

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, 8 May 2009.

PRESENT:

Chair	John Childs
Crs	Ross Craig
	Wayne Walker

IN ATTENDANCE:

Reporting Planner	Jemma Hollis
Team Leader	Carl Jenkins
Ecology Advisor	Rue Statham
Democracy Services Officer	Raewyn Morrison

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338/05/09 **APOLOGIES**
AGENDA ITEM NO. **1**

There were no apologies.

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**339/05/09 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION
88 OF THE RESOURCE MANAGEMENT ACT 1991****AN APPLICATION FOR SUBDIVISION CONSENT TO SUBDIVIDE THE
SITE TO CREATE ONE ADDITIONAL LOT ON THE BASIS OF 2HA OF
REVEGETATION PLANTING**

Address: 422 Coatesville-Riverhead Highway, Coatesville 0793

APPLICANT: ROBERTUS KUYPERS**FILE REF SUB 54680****WARD Central****AGENDA ITEM NO. 2**

9.00 a.m. The applicant seeks consent to subdivide an already existing site into 2 lots on the basis of 2ha of revegetation planting which will be covenanted in perpetuity. The resulting lot sizes will be 3.14ha for Lot 2 and 1.95ha for Lot 1. Lot 2 will contain the existing dwelling, with Lot 1 including a second dwelling and barn buildings. The new building platform on Lot 1 is proposed in the location of the existing dwelling, with the existing dwelling proposed to be removed. The boundary between the proposed two lots will run along the existing south-east to north-west fence line. Access to both lots will be gained via the existing right of way access. The electricity and telephone supply to Lot 1 exist; wastewater will discharge to a septic tank system. The proposed planting will take place within the south-east and western parts of the site as well as around the pond area.

John Childs replaced Alan Watson as the Chairperson.

The applicant, Mr Robertus Kuypers, and the applicant's representative, Dr Tony Poninghaus (Director, Lenswood Limited), present.

Submitter: Ms Fiona Sprott on behalf of the Auckland Regional Council, present.

Dr Poninghaus introduced proceedings for the applicant.

Dr Poninghaus tabled a modified landscape plan which addressed matters raised by the Council's Ecologist and contained advice from Ecological Consultants.

Dr Poninghaus also tabled the signed written consents (which had been absent from the agenda).

In his opening statement on behalf of the applicant, Dr Poninghaus referred extensively to the Resource Management Act 1991 and case law that he considered relevant to the application. He said that in considering this proposal there were a number of distinguishing factors that needed to be taken into account. Amongst the distinguishing features were that:

- The proposed subdivision followed the existing pattern of land use and/development.
- It was located within a self contained enclave of similar development that is unique in the zone and physically distinguishable from other sites in the immediate area.
- It was not located within the heart of the Rural zone such that it would introduce an incompatible use.
- It was located on the Coatesville/Riverhead Highway about 1000 metres from the Coatesville village centre, school and horse club.
- It was separated from the Riverhead forest by several land holdings and thus did not intrude into that environment.
- This part of the Rural zone visible from the Coatesville Riverhead Highway was not a "pristine rural environment".
- Notwithstanding, any new development on the land (new house on Lot 1) this would not be visible from the highway or for that matter off site.
- Any new house on Lot 2 would use the existing road access with no change required or necessary.

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- The intensity of building development in the future resulting from consent to this subdivision will be the same as now exists.
- There are no infrastructure or servicing issues.
- The subdivision complied with the Plan subdivision criteria.

Dr Poninghaus said that because the proposal would have no significant adverse effects on the environment, it would not involve loss of open space, and it was complementary to and consistent with the character of the existing environment (the opinion of the neighbours); the proposed subdivision meets the Plan objectives and policies that seek to accommodate rural living, protect and enhance existing rural character and maintain open space.

Dr Poninghaus distributed and read his statement of evidence.

Dr Poninghaus described the application, the site and the surrounding environment. He discussed the effects on the environment and Plan criteria applying to rural subdivision. He also addressed matters under the headings; the natural environment, neighbourhood, rural character, amenity, visual and landscape, open space and green belt, engineering, and the environment/ecological enhancement.

Dr Poninghaus discussed the Proposed District Plan (PDP) provisions planting rules. He noted that the total area of the property was 5 hectares. He said that while there were obvious reasons for the 6 hectare standard, if the Plan objectives for the protection and enhancement of the environment were to be achieved (as distinct from using the rule as an indirect restriction on subdivision), then there would be circumstances where an appropriate area is set aside. In this instance approximately 50% of the land holding would be set aside for these purposes and he considered that was more than appropriate in this setting. Dr Poninghaus considered that any effects on the environment would be positive.

