



## RESOURCE CONSENTS HEARINGS PANEL

**MINUTES:** of a meeting of the Resource Consents Hearings Panel which commenced at 9.04 a.m. in the Council Chamber, Centreway Road, Orewa on Friday, 12 March 2010.

**PRESENT:**

|       |                |
|-------|----------------|
| Chair | Les Simmons    |
| Crs   | Grahame Powell |
|       | Suzanne Weld   |

**IN ATTENDANCE:**

|                                    |                                  |
|------------------------------------|----------------------------------|
| Reporting Planner                  | Erik Oosthuizen                  |
| Team Leader                        | Denise Grandfield                |
| Engineer                           | Cameron Ure                      |
| Manager Urban Design & Development | Raewyn Catlow                    |
| Traffic Engineer                   | David Mitchell (from 10.50 a.m.) |
| Democracy Services Officer         | Raewyn Morrison                  |

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*Note: Cr Powell replaced Cr Turner on the Panel.*

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**219/03/10 APOLOGIES****AGENDA ITEM NO. 1**

There were no apologies.

**220/03/10 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991**

**AN APPLICATION FOR CONSENT TO CONSTRUCT AND ESTABLISH A STAGED MIXED USE DEVELOPMENT COMPRISING 5 RETAIL UNITS, A CAFÉ/RESTAURANT AND AN EXTENSION TO THE EXISTING PHYSIOTHERAPY CLINIC. SEVEN APARTMENTS WILL BE PROVIDED ON FIRST FLOOR LEVEL. ASSOCIATED EARTHWORKS WILL FURTHER BE REQUIRED IN THE FORMATION OF A NEW CAR PARK, ENTRANCE/EXIT WAYS AND SERVICING AREAS**

Address: 33, 35 &amp; 41 Matakana Valley Road, Matakana

**APPLICANTS: THE WALMSLEY SHEAT FAMILY TRUST LTD****FILE REF: L55332****WARD** Northern**AGENDA ITEM NO. 2**

The applicant seeks consent to establish and operate a mixed use development comprising 5 retail units, a café/restaurant and an extension to the existing physiotherapy clinic on the ground floor with 7 apartments above. The development will comprise two x two storey buildings linked by a covered walkway. The applicant has indicated that the buildings will also incorporate a covered verandah along the frontage facing Matakana Valley Road and that the building has a staggered design with varying setbacks from Matakana Valley Road.

The applicant, Ken Walmsley, and the applicant's representatives, Burnette O'Connor (O'Connor Planning Consultants), Grant Neill (Architect) and James Greenwood (Civil Engineer, Airey Consultants), present.

Submitters: Richard Wintle and Jenny Francis (on behalf of Matakana Community Group), Phillip Guy, Penny Shelbourne, and Lisa Capes (on behalf of Brick Bay Investment Trust), present.

9.04 a.m. The Chairperson opened the hearing and outlined the meeting procedure. The Chairperson indicated that the submission from the Matakana Community Group had been received late and outside the time frame when the Panel themselves could solely decide whether or not to accept the submission. The Chairperson requested that the applicant confer with the representatives from Matakana Community Group during the morning tea adjournment to ascertain whether the applicant would be prepared to accept the late submission.

The following items were tabled:

- The previous resource consent for the physiotherapy clinic.
- A copy of the Matakana Sustainable Development Plan.
- A memorandum from the Council's Manager of Urban Design and Development, Raewyn Catlow, which gave more detailed comments.

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- A proposed advice note from the Reporting Planner in regard to stormwater, to be added to the proposed set of conditions.

Ms O'Connor introduced proceedings for the applicant.

Grant Neill distributed and read written evidence and gave a powerpoint presentation.

Mr Neill said that the architectural and urban design principals of the development were discussed at length with Andrew Trevelyan (Council's previous Urban Design expert) before any building design began. In terms of the existing environment, it was noted that some buildings and uses in the immediate area were now of a more commercial nature; large scale commercial buildings were directly across the road from the site and the Matakana Hall at the west end of the site provided a large scale intuitive "full stop" to the "urban" village. Mr Neill outlined the architectural principals for the design commenting that it should encourage a "walkable" village by being of a clear pedestrian scale. Mr Neill also responded to the comments of Raewyn Catlow, the Council's Manager of Urban Design and Development. Mr Neill said that the proposal acknowledged the public realm of the street; it defined it and interacted with it in a way that created space appropriate for people walking, meeting, and socially interacting, and therefore facilitated community.

In response to a question from the Panel Mr Neill said that parking for the activity included parking in the road reserves; this would give more realistic parking for commercial users and there would be less parking than was originally intended at the back of the proposed buildings where there was residential activity.

Ms O'Connor said that when the application was first lodged all the parking had been on the site. In response to matters raised by Council staff the applicant had altered the parking arrangements in order to put some parking out the front. All the parking could be provided on site but this was not the case with the current design. Ms O'Connor said that the parking spaces out the front should be earmarked for users of the building with appropriate time limits and they could possibly be designated for clients of the commercial premises. Although designated parking wasn't heavily enforced it did act as a reminder to people. Ms O'Connor noted that there was nothing specific in regard to the Matakana Hall in the Matakana Sustainable Development Plan.

Mr Neill said that there would be the opportunity for some public street furniture. The area between the property boundary and the front of the carpark was 1m wide; people would be able to walk across the area uninterrupted; there would be a continuous pedestrian environment all the way through, it would be one fluid space and incorporate same paving. There was a distance of 2.8m from the front of the carpark to the front of the building. There could be a note in the conditions that any lessee or tenant could not cut off the public access space. With regard to the proposed angle parking narrowing the carriageway, Mr Neill said that it would, but the speed limit was 50kmp and the parking had been looked at by Council engineers and they concluded it was acceptable. Matakana was a 'market village' i.e. once people parked in the village they walked to various areas as opposed to driving from to place to place. He imagined the building would have individual titles with a body corporate with clear rules pertaining to the building tenants and any effects on the apartments. Mr Neill said that he believed the building fitted comfortably with key architectural characteristics.

Mr Walmsley confirmed that there would be sufficient safeguards with regard to the apartments; it was his intention to rent them but proposed conditions must allow for sale.

Burnette O'Connor distributed and read written evidence.

Ms O'Connor said that the current proposal represented a minor amendment to the original proposal which was submitted to the Council and subsequently notified. The amendments had been made following input from the Council's Urban Design and Development Manager and in order to address some of the concerns of the submitters. The amendments essentially set the car parking areas back from the side and rear boundaries to enable the establishment of a 2 metre wide planting strip between the carparks and the boundaries. Additional planting had also been proposed and the rubbish skips and

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loading bay had been relocated. There was also an increase in the number of carparks in the road reserve and these had been made as angle parking spaces to enable easy access.

Ms O'Connor said that the applicant and his representatives had met with Council officers about 2 years ago, before the proposal got off the ground. A fundamental issue raised at the time had been the Matakana Sustainable Development Plan (MSDP) which, although it was not statutory, was the most up to date document in regard to Matakana's future direction. Ms O'Connor noted that there were a number of additional activities which had already occurred in Matakana that were not in line with the MSDP. Ms O'Connor said that in her opinion the community hall offered a clear and solid boundary to the Village Heart zone.

Ms O'Connor's scope of evidence included addressing the proposal and site description; legislative considerations; submissions; assessment of the proposal including effects of the proposal on the environment, objectives and policies, other relevant matters and Part II Resource Management Act 1991; and, recommended conditions of consent. She addressed issues in regard to amenity, noise, vibration and privacy and traffic effects. She said that the key factor with regard to servicing was the wastewater. The proposed development had been staged to ensure that the wastewater flow for stage 1 did not exceed the existing flow. The applicant was amenable to a condition that restricted stage 2 of the development until such time as the Matakana Wastewater System was upgraded.

In conclusion, Ms O'Connor said that having considered the proposal in relation to the tests set out in Section 104B and 104D and the relevant matters for assessment set out in section 104 of the Resource Management Act, it was her opinion that consent should be granted to the proposal. The reasons for her opinion being:

- The potential adverse effects of the proposal on the environment were considered to be no more than minor.
- The proposal was consistent with the objectives and policies of the relevant District and Regional Planning documents.
- The proposal was not contrary to the intent of Vision Rodney or the SDP for Matakana.
- The proposal would not set a precedent.
- The proposal was consistent with Part II of the Act.

Ms O'Connor said that the matters raised in submissions had been addressed generally in the assessment of effects of the proposal on the environment and it was concluded that the matters raised in submissions were able to be adequately dealt with by way of consent conditions, such that any effects would not be more than minor.

10.30 a.m. - 10.50 a.m. Morning tea adjournment.

