

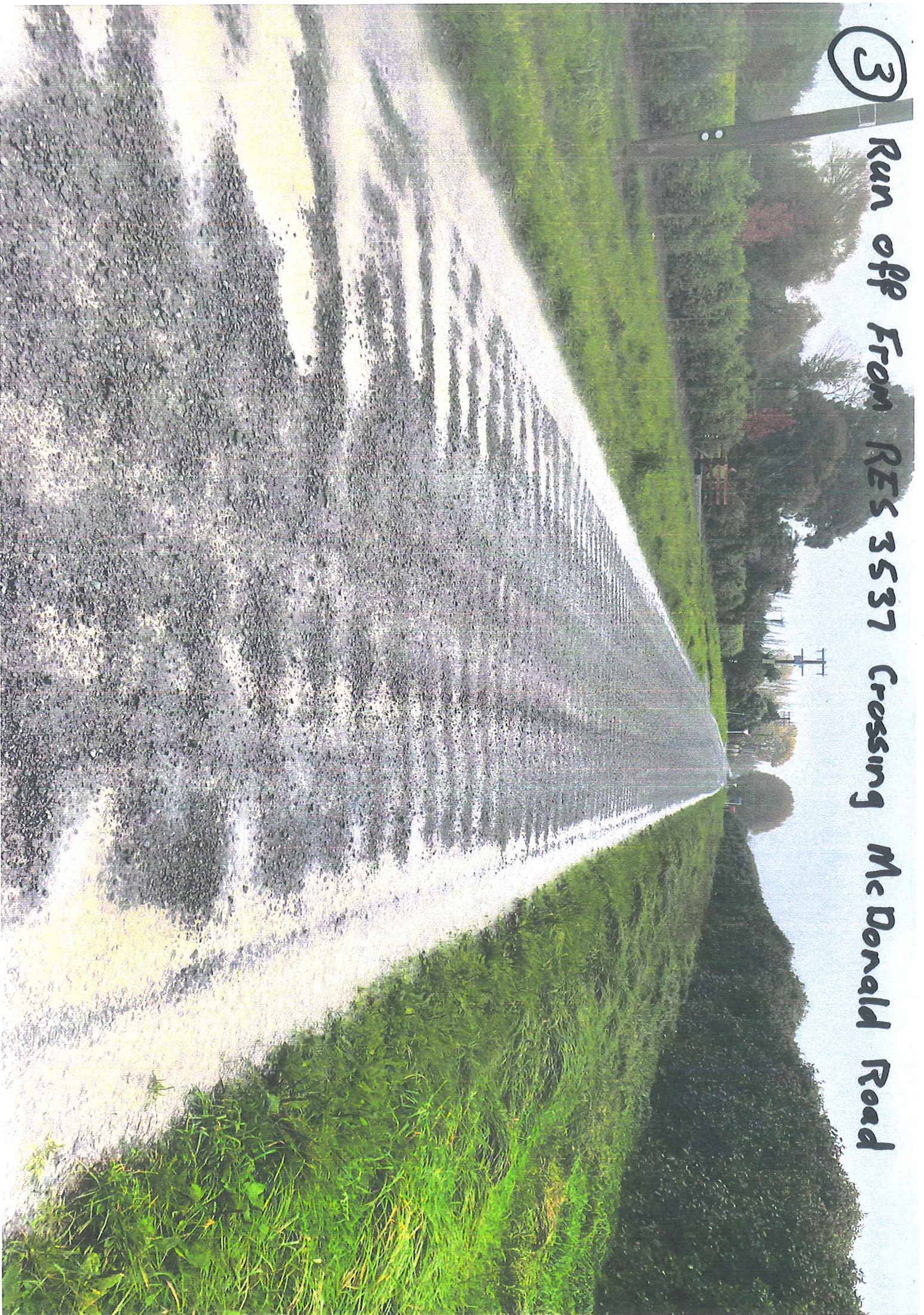
① Excessive Run off looking North at 94 Drive way



2 Run off looking west



③ Run off From RES 3537 Crossing McDonald Road



④ Excessive Run off From RES 3537 Flooding into [REDACTED]



⑤ Flood Water From McDonald Road



⑥ Formed Driveway with
no Culvert causes flooding
Res 3537



Council 'plug' blamed for farm flooding

Annette Scott
NEWS
Weather

CANTERBURY farmer Tom Power was left frustrated and blaming a lack of council action as he had to make serious farming decisions following the recent rain event.

Power, together with his family, runs Kinloch Farm, an 1100 hectare sheep and beef property on Banks Peninsula.

Last week he was making some tough business decisions after all the flats of the hill country property bordering Te Roto o Waitewa Lake Forsyth lay under water or remained sodden from flooding that Power said was mitigable.

Both Lake Forsyth and neighbouring Te Waihorua Lake Ellesmere have been a bone of contention amid the extreme rain event.

Power claims the lake level was sufficiently high ahead of the forecast rain to be opened but that the Christchurch City Council refused to do so when approached. It has to be opened with diggers to drain to the ocean.

On April 24, the lake was at 2.5 metres above sea level. Consent says at 2.7m, or if an extreme weather event is forecast, it has to be opened.

A clause in the Resource Management Act allows for the lake to be opened if there is a

at 4.091m was 1.39m above the trigger rate.

"The council said they were waiting for the next southerly to go through. Now after 300mm of rain and with 100 hectares of our good productive farmland underwater, we are forced to make the tough decisions going forward."

Weaning had been planned for the week of the rain. It had been delayed, and was now delayed again with nowhere for the calves to go.

"Fortunately with the hill country we were able to keep poking the cows and the sheep up above the floodwaters."

"Now it looks like we will have to wean next week and at this stage likely sell the calves as we won't have the feed for them now."

"We've also got the agent coming to look at the two-year trading stock and some of that will also have to go."

