

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, 1 May 2009.

PRESENT:

Chair	John Childs
Crs	Michael Goudie
	Grahame Powell

IN ATTENDANCE:

Reporting Officer	Owen Taylor
Team Leader	Steve Seager
Ecologist	Rue Statham
Democracy Services Officer	Raewyn Morrison

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663/05/09 APOLOGIES**AGENDA ITEM NO. 1**

Michael Harris of Pioneer Trust advised by email that he would not be in attendance at the hearing.

R and L Whale faxed their apologies.

A faxed apology was also received during the course of the meeting from Sarah Harris.

664/05/09 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

A NON-COMPLYING APPLICATION FOR A 10-LOT SUBDIVISION CONSENT TO CREATE 6 RURAL RESIDENTIAL ALLOTMENTS RANGING BETWEEN 1.0HA AND 1.3HA, AND FOUR ALLOTMENTS WITH ALLOTMENT SIZES OF 3.0HA, 6.0HA, 30.2HA AND 28.8HA. THE CREATION OF THE 6 ADDITIONAL ALLOTMENTS IS SOUGHT THROUGH BOUNDARY ADJUSTMENTS AND SIGNIFICANT ENHANCEMENT PLANTING OF 18.5 HA

Address: 662 Ocean View Road, Te Arai

APPLICANT: H.A. (ARNIM) PIERAU

FILE REF R52102

WARD Northern

AGENDA ITEM NO. 2

9.00 a.m. The applicant seeks consent for a 10 lot subdivision. It is proposed that there will be six rural residential allotments with allotment sizes ranging between 1.0ha and 1.3ha and four allotments with allotment sizes of 3.0ha, 6.0ha, 30.2ha and 28.8ha. The creation of the 6 additional allotments is sought through boundary adjustments and significant enhancement planting of 18.5ha.

The applicant, Mr Arnim Pierau and the applicant's representatives; Mr Shane Hartley, Ms Anna Murdoch and Ms Sarah Weatherall (all of Terra Nova Planning), Mr Tony Hayman (Surveyor, Buckton Associates) and Dr Tim Martin (Ecologist), present.

Submitters: Margaret Fishlock and Jenny Granville, present. On behalf of the Auckland Regional Council: David Town and Simone Fraser, present.

Council staff observing: Denise Grandfield.

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

A letter from Beca Carter Hollings and Ferner on behalf of the New Zealand Fire Service was tabled. The letter stated that should the application be granted consent that there be access for fire appliances and provision and location of sufficient water supply. The letter also noted that should consent be granted the planner's recommended conditions would need to be amended to take into account the updated NZFS Fire Fighting Water Suppliers Code of Practice SNZ PAS 4509:2008.

A fax was received from R and L Whale stating that they were unable to attend the hearing because of ill health and work commitments. Mr and Mrs Whale wished it to be noted that they had read the planning officer's report and they remained of the opinion that the application should be declined.

It was noted that a submission had been lodged by Ian Murray, the Council's Parks and Coastal Manager. This submission had been received by the applicant before the submissions closed, but had not been received by the reporting planner.

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Childs/Powell**That the submission from Ian Murray of Council's Parks and Coastal Department be accepted.****Carried**

Mr Taylor tabled additional information in regard to amending point 5 of his report.

Mr Seager drew the Panel's attention to the incorrect Decision Notice reference in Mr Taylor's report; it should have been 2133, not 2103 (para 3.4).

Mr Statham tabled additional information from Neal Perrott of Wetland Solutions.

During the course of the hearing an urgent fax was received by the Democracy Services Officer. The fax was from Sarah Harris who apologised for not being able to attend the hearing because she had a sick child home from school. Her fax stated that she still wished to have the application declined.

Mr Hartley introduced proceedings for the applicant.

Mr Pierau distributed and read written evidence. He also tabled results of cyanobacteria monitoring undertaken by the Auckland Regional Council.

Mr Pierau outlined the background of his family's ownership and operation of the property noting that a country resort/holiday accommodation activity had been operating since 1996. He said that the purpose of the application was to generate funds to re-establish 17.5ha of wetland on the property, adjacent to Slipper and Spectacle Lakes. The lakes and their margins were in need of a long-term management strategy to protect them from degradation due mainly to human modification of the area by clearing, draining and fertilisation and intensive animal farming. Mr Pierau said that up to now there had been few initiatives taken by local landowners to support the recovery or protection of the lakes and surrounds by any active means. Unfortunately the lakes and their water quality had degraded further over the last few years. Mr Pierau said that the 17.5ha wetland area to be re-established would provide a great opportunity for local involvement. The whole wetland area would be protected by a DoC covenant and would protect and enhance the view into the Tomarata Lake Valley, and protect the restored natural wetland habitat as well as aid the recovery of the water quality of the presently degraded lakes. Overall, he considered that the proposal had the potential to eventually create a nature park, comprising all the margins around the three lakes. He hoped that consent would be granted to the application.

In response to questions from the Panel, Mr Pierau said that close to 40% of the lake margins would be protected. He described the current activities on the site; on the western side of the site there was his personal dwelling and chalets/holiday accommodation. There was a consent for another 7 chalets. Apart from that there were only farm dwellings such as sheds and a little work bach down by the forestry headquarters which was not occupied at present but was habitable. He had not done much fertilising on the farm for some years. He was not going to block the outlet of Spectacle Lake into Slipper Lake; the drain would be taken out of the protected zone so it could be maintained. Eventually he hoped to fill all drains on his place so they wouldn't affect the flow of the lake. With regard to boats on the lake, Mr Pierau said that at the moment he used the lake for wakeboarding but he noted that the lakes were exposed to the wind. One day he hoped that there might be a no boat policy. Referring to the affects on avifauna with activity on the lake, Mr Pierau said that birds moved on to areas where boats didn't go. He noted that farming practices and fertilisers were one of the main factors in relation to the health of the lake. Science had proved that fertiliser and dairy effluent effects contributed to nitrification of lakes. He noted that the lakes were natural and not man made.

Mr Hartley said that with regard to easements, he envisaged a residents association; whatever option which was considered most appropriate.

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Dr. Tim Martin distributed and read written evidence.

Mr Martin's evidence addressed the following:

- The definition of wetland, as described in the Rodney District Plan;
- The ecological context of the site;
- A description of wetland areas;
- Entitlement for subdivision under rule 7.14.3.3. of the District Plan;
- The long-term effects of the development on indigenous biodiversity, if appropriate restoration and management was successfully implemented;
- Comments on the RDC planning report;
- Comments on the Wetland solutions report; and
- Suggested consent conditions.

