

NOTICE OF MEETING

RESOURCE CONSENTS HEARINGS PANEL

TO: Chairperson John Childs
 Crs Grahame Powell
 Wayne Walker

A meeting of the Resource Consents Hearings Panel will take place in the Council Chamber, Rodney District Council, Centreway Road, Orewa on Friday, 12 February 2010 commencing at 9.00 a.m.

for: CHIEF EXECUTIVE
Rodger Kerr-Newell

OREWA
3 February 2010

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PROGRAMME

<u>Time</u>		<u>Page</u>
9.00 a.m.	A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 FOR CONSENT TO REMOVE A NORFOLK ISLAND PINE AT 4/ 9A MELANDRA ROAD, MANLY AS A RESTRICTED DISCRETIONARY ACTIVITY Address: 4 / 9A Melandra Road, Manly APPLICANTS: SARAH AND REID QUINLAN	1

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ITEM NO: 1

APOLOGIES

ITEM NO: 2

REPORT



TO Resource Consents Hearings Panel
ON 12 February 2010
FROM Justin Walters – Reporting Planner

SIGNATURE

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APPROVED FOR Steve Seager – Team Leader
RELEASE BY

SIGNATURE

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SUBJECT **A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 FOR CONSENT TO REMOVE A NORFOLK ISLAND PINE AT 4/9A MELANDRA ROAD, MANLY AS A RESTRICTED DISCRETIONARY ACTIVITY**

Address: 4 / 9A Melandra Road, Manly

APPLICANTS: SARAH AND REID QUINLAN

FILE REF L55625

WARD Hibiscus Coast

Having considered the proposal against all the relevant statutory criteria it is recommended by the reporting planner that the application be granted consent subject to conditions. The reasons for this recommendation are set out in Section 10 of this report.

Note: This report sets out the advice of the reporting planner. This report has yet to be considered by the Panel of Commissioners delegated by the Council to determine this application. The recommendation is not the decision on this application. A decision will only be made after the Commissioners have considered the application and heard the applicant and any submitters.

1.0 APPLICATION AND PROPERTY DETAILS

SITE ADDRESS:	4 / 9A Melandra Road, Manly	
APPLICANT:	Sarah and Reid Quinlan	
LEGAL DESCRIPTION:	Flat 4 DP 166069 (CT NA100D/65)	
SITE AREA:	2730m ²	
DISTRICT PLAN:		
ZONING:	District Plan 2000 – Operative in Part	Residential Eastern Peninsula
	Other Notations:	None
ACTIVITY STATUS:	District Plan 2000 – Operative in Part	Restricted Discretionary
	Overall:	Restricted Discretionary
SNA:		None
OTHER RELEVANT CONSENTS:	None	
CONSENT NOTICES:	None	

2.0 BACKGROUND

S93/94 Decision

2.1 This application was applied for under the pre 2009 amendments to the Resource Management Act and was Limited Notified on the November 2009 for the following reasons.

- The effects of this proposal on the wider environment were considered to be no more than minor in that:
 - a) The removal of the Norfolk Pine will have no more than minor effects in terms of character or visual amenity on the immediately surrounding sites as the tree is one of a number of mid ranged pine trees in the area and because of the dominating effect of the large pine tree on 5/9A Melandra Road.
 - b) Although there is no arboricultural reason to remove the tree, effects in terms of condition and safety of the subject tree, and any ecological impact of the removal Norfolk Pine, will be no more than minor.
- The applicant has not provided the affected persons consent of all properties considered to be potentially affected.

3.0 THE PROPOSAL AND REASONS FOR APPLICATION

3.1 The applicant is proposing to remove a Norfolk Island Pine located on the north eastern boundary of 4 / 9A Melandra Road, Manly.

3.2 Reason for Application.

Resource Consent is required as under Rule 18.9.1.2 and the activity table under 18.9.3 of the District Plan 2000 - Operative in Part. The cutting, damaging or removal of any exotic tree over 6 metres in height and not listed in the exemptions is a **Restricted Discretionary Activity**.

4.0 SITE DESCRIPTION

4.1 The subject site is the northern most of 6 properties on a cross lease site located on the eastern side of Melandra Road. The wider site slopes relatively steeply from the road with building platforms having been formed for the dwellings on the southern portion of the wider site. There is a significant Norfolk Pine located to the east of the dwelling on number 5/9A and to the south of the dwelling on the subject site which is visible from the road and significantly adds to the amenity of the character of the surrounding area.