"It's not ideal, it's not the plan, but it's what this flood has forced us to come to. The only one upside is the market pricing is good at the moment."

Power said the most frustrating aspect is that despite being invited, no one from council has been out to see the reality.

"The point is at 2.7m the lake is already flooding over our farmland and depending on the seasons, it's normal for us to only be able to farm that 100ha for just six months of the year. But now we



REACTION: Canterbury farmer Tom Power says 100 hectares of productive farmland were under water because the Christchurch City Council didn't act soon enough.

Photo: Supplied

“You don't need a degree to know that if you leave the tap running with the plug in the bath, it will overflow.”

Tom Power
Banks Peninsula

us. Our farmlands suffer every year from mismanagement of council, that has no idea, nor interest to care about it.

"We've heard nothing from them, no contact made at all."

FARMERS WEEKLY
POLL

This week's poll question:

Are you confident your region's infrastructure and its management is fit for purpose when it comes to extreme weather events?

Flood but they are not interested. The sun comes out, they say they have done everything they could and wash their hands of it while we suffer the consequences."

At the height of the recent rain, Power and his family had to launch the jet boat as a means to get around the farm, given the water was above the fence tops and too deep for vehicles.

"With that amount of rain, yes there will be flooding. I'm not ignorant, I get that."

"But you don't need a degree to know that if you leave the tap running with the plug in the bath, it will overflow."

DRAFT

30 May 2024

Selwyn District Council
PO Box 90
Rolleston 7643

By Email: [REDACTED]

Attention: Sharon Mason

LOUISE STALKER – [REDACTED]

1. We act for Louise and Andrew Stalker, an owner of the property at [REDACTED], Lincoln.
2. We have been instructed in respect of Paul and Joanne Campbell's use of the land on the corner of McDonald and English Road. We understand the 2ha lot does not have an address.
3. Our clients have attempted to liaise with the Selwyn District Council about this matter however they have been unable to make any progress and accordingly, have had no choice but to engage legal representation.

Background

4. By way of background, Mr and Mrs Campbell purchased the 2ha plot of land in April 2023 from the Selwyn District Council. Our clients and a neighbour were told by the Council's real estate agent that a dwelling could not be built on the land. It was advertised on that basis.
5. As the Council is aware, Mr and Mrs Campbell have since built a pole shed on the site (which has a concrete floor). The shed is now fully enclosed. Mr and Mrs Campbell have parked a motorhome in the shed and have been living on the land since 20 April 2024. Our clients are aware that Mr and Mrs Campbell have undertaken plumbing work on the land and have installed a sewage system. It does not appear that the sewage system and discharge of water had a consent from Canterbury Regional Council (Ecan) or the Selwyn District Council.

Selwyn District Plan

6. We note that the lot is in the Outer Plains zone. Rule 3.10 of the Plan applies which states that erecting a building will be a permitted activity if the minimum area to erect any dwelling complies with the minimum land area as noted in the Plan. The minimum land area for the Outer Plains zone is 20ha.
7. A "building" is defined as any structure or part of any structure whether permanent, moveable, or immovable. A "dwelling" is defined as buildings or any part of a building which is used as a self-contained area for accommodation or residence by one or more

BRB-484604-1-72-V2

persons, where that area collectively contains: bathroom facilities, a sleeping/living area and kitchen facilities.

8. From the evidence our clients have collected (and previously provided to the Council) including photographs, the shed/motorhome has bathroom facilities, a sleeping/living area and kitchen facilities. Accordingly, resource consent is necessary.
9. The Council have advised Mr Stalker that Mr and Mrs Campbell are considering applying for resource consent and/or a change of use but have commented it is very expensive. With respect, this cannot be a valid reason for Mr and Mrs Campbell to continue to reside on the land without the necessary consents.
10. If a resource consent has been applied for, we would be grateful for a full copy of the application. As parties adversely affected our clients expect to be notified of any applications for resource consent to erect a dwelling or discharge any contaminants to ground.
11. In the meantime our client requests that the Selwyn District Council immediately issue an abatement notice to Mr and Mrs Campbell requiring them to cease living on the land pending approval of the applicable consents.

Building Act 2004

12. We note that under the Plan, erecting or demolishing any building or making alterations to building will require a consent under the Building Act 2004, irrespective of whether a resource consent is needed under the Plan.
13. Please confirm if Code Compliance has been issued for the shed build.

This matter is very stressful and concerning for our clients. Accordingly, we look forward to hearing from you as soon as possible.

Yours faithfully
HARMANS

Brian Burke
Partner


A2.2 Letter From T Snell to our lawyer



12 June 2024

Brian Burke
Harmans Lawyers



Email:



Our Ref: 24005866

Dear Brian,

***Non-complying 'residential dwelling/residential unit' on undersized rural zoned site
Cnr McDonald and Englishs Road, Lincoln (Valuation Number 2404015700)***

You are receiving this letter in response to a directive from Andrew and Louise Stalker, [REDACTED]

Selwyn District Council (SDC) is currently investigating a complaint in relation to a self-contained caravan being occupied at the above property.

A site visit was carried out by Compliance Officers on the 8th of May 2024. Follow up checks were conducted post site visit, and it has been confirmed that the residential activity is not a permitted activity for the site, and as such requires a resource consent (if the activity onsite does not cease).

The activity may potentially be permitted under the *Temporary Activities* rule TEMP-R1 and its associated Rule Requirements TEMP-REQ1 and TEMP-REQ2.

SDC has conveyed the findings of the investigation to the property owner, and a compliance date (5/9/2024) has been set. By this date either a resource consent is required to be obtained for the activity onsite, or the activity is to cease.

Andrew and Louise Stalker have requested that SDC issues an abatement notice to address the non-compliance onsite.

