

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of the First
Schedule of the Act

BETWEEN K & M LILE
(ENV-2012-WLG-000088)
Appellants

AND NELSON CITY COUNCIL
Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge B P Dwyer sitting alone pursuant to section 279 of the Act.

IN CHAMBERS

CONSENT ORDER

Introduction

[1] The Court has read and considered the appeal and the memorandum received 1 July 2013.

[2] Daelyn Holdings Limited and Marsden Park Limited gave notice of an intention to become parties under s274, and have signed the memorandum setting out the relief sought.

[3] The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order;
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to



relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

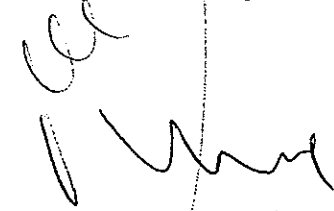
Order

[4] The Court orders, by consent, that Rule REr.31 of the Nelson Resource Management Plan be amended in accordance with the attached document setting out the amended rule in full.

[5] The appeal is otherwise dismissed.

[6] There is no order as to costs.

DATED at Wellington this 18th day of July 2013



B P Dwyer

Environment Judge



Confidential and Without Prejudice

Item	Permitted	Controlled	Discretionary/Non-complying
REr.31 Fences	<p>REr.31.1</p> <p>Fences are permitted if:</p> <p>a) In a front yard or on a road boundary of an Unclassified Road:</p> <p>i) the maximum height does not exceed 1.2m, or</p> <p>ii) for any fence over 1.2m in height the maximum height does not exceed 1.8m and the entire fence is visually permeable,</p> <p>and</p> <p>b) In a front yard or on a road boundary of a Classified Road:</p> <p>i) the maximum height does not exceed 1.2m, or</p> <p>ii) for any fence over 1.2m in height</p> <ul style="list-style-type: none"> • the maximum height does not exceed 1.8m and • at least 50% across the entire front boundary is visually permeable (as measured by the total length of the front boundary and the height of the fence), <p>and</p> <p>c) on a boundary with a reserve, walkway or other publicly owned space:</p> <p>i) the maximum height of the fence does not exceed 1.2m within 1.5m of the boundary, or</p> <p>iii) for any fence over 1.2m in height the maximum height does not exceed 1.8m and the entire fence is visually permeable,</p> <p>and</p> <p>d) on all other property boundaries the maximum height does not exceed 1.8m, and</p> <p>e) where board or paling fences are used, structural railings do not face a road, walkway, reserve or other publicly-owned space.</p>	<p>REr.31.2</p> <p>Not applicable</p>	<p>REr.31.3</p> <p>Fences that contravene a permitted condition are restricted discretionary.</p> <p>Discretion is restricted to the following assessment matters which will be guided by the assessment criteria in REr.31.4:</p> <p>(i) Height, Length and Location</p> <p>(ii) Design and Appearance</p> <p>(iii) Residential Character and Streetscape</p> <p>(iv) Surveillance and Safety</p> <p>(v) On site amenity</p> <p>Resource consent applications for restricted discretionary activities will be considered without notification.</p>

Assessment Criteria	Explanation
<p>REr.31.4</p> <p>a) the proportion of the front yard to be contained by the fence and whether the objectives of an open, high amenity, pleasant and safe streetscape can still be achieved, and, and</p> <p>b) the design and appearance of the fence (including physical dimensions), materials and colour of the fence and whether this provides a pleasant, human scaled streetscape, and</p> <p>c) whether any site specific circumstances exist that result in the need for a higher solid front fence for safety of the residential occupants and/or animals or to reduce noise effects from Classified Roads on residents, and</p> <p>d) the relationship of the fence with the dwelling, garage, and driveway on the site and the cumulative effects of those elements on the streetscape, and</p> <p>e) the degree to which landscaping between the fence and the road boundary mitigates the visual effects of solid fences, and</p> <p>f) the degree of surveillance when viewed from public spaces and the consistency with the outcomes sought in policy RE3.5 and DO13A.3.1 and</p> <p>g) the topography of the site and whether that mitigates the fence height encroachment effects on streetscape and/or reserve amenity, residential character and surveillance and safety.</p>	<p>REr.31.5</p> <p>The concept of open frontages onto roads, walkways and reserves is promoted. A sense of openness between residential properties and streets, reserves and walkways is required to maintain streetscape amenity, encourage a sense of community, provide opportunities for passive surveillance and improve safety in public spaces.</p> <p>The requirements of REr.31.1 a) to b) relate to the entire front yard i.e. the section of side boundaries that are within the front yard. In some circumstances multiple rules may apply, particularly where boundaries adjoin a reserve or walkway and are also within the front yard. On boundaries adjoining a walkway or reserve rule REr.31.1(c) applies rather than REr.31.1(a or b).</p> <p>The rule provides for different degrees of height and visual permeability for classified and unclassified roads in recognition of the different function, traffic effects and privacy needs of the residents living in that street.</p> <p>Fences on boundaries between properties are limited in height to avoid having a dominant effect, keep them human scaled, and to maintain a level of openness while providing for privacy.</p> <p>Development, including front fences, should not perpetuate existing patterns of design and layout that are not valued development patterns, nor representative of the urban design outcomes sought in the Plan. Valued development patterns are explained further in DO13A.1.1.i. and RE3.5.</p> <p>Visually permeable for front fences means the ability to clearly see through from the street to the front yard of the site, and is determined by a comparison of the solid portion of the fence structure against any gaps provided within the structure, or between fence structures.</p> <p>Notes:</p> <p>Refer to rules REr.29 corner sites, REr.40 Access and section 4.3.15.4 of the NCC Land Development Manual, and REr.92 Heritage Precincts Front fences for other rules relating to fence heights or locations.</p> <p>Refer to the NCC Residential Street Frontage Guidelines.</p>