In response to questions from the Panel, Ms O'Connor said that:

- It was not normal practice for a proposal to use parking on the road and in most cases the Council sought that proposals provided their own parking, however there were numerous instances throughout the district where this was not the case. The best possible outcome would be to have some parking out the front, this was logical for parking associated with commercial premises, however if the application had to give up the parking out the front, in terms of useability the proposal would still function reasonably well.
- The MSDP had very little weight compared to the District Plan, but the MSDP was the most recent document and research that the Council had undertaken to determine how Matakana would develop in the future and did provide guidance. In terms of other relevant documents it was relevant. There seemed to be no technical reason where the zone boundaries were located in the MSDP. She said that the Medium Intensity Residential zone anticipated a range of activities. With regard to the range of activities able to be provided for as a Discretionary Activity, Ms O'Connor said that one needed to look at residential amenity in terms of the existing environment.

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- With regard to the recent changes to the area, these included the medical centre and the Matakana Patisserie across the road and in the Medium Intensity zone. She said that the community hall was owned by the community, it was not Council owned. The community hall provided clear demarcation and the servicing zone on the other side of the road to a degree reflected the activities that were there.

With regard as to why the proposal was for mixed use, Mr Walmsley said that the reason was that he felt some residential use needed to be kept in the heart of the village; the proposal would increase residential use. To make the proposal sustainable it needed a commercial section as well. He could have tried to go totally commercial but he thought the development would be better as mixed use which would keep people living within the village. He had been approached by numerous people wanting smaller business units at a lower cost. The timeframe for stage 2 was primarily linked to the sewage upgrade; the expectation was this would occur within 18 months to 2 years.

Ms O'Connor confirmed that the applicant was prepared for the Panel to accept the late submission from the Matakana Community Group.

### **Simmons/Powell**

**That pursuant to Section 37A of the Resource Management Act the late submission from Matakana Community Group received on 23 October 2009 be accepted.**

**Carried**

James Greenwood distributed and read written evidence.

Mr Greenwood described the construction of services and infrastructure to service the development along with the proposed staging of the development, in part to address issues of capacity within existing Council infrastructure. He also commented on a number of the conditions in the draft conditions of the planning report.

Mr Greenwood described the site and outlined the proposed development. He addressed matters in regard to stormwater discharge, flood risk, and wastewater disposal. He also addressed water supply, vehicle access, earthworks and utilities.

In summary, Mr Greenwood said that he considered that the proposed development was able to be undertaken as proposed. The site was able to be developed in a staged manner, allowing for some of the development to occur. Subject to water use reduction fixtures in the existing dwellings on Lots 2 and 3, and the apartments on Lot 1, wastewater flow generation could be expected to be within the current discharge rates and volumes, placing no increased loading on existing infrastructure. Furthermore, with the use of the Pressure Wastewater Collection (PWC) pump chamber to discharge flows from the Stage 1 Lot 1 site at off-peak times, reduction in loadings at the wastewater treatment and disposal facility would be made.

Mr Greenwood said that it was acknowledged that Stage 2 of the development would not be permitted until the uplifting of the moratorium against wastewater generating activities. Full development of the site would require stormwater treatment and stormwater attenuation in order to comply with Auckland Regional Council Proposed Auckland Regional Plan: Air, Land and Water.

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

- The drain on private property was at the back of the site. This drain was about 1.5m from the boundary.
- Currently the lots sloped from Matakana Valley Road with some overland flow to the drain. With the development that flow would be intercepted and piped to the stormwater treatment area. The

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proposal would remove the run off from crossing the boundary; however the open drain would continue to take run off from neighbouring properties and be drained and piped to Matakana Hall.

- With regard to ponding, permeable pavers were no longer required; the proposed surface would be fully sealed.
- The stage 1 carpark and access was proposed to be metalled because it would be a construction site for stage 2.
- The final development would have traffic entering the site at the eastern entrance and exiting at the western entrance.
- Planting was proposed within 2m from their boundary.

Submitters:

Phillip Guy distributed a written statement on behalf of himself and his partner Ella Evans-Guy. Mr Guy reiterated the points raised in his original submission.

Mr Guy said that he lived at 10 Torea Road, Matakana and that their property was approximately 20 metres from the southern corner of the applicant's site. His objections included an increase in traffic and the lack of infrastructure including parking, the opportunities for safe car turning, and pedestrian access. He also had concerns regarding the wastewater system. He considered his family would be affected by noise and disturbance associated with the loading zone and the potential for odour and health risks resulting from the development. From an aesthetic point of view Mr Guy said that at present the site was a green and a pleasant residential space in keeping with that part of the village. The proposal would transform the site into a sea of concrete, buildings and carparking. Mr Guy said that he had been involved in discussions regarding the Matakana Sustainable Development Plan and the village heart was literally a heart shaped centre.

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

- There had been a consensus of opinion at the community meetings that a village heart was necessary.
- Matakana was very busy at peak times, i.e. Saturdays (Farmers Market), and the Christmas and New Year period. There were issues with carparking and there were issues regarding traffic management that needed to be addressed.
- He did not like angle carparking; he believed that parallel parking was much better.
- With regard to where other residential development could occur in Matakana, there was an area at the end of Torea Road, and on the other side of the river and further up the road.
- The Old Dairy factory (Creamery) and cement works site could be developed for future business use and wouldn't require any change in zoning.
- He still had concerns about the proposal as an immediate neighbour in regard to noise from the carparking area.

Penny Shelbourne gave verbal evidence on behalf of herself and her partner Tim Smyth.

Ms Shelbourne confirmed that she was in opposition to the development having had a chance to look closely at what was proposed. Her objection was based on effects in regard to traffic and parking effects on the character of the streetscape, and noise attenuation particularly from the restaurant. She also objected to the proposal because she felt that if it was granted consent it would set a precedent for both sides of Matakana Valley Road to become commercial development up to the hall.

Ms Shelbourne said that she lived 2km up Matakana Valley Road on a lifestyle block and the village was within walking distance. She noted that school children caught the school bus at the hall which resulted in a lot of conflict with other traffic and these concerns existed without any additional commercial development. She did not think the Council had done a decent traffic assessment of Matakana Village. She noted that the side of the road where the garage, patisserie and hardware shops were located had a footpath and was safe compared to the other side of the road which had none. Ms Shelbourne said that she was a member of the Matakana Community Group and the main objective in the MSDP process had been to look at walk-ability in the village.

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Ms Shelbourne did not think the proposed building was in keeping; at present there was open space between the existing houses and if the proposal was granted consent a lot of that green open space would be taken away from the zone. She said that noise from the existing commercial area was an issue on occasion and was exacerbated by the valley setting. She noted that in the MSDP process a lot of people had been opposed to strip and ribbon development. The Matakana Patisserie had changed the use and nature of that side of road and she didn't believe it needed to occur on both sides of the road. There was a lot of residential land behind the subject property and a lot of houses behind the site would be affected by a dense commercial development. With regard to the gymnasium area of 100m<sup>2</sup>, Ms Shelbourne said that this was a large area and she wondered whether it would be used for activities other than physiotherapy. Ms Shelbourne said that she was opposed to the development at this point in time. She believed Council officers had not adequately considered the existing uses of the area and they had not considered the benefit of keeping the area residential.

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

- The front parking would jut into the open carriageway and would not blend in with the quite moderate sensitive planning of the core.
- A strip of commercial buildings would affect the feeling of open space that the present residential nature of the site provided with plenty of green space.
- She believed there should be a condition on lateness and the level of noise from the café/restaurant.

#### Email from Hannah Edwards

During the course of the hearing the Democracy Services Officer received an email from Hannah Edwards of Active Living Physiotherapy forwarded by the Council's Customer Services Department.

*In the email Ms Edwards conveyed that she was unable to attend the hearing but stated that her view had not changed and she was still in support of the development. Growth was inevitable and she believed this would be a building that would maintain the integrity of Matakana and would bring much needed work to a community that was feeling the economical downturn.*

Jenny Francis and Richard Wintle on behalf of the Matakana Community Group distributed and read written evidence.

Ms Francis said that a great deal of community time went into the consultation process for the Matakana Sustainable Development Plan. As a community group they objected in the strongest terms to the lack of consultation and public process on this proposal; she considered the group should have been consulted at the preliminary level.

Mr Wintle said that rather than a staged mixed development the Matakana Community Group would be more supportive of medium density residential development closer to the village heart, as allowed for in the Matakana Sustainable Development Plan. Mr Wintle said that by residential development he didn't mean small first floor flats above shops, but rather, carefully designed townhouses or something similar that fitted in with and enhanced the character of the village. On the basis of their concerns about process and effects, they objected to the proposal and requested that the application for consent be declined. Mr Wintle stressed that the Matakana Community Group was not anti-development but it considered that any proposal should comply with the plan.

