Decision following the hearing of an application for resource consent

SUBJECT: Application for resource consent under section 88 of the Resource Management Act 1991 by Papakura Private Hospital to demolish the existing building and develop a new private hospital at 7A and 9 Youngs Road, Papakura held on 7 April 2014 commencing at 9.45 am Totara Room, Manukau Service Centre

CONSENT, PURSUANT TO SECTION 104B OF THE RESOURCE MANAGEMENT ACT, IS REFUSED.
THE FULL DECISION IS SET OUT BELOW

Hearing Panel: The Application was heard by Hearings Commissioners consisting of:

Ms Justine Bray (Chairperson)
Mr Ian Munro
Ms Janine Bell

Council Officers: Ms Marian Whitehead Team Leader Resource Consents
Ms Lee Boyt Reporting Officer
Mr Raj Kumar Development Engineer
Mr Peter Joyce Urban Designer
Ms Paulette Gagamoe Democracy Advisor – Hearings

APPEARANCES:
For the applicant: Owen Purdon - Applicant
John Latimer - Architect
Richard Blakey – Planner

Submitters:
Gordon Sowden – Tabled evidence
PF & ML Robertson represented by Larissa Clarke
Jennie & Edward Harmer & Christine Grinlinton
Brian Matthews
John Hunter
APPLICATION DESCRIPTION

Application and Property Details

<table>
<thead>
<tr>
<th>Application Number (s):</th>
<th>R/LUC/2013/557</th>
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<tbody>
<tr>
<td>Site Address:</td>
<td>7A and 9 Youngs Road, Papakura</td>
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<tr>
<td>Applicant's Name:</td>
<td>Papakura Private Hospital</td>
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<tr>
<td>Lodgement Date:</td>
<td>19 February 2013</td>
</tr>
<tr>
<td>Hearing Commencement:</td>
<td>9.45am 7 April 2014</td>
</tr>
<tr>
<td>Hearing Panel's Site Visit:</td>
<td>26 March 2014</td>
</tr>
<tr>
<td>Hearing Closed:</td>
<td>12 May 2014</td>
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</tbody>
</table>

Summary of Decisions

Late Submission

A late submission was received from Nicola and Michael Leckie (15A Youngs Rd). The Commissioners are satisfied that waiving compliance with time limits was appropriate and under sections 37 and 37A of the RMA resolved to accept the submission. The applicant was not opposed to this action.

Consent is Refused

Under sections 104 and 104B of the RMA, consent is refused to the discretionary activity application by Papakura Private Hospital. The applicant sought resource consent to develop a 115-bed private geriatric hospital facility in two stages and up to four storeys high to replace the existing 46 bed facility, with associated earthworks, parking and vehicle access and including the removal of three protected trees. The property is located at 7A and 9 Youngs Road, Papakura being Lots 1 & 3 DP 115200 and Lots 1, 4 & 5 DP 115200 and Lot 10 Deeds Plan 685 (Consent Application (LUC/2013/557)).

The full reasons for this decision are detailed at the conclusion of this decision notice.

Introduction

This decision is made on behalf of the Auckland Council by Justine Bray (Chairperson), Ian Munro and Janine Bell (Commissioners), appointed and acting under delegated authority pursuant to sections 34 & 34A of the Resource Management Act (RMA).

The Council’s officer’s report was circulated to the applicant and submitters and the members of the hearings panel prior to the Hearing. The applicant provided some further amendments to the application which were also circulated to all the above parties. The reporting planner provided an amendment to her section 42A report in light of these changes, which was similarly circulated.
The Hearing commenced on the 7 April 2014 and was adjourned in the afternoon of this day after the submitters had given their representations. This was to respond to additional information sought by the panel and subsequently outlined in a Minute from the Chairperson. The information was received and circulated to submitters for written responses and the right of reply was received from the applicant in writing. The Hearing was then closed on the 12 May 2014.

This decision contains the findings of the Commissioners deliberations on the resource consent application and has been prepared in accordance with section 113 of the RMA.

The Proposal

The proposal has been thoroughly explained in the application documents and in the Council’s section 42A report. In summary, the applicant operates a well-established (since 1989) private geriatric hospital facility on its site and wishes to comprehensively redevelop the site and increase the scale of private hospital operations. The proposal involves the staged redevelopment of the facility that will result in the full removal of all existing buildings and their replacement with new facilities. The key characteristics of the proposal are:

- Redevelopment of the existing 46 bed rest home/geriatric hospital and replacing this with a new 115 bed geriatric care facility.
- The development would occur over two stages. The first would involve the construction of a Stage 1 facility on the eastern side of the site to enable existing hospital patients to be relocated into new hospital rooms prior to demolition of the existing hospital facility. The construction of the balance of the building and associated parking and landscaping would occur as Stage 2 of the development.
- The building is of a design that progressively steps away from the site boundaries as it rises, with a maximum height of four storeys.
- Fifty two car parking spaces are provided with the main access via 9 Youngs Road and a service access via 7A Youngs Road. Emergency access only will be provided via the existing driveway off Great South Road.
- Staff numbers will increase from approximately 10-15 per shift to approximately 40 during the busiest shift times.
- Earthworks covering a total plan area of 3,500m² and a volume of 2,500m³ to enable the creation of a level building platform and associated parking, access and outdoor areas.
- Three native trees (a 10 metre high Rimu, a 9 metre high Karo and a 6 metre High Lancewood) will be removed. The design will enable retention of two large Kauri trees which will be incorporated into the landscaped parking area.
Site and Locality

The Commissioners visited the site on 26 March 2014. We agree with and accept the descriptions of the site and locality provided in the application document and the Council’s section 42A report. In summary, the site is in the northern part of Papakura, approximately 1.5 kilometres from the Papakura Town Centre. It is located in what can be characterised as a suburban area. The site and its locality are for all intent and purpose flat.

The existing hospital building (situated at 7A Youngs Road) is a single storey structure, of a relatively sprawling shape, and which covers a fairly substantial portion of the site. The hospital building extends along the full length of the rear (northern-western) and side (south western) site boundaries with the balance (eastern portion) of the site being utilised for parking. This site also has an existing right of way to Great South Road which is formed but unused for vehicle access.

The property at 9 Youngs Road has an area of 1,352m² and contains a single storey residential dwelling (which would be demolished). Two approximately 12 metre tall Kauri trees are contained in the western corner of the site.

The neighbourhood surrounding the subject site is generally characterised by single storey residential development, many units of which have been developed as clusters of flats with shared access. On their site visit, the Commissioners observed a number of two storey dwellings around the surrounding streets.

The land to the north contains the Counties Manukau District Health Awhinatia facility. The perimeter of the site is grassed and undeveloped with a cluster of single storey buildings and associated access and parking located some 40 metres from the subject site’s boundary. Approximately 100 metres to the south-west of the site is the property at 21 Youngs Road which contains duplex housing for elderly residents and a hospice facility.

Consents Required

Although the Commissioners were not fully convinced by the Council’s reporting consultant planner Ms Lee Boyt’s view that the activity is not a residential activity, they accept that there will be non residential activities occurring on the site that are closer to a hospital facility than a residential activity. That the applicant refers to itself as a hospital rather than, for example, an assisted residential living facility, reinforces this. On this basis the Commissioners accept Ms Boyt’s recommendations as set out in her section 42A report, including that overall consent is required as a discretionary activity. The consents required are:

Operative District Plan – Auckland Council District Plan (Papakura Section)

Rule 4.9.8.3 – Discretionary Activities

Residential activities are defined in the District Plan as “activities comprising one or more household units” (and include accommodation for physical, psychological or social support). A household unit is defined as “a building intended to be used as an independent residence”. The hospital activity, whilst providing sometimes long term accommodation for patients that to them represent their permanent address, the facility is not intended to
provide purely private residential living akin to a retirement village or intensive housing development.

The proposal therefore involves a ‘non-residential activity’ component and is not a listed permitted or controlled activity. Section 4.9.8.3 of the District Plan states that “other activities as specified in Rule 4.16.4.2 shall be deemed to be discretionary activities for which a resource consent must be obtained.” A Private Hospital is not one of the specified activities (listed in Rule 4.16.4.2) however and on this basis, as a resource consent is required for the proposed hospital, section 87B of the Resource Management Act applies. This states that:

“(1) An application for a resource consent for an activity must, with the necessary modifications, be treated as an application for a resource consent for a discretionary activity if - . . . .

(b) a plan or proposed plan requires a resource consent to be obtained for the activity, but does not classify the activity as controlled, restricted discretionary, or non-complying under section 77A”

The application therefore requires consideration as a discretionary activity.

Rule 4.9.8.3 states that in assessing discretionary activity resource consent applications the Council will use a number of performance criteria as a guide. These include the following:

Rule 4.9.8.3.1 – Use of buildings

No building providing for Residential Activities shall be used for more than 6 household units or provide accommodation for more than 10 people subject to common management or custodial arrangements. Household units shall be limited to six per lot.

Buildings to be used for non-residential activities or community facilities shall be limited to accommodating no more than 50 persons. The development proposes a 111 bed space private geriatric hospital activity.

Rule 4.9.8.3.2 – Bulk and Location

- The proposal exceeds the maximum height limit of 9 metres by 4 metres at the southern end of the roof parapets. The lift structure (5.5 metres x 3 metres) exceeds the height limit by a further 0.5 metres.

- The proposal exceeds the height in relation to boundary control (2m + 45°) along the western site boundary across the two projected elevations along this boundary, and by a maximum of 4 metres.

- The proposal exceeds the maximum building coverage limitation of 35% (1,794m²) of the net lot area by 1% (99m²).