Dr Poninghaus addressed the Auckland Regional Policy Statement (ARPS). He noted that the submission by the Auckland Regional Council (ARC) raised concerns in relation to the ARPS, adversely affecting rural character, undermining the district and regional strategies and plans, and precedent. He said that the subdivision would have no impact on rural character. It did not fragment rural land holdings as it was complementary to an existing land use pattern and was self contained. While it would have a countryside living character when within the property, this was what existed at present within the enclave and nothing changed. He believed the concerns of the ARC could be allayed and that the subdivision did not create a precedent. It had no adverse effects on rural character, it had no adverse effects on the environment, and it provided significant environmental benefits. In his view, the proposal did not undermine the Proposed District Plan or the ARPS.

In conclusion, Dr Poninghaus said that the proposed subdivision was consistent with the relevant statutory planning documents, the purpose of the RMA, and any adverse effect on the environment would be less than minor. Indeed, he considered the effects would be positive. He considered the proposal passed both gateway tests of section 104D and that consent should be granted subject to conditions.

In response to questions from the Panel, Dr Poninghaus said that:

- Of the people who had given written approval, two approvals were from within the enclave, the rest of the approvals were from surrounding properties.
- There could well be other enclaves in the Coatesville area, but what set this enclave apart was that the land was totally flat and in this case you would see nothing.
- With regard to vegetation and the level site, the shelter belt trees were planted in the 1960s, if someone else wanted to come in for subdivision on similar grounds they would have to wait at least 20 years for vegetation to reach a sufficient height.
- There were a number of distinguishing factors; the existing shelter belts, the topography, and the existing formative element from the roadside into the site.
- The shelter belts weren't protected but his client would be happy to protect those shelter belts and covenant the planting. The pond was already protected.
- There were sites in the district of similar and various sizes.
- The objective was sustainable management of natural and physical resources.
- With regard to the issue of precedent; it had to be recognised that rules were arbitrary standards. He thought it reasonable that 50% of the site would remain open.

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- The site had the appearance of two separate pieces of land.
- The applicant would be happy to have a condition imposed with a restriction to one household unit per lot.
- He could supply a draft set of conditions.

10.35 a.m. - 10.53 a.m. Morning tea adjournment.

Submitter:

Ms Sprott on behalf of the Auckland Regional Council. The following was noted:

Ms Sprott summarised the site attributes and proposed works. She said that the application proposed removal of a rural activity from the site to be replaced by a residential use. While residential structures were permitted and expected in the rural environment, they should not dominate the landscape at the expense of other rural use structures, or at the expense of openness. In addition, it was her view that the diminished size of the resultant lots would also contribute to a loss of openness. A more open character was more likely to be retained if the 5.09ha lot, with its single dwelling house, was retained. It was Ms Sprott's view that the adverse effects on rural character and amenity values caused by the proposal would be more than minor. Ms Sprott said that the ARC's Ecologist, Samantha Hill, had assessed the proposal and that based on that assessment, Ms Sprott concluded that the proposed development would provide neither the quantity nor quality of enhancement planting to meet the rules set out in the Proposed District Plan.

In conclusion, Ms Sprott said that her evidence had outlined the regional and local policy relating to the proposal. In particular her evidence focused on the proposal's failure to protect:

- The amenity values and rural character of the area;
- The soil versatility and productivity; and
- Did not demonstrate a capacity need for the provision of development which results in an unsustainable ad hoc Countryside Living type development in a rural environment.

It was Ms Sprott's view that the proposal, as currently notified, was contrary to the purpose and principles of the RMA. It was contrary to objectives and policies of the ARPS. It was contrary to objectives and policies of the PDP and would have adverse effects which were more than minor. Ms Sprott further considered that the precedent set in granting the application would have regionally significant adverse effects on the growth and urban containment policies of the ARPS. In conclusion, Ms Sprott considered that the application should be declined.

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

- She had viewed the site from the Coatesville Riverhead Highway from several places.
- There were a limited amount of Class 2 soils in the region (most were in Manukau); the flatness of the site did go toward classing soil.
- She would have concerns in regard to precedent with accepting 2ha of planting.
- The ARC appeal to Rodney's Proposed District Plan in regard to 6ha of enhancement planting (ARC want 10ha) was in meditation at the moment.
- The ARC argument was chiefly against the spread of countryside living.
- She did not see any distinguishing features that make the site unique.
- The rural character was reflective of both open pasture sites which contain rural uses, and native vegetation. There was a lot of rural activity in the area and she considered the area to be very much rural as opposed to a countryside living character which was much more residential in nature.