In response to questions from the Panel, Ms Francis said that the Matakana Community Group had received information about resource consents for the patisserie, Matakana Motors, the hardware store and the medical centre. Mr Wintle said that a change to the boundary of the business heart zone should go through public process.

1.03 p.m. - 2.00 p.m. Luncheon adjournment.

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Lisa Capes on behalf of Brick Bay Investment Trust distributed and read written evidence.

Ms Capes said that the proposal focused on the building itself rather than in the context of the other buildings around it. She also said that there was uncertainty in regard to when the variation to the District Plan for Matakana would be notified, and the wastewater issue being resolved. In her view the applicant's request for a 10 year period in which to implement the consent appeared to be premature.

Ms Capes said that her evidence addressed the extent to which the proposed application would conflict with the established planning framework for the village and had the potential to adversely affect the amenity and structure of the village should it be granted. Ms Capes addressed the key changes in the village subsequent to the structure plan adoption. Ms Capes discussed the concerns with the proposal which included character and visual effects, traffic effects and the extended consent period. Ms Capes considered that the buildings were structures with commercial character and as such would generate similar effects. She said that it was possible that the erection of the structures would have a significant impact on the character and visual streetscape of Matakana as the closing in of the western side of the road by what would be perceived as a long 9m high structure would create the effect of a "strip mall" scenario instead of the intended village heart blending to a more open and spacious area to the north.

Ms Capes noted that the traffic environment for Matakana was currently subject to an holistic review as part of developing the proposed variation to the District Plan to implement the MSDP 2006. Areas of concern related to the site's potential to increase traffic generation and its proximity to a location which was the subject of some traffic confusion around 3.00 - 4.00 p.m. during the week when school buses dropped school children at the hall.

Ms Capes said that the planning framework of the Proposed District Plan 2000 set out a Mixed Business zone to accommodate the existing area of commerce/non-residential activity and identified extensions to it for future commercial needs. The MSDP reinforced the existing commercial and industrial areas and provided for further areas for the Village Heart to extend. She discussed the considerations of the zonings when the MSDP was formulated. Ms Capes said that the proposal could not be considered to be consistent with the policy direction of the Rodney District Council as evidenced by its public policy instruments and that it was not consistent with the MSDP.

Ms Capes addressed the proposed conditions of consent. She believed that if the proposal was granted consent a separate condition of consent would be required that ought to impose restricted use of the gymnasium to clients of the physiotherapy practice who were under active clinical supervision at the time and who were using the gym for remedial purposes as directed by the physiotherapists. She also sought clarification of the noise limits for the commercial zone in an Advice Note.

Finally, Ms Capes said that the matters raised in the original submission by the Brick Bay Investment Trust were still of concern and not materially addressed by the changes made to the development prior to the hearing.

In response to questions, Ms Capes said that:

- With regard to her concerns about the gym, it was not so much the activity itself, although it may have adverse effects on the residential environment, her primary concern was the traffic effects.
- She considered that there needed to be a full traffic review on an holistic basis for the whole village.
- She was not aware of anything in the Matakana Sustainable Development Plan that would support the development on the site.
- In the District Plan the activity table did allow for some Discretionary activities in the Residential zone but a restaurant should not be within 50m of the Residential zone; she didn't think the objectives and policies of the Residential zone supported the proposal although she was aware that mixed use development had occurred in other places.
- The effects from the existing physiotherapy clinic were different from this proposal. She considered the effects of this proposal would be in relation to noise, bulk and location controls, vehicle movements, open space perception, and building bulk.

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- She believed the existing physiotherapy to be a good development. Her concerns regarding the proposal's provision for a gym related to its proximity to streetscape; gymnasiums were not usually located hard up against a front boundary.

Council Officers:

Cameron Ure addressed the Panel in regard to engineering matters.

Mr Ure said that the applicant had queried the financial contributions and he had ascertained that there would be some credits and these had already been given in the calculation provided. With regard to the right of way, the 3 sites were held together because of building consent; he accepted that applied for stage 2 but was not sure it applied for stage 1 as he wondered whether at the building consent on stage 1 the building officers would look at the other titles; there might need to be further discussion in this respect. With regard to proposed amendments to conditions, Mr Ure considered that proposed condition 2.1 (easements required) should stay. He also noted that the stormwater drain was not part of the public system. If the wastewater system was retrofitted and monitored and there was not a reduction he didn't think anything could be done about that; in practice he thought it would work and reduce the flow sufficiently. It would be possible to put a meter on but he didn't think this was necessary considering the practicalities of the situation. Mr Ure sought clarification as to the road sealing and said that rather than changing the condition the scheme plan should be the same as the engineering drawing.

With regard to having metal rather than seal at stage 1, Mr Ure said that if stage 2 was not implemented the site could be left with metal; he would rather see it sealed. He considered that the amendment proposed by Mr Greenwood to conditions 2.4 (engineering plans), 2.5 (pre-construction meeting) and 2.6 (as built record plans) should stay because of the vehicle crossing. With regard to proposed condition 2.17 (water reducing devices) Mr Ure said that it was fine as it was but he had no difficulty in accepting the additions suggested by Mr Greenwood. He said that he accepted the applicant's amendments for proposed condition 2.18 (wastewater connections) and 2.22 (low pressure wastewater system). With regard to proposed condition 3.6 (insurance and warranties for engineering works), Mr Ure said that he would prefer to keep the condition as it was. He agreed with Mr Greenwood's comments in regard to the stormwater pipeline.

David Mitchell addressed the Panel in regard to traffic matters.

Mr Mitchell said that he believed the number of parking spaces behind the activity would for the most part provide for practical parking activities. With regard to angle parking on the street frontage, one of the main things it did was create more side friction and controlled people's speeds and gave a clear definition between the rural and urban areas. With regard to notifying the variation to the District Plan for Matakana, Mr Mitchell said that he was pulling together a number of reports and consents, including parking studies, walking and cycling routes etc, to establish a short to medium long term strategy. Mr Mitchell said that he didn't think the timing of this application necessarily affected the outcomes of the study. He noted that most of the recent consents granted were residential ones and had been reasonably straightforward. These included the consent for the Wednesday night market; there were some on-street impacts from that. Mr Mitchell did not think that this proposal was going to make traffic issues any worse at peak times and he noted the provision of the reasonably large parking area behind the building to deal with the parking issues. He said that there should be a footpath of 2.5m – 3m outside the building with some controls in regard to the boundary. He noted that a car could overhang a footpath by 1m and he considered there should be condition imposed to achieve suitable footpath width.

Erik Oosthuizen, the Reporting Planner, addressed the Panel.

Mr Oosthuizen said that he stood by his recommendation to grant consent. He said that there could be a condition in regard to the easement over the front path next to the road in favour of general public and pedestrian use. He understood the gym would be for the use of physiotherapy patients and he suggested there could be a condition as such as there was potential for there to be an impact on the parking requirements.

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With regard to Ms O'Connor's amendments to proposed conditions, Mr Oosthuizen said:

- Rather than amend proposed condition 1.1 there could be reference to a new scheme plan in accordance with engineering drawings.
- He had no problem with amending proposed condition 1.3 (monitoring charges) as per Ms O'Connor's suggestion, but the applicant must pay for any monitoring done by the relevant Council division.
- With regard to the landscaping (proposed condition 1.5), he was in agreement with an amendment to sub section (i) to include the relationship between the pedestrian walkway and alfresco dining areas. He was happy with the applicant's amendment to proposed condition 1.6 (exposure of archaeological features).
- He agreed that proposed condition 1.10 (noise monitoring) could be deleted as there was already a condition for noise levels.
- He agreed with the amendment to proposed condition 1.11 (design of building) as this would be dealt with at building plan approval.
- With regard to proposed condition 1.12 (fencing) he agreed the first sentence could be omitted but he suggested that there be provision for an acoustic fence to protect the neighbours.

With regard to amplified music from the restaurant, Mr Oosthuizen noted that the restaurant was well contained within the middle of the building. Proposed condition 1.8 related to noise control and there was a standard for the Medium Intensity Residential zone in the District Plan and the applicant's suggestion should be fine. There was an option to be more stringent but the building was set away from neighbouring sites and focused on to the road where there was vehicle movement, and there were light industrial activities across the road. Mr Oosthuizen noted residential people would be living above the restaurant and as part of the building consent process there would need to be some conditions in regard to the floor and the roof.

Raewyn Catlow, Council's Manager of Urban Design and Development responded to questions from the Panel.

