

RESOURCE CONSENTS HEARINGS PANEL

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

PRESENT:

Chair	Harry Bhana
Crs	Ross Craig
	Michael Goudie

IN ATTENDANCE:

Reporting Planner	Jemma Hollis
Team Leader	Carl Jenkins
Development Engineer	Ross Green
Consultant Ecologist	Amy Bazeley
Democracy Services Officer	Raewyn Morrison

* * * * *

179/03/10 APOLOGIES**AGENDA ITEM NO.** 1

There were no apologies.

180/03/10 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 TO SUBDIVIDE THE SITE TO CREATE ONE ADDITIONAL LOT AT 406C SUNNYSIDE ROAD, COATESVILLE

Address: 406C Sunnyside Road, Coatesville 0792

APPLICANTS: VICKI ANN AND JEFFREY LYNTON JOWSEY

FILE REF SUB55613**WARD** Central**AGENDA ITEM NO.** 2

The applicant seeks consent to subdivide the existing site into 2 lots on the basis of protection of 5300m² of significant natural wetland and 510m of non-significant stream area which will be covenanted in perpetuity. The resulting lot sizes will be 16.93ha for Lot 2 and 2.43ha for Lot 1. Lot 1 will contain the existing dwelling and shed. The new building platform on Lot 2 is proposed on a slight knoll just south of the centre of the site. The building platform is clear of vegetation and is currently in grass. A new accessway will be formed over an existing farm track and connected to the eastern side of the right of way to service Lot 2. The right of way will be upgraded.

The applicants', Vicki Ann and Jeffrey Lynton Jowsey, and the applicants' representatives, Ms Karen Pegrume (Planner and Landscape Architect, Better Living Landscapes Ltd), Mr Rupert Mather (Surveyor, Lamb and Molloy), and Mr Peter Deane (Engineer, Deane Consultancy), present.

Submitters, Joshua and Jennifer Farmer had been in contact with Council staff to say that that they would not be attending the hearing but that they would appreciate the Panel taking their submission into consideration.

Observing: Charles Wedd, Council's Financial Accountant.

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

An A4 sheet of colour photos in regard to the wetland was tabled by Ms Bazeley.

Ms Pegrume introduced proceedings for the applicant. Ms Pegrume distributed and read written evidence and tabled two large drawings of the right of way.

Mr Pegrume said that Mr and Mrs Jowsey had lived on the property for over 10 years. Mr Jowsey was a veterinarian and Mrs Jowsey a school teacher and they were both actively involved in the local community.

Ms Pegrume said that the proposal involved the protection of a significant wetland in excess of 5000m² to be considered for one additional title. She said that a weed management plan had been provided with a full assessment of the wetland in accordance with the provisions of Appendix 7 Wetland Criteria of the Proposed District Plan.

5 March 2010

Ms Pegrume noted that the planner's report had identified a number of reasons that made the application non complying. She concurred with those reasons but noted that the reasons for non compliance were technical and she considered there to be some anomalies in the Plan (i.e. Chapter 23 and Chapter 7 had different status for the same role). In terms of plan weighting, Ms Pegrume said that all outstanding appeals had been settled on matters in regard to Chapter 7 and that the objectives and policies were now operative in the Proposed District Plan – Operative in Part.

Ms Pegrume described the site location and referred to matters in relation to the permitted baseline noting that it was permitted to undertake 1000m³ or earthworks in a General Rural zone. Under the heading Assessment of Environmental Effects under Section 93 and 94 of the RMA she described matters in relation to ecology, earthworks and land modification, tree and bush removal/protection, mitigation planting, and duration of covenants. She also referred to water quality and quantity, rural character, and rural amenity. Overall Ms Pegrume said that it was considered that the addition of one additional site would have effects on rural amenity that were no more than minor and was sufficiently mitigated by the protection of a significant wetland.

Ms Pegrume said that the wetland was functioning and representative rushland/reedland, with remnant manuka bog with a natural hydrology feeding the system on a year round basis. A large portion of it was in a state of healthy function requiring little restoration. Some small incursions of kikuyu grass and a number of other weeds were still evident but these could be controlled by way of a weed management plan as offered with the application.

With regard to financial contributions and contributions of work or services, this contribution was reflected in the conditions of consent. Referring to the summary of effects, Ms Pegrume said that she concluded that the effects of the development would be no more than minor because;

- There would be no adverse ecological effects.
- The visual and amenity values of the area would be maintained as the proposed new building site was positioned where visibility was restricted for the wider viewing audience.
- The rural character of the area would not be adversely affected as the level of the additional development would not compromise it and the proposed wetland protection would add to the existing rural character and was in keeping with the anticipated outcomes of the Plan.
- The additional development impacts on infrastructure would be managed by way of financial contributions.
- The proposal would not have cumulative effects on the environment and would not materially change the existing pattern of settlement.
- The protection of wetlands that meet Appendix 7C for additional titles was anticipated by the Plan.

