ORIGINAL

27 OCT 1993

Decision No A 104/93

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal under section 120 of the Act
BETWEEN	**HELLEN AND ANDREW DONNITHORNE**
	(RMA 95/93)
	Appellants
AND	**CHRISTCHURCH CITY COUNCIL**
	Respondent

BEFORE THE PLANNING TRIBUNAL

His Honour Judge Bollard (presiding)
Mrs N J Johnson
Mrs R Grigg

HEARING at CHRISTCHURCH on the 11th and 12th days of AUGUST 1993

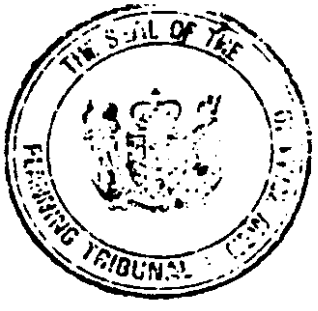
COUNSEL

Mr A Hearn Q C for the appellant
Mr A C Hughes-Johnson for the respondent

INTERIM DECISION

In this appeal, Mr and Mrs A Donnithorne ("the applicants") seek to overturn a decision of the Christchurch City Council ("the Council") declining consent to erect a dwelling-house on a 2.6076 ha rural block situated at 303 Prestons Road, Marshlands, more particularly being part Lot 17 Deposited Plan 875 Block V11 Christchurch SD and all the land in Certificate of Title 14A/262 (Canterbury Registry). The land is zoned Rural H (Horticultural) under the Waimairi Section of the Council's transitional Plan ("the plan").

The Council appointed a Hearing Panel ("the panel") to hear and consider the application at first instance. The panel's viewpoint was duly adopted by the Council as its decision. The following points were made by the panel in support of its conclusion (allowing for minor grammatical amendments):



"The Panel in considering the evidence, accepted the applicants' commitment to the farming proposals and accepted the additional evidence supporting their background and farming experience and their financial planning for future production.

However, the Panel could not overlook the requirements of proposed Change No 8 which set a minimum rural site for dwellings of 5 hectares. The site of this application being 2.60 hectares was well below that minimum standard. The Council had deliberately set a minimum limit of 5 hectares and the Panel considered that public confidence in the administration of the plan would be severely jeopardised if consent were granted to the application.

The Panel did not believe that there were any unusual factors in the application to warrant consent. The matter of over-capitalisation was still a concern, particularly in regard to future purchasers of the property as the Panel felt the size and likely value of the house in relation to the site would encourage Residential Use rather than an Agricultural Use.

The Panel also noted that the present gate sales did not comply with the requirements of the Scheme."

The last mentioned aspect was not raised as a matter of contention before us. Hence, whatever the degree of importance attached to it by the panel, we do not consider that it need detain us. On the other hand, it may be observed that the panel attached significance to proposed Change No 8 ("the change"). The provisions of the change and the weight to be afforded to them were a live issue before us and we accordingly discuss these aspects later.

At the outset of his submissions, Mr Hughes-Johnson made it plain that no challenge was made as to the adequacy of evidence provided by or on behalf of the applicants to demonstrate the need to establish a dwelling on their site in order to manage their rural land use. He also stated that no challenge was raised as to the applicants' bona fides as committed horticulturists. It was also acknowledged that the land has already been devoted to an established farming use, namely market gardening. Hence, counsel summarised the Council's position on the appeal as follows:-

"In its decision the Council accepted the (applicants') commitment to the farming proposals and accepted additional evidence supporting their background and farming experience and their financial planning for future production. In essence the real issue in the consideration of the operative scheme is whether the erection of the dwellinghouse will result in an over-capitalisation of land <u>in the sense to which reference is made later in these submissions</u>" (the emphasis is that of counsel).