Ms Catlow said that she had assessed the proposal in terms of it being a commercial development. She had taken into account the residential area to the rear of the site and had requested landscaping and a 1.8m high acoustic fence across the rear of the site to mitigate effects on those residences. Ms Catlow said that if the hall site had been residential she would have looked more closely at the interface in regard to privacy, shadowing and visual dominance.

Ms O'Connor presented the right of reply. The following was noted:

Ms O'Connor tabled an A3 aerial map of the area.

Ms O'Connor confirmed that the Matakana Patisserie was the last site to have retail service zoning in the Matakana Sustainable Development Plan. She said that when looking at the servicing zone in the MSDP the comments were quite generic. Ms O'Connor referred the Panel to pages 35 to 40 in the MSDP as pages that were important to be taken into account.

Ms O'Connor said that if the 3 sites were amalgamated they would meet the development controls except for the front yards. With regard to the scale and type of building, she said that it was not fanciful that the sites could be amalgamated and mixed residential; she didn't think the sites would always be single residential houses on 1200m<sup>2</sup> sites. With regard to the request for a 10 year time frame, Ms O'Connor said that the Matakana wastewater implementation seemed to be a moving target; she wanted to make sure the applicant could implement consent without having to come back for further consent. Ms O'Connor said that perhaps the condition could be reworded to reflect a 5 year time frame from the availability of wastewater.

Ms O'Connor said that the application included a gymnasium for the physiotherapy clinic as the existing physiotherapy owner ran Pilates classes; this condition could be tightened up to reflect the transfer of the Pilates classes from the Matakana Hall so as to not add anything additional to what was occurring at the

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present time. Ms O'Connor reiterated that the gymnasium was only in relation to the physiotherapy clinic and Pilates classes; it would not be a "full on" public gym. The reason for the large floor area was that the type of equipment used by the physiotherapy business was quite bulky and large.

Ms O'Connor said that she concurred with Mr Mitchell's comments in regard to angle parking. If the angle parking was rearranged to parallel parking there would be 6 carparks instead of 14. She noted that parallel parking seemed to disrupt traffic flow. With regard to submitter comments Ms O'Connor said that if what was shown on the MSDP was shown on the proposed variation the village heart would not remain as existing residential environment. Referring to the proposed condition for wastewater, Ms O'Connor said that it would be acceptable to be amended to include that devices be fitted to make sure the existing flow rates were not exceeded; it gave a bench mark to monitor against. If the Panel were minded there could be a condition to clarify exactly what an acoustic fence was. Ms O'Connor said that it remained her professional opinion that consent could be granted incorporating the changes discussed in relation to the conditions.

In response to questions from the Panel, Ms O'Connor said that an easement securing land in front of the building was acceptable as it was intended for public use and areas for al fresco dining could be identified on the landscaping plan.

In response to a question from the Panel, Ms Catlow said the reason for an acoustic fence had been the potential for vehicles and noise associated with the restaurant to be above the level that could be expected in a residential zone and she wanted to protect the amenity of residents.

Mr Neill said that the applicant envisaged a close boarded fence right down to the ground, with battens on the joins, as well as the landscaping. With regard to the car park sizes, there was enough space as per the District Plan requirements and he didn't think there needed to be wheel stops, he would rather see the whole kerb pulled back.

4.00 p.m. The Chairperson closed the hearing.

The Panel subsequently resolved:

**Powell/Weld**

### **THE DECISION**

**That, pursuant to Sections 104, 104B and 104D of the Resource Management Act 1991 an application for consent to construct and establish a staged mixed use development comprising 5 retail units, a café/restaurant and an extension to the existing physiotherapy clinic, and with seven apartments to be provided on first floor level and associated earthworks for the formation of a new car park, entrance/exit ways and servicing areas, is refused consent for the following reasons.**

### **PREAMBLE:**

#### **Procedural Matters**

The submission from the Matakana Community Group had been received late and was outside the time frame provided in the Act where the Panel could solely decide whether or not the submission could be accepted. It was noted that it was unclear from the submission if it was in support or opposed the proposal, nor was it clear what decision was being sought. It was requested by the Chairman that the applicant and the submitter confer and the applicant advise the Panel if they would be prepared to accept the late submission. Following the morning adjournment the applicant advised that there was no objection to the late submission being accepted. The Panel resolved to accept the late submission pursuant to Section 37A of the Act based upon the agreement of the applicant, because the applicant would be the only party who would be directly affected by this decision.

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**REASONS FOR THE DECISION:**

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

- (a) The scale and intensity of development and the proposed activities on the site are significantly different from the residential outcomes contemplated by the residential zoning and in contrast with the existing residential environment.
- (b) The proximity of the development to Matakana Valley Road together with the large sealed areas for parking and access result in a development that cannot be considered to be of a domestic residential scale by virtue of containing some residential accommodation on the upper levels.
- (c) The proposed development will erode rather than maintain or enhance the residential outcomes anticipated for this locality.
- (d) Overall the effects on residential character, the visual effects and the traffic effects have been determined to be more than minor.
- (e) In terms of policy 8.4.5 this proposal is contrary to, rather than consistent with, the non-residential outcomes contemplated by the District Plan.
- (f) In terms of Objectives 8.3.1 and 8.3.2 this proposal will not maintain and enhance amenity values within these residential sites, this neighbourhood or this residential area. Instead the proposal will introduce activities that are predominantly of a commercial nature, with a site appearance that visually will appear as non-residential, with large areas of car parking and access and amenity values that contrast with those anticipated in this residential environment. While facing the Mixed Business zoned land opposite, the proposal will not sit comfortably with the residential land to the rear.
- (g) Overall the proposal has been determined to be contrary to the above most relevant objectives and policies in relation to non-residential activities and the expected residential amenity values for this residential environment.
- (h) The expansion of business activities, which would include five retail units and a cafe in the manner proposed, would seriously challenge the strategic direction of the MSDP. It would result in the "Village Heart" extending well beyond the limited extent clearly identified and accepted by the Council and the community. The scale and intensity of the proposal is also inconsistent with the outcomes signalled for the "Village Residential" zone and would undermine the residential strategy signalled in the MSDP.
- (i) For the reasons set out above the Panel has determined the proposal fails to pass either of the gateway tests because the adverse effects on the environment will be more than minor and the proposal is contrary to the identified relevant objectives and policies. As neither gateway test can be passed, consent cannot be granted pursuant to section 104D of the Act.
- (j) The Panel has determined that the subject site does not have any significant features that distinguish it from other residentially zoned land near the business/residential interface at Matakana. A number of sites both at Matakana and near such a zone interface in other townships, or larger urban settlements, could claim the same or very similar characteristics. To grant consent in such circumstances would undermine the integrity and consistent administration of the District Plan.

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- (k) In having particular regard to the matters in section 7 of the Act, the proposal would not provide for the efficient use and development of this residential area, would not maintain and enhance amenity values, or the quality of the immediate environment.
- (l) In exercising a broad overall judgement in terms of Part 2 of the Act the proposal will not promote the sustainable management of resources as contemplated by section 5 of the Act, in the context of the current and future community expectations as set out in the District Plan and the MSDP.

**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 and 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. In summary the relevant provisions were those set out in the report of Mr Oosthuizen, the reporting planner.

**Auckland Regional Policy Statement**

**Proposed District Plan 2000, Operative in Part**

Objectives 8.3.1, 8.3.2, 8.3.3, 8.3.4, 8.3.5, and policies 8.4.1, 8.4.2, 8.4.3, 8.4.4, 8.4.5 and 8.4.7 and the relevant rules as they relate to the proposal. The relevant assessment criteria of 8.13.1 as set out in reporting planner's report.

Objective 18.3.1 and policies 18.4.1, 18.4.3 and 18.4.4.

Objective 21.3.4 and policies 21.4.6, 21.4.8 and 21.4.9.

Objective 22.4.1.

**Other Matters Considered Relevant and Reasonably Necessary to Determine the Application**

As envisaged under section 104(1) (c) of the Act the Panel has taken into account the non statutory Council documents Sustainable Development Plan for Matakana, June 2006 and 'Vision Rodney' (Revised December 2008).

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

The principal issues that were in contention were as follows:

1. Whether the proposed mixed use development is consistent with the relevant provisions of the Medium Intensity Residential Area.
2. Whether the proposal is consistent with the Matakana Village Sustainable Development Plan.
3. The nature and extent of any adverse effects on the environment of allowing the activity.

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4. Whether the proposal passes either of the gateway tests of section 104D of the Act.
5. Whether the grant of consent will have an effect on the integrity and consistent administration of the district plan.
6. Whether the grant of consent will promote the sustainable management of resources as contemplated by Part 2 of the Act.

