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LOCAL GOVERNMENT MATTERS
COUNCIL & ENVIRONMENT COURT
HEARINGS

Devin Grant-Miles
Land Use Advisor
Land Advisory Services
Community Facilities
Auckland Council
Mobile: 021 925 492
Via email
11 October 2017

Dear Devin

RE: 306 SEA VIEW ROAD SUBDIVISION-ACCESS AND ASSET OWNER APPROVALS AND LOCAL BOARD INPUT

I set out below my response to your recent emails asking for clarifications and include matters that I have addressed already by earlier email responses so these matters are 'bundled' for ease of reference. Your questions are **in red** with the responses set out below.

Can you please provide me with an archaeological report or other evidence stating that an access way through 306 Sea View Road is not viable due to the midden?

I note as below in reply to your question (which we discussed some time ago by email). The relevant reporting does not specifically state that such access is not feasible-rather the specialist assessments eliminated options thus structuring the access design. Clearly vehicle or pedestrian access cannot go through(or even abut) the midden (S11/1155).

Clough and Assoc note in their archaeological assessment in regard to the identified S11/1155 midden that;

The current proposal has been redesigned to avoid effects on the recorded extent of site S11/1155. The site will be encompassed in its entirety within the southern end of Lot 11. The current proposal will have no effects on the recorded extent of the site. This area will be maintained in short pasture grasses (Dennis Scott pers. Comm. 2017).

Of significance to the access for the subdivision I note that the Plan rules at 12.10.4.2 specifically require as follows;

- g. Ensures that there is no through road connection for vehicular traffic between the access points of Crescent Road East and 306 Seaview Road Driveway.

The topography and geotech findings as well as the archaeological findings prevent any alternative access on the application site in terms of access to lots 11-13. Access from Hill Road to the proposed building area at the top of Lot 13 is too invasive in terms of slope and earthworks.

The midden is to be covenanted and has been identified to be so since well before the proposed subdivision of the site in 2008 (which was withdrawn as the Plan review was forthcoming and that avenue was chosen to pursue the applicant's aspirations for the land-which resulted in the 2013 Operative Plan provisions under which consent for this proposal is sought

Early consultation with Ngati Paoa identified the need to avoid and protect the midden.

In relation to site instability Coffey noted in their 3 August 2017 memo as follows;

- *The portion of the Buildable Area upslope (south) of the Geotechnical Building Line shown on TCL drawings SP04 to SP07 is land having gradients of 1(V):4(H) or steeper and has evidence of soil creep and existing relic shallow seated slip features. No Building and no earthworks should take place within this area unless endorsed by specific site investigation and foundation design to assess slope stability and potential soil creep with the likely outcome being piled foundations designed for lateral soil creep loads.*
- *The portion of the Buildable Area downslope (north) of the Geotechnical Build Line shown on TCL drawings SP04 to SP07 is land having gradients steeper than 1(V):4(H) with associated soil creep and existing relic and recent shallow seated slip features. No building construction and no earthworks should take place in this area unless a substantial independent Palisade (close centred inground pile) wall is installed beyond the downslope side of the building platform and the leading edge foundations of the dwelling are piled. The Palisade wall and foundation piling should be the subject of specific site investigation carried out by a Chartered Professional Engineer experienced in geomechanics.*
- *All cuts and fills associated with future residential development on Lots 1 to 13, including those required to form driveway access onto each lot, should be fully supported by specifically designed retaining walls, preferably timber pole walls. The wall designer should be familiar with the recommendations presented in this letter and our 2008 GIR.*

Based on the specialist assessments my overall planning assessment finds that the effects of constructing suitable access below the midden are significant in terms of adverse landscape character and visual effects and also in relation to necessary earthworks and retaining.

The Clough and Assoc. archaeological report shows the midden as site S11/1155—no access can be formed in front of the midden on the application site as there is no room nor can it reasonably be formed below the midden due to topography.



Figure 18. Aerial showing distribution of identified archaeological sites (outlined in red), location of test pits (numbered) and possible terraces (blue triangles)

S11/1155: S11/1155 (previously S11/979 in Foster 2008) proved to be more extensive than initially recorded (Figure 24), consisting of four terraces, along with two clear pits and a further depression that may be two or three pits whose edges have collapsed together (Figure 26). The boundaries of this site were surveyed using a GPS, and are shown on Figure 25 (E1783005 N5927212; E1783013 N5927239; E1783036 N5927239; E1783035 N5927205).