- The proposal exceeds the maximum paved surface area of 25% (1,282m²) by 12% (625m2).

Rule 2.10.1.1 – Earthworks

- The proposal involves earthworks of 2,500m³ (which exceeds the permitted activity threshold of 50m³). Pursuant to Rule 2.10.1.1 this requires consent as a controlled activity.
Rule 2.10.2.1 – Trees

- The proposal involves the removal of three generally protected native trees from the site (a Karo, Lancewood and Rimu, being species identified in schedule 3E of the District Plan). This requires consent as a discretionary activity.

Rule 15.8.1 – Parking and Loading

- The proposal involves a parking shortfall of six spaces against the District Plan requirement of 58 spaces and a shortfall of one loading space (as assessed in terms of Rules 15.8.1, 15.8.15.1 and Schedule 15). Pursuant to Rule 15.8.11 this requires assessment as a discretionary activity.

Proposed Auckland Unitary Plan

Part 3 – Regional and District Rules, Chapter H (Auckland Wide Rules), Rule 4.2.1 – Earthworks

The proposal involves earthworks covering an area of 3,500m². Earthworks in the Residential Zones exceeding 2,500m² (and 2,500m³) require consent as a Restricted Discretionary Activity.

Part 3 – Regional and District Rules, Chapter J (Overlay Rules), Rule 3.6 – Pre 1944 Demolition Control

The proposal involves demolishing the existing dwelling at 9 Youngs Road, which was constructed prior to 1944 and this is a Restricted Discretionary Activity.

Notification and Submissions

The application was publicly notified on 20 June 2013. By the close of submissions 21 submissions had been received, 10 in support and 11 in opposition. A further opposing submission was received after the close of submissions. This submission did not raise fundamentally new or different issues to those that had been previously raised, and the Commissioners resolved to accept the late submission.

The opposing submissions were received from:

- Emerald Estate Ltd, 29C Youngs Rd, Papakura;
- B & S Honan, 29A Youngs Rd, Papakura;
- P & F Jury, 11A Youngs Rd, Papakura;
- G Sowden, 2/17 Youngs Rd, Papakura;
- L & B Matthews, 3/17 Youngs Rd, Papakura;
- J Pearce, 7/17 Youngs Rd, Papakura;
- P Wallace, 1/13 Youngs Rd, Papakura;
The issues raised in the above submissions were identified and assessed by Ms Boyt in her section 42A report. They were:

1. Development inappropriate in a single storey residential area
2. Excessive height
3. Loss of privacy
4. Dominance
5. Overshadowing
6. Impacts on traffic safety/flow of traffic
7. Inadequate parking
8. Loss of tranquillity/Noise effects
9. Construction/earthworks effects
10. Contrary to objectives and policies
11. Storage of dangerous goods
12. Devalue homes
13. Poor quality environment for residents of the complex
14. Loss of trees
15. Light disturbance

The relief sought in the submissions varied from full refusal of consent to a reduction in height and scale.
A petition containing 63 signatories (some of whom who have also made individual submissions) was also submitted in objection to the proposal. The Commissioners have disregarded this petition as it was not a submission.

Submissions in support were received from:

- D & M Iveson, 252 Mangatahiri Rd, Pokeno;
- J Cox, 1/17 Youngs Rd, Papakura;
- S MacPherson, 559 East Coast Rd, Kaiaua;
- P Laird, 38 The Track, Takanini;
- G Cameron, 198 Buckville Rd, RD2, Pukekohe
- K & M Logan, 2/7 Youngs Rd, Papakura;
- J Hunter, Longford Park Village, Takanini;
- W de Brouwer, 92B Bycroft Rd, RD2, Drury;
- The Tree Council, Remuera; and
- S Salisbury, 1/59 Longford Park Village, Takanini.

Ms Boyt identified that the issues raised in support were:

1. There is a need for a facility of this nature
2. Appropriate location
3. Effects on my property are not a concern
4. Existing facility offers a good standard of care and is supported
5. Impacts on trees can be mitigated.

For completeness, no written approvals have been provided by the applicant.

**Relevant Statutory Provisions**

In considering the submissions and making a decision, the Commissioners have been principally concerned with sections 104 and 104B of the RMA. Of additional significance have been sections 108, 87B (activity status) and sections 5 – 8 in Part II of the Act.

**Relevant Planning Documents**

The following planning documents were discussed at the Hearing or were otherwise relevant to the Commissioners:

- The Auckland Regional Policy Statement;
The Operative Auckland Council District Plan (Papakura Section);

The Proposed Auckland Unitary Plan; and

The (non statutory) Auckland Plan.

There were no other regional plans, national policy statements or national environmental standards relevant to this application.

