

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No: [2019] NZEnvC 5
ENV-2016-WLG-000081

IN THE MATTER of an appeal under clause 14 of
the First Schedule of the
Resource Management Act 1991

BETWEEN THE NEW ZEALAND HEAVY
HAULAGE ASSOCIATION INC
(HOUSE MOVERS SECTION)

Appellant

AND SOUTH TARANAKI DISTRICT
COUNCIL

Respondent

Court: Environment Judge C J Thompson
Commissioner R M Dunlop
Commissioner I A Buchanan

Hearing: at New Plymouth 9-10 May 2018

Closing submissions: 16 May and supplementary evidence 18 May 2018

Counsel and parties:

S J Ryan & O J Towle for New Zealand Heavy Haulage Association Inc
M G Conway & C G Coyle for the South Taranaki District Council

FINAL DECISION ON APPEAL

Decision Issued: **24 JAN 2019**

Plan amended as set out in Appendix A.



Introduction

[1] In a decision dated 28 May 2018 ([2018] NZEnvC 80), the Court declined the appeal lodged by the House Movers Section of the New Zealand Heavy Haulage Association (the Association) against the proposed new South Taranaki District Plan's provisions relating to relocated buildings. The Association sought to remove the bond part of the provisions, arguing that a bond was neither necessary nor the most appropriate mechanism for ensuring that transported buildings are brought to an acceptable standard to avoid adverse amenity effects for neighbours or passers-by. Whilst declining the appeal, the Court identified some drafting issues that required attention. We asked the Council to provide a revised draft of the provisions.

[2] The Council provided revised draft provisions, and has updated the provisions to:

- Provide for the advice note for partial refunds of performance bonds to be part of the rule;
- Provide for the two types of bonds (cash bonds or bank (third party) bonds); and
- Make associated mechanical changes to ensure the provisions are workable in light of these changes.

[3] The Council also made changes to the provisions to reflect the amendments agreed by the planners, as set out in the planning Joint Witness Statement.

[4] We have considered the proposed amendments and find that they are appropriate to give effect to the Court's decision.

Orders

[5] The Court orders that the South Taranaki Proposed District Plan be amended as set out in Appendix A.

Dated at Wellington this 24th day of January 2019
For the Court

C J Thompson
Environment Judge



Appendix A: Amended Provisions in Response to Environment Court Decision

Section 2.21 Relocated Buildings

Issue

- 2.21.1 Relocating buildings is an efficient use of resources but they can be unsightly and detract from the visual amenity of an area if they are ~~left unfinished, particularly for long periods~~ not reinstated and repaired in a timely manner.**

Relocated buildings represent sustainable development as they result in the re-use of materials rather than recycling, which may require some form of processing, or sending materials to landfill. Furthermore, relocated buildings provide an affordable housing choice for some. The Council supports the relocation of buildings providing that adverse effects on the quality of the environment can be avoided, remedied or mitigated.

The relocation of buildings in the District is a common practice but has caused some tension in the community. This tension has arisen because relocated buildings tend to be older buildings that may need some repair and they are being relocated onto sites but not re-instated to a standard anticipated by the community. For example, houses are left on blocks rather than foundations and are left unpainted or without driveways.

Objective

- 2.21.2 Maintain and enhance the amenity values of areas by ensuring relocated buildings avoid, remedy or mitigate their adverse effects.**

Policy

- 2.21.3 Provide for the relocation of buildings while requiring the completion and renovation of exterior reinstatement and repair works within a reasonable timeframe to avoid, remedy or mitigate their adverse effects.**

Explanation of Policy

The policy supports the relocation of buildings in the District provided that effects on the environment can be managed so as to not adversely affect amenity values and character, particularly in the Residential Zone. Relocated buildings are an important element of affordable housing and resource efficiency. However they can, if not properly established on sites, generate adverse effects as they can look unfinished for long periods of time.

The Council manages the relocation of buildings by way of rules and performance standards to maintain the quality of the environment.

Methods of Implementation

The methods of implementation include:

- Rules which permit relocated buildings subject to performance standards relating to previous use, foundations, and a performance bond and owner certification to maintain and enhance amenity values.



- Assessment of environmental effects through the resource consent process for proposals that are not permitted, because of non-compliance with performance standards. Use of conditions on resource consents to control the effects of relocated buildings.
- The provisions of the [Building Act 2004](#) and New Zealand Building Code to manage the structural integrity and habitable and occupancy requirements for relocated buildings.

Section 18 District Wide Rules

18.1 CATEGORIES OF ACTIVITIES

18.1.1 Permitted Activities

- (a) Relocated buildings (including the removal of a building from its original site).

18.1.3 Restricted Discretionary Activities

- (a) Any relocated buildings which do not comply with any one or more of the Performance Standards in Section 18.2.1.

