

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, 30 October 2009.

PRESENT:

Chair	Harry Bhana
Crs	Zane Taylor
	Suzanne Weld

IN ATTENDANCE:

Reporting Planner	Michelle Carmine
Manager: Resource Consents	Ian Dobson
Development Engineer	Ross Green
Ecology Advisor	Rue Statham
Democracy Services Officer	Raewyn Morrison

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957/10/09 APOLOGIES**AGENDA ITEM NO. 1**

There were no apologies.

958/10/09 A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

THE APPLICANT PROPOSES TO SUBDIVIDE AN 8HA LOT INTO TWO ALLOTMENTS THROUGH THE PROTECTION OF 3.32HA OF SIGNIFICANT NATIVE BUSH. LOT 1 WILL BE 1.69HA AND LOT 2 WILL BE 6.31HA. BOTH LOTS WILL BE ACCESSED FROM A JOINTLY OWNED ACCESS LOT, A RIGHT OF WAY WILL THEN BE LOCATED OFF THE ACCESS LOT OVER LOT 1 TO SERVE LOT 2. LOT 1 WILL CONTAIN AN EXISTING DWELLING AND LOT 2 CONTAINS A PROPOSED BUILDING PLATFORM

Address: 1343 Old North Road, Kiwitahi

APPLICANT: CRUZ LIMITED/CRUZ TRUST

FILE REF R53840**WARD Western****AGENDA ITEM NO. 2**

The applicant seeks consent for the subdivision of Lot 8 DP 123741 into two lots, Lot 1 being 1.69ha in area and Lot 2 being 6.31ha in area. The application proposes to protect a total of 3.32ha of significant bush. Lot 1 will contain 0.3ha of the bush, Lot 2 will contain 3.02ha of the bush. An additional 1.89ha which is protected under an old covenant will be re-covenanted to be included within the new covenant, which has tighter controls. Technically the bush for protection is not continuous as the existing covenant lies between the two main areas for protection. The total area of bush to be protected on the two proposed lots will be 5.21ha. The site is accessed from an existing access lot that currently serves 7 properties. The additional lot will mean that eight lots will use the existing single lane access lot; under the District Plan rules five lots are considered the maximum allowable.

The applicants, John Dobson and Louise Dobson of Cruz Limited/Cruz Trust and the applicants' representatives, Russell Bartlett (Counsel) and Myles Goodwin (Principal and Environmental Planner, Cato Bolam Consultants Ltd), present.

Submitter in support: Brooke Painter, present.

Submitters in opposition: Neisha and Anthony Holdaway, present.

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

Note: There had been a power outage prior to the meeting commencing. The power did not come on until 9.30 a.m. The meeting began regardless of this issue.

A copy of a report from Hugh Fendall Consultants in regard to control of driveway stormwater run-off was tabled. A copy of Robert McCrone's bush assessment was provided to the Panel.

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Russell Bartlett introduced the applicants' case with a verbal submission. The following was noted:

Mr Bartlett said that the applicant relied on the Council assessment on the quality of the bush. He said that he had reviewed the submissions and he considered that some of the issues raised were "out of court." Mr Bartlett noted that Plan Change 55 and Proposed District Plan 2000 had created an incentive for subdivision in conjunction with bush protection. The applicants' lot was 8 hectares, or 20 acres, and they wished to create 2 residential lots with a significant part of the site covenanted. There was a recommendation that the driveway be improved and the issue was whether this should be bitumen or concrete. Where the recommended passing bay should be located was obvious.

John Dobson distributed and read written evidence.

Mr Dobson said that he and his wife had lived at 1343 Old North Road for four and a half years. About 18 months ago it had come to their attention that they were entitled to subdivide if they had enough unencumbered native bush and they had subsequently employed Cato Bolam to assess the bush. If they were able to subdivide they would like to build a new home for themselves. As Cato Bolam had already successfully subdivided two properties down their right of way without objections, they set about speaking to their neighbours and getting their approval. All but one neighbour was happy to sign the approval. Mr and Mrs Holdaway had objected and their objection had brought the matter to a hearing. Mr Dobson said that he had circulated a plan with regard to the driveway and that most of his neighbours had preferred the bitumen option as it suited the rural nature of the area as opposed to a concrete surface. However, Mr Dobson said that he would be guided by the Panel in regard to the driveway surface.

Myles Goodwin distributed and read written evidence. It was noted during the course of the hearing that there was a slight discrepancy in the evidence tabled and the evidence read by Mr Goodwin. This was rectified when all parties were provided with a photocopy of the correct evidence once power was restored.

Mr Goodwin described the site and existing land use, and the proposed development. He said that he believed the application to be relatively straightforward and that the applicant had addressed all the issues that the Council had raised. One of the main issues to be resolved was the driveway. As over five lots utilised the access, this aspect technically made the application non-complying. Discussions with a Council engineer resulted in a proposal that the Council engineer believed would provide safe and acceptable access to the new lot and the other existing lots that utilise the drive. Mr Goodwin requested that the proposed condition allow either a concrete or bitumen surface. In regard to passing bays, Mr Goodwin said that two passing bays had been formed as a result of a previous subdivision application but they had subsequently become grassed over; they could be reformed quite easily.

Referring to the bush quality, Mr Goodwin said that Robert McCrone of Cato Bolam and the Council Ecology Advisor had both visited the site and concluded the bush offered for protection met the Council's quality standards. Mr Goodwin said that he believed that upgrading the existing covenant to a modern standard had significant environmental benefit. The existing covenant did not require a high standard of protection, and penalties for breaching the responsibilities that were imposed were little disincentive if a significant advantage from breaching the covenant could occur.

Mr Goodwin said that the proposed site for the new dwelling was low in the landscape and not widely visible from off the property. He said that neighbouring properties would find a dwelling hard to see due to its placement. With regard to the issue about stormwater runoff as raised by Mr and Mrs Holdaway, Mr Goodwin said that Hugh Fendall Consultants had reported on this and concluded that if constructed as outlined in the Fendall report, there would be virtually no effect on the environment or neighbouring properties as a result of additional stormwater flows. Mr Goodwin said that the dual strip construction for the private right of way was not in accordance with Council engineering guidelines, but Ross Green, Council's Development Engineer, had suggested that the Council would probably accept the construction standard in this case.

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Mr Goodwin addressed District Plan matters and concluded that he believed the environmental benefits offered by the application were sufficient to offset any potential adverse effects resulting from a new dwelling. All of the issues raised during the processing of the application had been adequately resolved to the satisfaction of the Council. The basis of the application complied with the requirements of the Proposed District Plan and overall environmental effects would be no more than minor. He therefore believed that the Council could grant consent to the application.

Mr Bartlett noted that in reviewing the submissions there had been some confusion regarding the services of phone and power to be undergrounded. Mr Goodwin had noticed that in the proposed recommended conditions of consent it appeared power could be over or underground. Mr Bartlett confirmed that the applicant offered to have the condition amended to reflect services would be underground.

9.34 a.m. - 9.43 a.m. Meeting adjournment for photocopying purposes.

In response to questions Mr Goodwin said that:

- From his observation of the area nearly all the bush on the site would meet the standard in regard to Appendix 7B of the Proposed District Plan. He had relied on Mr McCrone's report, but his own observation was that the areas would meet the standard, also there was well over 2ha of bush.
- The applicants' intention was to fence off the bush area; however the applicants wanted to retain as much grazing as possible.
- The old style covenant was for a 999 year term; the only real requirement was that the bush could not be cut down but there were no requirements like there were in modern covenants for weed control, pest management and fencing.
- The new building platform was reasonably level, but what earthworks would be required would depend on house design, whether the house was a slab structure in which case more earthworks would be required, or a pole structure in which case there would possibly not be a requirement for any earthworks.

