

No. 197/70

IN THE MATTER of the Town and  
Country Planning  
Act 1953

and

IN THE MATTER of an appeal under  
Section 28D of the  
Act

BETWEEN R. H. MARTIN

Appellant

A N D ROTORUA COUNTY COUNCIL

Respondent

A N D J. W. J. LEPPER

Applicant

BEFORE THE NUMBER ONE TOWN AND COUNTRY PLANNING APPEAL BOARD

Messrs A. R. Turner, S.M. (Chairman)  
A. E. Kennard  
G. R. Tutt

HEARING at Rotorua on the thirtieth and thirty-first days  
of July 1970 and on the third day of August 1970.

COUNSEL: Moore for Appellant  
Dillon for Respondent  
Duncan for Applicant

DECISION

Appeal under Section 28D Town and Country Planning  
Act 1953.

One J. W. J. Lepper (hereinafter termed "the applicant")  
operates the business of a contractor to various sawmills  
in and about Rotorua for the removal of sawdust and other  
wood waste products. The applicant's business disposes of  
over 2,500 cubic yards of wood waste per week and the  
applicant estimates that the total volume of wood waste  
produced in the Rotorua district (excluding that from the

Waipa State Mill and a large mill at Ngongotaha) is in the vicinity of 4,500 cubic yards per week. As the sites at present being used for disposing of this waste now have a limited capacity left, it has become necessary for the applicant to seek a new site for this purpose. He found what he considered a suitable gully of about 25 acres in the watershed of the Ngongotaha Stream on the farm of one T. J. Williams, Dansey Road, Ngongotaha, obtained a Deed of Licence from Williams permitting him to deposit wood waste in this gully for a period of 10 years and applied to the respondent Council for town planning consent to that use.

The land in question is situated in the Rural Zone in the operative district scheme. In that zone the following is permitted as a conditional use: -

"Timber mills, saw mills, timber processing and any undertaking which is ancillary to the forestry and timber industries, not being one of the industries listed in Appendix A hereto."

Among the industries excluded by Appendix A is: -

"Any industry that is or under any conditions may become noxious or dangerous in relation to adjacent properties or public places."

The Council granted its consent to the application but in doing so imposed a number of conditions. The appellant, who is the owner of the adjoining farm and had been an objector to the application, then brought this appeal against the granting of consent.

The Board accepts that the disposal of timber waste in appropriate places in rural zones is a proper activity in those zones. However, that activity has given rise to considerable criticism because of unsightliness and other detractions from amenities, mainly because of a lack of "good housekeeping" by many engaged in that activity. For that reason the following conditions are written into the respondent Council's Ordinances as applying to conditional uses in Rural Zones: -

- "(a) All tailings, sawdust, spoil, waste and effluent shall be so disposed of as to minimise damage to property or disfigurement to the countryside.
- (b) The sites of excavations, heaps, dumps, spoil or other materials at any workings or plant which cause or are likely to cause damage to property or disfigurement to the countryside shall be progressively restored to a reasonably natural state by levelling or back-filling where possible and by the planting of grass or trees and, on completion of work, by removal of plant and buildings."

Further difficulties with the disposal of wood waste are the possibility of a deep-seated fire in the dump, the possibility of pollution from sawdust washing into a water course, and the possibility of pollution from seepage from the dump.

The applicant took particular care in choosing the land the subject of his application. From the point of view of economic working the site is close to the main road, but it is capable of being screened in a reasonable manner, and the catchment is limited to the 25 acres of the site. The Board is satisfied on the evidence that the site is suitable for the proposed use.

One of the grounds of objection was that additional traffic hazards would be caused by a large number of trucks passing through the junctions of Western and Dansey Roads with the main highway. That may be so, but entry to the site is proposed to be limited to one point on Dansey Road and no traffic hazard would be created there. The hazard from additional traffic on public roads cannot be a valid ground of objection.

