

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of an application for
an enforcement order
under s.316 of the Act

BETWEEN

WELLINGTON CITY
COUNCIL

(Application No: ENF
108/93)

Applicant

AND

JORDAN PETER IVANOFF

Respondent

BEFORE THE PLANNING TRIBUNAL

His Honour Judge Treadwell presiding
Ms J D Rowan
Mr R G Bishop

HEARING at Wellington on the 28th day of July 1993

COUNSEL/APPEARANCES

Mr S M O'Sullivan for applicant
Mr J P Ivanoff in person

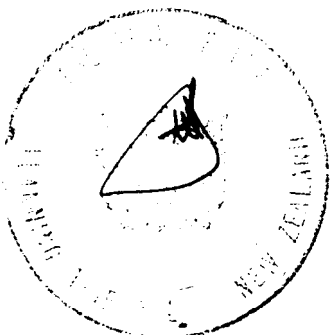
DECISION

This application seeks Enforcement Orders pursuant to s.316 of the Resource Management Act 1991 (RM Act). The Wellington City Council is the applicant and Jordan Peter Ivanoff the respondent.

Generally the orders aim at rehabilitation of a property at 88 Allington Road, Karori, Wellington and other residentially zoned blocks of land owned by the respondent which are within Certificate of Title 21C/244 (Wellington Registry). The land has been the subject of significant earthworks which concern the Council.

GENERAL OVERVIEW:

The Council seek enforcement orders as set out in their



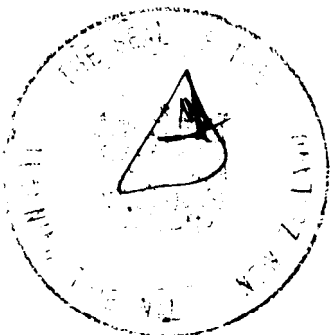
application and for convenience that application is annexed to this decision. It will be seen that the various matters of concern are set forth. There is also a definition section which describes words contained in the application. The application relates to:

- (a) Orders to remove piles of timber and/or containers and/or derelict vehicles.
- (b) A prohibition to prevent the respondent from living in a bus and/or caravans upon the land and requiring him to cease living in that accommodation.
- (c) An order requiring the respondent to remove the bus and/or caravans.
- (b) Orders requiring the respondent to cease or prohibit:-
 - (i) Allowing surface water to run over the batter
 - (ii) Allowing surface water to enter stormwater systems without being directed through silt traps
 - (iii) Failing to maintain or clear out silt traps
 - (iv) Allowing the batter to remain ungrassed
 - (v) Requiring reshaping of the batter and ancillary matters.

We have not listed in detail the orders at this stage because many are in the alternative in terms of s.314.

By way of general overview, and before examining the evidence in detail, we record that Mr Ivanoff appears to be suffering from a sense of persecution alleging, as he does, harassment by the Council. We informed him at the outset that we were not interested in examining the operations of the Council, its officers, or its councillors in the course of these proceedings but were concerned with environmental protection which is one of the cornerstones of the RM Act. We said this not only because the respondent's differences with the Council are not within the jurisdiction of this Tribunal but because whatever differences the respondent may have with the Council cannot be used as a justification for the environmental mayhem which has been inflicted upon an attractive residential area of Karori whose inhabitants suffer from views of Mr Ivanoff's property and the insensitive activities which have been carried out upon it.

Generally from the evidence and from the site inspection conducted by the Tribunal in inclement weather conditions we can say that the activities upon the property combined with its present cluttered state can only be regarded as environmental destruction and despoilation on a major scale. We say also from the evidence he gave to us that the respondent does not appear to have the financial capacity to remedy the situation.



GENERAL DESCRIPTION:

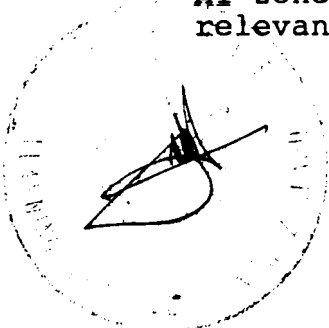
When one reaches the end of Allington Road a gravel track leads onto the subject site. Large quantities of material have been cut from the hill face immediately above and to the left of the entry track leaving a scarred face of rotten rock as often found in the Wellington area. That face is not benched and/or battered to an acceptable standard. A large sloping platform of rotten rock mixed with clay and silt lies at the toe of the cut. A great deal of material has been moved forward and over a natural face. It is uncompacted and forms an unstable facade to the new plateau sloping steeply to a small stream. As a result of these activities the property is largely denuded of vegetation. Steep erosion cuts traverse the face of the uncompacted batter with the eroded material filling silt traps which are improvised structures comprising large tree trunks. The silt trap is now overtopping with silt running into the stream together with aggregate formed by crushed rotten rock. This material (possibly combined with some material from further upstream) is finding its way into the creek bed and causing aggregation of that bed to the considerable distress of downstream riparian owners who find previously pristine waters now carry with them quantities of silt and debris which are choking the channels and ponds.

The respondent and his wife live in a bus and caravan upon the property - a residential pocket surrounded by mud and clutter. Water is apparently available by way of hose from the next door property with sewage disposal by way of chemical toilet. Power and telephone is connected. The immediate surrounds of the residential quarters comprise large shipping containers which we are told contain household furniture. Near to that are stacks of timber which we are told will be used in the construction of dwellinghouses. That timber has lain there for some time as evidenced by its grey to black colour and its lichen covered appearance. Apart from two motor vehicles which may be regarded as reasonably mobile the aura of the immediate environment is completed by the addition of some 10 motor vehicles in various stages of disrepair and/or wrecking. We were told that the respondent's son is responsible for this motor wrecking operation.