Mr Bartlett noted that there was no application for significant earthworks in relation to the driveway and that there was "no second agenda for making an application for that." He also noted that the minor dwelling unit near the applicants' house was constructed of similar materials to the house itself.

Mr Dobson said that in regard to the two storeyed barn, he planned to have an office above the shed; the upstairs area was not completed and there was no power and no kitchen, but there was a toilet and bathroom. He'd built the barn mainly to get his business work out of the house; the barn had been inspected and was permitted. Mr Dobson said that he, his wife and his daughter lived on the site.

Mr Bartlett noted that there was no limitation on out buildings or farm buildings in the District Plan.

Brooke Painter submitter in support, distributed and read written evidence.

Mr Painter said that he lived at 1353 Old North Road. He and his wife supported the application and they had stated that the only improvement to be asked for was to upgrade the right of way to a better standard to take into account the increased traffic flow.

In response to questions, Mr Painter said that when he subdivided his property approximately 3 years ago he was required to construct two metalled passing bays to a 5m width; these parking bays had been inspected. One of metal areas had since grassed over but nevertheless it was metalled and clearly defined as an ample passing area.

10.05 a.m. Mr Painter retired from the meeting.

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Submitters in opposition, Anthony and Neisha Holdaway.

Anthony Holdaway spoke to his original submission.

Mr Holdaway said that he took issue with some of the points in the Cato Bolam report. He said that he had bought his property to be able to enjoy a rural lifestyle. He stressed that his visual amenity was very important, in particular the view down the valley. About 20 years ago the original subdivision had started out with a beautifully sealed driveway but over time it had been ruined bit by bit (not by any fault of the applicants). A previous property owner had bought in two removable houses which he considered to be the basis for the deterioration of the driveway. The driveway was deeply rutted in places and stormwater flowed over several portions of the driveway which was eating it away.

With regard to comments from Mr Painter, Mr Holdaway said that everyone who shared the access had contributed to the upgrade of the driveway at the time of Mr Painter's subdivision. Mr Holdaway said that he thought the 2 storey barn building greatly detracted from the view from his property down towards the valley. He considered it would be easy to install a kitchen unit in the barn and said that Mr Dobson had spoken to him about establishing a homestay operation. Mr Holdaway was of the opinion that the property already had three dwelling units on it and that what the applicant was proposing would add a fourth. Referring to the issue of significant bush, Mr Holdaway said that he thought some areas consisted of sparse ti-tree. He also said that the removal of shelter belt trees had made his property more susceptible to wind.

Mr Holdaway said that he was concerned about erosion and slippage. He'd had a person who had geotechnical experience look at the area of concern and there appeared to be a tomo forming; water excavation was working its way into their property. He noted that the driveway down to Lot 2 ran straight down the natural stormwater area and he was concerned that this would greatly add to stormwater runoff. The geotechnical person he'd spoken to had considered that there should be a full geotechnical investigation. Mr Holdaway had concerns in regard to traffic noise and the issue of headlights at night, especially in a relation to the rural lifestyle nature of the area. He said that he was pleased to see that there would be no overhead power lines. Mr Holdaway said that he "wondered how far did the Council bend its rules" in regard to 8 lots off a shared access way. He was concerned about the potential for there to be rowdy neighbours.

Mr Holdaway circulated and read a further submission. Mr Holdaway said that he wished to withdraw paragraph 1 of his further written evidence.

In his further submission Mr Holdaway expressed a lack of confidence in the planner's report; he addressed issues in regard to the significant bush, erosion, the frontage, quality of life and excessive dwelling units. In conclusion, he said that taking into consideration the lack of any appreciable protection to significant bush areas, and the considerable adverse effect on the environment, the existing bush and the adjoining owners, he and his wife submitted that the resource consent application for the proposed subdivision by Cruz Limited should be declined.

10.45 a.m. - 11.06 a.m. Morning tea adjournment.

Neisha Holdaway addressed the Panel.

Mrs Holdaway said that she and her husband had lived on the property for 15 years. She said that she had concerns in regard to the right of way; drains needed to be more pronounced and shaped. She was worried about the slip which was undermining the boundary fence and was moving into their property, forming a sink hole which threatened to collapse the ground above. Mrs Holdaway considered that there was potential for the slippage to be extensive. She was worried about earthworks in the area in order to create the driveway and the undergrounding of services. She was also worried about the effects of major erosion problems above the stream. She considered that a retaining wall would be suitable to rectify the problem. She said that a concrete culvert and a wing wall on the main access way after Mr Dobson's property might need to be considered. The situation regarding stormwater needed to be addressed appropriately so that no stormwater impacted on their property.

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Mrs Holdaway raised the issue of a problem in regard to visibility on the driveway and she thought the passing bay was insufficient. She had experienced near misses and holdups on the right of way with neighbours stopped in the drive to chat. She thought the traffic on the driveway was dangerous and exceeded the requirements and she thought maintenance work on the driveway should be included in conditions if the subdivision was to go ahead.

Mrs Holdaway she that she was also concerned in regard to Mr Dobson's intentions regarding the barn as he had approached them for consent to convert it into a residential dwelling. Her other concerns included the issues of noise and traffic movement and whether the driveway to be constructed on the applicant's property would be concrete or metal, or sloped or shaped. She considered that at the very least the site should be inspected and a geotechnical report obtained so that their property was in no way whatsoever affected. Mrs Holdaway said that she was worried about the cost of rectifying a problem caused by the subdivision. She submitted photographs showing earthworks on the building platform.

In response to questions from the Panel, Mr and Mrs Holdaway said that:

- Dr Fendall's report could possibly form part of what necessary, but they still thought a full geotechnical report needed to be done to prevent further erosion.
- They thought core samples would be required.
- They would like to see a condition in relation to screening headlights, however they considered the only way this could be done was for trees to be planted; evergreen trees would help in regard to light and noise.
- They thought some of the track might need realignment.
- To the best of their knowledge a proper geotechnical report had not been carried out.

Council Officers:

Ross Green

Mr Green said that he thought a passing bay would help at the spot identified. He said that he had read the report in regard to the control of driveway stormwater and he respected Dr Fendall's opinion and he believed Dr Fendall had comprehensively covered the issues. Mr Green said that usually two concrete strips with a grass centre were not acceptable to the Council however, the driveway would only serve one lot and he thought the strips would be an acceptable method. He noted that proposed condition (g) *construction of private way* could be reworded to include the recommendations for driveway drainage in accordance with Dr Fendall's report. This would mean that proposed condition (h) could be deleted. Mr Green said that there should be less surface water going to the slump area once the driveway was completed; the stormwater would be controlled and taken to the bottom of the hill.

In response to questions from the Panel, Mr Green said that he had done his site visit some time ago and he didn't recollect noticing the existing passing bays. He said that the maintenance of the driveway would fall equally on the number of people who used the right of way and if the number of lots accessing the driveway went to 8 this was usually dealt with under the right of way agreement, this matter wasn't usually dealt with in conditions; all users should be responsible.

11.46 a.m. Mr Green retired from the meeting.

Rue Statham:

Mr Statham said that he had had a verbal discussion with Mr McCrone who did the bush assessment with regard to the additional areas omitted off the original scheme plan (Areas 5, 6, 7 and 8). In additional correspondence with Mr McCrone in relation to the scoring of the bush Mr Statham said that he had considered the scoring to be slightly high and this scoring had been adjusted accordingly by Council officers. Mr Statham noted that although there was some plus or minus 'sway' either way regarding the scoring, effectively he had peer reviewed the assessment and concluded that the bush met the scoring thresholds. Mr Statham said that Area 3 had been extended at his request.

