

IN THE MATTER OF the Local Government Act 1974
AND
IN THE MATTER OF an application by Addison Developments Limited (ADL) to the Auckland Council for construction of a private drain through an adjoining premise at 1 Takanini School Road, Takanini.

SECTION 460 LOCAL GOVERNMENT ACT 1974 – MEDIATOR’S REPORT

1. On 27 March 2017 the undersigned was asked by Council to mediate on a section 460 Local Government Act 1974 (LGA) application concerning land at 1 Takanini School Road, owned by Mr and Mrs Sabatier of Normandy Farms, Brookby.
2. The land in question constitutes the physical low point of an urbanising catchment, which includes the Addison and Wallace/Tonea developments at Takanini. Previous negotiations between ADL and the Sabatiers over a period of time had not been successful, resulting in the application by ADL to Council to use the provisions of section 460 of the LGA to secure construction of a private drain (open swale) through that land to convey the upstream stormwater overland flow in excess of the 1 in 10 year event, up to the 1 in 100 year event, to a 1:100 year pipeline that was apparently constructed in 2007 by the Papakura District Council from the Sabatier property, under the rail line, to the Pahurehure Inlet. The location of the pipeline therefore created a new downstream discharge location into which all of the developments in the catchment would connect.
3. The 2010 Pahurehure Inlet North Integrated Catchment Management Plan (ICMP) located the flow path beside the rail corridor in the Sabatier property, however only the location and magnitude of the flow was detailed in the ICMP as the cross section and area required for the flow is reliant on how a developer chooses to design their layouts.
4. It is understood that the main reason for locating the flowpath on the Sabatier land is that, as the lowest point in the catchment, it requires the least amount of earthworks to create it. Choosing the lowest point in the terrain also enables the steepest gradient to be achieved on the longsection of the flowpath. The flatter the gradient the more surface area is required to convey the overland flows, so by maximising the steepness of the gradient, the area of developable land is also maximised. Furthermore, as there is already an overland flowpath in this location it was seen as logical to utilise the same area to manage any post-development flows.
5. Council’s position is that the railway embankment is a barrier to flows that should not be overtopped in the 100yr event. A flowpath beside the rail corridor therefore creates a buffer between the rail corridor and housing while also ensuring that depressions behind the railway have a direct engineered route to the 100yr pipeline, reducing the flood risk to the railway, and protecting the railway embankment.
6. Having met separately with Mr Jean Marie Sabatier, Ms Claire Woolley for ADL, and Mr Doug Mitchell Council’s development engineer, during the week of 3 April 2017 to establish an appreciation of respective issues, a mediation session was scheduled for and took place on Monday 10 April. That session was also attended by Mr Guy

Rodger, a civil engineer, for ADL. All understood and accepted that the standard terms of mediation confidentiality applied.