Ms Pegrume said that the application was consistent with the objectives and policies as it would provide for the protection and enhancement of a significant area of wetland and riparian areas on the property that amounted to over 1 hectare of protection and enhancement. The proposal provided opportunities for linkages enabling positive outcomes that would extend beyond site boundaries. She noted that proposed Lot 2 utilised a grass paddock for the future building platform; no vegetation would be cleared. Ms Pegrume suggested that proposed condition 5(j) (upgrade existing private way) needed to be reworded to remove a level of confusion in regard to driveway width. She said that Mr Mather and Mr Deane would address this matter further.

In conclusion, Ms Pegrume said that subject to standard conditions for the right of way and wetland protection, the application was entirely consistent with the provisions of the District Plan.

Rupert Mather addressed the Panel and circulated new plans with regard to the proposed alterations to the right of way.

Mr Mather said that at the moment there were 7 lots gaining access from the right of way; the rules for rural areas allowed 6, so there was already one over. Mr Mather explained that the applicant would like to reduce the widening of some parts of the right of way carriageway to a width of 5.2m (rather than the required 5.5m required by the Standards) as there were some power poles in the way and some areas with steep batters; the applicant was trying to reduce the effects.

5 March 2010

Mr Mather explained the width of the carriageway formation proposed and referred to an aerial photograph which had marked on it right of way areas A – F. He said that the driveway would be widened over Areas A and B, to the intersection of B and C. This would meet the Engineering Standards which required a two lane carriageway where six lots or more were served. From that point on it was proposed to have a 3m wide concrete drive with passing bays over Area C to the access point to the new Lot 2 and from there on it would be left as a metal formation. There needed to be clarification in the proposed condition in regard to where the driveway reduced to 3m. In effect, Area A and B would be 5.5m or 5.2m (where necessary) and Area C and part of Area D would be 3m up to the crossing point of proposed Lot 2.

Peter Deane distributed and read written evidence.

Mr Deane referred to the widening of the driveway. He said that the existing 3m wide concrete accessway was not well completed on the edges; it had no shoulders and he considered it hazardous, however, the 3m accessway was still functional and worked without major concerns from its users. Mr Deane referred to a drawing attached to his evidence (titled page 1) which dealt with the driveway in sections. He said that section 1 would be widened to 5.5m, however in section 2 there were problems with achieving that width because of a power pole and steep banks in places on the western boundary. In section 2 it would be possible to achieve a 5.2m width by widening selectively; it would not be a dead straight line and there would be some kerbing. In section 3 there was some narrowing because of a culvert which would require a structural wall and also there was some widening on the inside coming into the curve. He noted that the existing concrete driveway was significantly elevated from the surrounding ground and in his opinion there was no need for side channels in the concrete as water runoff could be shed as per the existing situation.

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

- It was proposed that the widened edges would be metalled and topped with topsoil to the concrete edge. Vehicles driving over the edges should not be a problem as long as the topsoil used was well compacted and did not consist of too much clay; the intention was to mow this area.
- There was no specific provision for stormwater runoff because he didn't think there would be a significant impact; so long as the area was grassed the water would shed without forming any significant runnels.

In response to questions, Ms Pegrume said that:

- If the subdivision was granted consent the 16ha lot would still be one of the largest in the immediate vicinity and within the cluster of lots. There were however other large lots in the wider area.

Ms Pegrume addressed the photographs attached to her evidence noting that a house in the nominated building platform on proposed Lot 2 would not be visible to other houses in the vicinity.

Council Officers:

Ross Green:

Mr Green said that he believed proposed condition 5(j) read correctly but agreed that it could be confusing and it would be better to refer to rights of way A and B being upgraded to 5.2m – 5.5m, as per the plan from Lamb and Molloy. Mr Green said that he didn't see any problem in reducing the width to 5.2m and he noted that this had been the two lane width prior to the new Standards coming into force in 2009. Mr Green said that in any case the engineering plans for the driveway would be subject to Engineering Plan approval. Mr Green said that the area proposed to be 3 metres was acceptable, however if this section was greater than 100m there would need to be a passing bay.

5 March 2010

Jemma Hollis:

Ms Hollis addressed the meeting. She said that as detailed in the s93/94 Assessment the adverse effects would be no more than minor. She noted that the wetland met the significance criteria. The only issue that had resulted in the application being notified was the driveway itself. Ms Hollis said that providing there was sufficient upgrading of the driveway, which the applicant was agreeable to, the effects would be no more than minor. The upgrading works did not involve any harm to vegetation and the submissions received had mostly been concerned about upgrading the right of way and she believed those concerns had now been satisfactorily addressed. Ms Hollis said that she stood by the recommendation in her report to grant consent.

Amy Bazeley:

Ms Bazeley said that all her concerns had been addressed by the proposed conditions.

