

Minutes of a hearing of submissions on Bridesdale Farm Developments Ltd, Application for Right-of-Way Easement held via Zoom on Tuesday, 3 May 2022 beginning at 10.00am.

Present:

Councillor Glyn Lewers (Chair), Councillor Calum MacLeod and Councillor Esther Whitehead

In attendance:

Mrs Jeannie Galavazi (Senior Parks and Reserves Planner), Ms Alice Balme (Legal Counsel, Wynn Williams Ltd) and Ms Jane Robertson (Senior Governance Advisor); four members of the public (applicant's legal team)

Commencement of the hearing: Election of Chairperson

The Governance Advisor called the meeting to order and asked the panel members to elect a Chairperson for the hearing.

It was moved (Councillor MacLeod/Councillor Whitehead):
That Councillor Lewers be appointed to Chair the hearing.

The motion was carried, and Councillor Lewers duly took the chair.

Declarations of conflicts of interest

No conflicts were notified.

Confirmation of Agenda

It was agreed that the agenda be confirmed without addition or alteration.

Officer's covering report

Mrs Galavazi stated that she had nothing to add to her written report, however noting that the applicant was only submitter and, by agreement, had pre-circulated material prior to the hearing.

Hearing of submissions

1. Marika Eastwick-Field, Kristen Gull, Lauren Christie and Genevieve Simmers for Bridesdale Farm Developments Ltd ('BFDL')

Ms Eastwick-Field stated that BFDL supported the Council granting the easement. Most of the proposed conditions were fair and reasonable, but changes were sought to three of the proposed conditions and this was the primary reason for the hearing.

Ms Eastwick-Field explained the site using the map on page 11 of the hearing agenda. Lot 205 was the formed gravel access and was used relatively heavily by residents for accessing river trails. Garden allotments shown on the top of the map were connected to the residential lots and were to become part of the title. Ms Eastwick-Field stated that Lot 405 was owned by BFDL and proposed this lot to be beneficial land pursuant to the easement. It was noted that paragraph 2 of the report referred to Lot 404 however this should read Lot 405.

The distance was discussed between the end of Widgeon Place and Lot 205 however it was noted that access had already been formed across parts of the reserve land. Whilst BFDL owned section D, the garden allotments were privately owned and were intended to be the legal beneficiaries. Ms Eastwick-Field clarified that not each individual lot would be a party to the easement but rather, Lot 405 would be the benefited land and the residents would be able to access their lots using the easement on lot 405.

The presentation then turned to why the easement should be granted and its benefits. The panel recognised the need for access because there was currently none. An access via Alec Robins road was suggested however, this was deemed impractical as the access would have to cross Hayes Creek and a 35 metre drop in elevation and would require a lot of engineering and earthworks.

The current proposed route for the easement already had a formed gravel road and was being used to access the lots. The proposed route would also complement public use of the reserve by making the allotments accessible and would preserve the visual landscape.

BFDL sought three changes to the proposed conditions but accepted the remaining conditions. The suggested changes were outlined as follows, (amendments shown in underline and deletions shown in strike-through):

Condition (a): "Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments, and and/or any other use of [Lot 404] that may be permitted by relevant zoning or consents from time to time".

Condition (d)(iii): "Enable Council to relocate the access in the event that Council develops an alternative access to the reserve land through Widgeon Place at the cost of the Council.", ~~at BFDL Farm Development Limited's cost~~

Condition d(v): "~~BFDL Farm Development Limited will pay for~~ All ongoing maintenance costs associated with the easement shall be split equally between the parties to the easement in accordance with Schedule 5 of the Land Transfer Regulations 2018".

Condition(a):

The hearing panel expressed some concern around this proposal, acknowledging that it had taken a very long time to get to this position. If rezoning of Lot 404 was successful (or a different use permitted) then this should not get lost in a similarly protracted process. BFDL acknowledged they were aware of the Council's concerns and the need to leave the condition open ended, however did not consider it was necessary to double up on protections to put a condition in the easement. BFDL suggested additional tests to ensure protections for the reserve which would also help to avoid procedural inefficiencies in the future. Overall the Council view was that the principal submission for condition (a) was not sufficient and would need to be modified.

