



Waitakere City Council  
*Te Taiao o Waitakere*

## NOTICE OF MEETING

# HEARING BY COMMISSIONER

I hereby give notice that a Hearing by a Commissioner will be held on:-

**DATE:**        **Wednesday, 17 September 2008**        **TIME:**        **9.30 am**

**VENUE:**        **Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere**

to consider an application for Resource Consent at 41 Turanga Road, Henderson Valley and to take any necessary action connected therewith.

*Sharon Simiona .*

8 September 2008

Sharon Simiona  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8820

### **MEMBERSHIP:**

Commissioner: Les Simmons

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A HEARING BY A COMMISSIONER TO BE HELD AT WAITAKERE  
CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE,  
ON WEDNESDAY, 17 SEPTEMBER 2008 COMMENCING AT 9.30 AM**

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**1 NOTIFIED APPLICATION FOR RESOURCE CONSENT UNDER SECTION 88 OF THE  
RESOURCE MANAGEMENT ACT 1991 BY IVAN PAUL BOTICA TO  
RETROSPECTIVE CONSENT FOR BUILDING HEIGHT, AND HEIGHT IN RELATION  
TO BOUNDARY INFRINGEMENTS ASSOCIATED WITH ALTERATIONS AND  
ADDITIONS TO AN EXISTING DWELLING AT 41 TURANGA ROAD, HENDERSON  
VALLEY**

**WARD WAITAKERE 2**

**RMA LUC-2007-679**

**N.B.** This report sets out the advice of Consent Services to the Hearings Commissioner on the environmental issues raised by the application for resource consent. It is not the decision of the Council. The decision will be made after consideration of the application by the Hearings Committee.

**APPLICATION DETAILS**

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Planner:	Nick Pollard
Site Address:	41 Turanga Road, HENDERSON VALLEY
Applicant:	Ivan Paul Botica
Date Received:	24 April 2007
Resource Consent No:	LUC-2007-0679
Legal Description:	LOT 82 DP 21508
Address for Service:	c/- 24 Sapperton Drive, Henderson WAITAKERE 0612
Site Area:	1216m <sup>2</sup>
District Plan:	
Human Environment:	Bush Living
Natural Area:	General
Landscape Elements:	Outstanding "Ranges" Landscape
Hazards:	No known hazards
Roading Hierarchy:	Local
Further Information Required:	Yes: 1 Additional Height to Boundary Infringement 2 Additional fees required for processing on a Limited Notified basis 3 Clarification of ground level determination methodology, Additional Yard and Height to Boundary Infringement
Date Requested:	1 10 May 2007 2 10 May 2007 3 27 February 2008
Date Received:	1 5 October 2007 2 3 December 2007 3 31 March 2008 and 17 June 2008

## **1 INTRODUCTION AND RECOMMENDATION**

### **1.1 Nature of the Application**

The applicant seeks retrospective consent to regularize the enclosing of the viewing platform which exceeded the maximum height consented to under LUC-2003-0692. The overall height of the building was 8.8m in height. The structure, however, was not constructed as per the approved drawings and following certification by a Licensed Cadastral Surveyor, the height of the building measured 9.28m.

The approved drawings (LUC 2003-0692) identified that the dwelling was located 4.3m from the southern boundary and led to subsequent compliance with height in relation to boundary controls.

Certification has highlighted that the dwelling is in fact located 2.0m from the southern boundary. Accordingly, the dwelling constructed in the early 1980's infringes both yard and height in relation to boundary controls. The latter control also applies to the additions to the dwelling granted consent to under LUC 2003-0692.

This consent seeks to regularize all of the above.

### **1.2 Resource Management Issues Raised**

The Resource Management Act 1991 requires that, when considering an application for a resource consent, a consent authority shall have regard to the environmental effects of the proposed activity, together with any relevant objectives, policies and rules of the District Plan.

It is considered that the relevant resource management issues relating to the application relate to potential effects on visual and aural amenity, privacy, shading and dominance.

### **1.3 Planner's Recommendation**

The planner who has prepared this report recommends that, subject to any contrary or additional evidence submitted at the Hearing, consent be declined.

It is considered that the adverse environmental effects that would be generated by the development are more than minor and will not be adequately avoided, remedied or mitigated by alterations proposed by the applicant. In addition, the proposed activity is not consistent with the relevant objectives and policies of the District Plan.

## 2.0 LOCATION PLAN



Figure 1: The subject site (highlighted) as viewed by ortho-photography (2005) (c/- Council's GIS viewer)

Legal Description: Lot 82 DP 21508  
Human Environment: Bush Living  
Natural Environment: Managed  
Hazards: Stability Sensitive  
Roading Hierarchy: Local Road

### 3.0 PROPOSAL

The applicant seeks retrospective consent to regularize the structure enclosing the viewing platform which exceeds maximum height consented to under LUC-2003-0692. The maximum building height of the structure has been confirmed at 9.28m, greater than the height consented to under LUC-2003-0692 being 8.8m. It is noted that the part of this structure projects beyond the southern height in relation boundary recession plane. The dwelling including this recent addition shall be referred to as the “*modified dwelling*”.

Retrospective consent is also sought for the infringement of the structure on the 3m side yard and the main body of the dwelling projecting beyond the southern height in relation boundary recession plane. These infringements relate to the building as approved in 1980 and shall be referred to as the “*original dwelling*”.

The applicant has offered to reduce the length of the roof overhang on the conservatory addition to mitigate effects of shading generated by the development on No. 39 Turanga Road.

The applicant has provided copies of letters sent to the adjoining neighbours located at No. 39 Turanga Road, sent shortly after lodging the application. Council’s Issue Resolution Manager Mr Roger Wilson has also written to the aforementioned neighbours, to offer mediation services without resolution.

### 3.1 BACKGROUND

The original dwelling was constructed in the early 1980’s following both building consent with planning dispensation sought for a front yard infringement as the dwelling was located 9 metres from the front yard, where the District Scheme specified a front yard set back was 15.2 metres.

Applications were assessed against the Waitemata County Council Scheme (1973) which was Operative and the Waitemata City Council District Scheme which had been proposed and notified (28 August 1980). Apart from the front yard infringement, dispensation was not sought for any other bulk and location matter.

Upon certification, the building is not located as per the plans used at this time and subsequently dispensation would have required for the following:

**Ordinance 9.3(b)** Yards – Rural C Zone: Waitemata County Council Scheme (1973) located within the 10’ side yard of the southern boundary;

and:

Proposed by the Waitemata City Council District Scheme

**Ordinance 11.4:3(c)** Yards – all yards 3m; and,

**Ordinance 11.4:3(d)** For Height and Bulk of Buildings in Relation to Boundaries (refer **Ordinance 5.5:5**) where the control recession plane = 3m + 37°:

The dwelling at the eastern most corner at ground level is shown as being 2.9 metres from the southern boundary, with the first floor stepped out and within 2.5 metres. This reduces along the southern elevation with the southern-most corner of the dwelling located 3.5 metres at ground and the first floor within 3 metres. The eaves of the dwelling extend a further 0.6 metre towards the southern boundary.

