



30 May 2005

04581/605.00

THE CHAIRPERSON AND MEMBERS OF THE REGULATORY COMMITTEE

SECTION 357 OBJECTION TO COUNCIL STAFF DECISION ON AN APPLICATION FOR A NON-COMPLYING SUBDIVISION CONSENT

APPLICANT	B N Hollamby
PROPERTY ADDRESS	190 Mystery Creek Road
LEGAL DESCRIPTION	Lot 1 DPS 57287 (CT SA47A/737)
SITE AREA	3.2610 hectares
ZONING - DISTRICT PLAN	Rural
PROPOSAL	Objection by applicant to a Council staff decision dated 6 April 2005. Applicant sought subdivision of one certificate of title to create two additional lots; one long association holding, and subdivision of existing land use consent and a balance lot. Council staff approved the long association holding only, on the condition that its area is reduced from the proposed 7,525m ² to 5,000m ² . The remainder of the application was declined. The applicant has objected to that decision in its entirety (see Appendix A).
SURVEYOR	Murray Hislop Surveyors Ltd

1 THE SITE

190 Mystery Creek Road, Rukuhia. It is located within the Rural Zone under the Waipa District Plan, and is 3.2610 hectares. Mystery Creek Road is formed and sealed to standard. It is a 'Primary Road' under the Waipa District Plan.

The middle part of the site is currently used for a ferret farming operation and contains an existing dwelling and garaging. The site is generally flat. There are no features within the subdivision that would topographically limit subdivision.

2 THE PROPOSAL

1. The applicants have objected to the Council staff's decision pursuant to Section 357 of the Resource Management Act 1991 (RMA) on an application for subdivision consent to create two additional lots in the Rural Zone, as follows (original application and site plan for subdivision contained in Appendix B):

- Proposed Lot 1 – 7,805m². Currently vacant.
- Proposed Lot 2, subdivision of an existing land use consent using Rule 10.3.2.2(g) - 1.73 hectares, with an existing dwelling, garage and ferret operation.
- Proposed Lot 3, to be created using the Long Association Rule – 7,525m². Currently vacant.

2. Under delegated authority Council staff approved Proposed Lot 3, provided the size of the resultant lot was reduced from the proposed 7,525m² to 5,000m² (see Appendix C Decision Letter). Proposed Lots 1 and 2 were refused. The objection was received 19 April 2005, within 15 working days as required by RMA. The applicant's objection relates to Council staff's decision dated 6 April 2005.

3 STAFF DECISION

The long association holding (Lot 3) was approved, provided the applicant submitted an amended scheme plan showing the area as 5,000m². Lots 1 and 2 were declined.

4 NOTIFICATION

Sections 93 to 94D of the Resource Management Act 1991 (RMA) prescribe the requirements for notification. All applications for Non-Complying Activities must be publicly notified unless the Council is satisfied that the adverse effects of the activity will be minor. In addition to these tests, the Council is required to identify and serve notice to all affected persons if some of those parties have not given their written approval to the activity. The application was

processed on a non-notified basis. Written approvals of potentially affected parties were obtained.

It is considered that there are no potentially affected parties beyond the immediately adjoining lots. Council staff declined proposed Lots 1 and 3 on the basis that approving these lots for subdivision would undermine the public's confidence in the integrity of the District Plan and its consistent administration. There were no special circumstances that warranted notification pursuant to Section 93C of the RMA.

5 BACKGROUND

It is proposed that Lot 2 (central part of the site) will be a subdivision of a land use consent, previously granted for a ferret farming operation. A specified departure for the ferret farm was granted by Waipa County Council on 23 August 1985 under the Town & Country Planning Act 1977. A 'specified departure' is the Resource Management Act 1991 equivalent of a Non-Complying activity.

6 RESOURCE MANAGEMENT ACT

4.1 STATUTORY MATTERS

Section 104(1) requires that, subject to Part II of the RMA, the Council must have regard to any actual or potential effects on the environment of the activity, any relevant provisions of the District Plan or other statutory RMA document and to any other matter the Council considers relevant and necessary to determine the application.

4.2 Part II of the RMA

Any assessment of an application is subject to Part II of the RMA and the provisions of sections 5, 6, 7 and 8. The purpose of the RMA is to promote the sustainable management of natural and physical resources. The RMA also requires that the potential of natural and physical resources is sustained to meet the reasonably foreseeable needs of future generations and that the life-supporting capacity of air, water, soil and ecosystems are safeguarded. Of particular relevance to this application is section 7(b), (c), (g), which state:

4.2.1 Other Matters, Section 7

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to-

7(b) The efficient use and development of natural and physical resources.