The Canterbury Chief Executives' Forum agreed to the formation of a regional Compliance, Monitoring and Enforcement (CME) Working Group in May 2017 to share advice and guidance on compliance, monitoring and enforcement of environmental law across the region. The working group agreed that they would use the Regional Sector Strategic Compliance Framework 2016-2018 as the base of their strategy and only make changes where there were Canterbury specific reasons to do so. The Canterbury Strategic Compliance Framework (CSCF) also incorporates the Ministry for the Environment (MfE) Best Practice Guidelines for Compliance, Monitoring and Enforcement. In August 2018 the Canterbury Chief Executives' Forum endorsed the CSCF approach across the Canterbury District.

In accordance with best practice guidance and the CSCF it is important that SDC apply principles to guide its compliance operations. The requirements to monitor and ensure compliance with the law is a mandatory obligation of most of the Acts that SDC administers. Such Acts provide the specific legislative framework for SDC to enforce rules and regulations.

While these Acts provide the tools to gain compliance, the manner in which SDC chooses to gain compliance remain at its discretion. This is fundamental when considering that compliance and enforcement are complex notions in law and often gain further complexity via the effect of supplementary factors. Such discretion is exercised by SDC through the application of the principles listed below through instances of CME decision-making:

Transparent

SDC will provide clear information and explanation to the regulated community about the standards and requirements for compliance.

Consistency of process

SDC's actions will be consistent with the legislation and within its powers. CME outcomes will be consistent and predictable for similar circumstances. SDC will ensure that its staff have the necessary skills and are appropriately trained and that there are effective systems and policies in place to support decisions.

Fair, reasonable, and proportional approach

SDC will apply regulatory interventions and actions appropriate for the situation. Staff will use their discretion justifiably and ensure decisions are appropriate to the circumstances, that interventions and actions will be proportionate to the risks posed to people, the environment, and the seriousness of the non-compliance.

Evidence based and informed

SDC will use an evidence-based approach for decision-making. Decisions will be formed by a range of sources, including sound science, information received from other regulators, members of the community, industry, and interest groups.

Collaborative

SDC will work with and where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for Canterbury. SDC will engage with the community and consider public interest, those persons we regulate, and the Government to explain and promote environmental requirements and achieve better community safety and environmental outcomes.

Lawful, ethical and accountable

SDC will conduct itself lawfully and impartially and in accordance with the principles mapped out in this document/manual, relevant policies, and guidance documents. SDC will document and take responsibility for our decisions and actions made pursuant to this document/manual. SDC will measure and report on its Compliance Monitoring and Enforcement performance.

Targeted

SDC will focus on the most important issues and problems to achieve the best environmental outcomes and on those that pose the greatest risk to the community.

Responsive and effective

SDC will consider all alleged non-compliance issues covered by the Compliance Strategy document to determine the necessary interventions and action required to minimise impacts on the environment and the community to maximise deterrence. SDC will respond in an effective and timely manner in accordance with legislative and organisational obligations.

SDC will apply the right tools for the right problems at the right time. At this point in time, an abatement notice is not warranted given the circumstances of the case. SDC reserves the right to review this decision at any time.

If you have any questions regarding this letter, please do not hesitate to get in touch.

Kind regards,



Tristan Snell
Compliance Team Leader
Email: 

A3.1



15 July 2024

Mrs L A Stalker

By Email: [REDACTED]

Dear Louise

RESOURCE CONSENT DISPUTE

Please find **attached** a note of our interim fee account for work undertaken on your behalf in relation to the above matter.

You will see from our reduced invoice that the sum of \$6,065.00 is payable by you.

Yours faithfully
HARMANS

[REDACTED]
Brian Burke
Partner
Email: [REDACTED]

BRB-484604-1-84-V1

A 3.2

Costing plants hedging from 2024 onwards

Date	Cost
2023-05-01	87
2023-05-02	76.38
2023-05-03	19.98
2023-05-19	21.66
2023-11-16	115.98
2023-12-07	71.96
2023-12-17	61.82
2024-01-28	30.05
2024-06-05	78.97
2024-06-23	49.98
2024-07-21	68.54
2024-09-10	110.93
2024-11-15	26.43
2024-11-18	8.99
2024-11-18	19.64
2024-11-24	143.97
2024-11-24	30.18
2024-12-19	118.94

The total sum of the provided transactions is **\$1,141.40**. The table above shows the full breakdown by date

A 4

as [REDACTED]

If you need any further information, please let me know,

Gemma Smith
[REDACTED]

From: James Dobson [REDACTED]

Sent: Monday, July 22, 2024 3:07 PM

To: Gemma Smith [REDACTED] Leigh Thomas [REDACTED]

Subject: FW: Urgent request for investigation into illegal Sewerage and Wasterwater Systems corner McDonald and Springs Road

Hey guys,

I mentioned this request to Gemma earlier and we managed to have a quick discussion. I thought I'd forward the email for you both to have a look over.

I have drafted a response which I will get you to check the facts before I send to Gill & Jen. Hopefully we can have quick catch up either today or tomorrow just to confirm a few things.

From my catch up with Gemma it appears that there weren't any issues identified in relation to the disposal of human waste at the time of your visit. It appears that it was being stored within the campervan septic waste system, taken off site, and then disposed of correctly.

It sounds like they may have been discharging greywater from a washing machine around the time of the inspection? Are you able to please let me know whether you made an assessment of rule 5.12 of the LWRP in relation to greywater and if so what was the outcome of this assessment?

If you have any issues or concerns please let me know.

