

INDEPENDENT COMMISSIONER HEARING

RESOURCE CONSENTS

MINUTES: of a meeting of the Independent Commissioner Hearing (Resource Consents) which commenced at 9.14 a.m. in the Committee Room, Centreway Road, Orewa on Monday, 2 August 2010.

PRESENT: Commissioners Harry Bhana (Chair)
Alan Watson

IN ATTENDANCE: Reporting Planner Jemma Hollis
Team Leader Steve Seager
Democracy Services Officer Raewyn Morrison

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503/08/10 **APOLOGIES**
AGENDA ITEM NO. 1

There were no apologies.

504/08/10 **AN APPLICATION FOR SUBDIVISION CONSENT TO SUBDIVIDE THE SITE TO CREATE TWO LOTS NOT MEETING SITE SIZE, SHAPE FACTOR AND ACCESSWAY CONTROLS, TO ALLOW THE SITES TO BE CONTROLLED BY RESIDENTIAL HIGH INTENSITY ZONE CONTROLS, AND RETROSPECTIVE CONSENT FOR EARTHWORKS INFRINGING THE 1 VERTICAL TO 2 HORIZONTAL CONTROL**

Address: 2 Claude Road / 42 Langton Road, Stanmore Bay

APPLICANTS: C AND R TRUST

FILE REF **SLC 56284**

WARD Hibiscus Coast

AGENDA ITEM NO. 2

The applicant seeks consent to subdivide the site into two lots for residential use. The net site area of the proposed sites will be 328m² (408m² minus the entrance strip, proposed Lot 1) and 409m² (proposed Lot 2) respectively. The applicant proposes that the office and residential activities currently operating on the site will cease and the resource consents for the office and takeaway/shop activity will be relinquished, prior to the issue of the 224(c) certificate for the proposed lots. The applicant also requests that the development controls applicable for Residential High Intensity zones be applied to this site (the site is zoned Residential Medium Intensity), including increasing the permissible site coverage of the proposed lots.

The applicants, Craig and Robyn Davis of C and R Trust, present.

Submitters in attendance: Mark Townsend, Peter Pearce, Dawn Tearney, Gary Hansen, and Jack Faulkner.

9.14 a.m. The Chairperson opened the hearing and outlined the meeting procedure.

Craig Davis opened proceedings for the applicant. Mr Davis said that the agenda had incorrectly identified the applicant as Craig and Robyn Davis; the applicant was actually C and R Trust and he noted that he and his wife were not the only trustees in the Trust. Mr Davis gave a power point presentation and distributed a hard copy of the presentation. He said that the shop (takeaway/dairy) was currently closed.

Mr Davis said that the building was one of the original buildings in Stanmore Bay. He outlined the related resource consents for the property and gave a description of the site. He discussed the wider neighbourhood, the infrastructure, community focal points and gave a summary of the neighbourhood. Mr Davis outlined the proposal and showed indicative drawings of the type of buildings which could be built on the site. He advised that he had also lodged a resource consent application for a restaurant should the application for subdivision not be granted. He discussed the retrospective consent sought for the earthworks and expanded on his interpretation of Rule 18.10.3 of the District Plan. He considered the retaining wall to be a permitted activity but did note its height was 1.9m; the permitted height was 1.8m.

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Mr Davis said that all commercial use of the site would be removed if consent was granted and he advised that access to the proposed dwellings would be off Langton Road. The living areas of the proposed dwellings were on the northern side. Carparking would be underneath the buildings which would reduce the need for paved areas and on-site manoeuvring. He said that the effect of the buildings on the neighbours would be dealt with by normal yard rules and height requirements.

The subdivision proposal involved:

- Two lots with high quality housing
- Site size less than that required by the zoning
- Slightly higher site coverage than the zoning allowed
- The shape factor was not met.

Mr Davis said that the site coverage was 37% for the building designs exhibited but it could be adjusted to the permitted 35% if necessary. Mr Davis said that the takeaway/dairy caused issues in a residential neighbourhood and he was proposing two smaller residential lots instead. He said that the shop had operated since consent had been granted (early 2009) but it had shut 3 months afterwards; he said that the shop needed to be operational in terms of the requirements for existing use rights.

Mr Davis tabled copies of submissions for the resource consent relating to the shop. Included in the material distributed was a summary of the issues raised by those submissions. With regard to the shop, Mr Davis said that a lessee would likely operate the shop more vigorously. He advised that it was difficult to comply with the condition that odours be contained on site.

Mr Davis discussed matters in relation to the assessment of environmental effects and effects of commercial use. He addressed matters raised in the officer's report and gave his interpretation on relevant rules in the District Plan. In conclusion he said that he operated a local business which was trying to get on; it employed local people, served local people and the proposal would upgrade the local amenity. The alternative would be to re-lease the premises and address the application for a restaurant on the site. He said that the only concession requested was in regard to the site size and he considered the proposal for two high quality dwellings on two residential lots to be a better outcome than commercial use of the site.