**SUMMARY OF THE EVIDENCE HEARD:  
(Section 113(1) (ad))**

**The Applicant**

The applicant, Mr Ken Walmsley, was in attendance and was represented by Ms Burnette O'Connor. Written evidence was presented by Mr Grant Neill, Architect, Ms O'Connor, Planning and Resource Management Consultant, and Mr James Greenwood, Civil Engineer. Mr Walmsley answered questions from the Panel.

**Mr Neill** presented written evidence that described the development with reference to the plans and 3D images attached to his evidence. He outlined the architectural and urban design approach he had followed and the discussions he had with Council staff on these matters. He also responded to the comments from Ms Raewyn Catlow, the Council's Manager of Urban Design and Development.

It was Mr Neill's opinion that the proposed development had been designed to be consistent with appropriate architectural and urban design principals.

**Ms O'Connor** presented written evidence that described the proposal and the site, assessed the effects of the proposal on the environment, assessed the proposal in terms of the relevant objectives and policies of the District Plan and the Auckland Regional Policy Statement, set out and discussed other relevant matters that included Vision Rodney, the Sustainable Development Plan for Matakana and the reasons why she considered a precedent would not arise from the grant of consent. She commented on the recommended conditions of consent and outlined a number of revisions to those conditions.

Overall it was her opinion that the potential adverse effects of the proposal on the environment would be no more than minor, the proposal was consistent with the objectives and policies of the district and regional planning documents, that the proposal was not contrary to the intent of Vision Rodney or the SDP for Matakana, that the proposal would not set a precedent and that the grant of consent would be consistent with Part 2 of the Act. The specific evidence of particular relevance has been set out and discussed in the findings of fact portion of this decision.

In response to questions from the Panel Ms O'Connor stated that:

It was not normal practice for a proposal to use parking on the road and in most cases the Council sought that proposals provided their own parking, however there were numerous instances throughout the district where this was not the case. The best possible outcome would be to have some parking out the front, this was logical for parking associated with commercial premises, however if the application had to give up the parking out the front, in terms of usability the proposal would still function reasonably well.

The SDP had very little weight compared to the District Plan, but the SDP was the most recent document and research that the Council had undertaken to determine how Matakana would develop in the future and did provide guidance. In terms of other relevant documents it was relevant. There seemed to be no technical reason where the zone boundaries were located in the SDP. She said that the Medium Intensity Residential zone anticipated a range of activities. With regard to the range of activities able to be provided for as a Discretionary Activity, Ms O'Connor said that one needed to look at residential amenity in terms of the existing environment.

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With regard to the recent changes to the area, these included the medical centre and the Matakana Patisserie across the road and in the Medium Intensity zone. She said that the community hall was owned by the community, it was not Council owned. The community hall provided clear demarcation and the servicing zone on the other side of the road to a degree reflected the activities that were there.

With regard as to why the proposal was for mixed use, Mr Walmsley said that the reason was that he felt some residential use needed to be kept in the heart of the village; the proposal would increase residential use. To make the proposal sustainable it needed a commercial section as well. He could have tried to go totally commercial but he thought the development would be better as mixed use which would keep people living within the village. He had been approached by numerous people wanting smaller business units at a lower cost. The timeframe for stage 2 was primarily linked to the sewage upgrade; the expectation was this would occur within 18 months to 2 years.

**Mr Greenwood** also presented written evidence with respect to the engineering, construction and infrastructure services and staging of the proposed development. Subject to some recommended changes to the proposed conditions of consent he concluded that there were no engineering constraints that would prevent the grant of consent.

### **The Submitters**

**Mr Guy** presented written evidence and stated that he lived at 10 Torea Road and that his property was approximately 20 metres from the southern corner of the applicant's site. His objections included an increase in traffic and the lack of infrastructure including parking, the opportunities for safe car turning, and pedestrian access. He also had concerns regarding the wastewater system. He considered his family would be affected by noise and disturbance associated with the loading zone and the potential for odour and health risks resulting from the development. From an aesthetic point of view Mr Guy said that at present the site was a green and a pleasant residential space in keeping with that part of the village. The proposal would transform the site into a sea of concrete, buildings and carparking. Mr Guy said that he had been involved in discussions regarding the Matakana Sustainable Development Plan and the village heart was literally a heart shaped centre.

In response to questions Mr Guy said that:

- There had been a consensus of opinion at the meetings that a village heart was necessary.
- Matakana was very busy at peak times, i.e. Saturdays (Farmers Market), and the Christmas and New Year period. There were issues with carparking and there were issues regarding traffic management that needed to be addressed.
- He did not like angle carparking; he felt that parallel parking was much better.
- With regard to where other residential development could occur in Matakana, there was an area at the end of Torea Road, and on the other side of the river and further up the road.
- The Old Dairy factory (Creamery) and cement works site could be developed for future business use and wouldn't require any change in zoning.
- He still had concerns about the proposal as an immediate neighbour in regard to noise from the carparking area.

**Penny Shelbourne** gave oral evidence on behalf of herself and her partner Tim Smyth.

Ms Shelbourne confirmed that she was in opposition to the development having had a chance to look closely at what was proposed. Her objection was based on effects in regard to traffic and parking effects on the character of the streetscape, and noise attenuation particularly from the restaurant. She also objected to the proposal because she felt that if it was granted consent it would set a precedent for both sides of Matakana Valley Road to become commercial development up to the hall.

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Ms Shelbourne stated that she lived 2km up Matakana Valley Road on a lifestyle block and the village was within walking distance. She noted that school children caught the school bus at the hall which resulted in a lot of conflict with other traffic and these concerns existed without any additional commercial development. She did not think the Council had done a decent traffic assessment of Matakana Village. She noted that the side of the road with the garage, patisserie and hardware had a footpath and was safe compared to the other side of the road which had none. Ms Shelbourne said that she was a member of the Matakana Community Group and the main objective in the SDP process had been to look at walkability in the village.

Ms Shelbourne did not think the proposed building was in keeping; at present there was open space between the existing houses and if the proposal was granted consent a lot of that green open space would be taken away from the zone. She said that noise from the existing commercial area was an issue on occasion and was exacerbated by the valley setting. She noted that in the SDP process a lot of people had been opposed to strip and ribbon development. The Matakana Patisserie had changed the use and nature of that side of road and she didn't believe it needed to occur on both sides of the road. There was a lot of residential land behind the subject property and a lot of houses behind the site would be affected by a dense commercial development. With regard to the gymnasium area of 100m<sup>2</sup>, Ms Shelbourne said that this was a large area and she wondered whether it would be used for activities other than physiotherapy. Ms Shelbourne said that she was opposed to the development at this point in time. She believed Council officers had not adequately considered the existing uses of the area and they had not considered the benefit of keeping the area residential.

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

- The front parking would jut into the open carriageway and would not blend in with the quite moderate sensitive planning of the core.
- A strip of commercial buildings would affect the feeling of open space that the present residential nature of the site provided with plenty of green space.
- She believed there should be a condition on hours of operation and the level of noise from the café/restaurant.

### **Hannah Edwards**

During the course of the hearing the Democracy Services Officer received an email from Hannah Edwards of Active Living Physiotherapy forwarded by the Council's Customer Services Department.

*In the email Ms Edwards conveyed that she was unable to attend the hearing but stated that her view had not changed and she was still in support of the development. Growth was inevitable and she believed this would be a building that would maintain the integrity of Matakana and would bring much needed work to a community that was feeling the economical downturn.*

**Jenny Francis and Richard Wintle on behalf of the Matakana Community Group** distributed and read written evidence.

Ms Francis said that a great deal of community time went into the consultation process for the Matakana Sustainable Development Plan. As a community group they objected in the strongest terms to the lack of consultation in regard to this application and the public process; she considered the group should have been consulted at the preliminary level.

Mr Wintle said that rather than a staged mixed development the Matakana Community Group would be more supportive of medium density residential development closer to the village heart, as allowed for in the Matakana Sustainable Development Plan. Mr Wintle said that by residential development he didn't mean small first floor flats above shops, but rather, carefully designed townhouses or something similar that fitted in with and enhanced the character of the village. On the basis of their concerns about process and effects, they objected to the proposal and requested that the application for consent be declined. Mr

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Wintle stressed that the Matakana Community Group was not anti-development but it considered that any proposal should comply with the plan.

In response to questions from the Panel Ms Francis said that community group had received information about resource consents for the patisserie, Matakana Motors, the hardware store and the medical centre. Mr Wintle said that a change to the boundary of the business heart zone should go through public process.

