

Before Waipa District Council

In the Matter of the Resource Management Act 1991 (**Act**)

And

In the Matter of an application for resource consent to for a Terraced Housing Development and concurrent subdivision at 109 Taylor Street, Cambridge.

Council Reference Resource consent – SP/0028/21 & LU/0040/21

Evidence of Gareth Moran on behalf of Wendy & Warren Hodges

Dated 6 August 2021

Introduction

1. My full name is Gareth Elliot Moran. I am an Associate Planner at Barker & Associates Limited (**B&A**) an independent urban and environmental planning consultancy operating throughout New Zealand.
2. I hold the Degree of Bachelor of Resource Studies from Lincoln University and I am a full member of the New Zealand Planning Institute. I have approximately 16 years' experience in the planning and environmental industry.

Code of Conduct

3. I record that I have read and agree to abide by the Environment Court's Code of Conduct for Expert Witnesses as specified in the Environment Court's Practice Note 2014. This evidence is within my area of expertise, except where I state that I rely upon the evidence of other expert witness' as presented to this hearing. I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed.

Scope of Evidence

4. A thorough assessment of the proposal and the potential environmental effects and the statutory Resource Management Act (RMA) framework was submitted as part Wendy and Warren Hodges (the applicant) application for resource consent that was lodged in February 2021. The key findings of this report have not altered throughout the resource consent process. As such the intent of my evidence is simply to summarise the key points pivotal to this application.
5. In my evidence I will:
 - a. Provide a brief overview of the proposal;
 - b. Comments on Council's 42a Report;
 - c. Response to submitters concerns;

- d. Summary of the statutory framework under which the application was processed;
- e. Comment on draft conditions; and
- f. Summary of key conclusions.

Involvement with the Proposal

- 6. I was engaged by the applicant to provide planning advice and prepare/lodge the application for resource consent. I principally authored the Assessment of Environmental Effects (“AEE”) report submitted with the application for resource consent and was responsible for coordinating a response to Council’s request for further information.

Overview of Proposal

- 7. The proposal has been explained in the Applicant’s application for resource consent, and then again in Council’s s42a report. As such it has not been repeated again as part of my evidence package. However, for completeness purposes an extract from our application that best describes the proposal is shown in the italicised section below¹.

“The proposal is for a concurrent landuse and free-hold subdivision under the auspices of a ‘compact housing’ development (by virtue of the associated District Plan definition) to construct five ‘terraced houses’ and associated titles.

Throughout the design phase of the project, it was the applicant’s intention to create a development that would actively enhance both the current and future amenity values attributed to the area. On this basis Christopher Beer of Christopher Beer Architect Limited, who is a local Architect was engaged to bring the applicants vision into a reality.

¹ Extract taken from Section 3 of the Application

In doing so, along with our guidance, Mr Beer was able to create a unique housing development which minimised non-compliance with District Plan provisions, avoided potential effects on neighbouring properties whilst enhancing the amenity values of the area. These points form the nucleus of our application for resource consent and are discussed in depth in later sections of this report.

Although the development fails to comply with the minimum required area for compact housing (2000m²), given the site is located directly across the road from the Cambridge Green Belt and is located within a Compact Housing overlay, there is very strong policy support in the District Plan for development of this nature. Resource consent has therefore been applied for on this basis.”

8. It is noted that the plans submitted as part of the resource consent application have *slightly* changed following a request for Further Information by Council. These amended plans including the addition of a landscaping plan formed part of the notification package. The updated plans can be identified in Appendix 3 of Council’s 42a Report.

Councils’ 42a Report.

9. I have reviewed Council’s 42a report and have concluded that the report is accurate and correct. As such I agree with all the key points made within in the report including (but not limited to) the following:
 - a) The effects of the proposal are appropriate in the Residential Zone;
 - b) The proposal is not contrary with the objectives and policies of the Waipa District Plan (District Plan);
 - c) The proposal satisfies the Section 104D ‘gateway’ test and
 - d) The proposal aligns and gives effect to the National Policy Statement – Urban Development (**NPS:UD**).
10. Council’s processing planner has also submitted a draft set of consent conditions which I will comment on in a later section of my evidence.

