

INDEPENDENT COMMISSIONER HEARING

RESOURCE CONSENTS

MINUTES: of a meeting of an Independent Commissioner Resource Consent Hearing which commenced at 9.00 a.m. in the Council Chamber, Centreway Road, Orewa on Monday, 23 February 2009.

PRESENT: Commissioners Alan Watson
John Childs

IN ATTENDANCE: Reporting Planner Sarah Gathercole
Manager Resource Consents Ian Dobson
Landscape Peer Reviewer Patrick Corfe
Democracy Services Officer Raewyn Morrison

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131/02/09 APOLOGIES**AGENDA ITEM NO. 1**

There were no apologies.

132/02/09 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

AN APPLICATION FOR CONSENT TO ERECT SIX FLOODLIGHT TOWERS OF 21M IN HEIGHT TO REPLACE THE EXISTING FLOODLIGHTS FOR THE LEAGUE FIELDS. FLOODLIGHTS LESS THAN 9M ARE A PERMITTED ACTIVITY, AND FLOODLIGHTING TOWERS BETWEEN 9M AND 15M HIGH ARE A DISCRETIONARY ACTIVITY. AS THE TOWERS WILL BE 21M IN HEIGHT, THE ACTIVITY IS NON-COMPLYING AS THE ACTIVITY IS NOT LISTED WITHIN THE ACTIVITY TABLE

Address: 4 Glanville Close, Stanmore Bay

APPLICANT: RODNEY DISTRICT COUNCIL

FILE REF L54284**WARD Hibiscus Coast****AGENDA ITEM NO. 2**

The applicant, Rodney District Council, seeks consent to erect six floodlight towers of 21m in height to light the existing league fields on Stanmore Bay Recreation Reserve. Currently there are four lights which are not adequate in providing lighting for both of the fields.

The applicant, Rodney District Council, was represented by Mr Malcolm Maclean (Counsel), Ms Diana Bell (Planner), Ms Mary Buckland (Landscape Architect), Mr John Mckensey (Specialist Lighting Design Engineer), Mr Peter Bilton (Senior Parks and Coastal Capital Works Engineer), and Mr Brandon Baker (representative of the Hibiscus Coast Raiders Rugby League Club), present.

Submitters: Ms Kathy Bowmast, Ms Glennis Cash, Mr Ian Crowe, Ms Beverley McLeod, Mr Peter McLeod, Mr Ray Robins, Mr Brett Bath, Mr Stan Warrington, Mr Mike Tomey, and Mr Albert Robertson, present.

Apology: Mr Ian Crowe advised that his wife, Pamela, was unable to attend the meeting.

9.05 a.m. The Chairperson opened the meeting and outlined the hearing procedure.

Mr Maclean introduced the applicant's case and distributed and read a written submission. The following was noted:

Mr Maclean said that this was a highly constructive application to replace the existing outmoded and relatively ineffective lighting of the rugby league fields at the Stanmore Bay Recreation Reserve. The application sought to replace the existing facility with a modern, slimline and engineered sports lighting proposal which would enable the efficient lighting of the rugby league fields in a manner which minimised any potential visual and glare effects on neighbouring residential property.

Mr Maclean addressed the Actual and Potential Effects on the Environment. He considered the actual or potential effects of the proposal to be the height of the proposed sports lighting columns and the lighting itself. He also addressed the permitted baseline and referred to relevant case law. A copy of the Eyres Eco Park High Court decision was tabled. In summary, Mr Maclean considered that the

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planning report had been correct to assess the proposal as being consistent with the objectives and policies of the Plan.

Mr Maclean said that it was the actual or potential effect of the added illuminance that was to be assessed, not the height per se of the sports lighting columns on which the luminaries are situated. The application could have been put together on the basis that it kept within the 16 metre column height provided for under Rule 10.9.2 for the zone, as a discretionary activity, but doing so would have potentially resulted in significant adverse glare effects on neighbouring land because of the required tilt angle that would then have been necessary.

Mr Maclean said that the applicant agreed with all of the recommended conditions in the planning report with the exception of an amendment to proposed condition 4. In summary the requested amendment was for the flood lighting columns not to be painted, but to be allowed to naturally oxidise in their galvanised state to the normal recessive gray colour, which would assist in minimising any potential visual effect.

In response to questions from the Panel, Mr Maclean said that:

- The proposal would comply in regard to noise (Rule 16.9.2.1.1.).
- A timer was proposed for turning the lights out.
- He was unaware of any other floodlights towers in the Rodney District at a height of 21m.
- The lights would only be on during week nights and not during the weekend; this could be a potential condition of consent.
- There was no practical benefit in lighting part of a field; at present the lighting was inefficient and ineffectual and the applicant wanted to light two fields. There was a direct relation in regard to the height of the structure and taking the effects on neighbours into account.
- Currently the tilt angle of the lights affected neighbouring properties.
- When the lights were erected in 1999 a resource consent was not required because the lights complied with the District Plan rules; the current lights had building consent.
- With regard to the Reserve Management Plan, mention was made about appropriate lighting although not directly referred to.

Mr Mckensey, Specialist Lighting Design Engineer with LDP Ltd, distributed and read written evidence. The following was noted:

Mr Mckensey outlined the proposed lighting installation. He said that the design of the luminaire optic was such that this would not project any light above a horizontal plane through the luminaire. Mr Mckensey summarised the relevant lighting parameters and his calculated results.

Mr Mckensey said that it was proposed that the luminaires would not be used after 10.00 p.m. on any day until 7.00 a.m. the next morning, in accordance with District Plan controls. However, he understood that in practice the lights would only be utilised, as they were currently, for 4 nights per week, from 5.00 p.m. until 8.30 p.m. from April to early September.

In conclusion, Mr Mckensey said that the proposed lighting design was in keeping with good practice and had been based upon the tenets of minimising obtrusive light effects beyond the site boundaries, whilst providing for safe use of the training fields. The lighting design proposed, relative to the requirements of the Rodney District Council's Proposed District Plan 2000 (operative in part):

- was a permitted activity under Rules 10.10.2, 10.10.3, 10.10.4, 10.13.2.2. and 16.5.
- was a non complying activity under Rule 101.10.1 (height).

