

NOTICE OF MEETING

RESOURCE CONSENTS HEARINGS PANEL

TO: Chairperson Harry Bhana
 Crs June Turner
 Suzanne Weld

A meeting of the Resource Consents Hearings Panel will take place in the Council Chamber, Rodney District Council, Centreway Road, Orewa on Monday, 16 November 2009 commencing at 9.00 a.m.

for: CHIEF EXECUTIVE
Rodger Kerr-Newell

OREWA
9 November 2009

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PROGRAMME

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9.00 a.m.	A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991	1
	AN APPLICATION FOR CONSENT TO REMOVE TWO TREES THAT ARE PROTECTED UNDER RULE 18.9.3 OF THE RODNEY DISTRICT PLAN - OPERATIVE IN PART. THERE ARE AS FOLLOWS:	
	1. A JACARANDA TREE (JACARANDA MIMOSIFOLIA) OF MORE THAN 6 METRES IN HEIGHT	
	2. A RIMU TREE (DACRYDIUM CUPPRESSINUM) OF MORE THAN 6 METRES IN HEIGHT	
	Address: 24-26 Neville Street (5 & 3 Mill Lane), Warkworth	
	APPLICANT: PROGRESSIVE ENTERPRISES LIMITED	

I N D E X

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APPLICANT: PROGRESSIVE ENTERPRISES LIMITED

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ITEM NO: 1

APOLOGIES

ITEM NO: 2

REPORT



TO Resource Consents Hearings Panel

ON 16 November 2009

FROM Anne Hessell – Reporting Planner

SIGNATURE

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APPROVED FOR Denise Grandfield – Team Leader Resource Consents

RELEASE BY

SIGNATURE

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SUBJECT **A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991**

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Address: 24-26 Neville Street (5 & 3 Mill Lane), Warkworth

APPLICANT: PROGRESSIVE ENTERPRISES LIMITED

FILE REF RMA 55383

WARD Northern

Having considered the proposal against all the relevant statutory criteria it is recommended by the reporting planner that the application be *refused* consent. The reasons for this recommendation are set out in this report.

Note: This report sets out the advice of the reporting planner. This report has yet to be considered by the Panel of Commissioners delegated by the Council to determine this application. The recommendation is not the decision on this application. A decision will only be made after the Commissioners have considered the application and heard the applicant and any submitters.

1.0 APPLICATION AND PROPERTY DETAILS

SITE ADDRESS:	24-26 Neville Street (5 & 3 Mill Lane), Warkworth.	
APPLICANT:	Progressive Enterprises Limited	
LEGAL DESCRIPTION:	Lot 1 & Lot 2 DP 36090. (CT-24D/216)	
SITE AREA:	Lot 1 DP 36090 (1103 m ²) Lot 2 DP 36090 (1353 m ²)	
DISTRICT PLAN: ZONING:	Rodney District Plan: Operative in Part	Retail Service Zone
	Other Notations:	Warkworth Town Centre Policy Area-Policy Area 'C'.
ACTIVITY STATUS:	Rodney District Plan: Operative in Part	Restricted Discretionary
	Overall:	Restricted Discretionary
	SNA:	None
OTHER RELEVANT CONSENTS:	RMA 54594, RMA 55743, RMA 55383 & RMA 50755	
CONSENT NOTICES:	None	

2.0 BACKGROUND

S93/94 Decision

2.1 This application was fully publicly notified for the following reasons:

- The relevant Assessment Criteria under 18.12.10.2 (c) of the Rodney District Plan - Operative in Part requires consideration of whether the removal of the tree will adversely impact on the amenity and landscape values of the neighbourhood. Provisions in Chapter 18 discuss the valuable role exotic and native trees have in an urban environment. Such features are considered important in terms of visual amenity value with the visual relief they provide from the built environment, the sense of character to neighbourhoods, contribution to overall aesthetics and landmark significance.
- Based on the assessment of Council's Landscape Architect, the removal of the Jacaranda tree will have a more than minor adverse effect on the amenity values of the streetscape which is part of the neighbourhood and on the surrounding neighbourhood itself. The removal of the Rimu tree will have a more than minor adverse effect on the streetscape and on the surrounding neighbourhood as this tree makes a significant contribution to streetscape amenity.

Relevant Planning History

2.2 **RMA 54594 (Supermarket with Earthworks)** This application was lodged with the Council on 16 March 2009. The applicant Progressive Enterprises Limited seek to construct and operate a 'Countdown' supermarket on Lot 1 & 2 DP 36090 (the application site for the removal of the Jacaranda and Rimu tree) as well as on two adjoining sites to the north being Pt Lot 20 DP 27353 and Lot 2 DP 150337. The supermarket is proposed to have a total gross

floor area of 3494m² with a total of 154 associated carparks, requiring earthworks over an area of 5,200m² and volume of 13,000m³ cut to waste, plus the construction of five speciality retail shops on Neville St with a total combined gross floor area of 403m². The application has yet to be determined and is currently the subject of section 92 requests under the RMA for further information and for the applicant to agree to the commissioning of a report. The notification decision on this application has also yet to be made.

RMA 55743 (Supermarket with Earthworks) This application was lodged with the Council on 29 October 2009. This application is identical to the earlier supermarket and earthworks application referenced above (RMA 54594), except it is understood the branding of this new supermarket has been updated to reflect the new 'Countdown' branding that is to be introduced. In lodging this new application the applicant has indicated that without prejudice to its position that the proposal need not be notified. Progressive are prepared to seek full notification on the basis that the Council agree to it being directly referred to the Environment Court under the new section sections 87 D-87I of the Resource Management (Simplifying and Streamlining) Amendment Act 2009, which now provides this option. At the time of writing this report, the Council's decision under section 87D on whether direct referral to the Environment Court would be agreed to, was due to go before a meeting of the full Council on 5 November 2009. The applicant has indicated that the earlier supermarket application RMA 54594 is not withdrawn but is to remain on hold for the meantime pending further notice from them. Potentially however this will be withdrawn, if the new application is in fact processed by way of a direct referral to the Environment Court.