The subject tree is located on the southern side of the north eastern boundary of the number 4/9A site. Between the subject tree and the dwelling on the subject site there is a narrow garden area.

4.2 The surrounding properties are residential in nature.

5.0 NOTIFICATION AND SUBMISSIONS

Notification

5.1 The application was limited notified on 20 November 2009 and submissions closed on 11 January 2010. A summary of the submissions is set out below. A full copy of the submissions is attached as **Attachment B**.

Submissions

5.2 A total of 2 submissions were received by the close of the submission period, both opposing the application.

Name	Address	Main Concerns	Relief Sought	Wish to be heard
Danny Morris	9C Melandra Road	See below	Decline the application – Leave the situation as it currently is.	Yes
Liz Morris				Yes

LOCAL RESIDENTS

A total of 2 submissions have been received in opposition to the proposal raising the following concerns:

- 1(a) The tree is perfectly healthy;
- 1(b) The tree was firmly established prior to the applicant moving into the house and has not significantly changed in size or shape since then;
- 1(c) The issue is not about shading or debris, it is about the applicant obtaining a sea view;
- 1(d) The removal of the tree will impact on the privacy of their property at 9C.

5.3 Written Consents

The applicant has supplied the following owners' approvals (see **Attachment C**):

- S E Bretherton – 9B Melandra Road
- Nicholas and Rebecca George – 6/9A Melandra Road
- Ray and Lloyd Houghton – 5/9A Melandra Road
- John Skeen – 3/9A Melandra Road
- Rodger Spearman – 5/3 Swann Beach Road
- Alan Watkins – 15 B Melandra Road

Under Section 104 (3) of the Resource Management Act the consent authority must not have regard to any effect on a person who has given written approval to the application.

5.4 Correspondence

The applicant has lodged as part of the application for resource consent letters of support for the proposal from the following persons (see **Attachment D**).

- Sarah Bretherton (9B Melandra Road)
 - Wish to have it removed for the reasons stated within the application and has specifically identified neighbours wishing to have view, and the wellbeing of the community.
- Barbara Redmond (Previous owner of 4/9A Melandra Road)

As part of the processing of this consent Liz Morris (9C Melandra Road) raised concerns that the removal of the tree will affect the privacy of their site. This was followed up by a submission in response to the notification.

6.0 REPORTS FROM OTHER OFFICERS/DEPARTMENTS/CONSULTANTS

Reports and/or comments have been received from the following persons with respect to this application:

- (1) Arborist report from Nigel Clough (see **Attachment E**).

7.0 STATUTORY ASSESSMENT

7.1 The Act requires for all applications for resource consent that subject to Part 2 of the Act, the Council must have regard to the matters set out in section 104 of the Act.

7.2 Section 104 (2) of the Act states that the Council “may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.” The permitted baseline of effects will therefore be assessed prior to the assessment in terms of section 104 (1) of the Act.

7.3 Following the section 104 (1) assessment an assessment will be made in terms of sections 104 C, as applicable, and Part 2 of the Act.

8.0 SECTION 104 ASSESSMENT

8.1 Restrictions on Discretion

Under section 104C(a) Council has restricted itself to the following matters of discretion:

- Pruning or removal of the tree;
- Condition and safety of the tree;
- Location of the tree to be removed;
- The ecological value of the tree to be removed and the values of the vegetation or ecosystem of which it is a part; and
- Siting of the building works.

Permitted Activities Assessment

8.2 The Existing Environment

See above site description.

8.3 Unimplemented Consents

None

8.4 Activities Permitted by the Plan

Activities permitted by the plan; relevant to this application is the removal of an exotic tree up to 6 metres in height.

8.5 Section 104(1) (a) Any Actual and Potential Effects on the Environment of Allowing the Activity.

Section 3 of the Act states that the term “effect” includes any positive or adverse effect; temporary or permanent effect; past, present, or future effect; any cumulative effect and potential effects.