In his opinion, any off-site effects of the proposed lighting would be no more than minor.

Mr Maclean said that Mr Baker from the HBC Raiders had advised that most practices finished around 8.30 p.m. - 9.00 p.m. and at present the users proposed to continue as they were doing so now.

In response to questions from the Panel, Mr Mckensey said that glare was difficult to quantify; it was very subjective. The effect on most properties would be a glow, but not a disturbing glare situation. With regard to a possible change in the position or lux levels, he didn't think this was possible; he had tried to minimise the effects as much as he could by making the adjustment.

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Ms Mary Buckland distributed and read written evidence. Annexed to Ms Buckland's evidence was a set of photographic viewpoints. The following was noted:

Ms Buckland described the existing landscape and the proposal. She described the methodology which she had used to assess whether or not the proposed lights would have a more than minor effect on the nature and quality of its surroundings. These included landscape effects, effects on natural character, effects on amenity values and visual effects.

Ms Buckland addressed visual effects and the visual catchment and viewing audience. Referring to the photographs attached to her evidence, Ms Buckland discussed the immediate views, more distant views and the visual effects of the light standards. She noted that the main objective of the zone was to ensure that the community's recreational, sporting and leisure needs were met without compromising the amenity values of the surrounding area. In general the size and intensity of the activity would be in keeping with the size and character of the open space. This was a large area, surrounded by passive recreation areas as well as bush and residential covered slopes. The proposed lights would not have an adverse effect on the ecology or wildlife of the area and the valley did not have a high conservation value. The activity would introduce taller lighting columns into the view from some properties and this would have some minor effects on amenity value for some local residents. The new columns would slightly affect the open expansive nature of the park by introducing taller structures into it. However, the lighting poles would be oxidised, which meant that they would weather to become light gray over time, and this would help mitigate any effects to an extent where they were no more than minor.

Ms Buckland addressed the submissions; she noted that the new lights would be double the height of the existing lights, but that this did not mean that there was a 100% increase in the mass of the structure; she considered the new lights to be slim line and elegant. Ms Buckland also addressed the peer review of her landscape assessment by Patrick Corfe. She noted that overall Mr Corfe had agreed with her conclusion that the visual effects, and the effects on landscape, amenity, and natural character would be no more than minor.

10.30 a.m. – 10.53 a.m. Morning tea adjournment.

Ms Buckland continued reading her written evidence.

In conclusion, Ms Buckland said that that part of Stanmore Bay Park was already used as a rugby league field which was floodlit at certain times. The existing floodlights were badly aligned and created glare for the houses on Rimu Road. The proposed new lights would improve the lighting for rugby league training, but would also be more directed down onto the field and there would be less light spill for surrounding residents. The position of the new lights would also enable the fields to be used for Australian Rules (Aussie Rules) rugby.

The new lights would have no effect on the physical landscape, or on the natural character of the area. There would be some amenity effects on views for people whose houses overlooked the fields, but in her opinion these effects would be minor. One or two houses at the end of Kathy Place would also gain views of the lights. In terms of visual effects, the lights would be a partially new element in the view, but should not be an unexpected element and because they were tall, the landscape flowed beneath them. In her view there was little contrast between the lights and the surrounding environment. The effects of the lights would be mitigated because they would be oxidised and would be light gray. In her opinion the landscape, natural character, amenity and visual effects of the new lights would be no more than minor.

In response to questions from the Panel, Ms Buckland said that:

- Planting around the base of the lighting structures would draw attention to the lights.
- Possibly there could be some planting on people's property to mitigate effects, but planting might affect views.
- The goalpost cross bar was 4m, the peak of the roof on the Leisure Centre was 11m, and the rugby league changing room roof was 5m.
- She would not recommend painting the light structures dark green. She had seen places where poles had been painted part away up, but in her opinion that didn't give continuity.

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Gray was better when seen against the sky and sea, although the gray did show up in green backdrops.

- Oxidation would probably occur in the vicinity of 6 months.

Mr Mckensey noted that bright silver as a colour was considered to have the least impact and that he thought that oxidation would take 6 - 12 months.

Mr Corfe addressed the Panel. He asked points of clarification in regard to whether the lights would only be used for training purposes. He also asked whether there might be some occasions when the level of activities on the reserve would intensify with the removal of the existing lights. Mr Corfe said that nothing he had heard had changed his viewpoint.

Ms Diana Bell distributed and read written evidence, the following was noted:

Ms Bell said that the positive effects of the proposed flood light towers and lighting would allow the site, which has been specifically zoned for multi-purpose recreational use, to be better utilised by community sports groups, in particular the Hibiscus Coast Raiders. The proposed new lighting would enable the Hibiscus Coast Raiders to better use the fields for rugby league training during the winter months, as they do at present, while at the same time providing the ability to light both the league fields, rather than the present one field. The location of the proposed new flood lights would also enable the fields to be better utilised for playing daytime Australian Rules football during the summer months. In addition, the proposed flood lights were of a design that that would reduce the glare of the existing lights which was currently experienced by a number of adjoining properties.

In conclusion, Ms Bell said that having considered the proposal in relation to the tests set out in section 104D of the Act and the relevant matters for assessment set out in section 104 of the Act, it was her opinion that consent should be granted to the proposal. The reasons for that opinion were:

- The potential adverse effects of the proposal on the environment were considered to be no more than minor and the positive effects were significant;
- The proposal was consistent with, and certainly not contrary to, the relevant objectives and policies of the Proposed District Plan 2000 – operative in part; and
- The proposal was consistent with Part II of the Act.

The matters raised in submissions had been addressed generally in the assessment of effects of the proposal on the environment and it was concluded that the matters raised in submissions were able to be adequately dealt with by way of consent conditions, such that any effects would not be more than minor.

In response to questions from the Panel, Ms Bell said that:

- It was anticipated that the application would comply with noise levels of 40dba; this could be a condition of consent.
- There were no potential issues in regard to traffic and parking.
- Rather than increasing the intensity of activities, the proposal was to spread the activities across the two fields; it was likely the number of teams playing would be no greater.
- Training occurred 4 nights of the week until about 8.30 p.m. to 9.00 p.m.; if the time was increased to 10.00 p.m. she considered that there would be no more than minor effects.

