

**IN THE MATTER OF**

the Resource Management Act 1991

**AND**

**IN THE MATTER OF**

A Limited Notified Application to Change  
Consent Conditions of RMA20040306 to  
Remove a Cypress Tree and Plant Three  
Flowering Plum (Prunus) Trees in the legal Road  
Berm

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**STATEMENT OF EVIDENCE BY JANEEN ANNE KYDD-SMITH**

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## INTRODUCTION

1. My name is Janeen Anne Kydd-Smith. I am the Director of Kydd-Smith Environmental Planning Limited, based in Napier.
2. I have the following qualifications and experience relevant to the evidence I shall give:
  - (a) I have a Master of Regional Resource Planning from the University of Otago;
  - (b) I have over 25 years' experience as a Planner working in central government, local government and the private sector;
  - (c) I am an accredited Commissioner under the Ministry for Environment 'Making Good Decisions' programme.
3. I have the following relevant experience:
  - (a) Development Planner, Hastings District Council (February 1992 – July 1992);
  - (b) Policy Planner, Hastings District Council (July 1992 – April 1996);
  - (c) Senior Policy Planner, Hastings District Council (April 1996 – May 1998);
  - (d) Development Manager, Hastings District Council (June 1998 – September 2001);
  - (e) Environmental Planner, MWH New Zealand Limited (September 2001-January 2002);
  - (f) Planning Manager, MWH New Zealand Limited (January 2002 – December 2002);
  - (g) Senior Environmental Planner, Environmental Management Services Limited (February 2003 – August 2014); and
  - (h) Director, Kydd-Smith Environmental Planning Limited (September 2014 to present).
4. I have been engaged by Body Corporate 383624 (the Applicant) to prepare and present planning evidence in relation to their resource consent application to change consent conditions of RMA20040306 and plant three flowering plum (Prunus) trees in the legal road berm.
5. I am familiar with the contents of all documents that were submitted as part of the application, the application site and environs, and the relevant planning documents. I prepared the resource consent application, including a description of the proposal and an assessment of environmental effects, which was lodged on behalf of the Applicant, and received by the Council on 30 June 2015.
6. I confirm that I have read the 'Expert Witnesses Code of Conduct' contained in the Environment Court of New Zealand Practice Note 2014. My evidence has been prepared in compliance with that Code in the same way as I would if giving evidence in the Environment Court. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

## SCOPE OF EVIDENCE

7. This evidence provides a response to the Council Reporting Officer's Section 42A Report on the application in relation to:
- Site and surrounding environment;
  - Statutory provisions and status of the activity;
  - Assessment of Environmental Effects;
  - Relevant objectives and policies of the Operative Hastings District Plan ("Operative Plan") and Proposed Hastings District Plan ("Proposed Plan");
  - Other matters;
  - Part 2 of the Resource Management Act 1991 ("the Act"); and
  - Conclusion.

## SITE AND SURROUNDING ENVIRONMENT

8. I consider that the site and surrounding environment has been fully and accurately described in the application and in the Council Officer's section 42A report (Officer's Report") for the hearing. I, therefore, do not consider it necessary to repeat that in my evidence.

## STATUTORY PROVISIONS AND STATUS OF THE ACTIVITY

9. As set out in the Assessment of Environmental Effects provided with the application, and in the Officer's Report, the activity must be assessed as a Discretionary Activity under section 127(3) of the Act. As a Discretionary Activity, section 104 of the Act specifies the matters the Council must have regard to when considering the application, being:
- “(a) Any actual and potential effects on the environment of allowing the activity; and*
  - (b) Any relevant provisions of:*
    - (iv) a plan or proposed plan; and*
  - (c) Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*
10. Under section 104B of the Act, the consent authority may grant or refuse to grant the application.