2.3 RMA 55383 (Removal of Sweet Gum/Liquid Amber and Apple tree) The application currently under consideration for the removal of the Jacaranda and Rimu tree was originally lodged on 2 July 2009 and also included a request to remove an Apple Tree (*Malus spp*) of 6.2 metres in height and a Sweet Gum Tree (*Liquidamber styraciflua*) of more than 6.72 metres in height. Therefore under the original application as lodged, the applicant was requesting the removal of a total of four trees. In the decision on notification which was made on 30 July 2009 by Independent Planning Commissioner - John Childs, it was decided to split the processing of the single application (hence the identical application number), by processing the removal of the Apple and Sweet Gum tree on a non-notified basis and fully notifying the removal of the Jacaranda and Rimu tree. Consent has subsequently been granted on 18 August 2009, under section 104 of the RMA, for the removal of the Apple and Sweet Gum on the site.

2.4 RMA 50775 (Retail and Office Development, with Earthworks) On 18 October 2007, land-use consent was granted to MacRon Holdings Limited on a fully notified basis to construct 2,027m² of retail and office space on two levels with associated basement parking and approximately 2,700m² of earthworks. This consent approval only related to Lot 2 DP 150337 (20 Neville St) and Pt Lot 20 P 27253 (22 Neville St/7 Mill Lane) and is therefore of less significance than the other two consents referenced above as it does not directly relate to the two particular sites where the Jacaranda and Rimu tree are located, but is on the two sites directly to the north. It does however have some background relevance as it involves two of the sites that are subject to the applicant's current supermarket proposal.

3.0 THE PROPOSAL AND REASONS FOR APPLICATION

3.1 The applicant, Progressive Enterprises Limited, is seeking resource consent to remove two trees on the application site. The first is a Jacaranda tree (*Jacaranda mimosifolia*) of more than 6 metres in height and the second is a Rimu tree (*Dacrydium cupressinum*) also of more than 6 metres in height.

3.2 Both the Jacaranda tree and Rimu tree are located on the Neville Street frontage.

3.3 The cover letter the application has been submitted with was prepared by M. J Foster of Zomac Planning Solutions (dated 30 June 2009), and states that '*Irrespective of the final form of land use/building development on the site of the application consent to the removal of these trees needs to be obtained.*' Further emails received by the applicant's Planner have urged the Council to treat the tree removal as a 'stand-alone' application (email from Mike Foster 30 June 2009).

3.4 The application has been submitted with an Arboricultural Report, which apart from the cover letter and standard Council application form essentially makes up the entirety of the application. The Arboricultural Report was prepared by Stephen Bishop of 'Stephen Bishop

Amenity Tree Consultants Ltd'. This report includes an appraisal of all four trees, the Rimu and Jacaranda that are the subject of this application as well as the Apple and Sweet Gum/Liquid Amber tree for which consent approval has already been obtained, as well as what is described in the report as an Arboricultural assessment of effects.

- 3.5** It is clear in reading the Stephen Bishop report that the assessment was originally intended to form part of the supermarket proposal for the site as it is stated in the report that the company was '*commissioned by Progressive Enterprises to provide an arboricultural report to accompany a resource consent application for the construction of a Countdown Supermarket and associated infrastructure between Neville Street and Mill Lane, Warkworth.*' (para 1.1, pg 4).
- 3.6** Mitigation for the tree removal is discussed in section 9.33 (pg 14) of the Arboricultural report. In section 9.35 of the report it is indicated that the applicant proposes to carry out landscape planting within the site, which will include 2 x specimen trees to be planted as street trees in Mill Lane. However the discussed Landscape Plan is not actually included as an attachment to the report and section 3.1 (pg 4) of the report alludes to the fact that mitigation will form part of a wider application for resource consent. It is considered that it is not entirely clear in the application if this mitigation does in fact form part of this application and in what context it will be implemented. The impression is gained that there is a reliance on the supermarket proposal going ahead before this street tree mitigation planting will be executed. The applicant may wish to provide further clarity for the Panel at the hearing in respect of the mitigation measures that are offered in the application.



This photograph shows both the Rimu and Jacaranda tree on Neville Street. The Rimu tree is the tall tree in the right of the photograph the Jacaranda tree is located beside it.

REASON FOR APPLICATION

- 3.7** *Resource Consent is required for the following reason(s)*

Rodney District Plan-Operative in Part

- 3.8** Chapter 18 of the Rodney District Plan - Operative in Part 'Urban Land Modification and Vegetation Protection' became operative on 30 January 2009. This chapter provides rules relating to tree removal in urban zones such as the Retail Service Zone.
- 3.9** Rule 18.9.2 in this plan contains Activity Table 2 titled 'Urban Vegetation Protection and Removal.' This table indicates that '*The cutting, damaging or removal of any Trees (native and exotic species), greater than 6m in height (unless identified as exempt in accordance with*

the lists below)' is a Restricted Discretionary Activity in all urban zones with the exception of the Landscape Protection Zone and some identified areas in the Medium Intensity Residential zoning.

