

Form 34

Notice of appeal to Environment Court (General)

To the Registrar
Environment Court
P O Box 2069
Christchurch Mail Centre
Christchurch 8140

1. We, Kathy & Stacey Hood appeal a decision on the following matter:
Resource Consent LUC-2016-339
2. We received notice of the decision on 15 December 2016.
3. The decision was made by Commissioner Colin Weatherall.
4. We are not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

The decision that we are appealing is:

The grant legitimising the conversion of a shed to a dwelling which breaches the minimum side yard requirement by 40%

The reasons for the appeal are as follows:

- (a) The grant is unreasonable given the effects which cannot be mitigated
- (b) The Commissioner did not have authority to impose a condition that breaches local bylaws
- (c) Please refer to the additional information attached to this notice of appeal

We seek the following relief:

- (a) Consent to be refused
- (b) Costs

We attach the following documents to this notice:

- (a) a copy of the application
- (b) a copy of the relevant decision
- (c) a copy of our submissions
- (d) a list of names and address of persons to be served with a copy of this notice


.....
Signature of appellant

.....
Date

Address for service of appellant: P O Box 6433, Dunedin North 9059

Telephone: 021 140 4846

Email: hood.kathm@gmail.com

Contact persons: Kathy & Stacey Hood

Procedural Issues

1. *Council failed to notify the Otago Regional Council of the application,*

We consider rule 8.4 of the Second Generation District Plan operative as a result of section 86F of the Resource Management Act as no evidence of opposing submissions has been provided. Therefore in accordance with section 104 (3)(d) consent should not have been granted.

However if this incorrect sections 30 (i)(c)(iv) and 31 (1)(b)(i) should have triggered notification to the Otago Regional Council as the proposed swale and scheduled drain is of interest to it.

2. *Council failed to circulate crucial pre-hearing evidence,*

Issues relating to Consent Order ENV-2015-CHC-23 were not raised in the planners report. We were significantly disadvantaged by the ambush of the Hearings Committee Advisor as we were required to provide a response without the necessary evidence to support our position. The consequence of this is clearly seen at point 6 under the heading 'Reasons for this Decision'.

The injustice of this lack of procedural rigor was compounded when we were refused the opportunity to make a written post-hearing submission on the issue. The unresolved dispute resulted an applicant verbally attacking Kathy Hood and accusing her of misleading the parties.

Principal Issues of Contention

The principal issues of contention are recorded as '*effects on amenity*' and '*visual impact effects*'. In addition to those issues inadequate weight has been given to all matters including the social impacts of the application as provided for by the Resource Management Act.

Reasons for this Appeal

1. It is recorded in making this decision no bearing was given to the unlawful occupation of the shed. However the Commissioner did raise the issue of enforcement and was advised no proceedings had been commenced. We believe Council's tolerance in this respect has influenced the decision.
2. Insufficient weight was given to environmental issues including people. Any habitation on the boundary and its associated activity creates significant adverse effects which are unexpected in this setting and are an unwelcome intrusion. However this impact is even greater for us due to our genuine need for open space, peace and privacy. No meaningful consideration appears to have been given to this nor to the applicants' pre-purchase knowledge of our needs.

The intimidation and verbal attack Kathy Hood was subjected to by both applicants when visiting our property on 22 December 2016 has destroyed our expectation of freedom of movement and quiet enjoyment within our own boundaries.

Other factors for consideration include:-

- The shed lies within the designation D218 East Taleri Drainage Scheme
 - Environmental hazards including the potential for flooding associated with the swale
 - No mitigation such as minimum floor levels has been provided to manage this hazard
 - Responsibility for Health and Safety was renounced and delegated to Building Control
 - Council may be vulnerable to financial liability and litigation if flooding does occur
 - The Building Act allows an application for consent / certificate of acceptance to be declined
 - Our pre purchase advice that the conversion was not a permitted activity was dismissed
 - Section 104 of the Resource Management Act was not taken into consideration
3. No weight was given to the existing building and the application of the baseline. It is impractical to expect the shed would be demolished and a residential dwelling built with the set back.

4. While the Otago Regional Council scheduled drain is contained within the boundary of 482 Riccarton Road the required seven metres clearance extends well into the subject site. In fact the poplar trees, gas bottles and heat pump unit on this site breach the required set back.

The minimum clearance must be maintained and if erosion continues to occur the set back will be measured from that point.

