

Jacob Paget

From: Simon Bell s 9(2)(a)
Sent: Wednesday, 22 March 2023 4:06 pm
To: Ann Nicholas
Cc: Stuart Milsom
Subject: RE: COVID-19 RECOVERY (FAST-TRACK CONSENTING) ACT 2020 - MINISTRY FOR THE ENVIRONMENT REQUEST FOR FURTHER INFORMATION - CONSENT NOTICES

Kia ora Ann,

Thank you for your email.

The removal of the underlying consent notices in this case is a very straight forward process, provided the Fast Track Consenting Application (FTCA) is approved first. The decision to approve the FTCA by the minister would provide the reasons for Rotorua Lakes Council to remove/cancel the underlying consent notices.

Without an FTCA approval then the underlying consent notices are not able to be easily removed as the land-use would not be changing.

In addition to the above. I agree with your position regarding consent notices that do not reference operative planning rules. It is clear that these types of consent notices simply don't have legal effect once the operative rule/rules are changed. This is a position that is also shared by the Manager Planning and Development and one that RLC has received legal advice on in the recent past.

I trust that this response will be enough to provide the certainty that is required. I really don't want to over complicate things with a lengthy reply as the process essentially takes care of itself once a FTCA decision is issued by the Minister or their delegate.

Kind regards

Simon

Simon Bell *Development Support Manager (District Development)*
s 9(2)(a) | **W:** rotorualakescouncil.nz

From: Ann Nicholas s 9(2)(a)
Sent: Tuesday, 21 March 2023 4:59 PM
To: Simon Bell s 9(2)(a)
Cc: Stuart Milsom s 9(2)(a)
Subject: RE: COVID-19 RECOVERY (FAST-TRACK CONSENTING) ACT 2020 - MINISTRY FOR THE ENVIRONMENT REQUEST FOR FURTHER INFORMATION - CONSENT NOTICES

Hi Simon

This email amends the wording sent a short while ago.

There is one further clarification that may assist – the consent notice on the record of title for Lot 8 DP392696 refers to a specific rule in the District Plan that is no longer operative. Consent notice 12313701.5 (relating to Lot 2 DP558193) also contains a consent notice that restricts lifestyle lot creation in accordance with rule 13.10.3.2(d).

The District Plan was restructured on 23 July 2021 and the rule reference has been amended, again resulting in the consent notice no longer being current.

While there is a similar rule in the current Operative District Plan that rule is not the rule referenced. For just this reason, the Quality Planning website states in relation to consent notices that “*Conditions should not include reference to rules in plans because these may change during the duration of the consent*”. This supports the interpretation that rule references are not enduring and the outcome may be that the consent notice is not effective in perpetuity. It could therefore be concluded that the consent notice as registered is no longer enforceable. This results in consideration of subdivision under the current operative district plan against the test of the relevant rules which is appropriate. I would be interested in your interpretation.

Do you require any additional information from us at this stage as I am conscious that Thursday is rapidly approaching.

Kind regards

Ann

Ann Nicholas
Principal - Planner



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From: Ann Nicholas
Sent: Monday, March 20, 2023 8:20 AM
To: 'Simon Bell' s 9(2)(a)
Cc: Stuart Milsom s 9(2)(a)
Subject: COVID-19 RECOVERY (FAST-TRACK CONSENTING) ACT 2020 - MINISTRY FOR THE ENVIRONMENT REQUEST FOR FURTHER INFORMATION - CONSENT NOTICES

Hi Simon

Thank you for the opportunity to discuss the proposed subdivision and eventual development of the Millbrow Estate for which consent is currently sought under the Covid-19 Recovery (Fast-Track Consenting) Act 2020. In particular we discussed the process relating to the changes required to consent notices on the Records of Title.

There are several consent notices on the records of title which will continue unaffected. However, there are two particular consent notices that could be seen to restrict the ability of the expert consenting Panel to grant consent, if the project is referred on by the Minister for consideration.

Lot 8 DP392696: There is a consent notice that imposes a restriction that no further lifestyle lot created under rule 16.4.3.1(b) of the District Plan. It is our opinion that this consent notice does not restrict or prevent the application proceeding or being given effect to as subdivision consent is not sought under rule 16.4.3.1(b). Rule 16.4.3.1(b) refers the specific number of lots per land area. The rule reference is to a previous District Plan which was replaced by the Operative District Plan in 2016 and is no longer in effect. While there is a similar rule contained in SUB-S6(4).iv-vi, consent is not sought based on the parent lot area under this rule but rather is sought under SUB-S6(5), (6) and (7) as a non-complying activity. Therefore, we consider that the consent notice does not restrict or prevent progress of the application and no change is required.

Lot 7 DP 392696: Consent notice 7715575.1 on the record of title restricts further household units beyond one household unit from being established within this lot but does not restrict subdivision. As some eight lots are proposed that would have building platforms within the current extent of Lot 7 DP 392696. Therefore this consent notice would need to be cancelled under section 221 of the RMA before houses could be built on the new lots. Following discussion with the Deputy Chief Executive District Development, he sent a letter dated 27 January 2023 (Attachment G), that advised:

“ On the basis of a successful application through the fast-track consent process, and a possible application for cancellation of the consent notice in accordance with s221 of the RMA, Council will undertake the appropriate assessment for removal of the consent notice in accordance with the RMA.”

We would typically apply for this at the point where it is clear that the consent to subdivide would be granted, noting that other changes would be required to consent notices as part of the decision making process.

The Ministry for the Environment has asked for confirmation that if the Panel grants consent Rotorua Lakes Council would grant the necessary approval to cancel that consent notice. As the Deputy Chief Executive District Development has previously identified support for the proposal (Attachment F), we would appreciate clarification and confirmation that the Council would approve such application to support and give effect to the decision of the Panel to grant consent to the subdivision.

I would appreciate your consideration and confirmation of these points. We have been asked to respond to the Ministry by Thursday this week. Please contact me for any other information.

Kind regards

Ann

Ann Nicholas
Principal - Planner

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