Summary of Evidence Heard

The case for the applicant was presented by its planner, Mr Richard Blakey, who introduced the applicant’s team and experts, although he did so purely in an administrative role rather than as an advocate. No legal submissions or formal advocate was used by the applicant. The Commissioners were comfortable with this approach and Mr Blakey at no time confused his role as an impartial planning expert with that of an advocate.

Mr Owen Purdon, the owner and operator of the existing and proposed larger facility, outlined the reasons why the consent was being sought. He discussed the operational climate of private hospitals, the performance of the existing facility, and why the number of rooms sought was necessary.

Mr John Latimer, managing director of Code Design Ltd and architectural designer for the project presented a statement of evidence and a plan set. Mr Latimer outlined the design process followed and provided an architectural analysis of the proposal. He also identified the changes to the plans that were made after receiving the Council’s section 42A report. These included a 259m² reduction in the area of the building’s fourth floor and some reconfiguration of the lower floors as a consequence. He also spoke to the proposal’s plans and was able to assist the Commissioners in understanding the finer details of the architectural drawings. Mr Latimer recommended that consent should be granted.

Finally, Mr Blakey provided a resource management planning assessment of the application, taking into account the evidence and discussions that had preceded him. In his view, the Commissioners should take a pragmatic view of how the site could be developed. In particular this included taking into our considerations the proposition that two storey detached dwellings would be the likely alternative in the event that the existing hospital activity ceased. He described such a development in his evidence and included a diagram that provided a theoretical residential layout. This included dwellings located to the eastern and southern boundaries subject to the height in relation to boundary rule. He recommended that consent should be granted.

In terms of the submitters, it is relevant to note that there was no opposition to the private hospital activity per se; opposition was focussed on the size, scale and intensity proposed.

Ms Larissa Clarke, a consultant planner, presented a statement on behalf of Mr and Mrs P and M Roberston of 2/5 Youngs Road. Ms Clarke provided her opinion of the application including a raising a number of issues regarding the sufficiency of information provided by the applicant. She was concerned with a wide range of effects, notably including height, dominance, privacy, shadowing, and traffic. She recommended that consent be refused.
J Harmer and C Grinlinton, of 4/17 Youngs Road, discussed their concerns and explained the layout of their unit as it relates to the common boundary with the application site. They were concerned principally with height, a loss of sunlight, traffic congestion, nuisance associated with activity across the common boundary, and a concern for property devaluation. They felt that as it stood, the proposal should be refused consent.

Mr Matthews, of 3/17 Youngs Road, discussed his concerns and explained the layout of his unit as it relates to the common boundary with the application site. He opposed the height proposed, disagreed with the shadow analysis provided by the applicant, and felt that local transport infrastructure could not cope with the additional traffic likely from the proposal. He was clear that development in this locality should be limited to one to two storeys. He felt that as it stood the proposal should be refused consent.

Mr Sowden, of 2/17 Youngs Road discussed his concern with a loss of sun, particularly in winter. He provided a colour photograph taken from his dining room facing the subject site and shared with the Commissioners his analysis of how much of that sky view would be lost to the proposed building. In this respect, the Commissioners understood from him that the building’s height was the major problem. He felt that as it stood the proposal should be refused consent.

Mr Hunter, of Longford Park Village, explained that his wife is a patient at the existing facility. He shared his experience of visiting the facility almost every day. He observed that many patients did not enjoy regular visitors and that the nature of the activity was predominantly quiet. In his view Youngs Road was slightly narrow and that the Council (or Auckland Transport) could investigate limiting car parking along one side if there was a concern with opposing lanes of traffic having appropriate clearance to pass each other. He reiterated his full support for the proposal, and felt that consent should be granted.

All speakers responded to questions asked by the Commissioners, and on a number of occasions the Commissioners asked additional questions of clarification of the Council’s officers.

After hearing this evidence, the Commissioners resolved that additional information would be required from the applicant in terms of how the site could be developed with a compliant (in density, bulk and location terms, accepting that for such a development a resource consent would still be required) residential alternative. The hearing was adjourned to allow this information to be produced and the Chair produced a Minute dated 8 April 2014 setting out the process to be followed.

This information, along with an analysis by the Council’s officers and the submitters, was duly provided along with the applicant’s right of reply in writing. In summary, this information did not give any party cause to change their position from what had been presented previously. In addition, the submitters disagreed that the shadow analysis undertaken reflected a “reasonable” residential alternative for the site.

The Hearing was formally closed on 12 May 2014.
Principal Issues in Contention

By the close of the Hearing, the following issues emerged as being in contention:

1. Loss of amenity provided by mature trees and other existing vegetation;
2. Construction noise and disruption;
3. Traffic and parking issues in the street and on the site;
4. Shadowing of adjoining properties;
5. Overlooking and privacy intrusion on adjoining properties; and
6. Maximum appropriate height in this environment;

The Commissioners note that dominance effects related to the application would arise as a combination of items (4), (5) and (6) above.