This is the sight which presents itself as a prominent foreground spectacle to many of the residents in the south western part of Karori who have houses erected in a rough amphitheatre with Mr Ivanoff's property as the stage. Potential physical harm is of monumental proportions should there be any large scale rainfall event in which case the downstream consequences from run off could be severe.

THE RELEVANT RULES OF THE TRANSITIONAL DISTRICT PLAN:

The property subject to the application is in the Residential **A1 zone** the objectives are set out in Ordinance 9A.1. The **relevant** objectives are:



- "1. To encourage low density residential development.
2. To ensure that the low height of buildings and open character of the area is retained ...
3. To ensure that existing vegetation is retained as far as possible and that excavation of land where this would be harmful to the amenities of the area is not carried out."

Setting aside the removal of vegetation which appears to be largely in dispute there is no dispute that land has been excavated and that amenities (as defined in the RM Act) have been harmed.

The general objectives of the plan are reinforced by Ordinance 17E which deals with the question of earthworks. That rule provides:

"No work involving the disturbance of land surface or the excavation of the land (other than necessary investigative work) shall be carried out in connection with any existing or proposed use of land, whether or not related to a proposed subdivision or development (as such are defined in the Local Government Act 1974) until such excavation or work obtains the approval of the Council, and then upon such conditions as it may hereunder or otherwise, lawfully impose.

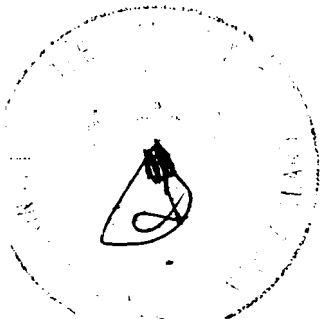
For the purpose of this Ordinance 'disturbance of land surface' means, inter alia, removal of top soil and dumping of fill material."

We have added emphasis to this rule to show that although it appears within the subdivisional part of the plan it is intended to be of wider application. We record at this stage that the respondent did not obtain approval from Council before embarking upon this present exercise and we are satisfied after hearing from the Council engineers on the question of the necessity for careful and planned earthworks that approval would never have been forthcoming for an exercise involving the deposit of fill without progressive compaction or the excavation of faces without benching.

Rule 17E(3) provides:

"Where excavation or any work involving the disturbance of the land surface is carried out, either in accordance with Ordinance 17E or 17E.2 or otherwise, the following conditions relation (sic) to that excavation or such work, involving the disturbance of land surface shall supply (sic):

- (i) Adequate protection shall be provided against damage occurring or likely to occur to any



- property or to any person as a result of the excavation.
- (ii) Sufficient silt traps shall be provided to ensure surface water will not damage any property.
 - (iii) Compaction tests certified by a registered engineer to ensure the stability of any fill shall be provided where the Council may reasonably require the same and for restoration (by replanting or other sufficient means) of faces denuded of vegetation shall be carried out to the satisfaction of the Council."

The respondent has not observed these rules.

Turning now to the other aspects of site use the first relates to the bus/caravan situation which can at best be regarded as temporary accommodation of an unsatisfactory nature. The rules relating to permitted uses in the zone are set out in Paragraph 9A.3 of the Transitional Plan which permits:- a dwellinghouse; not more than two townhouses; group housing scheme of not more than two household units; apartment houses. The definition of "dwellinghouse" is:

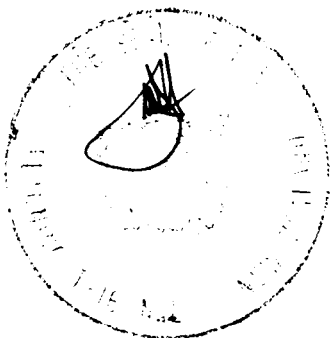
"A detached residential building designed and occupied exclusively as one household unit, being the only household unit on the site."

The bus and/or caravan are not a dwellinghouse within the meaning of the plan nor are they household units. The whole zone concept contains an aura of permanence in so far as residential structures are concerned and the bus/caravan concept is the very antithesis of the high quality environment this plan intends to **foster**. We reject the submission by the respondent that the accommodation is merely temporary until houses are constructed for himself and his family because, with the state of the property, it is evident that this is unlikely to eventuate for many years.

Essentially we find that you are not permitted by the plan to camp for years upon an unfinished development site surrounded by containers of household goods, building timber, old cars and rubbish, pending proper development of the site in accordance with the District Plan.

Even were the activity permitted, and it is not, we would still consider in terms of s.314 that it could be terminated as having an adverse effect upon the environment.

In respect of the derelict vehicles, piles of timber and containers we do not consider it necessary to make further comment upon them at this stage.



THE EVIDENCE OF COUNCIL:

Mr B J Stone is a resource consent planner. He inspected the property on 23 April 1993. He told us of the relevant rules of the plan which we have already recorded. He told us of the various viewpoints from whence the property can be seen and produced to us photographs to support that evidence. He told us of his opinions concerning the application of the RM Act and in particular drew our attention to s.9 in respect of the piles of timber and containers which he considered breached s.9 in that the land was being used in contravention of a District Plan rule and the activity was not expressly allowed by a resource consent. He drew our attention to s.9(4) which expressly referred to:

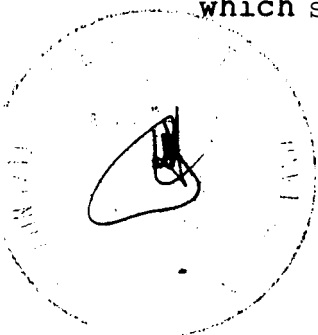
*"(d) Deposit of any substance in, on, or under the land;
..."*

We agree with his conclusions where he stated:

"In my opinion the present state of Mr Ivanoff's property is offensive and objectionable to the surrounding environment. The combination of neglected earthworks, derelict vehicles and containers on the property and a bus and caravan in which Mr Ivanoff lives presents a serious contravention of the Transitional District Plan and/or the Resource Management Act 1991."

