



R E P O R T	TO	HEARINGS COMMITTEE
	FROM	Grant Eccles – Consultant Planner
	FILE REF	84.710.105.7 – OC253866
	DATE	26 JULY 2006
	SUBJECT	LANDUSE CONSENT APPLICATION TO CONSTRUCT A DWELLING IN THE RURAL ZONE WITHIN THE SIDE YARD SETBACK DISTANCE K and N Benny, 116 Oparia Road, Turua

DETAILS OF APPLICATION

Date Received: 06 June 2006
Applicant: K and N Benny
Property: Pt Lot 8F DP 18439
Address: 116 Oparia Road, Turua
Extent: 4047m²
Certificate of Title: CT 103478
Zoning: Rural (District Plan – Map B)
Rule: 5.1.6.3(2) Discretionary Activities in the Rural Zone
Application: Section 88 of the Resource Management Act 1991:-
Discretionary Activity
Recommendation: Grant consent.

THE PROPOSAL

The applicant proposes to construct a new dwelling on the currently vacant site at 116 Oparia Road, Turua (see Appendix One for Location Plan). The site is zoned Rural. The proposed dwelling infringes the 6m side yard requirement on both the northern and southern boundaries of the site. At its closest point the proposed dwelling is 2.78m from the northern boundary and 2.33m from the southern boundary. The proposed dwelling complies with all other District Plan bulk and location controls for the Rural Zone. A site plan and elevation drawings showing the proposed location and design of the dwelling can be found in Appendix Two to this report.

THE SITE AND LOCALITY

The subject site has an area of 4047m². It is rectangular in shape but unusually long and narrow. The site has 25.4m of frontage to Oparia Road however the width of the site narrows to 22.3m at the rear (western) boundary. The southern boundary is 175.2m long and the northern boundary is 168.9m long. The site is entirely held in pasture with no existing internal fencing.

Adjoining properties to the north, south and west are also zoned Rural and are used for a variety of farming activities. Stockyards, a loading ramp and an accessory farm building are located on the property to the south immediately adjacent to the boundary of the subject site.

The Turua Domain is located 60m to the north-east of the subject site, while the western edge of Turua township is located approximately 250m to the east of the subject site. A trucking depot is located on the opposite side of Oparia Road from the site.

ACTIVITY STATUS OF THE APPLICATION

Rule 5.1.6.1 of the District Plan allows for “*two dwellings per separate lot, for lots within Certificates of Title created before 26 September 2000*” as a permitted activity. The subject site has a title date of 07 November 1925 (see Appendix Three for a copy of the certificate of title), thus has entitlement to two dwellings subject to compliance with the Performance Standards specified in Rule 5.1.8.

Rule 5.1.8 specifies that the performance standards listed in Section 9.5 – Matrix of Performance Standards and as detailed throughout Section 9.0 – Performance Standards for Development and Subdivision, shall be met by permitted activities.

The proposed dwelling fails to comply with performance standard 9.2.2.3 of the District Plan that requires a 6m side and rear yard for buildings for residential purposes in the Rural Zone. At its closest point the dwelling is 2.3m from the southern site boundary and 2.4m from the northern site boundary .

Rule 5.1.6.3(2) of the District Plan provides for “*any permitted or controlled activity that does not meet the particular rules for permitted or controlled activities or the performance standards specified in Section 5.1.8*” as a discretionary activity.

On the basis of the above the proposal can clearly be assessed as a discretionary activity.

STATUTORY REQUIREMENTS

Resource Management Act 1991 (RMA)

Section 93 of the Act states that a discretionary activity application need not be notified if the consent authority is satisfied that the adverse effects of the activity on the environment will be minor.

Section 94 of the Act states that Council is not required to serve notice of the application on any persons, if all persons who may be adversely affected by the proposal have given their written approval. At the time of initial assessment it was considered that the potential adverse effects of the activity would be minor, and that the owners and occupiers of 77 Oparia Road and 118 Oparia Road could be potentially affected.

The applicant gained written approval to the side yard infringement adjacent to the northern boundary from the owners of 77 Oparia Road. However the owners of 118 Oparia Road declined to grant written approval to the side yard infringement adjacent to the southern boundary of the site.

On that basis the application was processed on a limited notified basis, with the notification limited to the owners of 118 Oparia Road.

The matters to be considered in assessing the application are set out in Part II and Section 104.

Section 104B states that consent may be granted or refused to a discretionary activity, and conditions may be imposed pursuant to section 108 of the RMA.

Hauraki Gulf Marine Park Act 2000

Section 9(4) requires a consent authority, when considering an application for a resource consent for the catchments of the Hauraki Gulf, to have regard to sections 7 and 8 of the Act.

