

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision No. [2020] NZEnvC 162

IN THE MATTER

of the Resource Management Act 1991 (**the Act**)

AND

of an appeal pursuant to s 120 of the Act

BETWEEN

GOVIND AGARWAL

(ENV-2020-AKL-000081)

Appellant

AND

AUCKLAND COUNCIL

Respondent

Court: Chief Environment Court Judge D A Kirkpatrick sitting alone under s 279 of the Act.

Date of Decision: 25 September 2020

Date of Issue: 25 September 2020

DECISION ON APPLICATION UNDER S 116(1) OF THE ACT

A: The application under s 116 of the Act is granted. Resource consent BUN60341835 is allowed to commence subject to the conditions set out in this decision.

B: There is no order as to costs in relation to this decision.



REASONS

Introduction

[1] This matter relates to an appeal against the Council's decision to grant an application for consent to demolish existing buildings and construct and operate a new hotel at 74-80 Wellesley Street West, Auckland.

[2] The appeal concerns the resource consent allowing the new building to be built within two metres of the appellant's building at 125A Hobson Street, Auckland. The appellant submits that this will adversely impact the windows and balconies of the building. The appeal seeks the following relief:

The new building to be built at least 7 meters away from the building at 125A Hobson Street. ...

[3] In the Court's Minute of 12 August 2020 an evidence exchange timetable was set to progress this matter to hearing. The matter will be set down for hearing after 23 November 2020.

Application under s 116 of the Act

[4] The applicant has made an application under s 116 of the Act seeking that the resource consent (BUN60341835 granted to the applicant by the Auckland Council on 9 June 2020 (**the consent**)) commence.

[5] The parties have all agreed that the consent can commence subject to conditions.

Section 116 of the Act

[6] Section 116 of the Act states:

(1) Except as provided in subsections (1A), (2), (4), and (5), or section 116A and 116B, every resource consent that has been granted commences—

(a) When the time for lodging appeals against the grant of the consent expires and no appeals have been lodged; or

(b) When the Environment Court determines the appeals or all appellants withdraw their appeals— unless the resource consent states a later date or a determination of the Environment Court states otherwise.

[7] The approach taken to an application under s 116 is succinctly summarised in paragraphs [7] and [8] of *NCI Packaging (NZ) Ltd v Auckland Council*¹ as follows:

¹ [2013] NZEnvC 40.



[7] In *Walker v Manukau City Council*² it was confirmed that there are two tests under section 116(1). The first is whether allowing the consent to commence pending an appeal will serve the purpose of the Act. The second is whether prejudice arises from either allowing or disallowing the consent to commence.

[8] The Court is able to authorise a limited exercise of a consent, which is still subject to appeal,³ provided those parts of the consent that commence do not go to the core of the matter to be determined by the Court.⁴

[8] Having considered the application under s116 of the Act, and the fact that no party opposes the application being granted, I am satisfied that there is no prejudice to any party. I am also satisfied that the commencement of the consent, subject to the conditions agreed to by the parties, will serve the purpose of the Act because it will not impinge on the resolution of this appeal, nor will it impact the outcome.

Decision

[9] The Court orders, by consent, that resource consent BUN60341835 granted to the applicant by the Auckland Council on 9 June 2020 shall commence from the date of this decision, subject to the conditions that:

- (a) pending determination of the appeal, only that part of the Consent authorising the applicant to demolish the buildings on the site at 74-80 Wellesley Street West pursuant to Auckland Unitary Plan rule H8.4.1(A61) (**Demolition Consent**) may be implemented;
- (b) in implementing the Demolition Consent, the applicant complies with conditions 1, 2, 4, 4a, 4b, 5, 8, 9, 10, 11, 11a, 12, 14, 14b, 22, 23, 24, 25, 30, 63, 64, and 65 of the Consent in respect of all building demolition activities;
- (c) if construction of a new building on the site does not commence within six months of demolition being completed suitable temporary hoardings and/or hard and soft landscaping measures shall be installed on the site to provide a good standard of visual amenity for passers-by and persons who may view the site from elevated positions;

² Environment Court Christchurch, C106/99, 14 June 1999.

³ *Ngawha Geothermal Resource Co Ltd v Northland Regional Council*, Environment Court Auckland, A062/05, 18 April 2005.

⁴ *Armstrong v Central Otago District Council*, Environment Court Christchurch, C132/09, 23 December 2009.



(d) and prior to commencement of construction the site shall not be used for short-term non-accessory car-parking.

[10] There is no order as to costs in relation to this decision.



D A Kirkpatrick
Chief Environment Court Judge