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In response to questions Mr Statham said that he hadn't seen a weed and pest management plan yet although he did request one; the preference was for such a plan to be submitted with the application. With regard to the suggestion of screen planting, there would need to be sufficient width allowed in order to make the screening viable. Ideally the width should be 4 - 5m, with three rows of 'staggered' planting. The three rows would maintain the screening and provide height variance from the ground up.

11.54 a.m. Mr Statham retired from the meeting.

Michelle Carmine addressed the Panel. The following was noted:

Referring to the weed and pest management condition, Ms Carmine said that in terms of timing this had to be done before the 224(c) certificate was issued, it was a general requirement. She noted that from Mr Statham's point of view it would have been better to have had the weed and pest management plan up front. Ms Carmine said that from a planning point of view it was in the applicants' interest to progress rapidly with this plan in order to get 224(c).

Ms Carmine said that having listened to the issues raised she considered a condition for underground power to be acceptable and she agreed with the recommendations of Mr Green in regard to rewording condition (g), and deleting condition (h).

Ms Carmine said that she stood by her recommendation to grant consent for the reasons she noted in her report. She considered the effects of the proposal to be no more than minor and she noted that the site was not visible from any public vantage points. She said that as a result of the subdivision the accessway would be upgraded. She said the bush to be protected had been assessed by professionals and that they had considered it to be of a significant nature. With regard to the sight lines on the drive way, Ms Carmine said that although there was quite a lot of bush around she considered the sight lines to be relatively acceptable provided care was taken. She said that she had raised the matter with Mr Green and he believed there were no issues in regard to safety and the sight lines.

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

Mr Bartlett said that the application in general was an exercise in statutory planning and that the Panel understood the District Plan framework. With regard to comments about legality, Mr Bartlett said that the presumption was that the application would advance in accordance with conditions. Whether these conditions were in regard to the road, drain or wall, they would be constructed in accordance with Council requirements and the Council would not issue a 224(c) if these were not up to scratch. Mr Bartlett said that the applicant was experienced in property development and that in the past the applicant had used particular company vehicles for particular developments. His client wanted to live on the property but he was not sure which lot he would retain, there was a possibility he could sell a lot to his brother or otherwise he could put it on the market; his client wanted to do things properly.

Referring to the role of expert evidence, Mr Bartlett said that his client had obtained an expert assessment which gave enough comfort for him to progress the application. In regard to the original application, the Council had suggested changing a few things around and there was a general area of acceptance. The reason for fencing off the bush was to assist in regeneration and once fenced it would be managed with weed eradication programmes to help with regeneration. Whilst the bush at one end might be of variable quality it would regenerate. He believed what the applicant proposed in this respect could be safely adopted and the application could proceed on the basis that it did meet the requirements.

In regard to the driveway Mr Bartlett said that the area had ample width and that his client could easily put in a double carriageway, but his neighbours didn't want a 5m wide driveway. The already approved passing bays had overgrown; his client would be happy to form whatever was required. The comments from submitters about one vehicle meeting another had nothing to do with this application. There was plenty of space on the driveway for vehicles to avoid each other, there was a 20km speed limit and one had to presume people observed the legal limit. His client had the general consensus of the other property owners and had written approval from 6 out of the 7 lot owners. Mr Bartlett said that he didn't think there was a live issue in relation to the driveway problem that would be exacerbated. In

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his opinion the resealing of the surface would be a complete windfall for everyone. The driveway should have been maintained; not everyone had subscribed to keep up it up to scratch.

In relation to the driveway through his clients' property to the new lot, Mr Bartlett said that he didn't think there would be an issue with light spill affecting the submitters' house. Mr Bartlett said that he had no problem with the recommendation to plant at the turn at the bottom but in terms of any further planting, this would result in a major redesign and in his opinion would be a waste as vehicles going up the hill would pose no serious light spill.

Addressing stormwater, Mr Bartlett said that there was clear evidence that there would likely be an improvement with the proposed double access strips and the camber which was designed inwards to his clients' property. The works proposed would cut off and divert what was occurring at the moment; the works would have a neutral or positive benefit in regard to stormwater runoff.

Mr Bartlett said that during the course of proceedings the suggested amendment to conditions in regard to Hugh Fendall's report was accepted. However, in his opinion there did not seem to be any basis to undertake a whole new geotechnical report; a comprehensive geotechnical report seemed completely out of scale for a very minor driveway. Mr Bartlett referred the Panel to case law; Brookby Quarry and the ruling of Judge Smith on rural amenity regarding imposing control in terms of the General Rule zone. Mr Bartlett said that there were permitted living entitlements in a General Rural area.

In conclusion, Mr Bartlett said that his clients wanted to produce something that was saleable, useful, and with high amenity. He didn't think the submitters in opposition would be able to see the house on the new lot and the bush would only get better. The character of the area was protected or salvaged by the bush protection in this particular locality. Mr Bartlett requested that consent be granted.

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

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

The Panel subsequently resolved:

Taylor/Weld

DECISION OF THE RODNEY DISTRICT COUNCIL

That pursuant to Sections 104, 104D and 108 of the Resource Management Act, 1991, the notified resource consent application by Cruz Limited/Cruz Trust to subdivide a site at 1343 Old North Road, Kiwitahi, legally described as Lot 8 DP 123741, to create two allotments is granted consent for the following reasons:

REASONS FOR DECISION

1. The application does not result in adverse effects on the environment which are more than minor. In particular the Panel is satisfied that potential traffic effects including potential effects on vehicle safety as a result of occupants of the additional dwelling using the mutually owned access lot, and potential effects arising from stormwater runoff onto the adjoining site would be satisfactorily mitigated by the conditions of consent to be imposed. The Panel considered that effects of vehicle lights and noise of traffic using the proposed right of way over Lot 1 would be no more than minor. As a consequence the Panel is satisfied that the application passes the gateway tests of section 104D and falls to be considered under the provisions of section 104.
2. The grant of consent to the application would enable the enhancement and protection of areas of significant native vegetation that form part of a Significant Natural Area that is identified as such in the Partly Operative District Plan 2000. While the bush areas to be covenanted are technically not continuous or contiguous, they are separated by a previously covenanted area of significant bush and the result of the proposed covenanting is to create a 4.16ha area of continuous covenanted and protected bush subject to a full range of protection

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conditions including fencing, weed and pest removal and long term maintenance. A further 1.05ha of native bush will also be protected and most of that also adjoins other areas of native bush on adjoining lots.

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

THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:

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

OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:

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

National Policy Statement Provisions

None applicable

New Zealand Coastal Policy Statement Provisions

Considered broadly relevant

Auckland Regional Policy Statement Provisions

Policy 2.6.4.1 (ix)

Proposed Regional Policy Statements Provisions

Policies 2.6.17.1; 2.6.17.3 & 2.6.17.4

Auckland Regional Plan: Coastal Provisions

Not applicable

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Auckland Regional Plan: Air, Land and Water Provisions

None applicable

Plan Provisions**Plan Change Number 55, Rural Provisions**

Objective 5.1; 5.3; 5.13.

Policies 5.2(ii); 5.4(iii) & (iv); 5.14.

Plan Change Number 26, Residential Provisions

None applicable

Plan Change Number 62, Financial Contributions**Proposed Plan Provisions****Proposed District Plan 2000**General Rural Zone

Objectives 7.3.1; 7.3.2; 7.3.3; 7.3.8; 7.3.10

Policies 7.4.2; 7.4.4; 7.4.8; 7.4.9; 7.4.10; 7.4.15; 7.4.16

Subdivision & Servicing

Objectives 23.3.1; 23.3.2; 23.3.3

Policies 23.4.2 & 23.4.4

Other Documents

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

PREAMBLE

This was an application to subdivide an existing site into two separate allotments. Lot 1 of 1.69 ha, would contain the existing dwelling, a minor household unit, and an accessory building. Lot 2 of 6.31 ha would provide a site for an additional dwelling house. The application was based on the objectives, policies and rules for the General Rural Zone which permit subdivision in such cases where protection and enhancement and covenanting of significant native vegetation is provided. In this case a total of 0.3 ha of native vegetation within Lot 1 is to be enhanced and covenanted and within Lot 2, 2.72 ha of significant vegetation is to be covenanted and a 1.89 ha area of significant native vegetation which was previously covenanted will be included in the new covenants providing a better level of protection to that vegetation. The parent site obtained access to Old North Road by way of a jointly owned access lot (Lot 23 DP 123741). The new lot, Lot 2, would obtain access through a right of way easement over Lot 1 and through Lot 23 to Old North Road.

