

RESOURCE CONSENTS HEARINGS PANEL

MINUTES: of a meeting of the Resource Consents Hearings Panel which commenced at 1.08 p.m. in the Council Chamber, Centreway Road, Orewa, on Friday, 23 July 2010.

PRESENT:

Chair	John Childs
Crs	Wayne Walker
	Suzanne Weld

IN ATTENDANCE:

Team Leader Resource Consents	Ian Bayliss (from 1.10 p.m.)
Reporting Planner	Sarah Gardner
Consultant Traffic Engineer	Pippa Mitchell
Democracy Services Officer	Vivienne Martin

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Note: *This hearing was originally scheduled for 9 July 2010 and was deferred at the request of the applicant. Please refer to the agenda dated 9 July as it was not reprinted. An updated planning report which altered the original recommendation was tabled at the hearing.*

481/07/10 APOLOGIES**AGENDA ITEM NO. 1**

There were no apologies.

482/07/10 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

CONSENT IS SOUGHT FOR THE SUBDIVISION OF LAND TO ESTABLISH TWO RURAL RESIDENTIAL SITES IN THE FUTURE URBAN ZONE.

LOT 1 IS PROPOSED TO CONTAIN THE EXISTING DWELLING AND AN AREA OF 8130M². LOT 2 IS PROPOSED TO CONTAIN BUILDINGS FOR RURAL PRODUCTION AND THE BALANCE OF THE LAND AREA, BEING AN AREA OF 1.42 HECTARES.

Address: 108 Station Road, Huapai

APPLICANT: CP SMELLIE LTD

FILE REF R56007**WARD** Western**AGENDA ITEM NO. 2**

The applicant seeks consent to subdivide the 2.23 hectare site into two rural residential lots. It is proposed that Lot 1 will contain the existing dwelling and an area of 8130m². Lot 2 is proposed to contain buildings for rural production and the balance of the land area, being an area of 1.421 hectares.

Please note: Following receipt of new information an updated report by the reporting planner was tabled at the meeting. In the updated report the planner's recommendation had changed.

The applicant, Mr Chris Smellie, and the applicant's representatives, David Kirkpatrick (Legal Counsel) and Lance Hessel (Planning Consultant), present.

Submitter: Mr Graeme Hammonds, present.

1.08 p.m. The Chairperson opened the hearing and outlined the meeting procedure. He advised that a site visit would be undertaken later in the day.

The Chairperson, John Childs, advised that there were two procedural matters to deal with before the hearing commenced.

Firstly, Cr Weld stated that she had previously worked for the Council as a project manager for the Western Ward and that during that time she had been present at meetings with the applicant and submitters. However she said that she had no interest in the site which was the subject of the application.

David Kirkpatrick, Counsel for the applicant, thanked Cr Weld for her statement and said that his client had no issues with her being on the Panel.

The reporting planner, Sarah Gardner, was then requested to explain her change of stance in relation to the application.

Ms Gardner reported that in the original future subdivision concept plan provided by the applicant the proposed access was deemed to be inappropriate because of short sight lines, and safety concerns in relation to the intersection. There were concerns that the applicant would not be able to provide for future development on the two sites. Both fragmentation effects and cumulative impacts would be more than minor. Subsequently a new concept plan had been provided by the applicant, which was deemed to be a more appropriate future concept for development.

A letter was tabled from Beca Carter Hollings and Ferner on behalf of the New Zealand Fire Service (NZFS). The letter requested that, should consent be granted to the application, there be a condition requiring sufficient water volume, pressure and flows in accordance with NZFS Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008.

Counsel for the applicant, David Kirkpatrick, explained the updated concept plan and expressed his client's gratitude for the opportunity to present a revised plan.

David Kirkpatrick circulated and read his written submission in support of the application.

In his assessment of the application Mr Kirkpatrick suggested that the main question was whether subdividing the land would prejudice the objectives of the Future Urban zone and the patterns of future residential development. It was his submission that there would not be any adverse effect and he agreed with the reporting planner's conclusions in relation to maintenance of planning integrity. The applicant was not seeking to 'jump the gun' on the future urban development of Huapai.