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Council staff:

Rue Statham addressed the Panel.

Mr Statham noted the amended landscape plan tabled. He said he thought there would need to be a staged revegetation approach. He noted that the shelter belt (which he believed to be sheoaks) was suffering from canker and some trees did not look all that healthy. With regard to the enclave, he noted that it was screened from all directions and if there was to be revegetation ideally the shelter belt trees should be removed at some point because they would have an adverse effect on the regeneration planting. With regard to the modified plan, he noted that the areas proposed for planting had not changed at all and that they were not continuous with one another. He strongly questioned the shelter belts being used to make the planting continuous; in his opinion any planting needed to be a width of 40m. To provide 2ha was not meeting the objectives and policies of the Plan. Mr Statham considered that the pond was not a wetland; it was an amenity pond and it had a limited capacity to provide habitat apart from for ducks. He noted that the pond did not come up on the Council's Webmap.

Jemma Hollis addressed the Panel.

In relation to distinguishing factors (point 9 of the applicant's opening statement document: the intensity of building development in the future resulting from consent to this subdivision will be the same as exists now) as well as the comment made by Dr Poninghaus that 'no additional effects will arise as a dwelling was already established', Mr Hollis said that she believed it was important to note that the existing dwelling was illegally used as a household unit, and as such could not form part of the permitted baseline. This had implications in terms of generation of adverse effects such as traffic, light, and built structures, which were not considered to be legally present at this point in time.

Ms Hollis also referred to Dr Poninghaus' exert from her report, where she had stated 'the surrounding area was more highly developed then generally anticipated within this zone'. Ms Hollis said that it was important to note that she then went on to say that it was not however anticipated by the Plans that there would be a greater intensity of development in this area in the future above what was already in existence. Also, the development intensity of the surrounding area did not form a basis for subdivision under the Plans.

In response to Dr Poninghaus' comments that the application was consistent with Part II of the Resource Management Act, Ms Hollis said that it has been demonstrated that the proposal did not promote sustainable management of the rural land resource, or provide appropriate mitigation for the adverse environmental effects generated by this activity. As such, the proposed subdivision was considered to be contrary to the provisions of Section 5, which specifically required the avoidance, mitigation or remediation of adverse effects on the environment of activities, as well as the sustainable management of resources for future generations.

In reference to distinguishing factor 11 (the subdivision complies with the Plan subdivision criteria) as outlined in the applicant's opening statements, Ms Hollis said that the proposal did not comply with any of the Proposed District Plan subdivision criteria, save for one relating to the number of sites which may gain access off a right of way. In every other respect the proposal fell short of the criteria.

Ms Hollis acknowledged that the proposed new planting scheme may be an improvement on that previously proposed. However, on reflection and after hearing the comment of the Council's Ecologist, she still felt the new proposed planting was insufficient, and would provide a negligible ecological benefit. As such, the adverse effects on the environment arising from the creation of a new lot would not be appropriately mitigated. The proposal would result in intensification of development within a rural area of a type which the District Plan and regional policies specifically sought to avoid. A precedent may also be set for neighbouring properties and the surrounding area as the site did not display any distinguishing features which would make the proposed subdivision appropriate.

In conclusion, Ms Hollis said that she stood by the recommendations contained within her report to decline this application.

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Dr Poninghaus presented the right of reply. The following was noted:

Dr Poninghaus said that the shelter belts were substantially greater than 40m. The applicant had taken expert advice from two consultancies and their findings and what was proposed was that the proposal was ecologically and environmentally sound and he could not follow the arguments of the Council's Ecologist. With regard to the pond, Dr Poninghaus said that the pond had been covenanted for the protection of wildlife and it was a fish passage for a whole raft of native fish and a wildlife sanctuary for wildfowl which were important components of the eco-system. In regard to the planting matter, both in terms of extent and nature, the proposal was ecologically and environmentally important and sound; in terms of the quantum, 2ha plus the pond amounted to 50% of the site which was significant. The proposed planting areas connected in a meaningful way to the Rangitopuni Stream, and although what existed was scruffy in some places, this proposal was exactly the type of planting that would in future support the stream's ecosystem.