The land was zoned General Rural under both the Transitional District Plan (as amended by Plan Change 55) (TDP) and under the Partly Operative Rodney District Plan 2000 (PODP). Under the TDP the application required a non-complying activity consent because the location of the bush to be protected and the failure to provide at least 2 ha of contiguous bush to be protected, did not meet the requirements for a limited discretionary activity. It also required a discretionary activity consent, under the TDP, because the number of lots gaining access through the mutually owned access lot exceeded 6 sites. It required a non-complying activity consent under the PODP because the location of the bush to be protected and failure to provide at least 2 ha of contiguous bush to be protected, did not meet the requirements of the relevant rules, and it also required a non-complying activity consent because the number of sites gaining access from the jointly owned access lot exceeded 5.

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The applicant accepted recommended conditions of consent requiring the fencing and protection of the bush areas and implementation of weed and animal pest control prior to the issue of a s224 Certificate. Lot 2, the new residential site, was able to be adequately serviced using similar arrangements as those currently in place for the existing dwelling which has an on-site wastewater disposal system and obtains potable water by collection from roof run-off. The submitters in opposition owned an adjoining property to the west of the subject land and were concerned about a number of potential adverse effects, in particular placing some emphasis on the potential disruption to their amenities arising from the proposed right of way access which was to be located alongside the common boundary. They also expressed strong reservations about the potential effects of stormwater discharge from the new driveway that was to be formed adjacent to the boundary.

SITE VISIT

The Hearing Panel visited the site on 30 October 2009.

THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:

The principal issues that were in contention were as follows:

1. Whether covenanting and protection of the vegetation proposed together with the imposition of an updated covenant over the 1.89 ha of previously covenanted bush together provided a reasonable level of offset mitigation to justify the creation of another rural residential lot.
2. Whether the addition of a further residential dwelling within this rural area would result in a level of intensity of development that would be inconsistent with the visual character of the rural area and with the amenity values that presently exist.
3. Whether the grant of consent to the application would result in adverse effects on neighbouring properties as a result of additional vehicle movements on the mutually owned access lot.
4. Whether the proposed development of the vehicle access way to Lot 2 would have significant adverse effects as a result of headlight glare and noise from vehicles using that access.
5. Whether the construction of the vehicle access way to Lot 2 would result in adverse effects on the adjoining site as a result of increased stormwater run-off and/or soil instability arising from the effects of stormwater run-off.
6. Whether the proposed subdivision was consistent with the objectives and policies of both District Plans particularly (though not restricted to) those relating to the subdivision of land in exchange for protection of significant areas of native vegetation and those relating to the use of mutually owned access lots.
7. Whether one or other of the Section 104D RMA tests relating to non-complying activities would be met, those being whether the adverse effects of the activity on the environment would be minor or whether the application was for an activity that would not be contrary to the objectives and policies of either of the District Plans.
8. Whether the proposal is consistent with the purpose and principles of the RMA, as set out under Part 2 of that Act.

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SUMMARY OF THE EVIDENCE HEARD:**SUBMISSIONS AND EVIDENCE ON BEHALF OF THE APPLICANT****MR RUSSELL BARTLETT ON BEHALF OF THE APPLICANT:**

Mr Bartlett emphasised that the District Plan provided incentives for bush protection allowing for additional subdivision in return for covenanting and protection of significant areas of bush. He noted that in this case two residential sites would be created from the original 8ha parent site and a significant part of the total 8ha would be covenanted and protected. He said that he had observed over many years that although the development of the rural area in this part of Rodney had changed, as a result of the increase in the number of dwellings, its character had been largely maintained through the significant retention of bush which had resulted from the objectives and policies of the District Plans.

He noted the submitters' concerns about the potential effects of increased vehicle traffic on the mutually owned access lot and said that the applicant accepted that passing bays would need to be constructed. He said that the applicant also accepted the proposed conditions of consent for the permanent surfacing of the access lot carriageway from the road to the entrance of the subject site but noted that the neighbours, who had supported the application, would prefer the use of asphalt rather than concrete because the former would have a more natural appearance.

MR JOHN DOBSON – APPLICANT

Mr Dobson advised the Panel that he and his wife had lived on the site for 4½ years. After a neighbour had successfully obtained consent to a subdivision that they had decided to seek a similar consent. They had consulted with the neighbours and received positive feedback from all except Mr and Mrs Holdaway. They had attempted to meet the concerns expressed by Mr and Mrs Holdaway and had been able to rectify some of the matters which had been raised. They had circulated to their neighbours the recommendation of the Council's Development Engineer regarding the upgrading of the access lot carriageway and had been advised that most preferred the softer appearance of a bitumen seal on the carriageway rather than concrete.

Mr Dobson produced a report from Dr Hugh Fendall, a Chartered Professional Engineer, which addressed issues arising from stormwater run-off from the proposed new driveway which was required to provide vehicle access to Lot 2. The report contained a number of recommendations in relation to the construction of the driveway including measures to minimise the flow of stormwater run-off onto the adjoining property owned by Mr and Mrs Holdaway. His report concluded that provided the proposed new driveway was constructed in accordance with his recommendations there would be virtually no adverse effect on the environment or neighbouring property as a result of additional stormwater run-off flow.

In regard to the provision of telephone and electricity to the new lot, Mr Dobson accepted that they could be placed underground in order to minimise adverse effects on the neighbouring property. He offered to accept a condition that would require underground installation of these services.

Mr Dobson advised that the extent of earthworks required for the construction of the driveway and the building platform on Lot 2 would be well within the permitted activity level of 1000m³. He clarified the situation regarding the number of dwelling units on the property. He said that:

- i. There was a minor dwelling unit on the opposite side of the driveway to the house; and,
- ii. The two-storey barn had provision for appliance and implement storage on the ground floor and the upper level had been fitted out as a home office space with bathroom but not kitchen facilities.

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MR MYLES GOODWIN - ENVIRONMENTAL PLANNER IN SUPPORT OF THE APPLICATION

Mr Goodwin described the site and the existing land use. He noted that the topography sloped from the access lot to a water course which traversed the site, with the land rising from the watercourse up to the rear boundary.

He said that one of the main issues to be resolved was the non-complying aspect that arose from increasing the number of lots served by the jointly owned access lot (JOAL). As over five lots utilised the access, this aspect made the application non-complying. He said that discussions with the Council engineer resulted in a set of recommended conditions for upgrading the driveway of the JOAL, (between Old North Road and the entrance to the subject site). He said that the Council engineer believed that this upgrading would provide safe and acceptable access to the new lot, and to the other existing lots that utilise the drive. Mr Goodwin requested that the proposed condition allow upgrading with either a concrete or bitumen surface. In regard to passing bays, Mr Goodwin said that two passing bays had been formed and metalled as a result of a previous subdivision application. They had subsequently become grassed over but could be reformed quite easily.

He described the proposed subdivision advising that the existing covenant over 1.89 ha of bush did not require the covenanted area to be fenced, did not require weed and pest control and the penalty for breaching the covenant was a maximum of a \$2000 fine. He considered that these covenant provisions provided little disincentive to breaches. He noted that the applicant proposed to include the area of bush in the existing covenant within the newly covenanted areas and the older covenanted area would therefore be subject to requirements of fencing, weed/ pest control, ongoing maintenance/ protection and more effective penalties for any breach of the covenant.

