

ASHBURTON DISTRICT COUNCIL
RESOURCE CONSENT LUC21/0103
AK Tech Services Limited

MINUTE OF COMMISSIONER PATRICIA HARTE

I have been supplied with the following documents relating to the resource consent application LUC21/0103. From these documents and the advice provided by the Ashburton District Planning Manager it is my understanding that the following processes/actions have taken place:

1. **Date: 27 September 21**

Resource consent lodged with Ashburton District Council (ADC) as **LUC21/0103**

Applicant: AK Tech Services Limited

Proposed activity: Undertake servicing of farm machinery and equipment based in a 615m² shed. A limited amount of storage is proposed, and an office is to be established in a Portacom building near the shed.

Application site: Lot 5 DP 456684, Acton Road, Rakaia

Affected person approvals provided with the application as follows:

- a. Lindsay Nicky Brinsdon and LW Brinsdon owners of Lot 7 DP 456684 bounding the application site to the north-west.
- b. Jillian Gay Burrowes owner of Lot 2 DP 513941 on the south side of Acton Road opposite the application site.
- c. Rosemary Alice Gibbs owner of Lot 7 DP 456684 bounding the application site to the north-east.

2. **Date: 21 October 2021**

ADC Planning officer prepared a **notification report** under sections 95, 95A-95F RMA which concluded that:

- Public notification was not required under section 95A for reasons including that the activity is anticipated to have a minor effect on the environment.
- Limited notification under section 95A-95F is required of the owners and occupiers of Lot 6 DP 456684 (63 Acton Road) which bounds the application site to the south-east. This notification was required as it was assessed that the owners of this site are likely to be affected to a minor extent.

3. **Date: 26 October 2021**

Limited notification of the resource LUC21/0103; was made to the owners /occupiers of Lot 6 DP 456684 (63 Acton Road) with a closing date for submissions of 24/11/2021.

4. **Date: 08 November 2021**

Submission received from Warren and Tracy Mewes (owners/occupiers of Lot 6 DP 456684, 63 Acton Road) opposing the application and wishing to be heard.

5. **Date: 14 November 2021**

Written approval of Lindsay and Nicky Brinsdon withdrawn and comments opposing the application sent to ADC on the same date.

6. **Date: 17 November 2021**

Written approval of Rosemary Gibbs withdrawn and a submission in opposition to the application lodged with ADC on the same date.

7. **Date: 24 November 2021**

Written approval of Murray and Jillian Burrowes withdrawn and a submission in opposition to the application lodged with ADC on the same date.

8. The applicant and the Mewes (submitter) have indicated they are happy to have a pre-application meeting to work through the issues associated with the proposed activity.

Based on these events and the Resource Management Act 1991:

- At the time the notification assessment was undertaken the parties who had given their written approval for the resource consent application were defined not to be “affected persons”– refer s95E(3).
- Section 104(3) (a) (ii) confirms that when considering an application, a consent authority must not have regard to any effect on a person who has given their written approval to the application
- The Act anticipates the possibility that people will withdraw their approval during the resource consent process. This is referred to in s104(4) where it is stated that 104(3) (a)(ii) must be ignored if a person withdraws their approval before the hearing.

This combination of provisions indicates that while an affected person who withdraws approval has no formal right to be part of the ongoing consent process, that a decision maker is not barred from taking into account the effects of the activity raised by a person who has withdrawn their approval. These sections also imply that a withdrawal does not impact the integrity of the notification assessment and the actions following this assessment.

It is recommended that to provide certainty in the decision-making process that a legal opinion on these matters is obtained.

With regard to a pre-hearing meeting, a question has been raised as to what extent the people who have withdrawn their approvals but have either made a “submission” or have provided comments to the Council are able to be part of any pre-hearing meeting. Section 99 provides for a consent authority to invite or require an applicant and submitters to have a meeting (known as a pre-hearing meeting). The consent authority may also invite “*anyone else whose presence at the meeting the authority considers appropriate*” (s.99(1). S.99(2) states that this power is to be used to *clarify matters or issues* or to *facilitate resolution* of matter and issues. I also note that attendance of other parties is subject to approval of the applicant (s99(3)).

The decision to invite other parties initially lies with the consent authority and in this case I understand this decision is delegated to the Environmental Services Manager or the District Planning Manager, subject to the approval of the applicant. With regard to clarifying matters or issues I expect that the concerns of the parties who have withdrawn their written approvals will be apparent in the prehearing and hearing processes and therefore are able to be assessed. Facilitating resolution of issues is potentially more complex.



10 December 2021