It will now be convenient briefly to summarise the evidence of each applicant. Mr Donnithorne testified that he and his wife have a combined experience in horticulture totalling 38 years. Their ambition is to have a market garden property with a house on it of their chosen design. They purchased the subject site in 1988 with this object in view. Having established vegetable crops on the land, they expect to produce a yearly net return of some $28,000 based on two crops. Apart from the value of current crops and the land itself, the applicants have various items of farming equipment comprising tractors, rotary hoes etc., the cost of which was approximately $34,000 but which has a current replacement value of around $50,000. Mr Donnithorne went on to say that difficulties had been experienced over theft of various items. However, as the question of need for a dwelling on the site was not placed under contention by the Council (as opposed to the dwelling size and resultant capital value of the property), we refrain from further elaboration.

Mr Donnithorne concluded his evidence-in-chief as follows:

> "As I understand it, at the hearing the Council took the view that the house my wife and I want is too large and expensive. With respect they do not appear to have understood the situation. Design details of the proposed house, plans of which are included in the application include:
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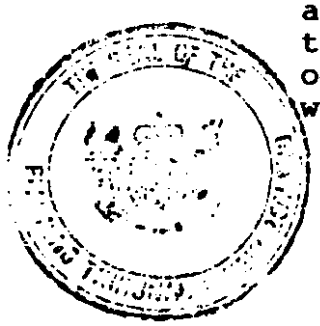
> | | |
> |---|---|
> | House | 225m^2 |
> | Car garage | 39m^2 |
> | Office | 15m^2 |
> | Purpose designed ablution area | 20m^2 |
> | Games room | 47m^2 |
> | Verandas | 34m^2 |
>
> The house has a living area of 225m^2 plus a double garage for ordinary cars. The office is for the farm business. The purpose designed ablution area is for storage of all weather clothing and an area to wash and clean before entering the house. A proud possession of my wife and I is a full sized billiard table and we want to have a room in which that can be used, hence the size of the games room. The land is precious to us and that led to our decision to have a two storey house so as to minimise the area of land used for a dwelling. The house is located 5 metres from the eastern boundary and 30 metres from the road on the southern boundary within an area already surrounded by existing shelter belts and trees where minimal production has been possible or has occurred. The ground floor area of the dwellinghouse will occupy less than 1% of the whole site."



Mrs Donnithorne's evidence was generally corroborative of that of her husband. She expanded upon the experience of them both in market gardening activities; also, upon their future intentions on the subject land, in the event of their proceeding to build a house to suit their living requirements. In answer to questions by the Tribunal, Mr Donnithorne stated that, as yet, he and his wife have no children. However, we gathered that the house as proposed, incorporating four bedrooms, is designed to cater for future aspirations in this regard.

Under s.230 (5) of the Resource Management Amendment Act 1993 the appeal falls to be determined as though the amending Act had not been passed. Hence, regard is to be had to the matters specified in s.104 of the principal Act in the form which the section took when the Act came into force on 1 October 1991. "Discretionary activity", we note, is defined in the Act to mean "an activity which a plan specifies as being allowed only if a resource consent is obtained in respect of the activity from a consent authority, which must exercise its discretion to grant the consent in accordance with criteria specified in the plan and this Act."

For present purposes, rule 13 of the plan prescribes "dwelling houses necessary for farming" as a conditional use (discretionary activity). The rule goes on to specify certain "criteria for assessment". Before indicating these, however, it is appropriate to note the statement for the zone and accompanying objectives. The zone statement points out that the zone encompasses the most productive and versatile land in the Waimairi District - including "the unique peaty soils of the Marshlands district...". The greatest proportion of the land in the zone carries a land use capability classification of Class II, with some land being Class I. The final paragraph of the statement reads:

> "Existing land use patterns within this zone reflect the productive nature of the land. Market gardening, berry fruit gardens, orcharding and other types of horticulture predominate and the provisions of the Scheme for the zone should reinforce these patterns. These provisions are designed to encourage efficient use of the premier soils without destroying their potential for the production of food. Soil-related uses such as market gardens are encouraged while activities not relying upon soil quality, such as factory farming, are not provided for."

The following zone objectives are next specified:

"In addition to the Overall Rural Objectives which are applicable to every Rural zone, the following objectives apply specifically to the Rural H zone:

(a) To promote those land use activities that will utilise or continue to utilise the potential of the Class I and II land of the Rural H zone for sustained and intensive food production.