Mr Baker of the HBC raiders Rugby League Club said that most training finished before 9.00 p.m. from an actual 'on the field' point of view. He didn't think there would be any impact on the club in having the lights turned off at 9.00 p.m. Senior training generally was held from Tuesday - Friday. On Mondays, the grounds were used by children and they were gone by 5.30 p.m. and there was no necessity for lights. Mr Baker confirmed that the club would like to see oxidation rather than painting of the poles.

Mr Maclean said that he saw no possible implication other than the Hauraki Gulf Marine Park Act which he had not addressed in his submission.

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Submitters:

Mr Stan Warrington of 6 Rimu Road gave verbal evidence. The following was noted:

Mr Warrington said that the main reason for the change to the lights appeared to be so 'Aussie Rules' rugby could be played on the ground and that he would rather see provision for this type of rugby at Metro Park. He said that he would rather see an extra four lights added, similar to those that already existed, so that both fields could be adequately lit at each end; he considered these extra lights would not need to be anywhere near as high. Mr Warrington said that he was in favour of the league people practicing. He said that he would like his suggestion considered as it would overcome any issue straightaway.

Mr Brett Bath of 8 Rimu Road distributed and read a written statement in addition to his original submission. The following was noted:

Mr Bath said that he did not agree with Ms Buckland's assessment and he challenged whether her photographs were an accurate representation. Mr Bath said that a 21 metre floodlight would be located 67.518 metres from his upper deck and he considered it would be highly visible in that position and that it would certainly dominate and compromise his outlook and ultimately have an affect on property values, resale value and rating value. He also said that he believed the cross bar on the goal post was 3m high not 4m as stated by Ms Buckland. Mr Bath said that he would like his household to be considered as it was one of the closest to the light fixings. Mr Bath stressed that the issue was about the height of the floodlight towers not the hours of operation; his main concern was having light towers always in his view.

Ms Kathy Bowmast of 25 Kathy Terrace distributed and read written evidence on behalf of her herself and her husband Denny. The following was noted:

Ms Bowmast said that the main effects on themselves and their neighbours stemmed from:

- Increased visual impacts from the towers.
- Increased glare and light spill.
- Increased noise and activity.

In response to questions, Ms Bowmast said that there was quite a bit of birdlife in the wetlands area, and that they were very highly valued wetlands. She noted that the stream that ran through the wetland area had native fish and that the Auckland Regional Council monitored the stream regularly. She believed that increased activity would have adverse impacts on the wildlife habitat. Ms Bowmast confirmed that the current light glare did not impact on them at all, but possibly some of her neighbours might be impacted. She was concerned with the possibility of reflective glare from the field and felt that there was no proven need for the floodlight towers at 21m.

Ms Glennis Cash of 22 Rimu Road distributed and read written evidence. The following was noted:

Ms Cash thought that some of the applicant's team had contradicted themselves. She considered that her sea views would be considerably interrupted with the presence of 21m high floodlight towers as they would create a larger light flow area and glare on neighbouring residential properties. Ms Cash said that the current 10m lights did not intrude on the beautiful landscape. She thought that the larger lights and increased use of the sports fields would create more noise and activity. She also believed the proposed higher lighting structures would have a major impact, not a minor one. Ms Cash considered that the proposal was "just not fair". She believed that any new lights should be around the height of those currently installed.

Ms Beverley McLeod of 6 Glanville Close distributed and read written evidence. The following was noted:

Ms McLeod read from a letter she had sent to the Rodney District Council Chief Executive dated 3 February 2009; she also addressed his reply dated 16 February 2009. Ms McLeod opposed the 21m height of the towers as she considered they would dominate the landscape and impact on the whole environment when in use at night.

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Ms McLeod noted that sports clubs with a proven need were struggling to meet the huge financial burdens of establishing at Metro Park, and to give each club a donation of \$100,000 (the estimated cost of the floodlight towers) would surely meet with more ratepayer approval than the fanciful 'want' for the limited membership of the league club to install Aussie Rules. Ms McLeod said that she would never accept the need for 20m (*sic*) high lighting towers in a residential area, when Metro Park could more easily accommodate them.

12.55 p.m. Mr Corfe retired from the meeting.

12.55 p.m. - 2.00 p.m. Luncheon adjournment.

Mr Ian Crowe of 12 Te Ruru Way distributed and read written evidence. The following was noted:

Mr Crowe said that he would be one of the parties who would be adversely affected by the light. He noted the change would be a considerable nuisance and reflect on his property values. He considered that the height and mass of the towers protruding into the skyline would be a permanent eyesore. He also queried whether there would be an increase in activities on the field, such as concerts and he was concerned that this could lead to issues in regard to traffic and parking. Mr Crowe suggested the alternative of there being more 10m lights, scrapping the idea of playing Aussie Rules, and sending the activity to Metro Park. In conclusion, Mr Crowe said that simply the loading on the community for such a minority group with dubious status as a sport was more than inappropriate; in his opinion this was the only trigger for the 21m high light towers.

In response to questions from the Panel, Mr Crowe said that:

- He was concerned about lighting and an increase in activities on the park putting pressure on the environment and worried about associated traffic and parking management.
- The area where the lights were situated would be worst for him; he was also considering subdivision.
- The issue mostly was the size and height of the towers and daytime intrusion was much more important than light glare.
- He wanted to see the facility used.
- The intrusion of poles into the skyline would be a great change and couldn't be described as minor.
- If the intention was to use the park more than it was currently used, this was also of concern.
- He thought that playing Aussie Rules was the only valid trigger for the lighting design.
- The glare was quite terrible at the moment on some of the neighbours; he wanted a chance to see the situation improved without environmental impacts and without it being at the expense of the greater community with the increased height.

Mr Ray Robins of 26 Kathy Terrace gave verbal evidence. The following was noted:

Mr Robins said that he was concerned about the impact of 21m towers; he thought they would have a major impact on the amenity people currently enjoyed and an impact on the value of properties. Mr Robins wondered about the point of having a district plan if it was not adhered to.

Mr Mike Tomey distributed and read written evidence. The following was noted:

Mr Tomey said that his main concern was the height of the towers and the impact on the skyline. If the towers illuminated the whole field, he was not bothered, but he didn't want the towers to impact on the skyline. Mr Tomey also believed the proposal had the potential to set a precedent for other high lights in residential areas.