The dwelling consists of a concrete block basement and first floor clad with vertical weatherboard. The first floor lounge located in the northern most corner opened onto a deck with views as described above to the east. No access was obtainable to the flat area located between the two pitched roof elements.

In the interim, a spiral staircase was erected providing access from the upper floor deck to the flat portion of roof between the two pitched roof elements. This area appears to have been used as viewing platform providing views across the City for some time as noted below by Mr Beaumont, the applicant's architect. Council records do not identify the addition of the stairs.

The site plans (in terms of distance separations) are reflective of those measurements provided as part of the application documentation that formed part of LUC 2003-0692. The application was submitted with the written consent of properties located either side of the subject site.

This consent provided for a number of improvements which included:

- The extension of the ground-floor and first floor decks and covering the upper floor deck with a roof extension; and,
- The enclosure of the flat area between the two pitched roof elements into a viewing platform accessed by the existing spiral staircase.

From the Reporting Planner's report the following is noted *"The proposed conservatory will enclose the viewing platform on the roof"* and:

*"It is considered, however, that the proposed roof conservatory may result in dominance and visual privacy effects on the adjoining properties to the north and south of the subject site. Any adverse effects are considered to be no more than minor, as the principal outlook from the conservatory will be north-east in the direction of the views. In addition, the location of the conservatory away from common boundaries, on the centre of the roof of the existing building and the partial screening provided by the tall existing native vegetation will help mitigate any adverse dominance and privacy effects.*

*Notwithstanding this, the applicant has provided written consent from the registered owners/occupiers of the adjoining properties at 39 and 43 Turanga Road, who are considered to be adversely affected by the proposal."*

*In addition, the applicant has advised (AEE, prepared by Peter G Beaumont & Associates) that:*

*'The existing viewing platform and spiral access stair have been in use since the building was constructed. We consider that in placing the proposed conservatory enclosure on the platform it will give the neighbours perhaps a little more privacy from direct sound and visual intrusion.'*

Resource consent was granted on the 30 May 2003 (LUC-2003-0692) for additions to an existing dwelling that would introduce a height infringement of 0.8m (permitted height = 8.0m). The consent was processed on a non-notified basis with the following persons considered adversely affected. The report made the following reference:

PERSON (owner/occupier)	ADDRESS	REASONS	APPROVAL OBTAINED
Jennifer Beveridge Debra Haigh	39 Turanga Road	Dominance and privacy refer paragraph 5.2.9 above.	Yes
Donald and Janet Alexander	43 Turanga Road	Dominance and privacy refer paragraph 5.2.9 above.	Yes

A95-A119 Consequently written approval had been obtained from every person whom the consent authority was satisfied to be potentially adversely affected by the granting of that resource consent. A copy of this report is attached as an appendix to the Section 93/94 Determination attached as Appendix G attached at pages A95 to A119.

A final inspection was undertaken on the 25 May 2006 with respect to LUC-2003-0692. An outstanding matter was identified with respect to Condition 4 which required a registered surveyor to certify the overall height of the structure. This identified that the consented height had been exceeded, the modified dwelling being in excess of 8.8 metres. This height was subsequently verified as being 9.28 metres.

Consequently the applicant initially applied under Section 127 to amend conditions of LUC-2003-0692 to reflect the height. This application LUC-2007-0498 was rejected noting that a new resource consent was required. It is noted that this application contained the written consent from the owners/occupiers of No. 43 Turanga Road for the increased height of the structure.

The applicant applied for resource consent with respect to matters at hand (LUC 2007-679). Additional infringements were identified by Council officers and applied for and the application was processed on a limited notified basis as detailed in Section 6.0 below.

#### 4.0 REASONS FOR THE APPLICATION

Consent is required under the following provisions of the District Plan for the following reasons:

##### **Operative District Plan (2003)**

Discretionary Activity consent is required for exceeding the 8.0m building height pursuant to **Rule 4.2 Bush Living Environment**. The building had obtained a previous Land Use Consent to exceed the maximum height control of 8.0 metres to 8.8 metres under LUC-2003-692. The completed building exceeded the previously consented height by a further 0.48 metres to a total of 9.28 metres in height. Further consent is sought to regularise this structure.

Discretionary Activity for infringement of the southern height in relation to boundary recession plane pursuant to Rule 5.2 Bush Living Environment:

There would be a 2.36m maximum height in relation to boundary infringement over a 10.8m horizontal length (introduced by the modified dwelling); and,

There would be a 5.4m maximum height in relation to boundary infringement over a 9.0m horizontal length (introduced by the original dwelling).

Discretionary Activity for infringement of the 3.0m southern yard setback pursuant to Rule 6.2 Bush Living Environment. The building is located within 2.9m of the southern boundary shared with No. 39 Turanga Road reducing to 2.0m as the building steps out on successive rising levels(introduced by the original dwelling).

Overall, the application is considered to be a Discretionary Activity. The proposal complies with all other development controls under the District Plan.

No other consents are required in respect of this application.

## 5.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The roughly rectangular shaped site is located on the north-eastern slopes of the Waitakere Ranges, with partially obscured views down the Henderson Valley towards the Waitemata Harbour and Auckland Central Business District. The property falls away from the road, sloping moderately down to the rear of the site.

An existing two dwelling is located near the front (south-western) portion of the site. A viewing platform has been enclosed by a structure located over the centre of the roof, and is accessed from the northern deck by an external spiral stairway. The viewing platform obtains wide views of the Henderson Valley, the upper Waitemata Harbour, Harbour Bridge and Hauraki Gulf beyond and the Central Business District. In addition, views are obtainable of the immediately adjoining property, No. 39 Turanga Road including the dwelling and some windows, part of the outdoor decks and associated outdoor living areas.

The existing driveway curves into the site to the single basement garage and stacked car park in front of the garage. The site is partially bordered with fencing and established vegetation. The topography of the area generally slopes down from south-west to north-east, with the properties on the opposite side of Turanga Road (south) elevated above the subject site (Note Figure 2 below, which includes building location and ground contour at two metre intervals).

Extensive established native vegetation, typical of the locality is located over north-eastern half the property. In addition the front seven metres of the subject site is covered with native vegetation which melds with the vegetated road reserve providing a buffer of approximately 18 metres deep, consequently the dwelling is largely screened from the street and limited views of the dwelling and its additions are obtainable from the road immediately outside the dwelling. The north-western boundary is vegetated with mature emergent Kanuka and other understorey vegetation. The south-eastern boundary features mature native vegetation over the first fifteen metres located adjacent to the garage located on No. 39 Turanga Road. Directly to the north east of the dwelling a grassed sloping area is established, approximately 100m<sup>2</sup> in area.

The surrounding environment contains a mixture of single and double storey dwellings, orientated across the Ranges to maximise the sun and views. The wider locality is characterised by sloping topography and highly vegetated sites.



