

Decision No. W14/96

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: ENF 106/95)

Applicant

AND

HANS ZEITLER

Respondent

BEFORE THE PLANNING TRIBUNAL

His Honour Judge Treadwell presiding
Mr R Bishop
Mrs R Grigg

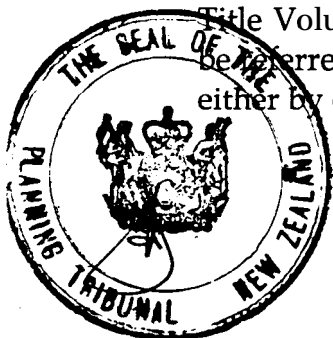
HEARING at WELLINGTON on the 4th day of December 1995

COUNSEL/APPEARANCES

Mr C M Stevens for Applicant
Mr J A Tannahill for Respondent

DECISION

This is an application pursuant to s.316 of the Resource Management Act 1991 (RM Act) in respect of activities being carried out upon properties at 367 - 375 Ohiro Road, Brooklyn, Wellington being particularly described in Certificates of Title Volume 419/80, 407/252, and 462.129 (Wellington Registry). That land will be referred to in this decision as "*the property*". The activities have been carried on either by or with the permission of the respondent.



The council also sought various orders in relation to unformed legal roads which are vested in the council pursuant to s.316 of the Local Government Act 1974. Those activities largely relate to earthworks and have been the subject of a consent order, therefore the jurisdiction of the Tribunal to make enforcement orders requiring works to be undertaken by a private individual upon a public road was not argued.

Remaining issues relate to buses and some caravans parked in a scattered fashion upon the property some of which are being used for human habitation and a building described as an outhouse structure which appears to be used as a type of laundry/ablution facility for those persons occupying the buses. That building is not legally connected to any sewerage or stormwater system.

The buses and caravans used for habitation are similarly bereft of any acceptable ablution or sanitary system.

Some of the buses we are told are being stored on the property preparatory to being fitted out as a type of campervan and this work would be done by the respondent in a small factory upon the property which is used for the construction of kitchen fittings. This presumably has existing use rights but there is no suggestion that those rights extend beyond the present factory building, therefore the storage of buses scattered upon the site for the purpose of this industry would not be protected by existing use rights.

We are perfectly satisfied that the district plan, both transitional and proposed, does not permit the use of buses (which do not fall within the definition of residential building) for human habitation without a resource consent within the residential zone wherein the property is situated. Nor would the storage of buses for the purpose of refurbishment be permitted in terms of those plans without a resource consent or without protection of existing use rights.

The application for the enforcement order is couched in the alternative with orders being sought pursuant to the following sections:

- (a) s.314(i)(a)(i) which relates to contravention of a rule in a plan;
- (b) s.314(l)(a)(ii) which relates to the activity being 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;
- (c) s.314(l)(b)(i) which relates to requiring a person to do something necessary to ensure compliance with a rule; and

(1) s.314(1)(c) which requires a person to remedy or mitigate any adverse effect on the environment caused by or on behalf of that person.



Apart from rule contravention to which we have referred it was not disputed that sanitary and ablution facilities were unsatisfactory or non existent. Mr B J Stone, a council planner in the enforcement arm of council told us that use of the buses for residential purposes was unsanitary substandard and unsightly. He told us the buses were highly visible from a new subdivision and constituted an unnatural addition to the residential area. He considered them dangerous in the sense that the council had no control over safety measures.

Our site inspection confirmed the views of Mr Stone and we would go further and state that in our opinion there is the embryo of an unsanitary slum growing upon this property. The view from above are also an amenity detraction in terms of s.314(1)(b)(ii) and are likely to have an adverse effect on the environment enjoyed by those persons with a view of the site.

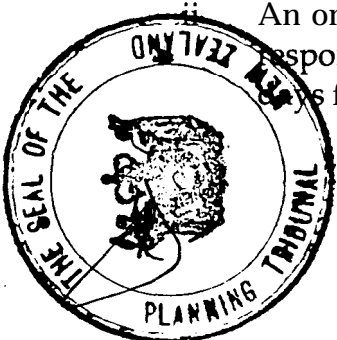
The respondent, Mr Zeitler gave evidence and impressed as a person somewhat naive concerning the resource laws of New Zealand but also did not appear greatly interested in observance of them. We had no evidence of profiteering and indeed it appears that in some instances he is allowing the buses to be occupied by friends or to be parked upon the property by friends or acquaintances. Some are only used spasmodically and some appear to be used full time. Whatever may be the motives of the respondent, the activity must stop and the buses must be removed.

In respect of the outhouse structure, this is a temporary building of spartan appearance. Upon our site inspection it was perfectly obvious that despite the drainage connection being sealed by consent order, it was still being used for laundry purposes. Both Mr Stone and the Tribunal formed the impression that if it remains upon the property it is likely to be noxious or offensive. Although of spartan appearance this particular zone contains no design control and it may well be that it could obtain either a resource consent from council for an acceptable activity or could in some ways be made to comply with accessory building criteria if used for a purpose accessory to a permitted use. We are therefore doubtful if we can order its removal without hearing further evidence but we can certainly make an order prohibiting the use of the structure for laundry or ablution purposes in connection with activities not permitted upon site.

The Tribunal therefore makes the following orders:

- i An order pursuant to ss.314(i)(a)(i) and 314(l)(a)(ii) prohibiting the respondent from allowing occupation of buses and/or caravans presently upon the property for human habitation.

- ii An order pursuant to ss.314(l)(b)(i) and 314(l)(b)(ii) and/or 314(l)(c) that the respondent remove the buses and/or caravans from the property within 14 days from the date of service of this order upon the respondent.



- iii An order pursuant to s314(l)(a)(ii) prohibiting the respondent from using an outhouse structure presently upon the property and used for laundry and ablution purposes ~~from being used using the structure~~ for those purposes.
- iv The property referred to is 367 - 375 Ohiro Road, Brooklyn, Wellington being described in Certificates of Title 419/80, 407/252 and 462/129 (Wellington Registry).

The question of costs is reserved.

DATED at WELLINGTON this 20th day of February 1996