Dr. Martin noted that the Tomarata Dune Lakes were described as Regionally Significant. The lakes were the only dune lakes in the Rodney Ecological District, and the only lakes on the east coast of the Auckland Ecological Region. He noted that:

- The wetland contained indigenous vegetation sequences from permanently wet ground through to open water; the reed-lands were largely unmodified from the original character;
- The wetlands supported at least six threatened bird species and one regionally uncommon plant species;
- The wetlands provided important habitat for threatened wetland bird species such as spotless Crane, Australasian bittern and the North Island fernbird;
- The wetlands formed part of a larger area of dune lake vegetation to both the north and south of the property; and,
- The wetlands had the potential to further increase in value in a short timeframe through weed control and the planting of terrestrial buffer.

In conclusion, Dr. Martin said that a total of 1.83ha of wetland habitat was present at 662 Ocean View Road, of which 1.60ha met the RDC quality criteria as outlined in Appendix 7C. An additional 0.23ha of existing wetland may meet the criteria in the future if managed appropriately. He noted that wetlands were formerly more extensive on the property, prior to the excavation of drainage ditches on the eastern side of Lake Spectacle. Blocking these drainage ditches would re-flood some of the low-lying dune slacks, and may increase the area of wetland on the property to well over 2ha. Restoration of wetland communities in the dune slack would have far greater ecological benefits than restoration of these areas as dry-land vegetation communities, and was likely to require less intensive planting. The re-flooding of the dune slacks, with possible planting once water levels had stabilised, would require some degree of flexibility to be retained with regard to the exact plant numbers and species.

Protection of the wetlands, including fencing, weed control, pest animal control, and planting of a terrestrial buffer was of high importance, particularly because of the presence of nationally threatened wetland bird species. Additionally, the 18.5ha of indigenous revegetation that was planned would provide significant buffering around the southern side of Lake Slipper, and the northern end of Lake Spectacle. This buffering would not only provide, protect and enhance indigenous biodiversity at the site, but also contribute towards improvements in the water quality of the lakes.

In response to questions from the Panel, Dr. Martin said that dune slacks were poorly drained and often characterised by the presence of rushes and sedges.

In regard to further comments tabled from Wetland Solutions, he was in agreement apart from two things:

- Section 9.3 the density of plantings was 1.4m apart, Table 2 did not provide a schedule for planting the dune slacks because that would be determined by what natural generation there was in the area, it was suggested that be left flexible but that it be achieved by a certain date, whether that was by planting or natural generation; and
- That all plants shall be fertilised at the time of planting by incorporating one fertiliser tablet into each planting hole (Wetland Solutions had pointed out fertilising was not good in areas of

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flooded dune slack) and this should be corrected to read fertiliser of dry land species. (Dr. Martin later tabled his suggested amendments).

In response to further questions from the Panel, Dr. Martin said that:

- He envisaged fencing to be the standard 8 wire post and batten fence similar to those already erected on the property.
- Alligator weed required herbicide treatment; he suggested it should only be controlled in areas where there were large dense patches, and subsequently those areas planted with indigenous species. Alligator weed was found throughout the whole catchment but the aim was to increase indigenous species where it was at its worst. Alligator weed invaded wet habitats but not the dunes.
- Pest animals: pukeko were pests at the time of planting and he would suggest that the plantings be checked regularly. Prior to any planting the site should be assessed for rabbit abundance and these should be controlled prior to planting if necessary.
- While the area was low lying and a wind environment he didn't think the plantings would be blown over. He was comfortable the regeneration planting would be successful. The pine forest acted as a buffer from the easterly wind, and with carefully selected plant species the dunes would be stabilised.
- With regard to how long it would be before there was improvement to the visual amenity, he expected that would be in 3-5 years when there was canopy closure. In terms of visual screening it depended on the situation; for example, if situated on a high ridge the plantings would need to be of greater maturity to screen the proposal. He expected the buildings would be visible by people living on higher ground for quite a few years.
- With regard to the chalets on the slopes above the lake, they would be tucked in and within 8 - 10 years the plantings would ensure that the chalets would be largely out of view.

10.20 a.m. - 10.43 a.m. Morning tea adjournment.

Mr Pierau drew the Panel's attention to a 180m² conference facility on the site; the conference facility was two levels with 90m² on the top and 90m² in the basement.

The Decision Notice in regard to the Te Arai area was tabled.

During the break Ms Weatherall drew to the Democracy Service's Officer's attention an email she had received from DoC in regard to DoC's response to further information provided by the applicant (dated 30 March 2009). This letter was addressed to the Democracy Services Officer, but she was not in receipt of the letter at the beginning of the hearing. Ms Weatherall organised for the email to be forwarded to the Democracy Services Officer and it was printed and circulated. The letter stated that if consent were to be granted the Director-General of Conservation would support the imposition of proposed conditions 8, 16, 17, 19 and 20 in the planner's report. In addition, the applicant's planning consultant, Sarah Weatherall, in discussions with DoC, had offered to agree to a consent notice prohibiting the planting of any plants listed in the Regional Pest Management Strategy as Total Control Pest Plants; Containment Pest Plants; Surveillance Pest Plants or any on the Research list. If the consent were to be granted the Director-General would support this restriction being included as a consent condition.

Ms Murdoch distributed and read written evidence.

Ms Murdoch gave the background to the application which had initially been lodged by Buckton Consultants in 2007. She addressed matters raised in submissions and landscape values and visual effects. She discussed landscape visual effects, open space and amenity, building design controls, proposed planting and rural character. Mr Murdoch noted that building form and massing had been omitted from the proposed conditions of consent and she recommended their inclusion, as they would adequately mitigate any potential landscape visual effects associated with the proposal.

In conclusion, Ms Murdoch said that the proposal would have no more than minor landscape/visual effects on the site and surrounding areas as was concluded by the reporting planner. Provided that the planting proposals were carried out in the manner as specified in the Supplementary Ecological Assessment prepared by Wildlands Consultants and the Supplementary AEE Report (ref 6171, dated March 2009) prepared by Terra Nova Planning Ltd, she considered that the development would have

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no more than minor effects on the environment. In regard to scale, character, context and mitigation, she expected the visual effects to be minor and that the proposal would result in positive (as opposed to negative) ecological effects, due to the increased vegetation cover over the site to be retained in perpetuity. She concluded that the visual landscape effects related to aesthetic, ecological and cultural benefit would be no more than minor and would be an improvement from the current landscape condition and appearance.

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

- With regard to the affect on visual amenity, the planting would be similar to what was planted around the chalets; this was about 10 years old and she expected a similar timeframe.
- The application would maintain rural character but altered it in terms of planting, not in a negative way, if at all.
- She didn't think the proposal would detract from rural character.
- She didn't think the proposal would alter the special nature of the dune lakes; she had seen the planting around the chalets, and in terms of building design guidelines, was perfectly happy.
- With regard to limiting the size of buildings, personally she would welcome some sort of restriction, for example, limiting building size to those that were of a similar size in the surrounding area would be appropriate.
- If the application was approved she didn't believe it would create a precedent.