(b) To prevent the intrusion of urban activities into the Rural H zone and prohibit any use or development likely to be in conflict with the legitimate rural landuse activities.

(c) To allow for flexibility in farm management provided activities do not result in a use of land which will prejudice the potential of the land for sustained and intensive food production.

(d) To protect the status of existing dwellinghouses and certain well established productive activities not utilising the soils of the site".

The following statement then appears:

"There are some 1200 houses existing in the rural part of the Waimairi District and it has been established that in general terms the rural sector is adequately if not over-stocked with dwellinghouses. This situation has largely been caused by a lack of planning control in previous District Schemes.

It is acknowledged that in some cases it will be necessary for further houses to be built. The council has a responsibility in terms of section 3 (1)(e) of the Town and Country Planning Act 1977 to prevent urban development in rural areas. In this Scheme formal planning procedures are used to assess the need for additional houses. In this zone dwellinghouses are a conditional use where they are "necessary for farming". A proposed dwellinghouse not fulfilling this requirement is not provided for at all. <u>The Council is also concerned to ensure that new dwellinghouses do not result in an over capitalisation of land to the extent that the investment in residential development exceeds that of the farming use</u>" (emphasis in the text).

Earlier, in the general explanatory section of the plan (section four) the following passage appears:

"While it is acknowledged that part-time farming units can make productive use of otherwise uneconomic land a major concern is that holdings too easily become over-capitalised with non-productive assets. Holdings eventually become uneconomic to the extent that they are no longer economic for rural use and become purely residential. Furthermore, over-capitalisation also needlessly contributes to increased land valuations in the locality making it prohibitively expensive to establish new farming operations."

Returning now to rule 13, we here set out the relevant provisions in full:

"13.1 CRITERIA FOR ASSESSMENT

The Council in considering a conditional use application for the erection of dwellinghouses necessary for farming shall in addition to taking account of the Overall Rural Objectives and the objectives for the Rural H zone, shall have regard to the following:

13.1.1 Effect of Dwellinghouses

The consequences the erection of a dwellinghouse will have on the value of the land. The Council will also take into account the presence and effect of any other dwellinghouse(s) on the site.

13.1.2 Custodial Management

Whether adequate evidence has been provided to establish the need for on site custodial and/or management function, including for example proof that there is no other suitable existing dwellinghouse either on the farming unit or sited close to the site which could reasonably be purchased to serve the same function.

13.1.3 Employment Capability

Whether the farming use is such that it will either:

(a) provide full time employment for at least one person; or

(b) in the case of part-time employment show that there will be a significant amount of production generated from the land having regard to the size and quality of the land, a significant capital commitment involved in the generation of productive output and that the potential use of the land for sustained production of food in an economic manner would not be inhibited by the erection of a dwellinghouse.

13.1.4 Commitment to Uses

Whether the farming use has already been established or whether there is sufficient evidence of the ability and intention to establish and sustain the use and that a dwellinghouse is necessary during the establishment period.

13.2 INFORMATION TO BE SUPPLIED WITH APPLICATION

To assist the Council in assessing the merits of any proposal based on the above criteria, such of the following information as is appropriate to the particular circumstances should be submitted at the time of lodging the notified application:

(a) How long the applicant has owned the property.

(b) The present land use and the work that has already been carried out on the land.

(c) The scale and nature of the use proposed.

(d) The applicant's experience in relation to the proposed farming use.

(e) The suitability of the site for this use

(f) The need for a dwellinghouse to be located on this particular property.

(g) A statement of the capital commitment associated with the implementation of the use.

(h) In the case of a proposed farming use which has not been put fully into effect, a management plan setting out a detailed assessment of the programme of implementation of the proposed farming use.

13.3 CONDITIONS APPLICABLE

13.3.1. Where the Council grants its consent to a conditional use application for a dwellinghouse any conditions imposed will take account of the matters referred to in 13.1 and 13.2 above.