10.45 a.m. - 11.05 a.m. Morning tea adjournment.

In response to questions from the Panel, Mr Davis said that:

- The proposed dwellings could be redesigned to comply with 35% site coverage.
- Rodney District Council thought Stanmore Bay inappropriate for zoning for infill housing; this was effectively a greenfields site.

The Chairperson requested that a copy of the plan for the consent for the takeaway/dairy be tabled.

Submitters:

Peter Pearce addressed the Panel. (*Note: His comments were later emailed to the Democracy Services Officer (copy on file 56284).*)

Mr Pearce said that he also represented his mother-in-law, Dawn Tearney. He said that Mr Davis had shown plans for a proposed two lot subdivision in 2007 before the proposal for the shop was lodged. He said that one of his main concerns was in regard to the consent sought for the earthworks. He wondered if this would result in a new datum point and considered that an extra 900mm in height could lead to an impact on his view. Mr Pearce said that if there was a restaurant on the site there could be issues in regard to a liquor licence. He noted that when the takeaway/dairy had operated it was only busy on Thursday and Friday nights. He thought that where the proposed dwellings were sited would result in a loss of his view and he considered that the property should stay as a single dwelling. Mr Pearce said that the retaining wall did not retain anything; it was effectively a cutting.

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In response to questions from the Panel, Mr Pearce said that:

- He did not consider the effects to be major when the shop was in operation.
- Personally, the proposal would result in a negative effect on his view.
- The continuation of what currently was on the site was the preferable option.
- Under the consent conditions for the takeaway/dairy the Trust needed to retain control of the office, the residential accommodation and the shop.

Mark Townsend distributed and read written evidence.

Mr Townsend said that he was a trustee of the M & D Townsend Family Trust, the purchaser of 59 Langton Road, Stanmore Bay. He fully endorsed the planner's report. He noted that he was a 'new entrant' to the area and said that the reasons for his securing the property related to proximity to the beach, access to the water, the character of the immediate area and the relative consistency of that character. He said that the residential character of the immediate area was very clearly one of predominantly single dwellings on relatively large sites, with a high level of open space and a good number of trees. Mr Townsend was also concerned with issues of precedent. He said that if it was possible to develop two sections from a lot of 817m², then it was fair to say that owners of the sites of that size or more (his site was 835m²) could not be refused consent if they applied for consent to subdivide. Mr Townsend said that in his opinion the application was without sufficient merit for consent to be granted.

Mr Townsend said that the "trade-offs" the applicant had presented wouldn't result in good urban design; bad planning should not be used to further bad planning. He noted that the applicant had discussed adverse effects in regard to the dairy, yet the applicant had lodged consent for a restaurant.

In response to questions Mr Townsend said:

- He considered the proposal would impact on the unique residential environment that currently existed; he was concerned with the intensity of the proposal which was not consistent with the character of the urban neighbourhood.
- With regard to what was preferable, the issues related to character and the consistency of that character, and precedent effect.

Gary Hansen gave verbal evidence. He said that he was also speaking on behalf of Dale and Susan Lott who were unable to attending the hearing as they were overseas.

Mr Hansen said that he lived at 4 Claude Road, Stanmore Bay. He queried whether the site had been surveyed by a registered surveyor. He said that he understood the Pohutukawa tree to be on the Council berm and he questioned the validity of the retaining wall and whether it was actually located on the Trust's property. Mr Hansen said that he concurred with the comments of Mr Townsend. Mr Hansen said that if consent was not granted he would be amazed if a restaurant would actually go ahead as there were other such outlets in the area.

Mr Hansen said that he and his wife wished to state that the proposal contravened the local zoning rules and that it would set a precedent. Mr Hansen highlighted points in his original submission and the submission from Mr and Mrs Lott. He said that he had not observed any drainage being put in place before the fill was placed on the site. Mr Hansen said that none of the neighbours supported the application and he queried whether the 35% site coverage related to one site or two. Mr Hansen said he was concerned with issues in relation to character and consistency of character of the area. He said that he had lived at 4 Claude Road for 14 years.

Jack Faulkner gave verbal evidence.

Mr Faulkner said that he lived at 53 Langton Road and his main concern was that the proposed two lots were well below the minimum site size of 600m² in the Residential Medium Intensity zone. He believed buildings should fit in with the requirements of the rules.

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Council Officer:

Jemma Hollis addressed the Panel. The following was noted:

Ms Hollis said that the site and surrounding area was zoned Residential Medium Intensity; the Residential High Intensity zoning rules did not apply in this area. She said that the area was not mixed use and that it was a clear example of Residential Medium Intensity development with sparse alternative uses. She noted that the commercial activities on the site had a long history and association with the site and the area, and were consented, so any adverse effects were considered to be no more than minor or controllable by conditions.