Figure 1-S11.1155 MIDDEN

Clough and Assoc. also note that;

Effects of Proposal

The scheme plan for this project has been designed to avoid adverse effects on archaeological sites wherever possible. This includes adjusting property boundaries and the location of the pedestrian access to avoid impacts on site S11/1155 and rerouting the proposed road so it avoids the defined site extents for S11/877, S11/878 and S11/1156 (Figure 31). Earthworks for the current stage of the project under application are required for the development of the road network (shown on Figure 32). These include cut and fill over a total estimated area of 9360m². The identified effects for each site is summarized here:

The current proposal has been redesigned to avoid effects on the recorded extent of site S11/1155. The site will be encompassed in its entirety within the southern end of Lot 11. The current proposal will have no effects on the recorded extent of the site. This area will be maintained in short pasture grasses (Dennis Scott pers. Comm. 2017).

As shown below in Figure 2 the limitations on building arising from identified geotechnical constraints (the green line shows the split between the southern building areas and the northern difficult area) mean that the only option for access to the west from the top of Crescent Road East is to use the Council's freehold Lot 229 to serve Lots 11-13 (noting access over Lot 229 to the north allows for access to be gained over the applicant's land for Lots 6-10 to the east).

Lot 229 already serves a number of other properties to the west as you will know and such access is supported by earlier resolutions from the Community Board (now the Local Board) and reflected in a 2007 3 lot subdivision which was granted consent on the

basis of using Lot 229 for access. I can re-forward that information if you cannot find it in my various earlier emails to Simon Roche. Aaron Putt at the Waiheke offices will also be able to retrieve that information if need be.

The building areas shown in yellow below were locked in through the Environment Court settlement as reflected in Figure 12.1 in the operative Plan provisions-any access north of the midden will significantly and adversely impact on the agreed building areas on Lots 10-12 in particular as evident from the drawing below and conflict with the defined geotechnical limitations. There is no ability to cross into the midden area at its southern side as that will not be supported by Ngati Paoa Iwi Trust-who endorse Clough and Associates recommendations that the midden be covenanted.



Figure 2-Geotec Line

The midden area shown above is identified as covenant area A1 in the application.

I attach a link to relevant documents noting some of the Coffey information using Terra plans is now outdated as the Terra plans have since altered-that does not affect any geotechnical recommendations.

<https://1drv.ms/f/s!AgqkS8vNj6y0gWH8p1KkNo4oFWSV>

Is there sufficient land available along the southern boundary of 306 Sea View to vest 2.21m in council to widen the access way?

In principle the applicant is willing to consider granting an easement in gross to the Council over such a strip of land but that is obviously dependent upon the applicant obtaining access over Lot 229 as requested and also in obtaining the support of the Board to the proposal per se including an indication of support for consenting the application on a non-notified basis, noting the restricted discretionary activity status of the subdivision and Landscape Management Plan components of the proposal.

In that context the Board should be aware, if they are not already, that changes to the RMA coming into force on 18th October mean that restricted discretionary activity subdivisions are to be non-notified. That reinforces the validity of a non-notified process for this application.

We note that while in principle vesting of such a strip may seem the best approach, that is simply not feasible given Rule 12.8.6.3.3 (iii) which requires that;

iii. Any nominated building platform within the Southern Slopes Buildable Areas as shown on [figure 12.1](#) must be no closer than 20m from the southern property boundary of Area 2B.

If a strip was to be vested the legal boundary of the application site would alter and that then would push the nominated building platforms shown on Figure 12.1 further downslope into the stability sensitive areas thus compromising the location of buildings. That also results in a change to Figure 12.1 which represents a negotiated Environment Court outcome between the applicant and local residents. An easement will avoid that negative outcome but achieve the same benefits.



Figure -Snapshot from Figure 12.1

I note that the traffic engineering requirements of the Council include provision for passing bays and at the southern part of the applicant's land as shown below. That may possibly limit the width of that additional strip in places. That discussion can be

progressed once the applicant has had a response from the Local Board and Parks/ Asset Owners over access and the other matters noted above.

I note also that to the west of Crescent Road East the midden clearly prevents any additional access strip being secured at that southern location and the existing width of Lot 229 will need to be relied upon for a short distance in front of the midden, as is the case now.

Once we have the position of the Local Board and Parks/ Asset Owners established we can instruct our engineers to define a strip to confirm that a 2.21m wide strip can be achieved as requested. If there are any variations we can discuss that with you to ensure the intent of the request can be achieved.



Figure 3-passing bays in relation to Lot 229 boundary

Have you had any feedback from Council so far regarding the access way works near the pohutukawa on Lot 229?

This was discussed with Simon Roche by email some time ago. The proposal is to avoid works under that pohutukawa tree thus the broken asphalt which was laid down by the Council under the tree will be repaired without requiring any sub surface works. If that proved to be contentious the applicant will withdraw that offer to seal that part of the existing access as it is a volunteered work. The balance area of Lot 229 to the western boundary of the application site away from the influence of the tree is proposed to be

new sealed. Similarly if that presents hurdles to consenting the application then the offer to seal will also be withdrawn.

