

Raymond Huang

From: Hamish Hey <hamish@clcgroun.co.nz>
Sent: Tuesday, 23 February 2021 10:46 am
To: Raymond Huang
Cc: Stuart Jones; Scott MacArthur; MADHAV
Subject: CLC Ref 20333: 34 White Swan Road - Passing Bay Easements and Issue of decision on s127 Variation to Condition Application [LUC60333519-A]
Attachments: FW: 34 White Swan Road - Easement matter (clc ref: 20333)

Follow Up Flag: Follow up
Flag Status: Completed

Morning Raymond

To confirm our discussion yesterday, the reference in paragraph item 9)g) on page of 8, of the original s127 AEE which refers to the passing bay easement Area A, was deleted by s92 discussions and updates of the plan of subdivision supplied to Council on 28 January 2021 (see attached).

Further as discussed last week, any condition regarding a right of way for a passing bay or vehicle crossing widening to be added to the application is in our view asking the applicant to mitigate existing consented permitted baseline effects that the current application is not a party to causing.

Rather we contend it is effectively Council imposing a cost to the applicant for correcting mistakes in Councils poor decision for four new dwellings and subdivision of #34C, in BUN 60144329 - with its total of 8 to 11 parking spaces Here we note easement area 'A' (mid length passing bay) is only in favour of #34c and hence does nothing to mitigate the effect where the other users of the driveway meet each other, and only works where they meet an occupant from #34C, and then only enables the vehicle from #34c to use the passing bay. Presumably Council's rationale for this was around mitigation of an 'existing effect' (if in fact it was even thought through). Hence Council you are now asking my client to provide the necessary mitigation, when his proposal is reducing the traffic quantum.

On the logic of Council's decision above, if the applicant were to establish easement area Q in favour of his site (#34), it would be the same scenario of Area 'A' which is only in favor of a specific parcel and not legally usable by other parties. Further with only two vehicles potentially allowed to use the widened crossing and none of the users vehicles, the purpose for which you state the widened crossing is necessary would be negated. In effect only the max of two vehicles from #34 could ever legally use the widened crossing and the probability of that causing conflict on White Swan Rd is very low indeed.

We also note that this is a larger area of land than easement area A, hence will incur an even greater cost to the applicant. Here we note the status quo of occupancy of the building and parking generated – hence given the cost of the mitigation Council now demand (regardless of you justification for it) why would the applicant proceed with the project? Hence the greater quantum of movements stays...

It is apparent that Councils agenda is to ignore the issue of the easement 'A' that cannot be used by others and set up the mitigation that likely should have occurred as part of BUN 60144329.

Below is a summary of the facts as we see them are

- 1) Existing parking use:
 - #34 is lawfully establishment with high occupancy as a flatting arrangement in a building with a large number of bedrooms,
 - #34A is long established with 2 spaces
 - #36A is long established with 2 spaces

- #34C has a recent RC that provides for 8 spaces at (although in a read of the plans there is stacked parking space for a further 2 vehicles on Lot 4 and a shared visitor parking space in front of Lot 1= #34C total of 11 spaces)
- 2) Demand from the applicants site reduces significantly, it is the application of the granted consent for #34C that causes the congestion effects that are Q would most serve to mitigate not the applicant's proposal.
 - 3) The RC granted for #34C is in our view flawed. It asserts:
 - A length of 98m of access way. Whilst this is the legal length to the start of the property it is not the actual length to the access way in the site, or distance travelled to respective parking spaces. Hence the application and assessment is incorrect and mitigation of 1 passing bay is also an insufficient quantum under E27.6.4.3.1(T148)
 - It asserted a baseline quantum of parking of only 13 spaces for all users of the driveway. Research/observation as to lawfully established activities and their demand at #34 in this assessment was flawed (this would be self-evident in a site visit to that applicant's and Councils' Planners and Traffic Engineer's); and
 - The passing bay easement provided by the application (Area A) s is small than the dimensions of the AUP for a passing bay; and
 - The passing bay easement it provides (Area A) is only in favour off #34c but the assessment in the RC assumes otherwise (i.e. that all driveway users can utilise it); and
 - Council had discretion under E27.4.1(A4) to impose the widening of the crossing and the improve both the legal use right and formed dimension of Area A and the opportunity at the entry to the site i.e. Area Q *"as it will prevent ingress vehicle from reversing to the road "* and failed to do so when considering an activity that generated additional traffic volumes that in the context of the driveway and exiting uses represented a significant increase in vehicle movements.
 - 4) If the provision of convex mirrors (reason 2 page 3 of BUN60078346) was adequate mitigation of traffic conflict for the lawfully established permitted baseline movements with neighbour's to the RC [BUN 60144329] including #34C (i.e. the parking spaces currently developed on site), why is not adequate mitigation when the current s127 variation for #34 significantly reduces its parking quantum?
 - 5) The assertion that occupants of the existing dwelling that is being converted into separate units, will park on site and do grocery deliveries and generate other use on a daily basis is without foundation. It is contrary to the scope of the easement detailed in the application,. Further it assumes that every household will have a car parked on the road, when the intention is for these occupants to be folk who want to live a carless life as provided by the NPS-Urban Development.
 - 6) You have asserted that Councils Traffic Engineer believes the movement modelling provided in the application to be optimistic. We ask to see her modelling calculations to disprove the evidence provided by the applicant's traffic engineer. Otherwise there is no evidence base to Council's position. Hence the applicant's specialist seeks the following feedback:
 - Which values are Council disputing - and what are Council suggesting the values should be?
 - Any modelling or calculation outputs Council have made to support their opinion
 - The queue length and delay **thresholds** Council are using to determine the impact on the road network
 - Also, what are the references to standards or guidelines to underpin Council's **threshold** values