Ms Pegrume presented the right of reply:

By way of right of reply, Ms Pegrume said that on the 3m section of the driveway Mr and Mrs Jowsey would be putting in a passing bay on the corner just past the entrance to Lot 1; this would allay the concerns of Mr and Mrs Farmer as it would widen the corner.

10.22 a.m. The Chairperson adjourned the hearing for the purpose of a site visit.

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

The Panel resolved:

Goudie/Craig

THE DECISION

That pursuant to Sections 104, 104B, 104D and 108 of the Resource Management Act, 1991, the notified resource consent application by Vicki Ann and Jeffrey Lynton Jowsey to subdivide a site at 406C Sunnyside Road, Coatesville legally described as Lot 1 DP193625, to create one additional allotment is granted consent for the following reasons

REASONS FOR DECISION

1. The application does not result in adverse effects on the environment which are more than minor. In relation to rural character, amenity and productive potential of the rural land resource the effects of the subdivision are no more than minor. The Panel is satisfied that potential traffic effects, including potential effects on vehicle safety as a result of occupants of the additional dwelling using the mutually owned access lot, would be satisfactorily mitigated by the conditions of consent to be imposed.
2. As a consequence the Panel is satisfied that the application passes the gateway tests of section 104D and falls to be considered under the provisions of section 104.
3. The grant of consent to the application would enable the enhancement and protection of areas of significant native wetland area which will result in significant environmental benefit and provide appropriate environmental mitigation for the creation of the new site.
4. The grant of consent to the application is consistent with the objectives, policies and other provisions of the Transitional and Partly Operative District Plans which both provide for subdivision for residential development in the General Rural Zone where specific provision is made for the protection and/or enhancement of significant areas of good quality native vegetation and wetlands.

5 March 2010

5. The grant of consent to the application would be consistent with the Auckland Regional Policy Statement and Proposed Change 6 to that Statement, which while seeking to strictly control the development of Rural Residential subdivision in rural areas of the region allow for subdivision which is provided as an incentive to protect natural resources.
6. The Panel considers that there are sufficient unusual circumstances which are particular to the subject site which ensure that no precedent will arise from the grant of consent to this proposal.
7. In terms of our overall broad judgement we find that the grant of consent to the application would be consistent with the principles and purpose of the Resource Management Act 1991 as it would enable the sustainable management of the natural resources of this area enabling people to provide for their economic, social, cultural and general well-being while ensuring that adverse effects are suitably avoided, remedied or mitigated and without compromising foreseeable needs of future generations or degrading the life supporting characteristics of air, soil or water.

THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:

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

OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:

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

National Policy Statement Provisions.

None applicable

New Zealand Coastal Policy Statement Provisions.

Considered broadly relevant

Auckland Regional Policy Statement Provisions.

Policy 2.6.4.1 (ix)

Proposed Regional Policy Statements Provisions.

Policies 2.6.17.1; 2.6.17.3 & 2.6.17.4

Auckland Regional Plan: Coastal Provisions.

Not applicable

5 March 2010

Auckland Regional Plan: Air, Land and Water Provisions.

None applicable

Plan Provisions.**Plan Change Number 55, Rural Provisions**Objective 4.1; 4.5; 5.1; 5.3; 5.5; 5.13
Policies 5.2(ii); 5.4(iii) & (iv); 5.6; 5.14.**Plan Change Number 26, Residential Provisions**

None applicable.

Proposed Plan Provisions.**Proposed District Plan 2000**General Rural ZoneObjectives 7.3.1; 7.3.2; 7.3.3; 7.3.6; 7.3.7; 7.3.8; 7.3.10.
Policies 7.4.2; 7.4.3; 7.4.4; 7.4.5; 7.4.7; 7.4.8; 7.4.10; 7.4.11.Subdivision & ServicingObjectives 23.3.1; 23.3.2; 23.3.3
Policies 23.4.1 & 23.4.2**Other Documents.**

Vision Rodney - A non-statutory document produced by The Rodney District Council (described as "A strategy for the District's future").

PREAMBLE

This was an application for consent to subdivide an existing site into 2 lots on the basis of protection of 5300m² of significant natural wetland and 510m² of non-significant stream area which was to be covenanted in perpetuity. The resulting lot sizes would be 16.93ha for Lot 2 and 2.43ha for Lot 1. Lot 1 would contain the existing dwelling and shed. The new building platform on Lot 2 was proposed on a slight knoll just south of the centre of the site. The building platform was clear of vegetation and currently in grass. A new accessway was to be formed over an existing farm track and connected to the eastern side of the right of way to service Lot 2. The right of way was to be upgraded.