7. The outcome of that session was an agreement to pursue further (but not an agreement to) what was referred to as the narrow swale option on the Sabatier land – a swale of no more than 4m width designed to take the upstream flow from the Wallace/Tonea and Sabatier land only, with the ADL flows being engineered and managed internally through its consented pond(s). This was neither ADL's nor the Sabatier's first preferences but posed a potentially workable compromise as being the least intrusive on any obvious future subdivision layout on the Sabatier land.
8. Mr Sabatier then, as earlier advised, was overseas for a period of some weeks returning on 3 May 2017.
9. Shortly before Mr Sabatier's return I was informed that a meeting had been called by Council with ADL and Wallace/Tonea engineers because an error in the modelling of relative levels had emerged, which indicated that the narrow swale option was unlikely to be practicable. In short this resulted from the realisation that part of the upstream flow that had been anticipated to flow onto the ADL land via Arion Road would, in fact, flow onto the Wallace/Tonea land because its now proposed roading connection with Arion Road was 0.56m lower. The result of that meeting was that ADL withdrew the narrow swale option from mediation.
10. A temporary solution between ADL and Wallace/Tonea was provisionally agreed to by Council subject to further modelling and design. That solution involves the location of pumps on Addison land next to the Railway, sized for the 100 year flow (approximately 4 cumecs). A temporary attenuation area would be created on ADL and Wallace/Tonea land to act as buffer storage allowing enough time (at least 5 hours) to mobilise transportable generators to get to site before the railway overtops necessitating closure of the southern line. The pumps would discharge onto the roads within the ADL development and flow overland into its ponds and then into the 100yr pipeline under the railway.
11. Council proposed that solution would be in place until such time as the Sabatier land is proposed to be developed, at which time it would require a full swale to take the full 4 cumecs flow to be provided as a condition of subdivision. The temporary solution would then be decommissioned. If modelling shows that solution to be tenable, Council accepts that it could be in place for many years as there is currently no development proposition on the Sabatier land.
12. Following Mr Sabatier's return I met with him and Mrs Sabatier on 5 May 2017 to discuss the variant options that now presented itself – being either:
 - (a) an agreement to permit the construction of the wider c.10m swale (to take the $4.1\text{m}^3 > 10$ year event flow from the subcatchment (including Addison and Wallace/Tonea)) now, at no direct cost to them (the works would be undertaken by ADL); or
 - (b) refusal to that construction now, in which case when a subsequent subdivision application is made to develop, Council will require the wider swale as a precondition of subdivision and the full cost of construction etc will lie with the applicant.
13. Mr Sabatier indicated that he would consult with his lawyer in the following week and advise me of his response. On Thursday 11 May 2017 he advised that he and his lawyer were engaging senior legal counsel, and I advised that my role as mediator was, therefore, at an end.

Section 460

14. In terms of section 460 LGA, on the available information I have concluded that the "only practical route", given Council's general opposition to long-term pumped solutions, is by open swale via the Sabatier land. That is not a solution that is currently amenable to a mediated outcome.

A handwritten signature in black ink that reads "David Hill". The signature is written in a cursive style with a large, sweeping initial 'D'.

David Hill
Mediator
Independent Hearings Commissioner
12 May 2017

Raj Kumar.
Senior Development Engineer
Admin Building Coles Crescent
35 Coles Crescent
Papakura.

RE: Application To Construct Drainage Over Neighbouring Properties 1 Takanini School Road

Dear Raj,

This letter is to confirm the Auckland Councils Healthy Waters Department preference for the route of a constructed overland flow path through LOT 2 DP 157092 at 1 Takanini School Rd, adjacent to the rail corridor as shown on Drawing 450 date 02/17 from Dodds Civil Consultants.


The reason for this preferred route is as follows:

- The flow path location is consistent with the 2010 Pahurehure Inlet North Catchment Management Plan. It is located in the lowest point in the terrain where the flow path can be conveyed to the Waimana Trunk stormwater pipeline constructed by Papakura District Council in 2007 to service the new development catchment area (including 1 Takanini School Rd).
- The route is the most efficient and requires the smallest footprint in the subcatchment.
- A 10 year capacity primary drainage system has already been constructed by the Addison development. Only flood flows in excess of the network capacity will utilise the overland flow path.
- Because of the peat geology and very flat topography in Takanini, overland flow paths need to be deliberately engineered to safely contain extreme flooding and protect the future development. The Addison group have investigated a number of options to manage the future flood risks. The route selected has the lowest risk profile to all land owners whilst maximising the development yields for all land owners.
- 1 Takanini School Rd will also be serviced by this overland flow path.

The Addison group have made a number of unsuccessful attempts to negotiate with owner of 1 Takanini School Rd and representatives from the Healthy Waters Departments have also attend those meetings to state our preference for the route for the reasons stated above.

The Local Government Act s181 request for access comes after a year of failed negotiations, and was only perused by Addison after their offers were rejected by the solicitor representing the owners of 1 Takanini School Rd.

Regards


Andrew Chin
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Andrew Chin
Strategy, Resilience & Development Manager
Healthy Waters Department
Auckland Council