

Hearings Commissioner

Creating the ultimate
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WHANGAREI
DISTRICT COUNCIL

Notice of Meeting

A meeting of the Hearings Commissioner will be held
in the Whangarei Library, May Bain Room, Whangarei

Friday
9 April 2010
1.00 pm

Application by
J Van der Veecken

Commissioner

Giles Bramwell

Vision Statement

To be a vibrant, attractive and thriving District
by developing sustainable lifestyles based around
our unique environment; the envy of New Zealand
and recognised world wide.

Resource Management Act 1991

Hearing By: Hearings' Commissioner Giles Bramwell of a non-complying subdivision proposal by J Van der Veeken to create Lot 1 of 5,245 m² net and Lot 2 of 5,000 m² net within the Countryside Environment.

The site is located on State Highway 14, Maunu, being legally described as Lot 1 DP 332772 (C.T. 134201). It has a zoning of Countryside Environment under the operative provisions of the Whangarei District Plan and there are no resource notations shown against the property. The proposal does not comply with the controlled activity provisions relating to allotment area and is a non-complying activity on this basis.

Evidence By: Liz Jolley, Environmental Planner (Consents), Bachelor Resource and Environmental Planning

File Refs: RC 40976 P110681.SD

TRIM 10/27914

Dated: 29th March 2010

1. Background

1.1 This report is an addendum to an earlier planning report and recommendation dated 27th July 2009 that I prepared for a hearing scheduled for the 7th August 2009. The earlier report recommended that Commissioner Les Simmons decline the application by J Van der Veeken (RC 40976) seeking consent to subdivide 1.071 hectares creating Lot 1 of 5,245 m² net and Lot 2 of 5,000 m² net. Access to Lot 1 is to be via State Highway 14 to the north, with access to Lot 2 proposed off Cemetery Road to the west. The recommendation that consent be declined was made for the following reasons:

1. The subdivision of the site into two lots does not satisfy the requirements of section 104D of the Act, 'Particular restrictions for non-complying activities'. It is also considered that the subdivision is contrary to Part 2, 'Purpose and Principles', of the Resource Management Act section 7, relating to the maintenance and enhancement of amenity values.

In terms of section 7 of the Act, whilst it is accepted that the locality is characterised by a pattern of development for lifestyle purposes, the Council has concerns in terms of the scale of development proposed and its ability to maintain and where possible enhance the character and amenity of the environment. These concerns stem from the intensity of the subdivision and the cumulative effects of this form of subdivision on the surrounding area.

2. The form, scale and intensity of development proposed would result in cumulative adverse effects on local amenity values that cannot be avoided, remedied or mitigated through conditions of consent. The development would allow for twice the level of built development on the existing title area. The applicant has not commented on the effects of this, particularly in terms of adjacent properties, or volunteered any mitigation measures to reduce the scale or appearance of development i.e. reduced height, appearance of buildings and/or landscaping to soften the effects of development.
 3. Case law has established that in order to gain consent to a non-complying activity, an application needs to be a 'true exception', so that it does not create undesirable precedent effects that undermine public confidence in the administration of the relevant District Plan/s. The applicant has not demonstrated any site uniqueness, in that there does not appear to be a distinction between the subject land and application and that of potential neighbouring applicants. Without evidence of any site uniqueness, the local area may be significantly altered by the proposal, with the longer term effects on the environment being a gradual change in the character and amenities of the locality and a change in community expectations to smaller lot development than already exists. The application therefore has the potential to undermine the integrity and consistent administration of the operative Whangarei District Plan, and if granted, Council would have difficulty declining similar applications in the locality.
- 1.2 On the 29th July 2009 the above planning report and recommendation was circulated to all submitters and the applicant as part of an agenda which incorporated a copy of the application (including further information), various maps (including parcel lot size map, location/cadastral plan, stability and flood hazard maps, and Maunu and Hora Hora Structure Plan diagrams), submissions to the proposal, and a staff report prepared by the Council's Senior Environmental Engineering Officer (Alan Young).
- 1.3 Given the negative staff recommendation, the hearing was subsequently deferred at the applicant's request to allow sufficient time to more fully address the matters raised in the staff recommendation, particularly as they related to site access onto the State highway. This further information has now been provided, and includes:
- ♦ correspondence from the New Zealand Transport Agency confirming that they approve the formalisation of access from State Highway 14 to service proposed Lot 1,
 - ♦ a landscape report prepared by Frances Donaldson, and
 - ♦ an engineering report relating to stormwater and wastewater management prepared by Richardson Stevens Consultants (1999) Ltd, dated 10th July 2009.

The subdivision layout remains as per the preliminary plan prepared by Simpson Shaw Surveyors, being '*Proposed Subdivision of Lots 1 & 2 being a subdivision of Lot 1 DP 332772*' dated December 2008, revised on the 13th and 27th March 2009, reference 28002-7.

