

RESOURCE CONSENTS HEARINGS PANEL

MINUTES: of a meeting of the Resource Consents Hearings Panel which commenced at 9.00 a.m. in the Council Chamber, Centreway Road, Orewa on Friday, 5 February 2010.

PRESENT:

Chair	Bill Smith
Crs	Michael Goudie
	Suzanne Weld

IN ATTENDANCE:

Reporting Planner	Nick McCool
Team Leader	Carl Jenkins
Democracy Services Officer	Raewyn Morrison

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073/02/10 APOLOGIES**AGENDA ITEM NO. 1**

There were no apologies.

074/02/10 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

RESOURCE CONSENT IS SOUGHT TO SUBDIVIDE THE UNDERLYING LOT TO CREATE 1 ADDITIONAL LOT. THE APPLICANT PROPOSES TO UNDERTAKE 1 HECTARE OF ENHANCEMENT PLANTING. RULE 7.14.4 OF THE PROPOSED DISTRICT PLAN – OPERATIVE IN PART PROVIDES FOR SUBDIVISION FOR SIGNIFICANT ENHANCEMENT PLANTING. THE PROPOSED SUBDIVISION DOES NOT COMPLY WITH RULE 7.14.4 AND IS THEREFORE CONSIDERED A NON-COMPLYING ACTIVITY

Address: 10 Old Pine Valley Road, Silverdale

APPLICANT: SHIRLEY ANNE RICHARDS**WARD** Central**FILE NO.** R55641**AGENDA ITEM NO. 2**

9.00 a.m. The applicant seeks consent to subdivide the subject site to create one additional rural-residential lot. The proposed subdivision involves dividing the subject site on either side of Pine Valley Road. Proposed Lot 1 will be located to the east of Pine Valley Road and will contain the existing dwelling and garage. The proposed lot will have a site size of 0.82 hectares. Proposed Lot 2 will be located to the west of Pine Valley Road and will contain the existing farm shed. The proposed lot will have a site size of 3.75 hectares which is the balance of the property. As part of the proposal, the applicant proposes to carry out 1 hectare of enhancement planting on proposed Lot 2. The planting will be located along the southern boundary.

The applicant, Shirley Anne Richards, and the applicant's representative, Myles Goodwin of Cato Bolam Consultants, present.

Observing: Andrew Maclennan (student).

A letter was tabled from the New Zealand Fire Service (NZFS). The letter advised that the NZFS would not be in attendance at the hearing. The letter said that in the event that consent was granted to the application, the NZFS requested the Hearing Commissioners incorporate as conditions of consent the concerns raised by the NZFS submission. These concerns related to the provision of sufficient water volume, pressure and flows in accordance with *NZFS Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008* and that this water supply was accessible for fire fighting purposes. The NZFS also requested that if the water supply was to be provided by tank storage that this be located a safe distance away from any habitable dwelling.

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

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Myles Goodwin opened proceedings for the applicant, Shirley Anne Richards. Mr Goodwin distributed and read written evidence.

Mr Goodwin described the site and the existing land use. He said that the property was previously used for calf rearing purposes, but the significant loss of land when Pine Valley Road was re-routed, and the forced separation of the dwelling from the bulk of the land now made this impractical. The applicant owned the land at the time the land for Pine Valley Road was taken, and had continued to own and attempt to farm it since. The applicant was not someone who had just recently purchased the land with a view to subdividing and moving on.

Mr Goodwin outlined the proposed development and said that the intention was that enhancement planting of an area of 1ha would be undertaken. This would be of benefit in terms of ecological and amenity aspects. The area to be planted was near the southern boundary and would adjoin an area of enhancement planting that formed part of the consent conditions for a subdivision of the adjoining land to the south. Mr Goodwin said that the applicant was willing to register a covenant on both titles banning the building of a minor household unit on either title. That meant the overall subdivision would not create any increase in the total potential number of new dwellings.

Mr Goodwin discussed in depth points that he believed supported the applicant's proposal and he addressed issues in relation to precedent. He discussed the Council Officer's hearings report and highlighted areas of disagreement. He also discussed the objectives and policies of the relevant planning documents.