In response to questions from the Panel, Mr Tomey said that the intrusive nature of light spill that was already there on the field needed to be addressed. He considered that with towers at 21m high a lot of neighbouring properties would be looking at light heads – not light towers. Mr Tomey said that he was not opposed to big field sport and AFL but he wondered about locating it at Metro Park. If the height of the towers was directly related to the area of the fields to be lit he said an option was for the applicant to consider lighting a lesser area in order to bring the height of the light towers down to a reasonable level.

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Mr Mckensey said in this situation the width of two fields needed to get light coverage so that people were not running in and out of dark areas. If the lights were 16m they would have to be tilted and the glare would impact on many households. The further away from where an area was trying to be lit, the higher up it needed to be

Mr Albert Robertson of 18A Rimu Road distributed and read written evidence. The following was noted:

Mr Robertson said that the application had been unpopular in the local area. He considered it to be wasteful of ratepayer's money and that the money would be better diverted to somewhere more deserving. He considered that Metro Park would be a better area for the sport. Mr Robertson was concerned about the impact of the towers on the beauty, views and general ambience of the area. He thought that the area should not be ruined by "these hideous sticks of steel." He believed that there might be other lighting alternatives.

Council Officer: Sarah Gathercole

Ms Gathercole said that the proposed towers would be located at the edge of the existing league fields and that the towers were thin in design. Although tall in height the towers were not considered to have bulk effects. She noted that both landscape assessments said that the effects would be no more than minor. Ms Gathercole considered that the issue in regard to glare had been addressed by Mr Mckensey and he had stated that the glare would be below the standards in the District Plan. Ms Gathercole said that she considered the application to be in keeping with the character of the zone and that it complied with the District Plan standards. In her opinion the overall effects on character, and visual and amenity values would be no more than minor. The floodlight towers would allow for the use of the recreation area and she stood by her recommendation to grant consent to the proposal subject to conditions of consent.

In addition, Ms Gathercole said that there appeared to be a discrepancy in the application in regard to the height of the existing flood light poles; 9m was stated in the 1999 building consent, and 10m was noted in the application. She wondered whether this could have an effect on the permitted baseline because if the towers were 10m in height they might need a retrospective resource consent. She was not sure where the 10m height had come from. In regard to complaints received by the Council, Ms Gathercole said that in 2006 and 2007 there were two complaints received in regard to noise and they were to do with the use of the clubrooms rather than the fields as a whole. Ms Gathercole said that she accepted the proposed wording change in regard to the colour of the columns.

2.58 p.m. - 3.16 p.m. Afternoon tea adjournment.

Malcolm Maclean presented the right of reply. The following was noted:

Mr Maclean said that he could not confirm the position of height of the current poles; the 10m figure may well be 9m.

Ms Buckland addressed the Panel: In regard to comments by Mr Bath about Ms Buckland's photographs, Ms Buckland said that she based her work on a 50mm lens and that she felt the photographs were a reasonable representation of what could occur. She and Ms Bell went to about a dozen properties and selected Mr Robertson's at 18A for some of the photographs because he was forward of everyone else although not as high. She felt the photographs were a good representative example. She had also been advised that the cross-bar on the goalpost was between 3.5m and 4m.

Mr Mckensey addressed the Panel: Mr Mckensey said that the lighting as designed was purely for training for football. If the existing lights were duplicated (i.e. increased) they wouldn't meet the criteria for training and glare issues would be replicated to the north; the properties identified as most affected by the new proposal would be more affected by the suggestion to increase the towers at the same height. He considered the 21m towers would only affect people's ability to sleep in a minor way. He noted that there would be more light on the field, and an increase in the reflected light in the sky but these would be no more than minor. Mr Mckensey said that the lights needed a 5m set back from the field. In regard to the suggestion of there being 6 x 16.5m poles, the centre of the field would need lights in both directions and there was a problem with occupying the centre space, these being safety

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issues and limitation on use of the field. Mr Mckensey said that he wouldn't like to keep the existing lights as part of new scheme.

Mr Maclean: Mr Maclean noted that what was driving the application was that the existing situation was of one of inefficient lights on one of the fields for training. The levels of light wouldn't elevate the use of the facility beyond training. Numbers were not falling off in the league club and this situation was expected to continue. Mr Maclean said that with the current lighting there was an issue in regard to physical dangers. The applicant was the Council, not the club, and the Council was looking at the overall use of reserves. In regard to comments about relocating the lights to Metro Park, Metro Park would be similar in that it was zoned Open Space 4 with residential dwellings located around it.

The HBC Raiders wanted to be able to manage the practices over both fields and the proposal would remove the sterilisation of the existing fields by virtue of removing the centre poles which would also free the field up for daytime events; widening the daytime use would be an important positive effect. With regard to proposed conditions, Mr Maclean said that the applicant would accept that the use of the lights be restricted to Monday – Friday and they would accept if necessary the lights going off at 9.30 pm. Mr Maclean confirmed also that the applicant would accept a review condition which would allow any unforeseen issues to be addressed should they arise. Referring to comments made about the parking, Mr Maclean said that there was plenty of parking and there was no suggestion in the proposal to enable concerts. Mr Maclean said that the proposal met the requirements of the Act in accordance with the objectives and policies of the planning documents and he felt that consent could be granted subject to conditions and amendments in regard to painting or galvanising the poles, along with an amendment to the condition in relation to the hours and also a review condition.

3.43 p.m. The Chairperson adjourned the hearing.

The Chairperson closed the hearing at 4.30 p.m. on Wednesday, 25 February following the close of deliberations.

The Panel resolved:

Watson/Childs

THE DECISION:

That, pursuant to Sections 104, 104B and 104D of the Resource Management Act 1991, the limited notified application for resource consent by the Rodney District Council for consent to erect six floodlight towers of 21 metres in height at 4 Glanville Close, Stanmore Bay, being Lot 17 DP 128249, Allot 717 Parish of Waiwera SO 59176 and Pt Lot 32 DP 56618, be refused consent.