**Lisa Capes on behalf of Brick Bay Investment** distributed and read written evidence.

Ms Capes said that the proposal focused on the building itself rather than in the context of the other buildings around it. She also said that there was uncertainty in regard to when the variation to the District Plan for Matakana would be notified, and the wastewater issue being resolved. In her view the applicant's request for a 10 year period in which to implement the consent appeared to be premature.

Ms Capes said that her evidence addressed the extent to which the proposed application would conflict with the established planning framework for the village and that the proposal had the potential to adversely affect the amenity and structure of the village should it be granted. Ms Capes addressed the key changes in the village subsequent to the structure plan adoption. Ms Capes discussed the concerns with the proposal which included character and visual effects, traffic effects and the extended consent period. Ms Capes considered that the buildings were structures with commercial character and as such would generate similar effects. She said that it was possible that the erection of the structures would have a significant impact on the character and visual streetscape of Matakana as the closing in of the western side of the road by what would be perceived as a long 9m high structure would create the effect of a "strip mall" scenario instead of the intended village heart blending to a more open and spacious area to the north.

Ms Capes noted that the traffic environment for Matakana was currently subject to an holistic review as part of developing the proposed variation to the District Plan to implement the Matakana Sustainable Development Plan (MSDP) 2006. Areas of concern related to the site's potential to increase traffic generation and its proximity to a location which was the subject of some traffic confusion around 3.00 – 4.00 p.m. during the week when school buses dropped school children at the hall.

Ms Capes said that the planning framework of the Proposed District Plan 2000 set out a Mixed Business zone to accommodate the existing area of commerce/non-residential activity and identified extensions to it for future commercial needs. The MSDP reinforced the existing commercial and industrial areas and provided for further areas for the Village Heart to extend. She discussed the considerations of the zonings when the MSDP was formulated. Ms Capes said that the proposal could not be considered to be consistent with the policy direction of the Rodney District Council as evidenced by its public policy instruments and that it was not consistent with the MSDP.

Ms Capes addressed the proposed conditions of consent. She believed that if the proposal was granted consent a separate condition of consent would be required that ought to impose restricted use of the gymnasium to clients of the physiotherapy practice who were under active clinical supervision at the time and who were using the gym for remedial purposes as directed by the physiotherapists. She also sought clarification of the noise limits for the commercial zone in an Advice Note.

Finally, Ms Capes said that the matters raised in the original submission by the Brick Bay Trust were still of concern and not materially addressed by the changes made to the development prior to the hearing.

In response to questions, Ms Capes said that:

- With regard to her concerns about the gym, it was not so much the activity itself, although it may have adverse effects on the residential environment, her primary concern was the traffic effects.
- She considered that there needed to be a full traffic review on an holistic basis for the whole village.

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- She was not aware of anything in the Matakana Sustainable Development Plan that would support the development on the site.
- In the District Plan the activity table did allow for some Discretionary activities in the Residential zone but a restaurant should not be within 50m of the Residential zone; she didn't think the objectives and policies of the Residential zone supported the proposal although she was aware that mixed use development had occurred in other places.
- The effects from the existing physiotherapy clinic were different from this proposal. She considered the effects of this proposal would be in relation to noise, bulk and location controls, vehicle movements, open space perception, and building bulk.
- She believed the existing physiotherapy to be a good development. Her concerns regarding the proposal's provision for a gym related to its proximity to streetscape; gymnasiums were not usually located hard up against a front boundary.

### **Council Officers**

**Cameron Ure**, the Council's reporting Engineer, addressed the Panel in regard to engineering matters.

Mr Ure said that the applicant had queried the financial contributions and he had ascertained that there would be some credits and these had already been given in the calculation provided. With regard to the right of way, the 3 sites were held together because of building consent; he accepted that applied for stage 2 but was not sure it applied for stage 1 as he wondered whether at the building consent on stage 1 the building officers would look at the other titles; there might need to be further discussion in this respect. With regard to proposed amendments to conditions, Mr Ure considered that proposed condition 2.1 (easements required) should stay. He also noted that the stormwater drain was not part of the public system. If the wastewater system was retrofitted and monitored and there was not a reduction he didn't think anything could be done about that; in practice he thought it would work and reduce the flow sufficiently. It would be possible to put a meter on but he didn't think this was necessary considering the practicalities of the situation. Mr Ure sought clarification as to the road sealing and said that rather than changing the condition the scheme plan should be the same as the engineering drawing.

With regard to having metal rather than seal at stage 1, Mr Ure said that if stage 2 was not implemented the site could be left with metal; he would rather see it sealed. He considered that the amendment proposed by Mr Greenwood to conditions 2.4 (engineering plans), 2.5 (pre-construction meeting) and 2.6 (as built record plans) should stay because of the vehicle crossing. With regard to proposed condition 2.17 (water reducing devices), Mr Ure said that it was fine as it was but he had no difficulty in accepting the additions suggested by Mr Greenwood. He said that he accepted the applicant's amendments for proposed condition 2.18 (wastewater connections) and 2.22 (low pressure wastewater system). With regard to proposed condition 3.6 (insurance and warranties for engineering works) Mr Ure said that he would prefer to keep the condition as it was. He agreed with Mr Greenwood's comments in regard to the stormwater pipeline.

**David Mitchell**, the Council's reporting Traffic Engineer, addressed the Panel in regard to traffic matters.

Mr Mitchell said that he believed the number of parking spaces behind the activity would for the most part provide for practical parking activities. With regard to angle parking on the street frontage, one of the main things it did was create more side friction and controlled people's speeds and gave a clear definition between the rural and urban areas. With regard to notifying the variation to the District Plan for Matakana, Mr Mitchell said that he was pulling together a number of reports and consents, including parking studies, walking and cycling routes etc to establish a short to medium long term strategy. Mr Mitchell said that he didn't think the timing of this application necessarily affected the outcomes of the study. He noted that most of the recent consents granted were residential ones and had been reasonably straightforward. These included the consent for the Wednesday night market; there were some on-street impacts from that. Mr Mitchell did not think that this proposal was going to make traffic issues any worse at peak times and he noted the provision of the reasonably large parking area behind the building to deal with the parking issues. He said that there should be a footpath of 2.5m – 3m outside the building with some

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controls in regard to the boundary. He noted that a car could overhang a footpath by 1m and he considered there should be condition imposed to achieve suitable footpath width.

**Raewyn Catlow**, Council's Manager of Urban Design and Development, responded to questions from the Panel.

Ms Catlow said that she had assessed the proposal in terms of it being a commercial development. She had taken into account the residential area to the rear of the site and had requested landscaping and a 1.8m high acoustic fence across the rear of the site to mitigate effects on those residences. Ms Catlow said that if the hall site had been residential she would have looked more closely at the interface in regard to privacy, shadowing and visual dominance.

**Erik Oosthuizen**, the Reporting Planner, addressed the Panel.

Mr Oosthuizen said that he stood by his recommendation to grant consent. The reasons for his recommendation were set out in Section 11.0 of his report. He said that there could be a condition in regard to the easement over the front path next to the road in favour of general public and pedestrian use. He understood the gym would be for the use of physiotherapy patients and he suggested there could be a condition as such as there was potential for there to be an impact on the parking requirements.

With regard to Ms O'Connor's amendments to proposed conditions, Mr Oosthuizen said:

- Rather than amend proposed condition 1.1 there could be reference to a new scheme plan in accordance with engineering drawings.
- He had no problem with amending proposed condition 1.3 (monitoring charges) as per Ms O'Connor's suggestion, but the applicant must pay for any monitoring done by the relevant Council division.
- With regard to the landscaping (proposed condition 1.5), he was in agreement with an amendment to sub section (i) to include the relationship between the pedestrian walkway and al fresco dining areas. He was happy with the applicant's amendment to proposed condition 1.6 (exposure of archaeological features).
- He agreed that proposed condition 1.10 (noise monitoring) could be deleted as there was already a condition for noise levels.
- He agreed with the amendment to proposed condition 1.11 (design of building) as this would be dealt with at building plan approval.
- With regard to proposed condition 1.12 (fencing) he agreed the first sentence could be omitted but he suggested that there be provision for an acoustic fence to protect the neighbours.

With regard to amplified music from the restaurant, Mr Oosthuizen noted that the restaurant was well contained within the middle of the building. Proposed condition 1.8 related to noise control and there was a standard for the Medium Intensity Residential zone in the District Plan and the applicant's suggestion should be fine. There was an option to be more stringent but the building was set away from neighbouring sites and focused on the road where there was vehicle movement, and there were light industrial activities across the road. Mr Oosthuizen noted residential people would be living above the restaurant and as part of the building consent process there would need to be some conditions in regard to the floor and the roof.