He advised the Panel that the bush areas to be included in the new covenant had been assessed under Rule 7.14.3.2 and Appendix 7B of section 7 of the PODP. In terms of these provisions all of the areas proposed to be included within the covenant qualified as "significant bush". He noted that the Council's ecology adviser had also visited the site and assessed the bush and was satisfied that it met the District Plan requirements.

He noted the proposed site for the new dwelling was set low in the landscape and not widely visible from off the property. The existing screening offered by vegetation on the site and adjacent to the boundaries would over time be further augmented as the covenanted native bush became denser and taller.

In regard to the concerns expressed by Mr and Mrs Holdaway regarding stormwater runoff from the proposed new driveway, Mr Goodwin referred the Panel to the report by Dr Fendall. He noted that the exclusion of stock from these bush areas and the removal of weeds and pests would result in the vegetation becoming denser with dense ground cover developing. He considered that the increase in vegetation density would further reduce stormwater runoff.

In regard to District Plan matters Mr Goodwin considered that:

- there would be a net environmental benefit arising from the bush protection;
- the land comprised in Lot 2 was suitable for subdivision as it contained a level building site and works required to provide access and servicing would have only minor effects on the overall land form;
- the proposed subdivision would result in only a minor increase in traffic generation on the shared driveway which would be improved as a result of the sealing or concreting of the section between Old North Road and the applicants' site entrance;
- he considered the proposed subdivision would not create any cumulative or precedent effects noting that only one further property served by the access lot might have the potential to subdivide in accordance with District Plan rules;
- he considered that the proposed subdivision was consistent with objectives and policies (referred to earlier in this decision) and noted that a new dwelling on Lot 2 would take advantage of the views over the bush around it while maintaining a relatively low visibility from off the property.

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He concluded that the environmental benefits offered by the application were sufficient to offset any potential adverse effects that a new dwelling might have. The application complied with the requirements of the Proposed District Plan and any adverse effects were no more than minor.

In response to questions Mr Goodwin said that:

- he had relied on Mr McCrone's report that the bush on the site would meet the standard in regard to Appendix 7B of the Proposed District Plan, and his own observation confirmed that the areas would meet the standard;
- he also pointed out that the area of significant vegetation to be protected was well in excess of the 2ha minimum;
- the applicants' intention was to fence off the bush area, however, the applicant wanted to retain as much grazing as possible, so did not wish to fence pasture areas adjacent to the bush;
- the old style covenant was for a 999 year term; the only real requirement was that the bush could not be cut down but there were no requirements as applied to modern covenants for weed control, pest management and fencing;
- the new building platform was reasonably level, but the amount of required earthworks would depend on house design, whether the house was a slab structure in which case more earthworks would be required, or a pole structure in which case there would possibly not be a requirement for any earthworks.

MR BROOKE PAINTER - NEIGHBOURING PROPERTY OWNER IN SUPPORT OF THE APPLICATION

Mr Painter advised the Panel that he owned a property to the west of Mr and Mrs Holdaway and he had obtained resource consent to subdivide through the provision of bush covenanting. He said that as part of the subdivision process, he had provided passing bays in Lot 23. These passing bays had been formed and surfaced with metal and although they were currently overgrown with grass they remained usable. He said that his subdivision had been completed about three years ago.

MR ANTHONY HOLDAWAY - SUBMITTER IN OPPOSITION

Mr Holdaway said that he had bought his property to be able to enjoy a rural lifestyle and to enjoy its visual amenity. He referred to a number of matters that were not directly relevant to the determination of the subject application.

He was of the opinion that the property already had three dwelling units on it and that what the applicant was proposing would add a fourth. He later acknowledged that he was aware that the office over the barn was not presently occupied as a dwelling.

Mr Holdaway said that he was concerned about erosion and soil instability. He had engaged a geotechnical expert to look at an apparently unstable area adjacent to the common boundary of the subject land, in the vicinity of the proposed boundary between Lot 1 and Lot 2 and had been advised that there appeared to be a tomo forming as a result of water excavation and this appeared to be moving towards the Holdaway property. He noted that the driveway down to Lot 2 ran straight down the natural stormwater flow path and was concerned that this would greatly add to stormwater runoff. He said that the geotechnical expert he had consulted had considered that there should be a full geotechnical investigation. Mr Holdaway had concerns in regard to traffic noise and the issue of headlights at night, especially in the context of the current enjoyment of the rural lifestyle of the area. He said that he was pleased to see that there would be no overhead power lines. Mr Holdaway questioned how far the Council would "bend its rules" in regard to 8 lots off a shared access way. He was concerned about the potential for there to be rowdy neighbours.

Mr Holdaway circulated and read a further submission but withdrew paragraph 1 of this further evidence.

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In his further submission Mr Holdaway expressed a lack of confidence in the planner's report; he addressed issues in regard to the significant bush, erosion, frontage, quality of life and excessive dwelling units. In conclusion, he said that taking into consideration the lack of any appreciable protection to significant bush areas, and the considerable effects on the environment, on the existing bush and on the adjoining owners, he and his wife submitted that the resource consent application for the proposed subdivision by Cruz Limited should be declined.

MRS NEISHA HOLDAWAY – SUBMITTER IN OPPOSITION

Mrs Holdaway said that she and her husband had lived on the property for 15 years. She said that she had concerns in regard to the JOAL particularly in regard to drainage and stormwater run-off. She was worried about the unstable area (referred to by Mr Holdaway) which was undermining the boundary fence and was moving into their property, forming a sink hole which threatened to collapse the ground above. Mrs Holdaway considered that there was potential for the slippage to be extensive. She was worried about earthworks in the area in order to create the driveway and the undergrounding of services. She was also worried about the effects of major erosion problems above the stream. She considered that a retaining wall would be suitable to rectify the problem. She said that a concrete culvert and a wing wall on the JOAL (to the north-west of the Dobson property) may need to be considered. The situation regarding stormwater needed to be addressed appropriately so that no stormwater impacted on their property.

Mrs Holdaway raised the issue of a problem in regard to visibility on the JOAL driveway and she said that the passing bay was insufficient to overcome the problem. She had experienced near misses and holdups on the right of way with neighbours stopped in the drive chatting. She thought the traffic on the driveway was dangerous and exceeded the requirements and she thought maintenance work on the driveway should be included in conditions if the subdivision was to go ahead.

Mrs Holdaway she that she was also concerned in regard to Mr Dobson's intentions regarding the barn as he had approached them for consent to convert it into a residential dwelling. Her other concerns included the issues of noise and traffic movement and whether the driveway to be constructed on the applicants' property would be concrete or metal, or sloped or shaped. She considered that at the very least the site should be inspected and a geotechnical report obtained to establish that their property was not affected. Mrs Holdaway said that she was worried about the cost of rectifying problems caused by the subdivision. She submitted photographs showing earthworks on the building platform.

She pointed out that the areas of bush did not meet the District Plan rules as they were not continuous and she considered the Panel needed to evaluate the benefits of the proposed covenanting.

In response to questions from the Panel, Mr and Mrs Holdaway said that:

- Dr Fendall's report could possibly form part of what was necessary, but they still thought a full geotechnical report needed to be done to prevent further erosion;
- they believed that the geotechnical report should include analysis of core samples of the subsoils;
- they would like to see a condition in relation to screening headlights, however they considered the only way this could be done was for evergreen trees to be planted to screen light and noise;
- they thought some of the proposed driveway might need realignment in order to accommodate stormwater run-off controls and to enable screen planting;
- to the best of their knowledge a proper geotechnical report had not been carried out.