Mr Kirkpatrick also drew the Panel's attention to tabled copies of an Environment Court decision *Aquita Holdings Ltd v Rodney District Council*, 17 June 2005, which related to a two lot subdivision on the Coatesville-Riverhead Highway. He suggested that the present application should be analysed in a similar way to the Aquita case and noted in particular, the Court's decision on the legal limits of cumulative effects and precedent effects.

Mr Kirkpatrick stated that the applicant was generally willing to accept the proposed conditions apart from conditions 4(d) preventing further subdivision of either lot, and 4(e) limiting each site to one household unit with no minor household unit. He said these were unnecessary, because there could be no further subdivision or household units on the sites without resource consent.

In response to a question from the Panel as to whether the Rodney District Plan lagged behind other areas in relation to what should happen in the District, Mr Kirkpatrick suggested that it was no better or worse than other district plans. However, reactions to what had happened over the past ten to twelve years had caused issues. There had been future urban zoning at Huapai for this time and the community's response to the transition was that it had become almost semi-permanent. He said that Mr Smellie was not trying to jump the gun, rather, to move to the next stage of transition. If the application was refused it would leave Mr Smellie in limbo.

Mr Kirkpatrick expressed concern that future zonings created a set of problems for the District Plan and for residents. The fact that the Future Urban zone had existed for over ten years called into question statements made at the time it was introduced, that the matter would be sorted out within ten years. He said that if the applicant's proposed subdivision was more intensive it would be considered to be 'nibbling at the edges' of the zoning; however, the current proposal was consistent with the environment south of Huapai. There would be no significant degree of difference created by the subdivision - possibly one extra house on Lot 2.

The Council's planners were requested to clarify whether the greenhouse coverage would allow an extra house to be built without resource consent.

Chris Smellie, the applicant, circulated and read his statement in support of the application.

Mr Smellie outlined the history of the rose growing business on the property, including the challenges that had arisen over the years through competition from imported roses, a rose root disease and the recent

economic downturn. He listed the advantages and the problems of the business, with some solutions for the latter, including the selling of some of his land to clear debt, and restructuring the business.

In response to questions from the Panel, Mr Smellie made the following points:

- Heavy clay soils were common in Huapai. While there were fertile river flats, other areas were difficult.
- Both land values and rates had increased in Huapai. However these were still a small percentage of the costs of the business which takes \$4,000 - \$5,000 per week to run.
- Resource consent was not required for the greenhouse as it was established as of right.
- Existing access to the greenhouse was through Lot 1.

Lance Hessell, Planning Consultant for the applicant, circulated and read his statement in support of the application.

Mr Hessell reiterated Mr Kirkpatrick's comments in appreciation of the opportunity to present a revised concept plan for the application.

Mr Hessell stated that the socio-economic aspect of the application was important and referred to Section 5 in Part II of the Resource Management Act, in which sustainable management included enabling people to provide for their social, economic and cultural wellbeing and their health and safety. The subdivision would provide for the continued operation of the business, the continued social and economic wellbeing of the applicants and their employees and would enable the applicants to remain in an area to which they and their families had developed a strong attachment over 40 years.

Mr Hessell also noted that written approvals had been obtained from surrounding neighbours and that two submissions had been received in support of the application.

Mr Hessell outlined the statutory assessment matters relating to the application and said that he concurred with most of the Council Planner's report. He provided a cadastral plan of the locality illustrating the varying lot sizes and pointed out the mixture of zonings in the area.

In relation to the proposed conditions of consent, Mr Hessell recommended that conditions 4(d) and (e) should not be imposed, as he considered them overly restrictive. Minor household units on the sites could be desirable to support family members and the character of the site and surroundings would not be adversely affected by these. He commented that no such conditions had been imposed on consents for two nearby properties.