13.3.2. (not relevant for present purposes)

13.3.3. Height, Siting, Site Coverage and Other Building Requirements.
These shall normally be as for replacement dwellings in this zone - refer to Ordinance 5.4 - Rural H above".

In opening for the applicants, Mr Hearn brought to mind authorities relating to the meaning to be given to the words "take account of" and "shall have regard to"; and he produced a copy of R v CD [1976] 1 NZLR 436. The well-known passage of Somers J, sitting in the Supreme Court, was drawn to our attention (p.437):

> "The first question ... is what is meant by the words "shall have regard to". I do not think they are synonomous with "shall take into account". If the appropriate matters had to be taken into account, they must necessarily in my view affect the discretion under s.5(1) (of the Costs in Criminal Cases Act 1967) and it is clear from s.5 (2) that the matters to be regarded are not to limit or affect that discretion. I think the legislative intent is that the Court has a complete discretion but that the seven matters, or as many as are appropriate, are to be considered. In any particular case, all or any of the appropriate matters may be rejected or given such weight as the case suggests is suitable. I propose to examine the matter on that footing".

While we remind ourselves that the plan is not to be regarded as a document aspiring to finished Chancery draftsmanship (to use the by now universally known descriptive phrase of Cooke P in Sandstad v Cheyne Developments Ltd 11 NZTPA 250 at p. 256), we do not consider that the four criteria set out under rule 13.1 are requirements or standards which necessarily have to be fully met, failing which an application must inevitably be rejected. We regard them as matters which must be considered as part of the weighing-up process contemplated by s.104 - such matters being given such weight as the deciding body deems appropriate in the overall mix of relevant considerations.

In view of the position adopted by the Council, it may be said that the critical question in this case revolves around the view to be taken in the light of the criteria in rule 13.1.1 and 13.1.3(b) - bearing in mind that various other matters under rule 13.1 are accepted as satisfied and not in issue.

As to the second criterion referred to above, we note that it is specified as an alternative to being able to show that the farming use will "provide full time employment for at least one person" (refer rule 13.1.3(a)). We pause to note that the evidence did not establish to our satisfaction that the full time alternative would apply. Rather, we understood from what Mr and Mrs Donnithorne had to say that work on the property would be seasonal, with two plantings and consequent cropping per year. Casual staff would be employed as and when necessary to assist with picking/gathering.

As regards rule 13.1.1, Mr Hearn submitted that, on the evidence, the erection of the proposed dwelling-house would not have any effect at all on the value of the land. He submitted that a fundamental principle of land valuation is that improvements on land do not affect the value of the land itself. Zoning, restrictive covenants and the like may do so, but not improvements as such. These contentions were supported by evidence adduced from Mr T I Marks, an experienced public valuer. He confirmed that the land value is not regarded by valuers as being affected by the value attached to

improvements. Each has its own value without being affected by the other. The correctness of this viewpoint was also acknowledged by Mr A J Stewart, a counterpart witness called by Mr Hughes-Johnson.

We agree with counsel for the applicants that the words on their face are rather meaningless in the light of the valuation evidence. But Mr Hughes-Johnson urged us to resort to the zone statement and objectives, plus the relevant passage in section four of the plan (earlier cited) for elucidation. It will be recalled that in the underlined passage from the zone statement (see above) concern is expressed "that new dwellinghouses do not result in an over capitalisation of land to the extent that the investment in residential development exceeds that of the farming use." On the other hand, the passage in section four speaks of "holdings" becoming over-capitalised.

We do not imagine that whoever drafted the plan for the former Council appreciated the significance of the valuation principle explained to us in evidence. Rather, looking at the passages in the plan's explanatory statement and in the zone statement, we believe that the intention behind the first sentence of rule 13.3.1 is to reflect the plan's concern that, as the result of the erection of a dwelling-house, a property will not become so heavily capitalised with improvements as to discourage, in effect, use of the land for productive purposes.