- 1.4 A copy of the above information was circulated to submitters on the 8th of March 2010 with advice that a hearing date had been scheduled for the 9th April 2010. As the further information was also intended to address submitter concerns, submitters were invited to consider the information and the matters raised in their submission. If they wished to alter their submission, submitters were requested to forward any additional comments in writing to the Council by 19th March 2010 thereby allowing staff to consider their comments in their supplementary reports.
- 1.5 In correspondence dated the 18th March 2010 from Beca Carter Hollings and Ferner Ltd on behalf of the New Zealand Fire Service Commission, the Council was advised that the Commission no longer wished to be heard as a submitter as further information had been provided confirming that the proposal would comply with the Commission's requirements. A copy of this correspondence is included in **Attachment 1**.
- 1.6 In correspondence dated the 19th March 2010, the Northland Regional Council commented as a submitter on the additional information. Whilst the regional council indicated that further clarification was required with respect to wastewater management to confirm compliance with the Regional Water and Soil Plan for Northland, they advised that they no longer had any concerns with respect to wastewater and stormwater management. The regional council no longer wishes to be heard in support of their submission. A copy of the regional council's comments is included in **Attachment 2**.
- Note: The Council's Senior Environmental Engineering Officer reporting on the application is on leave and at the time of finalising this report had not reviewed this correspondence. Mr Young will be available at the hearing to comment if required.
- 1.7 The Council has not received any additional comment from submitters Alan Inglis, John and Phillipa Monteith, KG Ryan and KM Mackie, or the New Zealand Historic Place Trust. It is assumed that KG Ryan and KM Mackie still wish to be heard.
- 1.8 A copy of the further information received since the initial hearing was adjourned is included in **Attachment 3**.
- 1.9 The Council's consultant landscape architect, Simon Cocker, has assessed the landscape report prepared by Frances Donaldson and visited the site. Mr Cocker provided advice in an assessment dated the 5th March 2010; refer to **Attachment 4**.
- 1.10 The agenda for the 7th August 2009 hearing included an assessment by the Council's Senior Environmental Engineering Officer, Alan Young, commenting on the submissions and recommending conditions of consent in the event of the application being approved by the Hearings' Commissioner. **Attachment 5** includes a revised assessment prepared by Mr Young. As the New Zealand Transport Agency has approved access from State Highway 14 servicing Lot 1, Mr Young has proposed revisions to condition 2c of his earlier report prepared for the August 2009 agenda.
- 1.11 It is recommended that the following assessment be treated as an addendum to the Council agenda prepared for the 7th August 2009 hearing - particularly in terms of referring to the staff planning report. The staff planning report summarises the proposal, describes the site and its setting, and confirms the site's zoning and the status of the subdivision proposal as a non-complying activity. The report comments briefly on the '*Maunu and Hora Hora Structure Plan*', confirming that the development falls outside of the study area. Section 5 of the report discusses the notification process and the submissions received.

The report assesses the District Plan objectives and policies, the regional policy statement, the regional water and soil plan, and the environmental effects of the proposal.

2. Further comment

2.1 Concerns raised in the August 2009 agenda planning report relating to site access onto the State highway have been addressed in the further information submitted (as included within **Attachment 3**), with authorised access onto the State highway now capable of servicing proposed Lot 1. To give effect to the development as proposed by the applicant –

- ♦ Access rights for Lot 1 over right of way easements S, T, H, I, J, L and M shown on DP 332772 will need to be revoked to ensure that access to Lot 1 is not obtained via Cemetery Road.
- ♦ Access to Lot 2 from Cemetery Road will be achieved via a network of existing rights of way, being easements S, T, H, I, J, L and M shown on DP 332772 (easement instrument 6075879.4). Access rights for proposed Lot 2 over right of way 'E' on DP 332772 will need to be revoked to ensure that this lot gains access via Cemetery Road as opposed to the highway.

2.2 The Council's consultant landscape architect, Simon Cocker, has raised some issues requiring further comment from the applicant. In his assessment of the 5th March 2010, Mr Cocker concludes as follows:

"The landscape proposals with respect to internalising the visual effects of the proposal are, with the exception of the use of 'garden character' plants, considered to be appropriate and, once established, effective. This assessment is based on the assumption that maintenance of these plants will ensure the formation of a hedge with a dense and visual impermeable character. It is noted that the 1500mm spacing of these hedging plants will mean that a screen will not be created for a number of years - perhaps 3 - 5 years. The assessment also assumes that any structure within the lots are of a height that they do not exceed the height of the hedge screen, once reasonably established.

It is considered that other matters raised could be addressed through conditions of consent. It is recommended that the Landscape report be amended to reflect concerns raised in this review."

It is expected that the above matters will be addressed in the applicant's hearing evidence. I accept that the applicant may be able to produce further evidence more completely addressing my concerns with respect to the maintenance and enhancement of visual amenity values.

2.3 I have reviewed the further information, as included in **Attachment 3**, and I remain of the opinion that the proposal is generally inconsistent with objective 5.3.5, policy 8.4.3, and policy 8.4.4 of the operative Whangarei District Plan. Refinement of the landscape plan submitted by the applicant may however address my initial concerns regarding policy 5.4.1, policy 5.4.5, policy 5.4.7, objective 8.3.2, objective 8.3.7 and policy 8.4.7.