Ms Hollis said that the proposal would result in an intensity of development within the site which was far greater than that anticipated within the Plan rules or that could be found within the surrounding area, with no ability to provide open space and significant vegetation planting to create the spacious environment expected in the zone. As such, the development would have adverse effects on the residential character and visual amenity values of the surrounding environment. She also noted the design was indicative only and that the site would not necessarily be developed in the manner proposed.

Ms Hollis said that the point she wished to stress the most was that the adverse effects which would be created by the proposal were different to and greater than those generated by existing commercial activities within the site. Regardless of the removal of the site coverage component of the application, the proposed site sizes were insufficient for the reasons outlined in her report. She said that the subdivision would result in an ad hoc increase in development intensity which could not be readily absorbed by the surrounding environment and would contribute to a character more akin to a High Intensity Residential zone.

Ms Hollis said that having heard the evidence presented at the hearing she stood by her recommendation that the application should be declined consent.

In response to questions from the Panel, Ms Hollis said that:

- With regard to the permitted baseline, the applicant was saying that the adverse effects generated by the proposed subdivision were the same as those currently generated by commercial activities within the site
- In her opinion, the only way that those adverse effects generated by the proposal would be less than or equal to those currently existing within the site was in terms of the effects of traffic and light spill impacting on amenity values. In every other way the adverse effects would be different to and greater than those existing at present.
- The area was residential and the takeaway/dairy activity would likely have more foot traffic than vehicle traffic as it was 'out of the way' from other commercial areas and not a destination in itself.
- With regard to the building form on site, two buildings would have greater adverse effects on amenity and character due to the fragmented nature of available open space; retention of one large and consolidated area of open space was preferable.

12.15 - 1.05 p.m. Luncheon adjournment.

Mr Davis presented the right of reply, the following was noted:

With regard to the comments by submitters, Mr Davis said that he was aware of the disquiet in the neighbourhood at the various proposals for the site. He considered that residential use of the site was appropriate but he had had to address the commercial activity in regard to the existing use rights. He considered the proposal for a two lot subdivision would normalise the neighbourhood. Referring to comments about a new datum for the ground level, Mr Davis said he understood there was no ability to raise the height as the existing ground level would apply. The reason for the fill and the raised level was for landscaping purposes.

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With regard to comments about the effects on views, Mr Davis said that was a permitted activity. He considered that Mr Townsend might not be aware of some of the effects of the shop when it was in operation. In relation to precedent effects, Mr Davis said that there might be similar future applications and if the effects were no more than minor they might be approved, however, he was unaware of any other commercial use on a Residential Medium Intensity zone on the Hibiscus Coast. Mr Davis said that the site had been surveyed by a registered surveyor and the boundary fence was likely to be on the boundary. He said that the proposal was not an integrated application and he would accept strict conditions in regard to the proposed dwellings if that made a difference as to whether consent was granted or not. He also said that he would accept site coverage of 35%.

1.30 p.m. The Chairperson adjourned the hearing.

5.00 p.m. The Chairperson declared the hearing closed following the site visit and the conclusion of deliberations.

The Panel resolved:

Watson/Bhana

THE DECISION

That pursuant to Sections 104, and 104B of the Resource Management Act, 1991, the notified resource consent application by C & R Trust to subdivide a site at 2 Claude Road/42 Langton Road, Stanmore Bay, legally described as Lot 29 DP 33497 into two residential lots, and for retrospective consent for a retaining wall, is refused consent for the following reasons.

REASONS FOR DECISION

1. The proposed subdivision and consequent permitted development would result in adverse effects on the environment which are more than minor. In particular it would result in development at an intensity that is significantly greater than that provided for under the Medium Density Residential Zone in the Proposed District Plan, Operative in Part. The proposed subdivision would potentially create adverse effects of over dominance from buildings erected on the subdivided sites and adversely affect neighbourhood character through diminution of the open low intensity nature of the development in this neighbourhood.
2. The grant of consent to the application would not be consistent with the objectives, policies and other provisions of the District Plan. In particular it is not consistent with a number of objectives and policies which relate to the location of high intensity residential development and which seek to ensure the protection and maintenance of the open and spacious living environment that characterises the areas zoned as Medium Density Residential. Furthermore, and most importantly, it would not be in accordance with Policies 8.8.3.2.2 and 8.8.3.2.3 which specifically state that intensity of development in the zone should not exceed one dwelling per 600m² and that subdivision in this zone should not create sites of less than 600m².
3. There was no evidence of unusual circumstances which were particular to the subject site. The reasons advanced by the applicant for creating such a high density of development were largely based on the potential adverse effects of the existing non-residential uses that had resource consents to operate from the site which the applicant was prepared to surrender. We do not accept that the potential adverse effects of the existing resource consents provide a basis for the grant of consent to a development which is contrary to the objectives and policies of the District Plan, not least because those resource consents incorporate conditions that are designed to avoid, remedy or mitigate such potential adverse effects.

