

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:

**Tuesday
29 April 2014
10am**

**Application by
Fred Morgan**

**Commissioner
Mr Les Simmons**

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Report to Hearings Commissioner Les Simmons on a Resource Consent Application

Council has instigated a review of consent notice conditions registered on a certificate of title for a property legally described as Lot 2 DP424725, located on Whau Valley Road, Whangarei.

During the processing and consideration of this review, the owner of Lot 2 DP424725 has raised concerns regarding the process and validity of both the review and the conditions subject to the review, and has requested a hearing before an Independent Commissioner.

The consent holder requested an independent review of this matter. As a result Whangarei District Council has engaged Burnette O'Connor from O'Connor Planning Limited to undertake an independent planning assessment of the review to the consent notice condition relating to the requirement for landscaping pursuant 221(3)(b) of the Resource Management Act. Burnette's statement of experience is attached as Attachment A.



Burnette O'Connor, Consultant Planner

3 April 2014

Approved by:



P Dell, Group Manager District Living

3 April 2014

Section 42A Hearing Report

Hearing By: Hearings' Commissioner Les Simmons of a review of a consent notice conditions under Section 221(3)(b) of the Resource Management Act 1991

The application site is located at Whau Valley Road, Whangarei, legally described as Lot 2 DP 424725, and is located within the Countryside Environment under the Operative District Plan.

Evidence By: Burnette O'Connor, Consultant Planner

File Refs: SD0539147.02 P100317.SD

Dated: 3 April 2014

1.0 Background

I have undertaken a visit to the site and surrounding area on the morning of Thursday 3 April 2014, I have also reviewed the Council file and relevant background information including the draft section 42A report prepared by Alister Hartstone, Manager Resource Consents – refer Attachment B.