The application proposes subdivision of a 3.2610-hectare rural zoned site, which does not represent the efficient use and development of natural and physical resources as anticipated by the operative District Plan, particularly in terms of proposed Lot 1, which is significantly smaller than the minimum lot size required by the District Plan (proposed Lot 1 is 7,805m², while Rule

10.3.2.1 requires a minimum lot size of 25 hectares). Allowing subdivision would preclude the site from future amalgamation for productive purposes. This is particularly relevant given that the site consists of some land use classification 1s1 soils.

7(c) The maintenance and enhancement of amenity values

It is a characteristic of most rural zones that amenity values are derived from open spaces, and a lower density of development anticipated than is expected and/or provided for in urban areas. Allowing subdivision of this site (particularly the subdivision of the land use consent which would result in the balance – Lot 1 – being created) would increase the density of development to a degree which is inconsistent with the rules of the District Plan. The minimum lot size in the Rural Zone is 25 hectares. Proposed Lot 1 is 7,805m², or 0.78 hectares.

By way of explanation, the rationale for Long Association Holdings under the District Plan is recognition that they are an accepted part of the environment. The maximum lot size of 5,000m² provided for as a Discretionary Activity is designed to protect the rural land associated with that dwelling for productive purposes. However, an additional lot of the type proposed (Lot 1) is not expected and therefore not provided for under the District Plan. The purpose of the general minimum lot size requirement of the District Plan has a number of purposes, including:

1. To maintain an adequate lot size for the purposes of primary production (the Waipa District contains some of the best soils for primary production in New Zealand); and
2. To maintain open space qualities that are characteristic of most rural zones. This in turn is consistent with Section 7(c) of the RMA.

7 (g) Any finite characteristics of natural and physical resources

High quality soils are identified in the District Plan a finite resource. If subdivision of this site is granted in the manner proposed, the future use of this finite resource would be compromised.

6 WAIPA DISTRICT PLAN

6.1 Rural Zone Rules

The application is a Non-Complying Activity under the Waipa District Plan. The following is a list of the definition/s, rules, and assessment criteria that are relevant to this application:

6.1.1: Definition of 'Factory Farming'

“means a farming activity either involving a high energy input per unit area or which is not dependent on the fertility of the soil on which it is located, or which takes place substantially within buildings or other structures. Factory farming will include poultry farming, rabbit farming, mushroom farming, pot grown

nursery, and glasshouses which have other than an earth floor. The keeping of up to 10 poultry shall be deemed to be a use accessory to dwellings and not 'factory farming'. The keeping of not more than 12 pigs older than 8 weeks at any one time of which not more than 5 are breeding animals shall be deemed to be a use accessory to farming and not 'factory farming'".

It is considered that ferret farming most closely fits with the definition of 'factory farming'.

The assessment criteria have been summarised where necessary.

Rural Zone Rules	Compliance with Permitted Standard
<p>10.3 Categories of Subdivision Any subdivision proposal not complying with the conditions prescribed for a Permitted Activity, or the standards and terms prescribed for a Controlled or Discretionary Activity, shall be a Non-Complying Activity.</p> <p>Rule 10.3.2 Rural Zone 1. Subject to the following subclauses any subdivision in the Rural Zone, except for a boundary adjustment, creation of a 25ha lot, a subdivision within a Rural Residential area...shall be a Discretionary Activity and shall comply with the standards for lots set out in Rule 10.6.1. 2. Any subdivision which is intended solely for the purposes set out in paragraphs a-g below shall be a Discretionary Activity in the Rural Zone and shall comply with the standards for lots set out in Rule 10.6.1.4 a) Dwelling for a Person with a Long Association with a Holding -creating a lot out of an existing holding for an existing or proposed dwelling for a person who – -has lived on the holding continuously for not less than 15 years; and -who intends to remain residing on the holding after subdivision. b) Activities with Land Use Consents -creating a lot per holding for a Discretionary or Non-Complying Activity for which a land use consent has been granted and been given effect to. The activity shall be one of the following non-farming activities:</p>	<p>Proposed Lots 2 and 3 are to be created using Rule 10.3.2(g) Activities with Land Use Consents and Rule 10.3.2(a) Dwelling for a Person with a Long Association with a Holding. An assessment of the compliance of the proposal against the standards in 10.6.1.4 is provided below. Rule 10.3.2.2 is not applicable to Lot 1.</p>
<p>Rule 10.6.1.1 General Standards for Allotments a) Minimum net lot area – 25 ha</p>	<p>Lot 1 complies with the minimum frontage provisions, however proposed Lot 1 is 7,525m² (0.7 hectares). This does not meet the minimum</p>