Matters to which the Council restricts its discretion:

- (i) External appearance of the building and site reinstatement
- (ii) Effects on amenity values
- (iii) Length of time taken to re-construct, repair or refurbish the building
- (iv) Performance bond.

18.2 PERFORMANCE STANDARDS – PERMITTED ACTIVITIES

18.2.1 Relocated Buildings

1. All relocated buildings shall comply with the relevant rules and standards of the Zone into which the building is to be relocated or relevant Concept Plan.
2. Building Inspection Report
 - (i) Prior to the building being relocated onto a site, a building consent(s) shall be obtained that covers all of the matters listed below; and
 - (ii) A building inspection report prepared by a Council Building Officer or other Licensed Building Practitioner shall accompany the building consent application. The report is to identify all reinstatement work required to the exterior of the building and an estimate of the costs for the external refurbishment works after relocation (see District Wide Rule Appendix 1 for report contents); and

The building shall be placed on permanent foundations approved by the building consent, no later than two months from the date the building is moved to the site; and



- (iv) All other work required to reinstate the exterior of any relocated building, including painting if required, shall be completed within twelve months of the building being delivered to the site. Reinstatement work is to include connections to all infrastructure services and closing in and ventilation of the piled foundations; and
 - (v) The owner of the site on which the relocated building is placed shall certify that the reinstatement work will be completed within the twelve month period. The site owner shall be responsible for ensuring this work is completed.
3. Previous Use
- (i) Any relocated building intended for use as a dwelling or for visitor accommodation must have previously been designed, built and used as a dwelling or for visitor accommodation.
4. Performance Bond
- (i) A ~~refundable performance bond of~~ in an amount equal to 125% of the cost of external reinstatement works identified in the Building Inspection Report under Performance Standard 18.2.1.2 in cash to shall be lodged with the Council along with the application for building consent, as a ~~guarantee that~~ security for completion of the external reinstatement works are completed.
 - (ii) The bond shall either be a cash bond deposited with the Council, or an on demand performance bond issued by a bank registered in New Zealand or another entity approved by the Council, and shall in either case be lodged in terms of the form of Deed annexed as District Wide Appendix 2 to the District Plan.
 - (iii) Subject to the provisions of the Deed, the bond will be refunded or released, after the Council has inspected and confirmed compliance with external reinstatement requirements. The Council will consider a partial reduction in the quantum of the bond when the main components (i.e. roof, wall cladding, foundation cladding) of the external reinstatement work are completed. In considering any such partial reduction, the Council shall take into account the amount specified for the relevant completed works in the building inspection report.

~~Note: The Council will in good faith consider the partial release of the bond to the extent that reinstatement works are completed (i.e. on a proportional basis).~~

18.3 DISTRICT WIDE RULES APPENDIX 1: BUILDING INSPECTION REPORT FOR RELOCATED BUILDING (PERFORMANCE STANDARD 18.2.1.2)

A Building Inspection Report for Relocated Buildings shall contain the following information:

- (a) Applicant's Contact Details
- (b) Building Details and Condition (description, condition, required upgrades and comments)
 - (i) Roof
 - (ii) Spouting and Downpipes
 - (iii) Wall Cladding
 - (iv) Foundation Cladding
 - (v) Sub-Floor Cladding and Ventilation
 - Window and Door Joinery



“Bond” or “Relocated Buildings Bond” means the Bond created by this Deed;

“Building ~~Pre~~-Inspection Report” means a report prepared by an appropriately qualified person in accordance with District Wide Rules Appendix 1 of the District Plan identifying the Reinstatement Works;

“Cash Deposit” means any sum or sums of money deposited in cleared funds with the Council from time to time by the Owner, any financial institution at the request of the Owner or other party at the request of the Owner, which have a value totalling the Quantum;

“Completion of the Reinstatement Works” means the date on which the Council confirms in writing to the Owner that the Reinstatement Works have been completed;

“Commencement Date” means the date on which the Relocated Building is placed on the site, whether on temporary supports or otherwise;

“Council” means the South Taranaki District Council and its successors and assigns;

“Monitoring Sum” means the Council’s actual and reasonable costs for carrying out monitoring and administration in relation to the Reinstatement Works;

“Owner” means *[name of registered proprietor(s) of the land onto which the Relocated Building is to be placed and who is/are to be bound by this Bond]* together with successors and permitted assigns;

“Performance Standards” mean the Performance Standards in Rule 18.2.1 of the South Taranaki District Plan;

“Plan” or “District Plan” means the South Taranaki District Plan;

“Quantum” means the sum as determined from time to time in accordance with clause 3.1;