MR BARTLETT IN REPLY ON BEHALF OF THE APPLICANT.

Mr Bartlett said that the application in general was an exercise in statutory planning. If the application was granted consent it would be subject to conditions. These conditions would have to be implemented in accordance with Council requirements or the Council would not issue a Section 224(c) certificate.

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Referring to the role of expert evidence, Mr Bartlett said that his client had obtained an expert assessment and Council staff had suggested a few changes but there was a general area of acceptance. He said that the reason for fencing off the bush was to assist in regeneration and once fenced it would be managed with weed eradication programmes to help with regeneration.

In regard to the driveway Mr Bartlett said that the area had ample width and that his client could easily put in a double carriageway, but his neighbours did not want a 5m wide driveway. The already approved passing bays had overgrown; his client would be happy to form whatever was required. The comments from submitters about one vehicle meeting another had nothing to do with this application because the area identified by Mrs Holdaway was to the west of the Dobson driveway entrance (and that part of the driveway was not affected by this application). He submitted that there was plenty of space on the driveway for vehicles to avoid each other, there was a 20km speed limit and one had to presume people observed the legal limit. His client had the general consensus of the other property owners and had written approval from 6 out of the 7 lot owners. Mr Bartlett said that he didn't think there was any real driveway problem that would be exacerbated by the proposed subdivision. In his opinion the sealing required by the proposed condition would be of benefit for all of the lots that use the JOAL.

In relation to the driveway through his clients' property to the new lot, Mr Bartlett said that he didn't think there would be an issue with light spill affecting the submitters' house. Mr Bartlett said that he had no problem with the recommendation to plant at the turn at the bottom but in terms of any further planting, this would result in a major redesign and in his opinion would be a waste as vehicles going up the hill would pose no serious light spill.

Addressing stormwater, Mr Bartlett said that there was clear evidence that there would likely be an improvement with the proposed double strips and the camber which was designed inwards to his clients' property. The works proposed would cut off and divert what was occurring at the moment and accordingly would have a neutral or positive benefit.

Mr Bartlett said that during the course of proceedings the amendment to conditions to reflect Hugh Fendall's report was accepted. However, in his opinion there did not seem to be any basis to undertake a comprehensive geotechnical report for the construction of a minor driveway.

Mr Bartlett referred the Panel to the decision of the Environment Court in respect of Brookby Quarries Limited v Manukau City and the conclusions of the Court that assessment of rural amenity must have regard to the nature of permitted activities in such zones.

In conclusion, Mr Bartlett said that his client wanted to produce a saleable and useful subdivision with high amenity. He submitted that the submitters in opposition would be unlikely to be able to see the house, and the screening provided by the bush would further improve with the protection measures to be imposed. The character of the area in this particular locality was protected or at least mitigated by the bush protection that the District Plans had encouraged. Mr Bartlett requested that consent be granted.

THE EVIDENCE OF COUNCIL OFFICERS

REPORT OF - MICHELLE CARMINE REPORTING PLANNER

Ms Carmine's report described the proposal and the reasons for the application. She referred to the relevant rules of both the Transitional and the Partly Operative Proposed District Plans concluding that the application required consent as a discretionary activity under the Transitional District Plan and as a non-complying activity under the Partly Operative District Plan. She considered that the Partly Operative District Plan should be given the most weighting.

The report writer advised that the application had been limited notified to the owners and occupiers of the lots served by the mutually owned access lot. Seven submissions had been received, of which 6 sought approval of the application, and one submission from Mr and Mrs Holdaway sought that consent be refused.

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Ms Carmine provided an assessment of the proposed subdivision noting that the permitted baseline for activities included the dwelling and accessory buildings existing on the site (including the use of a building for a home occupation) and homestay for up to 10 visitors and childcare for up to 10 children. She provided an assessment of the effects on the environment. In relation to visual amenity she noted that the existing lot was well screened from the public road, the access lot and most surrounding neighbours and that only one neighbouring dwelling (the Holdaway house) had views over the subject site. She stated that the proposed building platform for Lot 2 would not be visible to the neighbouring dwelling due to screening provided by the covenanted bush areas. As a consequence she considered that the additional lot and the new dwelling it enabled would not detract from the surrounding natural landscape or from the visual privacy/amenity of the adjoining property. She observed that the concerns expressed in the Holdaway submission regarding visual effects of utility services were overcome by the applicant accepting that these would be placed underground. She did not consider that the driveway to Lot 2 would have any effect on visual amenity that was more than minor. She was also satisfied that the neighbouring Holdaway dwelling was located at a sufficient distance and angle from the new driveway such that the effects of headlight glare from vehicles using the driveway would be no more than minor.

Ms Carmine was of the opinion that the additional lot to be created would be in keeping with the existing rural character and that the protection of bush and the visual screening which it provided would appropriately mitigate any effects on rural character and amenity.

She reported that in her view the new lot was suitable, was stable and could be adequately serviced. She noted the advice of Mr Ross Green, the Council's Development Engineer that subject to conditions regarding the design of stormwater drainage the proposed subdivision would not have any effect on areas of erosion. She noted that Mr Green had also recommended that the carriageway of the JOAL between Old North Road and the entrance to the subject site, approximately 190m, was to be upgraded to a concrete sealed standard with a 3m carriageway and passing bays. She considered that upgrading of the access would mitigate the effects of a larger number of lots sharing the JOAL. She did not consider that the increase in the number of lots gaining access from the JOAL would affect the surrounding rural character because the access lot was well screened by surrounding bush. In this case she considered that the upgrading of the JOAL would not result in the creation of a virtual public road.

Ms Carmine's report referred to advice provided by the Council Ecological Adviser, Rue Statham, who confirmed that the District Plan rules regarding the assessment of bush quality could be met and that there would be an overall ecological benefit from the proposed subdivision.

Ms Carmine considered the objectives and policies of both District Plans noting that their purpose was to maintain the existing rural character and sustainable use of soils and water. Subdivision was limited to circumstances where a clear environmental benefit could be achieved including protection of bush or natural features. She considered that the existing land configuration, the screening of the existing and proposed future site along with the protection of significant native bush ensured that the proposal was not contrary to the objectives and policies of the General Rural zone.

She considered the proposed subdivision having regard to the provisions of the Auckland Regional Policy Statement (ARPS). She considered the proposal was not inconsistent with the ARPS as it would not adversely affect any of the key issue areas contained in the document and would not be inconsistent with Proposed Change 6 of the ARPS. She also referred to Vision Rodney noting that the proposal was consistent with that document.

Ms Carmine considered whether the grant of a non-complying activity consent in this case would have an impact on the integrity of the consistent administration of the District Plans. She referred to distinguishing features of the proposal noting that the bush was non-complying because the new areas to be covenanted were not contiguous, however the two major areas of new covenanting were separated only by the area of existing covenanted bush and so in that context the intention of the rule was satisfied. She considered that the covenanting of the areas including the existing bush covenant would create firm linkages for the protection of the larger SNA area. She considered that the JOAL was wide enough to enable upgrading to meet safety and traffic requirements in a way that did not detract from the surrounding rural character because of the partial existing screening by surrounding bush. She considered that for those reasons the integrity and consistent administration of the District Plans would not be undermined.

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The report writer concluded that overall the grant of consent to the application would be in accordance with Part 2 of the RMA in particular noting that Section 6 provided for the protection of outstanding natural features from inappropriate subdivision, use and development and in this context the protection of the moderate to high values was consistent with that section. She considered that there were no Section 8 matters relevant to the application.

She recommended that the application should be granted consent subject to conditions attached to the report.

In response to questions from the Panel regarding the weed and pest management condition, Ms Carmine said that the weed and pest management control plan had to be submitted to the Council's Ecology Adviser for approval and had to be implemented to that officer's satisfaction before the 224(c) certificate was issued. She considered that it was therefore in the applicants' interest to proceed with this as soon as possible.