(a) Location of the tree to be removed

The location of the Norfolk Pine proposed to be removed has the potential to have adverse effects in terms of character and visual amenity, however within the wider environment any effects of the removal of the Norfolk Pine on the immediately surrounding sites will be significantly reduced as it is one of a number of mid sized pine trees in the area and taking into account the dominating effect of the large pine tree on 5/9A Melandra Road. It is noted that the applicant and the neighbour at 9B has given as one of the reasons for removal of the tree that it will have positive effects by improving the views of the surrounding properties. It is acknowledged that property owners often wish, where possible, to have sea views. However within the urban coastal environment larger trees (including exotics) also add to the amenity of the coastal environment. As the tree proposed to be removed is not significant within the wider landscape, although the removal of the tree will change the landscape, these effects are considered to be to be neutral.

The applicant has stated that the tree obstructs natural light from the lowest levels of the house, casts a shadow on the new lawn and gardens for most of the day, and drops leaves and seeds on the newly landscaped lawns and gardens. The applicant also states that the tree obstructs the right of way serving number 9B. At the time of the site visit (late afternoon on 16/10/2009) significant shading was not observed nor did the tree obstruct pedestrian access to any noticeable degree. The removal of the tree will reduce leaf litter in the immediate vicinity of the tree, however it is noted that there are other trees and bushes that will still contribute to the leaf litter.

The neighbour at number 9C has raised concerns that removal of the tree will have adverse impacts on their privacy. The removal of the tree will impact on the amenity of the property at number 9C as a result of the change in general amenity of the site as the removal of the tree will create a hole in the perimeter of what is currently an enclosed and private site and outdoor living area. However it is noted that any views through the gap created by the removal of the tree will be to the car parking area of number 9C rather than the outdoor living area. In addition the applicant has also volunteered to provide alternative planting. It is therefore considered that although the removal of the tree will have more than de-minimus effects on the amenity of number 9C, with appropriate alternative planting it is considered that these effect will only be minor on number 9C, and less than minor in the context of the wider environment.

Overall is it considered that the effects of the removal of the Norfolk Pine will be minor or can be mitigated using alternative planting.

(b) Condition, safety and ecological value of the tree to be removed and the values of the vegetation or ecosystem of which it is a part.

The Norfolk Pine to be removed has been assessed by the Council’s consultant arborist. Council’s arborist considers the tree to be in good condition and health and of early maturity. The Council’s arborist also states that there is no sound arboricultural reason to remove the tree.

Within the wider context of the site, the Norfolk Pine is an exotic tree and is not considered to be as high in terms of ecological value when compared to the surrounding bush on the coastline to the north east of the subject site.

It is therefore considered that although there is no arboricultural reason to remove the tree, the effects in terms of condition and safety of the subject tree, and any ecological impacts because of the removal Norfolk Pine, will be no more than minor.

(c) Siting of the works

The removal of the Norfolk Pine is not necessitated by any currently proposed works.

In summary

It is considered that the adverse effects of this proposal can be avoided, remedied or mitigated so as to be no more than minor.

Section 104(1) (b) Any Relevant Plan Provisions

8.6 District Plan Provisions

8.6.1 District Plan 2000 – Operative in Part - Residential Eastern Peninsula

8.6.1.1 Objectives and Policies

The proposal is considered to be consistent with Objective 18.3.1 and policies 18.4.1, 2, 3 and 4 in that the effects of the removal of the tree will not significantly impact of the surrounding environment in terms of natural character, water quality, site stability or cultural heritage.

The proposal is not considered to be **contrary** to any relevant objectives or policies.

8.6.1.2 Assessment Criteria

The proposal is considered to be **consistent** with the following assessment criteria.

- 1(a) Assessment Criteria 18.12.10.2(c)
- 1(b) Assessment Criteria 18.12.10.2(d) – (f)
- 1(c) Assessment Criteria 18.12.10.2(h)

As discussed above, removal of the Norfolk Pine will not significantly impact on the landscape or amenity values of the neighbourhood on the immediately surrounding sites as the tree is one of a number of mid ranged pine trees in the area and taking into account the dominating effect of the large pine tree on 5/9A Melandra Road. It is therefore considered that the proposal is consistent with 1(a).

Within the wider context of the site, the Norfolk Pine is as an exotic tree not considered to be high in terms of ecological value when compared to the surrounding bush on the coastline to the north east of the subject site. In addition, the removal of the tree will not initiate or exacerbate flooding. It is therefore considered that this proposal is considered to be consistent with 1(b).