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4. In relation to the retaining wall on part of the street frontage, we noted that applicant did not submit a copy of a survey drawing to confirm its location relative to the site boundary. Submitters expressed concern in this respect and site inspection showed that the line of the wall did not correspond with the line of the boundary fences of adjoining properties. We accordingly cannot be certain whether the wall is correctly located and are not able to consent to it in the absence of such information from the applicant.
5. The grant of consent to the application would not be consistent with the principles and purpose of the Resource Management Act 1991 as it would not result in the sustainable management of the physical resources of the area and would not provide for maintenance and enhancement of amenity values or the quality of the environment. In terms of the overall broad judgement of whether the proposal will promote the sustainable management purpose of natural and physical resources, we find the proposal would not do so.

THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:

Overall this application was considered to be a discretionary activity and was considered in terms of Sections 104, 104B, and Part 2 of the Act.

OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:

The provisions of the following documents were considered by the Hearings Panel in reaching this decision.

National Policy Statement Provisions

None applicable

New Zealand Coastal Policy Statement Provisions

None applicable

Auckland Regional Policy Statement Provisions (Including Provisions of Plan Change 6)

Issue 2.4.3 & Policy 2.6.5.11.

Auckland Regional Plan: Coastal Provisions

None applicable

Auckland Regional Plan: Air Land and Water Provisions

None applicable

District Plan Provisions:**Plan Change Number 62 Financial Contributions**

Provisions taken into account.

Operative District Plan 2000 Provisions

Objectives 8.3.1; 8.3.2; 8.3.3; 8.3.4; 8.8.3.1.1; 8.8.3.1.2
Policies 8.4.1; 8.4.2; 8.4.3; 8.4.6; 8.8.3.2.1; 8.8.3.2.2; 8.8.3.2.3; 8.8.3.2.5 & 8.8.3.2.7.

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PREAMBLE

This was an application to subdivide an existing residential site in the Medium Density Residential Zone into two lots. The existing site had an area of 817m² and the proposed subdivision would result in two lots, with Lot 1 having an area of 408m² and Lot 2 having an area of 409m². The applicant also sought a retrospective consent for the construction of a retaining wall adjacent to the street boundary of the site. The site contained a number of existing buildings including an office and a dwelling. A resource consent had been granted on 23 January 2009 to operate a takeaway and dairy in a 70m² area of the dwelling. The Council files indicated that a shop activity of a similar kind had operated on the site at various times since 1956. The applicant proposed to surrender the resource consents for the takeaway and dairy and for the office in the event that the current application to subdivide the site was granted consent. The application was notified on 3 June 2010 and a total of 8 submissions were received, all in opposition to the grant of consent.

THOSE PRESENT AT THE HEARING**COUNCIL STAFF ATTENDING HEARING**

Jemma Hollis	Reporting Planner
Steve Seager	Team Leader Resource Consents
Raewyn Morrison	Democracy Services Officer

ATTENDING HEARING ON BEHALF OF THE APPLICANT

Craig and Robyn Davis On behalf of the applicant Trust

ATTENDING HEARING ON BEHALF OF THE SUBMITTERS

Mark Townsend
Peter Pearce
Dawn Tearney
Gary Hansen
Jack Faulkner

SITE VISIT

The Panel visited the site on 2 August 2010.

THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:

The principal issues that were in contention were as follows:

1. Whether the proposed development would result in adverse effects on the environment that were not able to be adequately avoided, remedied or mitigated. In particular, whether the intensity of the development would generate adverse effects on amenity values through diminishing the open landscape character of the neighbourhood as a result of the intensity of development that would be enabled by the subdivision.
2. Whether the potential adverse effects generated by the non-residential activities that were authorised to operate by previous resource consents were of such significance that the surrender of those resource consents provided a positive reason for the grant of consent to the subdivision.
3. Whether there would be adverse effects as a result of the construction of the retaining wall and whether the structure was correctly located on the boundary of the site.

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4. Whether grant of consent to the application would be consistent with the objectives and policies and other provisions of the Operative District Plan 2000.
 5. Whether the grant of consent would have an adverse effect on the integrity of the Operative District Plan and whether (having regard to the need for public confidence that the Plan would be administered consistently) it might create a precedent for the grant of consents of a similar kind.
 6. Whether the proposal is consistent with the purpose and principles of the RMA, as set out under Part 2 of that Act.

