

CASE STUDY OF NEGOTIATION BEFORE A HEARING: SAND WINNING QUARRY, WAIKATO

BRIEF DESCRIPTION OF ALTERNATIVE DISPUTE RESOLUTION PROCESS:

- a negotiation which occurred between a pre-hearing meeting and the hearing which resulted in an agreement between 43 submitters and the applicant

SUMMARY OF PROPOSAL & BACKGROUND:

Applications were lodged with Environment Waikato and Waipa District Council to establish and operate a sand quarry to extract 50,000m³ annually for 20 years over a 29 ha area. The proposal required a land use consent from the district council, two discharge consents (air & stormwater), and a water take consent from the regional council.

The location of the quarry is alongside the Waikato River on an existing farm surrounded by residential lifestyle properties on the outskirts of Hamilton. The applications were notified in March 1999. Notification resulted in 64 submissions to Waipa District Council and 45 submissions to Environment Waikato.

The Regional Council drew the parties together for a pre-hearing meeting in May 1999. In all, 53 people attended the meeting which was facilitated by a regional council staff member. Issues discussed included traffic, dust, noise, visual amenity, property values, and drainage/underground water. The record of the pre-hearing meeting states that all issues remained outstanding and none were resolved.

The seemingly polarised pre-hearing meeting became the catalyst for some of the submitters to form a group. Forty-eight (48) of the lifestyle block submitters formed a collective called Environment Foresights. The group engaged a lawyer and a planner who had already started to act for a smaller number of the group. A series of meetings between the group and the professionals whom they engaged resulted in the group recognising that:

1. it was unlikely that the quarry would be declined by either council provided significant adverse effects could be mitigated
2. the group needed further information on some aspects of the operation in order to consider appropriate mitigations – for example particular advice was sought on
 - a. noise through a peer review from a noise consultant on the levels to expect on nearby properties and potential mitigations
 - b. the applicant was asked to provide information on particulate size of sand to compare sizes with another quarry where dust nuisance had been observable and difficult to control
3. it would be best to appoint a sub-committee to negotiate with the applicant – two submitters and the planner/mediator were chosen by the group to initiate a meeting with the applicant and the applicant's lawyer

DISPUTE RESOLUTION PROCESSES APPLIED

A facilitation process was used to work through the issues with a group this size to reach an agreement on the general direction which the group would take. Initially the group heard their professionals' views on the nature of the adverse effects and finally on the long odds of defeating the application. Individuals in the group did not immediately accept that conclusion. There was considerable disagreement about abandoning full opposition.

By the time of its second meeting, the group reached a consensus to negotiate with the applicant. They were persuaded that the group were in a more powerful position to gain concessions ahead of the hearing than they would be after it.

Three appointed negotiators met to discuss potential conditions and how to deal with matters which could not be handled under the RMA and would consequently need a side agreement to settle. They also discussed how they would conduct the negotiations, the roles they would take, and how they would handle the need to confer if the direction changed. They faxed through an agenda to the applicant and the applicant's lawyer which forewarned them about issues of process (methods of signing off an agreement) and substance (such as outstanding information, consent conditions and potential side agreements). Considerable progress was made at the first negotiation on conditions but the main sticking point was the direction of traffic and how to prevent trucks from travelling a route past the greatest number of houses.

The applicant and one of the appointed negotiators met informally a second time and concluded with a heads of agreement. The draft agreement itself was drawn up by the applicant's lawyer; checked by the other negotiators and then by the group's lawyer over one weekend. On the following day all the submitters were informed.. Just before the hearing started 43 of the 48 submitters signed the agreement, having been persuaded individually to sign off.

OUTCOME

The negotiation concluded with an agreement covering such matters as:

- consent conditions they would jointly seek from the respective authorities
 - issues such as methods of kerbing dust and of directing trucks away from residential area were worked out in conditions – many of which would not have formed standard consent conditions
 - the planting plan was amended in consultation with submitters who immediately surrounded the site or looked over it
- payment for some screen planting off site
- monitoring of wells and other water supplies
- payment by applicant of submitters consultants fees
- annual contribution to betterment of community
- sequence of mining
- the process which would be followed should there be any disagreement about the execution of the agreement

The full content of the agreement between the parties was not revealed to the consent authorities and confidentiality on detail remains part of the agreement. The hearings panel were advised that 43 of the submitters had reached an agreement which included consent conditions. The hearing took place over a significantly shorter time period than had been set aside and the conditions which had been agreed were duly applied by the consent authorities. The hearings panel also chose to apply some additional conditions of its own – a longer length of internal road sealing than had been agreed between the parties. Transit New Zealand did appeal the decision which had included a financial contribution to TNZ for sight distance improvements but the appeal was settled by consent order and the case never reached the Environment Court. The quarry is currently operating.

FACTORS CONTRIBUTING TO SUCCESSFUL CONCLUSION THROUGH ADR

- ✓ determination of parties to seek mutually acceptable solutions after a seemingly intractable start
- ✓ a willingness of the applicant to negotiate, once approached
- ✓ sufficient time to conduct negotiations between pre-hearing meeting and hearing (three months)
- ✓ submitters willing to work together, pool resources, and entrust a small team to work out a compromise on their behalf
- ✓ a system of reporting back to a large group of submitters

CONTACT FOR FURTHER INFORMATION

The consultant who negotiated on behalf and with submitters was Dorothy Wakeling. She can be contacted at wakeling@ihug.co.nz.