In conclusion, Mr Goodwin said that he believed the application had many points in its favour and that environmental effects would be no more than minor. The main points were:

- The land was already subdivided for all practical purposes therefore normal effects in regard to land subdivision such as effects on rural character and the fragmentation of the land resource did not apply.
- Effects on rural productivity would be no more than minor.
- The fact that the dwelling was separated from the bulk of the land by Pine Valley Road which made management of the property much harder and less efficient than should be the case.
- Precedent effects could not be seen as significant given the small number of properties divided by main roads in the area. Applications of this nature were rare and each had to justify itself on its own merits.
- Environmental enhancement in the form of planting 1ha of native bush in a location that would adjoin a proposed area of planting on a neighbourhood property was proposed.
- The application was in accordance with the objectives and policies of both Plan Change 55 and the Proposed District Plan.
- No submissions opposing the development had been received.

Mr Goodwin said that other environmental effects were no more than minor and he therefore believed it appropriate that consent be granted.

Shirley Richards distributed and read a written statement.

In response to a question from the Panel Ms Richards said that none of the buildings on Lot 1 were being used as a minor household unit.

Ms Richards read a short written statement. She stated that she had bought the property in 1992 and that during 1997 was made aware of Transit New Zealand's interest and plans for dissecting her property for the purpose of realigning Pine Valley Road with the existing highway. She described how she had continued to operate the block with a calf rearing operation and the need to move stock from time to time across the road. She said that the divided rural residential block now had two uses; a rural residential dwelling and across the busy road, grazing paddocks. The two blocks appeared to be separate properties to her neighbours and passersby. Managing the two properties in terms of water, power and security were issues of concern. The west section of land was not visually apparent from the house and stock monitoring was now difficult. Mrs Richards said that she was committed to enhancing the ecological and amenity aspect of Pine Valley Road by carrying out native planting.

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

Council's Development Engineer, Ross Green, had indicated he was happy with the entry to proposed Lot 2 at the western boundary provided there was a no planting covenant along the road edge to maintain sight views. However, Mr Goodwin confirmed that his client would be happy to consider another access. His client was prepared to offer to increase the proposed enhancement planting from 1ha to 2ha. (The Chairperson requested that a plan be provided by the applicant showing the natural contours and the bush areas enlarged. The Chairperson also requested that a revised map showing the planting in relation to an alternate access be provided with the planting being moved from Area B). With regard to the water supply easement, there was an area directly over the easement that couldn't be planted in the ground, but over time the canopy would close over the area. A 2m wide strip needed to be maintained, however Mr Goodwin said that he didn't think edge effects would be significant; in his opinion this was not a major issue.

With regard to the ecological needs of the property there would be benefits from having a nice stand of native bush and having an area of planting located adjacent to a large area of planting to the south, and it would also add to the visual amenity. The area had a character of lifestyle properties which were too small to be productive in the usual sense of the word (e.g. beef farm). He noted that there were quite a few horses in the area and there were some sheep and cattle on properties in the area, but that was on a very small basis.

With regard to a guarantee as to whether the screen planting would remain, Mr Goodwin said that at this stage it was not legally protected and there was the ability to remove it. A solution could be to place a covenant on it in order to maintain it as effective screening and that any dying trees be replaced; his client was interested in offering that. Mr Goodwin said that the pine trees could either be removed or managed; this could possibly be looked at and considered by a landscape architect.

With regard to visual character, Mr Goodwin said the planting introduced a landscape element that was not widely present, but in his opinion planting was missing from the area and the area would benefit from the proposed planting. He also believed that people would enjoy watching the planting develop; it would add interest to the landscape and also add a nice feature. His client offered a condition that there be no minor household unit on either of the lots. Mr Goodwin said that he had not obtained any traffic counts, but in general he knew the volume of traffic was fairly high.

Council Officer:

Nick McCool addressed the Panel.

Referring to the District Plan rules, Mr McCool said that the rules were very clear; for subdivision in the General Rural zone either 6ha of enhancement planting was required or a minimum of 2ha of Significant Natural Area. Mr McCool said that he did not think there was a lot of ecological benefit in 1ha of enhancement planting. Mr McCool confirmed that in his opinion the application was non complying.

Mr Jenkins tabled a map of the Metropolitan Urban Limits.

Mr McCool noted that approximately 0.96ha of the property had been lost as part of the road formation. In response to this statement, Mr Goodwin said the division of the property had made both lots unprofitable. Mr McCool said that he thought at present the possibility of a minor household unit was highly unlikely on proposed Lot 2, but it would be possible on Lot 1 with the existing dwelling. In regard to the other properties in the area, Mr McCool said that most tended to be 5 - 7ha. Referring to Mr Goodwin's statement about the site being split by a busy road, Mr McCool said that there may be other such instances in the region and the Panel needed to be aware that granting consent to the application had the potential to set a precedent.