With regard to comments made by the Council's planner that the existing house was illegal for residential uses, Dr Poninghaus said that the house could however be used for a raft of other activities; it was a permitted structure and complied with the coverage provisions. The applicant was also suggesting conditions in relation to coverage. Referring to the argument in regard to Part II of the Act and sustainable management, Dr Poninghaus said that based on the avoidance of adverse effects, there were none. The justification for negativity had been based on all these adverse effects, but none were quantified nor did they exist.

With regard to the submission by the ARC, Dr Poninghaus said that his client had a demonstrated need. The soils were high in clay context and low in fertility, and although the soil did respond well to applications of superphosphate, the soil was of low productive value. With regard to versatility and productivity, the property would be used that way in the future; the application didn't change anything as the open space and grassland would remain the same with the exception of that set aside as bush. Dr Poninghaus considered comments that the loss of bush amounted to loss of rural amenity as nonsense. The proposal was self contained in terms of infrastructure and in terms of views, you couldn't see anything.

With regard to precedent, there were no effects on the environment; the Plan was an effects based piece of legislation and he believed the proposal was in accordance with the objectives and policies. There were no impacts in terms of the ARPS and granting consent would not cause a rash of development of the rural zone. Dr Poninghaus considered that the application would not create precedence at all and he reminded the Panel of the case law he had mentioned.

Referring to the conditions of consent, Dr Poninghaus said that in addition to the normal conditions, his client would accept the recommendations of the NZ Fire Service, engineering conditions and the replacement of the septic tank on Lot 1. His client would agree to a restriction of one residential building per site and a limitation on coverage of 400m² for a residential dwelling as well as a recessive colour scheme.

With regard to the planting and management plan, Dr Poninghaus said that the revised landscape plan was principally based on regeneration planting and he was happy for this to be in accord with Council requirements for monitoring, management and stock proof fencing and to the approval of Council's Ecologist. Referring to the shelterbelts, Mr Poninghaus noted that the trees were getting on in age and that a few of the trees had been affected by nutrient deficiencies in the soil. The applicant would like to retain the shelter belts, but clearly, if at some time in the future the shelter belt trees became redundant in terms of the regenerating areas, they could be removed. His applicant would accept a condition to the effect that the shelter belts be inspected and such trees that required it be fertilised.

Dr Poninghaus said that the so-called 'illegal tenant' was seeking to establish a horse riding facility and he envisaged a similar use in the future. Dr Poninghaus referred the Panel to the Genesis decision. In conclusion, he said that what was proposed was tucked away; it would not be visible off site, it was screened and was supported by existing and neighbouring properties. There would be no visual impact in respect of Lot 2.

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

The Chairperson closed the hearing at 2.00 p.m.

The Panel resolved:

Childs / W Walker

THE DECISION:

That pursuant to Section 104, 104B and 104D of the Resource Management Act 1991 the notified resource consent application for resource consent by R. Kuypers to create an additional lot at 422 Coatesville – Riverhead Highway (Lot 2 DP 412174) be declined consent.

REASONS FOR THE DECISION:

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

- a) The mitigation planting proposed will not result in significant enhancement of ecological habitat or the environment and will not provide appropriate environmental mitigation for the creation of a new site. The effects of the subdivision in relation to rural character are not minor, and the proposal may result in irreversible changes to the existing surrounding rural environment.
- b) The Operative District Plan as amended by Plan Change 55 and the Proposed District Plan 2000 provide for subdivision in rural zones in situations where significant environmental benefits are achieved. The environmental benefits of the proposal are considered to be inadequate. The proposal would result in a type of ad hoc rural – residential development these documents specifically seek to avoid. The application is considered to be contrary to the objectives and policies of the District Plans.
- c) The proposal will introduce an intensification of development into a rural area, and will do so without appropriate remediation or mitigation. As a result the proposal is considered to be contrary to the objectives and policies of the Auckland Regional Policy Statement Proposed Change 6.
- d) The proposal is contrary to the intended 'Vision Rodney' community outcomes of 'Distinctive' and 'Clean and Green', as it would result in a type of unplanned intensification of development which is contrary to the need to contain development to protect the rural landscape as outlined in this document.
- e) The site contains limited distinguishing characteristics which would prevent a precedent being set by the application. Thus, should consent be granted, a situation may occur where similar cases in the surrounding area are obliged to be treated similarly by Council. This could result in an ad hoc fragmentation of land and further intensification of development, adversely affecting the rural character of the area. This would significantly affect the integrity and the Council's consistent administration of the District Plans.
- f) The proposal fails to meet either of the gateway tests for Non-Complying activities.
- g) The proposed fragmentation of the rural land resource does not promote sustainable management, and the proposal will have a detrimental effect on, rather than maintain or enhance the existing rural amenity values and environment. The proposal will also reduce the ability of the District Plans to sustain the potential of resources to enable future generations to meet their needs. The proposal is considered to be inconsistent with Section 5 of the RMA.