It follows that under s108 RMA, we see the condition that Council seeks (inclusion of area Q), does not serve a resource management purpose and would be contrary to planning case law. Here we observe that:

The Court of Appeal has held that the *Newbury* test remains of general application and New Zealand Courts should continue to apply it in relation to the provisions of the RMA. See [*Housing NZ Ltd v Waitakere CC* \[2001\] NZRMA 202 \(CA\)](#)

The principles of the Newberry test being:

- *The condition must be for a **resource management purpose**, not for an ulterior one.*
- *The condition must **fairly and reasonably relate to the development authorised by the consent** to which the condition is attached.*
- *The condition must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it*

It is our professional opinion that imposing such a condition fails the second part of the Newberry Test – when the applicant is reducing traffic volumes from his site from the lawfully established ‘permitted baseline’, rather you are mitigating effects from a different development in which Council assessed the mirrors as adequate mitigation for an existing quantum of parking/movements. Also from that assessment, Council and that application presumably had considered to be the quantum from the applicant’s site (i.e. 2 vehicles).

Further that the advice you are receiving from council specialists fails the 1st part of the test, as whilst the request may be technically correct ‘when considered in a vacuum of how traffic should best be managed’, when put in a resource management context of who generates the adverse effect it is flawed. Especially where the effect Council are seeking to be mitigated (quantum of vehicle movements) is reducing through the current consent application not increased.

Hence we question how council can ask for the extensive/expensive mitigation of lawfully established and consented activities by other users through the applicant’s proposal, at the applicant’s, when the quantum of vehicle movements is reducing not increasing and it is not his activity generating the effect.

The applicant has already incurred significant delays in the processing of the application well beyond the doubling of a timeframe for a non-notified processing.

Hence he seeks Council get on and make a decision.

Here we note that notification of the application would be contrary to s95B as under s95E we cannot see a scenario where other users of the driveway could be considered to be adversely affected by a reduction in traffic volumes.

Should Council wish to pursue its **current** position in regard to passing bay easements that do not serve to mitigate effects arising from the proposal, my client advises he is willing to resolve the matter in the Environment Court. This includes lodging a Judicial Review of the non-notification decision for the development at #34C [BUN 60144329], where it is evident that Council have failed to properly assess traffic quantum’s, nor is there adequate mitigation of those movements to mitigate effects below the ‘*no more than minor threshold*’ - as is evident from the now conveyed concerns of Councils Traffic Engineer. My client would also seek costs. My client advises he will be lodging his declaration for Judicial Review this afternoon.

Kind Regards

Hamish Hey | MSc (Geog) BSc Dip MNZPI

Planning Manager

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Raymond Huang

From: Raymond Huang
Sent: Thursday, 18 February 2021 4:29 pm
To: Grace Ng
Subject: RE: 34 White Swan Road - Easement matter (clc ref: 20333)

Hi Grace,

Apology for the delayed response and thank you for your patience.

I have obtained a second opinion from the Council's traffic engineer. In short, the traffic engineer agrees with the Council DE, and believes the proposed removal of three consented parking spaces and passing bays are not acceptable.