**Figure 2: The subject site (highlighted) including 2m Contour Intervals (c/- Council's GIS viewer)**

## **6.0 LIMITED NOTIFICATION - SECTION 94(1)**

Section 94(1) provides for "limited notification" if the adverse effects of a proposal would be no more than minor but not all adversely affected persons have given their written approval, whereby all affected persons will be notified (but not the public at large) and have the opportunity to make a submission and be heard. This application was the subject of limited notification under Section 94(1). A Section 93, 94 and 94A - 94D Determination Assessment was completed on 7 January 2008.

This report concluded the following:

- The adverse effects on the environment will be minor; and
- Written approval has not been obtained from every person who may be adversely affected by the proposal.

*A95-A119* This report is attached at pages A95 to A119 in Appendix G of this report and identified that two properties would be adversely affected by the proposal. However, not all persons identified as being affected gave their written approval.

As required by Section 94(1) notice of the application was therefore served on all persons who were identified as being adversely affected.

## **7.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS**

*A1-A24* Notice of this application was served on all identified affected persons on 10 January 2008 closing on the 8 February 2008. A copy of the application as notified is attached at pages A1 to A24 as Appendix A.

A51-A55 Following this, inconsistencies were noted in the calculation of average ground height affecting the overall height calculations. Subsequently this change to the nature and extent of the height infringement required the application to be re-served on affected persons from the 26 June 2008 to 24 July 2008. A copy of the additional information as notified is attached pages A51 to A55 as Appendix D.

A27-A86 In both notification periods submissions in opposition were received from both the owners of No. 39 Turanga Road. Please refer to Appendix C attached at pages A27 to A50 and Appendix E attached at pages A56 to A86 for copies of the submissions that were received.

## 7.1 Submissions

As noted above submissions were received from Ms Jennifer Beveridge and Ms Debra Haigh, owners and occupiers of No. 39 Turanga Road, their submissions are summarised as follows:

- The plans provided incorrectly represent the location of vegetation;
- The over height structure is located to the north-west and blocks the most crucial angle of the sun shading living areas;
- The structure has caused interior dampness and shaded the garden;
- The structure is unsightly;
- The structure provides for up to 30 people to congregate and reduce the amenity including privacy enjoyed by the submitters on their site; and
- Written approval would never had extended to the height that the building actually is constructed.

The submissions request that the building roof be lowered to the height actually consented to; and should Council determine to grant consent mitigation measures be adopted including eastern [sic, southern] wall be constructed of solid materials - glazing removed - and sound proofing be employed to mitigate noise generation.

No submissions were received from No. 43 Turanga Road with respect to the limited notified application(s).

## 8.0 STATUTORY REQUIREMENTS

### 8.1 Discretionary Activities

A120-A121 The relevant policies and criteria which apply under the District Plan and the Resource Management Act 1991 are set out in more detail in Appendix H attached at pages A120 to A121. This should be referred to as the legal framework within which the application should be addressed.

Section 104 of the Resource Management Act 1991 sets out those matters to be considered when assessing an application for resource consent. Amongst other things, these matters require consideration of any actual and potential effects on the environment arising from the proposal, together with an assessment as to whether the application is consistent with relevant objectives, policies and rules of the District Plan. All considerations are subject of the provisions of Part II of the Resource Management Act 1991, which sets out the purpose and principles that guide this legislation.

The District Plan has been prepared with an 'effects based' emphasis, in keeping with the Resource Management Act 1991. As such, consideration of the application in relation to each of the assessment criteria relating to the various infringements would ensure that all the relevant matters contained in Section 104 of the Resource Management Act 1991 would have been addressed. In addition, a brief summary is presented below of the main effects on the environment generated by the application.

## **9.0 EVALUATION IN ACCORDANCE WITH SECTION 104 OF THE RESOURCE MANAGEMENT ACT 1991**

In order to make a decision in terms of Section 104B of the Act it is necessary to undertake an analysis and assessment to determine whether the purpose and principles of the Act are being met. (Part II) having regard to the matters set out in Sections 104, 104A - 104D as relevant, the Fourth Schedule and any other statutory considerations.

Section 104(1) of the Act requires that Council have regard to any actual or potential effects on the environment, any relevant objectives, policies, rules or other provisions of a plan or proposed plan and any relevant regional policy statement and regional plan or proposed plan, and any other matters the consent authority considers relevant and reasonably necessary to determine the application.

When considering an application Council must not have regard to any effect on a person who has given their written approval to the application (section 104 (3)(b)) and may disregard an adverse effect of an activity on the environment if the Operative Plan permits and activity with that effect (section 104(2)).

### **9.1 Assessment of Environmental Effects (104(1)(a)): Actual and Potential Effects on the Environment.**

#### **9.1.1 Existing Environment**

The site and surrounding environment have been discussed in Section 6.0 of this report.

In determining the existing environment, those portions of the original dwelling infringing the 3 metre yard setback, height in relation boundary recession plane controls while existing, must not be considered as part of the existing environment. This includes the portion of the southern elevation of the building and the roofline as they do not appear to have been lawfully established.

Accordingly, those components of the site forming the existing environment, for the purpose of assessing the effects under the current resource consent application must only include the existing dwelling (excluding those portions described above), garage, vegetation growing on the property and the sloping topography of the site.

In considering the potential effects of the proposed yard infringements in terms of visual effects, shadowing, privacy and dominance, it is appropriate to have regard to the effects already created by those portions of the existing building complying with the 3 metres yard setback and the height in relation to boundary recession plane.

Further information submitted on behalf of the applicant notes the following:

*“Given the existing dwelling has been in existence for more than 20 years, it is considered that these infringements are minor technical infringements with no affected persons. At the time of the building consent application received 9 December 1980, there was no house built on the property adjacent to the southern boundary where the infringements occur. Furthermore the current owners/occupiers purchased the house in more recent years, and therefore based this purchasing decision on the current environment and surrounding locale. This includes the position of neighbouring buildings, including maximum height, height in relation to boundary, and possible bulk, dominance and privacy affects.”*

This approach is not considered consistent with the application of the RMA, whilst strictly speaking the effects generated by the infringing parts of the building are known by the adjoining neighbours, these structure are nevertheless not lawfully established and therefore do not constitute the existing environment. Consideration of their effects along with the effects of the modified dwelling on the environment, are considered obligatory in this instance.

### **9.1.2 Effects permitted by the Plan**

Pursuant to Section 104(2), Council may disregard an adverse effect on the environment if the plan permits an activity with that effect.

The subject site is identified as Bush Living Environment and Managed Natural Area under the Natural Area Rules.

A single residential dwelling is provided for and the site has been used accordingly.

Development controls, as a permitted activity, would provide a built form envelope with a 3 metre yard set back on all boundaries, a maximum height of 8 metres, height to boundary controls and building coverage being 10% of the site area or 150m<sup>2</sup>. The establishment of a dwelling exceeding these controls would require resource consent.

As noted above the dwelling exceeds height, height in relation to boundary and yard controls.

Previous consents did not correctly identify the siting of the dwelling and consequently effects were established which exceed both those effects permitted by the Plan, and those previously consented to.

### **9.1.3 Water Quality and Quantity**

There would be no adverse effects in relation to water quality/ quantity arising from the proposed activity as it would be located within the peri-urban area of the City and would not be near a water body or stream.