In response to Mr Goodwin's comments about land being rezoned for business purposes, Mr McCool said that there was no certainty and it was more than likely the Council would use other land in Silverdale for this purpose. Mr McCool considered the proposed subdivision would result in the loss of productive land as there would be two quite separate properties with associated plantings, dwellings, lawns, gardens etc. He noted that although the property was split by the road the productive lot could still be used for calf rearing and cattle yards could be built.

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Mr McCool said that the neighbouring property that had been granted consent to subdivide had decent areas of land on both sides of the road and it also had riparian margins. Mr McCool said that there needed to be environmental benefits for subdivision and the District Plan provided for ways to subdivide. He noted that although the resource consent on the neighbouring property had been granted it had not yet been implemented, and one could not rely on the fact that it would be implemented.

Mr McCool said that a dwelling on proposed Lot 2 would be highly visible to passing motorists. He realised that the applicant could have a barn as of right on the property which would have similar visual effects, however potential effects on amenity and character would be significantly different. Potential effects would include noise, light, and activity associated with a dwelling rather than a shed/barn. He said that if consent was granted a dwelling on proposed Lot 2 should be of a single storey and be of colours which would help integrate it into the environment.

Mr McCool said that he stood by his assessment of the objectives and policies; he believed this application was contrary to numerous objectives and policies. The main reasons being the lack of environmental mitigation, the loss of rural productive land, potential adverse effects on rural character, and potential amenity affects. Mr McCool said that the application also had the potential to set a precedent. In his opinion there was no requirement to move stock across the road and there were minimal outstanding circumstances that differentiated the application.

Referring to the General Rural Zone, Mr McCool said that the District Plan provided subdivision on ecological grounds (enhancement planting etc), but it did not provide for subdivision because a property was separated by a road. He noted that the applicant was offering 1ha of enhancement planting which would be of some environmental benefit, but it was not a core ecological benefit that the District Plan rules envisaged. He reiterated that he stood by the recommendations in his report to decline consent because of the potential adverse effects on rural character and amenity and because the Council needed to be careful about setting a precedent.

In response to questions, Mr McCool said that in previous subdivision applications Cato Bolam had used the argument in regard to no cumulative effects. Mr McCool considered that the cumulative effects of granting consent would be increased by ad hoc subdivision and slight erosion of the character of the area.

Mr Goodwin presented the Right of Reply. The following was noted:

Mr Goodwin said that he agreed that 1ha of enhancement planting would not be of the same benefit as 6ha of planting, nevertheless there were some benefits. One still saw birds in 1ha of bush and such a size seemed to be sustainable in the longer term. He noted that edge effects were more of an issue in smaller areas of bush, but with care the bush could be sustainable in the longer term; the enhancement planting proposed would form over three hectares of contiguous bush and would improve hydrological neutrality and water quality. There would be a net reduction in stormwater flows when the bush was planted.

Referring to stock movement, Mr Goodwin said that Mrs Richards stated that as part of the operation of rearing new calves they had be located close to the house because they needed constant feeding and a close eye kept on them, but once they had grown they were shifted across the road.

In regard the riparian margins on the property to the south, Mr Goodwin noted that they wouldn't have needed to be protected as part of the consent process; the offer had been in addition to District Plan requirements. With regard to the entryway being moved further to the west, Mr Goodwin said that there was a requirement to keep sightlines, but there was the ability to establish planting; this could be part of the consent as well as the building site location, and the screen planting could be subject to approval by a landscape architect so all the requirements imposed worked.

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Mr Goodwin considered that the objectives and policies in the District Plan were quite broad and open to interpretation in different ways and taking into account the property in its current location he believed the proposal was in line with the objectives and policies. He also considered that there were numerous differences between this application and the neighbouring application from Mr Cooper which had been granted consent. Mr Goodwin wondered how precedent could be considered because of these differences. With regard to there being numerous other applications of this nature, Mr Goodwin said that he was aware of one on State Highway 16, to the south, and one on Waitakere Road; these applications had been applied for on their own merits and he didn't see how these affected this application in any way.

10.55 a.m. The Chairperson adjourned the hearing.

An amended scheme plan showing the increase in enhancement planting was provided to the Panel on Tuesday, 9 February 2010. The Chairperson declared the hearing closed at 9.45 a.m. on Wednesday, 10 February 2010.

Weld/Smith

THE DECISION:

That, pursuant to Section 104 of the Resource Management Act 1991, the notified application for resource consent by Shirley Anne Richards for a non complying activity to subdivide the site being Pt Lot 5 DP 136559 and Section 7 and 8 SO 315843 to create 1 additional lot at 10 Old Pine Valley Road, Silverdale is refused consent for the following reasons.