Mr Statham, Council's Ecological Advisor, addressed the Panel. The following was noted:

Mr Statham noted that his evidence was based on what he had read and heard. With regard to the area of planting, Mr Statham noted the proposal was for subdivision on the basis of protection of wetland and enhancement planting and that the Council's rules were for 6ha for each rural residential site. The application dealt with a total area of 18.5ha (based on 1.6ha of wetland with a possible 0.2ha- 2.5ha of wetland and dune slacks which would equal 1 rural residential site). Mr Statham said that he thought the stream on Lot 10 should be protected and planted as well, and could be incorporated into the enhancement planting area. Mr Statham said that given that the wetland and enhancement standards were effectively two separate sets of District Plan rules, the wetland should incorporate a 10 metre buffer outside of the total area of enhancement planting, consistent with similar applications.

Mr Statham said that he supported the planting; the semantics and methodologies could be dealt with by conditions. He also fully supported control and planting where there were mats of dense alligator weed. He thought there should be a body corporate or trust as he had concerns in regard to who would look after the covenanted area. Mr Statham said that he thought all the planting should be completed and have reached a certain level before titles were granted. He understood the lakes were owned by the Crown. He also noted that the wetland protection was separate from the enhancement planting.

Mr Taylor, the reporting planner, explained the purpose of requiring a 95% success rate on Lot 7 – this was a staged process; all the other lots could be granted 224c, but Lot 7 by itself was within the parent Lot 10 and until such stage that there was a suitable percentage of growth and enhancement planting achieved at a level accepted by an ecologist he thought there should be a bond imposed of a substantial value.

The decision for the resource consent for 7 chalets was tabled.

Council officers confirmed that the building height restriction in the zone was a height of 4m for a dwelling and 7m for an accessory building; the building coverage was 15%.

Sarah Weatherall distributed and read written evidence.

Ms Weatherall described the background and the proposal. She addressed legal matters, the District Plan status, the submissions and affected parties, the justification for five rural residential sites, further amendments to the proposal and statutory assessment. She concluded that the proposal would have negligible potential adverse effects, subject to appropriate conditions, and significant positive effects

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for the water quality of Slipper and Spectacle Lakes, and for the indigenous birds and plants which inhabit the lake margins (both now and in the future), and would retain the un-built, natural character that currently surrounds the lakes. In this regard she considered that the proposal achieved the overall objective and policy thrust of the Operative and Proposed District Plans. In that respect, in her opinion, approval would be in accordance with Section 104 and Part II of the RMA.

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

- She had been a planner with Terra Nova Planning for 7 years.
- She did not think there was any 'double dipping'.
- She would suggest that building size be a maximum of 300m².
- The ARC undertook surveys of the lake quality on a frequent basis and it was going to take many years before the quality improved.
- The applicant would remove stock, increase the wetland area and the planted area around the lake margin, and also not use any fertilisers.

Tony Hayman of Buckton Associates noted that a study by Harrison Grierson some years ago had determined the edge of the legal boundary of the lakes and this had been accepted by LINZ and would be used in this situation. He noted that a landscape quality value of 5 meant that the area was regionally significant. The ridgeline surrounding the lakes was registered as sensitive landscape.

Mr Pierau explained that the proposed chalets would be 130m²; the existing chalets were 60m².

12.40 p.m. - 1.34 p.m. Luncheon adjournment.

Submitters:

David Town distributed and read written evidence on behalf of the Auckland Regional Council (ARC).

Mr Town discussed plan integrity, environmental values, landscape and rural character, archaeology and the covenanted lot. Mr Town considered that there had been limited landscape assessment prepared specifically for this proposal, despite the significance of the area's landscape; there was no separate analysis considering the cumulative effects of the proposed subdivision and subsequent development of the site itself or in combination with the chalets. The ARC had commissioned a review of the visual assessment and that had identified a number of deficits, consequently there were concerns with regard to the landscape assessments. Most critically, the assessments lacked specific analysis of the proposal against the landscape provisions of the Auckland Regional Policy Statement, despite the site being within a regionally significant landscape.

Ms Simone Fraser, Counsel for the ARC addressed the Panel.

Ms Fraser drew the Panel's attention to the Auckland Regional Council vs Rodney District Council and Parihoa Farms Ltd (Te Henga, Bethells Beach) Court of Appeal decision. Ms Fraser said that the ARC submitted there could be little weight given to landscape and planning evidence in relation to the landscape. Referring to Ms Murdoch's evidence, Ms Fraser said that Ms Murdoch had clearly failed to 'change her lens' and did not take into account the regional planning instruments. Ms Fraser noted that the applicant provided no view on precedent and they were unaware of who owned lake. She noted that DOC opposed the application and she considered that there was insufficient information provided to be able come to a conclusion.

Mr Town continued to read written evidence.

In conclusion, Mr Town said that the ARC submitted in opposition to the application for 662 Ocean View Road, Tomarata on the basis that the application lacked information on a number of key matters. While more information had now been supplied, it was considered that there were still a number of areas in which it was lacking, as outlined in his evidence. Furthermore, given that there were other options available for protection and enhancement of this site and that the policy direction was towards prohibiting subdivision in the dune lakes area, he was not convinced that this proposal was appropriate.

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A list of ARC consents in relation to the property was tabled.

Ms Margaret Fishlock distributed and read a written statement.

Ms Fishlock, of 356 Ocean View Road, said that she had lived at that address for 37 years. Their property backed on to the Pierau property at Atkins Road. She believed that the application made a mockery of the Special Activity Character Area. The cumulative effect of all the buildings would give the impression of a village and detract from the present open spaces. The fact that 7 more chalets had been granted consent was a surprise to Ms Fishlock as she had not received any notification of that proposal. Ms Fishlock said that she was in agreement with the further submission sent in by Pioneer Trust (included in the agenda). If the current proposal went ahead she believed other landowners would start to look at options for subdivision, thereby eroding what made the place special and worth preserving. Ms Fishlock asked that the proposal be declined in its entirety.

In response to questions, Ms Fishlock said that:

- She didn't accept fertiliser runoff as the sole cause of degradation to the lakes. She noted that there was only 1 dairy farm left in the area; 2 dairy farms had been retired and were now beef farms. She believed the putrefying of raupo and the ground it sat in, being peaty ground, had some bearing on what was happening to Slipper Lake.
- She could see the applicant's property and all the shrubbery around the chalets.
- She would describe a village as a collection of houses and a closing down of land that was otherwise normally open.
- Her property was 200 acres, and was predominately a beef farm. She had a house with a minor dwelling, a hayshed by the house, a cowshed and a yard facility for stock, and a shed beside that.
- She thought the proposal was what the District Plan sought to avoid.
- She had been opposed to various developments on the applicant's land over the years.