The Commissioners also find and note that the proposal raises no effects or issues of concern relative to the Ministry of Health site to the north-west at 5-19 Great South Road that would lead to a refusal of consent.

In respect of all other issues that require consideration and approval, there was agreement between the applicant’s and the Council’s experts. The Commissioners accept those recommendations, as well as those from Mr Peter Joyce, the Council’s urban design expert, that in terms of visual appearance and building design quality the proposed building was appropriate.

Findings on Principal Issues

Loss of amenity provided by mature trees and other existing vegetation

The Commissioners are satisfied that the trees proposed to be removed, while providing amenity to the locality, are not iconic or irreplaceable specimens. The application includes a landscaping plan and re-vegetation including numerous trees and shrubs. Any lost habitat will be replaced and an appropriately softened outcome will result that will provide areas of open green space around the building consistent with a residential environment.

As will be discussed later however, the Commissioners are concerned that the screening and general softening of buildings that vegetation in residential environments contribute essentially to, will be insufficient to address the fourth storey of the building. Larger and/or more densely planted trees which could achieve this would in turn create undesirable shadowing and nuisance for neighbouring properties.

Construction noise and disruption

The Commissioners accept that construction, including of large buildings, is an established activity including in residential areas (such as for schools, apartment building developments, and other facilities). Reflecting this commonness, noise and vibration standards, days and
hours of construction activity have been developed. These are widely seen as being reasonable and the Commissioners accept that occasional disruption from construction on neighbouring sites forms a part of residential amenity values. The applicant's and the Council's experts have agreed conditions of consent that will ensure these standards are adhered to. While the development would be large, the construction period would not be inappropriate in this residential environment.

Notwithstanding the opposition of the submitters, the Commissioners accept that effects arising from construction noise and disruption can be appropriately managed. There are no unique or special characteristics that would make such standards inappropriate in this environment.

Traffic and parking issues in the street and on the site

The proposal involves a somewhat convoluted access solution from Youngs Road, whereby service vehicles will use an existing vehicle crossing and driveway on the north-eastern side of 7A Youngs Road, and general traffic will use a larger crossing, driveway and parking area on the south-western side of 7A Youngs Road (currently a residential house and garden known as 9 Youngs Rd). A third access from Great South Road would remain available for occasional or emergency use only.

Although the Commissioners have some concerns regarding the operation of the service entrance and location of the gate, the applicant's and the Council's experts agree with the proposed traffic solution for the site. Furthermore they agreed that any effects on the road network (notably Youngs Road) will be appropriate. As a part of this, there was agreement between the experts that the number of car parking spaces provided on site would cater to the demand generated by the proposal such that on street parking would not become overloaded by the facility's visitors and staff. Those experts were also in agreement that a safe and workable outcome would result. Although Ms Clarke provided planning evidence in disagreement with this, she did not provide any evidential basis for her disagreement or reasons why the traffic experts may have not properly assessed the application.

Submitters raised other concerns including from headlight glare and noise arising from use of the car park (primarily a night time concern). Of most concern to the Commissioners are the properties at 2/17 and 3/17 Youngs Road. For these properties, a formed parking area close to the main entrance is likely to be the busiest, including during routine staff shift changes in the evening and more periodic late night visits. The car parking area here is a two-way aisle with car parking on either side, and had been accommodated as part of setting the four storey building further away from the side boundary.

The applicant is proposing an acoustic fence and landscaping to address this boundary. There is no doubt in the Commissioners' minds that compliance with the District Plan's noise limits will be possible, but that despite this there will be occasions where neighbours are disturbed by noise nuisance emanating from the facility.

Overall, while the effects arising from car parking and traffic are plainly more than would occur were the site developed for purely detached residential housing, of themselves they can be appropriately managed and mitigated. They are however at the maximum limit of what could be accommodated in this residential environment and will be reliant on proactive
ongoing management (such as ensuring staff are quiet when in the car park areas during evenings). Were these the only effects of concern to the Commissioners, we would not refuse consent to the application. But in combination with other problematic effects, primarily arising from the building’s fourth storey and its overall intensity, the application will create a disruption to neighbouring properties that is neither reasonable in terms of environmental effects nor appropriate in terms of the District Plan’s policy framework for the zone.

Shadowing of adjoining properties

The proposal will create shadowing on neighbouring properties. To the submitters, these shadows were not acceptable. The applicant’s argument was in essence that while the proposed building was taller than provided for in the District Plan, it was proportionally set further back from the side boundaries with the effect being that shadows would not be appreciably worse than could occur with a complying development under the District Plan.

The Commissioners are satisfied that the various shadow analyses provided to them are sufficiently accurate to make a finding of fact on the matter. While the accuracy of the analyses was questioned by the submitters in opposition, no material reasons or counter analysis was provided to outweigh the expert attestation provided by the applicant’s and the Council’s experts.