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**THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (AA))**

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

**OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (ab))**

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

Auckland Regional Policy Statement Provisions

Strategic Objective

2.5.1.3

2.5.2.1, 4 and 5

Section

2.5.3

Chapter 12

2.6.17.1

2.6.17.4

2.6.17.30

Appendix D definition of Rural Areas / Countryside Living

Proposed Regional Policy Statements Provisions**Plan Provisions****Plan Change Number 62 Financial Contributions****Plan Change Number 55 Rural Provisions**

- Specific Issues within the Rural Activity Area
- General Objective Rural Activity Area
- Objective 4.1
- Policy 2(b)
- Objectives 5.1, 5.3, 5.13
- Policies 5.2, 5.4, 5.14

Proposed District Plan 2000**Rural**

Objectives

7.3.1, 7.3.3, 7.3.4, 7.3.5, 7.3.6, 7.3.10

Policies

7.4.2, 7.4.5, 7.4.7, 7.4.10, 7.4.16

General Rural Zone

Objectives

7.8.1.1.1, 7.8.1.1.4

Policies

7.8.1.2.1, 7.8.1.2.2, 7.8.1.2.4, 7.8.1.2.9, 7.8.1.2.11

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Case Law

Aquita Holdings Ltd v Rodney District Council
 Unique Homes Ltd v Rodney District Council

Other Documents

Vision Rodney

PREAMBLE

This application seeks consent to subdivide a 4.9 hectares lot into two. Lot 1 of 1.95 hectares, Lot 2 being 3.14 hectares.

The proposal was fully notified attracting two submissions. One sought conditions while the other submission was in opposition. Six written consents were obtained.

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

- (1) The Integrity of the District Plan
- (2) Precedent
- (3) Site suitability
- (4) Rural amenity values
- (5) More intensive rural development
- (6) The nature / quality of the enhancement planting

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

Dr Tony Poninghaus (Submissions and evidence)

Dr Poninghaus in his opening statement discussed the statutory criteria and relevant case law. He advised that all adjoining owners had given written consent to the application. As a result the Panel did not have to have regard to any adverse effects if there were to be such effects on those parties.

He advised there were distinguishing characteristics that separated the application from the generality of cases which included

1. The subdivision follows the existing pattern of land use / development, including shelter belts that define the proposed lots.
2. It is located within a self contained enclave of similar development that is unique in the zone and "physically distinguishable from other sites in the immediate area".
3. It is not located within the "heart" of the Rural Zone so that it would not introduce an incompatible use.
4. It is located about 1,000 metres from the Coatesville village centre.
5. It is separated from the Riverhead Forest by several land holdings and does not intrude into that environment.

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6. This is not a pristine rural environment.
7. The new development on the land i.e. Lot 1 will not be visible from the highway or off site.
8. Any new house on Lot 2 will use the existing road access with no change required or necessary.
9. The intensity of building development in the future resulting from consent with subdivision will be the same as now exists.
10. There are no issues in regard to infrastructure or servicing.
11. The subdivision complies with the plan subdivision criteria.
12. The written consents obtained.
13. There is no regenerating bush to be removed and substantial additional planting is proposed.
14. Because of the physical setting, a new house on Lot 1 would have no significant adverse effects on the environment.
15. The proposed subdivision

“will result in the living amenity in relation to the immediate neighbourhood which is consistent with existing and established neighbourhood amenity.”
16. As the proposal does not involve adverse effects nor the loss of open space

“It is complementary to and is consistent with the character of the existing environment.... the proposed subdivision meets the Plan objectives and policies to accommodate rural living, protect and enhance existing rural character and maintain open space qualities.”
17. It is not urban sprawl.
18. There is no precedent.

Dr Poninghaus then discussed the Planner's Report indicating that his client was prepared to modify the landscape concept.

EVIDENCE

In written evidence Dr Poninghaus described the application. He discussed the site and the surrounding environment, the effects on the environment and the District Plan criteria applying to rural subdivision.

In discussing the actual and potential effects on the environment he advised that this was not a rural environment and the character of this environment was not rural in the conventional sense. He discussed the significant enhancement planting proposed. Overall he concluded that the effects on the environment would be positive.

