

**RE: RC 2250414-RMACOM - Limited Notification
of resource consent application for Nags Head
Horse Hotel Limited: Kerikeri Inlet Road – Lot 2
DP 442820**

(References to p xx are references to the page numbers of the whole application as presented. All substantive emails are set out the emails attachment)

We are the owners of 431 Kerikeri Inlet Road which is Sec64 Bk XII KK SD at the south of the lake.

We oppose the grant of resource consent for the above development which the application acknowledges to be “non complying”, on numerous grounds.

Our objection may be considered in two parts.

PART A

The first part is that the application is an abuse of the planning process and/or that the application is inherently inconsistent, therefore defective in that the Committee cannot know, with any certainty, particularly as to roading and earthworks, upon what basis to make its decision.

We suggest that there be a preliminary hearing on the above issues and, only if the application is still to proceed, should PART B the second part, being the numerous other detailed environmental and planning aspects be listed for a hearing.

The abuse, and the inherently defective aspects of the application, arise because there is, currently unresolved, a legal dispute pertaining to the easements / rights of way /lot allocation (“RoW dispute”) related to the proposed private accessway to the application site.

This is to the south of the applicant site identified as C , D and J see Deposited Plan DP 167657 at p 360 and the dispute is between the Applicant - Nags Head/(Mrs Lowndes) , Mrs Houry and Mr Malcolm. Until that dispute is resolved by agreement between those parties or by the appropriate land court or tribunal we suggest this application cannot be decided as the number of lots, and the allocation of lots legally entitled to use C, D and J cannot be known with the certainty necessary to determine what roading requirements will be appropriate.

The Abuse of Process argument.

1. The application and supporting documentation makes no reference to the RoW dispute.

2. We refer to our email of 26th June 2025 to the Applicant's planners Williams and King (WK), (or is it now SAPS ?) copied to Haigh Workman (HW) and also to FNDC pointing out the inherent defect in the application as to the lots it attributes to Mrs Houry's and Mr Malcolm's land . We requested a response from WK and HW as to how the suggested 1 lot to each of them is derived. We also requested a stay until these issues are resolved.

3. We have no response from HW, but WK has responded by forwarding an email dated 15th July 2025 from the Applicant's solicitors , Sellars Law, (SL) which fails to disclose, and makes no reference to the ROW dispute, although they have been fully involved with such a dispute on the Applicant's behalf for many months.

4. It does not matter for this purpose what the arguments, or the strengths of those arguments, may be or whether the Applicant or her/its advisors believe that their view will, or should prevail. The fact that there is an unresolved legal dispute on lot allocations, means the experts do not know what facts as to lot entitlements to report on, nor can the Planning Committee decide.

5. If the Applicant company wishes to have the RoW dispute resolved, it should do so by issuing declaratory proceedings in the appropriate court or tribunal. The Planning Committee has no power to determine that aspect.

6. Even if the committee decides to grant a resource consent for 4 lots - unless the Applicant can get agreement from Mrs Houry and Mr Malcolm, or a declaration from an appropriate court entitling it legally to a right of way allocation over a private right of way for 4 lots, that very expensively obtained consent is worthless, and these resource consent proceedings will prove to have been futile.

7. The specific abuses of process alleged are :-

1. that the failure to disclose the long running RoW dispute deliberately presents misleading and inaccurate information to FNDC and those notified, including ourselves
2. that such information is highly material to the determination of the application (mainly roading requirements and consequent earthworks)
3. that the Applicant company will have supplied the information for, and approved the application in its current form, well knowing of the dispute, so that the application is deliberately misleading, it is not made in good faith, is unfair, vexatious and appears to be for an improper purpose, namely an attempt to circumvent, pre-empt, ignore and/or override the RoW dispute.
4. See also paras 30 to 35 for the detail of the further abuses alleged, arising subsequent to the Application.