SUMMARY OF THE EVIDENCE HEARD:**SUBMISSIONS AND EVIDENCE ON BEHALF OF THE APPLICANT****CRAIG DAVIS FOR THE APPLICANT TRUST**

Mr Davis gave a power point presentation and distributed a hard copy of the presentation. He said that the shop (takeaway/dairy) was currently closed.

He said that building was one of the original buildings in Stanmore Bay. He outlined the related resource consents for the property and gave a description of the site. He discussed the wider neighbourhood, the infrastructure and community focal points and gave a summary of the neighbourhood. Mr Davis outlined the proposal and showed indicative drawings of the type of buildings which could be built on the site if the subdivision was granted consent. He advised that he had also lodged a resource consent application for a restaurant should the application for subdivision not be granted. He discussed the retrospective consent sought for the earthworks associated with the retaining wall and expanded on his interpretation of Rule 18.10.3 of the District Plan. He considered the retaining wall to be a permitted activity but did note that the height of the fence that had been erected on top of the retaining wall had a height 1.9m above ground level. He acknowledged that the permitted height was 1.8m and said that the fence could be reduced to comply with that height limit.

Mr Davis said that the applicant proposed that all commercial use of the site would be removed if consent was granted to the subdivision and he advised that access to the proposed dwellings would be off Langton Road. He said that the living areas of the proposed dwellings would be on the northern side and that car parking would be underneath the buildings which would reduce the need for paved areas and on-site manoeuvring. He said that the effect of the buildings on the neighbours would be dealt with by normal yard rules and height requirements.

The witness said that the subdivision proposal involved:

- two lots with high quality housing;
- site size less than required by zoning;
- slightly higher site coverage than the zoning allowed; and,
- shape factor not met.

Mr Davis said that despite the application seeking a 50% site coverage, the site coverage was 37% for the building designs exhibited but that those designs could be adjusted to the permitted 35% if necessary. Mr Davis said that the takeaway/dairy caused issues in a residential neighbourhood and he was proposing two smaller residential lots instead. He said that the shop had operated since consent had been granted (early 2009) but it had shut 3 months afterwards. He said that shop was initially opened because it needed to be made operational to avoid having the consent lapse.

Mr Davis tabled copies of the earlier submissions for the resource consent relating to the shop. Included in the material distributed was a summary of the issues raised by those submissions. With regard to the shop, Mr Davis said that a lessee would likely operate the shop more vigorously than the Trust had done and potentially create greater problems in the neighbourhood. He advised that it would be difficult to comply with the condition that odours be contained on site.

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Mr Davis discussed matters in relation to the assessment of environmental effects and effects of commercial use. He addressed matters raised in the officer's report and gave his interpretation on relevant rules in the District Plan. In conclusion he said that he operated a local business which was trying to get on; it employed local people, served local people and the proposal would upgrade the local amenity. The alternative would be to re-lease the premises and address the application for a restaurant on the site. He said that the only concession requested was in regard to the site size and he considered the proposal for two high quality dwellings on two residential lots to be a better outcome than commercial use of the site.

In response to questions from the Panel, Mr Davis said that:

- the proposed dwellings could be redesigned to comply with 35% site coverage;
- Rodney District Council in its decisions on the zoning of Stanmore Bay stated that the area was inappropriate for zoning for infill housing but that the Trust site was effectively a greenfields site.

SUBMISSIONS AND EVIDENCE ON BEHALF OF THE SUBMITTERS

PETER PEARCE

Mr Pearce from 38 Langton Road said that he also represented his mother-in-law, Dawn Tearney. He said that Mr Davis had shown plans for a proposed two lot subdivision in 2007 before consent for the shop was lodged. He said that one of his main concerns was in regard to the consent sought for the earthworks. He wondered if this would result in a new datum point and considered that an extra 900mm in height could lead to an impact on his view. Mr Pearce said that if there was a restaurant on the site there could be issues in regard to a liquor licence. He noted that when the takeaway/dairy had operated it was only busy on Thursday and Friday nights. He thought that where the proposed dwellings were sited would result in a loss of his view and he considered that the property should stay as a single dwelling. Mr Pearce said that the retaining wall did not retain anything; it was effectively a cutting.

In response to questions from the Panel, Mr Pearce said that:

- He did not consider the effects to be major when the shop was in operation;
- Personally, the proposal would result in a negative effect on his view;
- The continuation of what currently was on the site was the preferable option;
- Under the consent conditions for the takeaway/dairy the Trust needed to retain control of the office, the residential accommodation and the shop.