The Commissioners are satisfied that other than 17, 7, 5A and 3A Youngs Road, any shadows cast by the proposal will be acceptable, with potential shadowing managed by distance, intervening buildings, fences and vegetation.

In summary, the argument in favour of the proposal is that the additional height sought is offset by horizontal setbacks from neighbouring boundaries much greater than required by the District Plan. The District Plan provides for buildings up to 8m tall subject to yard and height in relation to boundary setbacks. They work together (assuming a flat site) to allow an 8m tall building 5.5m from the boundary. Such buildings would not typically be as wide as the proposed building.

The Commissioners were not opposed to this argument being presented but felt that inadequate detail had been provided. To that end the applicant, with the participation of the Council’s experts (at the Commissioners’ direction), worked on a hypothetical but reasonable “alternative” development concept for the site. We refer to the statement provided by Mr Blakey dated 22 April 2014 in this regard This alternative would require resource consent for matters such as the number of dwellings on a site and total earthworks, but would comply with density and relevant bulk and location controls. This was then subjected to shadow analysis provided by the applicant and referenced as SD20 Rev B.

This work sits beyond the permitted baseline for the site as strictly established in the industry but is in the Commissioners’ view a key input to the making of a decision. Under s.104(1)(c), the Commissioners find that to assess this application it is reasonable and necessary to appreciate the order of effects that the site could give rise to for neighbouring properties, if it were to be developed along the lines of detached housing in accordance with the District Plan. The assessment is necessary because the site is atypically large and the activity is markedly different from the norm for the zone. As such, taking this information into account will allow the Commissioners to reach the fairest, most practical, and most robust finding on
the appropriateness of the proposal on neighbours. This is furthermore appropriate as the applicant confirmed that the activity could not continue in its current form and that if it could not move with the times, it would cease to operate. To that end, and acknowledging the view of the submitters that the “reasonable” alternative is in fact a “worst case” one, the Commissioners accept the hypothetical alternative developed by Mr Blakey and Ms Boyt as a reasonable representation of the District Plan’s intent, and the shadow analysis (referred to above) of that alternative provided by the applicant.

The Commissioners accept the analysis of Mr Blakey that the shadowing effects caused by the proposal will be acceptable. While the proposal’s shadows are different from both the existing facility and the hypothetical alternative, they fall within the range of shadows that the District Plan anticipates for the zone from outcomes built in accordance with the zone’s bulk, location and density controls. The applicant’s effort to set the building back from boundaries to offset increased height has adequately avoided potential shadow effects.

Overlooking and privacy intrusion on adjoining properties

The Commissioners find at the outset that there are no problems of overlooking or privacy beyond the immediately adjoining residential neighbours. For properties beyond that, intervening buildings and distance will together remedy or mitigate potential effects. The Commissioners also find that there will be no overlooking or privacy effect caused by the ground and first floors of the facility that cannot be ably mitigated to a satisfactory level by distance, boundary screening or vegetation.

Our issues of concern relate solely to the second and third floors (the third and fourth storeys).

The submitters in opposition argued that the combination of the sheer number of windows facing them in the building facade, each being occupied by a different person and their potential visitors, as well as the height of those windows (the top two storeys), would create an unavoidable sense of being overlooked. This overlooking would be so severe as to result in a serious and material diminishment of those submitters’ amenity, even taking into account a level of growth or change on the site in line with the District Plan’s development control rules. The Commissioners took from this information that the height above ground of the windows involved meant that boundary fences and vegetation suitable to screen development but which would also still allow sun and daylight into properties, would not be practical.

The applicant’s experts argued that effects would not be as serious as the submitters perceived. The primary arguments were that the design of the proposal had purposefully addressed privacy concerns in the way that the taller elements of the building were successively stepped further back from boundaries; and that those boundaries would be fenced and landscaped. In addition, Mr Purdon proposed that many patients at the facility would not be readily able to leave their beds or look out of windows (and associated with this, it was put to the Commissioners that many patients enjoyed very infrequent visitors). Mr Blakey in his evidence also noted that the proposed hospital day rooms would be located on the western side of the building where the outlook is over the open area of the Counties Manukau District Health facility.
The Commissioners accept that the facility will not lead to a degree of active use of room windows (i.e. people standing at windows looking out over neighbouring properties) similar to an apartment building occupied by able bodied persons. But this will not alleviate the real perception for neighbours of always being exposed and under scrutiny from an elevated and extended audience that cannot be reasonably mitigated. There will also be regular instances where patients and visitors do look out from windows and to or over those properties.