The land was zoned General Rural under both the Transitional District Plan (as amended by Plan Change 55) (TDP) and under the Partly Operative Rodney District Plan 2000 (PODP). Under the TDP the application required a consent as a discretionary activity because:

- the existing shed was located closer than 3 m to a rear boundary;
- the site on which the significant natural feature was to be retained (Lot 1) exceeded the 2 ha limit under Rule 11.1.7;
- the number of lots gaining access through the mutually owned access lot exceeded 5 sites. (In this case a total of eight lots gaining access off a right-of-way in some places no more than 3 m wide)

It required a non-complying activity consent under the PODP because:

- the existing shed was located closer than 6 m to a rear boundary;
- the fences proposed to protect the wetland are not set back the required minimum of 10 m and in some cases immediately join the protected wetland area;

5 March 2010

- the number of lots gaining access through the mutually owned access lot exceeded 5 sites.
(See comments above)

The applicant accepted recommended conditions of consent requiring the fencing and protection of the bush areas and implementation of weed and animal pest control prior to the issue of a s224 Certificate. Lot 2, the new residential site, was able to be adequately serviced using similar arrangements as those currently in place for the existing dwelling. The submitter in opposition, Mr Kelvin Kennett owned an adjoining property to the east of the entrance strip to the subject land and was particularly concerned about the potential loss of existing trees along the eastern edge of the driveway which the applicant proposed to widen. However the widening did not have an effect on those trees. Mr. Kennett also sought a formal reassurance that no further subdivisions would be permitted off this right-of-way.

Mr and Mrs Farmer are the owners of a property to the south of the subject site and gain access (via appropriate right-of-way easements) from the driveway which serves the subject site. They were particularly concerned about the impact on their vehicular access during the upgrading of the driveway and also with the impact on the rural character of the valley. They requested appropriate measures to be taken to ensure continuation of their access during the upgrading and consideration being given to protection of the rural quality of the valley.

Mr and Mrs Farmer advised Council staff they would not be attending the hearing but wished the Panel to take into account the submission they had made.

SITE VISIT

The Hearing Panel visited the site on 5 March 2010.

THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:

The principal issues that were in contention were as follows:

1. Whether covenanting and protection of the wetland and the enhancement planting of the existing bush area together provided a reasonable level of offset mitigation to justify the creation of another rural residential lot.
2. Whether the addition of a further residential dwelling within this rural area would result in a level of intensity of development that would be inconsistent with the visual character of the rural area and with the amenity values that presently exist.
3. Whether the grant of consent to the application would result in adverse effects on neighbouring properties as a result of additional vehicle movements on the mutually owned access lot.
4. Whether the proposed upgrading of the vehicle access way would have significant adverse effects on the existing planting adjacent to Mr Kennett's property at 408 Sunnyside Road.
5. Whether the proposed subdivision was consistent with the objectives and policies of both District Plans particularly (though not restricted to) those relating to the subdivision of land in exchange for protection of significant areas of native wetland and native bush and those relating to the use of mutually owned access lots.
6. Whether the Panel could impose any restriction on potential further subdivision which might result in a further increase in vehicles using the right-of-way or have further impacts on the amenity and rural character of the area.

5 March 2010

-
7. Whether one or other of the Section 104D RMA tests relating to non-complying activities would be met, those being whether the adverse effects of the activity on the environment would be minor or whether the application was for an activity that would not be contrary to the objectives and policies of either of the District Plans.
 8. Whether the proposal is consistent with the purpose and principles of the RMA, as set out under Part 2 of that Act.

SUMMARY OF THE EVIDENCE HEARD:**SUBMISSIONS AND EVIDENCE ON BEHALF OF THE APPLICANT****MS PEGRUME ON BEHALF OF THE APPLICANT:**

Ms Pegrume said that Mr and Mrs Jowsey had lived on the property for over 10 years. She said that the proposal involved the protection of a significant wetland in excess of 5000m² to be considered for one additional title. She said that a weed management plan had been provided with a full assessment of the wetland in accordance with the provisions of Appendix 7 Wetland criteria of the Proposed District Plan.

Ms Pegrume noted that the planner's report had identified a number of reasons that made the application non complying. She concurred with those reasons but noted that the reasons for non compliance were technical and she considered there to be some anomalies in the Plan (i.e. Chapter 23 and Chapter 7 had different status for the same role). In terms of plan weighting, Ms Pegrume said that all outstanding appeals had been settled on matters in regard to Chapter 7 and that the objectives and policies were now operative in the Proposed District Plan – Operative in Part.

Ms Pegrume described the site location and referred to matters in relation to the permitted baseline noting that it was permitted to undertake 1000m³ or earthworks in a General Rural zone. She described matters in relation to ecology, earthworks and land modification, tree and bush removal/protection, mitigation planting, and duration of covenants. She also referred to water quality and quantity, rural character, and rural amenity. Overall she said that it was considered that the addition of one additional site would have effects on rural amenity that would be no more than minor and would be sufficiently mitigated by the protection of a significant wetland.