Key points raised by submitters

11. I have read and understood the submissions lodged by the owners of the properties located at 111 Taylor Street and 107 Taylor Street. In my opinion the key points raised by the submitters can be broken down into the following categories, which I will comment on individually:
 - Loss of privacy
 - Shading
 - Failure to comply with District Plan provisions
 - Permeable surfaces/flooding; and
 - Amenity Values

Loss of privacy

12. The submitters have expressed particular concerns in relation to the potential loss of privacy. In particular the submitters at 107 Taylor Street have stated that there will be a total of twenty windows overlooking their property. In my opinion, this statement is misleading as the windows located on the ground floor will not be visible from the property due to the 1.8m high fence and landscaping that is proposed along the internal boundary. Of the upper-level windows (which there are 10 in total), three of them will be windows to bathrooms, which will contain opaque glass, which cannot be seen through. Notwithstanding in order to further mitigate any potential effects on the owners at 107 Taylor Street, the Applicant is happy to explore the potential for a higher internal fence. This was not offered up as part of the original application as it would result in a further non-compliance with the District Plan standards. It is important to note that this measure would be voluntary mitigation offered up by the applicant, and will not have any bearing on the overall conclusions reached in this report in relation to potential privacy effects.

It is also noted that the proposed landscaping identified in the professional landscaping design plan prepared by Line 7 Design, along the peripheries of

the site will soften the bulk of the dwellings when viewed from the neighbouring properties.

13. Accentuating or maximising privacy on neighbouring properties was a key discussion point during the design phase of the project. As such the development was designed so the upper levels of the dwellings were recessed off the boundary to maximise the separation distance between the units and the adjoining properties.
14. It is important to note that there are no District Plan provisions that restrict the number of windows that could be constructed on the exterior façade of a building. For example, a dwelling exactly the same size as what is proposed (when viewed from the boundary at 107 Taylor Street) could be constructed as a permitted activity, not requiring resource consent. This point was also specifically referenced in Council's 42a report as follows²:

"I agree, and also note that the number of windows is typical and generally consistent with what could occur as a permitted development. Specifically noting that the proposed buildings comply with the internal setback and height in relation to boundary requirements of the District Plan. Furthermore, two-storey dwellings are anticipated by the District Plan and are not uncommon in the area. Therefore, while there may be a perceived 'loss' of privacy, there is no increased loss of privacy as a result of the two-storey dwellings."

15. Based on the above analysis, I conclude that the proposal will not result in a loss of privacy on neighbouring properties that has not already been anticipated in a residential environment by virtue of the provisions of the District Plan.

Shading

16. The submitters have raised concerns regarding potential shading effects. The

² Extract taken from Section 8.7 of the s42a Report

key point to note is that the proposal complies with the height in relation to boundary provisions of the plan, thus a dwelling exactly the same height and in the same location could be constructed as a permitted activity, not requiring resource consent.

17. As such we are able to conclude that the proposal does not generate any additional shading effects over and above what has been anticipated and is permitted in the Residential Zone.

Failure to comply with District Plan provisions

18. It is acknowledged that the proposal fails to comply with a number of District Plan provisions and ultimately defaults to a Non-Complying Activity Status. However, the 'journey' to which the proposal defaults to non-complying is worth further analysis. As identified in Council's 42a Report, Compact Housing, within a Compact Housing overlay is initially assessed as a Restricted Discretionary Activity. However, since the site fails to comply with the 2000m² minimum lot size, the landuse component of the proposal defaults to a Discretionary Activity.
19. The only reason the application defaults to Non-Complying is due to the corresponding free hold subdivision. Thus, if the application did not seek a concurrent subdivision, the Discretionary Activity status would remain intact.
20. Council's s42a report also recognises the significance of the activity status:³

In terms of the site failing to meet the 2,000m² minimum area of Rule 2.4.2.43, it is important to note that this failure results in the proposal being considered as a Discretionary Activity, rather than as a Restricted Discretionary should the proposal meet the other matters within the rule. This Discretionary Activity status indicates that the District Plan contemplates compact housing that may not meet the Restricted Discretionary Activity requirement. If a more stringent activity status such as Non-Complying, were

³ Extract taken from Section 8.17 of the s42A Report

applied to proposals that did not meet the minimum area, would set a clear direction that those proposals are inconsistent, or not anticipated, by the District Plan.

I also concur with the above analysis by Council's processing planner.

21. The submitters have identified the 'permeable surface' area as a key non-compliance with the District Plan. Whilst I acknowledge that this non-compliance exists, it is important to understand why the permeable surface provisions of the District Plan were introduced, and that was to give Council a degree of discretion, to ensure a proposal or activity does not generate any additional stormwater or flooding effects.
22. As part of the application process an Engineering Assessment and Design report was provided by TITUS Consulting Engineers which provided a proposed solution for the disposal of stormwater. The same report was also reviewed by Council's Development Engineer who was satisfied that the proposed design complies with the RITS and NZBC E1 standards and will not affect neighbouring properties.
23. Based on the findings of the TITUS report and specialist comments made by Council's Development Engineer I am satisfied that the proposal will not contribute to any adverse flooding/stormwater effects, including the 'historic' flooding issues on Taylor Street.
24. In conclusion, the provisions of the District Plan provide an '*anticipated level of acceptance*' which provides a threshold for development to occur as of right. Where a development fails to comply with the provisions of the District Plan, it simply allows Council (or the decision maker) the ability to exercise discretion as to the acceptability of such a development through a resource consent process. If a development fails certain provisions of the District Plan, it is by no means a pre-requisite for a resource consent to be refused.