What engagement with mana whenua has been undertaken with respect to the midden?

We have included in the application as lodged responses from Iwi at that time (refer Appendix 4 to the AEE) and are providing additional information currently to Ngati Paoa Iwi Trust (NPIT) in relation to other matters. We expect a final report from them shortly thereafter. In their initial response to us NPIT note as follows;

“NPIT support the conditions recommended by within the archaeology assessment though seek an amendment to include NPIT as an iwi with mana whenua within Waiheke”.

Which lots is the easement in favour of?

The necessary easements over Lot 229 will be in favour of proposed Lots 6-13 as shown on the easement schedule on the Terra scheme plans. While Lots 10-13 will take direct access from Lot 229, Lots 6-9 need the easement in order to cross over Lot 229 into the applicant’s land. Thereafter their access to the east is on the applicant’s land.

| Memorandum of Proposed Easements (Pursuant to S.243(a) Resource Management Act 1991) | | | |
|--|------------------------|--------------------|--|
| PURPOSE | SHOWN | SERVIENT TENEMENT | DOMINANT TENEMENT |
| Right of Way, Right to Convey Electricity, Water, Gas, Telecommunications & Computer Media | (I) (T) | Lot 229 DP15795 | Lot's 11 - 13 Hereon |
| | (I) | | Lot's 6 - 10 Hereon |
| | (V) | Lot 10 Hereon | Lot's 6, 7, 8 & 9 Hereon |
| | (W) | Lot 9 Hereon | Lot's 6, 7 & 8 Hereon |
| | (X) | Lot 8 Hereon | Lot's 6 & 7 Hereon |
| | (Y) | Lot 7 Hereon | Lot 6 Hereon |
| | (Z) | Lot 4 Hereon | Lot's 1 - 3 & 5 Hereon |
| | (AA) | Lot 3 Hereon | Lot's 1, 2, 4 & 5 Hereon |
| | (AB) | Lot 2 Hereon | Lot's 1, 3, 4 & 5 Hereon |
| | (AC) | Lot 1 Hereon | Lot's 2, 3, 4 & 5 Hereon |
| | (AK) | Lot 1 Hereon | Lot's 2, 3, 4, 5, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 & 25 Hereon |
| | (AJ) | Lot 17 Hereon | Lot 16 Hereon |
| | (AP) (AI) (AR) | Lot 18 Hereon | Lot's 14, 16 & 17 Hereon |
| | (AI) | Lot 18 Hereon | Lot 15 Hereon |
| | (AZ) (AS) (AH) (AT) | Lot 19 Hereon | Lot's 14, 15, 16, 17 & 18 Hereon |

Do you still plan to move the walkway, extinguish the old easement and create a new one?

We addressed this matter in earlier correspondence with Simon Roche and the application as accepted reflects the proposal detail in this respect. We will retain the existing easement and form steps at the applicant's cost as noted below.

To repeat that earlier correspondence I note as follows.

On the 16th May 2017 my email to Simon Roche advised as follows;

“Hi Simon

Just left a message

Didn't want to email cold but;

Meeting with applicant this morning has led to us being instructed not to proceed with new walkway alignment and to leave the existing easement as it is now

That means we only now need to get landowner approval for use of Lot 229-which is a freehold lot [and not reserve as noted in your draft memo]

Cheers

Barry

We should talk about where to now-I can update your memo to reflect the amended proposal if you wish??”

On the 18th of May I emailed Simon again saying as below. I also edited the draft memo he was preparing for the Board to update the information therein so that it was accurate.

“Hi Simon

I have made some changes to this noting the latest advice from me to you whereby the applicant will retain the existing walkway easement but is happy to discuss an enhanced formation standard and how to achieve that –which the applicant will then incorporate into the proposals.

The applicant also still seeks to obtain access for 7 sites over Lot 229

While the applicant is prepared to seal part of Lot 229 this may not be a necessity and the Council may prefer it remains as is to slow vehicles down possibly.

Please call if you want to discuss.

I am waiting on revised plans from the engineers which I will hopefully get tomorrow.

Regards

Barry “

On the 10th of July I further updated Simon (and John Nash) as stated below and provided amended plans at that time also.

“Hi Simon and John,

Following unavoidable delays I now can attach the revised scheme plan details showing proposed access over Lot 229 for which landowner consent is sought. You already have information I sent earlier regarding previous resolutions on obtaining such access as well as information from the property department.

I note that;

Lots 11-13 require access from the western part of Lot 229

Lots 6-10 require access to go north over Lot 229 directly from Crescent Road and thereafter the access to those lots is on the applicant’s land.