- **Recognition of national significance of Hauraki Gulf**
- **Management of Hauraki Gulf** – objectives to recognise the national significance of the Gulf, its islands and catchments.

Give the local scale and nature of the proposal it does not conflict with any of the matters in the above Act.

SUBMISSIONS

One submission was received, in opposition to the proposal (a copy of the submission can be found in Appendix Four to this report). The submission was from:

- A Ward, R Gardner, and T Ward (owners of 118 Oparia Road)

The submitters concerns can be summarised as follows:

- The house will be located too close to a 2m wide drain that runs down the boundary of the submitters property and the subject site. The soils in the area are comprised of marine clays and there are concerns with regards possible subsidence of the drain from the weight of the house, access to the drain for drain clearance purposes, and leaching of human effluent into the drain from the effluent disposal field serving the house.
- The house location is too close to the submitters existing stock yards, loading ramp and sheds. There is the potential for both the applicant and future occupiers of the proposed dwelling to complain about legitimate farming activities being carried out at the yards in terms of loss of privacy, noise, smell, and timing of activities (eg stock trucks loading/unloading at night). There is also the potential for stock at the yards to become agitated from activities being carried out at the proposed dwelling.

An additional submission was received from R and M Gubb of 142 Oparia Road. This submission cannot be considered in the assessment of the application due to the fact that the submitter was not included in the limited notification of the application. Section 96(1)(b) of the Act stipulates that only those persons served with notice of the application pursuant to Section 94(1) may make a submission on an application. There is no discretion afforded to Council by the Act to accept a submission from a party outside of those served notice. Accordingly, the submission from R and M Gubb has no status and is not considered further in the assessment of the application.

ASSESSMENT OF THE PROPOSAL

General Criteria

Section 104(1)(a) of the RMA requires that consideration be given to the actual and potential effects on the environment of allowing an activity, (b)(iv) any relevant provisions of the District Plan and (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

An assessment of the environmental effects of the proposed activity is provided in the following sections of this report.

Part II Resource Management Act 1991

The matters in section 104 are subject to Part II of the RMA.

Section 6	-	Matters of National Importance (which shall be recognised and provided for in achieving the purpose)
Section 7	-	Other matters (that shall be had regard to)
Section 8	-	Treaty of Waitangi (its principles are to be taken into account)

The proposal will not compromise Section 5(1) whereby the purpose of the Act is to promote the sustainable management of natural and physical resources.

(2) *In the Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –*

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

The proposal achieves the purpose of the Act. It will not inhibit the ability for any persons to provide for their social, economic and cultural wellbeing, nor for their health and safety. At the same time the proposal will not create more than a minor adverse effect on the surrounding environment, when the effects of a fully complying dwelling design are taken into account.

It is not considered that there are any matters of national importance (Section 6), other matters (Section 7), or Treaty of Waitangi matters (Section 8) to be considered with regard to the application.

Actual and Potential Adverse Effects

Section 94(2) of the Act stipulates that if a property owner has granted written approval to a proposal for resource consent, Council can disregard any adverse effects of the proposal on that property. In this case the landowner that is potentially affected by the side yard infringement on the northern boundary has granted written approval to the yard infringement. This assessment of effects thus takes no account of the effect of the northern yard infringement, and focuses solely on the effects of the yard infringement adjacent to the southern boundary.

In assessing the actual and potential effects of the proposal, it is important to take account of Section 104(2) of the Act. This section states that when forming an opinion on the actual and potential effects of a proposal under Section 104(1)(a) "...a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect".

Section 104(1)(a) formalises and gives statutory weight to the consideration of the baseline of effects from permitted activities on a site. In this case, the effects of a dwelling constructed in accordance with the permitted activity side yard standard must be considered against the effects of the proposed infringement, particularly in terms of the concerns raised through submission with regards to the potential for reverse sensitivity and health and safety issues.

The extent of building on the site that could occur as a permitted activity must also be taken into account. There is no maximum site coverage control in the Rural Zone, and the site has entitlement to two dwellings given the age of its title.

The area of the dwelling (55m²) that is within the yard setback is relatively minor and the infringing area is approximately 30 metres from the stockyards on the submitters property that are of concern.

Reverse Sensitivity

The submission in opposition to the proposal asserts that reverse sensitivity effects will occur through the construction of the dwelling in the proposed location relative to the boundary. This however relates more to

the fundamental issue of the ability for residential activity to be established on the site, than the distance of the dwelling from the boundary. The potential for reverse sensitivity effects to occur in future would still be generated by the establishment of a dwelling in a manner fully complying with permitted activity standards. There is the ability for two complying dwellings to be established on the site which would further increase the potential for reverse sensitivity to occur.

In essence the District Plan creates a degree of reverse sensitivity effect through the zoning of the property and the proposed dwelling location relative to the boundary will not increase the potential reverse sensitivity effects to a level greater than those already permitted by the District Plan.

