

NEW PLYMOUTH DISTRICT COUNCIL

MATTERS RELATED TO THE RIGHT OF REPLY- GREENSILL RESOURCE CONSENT HEARING

COMMISSIONER MINUTE: No 2

Background to earlier directions issued in Minute 1 dated 6 July 2022

In my earlier Minute (dated 6 July 2022), I directed the parties to undertake without-prejudice discussions in respect of the potential mitigation proposed. If agreement was reached on any potential mitigation options, that agreement was to be documented and provided to the Council by noon on Friday, 22 July 2022.

This approach was adopted to determine if any agreement on mitigation options could be reached between the parties, for my consideration as part of the substantive decision-making on the consent application. The parties indicated their agreement with the proposed 'without prejudice' discussions step at the conclusion of the hearing on Friday, 1 July 2022.

In my earlier Minute, I also directed that Ms Marner (the planner for the Applicant) provide a written right of reply by 5pm on Wednesday, 27 July 2022. Draft agreed conditions were to be provided as part of that right of reply.

Without prejudice discussions

I understand that the parties have since participated in without-prejudice discussions in accordance with my directions.

In accordance with the principles outlined in the Environment Court Practice Note 2014 for Court-assisted mediation, and expert conferencing, discussions conducted on a without-prejudice basis are private, confidential to the parties, and apart from any agreed statement produced as a result of any such discussions, cannot be referred to or relied on in any proceeding. This feature of without prejudice discussions allows for open engagement on material issues in contention, which may enable the parties to find solutions that can settle disputes. Most importantly, if such discussions or negotiations are unsuccessful, the information shared during these without-prejudice discussions cannot be used against any party who participated in good faith on the understanding that the discussions would remain confidential to the parties.

The written right of reply lodged with the Commissioner

Ms Marner's right of reply was lodged with the Council on Wednesday, 27 July 2022, and published on the Council's website the same day.

On reviewing Ms Marner's right of reply, it is apparent that it contained details of the without-prejudice discussions between the parties. The right of reply was subsequently removed from the Council's website, as of 3 August 2022.

The disclosure of information exchanged or discussions between the parties during the without-prejudice discussions should not have occurred, and it is important that all parties have a clear understanding of how I propose to treat this matter. The parties need to understand that the relevant information / comments **will not** be taken into account as part of my deliberations.

I note that there is no indication that the disclosure was intentional, and so this Minute is not intending to be critical of Ms Marner in any way. What is more important is ensuring that there is no prejudice (inadvertent or otherwise) to any party, and that the process remains fair and transparent.

In light of the above discussion, I have decided that the following process and timetable should be adopted:

- Ms Marner to file an updated right of reply by 5pm, 12 August 2022. The updated reply is to remove all reference to comments / discussions which arose from the without-prejudice discussions between the parties. For the sake of clarity, only the agreed outcomes of those discussions should be included, in the form of draft agreed conditions (noting that if any draft conditions were not agreed, reasons for any remaining disagreement can be described – on the terms agreed between the parties). Council is to circulate the updated right of reply by 12 noon, 15 August 2022.
- Leave is reserved for any party to file a memorandum raising procedural concerns in relation to the updated right of reply, by no later than 5pm, 19 August 2022.
- I will then consider the draft conditions, right of reply and any additional memoranda, and if I have any questions regarding any matters contained therein, I will provide written questions to the Council for circulation to Ms Marner by 12 noon, 23 August 2022. Responses to any questions are to be received by me via the Council by 12 noon, 26 August 2022.
- If no questions are posed by me, the right of reply will be deemed to have been completed on 23 August 2022. The relevant legislative timeframes for closure of the hearing and issuing a decision will commence from that date.
- Any questions posed by me, and subsequent responses will be circulated by the Council. The circulation of all information is to be by email.

Bill Wasley

A handwritten signature in black ink, appearing to read 'Bill Wasley', with a stylized 'W' and 'A'.

Commissioner

5 August 2022