I can generally accept your traffic engineer's assessment on the parking supply, as I believe there should be flexibility around the provision of parking in area with good public transport connections. However, I believe that the passing bay (Area A LT 545442) must stay to ensure traffic safety and efficiency for your development and your neighbouring property. The passing bay is required due to the following main reasons:

- Poor inter-visibility between ingress and egress vehicles on the shared driveway. The visibility can also be restricted by on-street parking on the northern side of the vehicle crossing. Given the proposal would be more reliant on on-street parking, these on-street parking are more likely to be occupied – exacerbate the visibility problem.
- White Swan Road is an arterial road. In the Council's traffic engineer's view, although there is 50km speed limit, the actual speed of vehicle travelling down this section of the road would be higher due to the straight alignment of the road and the downslope gradient. Therefore, it will be even more dangerous for an ingress vehicle reverse manoeuvring onto the road when trying to give way to an egress vehicle.

I acknowledge that your traffic engineer believes the proposed removal of the three parking spaces means the parking demand will be status quo, and accordingly, the trip generation will be low and does not warrant a passing bay to be provided. The Council engineers have both agreed that the trip generation figures provided are overly- 'optimistic' and inaccurate. I believe the key contention here is whether there will be increased use of the shared driveway, despite only one parking space would be provided. I understand you have highlighted the easement area over the access will only be provided for temporary service and delivery vehicles. However, this easement area can also be used by future residents in Lot 2 for temporary parking (e.g. dropping off groceries and passengers). Therefore, given your proposed vehicle access layout, there is no guarantee that there will be no increased use of the shared vehicle access, particularly with 4 additional dwellings on the site.

Ultimately, I support your assessment of the NPS around flexibility for parking provision, hence I also support the removal of three consented parking space. However, the unique characteristics of the application site and its shared vehicle access necessitate the provision of passing bay for ensuring the traffic safety of the neighbouring properties. Therefore, I can offer you two options to move forward with your application.

Option A – remove the consented parking space and retain the passing bay (Area A LT 545442) as per your original s127 proposal.

Option B – remove the consented parking space and passing bays – I will be recommending your application to be limited notified as the neighbouring properties would be adversely affected.

Please let me know your decision. As always, happy to have a discussion over the phone if required.

Thank you,
Raymond

Raymond Huang
Planning Consultant





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From: Grace Ng <grace@clcgroup.co.nz>
Sent: Tuesday, 16 February 2021 1:05 pm
To: Raymond Huang <rhuang@propertygroup.co.nz>
Subject: RE: 34 White Swan Road - Easement matter (clc ref: 20333)

Hi Raymond,

Sounds good, thank you for the update.

Kind Regards

Grace Ng | BPlan (Hons) Int.NZPI

Resource Management Planner Independent
DDI: 09 576 1977 | E: grace@clcgroup.co.nz

From: Raymond Huang [<mailto:rhuang@propertygroup.co.nz>]
Sent: Tuesday, 16 February 2021 12:57 pm
To: Grace Ng <grace@clcgroup.co.nz>
Cc: Hamish Hey <hamish@clcgroup.co.nz>
Subject: RE: 34 White Swan Road - Easement matter (clc ref: 20333)

Hi Grace,

Sorry for the late response.

I just received the memo from the traffic engineer.

Will provide you with a response by tomorrow.

Thank you for your patience.

Raymond Huang
Planning Consultant



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From: Grace Ng <grace@clcggroup.co.nz>
Sent: Monday, 15 February 2021 8:57 am
To: Raymond Huang <rhuang@propertygroup.co.nz>
Cc: Hamish Hey <hamish@clcggroup.co.nz>
Subject: RE: 34 White Swan Road - Easement matter (clc ref: 20333)

Morning Raymond,

Could you please provide us with an update of where the application is at now?

If you need any further clarification please let me know.

Many thanks,

Kind Regards

Grace Ng | BPlan (Hons) Int.NZPI
Resource Management Planner Independent
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From: Grace Ng
Sent: Thursday, 28 January 2021 12:14 pm
To: 'Raymond Huang' <rhuang@propertygroup.co.nz>
Cc: Hamish Hey <hamish@clcggroup.co.nz>; Stuart Jones <stu@clcggroup.co.nz>
Subject: 34 White Swan Road - Easement matter (clc ref: 20333) [Filed 28 Jan 2021 12:13]

Hi Raymond,

Sorry I couldn't get a hold of you on the phone.

Upon clarification, I can confirm that the passing bay easement 'Area A LT 545442' will not be part of the application. The easement will not be in effect for this application as it is no longer required due to the significant reduction in the number of carpark spaces now provided on the proposed site. There is only carpark space on site and we do not consider that the quantum of vehicle movement from this one space (i.e. the existing baseline) justifies the need for a passing bay.

We have updated the Scheme Plan to reflect this to avoid any confusion, please see attached.

Thank you,

Kind Regards

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