She said that having listened to the issues raised she considered a condition for underground power was acceptable and she agreed with the recommendations of Mr Green in regard to rewording condition (g), and deleting condition (h).

Ms Carmine said that she stood by her recommendation to grant consent for the reasons she noted in her report. She considered the effects of the proposal to be no more than minor and she noted that the site was not visible from any public vantage points. She said that as a result of the subdivision the accessway would be upgraded. She was satisfied that the bush to be protected had been assessed by professionals and that they had considered it to be of a significant nature. With regard to the sight lines on the drive way, Ms Carmine said that despite the vegetation along the driveway edges she considered the sight lines to be relatively acceptable provided care was taken. She said that she had raised the matter with Mr Green and he had advised that in his opinion there were no issues in regard to safety and the sight lines were satisfactory.

MR RUE STATHAM

Mr Statham advised the Panel that he had had discussions and correspondence with Mr McCrone in relation to assessment of the bush quality under the District Plan rules. Mr Statham said that he had considered Mr McCrone's assessment of the bush quality to be slightly high and Mr McCrone's scoring had been adjusted accordingly by Council officers. Mr Statham confirmed to the Panel that he had peer reviewed the McCrone assessment after visiting the site, and although he had made some minor adjustments to the assessment by Mr McCrone, he concluded that the areas of native vegetation proposed to be covenanted met the District Plan assessment thresholds. Mr Statham said that the extent of covenanted bush comprised in Area 3 on the scheme plan, had been extended at his request.

In response to questions Mr Statham said that he had not yet received a weed and pest management plan despite a request for one. It was his preference to have weed and pest control management plans submitted with the application. He offered the advice that if screen planting was to be provided along the boundary with the Holdaway property there would need to be 4 - 5 m width allowed in order to make the screening viable.

MR ROSS GREEN

Mr Green said he considered that a passing bay on the JOAL would help overcome the traffic problem identified by Mrs Holdaway. He said that he had read Dr Fendall's report in regard to the control of driveway stormwater. He said he respected Dr Fendall's opinion and believed Dr Fendall had comprehensively covered the issues associated with the construction of the driveway and avoidance of adverse effects from stormwater associated with the driveway. Mr Green said that usually the Council did not accept a driveway consisting of two concrete strips with a grass centre strip. However, in this case, the driveway would only serve one lot and he thought the strips would be an acceptable method of minimising stormwater discharge. He noted that proposed condition (g) (relating to the construction of the private way) could be reworded to include the recommendations for driveway drainage in accordance with Dr Fendall's report. This would mean that proposed condition (h) (which had separately dealt with stormwater drainage from the private way) could be deleted. Mr Green said that there should be less surface water going to the area of instability identified by Mr and

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Mrs Holdaway once the driveway was completed because the stormwater would be controlled and taken to the bottom of the hill.

In response to questions from the Panel, Mr Green said that he did not recollect observing the existing passing bays when he had visited the site some time ago. He said that the maintenance of the JOAL driveway would fall equally on the number of people who used the right of way and was usually dealt with under the right of way agreement and not through resource consent conditions.

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

BASIS

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

BENEFITS OF COVENANTING AND PROTECTION OF NATIVE VEGETATION

The Panel accepts the expert assessment of Mr McCrone, Mr Statham and Mr Goodwin that the quality and significance of the native vegetation which is to be covenanted and protected meets the threshold standards specified in the District Plans. We find that the technical element of non-compliance is not relevant in this case because the effect of the proposed covenanting is to create a contiguous area (including the existing covenanted area) of 4.16ha of significant native vegetation which forms part of a wider Significant Natural Area. Of the total 3.32ha of significant native vegetation to be covenanted as a result of the subdivision all but 0.13ha is adjacent to or attached to larger areas of good quality native vegetation on the subject site or on adjoining sites. We agree with Mr Goodwin that the covenanting and protection measures proposed will result in the further enhancement of this native vegetation as a result of natural processes including the spread of seed by birds that inhabit the extensive area of surrounding native vegetation.

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

We accept the evidence of both Mr Goodwin and Ms Carmine that the addition of a further residential dwelling in this area would not have any significant adverse effects on the rural character of the area because the additional house site is well screened from surrounding houses and the public road by existing vegetation and that screening is likely to become denser and even more effective as a result of the protection measures required. Furthermore we note that the size of the allotments created will be consistent with many of those in the surrounding area.

ADVERSE EFFECTS OF ADDITIONAL VEHICLE MOVEMENTS ON THE JOAL

We are satisfied that the additional vehicle movements generated by a further dwelling will have limited effects on the amount of traffic using the JOAL, since that increase will be confined to the first 190m of the driveway between Old North Road and the driveway entrance to the subject land. We find that the conditions of consent requiring sealing of a 3m wide carriageway in that 190m section of the driveway and the provision of passing bays will adequately mitigate the increase in vehicle movements in this part of the access lot.

ADVERSE EFFECTS ON THE HOLDAWAY PROPERTY FROM HEADLIGHT GLARE AND NOISE OF VEHICLES ON LOT 2 ACCESS DRIVE

The Panel carefully assessed this matter during the site visit. We agree with the assessment by Ms Carmine that due to the distance between the proposed driveway and the Holdaway house and the likely angle traversed by headlight sweep from a vehicle using the access drive, that any effects on the occupants of the house on the neighbouring site will be no more than minor. As a consequence we do not consider that any additional screening is necessary.

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EFFECTS OF INCREASED STORMWATER RUN-OFF AND/OR SOIL INSTABILITY FROM CONSTRUCTION OF ACCESS TO LOT 2

We have considered the evidence from Mr Green and the report of Dr Fendall and we find that subject to the recommendations of the report of Dr Fendall, (which are included in the conditions of consent) any effects arising from stormwater flowing off the new driveway will be no more than minor.

CONSISTENCY WITH OBJECTIVES AND POLICIES OF BOTH RELEVANT DISTRICT PLANS

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

GATEWAY TESTS OF SECTION 104D RMA

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

CONCLUSION AS TO FINDINGS

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

CONDITIONS

LAPSING OF CONSENT

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

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

General Conditions

- 1) (general) The development shall proceed in general accordance with the application submitted, and the plans drawn by Cato Bolam, dated 21st May 2009, and signed by Processing Planner Michelle Carmine dated 20th October 2009.

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

- 2) (Fencing bush) The area(s) of native bush to be protected on Lot(s) 1 and 2 shall be fenced in accordance with one of clauses 6, 7 or 8 of the Second Schedule of the Fencing Act 1978; the fence shall be erected outside of the dripline of the proposed covenant trees. No gates shall be installed in the fence.

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Note: Where a dwelling boundary abuts a covenant boundary this requirement may be reduced to a demarcation fence of a standard of no less than 75mm post and three strands of No.8 wire.

- 3) (Weed and pest control) The Consent Holder shall submit a Weed and Animal Pest Control Plan to the Council's Ecology Advisor for approval. This plan shall demonstrate how weeds and animal pests are to be eradicated and/or controlled within the protected area(s) on an ongoing basis. Any chemical control to be used must be suitable for the purpose and the environment in which it is to be used. Note: Particular consideration is to be given to the control of ungulates known to exist in the bush environment in this locality.