The Commissioners have considered this outcome in light of the District Plan’s policy framework for the zone and have concluded that it is not reasonably anticipated. The Commissioners have further considered whether any signalled change in the planning regime for this locality might create an opportunity for the proposal’s effects to be seen in a more favourable light. But this area has not been identified for any magnitude of change such as the Auckland Plan and Proposed Unitary Plan have signalled for identified metropolitan and town centres. It is hard to envisage developments greater than three storeys occurring in this locality in even the more optimistic planning framework. The Commissioners also note that the argument made by submitters and Ms Boyt that this part of Auckland is unlikely to become a focus of redevelopment activity and intensification, compared to many other locations such as around Manukau centre or even Papakura’s own town centre, has been convincing (albeit that more two and possibly three storey buildings are likely to occur). That this environment is so flat and defined by one to two storey buildings makes additional height more difficult to mitigate.

The proposal is overall not a consentable outcome.

Specifically, the Commissioners find that the effects of the third storey, in conjunction with what neighbours could see of the first two storeys, could be adequately mitigated and otherwise be acceptable. The fourth storey adds considerably greater unique and cumulative overlooking issues that emphasise the high intensity of the proposal and the effects of this intensity are the key barrier to consent being granted.

Maximum appropriate height in this environment

The submitters in opposition argued that the proposed height would lead to unavoidable dominance effects. The height was also alleged to lead to a worsening or exaggeration of other effects of concern including shadowing and overlooking, as has been presented previously.

As will be evident by this point, the Commissioners do not support the fourth storey of the proposal as it unavoidably leads to inappropriate intensity-related effects on neighbouring properties. Despite the considerable efforts of the applicant’s experts – and best intentions by the applicant to be a good neighbour – the development will be detrimentally anomalous in its environment creating effects that its design quality, separation distances, and boundary treatments will not adequately mitigate.

The Commissioners accept the applicant’s general proposition that there is a relationship between additional height and increasing separation distance from affected neighbours. In this environment, the horizontal setbacks remain insufficient to assure adjoining neighbours of an outcome that will maintain their minimum residential amenity values, privacy, and general use and enjoyment of their property.

7A and 9 Youngs Road, Papakura
Application No.: R/LUC/2013/557
However the Commissioners note that the effects of concern are not strictly due to a measurement of height in metres - for example the portion of building height given over to roof shape and form are seen by the Commissioners as positive attributes of the building and help give it much of what compatibility it does have with its residential context. So simply installing flat roofs would make a notable decrease of absolute height from ground level but not proportionally reduce the concerning effects that the building's height has given rise to. Those effects are the fourth storey of habitable rooms and windows; elevated opportunities for overlooking and an awareness by neighbours of being looked down upon; the horizontal solidity of the top level; and the cumulative intensity effects these create in conjunction with the remaining three levels of the building.

In the Commissioners’ minds, the fourth storey is indicative of the activity proposing too much for this site. The general proposition put forward by the applicant, and agreed with by the Council’s Urban Design Expert Mr Joyce, had been that the mass and scale proposed was less adverse than a lower height but more horizontally spread out alternative, or one that featured less modulation and variety. The Commissioners accept this view, but are ultimately of the opinion that even in its most compatible expression it remains too intense for its environment. In other words, the effects on submitters that are of concern to the Commissioners would not be alleviated by reducing height but then locating buildings and windows closer to boundaries than has been already proposed so as to maintain the proposed number of rooms.

Section 104 and 104B Matters

Section 104

Section 104 sets out various matters for consideration by the Commissioners. Relevant to this decision are sections 104(1)(a) to (c), as well as Part II of the RMA.

s.104(1)(a)

The Commissioners find that the proposal will be generally successful in avoiding,remedying and mitigating adverse effects. The proposal will also provide a number of positive effects very relevant to the community’s ongoing social wellbeing, health and safety.

Were it not for the fourth storey, the windows and rooms that this level provides, and the cumulative effects it has given rise to in combination with the remainder of the building, the Commissioners would have likely granted consent to the proposal, but would have considered additional conditions of consent relating to managing outdoor nuisance in the grounds and car parking areas.

But the fourth storey and its related intensity will give rise to dominance, privacy and amenity effects that are not appropriate and outweigh the positive effects of the proposal.

s.104(1)(b)

The Commissioners find that the proposal does not sit well with either the specific land use zone applying to the site, or the District Plan as a whole which provides a framework for more intensive development that clearly steers away from this zone (for example, even the...
Residential 2 zone encourages higher density than the subject Residential 1 zone let along mixed use commercial zones in the Papakura town centre itself). The District Plan places considerable emphasis on protecting the primary amenity focus of the Residential 1 zone, with unambiguous guidance given on how activities, whether residential or non residential, should be massed, scaled and designed to not dominate or undermine the qualities of neighbouring properties. The proposal does not reflect this.

Further, the objectives and policies of the Proposed Auckland Unitary Plan that enjoy legal effect also cannot be comfortably interpreted as giving support to the proposal. While that framework, as proposed by the Council, would enable greater density and building height in the locality this still fails to give any reasonable expectation for outcomes of the scale proposed.

