


Minutes – Hearings Committee 18 May 2021

 <p>WHAKATĀNE District Council <i>Kia Whakatāne au i ahau</i></p>	Details of Meeting:	HEARINGS COMMITTEE MEETING HELD IN THE COUNCIL CHAMBER, CIVIC CENTRE, WHAKATĀNE ON TUESDAY, 18 MAY 2021 COMMENCING AT 9:05 AM
	Present:	Councillors G F van Beek (Chairperson), V Luca and N S Tánczos
	In Attendance:	M Avery (Manager Resource Consents), R Gardiner (Consents Planner) and H J Storey (Governance Support Advisor)
	Visitors:	G & D Woollett, M Lefort - Applicants T Fergusson for the Applicant E Anderson, G and S Dawson, G Sharp - Submitters
	Apologies:	Nil

1 RESOURCE CONSENT: PROFESSIONAL OFFICES FOR KIWISPAN – BLANCH HOLDINGS LIMITED, 80 MCALISTER STREET, WHAKATANE

Refer to pages 5-91 of the agenda.

1.1 T Fergusson for Applicant

Mr Fergusson noted that Kiwispan had until recently operated from a larger premises in Valley Road and due to a change in the business model were now working as a professional office and had purchased the property at 80 McAlister Street for that purpose. The district plan allowed for a professional offices as a discretionary activity. The office would operate within normal business hours with two full time and two part time staff with staff carparks and signage being provided with the district plan rules. Mr Fergusson advised that the planning evidence had been circulated and that the applicant did not have any issues with the Planner's report although there were some recommended changes to the conditions.

The submitters noted that they had received and read the application, planners report and the applicant's evidence. Replies to questions raised were:

- external changes included an extension to the floor area of the building and some alteration to the exterior of the building and its surrounds
- the different business model of the company meant that no construction yard was required and materials would be shipped directly to the building site. The business had become a project management style business where only an office was required.
- there was an option to increase the width of the concrete area at the rear of the building and to form a carpark which could also accommodate additional vehicles if required
- the only use of a trailer on site would be to deliver such items as office equipment and a request was made to remove the blanket restriction as there did not seem to be a need for it to be so restrictive. It was requested that recommended conditions 4 and 5 be consolidated as they addressed building materials and movement of these
- traffic movement on the site would expect to be light as the business would be mostly internet based and a trailer may be required to be on site on the odd occasion
- while the use of the building was for Kiwispan to operate from, owner Debbie Woollett was also a trained business coach and may wish to run the business from the site at some stage.

The applicant notes this was not on the table at present and realised that additional consent would be needed if this was to occur.

1.2 Submitters – E Anderson, G and S Dawson, G Sharp

Ms Anderson advised that she has made a written submission but said that she was not happy to have a business located at the house in front of her property. She noted that the main concern was that the property was very close and was on a shared driveway and this would likely create more traffic than a household living at the property. She noted that the previous owners had 2 vehicles and on average would use the drive 2-3 times a day.

Mr Dawson advised that he lived next door to the property and was not as affected by the change as Mrs Anderson but was at the hearing to support her. He noted that she was 70 years old and had lived in a quiet rear section for 16 years but would never have purchased the property if she knew it would end up having a business in front of it. Mr Dawson said that it was important to Mrs Anderson to retain her privacy, security, peace and quiet and to live in a location that had easy access to the town. With a business being planned at the front of her property she was worried as there would be strangers and new visitors at the office and the shared driveway would be used by people she did not know so it added a completely different perspective to her life that if she had neighbours she knew.

Mr Dawson advised that he had seen two people on the Landmark property across the road recently outside of office hours as they knew it was empty. He noted that while he contacted the owners and the police, it raised a concern of security for the Kiwispan office where people would know when it was empty. He said that while the neighbours were not there to provide security to Kiwispan they would provide help when needed. Mr Dawson said he failed to see why the property needed to accommodate a business, noting that it was on a main arterial route and the neighbours had a right to live there in peace and quiet. He said that he had a concern with the operating hours of 7.30 am to 5 pm when most business hours were 9 am to 5 pm. He noted that a 7.30 am start was early for retired people with the noise of vehicles coming onto the site and could be detrimental to their lifestyle.

Mr Dawson noted that there were very few 100 year old properties in the town and with the current shortage of family home. He questioned what the area was becoming by allowing more houses to get converted into businesses because they were on main arterial routes, especially when there must be more suitable commercial premises available. Mr Dawson considered that if Landmark were not situated across the road, Kiwispan would not be looking at the move as an opportunity. He said the area they live in was residential, surrounded by neighbours and while it may not be quiet regarding traffic they still wanted to retain the character of the area as much as they could. Mr Dawson concluded by noting that the property was a three bedroomed family home close to town and schools and considered it should remain a family home.

