

Hearings Commissioner

Notice of Meeting

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

**Thursday
31 July 2014
10a.m.**

**Application by
Colin Holwell**

**Commissioner
Giles Bramwell**

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Report to Hearings' Commissioner Giles Bramwell on a Resource Consent Application

This land use consent application was lodged by Owen Jones of Architectural Services Northland Limited on behalf of Colin Holwell and was reported on by Council's Senior Specialist (Consents), Katie Martin.

The applicant seeks consent to legalise a 25m² deck constructed adjoining the existing residential unit. The timber deck is predominantly at ground level but has portions that vary in height from 300mm to 930mm and is constructed in a position that has a 0m setback off the northern, eastern and southern side boundaries. The deck is classified as a building by virtue of the District Plan definition and requires consent under the Building Setback, Building Setback to Water Bodies, Coastal Hazard and Flooding rules

This report was peer reviewed by the following signatories:



17 July 2014

Katie Martin – Senior Specialist (Consents)

Date

This report was peer reviewed by the following signatory:

Alister Hartstone – Resource Consents Manager

Date

Statement of staff qualification and experience

Katie Martin – Council Senior Specialist (Consents)

I hold the qualification of a Bachelor of Planning (Hons) from the University of Auckland. I have been working at Whangarei District Council since October 1998, initially working full time as an Environmental Planner (Consents), then Team Leader Consents and now after returning from maternity leave part-time as a Senior Specialist (Consents). Overall, my work experience includes assessing, reporting and presenting evidence at hearings on a broad range of subdivision and land use consents within the Whangarei District, guiding and supporting planning staff and using delegated authority to make decisions on applications. I have presented evidence at the Environment Court as an expert witness on behalf of council.

Prior to working at Whangarei District Council I worked at both North Shore City Council and Waitakere City Council undertaking resource consent processing work.

The above staff are familiar with the Environment Court's 'Code of Conduct' for expert witnesses and agree to comply with the Code of Conduct in presenting hearing evidence to the Commissioner.

Section 42A Hearing Memorandum and Attachments

Hearing By: Hearings' Commissioner Giles Bramwell of a Discretionary Activity land use proposal by Colin Holwell to legalise a 25m² deck constructed adjoining the existing residential unit. The timber deck is predominantly at ground level but has portions that vary in height from 300mm to 930mm and is constructed in a position that has a 0m setback off the northern, eastern and southern side boundaries. The site is located at 9A Te Kapua Street, Oakura being legally described as Lot 2 DP 68747.

Evidence By: Katie Martin – Senior Specialist Consent Bachelor of Planning (Hons)

File Refs: LU1400005 P034085

Dated: 18 June 2014

1.0 Scope of the Report

- 1.1 The scope of this report is to provide the commissioner with detail of the proposal for which consent is sought and provide a detailed description of the process to date to enable the commissioner to undertake an informed consideration of the facts, subsequently to be supported by evidence presented at the hearing.
- 1.2 Due to the circumstances during the processing of the application and an endeavour to not duplicate work undertaken, the report follows a format slightly altered from our usual section 42A agenda's.
- 1.3 This report provides a brief overview supported by a detailed set of attachments.

2.0 The Proposal

2.1 The proposal

- 2.1.1 A full description of the proposal and the subject site can be found both in the planners report in attachment one and in the notification decision dated 1 April 2014 included in attachment three. For clarity the proposal is to:

"To legalise a 25m² deck constructed adjoining the existing residential unit. The deck which is constructed using Kwila timber was done so without consent and while the deck is predominantly at ground level and under 300mm in height it has portions that vary in height from 300mm to 930mm, with the higher areas topped with a glass balustrade. The deck is constructed in a position that has a 0m setback off the northern, eastern and southern side boundaries and adjoins an existing Esplanade Reserve to the east. The property adjoins privately owned residential land to the north, south and west".

3.0 Background

3.1 Notification Detail

- 3.1.1 Full details of the notification decision and the process followed are included in attachments one and three. As a précis the application:

- Was subject to limited notification due to potential effects on the neighbouring landowner and the shortfall in written approvals.
- Received one submission from K and T Pow. Their submission opposes the application in its current form. They have requested to be heard but included two requests that if met they would withdraw their request to be heard.

3.2 Post Notification Negotiations

3.2.1 After the close of submission on 7 May 2014 contact was made with the applicants agent (Owen Jones) to advise a submission had been received and advise of the content of the submission (including the two requests surrounding their request to be heard).