Ms Jenny Granville gave verbal evidence. The following was noted:

Ms Granville said that she was an architect. She had grown up in the area and it was still dear to her heart and she still owned some land at Granville Road. Ms Granville said that her father had gifted 100 acres of native bush to the Crown when he'd sold his farm. Ms Granville said that the history of resource consent applications in relation to the site was long and varied. She noted that the existing chalets had been granted consent in 1992 and she thought the consent for the proposed new chalets might sit on the effluent fields as per the previous consent. Ms Granville believed that the forestry dwelling had never been legally established as a dwelling and she thought consent for the camping ground might have lapsed. Ms Granville said that she was astounded that the consent for the 7 (as yet unbuilt) chalets went through without notification. She said she opposed the current proposal on the basis that it went against the intent of Vision Rodney, and that it would not maintain the rural look and character of the rural landscape which was reflected in the rural land use, and which was of an open nature with scattered settlements. Ms Granville believed very few viewpoint photographs of the land had been taken from public roads and she could not support the applicant's evidence that there would be no more than a minor effect as it was not possible to visualise what the buildings might look like from an open paddock. Ms Granville highlighted how popular and intensively Lake Tomarata was used over Xmas and summer. She said that if consent was granted, local people should be able to seek and be granted a greater intensity of subdivision on their land. Ms Granville concluded by saying that she was surprised the Council hadn't hired its own landscape architect.

In response to questions from the Panel, Ms Granville said that if the proposal was granted consent it would increase the value of the land and might make other people seek applications. She noted the degradation of the lakes and was aware that many children suffered ear infections from swimming in the lake. She said that the applicant had a boat ramp on the lake and to her knowledge did not have Auckland Regional Council permission or consent for it.

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Council Officers:

Mr Taylor, the Reporting Planner, addressed the Panel.

Mr Taylor confirmed that he still stood by his recommendation to grant consent. He noted that the proposal was a non complying activity. He also noted that based on the way the Proposed District Plan had evolved through decision notices there may be slightly different calculations in regard to how many allotments could be achieved through wetland and enhancement planting. Referring to the controls for non complying activities, he said that they were merely guides, not controls within themselves. Mr Taylor said that there were 10 lots proposed with 4 existing titles, with a differential of 6. In regard to the wetland and enhancement planting he said that the Panel needed to exercise discretion as to whether provisions should be imposed per se. With regard to Lot 10, the conservation allotment with the existing bach, Mr Taylor said that there were benefits in having the bach available as it could contribute to the funding of the future management, or there could be a total restriction on residential activity. He noted that Lots 3 and 6 were intertwined as an activity at present; he believed there would not be an increased adverse effect caused by the title separation as both sites were fully developed.

With regard to the visual impact being more noticeable than what the landscape architect intended, Mr Taylor said that he thought the frequency of public exposure was limited. Addressing the issue of precedent, Mr Taylor said the comparativeness of two situations must be very alike and that he thought it would be difficult for anyone to use the precedent argument anywhere else. He suggested that there be a condition imposed in regard to the conference facility whereby Lot 6 notarially be attached to Lot 9 until such time as the conference facility was stopped or ceased to operate (i.e. one cannot be sold without the other).

With regard to a restriction on the release of Lot 7, Mr Taylor noted that the applicant proposed a staging; a proviso on the staging could be provided in that Stage 2 was continued in the event of certain planting. Referring to the issue raised in the submission from Council's Parks Department, this was something that could be negotiated afterwards. Referring to rural character, Mr Taylor said that his opinion remained the same because of the detail of design, the proposed mitigation, and the topography of the area; the real character was the lakes and their surrounds. With regard to the boundary of the lake, the Panel would need to determine whether they were happy with the extent of the protection.

Mr Statham addressed the Panel.

Mr Statham commented on costing and staging. He noted that the stream on Lot 10 seemed to be excluded from the enhancement planting. He said that the Council's policy was adamant in that wetland protection for subdivision and enhancement planting proposals were completely separate and should be excluded from one another. Policy advice was that Council should not consider combining the two where ecological integrity and viability cannot be guaranteed. With regard to the submission from Council's Park Department, Mr Statham highlighted the Department of Conservation's role in regard to reinforcement.

Mr Hartley presented the right of reply. The following was noted:

Mr Hartley said that the area was a special place, and the objective of the applicant was to make it even more special. The bottom line was that the lakes were not in good condition – the ARC had advised staying out of the lakes and the water was really only good enough for putting on a garden. Although the lakes were picturesque and looked lovely they were in poor condition and one of the primary reasons was due to the nutrient runoff (mostly from pastoral farming activities). If one were serious about doing something in regard to the lakes it would be to retire the land and wetlands and replant those areas in natives; that was the application's objective. Mr Hartley drew the Panel's attention to Decision Report 2141 in regard to 6ha of enhancement planting. Mr Hartley said that it was far more important to plant the margins and catchments of these lakes than have 6ha of planting in the middle of a flat paddock. In effect the proposal was for 5 additional sensitively located rural residential sites; 3 of those predicated upon 18ha of planting and 2 were based on the wetland area which qualified. A second lot was warranted in 5-10 years when the wetland areas, with proper management, would reach the required standards.

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Mr Hartley said that because the application was non complying didn't mean 'no'; it simply didn't comply with the rules. In his view, he thought the application would be better termed a marginal activity rather than a non complying activity. The applicant was doing a lot with the land but one of the key activities going on in the area was sand mining which was part of the rural scene. He noted that the existing operation of 13 chalets was in a fairly tightly packed area. The proposed residential lots were in a cluster form to minimise the effect on the lake environment; houses built on existing lots would potentially be far more visible in the environment than what was proposed. Mr Hartley noted that the applicant's landholding was 77ha and that it did have quite a lot of lake frontage.

In regard to the ARC who highlighted environmental evidence in regard to the lakes and margins, Mr Hartley said that the applicant's landscape assessment focused on building sites, building design, controls and planting mitigation which would make the proposed dwellings marginally visible. If the dwellings couldn't be seen in 10 years time, then there would be no regional landscape impacts. The bulk of the cost of the proposal would go towards achieving the environmental outcomes. With regard to plan integrity, Mr Hartley said that there was no issue in undermining planning integrity when taking into account the environmental benefits, and the landscape improvements etc.

With regard to the size of houses, Mr Hartley said that Mr Pierau would accept a consent notice on the residential titles for a maximum floor area of 350m² and a dwelling of a single level with a 4m height limit; this would give more flexibility. Regarding proposed condition 17 (planting staging), in essence the proposed condition in the planning report had been amended to allow the site's boundary relocation or complying wetland site to have their titles uplifted sooner. The remaining sites were dependent on the requirement for enhancement planting to be implemented before 224c was achieved and there could be a bond approach for maintenance.

Mr Hartley suggested a staging to allow for the release of sites. For instance, the second stage would be released when the planting was fully implemented (on Lots 1, 2, 4, 5 or 1, 2, 4, 7). In response to a question from the Panel, Mr Hartley said that there were clusters of smaller sites in the general locality and the proposal was the ideal way to maintain the open space values.