Condition(d)(iii):

This proposed change stated the cost should be the Council's and not BFDL's. BFDL explained they had already paid to construct access along lot 205 and the gravel road that was the proposed easement route. They considered it was unreasonable to have to pay to relocate access, which in effect was a third access. Ms Christie provided a quote of \$500K for the access between Widgeon Road, Lot 404 and Lot 405. In BFDL's opinion this would result in a disproportionate cost burden. It was also highlighted that BFDL should be removed from the condition as they may end up selling the land and therefore it should mention the original registered owner instead.

Condition(d)(v):

The Council report acknowledged that the farming use of Lot 404 did not generate a lot of vehicle movements therefore cost should be low. BFDL expressed concern that the current condition placed all maintenance cost on them and it would be fairer to share across the parties to the easement. BFDL suggested that a change to the use of Lot 404 could change the split of the costs.

BDFL ended their presentation by stating they were in support of granting the easements and indicated that most of the conditions were fair and reasonable except for the three conditions covered in their verbal submissions. They asked the hearing panel to accept the proposed modifications.

Consideration of verbal submissions

A discussion then occurred between the hearing panel and BDFL representatives.

Councillor MacLeod expressed his concerns around how inefficiencies occurred throughout the whole development period and the threatened legal proceedings which reflected on the lack of traction. He also questioned the appropriateness of suggested locations of the easements and their future use. Councillor MacLeod mentioned the \$500k

estimated cost and expressed there was a lack of clarity about what the access might be and where those costs might lie.

Councillor Lewers questioned the legal access to the allotments and how that would be created with the split in maintenance costs. Ms Balme expressed support for the change sought in condition d(v) of removing BFDL and amending to a landowner or person who benefits from the easements. It was noted that there were existing easement instruments for the aisles.

Councillor MacLeod pointed out a drafting error to Easement C in the attachment as this did not connect to lot 405 which was noted by the members. It was also noted that Lot 205 was currently a recreation reserve and therefore public access could not be prevented permanently unless there was a change in the status of the land.

The meeting adjourned at 10.58am and reconvened at 11.01 with no members of the public present.

Deliberations

In relation to condition (a), Councillor MacLeod expressed that any other use of Lot 404 would be risky as it was in a Flood Zone. He felt that any connection to Lot 404 should be at BFDL's cost but any alternative access should be at the cost of the Council.

Ms Balme reminded the panel that any future development needed to be carefully considered as Lot 404 may have alternative uses in the future and Council should not want to create an expectation that there would be a public access through the BFDL community. She also added that the rezoning appeal was currently on hold.

The panel agreed that QLDC should be prepared to pay up to a certain level of service but not for a future development. The splitting of maintenance costs seemed fair and a three-meter gravel track could be implemented, however if the track requires an uplift of service in the future then this should be at the developer's cost.

Councillor Whitehead suggested that funding anything above the current grading would be logical. Council would not have to close current access from Hayes Creek Road and any access from Widgeon Place would be beneficial, adding that direct access to Widgeon Place would be better but could not be forced.

The panel did not support the proposed change to condition (a) as they felt any other use as mentioned should be subject to a future consent. Council recommended; "Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments."

The panel did not support the proposed change to condition (d)(iii) as a new access from Widgeon Place would benefit future development to Lot 404 and therefore the cost of

developing that access should lie with the owners of Lot 404 and not with the Council. Overall the panel agreed that having the full cost sit with Council would not be acceptable and therefore this condition (d)(iii) would need to be clearer.

The panel supported the change to condition (d)(v) but added that if there was an uplift in service, then this condition may need to be reviewed.

On the motion of Councillor Lewers and Councillor Whitehead it was resolved that the hearing panel:

- 1. Note the contents of the report;**
- 2. Consider the submission received on the proposed intention to grant an easement to BFDL Farm Limited, as detailed in the plans prepared by Clark Fortune McDonald and Associates Ltd and dated 15 May 2020;**
- 3. Agree to accept partially the applicant's submissions; and**
- 4. Recommended to Council that the easement be granted subject to the changes determined during the hearing.**

The meeting concluded at 11.37am.