In relation to District Plan objectives and policies he was satisfied the proposal was “entirely” consistent with the objectives and policies of the Plan.

In relation to the Auckland Regional Policy Statement he was satisfied that the proposal did not impact on rural character and did not fragment rural holdings; there was effectively no change. He felt the subdivision would not create a precedent and would have no adverse effect on rural character. Also it would have no other adverse effects and it would provide significant environmental benefits, therefore it would not undermine the Regional Policy Statement.

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In summary he indicated that:

1. The application was consistent with the relevant planning documents and the purpose of the RMA.
2. Any effects on the environment would be less than minor.
3. The effects would be positive.
4. It passed both gateway tests of Section 104D and was satisfied.

He considered that consent should be granted subject to conditions.

EVIDENCE ON BEHALF OF THE SUBMITTERS WAS GIVEN BY:

Ms Fiona Sprott - Auckland Regional Council

A letter was also tabled from the New Zealand Fire Service.

Ms Sprott in written evidence advised that the basis of this submission and her evidence was that the application

“Will result in the loss of rural character and amenity values. The application does not propose sufficient mitigation to address these issues. The precedent set by any grant of consent would have regionally significant implications therefore the application in my view should be declined”. (Para 1.3).

She then discussed the provisions of the District Plan and was concerned the proposed development did not provide the quantity or quality of enhancement planting to meet the rules in the Rodney District Plan. Ms Sprott then examined the objectives and policies; she referred to objective 5.1 which relates to maintaining and enhancing the rural character of the General Rural Area.

She discussed the Auckland Regional Policy Statement and considered that the proposal was inconsistent with it and that the proposal would have adverse effects on amenity values and rural character from the proliferation of unplanned ad hoc countryside living type development in the rural area.

She also advised that the land contained Class 2 soils which are identified as “prime” agricultural land.

The proposal would

“Result in regionally significant adverse effects which would be contrary to the strategic direction of the Auckland Regional Policy Statement and the purpose and principles of the RMA”.(para 9.8)

She was satisfied that neither statutory tests were satisfied and the proposal was contrary to the purpose of the RMA, the objectives and policies of the Auckland Regional Policy Statement, and the Rodney District Plan and that the adverse effects were more than minor. She requested that the application be declined.

“I further consider that the precedent set by granting this consent will have regionally significant adverse effects on the growth and urban containment policies of the ARPS”

A letter from the New Zealand Fire Service indicated that should consent be granted that two conditions be imposed on the application.

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EVIDENCE ON BEHALF OF THE COUNCIL

Evidence on behalf of the Council came from Planner Jemma Hollis with reports from Ecologist Rue Statham and Council Development Engineer Ross Green.

Mr Statham also answered questions from the Panel.

Ms Hollis in her report had analysed the proposal in terms of the statutory criteria and concluded that the proposal would have more than minor effects on the environment and that consent should be declined for reasons including

1. The mitigation planting would not provide significant enhancement of ecological habitat or the environment.
2. The effects of the subdivision in relation to rural character, amenity and productive potential of the land resource may result in irreversible changes to the surrounding rural environment.
3. The proposal was not consistent with the objectives and policies of both District Plans.
4. The proposal represented an intensification of development in a rural area and was contrary to the objectives and policies of the Auckland Regional Policy Statement Proposed Change 6.
5. The proposal was contrary to the Vision Rodney.
6. The proposal did not contain any distinguishing features which would prevent a precedent being set by the application.
7. Neither gateway tests for a non complying activity were satisfied.
8. It was inconsistent with Section 5 of the Act.

Before the right of reply Ms Hollis confirmed that she stood by her recommendation that the application be declined.

Mr Statham in his report and oral comments indicated:

1. The site contained no significant stands of bush or area of wetland that provided subdivision potential in terms of the requirements of the District Plan.
2. The proposal did not provide for the protection of any natural features but relies on 2 hectares of planting in mitigation of the subdivision.
3. The District Plan requires enhancement or rehabilitation planting of six hectares. The site is too small at five hectares.
4. The proposed planting is more of an amenity / aesthetic approach with no regard to any ecological or environmental benefits.
5. The species chosen are not consistent with those found in the immediate bush environment.
6. The proposed planting had "little or no real environmental / ecological benefit to the property and the surrounding area."

