



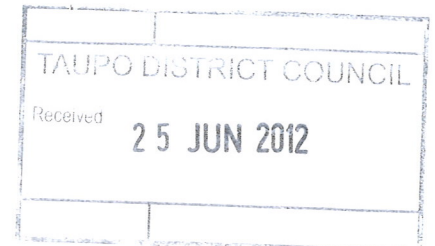
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OUR REF 2012-04801L2

22 June 2012

Taupo District Council
Private Bag 2005
Taupo Mail Centre
TAUPO 3352

E-MAILED



ATTENTION: DAVID GREAVES

Email: dgreaves@taupo.govt.nz

Dear David

KINLOCH GOLF :: LAND USE CONSENT DURATION

On 12 December 2002 land use consent was granted by Taupo District Council to construct and operate an international standard golf course (including a driving range and three practice fairways), a clubhouse, maintenance facilities, a lodge facility and 226 house sites. Condition 5 of that consent stated – this consent shall be valid for a period of 10 years from the date of the granting of the consent. December this year will be the 10 year anniversary of the granting of the consent and therefore we are seeking your confirmation that the consent has been given effect to and therefore will not expire.

Case Law

The following case law gives confidence that a proposal does not have to be fully completed in order for the consent to be 'given effect to'. Substantial changes to the subject site have been carried out in accordance with the land use and accordingly I consider the consent has been given effect to and therefore will not lapse.

In Goldfinch v Auckland CC (1997) NZRMA 117 (HC), the Court was of the view that the comments in GUS Properties (above) should not be elevated to a general rule.

Whether a consent has been given effect to is a question of degree and the answer will vary from case to case depending on the facts and answers to questions such as:

- What is the nature of work authorized by the consent?
- What in fact has been done?
- Why has it not been completed?
- Why has it been discontinued?
- Was this discontinuation voluntary and justified?

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The Court observed that subs (1)(b) (see now subs (1A)(b)) reinforces this interpretation and provides for situations where, although little or no work has been carried out on site, the consent holder has been doing its best to get the work under way without success. In *Goldfinch* the Court found that the consent had not lapsed (the house was fully enclosed and although not habitable, all the work that was subject to controls in the plan and for which a consent had been obtained, was complete). The *Goldfinch* approach was approved in the circumstances applying in *Robinson Developments Ltd v Marlborough DC* EnvC W074/04, where a substantial part of the resource consent for a development had already been given effect to.

In *Rowell v Tasman DC* W066/94(PT), the tribunal rejected a submission that a quarrying consent had lapsed because it had not been given effect to. The Tribunal held that the company was not required to carry out all of the quarrying which the consent allows before it can be said to have given effect to the consent.

Consenting History - Regional Council Consents

- 107941 – Discharge of stormwater to land and watercourses.
- 107942 – Soil disturbance.
- 107943 – Dam and divert water in ephemeral watercourses.
- 107944 – To place structures (culverts, bridges, weirs etc) in ephemeral water courses.
- 107738 – Bore construction.
- 110524 – Bore construction.
- 109014 – Groundwater take.

Consenting History - District Council Consents

RM020327 Land Use Consent – granted on 12 December 2002 for the development of the site into a golf course, clubhouse, lodge and 226 house sites.

Variations to RM020327

- Temporary clubhouse and removal of landscaping bond condition (granted November 2006).
- An application to vary the condition of consent regarding the public footpath. The application was lodged in November 2006 and later withdrawn.
- Change to layout (October 2004).
- Change to residential lots on western side of Kinloch Rd (December 2005).

RM050304 - Subdivision Consent to subdivide Lots 1, 2 and 3 DPS 68793 (39.22 hectares) into 52 residential lots ranging in size from 1,770m² (Lot 101) to 2,410m² (Lot 75). The subdivision will also create three balance lots to accommodate a golf course, being Lot 261 (1.796 hectares), Lot 262 (3.820 hectares), Lot 263 (13.265 hectares) and Lot 266 (4.6180 hectares).

RM060349- Subdivision Consent to allow a boundary adjustment and effectively removed residential Lot 29 and increased the size of residential Lot 30. (October 2006)

Vary Consent Notice - Change to consent notice on residential Lot 30 to change the bulk and location requirements relative to boundary adjustment RM060349 (RM040415 - October 2006)

RM040415 - Subdivision Consent to create 54 residential lots, Lot 251 (holes 1-9), Lot 252 (holes 10-18), Lot 253 clubhouse, Lot 254 (lodge), lots 255 and 257 (effluent disposal), Lot 256 (maintenance facility), and Lot 250 as the balance lot (October 2004).

Variation to RM040415 - To allow staging of the subdivision (March 2005).

RM050082 - Subdivision Consent to create 69 residential lots, 2 residential villa lots and a balance lot. The subdivision creates stages – 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H and stage 4.

Physical Works

Completed physical works to the site include:

- Earthworks and construction of the par 72 eighteen hole Championship golf course including irrigation ponds and shed for equipment and maintenance.
- Practice facilities including putting green, grass tee driving range, and chipping green with bunkers.
- Three practice fairways.
- Clubhouse with café, locker rooms and proshop.
- Roading for the site with exception to the highest reaches.
- Landscaping.
- Reticulated services extended to the residential sites on both sides of Kinloch Road.
- Earthworks for the entire master plan.
- 54 fairways lots on the corner of Whangamata Road and Kinloch Road (on the east) have been created, new titles issued and several dwellings constructed.
- 52 residential lots have been created on the west side of Kinloch Road with new titles issued.
- Various golf course lots have been created with new titles issued.
- 14 residential lots (known as the Plateau) have been constructed and only require power and telecommunications to be completed.

Summary

Since the land use was granted in December 2002 the subject site has been transformed into an operational international standard golf course. In addition to the golf course development which included extensive earthworks, the creation of irrigation ponds and maintenance areas; over 100 lots have been created. Numerous Regional Council and District Council consents have been granted (and varied). Services, roading and new residential dwellings have been constructed. Accordingly I consider the land use consent has been given effect to and therefore shall not lapse in December this year.

We look forward to your confirmation.

Yours sincerely



ELLA BACHER
SENIOR PLANNER

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Copy to:

1. Southpark Corporation Limited, Gary Noland.....garynoland@southparkcorp.co.nz



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26 July 2012

Cheal Consultants
PO Box 165
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Attn: Ella Bacher

On all correspondence please
quote:
RM 020327

Dear Ella,

KINLOCH GOLF – ADVICE ON WHETHER THE RESOURCE CONSENT HAS BEEN GIVEN EFFECT TO

Thank you for your letter dated 22 June 2012. You have requested that the Council provide advice in order to determine whether the Resource Consent for the Kinloch Golf development has been given effect to.

Based on the information you have provided which explains the progress towards giving effect to the consent and the works undertaken to date, we consider that this Resource Consent has been given effect to.

Please do not hesitate to contact me on 07 3760819 or email at rhelme@taupo.govt.nz if you have any questions or require further clarification.

Yours sincerely,

Rachel Helme
Consents Planner