REASONS FOR THE DECISION:

Pursuant to Section 113 of the Resource Management Act 1991, the reasons for this decision are as follows:

1. The proposed light towers would be situated upon the sports park at Stanmore Bay which has many residential properties located around and above it. These properties contain one and two-storey dwellings. The sports park is set within what is largely a suburban setting. Whilst the proposed towers would be relatively thin in their design they reach an overall height of 21 metres with the lights at the top. The height and size of the light towers would be out of scale and character with the locality and would impact in an adverse manner on the outlook from the residential properties. The Hearings Panel accepts that the lights themselves would not impact in an adverse manner that was more than minor, with the design of the lights including direction of the lighting direct to ground and the illumination levels complying with the District Plan. The lights atop the towers would however serve to accentuate the height and scale of the towers, both during the day and in the evenings at the times the lights were in use. The Panel formed the view, from the evidence and site visit, that the adverse visual effects of the proposed light towers would be more than minor in terms of the amenity of the residential

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area around the sports park. Overall, the adverse effects of the proposal on the character, visual and amenity values of the area would be more than minor.

2. The application is for an activity which will be contrary to the relevant objectives and policies of the District Plan. Whilst it would provide for the use of the recreation area of the sports park it would create adverse effects on the character, visual and amenity values of the surrounding environment that are more than minor.
3. The proposal does not pass either test for non-complying activities in Section 104D of the Resource Management Act 1991 because the adverse effects of the activity on the environment will be more than minor and the application is for an activity that will be contrary to relevant objectives and policies of the District Plan.
4. There are insufficient circumstances relating to the application that distinguish it from other applications and which would support consent to it as a non-complying activity.
5. The proposal is not consistent with the purpose and principles of the Resource Management Act 1991, as included at Part 2 of that Act because of the adverse effects that would be created in the locality and which would impact in an adverse manner upon the amenity values and quality of that environment.

**THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (AA))**

Overall this application was considered to be a **non-complying** activity and was considered in terms of Sections 104, 104B, 104D and Part 2 of the Resource Management Act (RMA).

**OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (ab))**

The provisions of the following documents were considered by the Hearings Panel in reaching this decision.

Auckland Regional Policy Statement, Chapter 2, Regional Overview and Strategic Direction.

Proposed Regional Policy Statement, Proposed Plan Change 6.

Operative District Plan 1993, This District Plan applied at the time of the lodging of the application but it has since been effectively superseded by the relevant provisions of the Proposed District Plan becoming operative. It is therefore no longer relevant.

Proposed District Plan 2000, Objectives and policies as relevant to the application.

Other Legislation, Hauraki Gulf Marine Park Act.

Other Documents, Stanmore Bay Recreation Reserve Management Plan (As amended by Council 16/12/1999), "Vision Rodney" (non-statutory).

PREAMBLE:

The site is part of the larger Stanmore Bay Recreation Reserve which is split in half by Brightside Road. It is located adjacent to the Stanmore Bay Leisure Centre and consists of two rugby league fields. The topography of the land rises to residential areas to the east and south west. The site is effectively surrounded on three sides by residential development which generally looks onto the park. The proposal is to erect six floodlight towers to a height of 21m around the perimeter of the existing sports fields to provide for night time rugby league training. Two of the proposed towers would contain 6 floodlights each, and the other four towers would contain 4 floodlights. Currently there are four centrally located floodlight towers to a height of 9m which are not adequate in providing lighting for both of the fields. The existing floodlight towers, located between the two football fields, also limit the day time use of the fields for Australian Rules football because that activity requires a larger field area.

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REASONS FOR THE APPLICATION:**Operative District Plan 1993**

This District Plan applied at the time of lodging but has since been effectively superseded by the relevant provisions of the Proposed District Plan becoming operative. It is therefore no longer relevant.

The now Partly Operative (previously Proposed) District Plan 2000

Floodlight towers up to 16m high are a discretionary activity. The proposal is for towers to 21m in height and the application is therefore for a non-complying activity.

Rule 10.10.1 limits the height of buildings to 9m within this zone. Restricted discretionary activity consideration is required for the infringement of this rule.

Rule 16.5.1 states:

Other Zones –Daytime

A person shall not use on any site between the hours of 7am to 10pm any artificial lighting in such a manner that the use of such lighting causes an added illuminance in excess of 100 lux, measured horizontally or vertically on or directly above the boundary of any adjacent site at that point which is closest to any window of an adjacent household unit; and

Other Zones – Night-time

*A person shall not use on any site between the hours of 10pm on one day to 7am on the next day any artificial lighting in such a manner that the use of such lighting causes an added illuminance in excess of 10 lux measured horizontally or vertically on or directly above the boundary of any adjacent site at that point which is closest to any window of an adjacent household unit ; and
[Decision Report 2258]*

The Council considers that the luminance or glare does not cause a significant level of discomfort or inconvenience to adjacent household units. [Decision Report 2258]

All welding activities shall be screened from adjacent sites and roads.

Lighting facilities which may cause confusion with lights for navigation and traffic purposes shall not be constructed.

Lighting shall not be constructed so that direct or indirect luminance or glare causes adverse effects on traffic safety.

The application needs to be assessed against this rule. The advice from all parties was that it complies with this Rule.

Overall the application is a non-complying activity.

SUBMISSIONS

Twenty three submissions were received, all opposing the application. In addition, seven submissions were received from persons who were not part of those persons included in the limited notification of the application. Those seven submissions were given no regard by the Panel.

**THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:
(Section 113(1) (ac))**

1. Whether the adverse effects of the proposed activity on the environment are minor for the surrounding mainly residential environment particularly in regard to illumination, height of structures, traffic, parking and hours of operation.

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2. Whether the application is for an activity that will not be contrary to the objectives and policies of the District Plan.
3. Whether the above Section 104D tests of the RMA can be met.
4. Whether conditions could be applied to the activity that would serve to satisfactorily avoid and/or mitigate any adverse effects to a level that those effects are minor.
5. Whether there are distinguishing circumstances applying to the application that provide for it to be granted consent as an exception to the District Plan provisions.
6. Whether the Section 104 provisions of the RMA can be met.
7. Whether the proposal would be consistent with Part 2 of the RMA relating to its purpose and principles.