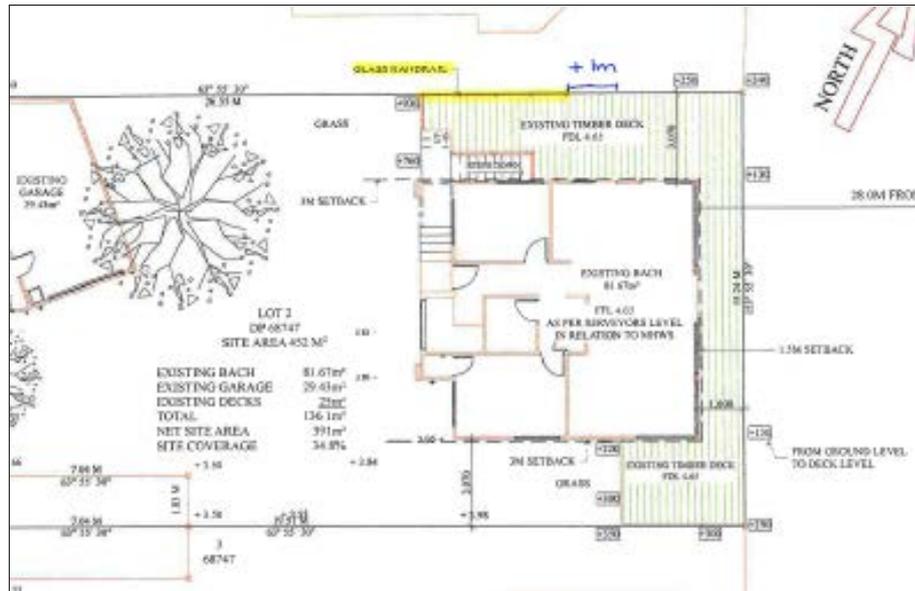
3.2.2 At a meeting with Mr Holwell and Mr Jones on 13 May 2104 Mr Holwell indicated a willingness to meet the two conditions put forward by the Pow's subject to three questions:

- Would the Pow's be happy to accept an aluminium and obscure glass screen instead of the wooden fence requested? Mr Holwell would like to achieve the level of screening sought but with a design more suited to his bach. He is happy to discuss glass options with the Pow's and indicated he may obtain a sample to show them.
- Mr Holwell would like to erect the screen for length equal to the current balustrade plus one additional metre toward the coast to ensure a reasonable level of privacy for the Pow's. Would the Pow's be happy with the additional length?
- Mr Holwell would like to clarify the extent and location of the earthworks sought by the Pow's and has stated he has a plan with marked ground levels prepared by a surveyor prior to any works being undertaken on the bach several years ago. Will the Pow's be happy if he works toward achieving the ground level marked on this plan? Mr Holwell also noted that he has a storm water soak hole in the back yard area already to try and address any run-off issues

3.2.3 An agreement was reached between the parties (Holwell and Pow) over the above points and it was agreed that an aluminium and glass screen would be acceptable (including the additional 1m length) and the survey plan was an acceptable method of determining previous ground level. Based on the agreement the planners report was drafted and recommended conditions drafted.

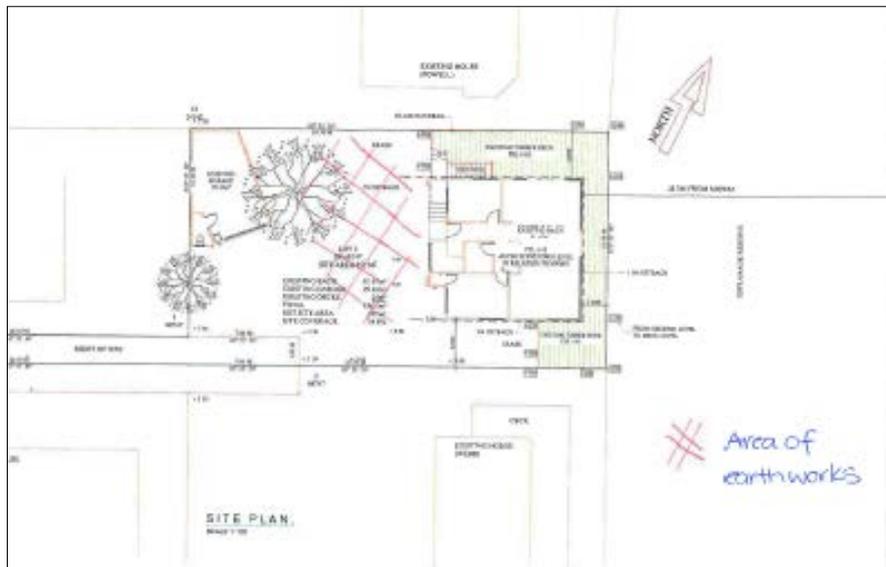
3.2.4 The recommended conditions were:

- a. That within 3 months of the date of this decision the applicant shall erect a solid screen to a height of 1.8m (as measured from the finished floor level of the deck) along the edge of the existing deck located on the northern side of the existing dwelling and adjoining the common boundary with Lot 10 DP 24542. The screen shall be constructed using aluminium supports and obscured glass panels and shall be to length equal to the existing glass balustrade plus one additional meter toward the eastern site boundary as marked on the plan below:*



Evidence that the works have been completed shall be provided to the satisfaction of the Resource Consents Manager.

- b. That within six months of the date of this decision the applicant shall undertake site re-contouring works at the rear (west) of the existing dwelling for the purpose of re-instating the ground levels that existing pre-site development and as identified on the plan prepared by Beasley and Burgess Surveyors Limited Dated December 2006 Reference 2183. The area where such re-contouring work is to occur is marked on the plan below:



Completion of such works shall be to the agreement of the current owners of Lot 10 DP 24542 (K & T Pow) and Lot 2 DP 68747 (C Holwell). Where such agreement is unable to be reached confirmation of the finished ground level achieving those levels identified on the Beasley and Burgess plan shall be verified by a registered surveyor.

- 3.2.5 On 30 May 2014 the Pow's agent (Russell Mortimer) confirmed that the recommended conditions were acceptable and on the basis of their inclusion in the consent decision they no longer wished to be heard at a hearing.
- 3.2.6 However on 17 June 2014 Mr Howell provided feedback that he no longer agreed to the requested earthworks and sought the provision of storm water cut-off drains along the northwest and southeast boundaries as an alternative method of storm water mitigation (refer Hewson Planning Letter in attachment five).

- 3.2.7 The Pow's confirmed that they were not agreeable to such a suggestion and as such the matter has been set down for a hearing.
- 3.2.8 It is considered that the planners report already prepared provides the commissioner with an assessment of effects and adequate detail of the process in support of the hearing and subsequent decision making and for the sake of minimising costs a secondary full agenda is not considered necessary in this instance.

3.3 Matters to be considered

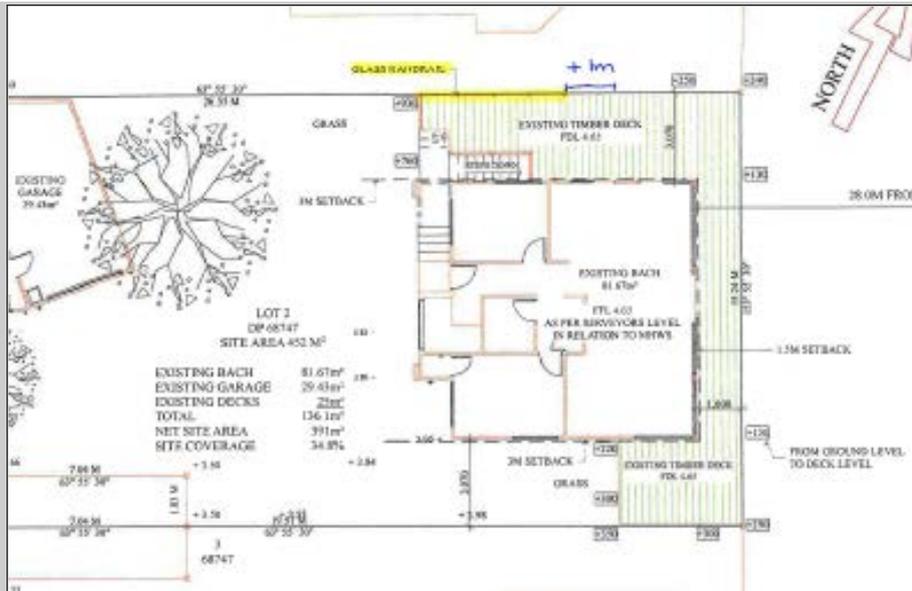
- 3.3.1 While the submission process has brought the issues of storm water control and previous earthworks at the rear of the dwelling to the forefront, such earthworks were undertaken some years ago in conjunction with the re-development of the existing dwelling. They were not undertaken in conjunction with the infringing deck and do not require resource consent. As such they are considered to be outside of the scope of this consent.
- 3.3.2 While council was willing to consider imposing a condition in that regard, this was based on the *Augier* principal of the applicant agreeing to its inclusion. As the applicant no longer agrees to this condition it is assessed that the matter of storm water relating to previous earthworks at the rear of the dwelling have no relevance to the application presented.