Replies to questions raised with the submitters in relation to Landmark Homes and Hertz Rental being in close proximity to the Kiwispan site were:

- There were no detrimental effects from the Landmark Homes site except on some weekends when it sometimes became a congregation point with alcohol cans and other evidence of poor behaviour
- Landmark Homes were located on a corner site with its own access and was not infringing on anyone else's ability to come and go, the lawns were kept trimmed and they were a good neighbour

The submitters considered that the Landmark site does not compare with Kiwispan as they are not sharing the same driveway therefore neighbours access to their own properties would not be blocked. With the garage situated right on the boundary and no fence it was very tight with vehicles going in and out. While they recognised the setting up period needed trailers, there had been a lot of big

tandem trailers coming onto the site and blocking the driveway. The noise of the building materials on these trailers had caused residents to cringe.

In response to a query in relation to the conditions being made rigorous in relation to hours of operation and security, the submitters noted that it would be good if no trailers were going up and down the driveway. They also considered that it was not a small business with 7 staff members.

Mr Dawson noted that they had been told at a pre-hearing meeting that any issues with the driveway were a private aspect and the Council would not get involved. He advised that the original submission made reference to the neighbour on the south side signing off the garage being built closer than the required 3m from the boundary but was unable to find that correspondence. Mr Dawson said that when he delved into the zone rulings he was told it did not apply as it was residential and now that the property was to change to a business he asked the Council to consider looking at imposing the 3m boundary around the section.

The Planner noted that the setback use would remain the same as it was and existing use rights would be applied as the building was lawfully established at the time it was built.

In relation to the queries raised by the submitters Mr Woollett responded as follows:

- there would be a team meeting one day a week and the rest of the week the builders would leave from their residences and go directly to the work site
- 7.30 am was traditionally the time they started work and while they don't want to infringe on the neighbours there had to be latitude given so that the business could function
- the construction team were hardly ever at the office, however health and safety meetings were held to cover each new site before moving out to the site
- the photographs provided by the submitters of materials stored on site were sectional doors for the planned alterations to be carried out

Mr Lefort advised that the only materials that would be stored on site were small items including specialised screws and the like noting that without minimal stock supplies of such vital items, the work would stop. He requested that condition 4 be amended to allow these smaller items to be stored on site and noted that the delivery of such items would be by courier the same way as deliveries to a normal home.

Mr Sharp advised that the property had an incremental change on what had been applied for and said that there were now a lot of commercial properties in residential areas. He noted that he had not seen any examples where residences had a chance to fight a losing battle with neighbours and all of the details in email inquiries was the Council submitting information where other towns have gone ahead because of the development but he had not seen anything submitted in the information by residents who had fought it. Mr Sharp said there seemed to be a lot of conflicting details, especially with the hours of operation and while he was aware of meetings being held outside of office hours after 5 pm, he was not sure how often this was but had noticed a lot of cars at times.

Mr Sharp said that the business would affect the value of his property and said there were two problems with this, one was that as a commercial property they were able to claim back their GST on the purchase and with the property value being inflated by \$100,000-200,000, rates were likely to go up in that bracket. Mr Sharp said that this was not really the case for the business as they were able to claim back \$90,000 on the purchase.

The Chairperson noted that the provision of examples of market impact because of a change in the activity was not an effect on the Resource Management Act, there was no cause to consider the matter at this hearing.

Mr Sharp said that he had concerns with vehicles parking on the site and asked if because of the number of children in the area a circular driveway could be installed as it was a busy road and he did not want to see traffic held up with vehicles backing out and with lots of cars parked on the side of the

road it made it hard to see. Mr Sharp was advised that a turning bay was required on the property to ensure that all vehicles leaving the property were facing the road.

In response to a query in relation to the impact of the increased traffic over the years and whether there were any issues with bordering Apanui School at the rear of the properties, Ms Dawson noted that as a back section, Ms Anderson's property was really quiet and with a fence installed along the back it was at a suitable height to keep the children at bay and as they were gone by 3pm there were no issues. She said that Ms Anderson enjoyed the sound of the children playing and did not think that she should sell because of something happening in front of her property. Ms Dawson also noted that the Council owned a stream along the boundary and said it was in a bad state of disrepair and needed attention.