**SUMMARY OF THE EVIDENCE HEARD:
(Section 113(1) (ad))**

Applicant

Malcolm Maclean stated in legal submissions that this was a highly constructive application to replace the existing outmoded and relatively ineffective lighting of the rugby league fields. The application was to replace the existing facility with a modern, slimline and engineered sports lighting proposal which would enable the efficient lighting of the rugby league fields in a manner which minimised any potential visual and glare effects on neighbouring residential properties. The reason for the additional column height was to provide for a zero tilt angle for the light and therefore minimise the potential light spill and potential glare effect on neighbours. The lights would only be used to 10pm.

Mr Maclean saw the potential adverse effects of the proposal being no more than minor based on the evidence to be presented and the Council planner's report. The effects were the height of the proposed lighting columns and the lighting itself. He saw the existing lighting, and its effects, forming part of the existing environment in terms of assessing the effects of the proposal on the environment. He pointed out that the proposed lighting complied with the District Plan standards and therefore those effects were no more than minor. Mr Maclean said that it was the actual or potential effect of the added illuminance that was to be assessed, not the height per se of the sports lighting columns on which the luminaires are situated. The application could have been put together on the basis that it kept within the 16 metre column height provided for by the District Plan as a discretionary activity, but doing so would have potentially resulted in significant adverse glare effects on neighbouring land because of the tilt angle for the lights that would then be necessary.

Mr Maclean concurred with the reporting planner regarding the proposal being consistent with the objectives and policies of the District Plan. The applicant agreed with all of the recommended conditions in the planning report with the exception of an amendment to provide for the flood lighting columns to be allowed to naturally oxidise in their galvanised state to the normal recessive gray colour rather than be painted.

John Mckensey, Lighting Design Engineer, described the proposed lighting installation that his company had prepared. The luminaires were proposed to be installed with zero degrees upward tilt. The measures for maximum glare rating and maximum light spill showed that only a few residential properties would be affected with the height of the columns having been calculated to achieve lighting over the fields without the need to tilt the luminaires which would then cause an increase in the glare rating to the residential properties. Mr Mckensey said that it was proposed that the luminaires would not be used between 10pm and 7am the next morning, in accordance with District Plan controls, which were all met. He understood that the lights would only be utilised, as the existing lights were currently, for 4 nights per week, from 5pm until 8.30pm from April to early September.

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In conclusion, Mr Mckensey said that the proposed lighting design was in keeping with good practice and had been based upon the tenets of minimising obtrusive light effects beyond the site boundaries, whilst providing for safe use of the training fields. Any off-site effects of the proposed lighting would be no more than minor.

Mary Buckland, Landscape Architect, presented evidence based on her earlier landscape and visual assessment of the proposal. Her evaluation was that the effects in relation to landscape, natural character and amenity were no more than minor because the proposal had to be seen in the context of the open expansive nature of the playing fields, the proposal being tall thin structures which will in some cases be seen against a backdrop of trees and houses or against the sky or will be over-looked. In relation to visual effects there was the effect of the light itself and the effect of the lighting columns. Her analysis was that visual effects would be no more than minor.

Ms Buckland addressed the provisions of the District Plan stating a wide range of activities were permitted in the Open Space zone; the size and intensity of the activity would be in keeping with the size and open character of the open space; and, whilst it would introduce taller columns into the view of some properties this would only have some minor effects on amenity values for some local residents. Ms Buckland also addressed the peer review of her landscape assessment by Patrick Corfe and noted that he had agreed with her conclusions.

Diana Bell, Planning Consultant, had prepared the application and the planning report with it. In her evaluation she stated the adverse effects on the environment were no more than minor by reference to both the permitted baseline approach to evaluation and also to the environment as it exists. She noted that the proposal met the District Plan lighting standards. The lighting and towers were consistent with the character of the reserve and would create no more than minor adverse effects on the amenity values of the surrounding sites. The towers and lighting related to activities already undertaken on the reserve; were well removed from residential boundaries; and, the lighting was to be directed to the playing areas. The positive effects were that the proposal would allow the site, which has been specifically zoned for multi-purpose recreational use, to be better utilised by community sports groups, in particular the rugby league club. In addition, the proposed flood lights were of a design that would reduce the glare of the existing lights which was currently experienced by a number of adjoining properties.

In conclusion, Ms Bell said that having considered the proposal in relation to the tests set out in Section 104D of the RMA and the relevant matters for assessment set out in Section 104, it was her opinion that consent should be granted to the proposal.

Brendan Baker from the rugby league club said that most training finished before 9pm and he did not think there would be any impact on the club in having the lights turned off at 9pm. Senior training generally was held on Tuesday to Friday. On Mondays, the grounds were used by children and they were gone by 5.30pm so there was no necessity for lights at that time.

Submitters

Stan Warrington of 6 Rimu Road said he would rather see provision for playing Australian Rules football at Metro Park. Further he would rather see the existing lights being relocated and extra lights being added that were similar to those that already existed to meet the needs of the rugby league club.

Brett Bath of 8 Rimu Road presented a written statement. He did not agree with Ms Buckland's assessment and he challenged whether her photographs were an accurate representation. Mr Bath said that a 21m floodlight would be located 67m from his upper deck and he considered it would be highly visible in that position and that it would certainly dominate and compromise his outlook and ultimately have an affect on property values, resale value and rating value. His house was one of the closest to the proposed light towers. Mr Bath stressed that the issue was about the height of the floodlight towers not the hours of operation; his main concern was having light towers always in his view.

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Kathy Bowmast of 25 Kathy Terrace presented a written statement on behalf of her herself and her husband Denny. She said that the main effects on themselves and their neighbours stemmed from increased visual impacts from the towers; increased glare and light spill; and, increased noise and activity. These effects would lead to significantly increased effects and reductions in amenity values and to effects that were unacceptable. Ms Bowmast was also concerned about the potential effect on the neighbouring wildlife wetlands.

Glennis Cash of 22 Rimu Road presented a written statement in which she expressed concern for the effects from the proposed light towers. She considered the effects would be a larger light glow and glare on neighbours; intrusion on the landscape and dominance in the landscape; and, impact on the wetland area. Ms Cash considered that her sea views would be considerably interrupted with the presence of 21m high floodlight towers whereas the current lights did not intrude on the beautiful landscape. She thought that the larger lights and increased use of the sports fields would create more noise and activity and that the proposed lighting structures would have a major impact, not a minor one. Ms Cash considered that the proposal was "just not fair" and that any new lights should be around the height of those currently installed.