Matters of stormwater generation have already been considered under LUC 2003-0692 which concluded that the effects of the proposal to be no more than minor. No further effects are generated with the regularisation of this activity.

### **9.1.4 Native Vegetation, Vegetation and Fauna Habitat**

There would be no adverse effects in relation to vegetation and fauna habitat as a result of the proposed activity.

### **9.1.5 Land / Soil**

There would no adverse effects on soil/ existing landform as a result of the proposed activity.

### **9.1.6 Air**

As the site is within the urban area and the proposed activity does not include air emissions of any kind, there would be no adverse effects on air quality.

### **9.1.7 Ecosystem Stability**

As the site is within the peri-urban area and the existing environment is already modified there would be no adverse effects on the stability of ecosystems as a result of the proposal.

### **9.1.8 Outstanding Natural Features; Landforms, Geological Sites**

The subject site is not identified in the District Plan as being within an area identified as containing "outstanding natural features" within the City (refer Maps 3.5D & E). The proposed activity would not therefore adversely affect any identified outstanding natural features.

### 9.1.9 Natural Character of Coast and Margins of Lakes, Rivers and Wetlands

There would be no adverse effects in relation to the natural character of the coast and margins of lakes, rivers and wetlands arising from the proposed activity.

No further effects are generated with the regularisation of this activity.

### 9.1.10 Outstanding Landscapes

The subject site is identified in the District Plan as being within an area of "outstanding landscape" within the City (refer Map 3.6B).

The site is noted as being within the 'Ranges' landscape and it is noted that associated qualities include the domination of natural features, such as vegetation and steep terrain over human activities.

Notwithstanding the above the residential component has already been established, with residential activities permitted as of right. The proposed development retains the same building footprint and the proposed levels of development does not undermine or diminish the qualities associated with the landscape of the immediate locality or the wider receiving environment. No further bush clearance is proposed, the development is not located on a sensitive ridge and the development is located below Turanga Road. The distinctly non-urban character of the site and wider locality continues to prevail.

The development is of a reasonable scale and design that does not introduce obtrusive structures out of character with the vegetated nature of the site. The proposal results in a merging of buildings, structures and bush sympathetic and consistent with the character of the surrounding predominantly residential (Bush-Living) neighbourhood.

It should be noted however that as viewed from the adjoining property No. 39 Turanga Road, only low bush elements remain between the two dwellings consisting of Kanuka, Karamu and other native species with the majority of this vegetation located on No. 39 Turanga Road rather than the subject site. Beyond the subject dwelling on the boundary shared with No. 43 Turanga Road tall mature Kanuka are established greater than the height of the established building.

Consequently, it is considered that some of the characters considered consistent with Bush Living and residential development within "The Ranges" including vegetated boundaries and side yards have been compromised with respect to the boundary shared by No. 39 and No. 41 Turanga Road. This is likely to have arisen from the location of buildings located within a diminished side yard and historic management and its subsequent effects on regeneration.

This effects of the building height infringement is largely limited to these sites (No. 39 and No. 41 Turanga Road) and Council's Landscape Architect, Mr Gordon Griffin confirms this with respect to the development noting that:

*"With regard to the...criteria, (4(a)) [the extent to which building height will intrude on the surrounding natural landscape] the building height has a localised landscape effect only and does not intrude into the wider landscape surrounding"*

It is therefore considered that the proposed activity would not adversely affect any identified outstanding landscapes by more than a negligible amount. In addition the effects on the immediate landscape are contained within the subject site and the two adjoining sites (No. 39 and No. 43 Turanga Road) given the extent of vegetation cover and the nature of the infringements their effects are considered localised, and there would negligible appreciation of their effects wider than these identified sites.

### 9.1.11 Amenity Values - Health and Safety, Landscapes, Local Areas and Neighbourhood Character

'Amenity Values' is defined in Part 1, Section 2 of the RMA as being:

*"those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes".*

The District Plan also defines Amenity Values as follows:

*"These are those natural and physical characteristics of an area that contribute to people's enjoyment of it ..."*

Actual and potential effects can be tangible or intangible. Tangible effects include:

- visual presence of the structure; and
- overshadowing and loss of privacy.

Intangible adverse effects may include:

- loss of residential amenity from visual intrusion.

Submissions received by the owner and occupiers of No. 39 Turanga Road sets out a number of contributing factors which have diminished the amenity associated with their enjoyment of their property related to exceeding the height controls as established under LUC-2003-0692. For the purposes of assessment, it is considered that the effects of the proposal can be broken down into the following categories:

- Dominance;
- Visual and Aural Amenity;
- Privacy; and
- Shading.

### 9.1.12 Visual & Residential Amenities of the Site and Locality

Amenity values within the Bush Living Environment are primarily derived from the extensive bush cover and its dominance over the built environment. This landscape contributes to a "non-urban", enclosed and isolated character by providing a level of screening between dwellings and along the road frontage. As set out in part 5.0 of this report (Site and Neighbourhood Description), the application site and surrounding area contain extensive vegetation cover on land with a moderate to steeply sloping gradient.

Residential activities form an established part of both the site and wider locality. As referred to in Section 9.1.10, the proposed development retains the same building footprint and the proposed levels of development does not undermine or diminish the qualities associated with the landscape of the immediate locality or the wider receiving environment

Submissions identify the existing natural and physical qualities and characteristics of this neighbourhood and their importance to the within the immediate environment. Given the effects the proposal has on landscape and potential for landscape interventions to resolve matters, Council's Landscape Architect, Mr Griffin has commented on the development:

*"It is noted that the eastern end of the building exceeds the approved 8.8m by the greatest amount. I consider this part of the building is the most dominating and the least aesthetically pleasing and has the greatest visual dominance on No. 39 Turanga Crescent [sic] adjacent and to the south. The upper level may affect privacy relative to No. 39 Turanga Road also. ..."*

*The building height has a localised landscape effect only and does not intrude into the wider natural landscape.”*

This opinion is concurred with and it is considered that the adverse effects of the proposal are limited to the adjoining properties only. Consequently it is considered that the effects arising from the development on the subject site are limited to No. 39 Turanga Road and No. 43 Turanga Road.

In terms of No. 43 Turanga Road, those effects are considered to be negligible as the shared boundary between the subject site and No. 43 Turanga Road features mature Kanuka and other understorey vegetation (within the application site) which screen the built form including the recent addition and reduce effects such as domination, visual intrusion and privacy. This separation and planting ensures that the existing built development is significantly reduced in terms of its visual effects. This separation is further reinforced given that the dwelling on No. 43 Turanga Road is located slightly elevated above the dwelling on the subject site and separated by adequate yard set back on No. 43 Turanga Road. It is also worth noting that the building is further separated from this boundary as previously consented to. The proposal, therefore, is not considered to cause detriment to the amenity values expected and presently enjoyed by this property.

Consequently the following assessment of amenity effects focuses on No. 39 Turanga Road that arise as result of development of the subject site and are considered to be more than minor with respect to dominance and privacy:

#### **A Dominance**

As noted above this site has been modified over time and the sense of enclosure and isolation typical of other sites in the locality with respect to the boundary separating No. 39 and No. 41 Turanga Road are diminished when compared to other site boundaries of the subject site. Views are therefore obtainable between the subject site and the adjoining site. The effects associated with No. 43 Turanga Road have been earlier discussed.