4.0 Recommendation

THAT pursuant to sections 104 and 104B of the Resource Management Act 1991, it is recommended that consent be **granted** to Colin Holwell (LU1400005 P034085) to legalise a 25m² deck constructed adjoining the existing residential unit. The timber deck is predominantly at ground level but has portions that vary in height from 300mm to 930mm and is constructed in a position that has a 0m setback off the northern, eastern and southern side boundaries. The deck is classified as a building by virtue of the District Plan definition and requires consent under the Building Setback, Building Setback to Water Bodies, Coastal Hazard and Flooding rules and requires Discretionary Activity consent.

Recommended Conditions of consent

- 1 Subject to changes required by the conditions below, the proposed development shall conform to the site plan, elevations and accompanying details submitted with this application by Architectural Services Northland Limited reference 1353 dated 10 February 2014.
- 2 That within 3 months of the date of this decision the applicant shall erect a solid screen to a height of 1.8m (as measured from the finished floor level of the deck) along the edge of the existing deck located on the northern side of the existing dwelling and adjoining the common boundary with Lot 10 DP 24542. The screen shall be constructed using aluminium supports and obscured glass panels and shall be to length equal to the existing glass balustrade plus one additional meter toward the eastern site boundary as marked on the plan below:



Evidence that the works have been completed shall be provided to the satisfaction of the Resource Consents Manager.

Reasons for the Recommendation:

That pursuant to section 113 of the Resource Management Act 1991 the reasons for this decision are as follows:

- 1 Subject to adherence with the consent conditions any actual or potential effects on the environment and more specifically the adjoining landowners privacy are considered to be appropriately remedied and mitigated to a point where they can be considered as less than minor .
- 2 The proposal is considered consistent with the objectives and policies of the operative District Plan because the scale of the deck is not out of character with the location and the existing built development along the coastal fringes. .
- 3 There are no other relevant matters relevant to the consideration of this application.

Advice Notes

- 1 This resource consent will lapse five years after the date of commencement of this consent (being the date of this decision) unless:
 - It is given effect to before the end of that period; or
 - An application is made to Council to extend the period after which the consent lapses, and such application is granted prior to the lapse of consent. The statutory considerations which apply to extensions are set out in Section 125 of the Resource Management Act 1991.
- 2 A copy of this consent should be held on site at all times during the establishment and construction phase of the activity.
- 3 All archaeological sites are protected under the provisions of the Historic Places Act 1993. It is an offence under that act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to the New Zealand Historic Places Trust for an authority to modify, damage or destroy an archaeological site(s) where avoidance of effect cannot be practised.
- 4 The consent holder shall pay all charges set by Council under Section 36 of the Resource

Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The applicant will be advised of the charges as they fall.

5 Pursuant to Section 102 of the Local Government Act 2002, Whangarei District Council has prepared and adopted a Development Contributions Policy. Under this policy, the activity to which this consent related is subject to Development Contributions. You will be advised of the assessment of the Development Contributions payable under separate cover in the near future. It is important to note that the Development Contributions must be paid prior to commencement of the work or activity to which consent relates or, in the case of a subdivision, prior to the issue of a Section 224(c) Certificate. Further information regarding Councils Development Contributions Policy may be obtained from the Long Term Community Consultation Plan (LTCCP) or Council's web page at www.wdc.govt.nz.

6 Section 357B 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.

5.0 Attachments

1. **Planners Report**
2. **The application (as lodged)**
3. **Submissions Received**
4. **Notification Decision**
5. **Update Letter - Hewson Planning Limited**
6. **Richardson Stevens 2008 Engineering Assessment and 10 July 2014 Addendum**
7. **Relevant Objectives and Policies.**