Overall, the proposal is inconsistent with the applicable planning framework.

s.104(1)(c)

Ms Boyt, and many of the submitters, put it to the Commissioners that despite theoretical development of two or more storeys, the particular nature of this environment was such that for the foreseeable future, one storey development will continue to prevail. This, the Commissioners heard, should form a more reliable basis for assessing the application rather than two storey (the Operative District Plan) or three storey (the Proposed Unitary Plan) development. The Commissioners understood this argument to be one of pragmatism based on the view of Papakura remaining as a comparatively quieter and more settled part of metropolitan Auckland, where pressure for more intensive living is likely to occur elsewhere. Such an example is around Manukau where accessibility and other benefits may more directly compensate for smaller section sizes, less open space and separation between neighbouring buildings, and so on.

There was no suggestion that the locality is a heritage or conservation area. Over the next several decades widespread change and densification could occur compared to the existing intensity of development. To this end the Commissioners considered the Auckland Plan, which sets out a development strategy for the region, as well as the Proposed Unitary Plan’s proposed zone and development controls that might apply in the locality. The Unitary Plan provisions are in their early days and have not been given weight for the purposes of the section 104(1)(b) analysis above.

The Commissioners also understand from the above planning documents that this part of Papakura has not been identified as a location of significant intensification or focussed change, such as has been the case for many town centres around the region.

On the basis of this information and the evidence presented at the Hearing, the Commissioners find that there may well be two and three storey development occurring in the locality over the next thirty years. But given the established nature of the locality and its settled nature on the region’s intensification agenda, one to two storey outcomes are likely to predominate. Even on a more optimistic redevelopment path, the four storeys and overall scale proposed in this application would very likely remain amongst the most dominant and prominent buildings in the locality 30 years from now based on the information available.
While the Commissioners anticipate that the environment will change, this will not sufficiently ameliorate the effects that the proposal will create for adjoining neighbours.

Part II RMA

The Commissioners are comfortable that the planning framework applicable to the application gives effect to Part II of the Act and that they do not need to make any additional findings in relation to the decision. The proposal will not promote the sustainable management of natural and physical resources.

Section 104B

Section 104B gives the Commissioners the power to grant or refuse an application on merit. As will be apparent from the previous section 104 findings, the Commissioners are not supportive of the application in its current form, in particular its excessive intensity, currently expressed by the fourth storey, despite the horizontal setbacks and other mitigation measures offered by the applicant. Looking at the totality of effects that will result from the activity, the proposed scale of the development is not appropriate in this location and will create a number of dominance and amenity effects that will be anomalous not only in the current environment, but also in a potentially denser future environment as currently indicated by the Proposed Auckland Unitary Plan. The Commissioners do not feel there are any additional practicable mitigation measures that could be taken to rectify this.

The Commissioners do not consider it is appropriate to grant consent to the application without the fourth storey as this is a substantial change to the application and may raise additional matters relating to building layout and design.

On this basis, the consent must be refused.

For completeness, the Commissioners were satisfied that the application’s first three levels and the remainder of site layout and landscaping proposed, would be appropriate in this environment subject to conditions of the sort proposed by the applicant’s and Council’s various experts.

Decision

Under sections 87B, 104 and 104B of the RMA, consent is refused to the discretionary activity application by Papakura Private Hospital to develop a 115-bed private geriatric hospital facility in two stages and up to four storeys high to replace the existing 46 bed facility, with associated earthworks, parking and vehicle access and including the removal of three protected trees at 7A and 9 Youngs Road, Papakura being Lots 1 & 3 DP 115200 and Lots 1, 4 & 5 DP 115200 and Lot 10 Deeds Plan 685 (Consent Application (LUC/2013/557)).

The reasons for this recommendation are as follows:

a) In terms of section 104(1) of the RMA, and having regard to any actual and potential effects on the environment of allowing the activity it has been determined that overall, the adverse effects of the development would be inappropriate, due to the overall intensity, bulk and dominance of the proposed
building and its impacts on the residential amenities of the adjoining residential properties.

b) In terms of section 104(1) (b) of the RMA, the proposal is inconsistent with the objectives, policies, assessment criteria and environmental outcomes contemplated by the District Plan. The proposal will unacceptably undermine residential amenity values, and their predominance, for the neighbourhood.

c) In terms of section 104(1)(c) of the RMA, the longer term strategic plans for Auckland do not support the application. Additionally, extending the permitted baseline concept to reflect a reasonable and pragmatic alternative of likely residential development for the site does not sufficiently account for the proposal's effects of concern.

d) Overall, the proposal will not promote the sustainable management of physical resources of the surrounding residential environment due to dominance, privacy and overlooking effects on immediately adjoining residential properties.

e) For completeness, the issues outlined in (a) to (d) above stem largely from the proposed intensity, number of beds sought, and the fourth storey of the development. In other respects the proposal is of a design that would be at but within the limits of appropriateness.

Chairperson

Date: 29 May 2014