REASONS FOR THE DECISION:

Pursuant to Section 113 of the Resource Management Act 1991, the reasons for this decision are as follows:

1. The proposed subdivision involves creating an additional rural-residential lifestyle lot without appropriate environmental mitigation. The proposed enhancement planting (increased from 1 hectare to 2 hectare at the hearing with an amended plan subsequently being provided showing enhancement planting of 1.2ha) is considered insufficient to adequately remedy or mitigate the adverse effects on the environment. Also the applicant has not provided adequate reason why having Pine Valley Road dividing their site should allow them to undertake a subdivision. Potential adverse effects include alteration to the present rural character and high amenity values, reduction of productive land, visual effects associated with a building site in such a highly visible position, and cumulative effects.
2. The proposal is considered to be contrary to the objectives and policies of the Operative District Plan as amended by Plan Change 55 and the Proposed District Plan - Operative in Part because the proposed subdivision increases opportunities for rural-residential lifestyle rather than allowing for activities based on primary production, hence altering its existing rural character without the appropriate environmental mitigation or remediation to offset the intensification of development within the General Rural Zone.
3. The proposal seeks subdivision, and future associated development rights. However, there are insufficient circumstances relating to the proposal which serve to differentiate it from the generality of other applications that may be received by the Council and which serve to justify a grant of consent to it as a non-complying activity
4. The proposal is considered to be contrary to the objectives and policies of the Auckland Regional Policy Statement Proposed Change 6 as the proposed subdivision intensifies development within an area with present rural characteristics and the proposal falls outside the Metropolitan Urban Limits. Consequently, the proposal will bring about alteration of the existing rural character to countryside living without appropriate environmental enhancement or remediation opportunities.

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5. The proposal does not meet either of the gateway tests for non-complying activities as set out in section 104D of the Act.
6. In terms of section 5 of the Act, it is considered that this application does not promote sustainable management and it will result in adverse effects including alteration to the rural character and high amenity values without appropriate environmental mitigation or remediation, leading to the loss of activities based on rural production.
7. In all the circumstances the proposal is not consistent with the sustainable management purposes of the Act or with its principles, as included at Part 2 of the Act. It would result in adverse effects on the environment by providing for further development not consistent with the character and amenity values of this area as sought to be protected by the District Plan. In these respects it would not maintain and enhance the amenity values or the quality of the local environment.
8. Although a non-statutory document the proposal is considered to be contrary to Vision Rodney as the creation of rural-residential lifestyle lots reduces the opportunities for activities based on rural production, an activity which is considered to be more suitable on the rural site. In addition, the inadequate environmental mitigation or remediation to offset the intensification effects of development within the rural area prejudices Vision Rodney's intention to value, protect and enjoy the natural environment.

Hearing Details

Council Officers: Carl Jenkins – Team Leader
Nick McCool – Reporting Planner
Raewyn Morrison – Democracy Services Officer

For the Applicant: S A Richards – Applicant and M Goodwin – Planner

The hearing started at 9am on Friday, 5 February 2010 and concluded at 10.55am when the hearing was adjourned to enable Mr Goodwin to provide the Panel with information regarding the Silverdale West Structure Plan as referred to in his evidence, and a site plan with contours (if appropriate) showing the area to be enhanced and a possible increase to 2ha. Further information was subsequently received and the hearing was closed on 10 February 2010. A site visit was undertaken on 5 February 2010.

INTRODUCTION

This report contains the decision (and reasons) of the Panel in respect of an application for subdivision at Silverdale. It incorporates the requirements of s113 of the Act and is informed by the documents presented at and during the hearing and the site visit. These documents include a report prepared by the Rodney District Council by Mr McCool, as well as evidence presented at the hearing by the applicant and Mr Goodwin and a tabled letter from the submitter. The report refers to these public documents but does not reproduce them. The decision of the Panel is to refuse consent.

SUBMISSIONS

The application was notified on 29 October 2009 and submissions closed on 27 November 2009. One submission from the New Zealand Fire Service – (NZFS) was received and its concern was to ensure that there was an adequate water supply, pressure and flows for fire fighting purposes and also that the water supply was located a safe distance away from any habitable dwelling.

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SUMMARY OF EVIDENCE

The officer's report is part of the public record and was taken as read. Written evidence was presented by the applicant and her representative, Mr Goodwin. Again, this evidence is part of the public record and it is not necessary to restate it. However, the following is a summary of the main points.