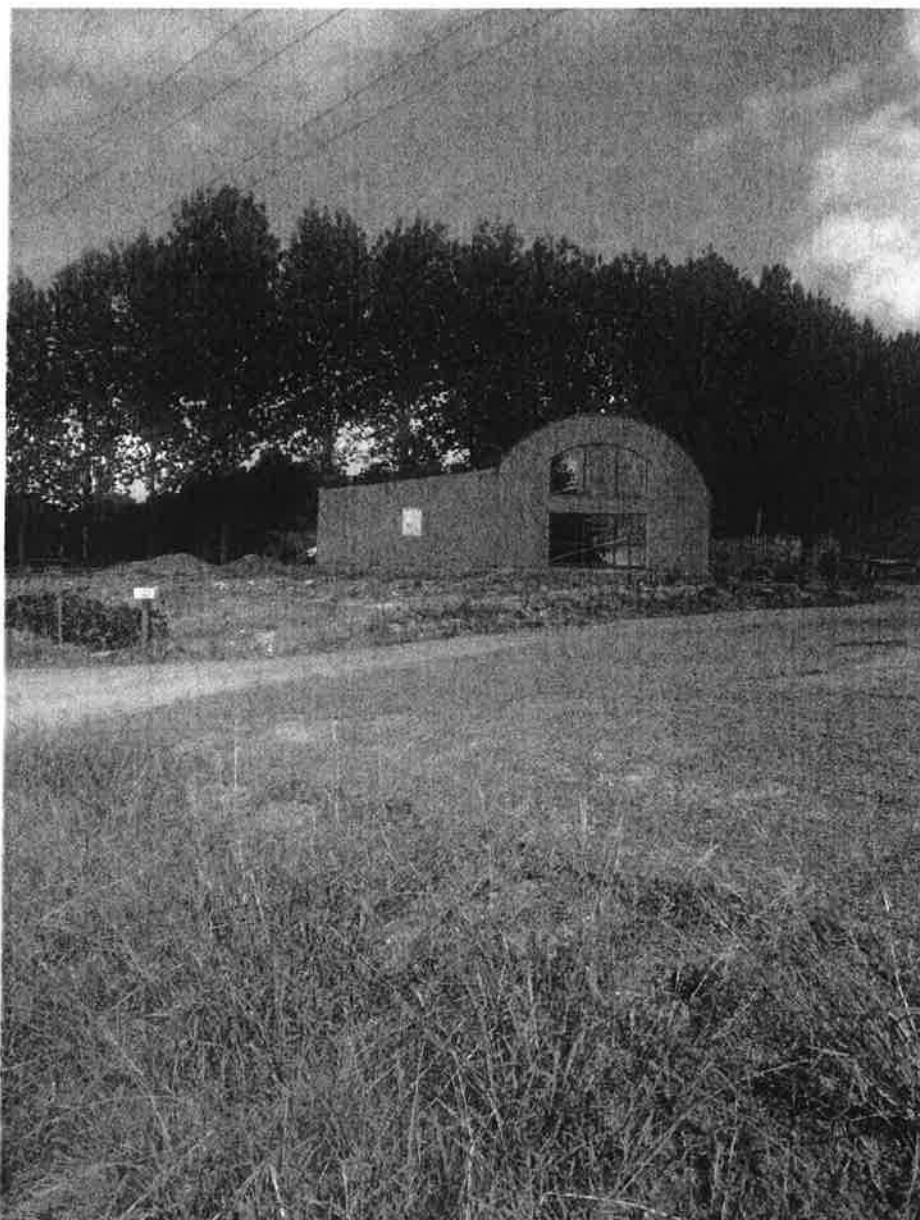
2.0 Assessment

The relevant matter for assessment is the wording of the landscape condition that has been reflected on the certificate of title of the subject site as a consent notice. The appropriateness of the wording and any changes needs to be undertaken in the context of the subdivision consent that resulted in the consent notice – refer to Attachment D.

The required landscaping was the key mitigation for the non complying subdivision which needed to be varied in accordance with s127 of the Act because the vegetation on the elevated slopes that was to be protected had been removed.

Given this situation there is no basis for deletion of the condition and it is important that the wording of the condition is clear and enforceable. The current wording is unclear in terms of what is required in terms of landscaping and the triggers and timeframes for when landscaping is required. Clarification has been sought from Councils Consultant Landscape Architect, Mr Simon Cocker, who has advised that the intention of the original condition was that condition applied to any built development that required building consent – refer to Attachment E.

From undertaking a site visit it is clear that a new building has been constructed on Lot 2 and it appears that some landscaping planting has been undertaken as shown in the photograph below. The intended use of the building was not discernible from the site visit.



In my opinion, given the character of this area and the history of the subdivision, clear and enforceable wording of the landscaping conditions is imperative. The current wording is not clear as to what actions are required in relation to which parcels of land nor is it clear as to the trigger for when planting is required or the timeframes for doing so.

The proposed outcomes of the review do not change or impact on how development will affect any neighbouring properties. Therefore there are no affected persons or properties and it is appropriate for the review to proceed on a non notified basis.

3.0 Conclusion and Recommendation

Having reviewed the draft staff report I concur with the assessment, conclusions and reasons set out in that report.

On this basis, it is considered appropriate to amend wording contained within clauses 3 and 5 of the consent notice only, to read as follows (with changes highlighted with strikethrough and underlining as appropriate):