Amenity

25. Amenity and amenity related values were comprehensively assessed as part of the application for resource consent and Council's 42a report, where it was concluded that development of this nature has been anticipated on residential sites adjoining reserves by virtue of the objectives and policies of the District Plan, Compact Housing overlay and the key principles of the NPS: UD. A very similar conclusion was reached within Council's 42a report, which I concur with.

26. A key extract from the resource consent application sums the existing and future amenity values attributed to the area:⁴

"It is noted that this type of development is the first of its kind to occur along Taylor Street, which will indicate that it will look slightly different to the standard residential development largely comprising of single-story housing existing along that street. However, given the District Plan provisions and further direction from central government to establish higher density housing, the proposal represents a 'snapshot' into the future development that will exist in time along Taylor Street, whilst not compromising the existing amenity values."

27. Overall, it was concluded that the proposal represented an acceptable outcome for the site. I agree with this conclusion.

28. The submitters have raised specific concerns that the dwellings might be sold to investors for rentals. This is entirely speculative as the occupancy and tenancy of the dwellings is not a relevant resource management issue and should not be given any weighting in the decision-making process.

Statutory Framework (Section 104)

29. A thorough assessment against the Statutory Framework was undertaken within the application for resource consent and Council's 42a Report.

⁴ Extract taken from Section 5.5 of the Application.

30. I conclude that the s42a Report has accurately covered off all the relevant statutory requirements outlined in Section 104 of the Act, and thus the proposal has been accurately assessed.
31. The conclusions made within the application for resource consent also remain relevant. In summary both reports have drawn the same key conclusions, as follows:
- a) The proposal represents an acceptable outcome in the residential environment in close proximity to a reserve;
 - b) The proposal generates a number of positive effects such as the creation of additional dwellings, providing a mixture of housing typologies, increased vibrancy of the area;
 - c) The proposal is not contrary to the objectives and policies of the District Plan;
 - d) The proposal aligns with the key high level planning documents, in particular the NPS:UD as concluded in Council's 42a report as follows:⁵
- “The key outcome of the supporting policies of the NPS-UD 2020 is for local authorities to provide for housing variety, accessibility, density intensification, and responsiveness to changing community demands. In my view, the proposal represents an alternative housing type that can be appropriately serviced, and accessible to recreation activities. On this basis, the proposal aligns and gives effect to the NPS-UD 2020”*
- e) The proposal is in accordance with the Part 2 – Purpose and Principals of the Act;
 - f) The proposal passes through both limbs of the Section 1041D gateway test.
32. Based on the above rational, I conclude that the proposal satisfies the required RMA statutory framework and thus consent is able to be granted.

⁵ Extract taken from Section 10.7 of the s42A Report

Draft Conditions

33. I have read the draft conditions of consent recommended in the s42A report and I'm generally in agreement with them, aside from the following comments.
- a) Condition 2 is not required, as it will be covered off by Condition 1,
 - b) Condition 9 refers to conditions that don't exist (looks to be a simple typo). In my opinion, it would be best to repeat these conditions in full under both the Landuse and Subdivision consents, rather than cross referencing.
 - c) A separate subheading should be included above Condition 9, as that condition doesn't really fall under the 'monitoring' umbrella.
 - d) I'm happy to revisit Condition 10 subject to the findings of the hearing.

Key Conclusions

34. Having considered all relevant matters, my evidence draws the following key conclusions:
- a) I agree with the findings of Council's s42a Report.
 - b) The conclusions made within the application for resource consent application have not altered throughout the consenting process.
 - c) Development of this nature has been anticipated on residential zoned sites in close proximity to a reserve and within the Compact Housing overlay identified within the District Plan, which the site accords with.
 - d) Any potential adverse effects of the proposal are considered 'acceptable' in my opinion.
 - e) The permitted baseline associated with privacy, height and shading provides clear guidance on the type of effects that have been anticipated and provided for within the Residential Zone by virtue of the District Plan provisions.
 - f) There is strong policy support in the District Plan for development of this nature.

- g) The proposal aligns with the key principles identified with the NPS:UD.
- h) The purpose of the RMA is best achieved by approving this consent rather than refusing it.



Gareth Moran

Date: 6 August 2021