A letter was tabled from the New Zealand Fire Service (NZFS). The letter advised that the NZFS would not be in attendance at the hearing. The letter said that in the event that consent was granted to the application, the NZFS requested the Hearing Commissioners incorporate as conditions of consent the concerns raised by the NZFS submission. These concerns related to the provision of sufficient water volume, pressure and flows in accordance with *NZFS Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008* and that this water supply was accessible for fire fighting purposes. The NZFS also requested that if the water supply was to be provided by tank storage that this be located a safe distance away from any habitable dwelling.

Mr Goodwin opened proceedings for the applicant, Shirley Anne Richards.

Mr Goodwin described the site and the existing land use. He said that the property was previously used for calf rearing purposes, but the significant loss of land when Pine Valley Road was re-routed, and the forced separation of the dwelling from the bulk of the land now made this impractical. The applicant owned the land at the time the land for Pine Valley Road was taken, and had continued to own and attempt to farm it since. The applicant was not someone who had just recently purchased the land with a view to subdividing and moving on.

Mr Goodwin outlined the proposed development and said that the intention was that enhancement planting of an area of 1ha would be undertaken. This would be of benefit in terms of ecological and amenity aspects. The area to be planted was near the southern boundary and would adjoin an area of proposed enhancement planting that formed part of the consent conditions for a subdivision of the adjoining land to the south. Mr Goodwin said that the applicant was willing to register a covenant on both titles banning the building of a minor household unit on either title. That meant the overall subdivision would not create any increase in the total potential number of new dwellings.

Mr Goodwin discussed in depth points that he believed supported the applicant's proposal and he addressed issues in relation to precedent. He discussed the Council Officer's hearings report and highlighted areas of disagreement. He also included a discussion of the objectives and policies of the relevant planning documents.

In conclusion, Mr Goodwin said that he believed the application had many points in its favour and that environmental effects would be no more than minor. The main points were:

- The land was already subdivided for all practical purposes therefore normal effects in regard to land subdivision such as effects on rural character and the fragmentation of the land resource did not apply.
- Effects on rural productivity would be no more than minor.
- The fact that the dwelling was separated from the bulk of the land by Pine Valley Road which made management of the property much harder and less efficient than should be the case.
- Precedent effects could not be seen as significant given the small number of properties divided by main roads in the area. Applications of this nature were rare and each had to justify itself on its own merits.
- Environmental enhancement in the form of planting 1ha of native bush in a location that would adjoin a proposed area of planting on a neighbourhood property was proposed.
- The application was in accordance with the objectives and policies of both Plan Change 55 and the Proposed District Plan.
- No submissions opposing the development had been received.

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Mr Goodwin said that other environmental effects were no more than minor and he therefore believed it appropriate that consent be granted.

Ms Richards stated that she had bought the property in 1992 and that during 1997 was made aware of Transit New Zealand's interest and plans for dissecting her property with the purpose of realigning Pine Valley Road with the existing highway. She described how she had continued to operate the block with a calf rearing operation and the need to move stock from time to time across the road. She said that the divided rural residential block now had two uses; a rural residential dwelling and across the busy road, grazing paddocks. The two blocks appeared to be separate properties to her neighbours and passersby. Managing the two properties in terms of water, power and security were issues of concern. The west section of land was not visually apparent from the house and stock monitoring was now difficult. Ms Richards said that she was committed to enhancing the ecological and amenity aspect of Pine Valley Road by carrying out native planting.

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

Council's Development Engineer, Ross Green, had indicated he was happy with the entry to proposed Lot 2 at the western boundary provided there was a no planting covenant along the road edge to maintain sight views. However, he confirmed that his client would be happy to consider another access. His client was prepared to offer to increase the proposed enhancement planting from 1ha to 2ha. In light of these offers the Chairperson requested that a plan be provided by the applicant showing the natural contours (if appropriate) and the bush area enlarged. The Chairperson also requested that a revised map showing the planting in relation to an alternate access be provided – and the planting being moved from Area B.

With regard to the water supply easement, there was an area directly over the easement that couldn't be planted in the ground, but over time the canopy would close over the area. A 2m wide strip needed to be maintained, however Mr Goodwin said that he didn't think edge effects would be significant; in his opinion this was not a major issue.

With regard to the ecological needs of the property he said there would be benefits from having a nice stand of native bush and having an area of planting located adjacent to a large area of planting to the south and it would also add to the visual amenity. The area had a character of lifestyle properties which were too small to be productive in the usual sense of the word (e.g. beef farm). He noted that there were quite a few horses in the area and there were some sheep and cattle on properties in the area, but that was on a very small basis.