## ASSESSMENT OF ENVIRONMENTAL EFFECTS

11. Since the application was lodged, the Council sought advice from an Arborist, Darryl Judd, about the health of the Italian Cypress tree that is proposed to be removed. That advice is attached in Appendix D of the Officer's Report. Mr Judd confirmed the advice of the Applicant's Arborist that the tree is currently in reasonable health. However, Mr Judd advised that the tree has *“a major failing within its structural*

*architecture*”, which means that it has the potential to lead to its ‘self-destruction’. While Mr Judd cannot determine when this failure will occur, he has recommended that it would be prudent to consider the removal of the tree, as the “*chance of failure in a wind event would not be unforeseen*”.

12. If the advice of Mr Judd is accepted, then, in my opinion, the relevant matters to be considered by the Hearings Panel in relation to the proposal are:
  - (a) the visual and amenity effects on the adjacent sites; and
  - (b) the positive effects of removing the tree.
13. I note that both submitters consider that the proposal will be inadequate/ineffective in screening noise from the apartments. I concur with the Reporting Officer’s assessment (third paragraph, page 17), that the Italian Cypress tree, or any tree for that matter, is not effective at reducing noise from adjacent properties. The noise arising from the apartments is residential-based and is not out of character with the residential zone. Furthermore, any noise generated by activities in the apartments must comply with the relevant District Plan noise standards.
14. The decision to impose the condition requiring the retention of the four Cypress trees did not relate to mitigating noise from the apartments. In fact, one of the reasons for granting consent to the apartment development was that nuisance effects to neighbours would be no more than minor in terms of noise.

### **Visual and Amenity Effects**

15. I agree with the Reporting Officer, that the removal of the tree will have an immediate visual effect on the adjacent submitters’ properties, in terms of the screening of the apartment building from their sites that the tree provides.
16. I note, however, that in terms of the visual effects considered as part of the original application for the consented apartment building, the apartment building complied with all of the relevant permitted activity standards and terms of the Operative Plan, with the exception of the maximum density limit (which permitted six apartments to be developed on the site) and the intrusion of the front yard on Tanner Street. The building therefore complied with the maximum height, recession planes and building coverage standards of the Operative Plan, as well as the setbacks from all other site boundaries, including the Plassey Street boundary. The eight apartments were also contained within a building which is virtually the same in appearance and only slightly larger in scale to a building granted a Certificate of Compliance for six apartments. The visible differences between the two developments were minor.
17. In that regard, the Reporting Officer has referred (in the fourth paragraph on page 17 of the Officer’s Report) to the fact that a building of a similar size and orientation could have been erected on the subject site as of right if the density requirements were met.
18. This fact was reflected in the following Council reasons for granting consent to the apartment development:
  - *The proposed development will not result in visual domination in the context of the District Plan noting that it complies with the height and site coverage provisions of the Plan, and that the front boundary intrusion is on a sloping part of the site below the level of the road and reserve across the road.*

- *The proposed development is similar in design with the building already issued a Certificate of Compliance for the site.*
19. The following reason was also given for imposing Conditions 6, 7 and 8 of the consent in relation to retaining and maintaining the existing shrubs and trees located on the site, in particular the four Cypress trees, along the Plassey Street frontage:
- “6. *Conditions 6, 7 and 8 ensure that some existing screening is retained around the site.*”
20. The purpose of retaining the four Cypress trees was, therefore, to retain some existing screening. It was not intended to screen the apartment building completely.
21. While the removal of the Cypress tree will have an immediate effect on the current level of screening of the apartment building from the adjacent properties, I consider that the Reporting Officer’s recommended condition of consent, requiring that the tree be replaced with a similar species of tree (PB95 or larger and a minimum height of 3 metres) within 1 month of the removal of the tree, would ensure that, in time, a similar and appropriate level of screening will be provided again. The Applicant is agreeable to Council imposing such a condition.
22. I agree with the Reporting Officer’s comment (third paragraph, page 19) that Council’s normal requirement would be to require the replacement of trees that are lost or otherwise defective and to generally preserve the landscaping to a healthy standard. In this case, the Applicant proposes to go further than that by paying the Council \$840 (inclusive GST) to plant another three trees (Flowering Plum) within the road reserve in Plassey Street, adjacent to the apartment building.
23. While this will not mitigate the visual amenity effects of removing the Cypress tree in the short term, in my opinion it is the most reasonable and appropriate response available in the circumstances where, in order to maintain the landscaping, there is a need to remove a defective tree.
24. For that reason, I also support the Reporting Officer’s recommendation to add an Advice Note to recommended Condition 7A, which sets out the meaning of ‘maintained’, which includes *“the ongoing replacement of any dangerous, dead or dying matter, the replacement of any plants/trees that are lost or otherwise defective and the general preservation of the landscaping to a healthy standard”*.