A strong visual relationship between the subject site and No. 39 Turanga Road exists by the nature of development on the respective sites that has been further exacerbated by historic infringements.

The dwelling located on the subject site is close to the boundary, two-storey and generates domination effects with respect to the adjoining site. The viewing platform was previously open to the elements and accessed by a spiral staircase. The enclosure (LUC 2003-0692) increased its usability.

Both the subject dwelling and the dwelling at No. 39 Turanga Road are orientated to the north east and have evolved along these parallel axes over time, rather than towards each other. However, the subject dwelling given its location slightly to west, slightly higher and of a larger stature, consequently dominates No. 39 Turanga Road.

Such effects would have existing in relation to the dwelling as constructed in the early 1980's, but the modified dwelling has noticeably increased these effects and have been exacerbated when considered in association with the historic yard and height to boundary infringements. This ultimately has placed the building closer than anticipated to the boundary. Submitters have raised concerns with respect to domination noting that they feel “intimidated” by the building and further:

*“The over height building platform is significant, and has a major impact on us and the feel of the Waitakere Ranges”*

The viewing platform extension introduced an additional element on top of the dwelling that noticeably increased the physical domination of No. 39 Turanga Road.

Domination effects are further aggravated by the roof extension located on the viewing platform roof that projects out and over the spiral staircase. This structure when viewed from No. 39 Turanga Road is viewed against the sky and creates a visually dominant structure. It should be noted that the roof overhang structure actually built appears to differ from that consented to, incorporating diagonal rather than vertical bracing and extending 500mm beyond the north-east face of the building.

Mr Griffin notes in his conclusion and recommendation that:

*"I consider that the roof level addition, compounded by the south yard infringement, is dominant relative to adjacent sites, particularly at its eastern end, and the 8.8m represents a preferred upper maximum height.*

*Furthermore, as viewed from the adjacent site, 39 Turanga Rd, the roof and form of the building has poor visual amenity and together with the large deck area and south facing windows, reduces privacy and amenity for the adjacent site, particularly No. 39 Turanga Road"*

The further information submitted in support of the application dated 17 June 2008 (prepared by Anna Dolheguy of Andrew.Stewart Limited) notes that effects do arise as a result of the roof overhang at the northern end of the dwelling. This statement is concurred with. The applicant has consequently offered to reduce the length of the roof overhang structure to reduce any effects that may arise from it. It is noted that one of the submitters, Ms. Haigh has included this as relief among other measures in her submission *"in the most dire situation."* Mr Griffin also considers relief in his report noting that:

*"I consider the upper canopy, north east end, projects too far beyond the building and if this was reduced in its overhang to circa 1m, perhaps 1.2m, it would be less overpowering, more aesthetically pleasing, and may be enough (altered) to allay their (occupants of No. 39 Turanga Rd) concerns. I note that the subject dwelling would block out much of the western sun, even if of complying height. It was noted that surrounding vegetation is to a comparable height and that shade from trees may be comparable to that from the building. The height difference is at its greatest at the north east end, and the appearance of the building, in my view by virtue of the projecting upper canopy, is poorest at this end of the building, and most visible from the adjacent site to the south east.*

*Further to this, redesign of the eastern end of the roof potentially reducing the extent and height of the canopy could bring the building to compliance relative to the 8.8m height, could be designed with regard to amenity relative to the adjacent sites, No. 39 and No. 43 Turanga Rd, and to reduce the domination of the building relative to adjacent sites."*

On balance, it is considered that the additions to the original dwelling introduced adverse domination effects which exceed that previously provided for by and detailed within the approved plans of LUC-2003-0692. The resultant impact on the adjoining property is considered to be more than minor and leads to a loss of enjoyment to the residents of No. 39 Turanga Road.

The proposed mitigation measure of reducing the length of the roof overhang will result in the reduction of the dominance of the roof extension but does not reduce the dominance of the modified dwelling to the extent that those effects can be considered minor upon the amenity values associated with No. 39 Turanga Road.

## B Privacy

A reduction in the side yard setback has the potential to generate adverse effects on the privacy of an adjoining site by allowing a greater level of visibility between dwellings and creating a situation whereby a dwelling or its associated outdoor living space is overlooked by another. In addition, the structure and associated windows located in excess of the height and height in relation to boundary controls can also lead to potential for overlooking.

Unlike other Human Environments within the City, the Bush Living Environment does not include controls relating to the location of windows, main glazing or outdoor living areas, in order to ensure a certain level of on and off site privacy and amenity is achieved. However Yard and Height in Relation to Boundary controls ensure that buildings are suitably separated and amenity is maintained within each site. Consequently Assessment criteria 6(d) applying to Rule 6.2 (Yards) and similarly assessment criteria 4(c) applying to Rule 4.2 (Building Height), require consideration of the extent to which a building is located in order to provide a “*degree of privacy*” to adjoining sites.

Those aspects of the development that have the potential to generate adverse privacy effects on the neighbouring property at No. 39 Turanga Road relate to those windows located either entirely or partially within the 3 metre yard setback and windows located within the viewing conservatory.

The windows located in the viewing platform are primarily directed to views across the City but windows located along the southern elevation obtain clear views of No. 39 Turanga Road, including bedroom windows, decks and outdoor living spaces. It is considered that these windows have a significant effect with respect to privacy given their orientation and elevated position. This is reflected by submitters citing a loss of privacy following the additions to the dwelling and that vegetation as suggested by the applicant’s agent does not screen the conservatory windows. This view is supported and it is considered with respect to privacy, that the windows located in the viewing platform have more than a minor effect with respect to privacy related to No. 39 Turanga Road.

Ms. Haigh also notes that privacy could be maintained with the wall of the viewing platform “*to have all glazing removed and the wall to be made solid*”. This would ensure privacy is maintained by reducing the potential for overlooking, but this would not impact upon the effects associated with domination as identified 9.1.11 (B) above.

In terms of the original dwelling, it is noted that the uses associated with the windows in the southern elevation, are a bedroom and bathroom (ground floor) and bedrooms (first floor). Given the nature of these uses the potential for overlooking is accordingly reduced.

These windows are intermittently screened by vegetation located on boundary of No. 39 Turanga Road which ranges in height between approximately 2 and 5 metres in height consequently this further limits the potential for overlooking from the windows associated with the structure located within the side yard.

There are opportunities for further landscape treatment, although limited given the narrow nature of this part of the site due to the reduced yard setback. Currently this area on the subject site is sloping, with a mown grass, given the width of the area it may be difficult to establish native trees without further adversely affecting sun and daylight access. Mr Griffin’s assessment notes that planting for further privacy is possible and that “*species such as cabbage tree and kowhai give reasonable privacy while allowing some light through*”. Additional planting consequently would provide a greater screen and increase the buffering between the dwellings protecting privacy.

In addition to landscape treatment, to manage the effects of the development, frosted/opaque glass could also reduce the potential for overlooking and loss of privacy from the parts of the structure which encroach on the yard setback.