3.14 p.m. The Chairperson adjourned the hearing subject to a site inspection.

The Chairperson closed the hearing at 4.00 p.m. on Wednesday, 6 May 2009 at the conclusion of the site visit.

The Panel resolved:

Powell/Childs

THE DECISION

That, pursuant to Section 104, 104B and 104D of the Resource Management Act 1991, the non complying application by H.A. Pierau for a 10 lot subdivision at 662 Ocean View Road, Te Arai to create 6 rural residential lots and four larger lots be declined consent.

REASONS FOR THE DECISION

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

- 1. The adverse effects of the activity on the environment will be more than minor.**
 - **The visual and landscape effects of the proposal will be more than minor because the site already contains six chalets, a house and various accessory buildings clustered around Ocean View Road. A further seven chalets have a resource consent. The additional lots will create further development potential with further residential and ancillary buildings. This combined development will result in a level of development mainly in one area, which is inappropriate in this rural location.**
 - **The subdivision would create a more intensive subdivision pattern including six small lots which is out of character with the subdivision pattern in the neighbourhood.**

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- The subdivision is located in the vicinity of the Dune Lakes which have high environmental and landscape values. The proposal with its smaller lots and subsequent development will detract from the special values of this area.
 - In combination with the existing and consented development the subdivision will have adverse cumulative effects.
2. The proposal is contrary to the objectives and policies of the Operative Plan Change 55 in particular the General Objective for the Tomarata Dune Lakes Special Character Area which seeks

“To protect the natural environmental values of the Lakes and margins and the open non urban character of the lakes surrounds whilst enabling the continued operation of rural primary productive activities.”

In this case the subdivision and the residential development will not protect the natural non urban character of the Lakes area as it will allow a more intensive level of subdivision and development than is anticipated by this Plan.
 3. The proposal is contrary to the provisions of Proposed District Plan 2000 in relation to the Dune Lakes area as it will not protect the landscape and natural character of the area.
 4. The proposal is contrary to the provisions of the Auckland Regional Policy Statement in particular Policy 5.2(ii) which seeks to protect features of high natural environmental value and habitats, particularly as the Lakes are identified in this document as a Significant Natural Heritage Area.
 5. The proposal does not pass either test for a non-complying activity in Section 104D of the Resource Management Act 1991 because the adverse effects of the activity on the environment will be more than minor and the activity will be contrary to the relevant objectives and policies of the District Plan.
 6. There are insufficient circumstances relating to the application that distinguish it from other applications which would support consent to it as a non-complying activity.
 7. The proposal is contrary to Vision Rodney in particular the statements:
 - We will keep our country look and feel.
 - We will maintain our lifestyles and look after the environment.
 8. The proposal, by the subdivision pattern and the subsequent development that will result, will not promote the sustainable management of natural resources. While the proposal may provide for the economic wellbeing of the applicant it would not avoid, remedy or mitigate adverse effects on the environment.
 9. In terms of Section 6(b) the subdivision will not ensure the protection of the natural features and landscape of this special area.

**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 Section 104, 104B, 104D and Part 2 of the Act.

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**OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (ab))****Auckland Regional Policy Statement Provisions**

Policy 5.2(ii), Appendix B

Plan Provisions**Plan Change Number 62 Financial Contributions****Plan Change Number 55 Rural Provisions**

Tomarata Dune Lakes Special Character Area Objectives and Policies in particular General Objective 5.1.

Proposed Plan Provisions**Proposed District Plan 2000**

Objective 7.8.4.1

Policy 7.8.4.2.3
7.8.4.2.4**Other Documents****Vision Rodney**

Tomarata Lakes Management Plan

Case Law

Auckland Regional Council v Rodney District and Parihoa Farms Ltd

PREAMBLE

This application seeks consent for a ten lot subdivision to create six small residential lots (1.0 to 1.3 hectares) and four allotments varying in size from 3 to 30 hectares. This involves boundary adjustments. The proposal also involves significant enhancement planting. The application was fully notified, 11 submissions were received.

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

1. Consistency with District Plan provisions for this zone.
2. Impacts on landscape values and neighbourhood character.
3. Impacts on the Dune Lakes (including water quality and ecological values).
4. Cumulative effects.
5. Consistency with the Regional Policy Statement.
6. Special circumstances pertaining to the proposal.

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

Mr Shane Hartley – Town Planning Consultant for the applicants.
Arnim Pierau – The applicant.
Dr Tim Martin – A Consultant Ecologist.
Ms Anna Murdoch – Landscape Architect.
Ms Sarah Weatherall – Town Planner.

Mr Hartley introduced the application. He described the proposal and the statutory issues. He advised that the proposal included enhancement planting.

Arnim Pierau the owner and application advised

1. He currently operated on his 80 hectare farmland chalet accommodation which had been granted resource consent in 1996.
2. The purpose of the application was by way of a subdivision to help finance the re-establishment of 17.5 hectares of wetland adjacent to Slipper and Spectacle Lakes.
3. The Lakes were degraded as well as their margins and there is a need for a long term management strategy to protect them. This degradation was largely due to human modification of the area by farming, clearing, draining, fertilisation and intensive animal farming.
4. Five years ago he fenced the areas around the Lake and that seemed to indicate there was potential for a relatively fast recovery.
5. The Tomarata Dune Lake's Management Plan indicated that the Lakes and surrounds are of high environmental value and their water qualities are extremely degraded by blue/green algae.
6. 17.5 hectares was to be restored to its original wetland state. This would act as a buffer and filter the nutrient inflow from the farmland to the Lakes.

“The option of a subdivision as a source of restoration funding in lieu of or as compensation for the retired land does however create a valid incentive to carry out the restoration and make it financially viable.”

7. The wetland area would be protected by a DOC covenant which would protect and enhance the views into the Tomarata Dune Lake Valley and protect the restored natural wetland habitat as well as aid the recovery of the water quality of the presently degraded Lakes.
8. The project has the potential to eventually create a nature park comprising all the margins around the three lakes that have been restored and protected in partnership with land owners, community conservation groups as well as local and central Government agencies. He requested that consent be granted.
9. In response to a question regarding the development potential of each lot, he offered a consent notice on the residential titles residential building coverage with a limitation on each lot of 350m² and a height restriction of 4m.