## Reply

Ms O'Connor confirmed that the Matakana Patisserie was the last site to have retail service zoning in the Matakana Sustainable Development Plan. She said that when looking at the servicing zone in the MSDP the comments were quite generic. Ms O'Connor referred the Panel to pages 35 to 40 in the MSDP as pages that were important to be taken into account.

Ms O'Connor said that if the 3 sites were all amalgamated they would meet the development controls except for the front yards. With regard to the scale and type of building, she said that it was not fanciful that the sites could be amalgamated and mixed residential; she didn't think the sites would always be

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single residential houses on 1200m<sup>2</sup> sites. With regard to the request for a 10 year timeframe, Ms O'Connor said that the Matakana wastewater implementation seemed to be a moving target; she wanted to make sure the applicant could implement consent without having to come back for further consent. Ms O'Connor said that perhaps the condition could be reworded to reflect a 5 year timeframe from the availability of wastewater.

Ms O'Connor said that the application included a gymnasium for the physiotherapy clinic as the existing physiotherapy owner ran Pilates classes; this condition could be tightened up to reflect the transfer of the Pilates classes from the Matakana Hall so as to not add anything additional to what was occurring at the present time. Ms O'Connor reiterated that the gymnasium was only in relation to the physiotherapy clinic and Pilates classes; it would not be a "full on" public gym. The reason for the large floor area was that the type of equipment used by the physiotherapy business was quite bulky and large.

Ms O'Connor said that she concurred with the comments of Mr Mitchell (Council's Traffic Engineer) in regard to angle parking. If the angle parking was rearranged to parallel parking there would be 6 carparks instead of 14. She noted that parallel parking seemed to disrupt traffic flow. With regard to submitter comments, Ms O'Connor said that if what was shown on the MSDP was shown on the proposed variation the village heart would not remain as existing residential environment. Referring to the proposed condition for wastewater, Ms O'Connor said that this would be acceptable to be amended to include devices to be fitted to make sure the existing flow rates were not exceeded; it gave a bench mark to monitor against. If the Panel were of a mind there could be a condition to clarify exactly what an acoustic fence was. Ms O'Connor said that it remained her professional opinion that consent could be granted incorporating the changes discussed in relation to the conditions.

In response to questions from the Panel, Ms O'Connor said that an easement securing land in front of the building was acceptable as it was intended for public use and areas for al fresco dining could be identified on the landscaping plan.

In response to a question from the Panel, Ms Catlow said the reason for an acoustic fence had been the potential for vehicles and noise associated with the restaurant to be above the level that could be expected in a residential zone and she wanted to protect the amenity of residents.

Mr Neill said that the applicant envisaged a close boarded fence right down to the ground, with battens on the joins, as well as the landscaping. With regard to the car park sizes, there was enough space as per the District Plan requirements and he didn't think there needed to be wheel stops, he would rather see the whole kerb pulled back.

#### **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, the submissions, the evidence and submissions at the hearing, the report prepared by the reporting planner, all the relevant statutory and planning provisions and from a site visit. The Panel finds the following.

#### **Whether the proposed mixed use development is consistent with the relevant provisions of the Medium Intensity Residential Area.**

The proposed mixed use development requires consent primarily because the retail units proposed are not provided for under the Medium Intensity Residential zoning. The planning evidence from Ms O'Connor and Mr Oosthuizen was that the proposal is consistent with the relevant objectives and policies, particularly those relating to the residential provisions in Chapter 8 of the Rodney District Proposed Plan 2000. Ms Capes was of the opinion that the proposal could not be considered to be consistent.

The Panel has carefully considered this competing evidence, particularly in the context of the proposed retail and restaurant activities that are non-complying in the residential zoning of this land.

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Policy 8.4.5 specifically relates to non-residential activities. This policy states that non-residential activities *"should be located, designed and operated so that adverse effects that are incompatible with the environment of a residential area, such as interrupting the sense of community and cohesion within neighbourhoods, noise, traffic generation and visual impact, are avoided, mitigated or remedied. If this is not possible, then these activities should not be located in residential areas."*

The planning evidence in support of the proposal relied to a significant degree upon the surrounding activities, particularly those industrial and business activities within the Mixed Business zone opposite the subject site, in concluding that this proposal would be compatible with its surrounding environment. Policy 8.4.5 specifically is worded in terms of compatibility, or incompatibility, with the environment of a residential area. While the Mixed Business zone on the opposite side of Matakana Valley Road does impact upon the residential environment that exists on the south western side of Matakana Valley Road, the residential area itself extends a considerable distance to the north and west of the subject site. The subject site is effectively at the interface of the residential area and the mixed business land opposite, and a short distance from the mixed business land on the same side of the road that forms the centre of Matakana Village.

The mixed use development proposed for the subject site, while including a residential component, will be not be of a residential scale and intensity that is typical in the surrounding residential environment. In fact the proposed development will contrast with and be significantly different from the scale, design, sense of community and cohesion, and will result in significantly different noise, traffic and visual impact, from any existing development and any residential development that can be reasonably expected in this residential environment. Compliance with almost all of the development controls has not resulted in a development that has been located, designed and operated consistent with the environment of a residential area. In this regard the Panel has preferred the evidence of Ms Capes when she concluded that *"the buildings are structures with commercial character and generate similar effects."*

In terms of policy 8.4.5 this proposal is contrary to, rather than consistent with, the non-residential outcomes contemplated by the District Plan.

In terms of Objectives 8.3.1 and 8.3.2 this proposal will not maintain and enhance amenity values within these residential sites, this neighbourhood or this residential area. Instead the proposal will introduce activities that are predominantly of a commercial nature, with a site appearance that visually will appear as non-residential, with large areas of car parking and access and amenity values that contrast with those anticipated in this residential environment. While facing the Mixed Business zoned land opposite, the proposal will not sit comfortably with the residential land to the rear.

Overall the proposal has been determined to be contrary to the above most relevant objectives and policies in relation to non-residential activities and the expected residential amenity values for this residential environment.

#### **Whether the proposal is consistent with the Matakana Village Sustainable Development Plan.**

The Sustainable Development Plan 2006 for Matakana Village (SDP) is a non statutory document that sets out the Council's vision for Matakana Village. Following considerable public consultation over a two year period, including a public submission process, the Council in 2006 adopted the final version of the SDP. The SDP includes the Matakana Village Structure Plan which identifies new zonings in and around the Matakana Village. The purpose of the SDP was to set out the basis for a future plan change that would introduce the zoning changes necessary to implement the key outcomes of the SDP. At the time of the hearing on this resource consent application no plan change had been publicly notified, however we were advised notification was intended within the next few months.

A key issue in relation to the SDP is the weight that should be given to it. All three planning witnesses gave detailed evidence on the SDP itself and all three agreed that it was a document that we should consider in terms of section 104 (1)(c) of the Act. Ms O'Connor's opinion, in response to a question, was that the SDP *"should be given very little weight compared to the District Plan"* but that it *"was the most recent document and research that the Council had undertaken to determine how Matakana would develop in the future and it did provide guidance."*

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The Panel agrees with Ms O'Connor that the SDP is a document that we should not ignore. It has involved lengthy public consultation, considerable expense on behalf of the Council and the community, and it is the latest strategic planning document for Matakana. It is a document that all of the parties to this hearing have relied upon, to varying degrees, in support of their position on the proposed development.

The key difference between Ms O'Connor and Ms Capes in relation to the SDP relates to the extent to which the SDP supports the proposed mixed use development on this site. Ms O'Connor conceded that the application site remained residential under the zonings identified on page 31 of the SDP. She noted that the site fell outside the proposed "Village Heart Zone" contained within the SDP. This zone is intended to limit the extent of business zoning and keep the "Village Heart" small. It was Ms O'Connor's opinion at her paragraph 52 that *"the current extent of this area (Village Heart Zone) has been superseded by the high rate of growth in the area and the rapidly changing character of the Matakana Township."* In her paragraph 53 she stated *"It is considered that the proposal, which will effectively alter the extent of the "Village Heart Zone", will result in a better outcome in a local and regional planning context and avoids the imposition of un-defendable boundaries."*

Ms O'Connor was in effect saying that in her opinion the boundary in the SDP between residential and the "Village Heart" would be more appropriately shifted further to the north-west to include the application site.

Ms Capes on the other hand was of the opinion that the SDP *"reinforced the existing commercial and industrial areas of Matakana and provides for further areas into which the Village Heart could extend."* She concluded that the proposal cannot be considered to be consistent with the SDP.

In response to questions from the Panel, neither Ms Capes nor Ms O'Connor could identify any specific provisions or comments within the SDP that would support the proposed development on this particular site.

The Panel has carefully considered the SDP.