MARK TOWNSEND

Mr Townsend said that he was a trustee of the M & D Townsend Family Trust, the purchaser of 59 Langton Road, Stanmore Bay. He fully endorsed the planner's report. He noted that he was a 'new entrant' to the area and said that the reasons for his securing the property related to proximity to the beach, access to the water, the character of the immediate area and the relative consistency of that character. He said that the residential character of the immediate area was very clearly one of predominantly single dwellings on relatively large sites, with a high level of open space and a good number of trees. Mr Townsend was also concerned with issues of precedent. He said that if it was possible to develop two sections from a lot of 817m², then it was fair to say that owners of the sites of that size or more (his site was 835m²) could not be refused consent if they applied for consent to subdivide. Mr Townsend said that in his opinion the application was without sufficient merit for consent to be granted.

Mr Townsend said that the "trade-offs" the applicant had presented wouldn't result in good urban design; bad planning should not be used to justify further bad planning. He noted that the applicant had discussed adverse effects in regard to the dairy, yet the applicant had lodged consent for a restaurant.

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In response to questions, Mr Townsend said:

- he considered the proposal would impact on the unique residential environment that currently existed; he was concerned with the intensity of the proposal which was not consistent with the character of the urban neighbourhood;
- with regard to what was preferable, the issues related to character and the consistency of that character, and precedent effect.

GARY HANSEN

Mr Hansen gave verbal evidence. He said that he was also speaking on behalf of Dale and Susan Lott who were unable to attending the hearing as they were overseas.

Mr Hansen said that he lived at 4 Claude Road, Stanmore Bay. He queried whether the site had been surveyed by a registered surveyor. He said that he understood the Pohutukawa tree to be on the Council berm and he questioned the validity of the retaining wall and whether it was actually located on the Trust's property. Mr Hansen said that he concurred with the comments of Mr Townsend. Mr Hansen said that if consent was not granted he would be surprised if a restaurant would actually go ahead as there were other such outlets in the area.

Mr Hansen said that he and his wife wished to state that the proposal contravened the local zoning rules and that it would set a precedent. Mr Hansen highlighted points in his original submission and the submission from Mr and Mrs Lott. He said that he had not observed any drainage being put in place before the fill was placed on the site. Mr Hansen said that none of the neighbours supported the application and he queried whether the 35% site coverage related to one site or two. Mr Hansen said he was concerned with issues in relation to character and consistency of the character of the area. He said that he had lived at 4 Claude Road for 14 years.

JACK FAULKNER

Mr Faulkner said that he lived at 53 Langton Road and his main concern was that the proposed two lots were well below the minimum site size of 600m² in the Residential Medium Intensity zone. He believed buildings should fit in with the requirements of the rules.

THE EVIDENCE OF COUNCIL OFFICERS

REPORT OF JEMMA HOLLIS – CONSULTANT PLANNER

Ms Hollis described the proposal and the reasons for the application. She described the site and the surrounding development noting that apart from accommodation units for the New Zealand Police Force, a retirement village and a three level apartment building, the dominant land use on the surrounding area was single dwellings on sites greater than 600m².

Ms Hollis described the existing development and the activities authorised on the site including the dairy/ takeaway and office. She set out the relevant District Plan provisions noting that the proposed subdivision was clearly contrary to a number of objectives and policies that applied to the Medium Density Residential Zone.

The report described the notification process advising that a total of 8 submissions had been received by the Council (all opposed to the application) and provided a summary of the subject matter of the submissions.

Ms Hollis gave a statutory assessment of the application expressing her view that the adverse effects assessed in terms of section 104(1)(a) would be more than minor and that the increased site coverage proposed and intensity proposed could not be readily absorbed by the surrounding environment. She said the proposal would have a more than minor effect on the existing residential character and amenity values of the area and would create adverse effects different from and greater than the permitted baseline of adverse effects generated by the existing commercial activities within the site.

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She considered the subdivision would result in a character of development more appropriate to a High Intensity Residential Zone. She pointed out that Plan Change 6 to the Regional Policy Statement under Policy 2.6.5.11 "Strategic Policy-Urban Structure" specifically directed that existing urban areas should be managed so that landscape, amenity and character values were maintained and enhanced.

Ms Hollis considered that the grant of consent to the application would not be consistent with Part II of the Resource Management Act 1991 and she recommended that consent be refused.

After hearing the evidence and submissions from the applicant and submitters Ms Hollis was invited to provide her professional assessment having regard to the matters presented at the hearing.

Ms Hollis said that the site and surrounding area was zoned Residential Medium Intensity and the Residential High Intensity zoning rules did not apply in this area. She said that the area was not mixed use and that it was a clear example of Residential Medium Intensity development with sparse alternative uses. She noted that the commercial activities on the site had a long history and association with the site and the area, and were consented, so any adverse effects were considered to be no more than minor or controllable by conditions.

Ms Hollis said that grant of consent to the subdivision would result in an intensity of development within the site which was far greater than that anticipated within the District Plan rules or that could be found within the surrounding area, with no ability to provide open space and significant vegetation planting to create the spacious environment expected in the zone. As such, the development would have adverse effects on the residential character and visual amenity values of the surrounding environment. She also noted the design was indicative only and that the site would not necessarily be developed in the manner proposed.