We then heard from Mrs V M Bedingfield a Wellington City Councillor who is one of the three representatives of residents of the Western Ward of Wellington which includes the suburb of Karori. We record that it is not often that councillors give evidence before the Tribunal but in matters of this kind it is of great assistance to us to have the type of evidence which we received from Mrs Bedingfield. It is also helpful that an aggrieved respondent such as Mr Ivanoff can ask questions of a councillor. This is of some importance in enforcement procedures where a standoff situation exists as between a respondent and the Council.

The facts emerging from that evidence are as follows. Mr Ivanoff purchased the property in or about 1985 and, as Mr Stone told us, has been living upon it in a bus and caravan for some years. In 1987 the Council discovered that major earthworks had commenced without Council approval and the Council on 20 October 1987 wrote to Mr Ivanoff advising him of the necessity for Council approval. An engineering firm of consultants was instructed by Mr Ivanoff and a letter was sent to Council on 20 November 1987 explaining the earthworks intended to be carried out. As a result of that letter Council approved the proposal for excavation subject to a number of conditions and in particular the approval was conditional upon the excavated and filled areas being top soiled and grassed and upon the silt retaining structures being kept in working order at all times. Further earthworks commenced shortly after, **which** should have been in accordance with the approval.



By the end of December 1988 Mr Ivanoff had commenced living on the property with his family in a bus and caravan and the Council commenced proceedings in the District Court relating to:- that issue; the dumping of fill on the land without Council consent; breach of conditions of the earthworks approval; and the carrying out of earthworks beyond the approval. The latter proceedings related specifically to the dumping of uncompacted fill which could move from the land into a tributary of the Karori stream to the eventual danger of residents in Allington Road.

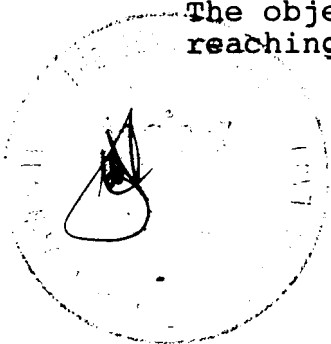
An interim injunction was subsequently obtained but it was later changed by consent. An order dated 23 December 1988 subsequently issued effectively restraining the respondent from dumping any fill on his land. Later, in December 1989, there was a four day hearing in the District Court at Wellington in relation to the earthworks that had been carried out by the respondent and to his living on the property in a bus and caravan. An interim order was made that all earthworks were to cease immediately and His Honour Judge Paterson called for an engineer's report. No order was made at that stage. In July 1990 the Judge delivered final judgment making various orders forbidding Mr Ivanoff from undertaking further development works without consent (and in that respect a development proposal had to be applied for by 31 December 1990) and further requiring the taking of steps to abate the nuisances caused and to cease living in the temporary residence by no later than 31 December 1990.

We record that the respondent Mr Ivanoff now seeks to hide behind that order because he tells us that he was unable to use his machinery to clear the silt traps and otherwise tidy up the property. We do not accept that construction of the judgment which is clear in that works of a developmental nature were to cease but that Mr Ivanoff was to take all steps to abate nuisances. Those steps could involve the use of machinery.

In September 1990 the Council again applied for further orders that the respondent be required:

- (a) To construct two silt traps (as had been shown on the plans originally lodged with Council by TSE Group Ltd - the consultants);
- (b) To construct a diversion channel as shown in the report annexed to Judge Paterson's decision;
- (c) To gravel the driveway to avoid mud being transported onto Allington Road;
- (d) To spread sufficient quantities of grass seed and fertiliser over the exposed areas of earthworks.

The objective of this application was primarily to prevent silt reaching the tributary to Karori stream and to prevent dust



which was the subject of significant nuisance to nearby neighbours. That latter point is disputed by the respondent but having heard from one of the neighbours we are satisfied that dust nuisance is significant and to a degree intolerable.

The Council did not proceed with the application having reached agreement with the **respondent**. ~~That~~ agreement required the respondent to authorise Truebridge Calender Beach Ltd to prepare plans for earthworks pursuant to the orders that had been made by Judge Paterson. Various correspondence then took place between the Council and the consultants.

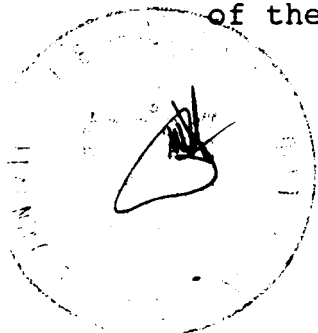
In or about January 1991 the Council approved a plan prepared by Truebridge Calender Beach Ltd for the earthworks and development of Mr Ivanoff's property subject to several conditions. One condition included a development bond of \$30,000 which the respondent now disputes but having regard to the history of the matter we consider that the request for a bond was more than reasonable.

The Council by letter dated 25 November 1991 reminded the respondent of the need to complete the earthworks and to cease living in the accommodation by 31 December 1991.

In February of 1992 the respondent was still residing on the property and the Council took steps to seek committal. At that stage no further steps were taken in relation to earthworks as an extension for those works to 30 June 1992 had been granted. Because of a technicality concerning the notification to the respondent of the consequences of disobedience of the injunction the application for committal was dismissed.

To complete this aspect of the matter we must here refer to the evidence of Mr Ivanoff when he told us that on or before 24 January 1992 he accepted a tender (in principle) from McKay Construction for \$125,225.00 plus GST to complete the earthworks within an 8 week period. He told us that he had obtained the finance and was ready to go ahead. The Tribunal being curious as to why two construction periods should have passed since the acceptance of that tender asked the respondent why nothing had yet been done. His response was that he had not got the money and considered that the Council had in some way stopped him by influencing finance companies. We mention this at this stage because it is symptomatic of the continued vacillation which is evidenced by the record we have so far given. We further record that the respondent told us that his financial state is presently precarious. He told us he is living with his wife upon the site because they are in receipt of a pension and are unable to afford accommodation elsewhere. If that is so we can simply observe that it is high time he faced reality and sold his property which must be of some value leaving future problems to someone who may be more financially able to cope.