This proposal is considered to be consistent with 1(c) in that the applicant has offered to plant an appropriate replacement tree in consultation with their neighbours. A condition of consent is also recommended requiring the planting of a replacement native tree.

The proposal is not considered to be **contrary** to any relevant assessment criteria.

8.7 Any Relevant National Policy Statement or Regional Policy Statement

The Auckland Regional Policy Statement (hereafter referred to as RPS) sets in place the policy for promoting the sustainable management of the natural and physical resources of the Region. The RPS identifies significant matters of concern to Tangata Whenua and objectives, policies and methods are set out to achieve sustainable and integrated management of major natural and physical resources. The RPS recognises that the Auckland region has a diverse natural and cultural environment with features such as intricate coast lines and bush clad slopes. The key strategic resource management issues in the Auckland region stem from the pressures and impacts of development on the region's natural and physical resources. The

RPS promotes integrated management of development to ensure the protection of environmental quality. Due to the nature and scale of the proposal the provisions of the RPS are not relevant to the consideration of this application.

S104(1)(c) ANY OTHER MATTERS THE CONSENT AUTHORITY CONSIDERS RELEVANT AND REASONABLY NECESSARY TO DETERMINE THE APPLICATION

8.8 Vision Rodney

Vision Rodney is a document incorporating the statements of the future that people and communities of Rodney want for the District. It sets out the following 6 key intent statements:

- Prosperous
- Vibrant
- Distinctive
- Connected
- Safe and healthy
- Clean and Green

This proposal is considered to meet the outcomes of 'distinctive' and 'clean and green' in that the proposal will be consistent with the surrounding development and will not impact on the surrounding coastal or significant landscapes.

8.9 A Living Vision for Rodney's Economy

As the scope of this proposal is limited to tree removal it is unlikely to impact on the above document.

8.10 Draft Tourism Strategy

As the scope of this proposal is limited to tree removal it is unlikely to impact on the above document.

8.11 Structure Plans

There is no relevant structure plan for the area.

8.12 Auckland Regional Growth Strategy

As the scope of this proposal is limited to tree removal it is unlikely to impact on the above document.

8.13 North-western Sector Agreement

As the scope of this proposal is limited to tree removal it is unlikely to impact on the above document.

8.14 Changes to Legislation

Under *Butterworth v Auckland City Council* (ENV-2008-AKL-000248) (see **Attachment F**) the Environment Court noted that it was relevant under 104(1)(c) to consider the Resource Management (Simplifying and Streamlining) Amendment Bill which contains provisions limiting the future force of general tree protection measures in District Plans from 1 January 2012. Although the Court noted that it was not correct to give the change in the legislation instant full effect for practical purposes where there were other reasons to warrant the removal of the tree it was not necessary to make the applicant wait until 1 January 2012.

Although it is noted that there are distinctions between the above case and the subject application, namely that in the *Butterworth v Auckland City* case the tree had significant adverse effects on the applicant and surrounding neighbours, it is worth noting that due to a number of factors including the very common nature of Norfolk Pine trees and the lack of prominence within the wider landscape, the subject tree is likely to have a very low probability of becoming a scheduled tree. Unless the tree does become a scheduled tree under the District Plan it will be able to be removed in 2012 and it is therefore considered that the subject tree should not unnecessarily be retained. However the change in the legislation should only be given a small weighting in the overall decision.

Section 104 Assessment Conclusions

8.15 Overall it is considered that having regard to all the relevant section 104 matters that consent be granted subject to conditions.

9.0 PART II ASSESSMENT

9.1 Section 5 of the Act describes the purpose and principles of the Act, and provides a definition of 'sustainable management' which means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while sustaining the potential of the natural environment; safeguarding the life-supporting capacity of air, water, soil and ecosystems; and avoiding, remedying or mitigating any adverse effects of activities on the environment. For the reasons discussed in the evaluation section, the effects of the proposal will be no more than minor in that the effects can be avoided, remedied or mitigated and it is considered that the proposal is consistent with the provisions of Section 5 of the Act.