“Reinstatement Works” means the extent of the work required to the exterior of the Relocated Building as specified in the Building Pre-Inspection Report for the purposes of the District Plan. The exterior reinstatement works will not include matters regulated by the building legislation such as re-joining of the roof; re-joining of the building (if shifted in more than one section) or connection to foundations; but may include matters required by the District Plan for work to be undertaken and completed to the exterior of the building to a workmanlike standard and to achieve a tidy appearance, including, without limitation:

- (a) Repair of broken windows and window frames;
- (b) Repair of rotten weatherboards or other damaged wall cladding;
- (c) Necessary replacement or repair of roof materials;
- (d) Cleaning and/or painting of the exterior where necessary e.g. roof, walls, window frames etc; and/or
- (e) Replacement and painting of baseboards or other foundation cladding.

“Relocated Building” shall have the same meaning as the definition of “Relocated Building” in Section 1 of the District Plan;

“Security” means the Cash Deposit or Performance Bond;

“Site” means the whole of the land onto which the Relocated Building is to be placed;

“Term” means the period from the Commencement Date to Completion of the Reinstatement Works.



Joint and Several

- 1.2.1 References in this Deed to the "Owner" are references to the parties (if more than one) named in this Deed as the Owner jointly and severally, and the representations, covenants and undertakings of the Owner in this Deed shall be deemed to be given jointly and by each of them severally.

2. THE BOND

2.1 Undertaking to Comply

The Owner undertakes to the Council to:

- (a) complete, at the expense of the Owner, the Reinstatement Works as set out in the Building Pre-Inspection Report within the timeframe specified by Rule 18.2.1 of the District Plan or within such reasonable timeframe otherwise agreed by the Owner and the Council in writing; and
- (b) promptly remedy any breach by the Owner of its obligations under this Deed within seven (7) days of a request in writing by the Council to do so, or within such reasonable timeframe otherwise agreed by the Owner and the Council in writing.

2.2 Council Right to Access

The Council may from time to time, under section 171 of the Local Government Act 2002, enter onto the Site to ascertain whether the Reinstatement Works have been completed to the satisfaction of the Council.

2.3 Council Right to Rectify

If the Owner fails to comply with the Owner's obligations, or any of them, referred to in clause 2.1 within seven (7) days of receipt of the notice in writing from the Council referred to in clause 2.1(b), or within such reasonable timeframe otherwise agreed by the Owner and the Council in writing, which notice shall refer to the failure and request the failure to be rectified, then:

- (a) the Council may (but shall not be under any obligation to) undertake, or procure that its contractors undertake, all or part of those obligations referred to in the notice;
- (b) for that purpose, the Council (including its contractors and assigns) may, at all reasonable times, enter the Site, including any Relocated Building on the Site; and
- (c) the Owner will pay to the Council upon demand the amount of all costs, expenses, liabilities and other amounts incurred by the Council under or in connection with the exercise by the Council of its rights under clause 2.3(a) and (b), less the amounts paid to the Council and which the Council is entitled to retain on its own behalf from the Security under clause 4.1 or otherwise.

2.4 Provision of Security

To better secure to the Council the completion by the Owner of its obligations under this Deed and the District Plan, the Owner undertakes on or before the date the Council issues a building consent to relocate the building to the Site, to either:

- (a) deposit into a bank account in the name of the Council, with a bank nominated by the Council in cleared funds, the Cash Deposit totalling the Quantum; or
- (b) provide a Performance Bond in favour of the Council.

2.5 Application of Security

- 2.5.1 The Council may, from time to time, apply all or part of the Cash Deposit or any proceeds from a demand under the Performance Bond for payment of the Monitoring Sum, which sum shall be deducted from the Cash Deposit or drawn under the Performance Bond before or on repayment of the balance of the Cash Deposit or the release of the Performance Bond upon Completion of the Reinstatement Works in accordance with clause 3.2.1.



- 2.5.2 If the Owner fails to comply with any of its obligations referred to in clause 2.1 within seven (7) days of receipt of a notice in writing from the Council, which refers to the failure and requests the failure to be rectified, or within such reasonable timeframe otherwise agreed by the Owner and the Council in writing, then the Council may, from time to time apply all or part of the Cash Deposit, or make a demand under the Performance Bond and apply all or part of the proceeds, towards the payment of any sum payable by the Owner to the Council under this Deed, the District Plan and/or the Act, including any sum incurred by the Council under clause 2.3 of this Deed, or draw and retain all or part of those proceeds to cover amounts as reasonably estimated by the Council to be incurred or which may (in the reasonable estimation of the Council) be incurred by the Council or its contractors under clause 2.3 or in respect of those matters.