Other factors that appear to have been given insufficient consideration include:-

- One of the purposes of the designated clearance area is to allow access for maintenance of the drain from both sides
- Numerous subdivisions have intensified residential activity in the area and resulted in increased pressure on the drain network
- The area is prone to flooding and the hazards may be exacerbated by climate change
- In order to comply with the Building Code the floor height of the shed must be raised

5. The comment at point 5 appears to be generic and at odds with an earlier decision of the 2GP Hearings Panel that was circulated by our expert Conrad Anderson as outlined under Procedural Issues.

The decision at issue is precedent setting due to the principal of consistency in decision making and could well be relied by other property owners.

6. The consequence of Council's failure to circulate crucial pre-hearing evidence is clearly stated in the decision. This ambush damaged our credibility as our response could not be substantiated without accessing our records and therefore was dismissed. Further the Commissioner does not appear to accept a central location is the logical site for our home or any other complying dwelling given the nature of the land.

This gave rise to an incident on 22 December 2016 in which Kathy Hood was followed for a considerable distance and verbally attacked by Steven Greer whose accusations included that she had attempted to mislead everyone including the Commissioner over the location of our dwelling in order to get the applicants 'kicked out' of their shed. This allegation is untrue. Further:-

- Council records should confirm we can establish our dwelling in any complying location
- The attached site plan was not include in the original decision as the planners evidence was there were no affected parties and therefore the location of the dwelling was not restricted
- The site plan was not signed nor was it attached to the mediated settlement documentation
- This issue is currently before the Environment Court and will be resolved in due course

7. There is no reason to believe our consent will not be given effect. However in light of the leniency of the decision at issue we may well seek to have the condition of the shared entry removed from our consent as it will add significant cost to our build yet lessens its market value and desirability. This condition was agreed to in good faith to assist Council in maintaining the integrity of the District Plan and is not a Resource Management Act matter.

The Commissioner appears to have given no weight to the fact the *minimum* separation required between dwellings is 20 metres. Given that the shed at issue was a pre-existing structure that Council advised could not be used for residential activity it was our reasonable expectation that development would occur on the other side of the shed resulting in a separation of approximately 40 metres between dwellings. It was on this basis that we proceeded to purchase our property.

There was no rationale provided to support the statement 'the development on the subject site is not atypical of the proximate environment'. Our submissions demonstrate surrounding dwellings are positioned more centrally on their site and activity and occupation on the boundary is not in keeping with the amenity values of the rural residential area.

8. We do not believe sufficient weight was given to the confidential letter tabled by our expert Conrad Anderson, nor the ongoing legal struggle over the easement and the aggression of the applicants. We wish to record the impact of this conduct towards us and our property.
9. At point 7 of the decision the Commissioner recorded 'any dwelling on 482 Riccarton Road may be set back even further from the shared boundary to avoid a potential flood hazard associated with the swale area'.

The proposed location of our dwelling has been selected to minimize this risk as it is a higher point. Yet the Commissioner has not given the same regard to how this hazard may affect the shed which is located within a swale.

10. At the time of purchase our property enjoyed a high level of amenity value and the position of the shed was considered an important buffer in protecting the values we place great importance on. We can attest from our site visits that the ongoing occupation and arsing activity on the boundary has significantly eroded our peace and privacy. Further:-
 - It is factually incorrect to state a shed conversion on the boundary is in keeping with surrounding properties
 - Consideration was not given to the impact its occupation will have on the desirably and value of our property
 - The natural location for a residential dwelling on the subject site is the vast area beyond the shed which would create considerable separation between the dwellings
 - No consideration was given to the possibility of future development and the accumulative adverse effects of more intensive activity on the amenity value of our property
11. The condition of the grant cannot mitigate the effects on our property and its occupiers, nor does it comply with other relevant bylaws:-
 - The condition to screen the shed infers there are effects that need to be mitigated and without sufficient screening the effects are more than minor
 - It is unclear how landscaping can be considered sufficient when a plan has not been completed and the planting of trees is not permitted
 - A detailed plan was needed to allow the decision maker to reach an informed decision
 - The structure and resources of Council does not allow enforcement of consent conditions
 - The condition could be varied at any time and there is no ability to secure the long term performance of the condition
 - There is considerable risk of ongoing litigation between the parties
 - Finally we wonder whether the Commissioner has authority to impose a condition that breaches local bylaws and is legally unenforceable

We intend to provide expert evidence including that of an Environmental Psychologist to attest to the adverse effects of the occupation of the shed. For the reasons outlined above we do not believe consent should have been granted and we seek to have the decision overturned.

A list of names and address of persons to be served with a copy of this notice

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