9.2 Section 6 of the Act sets out the matters of national importance. Included within this are the preservation of the natural character of the coast, protection of outstanding natural features and landscapes, including significant indigenous vegetation, habitats and historical heritage and the maintenance and enhancement of public access along water bodies. As the proposal will not have more than minor effects on the surrounding coastal environment or any significant landscapes this proposal is not considered to be contrary to the provisions of Section 6 of the Act.

9.3 Other matters are discussed in Section 7. Such matters include kaitiakitanga, maintenance and enhancement of natural and physical resources, intrinsic values of ecosystems, and the maintenance and enhancement of amenity values and the quality of the environment. The adverse effects on the landscape and visual amenity values of the proposal have been discussed above. As the proposal is consistent with the surrounding area this proposal is considered to be consistent with Section 7 of the Act.

9.4 Section 8 requires that the principles of the Treaty of Waitangi shall be taken into account in relation to managing the use and development of natural and physical resources. The Cultural Heritage Inventory shows the subject site as having archaeological sites on or within the proximity to the site. It is therefore considered that the proposal is consistent with the provisions of Section 8 of the Act.

9.5 Overall it is considered that the proposal is not inconsistent with the purpose and principles of Part II of the Resource Management Act, 1991.

10.0 RECOMMENDATION

10.1 That, pursuant to Sections 104 and 104C of the Resource Management Act 1991, the notified application for resource consent by Sarah and Reid Quinlan to remove a Norfolk Island Pine located on the north eastern boundary of 4 / 9A Melandra Road, Manly Flat 4 DP 166069 (CT NA100D/65) be granted subject to conditions.

REASONS FOR THE RECOMMENDATION

10.2 Pursuant to Section 113 of the Resource Management Act 1991, the reasons for this decision are as follows:

- (a) The effects of the proposal are considered to be no more than minor in that:
 - The removal of the Norfolk Pine will have no more than minor effects in terms of character or visual amenity on the immediately surrounding sites as the tree is one of a number of mid ranged pine trees in the area and taking into account the dominating effect of the large pine tree on 5/9A Melandra Road within the immediate landscape.
 - Although there is no arboricultural reason to remove the tree, effects in terms of condition and safety of the tree, and any ecological impact of the removal of the Norfolk Pine will be no more than minor.
 - Although the removal of the Norfolk Pine will have adverse effects on number 9C Melandra Road in terms of amenity, these effects will be minor and can be further mitigated with appropriate replacement planting.
- (b) The proposal is not contrary to the Objectives and Policies of the Operative and Proposed District Plan.
- (c) The proposal is consistent with Vision Rodney as it will maintain the look and feel of the surrounding area.
- (d) The proposal is consistent with Part 2 of the Resource Management Act in that the effects of this proposal can be avoided, remedied or mitigated and the proposal will not impact on significant landscapes or wider amenity of the surrounding area.

LAPSING OF CONSENT

Pursuant to Section 125 of the Resource Management Act 1991, this resource consent will expire 5 years after the date of commencement of consent unless, before the consent lapses;

- (a) the consent is given effect to; or
- (b) an application is made to the Council to extend the period of consent, and the Council decides to grant an extension after taking into account the statutory considerations, set out in section 125(1)(b) of the Resource Management Act 1991.

CONDITIONS OF CONSENT:

Pursuant to Section 108 of the Resource Management Act 1991, this consent is subject to the following conditions:

1. (general) The development shall proceed in general accordance with the application submitted.

Note: (building consent) The granting of this resource consent does not preclude the consent holder from the need to obtain a building consent prior to construction commencing.

2. (notification of commencement) At least 7 days prior to the work commencing the resource consent holder shall notify the Council's RMA Compliance Administrator by telephone (0800 426 5169) the expected date of work commencing.
3. (replacement tree) Within the next planting season (May to October) immediately following the completion of the work on the site the consent holder shall plant one native tree within the site or with Council Reserve to the discretion of the Manager, Environmental Services RDC - Parks, Coastal & Stormwater Operations, with a minimum size of Pb95 or of a height of no less than 1.8 metres. The replacement tree shall be retained thereafter.

ATTACHMENTS

Attachment A – Limited Notified Application

Attachment B – Submissions

Attachment C – Affected Persons Consent

Attachment D – Correspondence

Attachment E – Arborist Report

Attachment F – Butterworth v Auckland City Council (Env-2008-AKL-000248)

Attachment G – Section 93/94 Report and Delegated Decision