Cheers,
James

From: Jennifer Rochford [REDACTED]

Sent: Monday, July 22, 2024 11:38 AM

From: [Gemma Smith](#)
To: [Gillian Jenkins](#)
Cc: [Nathan Dougherty](#); [Leigh Thomas](#)
Subject: FW: Urgent request for investigation into illegal Sewerage and Wasterwater Systems corner McDonald and Springs Road
Date: Monday, 29 July 2024 5:30:00 pm
Attachments: [Landonline - 1114901 \(1\).pdf](#)
[BBB-484604-1-72-2 Letter to Selwyn District Council.pdf](#)
[Email to Environment Canterbury.png](#)
[20240612 SR 24005866 Letter to Brian BURKE \(Harmans Lawyers\) \(2\).pdf](#)
[BBB-484604-1-105-1 Letter to Selwyn District Council.pdf](#)
[IMG_0612.jpg](#)
[IMG_0518.jpg](#)

Hi Gill

Just wanted to give you an update on this complaint that came through early last week and was being looked into by James. Nathan and I went back out to site on Friday 26/072024 for another unannounced site visit. No one was onsite at the time and NOI was left. From what we saw on site there did not seem to be much change from my first visit with Leigh. There was some possible minor greywater noncompliance but nothing to confirm any of the claims made in the report from the customer.

Monday 29/07/2024. I spoke on the phone with [REDACTED] at McDonalds Road. [REDACTED] advised that on the Friday morning before our visit [REDACTED] had been to Robsons and emptied his two IBC containers there and had photos and receipts for it. I have asked [REDACTED] to provide these for us as proof of compliance with the wastewater rules. [REDACTED] has been using a macerator pump to pump black water into the IBC and then grey water to clean the pipes into the IBC. Shower water he had been pumping to [REDACTED] paddock to save on space in the IBC. I have advised that we have rules on greywater and will send these through to [REDACTED] as these were missed in my last communications with them.

[REDACTED] also confirmed that the work that had been done near the driveway as claimed by the customer was for water lines for his trees by drip line and that [REDACTED] also has pop up sprinklers in the lawn and drip lines along the boundary for [REDACTED] pittosporums. [REDACTED] has [REDACTED] own well onsite and has no storage containers for this but just pumps directly from the well.

Apart from the minor greywater discharge to land from the shower there are no other concerns at this property. -I have updated the original PE (PE244815) and TRIM with details from the site revisit.

[REDACTED] also advised that they have until the [REDACTED] [REDACTED] If they do not comply by the [REDACTED] then an [REDACTED] will be issued. [REDACTED] advised [REDACTED] will still be onsite after this time during the day. They had looked into getting a consent for living onsite as the caravan is classed as a dwelling by SDC in this scenario and in the future to build here but with the [REDACTED] they have [REDACTED].

On a side note, [REDACTED]

Sunday, May 18, 2025

Wellington family to lose home after court ruling it's a storage shed

Deborah Morris

April 9, 2025

Share:

<https://www.thepost.co.nz/nz-news/360645355/wellington-family-lose-home-after-court-ruling-its-storage-shed>



An Environment Court judge has ruled that Ben Watson's family home in rural Brooklyn is consented to be a storage shed and not a residence.SUPPLIED

A family in Brooklyn has a few months to find a new home after the Environment Court found their house was never consented and should instead be a storage shed.

Ben Watson and his family had [challenged](#) a Wellington City Council abatement notice to the court in February, saying they would have nowhere to live if they could not continue to live in their rural Brooklyn house.

In late 2022, the Wellington City Council Compliance Team commenced an investigation into a number of alleged district plan breaches in the wider Long Gully area, including the issue of unconsented residential buildings.

The rural Brooklyn property in Southernthread Rd had four buildings on it when Watson bought it in 2015. Two were to be removed and two remained under consent conditions from 2012.

A tiny sleepout was the property listed as having proper consent to be a residence while the second property, which they used as their home, was in fact supposed to be converted to storage. The sleepout was not suitable to be used as a home.

The council issued an abatement notice to remove all internal kitchen, bathroom, sleeping, and toilet facilities including the plumbing and drainage servicing these facilities from the second building.

An application was made retrospectively to authorise the building, but after technical assessments could not be obtained the application was amended to authorise it as a storage building only.

Watson had believed that meant he had a five-year time frame to convert the building to storage and that they could continue using it as a home.

The council's position was that the house remained unconsented as a residential dwelling.

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ADVERTISE WITH STUFF

Watson had told the court he had believed the house could be lived in until their new home was built – something he was always planning to do.

However, Environment Court judge Lauren Semple has refused his appeal, although she halted the abatement notice until the end of July and urged the family to find new accommodation.

She said she was satisfied that the building being used as a residence did not have consent and it was not authorised other than as a storage building.

“A consent is, and at all relevant times was, required for a residential dwelling on the site. No such consent exists and, as such, the abatement notice requiring that Building 2 (the house) cease being used as a residential building was lawfully issued and is upheld.”

The judge said she understood why Watson, on purchasing the property, could have read the previous conditions as authorising a residential dwelling.

“While the law is not on Mr Watson's side, I do however have considerable sympathy for the situation in which he has found himself. I also received evidence from Mr Watson that he and his family have no other

accommodation available to them and this situation has created considerable stress. That too is understandable. “

-

A5.2

SCHEDULE OF PROCEEDINGS

1. Topic:



i. B Watson v Wellington City Council

Appeal Against Abatement Notice pursuant to Section 325 of the Resource Management Act 1991

Court Reference: ENV-2024-WLG-000040

3. has any special arrangements for the hearing are required, e.g. transport for site visits, storage space for bulky exhibits, video playback

<https://www.justice.govt.nz/courts/going-to-court/pre/interpreters-language-and-disability-access/>


they are to advise the Court in writing of this not later than **10 working days** from the date of hearing so that appropriate arrangements can be considered.

5 CORRESPONDENCE AND ENQUIRIES

Information on the Environment Court and the Court's Practice Notes which serve as a guide, are available at www.justice.govt.nz/courts/environment-court. All correspondence or enquiries about this notice or the hearing procedures are to be directed to the undersigned.