Ms Pegrume said that the wetland was a functioning and representative rushland/reedland, with remnant manuka bog with a natural hydrology feeding the system on a year round basis. A large portion of it was in a state of healthy function requiring little restoration. Some small incursions of kikuyu grass and a number of other weeds were still evident but these could be controlled by way of a weed management plan as offered with the application.

With regard to financial contributions and contributions of work or services, this contribution was reflected in the conditions of consent. Referring to the summary of effects, Ms Pegrume said that she concluded that the effects of the development would be no more than minor because;

- There would be no adverse ecological effects.
- The visual and amenity values of the area would be maintained as the proposed new building site was positioned where visibility was restricted for the wider viewing audience.
- The rural character of the area would not be adversely affected as the level of the additional development would not compromise it and the proposed wetland protection would add to the existing rural character and was in keeping with the anticipated outcomes of the Plan.
- The additional development impacts on infrastructure would be managed by way of financial contributions.
- The proposal would not have cumulative effects on the environment and would not materially change the existing pattern of settlement.

5 March 2010

- The protection of wetlands that meet Appendix 7C for additional titles was anticipated by the Plan.

Ms Pegrume said that the application was consistent with the objectives and policies as it would provide for the protection and enhancement of a significant area of wetland and riparian areas within the property that amounted to over 1 ha of protection and enhancement. The proposal provided opportunities for linkages enabling positive outcomes that would extend beyond site boundaries. She noted that proposed Lot 2 utilised a grass paddock for the future building platform and that no vegetation would be cleared. Ms Pegrume suggested that proposed condition 5(j) (upgrade existing private way) needed to be reworded to remove a level of confusion in regard to driveway width. She said that Mr Mather and Mr Deane would address this matter further.

In conclusion, Ms Pegrume said that subject to standard conditions for the right of way and wetland protection, the application was entirely consistent with the provisions of the District Plan.

RUPERT MATHER – REGISTERED SURVEYOR FOR THE APPLICANT

Mr Mather said that at the moment there were 7 lots gaining access from the right of way; the rules for Rural areas allowed 6, so there was already one over. Mr Mather explained that the applicant would like to reduce the widening of some parts of the right of way carriageway to a width of 5.2m (rather than the required 5.5m required by the Standards) as there were some power poles in the way and some areas with steep batters. He said the applicant was trying to reduce any adverse effects resulting from the upgrading.

Mr Mather explained the width of the carriageway formation proposed and referred to an aerial photograph which had marked on it right of way areas A – F. He said that the driveway would be widened over Areas A and B, to the intersection of B and C. This would meet the Engineering Standards which required a two lane carriageway where six lots or more were served. From that point on it was proposed to have a 3m wide concrete drive with passing bays over Area C to the access point to the new Lot 2 and from there on it would be left as a metal formation. There needed to be clarification in the proposed condition in regard to where the driveway reduced to 3m. In effect, Area A and B would be 5.5m or 5.2m (where necessary) and Area C and part of D would be 3m up to the crossing point of proposed Lot 2.

PETER DEANE REGISTERED ENGINEER FOR THE APPLICANT

Mr Deane referred to the widening of the driveway. He said that the existing 3m wide concrete accessway was not well completed on the edges; it had no shoulders and he considered it hazardous, however, the 3m accessway was still functional and worked without major concerns from its users. Mr Deane referred to a drawing attached to his evidence (prepared by Lamb & Malloy, Reference 1930 Sheet 1 of 1) which dealt with the driveway in sections. He said that section 1 would be widened to 5.5m, however in section 2 there were problems with achieving that width because of a power pole and steep banks in places on the western boundary. In section 2 it would be possible to achieve a 5.2m width by widening selectively; it would not be a dead straight line and there would be some kerbing. In section 3 there was some narrowing because of a culvert which would require a structural wall and also there was some widening on the inside coming into the curve. He noted that the existing concrete driveway was significantly elevated from the surrounding ground and in his opinion there was no need for side channels in the concrete as water runoff could be shed as per the existing situation.

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

- It was proposed that the widened edges would be metalled and topped with topsoil to the concrete edge. Vehicles driving over the edges should not be a problem as long as the topsoil used was well compacted and did not consist of too much clay; the intention was to mow this area.
- There was no specific provision for stormwater runoff because he did not think there would be a significant impact; as long as the area was grassed the water would shed without forming any significant runnels.

5 March 2010

In response to questions, Ms Pegrume said that if the subdivision was granted consent the 16ha lot would still be one of the largest in the immediate vicinity and within the cluster of lots. There were however other large lots in the wider area.

Ms Pegrume addressed the photographs attached to her evidence noting that a house in the nominated building platform on proposed Lot 2 would not be visible to other houses in the vicinity.

THE EVIDENCE OF COUNCIL OFFICERS

SECTION 42A REPORT

The Section 42A report was prepared by Jemma Hollis a Council Planner and included her planning evaluation of the application together with a summary of comments from:

- Council Development Engineer, Ross Green;
- Council Consultant Traffic Engineer, David Mitchell;
- Council Ecological Consultant, Amy Bazeley.