8. The RoW dispute turns on :-

- a) the access rights and private road lot entitlements appurtenant to Mr Malcolm's land, and therefore the burden of those rights and lot entitlement agreement appurtenant to the land now owned by Mrs Houry (as contained in C.871824.6 registered against Mrs Houry's title and in Mr Malcolm's title) and
- b) A right of way grant , now appurtenant to the land of the Applicant a company controlled by Mrs Lowndes (as contained in C 871824.10 also registered against Mrs Houry's title and Nags Head's title) which contains no private road lot entitlements.

9. The application helpfully contains a copy of Mrs Houry's title NA138C/239 at p. 400 which sets out the easements to which her lot 2 DP210733 is subject.

10. In summary, C. 871824.6, set out at p 407-11 was made by a predecessor in title to Mrs Houry, and grants a right of way to Mr Malcolm's land over "J " and "D" (Note - the original grant referenced the 1994 DP166944 on which it was identified as "B " and "C " but in the 1995 Plan DP167657 p360 it became "J" and "D".) "C" on the 1995 DP167657 is

the RoW grant to the applicant site as per C871824.10.

The 1994 DP166944 was not included with the application but is on p6 of Mr Malcolm's submission.

The terms of that C871824.6 grant, over what is now Mrs Houry's land, allocated to her land the right to use that part of a private road access way, now J, for 3 lots and Mr Malcolm's land, for 2 lots. (The maximum permitted at the time being 5 lots for private access to rear lots). That easement also allowed a pro rata increase to whatever the maximum for private access to rear lots may become. It is now 8, so 3 > 4.8 Houry and 2 > 3.2 Malcolm.

11. As far as we can see, a company controlled by Mrs Lowndes (as is the current applicant company) became involved in the applicant land sometime at the end of 2000.

12. C871824.6 is registered against the title out of which the applicant land title was created and would have been apparent to any purchaser or their solicitors investigating the servient title to the Applicant's land's right of way easements.

13. Around that time, Mrs Lowndes' brother met with us and advised us that her intention for the land was "to run a few horses" which may explain why no provision was made in C871824.10 at p 412-416 for an apportionment of lot entitlements in respect of the

right of way to the applicant land, but we also note Transfer D587086.3 registered in 2001 at p 438-9 which among other aspects, (including adding Z to the dog leg, between the new J and D) contains the following covenant over Mrs Houry's land for the benefit of the Applicant's land.

“The transferor covenants with the transferee that should the specified area and the land "J", "D" and "C" on Deposited Plan 167657 be required for the purpose of vesting that land as a public road then the transferor will consent to that vesting or sell the said land to the local authority for the purpose of public road without payment of any consideration. This covenant is intended to run with the servient land for the benefit of the dominant land. “

14. One way of reconciling C 871824.6 and C871824.10 is that J, D and C should become a public road, (in which case the private road lot entitlements are of no importance). The above demonstrates that Mrs Lowndes original purchasing company appears to recognise that, but a public road is not proposed here.

15. Why are the Committee being asked to consider this private -access -way -only application when the Applicant's predecessor company (also under Mrs Lowndes control) appears to have acknowledged as far back as 2000 that a public road would be likely to be necessary for any development?

16. There is nothing in the title documentation suggesting that either Mrs Houry's land or Mr Malcolm's land has given up any of their private road lot allocation entitlement in relation to " J " and we now know from them that they have not done so.

17. Whatever the situation may be between Mrs Houry's land and the applicant's land as a result of C871824.10, Mr Malcolm's land is clearly entitled to use the private access road J for 3.2 lots, and not the 1 lot assumed by the application. The applicant appears to have appropriated to itself an allocation of 4 lots to use a private access way over J although the reasoning / authority for that is not clear. Mrs Houry under C.871824.6 claims 4.8 lots making $3.2 + 4 + 4.8 = 12$ lots, not the 6 lots assumed in the roading assessment.