However, even if we are wrong in this, the second alternative in rule 13.1.3 (as to part-time employment) speaks of the "sustained production of food in an economic manner (not being) inhibited by the erection of a dwellinghouse". Clearly, in considering this criterion, the value of the dwelling-house in relation to the capital commitment in working the land for food production purposes, is relevant. Another relevant consideration would appear to be the amount of land that might be taken up (i.e. required by way of curtilage) consequent upon the erection of a dwelling-house. In this regard, Mr Donnithorne indicated that a curtilage of 2,000m^2 was sought, corresponding with an area already defined by established live screening. Evidence from Mr R S Skinner, an assistant town planner on the Council's staff, indicated that a curtilage of nearer 1,000m^2 to 1500m^2 would be more in line with that commonly recognised in other cases. For ourselves, we regard 2,000m^2 as being on the generous side. Nevertheless, with the Council having conceded that the balance of the land has, in fact, been suitably devoted to established market gardening activity, we do not regard the curtilage area factor as critical in this case. The area of the building itself is of greater concern in our view.

Mr Stewart concluded his evidence-in-chief with the following comment:

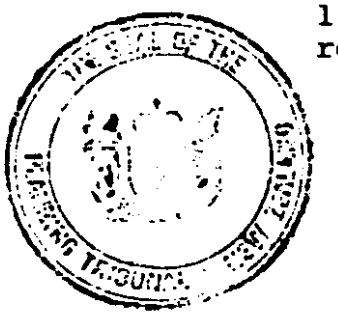
> "Based on my experience over many years of valuing, ... buyers of those properties with larger homes tend to be principally interested in the quality of the home and surrounds, as logically the house represents the highest proportion of the value of those rural/residential investments and the use the land is put to is generally very much a secondary factor."

Mr Stewart adhered to this viewpoint in cross-examination. We accept it as valid. It is precisely because of this factor that the council has endeavoured (however infelicitous the wording in rule 13.1.1 may be), to ensure that where the erection of a dwelling-house is consented to, the dwelling-house will not operate as a disincentive to continued working of the land. In other words, the plan regards it as of prime importance that the land continues to be used for productive purposes, rather than have the use "fall away" because of an owner's predominant interest in a "rural lifestyle" - such interest being induced by the nature of the residential improvements permitted to be undertaken on the property. We return to the "size/value factor" shortly.

At this point, it will be convenient to discuss the change. For the applicants, we were urged to afford it little weight. At the time of the Council's decision, submissions in support and opposition were awaiting determination. The Council resolved on the eve of the appeal hearing, however, to uphold the change. Nevertheless, Mr Hearn indicated that he had instructions from at least one client (not the applicants) to lodge an appeal against the Council's decision. We accept that the change will inevitably be coming before the Tribunal for consideration, so that, for present purposes, it cannot be regarded as settled. During the hearing we raised the possibility of adjourning the case pending resolution of the change, but it appeared to us that the applicants were (and are) entitled to know where they stand at this stage.

Evidence was called for the council from Mr R W Batty, an experienced planning consultant, to the effect that allowing the appeal would mean undermining the change. Mr Batty expressed his conclusions in this way (paragraph numbers omitted):

> "The general planning concerns in this case are the potential adverse effects that the erection of the proposed house would have on the sustainable management of resources in the rural zone. These effects are of two broad kinds. The first concern is about the potential adverse effects of decreasing rural lot sizes coupled with increasing capital values - trends which in the wider context, may be likely to reduce the range of likely future options for the use of this type of rural resource (highly versatile soil).



The second concern relates to the principle of consenting to dwellings on a discretionary basis at this sort of density throughout rural areas of the City potentially including those where there are known environmental constraints and where such densities could not be sustainably managed in the longer term, if left to ad-hoc (discretionary) decision making, the criteria for which did not adequately reflect the need for such restraint (prior to proposed Change 8).

It was because of both of the above types of concern that proposed Change 8 was introduced. While it is possible that the new District Plan may identify parts of the rural areas in the City where both the quality and quantity of natural and physical resources could sustain intensive farming and residential activity at the sort of density here proposed, the decision upon the extent and location of such areas is (rightly in my opinion) a matter for that new Plan to determine.