With regard to a guarantee as to whether the screen planting on proposed Lot 1 would remain, Mr Goodwin said that at this stage it was not legally protected and there was the ability to remove it. A solution could be to place a covenant on it in order to maintain it as effective screening and that any dying trees be replaced; his client was interested in offering that. Mr Goodwin said that the pine trees could either be removed or managed; this could possibly be looked at and considered by a landscape architect.

With regard to visual character, he said the planting introduced a landscape element that was not widely present, but in his opinion planting was missing from the area and the area would benefit from the proposed planting. He also believed that people would enjoy watching the planting develop; it would add interest to the landscape and also add a nice feature. His client offered a condition that there be no minor household unit on either of the lots. Mr Goodwin said that he had not obtained any traffic counts, but in general he knew the volume of traffic was fairly high.

COUNCIL OFFICERS:

Mr McCool in referring to the District Plan rules, said that the rules were very clear; for subdivision in the General Rural zone either 6ha of enhancement planting was required or a minimum of 2ha of Significant Natural Area. Mr McCool said that he did not think there was significant ecological benefit in 1ha of enhancement planting. He confirmed that in his opinion the application was non complying.

Mr Jenkins tabled a map of the Metropolitan Urban Limits (MUL) which clearly showed that the applicant's property was outside the MUL.

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Mr McCool noted that approximately 0.96ha of the property had been lost as part of the road formation. In response to this statement, Mr Goodwin said the division of the property had made both lots unprofitable. Mr McCool said that he thought at present the possibility of a minor household unit was highly unlikely on proposed Lot 2, but it would be possible on Lot 1 with the existing dwelling. In regard to the other properties in the area, Mr McCool said that most tended to be 5 - 7ha. Referring to Mr Goodwin's statement about the site being split by a busy road, Mr McCool said that there may be other such instances in the Rodney region and the Panel needed to be aware that granting consent to the application had the potential to set a precedent.

In response to Mr Goodwin's comments about land being rezoned for business purposes, Mr McCool said that there was no certainty and it was more than likely the Council would use other land in Silverdale for this purpose. Mr McCool considered the proposed subdivision would result in the loss of productive land as there would be two quite separate properties with associated plantings, dwellings, lawns, gardens etc. He noted that although the property was split by the road the productive lot could still be used for calf rearing and cattle yards could be built.

Mr McCool said that the neighbouring property that had been granted consent to subdivide had decent areas of land on both sides of the road and it also had riparian margins. Mr McCool said that there needed to be environmental benefits for subdivision and the District Plan provided for ways to subdivide. He noted that although the resource consent on the neighbouring property had been granted it had not yet been implemented, and one could not rely on the fact that it would be implemented.

Mr McCool said that a dwelling on proposed Lot 2 would be highly visible to passing motorists. He realised that the applicant could have a barn as of right on the property which would have similar visual effects, however potential effects on amenity and character would be significantly different. Potential effects would include noise, light, activity associated with a dwelling rather than a shed/barn. He said that if consent was granted a dwelling on proposed Lot 2 should be of a single storey and be of colours which would help integrate it into the environment.

Mr McCool said that he stood by his assessment of the objectives and policies; he believed this application was contrary to numerous objectives and policies. The main reasons being the lack of environmental mitigation, the loss of rural productive land, potential adverse effects on rural character, and potential amenity affects. Mr McCool said that the application also had the potential to set a precedent. In his opinion there was no requirement to move stock across the road and there were minimal outstanding circumstances that differentiated the application.

Referring to the General rural Zone, Mr McCool said that the District Plan provided subdivision on ecological grounds (enhancement planting etc), but it did not provide for subdivision because a property was separated by a road. He noted that the applicant was offering 1ha of enhancement planting which would be of some environmental benefit, but it was not a core ecological benefit that the District Plan rules envisaged. He reiterated that he stood by the recommendations in his report to decline consent because of the potential adverse effects on rural character and amenity and because the Council needed to be careful about setting a precedent.

In response to questions, Mr McCool said that in previous subdivision applications Cato Bolam had used the argument about no cumulative effects. Mr McCool considered that the cumulative effects of granting consent would be increased by ad hoc subdivision and slight erosion of the character of the area.

RIGHT OF REPLY:

Mr Goodwin said that he agreed that 1ha of enhancement planting would not be of the same benefit as 6ha of planting, nevertheless there were some benefits. One still saw birds in 1ha of bush and such a size seemed to be sustainable in the longer term. He noted that edge effects were more of an issue in smaller areas of bush, but with care the bush could be sustainable in the longer term; the enhancement planting proposed would form over three hectares of contiguous bush and would improve hydrological neutrality and water quality. There would be a net reduction in stormwater flows when the bush was planted.