In response to a question from the Panel relating to the site coverage issue, Mr Hessell said that in the General Rural zone a house was permitted if the glasshouse was over 2,000m³.

In response to questions from the Panel, Mr Smellie made the following points:

- In relation to the imminence of intensification demand for property in the Huapai area - this depended on Water Care and provision of a sewerage supply.
- In relation to possible reverse sensitivity issues for the new lot from the glasshouse - spraying was contained internally. There would be some noise, but it was not excessive. He had no intention of removing the glasshouse and spraying outdoors.

Mr Hessell suggested that a consent notice regarding reverse sensitivity could be included.

- In relation to whether there was sufficient flexibility in the current consent to allow further development once zoning allowed - the indicative road covered a driveway and a property either side, so any further development would be dependent on more than Mr Smellie.

Mr Hessell confirmed that there were other options available for further development.

- Activities on the properties surrounding the applicant's land included a persimmon plantation which was harvested annually; stock grazing and lifestyle blocks. Grapes were grown north of Nobilo Road.

In response to questions from the Panel, Mr Hessell made the following comments:

- In regard to fragmentation by subdivision – in rural areas this had generally a negative effect, but not so much in the current situation. It was not surprising that people had taken action and wanted to get on, since intensification had been anticipated for over twelve years.
- How the matter of the indicative road might be addressed - the line was along the legal boundary to Lot 2 DP 156727, not on the applicant's property, and it seemed impractical to form and vest it.

Mr Kirkpatrick commented that indicative roads had been used in Manukau and Waitakere. They were useful for the structure plan but needed to be supported by a designation or requirement.

- The Auckland Regional Council had been notified of the application.

Graeme Hammonds, submitter, circulated and read a written statement on behalf of himself and Mary Hammonds, in support of the application.

Mr Hammonds commented on the positive future effects of the proposed subdivision, including the Smellie family's value to the local community, additional development contributions and rates for the Council from the subdivision, participation in an integrated planning process by a future owner (of the new lot) and the upholding of *Vision Rodney* by creating an acceptable method of catering for people in the future urban zone.

Mr Hammonds noted that he and his wife, and others in the community, had been personally involved with the Council in trying to achieve an integrated planning approach in the area, a process which had been difficult and time consuming. He questioned the ethics of forcing long term residents off land they had lived on for generations and asked whether it was better to keep them in the area by allowing varying acceptable sized house sites to be split off, so that they could work with the Council to plan an integrated future.

Finally Mr Hammonds requested that the application be consented to, as the negative effects were minor and the positive effects considerable.

In response to questions from the Panel, Mr Hammonds commented as follows:

- With reference to people's acceptance of these types of subdivision in the Future Urban zone - the community had changed, with 30-40% of properties being held by absentee land owners who were not concerned. There were 10 - 15 land owners on Station Road who would like to be involved in partnership planning with the Council.
- Whether there should be integrated planning before subdivision - rural land was no longer determined by economics. Such subdivision would allow people to stay in the area while the Council talked with the community, for example during the North Huapai process.
- Instances of land owners getting together - previously a care group had been formed (for the area) and an integrated plan had been signed off by the previous Mayor, John Law, and the care group.
- He wanted people who cared to remain in the area and for the Council to plan for present people and community. The zoning could be changed.

3.02 p.m. The Chairperson thanked Mr Hammonds for his submission; Mr Hammonds retired from the meeting.

Sarah Gardner, Reporting Planner, was requested to comment on the evidence presented.

Ms Gardner said that she stood by her recommendation that the application be granted, subject to conditions.

In relation to matters identified over the course of the hearing, Ms Gardner said that she would prefer conditions 4(d) and 4(e) to remain as these activities would require consideration under section 221 of the Resource Management Act in the future. However her recommendation would be the same if the conditions were not retained because of the non-complying activity status of the activities. If the application was approved an advice note should be included in relation to appropriate parking provision for the glasshouse employees.

Mr Smellie advised that there was currently parking for twenty cars.