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Dr Tim Martin a Senior Ecologist of Wetland Consultants discussed the ecological issues of the proposal. He indicated

1. The three dune lakes are the only dunes in the Rodney Ecological District and the only lakes on the east coast of the Auckland Ecological Region.
2. Lake Slipper and Lake Spectacle and their associated wetlands have been identified as warranting protection in the Protected Natural Area Programme Survey Report.
3. The indigenous species of the vegetation communities on the Lake margin included various invasive and highly invasive species.
4. The indigenous wetland communities on the Lake margins meet the Rodney District Council criteria for wetland quality.
5. The Lake margin to be covenanted and restored is 18.5 hectares.
6. He then discussed the long term ecological effects of the proposal. These would include
 - (a) Restoration of indigenous wetland communities.
 - (b) Improvement in water quality.
 - (c) Enhancement of wildlife habitat.
 - (d) Re-flooding of the Dune Slack Wetlands and planting these areas with wetland species.
 - (e) Weed management strategies.
 - (f) Pest control.
 - (g) Potential increase in the area of wetland.
 - (h) Restoration of the wetland communities.

He indicated that

“Protection of the wetlands.....is of high importance particularly because of the presence of nationally threatened wetland bird species. Additionally the 18.5 hectares of indigenous planting that is planned will provide significant buffering around the southern side of Lake Slipper and northern end of Lake Spectacle. This buffering will not only provide, protect and enhance indigenous biodiversity at the site, but also contribute towards improvement in the water quality of the Lakes.” (Para 75)

Ms Anna Murdoch a Planner and Landscape Architect discussed the landscape values and visual effects of the proposal as well as the recommended conditions of consent. She concurred with the Reporting Planner that the visual and landscape effects of the proposal on the local and surrounding area would be minor with the mitigation planting proposed and controls on building design. This was because

- (a) There was visual separation as a result of clustering and significant distances between the proposed building platform and public areas.
- (b) The topography of the site and the surrounding area.
- (c) No major earthworks or landscape modification are proposed.
- (d) The proposed landscaping.
- (e) Extensive building design and development guidelines.

With regard to the open space amenity of the site she noted that the open space amenity of the land would not be compromised by the proposal because

- 1.) The proposed building platforms were situated a considerable distance from the Lakes.
- 2.) Proposed Lots 1, 2, 5 and 7 have been clustered to reduce potential impact.
- 3.) The majority of the site is to be planted or retained in its current state.

She then discussed the building design guidelines. She considered that these were an appropriate way of mitigating the impacts of the proposal.

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She then discussed the conditions of consent and requested that additional provisions be added relating to building design / development. These related to building form and massing.

In conclusion she advised that the proposal would have no more than minor landscaping visual effects on the site and the surrounding area provided the planting proposal was carried out as specified in the supplementary ecological assessment. Overall the development would have no more than minor effects on the environment.

In terms of scale, character, context and mitigation the visual effects would be minor and the proposal would have positive ecological effects due to the increased vegetation cover over the site to be retained in perpetuity.

In conclusion she advised that

"The visual landscape effects related to aesthetic, ecological and cultural benefit would be no more than minor and would be an improvement from the current landscape condition and appearance." (36)

Ms Murdoch included visual material to support her conclusions.

Ms Sarah Weatherall, a Town Planning Consultant discussed the proposal, legal matters, the District Plan status, submissions, affected parties and the justification for the five rural residential lots, amendments to the proposal and the statutory criteria.

She advised that the proposal had been amended to include

1. 1.93 hectares of wetland area of which 1.6 hectares qualified and the remainder did not meet Council standards.
2. About 17.7 hectares of enhancement planting.
3. A conservation lot.
4. Specified building and development controls.

She indicated that the applicant had agreed to enter into a Department of Conservation covenant.

She discussed the justification for the rural residential sites which included the protection and enhancement of wetland areas and the 17.7 hectares of native enhancement planting.

The fifth additional lot was justified because

1. Appropriate protection and management of more of the identified wetlands would result in 1.83 hectares of wetland.
2. The costs required to undertake the additional enhancement planting across the subdivision.
3. The results would have significant benefits to the ecology of the wetland environments and the water quality of the Lakes.

She advised that the additional five lots are required to make the project financially viable particularly in the current economic property market climate.

The effects of the five additional rural lots in her opinion would be more than offset by the significant environmental benefits that will be gained by covenanting the wetland of 1.83 hectares and the enhancement planting of about 17.7 hectares.

She then discussed various amendments to the conditions and assessed the proposal and the actual and potential effects on the environment. These included effects on landscape values and the visual benefits, ecological benefits, water quality, rural character, amenity, cultural heritage and reverse sensitivity issues.

In relation to the District Plan, she concurred with the planning report that the proposal was consistent with the relevant plan objectives and policies relating to the protection of the environmental values of the Lakes and their margins as well as their landscape values.

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The proposal would also in her opinion be consistent with the objectives and policies of the Auckland Regional Policy Statement (ARPS) because

“The proposed subdivision recognises and protects an area of notable landscape quality and is designed in such a way that the future buildings will sit sensitively within the surrounding environment and will not adversely affect the area of landscape quality.” (10.42)

In terms of integrity and consistent administration of the District Plan she identified the following distinguishing qualities

1. The Lakes exist and the water quality has been deteriorating over the years.
2. A reasonable area of existing wetland exists around the Lakes.
3. The significant area of proposed planting around the Lakes would create ecological linkages with surrounding areas.
4. The vegetation surrounding the Lakes comprises endangered and threatened bird species.
5. The buildings can be integrated into the environment.
6. The site is identified in the ARPS and other documents as a significant ecological area.

In her opinion the proposal was in accordance with Part II of the RMA.

In conclusion she considered

1. Subject to conditions the proposal would have negligible potential adverse effects on the environment.
2. It would have positive environmental effects for the water quality of Slipper and Spectacle Lakes and for the indigenous birds and plants which inhabit the Lake regions.
3. It would retain the current un-built natural character that currently surrounds the Lakes.
4. The proposal achieves the overall objective and policies of the Operative and Proposed Plans.

In her opinion consent should be granted.

Right of Reply

In the right of reply Mr Hartley indicated that the area was a special place and the objectives of the applicant were to make it even more special. The bottom line was that the Lakes were not in good condition.

EVIDENCE ON BEHALF OF THE SUBMITTERS WAS GIVEN BY:

Mr David Town - Planner, Auckland Regional Council
 Ms Simone Fraser - Counsel, Auckland Regional Council
 Ms Margaret Fishlock - Submitter
 Ms Jenny Granville - Submitter

Letters were tabled from the New Zealand Fire Service, RB & LG Whale, SA Harris and DOC.

Michael Harris of Pioneer Trust had advised by email that he would not be in attendance at the hearing.

Mr David Town a Policy Planner for the Auckland Regional Council appeared in opposition to the proposal. His concerns included

1. The integrity of the District Plan.

He advised that the Dunes Lake Section of the Proposed Plan as amended by decisions of submissions recommended that any subdivision within this zone would be a prohibited activity. He quoted from the Council's decision which stated that

“The Committee considers sustainable management is best achieved by ensuring that subdivision is not contemplated in the Dunes Lake Zone.” Para 5

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His view was that the integrity of the District Plan should not be brought into question by allowing for enhancement planting based on a subdivision in a sensitive area where there is no provision made for it.