Beverley McLeod of 6 Glanville Close presented a written statement. She opposed the 21m height of the towers as she considered they would dominate the landscape and impact on the whole environment when in use at night. Ms McLeod was concerned there was no demonstrated need for the proposed lighting in a residential area and that Metro Park could more easily accommodate them.

Ian Crowe of 12 Te Ruru Way presented a written statement. He said that he would be one of the parties who would be adversely affected by the light. He noted the change would be a considerable nuisance and reflect on his property values. He considered that the height and mass of the towers protruding into the skyline would be a permanent eyesore. He also queried whether there would be an increase in activities on the field, such as concerts and he was concerned that this could lead to issues in regard to traffic and parking. Mr Crowe suggested the alternative of there being more light towers at the height of the existing towers, scrapping the idea of playing Australian Rules football, and sending the activity to Metro Park. In conclusion, Mr Crowe said that simply the loading on the community for such a minority group with dubious status as a sport was more than inappropriate; in his opinion this was the only trigger for the 21m high light towers. He said he wanted to stress that it was the height of the proposed light towers that was the main concern of the residents.

Ray Robins of 26 Kathy Terrace gave verbal evidence in which he noted his concern about the impact of 21m towers; he thought they would have a major impact on the amenity people currently enjoy and an impact on the value of properties. Mr Robins wondered about the point of having a District Plan if it was not adhered to.

Mike Tomey of 14 Rimu Road presented a written statement. His main concern was the height of the towers and the impact on the skyline. He said that if the towers illuminated the whole field he was not bothered, but he did not want the towers to impact on the skyline. Mr Tomey also believed the proposal had the potential to set a precedent for other high lights in residential areas. He said that the intrusive nature of light spill that was already present on the field needed to be addressed. He considered that with towers at 21m high a lot of neighbouring properties would be looking at light heads – not light towers. Mr Tomey said that he was not opposed to big field and Australian Rules football but he wondered about such activities being located at Metro Park. If the height of the towers was directly related to the area of the fields to be lit he said an option was for the applicant to consider lighting a lesser area in order to bring the height of the light towers down to a reasonable level.

Mr Robertson of 18A Rimu Road distributed and spoke to his original submission. He said that the application had been unpopular in the local area. He considered it to be wasteful of ratepayers' money and that the money would be better diverted to somewhere more deserving. He considered that Metro Park would be a better area for the sport. Mr Robertson was concerned about the impact of the towers on the beauty, views and general ambience of the area. He thought that the area should not be ruined by "these hideous sticks of steel." He also believed that there might be other lighting alternatives.

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Council Officers

Patrick Corfe, Consultant Landscape Architect, addressed the hearing. He had prepared a report for the Council regarding the application in which he agreed with the applicant's (Ms Buckland's) evaluation of landscape and visual effects. He had concluded in his report that the effects of the proposal on landscape, natural character, amenity and visual value would be no more than minor. He had also stated some restrictions on the time and frequency of the use of the lights may assist neighbours concerns. At the hearing he confirmed his view and sought the applicant provide comments on the use of the proposed lights for events other than training.

Sarah Gathercole, Reporting Planner, had prepared a comprehensive report on the application in which she recommended consent be granted subject to conditions. She said that the proposed towers would be located at the edge of the existing league fields and that the towers were thin in design. Although tall in height the towers were not considered to have bulk effects. She noted that both landscape assessments said that the effects would be no more than minor. Ms Gathercole considered that the issue in regard to glare had been addressed by Mr Mckensey and he had stated that the glare would be below the standards in the District Plan. Ms Gathercole said that she considered the application to be in keeping with the character of the zone and that it complied with the District Plan standards. In her opinion the overall effects on character, and visual and amenity values would be no more than minor. The floodlight towers would allow for the use of the recreation area and she stood by her recommendation to grant consent to the proposal subject to conditions of consent.

Right of Reply

Ms Buckland stated her photographs were a reasonable representation of what could occur but explained that she had reduced the size of photos to get them onto an A4 size page.

Mr Mckensey said that the lighting was designed purely for training and that if only the existing lights were increased they would not meet the criteria for training and residential properties would be more affected.

Mr Maclean noted that the existing situation was one of inefficient lights on one of the fields for training. The proposed levels of light would not elevate use of the facility beyond training. The rugby league club wanted to be able to manage the practices over both fields and the proposal would remove the sterilisation of the existing fields by virtue of removing the centre poles which would also free the sports field up for day time events; widening the day time use would be an important positive effect. The applicant would accept that the use of the lights be restricted to use Monday to Friday and accept if necessary the lights going off at 9.30pm. Mr Maclean confirmed also that the applicant would accept a review condition which would allow any unforeseen issues to be addressed should they arise.

**THE MAIN FINDINGS OF FACT:
(Section 113(1) (ae))****Weighting of District Plans**

The Proposed District Plan 2000 is considered to be the dominant document for assessing the proposal because the Operative District Plan 1993 that applied at the time of the lodging of the application has since been effectively superseded by the relevant provisions of the Proposed District Plan becoming operative.

Adverse Effects

The evidence on behalf of the applicant and the presentations from submitters identified two main potential adverse effects. These related to effects arising from the lighting and the height of the towers. The Panel accepts that the intention of the lighting proposal is that the lights be set at a height whereby they can be directed immediately to the ground rather than having to be tilted in order to light the necessary area of the sports field. In that manner the evidence for the applicant was that the lighting is then not directed towards the surrounding residential properties in a manner whereby it

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could adversely affect those properties. From all accounts, those properties currently experience some adverse effects from the existing lighting as a result of tilting or similar of the existing lights.

However, submitters were explicit regarding their concern being primarily directed towards the overall height of the light towers which would reach an overall height of 21m with the lights at the top. The existing lights are seen against a backdrop of the sports field, surrounding buildings and landform whereas the proposed lights would intrude into the skyline and be silhouetted, in many instances, against views of the sea and sky. When the lights were on during the evening they would also serve to accentuate the height and presence of the towers. Submitters were concerned that the height and size of the towers would be out of character with the locality and would impact in an adverse manner upon the outlook from their residential properties. The light towers would always be present, whether or not the lights were being used.