Dated at Wellington Environment Court Registry on 05 December 2024



Joseph Buckton
Hearing Manager
E-mail address: 

ENVIRONMENT COURT
SX10044
Wellington
Telephone: (04) 918 8300
Facsimile: (04) 918 8303



Environment Court of New Zealand


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↔ **Watson** ↔ v ↔ **Wellington** ↔ **City Council** [2025] NZEnvC 106 (3 April 2025)

Last Updated: 11 April 2025

- A.
- B.
- C.

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IN THE ENVIRONMENT COURT AT ↔ **WELLINGTON** ↔

I TE KŌTI TAIAO O AOTEAROA

KI TE WHANGANUI-A-TARA

Decision [\[2025\] NZEnvC 106](#)

IN THE MATTER of an appeal and an application for stay

under s 325 of the Resource Management Act 1991

BETWEEN BENJAMIN ↔ **WATSON** ↔ (ENV-2024-WLG-000040)

Appellant

AND ↔ **WELLINGTON** ↔ CITY COUNCIL

Respondent

Court: Environment Judge L J Semple sitting alone under s 309 of the Act

Hearing: at ↔ **Wellington** ↔ on 13 February 2025 Last case event: 13 February 2025

Appearances: B ↔ **Watson** ↔ (self-represented)

N Whittington for the Council

Date of Decision: 3 April 2025

Date of Issue: 3 April 2025

DECISION OF THE ENVIRONMENT COURT

The abatement notice is confirmed.

The appeal is disallowed. The stay will end on 31 July 2025.

Any application for costs must be made by 17 April 2025, with any response to be lodged by 29 April 2025.

WATSON v WELLINGTON CITY COUNCIL

REASONS

Introduction

- [1] The Appellant, Mr Watson, purchased a property at 510 Southernthread Road, Brooklyn in Wellington in 2015 (the site). The site is located within the Long Gully area and is classified as part of the General Rural Zone within the Wellington City District Plan (the Plan).
- [2] It is common ground that when Mr Watson purchased the property (being Lot 6 of a previous subdivision), there was a residential dwelling on the site which he and his family subsequently occupied. For the reasons set out subsequently that dwelling is referred to as Building 2 within this decision. All parties agree that Building 2 was constructed between 2010 and 2012.
- [3] In late 2022, the Wellington City Council Compliance Team commenced an investigation into a number of alleged District Plan breaches in the wider Long Gully area, including the issue of unconsented residential buildings.
- [4] Consistent with that investigation, on 4 October 2022, Mr Benjamin Brown, a compliance officer with the Wellington City Council (the Council) undertook a site visit to 510 Southernthread Road. As part of that site visit Mr Brown identified several buildings on the property which he subsequently determined did not hold resource consents. That led to a series of abatement notices being issued by the Council.
- [5] The first abatement notice was issued on 16 June 2023 and required the removal of all non-consented buildings from the property that did not comply with the Plan as well as the cessation of operation of a shooting range.
- [6] After discussions between Mr Watson and the Council an amended abatement notice was issued on 20 November 2023. This abatement notice again required the removal of all non-consented buildings, but deleted specific reference to a sleepout which was accepted to have been authorised under a previous resource consent (SR 146415).
- [7] Further discussions between the Council and Mr Watson ensued and an application was made (albeit reluctantly) for a retrospective resource consent to inter alia authorise Building 2 (SR 542975). Further information requests for technical assessments were issued by the Council during the processing of that application¹ and were considered by Mr Watson to be outside of his means to obtain. As a result, the application was amended to authorise the use of Building 2 as a storage building only and that was subsequently granted. Erroneously, Mr Watson believed that the issue of this consent would provide him with a five year timeframe within which to undertake the conversion of Building 2 to a storage building and in the interim, he and his family would be able to continue using Building 2 as their home.

- [8] The Council's position was that Building 2 remained unconsented as a residential dwelling and accordingly it issued a further amended abatement notice on 17 September 2024. This abatement notice replaced the prior notices and required all internal kitchen, bathroom, sleeping, and toilet facilities (including the plumbing and drainage servicing these facilities) from Building 2 to be removed, effectively replicating the conditions of SR 542975 and requiring Mr **Watson** and his family to cease using Building 2 for residential activities.
- [9] Mr **Watson** appealed that abatement notice on 2 October 2024 on the basis that a previous resource consent (SR 254721) granted on 27 February 2013 authorised Building 2 to remain and be used as a residential dwelling.

Background

- [10] The background to these proceedings is particularly complex and it became clear during the course of the hearing that the previous consent (SR 254721) relied upon by Mr **Watson** to authorise Building 2, lacked clarity in a number of areas.

¹ Dated 29 February 2024.

- [11] While not seeking to traverse the entire consenting history of this area, it is pertinent to look closely at consent SR 254721 in untangling whether Building 2 holds a consent or otherwise.
- [12] SR 254721 was lodged with the **Wellington** City Council on 27 April 2012. That application sought subdivision consent for 17 lots and a variation of consent notice 8105871.3.
- [13] The resource consent application identifies a number of existing buildings on the property and with particular reference to Lot 7 DP 392856, (which became Lots 5 and 6 post-subdivision²) states that Lot 6 contains "an existing house and three farm accessory buildings (to be removed in accordance with the consent notice as noted in section 6.0)". The three farm accessory buildings and existing house are identified on a plan accompanying the application as Buildings 1 to 4 read from north to south. As previously mentioned, the building in dispute here is Building 2 as identified on that plan.
- [14] Somewhat unusually, and potentially unlawfully, although the resource application was for a subdivision consent, the decision dated 27 February 2013 purports to grant both a subdivision consent and a land use consent.
- [15] Of relevance to the matter before us, the subdivision consent imposes condition (r) which reads:

Prior to the issue of a section 224(c) certificate, all but one of the residential dwellings (or other buildings that may comprise a household unit) within Lot 6 must either be removed from the site or converted such that the building no longer constitutes a household unit. The Council's Compliance Monitoring Team shall undertake an inspection to confirm the building(s) have been relocated/converted, at the request of the consent holder, once the work is completed.