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

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

The main findings of fact are

1. The size of the site and the position of the existing buildings on the property does not justify the granting of consent.
2. The proposal will have effects on District Plan integrity and create an undesirable precedent.
3. The proposal is contrary to the Regional Policy Statement.
4. The nature and quality of the enhancement planting is inadequate and does not meet the District Plan criteria.
5. The proposal will have adverse effects on rural character.

This application seeks consent to subdivide an existing front rural site of 4.99 hectares into two lots; Lot 1 is an area of 1.95 hectares and Lot 2 currently contains an existing dwelling. It is generally flat and surrounded by rural land.

The application proposes mitigation planting particularly around the perimeter of the two lots. Under both District Plans the land is zoned General Rural. The application seeks to create two lots in a manner which is not provided for in the District Plans and is therefore considered as a non complying activity.

In terms of the permitted baseline, case law establishes that it relates to the existing environment and the potential environment which may be comprised by what could be only taken by unimplemented resource consents and what can be undertaken as of right. In this case the existing environment is a house erected on the property, and various out-buildings. In terms of activities permitted by the District Plan these include a single household unit, home occupations, boarding houses for up to ten guests and child care facilities for up to ten children.

ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT**1. Proposed Revegetation Planting**

The applicant proposed enhancement planting in association with an existing large pond. In the District Plan the intended outcome of such planting is to create a natural ecosystem which enhances species diversity, provides habitat for native flora and fauna, reduces soil erosion and enhances water quality.

The Panel accepted the advice of Mr Statham rather than Dr Poninghaus in this matter. That:

- a) No regard has been given to the revegetation standards in rule 7.14.2.3 with the shelter belts having limited value involving inappropriate species.
- b) The planting densities are well below the required minimum.
- c) The two main areas of planting are not continuous with one another.

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- d) The planting has more of an amenity and aesthetic perspective for the owners rather than an ecological and environmental benefit and inappropriate species are proposed.
- e) The planting is not consistent with that found in bush in the immediate area.
- f) The proposed planting is unrelated to neighbouring bush.
- g) The pond has no ecological value.

The proposal would not result in the appearance of a subdivision in a bush environment which the District Plan seeks to achieve. The planting may enhance the amenity values of the site but not the surrounding area.

2. Rural Character

The surrounding area contains a mix of land uses including rural production activities and rural residential activities. The proposal will allow the creation of two sites which are smaller than those generally found in the General Rural Zone and are more in keeping with the Countryside Living Zone. The proposal would allow further residential development which would further compromise the rural character of the area. The Panel are satisfied from the site inspection that the proposed development would have adverse effects on the rural character of the surrounding area and would create more of a Countryside Living enclave than a rural enclave.

3. Amenity Values

The amenity values of rural zones in this area are those created by wide open spaces, few buildings - particularly residential buildings, and few residential activities. In this particular case the proposal will allow a tight subdivision pattern with further residential development possible as well as the effects associated with a more intensive subdivision from things like traffic movements etc.

The revegetation planting as proposed is more of a Countryside Living type, enhancing the activities on the site rather than contributing to the quality of the rural amenity. As a result it is considered that the proposal will have, given the type of planting and the level of development that the subdivision would allow, adverse effects on a rural amenity values.

4. Traffic and Access

The Panel are satisfied that the access and traffic arrangements to the site are satisfactory and such adverse effects in this regard will be minor.

5. Service and Stability

No issues arise in this matter as the Council Engineers have identified that this site can be appropriately serviced.

In summary the adverse effects of this proposal relate

1. To rural character.
2. Impacts on rural character and amenity values arising from the more intensive subdivision that the development would allow, and with it additional residential development.
3. The enhancement planting is not appropriate in a rural area.

The subdivision would in the Panel's view erode rural character by more intensive subdivision and the further residential development that it would allow.

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POTENTIAL CUMULATIVE EFFECTS

The Commissioners consider that adverse cumulative effects could arise if consent is given to this application and could bring with it a proliferation of similar applications in this locality. This could bring with it adverse effects on rural character by a more intensive development not anticipated by the District Plan.

The Panel are also not satisfied that if the sites were subdivided that they would be economically viable for some form of rural activity as anticipated by the District Plan. The Panel notes that the soil classification is Class 2 which as identified by Ms Sprott is prime agricultural land.

This proposal gives rise to two lots which would be more akin to Countryside Living lots.

DISTRICT PLAN PROVISIONS**Operative Plan 55**

This issues objectives and policies of the General Rural Zone include that

1. The rural production is considered to dominate the use of the land.
2. The pressure to introduce non farming activities into rural areas.
3. Maintaining and enhancing rural character.
4. Retaining the productive potential land.
5. Limiting subdivision to maintain the current land use pattern.