2. He advised that the Lakes were identified as being a significant natural heritage area under the Auckland Regional Policy Statement and the proposal was contrary to Policy 5.2(ii).
3. He acknowledged that ecological benefits are likely to arise as a result of the enhancement planting covenant.

"...it is arguable that there are a number of approaches to achieving ecological benefits in this area." (Para 13)

"The lack of detail around the methods to ensure the avoidance, remediation and mitigation of adverse impacts of the subdivision and subsequent development, as well as the recognition that there can be more than one approach to protection and enhancement of the area's environmental values, contributes to the view that subdivision is inappropriate in this area." (Para 15)

4. He was concerned that the introduction of further dwellings as a consequence of the subdivision had the potential to alter the remote and non urban character and *"close down the landscape."* (Para 16)
5. He was critical of the landscape assessment prepared specifically for the proposal.

He indicated that

"The uncertainty that remains with regard to the landscape assessment adds weight to the recommendation that a precautionary approach is needed and the application should be declined." (Para 23)

6. He was also concerned at the lack of an archaeological assessment of the area and the uncertainty in relation to covenanting some of the land on the site.

In conclusion in his opinion there were still a number of issues where inadequate information was available. Also he believed there were other options available for protection enhancement of the site. The policy direction from the District Plan was towards prohibiting subdivision in the Dunes Lake area.

"On this basis I am not convinced that this proposal is appropriate." (Para 32)

Ms Simone Fraser, Counsel for the Auckland Regional Council, referred the Council to a Court of Appeal decision; *Auckland Regional Council v Rodney District Council and Parihoa Farms Ltd.*

Her submission was that little weight could be given to the landscape and planning evidence in relation to landscape. She felt that the landscape architect for the applicant had not taken into account the regional policy instruments and there was insufficient information to justify consent being given.

Ms Margaret Fishlock a resident of 356 Ocean View Road advised that she had lived on the property for 37 years. Her concerns included:

1. The proposal made mockery of the Special Character Activity Area and was totally non compliant.
2. The cumulative effect of the buildings would give the impression of a village and detract from the present open spaces. This was emphasised by the fact that seven more chalets have been granted permission on the property.
3. This application would create a precedent and would encourage other local people to subdivide their land.

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Ms Jenny Granville opposed the current proposal because

1. It was against the intent of Vision Rodney in relation to maintaining the rural outlook and character of the rural landscape.

This intent was reflected in the Rural Land Use, being an open area with scattered settlements.

2. The proposal would have more than minor effects on the environment.
3. She, like Mrs Fishlock was concerned that the proposal would allow further consents for greater intensive subdivision on land in the area.
4. She was also concerned that the proposal had not been peer reviewed by a landscape architect.

EVIDENCE ON BEHALF OF THE COUNCIL WAS GIVEN BY:

Owen Taylor a Consultant Planner with input from other experts including Neal Perrott of Wetland Solutions.

Rue Statham Rodney District Council Ecology Advisor.

In his report Mr Taylor analysed the application in terms of the statutory criteria and concluded that

1. The actual and potential adverse effects on the environment would be minor; these included effects on visual and landscape and the rural character of the area which would not, in his opinion, be compromised.
2. The enhancement planting would have positive effects and that stormwater and effluent disposal could be adequately mitigated. In support of the minor adverse effects there would be no modification of land forms nor any trees required to be removed.
3. The proposal was consistent with the objectives and policies of both District Plans.
4. It is consistent with the objectives and policies of the Auckland Regional Policy Statement and the Proposed Auckland Regional Plan, Air, Land and Water.
5. The proposal would not compromise Vision Rodney as it retains the rural character of this precinct as sought by the objectives and policies of the zone.
6. The proposal satisfies both Gateway Tests of Section 104D.
7. The proposal was consistent with Part II of the Resource Management Act.

Mr Rue Statham commented on the costing and staging of the works. He advised that wetland protection and enhancement planting should be considered separately.

Before the right of reply Mr Taylor confirmed that he stood by his recommendation that the application should be consented to.

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

The main findings of fact determined by the Hearings Panel that have led to the above decision and the reasons for that decision are as follows. They have been reached after considering the application, visiting the site and the neighbourhood, 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.

The main findings of fact are:

1. The visual and landscape effects of the proposal will be more than minor as the subdivision would allow a more intensive development of the land with the potential resultant development of cluster style development located close to Ocean View Road.

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2. The proposal is contrary to the objectives and policies of both District Plans which seek to protect the natural environmental values of the area and its non urban character.
3. The proposal is contrary to the provisions of the Auckland Regional Policy Statement as the Lakes are identified in this document as a significant natural heritage area.
4. Although it is likely that there would be a significant improvement in the water quality of the Lakes with the proposed revegetation and other works there are insufficient circumstances to justify consent being granted.
5. The proposal will not promote the sustainable development of natural and physical resources and is contrary to Section 6(b) of the Resource Management Act.
6. The proposal is out of character with existing development in the area and the level of development anticipated by the District Plan in this area.
7. A significant level of development has already been approved for the land. The additional development proposed by this application would further reduce the open character of the site.

This proposal involves

1. Six rural residential lots. One will contain the existing farm homestead located close to Ocean View Road.
2. The creation of a lot (Lot 6) which will contain the existing six chalets plus the seven chalets which have recently obtained a resource consent.
3. A cluster of residential development close to Ocean View Road.
4. Extensive mitigation planting on the rural residential allotments.
5. The protection of approximately 18.5 hectares of significant planting including wetland planting around the Lakes and 16.7 hectares of native enhancement planting.
6. A conservation lot, (Lot 10) including the enhancement planting.
7. Lot 8 which will contain the existing and approved sand mining operation.
8. Lot 9 which contains an existing conference centre building.

The proposal relates to a site at 662 Ocean View Road in Te Arai. The land area involved is 77 hectares. The property concerned abuts Ocean View Road and falls gently away from the road and abuts parts of Slipper and Spectacle Lakes. The land uses are mixed including an existing house close to the road, various out-buildings and the existing chalets, a conference centre and sand mine. Beyond the Lakes to the south, is the conference centre and sand mine.

The surrounding area is rural in nature with few buildings in evidence.

The actual and potential effects on the environment were identified in the Planning Report. Relevant in looking at these effects are the existing environment which includes the house, the conference centre, the sand mine, the six existing chalets and the seven chalets that have been approved.

The activities permitted by the Plan are limited to pastoral farming, a single household unit with accessory buildings and small home stay accommodation.

Landscape Values and Visual Effects

The Tomarata Dune Lakes have high environmental and landscape values with the Lakes being a focal point in the open landscape. The site inspection confirmed the very limited level of development with few houses and built structures in close proximity or in the environs of the Lake.