- [16] The land use consent purports to authorise the relocation of two residential buildings with conditions (b) and (c) providing:

² Lot 6, being the lot in question for 510 Southernthread Road.

(b) Building 1 (the northernmost building currently located on Lot 6 DP 392856), as shown in the photographs submitted 13 February 2013, must be relocated/removed to the approved house site on Lot 12 as shown on the Plan by Cardno, drawing No NZ0111154-C104, revision 1, dated 24/1/2013.

(c) Building 4 (the southernmost building currently located on Lot 6 DP 392856), as shown in the photographs submitted 13 February 2013, must be relocated/removed to the approved

house site on Lot 14 as shown on the Plan by Cardno, drawing no NZ0111154-C101, revision 9, dated 17/1/2013.

- [17] It is understood that Building 1 and Building 4 were relocated to Lots 12 and 14 as required by the consent conditions, leaving Building 2 and Building 3 on the property. It is accepted by the Council that Building 3 was a sleepout which had been consented by a previous resource consent.
- [18] Mr  **Watson** ’s belief when he purchased the property was that condition (r) authorised Building 2 to remain as a residential dwelling. The Council says this cannot be the case because there is nothing in the application or in the decision which assesses and specifically authorises a residential dwelling. It is therefore the Council’s position that Building 2 remains unconsented.
- [19] During the hearing, counsel for the Council and the Court carefully worked through the application for resource consent, the email correspondence which took place during the processing of the resource consent and the decision itself in an attempt to understand the provenance of condition (r). It must, of course, be recognised that Mr Smith, who processed the consent and prepared the decision, was not in Court with us and as such, we are limited to reviewing the documents as they stand in an attempt to discern meaning.
- [20] What seems clear is that although the application originally referred to an existing house and three farm accessory buildings, Council at some point in the processing of the consent application became aware that all four of the buildings were either being used for or were capable of being used for residential purposes.
- [21] Although not explicitly recorded, the email correspondence between the Council and the applicant suggests that once it became clear that Lot 6 would, on subdivision, have four buildings on it capable of being used for residential purposes, a decision was taken to relocate two of the buildings (being Building 1 and Building 4) to other lots (namely Lot 12 and Lot 14) as part of the application. Whether this in fact authorised residential dwellings on Lot 12 and Lot 14 is a matter for another day given there appears to be no application for land use consent for residential dwellings on these lots, nor any assessment in accordance with the provisions of the District Plan.
- [22] That left two residential buildings on Lot 6, being Building 2 and Building 3 (the sleepout). The sleepout, as previously referenced, had been authorised by a previous resource consent, however condition (r) of the subdivision consent provides that only one of the two buildings could remain on site post-subdivision. As previously set out, the condition ensuring only one building remained was a precondition to the issue of a s 224(c) certificate. Despite that, a s 224(c) certificate was issued with both Building 2 and Building 3 remaining on site. There is no evidence available to me as to why this was the case.

Legal question

- [23] In any event, the question that then arises is whether condition (r) which purports to “allow” one residential dwelling to remain on Lot 6 can be considered to authorise that dwelling in terms of a land use consent.
- [24] I accept that as a matter of law:³













If the condition proposed meets the Newbury tests, it can be validly imposed. On a subdivision consent, that may include conditions of the kind referred in s220(1)(c), and it may include other “land-use” type conditions.

- [25] However, I find that in the circumstances of this case, the condition in question cannot be read to authorise a land use not applied for nor evaluated. No application for a land use consent was made as part of the original subdivision consent application. There is no assessment of a residential dwelling in accordance with the

provisions of the Plan either as part of the original application or in the supporting information provided to Council. Rather, the subdivision application is clear that it does not seek to authorise any residential dwellings. No assessment of a residential dwelling is provided within the Decision. There is no discussion of authorising residential dwellings within the Decision. Moreover, it is noted that the subdivision application was publicly notified and a number of submissions received. It is unlikely on the face of it that any attempt to enlarge the application to include authorisation of a residential dwelling or dwellings during the course of processing the application would have been within scope of the notified application.

- [26] Overall and on that basis, I am satisfied that SR 254721 does not authorise Building 2 as a residential dwelling. SR 542975 authorises the use of the building as a storage building but does not authorise its use as a residential dwelling. A consent is, and at all relevant times was, required for a residential dwelling on the site. No such consent exists and, as such, the abatement notice requiring that Building 2 cease being used as a residential building was lawfully issued and is upheld.