Drainage

The boundary between the subject site and the submitters property runs down the centre of a drain held in common ownership by the two sites. The submitter is concerned that the siting of the dwelling will mean that access to the drain from the northern side for maintenance purposes is compromised. Given that the drain is held in private ownership this matter is not an adverse effect of any significance and there are a range of options available to both landowners to ensure the drain is adequately maintained should the dwelling be established in its proposed location.

The stability of the drain is not a matter that can be assessed as part of this consent application. It will be addressed through the building consent process under the Building Act 1991.

Effluent Disposal

It is proposed that the dwelling will be served by an improved on-site septic disposal system, with liquid waste from a septic tank being discharged to disposal trenches. The submitter is concerned that there is potential for leaching of such discharge to the drain. While the adequacy of the sewage treatment and disposal system will be addressed through the building consent process, it should be noted that the effluent disposal system proposed for the dwelling is of a high standard and issues of effluent disposal are certainly not a matter that can warrant decline of consent to the yard infringement. The site is large enough to comply with On-Site Effluent Disposal Rules in the Waikato Regional Plan, and the disposal trenches are approximately 15m from the drain in question.

Health and Safety

Concerns have been raised by the submitter about the potential for health and safety effects for both the submitter and the applicant caused by cattle at the stockyards behaving unpredictably due to the presence of the proposed dwelling and its occupants in close proximity to the boundary.

These effects are somewhat difficult to assess and are considered to be adequately avoided, remedied or mitigated by the following:

- the areas of the dwelling that infringe the yard distance on the southern boundary are comprised of the garage and laundry. The indoor and outdoor living areas of the dwelling that will attract the most activity are located on the northern side of the building adjacent to the northern boundary
- the infringing 25m² of the dwelling is approximately 35m from the stockyards.
- the potential for adverse effects on cattle behaviour to occur in future would still be generated by the establishment of a dwelling or dwellings in a manner fully complying with permitted activity standards.

On the basis of all the above it is considered that the actual and potential effects of the proposed yard infringement will be extremely minor, and not of a scale or significance that warrant a decline of consent or modification of the proposal. The District Plan permits activities on the subject site that could have the same or greater adverse effects than the proposed activity.

Objectives and Policies – Section 5.1.2 Rural Zone

Objective 1

To ensure a range of compatible rural land use activities can be undertaken, which benefit from the productive potential, location and rural character of the zone.

Policies

- 4. Ensuring buildings and rural activities maintain the amenity value of a predominantly open rural character.*
- 7. Dwellings should be developed to avoid, remedy, or mitigate the adverse effects on the visual impact of the rural landscape and the productive use of the land.*

Comment

The proposed yard infringement will not adversely affect the open rural character of the area to a degree greater than other activities that could be established as a permitted activity on the site.

Objective 2

To ensure residential development and other complementary activities develop in a way that is compatible with the rural character of the zone.

Policies

- 1. The density of residential development in the zone should retain a predominantly open landscape, therefore preserving the amenity that this openness provides.*
- 2. Activities which are complementary to residential uses should be accommodated on a site in a manner which does not compromise the amenity of the surrounding rural neighbourhood.*

Comment

The open landscape of the area will be retained should consent be granted to the yard infringement. It should be noted that the open landscape of the area could be adversely affected to a greater degree by two dwellings being established on the site as a permitted activity.

Objective 7

To ensure that any adverse effect of a land use activity on the environment or on the amenities of neighbours is avoided, remedied or mitigated.

Policies

- 1. Requiring that all effluent is able to be safely disposed of and there is no associated smell nuisance from effluent or any other aspect of the activity.*
- 2. Ensuring the implications of land use activities for the roading network (especially the safety and efficiency) are properly addressed.*
- 3. Requiring off-street parking and loading facilities, and safe vehicle access to be provided and constructed so as to prevent dust and other nuisance.*

4. *Other adverse effects (eg noise, smell, glare, vibration) on the environment and amenity of the District (not only the rural areas) should preferably be avoided, or at least remedied or mitigated.*

Comment

The adverse effects of the proposed yard infringement on the amenity of the neighbouring property to the south and the environment in general are considered to be avoided, remedied and mitigated by the factors outlined previously in this report. Adequate effluent disposal and parking is provided for the dwelling.

