

## **Hearings Panel OPEN MINUTES**

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**Date:** Monday 18 September 2017  
**Time:** 9.09 am  
**Venue:** Committee Room 1, Level 2, Civic Offices,  
53 Hereford Street, Christchurch

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**Present**  
Members

Councillor David East  
Councillor Sara Templeton  
Councillor Mike Davidson

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**18 September 2017**

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The agenda was dealt with in the following order.

The meeting opened at 9.09 am and immediately adjourned and reconvened at 9.14am.

## 1. Apologies

An apology for lateness was received for Councillor East.

## 2. Election of Chairperson

### Committee Resolved BLHP/2017/00014

It was **decided** that Councillor Templeton be appointed Chairperson of the Hearings Panel.

Councillor Davidson/Councillor East

**Carried**

## 3. Declaration of Interest

Councillor David East declared a conflict of interest and left the hearing at 9.15am

## 4. Proposed Lease to Canterbury Car Club Incorporated - Ruapuna Park

Jeff Woodham, Kathy Jarden and Ivan Thompson presented the staff report.

## 5. Hearing of Submissions

The Hearings Panel heard from Sara Harnett Kikstra, Chairperson QP (Quieter Please) who was supported by Frank and John Rich. A copy of Sara Harnett Kikstra's verbal submission was tabled (**Attachment 1**).

The meeting adjourned at 9.59am and reconvened at 10.04am

## 6. Hearings Panel Consideration and Deliberation

### Hearing Panel Recommendations

#### Committee Resolved BLHP/2017/00015

The Hearing Panel recommends to the Council:

1. To grant a lease to Canterbury Car Club Incorporated over that part of Ruapuna Park where the raceway is situated, an area of approximately 39.9751 hectares, contained in Lot 1 DP 323836, classified as Recreation Reserve and shown on Attachment A, RPS856-42.
2. The Hearings Panel has considered the objection and recommend that the Council:
  - a. In its capacity of holding the Minister of Conservation's Delegation, the Council resolve to give consent to the lease in accordance with 54(1)(b), (c) and (d) of the Reserves Act 1977.
  - b. Delegated authority is granted to the Property Consultancy Manager to manage and conclude all issues and processes associated with the above

resolutions including, but not limited to c. and d. below.

- c. Finalising lease documentation to Canterbury Car Club Incorporated for a period of up to 33 years broken into three 11 year terms at an annual rental to be negotiated.
- d. Grant permission to Canterbury Car Club Incorporated to enter into hire and sublease arrangements for utilisation of the grounds and buildings contained within the lease area specifically to Canterbury Racing School as well as other user groups on terms and conditions to be approved by the Property Consultancy Manager, on behalf of the Council.
- e. That officers review the documentation in clause 15.2 in the lease document on an annual basis in conjunction with the requirements of the District Plan.

Councillor Davidson/Councillor Templeton

**Carried**

**Meeting concluded at 10.18am.**

## Attachment 1

### SUBMISSION ON RUAPUNA LEASE AGREEMENT

My name is Sara Harnett Kikstra. This submission is on behalf of Quieter Please.

#### A BRIEF HISTORY

In 1995 a previous City Plan made operative in 1999 changed the rules for Ruapuna Motorsport Park to allow them to operate everyday of the year at 90dba max and for 200 of those days at 95dba max. This was a very permissive regime.

Plan Change 52 was drafted in response to Noise Management issues arising from the operation of the Ruapuna Motor Sport Park ("Ruapuna"). There were 44 submissions with 42 submissions opposed to PC52 as it was drafted. The council had received a significant increase in complaints from local residents regarding the operation of Ruapuna around 2005. The council established a working party to investigate options addressing those concerns and that resulted in the resolutions made by the Council in its meeting of 25 June 2009 to:

- (a) initiate a Plan Change:
- (b) to purchase seven residential properties affected by "unreasonable" levels of noise (as advised by 2007 report by Marshall Day Acoustics ("MDA")) and:
- (c) to engage with the Car Club and Speedway Association to vary their current leases so as to introduce measures to control noise.