Mr Watson ’s position

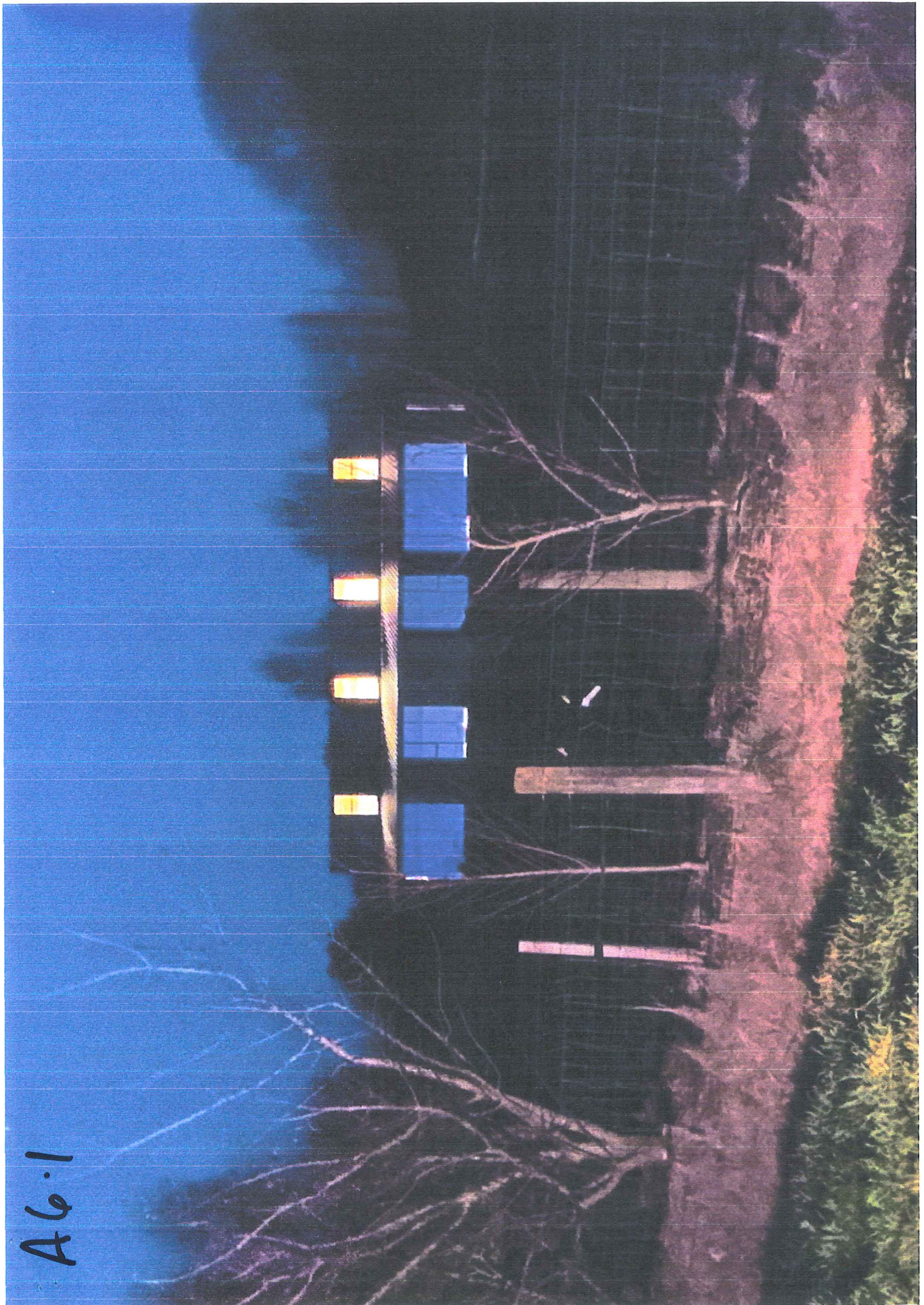
- [27] Despite the above, I understand why Mr  Watson , on purchasing the property, could have read condition (r) on SR 254721 as authorising a residential dwelling on Lot 6. While in a legal sense, condition (r) is something of a nonsense, its existence has clearly caused considerable confusion and Mr  Watson  at least has acted in reliance on it. That is understandable from a plain reading of the condition.
- [28] While the law is not on Mr  Watson ’s side, I do however have considerable sympathy for the situation in which he has found himself. I also received evidence from Mr  Watson  that he and his family have no other accommodation available to them and this situation has created considerable stress. That too is understandable.
- [29] The stay on the abatement notice is extended to 31 July 2025 to enable Mr  Watson  and his family to find alternative accommodation. I am however acutely aware that the dwelling does not hold a resource consent and as I understand it, is also not the subject of a building consent. On that basis Mr  Watson  and his family

are urged to find alternative accommodation as soon as possible.