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Referring to stock movement, Mr Goodwin said that Ms Richards stated that as part of the operation of rearing new calves they had to be located close to the house because they needed constant feeding and a close eye kept on them, but once they had grown they were shifted across the road.

In regard to the riparian margins on the property to the south, Mr Goodwin noted that they wouldn't have needed to be protected as part of the consent process; the offer had been in addition to District Plan requirements. With regard to the entryway being moved further to the west, Mr Goodwin said that there was a requirement to keep sightlines, but there was the ability to establish planting; this could be part of the consent as well as the building site location, and the screen planting could be subject to approval by a landscape architect so all the requirements imposed worked.

Mr Goodwin considered that the objectives and policies in the District Plan were quite broad and open to interpretation in different ways and considering the property in its current location he believed the proposal was in line with the objectives and policies. He also considered that there were numerous differences between this application and the neighbouring application from Mr Cooper which had been granted consent. Mr Goodwin wondered how precedent could be considered because of these differences. With regard to there being numerous other applications of this nature, Mr Goodwin said that he was aware of one on State Highway 16, to the south, and one on Waitakere Road; these applications had been applied for on their own merits and he didn't see how these affected this application in any way.

THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:

(Section 113(1) (aa))

Overall this application was considered to be a **non-complying** activity and was considered in terms of sections 104, 104B, 104D and Part 2 of the Act.

OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:

(Section 113(1) (ab))

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

Auckland Regional Policy Statement Provisions

Chapter 2, Regional Overview and Strategic Direction

Proposed Regional Policy Statements Provisions

Proposed Plan Change 6

Plan Provisions.

1993 Operative District Plan as Amended by Plan Change Number 55, Rural Provisions

General Rural Activity Area objectives, policies and rules as they relate to the proposal

Proposed District Plan 2000

General Rural Activity Area objectives, policies and rules as they relate to the proposal

Other Legislation

There are no other legislations relevant to this matter

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ANY OTHER MATTERS**Vision Rodney**

Vision Rodney is a non statutory document which incorporates the statements of the future that people and communities of Rodney want for their District. The Panel has taken into account Mr McCool's comments in his report regarding Vision Rodney and generally agrees with his assessment that the application is prejudicial to Vision Rodney's intention, although little (if any) weight can be given to the document.

Silverdale West Structure Plan

Both Mr McCool and Mr Goodwin referred to the above structure plan. In February 2008 the Council resolved to prepare a structure plan for an area of land to the west of the motorway at Silverdale to indicate the potential use of this land for business activities.

The Council has also identified an area of land which is referred to as the Pine Valley Block which may be rezoned in the future. This area is located to the east of Pine Valley Road and includes part (proposed Lot 1) of the applicant's site. Mr McCool stated that the possible future zoning should be given no weight as it has a 10 - 20 year timeframe. Having taken into account the comments and evidence of Mr McCool and Mr Goodwin in regards to the structure plan the Panel's view is that it should be given no weight in making a decision on this application.

THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:

- Whether the application passes the gateway tests of s104D of the Act and in particular whether it is contrary to the objectives and policies of the district plan, or whether the effects of the application on the environment will be more than minor.
- Whether the application passes one or other of the gateway tests so that it can be approved under s104 of the Act.
- Whether the potential adverse effects of the subdivision had been identified and that they could be adequately avoided remedied or mitigated.
- Whether the proposed development would create a precedent.

**THE MAIN FINDINGS OF FACT:
(Section 113(1) (ae))**

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

- Having read and listened to the evidence and studied the objectives and policies the Panel is of the view that the application is contrary to the objectives and policies of the appropriate Plans.
- As a non-complying application there must be some unusual quality applying to it to justify consent and therefore a departure from the Plan provisions. In this case the Panel does not consider that there are unusual qualities.
- The proposed subdivision fails to meet any of the subdivision provisions of the Operative District Plan as amended by Plan Change 55. The applicant's proposal to undertake 1 hectare (the offer increased to 2 hectares at the hearing and the plan submitted on 10 February 2010 showed an increase in area of 1.2 hectares) of enhancement planting is less than the minimum required under Rule 7.14.4.2 of the Proposed District Plan.