Neither landscape treatment nor opaque window treatments have been offered by the applicant.

In light of those effects permitted by the plan (i.e. 3.0m setback) and the location and purpose of windows, and with the incorporation of landscape treatment, any effects associated with the original dwelling are no more than minor in nature upon the amenity values associated with No. 39 Turanga Road.

### **C Shading / Sunlight Access**

As noted above the subject site and No. 39 Turanga Road are located within the Bush Living Environment. The bulk and location rules of the District Plan in general seek to ensure minimum levels of daylight and sunlight access are obtainable to dwellings and outdoor living areas. However given the landscape and topographical qualities of many Bush Living sites - steeply sloping and bush clad that access to daylight and sunlight may be compromised by natural and physical features when considered in comparison to the City's urban lots.

Consequently, it is noted that a complying development given the location – slightly elevated, to the north-west – set back 3 metres, built to 8 metres would generate effects with respect to shading. This is compounded with vegetation located on the northern boundary of subject site which is at approximately the height of the modified dwelling and would regardless generate shading effects on No. 39 Turanga Road.

Plans prepared by Tripp Andrews and Partners and an additional annotated plan provide information with respect of the shading generated by the existing building as prior to 2003 and including the more recent additions and alterations.

The surveyed plan also details the location of vegetation as located on the adjoining site No. 39 Turanga Road. It is noted that shading effects do arise from the original dwelling and further shading is generated by the modifications.

From the information provided, the original dwelling generates an area of shade which projects some 4m into the adjoining property for the length of the dwelling, approximately 9 metres. The application clearly shows a degree of shading of the neighbouring property

The recent addition and alteration generates additional shading along its full length, given that it exceeds the height and height in relation boundary recession plane controls. For the most part, shading is generated by the roof line of the pre 2003 building and only where the conservatory roof line extends beyond the original eave line does additional shading effects become apparent. The annotated plan details these as areas (1) and (3) being 0.2 x 0.80 metres and 2.2 x 0.8 metres respectively.

The applicant has not provided further information such as a sun path diagram or other so that it cannot be ascertained the extent to which shading extends across the site as it varies through the year. The Plan submitted "*Sun Shading Created by Addition to Dwelling at 41 Turanga Road*" prepared by Tripp Andrew and Partners and provided by the applicant demonstrates that shading would be generated during the winter solstice during "C" 12:20pm on the 21 June and from 21 March to 21 September the conservatory addition is shielded by the existing building.

It is considered that the modifications to the dwelling generate additional shading effects on the adjoining property. Ms. Beveridge contests the shading diagrams noting that the vegetation is located much closer to the shared boundary and therefore shading is experienced beyond the vegetated strip and also notes that the structure forms a shadow over the master bedroom, generating damp within the house, reducing the time in which the outdoor deck can be enjoyed, concluding that:

*"The height of Number 41 makes my house damp it blocks the sun from the most critical direction. Some of the trees created some filtered light. Now it is a block shadow."*

In light of the above, it is considered that the applicant has not clearly demonstrated the effects of the original and modified dwelling with respect to shading and sunlight/daylight access on No. 39 Turanga Road including effects on the dwelling and the site in general. Consequently it cannot be concluded that the effects of the proposal would be no more than minor. Factors which would need to be considered in respect of shading generated by the dwelling include:

- Effects permitted by the Plan;
- The impact of vegetation (the existing environment); and
- The impact of sun angles throughout the year.

Such information would clearly establish the extent of the effects beyond the subject site and establish both internal and external effects shading effects, and quantify the extent to which the dwelling impacts on the amenity enjoyed No. 39 Turanga Road.

#### **D Aural Amenity**

The dwelling is located in a critical position slightly elevated above and closer to the boundary than anticipated by the District Plan. Development in this instance has the potential to generate adverse aural effects on No. 39 Turanga Road and these potential effects are heightened by the use of the viewing platform that have also increased the duration and weather conditions in which this area could be used.

Submitters have raised the use of the viewing platform as a concern, noting that:

*“This new rooftop supports, glass, weather proofing, seats, cushions, a place for up to 30 people to gather in all weathers night and day affording conviviality to stay there for hours looking directly in to my home whilst perhaps enjoying music, entertainment, food, liquor.”*

It is considered that the proposal does have the potential to generate such effects, however these are no greater than those of a complying dwelling and associated residential activity. Noise from residential activities is therefore clearly anticipated by the Plan. The dwelling in terms of its size, siting and height is not considered to directly result in increased noise generation, when compared to those effects permitted by the Plan.

No mitigation has been offered in respect of aural effects in response to the submissions. However it is noted that Ms. Haigh has suggested, again in the most dire of circumstances *“that all glazing [be] removed...with sound proof insulation to mitigate sound...”* Management of noise generation in this manner could potentially mitigate the above effects should the applicant consider them appropriate.

#### **9.1.12 Heritage**

There would be no adverse effects in respect of heritage items as the proposed activity would not be located near, or impact on any identified heritage item.

#### **9.1.13 Summary**

In summary, it is considered that the infringements have a more than a minor adverse effect on the amenity values of the neighbouring property to the south, being No. 39 Turanga Road.

The adverse amenity effects on No. 39 Turanga Road primarily centre upon those effects introduced by the ‘modified’ dwelling. While consented to by LUC 2003-0692, the structure was not built as per the approved plans with increased elements and height with those effects exacerbated and compounded by historic infringements which positions the dwelling closer to the southern boundary toward No. 39 Turanga Road and projecting through the daylight recession planes.

As such, the proposal has a more than a minor adverse effect on the amenity values of No. 39 Turanga Road as both privacy is compromised and physically dominates the neighbouring property. In terms of the 'original' dwelling it is considered that adverse effects in terms of privacy and physical dominance are no more than minor subject to appropriate landscaping (strengthening of) along the boundary with No. 39 Turanga Road.

In terms of loss of daylight/sunlight opportunities, the original dwelling is the most significant contributor to the shading of the neighbouring property. The recent additions are considered to introduce further shading effects, however the applicant has not clearly demonstrated the extent to which the dwelling (original and modified) impacts on No. 39 Turanga Road and consequently the extent to which the effects cannot be adequately concluded. However, it is clear that the dwelling generates impacts on sunlight/daylight access and that the effects of which are not wholly contained within the site.

Mitigation has been offered by the applicant in terms of modifying the structure associated with the viewing platform. This would reduce the effects associated with the development but adverse effects would remain as more than minor. Further mitigation has been referred to in the report in addition to those matters raised in the submission by No. 39 Turanga Road. Again, this would noticeably reduce the adverse effects but not to the extent that those effects could be assessed as no more than minor.

Ultimately, and with specific reference to the 'modified' dwelling results in adverse effects beyond its boundaries towards No. 39 Turanga Road reducing the owners/occupiers enjoyment of their property.