#### EXISTING USE RIGHTS

The Section 32 assessment of PC52 said that existing use rights were critically important in the preparation of the Plan Change and states that the effect of Section 10 existing use rights is that the Plan Change cannot reduce activity levels at Ruapuna.

(Paragraph 34 – Section 32 Assessment)

The report goes on to say that a significant amount of consultation occurred with the Canterbury Car Club, Christchurch Speedway Association and the Canterbury Radio Control Club to ensure that the rules did not inadvertently reduce activity levels.

(Paragraph 35 – Section 32 Assessment).

In its conclusion, the Section 32 assessment acknowledges that the Plan Change amendments will not reduce the noise levels current residents in the area are exposed to and says that the Council cannot do this through the Plan Change process because of Section 10 of the RMA. (Paragraph 33).

Consequently the potential of existing use rights has resulted in PC52 being drafted so as to cap the noise and activity levels at Ruapuna and to not seek to reduce the existing noise and activity levels but rather to maintain the same “scale and intensity” of Ruapuna’s activities. (See paragraphs 5.9 and 5.14 of CCC Section 42A report prepared by Andrew Long January 2013).

As a consequence the Council has not adequately addressed the unreasonable noise levels being experienced by the neighbouring properties to Ruapuna Park including those properties which the council purchased in 2009 as well as the other properties that have been identified as being affected and properties further afield.

The Section 32 Assessment does record that the Council resolved to engage the Car Club in formal discussions in an attempt to vary the current leases to reduce the maximum allowable noise limits and could include the imposing of restrictions on the operating hours, introducing noise free days and placing limits on the future expansion of the track. (Paragraph 22)

I wish to emphasise the 2009 resolution and the section 32 statements because they are not my words, they are the words of council staff and councilors. Did that resolution mean nothing and why is it not included in the current staff recommendations? Time dims the memory, it has been eight years since that resolution and while the current councilors may be unfamiliar with the history of Ruapuna, the rules that allowed such a permissive regime have had major adverse effects on local residents.

The Current lease to the Canterbury Car Club Incorporated (the Car Club) dated 23 April 1998 has been entered into in accordance with an incorrect section of the Reserves Act 1977, Section 54 (1)(d) and may therefore be ultra vires the Reserves Act and invalid.

In this regard I note that Simpson Grierson the council’s legal counsel in their opinion of 23 January 2013 note “you have not asked us to review the existing leases and sub leases for compliance with the Reserves act. We consider there is merit in completing such review, because any irregularities could be useful to the Council in its plan to renegotiate with leases in the near future.”

It appears that the new lease is also under the incorrect section of the Reserves Act 1977.

I also note at paragraph 8.2 of the proposed lease agreement agreement:

**If at any time the Lessor is of the reasonable opinion that the Premises are not being used or not being sufficiently used for the Permitted Use, the Lessor (after making such enquiries as the Lessor thinks fit and giving the Lessee a reasonable opportunity of explaining the usage of the Premises and if reasonably satisfied that the Premises are not being used or not being sufficiently used for the permitted use), may cancel this Lease in accordance with clause 19.1(b). In the event of such cancellation, compensation shall not be payable to the Lessee.**

Given the history of Ruapuna this paragraph is completely inappropriate.

#### CONCLUSION

Staff Recommendations are flawed because they fail to include:

- (a) The catalyst for such a permissive regime the 1995 City Plan
- (b) The 2009 Resolution which included the promise to engage with Speedway and the Car Club to vary their current leases so as to introduce measures to control noise.
- (c) To point out the limitations of PC52 because of existing use rights.
- (d) The proposed lease agreement prepared with an incorrect section of the Reserves Act 1977 Section 54 (1)(d) and may therefore be ultra vires the Reserves Act and invalid.

We seek that these matters are addressed.

Sara Harnett Kikstra

Quieter Please

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## MEETING MINUTES (Excerpt From)

### MINUTES OF A MEETING OF THE CHRISTCHURCH CITY COUNCIL HELD AT 9.30AM ON THURSDAY 25 JUNE 2009

#### 19. REPORT ON RUAPUNA MOTOR-SPORT NOISE ISSUES

This item was taken at this stage of the meeting.