In response to a question from the Panel, Ms Gardner said that further development of a house on Lot 1 was a permitted activity in the General Rural zone, but there could be an issue with overall site coverage as a result of the glasshouse. In the Proposed District Plan there was no development control over site coverage in the Future Urban zones however there was a site coverage control under the Operative District Plan 1993 which remained relevant to the Smellie site at this time.

Team Leader, Resource Consents, Ian Bayliss, advised that once the proposed District Plan became operative a house on the site would be a permitted activity.

Ms Gardner further commented that there had been no complaints about the glasshouse activity, but that a future owner of a site would be aware of the activity operating, and that noise controls would need to be complied with at the boundary.

Regarding fragmentation, Ms Gardner said that this was interpreted as the breaking down of larger land holdings. She noted that fragmentation could have adverse affects especially in Future Urban zones. However the application was found to leave options available in relation to the future urban development of the area and the effects from this subdivision were determined to be no more than minor.

Pippa Mitchell, the Council's traffic engineering consultant, advised that in terms of transportation there were no reasons to decline the application, subject to the proposed condition (3a). There should be sufficient parking for the business operation and a future dwelling on Lot 2. An advice note to this effect would be required.

Mr Kirkpatrick, in his right of reply, emphasised that the application was not being advanced on the basis of hardship. The existing operation had excess land and Mr Smellie was seeking to manage the land and his business needs. Times were tough, but the application was being argued in terms of the Resource Management Act.

Mr Kirkpatrick advised that the applicant had no problem with condition 3(a). There was ample parking for the existing business.

Regarding the issue of fragmentation, Mr Kirkpatrick said that it was an issue to be considered in context. In some areas 100ha lots constituted fragmentation, in others 10 acre to 4ha lots caused it. Some fragmentation, as in the existing situation, was acceptable. The s42A report and Lance Hessel's evidence had addressed the issue. Finally, Mr Kirkpatrick expressed his thanks for Mr Hammond's support.

3.18 p.m. The Chairperson adjourned the hearing, subject to a site visit.

The Chairperson closed the hearing at 4.00 p.m., at the conclusion of the site visit.

The Panel resolved:

Childs/Walker

THE DECISION:

That pursuant to Sections 104, 104B and 104D of the Resource Management Act 1991, the notified application for resource consent by C.P. Smellie Ltd for the two lot subdivision of the site at 108 Station Road, Huapai, Lot 1 DP 156727 be granted.

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

- (a) The actual and potential environmental effects of the activity will be no more than minor in terms of rural character, future urban character, amenity, servicing and cumulative effects. In particular, the site size and layout proposed by the applicant have been identified as having effects that are comparable to those in the surrounding rural environment. In addition the concept future development plan demonstrates that the proposed two lot subdivision does not prejudice options for future urban development in the area.
- (b) The subdivision will not compromise the rural uses of the land.
- (c) The proposed subdivision is not contrary to the relevant objectives and policies of the District Plans. It is considered that, although the subdivision will decrease the land holding, it will not prevent the land zoned Future Urban from being developed in a co-ordinated and integrated manner.
- (d) From this assessment, this proposal for a non-complying activity is considered to satisfy the Gateway Tests under Section 104D of the Act, in that both the adverse effects of the activity on the environment will be minor, and the activity will not be contrary to the objectives and policies of the Operative and Proposed District Plans.
- (e) The proposal is generally consistent with the Regional Policy Statement and its strategic directions insofar as subdivision and development is directed towards an area identified for that purpose, albeit earlier than anticipated but in a staged manner.
- (f) The proposal is consistent with outcomes sought by Vision Rodney, particularly in relation to providing for employment in the District and retaining and enhancing connectivity.
- (g) This subdivision will not preclude a rezoning of the land in the future from being achieved.
- (h) The proposal is considered to be consistent with Part II of the Resource Management Act 1991, with particular regard to s.5, and s.7 of the Act. Overall, it is considered that the proposed subdivision of the site does promote the efficient use of resources.