Mr Dawson concluded by noting that they had received information from the Council regarding the Resource Management Act and the decision expected and agreed that as neighbours that while they were pushing uphill, they failed to see why town planning thought that the issue was minor or of no great consequence. He said that from the side lines, what Kiwispan wanted to do was a minor infraction against their rights as surrounding property owners and said that while they took that on board, there were concerns with noise, security and the like and they did not like being told it was a minor thing. He said the business was taking over another family home and creating noise in the area.

In relation to information provided in the Planners report on 40 Domain Road, Ms Dawson questioned the comparison and said that there were a number of differences including the car parking area being much bigger, the business being conducted a good distance from the rear neighbours and it had not been a 3 bedroomed residential home.

Ms Dawson noted that regular Zonta meetings were being held on the Kiwispan property. Ms Woollett advised that she was the President of the local Zonta Club, which was a new club with 7 members and met once a month in the back room of the office because it was of suitable size and free. She said that as the club membership increased, they were unsure where they would continue to meet, but at this stage it was a wonderful space to meet.

1.3 Reporting Planner

The Planner noted that there were some minor changes proposed by the applicant to the conditions noted on page 54 of the agenda and considered that these were acceptable with some statement derivatives or subsequent sub-wording relating to running a professional office being permitted on the site. In reference to the storage of minor building materials on site, the Planner noted that a clear indication of the type of materials to be included would be acceptable.

The Planner noted that the National Policy Statement for urban development which was introduced in 2020 had a requirement to remove minimum parking requirements apart from disability parks and must be given effect by 20 February 2022. He noted that while Council had not incorporated this at present, they must have regard to it in its decision making as it was a national document. In response to a query regarding the installation of a circular driveway the Planner noted that the current district plan was silent on multiple access points but there was a need to comply with standards which had been established for safety reasons, therefore it was ideal to only have one.

All parties agreed to the Hearings Committee carrying out a site visit to the properties following the hearing.

1.4 Applicants Reply

Mr Fergusson made the following points:

- the site was located in a mix of land uses and zonings and in terms of the issues of concern with traffic effects he considered it to be comparable and similar to a residential property and the onsite parking and manoeuvring met the needs of the business
- It was agreed that all parties were entitled to free and unobstructed access to the site and the right of way would be kept free of obstruction
- The conditions and recommendations on directional signage for parking and the business provided minimal risk of people wandering into the neighbouring properties
- It was requested that the condition regarding building materials on site be amended to allow smaller items to be stored
- The external appearance of the building would remain the same with no effect on the surrounding residential amenity and character of the area
- As many residents left their homes before 7.30 am there would be no additional impact on noise in the area and would meet residential standards
- A change was sought in the wording to create a professional office, rather than limiting the consent to Blanch Holdings that runs as Kiwispan. Any limit would overly restrictive any future business for which activities would be managed through the consent conditions
- The ability for trailers to come onto the site at times was necessary and should not be restricted
- The applicant was willing to install security cameras and alarms if necessary, but noted there had not been any issues in the past and there would be nothing on the premises to steal

In response to a query from Ms Dawson regarding the request for any other business being able to operate from the site if Kiwispan moved out, the Planner advised that any business would be restricted to the scope of the consent and conditions of that consent and if they wanted to do anything outside of that they would be required to seek a variation to the consent. In response to a comment that was not what they were told at the pre-hearing meeting, Mr Fergusson reminded the committee that all matters discussed at a pre-hearing meeting were without prejudice.

The meeting adjourned at 10.20 am and reconvened following the site visit at 11.30 am

RESOLVED:

THAT the public be excluded from the following parts of the proceedings of this meeting, namely:

1. Application - 80 McAlister Street – Professional Office

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
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<p>1 Application – 80 McAlister Street – Professional Office</p>	<p>To enable the Committee to consider the applicant and submitters' submissions and evidence</p>	<p>That the exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the Committee to deliberate in private on its decision or recommendation in any proceedings where a right of appeal lies to any Court or tribunal against the final decision of the Committee in those proceedings.</p> <p>Section 48(1)(d)</p>
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Chairperson van Beek/Councillor Luca

CARRIED

The meeting adjourned at 11.36 am to allow the Committee to discuss their decision.