Councillor Shearing moved, seconded by Councillor Broughton:

*That the Council:*

- (a) *Receive the report.*
- (b) *Initiate a plan change to restrict the noise levels and frequency of events and track usage to limit the use of Ruapuna Reserve to the current levels and to widen the development setback from 400 metres to correspond with the 60dBA contour line as identified by MDA.*
- (c) *Agree to investigate a plan change or other measures for placing restrictions on rural-residential development between the 55 and 60dBA noise contour lines through the City Plan.*
- (d) *Delegate to the Chief Executive authority to execute and complete agreements for the sale and purchase for any or all the affected properties detailed in Table 1 (below). The Chief Executive is delegated a discretion to determine the purchase price for each property, based on fair market value, willing buyer willing seller. Such agreement may include, subject to receipt and approval of invoices for payments, reimbursement of the vendors actual and reasonable legal costs and removal expenses up to \$5,000 (plus GST) per property.*
- (e) *Confirm that it does not intend to use any of the properties acquired around Ruapuna for permanent residential accommodation, and instructs the Chief Executive to investigate the range of land uses and financial options (including commercial, business and recreational development) to assist in offsetting the costs of its investment in additional land.*
- (f) *Agree to engage the Car Club and Speedway in formal discussions to vary the current leases to reduce the maximum allowable noise limits including, impose restrictions on operating hours, introduce noise free days, and place limits on the future expansion of the track. That the Council grants the Chief Executive delegated authority to negotiate and conclude these variations on behalf of the Council.*

**ALL OF THESE ABOVE CLAUSES (a) thru (f) WERE ALL DECLARED CARRIED**

**An additional clause (g) proposal to buy out Trotts property was declared lost  
Page 2 of this CCC MEETING MINUTES excerpt shows clause (g) & vote details**

- (g) *It is acknowledged that resolution (d) above would result in the purchase of the seven identified properties within the 60 dBA unreasonable noise boundary, but further to this point the Chief Executive also be authorised to purchase Lot 7 DP 23834 (the Trott property) based on fair market value, willing buyer willing seller, if in his opinion the Council recover the purchase price and any holding costs related to the purchase by incorporating this property with the other properties purchased.*

The recommendations were put to the meeting separately.

Clauses (a) to (c) were declared **carried**.

Clause (d) was declared **carried** on division No. 1 by 9 votes to 4, the voting being as follows:

**For (9):** Councillors Broughton, Button, Corbett, Johanson, Reid, Shearing, Wall, Williams and the Mayor.

**Against (4):** Councillors Cox, Sheriff, Wells and Withers.

Clause (e) was declared **carried** on division No. 2 by 10 votes to 3, the voting being as follows:

**For (10):** Councillors Broughton, Button, Corbett, Johanson, Reid, Shearing, Wall, Wells, Williams and the Mayor.

**Against (3):** Councillors Cox, Sheriff and Withers.

Clause (f) was declared **carried**.

Clause (g) was declared **lost** on division No. 3 by 4 votes to 8, with 1 abstention, the voting being as follows:

**Against (8):** Councillors Button, Cox, Reid, Shearing, Sheriff, Wells, Williams and Withers.

**For (4):** Councillors Corbett, Johanson, Wall and the Mayor.

**Abstained (1):** Councillor Broughton.

**TABLE 1: SEVEN MOST AFFECTED DWELLINGS**

Address	Legal Description	Rateable Value
4 Hasketts Road	Lot 6 DP 23834	1030000
7 Hasketts Road	Lot 3 DP 403260	630000
14 Hasketts Road	Lot 5 DP 23834	675000
22 Hasketts Road	Lot 2 DP 24156	807000
30 Hasketts Road	Lot 1 DP 24156	700000
40 Hasketts Road	Lot 2 DP 23834	735000
48 Hasketts Road	Lot 1 DP 23834	724000
Total rateable value of affected dwellings		5301000