## **9.2 Any Relevant Provisions of the District Plan 104(1)(b)(iv):**

### **9.2.1 District Plan Policies and Objectives**

The District Plan Assessment Criteria have been developed to address the issues covered in the objectives and policies and are a useful guide in assessing the effect of an activity. The proposed activity is assessed in relation to each of the relevant assessment criteria, objectives and policies, and with respect to this proposal the following is noted:

Objectives: 9, 10, 11

Policies: 9.4, 9.5, 10.5, 11.3, 11.8

Assessment Criteria: Building Height 4(a) - 4(d);

Height in Relation to Boundaries 5(a) - 5(c); and

Yards 6(a) – 6(d).

The objectives and policies in this instance represent an inter-related suite of guidance which is sought to influence and direct development within this distinct Living Environment within the City. The policies and objective recognise the unique qualities associated with Bush Living areas and values place upon it by the community which includes the preservation of natural features, landscape considerations including built form and other structures, and amenity values which as detailed above in Section 8.1.11 are influenced by qualities noted as "non-urban", enclosure and isolation. Objectives and policies pertaining to water (Objective 1 and Policy 1.15) as detailed in Section 9.1.2 are not considered relevant in this instance.

As noted above the subject site lies within the Outstanding 'Ranges' Landscape and the Plan seeks to protect the quality and significance of such areas seeking to ensure that built form is subservient in this instance to the natural landscape character and visual amenity associated with the locality. Policy 9.4 notes, "*Structures...should, [where] practicable, either be constructed of materials, or be of a colour, or screened by vegetation, in a way that does not dominate or detract from the natural character...and ensures that they merge with the surrounding bush or coastal vegetation.*"

As noted above the dwelling beyond the boundaries of the subject site and No. 39 Turanga Road is considered to be largely contained and is compatible within the wider landscape. The site has long been used for residential activities, and is extensively vegetated beyond the developed area. In addition, the northern boundary of the subject site consists of a tall row of mature Kanuka which provides a backdrop to the dwelling. Consequently, it is considered that the detrimental effect of the development on the site is negligible beyond the site boundaries of No. 39 Turanga Road and the subject site, within the wider landscape.

The backdrop of vegetation is at, or exceeds the height of the modified dwelling which reduces the impact of the built form integrating it with the bush surrounds this is demonstrated within photos provided with submissions. Therefore, with respect to Objective 9 and Policy 9.4 it is considered that the ratio of built form to natural features remains subservient albeit finely balanced and reliant on the retention and maintenance of this protected vegetation and therefore the development remains consistent with the intent of the Plan.

The conclusion to Section 9.1 noted that the development generated more than minor effects with respect to amenity: notably physical domination and loss of privacy upon No. 39 Turanga Road.

Objective 10 seeks to ensure that the well being of residents are protected with respect to access to daylight, sunlight, and privacy.

As noted above the applicant has not fully detailed the impact of shading as a result of the dwelling.

Consequently, it is considered that the modified dwelling on the subject site results in a loss of sunlight however given the information provided the applicant, the extent of the effects cannot be adequately determined.

As identified above domination and loss of privacy effects arise as a result of the development and in particular in respect to the north-eastern-most part of the 'modified' dwelling (conservatory addition). It is considered that this portion of the proposal adversely affects the adjoining property and is exacerbated by the Yard and Height in Relation to Boundary infringements, the natural topography and style of the dwelling.

Policy 11.8 provides guidance with respect to this stating "*Structures, should be of a form, height and scale which avoids physical domination of surrounding sites and buildings, which does not adversely affect the landscape character and other amenity values of these areas, and which minimises encroachment on views*". The development is considered to be inconsistent with this policy and it is considered that the proposal adversely affects the amenity values associated with the adjoining site and landscape character as relevant to No. 39 Turanga Road. Whilst not encroaching on views the development establishes an 'intimidating' structure. The built form exceeds 8 metres in height and is located within 3 metres of the southern boundary, projecting through daylight recession planes. As a result of this it is considered that the structure as built introduces effects such as increased domination and loss of privacy never contemplated by the owners and occupiers of No. 39 Turanga Road regardless of the 2003 resource consent and for which the effects are considered to be more than minor and the development considered inconsistent with Policy 11.8.

#### **Rule 4 Building Height: Assessment Criteria**

- 4(a) The extent to which building height will intrude on the surrounding natural landscape.
- 4(b) The extent to which building height will physically dominate adjoining sites.
- 4(c) The extent to which building height will intrude into the privacy of adjoining sites.
- 4(d) The extent to which building height will interrupt views from sites in the vicinity.

As noted above the effects of the development are considered to be largely contained with effects on the landscape largely limited to the subject site and adjoining site No. 39 Turanga Road. No views are interrupted given that the principal aspect is toward the east and that development has occurred on the site in recognition of these axes. It is considered that effects do arise with respect to domination and privacy upon the amenity values of No. 39 Turanga Road have been discussed above.

#### **Rule 5 Height in Relation to Boundaries: Assessment Criteria**

- 5(a) The extent to which the height, location and design of buildings will allow for reasonable sunlight and daylight access to adjoining sites.
- 5(b) The extent to which the height, location and design of buildings will allow for reasonable sunlight and daylight access to the proposed building.
- 5(c) The extent to which each habitable room in a building is located to allow for reasonable daylight access.

The development has established structures which project into the recession plane relative to the southern boundary and therefore affecting the amount of daylight and sunlight enjoyed on No. 39 Turanga Road.

As noted above the applicant has not fully detailed the impact of shading as a result of the dwelling.

Consequently, it is considered that the modified dwelling on the subject site results in a loss of sunlight however given the information provided the applicant, the extent of the effects cannot be adequately determined.

#### **Rule 6 Yards: Assessment Criteria**

- 6(a) The extent to which buildings are located a sufficient distance back from the site boundary to avoid more than minor adverse effects on the natural landscape.
- 6(b) The extent to which buildings are located in a position which maintains opportunities to retain vegetation around the edges of the site.
- 6(c) The extent to which buildings are located in a position which allows for safe traffic movement on and off the road and car parking and manoeuvring off the road.
- 6(d) The extent to which buildings are located a sufficient distance back from site boundaries of adjoining sites to provide a degree of privacy.

The development is located within the 3 metre yard and has been since 1980, it is considered that development has largely evolved cognisant of this as

- both dwellings are orientated to along an east-west axis toward views from the Ranges to the wider City; and
- a vegetated buffer is established along the boundary of No. 39 Turanga road providing limited screening and protection of privacy for No. 39 and the subject site.

Consequently, the sites retain qualities consistent with Bush Living with a “non-urban”, enclosed and isolated character, however as a result of this historic yard infringement and the extent of vegetation present, enclosure between these two sites is reduced. All other boundaries remain consistent with the natural landscape character. As noted above there is potential for further landscape treatment between the two buildings, this could reduce effects arising as a result of the developments position with respect to the yard infringements. It would also reinforce and enhance the Bush Living landscape qualities which include isolation and visual separation with native vegetation.

It is therefore considered from a wider landscape context that the proposal has negligible impact on natural landscape character, however within the immediate environment context particularly from the perspective of the subject site and the adjoining site this character is modified and diminished. It should be noted that this not a new effect and does not arise from the recent additions. There is no detriment to road safety as a result of the yard infringement.