- 3.10** The application site is within the Retail Service zone which by definition under Chapter 3 the 'Definitions' chapter of the plan is an urban zone.
- 3.11** One tree sought for removal is a native tree this being the Rimu, the other is an exotic tree (the Jacaranda). Both trees exceed 6 metres in height and are not included in the list of exempt trees provided in the table.
- 3.12** Accordingly the application is considered to be Restricted Discretionary under this Plan.
- 3.13** Rule 18.12.12 in this Plan indicates that in relation to the cutting, damaging or removal of any native or exotic tree greater than 6 metres in height, the matters for discretion and assessment criteria in Rule 18.12.10.1 should be referred to.
- 3.14** It is noted that on 1 October 2009 the Resource Management (Simplifying and Streamlining) Amendment Act 2009, came into force, which amongst other things liberalised the rules in respect of activities relating to trees, for sites in the urban environment. The application site falls within the definition of a site within an urban environment, as defined under the new Amendment Act. On its commencement the Act revoked any rules in a district plan or proposed district plan that restricts the trimming of any tree in an urban environment. On 1 January 2012, the Amendment Act also revokes rules in a district plan or proposed plan that prohibits or restricts the felling, damaging, or removal of any tree or group of trees. These legislative provisions do not apply to a tree or group of trees that are specifically identified in the plan or proposed plan. In other words specifically scheduled trees would still be protected.
- 3.15** Rule 18.9.2 referenced above is therefore affected by the Amendment Act in relation to tree trimming. This application however involves the entire removal of the two trees and therefore is not at the present time affected by the 2009 Amendment Act. Therefore despite this new legislation being passed a Restricted Discretionary resource consent is nevertheless still required.
- 3.16** To provide the Hearings Panel with some further background and context it is also noted that Chapter 9 of the Rodney District Plan - Operative in Part which contains the rules relating to business activities in the District has been subject to a variation (Variation 125). Essentially this variation seeks to protect the special character and amenity values of the Warkworth Town Centre through floor area and frontage length controls. An equivalent Plan Change was also introduced in to the Operative District Plan 1993 (Plan Change 110). The variation introduces a Warkworth Town Centre Policy Area, which the application site is subject to. This main policy area is then divided into three sub policy areas, Policy Areas A, B and C. The application site falls within the 'Core Expansion Policy Area C' where large format business activities may locate provided certain criteria are met.
- 3.17** A decision on submissions was released on Variation 125 on 3 September 2009. This decision has subsequently been appealed by the applicant Progressive Enterprises Ltd and others. Prior to this, Progressive Enterprises Ltd also commenced judicial review proceedings in the High Court in relation to Variation 125 which have yet to be resolved. The variation does not focus on tree removal issues or introduce rules that would affect the activity status of this application under Chapter 18. It does however introduce some new policies and objectives into the Plan in respect of the Warkworth Town Centre relating to protecting and enhancing the special values of the town centre. In my opinion while secondary to the more pertinent provisions of Chapter 18, the new policies and objectives are considered to have some degree of relevance to this application and, under section 88A of the RMA, can be given regard to in a 104 assessment.

Overall the application is a Restricted Discretionary Activity.

4.0 SITE & LOCALITY DESCRIPTION

- 4.1** The site, Lot 1 & 2 DP 36090, has dual frontage on both Mill Lane and Neville Street. Access into the site would appear to be obtained from both frontages. Directly adjoining Lot 2 to the south is the Warkworth RSA, which contains the RSA building and carpark. Directly adjoining Lot 1 to the north is a site that has two buildings located on it, which are used for offices and a church operated second hand shop, with unsealed parking. The western side of this site extending to the Mill Lane road frontage has been left undeveloped in open grass and a few trees.
- 4.2** The main activities on Lot 1 & 2 DP 36090 itself are a motel unit development and parking with an associated residence and amenities. It is understood the motel is not currently in operation. Also on the motel site on the Neville Street frontage is a small shop building which is currently untenanted. It is directly beside this small shop that the Jacaranda tree is located close to the Neville Street road frontage. The Rimu tree is also located within the motel site approximately 10-15 metres along the Neville Street frontage from the Jacaranda tree. There are other trees on the site, that are mainly located near the back of the residence that appears to be connected to the motel development, this includes the Sweet Gum tree for which consent approval for removal has already been obtained. From the Mill Lane frontage the site is generally flat but gradually slopes up toward the east to the higher road level of Neville Street.
- 4.3** In the wider context the site is located in one of the southern most sections of the commercial part of the Warkworth Township, with land directly to the north, east and west of the site being commercial and land to the south, south-east of the site being generally residential in nature.

5.0 WEIGHTING OF DISTRICT PLANS

- 5.1** As discussed above Chapter 18 'Urban Land Modification and Vegetation Protection' of the Rodney District Plan - Operative in Part, along with a number of other chapters were made operative on 30 January 2009. This therefore means that any equivalent tree rules in the earlier Plan being the Operative District Plan 1993 are now inoperative and are no longer legally applicable. The only tree removal rules that currently have legal effect are contained in the Rodney District Plan - Operative in Part, and therefore the full amount of weight should be placed on these provisions.

6.0 NOTIFICATION AND SUBMISSIONS

Notification

- 6.1** The application was notified on 8 September 2009 and submissions closed on 7 October 2009. A summary of the submissions is set out below. A full copy of the submissions is attached as **Attachment B**.

Submissions

- 6.2** A total of two submissions were received by the close of the submission period. Of these one opposed the application in part and the other supported the application in full.

GROUPS & COMPANIES

Name	Main Concerns	Relief Sought	Wish to be heard
The Tree Council	<p>-In early Summer the Jacaranda tree is one of the most floriferous of this species in the area. The beauty of the tree makes a significant contribution for about 6-8 weeks, to the amenity of the area at this time. For the remainder of the year it is a very pleasant shady tree of substantial size, good form and excellent health.</p> <p>-The Rimu tree is growing in the SE corner of its original site and has foliage around it. On the surface it makes a pleasant green addition to an otherwise quite sparsely treed area, but it is not an outstanding example of its species. In view of the problems with the structure of the tree, as indicated in the arboricultural report, The Tree Council does not believe the retention of this tree is warranted.</p>	<p>-Consider the retention as an important aspect of the design of the building.</p> <p>-With many members of the Warkworth community being against such a large scale building . . . the retention of the Jacaranda tree could go some way to ameliorating the concerns of those residents.</p> <p>-Requests that consent for the Jacaranda be refused, if consent is granted require a mitigation and maintenance plan.</p> <p>-Consent for tree removal is only granted, if consent for building is also granted.</p>	Yes
Hinaiu Developments Limited	<p>-Support the entire application.</p> <p>-The presence of the trees is interfering with a better use of the land and the effects of their removal are not more than minor.</p>	-Grant the application.	-Does not specify.

