

Appendix 5: Correspondence from Applicant on “Bundling” of Consents

From: Alistair Aburn <Alistair@urbanp.co.nz>
Sent: Saturday, 22 September 2018 11:17 AM
To: Gina Sweetman <gina.s@sweetmanplanning.co.nz>
Subject: RE: Summerset Boulcott

Good morning Gina

As discussed briefly by phone on Friday, the Applicant’s position is that the signs can be dealt with separately as a discretionary activity under Rule 14B 2.4, separate from the development of the retirement village (housing for the elderly) which requires consent as a restricted discretionary activity under Rule 4A.2.3(m).

It is the Applicant’s position that the required consents under Rule 4A.2.3(m) and Rule 14B 2.4 do not need to be ‘bundled’.

The principal reason for the Applicant’s position is that the proposed entrance signs are a very, very minor element in the overall retirement village development which can readily be removed from the consenting process, without any detriment to the proposed retirement village. Their removal would not in any way change the overall scope of the assessment required under Rule 4A.2.3(m), which is a specific rule for development of ‘housing for the elderly’ within the area of land shown on Appendix General Residential 21.

As the entrance signs are a very, very minor element in the overall development, there would be nothing ‘artificial’ in keeping the assessment under Rule 14 2.4 separate from the assessment under Rule 4A 2.3(m). Accordingly, bundling of the two rules is not necessary or appropriate in the circumstances of this application.

This position is, in the Applicant’s opinion, supported by case law - see, for example, *Urban Auckland v Auckland Council CIV 2015-404-000719 [2015] NZHC 1381*. When addressing the question: was bundling of the consents required in this case?, including bundling of the consents required for the various activities proposed, the High Court at para [64] recorded as follows:

“[64] In *Southpark Corporation Ltd v Auckland City Council* the Environment Court also considered the effect of *Bayley*. It summarised the law as:

From those authorities, it is our understanding that while the *Locke* approach remains generally applicable, so a consent authority can consider a proposal in the round, not split artificially into pieces, that approach is not appropriate where: (a) one of the consents sought is classified as a controlled activity or a restricted discretionary activity; and (b) the scope of the consent authority’s discretionary judgement in respect of one of the consents required is relatively restricted or confined, rather than a broad range of factors; and (c) the effects of exercising the two consents would not overlap or have consequential or flow-on effects to be considered on the another application, but are distinct”.

In the case of the proposed retirement village the proposed entrance signs are not an essential part of the development. Consequently, there is nothing artificial in separating them from the assessment of the village overall. They can be treated as distinct.

I can advise that Russell Bartlett QC is in agreement with the approach to separate the consents given that the signage element is a very, very minor element in the overall scheme of things.

I would be grateful if you could advise if your position on 'bundling' on this occasion is any different from that summarised above.

Warm regards

Alistair Aburn



In the office Mondays
to Thursdays
inclusive, and not on
Fridays.

ph: 04 474 4111
Level 5, 82 Willis
Street
PO Box 9042,
Wellington
New Zealand

From: Gina Sweetman [<mailto:gina.s@sweetmanplanning.co.nz>]

Sent: Wednesday, 19 September 2018 7:04 p.m.

To: Alistair Aburn

Cc: Phill Stanley

Subject: Summerset Boulcott

Hi Alistair, further to our phone conversation about the signage issue, and the bundling or not bundling of the application as a result of its discretionary activity status.

I've talked through this with Stephen, and his position is that it should be the applicant who puts the case in respect to how the application should be treated, and the approach you want to take. The question of course is whether the signage is part of the application "bundle" or can be dealt with as a separate matter.

Can I leave this in your hands to mull over and discuss with Russell how you want to address this? Obviously, the sooner that you get back to me, the better.

Kind regards, Gina

Gina Sweetman
Sweetman Planning Services
MPlan (First Class Honours), MNZPI, DSA
Ph: 04 973 3714 Mob: 021 866 711
39 Navigation Drive, Whitby, Porirua 5024
<http://sweetmanplanning.co.nz/>