3. QUANTUM PROVISION AND RELEASE OF THE SECURITY

3.1 Quantum and Provision of the Security

3.1.1 The Quantum of the ~~Bond Security~~ as at the Commencement Date shall be one hundred twenty five (125) percent of the estimated cost of the Reinstatement Works as established by the Building Pre-Inspection Report. A loading of 25% of the estimated cost of remediation is added to protect the Council from price fluctuations.

3.1.2 For the avoidance of doubt, the Quantum of the ~~Relocated Buildings Bond Security~~ does not include any bond required by the Council for the purposes of its Land Transport Bylaw.

3.2 Release of Owner of Security

3.2.1 Upon Completion of the Reinstatement Works, the Council shall release the Owner from the obligations under clause 2 of this Deed, and either repay the balance of the Cash Deposit or authorise the release of the Performance Bond remaining after application under clause 2.5 or clause 4.1, if any, ~~to the party which provided the Cash Deposit.~~

4. PAYMENT OF QUANTUM AND CALLS ON THE SECURITY

4.1 If the Owner:

4.1.1 Fails to comply with the Owner's obligations, referred to in clause 2;

4.1.2 Abandons the Site without taking adequate and proper measures to rehabilitate the Site to the reasonable satisfaction of the Council; and/or

4.1.3 Fails to comply with any of the obligations of the Owner under this Deed,

the Council may, without notice and without limitation of its rights under clause 2, ~~forfeit (take) such of the Quantum~~ take such part of the Cash Deposit, or demand such amount under the Performance Bond, as it estimates will be the cost of carrying out remedial work (including the Reinstatement Works) or measures to rehabilitate the Site to a standard similar to surrounding properties (which costs may include any Monitoring Sum) and may call, apply or enforce, without further notice, on or exercise its rights in respect of the Security in that sum. The Council may at any reasonable time and from time to time enter the Site and take such steps and carry out such works as may be necessary to rehabilitate the Site;

4.1.4 Transfers ownership of the Site without the Council having received a bond from the Transferee containing the same terms and conditions as are set out in this Bond, then the ~~Quantum Cash Deposit~~ shall be forfeited to the Council ~~and the Council may, without notice, call on or exercise its rights in respect of the Security in that sum~~ or the Council shall be entitled to draw on the Performance Bond and retain the proceeds.

5. RESOURCE MANAGEMENT ACT 1991

The powers and remedies given to the Council in the Bond and the Security are in addition to all other powers and remedies conferred on it by the Resource Management Act 1991 and the exercise by the Council of any power or remedy under the Bond shall not prejudice its authority to exercise any other such power or remedy.



ENVIRONMENTAL VARIATION AND RENEWAL

The Bond may be varied or renewed at any time by agreement in writing between the Owner and the Council.

7. ARBITRATION

In the event of any dispute or difference between the parties arising out of the Deed or the construction of interpretation thereof then the dispute or difference shall be referred to a sole arbitrator to be agreed upon between the parties or failing agreement, appointed in accordance with the provisions of the Arbitration Act 1996 and its amendments or any Act passed in substitution thereof.

8. NOTICES

All notices required or permitted to be given under or in connection with this Deed shall be in writing and be served on a person or on a body (whether incorporated or not) in accordance with the method of service of documents in section 352 of the Act or any section enacted in substitution thereof.

8.1 The Owner: If to the Owner to:

[add address]

8.2 The Council: If to the Council to:

The Chief Executive
South Taranaki District Council
105 – 111 Albion Street
Private Bag 902 HAWERA 4640

9. COSTS

9.1 Without prejudice to any other right of recovery or reimbursement of costs or expenses by the Council at law or otherwise, the Owner agrees to pay to the Council, promptly upon receiving a request in writing and an appropriate tax invoice, the Council's reasonable legal costs and disbursements incurred in connection with the preparation and engrossment of this Deed.

10. MISCELLANEOUS

10.1 All payments under this Deed will be made in cleared funds without deduction, withholding, set-off or counterclaim.

10.2 The entry into and performance of obligations under this Bond shall not merge with or release any rights or obligations under the District Plan, nor shall the provision of the Security merge with or release the Owner's covenants under this Deed.

10.3 The Owner undertakes that it shall not exercise its rights under a Building Consent to relocate a building unless and until the Owner has signed this Deed and has caused the Cash Deposit to be deposited in cleared funds with the Council or a Performance Bond to be issued in accordance with this Deed, in each case having a value not less than the Quantum.

10.4 The Owner acknowledges and agrees that all references to the approval, determination or satisfaction of the Council in this Deed shall be deemed to mean the approval, determination or satisfaction of the Council at its reasonable discretion.

In witness of which this Deed has been executed.

SIGNED by *[Owner]*

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Director

Director

The Common Seal of)
SOUTH TARANAKI DISTRICT COUNCIL was)
affixed in the presence of:)

Mayor

Chief Executive