7.0 REPORTS FROM OTHER OFFICERS/DEPARTMENTS/CONSULTANTS

Reports and/or comments have been received from the persons with respect to this application:

- (1) Comments from Council's Development Engineer - Ray Smith (see **Attachment C**).
- (2) Comments from Council's Ecological Adviser - Rue Statham (see **Attachment D**).
- (3) Comments from Council's Open Space Planner (qualified Landscape Architect) (see **Attachment E**).

8.0 STATUTORY ASSESSMENT

- 8.1** The Act requires for all applications for resource consent that subject to Part 2 of the Act, the Council must have regard to the matters set out in section 104 of the Act.
- 8.2** Section 104 (2) of the Act states that the Council “may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.” The permitted baseline of effects will therefore be assessed prior to the assessment in terms of section 104 (1) of the Act.
- 8.3** Following the section 104 (1) assessment an assessment will be made in terms of sections 104 C, as applicable, and Part 2 of the Act.

9.0 SECTION 104 ASSESSMENT

Permitted Activities Assessment

The Existing Environment

- 9.1.** As discussed above the site has an existing motel unit on it with an associated residence and amenities, which in total amount to four buildings on the application site as a whole. Those parts of the site that are not in a permanently sealed surface and used for parking and access, have been retained in lawn, such as the areas in and around the more northern motel units and the close by residential dwelling on the site. Within this lawn area, the site contains other trees that are generally located close or reasonably nearby to the Mill Lane frontage. One of these trees is a Liquid Amber tree which was subject to a consent approval for removal under the other part of this application RMA 55383, which was treated separately on a non-notified basis.

Unimplemented Consents

- 9.2** As discussed previously under the earlier ‘Planning History’ section of the report, a consent has relatively recently (2 July 2009) been granted under the same RMA reference number (RMA 55383) for the removal of two trees, an Apple tree and a Sweet Gum/Liquid Amber tree. The Apple tree is not within the boundaries of the application site that is the subject of this particular part of the application but is located two sites to the north of Lot 1 DP 36090 on Lot 2 DP 150337. The Sweet Gum/Liquid Amber tree is located on one of the subject sites (Lot 1 DP 36090), close to the Mill Lane frontage. A site inspection has not been undertaken to check if this consent has in fact been exercised and the trees removed, however as there are a number of applications yet to be determined on the site it has been assumed the consent is unlikely to have been implemented. The applicant may wish to advise the Panel on the up to date situation with the implementation of this consent.

Activities Permitted by the Plan

- 9.3** As discussed above the only District Plan rules that are legally in force are those within Chapter 18 of the Rodney District Plan - Operative in Part ‘Urban Land Modification and Vegetation.’ Under this chapter, under Rule 18.9.3 Activity Table 2, the plan permits the removal of trees within the ‘Retail Service’ zone under the following circumstances summarised and listed below:

- Trees that are dead.
- Trees that are authorised to be removed by any statute or delegated legislation.
- Trees listed as a plant pest within the Auckland Regional Plant Pest Management Strategy or the National Pest Plant Accord (provided the tree is not listed in the plan as a notable or historic tree).
- Removal of any tree listed as a National Surveillance Plant Pest, under the Bio-security Act 1993.
- The removal of tree species listed in the plan that are exempt from protection (provided the tree is not listed in the plan as a notable or historic tree).
- The removal of native trees less than or equal to 6 metres in height provided they are not within 200 metres of Mean High Water Springs (provided the tree is not listed in the plan as a notable or historic tree).
- The removal of exotic trees less than or equal to 6 metres in height (provided the tree is not listed in the plan as a notable or historic tree).

None of the above circumstances apply to the Jacaranda and Rimu tree which the applicant seeks consent approval to remove.

- 9.4** It is also noted that Rule 18.9.3 Activity Table 2 allows for any regular pruning or maintenance of any tree, using short-handled hand-operated secateurs. However the RMA Amendment Act 2009, which is effective from 1 October 2009, would also allow for the trimming of any tree that is not a scheduled tree, within what is defined as the urban environment (under which the application site qualifies). In respect of these new legislative provisions Council has indicated to the general public that trimming is considered to involve no more than 20% of live growth removal from the tree in any given year. Therefore this extent of trimming can take place as of right.

Section 104(1) (a) Any Actual and Potential Effects on the Environment of Allowing the Activity.

- 9.5** Section 3 of the Act states that the term "effect" includes any positive or adverse effect; temporary or permanent effect; past, present, or future effect; any cumulative effect and potential effects.

The following headings are based on the environmental effects that are referred to in the relevant restricted discretionary assessment criteria for this type of application contained in 18.12.10.2 of Chapter 18 of the Rodney District Plan-Operative in Part (**Attachment G**). Those parts of the assessment criteria in 18.12.10.2 that are related to other considerations will be evaluated in a later section of the report.

Safety (18.12.10.2 (a))

The Assessment Criteria in the Rodney District Plan - Operative in Part under 18.12.10.2, requires that when considering an application the Council will have regard to whether the condition of the tree is such that it will endanger life or property.

The Arboricultural report by Stephen Bishop of Amenity Tree Consultants Limited (ATC) which supports the application undertakes an appraisal of the condition of both the Jacaranda and Rimu tree.

In respect of the Jacaranda tree the ATC report notes that there is minor dead wood that is present throughout the crown, however this is considered normal for the species and age of the tree. The report also notes the lower branches of the tree are making contact with the roof of the adjacent building (being the small untenanted shop on the Neville Road frontage). Overall however the tree is considered by the assessment as a good specimen that is not exhibiting any visible signs of pest or disease (p.9).

In respect of the Rimu tree the ATC report notes the presence of longitudinal cracks in the main stems of the tree as well as some dead branches within the crown. The assessment notes the lower canopy branches overhang the adjacent Neville Street footpath. The overall conclusion on the state of the tree is that it is considered to be a poor specimen with a limited safe useful life expectancy (p. 10).

Council's Ecological Adviser Rue Statham has reviewed the application including in particular the ATC report. He considers the Jacaranda tree does not appear to pose any threat to persons and/ or property on the site. While he acknowledges the Rimu is in a state of decline, he considered there are no obvious signs of imminent failure.