A key change from earlier designs is that there will be no vehicle access required from Hill Road (as all building areas are at the southern part of the site) and thus the walkway easement unaffected by the proposals.

The walkway easement is to remain as is with the applicant having contacted Frame Group to get a cost estimate for the applicant to form steps to the necessary standard to enhance the usability of that existing walkway easement. That is part of the proposal.

Frame Group advise that;

Typically on Waiheke we have been using timber boxed steps filled with local material and topped with a 50mm thick compacted GAP20 aggregate. I have attached a drawing for your reference. The minimum width you would want on this site is 750mm and a handrail is optional. Ideally the step flights would be built between 33% and 75% with maximum 2.5m between minimum 900mm long landings. It would be our preference choose an ideal grade of steps that suits the site and completed cut/fill earthworks to try and make all of the steps the same. Areas with a grade less than 17% can remain as

track. Please allow \$250 per metre for the boxed steps, \$30 per metre for the surfacing material, and a 15% contingency for establishment and site constraints. This is approx. \$320 per metre ex GST (add an additional \$200 per metre if a handrail is required).

We anticipate that Parks will have some fine tuning input into design and that can be worked through in the consenting process and be reflected in a condition of consent requiring the applicant to either form the steps or to post an agreed value bond so that the Council forms the steps.

The attached concept plan illustrates the extent of proposed revegetation for the proposal noting that the houses shown are indicative only and have no status as they do not form part of the proposal other than illustrating an overall development using the defined building areas set out in Fig 12.1 of the Plan provisions.

If you have any further questions please advise.

I am happy to attend any workshop with the Board if that is useful to all parties.

Regards

Barry “

In Council's letter dated 13th September 2017 it was noted that the application was accepted on the 31st of August pursuant to s88 of the RMA.

The applicant proposes to fund the formation of steps along the existing walkway alignment to a sum of \$100,000. That provides a 20% contingency over and above the Frame Group estimates.

If you need further information or wish to meet to ensure your understanding of the proposal is correct please ask and I will make myself available.



Regards

Barry

APPENDIX 1

RECORD OF PREVIOUS CORRESPONDENCE WITH THE COUNCIL (SIMON ROCHE) ON ACCESS MATTERS AND ASSET OWNER APPROVAL

| From: Simon Roche (16 items) | | | |
|---|---|------------------------|--------|
|  Simon Roche | Automatic reply: 306 SEA VIEW ROAD ACCESS - LANDOWNERS APPROVAL | Mon 10-Jul-17 12:21 PM | 46 KB |
|  Simon Roche | Thompson Point - Easements over Crescent Road East | Wed 07-Jun-17 9:59 AM | 44 KB |
|  Simon Roche | RE: Draft Memorandum to LB for 306 Seaview Road.docx | Thu 18-May-17 2:26 PM | 44 KB |
|  Simon Roche | RE: Draft Memorandum to LB for 306 Seaview Road.docx | Tue 16-May-17 12:23 PM | 54 KB |
|  Simon Roche | Draft Memorandum to LB for 306 Seaview Road.docx | Tue 16-May-17 9:00 AM | 4 MB |
|  Simon Roche | RE: 306 Seaview Road Easement | Mon 15-May-17 11:40 AM | 52 KB |
|  Simon Roche | RE: Sealing the road and effects on the trees. 306 Seaview Road | Mon 15-May-17 10:33 AM | 51 KB |
|  Simon Roche | Sealing the road and effects on the trees. 306 Seaview Road | Fri 12-May-17 1:45 PM | 39 KB |
|  Simon Roche | 306 Seaview Road Easement | Fri 12-May-17 12:16 PM | 147 KB |
|  Simon Roche | RE: 306 SEA VIEW ROAD PROGRESS | Fri 28-Apr-17 2:03 PM | 124 KB |
|  Simon Roche | RE: 306 SEA VIEW ROAD PROGRESS | Fri 28-Apr-17 11:35 AM | 102 KB |
|  Simon Roche | RE: 306 SEA VIEW ROAD PROGRESS | Fri 28-Apr-17 11:29 AM | 110 KB |
|  Simon Roche | RE: Emailing - Parks Land Owner Approval Application Form December 2016.pdf | Wed 12-Apr-17 9:53 AM | 282 KB |
|  Simon Roche | RE: 306 Seaview - Site Visit and Slope/Aspect overlay request | Wed 29-Mar-17 11:49 AM | 60 KB |
|  Simon Roche | RE: happy new year | Fri 17-Feb-17 12:36 PM | 204 KB |
|  Simon Roche | Automatic reply: happy new year | Thu 09-Feb-17 9:01 PM | 36 KB |