Their detailed assessments of the relevant parts of the application were annexed to and formed part of the Section 42A report.

Ms Hollis' conclusion was that having considered the potential adverse effects on the environment and on the amenity values of adjoining properties she was satisfied that the potential adverse effects had been satisfactorily avoided, remedied or mitigated. She assessed the application against the objectives and policies of the Partly Operative District Plan and concluded that the grant of consent would be generally consistent with those objectives and policies. She accordingly considered that the application met the gateway tests of section 104D. She assessed the application against the wider criteria of section 104 and Part II of the Resource Management Act 1991 and was satisfied that the application met those criteria and that grant of consent would be consistent with the purpose and principles of the RMA. She recommended that consent be granted subject to conditions.

MR ROSS GREEN

Mr Green said that he believed proposed condition 5(j) read correctly but agreed that it could be confusing and it would be better to refer to rights of way A and B being upgraded to 5.2m – 5.5m, as per the plan from Lamb and Molloy. Mr Green said that he didn't see any problem in reducing the width to 5.2m and he noted that this had been the two lane width prior to the new Standards coming into force in 2009. Mr Green said that in any case the engineering plans for the driveway would be subject to Engineering Plan approval. Mr Green said that the area proposed to be 3 metres was acceptable, however if this section was greater than 100m there would need to be a passing bay.

THE MAIN FINDINGS ON THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:

BASIS

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

BENEFITS OF COVENANTING AND PROTECTION OF NATIVE VEGETATION

The Panel accepts the expert assessment of Ms Pegrume and Ms Bazeley that the quality and significance of the native wetland and bush which is to be covenanted, protected, and enhanced meets the threshold standards specified in the District Plans.

5 March 2010

EFFECTS OF A FURTHER RESIDENTIAL DWELLING ON THE VISUAL CHARACTER OF THE RURAL AREA AND ON AMENITY VALUES

We accept the evidence of both Ms Pegrume and Ms Hollis that the addition of a further residential dwelling in this area would not have any significant adverse effects on the rural character of the area because the additional house site is well screened from surrounding houses and the public road by existing vegetation and by topography. Furthermore we note that the size of the larger allotment created will be consistent with or larger than many of those in the surrounding area.

ADVERSE EFFECTS OF ADDITIONAL VEHICLE MOVEMENTS ON THE RIGHT OF WAY

We are satisfied that the additional vehicle movements generated by a further dwelling will have limited effects on the amount of traffic using the ROW, given the proposed upgrading and the agreement between Mr Deane and Mr Green that the upgrading works proposed will be effective and practicable.

ADVERSE EFFECTS ON MR KENNETT'S PROPERTY

The Panel is satisfied that the proposed upgrading will not affect the planting on the eastern side of the access way adjacent to Mr Kennett's house and that the effects on that property will be no more than minor.

FUTURE SUBDIVISION

The RMA provides a right to any person to make an application for a land use consent or a subdivision regardless of the provisions of the District Plan. The Council or this Panel are not able to restrict that right. On the other hand any application for a future subdivision would have to satisfy the Council or the Environment Court that the adverse effects on the environment and on the amenity values of affected people would not be significant, and that such effects were avoided or satisfactorily remedied or mitigated.

CONSISTENCY WITH OBJECTIVES AND POLICIES OF BOTH RELEVANT DISTRICT PLANS

As we have recorded above we find that the provision of an additional allotment in return for the covenanting and protection of significant native wetland and bush is entirely consistent with the objectives and policies of both District Plans. We are also satisfied that the proposed upgrading of the right of way will be consistent with the Council's objectives and policies regarding the provision of adequate servicing (including suitable roading and access) of new subdivisions.

GATEWAY TESTS OF SECTION 104D RMA

We agree with Ms Pegrume and Ms Hollis that the adverse effects on the environment that would arise if consent was granted to the application would be no more than minor and that subject to the conditions to be imposed the proposed activities would not be contrary to the objectives and policies of either the TDP or the PODP. As a consequence we consider that the gateway tests imposed by section 104D have been met and as a consequence the Panel is able to consider the application under the provisions of section 104.

CONCLUSION AS TO FINDINGS

We conclude that, subject to the conditions to be imposed, the proposed subdivision would enable the applicant and the occupants of the new site to provide for their health, safety, economic, social, cultural and general welfare while having no more than minor adverse effects on the environment. We find that the residents of this neighbourhood and of the wider district, as well as future generations, would benefit from the formal protection of an area of significant native wetland and the enhancement planting and protection of an area of native bush. We accordingly find that the sustainable management of natural and physical resources would be appropriately met by granting consent to the application.