Therefore it appears there is certainly no safety issue in respect of the Jacaranda tree. In relation to the Rimu tree while there are recognised issues with its health which both experts have highlighted, at this particular time these would not appear to be of a severity that would justify immediate action involving the removal of the tree for reasons of protecting people's life and/or property.

Landscape and Amenity Values (18.12.10.2(b))

The relevant assessment criteria also expects that regard is had to whether the removal of the tree will adversely impact on the amenity and landscape values of the neighbourhood.

The plan provisions are considered to provide a framework for evaluating such effects.

The provisions in Chapter 18 of the District Plan discuss the importance of vegetation in urban zones as they provide visual relief from the built environment, and a sense of character to neighbourhoods. The fact that some trees stand-out in the landscape because they contribute not only to the values of the property they are located on but to the wider values of the community is also discussed and is considered relevant to this particular application. The plan also emphasises the contribution both exotic and native tree species make to amenity values by contributing to the overall aesthetics of an area and providing landmark significance (18.1.2 'Urban Vegetation Protection' p.2 & Explanations and Reasons for Policy 18.4.2 p.9). Again this is considered particularly pertinent to this tree removal proposal, as in terms of amenity values, Neville Street has some prominence in the wider Warkworth townscape being the main gateway thoroughfare into the settlement from the south.

The provisions in Chapter 9 relating to business activities in the district including in the 'Retail Service' zone which relates to the application site and the 'Warkworth Town Centre Policy Area' under Variation 125 which is also applicable to the application site, place emphasis on protecting and enhancing the unique character and special values of the town centre and ensuring the amenity values of the town centre continue to be of a high quality. It is considered the retention of established trees on the streetscape within the town centre plays an important role in ensuring these amenity values remain intact.

The way in which the Jacaranda tree contributes to the amenity and landscape value of the area is detailed in the submission of the Tree Council who note that:

'In the early summer the Jacaranda is one of the most floriferous of this species in the area. The beauty of the tree in flower makes a significant contribution, for about 6-8 weeks, to the amenity of the area at that time. For the remainder of the year it is a very pleasant shady tree of substantial size, good form and excellent health. I believe the reason for the tree's flowering performance is the shelter the current building offers the tree from the cold south and south westerly winds and the clear area around the root system that allows for the sun to ward the soil.' (p. 1 submission by The Tree Council dated 06/10/09).

Council's Open Space Planner who is a qualified Landscape Architect (Leo Jew), has undertaken an assessment of the proposed tree removal in terms of the loss of landscape and amenity values (**Attachment E**).

Mr Jew considers that due to its closeness to the front boundary and scale, the Jacaranda tree is contributing significant amenity to the streetscape. He considers given the scale and proximity to the street frontage the removal of this tree would have a more than minor impact on the amenity of the streetscape and the surrounding neighbourhood.

In respect of the Rimu tree, this is also considered to make a significant contribution to the streetscape amenity and Mr Jew notes that when viewed from the south forms what he describes as a visual coherency, with the Kauri tree which stands at the frontage of 18 Neville Street, to the town backdrop which is formed by the Department of Conservation reserve along the Mahurangi River. His comments also indicate that despite the cracks in the Rimu tree there remains potential for considerably longevity.

It is difficult to see how the offer to plant two street trees on Mill Lane (if this is in fact a measure that is formally part of this application) will mitigate the significant loss of amenity from the removal of these two trees on the Neville Street streetscape which has considerably more amenity and prominence than the Mill Lane streetscape. Mr Jew has commented in his evaluation that planting outside the visual catchment of the two subject trees, in no way contributes to the mitigation of these impacts. Further to this and a point which will be more fully elaborated on later in the report, at the applicant's insistence the tree removal cannot be assessed in the context of the supermarket proposal and therefore the benefit of a 'complete picture' assessment and a weighing up of effects on this basis cannot be undertaken.

The application site is an area of land that is over 2000m² and zoned for retail service purposes. Under this zoning, shops, offices, commercial services and town centre business areas, could be expected to be developed. Potentially this would be in accordance with the very permissive development controls the plan provides for business zones, where in certain circumstances there are no yard controls or height to boundary requirements and the plan provides no limit on the area of the site that can be covered by buildings. In certain situations this will create the need for the removal of trees so the potential and function of the zoning can be properly realised. However a case still needs to be made as to how a particular development proposal is incompatible with the retention of the trees and mitigation commensurate with the adverse effects generated by their removal needs to be put forward for consideration. Usually such mitigation would be integrated into a site specific development proposal. The application has not adequately addressed these important matters.

Based on the above discussion and assessment as well as the input from the submission process provided above it is considered the adverse effects on amenity values that would result from the removal of both the Jacaranda and Rimu tree, and the complete lack of justification for this in the application make it very difficult to justify their removal.

Erosion/Instability/Flooding (18.12.10.2 (d) & (e))

As the engineering impacts of the tree removal proposed in this application (and in respect of the other two trees previously part of the application) were considered to be at a very minor level, a full report from Council's Development Engineer was not undertaken.

However as these issues all feature in the relevant assessment criteria some comments have been provided by Council's Development Engineer - Ray Smith.

The comments provided indicate that there is not a concern with the removal of the trees exacerbating or contributing to flooding, due to the site's natural elevation and the fact that it has not shown to be prone to flooding.

Mr Smith notes that tree removal can potentially trigger erosion or instability if the works are not carefully controlled. However a works methodology and silt control can address and manage such effects to an acceptable level.

Overall effects relating to erosion, instability and flooding from the removal of the trees were considered to be minor.

Loss of Wildlife Habitat (18.12.10.2(f))

The District Plan indicates that where natural features in urban areas, have value as wildlife habitat, they are retained through the appropriate siting of structures and works which avoid effects on such features (p. 8 Explanations & Reasons, Policy 18.4.2).

The ATC Arboricultural Report that forms part of the application indicates that linkages between habitats and other natural features would remain unaffected by the tree removal proposal due to the small percentage of vegetation being removed from the overall urban area and the extent of remaining vegetation within the area.