RESOLVED:

To Grant Resource Consent

- i) Under section 9(3)(a) of the Resource Management Act 1991 and Rules 3.4.1.1.24 and 13.2.9.1 of the Whakatāne District Plan, being a discretionary activity, and
- ii) In accordance with sections 34A, 104, and 104B of the Resource Management Act 1991,

for the establishment and use of a professional office on a 594 m² allotment of land described as:

- Legal description: LOT 2 DPS 74955
- Record of Title (RT): SA60B/571
- Site Address: 80 McAlister Street, Whakatāne

Subject to the following conditions:

Conditions:

1. Except where modified by a condition of this consent, the development shall be carried out in accordance with the land use application LL-2020-9283-00 and further information submitted on 27 August 2020 by Gary Woollett, on behalf of Blanch Holdings Ltd t/a KiwiSpan.
2. The site shall only be used for activities associated with the operation of KiwiSpan Whakatāne or its successors.
3. The professional office shall be restricted to the following hours of operation:
 - 7:30am to 5:00pm Monday to Friday.
4. There shall be no heavy vehicle deliveries and no deliveries of building materials to the site.
5. There shall be no outdoor storage of materials on the site.
6. Directional signage shall be installed to direct visitors to park in the carparks at the front of the property, as well as identifying the building entrance and reception.
7. After-hours contact details shall be displayed at the entrance to the building.
8. A maximum of 0.5m² of advertising signage may be installed either within the site, on or above the front boundary fence. If on or above the fence, it shall be parallel to the fence to ensure sightlines for vehicles exiting the site or adjoining properties are maintained.
9. The activity shall not exceed the following Residential zone noise limits:

Daytime: 7am to 10pm Monday to Sunday inclusive, including Public Holidays	Night-time: At all other times
50 LAeq	40LAeq 70LAmx

10. That a monitoring fee of \$320 shall be paid to the Council as a single charge for the administration, monitoring and supervision of this resource consent. Notwithstanding the above, where there is good and reasonable cause for unprogrammed monitoring and additional site inspections, the costs of that will be a charge on the consent holder. Such costs are recovered on an actual and reasonable basis as defined in the General Conditions and Notes of the Fees and Charges Schedule as approved by the Council in terms of Section 36 of the Resource Management Act 1991.

THAT within 20 working days of the receipt of the invoice, the additional administrative charges that were incurred in relation to the receiving, processing and granting of this resource consent (pursuant to S36 of the Resource Management Act 1991) shall be paid to the Council in full.

Advice notes:

- i) If you do not understand any conditions of this consent, please contact the Council's Planning Department for clarification before starting work.
- ii) Under Section 125 of the RMA, this resource consent will lapse in five years, unless it is given effect to within that time.
- iii) In accordance with Section 127(1) of the RMA, the consent holder may apply to the consent authority for a change or cancellation of any condition of this consent.
- iv) It is the consent holder's responsibility to comply with any conditions imposed on this resource consents prior to and during (as applicable) exercising this resource consent.
- v) No development or financial contributions are payable for this activity.

Reasons for the decision:

The proposed activity is acceptable because:

1. The proposed scale of activity is similar to a permitted home occupation activity which may establish within the Residential Zone under the Whakatane District Plan.
2. Consent conditions will manage, avoid or mitigate any effects, associated with the hours of operation, noise effects, business signage, customers visiting the site, management of the delivery of building materials and the storage of materials. These were many of the key concerns raised by the submitters.
3. The proposal is consistent with the objectives and policies of the Whakatāne District Plan because it balances the needs of business growth and development with the need for residential development, whilst ensuring that any effects not commensurate with residential use are avoided. The policy framework does not preclude some changes in land use and amenity, and the establishment of non-residential activities in the Residential zone, provided they are compatible with residential uses and domestic in scale and character. The proposed KiwiSpan activity, as described in the application, is of a scale and character that means it acceptable in this location. No significant external changes are proposed to the dwelling. A condition is imposed to restrict the office activity to the specific Kiwispan Whakatane business for which consent was sought. This condition provides certainty and clarity for adjoining residents as to the nature of the consented activity.
4. The proposal has a less than minor effect on the mixed use character of the area Although zoned Residential, the site is located on a District Arterial road which has a number of commercial, accommodation and educational activities operating along it. The site is

opposite land zoned Mixed Use and close to other commercial zones and the town centre. The activity is consistent with the established character of the area.

5. The effects on the party who provided written consent have been disregarded and the effects of the establishment and operation of a permitted home occupation have also been disregarded.
6. The proposal is consistent with all other relevant matters under the Resource Management Act 1991, the higher order National and Regional planning documents.

van Beek/Luca

CARRIED

THE MEETING CLOSED FOLLOWING THE DECISION BEING MADE.

Confirmed this day of
CHAIRPERSON