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

Issues 2.3.1, 2.3.2, 2.3.3, 2.6.1

Plan Provisions

Operative Plan as amended by

General Rural Zone

Issues

4.1 Policy 1 and 2

4.2(a) Objective

4.3(a) Objective

Policy 1 Roads

Policy 2 Utilities

Policy 4 Upgrading and Financial Contributions

Objectives 5.1, 5.3, 5.5, 5.7, 5.11, 5.13

Polices 5.2, 5.4, 5.6, 5.8, 5.12, 5.14

3 General Objectives

Proposed District Plan 2000**Other Legislation**

Objectives

13.3.1, 13.3.2, 13.3.3, 13.3.4, 13.3.5, 13.3.6, 13.3.7

Policies

13.4.1, 13.4.2, 13.4.3, 13.4.4, 13.4.5, 13.4.6, 13.4.7

Any other relevant legislation

Other Documents

Vision Rodney

Planning Rodney

Kumeu – Huapai Central Area Plan

Huapai South Urban Design Plan

PREAMBLE

This application seeks consent to subdivide a 2.2353 hectare site into two lots. Lot 1 will contain an existing dwelling house, Lot 2 contains an existing greenhouse used for the growing of roses and an associated retail outlet in front. The application was notified. Three submissions were received. Two supported the application and the third was neutral.

**THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:
(Section 113(1) (ac))**

- (1) Whether the subdivision was premature and would compromise the future urban zoning of the land.
- (2) Whether the subdivision would adversely impact on current activities on the site.
- (3) Whether the subdivision would adversely impact on the neighbourhood.
- (4) Cumulative effects.

**SUMMARY OF THE EVIDENCE HEARD:
(Section 113(1) (ad))****EVIDENCE ON BEHALF OF THE APPLICANT WAS GIVEN BY:**

Evidence on behalf of the applicant was given by:

Mr David Kirkpatrick	-	Counsel
Mr Chris Smellie	-	Applicant
Mr Lance Hessell	-	Planning Consultant

Mr Kirkpatrick

He described the application and its activity status. He saw the Proposed District Plan as the more relevant document. In relation to the Future Urban Zone he saw it as a holding zone

“which points clearly in a certain direction (with which the application is consistent) but does not yet allow people to go that way”. P3.

The subdivision would leave open future options regarding the expansion of Huapai’s urban area.

He saw the non complying activity tests as being satisfied. The application allowed, in his submission, a transition between small scale rural use and whatever the future form of the area would be. The rose business would be able to continue. The proposal did not challenge the policy structure of the District Plan and adverse effects would be minor.

He requested that consent be granted subject to minor changes to the recommended conditions.

Mr Smellie

He described the rose growing business, advantages and problems with the business, solutions to the business problems and the consequence of not finding a solution to these problems. He advised that he wished to continue to be involved in the business. If the subdivision did not proceed the whole property would need to be sold and potentially the greenhouse would become derelict.

Mr Lance Hessell

He described the proposal, the planning position and the written approvals and submissions received. This included abutting neighbours who supported the proposal. He saw the area as one in a transitional state from a rural character to

“a more rural residential nature” P5

In his opinion an additional unit on proposed Lot 2 would not compromise the established character of the area. Adverse effects would be minor with a net environmental gain.

Distinguishing characteristics in the application were:

- (1) The substantial assistance the subdivision would provide for the ongoing operation of the business.
- (2) The social and economic wellbeing for the owners and employees that would result.
- (3) The social benefits of the applicants remaining on the land.

He considered that the Section 104 tests were met.

EVIDENCE ON BEHALF OF THE SUBMITTERS WAS GIVEN BY:

Mr G Hammonds - 100 Station Road

Mr Hammonds referred to the Resource Management Act definition of effects which includes positive effects. He saw several positive effects arising from this proposal.

- (1) It would allow a valuable local family to continue to be involved in the community.
- (2) It would result in additional funds by way of development contributions and increased rates to Rodney District Council. The contributions would contribute to future infrastructure in Kumeu.
- (3) The subdivision has limited implications with possibly an additional residence and would allow integrated planning, making the land on Lot 2 able to be purchased by an owner who would be keen to participate in the process of integrated planning.
- (4) The two lot subdivision would require any owners to follow the integrated plan of the Council in applying for resource consents.