3. *That a Landscape Mitigation Plan is to be prepared by a suitably qualified and experienced landscape architect and submitted to the satisfaction of the Resource Consents Manager. It is to be submitted at the time of seeking building consent for a dwelling on Lot 2. The plan shall include the following information; north point, graphic scale, numerical scale and sheet size. Any drawings which detail planted areas shall be at a scale of 1:200 or similar. The Plan shall also include details of stock sizes, species of plants, methods of staking plants, proposed mulching, planting programme and methodology and maintenance programme for the 3 year establishment period. Plant spacing shall be such that canopy closure is achieved within 3 years. The Plan shall be for the purposes of providing visual mitigation planting shall be for the following purposes:*
 - a. *Providing visual separation from the existing building on Lot 1 to the north and from built development to the south.*
 - b. *Providing screening of the future building development within Lot 4 2 from views along Whau Valley Road to the north and south.*
4. *The planting area(s) shall be of an extent, and shall include plant species that will develop sufficient scale to that they fulfil the above purposes to the satisfaction of the Resource Consents Manager or his appointed representative.*
5. *Once approved, the Plan shall be implemented within the first planting season 12 months following substantial completion of the dwelling (defined as being completion of enclosure of the dwelling) and retained and maintained in perpetuity to the satisfaction of the Resource Consents Manager or his appointed representative.*

Recommendation A

That pursuant to Sections 95A- 95F of the Act, this application proceed on a non-notified basis because:

- 1 The review of the condition specified in the consent notice relating to landscaping will not create any additional adverse effects beyond those considered when the original subdivision and conditions were granted.
- 2 No persons have been determined to be adversely affected by the proposal.
- 3 There are no special circumstances to warrant public notification.

Recommendation B

That, pursuant to Sections 221(3)(b) and 132, clauses 3, 4, and 5 of the consent notice registered against Lot 2 DP 424725 be amended to read as follows:

3. *That a Landscape Mitigation Plan is to be prepared by a suitably qualified and experienced landscape architect and submitted to the satisfaction of the Resource Consents Manager. It is to be submitted at the time of seeking building consent for a dwelling on Lot 2. The plan shall include the following information; north point, graphic scale, numerical scale and sheet size. Any drawings which detail planted areas shall be at a scale of 1:200 or similar. The Plan shall also include details of stock sizes, species of plants, methods of staking plants, proposed mulching, planting programme and methodology and maintenance programme for the 3 year establishment period. Plant spacing shall be such that canopy closure is achieved within 3 years. The Plan shall be for the purposes of providing visual mitigation planting shall be for the following purposes:*
 - a. *Providing visual separation from the existing building on Lot 1 to the north and from built development to the south.*
 - b. *Providing screening of the future building development within Lot 2 from views along Whau Valley Road to the north and south.*
4. *The planting area(s) shall be of an extent, and shall include plant species that will develop sufficient scale to that they fulfil the above purposes to the satisfaction of the Resource Consents*

Manager or his appointed representative.

5. *Once approved, the Plan shall be implemented within 12 months following substantial completion of the dwelling (defined as being completion of enclosure of the dwelling) and retained and maintained in perpetuity to the satisfaction of the Resource Consents Manager or his appointed representative.*

Reasons for the Decision

Pursuant to Section 113 of the Act the reasons for the decision are:

- 1 There are no adverse effects arising from the exercise of the consent. The review is simply intended to address ambiguities raised in the wording of the conditions specified in the consent notice.
- 2 Regard has been given to relevant matters under Section 104, and on this basis it is considered that as a result of the review, changes to the consent notice are warranted to address ambiguities in the condition specified in the consent notice. The changes to the consent notice are not considered to affect the viability of the consent in any way. The changes will ensure that the condition specified in the consent notice is clear and enforceable.
- 3 There are no other relevant matters relevant to the consideration of this application.
- 4 It is considered that the assessment and decision on the review of condition specified in the consent notice will be in accordance with the matters contained within Part 2 of the Act in particular the sustainable management of natural and physical resources.

Advice Notes

1. The applicant shall pay all charges set by Council under Section 36 of the Resource Management Act 1991. The applicant will be advised of the charges as they fall.
2. Section 357A of the Resource Management Act 1991 provides a right of objection to this decision.

4.0 Attachments

Attachment A – Burnette O'Connor Statement of Experience

Attachment B – Draft Section 42A report

Attachment C – Registered Consent Notice

Attachment D – Section 127 decision

Attachment E – Simon Cocker letter