Ms Hollis said that a point she wished to emphasise the most was that the adverse effects which would be created by the proposal were different to and greater than those generated by existing commercial activities within the site. Regardless of the removal of the 50% site coverage component of the application, the proposed site sizes were insufficient for the reasons outlined in her report. She said that the subdivision would result in an ad hoc increase in development intensity which could not be readily absorbed by the surrounding environment and would contribute to a character more akin to a High Intensity Residential zone.

Ms Hollis said that having heard the evidence presented at the hearing she stood by her recommendation that the application should be declined consent.

In response to questions from the Panel, Ms Hollis said that:

- with regard to the permitted baseline, the applicant was saying that the adverse effects generated by the proposed subdivision were the same as those currently generated by commercial activities within the site;
- in her opinion, the only way that the adverse effects generated by the proposal would be less than or equal to those currently existing within the site were in terms of the effects of traffic and light spill impacting on amenity values;
- in every other way the adverse effects would be different to and greater than those existing at present;
- the area was residential and the takeaway/dairy activity would likely have more foot traffic than vehicle traffic as it was 'out of the way' from other commercial areas, and not a destination in itself;
- with regard to the building form on site, two buildings would have greater adverse effects on amenity and character due to the fragmented nature of available open space and she considered that retention of one large and consolidated area of open space was preferable.

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APPLICANT IN REPLY**CRAIG DAVIS FOR THE APPLICANT TRUST**

With regard to the comments by submitters, Mr Davis said that he was aware of the disquiet in the neighbourhood at the various proposals for the site. He considered that residential use of the site was appropriate but he had considered it necessary to address the commercial activity in order to retain the existing use rights. He considered the proposal for a two lot subdivision would normalise the neighbourhood. Referring to comments about a new datum for the ground level, Mr Davis said he understood there was no ability to raise the height as the existing ground level would apply. The reason for the fill and the raised level was for landscaping purposes.

With regard to comments about the effects on views, Mr Davis said that the height of buildings on the subdivided sites would have to comply with the rules for permitted activities. He considered that Mr Townsend might not be aware of some of the effects of the shop when it was in operation. In relation to precedent effects, Mr Davis said that there might be similar future applications and if the effects were no more than minor they might be approved, however, he was unaware of any other commercial use on a Residential Medium Intensity zone on the Hibiscus Coast. Mr Davis said that the site had been surveyed by a registered surveyor (although prior to the erection of the retaining wall) and the boundary fence was likely to be on the boundary. He said that the proposal was not an integrated application and he would accept strict conditions in regard to development being generally similar to the indicative drawings included with the application if that made a difference as to whether consent was granted or not. He also said that he would accept a site coverage of 35%.

THE MAIN FINDINGS OF FACT:**BASIS**

The main findings of fact determined by the Panel that have led to the above decision and the reasons for that decision are as follows. They have been reached after visiting the site, considering the application, the evidence and submissions heard at the hearing, the report prepared by the reporting planner, all the relevant statutory and planning provisions, as well as the principal issues that were in contention.

ADVERSE EFFECTS ON THE ENVIRONMENT

Mr Davis identified a number of features of the neighbourhood that he saw supported his proposal for subdivision of the site and development. These features included proximity to the beach, recreational areas and commercial services as well as being well serviced with infrastructure. These features he said provided a high degree of off-site amenity. However all the features he identified apply to any sites in the neighbourhood and wider locality. They are not specific to the application site and in that respect provide little support to a proposal that is not consistent with the zoning of the site and that wider locality.

Mr Davis indicated that an application for restaurant usage of the dairy/takeaway building on the site had been made to the Council in recent times. That has no bearing on our considerations of the current application, the restaurant application will be considered on its merits in due course.

Mr Davis stated that his proposal derived some support from a permitted baseline approach to the assessment of it. He considered that compliance with the range of development controls for the zoning supported it. However, even if full compliance with the range of development controls can be achieved, this is against a "baseline" whereby the subdivided lots are around two-thirds of the minimum lot size provided for in the zone.

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Mr Davis argued for his proposal on the basis that he would relinquish any rights for commercial activity upon the site. He referred to the adverse effects arising out of commercial activity on the site, particularly associated with the dairy/takeaway activity which had earlier been granted resource consent by the Council. We acknowledge that activity would generate a range of adverse effects but the fact is that those adverse effects have been taken into account by the Council in earlier granting consent to it. That earlier consent includes a range of conditions that are intended to specifically avoid, remedy or mitigate the adverse effects associated with that commercial activity.