The Council would be upholding its vision to make a positive difference. He said that the two lot subdivision application should be approved as the adverse effects would be minor and the positive effects would be considerable.

A letter from the New Zealand Fire Service was tabled regarding possible conditions being imposed to deal with its concerns.

EVIDENCE ON BEHALF OF THE COUNCIL

This came from a report from Sarah Gardner, the Reporting Planner. She supported the application because

- (1) The actual and potential environmental effects of the activity would be minor.
- (2) The two lot subdivision would not necessarily prevent the two sites being developed and integrated in an appropriate manner when a future zoning was in place.
- (3) The proposal was not contrary to the relative objectives and policies of the relevant planning documents.
- (4) The proposal met the gateway tests for a non complying activity.
- (5) The proposal was generally consistent with the Regional Policy Statement and its strategic direction.
- (6) The proposal was generally consistent with the outcomes sought by Vision Rodney and the approach proposed by the Huapai Central Area Plan.
- (7) The proposal was consistent with Part II of the Act and the proposal would promote the efficient use of resources.

**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, all the relevant statutory and planning provisions, as well as the principal issues that were in contention.

- (1) The subdivision will allow the continuation of current lawfully established activities on the site, being the glasshouse for the growing of roses, the associated retail outlet and the house.
- (2) The concept plan submitted indicates that the site subdivision will not compromise the future urban aspirations as indicated in the District Plan for the land.
- (3) Adverse effects on the environment will be minor.
- (4) There are special / unusual circumstances which justify consent being given.

This proposal involves a two lot subdivision; Lot 1 having an area of 8130m² which contains an existing house. Lot 2 contains a glasshouse and associated retail area for the sale of roses.

The land concerned is a front lot and has an area of 2.23 hectares. It currently contains a glasshouse on one side of the site for the growing of roses and a retail outlet and a house occupied by the Smellies on the other side. The surrounding area consists of a variety of sites containing horticultural and residential activities.

The Panel concurs with the advice of Mr Kirkpatrick and Ms Gardner that greater weight should be given to the Proposed District Plan.

The application is a non complying activity, given that it does not comply with the subdivision minimum site area rules in both District Plans.

Actual and potential effects on the environment

In looking at this matter the Panel notes that consent of the three abutting property owners at numbers 100, 104 and 116 Station Road, as well as number 118, have been obtained. As a result the effects on these persons can be disregarded.

In terms of rural character the Panel concurs that the area is surrounded by sites of a variety of sizes and rural residential activities. They note that there is a school close by in Station Road. The area appears to be in transition. It concurs with Mr Hessel's assessment that the area is moving away from a rural nature to a more rural residential area.

The Panel also agrees with the Reporting Planner that the general rural character has not been consistently retained and is being impacted by the proximity of the area to residential and urban zones being located about 500 metres from the subject site. Given this situation and the limited level of development that will accrue from the subdivision, the effects on rural character will be no more than minor. It will also allow the existing greenhouse business which is a rural activity to continue on Lot 2.

In relation to the effects on the character of future development the applicant has submitted a concept plan which would allow these two lots to ultimately be subdivided into 15 urban lots with associated access from a road corresponding to the adjoining indicative road shown in the Proposed District Plan. This would obviously involve the removal of the glasshouse, but it indicates that this subdivision can be part of a staged development which will not compromise the future urban zoning of the land. As a result the two lot proposal will avoid adverse effects on the future development of the area, as an appropriate level of subdivision can be provided for in the future.

In terms of amenity values the main effect will be the potential for a further household unit on the horticultural lot which is Lot 2. Once the District Plan 2000 becomes operative this is unlikely to require resource consent. Given this minor change and given that abutting neighbours have given written consent, the adverse effects on amenity values will be minor.