12 lots would require substantially different roading standards ie the public road contemplated by Mrs Lowndes company in 2000. This would obviously involve a considerable increase in the earthworks necessary for the approx. 900 metre roading. (We note that even with the $3 > 5$ m carriageway proposed, the engineer's estimate earthworks for the proposal to be 4328 m³ ie 14+ times the permitted 300m³. If C, D and J are now to be public road that will materially increase.

18 What information does the Application contain about these aspects ? -

Next to nothing and some of what there is, is in correct and misleading.

The Application at p 17 lists the relevant documents C 871824.6 and C871824.10 so the legal issue/difficulty is clear from examination of those supporting documents.

We would have expected some discussion of why the application assumes a private road entitlement for 4 lots, whilst relegating Mrs Houry's land and Mr Houry's land to one lot each, but there is none.

The Application plan at p11 refers to C871824.6 in the legend but then incorrectly identifies it as relevant to D and K which are at the top of the application site. Reference to the document C871824.6 at p 409 shows that it relates only to a "C" and a "B" on DP166944 dated 1994 (which became "J" and "D" on DP 167657 dated 1995). There is no reference to a "D" or a "K" in C871824.6.

The reference to C871824.6 on p17 also incorrectly identifies it to relate to "H on plan DP167657". H on that plan p 360 is also up to the north west of the applicant site and nothing to do with access way to the south of the applicant site (C, D and J on plan DP167657) to which C871824.6 and C871824.10 apply.

At p18 the application states at the foot of the table *“The easement areas are highlighted in **Figure 2**, but were first shown as areas ‘C’, ‘D’ and ‘J’ on DP 167657 and area ‘Z’ on DP 180325.”*

Whilst “Z” may appear on DP180325, no copy has been provided to confirm, although it appears it may be the same Z as on DP210733.

The easement areas C, D and J were in one sense “first shown” as areas marked C, D and J (ie with those letterings) on the 1995 DP 167657 but this may present the misleading impression that they refer to one easement. C, D and J is an amalgamation of the two easements C871824.6 (ie over D and J for Malcolm’s land and then C871824.10 over C, D and J for the Applicant land.) It is important to note that easements D and J (the Malcolm land easement) were in fact “first shown” as easement rights on the 1994 DP166944 as B and C respectively deriving from C871824.6

Both the application plan legend p11 and the summary of easements p17 are therefore incorrect and misleading, and P18 is potentially misleading as to the fundamental inherent defect issue identified to WK /HW on 26th June, which is unfortunate.

19. The WK report refers at p11 at para 2.2 only to *“the access arrangements as being outlined in App 2a, and the Vehicle Crossing Design in App 2c .”*

App 2a and App2c are supporting reports from expert engineering witness HW .

20. At p 59 and p 60 , that HW report states “ *access is to be by existing and proposed easements*”
Again no reference or consideration is given in the HW report to C871824.6 and/or C871824.10 .

21. The Table at p 59 suggests that “J “ has a 6 lot proposed use, “D” - 5 lots (both those with an aggregate 5m surfacing minimum) and “C” 4 lots (aggregate 3m with bays) but no explanation for choosing those proposed lot numbers is given, notwithstanding C 871824.6.

At the foot of that Table appears :-
“No change is proposed to the ROWs in easements D and K.”

Which we understand to be correct . As noted above D and K are at the top of the site and refer the rights of way over the road on the boundary between Lots 3 and 4 and not, as stated on the Application plan legend, the rights created by C871824.6.

22. Later at p68 of the application is

“4.3.2 Vehicle Crossing Standards

The six lots (Lots 1 – 4, Lot 2 DP 210733 & Lot 1 DP 442820) to gain access via the proposed crossings have an estimated 60 one way traffic movements per day.”