Mr Davis was of the view that the existing environment, against which we are to assess the adverse effects of his proposal, consists of the consented dairy/takeaway and office use on the site. He saw the proposal to subdivide and develop the site for two residential units as being preferable from an assessment of adverse effects situation. However, it appeared that the recent experience of the submitters was that those activities had not caused any significant problems in the neighbourhood in terms of environmental effects.

Ms Hollis as the reporting officer stated she saw the proposal for subdivision and development of the site as having different and greater effects on the local environment than the existing commercial activities. The proposal would see a concentrated form of building development upon the site as compared with the more open nature of other sites in the locality.

There was a clear expression of opposition from neighbouring property owners. That opposition was underlain by a concern for the character of the neighbourhood being severely impacted upon if the proposal was to proceed. Their concerns are supported by the intention of the Medium Intensity Residential zone being to allow residential living at densities which preserve an open and spacious living environment.

From our visit to the site and the locality, we were of the view that the subdivision of the application site into two lots, and associated development of two separate dwelling units, would represent an intensity of built development that was out of character with the prevailing sense of openness and amenity that the neighbourhood currently possesses. We find this would be an adverse effect on the amenity of the neighbourhood and wider locality.

The proposed lot sizes are simply unsuitable and insufficient for their intended purpose in the context of this locality where there would be a resultant adverse effect on the neighbourhood character.

OBJECTIVES AND POLICIES AND OTHER PROVISIONS OF THE DISTRICT PLANS

Policies 8.4.1 and 8.4.2 of the District Plan place considerable emphasis on the design of buildings so as to avoid adverse effects in terms of: over dominance; loss of sunlight and daylight; and, loss of visual and aural privacy. As noted above we consider that the over intensive development of the site will result in greater adverse effects (including adverse effects on the amenity values of residents of the surrounding area) than might be expected from a complying development. The proposed development is at least inconsistent with, if not contrary to, these policies. However it is specifically contrary to Policies 8.8.3.2.2 and 8.8.3.2.3, which respectively set intensity of development at an average no greater than one household unit per 600m² of site area and a net minimum site area of 600m².

The Panel notes that the objectives and policies of the Operative District Plan provide for high density residential development only within specified areas that are zoned for that purpose and have particular attributes that are not shared by this site.

We find that the objectives and policies do not provide a justification for the level of density proposed in this application. We find that the interests of the neighbourhood would be best served by a decision on this application which confirms that the zoning and the associated zone provisions are considered appropriate and that a proposal to depart from them in a significant way, as this application does in terms of the proposed lot sizes, is not supportable. We find further, that it does not meet the statutory tests for a resource consent as a discretionary activity when assessed against the zone provisions.

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EFFECTS OF RETAINING WALL AND ASSOCIATED EARTHWORKS

We find that the effects of the retaining wall and associated earthworks and fence could be adequately controlled by conditions and would not normally consider that this matter was a significant issue for consideration by the Panel. However we noted the evidence of Mr Hansen who considered that the retaining wall was incorrectly located within the road reserve. Mr Davis stated that the site had been surveyed at some time prior to the retaining wall being erected but did not submit a copy of the survey drawing. When we visited the site we observed that the line of the wall did not correspond with the line of the boundary fences of adjoining properties. We are accordingly not certain whether the wall is correctly located and because the provisions of section 115 of the RMA require that we must issue a decision within 15 working days of the close of the hearing we find we must refuse consent to this part of the application also.

PRECEDENT, INTEGRITY OF THE DISTRICT PLAN AND CONSISTENT ADMINISTRATION

We consider that the prospect of immediate financial returns from infill housing would provide a strong incentive for other residential property owners to seek similar opportunities for subdivision of their sites. Such an outcome would inevitably call into question the integrity of the provisions of the District Plan, a document which has only just completed a detailed and lengthy public consultation and legal process in order to provide for the sustainable management of the future development of the district. Creation of uncertainty about whether the new District Plan would be applied consistently in a situation where rapid change and growth has occurred (and will most probably occur again) would invite an unnecessary continuation of the litigation processes which have accompanied the development of the new District Plan.

PART 2 RMA CONSIDERATIONS

The Panel accepts that the grant of consent to this proposed development would provide for the social and economic wellbeing of the applicant. We have found above that the proposed subdivision would have potentially significant adverse effects on the amenity values of the surrounding area. We consider that it would adversely impact on the sustainable management of the development of the district through calling into question the integrity of the newly operative District Plan, and the public expectation that the Plan would be administered consistently and that its provisions would be upheld by the Council. We find that, having regard to the purpose and the principles of the RMA, the application does not merit the grant of consent and accordingly have determined that consent should be refused. As we have noted above we do not consider the application for a retrospective consent to the retaining wall to be of any significance in terms of its effects on the environment but in the absence of evidence that the structure has been properly located we have determined that we must refuse consent to that part of the application also.

Carried

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 30TH DAY OF SEPTEMBER 2010

MAYOR

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