In terms of effects on the land form, and vegetation given the topography of the land and the advice from Council's engineers, no obvious issues arise. Council's traffic engineering consultants advise that the impacts on the roading network will be minor.

The Panel concurs with the advice given by the two planners and Mr Kirkpatrick that adverse cumulative effects will be minor, particularly given that the development can internalise adverse effects and future development can be adequately catered for. Overall the adverse effects on the environment will be minor.

DISTRICT PLAN ISSUES

The site is zoned General Rural in the Operative Plan as amended by Plan Change 55 and Future Urban in the Proposed District Plan 2000. Given the stage of the Proposed District Plan the Operative Plan is considered to have limited relevance. In relation to the Proposed Plan the objectives, amongst other things, seek to ensure sufficient land is available for future growth for urban purposes.

In this case the two lot subdivision can be seen as a staged subdivision, as the Indicative Concept Plan shows that it can be developed more intensively to cater for future urban growth.

The site has been identified for future growth. The subdivision therefore goes some way to achieving the outcomes for the area as identified in the Regional Growth Strategy. Other objectives and policies are concerned with avoiding, remedying and mitigating the effects of urbanisation and attaining a high level of amenity. The policies are also concerned that subdivision will not adversely effect the future urban development of land. As indicated above, the staged development proposed does not adversely affect this provision. Also of relevance is that the proposed subdivision will allow the current activities, namely the greenhouse and the residential activities, to continue. Overall it is considered that the subdivision will not be inconsistent with the District Plan objectives and policies.

OTHER MATTERS

In terms of Regional Policy Statement issues the Panel notes the Kumeu / Huapai area is identified as a major growth zone. In terms of the document this proposal in a small way and in the longer term will contribute to the future residential growth in this area.

The Panel notes that this site appears to be located in the area identified as Future Urban in the Kumeu / Huapai Central Area Plan.

In terms of integrity and consistent administration of the Plan the critical issue is that the future sustainable urban development in this area will not be compromised by current activities and development. In this case it is important to look at whether there is anything unusual or special about this application which distinguishes it from other applications. In this case they are:

- (1) The proposal can be seen as part of a staged development, with the Concept Plan indicating that the glasshouse can be retained with residential on the other lot and that future development can occur at a more intensive level using the indicative road as shown in the District Plan.
- (2) The retention of the horticultural business and the house being retained on a separate lot.
- (3) The ability of the site to cater for future development of a residential / business use, given its location on Station Road and abutting the indicative road.

While sympathetic to the social impacts that this proposal will have, as raised by Mr Hammonds and Mr Hessel, these are not considered to be distinguishing characteristics. Case law clearly indicates that hardship is not a justification for consent being granted.

In terms of Part II the proposal will promote sustainable management of natural and physical resources, as the existing horticultural and residential activities will be able to continue.

Overall the Panel is satisfied that overall the Section 104D tests for a non complying activity are satisfied as the proposal will not be contrary to the relevant objectives and policies of the District Plan, particularly as they will not compromise the Future Urban Zoning anticipated by the Proposed District Plan. Subject to conditions adverse effects will be less than minor.

Consent is granted

LAPSING OF CONSENT

Pursuant to Section 125 of the Resource Management Act 1991, this resource consent will expire 5 years after the date of commencement of consent unless, before the consent lapses:

- (a) the consent is given effect to; or
- (b) an application is made to the Council to extend the period of consent, and the Council decides to grant an extension after taking into account the statutory considerations, set out in section 125(1)(b) of the Resource Management Act 1991.

Pursuant to Section 108 of the Resource Management Act 1991, this consent is subject to the following conditions:

CONDITIONS OF CONSENT

Pursuant to section 108 of the Resource Management Act 1991, this consent be granted, subject to conditions attached, to the application for a non-complying activity for the reasons stated

1. (general) Except as amended by conditions below the development shall proceed in general accordance with the application submitted, and the plans drawn by C & R Surveyors Ltd, dated 30-09-09, numbered 3115-1 and signed by Processing Planner Sarah Gardner, July 2010.