The Panel had the opportunity to view the sports field and the location for the proposed lights from a number of viewing points. Based upon the evidence and the site visit the Panel has concluded that is largely a suburban setting that includes residential development consisting of one and two storey dwellings. The proposed light towers would have adverse effects that were more than minor in terms of visual considerations, the character of the area, and the amenity of the low scale residential area around the sports park.

Objectives and Policies

There are a range of objectives and policies relating to the Open Space 4, Open Space and Recreation, zone. The provisions seek to ensure that adequate land and facilities are available to meet the recreational needs of the existing and future population of the district and the region and to also ensure that the use and development of open space and recreation facilities takes place without significant adverse effects upon the surrounding environment including the community. The objectives further seek to ensure that the use and development of open space and recreation facilities takes place, without significantly reducing the amenity values of the open space area or its ability to function as a reserve or open space and to enable the community's recreational sporting and leisure needs to be met without compromising amenity values of surrounding areas.

The concern for neighbouring and adjoining sites is further reflected in associated policies that include that the use and development of open space and recreation areas should be undertaken in such a way that adverse effects on the amenity values of neighbouring properties and communities, in particular from noise, glare, traffic and parking and visual effects, are avoided, remedied or mitigated. Further, activities in the Open Space 4 zone should not adversely affect the amenity values of adjoining sites, particularly through noise, glare, traffic and visual impacts.

The Panel accepts that the proposal for improved floodlighting of the sports park facility is in order to meet the recreational needs of the population of the district but does not consider it is proposed in a manner that will meet the concerns expressed in the objectives and policies for not creating significant adverse effects upon the surrounding environment. The potential effects associated with noise, traffic and parking are not, the Panel believes, issues in this respect. Further, the potential effect of glare is able to be overcome by the nature of the lighting and the zero tilt associated with it. However, the Panel has concluded that the height of the proposed light towers will have an adverse effect upon the surrounding environment in terms of scale and character and outlook from residential properties. Whilst acknowledging the open space nature of the sports fields, this is a suburban locality and towers and structures to the height proposed are well beyond that which may reasonably be expected. Apart from that the towers will have an adverse visual effect and an adverse effect on the amenity values of the area.

Permitted Baseline and the Existing Environment

The Panel has had regard to the permitted baseline approach when assessing the adverse effects of the proposal. Also, when considering the existing environment as the basis for the assessment of the effects of the proposal, the Panel has taken into account the existing light towers and lights.

Ms Gathercole reported there was some discrepancy in the height of the existing towers, that being described in different instances as 9m or 10m. The actual height was not confirmed by any of the parties. The information available to the Panel was that the existing towers had been the subject of a

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building consent in June 1999. That included the relocation of two 9m high floodlight towers from another sports park and the installation of two additional floodlight towers. As the height of the towers was 9m they were considered by the Council to be a permitted activity and accordingly did not require resource consent consideration. The Panel has accepted the height of the existing towers as 9m in terms of that information and in the absence of any information to the contrary.

Section 104D RMA

As a consequence of the above, the Panel concludes that the adverse effects of the activity on the environment are more than minor and this is an application for an activity that will be contrary to the objectives and policies of the District Plan.

Conditions

This is not a proposal that can be the subject of conditions in a manner that would allow the adverse effects relating to it to be avoided, mitigated or remedied to a level that those effects are minor.

Distinguishing Circumstances

As a non-complying activity, being one not provided for or sitting outside the provisions of the District Plan, there is the matter of precedent to consider or whether there are distinguishing circumstances that separate the proposal from the generality of applications that may be made for non-complying activities. In the view of the Panel there are insufficient distinguishing circumstances which support this proposal.

Section 104 RMA

With the proposal not meeting the Section 104A tests of the RMA it could be that the Section 104 provisions are not entirely relevant. However, for completeness, the Panel has given consideration to the actual and potential effects on the environment of allowing the activity; the provisions of the district and regional planning documents; and, any other matter that may be relevant or reasonably necessary in determining the application.

In doing so, the Panel returns to the principal point in relation to this proposal that the height of the towers would create an adverse impact in terms of the character and visual amenity of the locality. In that respect the proposal is not able to meet the Section 104 provisions of the RMA as the provision relates to effects and the District Plan. There are no other matters considered relevant or necessary in determining the application.

Stanmore Bay Recreation Reserve Management Plan

This Plan has been prepared in terms of the Reserves Act 1977. It includes a description of existing development at the reserve and objectives and policies relating to its continued use and future development. A concept plan is provided for the land to the south of Brightside Road. That plan includes the sports fields that are the site for the current floodlighting application. That concept plan is however of limited use in the consideration of the current application because it only delineates the two sports fields and provides no other relevant details. The objectives include recognising the reserve as a significant recreation resource with associated policies to use it for that purpose and to maintain and develop the existing facilities as demand and finances permit. Another objective is to recognise and enhance the environmental quality of the reserve with a related policy being:

"Particular care be taken to ensure that the appearance and location of ancillary facilities such as light standards, rubbish bins, vehicle barriers, signs etc do not compromise the aesthetic appeal of the reserve."

The Panel concludes that the Management Plan does not provide very much assistance to the consideration of the application. Clearly the proposed floodlighting is to assist in the continued use of the reserve but has not been arranged, in the view of the Panel, in a manner that sufficiently has regard to the appearance of the reserve from the surrounding residential area.

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Part 2 RMA

The Panel finds that the proposal does meet the sustainable management purpose of the RMA. Whilst it may enable a sector the community to provide for its social wellbeing it would adversely impact on the social wellbeing of others in the locality. Further, the adverse effects of the proposal on the environment cannot be sufficiently avoided, remedied or mitigated. More particularly, the proposed activity does not sufficiently meet the other matters included in the RMA at Section 7 relating to the maintenance and enhancement of amenity values and of the quality of the environment given the adverse impact it would have upon the locality around the sports fields.

Carried

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 9TH DAY OF APRIL 2009

MAYOR

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