The respondent Council also took particular care to frame and impose special conditions to safeguard against the possibility of detracting from amenities. The Board is satisfied on the evidence that except for two matters, the general and special conditions imposed are adequate.

In order to safeguard against fire, to prevent sawdust from washing away and to control or minimise seepage, the Council required that the applicant's operations should be conducted on the "cell" or "compartment" principle. The County Engineer said that he had adapted this method from the method used in the disposal of household and other refuse. It was given in evidence that the moisture content of the wood waste handled by the applicant is 60 per cent. The respondent proposed that the applicant should commence his operations on the floor of the gully, working back from the mouth. The Board is not satisfied on the evidence that there would be no danger of the face of the front compartments bursting in times of heavy rain or other unusual conditions, and of ponded water escaping and sawdust and deleterious substances being carried away.

In his evidence the applicant asserted that "there is no risk arising from the manner in which disposal operations are to be carried out that there will be any escape of toxic element via the water course into the Ngongotaha Stream" and no risk at all that any quantities of sawdust might be carried into the stream. In cross-examination he admitted that he is concerned on the issue of pollution. When asked as to methods of controlling the toxic nature of the effluent he said that the industry is aware of various techniques, that he accepts certain controls before starting the new dump and that he desires to "continue the experiments".

The appellant in his Notice of Appeal alleged that there would be seepage (effluent) from the dump, and that this seepage would drain into the Ngongotaha Stream and pollute it. The appellant gave evidence that there is seepage from a large dump of timber waste in a nearby gully. A considerable volume of evidence was called by the appellant on the question of seepage from dumps of timber waste, the toxicity of such seepage and the deleterious effect of the withdrawal of oxygen from water by tannins present in timber.

Despite the notice given to him and the nature of his own evidence the applicant did not call any technical evidence to meet these allegations.

The Board finds on the evidence that there are reasonable grounds for believing that there would be some toxic seepage from the dump proposed to be established by the applicant and that any seepage will find its way to and is likely to pollute the Ngongotaha Stream.

But the Board is unable to decide on the evidence placed before it just what amount of seepage there would be from a timber waste dump built up on the "cell" principle and in particular, from the dump proposed by the applicant, and the degree to which it would be toxic. The Board accepts the evidence given to it that the Ngongotaha Stream is to some degree polluted already. The Board holds that it is important in the public interest to prevent additional sources of pollution of the stream. But the Board is unable on the evidence to decide to what degree seepage from the dump proposed by the applicant will pollute the Ngongotaha Stream or cause withdrawal of oxygen from its waters.

The Board holds that in view of the provisions quoted from the Ordinances of the respondent Council and in view of the fact that an application for consent to a conditional use may be allowed or refused there is an onus on the applicant in this case to establish affirmatively either that there will be no toxic seepage from the dump he proposes or that any toxic seepage can be controlled so that noxiousness will be eliminated and pollution of the Ngongotaha Stream will not occur, not only for the period of his Licence but for such longer period as toxic seepage may continue. The applicant has not discharged that onus nor rebutted the prima facie case raised by the appellant.

The Council was concerned about these issues because two of the conditions laid down by it read as follows: -

"That in the event of any seepage, vermin or other health hazards or nuisance occurring, the applicant undertake such preventive or curative methods as may be directed by the County Council.

That the conditions herein imposed do not relieve the applicant in respect to his liability so far as pollution of any waterway may be concerned."

It is to be noted that these conditions are not adequate. It is better to prevent pollution before it starts but in the case of a timber waste dump which will remain for many years after the dumping of waste has ceased the community must be satisfied in advance that if toxic seepage occurs it can be adequately and permanently controlled without any possibility of pollution.

The appeal is allowed and the consent given by the respondent Council on the applicant's application is set aside, but without prejudice to the right of the applicant to bring a further application.

Dated this

*eight*

day of

*September* 1970.



*[Handwritten signature]*

Deputy Chairman