It is considered that the proposed development would be consistent with Objective 9 and Policy 9.4 and is inconsistent with the Objective 11, particularly Policy 11.8 of the District Plan.

### **9.3 Auckland Regional Policy Statement, Plan or Proposed Regional Plan (104(1)(b)(iii) and (iv))**

The Auckland Regional Policy Statement sets out broad resource management issues. Objectives and Policies for the Auckland Region to achieve the integrated management of its natural and physical resources. The policy statement functions as an umbrella policy document for environmental planning and policy development within the region, under which Waitakere City Operative District Plan has been prepared.

For the reasons highlighted in Section 9.2.1 of this report, it is considered that the proposal is not consistent with these documents.

### **9.4 National Policy Statement (104(1)(b)(i)(ii))**

The only National Policy Statement in place at the time of writing (notwithstanding the NZCPS) is the National Policy Statement on Electricity Transmission. This policy statement is not considered relevant with respect to this application.

#### **9.4.1 New Zealand Coastal Policy Statement (s104 (b)(ii))**

Not considered relevant with respect to this application, given its location.

### **9.5 Any Other Matters the Consent Authority considers relevant and reasonably necessary to determine the Application (104(1))(c)).**

#### **9.5.1 Other Issues Raised by Submitters Not Covered Elsewhere in Report**

There are no other issues considered relevant in this instance.

## **10.0 PART II OF THE RESOURCE MANAGEMENT ACT 1991**

Section 5 in Part II of the Act identifies the purpose of the Act as being the sustainable management of natural and physical resources. This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.

It is considered that the granting of this application would not be consistent with sustainable resource management. As noted above the development and proposed alterations fail to adequately internalise the effects generated by the development on no. 41 Turanga Road and consequently it is considered with respect to the amenity values associated with No. 39 Turanga Road that effects such as dominance, and loss of privacy are not adequately addressed by the proposed alterations and will continue to have an effect on this property.

The proposal is not considered to adversely affect any matters of national importance. It is considered that the adverse effects arising from the proposal are limited in significance to the surrounding neighbourhood.

Section 7 identifies a number of "other matters" to be given particular regard by Council in the consideration of any assessment for resource consent, and includes the efficient use of natural and physical resources. Section 7(c) refers to the maintenance and enhancement of amenity values. The 'modified' dwelling fails to maintain amenity values associated with No. 39 Turanga Road in terms of loss of privacy and physical domination, but also potentially loss of reasonable daylight / sunlight opportunities in association with the dwelling.

It not considered that the proposal would give rise to any issues relating to the Treaty of Waitangi that would require consideration under Section 8 of the Act.

The potential effects of the proposal on the amenity and character of the area have been discussed in detail in the effects assessment contained in Section 8.1 of this report. It is concluded that the potential adverse effects on the amenity of the surrounding environment, and in particular on the property at No. 39 Turanga Road, would be more than minor.

## 11.0 CONCLUSION

Retrospective consent is sought to primarily regularize the structure enclosing the viewing platform located on the roof of the existing dwelling at No. 41 Turanga Road which exceeds the maximum height as consented to under LUC-2003-0692 and also infringes height in relation to boundary controls. In addition, consent is sought with respect to historic infringements of the yard setback controls and height in relation to boundary controls that have arisen from surveying the correct position of the 'original' dwelling. The subject site is located with the Bush Living Environment and Managed Natural Area.

The impacts of the proposal with respect to the wider Ranges landscape are contained and limited to the subject site and the two adjoining sites. The development is not considered to detract from this Outstanding Landscape nor the amenity values of the wider neighbourhood. Given the presence of tall screening vegetation along the northern boundary of the subject site No. 43 Turanga Road is not considered to be adversely affected. Consequently effects of the development remain restricted to No. 39 Turanga Road.

It is considered that the proposal does not meet the criteria for granting consent as the potential adverse environmental effects are more than minor with respect to No. 39 Turanga Road and cannot adequately be mitigated through the imposition of appropriate conditions of consent. It is concluded that the development will adversely affect the amenity values of No. 39 Turanga Road by virtue of loss of privacy and physical domination in direct relation to the 'modified' dwelling, but also potentially loss of reasonable daylight / sunlight opportunities in association with the original dwelling.

The topography of the land, nature of built form and low screening vegetation between the subject site and No.39 Turanga Road aggravates the effects that arise from the development of the site.

It is unfortunate that no party previously identified the historic infringements including the applicant, the neighbours or the Council as this has complicated matters surrounding this consent.

The proposal is considered to be inconsistent with objectives and policies of the District Plan which seek to protect and enhance amenity values associated with the Bush Living environment. Amenity values in this instance relate to dominance, visual amenity, privacy and shading.

The applicant has offered to amend the structure to reduce the effects on the adjoining neighbours. This aspect has been considered by Council's Landscape Architect and contemplated by one of the submitters.

The proposed mitigation measures offered would reduce some of the domination effects and visual intrusion generated by the roof overhang. It is considered however this would not address all effects arising as a result of the development. Effects arising from domination and on privacy remain. Consequently it is considered that the issues raised by the submitters cannot be adequately addressed through the imposition of appropriate conditions.

The proposal could address effects on privacy and domination through the alteration of the structure, enhanced landscape treatment between the dwellings, opaque glass treatments on overlooking windows and replacing viewing platform widows with solid materials. A reduction in the height of the structure would address the primary issue of physical domination but may adversely affect its usefulness.

Subject to any additional and/or contrary evidence being presented at the hearing, it is concluded that the application does not merit consent in accordance with Section 104 of the Resource Management Act 1991.

## 12.0 RECOMMENDATION

That pursuant to Sections 104,104B, 108 and 113 of the Resource Management Act 1991, and subject to additional or contrary information being presented at the hearing, consent be declined to the application by Ivan Botica for retrospective consent for infringements of Building Height, Height in Relation to Boundary and Yards at 41 Turanga Road, being LOT 82 DP 21508 for the following reasons:

- (i) The overall site development compromises the amenity values enjoyed by No. 39 Turanga Road as the development generates effects on amenity including physical domination and loss of privacy associated with the 'modified' dwelling.
- (ii) The effects arising from the 'modified' dwelling are exacerbated by the historic infringements which places the dwelling closer to the boundary, reducing the opportunities for landscape treatment and exacerbates the built form as viewed from the neighbouring property.
- (iii) That the physical dominance and loss of privacy of No. 39 Turanga Road are not adequately internalised within the subject site and the further mitigation proposed does not adequately mitigate effects generated by the development.
- (iv) The applicant has not adequately articulated the effects associated with the loss of daylight and sunlight on No. 39 Turanga Road and consequently it is unable to be concluded that the adverse effects on the amenity values on No. 39 Turanga Road are no more than minor, or can be adequately mitigated if required.
- (v) The development is inconsistent with the Objective 11, Policy 11.8 and the relevant assessment criteria of the Operative District Plan that seek to maintain and enhance amenity values.
- (vi) The proposal is inconsistent with Part II of the RMA, with particular regard to Section 5 and 7(c) of the Act

Report prepared by (Nick Pollard), Resource Planner.