To be completed before issue of the s. 223 certificate

2. (conditions to be shown on survey title plan) Before the Council will approve the survey plan pursuant to s.223 of the Act, the owner shall:
 - a. (access) If it is intended to proceed with either altering the boundary between the two lots to enable the existing crossing to be used for both lots, or providing a right of way over Lot 1 in favour of Lot 2 then show the change on the survey plan.

To be completed before the issue of s.224(c) certificate

3. (conditions to be carried out by the developer) Before the Council will issue a certificate pursuant to section 224(c) of the Act, the consent holder shall satisfy the following conditions at his/hers/its full cost:
 - a. (access) Either establish a right of way over the existing driveway to provide access to Lot 2 (or alter the boundary between the two lots to have the same effect) or construct a new crossing to Lot 2 to a rural sealed / concrete standard to the requirements of the Council's Standards for Engineering Design and Construction. If the new crossing option is chosen then obtain a Road Opening Notice prior to the construction of the crossing.

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- b. (provide for electric power) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an electric supply has been made available by underground means to all saleable lots created and that all the network supplier's requirements for making such means of supply available have been met.
 - c. (provide for telephone) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of telephone services has been made available by underground means to all saleable lots created and that all the network supplier's requirements for making such services available have been met.

Subdivision advice note

Please note that pursuant to section 198 (1) (a) of the Local Government Act 2002 Development Contributions are applicable to this proposal.

The consent holder is advised that the contribution has been calculated on the basis of one additional (residential/business) lots created by the subdivision. The contribution assessment is attached to this consent. Under section 208(1) of the Local Government Act 2002 the Council may withhold a certificate under section 224(c) of the Resource Management Act 1991 and/or prevent commencement of the resource consent until the development contribution is paid. The Council may also register the development contribution under the Statutory Land Charges Registration Act 1928 as a charge on the title of the land.

It should be noted that the Development Contributions are reassessed in accordance with the Long Term Council Community Plan and the Local Government Act and are subject to change. Any new application will be assessed under the then current policy.

Ongoing Conditions/Consent Notices

4. The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notices pursuant to s.221 of the Act:
 - a. (building restrictions) Any buildings erected on the building site on Lot 2 shall be subject to the requirements of the report prepared by Hutchinson Consultants Ltd, reference LN13520a, dated 20 November 2009, and any subsequent reports. Copies of the said report(s) will be held at the offices of the Council, Centreway Road, Orewa.
 - b. (fire fighting) That upon the construction of any dwelling, sufficient water volume, pressure and flows be provided in accordance with NZFS Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 and that this water supply be accessible for fire fighting purposes.
 - c. (water supply) If water supply is to be provided by way of tank storage, this must be located a safe distance away from any habitable dwelling in accordance with NZFS Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008.
 - d. (no further subdivision) There shall be no further subdivision of Lot 1 or Lot 2 until such time as a change of zoning is incorporated into the District Plan by way of variation or plan change and urban development and subdivision are deemed to be appropriate.
 - e. (no additional household units) Lot 1 and Lot 2 shall each contain a maximum of one household unit and no minor household unit until such time as a change of zoning is incorporated into the District Plan by way of variation or plan change and urban development and subdivision are deemed to be appropriate.

5. **Advice Notes**

Note: Reports and limitations on the land regarding any features or characteristics of the land or works on the land, whether the subject of specific encumbrances on the land or not shall be discoverable as part of the Council's records.

Note: The provision of vehicle parking shall be retained at the level deemed appropriate by the District Plans for all existing and future buildings and/or activities. Failure to meet the parking provisions will require resource consent be sought for a shortfall.

Note: A sufficient number of vehicle parking spaces and loading spaces to satisfy the District Plan requirements for parking shall be provided for all existing and future buildings and / or activities. Failure to meet the parking provisions will require resource consent to be sought for a parking shortfall.

Carried

The meeting closed at 4.00 p.m.

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

MAYOR

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