

**BEFORE THE INDEPENDENT HEARINGS PANEL
FOR THE KAPITI COAST DISTRICT COUNCIL PLAN**

IN THE MATTER of the Resource Management

Act 1991

AND

IN THE MATTER of submissions and further submissions in respect of Kapiti Coast District Council's Proposed Plan Change 2: Intensification.

**MEMORANDUM OF COUNSEL ON BEHALF OF THE MANSELL FAMILY IN
RESPONSE TO PANEL'S REQUEST FOR FURTHER INFORMATION**

Dated: 18th April 2023

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MAY IT PLEASE THE PANEL:

1. The Mansell family appeared and presented a submission before the Panel in March 2023. During the presentation of the Mansell family submission a number of requests were made by the Panel for further information from the submitter.
2. This request was confirmed via email from the Hearing Adviser, after which a formal Minute was issued on 28 March 2023 confirming the information to be requested.
3. Counsel apologises for the delay in responding to the Panel's request. Counsel has been unwell over the last few weeks, and has not been in a position to attend to the request in a more timely way.

Information provided:

4. In response to the matters raised by the Panel, please find **enclosed:**
 - (a) A memorandum from the Mansell family's property lawyers, Duncan Cotterill. This identifies properties to the north and west of the Mansell site, which it is understood were the primary concern of the Council and discusses the ownership patterns of that land, existing easements and access and rights of way that provided for servicing of that land. It is not infrastructure locked.
 - (b) A memorandum from Mr Martell at AWA that confirms from an infrastructure perspective, the conclusions of the Duncan Cotterill advice, being that the surrounding land has options available and access to infrastructure, which can be explored if and when those sites are developed.
 - (c) An statement from Mr Hansen responding to the Panel's requests relating to:
 - (i) an assessment as to whether the rezoning of the site has any prospect of foreclosing reasonable opportunities for the development of the broader growth node or structure planning for optimal urban form;
 - (ii) an assessment of risks of applying the MDRS to an unimplemented subdivision consent granted based on a different planning regime, i.e., the creation of new development capabilities on titles that can be created under a lifestyle management regime. We assume the

Mansell family will seek to secure that approval through the EC process;

- (iii) An assessment of how the existing plan provisions address the sites values and will achieve Policy 55 and PRPS.

Relationship between existing resource consents and PPC2.

5. The Panel's Minute notes an assumption that the Mansell family will seek to secure their existing resource consents as part of the appeal process. That is correct. That matter is to be mediated next week. As the Applicant to those consents, the Mansells are entitled to defend that appeal. However, it should not be assumed that the Mansells will seek to implement those consents when confirmed by the Court.
6. Due to the timing of the appeal process and a decision on PPC2, currently two separate processes running parallel, it is necessary for the Mansells to participate in both processes. There is little that can be done to avoid that.
7. However as noted at the hearing, the Mansell family have pursued rezoning as part of PPC2 and are serious about that rezoning request, having expended considerable resources to support that request before PPC2. If successful in their rezoning request, they have every intention of redesigning the site to allow for more intensive development under the MDRS which, based on their experts' advice to date and planning advice that they have received from Mr Hansen, will involve seeking new district and regional resource consents.

Background - Tieko Street Extension

8. In terms of the material submitted as part of the Duncan Cotterill memorandum, it is important to note that only a small part of Tieko Street currently operates as a legal road. The remaining properties off Tieko Street to the north are accessed via a gravel track via a right of way over the Mansell land.
9. The Mansells have entered into a Memorandum of Understanding with Council to jointly fund the Tieko Street extension works, and these works will form part of the terms of a Development Agreement.
10. As part of the consented Otaihangā development, some of the easements held by properties that use the right of way over the Mansell land will be extinguished and a new legal road created extending Tieko Street and providing legal access to these properties that will vest in Council. It is noted that this will not alter the existing right of way over the northern end

of Tiekko Street that will continue to provide gravel track access to the northern properties. This is shown on the diagram at **Appendix 1**.

11. Extension of Tiekko Street and vesting it as a legal road as part of the proposed development of the Mansell site, will aid rather than preclude the provision of access and services to northern areas as confirmed by Mr Martell. In the event that the Mansell site is rezoned and developed to achieve a better yield, better access to the rear of the site will be needed and there is the ability to further extend Tiekko Street to the north along the existing right of way of the Mansell land.

Other options

12. At the hearing the Chair posed the question to counsel as to whether a simple structure plan for the Mansell site itself would resolve the situation. The Mansells' current position is that that is not needed. However, as this was requested by the Chair, the submitter has sought to advance that option as a backup in the event that the information provided in this response is not sufficient to allay the Panel's concern.
13. The submitter has made several attempts via counsel for KCDC to contact Council Officers to discuss that option in order to identify what (if any) future linkages Council would like to retain, and also to discuss other possible options that it had identified to address Council's concern that future development of land to the north would be precluded.
14. The Mansells also consider that there are other mechanisms available to the parties to resolve the Council's concern. These including the Mansells granting an easement in gross in favour of the Council over their land, and/or vesting the remaining gravel track (right of way) over the Mansell land at the northern end of Tiekko Street extension to be future legal road, allowing both access and services in due course. The Mansells are open to these solutions if it would resolve Council's concerns. It is noted that Council also has powers under the Local Government Act 2002 to provide for infrastructure and roads should it wish to do so.
15. Unfortunately, Council Officers have declined to meet at this stage, and have indicated via Mr Conway that their preference is to consider the material received in response to the Panel's direction. This is disappointing, as the Mansells cannot resolve the Officers' concern without the Council Officers being prepared to engage in those discussions to consider possible solutions, which the Mansells consider are readily available.
16. It is noted that there are no appeal rights as part of the ISPP, and it is respectfully requested that if, having reviewed the further information submitted, the Panel continue to have concerns about rezoning the Mansell

site or how that could be achieved (or consider a structure plan of the Mansells' site would assist with that) that the Panel direct Officers to conference/confer with the Mansells to see if these issues can be resolved. The Mansells' team is willing and able to do so.

Request to be heard on the new material

17. The Mansells would like to be heard in support of the new material filed, and witnesses can be available to answer any additional questions the Panel may have. Counsel and Mr Hansen have availability to do this next week online, at a time convenient to the Panel (aside from Thursday 27 April as counsel has an Environment Court mediation).



P D Tancock

Counsel for the Mansell Family

Dated: 18th April 2023