The proposed subdivision would create two lots, each lot having the potential for at least one household unit which would adversely affect the rural character and amenity of this rural area. It would also result in a further fragmentation of the land reducing the productive potential of the property for a range of rural based activities. The enhancement planting discussed does not satisfy the District Plan criteria.

PROPOSED DISTRICT PLAN 2006

This emphasises

1. Maintaining, enhancing and protecting rural character amenity values.
2. Maintaining and enhancing a land tenure pattern which allows rural land to be used for a range of activities on a sustainable basis in the future.
3. Avoiding adverse effects of subdivision.
4. Avoiding reverse sensitivity and adverse cumulative effects.
5. Limiting rural residential development unless it involves protection of significant natural areas, enhancement planting or land with rehabilitation.
6. Any subdivision "should result in the retention of land in large holdings or to maximise the diversity of activities that can be undertaken on the rural land resource."

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This application is inconsistent with all these statements because

- a) The size of the lots involved means that the proposal will not maintain or protect rural character and amenity values.
- b) It will bring with it more intensive development where there are no real environmental compensations such as effective bush retention or land rehabilitation as anticipated by the Plan. The enhancement planting proposed is more of a Countryside Living nature than was anticipated by the District Plan.

In summary the proposal represents the fragmentation of rural lots which is clearly inconsistent with provisions of the Proposed District Plan for this rural zone.

AUCKLAND REGION POLICY STATEMENT

The issues include those outlined by Ms Sprott in particular the following are relevant

1. That the large supporting capacity of rural soils is safeguarded as far as practicable.
2. To ensure rural resources meet the needs of future generations.
3. Avoid where practicable significant adverse effects on the rural environment.

In this particular case the rural character of the area is likely to change. The proposal would result in the lots having at least one household unit and there being less economic rural lots. This will have an adverse effect on the rural development.

The Proposed Plan Change 6 has similar provisions relating to the region's natural resources and protecting rural land from adverse effects of urban development and retaining options for preferred use.

The proposal does not represent rural development and it will limit future options for land with smaller lots than as anticipated by the District Plan.

This site is more akin to Countryside Living with a specific zone in the District Plan to accommodate it. This site contains Class 2 soils which were identified in the District Plan as prime agricultural land. The proposal is not consistent with the Regional Policy Statement.

Vision Rodney

The proposal is considered to be inconsistent with this document as it will erode the country look and feel of this particular area particularly when viewed from elevated ground and it will create more intensive form and development than anticipated by the District Plan.

SPECIAL OR UNUSUAL CIRCUMSTANCES

The Panel have spent some time reviewing the case law discussed at the hearing although there are some circumstances that make this site a little unusual it could be argued that there are a number of other sites in the vicinity located on a main road, have good access to the local village etc which could open the flood gates for other similar applications.

The Panel note that the site is at least 1 kilometre from the nearest village. There are numerous other rurally zoned sites which have similar locational characteristics and are not a reason for giving consent.

The proposal offers no significant environmental compensation and would result in two Countryside Living lots. This is not what is envisaged in this General Rural zone and is more akin to Countryside Living subdivision.

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PART II MATTERS

This is concerned with purpose and principles of the Act. The proposed subdivision will result in considerably smaller lots than what is anticipated in the District Plan. This will potentially have adverse effects on the natural and physical environment by allowing additional household units and will create a Countryside Living character rather than a rural character. These effects will be more than minor.

No matters of national importance arise.

In relation to Section 7; 7(a), 7(b) and 7(f) are relevant. The proposal, in the opinion of two of the commissioners represents the inefficient use and development of natural and physical resources. By allowing at least one further household unit and a further lot it will not maintain and enhance the amenity values of the area which are created by larger lots.

OTHER MATTERS

The proposal would have an effect on consistent administration of the District Plan for other similar applications and therefore lead to the erosion of the rural character and amenity values associated with the area.

CONCLUSION

The Commissioners are not satisfied that either gateway tests are satisfied for a non complying activity and that:

1. The proposal is contrary to the provisions of the relevant planning documents.
2. The proposed subdivision will have more than minor adverse effects on the rural environment by changing the subdivision pattern of this rural area along with the potential for further development on either lot.

Consent is declined.

Carried

The meeting closed at 2.00 p.m.

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 2ND DAY OF JULY 2009

MAYOR

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