I therefore believe it proper for the Council to uphold its moratorium on developments of the scale involved here. In the broader time frame of District Planning, little or nothing will be lost by awaiting the new Plan. The alternative of continuing to allow piecemeal consents for dwellings on small lots in the rural area can only compromise its overall and sustainable management in my view and send confusing messages about the Council's policy to existing or potential property owners in such areas."

We have carefully considered Mr Batty's evidence summarised in the conclusions above. Were it not for the acknowledgments made by counsel for the Council earlier noted, we may well have viewed the case rather differently against the background of the change. However, in the light of the factor mentioned, we consider the case to be out of the ordinary and thus not liable to influence the change either way. In the circumstances, while having regard to the change, we do not consider that such weight should be afforded to it as to render it determinative of the appeal.

We return to the house size/value aspect. After carefully deliberating upon all that was said in submissions and in evidence, we consider that the proposed dwelling is notably large - so that, while the applicants themselves may be expected to carry on market gardening, the same cannot be said for a likely purchaser if the applicants decide to sell.

Recognising that we might so conclude, Mr Hearn indicated in his opening that the applicants would accept a condition similar to that endorsed by the Tribunal in Sparrow v Rangiora District Council (Decision C1/90 (interim) and C14/90 (final). The suggested condition (including certain amendments agreed during the hearing) is as follows:

> "That in respect of the dwellinghouse erected in accordance with the consent hereby granted, the consent to its use for residential purposes shall enure only for so long as at least 2.40 hectares (minus any area required for road-widening) of the lot upon which it is situated is being used for the purposes of market garden and/or some other predominant/permitted farming use."

Mr Hughes-Johnson, in response, was critical about the enforceablity of the condition. During the hearing we echoed his concerns. Depending upon the circumstances, it may well be difficult to enforce a prohibition on use of the dwelling-house for residential purposes when it is obviously present on the land for such purposes. However, Mr Skinner stated in cross-examination that the Council has commonly stipulated conditions in similar form when permitting the erection of dwelling-houses on other small rural use allotments in the zone. Against this background, we requested Mr Hughes-Johnson to obtain specific instructions as to whether his submissions in criticism of the proposed form of condition were to be maintained. In a memorandum filed subsequent to the hearing, counsel advised:

> "Having regard to the position reached at the end of the hearing counsel has now taken instructions from the Respondent which are to the effect that it does not wish to pursue the arguments in opposition to the condition and will accept the condition as modified should the appeal be found to be meritorius in all other respects."

We regard the Council's response as conveyed through Mr Hughes-Johnson as fair and proper. This is not to say, however, that the Council should regard itself as inhibited in arguing against such a condition in a subsequent case - with the benefit of our views in this instance and the advice, no doubt, of its solicitors.

Reference was made during the hearing to a "new breed" of small allotment farmer. It was suggested that nowadays many folk who work the land seek to do so in living circumstances far removed from the quality of dwelling that might have sufficed in the past. We are prepared to accept this up to a point. There is no reason why the farming community should not aspire to up-to-date standards commensurate with the 1990s. This said, we consider, on balance, that the applicants' proposal, in scale and degree, is over-generous to the point that, were it not for the special circumstances earlier discussed, we would probably have been minded to reject the appeal entirely. As it is, we consider that the development should be reduced by $45m^2$, which will still leave ample latitude for the applicants to satisfy their personal aspirations. We bear in mind Mr Mark's evidence that, at the scale proposed, the dwelling-house would "fit into the top end of the market in this area". Mr Stewart, we recall, suggested a much greater

reduction in size, with the comment that size inter-relates directly with value. But for the reasons we have been at pains to express, we are prepared to endorse the proposal as a special case.