A key strategic direction in the SDP that is of particular relevance to this proposal is on page 35 where it is stated that it is proposed to, *"Keep the Village Heart small - limit business zone extent."*

On page 37, in relation to the Matakana Village Residential Zone which is signalled for the applicant's land, it is stated that it is proposed to; *"Focus on stimulating a residential area where quality "village" living is provided for and enabling good housing for a range of family sizes" and "Allow for home working and small scale creative (local focus) business within the Residential Zone."*

On page 39, in relation to the Matakana Servicing Zone which is signalled for the land on the opposite side of Matakana Valley Road, it is stated that it is proposed to; *"Recognise existing development and manage it so that it is compatible with residential uses" and "Build on existing development and consolidate" and "Define the location, nature and scale of a service zone to avoid conflicts with "Village Residential and Village Heart" activities."*

The overall direction of the zoning pattern proposed in the SDP is one of consolidation of business activity to the "Village Heart" and service activities to the north-eastern side of Matakana Valley Road. The Panel could not find any support for the extension of business activities beyond the "Village Heart". With respect to the "Village Residential" zone that has been applied to the application site, the Panel could not find any support for the type of mixed use development being proposed.

In summary the Panel has accepted the evidence of the submitters in relation to the SDP to the extent this specific proposal is inconsistent with and contrary to this document. The expansion of business activities, which would include five retail units and a cafe in the manner proposed, would seriously challenge the strategic direction of the SDP. It would result in the "Village Heart" extending well beyond the limited extent clearly identified and accepted by the Council and the community. The scale and intensity of the proposal is also inconsistent with the outcomes signalled for the "Village Residential" zone and would undermine the residential strategy signalled in the SDP.

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**The nature and extent of any adverse effects on the environment of allowing the activity.**

With respect to the actual and potential effects on the environment, the planning evidence of Ms Capes has been preferred. Although the proposed development has been designed to comply with the residential development controls, with the exception of the front yard control, the overall development will appear as one that is commercial rather than residential in character and visual appearance. The proximity of the development to Matakana Valley Road together with the large sealed areas for parking and access result in a development that cannot be considered to be of a domestic residential scale by virtue of containing some residential accommodation on the upper levels.

The scale and intensity of development and the activities on the site are significantly different from the residential outcomes contemplated by the residential zoning and in contrast with the existing residential environment. In addition the subject site has extensive residentially zoned land to the rear that is yet to be fully developed for residential purposes. The proposed car parking areas to the rear will detract from rather than enhance the future residential amenity values for the surrounding properties.

The overall shortfall in the provision of on site car parking spaces, with 14 spaces being provided on the road reserve, was identified as a matter of concern to submitters. While the expert traffic evidence supported this arrangement, the Panel noted the concession by Ms O'Connor that it was not normal practice to utilise off site parking in this manner. While such an approach may have some merit in commercial areas, in this case the lack of on site parking, together with the proposed parking on the street in front of the development reinforces the commercial rather than the residential nature of the proposal. The overall impact is one where the proposal has very little regard to the established and expected residential amenity values for the land on the western side of Matakana Valley Road.

Another key aspect of the evidence in support of the proposal was the nature of the mixed business zoning on the opposite side of Matakana Valley Road. In addition to this zoning it was claimed the existing character of the area includes a mix of uses, which included a number of recent changes such as the new medical centre and the Matakana Patisserie. These non-residential activities were identified in part to support the proposed development which would introduce further business activities within the residential zone. In response to questioning from the Panel the majority, if not all of the non-residential activities identified, appeared to be located within the Mixed Business zoned land on the opposite side of Matakana Valley Road.

The Panel has carefully noted the extent of the Mixed Business zone and the actual nature of development that has occurred on the opposite side of Matakana Valley Road. The current zoning of the western side of Matakana Valley Road in this locality is for residential purposes and the SDP signals residential zonings to be retained. The proposed development will erode rather than maintain or enhance the residential outcomes anticipated for this locality.

Overall the evidence of Ms Capes has been preferred on planning matters. Although she did not specifically quantify the extent of the adverse effects on the environment, the Panel has concluded that the effects on residential character, the visual effects and the traffic effects will be more than minor.

**Whether the proposal passes either of the gateway tests of section 104D of the Act.**

For the reasons set out above the Panel has determined the proposal fails to pass either of the gateway tests because the adverse effects on the environment will be more than minor and the proposal is contrary to the identified relevant objectives and policies. As neither gateway test can be passed, consent cannot be granted pursuant to section 104D of the Act.

For completeness the Panel has gone on to consider if the proposal could be favourably assessed in terms of section 104 of the Act. For similar reasons to those set out elsewhere in this decision, after having regard to both the positive and adverse actual and potential effects on the environment, having regard to the relevant provisions of the District Plan and the MSDP, it has been determined that the consent cannot be supported.

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**Whether the grant of consent will have an effect on the integrity and consistent administration of the district plan.**

The Panel agrees that in order to grant consent to a non-complying activity it is appropriate to determine if there are any features that distinguish this proposal from other sites in similar circumstances.

Ms O'Connor set out in paragraphs 54 to 58 of her evidence the circumstances that she considered distinguish the subject sites from other sites within the Medium Intensity Residential Zone generally.

The first set of circumstances identified were, *"the proximity of the site to the commercial centre of Matakana Village, the location of the subject site directly opposite various businesses and the existing business premises on the site."*

With respect to the existing business premises on the site, resource consent was granted in 2008 to operate a physiotherapy clinic on the property at 41 Matakana Valley Road. The clinic operates within the existing residential building on the site between 8am and 5pm. The reasons for the grant of this consent included;

- "3. *The inclusion of a physiotherapy clinic at the proposed location is considered to be compatible with the residential area as it is of a small, local scale, it will operate during reasonable hours (8am to 5pm), it will not create strong odours, pollutants or excessive noise and will provide local residents with a useful service without significantly compromising the area's residential character.*
  
11. *The proposed physiotherapy clinic is considered to be a small scale business with a local focus and as such is considered to fit with the proposed strategy for the "Matakana Village Residential Zone" within the Sustainable Development Plan for the Matakana Village."*

This existing business activity is one that is consistent with the residential zoning of this land and the existing surrounding environment. The Panel does not accept that the existing clinic is a distinguishing feature that would support the scale and intensity of the proposed development.

With respect to the proximity to the commercial centre of Matakana and the business activities on the opposite side of Matakana Valley Road there are number of properties in the immediate locality that can claim the same or similar proximity. In addition, the Panel notes that it is a common feature of most commercial or business zoned land within the District that residential zoning surrounds such areas.

The proximity of the subject site to non-residential land and non-residential activities has not proved to be a convincing distinction in relation to this proposal for the Panel.

As a further distinguishing factor Ms O'Connor noted that the subject site consisted of the only remaining sites between the "Matakana Village Heart Zone" identified in the SDP and the Matakana Hall. This statement is factually correct with respect to the land fronting the southern side of Matakana Valley Road. The Panel does not accept the significance of this factor that Ms O'Connor attributed, for the following reasons.

While the Matakana Hall is a long established community facility, it is sited on residentially zoned land.

It was Ms O'Connor's opinion that very little weight should be placed upon the SDP compared to the District Plan.

When giving even limited weight to the SDP, to the extent that it does represent the most recent document and research on Matakana's future, the SDP clearly contemplates the "Matakana Village Heart Zone" being limited in extent. No witness could identify any provisions within the SDP that would support an extension of commercial or business activities beyond that signalled in the Structure Plan contained on page 31 of the SDP.

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Overall the Panel has determined that the subject site does not have any significant features that distinguish it from other residentially zoned land near the business/residential interface at Matakana. A number of sites both at Matakana and near such a zone interface in other townships, or larger urban settlements, could claim the same or very similar characteristics. To grant consent in such circumstances would undermine the integrity and consistent administration of the District Plan.

**Whether the grant of consent will promote the sustainable management of resources as contemplated by Part 2 of the Act.**

In reaching a broad overall judgement with respect to Part 2 matters this proposal will not sustainably manage the residential land resources of Matakana in a manner that would be consistent with the community and environmental outcomes set out in the District Plan and the MSDP. The nature of this mixed use development may well sit comfortably within the neighbouring Mixed Use zone, however the adverse effects on the environment cannot be avoided, remedied or mitigated to the extent that this proposal will sustainably manage the residential environment that surrounds the subject site.

In having particular regard to the matters in section 7 of the Act, the proposal would not provide for the efficient use and development of this residential area, would not maintain and enhance amenity values, or the quality of the immediate environment.

**Carried**

The meeting closed at 4.00 p.m.

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 27TH DAY OF MAY 2010

MAYOR

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