Returning to the evidence of Councillor Bedingfield she told us **of the** effect upon residents which was confirmed by evidence we



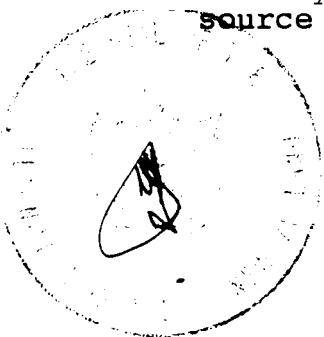
heard from those residents. She stated:


"I believe it is fair to say from my discussions with the residents that they are totally frustrated and at present despondent about the state of Mr Ivanoff's property."

The residents are concerned with dust, appearance, neglect, derelict cars, the bus and caravan, shipping containers, piles of wood and other junk. This amenity detraction has continued for several years. We were told that many of the residents have moved from the area and that in the view of many residents the value of their properties have decreased significantly. The neighbours consider the property to be a visual detraction visible from a large part of Karori and indeed the excavations can be seen from some distance when travelling south along Karori Road.

We have concluded from hearing the evidence of the councillor that Mr Ivanoff has virtually achieved community destruction by being either unable to or unwilling to remedy the environmental damage he has done and by his obdurate attitude to a Council which is merely trying to apply environmental law for the benefit of the community at large.

We turn now to the evidence of the other witnesses called. Mr B Bhikha is the owner of the property immediately adjacent to the entrance to the application site. He tells us of constant mess on the site with noise, dirt, dust, silt run off, fires etc. His personal concern was dust which blows into his home through open windows or open garage doors and on occasions onto clothes which are on the washing line drying. He told us that the dust is a clay dust, orange in colour and in particular he recently expended \$200 to have his house waterblasted. In winter rain, dirt and silt trickles down into Allington Road and onto the pathway. Although Mr Ivanoff attempted to argue with Mr Bhikha when questioning him we are satisfied as to the correctness of that evidence. Another resident was called on subpoena by the respondent namely Mrs Walmsley but we were subsequently told by him that she was not required. Nevertheless we decided to inspect her property as she was concerned at the effect upon it caused by the activities of the respondent. Direct evidence of that effect was given to us by Mr T Chrysoulis the Wellington drainage and public services officer. The property is at 7 Allington Road and contains an ornamental pond into which the Karori stream flows. An inspection of that property revealed silt and aggregate buildup apparently occurring over the last few years of significant proportions. It has destroyed to a large degree the tranquil pond which previously existed and has blocked the flow of water under one arch of an attractive bridge built across the stream. Although there may be some aggregate and/or silt unconnected with the respondent's earthworks which might contribute to this buildup we have reached the conclusion that Mr Chrysoulis is correct in his conclusion as to the major **source** of that material.



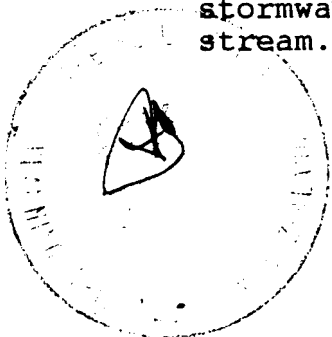


Mr Chrysoulis told us of inspections of the Ivanoff property in July 1992 as a result of this material finding its way into the pond and he told us it was clear from his inspection that the earthworks on the respondent's property had been eroding and that the silt trap at the bottom of the uncompacted fill batter was full. The silt trap was not therefore preventing material from entering into the tributary. The property was again inspected on 6 May 1993 and various photographs taken on that day. In his opinion the situation had worsened and ~~that~~ material was being deposited along the flat parts of the tributary bed which would eventually lead to blockages where the stream had been piped and could result in the flooding of properties downstream. He was in no doubt as to the source of the material causing the problem although he conceded in response to questions from the Tribunal that he had not carried out extensive upstream investigations but had relied upon evidence of other officers to the effect that there were no earthworks or erosion of any significance in the upstream catchment. He stated in evidence:

"It is essential that the existing silt traps on the property be cleared so that they can work properly and ensure that the tributary remains clear. The silt traps must then be cleared on a regular basis. Because of the extent of the erosion, it is also necessary for a further silt trap to be constructed to contain the run off material within the undeveloped site. The surface of the fill batter should be graded so that the run off water does not go down the batter but back down on to the flat land into the developed silt trap."

The respondent questioned the witness concerning the siltation problems which he suggested might have occurred because of a downstream development between the subject site and the pond to which we have referred. The witness did not deviate from his primary evidence although conceding that some localised effect may have occurred when that development first took place.

Mr R W Small, subdivisions officer for the Wellington City Council and a registered engineer's associate with 40 years experience in developments and earthworks, told us of his association with the respondent's property. He produced various photographs and told us that at his last visit he found the property to have deteriorated considerably. We found Mr Small to be anxious to assist in resolving the respondent's problems but we further found that the respondent appears to be in a frame of mind where he will not trust Council officers. In October of 1990 Mr Small told us of the construction of a silt trap and as to why it was not working - namely because it is full of silt and has not been cleared. The respondent, as we have previously recorded, blames the order made by Judge Paterson for his inability to use machinery but we reject that contention. Silt is therefore going directly into the **stormwater** system and entering the tributary of the Karori **stream**.