2.4 I consider that the application achieves the relevant issues, objectives and policies of the Regional Policy Statement for Northland. With appropriate conditions of consent, future development will likely achieve the environmental results anticipated by the Regional Water and Soil Plan for Northland.

- 2.5 Section 11.1 of the planning assessment that I completed for the August 2009 agenda commented on plan integrity and precedent effect. The additional information submitted by the applicant does not comment on this matter and I expect that the applicant's hearing evidence would have regard to my earlier comment on pages 23 and 24 of the agenda which are as follows –

"I have concerns that granting consent to the subdivision would set some precedence for future applications of a like nature both within the immediate vicinity and elsewhere in the District. The applicant has not demonstrated any site uniqueness, in that there does not appear to be a distinction between the subject land and application and that of potential neighbouring applicants. Without evidence of any site uniqueness, the local area may be significantly altered by the proposal, with the longer term effects on the environment being a gradual change in the character and amenities of the locality and a change in community expectations to smaller lot development than currently exists.

The subdivision has the potential to have adverse precedent effects in that it is likely that other applications for similar subdivisions would be presented to the Council undermining the future structure plan process that will address how residential/lifestyle development will be managed in the locality. In particular it would be reasonable to assume that other landowners in proximity to the site would consider similar development of their properties (such as the 1.2194 hectare site immediately east of the site, a 1.0206 hectare site to the southeast, and a 3.1039 hectare site to the west), with proposals to establish clustered lots within minimum areas well below that currently applying to controlled activity subdivision within the Countryside Environment.

The application may also have wider implications beyond the immediate area, with the potential to undermine the integrity of the Whangarei District Plan, and the Maunu and Hora Hora Structure Plan regarded as an issue."

3. Conclusion and Recommendation

- 3.1 Given its non-complying activity status, in order for the Council to consider granting consent the application must pass one of the thresholds under section 104(D) of the Resource Management Act. The two limbs of section 104(D) require the Council to assess whether the effects of the proposal will be no more than minor, or whether the proposal will not be contrary to the relevant objectives and policies of the District Plan. The application does not satisfy either of these limbs and therefore I remain of the opinion that consent cannot be granted.
- 3.2 Having considered the application against the relevant provisions of the Act, it is therefore recommended that this application be declined.

Recommendation

THAT pursuant to sections 104 and 104D of the Resource Management Act 1991, the Whangarei District Council declines consent to RC 40976, being an application by J Van der Veeken to subdivide a 1.071 hectare property legally described as Lot 1 DP 332772 (C.T. 134201); creating Lot 1 of 5,245 m² net and Lot 2 of 5,000 m² net.

The site is located on State Highway 14, Maunu, within the Countryside Environment of the operative Whangarei District Plan and there are no resource notations shown against the property.

The Council declines consent for the following reasons:

1. The subdivision of the site into two lots does not satisfy the requirements of section 104D of the Act, 'Particular restrictions for non-complying activities'. It is also considered that the subdivision is contrary to Part 2, 'Purpose and Principles', of the Resource Management Act section 7, relating to the maintenance and enhancement of amenity values.

In terms of section 7 of the Act, whilst it is accepted that the locality is characterised by a pattern of development for lifestyle purposes, there are concerns in terms of the scale of development proposed and its ability to maintain and where possible enhance the character and amenity of the environment. These concerns stem from the intensity of the subdivision and the cumulative effects of this form of subdivision on the pattern of development in the surrounding area.

2. Case law has established that in order to gain consent to a non-complying activity, an application needs to be a 'true exception', so that it does not create undesirable precedent effects that undermine public confidence in the administration of the relevant District Plan/s. The applicant has not demonstrated any site uniqueness, in that there does not appear to be a distinction between the subject land and application and that of potential neighbouring applicants. Without evidence of any site uniqueness, the local area may be significantly altered by the proposal, with the longer term effects on the environment being a gradual change in the character and amenities of the locality and a change in community expectations to smaller lot development than already exists. The application therefore has the potential to undermine the integrity and consistent administration of the operative Whangarei District Plan, and if granted, Council would have difficulty declining similar applications in the locality.

Advice Notes

1. As the application was lodged prior to the 1st October 2009, the Resource Management (Simplifying and Streamlining) Amendment Act 2009 does not apply.
2. Section 120 of the Resource Management Act 1991 provides a right of appeal to this decision. Appeals must be in writing, setting out the reasons for the appeal, and lodged with the Environment Court within 15 working days after the decision has been notified to you. Appellants are also required to ensure that a copy of the notice of appeal is served on all other relevant parties.
3. The Consent Holder shall pay all charges set by the Council under section 36 of the Resource Management Act 1991. The applicant will be advised of the charges as they fall.

Attachments:

1. Correspondence from Beca Carter Hollings and Ferner Ltd on behalf of the New Zealand Fire Service Commission, dated the 18th March 2010
2. Correspondence from the Northland Regional Council, dated the 19th March 2010
3. Additional information received after the 31st July 2010
4. Landscape advice from the council's consultant landscape architect, Simon Cocker, dated 5th March 2010
5. Updated report from the Council's Senior Environmental Engineering Officer, Alan Young, reviewed 3rd March 2010