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- There is a consistent approach to subdivision between both Plan Change 55 and the Proposed Plan and taking into account this consistency the Panel's view is that consent be refused.
- The analysis provided in the Council's planner's report on the application correctly, and comprehensively, sets out all the matters needing consideration by the Panel in making its decision and clearly shows the strict subdivision regime in the District Plan for the rural areas of the Rodney.
- If the Council had considered this area suitable for the type of development now sought it could have allowed for it in either Plan Change 55 or the Proposed Plan. At this stage it has not identified the property for any particular type of treatment, although it is acknowledged that some work has been started on the Silverdale West Structure Plan, this can be given no weight when considering this application.
- The offer of additional enhancement planting (up from 1ha to 2ha at the hearing and then subsequently 1.2ha) and restricting future minor household units on either of the lots do not (in the Panel's view) support the application being consented to and does not overcome the fact that it is contrary to the objectives and policies of the Operative District Plan as amended by Plan Change 55 and the Proposed District Plan.
- The adverse effects of the activity on the environment will be more than minor and the application is considered contrary to the objectives and policies of the relevant Plans.
- The property is outside the Metropolitan Urban Limit (MUL) and is not consistent with the Regional Policy Statement.
- Overall it is considered that having regard to all the relevant section 104 matters that consent will have more than minor adverse effects on the environment.
- The proposal seeks subdivision, and future associated development rights. However, there are insufficient circumstances relating to the proposal which serve to differentiate it from the generality of other applications that may be received by the Council and which serve to justify a grant of consent to it as a non-complying activity.
- The proposal does not meet either of the gateway tests for non-complying activities as set out at section 104D of the Act.
- In terms of section 5 of the Act, it is considered that this application does not promote sustainable management and it will result in adverse effects including alteration to the rural character and high amenity values without appropriate environmental mitigation or remediation, leading to the loss of activities based on rural production.
- In all the circumstances the proposal is not consistent with the sustainable management purposes of the Act or with its principles, as included at Part 2 of the Act. It would result in adverse effects on the environment by providing for further development not consistent with the character and amenity values of this area as sought to be protected by the District Plan. In these respects it would not maintain and enhance the amenity values or the quality of the local environment.
- The question of whether this application would create a precedent was raised. Generally speaking it is difficult to argue in the case of a non-complying activity that there is a precedent issue. Each site and application is different and has to be assessed on its merits. However, the Panel is of the view that granting consent to this application would create a precedent that will undermine the integrity and consistent administration of the Plan. The Panel notes that the property next door (the Cooper property) which was referred to by the applicant and Council staff has very similar circumstances. Such as:
 - *Both properties were severed by the realignment of Pine Valley Road in 1998.*
 - *The applications both offered enhancement planting and both offered to increase the area to be enhanced at the respective hearing, with the Cooper's increasing from 1.2ha to 2.3ha and the Richard's from 1ha to 2ha at the hearing with the final plan subsequently provided actually showing 1.2ha.*
 - *Both applicants offered at the respective hearings that no minor household units would be able to be erected on any of the two proposed lots.*
 - *The movement of stock from one side of the road to the other has not proved practical or safe.*
 - *The two areas of each site are quite separate.*
 - *Both properties are outside the MUL.*

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- In relation to the enhancement planting and ecological benefits the Panel accepts that there may be some benefits but considers that these benefits do not outweigh the integrity of the District Plan. With respect to the area to be planted adjacent to an area of enhancement planting on the adjoining land (the Cooper's land), there is no guarantee that the consent on the adjoining land will be implemented and the enhancement planting carried out, and therefore ecological benefit cannot be guaranteed. It has not been demonstrated how the proposed planting would improve the ecological condition of the site, or relate to any natural features on the site.
- The proposed subdivision has the potential to reduce the versatility of the rural land through inappropriate subdivision and land use and reduces the potential of the land to be used for a range of more traditional types of farming.
- The proposal is considered to be contrary to Vision Rodney as the creation of rural-residential lifestyle lots reduces the opportunities for activities based on rural production, an activity which is considered to be more suitable on the rural site. In addition, the inadequate environmental mitigation or remediation to offset the intensification effects of development within the rural area prejudices Vision Rodney's intention to value, protect and enjoy the natural environment.
- In regard to vegetation clearance and earthworks, entranceways and vehicle access, traffic generation and distribution and other engineering related issues, the Panel accepts the expert advice that the proposed subdivision will have no more than minor adverse effects.
- Clearly consent to the application would enable the applicant to benefit from an additional site. However, the Panel's responsibility (although it may have some sympathy with the applicant's situation) is to the wider public, the integrity of the District Plan and the requirements of the Act.

Consent is declined.

Carried

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 4TH DAY OF MARCH 2010

MAYOR

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