

"C"

The following pages are extracts from an Auckland Council agenda for a notified hearing for resource consent BUN60078992.

The extracts from the agenda are pages:

- 1-4
- 9-10
- 131-135

This is the exhibit marked "C" referred to the affidavit of **TANIA EVELYN RICHMOND** sworn at Auckland this *12th* day of October 2018 before me:



A Solicitor of the High Court of New Zealand

Pierce Jack Bedogni
Solicitor
Auckland

I hereby give notice that a hearing by commissioners will be held on:

Date: Friday 27 July 2018
Time: 9.30am
Meeting Room: Reception Lounge
Venue: Level 2, Auckland Town Hall,
301-303 Queen Street, Auckland

HEARING AGENDA
33 GLENFELL PLACE, EPSOM
LILY INVESTMENT COMPANY LIMITED

COMMISSIONERS

Chairperson Robert Scott
Commissioners John Kirikiri
Richard Knott

Robert Boswell
SENIOR HEARINGS ADVISOR

Telephone: 09 977 6534 or 021 229 6211
Email: robert.boswell@aucklandcouncil.govt.nz
Website: www.aucklandcouncil.govt.nz

Note: The reports contained within this agenda are for consideration and should not be construed as a decision of Council. Should commissioners require further information relating to any reports, please contact the hearings advisor.

WHAT HAPPENS AT A HEARING

At the start of the hearing, the Chairperson will introduce the commissioners and council staff and will briefly outline the procedure. The Chairperson may then call upon the parties present to introduce themselves to the panel. The Chairperson is addressed as Mr Chairman or Madam Chair.

Any party intending to give written or spoken evidence in Māori or speak in sign language should advise the hearings advisor at least five working days before the hearing so that a qualified interpreter can be provided.

Catering is not provided at the hearing. Please note that the hearing may be audio recorded.

Scheduling submitters to be heard

A timetable will be prepared approximately one week before the hearing for all submitters who have returned their hearing attendance form. Please note that during the course of the hearing changing circumstances may mean the proposed timetable is delayed or brought forward. Submitters wishing to be heard are requested to ensure they are available to attend the hearing and present their evidence when required. The hearings advisor will advise submitters of any changes to the timetable at the earliest possible opportunity.

The Hearing Procedure

The usual hearing procedure is:

- The applicant will be called upon to present his/her case. The applicant may be represented by legal counsel or consultants and may call witnesses in support of the application. After the applicant has presented his/her case, members of the hearing panel may ask questions to clarify the information presented.
- The relevant local board may wish to present comments. These comments do not constitute a submission however the Local Government Act allows the local board to make the interests and preferences of the people in its area known to the hearing panel. If present, the local board will speak between the applicant and any submitters.
- Submitters (for and against the application) are then called upon to speak. Submitters may also be represented by legal counsel or consultants and may call witnesses on their behalf. The hearing panel may then question each speaker. The council officer's report will identify any submissions received outside of the submission period. At the hearing, late submitters may be asked to address the panel on why their submission should be accepted. Late submitters can speak only if the hearing panel accepts the late submission.
- Should you wish to present written information (evidence) in support of your application or your submission please ensure you provide the number of copies indicated in the notification letter.
- Only members of the hearing panel can ask questions about submissions or evidence. Attendees may suggest questions for the panel to ask but it does not have to ask them. No cross-examination - either by the applicant or by those who have lodged submissions - is permitted at the hearing.
- After the applicant and submitters have presented their cases, the chairperson may call upon council officers to comment on any matters of fact or clarification.
- When those who have lodged submissions and wish to be heard have completed their presentations, the applicant or his/her representative has the right to summarise the application and reply to matters raised by submitters. Hearing panel members may further question the applicant at this stage.
- The chairperson then generally closes the hearing and the applicant, submitters and their representatives leave the room. The hearing panel will then deliberate "in committee" and make its decision.
- Decisions are usually available within 15 working days of the hearing.

A NOTIFIED NON-COMPLYING ACTIVITY RESOURCE CONSENT APPLICATION BY LILY INVESTMENT COMPANY LIMITED

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Reporting Officer, Patrick Moss, Planner

Reporting on an application to construct a new building comprising two dwellings with up to 10m3 of excavation, limited removal of vegetation in an SEA to allow driveways and building platforms. Subdivision around dwellings if landuse granted. at 33 Glenfell Place, Epsom. The reporting officer is recommending, subject to contrary or additional information being received at the hearing, that the application be **REFUSED**.