A further silt trap was constructed under Mr Small's supervision in October of 1990. In April of 1992 that had also become full of silt which was being contained solely by a large log which was at that stage part buried. By April of 1993 the silt was running around the edge of the log. There was no evidence that the trap had ever been cleared in either April 1992 or April 1993. The photos produced showed miniature gullies running down the face of the uncompacted batter and it is inevitable that over years the whole of that uncompacted batter will find its way to the bottom of the valley.

Mr Small was of the view that the batter is extremely dangerous as it has been totally neglected since the work was carried out. He considered it would be unsafe to walk anywhere near the cut face as falling debris could easily cause injury. To be remedied the whole face needs to be properly shaped and compacted and then revegetation introduced either through grassing, hydroseeding or planting.

He said that the earthworks that had been carried out and subsequently neglected at Allington Road would be the worst he had seen in his experience. He told us that the necessary steps could be completed very quickly by using contractors and appropriate equipment such as a grader. Whilst carrying out the work in the summer time would be the best option, because of the state of the property at present this work could and in his opinion should be carried out immediately.

He told us that the minimum required at present was:

- (i) The surface of the uncompacted fill should be reshaped to stop any water from going over the fill.
- (ii) All surface water should be directed to the large silt trap before entering the stormwater system. This silt trap needs to be located not where the existing silt traps are but so that it catches the silt from the reshaped surface. It should be situated approximately opposite the silt trap that was created near the entrance to Allington Road.
- (iii) The two existing silt traps need to be cleared out and then together with any further silt traps installed, cleared on a periodic basis. The traps would need to be cleared approximately once a month to be effective but they should be checked and if necessary cleared after any heavy rainfall.
- (iv) To avoid the continued erosion of the fill batter, it needs to be reshaped and all surfaces need to be top soiled and grassed or hydroseeded.

The foregoing is a synopsis of the evidence of the Council. We turn now to the evidence of the respondent. His evidence largely consists of complaints about the requirements of the



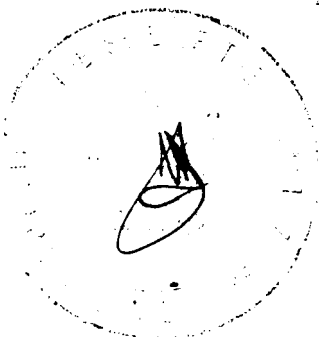
Council and complaints about various contributions he has been required to make and in particular a contribution for a stormwater pipe from a public road across his property. He also told us, with some justification, that remedial earthworks had been delayed because of repositioning of Telecom poles. Nowhere in his evidence does he tell the Tribunal what he is proposing to do to alleviate the intolerable environmental havoc he is wreaking upon the other inhabitants of Karori. As we have previously recorded he had a contract to complete the works which did not go ahead presumably because of shortage of money. He tells us that he is a superannuitant (old age) earning \$288 weekly and had a bad accident some years ago. He tells us he is not in a position to shift because of accumulated possessions including 126m³ of timber stored on site, three large storage containers, a bulldozer, an earthworks digger, a bus and two caravans. He asks us to forbid the Council from entering his property without permission and to forbid the council from taking photographs without permission. He tells us that the disused vehicles belong to his son but when on site inspection he told the presiding Judge that some had been dumped on his property by Council rangers.

We found the respondent's evidence singularly unhelpful in that it gave us no assistance towards resolving the issues before us.

COMMENT:

The situation upon this property is so bad that were the Tribunal still possessed of the powers it previously had under the Town and Country Planning Act 1977 which enabled it to order compulsory acquisition under the provisions of the Public Works Act 1971 for the purpose of amenity improvement it would not hesitate to use them. As it is the RM Act has modified that provision. Section 86 of the RM Act now gives a power to the Council to acquire land only by agreement under the Public Works Act 1981 if it considers it necessary or expedient to do so for the purpose of terminating or preventing any non-complying or prohibited activity in relation to land. That of course is of no assistance in the case of a landowner who is not co-operative. We would suggest however that Mr Ivanoff may well consider this provision of the Act because, if the Council were prepared to acquire the land subject to the compensation provisions of the Public Works Act 1981, then Mr Ivanoff could well find himself in a position to:

- (a) Acquire a home for himself and his wife.
- (b) Have a modest sum of money available for his family when he passes on (that being a cause of concern to him).
- (c) Relieve himself of the worries of a major development exercise which we frankly consider upon the evidence we have heard to be beyond him at his age.



CONCLUSIONS AND ORDERS:

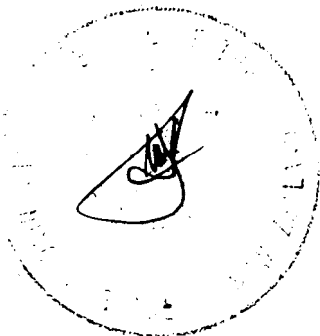
The making of enforcement orders in this case is inevitable. Under the provisions of s.314 there are many of the subsections which could apply. We previously recorded the definitions which the Council seek incorporated in the decision. The originals of the photographs referred to in the definitions form part of the record. For the purpose of incorporation into this enforcement order the definitions are here repeated.

- (i) "*the land*" means the land described in paragraph 2 below.
- (ii) "*derelict vehicles*" means vehicles without a current warrant of fitness and registration at the date of this order.
- (iii) "*piles of timber*" means the timber located on the land, shown in the photographs annexed to the Affidavit of Brendon James Stone as exhibits "D" and "E".
- (iv) "*containers*" means the containers located on the land, shown in the photographs annexed to the Affidavit of Brendon James Stone as exhibits "D" and "E".
- (v) "*bus and/or caravans*" means the bus and/or caravans located on the land, shown in the photograph annexed to the Affidavit of Brendon James Stone as exhibit "D".
- (vi) "*batter*" means the uncompacted fill on the land, shown in the photographs annexed to the Affidavit of Ronald William Small as exhibits "N" and "O".