As to the basis for the 45m^2 reduction, we are of the view that the proposed dwelling, including games room, garaging and any verandas, would be adequately accommodated within an area of 300m^2, while still meeting the applicants' apparent desire for a relatively commodious house. Allowing for the desired office space (15m^2) plus the purpose-designed ablution area (20m^2), the total area becomes 335m^2 - thus resulting in the reduction of 45m^2 from the 380m^2 total in Mr Donnithorne's evidence. We hasten to make it plain that the size of the dwelling allowed in this instance (albeit somewhat reduced), is not to be taken as any form of benchmark for other cases.

In his final submissions in reply, Mr Hearn helpfully dealt with a question we raised as to whether the proposed condition might be entered as a restrictive covenant upon the applicants' title. In the light of s.58 (2) of the Resource Management Amendment Act 1993, it was suggested that the condition would be capable of registration under the Land Transfer Act 1952 by virtue of ss. 108 and 109 of the Resource Management Act 1991 (as amended). Counsel went on to state:

> "If the Tribunal were minded to grant a consent with such a condition, a difficulty arises in that the matter before the Tribunal is to be considered as if the Amendment Act had not been passed. However, it is submitted that in this case the difficulty can be overcome by using the provisions of s.128. That section provides, inter alia, that the consent authority may in accordance with the provisions of s.129, serve notice on a consent holder of its intention to review the conditions of the resource consent:
>
> "(a) At any time specified for the purpose in the consent for any of the following purposes:
>
> (i) ...
>
> (ii) ...
>
> (iii) For any other purpose specified in the consent."

Accordingly, it is suggested that any consent granted could contain a condition providing that in accordance with that section, by notice duly served, the consent authority may review the condition say six months from the date of consent for the purpose of requiring the consent holder to enter into a covenant to give effect to (the condition) and to register the same on the title of the subject property under the Land Transfer Act 1952 pursuant to the provisions of ss. 108 (1) (c) and 109.

> Such a notice would trigger a hearing and in my submission such a hearing would be under the provisions of the Act as amended. Any review of conditions at that time would include the exercise of powers contained in the Amendment Act which came into force on 7 July."

We propose adopting this course and are obliged to counsel for suggesting it.

In the course of our deliberations, we have, of course, considered the actual and potential effects of allowing the activity. Even on the slightly reduced footing, the dwelling-house will be visually imposing in the area. But any residential lifestyle image it may project will be tempered to a degree by the market garden activity, clearly established as a going concern on the major part of the land. And for anyone wishing to investigate further, the restrictive condition that the building be used for residential purposes only for so long as the land is devoted to rural use activity, (with the possibility of it being converted so as to appear as a covenant on the title), will suffice to ensure that the case does not interfere with the Council's ability to administer the plan generally, let alone create difficulty as regards the change - whatever its final form may turn out to be.

We have also considered the various provisions of the plan drawn to our attention both by counsel and the planning witnesses. No regional plan provisions were raised as pertinent. Again, we have had due regard to Part II of the Act. We consider that our approach for disposing of the appeal takes due heed of the purpose of the Act expressed in s.5. It will enable the applicants to provide for themselves, while providing reasonable assurance, in the special circumstances pertaining, that the land will continue to be used productively. We have also had particular regard to matters under section 7, including paragraphs (b) and (g); also (c) and (f) to the extent that they bear relevance.

To summarise: While, in general terms, we have distinct reservations about the size/value of the dwelling-house sought to be erected, in view of the particular background of this case, including the unusual way in which the hearing proceeded, we allow the appeal subject to:

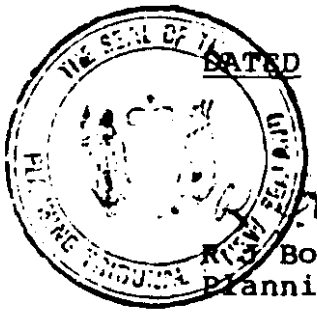
(a) the dwelling-house being modified in area as discussed; and

(b) counsel filing a memorandum of proposed conditions to be attached to the consent - including a condition as contemplated in terms of Mr Hearn's submissions in reply.

Upon receipt of the memorandum, a final order will issue.

We make no order as to costs.

DATED at AUCKLAND this 6th day of October, 1993



R J Bollard
Planning Judge

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