5 March 2010

CONDITIONS**LAPSING OF CONSENT**

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

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

General Conditions

- 1) general) The development shall proceed in general accordance with the application submitted, and the plans drawn by Lamb and Molloy Ltd, dated 06/04/09, numbered 1930, revision B, and signed by Processing Planner Jemma Hollis, dated March 2010.

Note: (building consent) The granting of this resource consent does not preclude the consent holder from the need to obtain a building consent prior to construction commencing.

- 2) (notification of commencement) At least 7 days prior to the work commencing the resource consent holder shall notify the Council's RMA Compliance Administrator by telephone (0800 426 5169) the expected date of work commencing.
- 3) (resource consent and monitoring charges) The resource consent holder shall pay to the Council within one month of the issue of this consent or prior to the activity commencing (whichever is earlier) the cost, including specialist services, staff time and administration for the processing of his application together with initial charges for the following inspections:
 - 4) Environmental protection 2x site visit(s).
 - 5) Monitoring deposits will be invoiced by the Council together with the consent processing charges.
 - 6) Should further monitoring be required to ensure compliance, the Council will recover the actual and reasonable costs that are incurred for this monitoring as set out in the Council's Schedule of Fees and Charges.

To be completed before Council approval of the Survey Plan

- 7) (fencing wetland) A stock-proof fence as specified under one of clauses 6, 7 or 8 of the Second Schedule of the Fencing Act 1978 shall be constructed around the perimeter of the wetland and riparian covenanted area as depicted on the plan of subdivision drawn by Lamb and Molloy Ltd, dated 06/04/09, numbered 1930, revision B, and signed by Processing Planner Jemma Hollis, dated March 2010. No gates shall be installed in the fence.
- 8) (conditions to be shown on survey title plan) Before the Council will approve the survey plan pursuant to s.223 of the Act, the owner shall undertake to give effect to and show on the survey plan:

5 March 2010

- a) (identify Riparian area to be protected) The areas of existing wetland and riparian area to be protected on Lot 2 shall be defined on the survey plan as "area to be subject to land covenant".
- b) (wetland area) provide the Council with the calculated area of wetland to be protected, as defined by a survey of the fence line.
- c) (easement required) The Right of Way, Utilities and Services easements labelled 'A, B, C and D' are to be endorsed on the survey plan under a Schedule of Memorandum of Easements.

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

- 9) (conditions to be carried out by the consent holder) Before the Council will issue a certificate pursuant to s.224(c) of the Act, the consent holder shall satisfy the following conditions at his/her/its full cost:
 - a) (planting required) additional planting of *Baumea rubiginosa*, *Eleocharis pusilla* & *E. acuta*, and *Carex secta* and *C. virgata*, to be sourced from within the subject wetland, shall be undertaken to the satisfaction of Council's Consultant Wetland Ecologist at the top of the wetland in the area identified on the scheme plan drawn by Lamb and Molloy Ltd, dated 06/04/09, numbered 1930, revision B, and signed by Processing Planner Jemma Hollis, dated March 2010.
 - b) (weed and pest management plan) the weed and pest management plan submitted with the application, prepared by Better Living Landscape Limited, dated 12/05/09, shall be reviewed and approved by Council's Consultant Wetland Ecologist at the applicant's expense, with any recommendations made by AB Ecology incorporated into the weed and pest management plan. Control of weeds must be demonstrated and confirmed prior to the sign off of this condition. 'Control' may be taken to mean that weed populations have been reduced to a level whereby any ensuring landowner may remove re-infestations by using a back pack spray up to 4 times per year. The weed and pest management plan shall be implemented and control demonstrated prior to the issue of s224(c) certificate issue. Weed and Pests shall be controlled for a minimum maintenance period of 5 years.
 - c) (identify building sites) Two copies of a plan certified and dated by Deane Consultancy fixing the location and size of the identified building site on Lot 2 by offsets from surveyed boundary pegs are to be provided to the Consents Engineer.
 - d) (developer's representative) Prior to the commencement of engineering design, the Consent Holder shall nominate, in writing, its Developer's Representative in terms of Council's "Standards for Engineering Design and Construction" to be the first point of contact for all engineering matters. Any subsequent change to the nominated Developer's Representative shall be immediately notified in writing to the Consents Engineer.
 - e) (insurance and warranties for engineering works) Prior to the commencement of engineering design for the works required by these conditions, the Consent Holder and the Developer's Representative shall provide to the Council proof of Professional Indemnity Insurance and Warranties in full satisfaction of section 102 of the "Standards for Engineering Design and Construction".

5 March 2010

- f) (engineering plans) The engineering works required by this consent shall comply with the Council's "Standards for Engineering Design and Construction" as may be amended from time to time. Engineering Plans, as specified in the "Standards", shall be submitted to the Consents Engineer, and approval thereto received in writing, prior to the commencement of any works on the site.

Any variation or changes to the approved engineering plans shall be submitted for approval as an Amendment and approval received thereto prior to construction of the varied works.