ENFORCEMENT ORDERS:

After considering the application for enforcement orders and pursuant to s.319 of the Resource Management Act 1991, the Tribunal makes the following orders:-

1. (a) An order pursuant to s.314(1)(a)(i) that the respondent cease using the land as a place for keeping derelict vehicles and piles of timber and containers upon the grounds such use is in contravention of the rules of the District Plan not being a permitted, discretionary or controlled use and not been expressly allowed by a resource consent; and:-
- (b) An order pursuant to s.314(1)(a)(ii) that the respondent cease to use the land as a place for keeping derelict vehicles and piles of timber and containers upon the grounds set forth in that subsection namely that such use is likely to be noxious, dangerous, offensive, or objectionable to



such an extent that it has and is likely to have an adverse effect on the environment; and:-

- (c) An order pursuant to s.314(1)(b)(i) that the respondent remove the derelict vehicles and piles of timber and containers from the land for the purpose of avoiding, remedying or mitigating the actual or likely adverse effects on the environment caused by the respondent in respect of those uses.

The foregoing orders shall be complied with within thirty (30) days from the date of this decision.

2. (a) An order pursuant to s.314(1)(a)(i) prohibiting the respondent from living in a bus and/or caravans on the land and requiring the respondent to cease living in a bus and/or caravan on the land in contravention of the rules of the District Plan and s.9(1)(a) of the Act; and:-
- (b) An order pursuant to s.314(1)(b)(ii) that the respondent remove the bus and caravans from the land for the purpose of avoiding, remedying and mitigating actual and likely adverse effects on the environment caused by the presence of such bus and caravans upon the land.

The foregoing orders number 2 are to be complied with within forty two (42) days from the date of this decision.

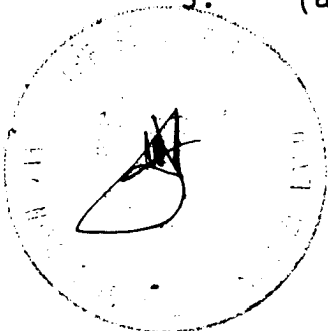
In respect of the foregoing matters we have not made all the orders sought on the basis that some are unnecessary and/or repetitive.

ORDERS IN RELATION TO EARTHWORKS:

In respect of the earthworks the damage has been done therefore the question of "ceasing" is largely irrelevant. The contravention of the Act or rules has already taken place in that the earthworks have been commenced without the consent of Council under the appropriate rule. Those acts could be the subject of prosecution proceedings and we record that we told Mr Ivanoff in the course of proceedings that the Council, far from being vindictive, have shown some compassion in that they have not moved against him under the punitive provisions of the Act which could, if he were proven guilty, result in a fine of \$200,000 or a 3 year term of imprisonment.

We consider the appropriate orders are those which relate to the environmental effects of the earthworks to ensure that positive steps are taken. We therefore make the following orders:

3. (a) An order pursuant to s.314(1)(b)(i) that the respondent adhere to the earthworks plan approved



by Council by doing the following things to ensure compliance:

- (i) Reshape the surface of the batter to stop any surface water from going over the batter; and
 - (ii) Direct all surface water to silt traps before entering the stormwater system; and -
 - (iii) Instal silt traps necessary to contain the runoff of material within the land; and -
 - (iv) Clear out immediately and thereafter on a periodic basis at not less than yearly intervals all silt traps before they become filled; and -
 - (v) Reshape the batter and top soil to a slope factor enabling grassing or hydro seeding of all surfaces and to then in fact grass or hydro seed those surfaces.
- (b) The respondent is ordered pursuant to s.314(1)(b)(ii) for the purpose of remedying or mitigating any adverse effects on the environment caused by the actions of the respondent to:
- (i) Reshape the surface of the batter to stop any surface water from going over the batter; and -
 - (ii) Direct all surface water to silt traps before entering the stormwater system; and -
 - (iii) Instal silt traps necessary to contain the runoff of material within the land; and -
 - (iv) Clear out immediately and thereafter on a periodic basis at not less than yearly intervals all silt traps before they become filled; and -
 - (v) Reshape the batter and top soil to a slope factor enabling grassing or hydro seeding of all surfaces and to then in fact grass or hydro seeding those surfaces.

The works to which the foregoing order number 3 relates shall be completed within ninety 90 days of the date of this decision.

The question of costs is reserved.

FINAL COMMENT:

The Tribunal is prepared to make orders couched in terms of further precision if the Council chooses to place before the Tribunal an order based on the contract for earthworks accepted by the respondent in January of 1992. This may be a more effective order and is within the terms of the relief sought. ~~Therefore~~ although this decision remains final in respect of ~~all the~~ orders we have so far made it remains interim in



respect of that issue and we await the submissions of the Council. Enforcement orders are accordingly granted in the terms previously set forth.

DATED at WELLINGTON this 10th day of September 1993



W J M Treadwell
Planning Judge

0759P

ENF 108/93

RECEIVED
-9 JUN 1993

IN THE PLANNING TRIBUNAL AT WELLINGTON

No. _____

BETWEEN WELLINGTON CITY COUNCIL

Applicant

AND JORDAN PETER IVANOFF

Respondent

**APPLICATION FOR AN ENFORCEMENT ORDER UNDER SECTION
316 OF THE RESOURCE MANAGEMENT ACT 1991**

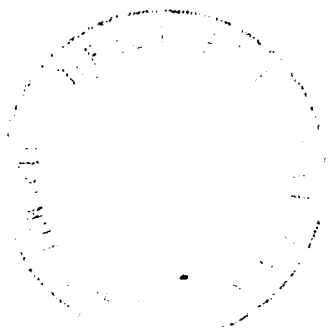
TO: The Registrar
Planning Tribunal
WELLINGTON

THE WELLINGTON CITY COUNCIL a local authority duly constituted under the Local Government Act 1974 situated at 101 Wakefield Street, Wellington, HEREBY APPLIES for enforcement orders under Section 316 of the Resource Management Act 1991.