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The subdivision will allow the establishment of six additional residential buildings on the site most close to Ocean View Road, the others will be scattered around the site. These buildings could, as indicated by Mr Pierau, include 350m² of residential building per site 4 metres high and with up to 10% of each site containing all buildings.

The Panel having inspected the site and the locality are not satisfied that the effects of these buildings will be minor. The proposal will facilitate a cluster of buildings close to Ocean View Road which will include the existing house, potentially five additional residential buildings, and accessory buildings and up to 13 chalets in terms of the approved development. This will change the open character of the area where the dominant feature is the undeveloped landscape with its farming, forestry, sand mining and related activities. Mitigation landscaping is suggested; however this will take time to have an effect. As a result the Panel consider that the visual and landscape effects of the proposal will be more than minor.

Natural Ecosystems

Detailed evidence was received from Dr Tim Martin. The Lakes are extremely degraded and this is not disputed. The proposed revegetation would have an effect particularly on the conservation lot, along with the fencing that is already undertaken, in improving the water quality of the Lakes.

Rural Character

The surrounding area as described is rural in character; the only exception to this particular site being the established chalets and the house and various out buildings. As discussed above, approval has been given for a further seven chalets each about 150m² in area. These will alter the rural character of the site.

The Commissioners are not satisfied that this proposal will maintain rural character as it will facilitate a cluster of further buildings close to Ocean View Road which, in the words of one submitter, will result in a 'village' appearance. As a result the potential additional buildings will have an adverse effect on rural character.

Amenity

These relate to the Lakes and their margins and the rural character where the natural character is created by the land and the lakes. For reasons already addressed this particular proposal will detract from the amenity values of the area by changing this situation to that of a more built character created by the numerous buildings that the subdivision will facilitate, as buildings will be more significant.

Heritage

The Panel notes that no archaeological report was provided however it appears that subject to conditions this matter could be resolved.

Hazards / Services

The Panel are satisfied that subject to conditions these matters can be dealt with. The same applies to services.

Traffic

The proposal will bring an additional 50 – 60 vehicle movements per day; this is not considered to be significant but will again cumulatively contribute to having an adverse effect on rural character.

Cumulative Effects

The proposal will have cumulative effects by allowing a level of development which is inconsistent with the surrounding rural character. It opens up the potential for other similar applications. As a result adverse cumulative effects will be more than minor.

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Summary of Effects

The proposal will have some positive effects particularly in improving the environs of the Lakes and their water quality which is in need of improvement. However on balance the Panel consider that the proposal will have significant adverse effects on landscape values and visual effects, character and amenity values. These outweigh the other benefits anticipated by the proposal.

The District Plan

The relevant documents are the Operative Plan Change 55 and the Proposed District Plan 2000. The former document has more relevance as the latter is subject to an appeal. In both District Plans the land is zoned subject to the Tomarata Dunes Lakes Special Character Activity Area. One of the specific issues within the activity area identified is

"The land has a low intensity of settlement and has a remote and non urban character. It also has a high quality open landscape...." 2(ii)

In the Operative Plan the general objective is

"To protect the natural environmental value of the Lakes and margins and the open and non urban character of the Lakes surrounds whilst enabling the continued operation of rural primary productive activities."

Specific objectives include 5.1 which continue the theme of protecting the open landscape and natural character around the Tomarata Dune Lakes.

Policy vi is also relevant it states

"Retaining the natural and non urban character of the activity area by limiting the creation of additional sites to those necessary for specified activities which have received resource consent, and by limiting the range of activities to those largely occurring at present and making no provision for urban scale activities."

In terms of these statements the Panel are of the view that the proposal is contrary to these particular provisions because it will not protect the open and non urban character of the area around the lakes.

The proposal involves a relatively intensive development which has characteristics more like a countryside living zone than a Dunes Lake area. While there are some benefits in terms of improving water quality, this proposal, in the Panel's view, is not the best mechanism to achieve this end.

Proposed District Plan 2000

As identified in the planning report the decision on submissions requests that this form of development be a prohibited activity in this zone. This provision is subject to appeal.

The provisions of the Dune Lakes in terms of the objectives and policies of the PDP are similar to those in the Operative Plan. The main zone objective is

"To protect the landscape and natural character of the land around the Dune Lakes and the high natural environmental values of the Lakes themselves whilst enabling the area to continue to be used for appropriately located rural based activities." (7.8.4.1.1)

Policy 7.8.4.2.3 states

"High quality landscapes, in particular the open nature of the landscapes, should be protected from significant change or modification from their present state particularly, by buildings and structures."

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Policy 7.8.4.2.4 refers again to the natural and non urban character of the area and this should be retained

“...by limiting the creation of additional sites and by limiting the range of activities so that more intensive activities and activities of an urban nature do not establish within the zone.”

As with the Operative Plan Change, the subdivision, by creating more sites, will result in a reduction in this rural character with the smaller lots in particular not being used for *appropriately located rural based activities*.

The creation of additional sites brings with it the potential for development which is contrary to the objectives and policies of this zone.

Auckland Regional Policy Statement

The concerns of the ARC were outlined within the submissions by Ms Fraser and Mr Town. The Lakes are identified in the Regional Policy Statement as a significant natural heritage area. The wetlands have been identified as a national priority for protection.

Although the quality of the Lakes is likely to improve if this consent were granted the Panel are not satisfied that this proposal is consistent with the Regional Policy Statement particularly Policy 5.2(ii) which states

“Protection of features of high natural environmental value and habitats to controls on earthworks and bush and vegetation removal and limitations on activities and subdivision.”

The emphasis is that of the Panel.

The proposal will result in a more intensive subdivision and development potential for six new residential buildings and various ancillary buildings which, in this special rural area, is not considered to be consistent with the policy.

Vision Rodney

The proposal is not considered to be consistent with two statements of Vision Rodney

- *We will keep our country look and feel.*
- *We will maintain our lifestyles and look after the environment.*

The reasons for this have already been explained.

Integrity and Consistent Administration of the Plan

Both District Plans recognise that this is a unique area. This is a non complying activity and as such the proposal will not meet the intent of the zone in terms of the level of development proposed. There are some pluses in terms of the lake margins being improved but these are not counter balanced by the level of subdivision / development proposed.

Special or Unusual Circumstances

These were outlined by Ms Murdoch. In the Commissioners' view there is only one which would be regarded as unusual and that is the enhancement of the Lake and the wetlands that could arise from the proposal. However this is not considered sufficient to justify consent being granted.

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CONCLUSION

As discussed above there are some potential environmental benefits from this proposal. However the level of development anticipated by this subdivision consent does not justify consent being granted. The proposal is contrary to the objectives and policies of both the district plans which are concerned with maintaining the open natural character of the area and ensuring urban development or countryside living development does not occur. It is also contrary to the Auckland Regional Policy Statement. The adverse effects on the environment will be more than minor. As a consequence consent is declined.

Carried

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 5TH DAY OF NOVEMBER 2009

MAYOR

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