Assessment Criteria

The relevant assessment criteria for Discretionary Activities in the Rural Zone (5.1.6.3A) are considered in Table One below:

Table One – Relevant General Assessment Criteria for Discretionary Activities in the Rural Zone

Rule (5.1.6.3A)	Comments
<i>1. The performance standards for the zone.</i>	The proposed dwelling complies with all the performance standards for the Rural Zone apart from the side yard requirement.
<i>5. Whether buildings are sufficiently set back from the boundaries of neighbouring properties to avoid causing a nuisance to neighbouring holdings by way of overshadowing, obstruction of views, noise, glare, and loss of privacy.</i>	The proposed dwelling setback from the southern boundary is considered to be sufficient to avoid the stated nuisances.
<i>7. Whether features of the proposal including the location, design, and colour of buildings and structures, the planting of trees and shrubs, and the shaping of earth avoids, remedies or mitigates any adverse effects on the existing landscape.</i>	The proposed dwelling location will not create adverse effects on the exiting landscape that are any greater than those that could be generated by a complying permitted activity.

Rule 9.2.2.4 of the District Plan also provides a specific assessment criteria for discretionary activities for yard infringements. This criteria is set out in Table Two below:

Table Two – Specific Assessment Criteria for Yard Infringements

Rule (9.2.2.4)	Comments
<i>1. The extent that topographical and site conditions restrict the area or shape of the site that is available and suitable for building.</i>	The unusually long and narrow shape of the site, when combined with the “deemed to comply” yard requirements, means that the area of the site available for building without the need for resource consent is restricted.
<i>2. The degree to which the functioning of the site and/or the activity can be improved.</i>	The proposed dwelling setback from the southern boundary is considered to be sufficient to avoid the stated nuisances.
<i>3. Whether there is a need to preserve existing trees, vegetation or important physical characteristics of the site.</i>	No such features and characteristics exist on the site.
<i>4. The extent to which the provision of daylight and sunlight into the neighbouring properties and the visual and aural privacy of neighbouring sites</i>	Given the size and nature of the adjoining site, the extent of the stated adverse effects will be (at worst) extremely minor, and not of a level that exceeds those that could be created by activities permitted by the plan.

<i>will be affected.</i>	
<i>5. The extent to which the safe and efficient functioning of the street or road will be significantly compromised.</i>	The side yard infringement will have no adverse effects on this matter.
<i>6. Whether the detrimental effects of building in the yard can be reduced or avoided.</i>	The adverse effects of the side yard infringement have been assessed earlier in this report, and have been found to be extremely minor.
<i>7. Whether the yard functions (including separation, landscaping and service provision) will be provided on the site by other means, or are they necessary.</i>	Given the size of the site there are alternatives available for each of these factors.

CONCLUSION

The proposal fails to comply with the standard requiring a 6m side yard setback on properties in the Rural Zone. The proposed dwelling infringes the side yard setback on both the northern and southern boundaries of the site. Written approval was gained from the landowners adjoining the northern boundary infringement however similar approval was not gained from the landowners adjoining the southern boundary.

It has been found that the adverse effects of the yard infringement will be no greater than those that could be created by a dwelling or dwellings (the site has entitlement to two dwellings) established in accordance with the permitted activity standards of the Rural Zone. The area of the dwelling (55m²) that is within the yard setback is relatively minor and the infringing area is some 30 metres from the stockyards on the submitters property that are of concern. Additionally the areas of the dwelling that are within the side yard distance are the garage and laundry, with the indoor and outdoor living areas located on the northern side of the dwelling.

The proposal does not conflict with the relevant objectives and policies

RECOMMENDATION

THAT pursuant to Section 104B of the Resource Management Act 1991 the Hauraki District Council grant consent to this limited notified discretionary activity application to construct a dwelling within the 6m side yards on Pt Lot 8F DP 18439, 116 Oparia Raod, Turua, for the following reasons:

- The potential adverse effects of the yard infringement are no more than minor. The same or greater adverse effects could be generated by activities permitted by the District Plan occurring on the site.
- The potential for reverse sensitivity effects to occur in future would still be generated by the establishment of a dwelling in a manner fully complying with permitted activity standards.
- The proposal is not inconsistent with the relevant objectives, policies and assessment criteria of the Rural Zone that require retention of an open rural landscape, and for dwellings to be designed in a manner that avoids, remedies or mitigates adverse effects on neighbouring properties.

Conditions:

1. That the proposal be established in general accordance with the application submitted by K and N Benny, received on 29 May 2006, and the plans prepared by Aesthetics Architecture Ltd entitled "New Benny Residence", dated 12/2005, Job Number TM02, reference A01, A02 and A03.
2. That pursuant to Section 36(1)(b) of the Resource Management Act 1991, the applicant shall pay Council charges for receiving, processing and granting the resource consent.
3. That pursuant to Section 36(1)(c) of the Resource Management Act 1991, the applicant shall pay an administration fee of \$75.00 for the administration of the consent.

4. That pursuant to Section 36(1)(c) of the Resource Management Act 1991, the applicant shall pay all Council's costs for monitoring this consent including all costs associated with the consideration and certification of plans and details associated with the consent as appropriate.

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