To be shown on the survey plan prior to Section 223 approval

- 4) (conditions to be shown on survey title plan) Before the Council will approve the survey plan pursuant to s.223 of the Act, the owner shall:
- a) (Identify bush area(s) to be protected) The area(s) of native bush to be protected, as fenced under condition 2, shall be defined on the survey plan as "area to be subject to land covenant".
 - b) (Area of Bush) The applicant shall provide the Council with a calculated area of the bush to be protected, as defined by survey.
 - c) (Easement required) The right of way easement(s) labelled A and B shall be endorsed under a Schedule of Memorandum of Easements.
 - d) (title amalgamation) Pursuant to s.220(1)(b)(iv) of the Act, have endorsed on the survey plan the following condition of amalgamation:
 - e) Lot 23 DP 123741 (legal access) be held as to two undivided one-twelfth shares by the owner of Lots 1 and 2 as tenants in common in the said shares and that individual Certificates of Title be issued in accordance therewith. See DLR 872963

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

- 5) (conditions to be carried out by consent holder) Before the Council will issue a Certificate pursuant to s.224(c) of the Act, the Consent Holder shall satisfy the following conditions at their full cost:
- a) (fencing of bush) The consent holder shall arrange with Council's compliance officer, or similar position, to inspect the stock-proof fence which has been erected in accordance with condition 2.
 - b) (Weed and animal pest control) The consent holder shall undertake the elimination and/or control of weeds and animal pests in accordance with, but not limited to, the approved plan as required by this consent, and submitted. The weed and animal pest control plan shall be implemented and control of invasive plants demonstrated, to the satisfaction of Council's Ecology Advisor, prior to the issue of s224(c) certificate.
- (Advice Note) 'Control' may mean the weed populations have been reduced to a level whereby any ensuring landowner may remove re-infestations by using chemical or non- chemical control up to three times a year.

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- c) (developer's representative) Prior to the commencement of engineering design, the Consent Holder shall nominate, in writing, its Developer's Representative in terms of Council's "Standards for Engineering Design and Construction" to be the first point of contact for all engineering matters. Any subsequent change to the nominated Developer's Representative shall be immediately notified in writing to the Consents Engineer.
- d) (insurance and warranties for engineering works) Prior to the commencement of engineering design for the works required by these conditions, the Consent Holder and the Developer's Representative shall provide to the Council proof of Professional Indemnity Insurance and Warranties in full satisfaction of section 102 of the "Standards for Engineering Design and Construction".
- e) (engineering plans) The engineering works required by this consent shall comply with the Council's "Standards for Engineering Design and Construction" as may be amended from time to time. Engineering Plans, as specified in the "Standards", shall be submitted to the Consents Engineer, and approval thereto received in writing, prior to the commencement of any works on the site.

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

The term 'engineering works' includes, but is not limited to:

- Earthworks;
- The formation of roads, the laying of pipes and other ancillary equipment to be vested in the Council for water supply, drainage or sewage disposal;
- Street lights, landscaping or structures on land vested, or to be vested, in the Council;
- The installation of gas, electrical or telecommunication reticulation including ancillary equipment;
- Any other works required by conditions of this consent.

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

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

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

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

- Approved engineering plans and copy of approval letter;
- Health and Safety Plan;
- The Signed Road Opening Notice;

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- The relevant Resource or Subdivision Consent (and all conditions attached thereto);
- g) (construction of private way) The private way over parts of Lot 1 and the vehicle crossing thereto shall be constructed in accordance with an engineering report and engineering plans to be prepared by a Chartered Professional Engineer, to the satisfaction of the Council's Development Engineer, in accordance with the recommendations contained in the report of Hugh Fendall Consultants Ltd entitled "Proposed Subdivision at 1343 Old North Road – Control of Driveway Stormwater Run-off" and dated 19 October 2009.
- h) (upgrade existing access lot) The existing Access Lot (Lot 23 DP 123741), from Old North Road to the entrance to Right of Way 'A' shown on the approved scheme plan, and the vehicle crossing thereto, shall be upgraded to a 3 metre wide rural concrete or rural sealed standard to the Council's Standards for Engineering Design and Construction". The upgrade shall include the provision of passing bays at the road and at 100 metre centres in locations approved by the Council's Development Engineer. In the case of the rural sealed option being chosen the pavement shall be designed as if for a rural sealed road.
- i) (provide for electric power) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an electric supply has been made available by underground means to all saleable lots created and that all the network supplier's requirements for making such means of supply available have been met.
- j) (provide for telephone) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of telephone services has been made available by underground means to all saleable lots created and that all the network supplier's requirements for making such services available have been met.
- k) (financial contributions) Pursuant to Operative Plan Change 62 (Chapter 22), the financial contributions as set out in the "Schedule of Financial Contributions", RMA 53840, Sequence 001, attached to this consent shall be paid to the Council in full mitigation of the offsite effects of the activity in respect of infrastructure and community facilities.
- l) (reassessment of contributions) Any portion of the contributions remaining unpaid on the anniversary of the date of granting the consent, shall be adjusted by applying any change in the Producer Price Index - Construction between the date of consent and the most recent anniversary of the date of consent prior to the payment of the contribution.
- Any portion of the contributions remaining unpaid five years after the date of granting of the consent, shall be fully reassessed in accordance with Operative Plan Change 62 immediately before the time of payment.
- m) (timing of payment) Pursuant to Rule 22.8.3.2, all contributions shall be paid in full prior to the issue of the s.224(c) certificate, unless other arrangements satisfactory to the Council have been made pursuant to Rule 22.8.5. In the case of staged developments, the contribution payable on each stage shall be reassessed on the number of sites created in each stage.
- n) (balance of fees) Pay any outstanding balance due to the Council for scheme plan processing.

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Ongoing Conditions/Consent Notices

6) The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notices pursuant to s.221 of the Act.

- a) (building platform) The building platform for any buildings to be constructed on Lot 2 shall be located at a distance of at least 10m away from any area of covenanted bush located within the site.
- b) (Bush) The native bush area(s) to be protected within Lots 1 and 2 (Areas 1-8 inclusive) shall be protected in perpetuity to the satisfaction of the Consents Manager, Resource Management:

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

- (i) Shall preserve the native/exotic vegetation, wildlife habitats and the natural landscape within the protected bush, riparian and/or wetland areas; and
- (ii) Shall maintain stock crossings and/or fish passage(s) in accordance with any easement(s) through the covenant areas; and
- (iii) Shall not (without the prior written consent of the Council and then only in strict compliance with any conditions imposed by the Council) cut down, damage or destroy, or permit the cutting down, damage or destruction of the vegetation or wildlife habitats within the protected areas; and
- (iv) Shall not do anything that would prejudice the health or ecological value of the protected areas, its long term viability and/or sustainability; and
- (v) Shall control all invasive plants and animal pests within the protected areas, with particular reference being given to the approved weed and animal pest control plan; and
- (vi) Shall exclude all livestock from the covenanted area and maintain a stock-proof, or demarcation where applicable, fence as approved by the Council around the perimeter of the protected areas.

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

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

Advice Note: Copies of the approved weed and animal pest control plan shall be held at the offices of the Rodney District Council.

Advice Note: A list of all current pest plants and animals can be found in the Auckland Regional Pest Management Strategy (ARPMS), available from the ARC, which includes all plants identified in the National Pest Plant Accord (MAF).

Advice Note: Any activity pertaining to maintenance of covenant areas, including any required or ancillary structure(s), i.e. culvert or fish passage, may require lodgement for RDC or ARC Resource Consent.

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Advice Note: Where significant weed and animal populations persist, the consent holder may wish to consider Local Landcare Groups, or the employment of a professional contractor to assist with the ongoing management of the protected area.

- c) (Monitoring) The respective owners of Lots 1 and 2 shall pay to the Council the fair and reasonable costs incurred by the Council in monitoring ongoing conditions of consent as they apply to the Lots at not less than two-yearly intervals, unless required otherwise by a legitimate complaint. The respective owners will be advised of the costs, assessed under the Council's Schedule of Fees and Charges, as they fall due.

Carried

The meeting closed at 3.00 p.m.

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 4TH DAY OF MARCH 2010

MAYOR

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