APPLICANT: LILY INVESTMENT COMPANY LIMITED

SUBMITTERS:			
Page 87	C Wifton & I M Huhtala	31 Glenfell Place	Epsom
Page 93	Carmel J Williams & Peter Louisson	17A Glenfell Place	Epsom
Page 96	P J & J E Taylor	19 Glenfell Place	Epsom
Page 99	G A & V N Crooks	29 Glenfell Place	Epsom
Page 103	Wei Shu	465 Khyber Pass Road	Newmarket
Page 107	Qiang Zheng & Huang Dong and Zheng and Dong Family Trust	27 Glenfell Place	Epsom

Page 111	The Tree Council - David Smith	PO Box 60203	Titirangi
Page 113	Hong Ling and Si Hao Li	PO Box 5470	Wellesley Street
Page 115	Tupuna Maunga o Tamaki Makaurau Authority	C/- Tania Richmond Richmond Planning Ltd	PO Box 91689 Victoria Street West
Page 123	Heritage New Zealand Rebecca Vertongen	PO Box 105 291	Auckland City
Page 129	Grenland Limited	465 Khyber Pass Road	Newmarket

Mount Eden. The flat land on the site that can be built on comprises a narrow strip of land connecting through to Glenfell Place and the north-eastern portion of the site adjacent to 31 Glenfell Place which measures roughly 1/3rd of the site area (421m² approximately).

The wider neighbourhood consists of a mixture period and contemporary dwellings, including a scheduled building and site, Firth Castle, located at 11 Castle Drive. Government House is located on the southern side of Glenfell Place which limits residential development to the northern side of Glenfell Place. Maungawhau/ Mt Eden is located directly to the west and in practice forms the western portion of the site. Maungawhau is listed in the Plan as being an outstanding natural feature and whilst this overlay encompassing a good portion of the site, the building platform sits just outside it.

The surrounding environment is characterised by housing located within a spacious and well-landscaped setting. While street trees are present on the northern side of Glenfell Place, the landscaped appearance of the area is largely created by large trees planted on the Government House site or private properties to the north of the road.

Also of note is a path and stairway at the end of Glenfell Place for use by the general public from which they can access the Maunga. This pathway starts just outside 21 Glenfell Place and the stairway gives elevated views of the subject site and surrounding area.

Relevant Background

SEA

The proposal involves subdivision of a site subject to a Significant Ecological Area that does not comply with Standard E38.8.2.5. The standard requires the SEA to be legally protected and development lots to be restricted to areas outside the SEA. Whilst the applicant has indicated on the scheme plan that the SEA is to be legally protected, the development lots are marked over the whole of the site rather than be restricted to areas outside the SEA. The proposal therefore doesn't comply with the standard and is a non-complying activity in this respect.

Tūpuna Maunga Authority

In 2014, following five years of Te Tiriti of Waitangi settlement negotiations, 14 Tūpuna Maunga were transferred to the 13 iwi/hapū of Ngā Mana Whenua o Tāmaki Makaurau. The Tūpuna Maunga are held in Trust for the benefit of those iwi/hapū and people of Auckland. Governance and administration of the Tūpuna Maunga is undertaken by the Tūpuna Maunga Authority. This is a co-governance body with equal representation from Mana Whenua and Auckland Council (together with a non-voting Crown representative).

The Tāmaki Collective Redress Act requires that the Tūpuna Maunga Authority have six representatives from Mana Whenua and six representatives from Auckland Council with one non-voting representative from the Department of Conservation. The Maunga Authority are a submitter on the application.

Volcanic Viewshaft and Height Sensitive Areas Overlays

The building infringes the volcanic viewshaft overlay and as such is a restricted discretionary activity as per chapter D14.4 (A3). However it is also a permitted activity as it complies with the 9m height limit in the height sensitive areas overlay as per D14.4 (A7). To resolve this contradiction, I have looked at the direction of the objectives and policies. Policy 4 states:

4. *Avoid new buildings or structures that intrude into volcanic viewshafts scheduled in Schedule 9 Volcanic Viewshafts Schedule, except:*
 - a. *where they would have no adverse effect on the visual integrity of the volcanic maunga as seen from the identified viewing point or line; or*
 - b. *to allow development up to a two storey height to intrude into a volcanic viewshaft, where any adverse effect of development is avoided or mitigated; or*
 - c. *to allow development located within an identified height sensitive area up to defined appropriate height limits; or*
 - d. *to allow the provision of infrastructure where there are particular functional or operational needs that necessitate a structure that penetrates the floor of a volcanic viewshaft, there is no reasonably practicable alternative and adverse effects of development are avoided or mitigated.*

My reading of this is that an exception is granted to intrusion into a viewshaft if the building complies with the height limit in the height sensitive area (part c). My position is therefore that the permitted activity status of the height sensitive areas overlay takes precedence. The commissioners should be aware that the Tūpuna Maunga Authority has gone on record a number of times disagreeing with this position.

Geotechnical Issues

The subject site has a soil warning tag on Council's GIS viewer. According to Rule E36.4.1 (A43) buildings and structures on land subject to instability complying with standard E36.6.1.11 is a permitted activity if a geotechnical report is submitted and accepted by Council as being adequate. In this case the building will be constructed in accordance with a geotechnical report which is supported by appropriate conditions of consent and which is accepted by Council's engineer. It therefore complies with the standard and is a permitted activity.