Council's Ecological Adviser - Rue Statham would appear to concur with this analysis, as from his assessment it is clear he is satisfied that none of the trees are providing significant wildlife habitat.

On this basis it is considered the habitat issues in relation to the removal of both the trees are considered to be minimal, with both experts involved in agreement that the adverse effect in this regard are not great.

Section 104(1) (b) Any Relevant Plan Provisions

District Plan Provisions

Rodney District Plan - Operative in Part

Objectives and Policies

- 9.6** The proposal is considered to be **contrary** to parts of the following objectives and policies in Chapter 18 'Urban Land Modification and Vegetation'.
- (a) Objective 18.3.1 (c) on page 6.
 - (b) Policy 18.4.1 on page 7.
 - (c) Policy 18.4.2 on page 8.
- 9.7** The reasons why the proposal is considered to be contrary to parts of these provisions is that they seek to avoid, remedy or mitigate adverse effects of vegetation removal on the visual amenity values of neighbourhoods, neighbouring properties and communities and to minimise adverse effects on landscape amenity values. They also seek to retain native trees and significant exotic trees where possible.
- 9.8** The Jacaranda and Rimu trees the applicant seeks to remove are not in an obscure location but are on the main thoroughfare into the Warkworth Township from the south. Council's Landscape Architect has signalled that in his professional opinion the removal of the trees will bring about a significant loss of streetscape amenity. The mitigation that is offered in the application is ambiguous and would not appear to be targeted toward directly offsetting the effects of losing trees that contribute to the amenity and landscape values to this degree. In the absence of being part of a broader development proposal, it is a loss that would appear entirely unwarranted, based on the information presented and the matters that are within the jurisdiction of making a decision on the application.
- 9.9** The proposal is also considered to be **contrary to** the intentions of the following objectives and policies in Chapter 9 the 'Business' chapter of the plan, relating to Business zoned land in general, the Retail Service zone and the Warkworth Town Centre Policy Area.
- (a) Objective 9.3.1 (p. 9).
 - (b) Objective 9.3.8 (p.9).
 - (c) Objective 9.8.1.1.2 (Variation 125).
- 9.10** The proposal to remove two visually significant trees on the Neville Street streetscape is considered to be contrary to what was intended in a business area, such as where the tree removal under this application has been sought. The over-riding theme of these provisions is the importance placed on the maintenance and enhancement of the amenity values of town centre business areas. Clearly therefore the removal of established trees, that contribute positively to this level of amenity, without sufficient justification and mitigation is not an intended environmental outcome for a town centre environment and such adverse effects should be avoided. The provisions also emphasise the need to maintain and enhance the quality of the natural environment in areas where business activities occur.
- 9.11** Finally while it is recognised that Variation 125 is primarily focused on the frontage width and floor areas of business activities within the Warkworth Town Policy Area, the application site nevertheless falls within this policy area and is therefore subject to objective 9.8.1.1.2 which seeks to protect the special values existing in the Warkworth Town Centre. The established streetscape trees particularly on the more prominent streets within the town centre are considered contribute to these special values and under section 88A and 104(1)(b) must be had regard to.

Assessment Criteria

- 9.12** The following are relevant aspects of the Assessment Criteria 18.12.10.2, which have not been commented on in the assessment of any actual or potential effects on the environment earlier in the report.

9.13 *'Whether alternative remedial mechanisms are available, so that removal or cutting of the tree does not need to occur' (18.12.10.2 (b))*

Council's Ecological Adviser has provided comment on this aspect of the assessment criteria. In his view as both the Jacaranda and Rimu tree are situated on the eastern boundary of the site and thus on the periphery as opposed to the interior of the site this makes their possible retention easier.

In the early stages of processing the tree removal application it was discussed with the applicant that it was felt the tree removal would appear to be closely associated with the supermarket application. In terms of how the two proposals relate, the Jacaranda tree is approximately located partly where the vehicle entry into the underground parking for the supermarket is proposed and partly where pedestrian entry to the store will be gained from Neville Street. The current design shows the Rimu tree being partly located where the first speciality retail shop associated with the supermarket will be and partly within or very close to the access for the supermarket truck dock. Therefore the current design of the supermarket proposal appears to rely on the entire removal of both trees.

The applicant was advised that it was thought the determination of the decisions together, would bring about a better overall resource management decision. It was also specifically pointed out to the applicant that in the absence of a development proposal the tree removal application wouldn't appear to meet the relevant assessment criteria in 18.12.10.2 and therefore it would not appear to be in the applicant's interests to pursue the application independently of the development proposal. The applicant however vigorously insisted that the tree removal application be treated as a 'stand-alone' application separate from the supermarket as they considered the application to remove the trees was necessary irrespective of the final form of development on the site.

The Council took legal advice on this issue and were advised that despite the planning issues that may arise from a legal standpoint, dealing with the tree removal application separate to the supermarket proposal, would not pose legal difficulties. It is noted that section 103 of the RMA provides for combined hearings in respect of two or more applications that are made in relation to the same proposal, but this appears to be only in circumstances where the consent authority has decided to hear the applications. The notification decisions on both the lodged supermarket applications are still outstanding awaiting the applicant's response to section 92 requests and Council's decision on direct referral to the Environment Court. Therefore the processing of the tree removal is at a more advanced stage than the processing of the supermarket proposal.

Overall it is considered the applicant has failed to demonstrate that there are not alternative remedial mechanisms available, so that removal or cutting of the trees would not need to occur and therefore this aspect of the assessment criteria is not met.

9.14 *'Whether the development or earthworks which threaten the tree could be undertaken elsewhere on the site, so that effects on the tree are avoided or minimised' (18.12.10.2 (g))*

Again as discussed with criteria (b), the applicant is unable to demonstrate if the development and/or earthworks which threaten the tree could be undertaken elsewhere, so the effects on the trees could be avoided or minimised. The request to remove the trees has been lodged with no assessment in this regard and an insistence that the application be processed in isolation of any development proposal particular to the site, whether this be for the proposed 'Countdown' supermarket or any proposal. On this basis it is considered there is insufficient justification in the application at this point to motivate approval of the application, having regard to this aspect of the assessment criteria.