- The term 'engineering works' includes, but is not limited to:
- Earthworks;
- The formation of roads, the laying of pipes and other ancillary equipment to be vested in the Council for water supply, drainage or sewage disposal;
- Street lights, landscaping or structures on land vested, or to be vested, in the Council;
- The installation of gas, electrical or telecommunication reticulation including ancillary equipment;
- Any other works required by conditions of this consent.

Note: Structures such as retaining walls, in-ground walls and bridges will require a separate Building Consent.

Note: The plans required under this condition are separate to, and do not form part of, any Building Consent that may be required on the subject site.

- h) (pre-construction meeting) The Developer's Representative shall give the Consents Field Supervisor named in the engineering plan approval at least 5 working days notice of the on-site pre-construction site meeting (refer section 103.15 of the "Standards for Engineering Design and Construction"). Construction work shall not commence on the site until such meeting has been held and all necessary documentation presented.

Note: Attention is drawn to the requirements of section 103.15.3 "Standards for Engineering Design and Construction" for the following documentation to be presented at the preconstruction meeting:

- Approved engineering plans and copy of approval letter;
 - Health and Safety Plan;
 - The signed Road Opening Notice;
 - The relevant Resource or Subdivision Consent (and all conditions attached thereto);
 - Copies of any Auckland Regional Council Consents necessary for the works.
- i) (construction of private way) The private way over parts of Lot 2 shall be constructed to a rural concrete standard to the Council's "Standards for Engineering Design and Construction".

5 March 2010

- j) (upgrade existing private way) Upgrade the existing private way, from Sunnyside Road through right of ways 'A' & 'B', to a 5.2 to 5.5 metre concrete carriageway width exclusive of channels. The widening of the existing concrete through this section shall be in general accordance with Drawing 1930 from Lamb & Malloy Ltd. Where it is necessary to join a new section of concrete to the existing then the detail of the jointing system shall be shown on the engineering plans for approval. Upgrade the remainder of the private way, from the point where the widening to 5.2 – 5.5 metres finishes, to the point where the driveway to the building site on Lot 2 leaves the private way to a 3 metre concrete standard with passing bays. All work and the location of the passing bays shall be to the requirements of the Council's "Standards for Engineering Design and Construction."
- k) (provide for electric power) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an electric supply has been made available to all saleable lots created and that all the network supplier's requirements for making such means of supply available have been met.
- l) (provide for telephone) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of telephone services has been made available to all saleable lots created and that all the network supplier's requirements for making such services available have been met.
- m) (balance of fees) Pay any outstanding balance due to the Council for scheme plan processing.

Advice note

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

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

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

Ongoing Conditions/Consent Notices

- 10) The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notices pursuant to s.221 of the Act.
 - a) (building restrictions) Any buildings erected on the building sites identified on the plan required by the condition relating to identifying building sites shall be subject to the requirements of the report prepared by Deane Consultancy Ltd, reference 9/118, dated 31 August 2009, and any subsequent reports. Copies of the said plan and report(s) will be held at the offices of the Council, Centreway Road, Orewa.

5 March 2010

- b) (wetland and riparian areas) The existing wetland and riparian areas to be protected on Lot 2 shall be protected in perpetuity to the satisfaction of the Team Leader Resource Consents.

The owners, or their successors in title for the time being, of the above lots:

- i. Shall preserve the natural landscape trees, vegetation and areas of wetland now thereon within that part of each lot identified as such on the survey plan; and
- ii. Shall not (without the prior written consent of the Council and then only in strict compliance with any conditions imposed by the Council) cut down, damage or destroy, or permit the cutting down, damaging or destruction of, any of such natural landscape trees, vegetation or areas of wetland;
- iii. Shall not do anything that would prejudice the health of any of such natural landscape trees, vegetation and areas of bush; and
- iv. Shall control all noxious plants and animals within the identified part of each lot; and
- v. Shall maintain a stock-proof fence as approved by the Council around the perimeter of the identified part of each lot.

The owners shall be deemed not to be in breach of this covenant if any of such trees, vegetation or bush die from fire or natural causes not attributable to any act or default by or on behalf of the owners and for which the owners are responsible.

Note: Failure to comply with this condition may result in enforcement action being taken by the Council under the Resource Management Act 1991 to ensure full compliance and the continuing protection of the bush.

The owners shall pay to the Council the fair and reasonable costs incurred by the Council in monitoring this condition at not less than two-yearly intervals, unless required otherwise by a legitimate complaint. The owners will be advised of the costs, assessed under the Council's Schedule of Fees and Charges, as they fall due.

- c) (weed and pest control) The landowners for the time being shall implement the Weed and Pest Control Plan approved under resource consent R55613.

Advice Notes

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

Carried

The meeting closed at 12.00 p.m.

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

MAYOR

* * * * *