Flooding Issues

There is a flood plain on Council's GIS viewer, indicating that the proposal requires consent for building over the floodplain. Council's development engineer, Inthan Azoor, has indicated in her memo that the floodplain has subsequently been found not to exist. However, an overland flowpath is present and consent is required in this respect instead.

ATTACHMENT SIX
ADDITIONAL INFORMATION

From: [Joe Gray](#)
To: [Scott MacArthur](#)
Cc: [Helen Andrews](#); ["Catherine Ma"](#); [Tania Richmond](#)
Subject: FW: 33 Glenfell Place - BUN60078992, LUC60116106 and SUB60221447
Date: Monday, 26 March 2018 2:51:05 p.m.
Attachments: [image002.png](#)
[FW Enquiry 33 Glenfell.msg](#)
[Plan change 4 .msg](#)

Hi Scott,

With respect to you two queries:

1. Compliance with the volcanic view shaft overlay. Our understanding of the rules is provided below:

Compliance with Schedule 9 Volcanic Viewshafts Schedule

D14.4.1 – Activity table

We have received advice from the council unitary plan team that the Height Sensitive Area overlay overrides D14.4.1 (A3). See first email attached. This would mean buildings up to 9 m are permitted, provided D14.6.3 is met.

Given that we know the building intrudes into a viewshaft it may be prudent to apply the RD status under D14.4.1(A3). This is the view of the Maunga Authority and we accept this view.

D14.6.1 - Height

The height has been measured using the rolling height, refer to the revised sections with the new roofline attached that demonstrate compliance.

D14.6.2 – Buildings and structures that do not intrude into a viewshaft

In this instance the building does intrude into a viewshaft. Given that it has been established that the base of the viewshaft is well below ground level at the subject site (11 m), a surveyors report to determine the viewshaft baseline is not considered to be helpful.

D14.6.3(1)

Buildings on sites that have a contiguous boundary with a site with a volcanic feature mapped as an outstanding natural feature must not exceed a height of:

(a) the lowest of:

- (i) the height defined in the height sensitive area planning maps or otherwise 9 m; or*
- (ii) where there are buildings on the adjoining sites on either side that also have a contiguous boundary with the site with the volcanic feature, the average height of the highest points of the roofs of the nearest buildings (other than accessory buildings) on each site, provided that such buildings are both higher than the average boundary level of the site of the proposed building; or*
- (iii) where D14.6.3(1)(ii) cannot be applied, the average height of the site which is contiguous with the boundary of the site with the volcanic feature.*

The GIS layer and figures on the contours show a maximum height of -11 m. Given that this figure is not an actual height (it is below ground), it was considered more appropriate to apply the 9 m trigger.

I am of the view that '*...(a) the lowest of:*' refers to one of either D14.6.3(1)(a)(i), D14.6.3(1)(a)(ii), or D14.6.3(1)(a)(iii). It is understood that a similar interpretation is currently being considered by Council (refer to second email attached).

2. Please see revised RC drawings with the revised roofline and cladding in the link below

http://babbage-files.co.nz/Downloads/2018.03.20_Collated_drawings_for_revised_RC_package_-_33_Glenfell_Place_Epsom.pdf

In addition to the above, the Maunga Authority have requested that the protection mechanism for the SEA areas is provided for as a consent notice rather than a covenant. The applicant is happy to accommodate the request. The consent notice shall require the owner of the site to implement and maintain the Planting and Pest and Weed Management Plan by Bioresearches, dated January 2018. The weed management shall be undertaken for a minimum period of 5 years after initial control.

Happy to discuss.

Thanks
Joe

Joe Gray
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From: Helen Andrews [mailto:Helen@berrysimons.co.nz]
Sent: Monday, 19 March 2018 2:49 PM
To: Joe Gray <joe.gray@babbage.co.nz>
Subject: FW: 33 Glenfell Place - BUN60078992, LUC60116106 and SUB60221447

Hi Joe,

Scott's queries / email as follows:

Hi Helen

This application is currently on hold at the applicants request. As such I had not formally requested information but there was a need to confirm compliance with volcanic view shaft rules.

We also need to receive your amended house designs (if any).

On that basis we would need at least a month and hearing date would not be set until we had

received the above info first.

Regards

Scott Macarthur
Acting Team Leader - Resource Consents

Kind regards,

Helen Andrews
Senior Associate



Berry Simons Environmental Law

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----- Original message -----

From: Helen Andrews <Helen@berrysimons.co.nz>
Date: 9/03/2018 2:50 pm (GMT+12:00)
To: Scott MacArthur <scott.macarthur@aucklandcouncil.govt.nz>
Subject: 33 Glenfell Place - BUN60078992, LUC60116106 and SUB60221447

Scott,

Can you please make enquiries and advise the earliest hearing date that might be available for the above applications?

Alternatively I'm happy to contact Democracy Services directly, if that's easier.

Kind regards,

Helen Andrews
Senior Associate



Berry Simons Environmental Law

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