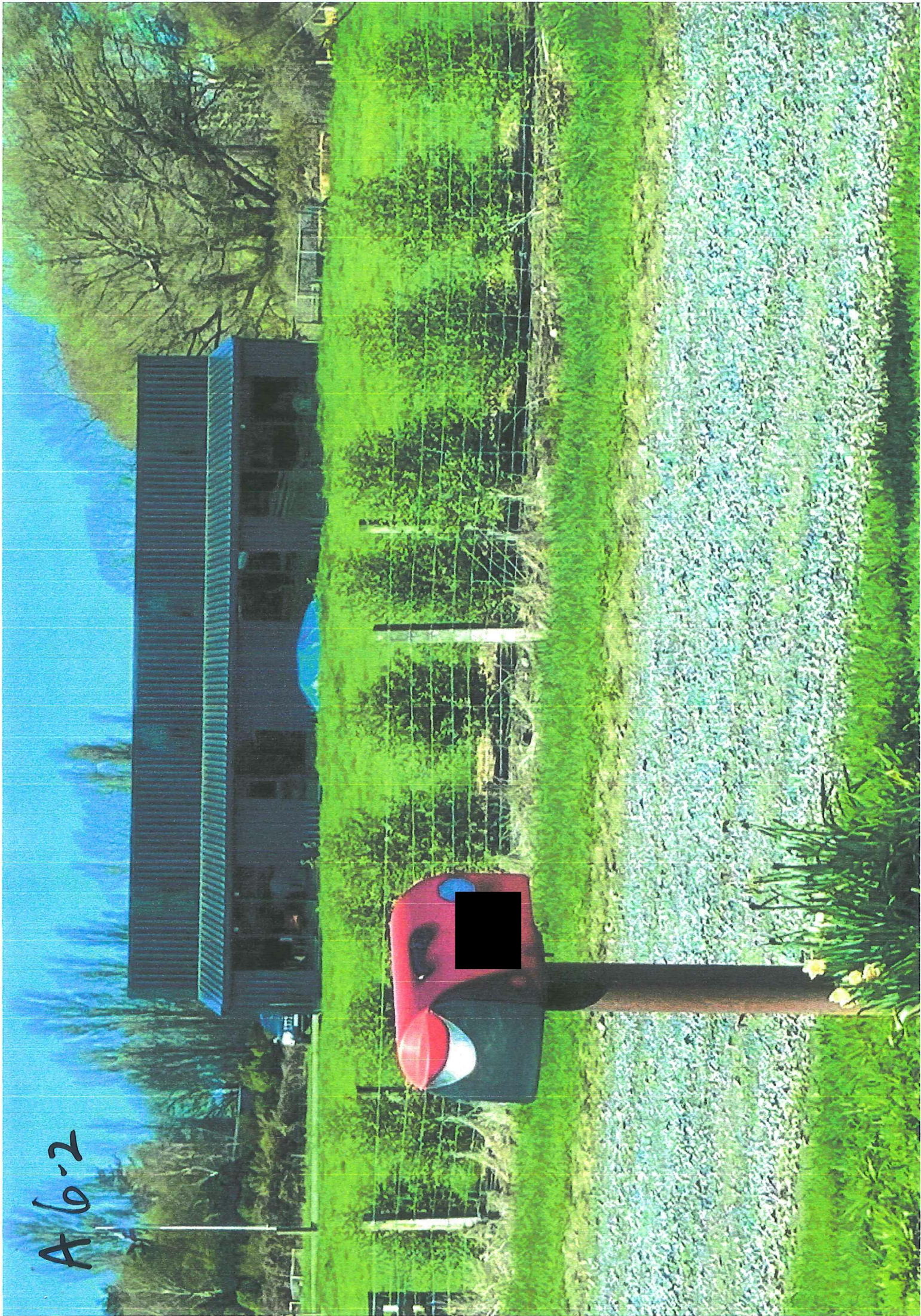
Conclusion

- [30] On the basis of the evidence before me, I am satisfied that Building 2 does not have a resource consent and as such the abatement notice was appropriately issued and is confirmed.
- [31] The appeal is disallowed. The stay will end on 31 July 2025.
- [32] Given the circumstances an application for costs by the Council is not encouraged however any application must be made by **5pm 17 April 2025** and any replies shall be filed by **5pm 29 April 2025**.

A6.1

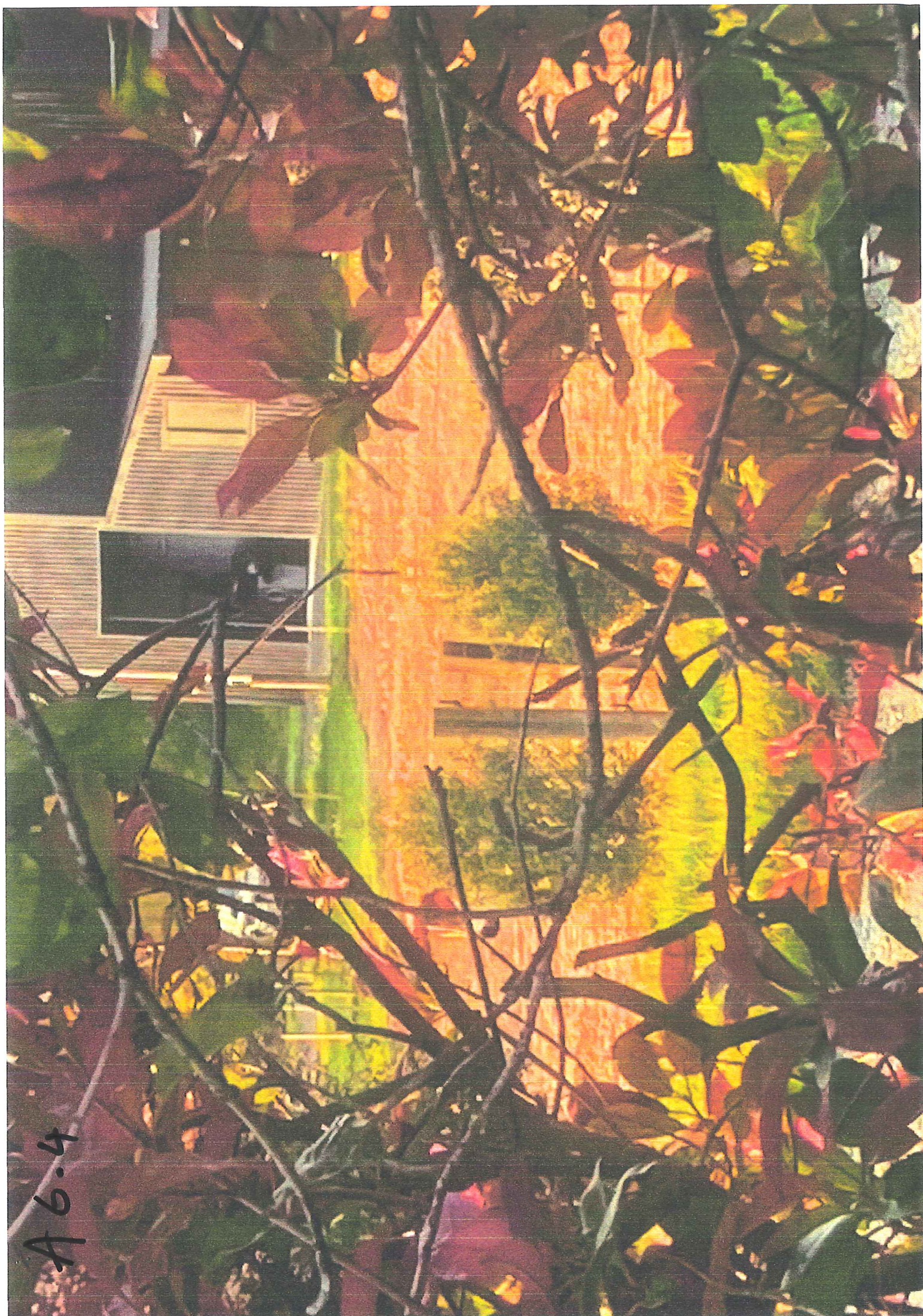


A6-2



A 6.3





A6.4

A 6.5