Again no explanation given for how the “6 lots” figure is reached is, nor why Mr Malcolm’s land has been

assessed as 1 lot , despite it being at least 3.2 as per C871824.6 Whatever the situation between Mrs Houry's land and the applicant's land, that additional 2.2 lots would increase the report's suggested 6 to 8.2 and require a public road. (We note that even the 6 lot assessment usually requiring a 5m carriageway is proposed to be breached, as the bridge is proposed to be 4m maximum as shown at p 24 para 4.1.5 and on the plan on p 172)

23. As mentioned above we have asked WK and HW for an explanation of how or why the application and the engineering report refers to those lot figures but we have had no response from them other than the WK forwarded email from SL of 15th July also referred to above (which fails to identify that there is a dispute which goes to the heart of the facts which must be established before the Committee can make a decision) or respond to the question) .

24. Before everyone involved is required to get into the fine planning/ environmental detail of this 463 page application, we believe it is essential for the purely legal RoW dispute first to be resolved. This is not an appropriate matter for the Planning Authority to determine and it has no jurisdiction to do so.

25. As set out in our 2nd email of 16th July 2025 made above, to WK, copied to SL and also FNDC

which outlines the abuse of process argument made above, we have again suggested:-

“That the Applicant agree that this application be put on hold and the time for submissions adjourned sine die until the matter of the number of lots having the right to use “C”, “D” and “ J” identified above is either agreed between the Applicant , Mrs Houry and Mr Malcolm or otherwise determined by a court or tribunal.”

26. We have had no response at the time of submitting this objection

27. We are aware that a request from Mr Malcolm to have his time for objection submission extended (because he only received a full viewable copy of this voluminous application from FNDC on 10th July) has been refused notwithstanding that twenty working days from 10th July would be 7th August 2025

28. The RoW dispute was known to the Applicant and SL long ago , and even if not known before, identified to WK and HW by our first email of 26th June 2025

29. An applicant dealing in good faith would have acknowledged that there is RoW dispute, that it

would have a highly material effect on the factual basis of the reports submitted, as well as upon the Committee's deliberations, and have agreed to our request for a stay immediately.

30. It is bad faith, and a further abuse of process, not to have done so.

31. It cannot be coincidental that the final date for submissions is Wednesday 23rd July and by refusing the stay request, the Applicant well knows that it is forcing those opposed to this patently defective application to file objections within a time limit of 20 working days, or in the case of Mr Malcolm only 10 working days.

33. We see that the application plan was dated October 2024 -p 360. It will have been preceded by probably a number of months in contemplation of this application, which was received by FNDC on 15th May 2025

34. It took the Applicant at least 7, and may be as much as 9 months to seek advice, instruct experts and prepare the application.

35. By refusing the stay request the Applicant, in bad faith, forces a response from objectors within 20 (10 for Malcolm) working days, seeking it seems to take advantage of the inherent difficulty of getting advice

and preparing such a detailed response in that short time.

36. If the Committee decides not to stay the application, and intends to proceed to consideration of the planning and environmental issues, we submit that the objectors should be granted an adjournment of an equivalent additional time to that taken by the Applicant ie 7-9 months in which to seek professional advice, instruct experts, and prepare their final detailed objections as advised, before the Committee proceeds to hear the full application on the planning merits.

For all the reasons set out above, we submit that the Application:-

- a) be struck out as an abuse of process and/or inherently defective
- b) stayed or adjourned until the RoW dispute is resolved or
- c) refused as the Committee cannot establish, and has no power to determine, how many lots are entitled to use the proposed private right of way or
- d) that the Committee make such directions as it deems suitable in relation to the application as are fair and equitable and appropriate to do justice to the interests of all interested parties, having regard to their conduct in the course of the application.

We also apply for the wasted costs necessitated by the Applicant's refusal to act in good faith:-

- 1) in the production of the application and
- 2) its failure to agree the entirely reasonable request for stay because of the unresolved RoW dispute, of which it has been well aware for at least 6 months.

Kim and Sally Taylor 21st July 2025