1. **The type of enforcement orders sought are:**

~~(a)~~ Definitions

With respect to the following orders:



- (i) “the land” means the land described in paragraph 2 below.
- (ii) “derelict vehicles” means vehicles without a current warrant of fitness and registration at the date of this order.
- (iii) “piles of timber” means the timber located on the land, shown in the photographs annexed to the Affidavit of Brendon James Stone as exhibits “D” and “E”.
- (iv) “containers” means the containers located on the land, shown in the photographs annexed to the Affidavit of Brendon James Stone as exhibits “D” and “E”.
- (v) “bus and/or caravans” means the bus and/or caravans located on the land, shown in the photograph annexed to the Affidavit of Brendon James Stone as exhibit “D”.
- (vi) “batter” means the uncompacted fill on the land, shown in the photographs annexed to the Affidavit of Ronald William Small as exhibits “N” and “O”.

(b) Derelict Vehicles, Piles of Timber and Containers

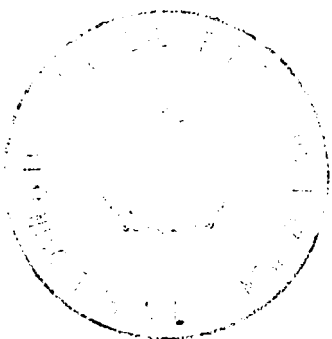
- (i) An order pursuant to s.314(1)(a)(i) requiring the Respondent to cease using the land as a place for keeping piles of timber and/or containers which contravenes s.9(1)(a) of the Act; and/or
- (ii) An order pursuant to s,314(1)(a)(ii) requiring the Respondent to cease using the land as a place for keeping derelict vehicles and/or piles of timber and/or containers,

which are likely to be noxious, dangerous, offensive or objectionable to such an extent that has or is likely to have an adverse effect on the environment; and/or

- (iii) An order pursuant to Section 314(1)(b)(i) requiring the Respondent to remove any derelict vehicles and/or piles of timber and/or containers from the land to ensure compliance with the preceding orders; and/or
- (iv) An order pursuant to Section 314(1)(b)(ii) requiring the Respondent to remove any derelict vehicles and/or piles of timber and/or containers from the land to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by the Respondent allowing such derelict vehicles and/or piles of timber and/or containers to be on the land; and/or
- (v) An order pursuant to Section 314(1)(c) requiring the Respondent to remove any derelict vehicles and/or piles of timber and/or containers from the land to remedy or mitigate any adverse effect on the environment caused by the Respondent allowing such derelict vehicles and/or piles of timber and/or containers to be on the land; and/or

(c) Bus and Caravans:

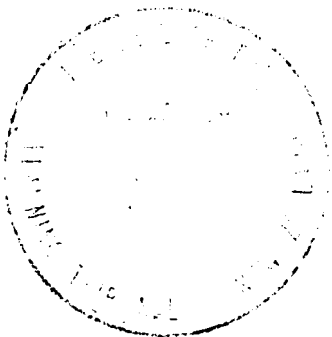
- (i) An order pursuant to Section 314(1)(a)(i) prohibiting the Respondent from living on a bus and/or caravans on the land and/or requiring the Respondent to cease living on a bus and/or caravans on the land which contravenes Section 9(1)(a) of the Act: and/or



- (ii) An order pursuant to Section 314(1)(a)(ii) prohibiting the Respondent from living on a bus and/or caravans on the land and/or requiring the Respondent to cease living on a bus and/or caravans on the land which is or is likely to be noxious, dangerous, offensive or objectionable to such an extent that it has or is likely to have an adverse effect on the environment; and/or
- (iii) An order pursuant to Section 314(1)(b)(i) requiring the Respondent to remove the bus and/or caravans from the land to ensure compliance by the Respondent with orders (i) and/or (ii) above; and/or
- (iv) An order pursuant to Section 314(1)(b)(ii) requiring the Respondent to remove the bus and/or caravans from the land to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by the Respondent allowing such bus and/or caravans to be kept on the land and/or living in the same; and/or
- (v) An order pursuant to Section 314(1)(c) requiring the Respondent to remove the bus and/or caravans from the land to remedy or mitigate any adverse effect on the environment caused by the Respondent allowing such bus and/or caravans to be kept on the site; and/or

(d) Earthworks:

- (i) An order pursuant to Section 314(1)(a)(i) requiring the Respondent to cease, or prohibit:



- (1) Allowing surface water to run over the batter;
and/or
- (2) Allowing surface water to enter the stormwater
system without being directed through silt traps;
and/or
- (3) Failing to maintain or clear out silt traps; and/or
- (4) Allowing the batter to remain ungrassed;

which contravenes Section 9(1)(a) of the Act; and/or

- (ii) An order pursuant to Section 314(1)(a)(ii) requiring the
Respondent to cease or prohibit:

- (1) Allowing surface water to go over the batter;
and/or
- (2) Allowing surface water to enter the stormwater
system without being directed through silt traps;
and/or
- (3) Failing to maintain or clear out silt traps; and/or
- (4) Allowing the batter to remain ungrassed;

which is or is likely to be noxious, dangerous, offensive, or
objectionable to such an extent that it has or is likely to
have an adverse effect on the environment; and/or



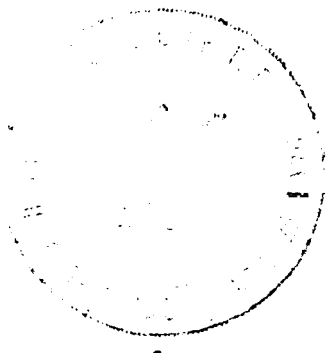
(iii) An order pursuant to Section 314(1)(b)(i) requiring the Respondent to:

- (1) Reshape the surface of the batter to stop any surface water from going over the batter; and/or
- (2) Direct all surface water to silt traps before entering the stormwater system; and/or
- (3) Install any further silt traps necessary to contain the run off material within the land; and/or
- (4) To clear out immediately and on a periodic basis all silt traps; and/or
- (5) Reshape the batter and topsoil and grass or hydroseed all the surfaces;

to ensure compliance by the Respondent with orders (i) and (ii) above; and/or

(iv) An order pursuant to s.341(1)(b)(ii) requiring the Respondent to:

- (1) Reshape the surface of the batter to stop any surface water from going over the batter; and/or
- (2) Direct all surface water to silt traps before entering the stormwater system; and/or
- (3) Install any further silt traps necessary to contain the run off material within the land; and/or



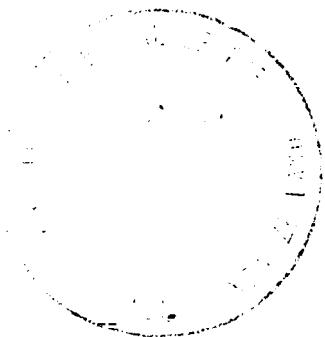
- (4) To clear out immediately and on a periodic basis all silt traps; and/or
- (5) Reshape the batter and topsoil and grass or hydroseed all the surfaces;

in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by or on behalf of the Respondent; and/or

- (v) An order pursuant to Section 314(1)(c) requiring the Respondent to:

- (1) Reshape the surface of the batter to stop any surface water from going over the batter; and/or
- (2) Direct all surface water to silt traps before entering the stormwater system; and/or
- (3) Install any further traps necessary to contain the run off material within the land; and/or
- (4) To clear out immediately and on a periodic basis all silt traps; and/or
- (5) Reshape the batter and topsoil and grass or hydroseed all the surfaces;

to remedy or mitigate any adverse effect on the environment caused by the Respondent; and/or



(e) Costs:

- (i) An order to pay the Applicant's costs of this application pursuant to Section 258; and/or

(f) Any Other Orders:

- (i) Any other orders that the Tribunal deems fit pursuant to Section 314 or any other provisions of this Act.

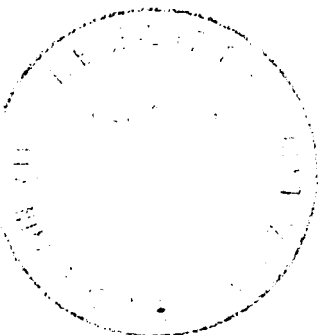
2. The location in respect of which the enforcement order is sought is:
88 Allington Road, Karori, Wellington, and other nearby blocks of land being more particularly described in Certificates of Title Volume 21C/244, 31A/318, 14C/1470 and 257/113 (Wellington Registry).

3. The name and address of the person referred to in the orders as "the Respondent" against whom the order is sought is:

Jordan Peter Ivanoff.

4. The following terms and conditions are sought in respect of the orders:

- (a) That the orders requiring the Respondent to remove the derelict vehicles and/or piles of timber and/or containers are to be complied with within 21 days of the date of the order.
- (b) That the orders requiring the Respondent to remove the bus and/or caravans from the land are to be complied with within 42 days of the date of the order.
- (c) That the orders in relation to earthworks are to be complied with within 90 days of the order, to the satisfaction of the Drainage



and Water Supply Department of the Applicant except for the orders in relation to topsoiling and grassing or hydroseeding the batter.

- (d) That the orders in relation to topsoiling and grassing or hydroseeding the batter are to be complied with by the Respondent engaging a landscape architect to complete a plan for the revegetation of the batter within 90 days of the date of the order and to commence the revegetation programme in the next planting season after the date of the order.

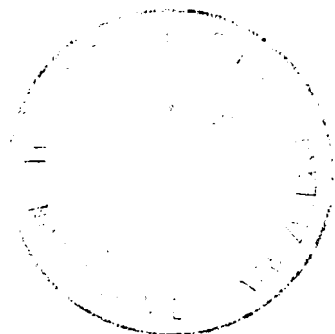
5. The grounds for this application are set out in the attached Affidavits of:

- (a) Babulal Rhikha;
- (b) Ronald William Small;
- (c) Theodore Chrysoulis;
- (d) Valda Margaret Bedingfield;
- (e) Brendon James Stone.

J. M. Suhr

.....
J M Suhr
Solicitor and duly authorised to sign on
behalf of the Applicant

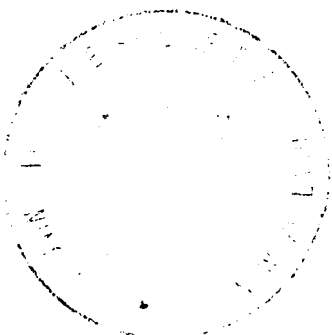
Date: 9-6-93



THIS Application is filed by JOANNA MARIE SUHR Solicitor for the Applicant whose address for service is at the offices of Phillips Fox, Solicitors, 7th Floor, 50-64 Customhouse Quay, Wellington. (PO Box 2791, Wellington. Telephone: O-4-472 6289. Facsimile: O-4-472 7429.)

Annexures

- A. Affidavits of Applicant.
- B. Names and addresses of persons to be served with a copy of this Application.



**NAMES AND ADDRESSES OF PERSONS TO BE SERVED WITH A
COPY OF THIS APPLICATION**

1. Jordan Peter Ivanoff, 88 Allington Road, Karori, Wellington.
2. Elizabeth Ivanoff, 88 Allington Road, Karori, Wellington.

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