9.15 *'Whether appropriate alternative plantings or remedial measures are proposed. (18.12.10.2 (h))*

As indicated in the comments from Council's Ecological Adviser - Rue Statham and as discussed in an earlier section of the report it is unclear exactly what alternative plantings or remedial measures form part of the proposal. There is mention made in the Arborist report of two specimen trees being planted in Mill Lane, however no plan accompanies the report and it would appear this mitigation is really part of the yet to be determined supermarket proposal. In the absence of any special arrangements to link the two proposals, it would appear unreasonable and impractical to expect Council to rely on mitigation measures to offset tree

removal that will only take place if and when consent approval on another proposal results in the future. The current application not only offers little clarity on what mitigation is actually put forward in the application but also offers little certainty that this mitigation would or could take place if the application continues to be dealt with separately from the associated development proposal.

- 9.16** *'Whether circumstances exist, concerning the health of the tree, including diseased or damaged conditions, that warrant the tree's removal.'* (18.12.10.2(i))

Council's Ecological Adviser Rue Statham has provided specific comment on this part of the assessment criteria in relation to the Rimu. The following is an extract from his assessment:

'As indicated in the Arborist report, the only tree that is subject to physical damage is the Rimu. However without a more in-depth assessment of the tree its longevity is unknown. The crown of the tree appears to be healthy, and exhibits natural growth. The retention of the tree could be safeguarded in the short term if a sympathetic development was to take place. It would be a matter of monitoring the tree as part of a routine landscape management plan, to ensure that its retention for as long as possible was maintained. As indicated in the Arborist Report, there was no significant reasoning that warranted the removal of the trees.'

It therefore appears that the potential for the Rimu tree to have some longevity along with the amenity benefits it provides outweigh any arguments raised at this point seeking its removal based on its current state of health. The Arboricultural assessments undertaken on the Jacaranda tree have highlighted no major issues in respect of damage or disease.

Any Relevant National Policy Statement or Regional Policy Statement

Auckland Regional Policy Statement

- 9.17** The Auckland Regional Policy Statement (RPS) is a regional planning instrument that seeks to achieve integrated and co-ordinated management of the region's natural and physical resources. A wide range of regionally important issues are evaluated in the document including issues relating to rural areas.
- 9.18** The 'Regional Overview and Strategic Direction' section of the document Chapter 2, identifies and discusses key issues relating to a broad array of regionally based issues in respect of, for example, the quality of the environment, the protection of rural zones, the natural character of the coast, heritage resources, transport efficiency, significant natural features and landscapes and areas of significant indigenous vegetation. The removal or modification of single specimen trees in an urban environment under general tree protection rules is very clearly within the domain of territorial local authority functions, and therefore as would be expected there are not considered to be any specific provisions in the Regional Policy Statement, that would relate to this proposal or any particular concerns that are triggered on a regionally level. It is accepted that the trees that are sought for removal are not regionally significant natural features.

Section 104 (1) (c) Any other Matter

Relevant Council Documents

Vision Rodney/ Planning Rodney

- 9.19** Vision Rodney is a strategic vision document that was formed through local community involvement and the facilitation of Council, whereby the people of Rodney articulated what they value in the district, what they would like to see change and what they want for the future.
- 9.20** It is structured into six outcomes and associated outcome statements. The two statements that are considered to hold the most relevance to this application are: Outcome 3 - 'Distinctive' *'We will maintain and enhance the character of our townships and rural areas through excellent rural and urban planning and the intelligent management of growth'* and Outcome 6- 'Clean and Green' *'We will continue to value and protect and enjoy our natural environment.'*

- 9.21** Clearly this document illustrates that people value high quality township environments such as the Warkworth Township. The amenity and landscape values provided by established trees in prominent street frontage locations within the business areas of a township setting contribute to this character, by providing visual relief, aesthetic appeal and landmark significance. It also illustrates that people also value retaining where possible elements of the natural environment such as established street trees.
- 9.22** It is considered the application currently before the Council does not provide adequate justification for the removal of the trees and therefore does not have sufficient regard to the values reflected in the Vision Rodney document.

Section 104 Assessment Conclusions

- 9.23** Overall it is considered that having regard to all the relevant section 104 matters that consent be refused.

SECTION 104 C ASSESSMENT

- 10.0** As a restricted discretionary activity section 104C of the Act states the Council must consider only those matters specified in the plan or proposed plan to which it has restricted the exercise of its discretion and may grant or refuse the application and if it grants the application, may impose conditions under section 108 only for those matters specified in the plan or proposed plan over which it has restricted the exercise of its discretion. For all the reasons contained in this report it is recommended that the application in its current form be *refused*.

PART II ASSESSMENT

- 11.0** The purpose of the Act is to promote the sustainable management of natural and physical resources. In terms of section 5 of the Act it is considered that this application in its current form *does not* promote sustainable management because it fails to manage two natural features within the Warkworth Town Centre environment in a sustainable way by seeking the removal of such features in the absence of any reasoning or justification for such action. This would normally be provided in the context of a proposal for development in accordance with the zoning provisions. While a supermarket proposal for the site and adjoining sites has been lodged with Council, this has not been formally integrated into the application to remove the Jacaranda and Rimu tree. The approach that has been taken to making the application in this regard is not considered to be in accordance with the principles of sustainable development. The application also fails to demonstrate how the adverse effects of the removal of the trees on the environment, in particular the effects on the amenity and landscape values on Neville Street, will be avoided, remedied or mitigated.
- 11.1** There are no section 6 matters of national importance relevant to this application
- 11.2** The following section 7 matters are relevant to this application.
- Section 7(c), having particular regard to *'the maintenance and enhancement of amenity values'*.