**Positive Effects**

25. In my opinion, it is also appropriate for the Hearings Panel to consider the benefits that are to be derived from the proposed removal and replacement of the Cypress tree, being:
- the avoidance of potential harm to people and/or property that could occur from the failure of the defective tree in a wind event;
  - greater access for the remaining Cypress trees to moisture and nutrition (as advised by Mr Judd);
  - increased light in the adjacent apartments until such time as the replacement tree reaches maturity; and

- the provision of three Prunus (Flowering Plum) trees in the road reserve that will fill an existing gap in the tree planting along Plassey Street.

## **Conclusion**

26. On the basis of the above assessment, I consider that the proposal will not result in a fundamentally different activity from that consented, or one having materially different adverse effects.

## **RELEVANT OBJECTIVES AND POLICIES OF THE PLAN OR PROPOSED PLAN**

27. I concur with the Reporting Officer that Objective HNRO7 and Policies HNRP11 and HNRP12 are relevant to the application. I also concur with the Officer's assessment and conclusion that the proposed change of conditions will not be contrary to the relevant objectives and policies of the Operative and Proposed District Plans.

## **OTHER MATTERS**

28. I support the Reporting Officer's conclusion that there are no other matters that are reasonably necessary to determine the application.

## **PART 2 OF THE ACT**

29. I support the Reporting Officer's assessment that none of the matters under sections 6 and 8 of the Act are relevant to the application.

30. The purpose of the Act is set out in section 5(1), which is:

*"To promote the sustainable management of natural and physical resources."*

31. Section 5(2) defines 'sustainable management' as:

*"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."*

32. The promotion of sustainable management requires an overall broad judgement of whether a proposal will meet the requirements of section 5(2). The approach recognises that the RMA has a single purpose – sustainable management. Such a judgement allows for the comparison of conflicting considerations and the scale or degree of them and their relative significance or proportion in the final outcome.

33. I consider that the proposed removal of the Cypress tree will (on the basis of advice received from the Council's Arborist) provide for the safety of people, as well as the health of the adjoining apartment owner. Also, the proposed replacement of the tree with another Cypress tree and the planting of three Flowering Plum trees within the

Plassey Street road reserve will, in time, mitigate any adverse visual amenity effects on adjoining properties.

34. I therefore consider that, on balance, the proposal is consistent with section 5 of the Act.
35. In terms of section 7, I concur with the Reporting Officer that sections 7(c) and 7(f) are relevant to the proposal. In the longer term, I consider that, with the imposition of the recommended conditions of consent, the amenity values and quality of the area will be maintained. In fact, over the longer term the planting of the three Flowering Plum trees will enhance the amenity values of the existing environment.
36. Overall, I consider that the proposal is consistent with the purpose and principles of the Act.

## CONCLUSION

37. On the basis of the above, I concur with the Reporting Officer's recommendation that, after considering the requirements of sections 104, 104B and 127 of the Act, that the consent conditions can be amended to allow the removal of the affected tree, its replacement with a suitable tree, and the planting of three Flowering Plum trees in the legal road reserve.
38. I note, however, that the Advice Note with Condition 7A currently reads: "*To avoid doubt 'maintain' and 'maintained' mean ...*" I consider that the Advice Note should be amended so that it is consistent with the wording used in Condition 6A, so that it reads: "*To avoid doubt 'retain' '~~maintain~~' and 'maintained'...*"



Janeen Kydd-Smith

9 November 2015