 and Policy 1.3.2.6, Objective 14.3.1, Objective 15.3.3 and Policy 15.3.32(a) and (d), Objective 15.3.15 and Policy 15.3.15.1, Objective 16.3.1 and Policy 16.3.1.2(b) (paragraph **12.62** of the decision);
- d) A finding that granting consent may ultimately compromise the effective and timely delivery of the infrastructure by Council, and its broader integration of subdivision, use and development over the rest of the C2 and other growth cell (structure plan) areas (paragraph **12.63** of the decision);
- e) A finding that if approved, the subdivision would have a consequential land use change or potential effect (presumably adverse) on other landowners by virtue of a different land use and infrastructure outcome/configuration than was otherwise anticipated by the structure plan (paragraph **12.64** of the decision);
- f) A finding that the application, if granted, would potentially affect land use efficiency and integration with adjacent parts of the structure plan area, as well as other growth cell areas (paragraph **12.66** of the decision);

- g) A finding that the adverse urban design effects are more than minor for the purposes of s 104D of the RMA (paragraph **12.85** of the decision);
- h) A finding that the potential adverse traffic effects (specifically integration with the surrounding growth cells) will be more than minor, and are not satisfactorily avoided or mitigated (paragraph **12.99** of the decision);
- i) An overall finding that for the purposes of s 104D of the RMA, the adverse effects of the proposal are more than minor (paragraph **12.108** of the decision);
- j) A finding that there is potential for negative precedent and plan integrity issues to arise if consent is granted (paragraph **12.114** of the decision);
- k) A finding that the application does not satisfy either limb of s 104D of the RMA and there is consequentially no discretion but to refuse consent (paragraph **12.115** of the decision);
- l) A finding that even if the application had satisfied s 104D of the RMA, having considered the matters in s 104, it would have refused consent under s 104B of the RMA (paragraph **12.116** of the decision);
- m) Overall, as a consequence of these errors, the decision does not promote the sustainable management of natural and physical resources, or the efficient use and development of resources;
- n) The decision does not give effect to the purpose of the RMA nor the National Policy Statement on Urban Development 2020.

9. Had these errors not been made, the application would have passed the gateway test in s 104D, and after correctly applying the evaluation of considerations under s 104, the application would have been granted under s 104B of the RMA.

Relief sought


10. The relief sought by 3MS is:
 - a) That the application for subdivision consent be granted; or
 - b) That the application be granted in an amended form which incorporates a staging approach which enables the subdivision to proceed as stage one which excludes the land identified as infrastructure corridor, while preserving the land identified as infrastructure corridor in stage two, which may be developed once the infrastructure alignment is determined; and
 - c) Such alternative or consequential relief necessary to enable the relief sought in a manner which addresses 3MS' concerns with the decision; and
 - d) Costs of and incidental to the appeal.

Attachments

11. The following documents are attached to this notice:
 - a) A copy of 3MS' application that is the subject of the appeal (**Attachment 1**);

- b) A copy of the decision (**Attachment 2**); and
- c) A list of names and addresses of persons to be served with a copy of this notice (**Attachment 3**).

Dated 26 July 2021



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Advice to recipients of copy of notice

How to become party to proceedings

1. You may be a party to the appeal if,—
 - a) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and

- b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.
- 2. Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.
- 3. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

- 4. If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.