Whether the removal of the trees will adversely impact on amenity values is a specific part of the restricted discretionary assessment criteria for tree removal in 18.12.10.2 of the Rodney District Plan-Operative in Part. It is considered the applicant has not had adequate regard to this section 7(c) matter. The effects in this area have been indicated as of concern by Council's Landscape Architect, yet the mitigation provided in the application is unclear and would not appear to be of a sufficient standard to offset these effects.

- 11.3** There are no section 8 Treaty of Waitangi matters relevant to this application.
- 11.4** Overall it is considered this application is currently contrary to the Part 2 matters highlighted above.

RECOMMENDATION

That, pursuant to Sections 104 & 104 C of the Resource Management Act 1991, the notified application for resource consent by Progressive Enterprises Limited to remove a Jacaranda tree (*Jacaranda mimosifolia*) of more than 6 metres in height and a Rimu tree (*Dacrydium cupressinum*) of more than 6 metres in height, at the site at 24-26 Neville St (5 & 3 Mill Lane) Warkworth (Lot 1 & 2 DP 36090) be *refused* consent.

REASONS FOR THE RECOMMENDATION

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

- (a) Council's Landscape Architect has assessed the application and considers the removal of the Jacaranda tree and the Rimu tree will have a more than minor impact on the amenity of the streetscape and surrounding neighbourhood. This is a matter over which discretion is restricted under the relevant restricted discretionary assessment criteria in 18.12.10.2(c) of the Rodney District Plan - Operative in Part. The mitigation measures provided in the application are ambiguous and unclear, if they do in fact involve the planting of 2 specimen street trees in Mill Lane, this has been considered by Council's Landscape Architect to in no way contribute to the mitigation of the loss of amenity on the streetscape, as it is outside the visual catchment of the two subject trees for removal.
- (b) Taking account of the assessment of Council's Development Engineer it is accepted that the removal of trees will not cause any major concerns in respect of erosion, instability and flooding, provided appropriate methodologies for undertaking the works are followed. There are no safety issues in respect of the Jacaranda tree. While there are some cracks in the Rimu tree, Council's Ecological Adviser considers there are no obvious signs of imminent failure and the crown of the tree appears healthy and exhibits natural growth, therefore the current information before the Council's expert is not sufficient evidence to suggest the health of the Rimu tree would warrant its removal. Both the applicant's Arborist and Council's Ecological Adviser agree that the removal of the trees will not result in a significant loss in wildlife habitat. These are all matters over which discretion is restricted under the relevant restricted discretionary assessment criteria in 18.12.10.2 (a), (d), (e), (f) and (i).
- (c) The restricted discretionary assessment criteria in 18.12.10.2 (b), (g) and (h) of the Rodney District Plan - Operative in Part, places considerable emphasis on assessing the merit of a tree removal proposal in the context of whether there are alternative remedial mechanisms available, whether the development threatening the tree could be undertaken elsewhere and whether appropriate alternative plantings and remedial measures are offered. The applicant has lodged a resource consent application with Council for a 'Countdown' supermarket on the tree removal site and other adjoining sites to the north. They have insisted that the tree removal application be treated as a stand-alone application separate from the supermarket proposal, and have therefore lodged the tree removal application without adequate regard for these parts of the assessment criteria. It is accepted that the Retail Service zone which applies to the site is a very development focused zone which anticipates a high degree of built form, however the loss of natural features to make way for such development needs to be justified and appropriately mitigated. Usually Landscape Mitigation Plans lodged with development proposals seek to mitigate such effects. The mitigation provided in this tree removal application however, makes no attempt to provide a development context and is unclear, therefore the application in its current form does not effectively offset the amenity effects that would result from the loss of trees.
- (d) The application is considered to be contrary to objectives and policies in Chapter 18 'Urban Land Modification and Vegetation' of Rodney District Plan - Operative in Part, which seek to avoid, remedy and mitigate adverse effects of vegetation removal on the visual amenity values of neighbourhoods, neighbouring properties and communities and seeks to retain native and exotic trees where possible.

- (e) The application is also considered to be contrary to objectives and policies in Chapter 9 the 'Business' chapter of the Rodney District Plan - Operative in Part, which relate to business zoned land in general, the Retail Service Zone and the Warkworth Town Centre Policy Area. The over-riding theme of these provisions is the importance placed on the maintenance and enhancement of the amenity values of town centre business areas. The poorly mitigated removal of established trees on the streetscape of a main thoroughfare into the town centre is therefore not considered to be an intended environmental outcome for the Warkworth town centre having regard to these provisions.
- (f) In terms of Part II matters, the application in its current form is not considered to promote the sustainable management of natural and physical resources under Section 5. The request to remove the two trees is not within the context of a proposal for development. Despite the applicant's lodgement of a supermarket proposal on the site and adjoining sites, they have insisted that an integrated approach to the application not be taken and have failed to demonstrate how the adverse effects on amenity values will be avoided, remedied or mitigated, which is not in accordance with the principles of sustainable management. They have also not had particular regard to *'the maintenance and enhancement of amenity values'* under section 7(c). These Part II matters are also contained in or relate to the restricted discretionary assessment criteria 18.12.10.2 (b), (c), (g) and (h) in the Rodney District Plan - Operative in Part.
- (g) It is considered the application currently before Council does not provide adequate justification and mitigation for the removal of the trees and therefore does not have sufficient regard to the 'Outcome Statements' reflected in the 'Vision Rodney' document, which indicate people value high quality township environments and the retention of natural features such as established street trees where possible.

ATTACHMENTS

- ATTACHMENT A:** Application
- ATTACHMENT B:** Submissions
- ATTACHMENT C:** Comments from Council's Development Engineer - Ray Smith
- ATTACHMENT D:** Comments from Council's Ecological Adviser - Rue Statham
- ATTACHMENT E:** Comments from Council's Open Space Planner (qualified Landscape Architect)-Leo Jew
- ATTACHMENT F:** Plans from Supermarket proposal (RMA 54594 & RMA 55743)
- ATTACHMENT G:** Assessment Criteria 18.12.10.2 in the Rodney District Plan - Operative in Part.