b) Minimum frontage for front lots – 20m	net lot area of 25 hectares; therefore it is a Non-Complying Activity .
<p>Rule 10.6.1.4 Standards for allotments as Discretionary Activities referred to in Rule 10.3.2.2 are as follows:</p> <p>a) Dwelling for a Person with a Long Association with a Holding</p> <ul style="list-style-type: none"> -No previous subdivision -No lot shall be created under this Rule within the Deferred Residential Zone. -Person shall have resided on land for not less than 15 years -Only one lot per holding permitted -The applicant shall provide details of the person or persons for whom the allotment is to be created... -Proposed lot shall not exceed 5,000m² -Proposed lot and balance lot shall be not less than 2500m² etc... -Payment of financial contributions 	<p>Proposed Lot 3 is to be created using the Long Association Rule. It does not comply with the minimum lot size of 5000m². The size of Lot 3 as proposed is 7,805m². This is more than 50% larger than the maximum lot size provided for under Rule 10. This aspect of the application is therefore a Non-Complying Activity.</p>
<p>Rule 10.6.1.4 Standards for allotments as Discretionary Activities referred to in Rule 10.3.2.2 are as follows:</p> <p>g) Land Use Consent Lots</p>	<p>Rule 10.3.2(g) sets out the activities that are provided for under this Rule, and they are:</p> <p>-Industry, packing sheds involving produce grown off site, restaurants and cafes, retreat, conference or education centres, garden centres or nurseries, commercial garages, service stations, health care facilities, travellers accommodation excluding bed and breakfast or similar home-based accommodation, and places of assembly. The rule specifically excludes wood splitting and drying associated with the sale of firewood, seasonal activities, fortified sites, greenhouses, operations involving the hire or lease of goods, and distribution of goods not manufactured on site.</p> <p>It is considered that ferret farming/breeding most closely fits the definition of factory farming (defined under the District Plan), which is not specifically included or excluded under this Rule. Therefore the activity defaults to the Non-Complying activity status, under Rule 10.3 Categories of Subdivision. This rule states, “any subdivision proposal not complying with the conditions prescribed for a Permitted Activity, or the standards and terms prescribed for a Controlled or Discretionary Activity, shall be a Non-Complying Activity.”</p>

6.2 Waipa District Plan Objectives and Policies

The degree of compliance with the District Plan objectives and policies helps to assess whether the effects of an activity are more than minor. Case law suggests that in considering one of the tests for a non-complying activity, the council must consider whether the non-complying activity applied for is opposed in its nature to the objectives and policies of the plan. This process involves an overall consideration of the purpose and scheme of the plan rather than a checking of whether the non-complying activity fits exactly within the detailed provisions of the plan (RM104D.08: s 104D(1)(b)).

Objective SU2

To ensure that subdivision takes into account the effects of consequent land development and use.

A potential consequence of allowing subdivision of this site in the manner proposed is that it would preclude the resultant lots from use for primary production due to fragmentation.

Objective SU4

A financial contribution will be required to mitigate the adverse effect on the District's existing roading infrastructure of rural subdivision and provide for its future maintenance and enhancement.

A subdivision such as this would require financial contribution/s for the District's existing roading infrastructure. The conditions contained in the subdivision report prepared by Council dated 6 April 2005 that approved proposed Lot 3 imposed a financial contribution of \$3,330.00 for general rural road improvements. The financial contribution was based on the Long Association Holding approved at 5,000m².

Policy RU39

To ensure that prime agricultural land remains available for future primary productive use.

Policy RU40

To encourage activities which would compromise the future use and availability of prime agricultural land to locate in alternative rural or urban locations.

The purpose of Policies RU39 and RU40 is to protect the finite qualities of the prime agricultural land resource. In this respect these policies direct that the management of this resource should be undertaken in a manner that continues to ensure it is available for primary production and other land uses which depend on the on the natural fertility and versatility of the soils. The land subject to the application is listed as Land Use Classification 1s1 and 7e10. The Land Use Classification 1s1 represents prime agricultural land with high versatility for productive use.

The area of proposed Lot 1 is relatively small and would realistically be used for rural-residential purposes as a result of this proposal. The use of this land for rural-residential purposes would compromise the future use and potential of Lot 1 for primary productive purposes because it is too small. Therefore the subdivision of the land use consent to create proposed Lot 2, and the creation of the balance area, Lot 1, is inconsistent with Policies RU39 and RU40. This is reiterated by the fact that proposed Lot 1 is 7,805m², or just over 3% of the minimum lot size required in the Rural Zone by the Waipa District Plan. This represents a substantial degree of non-compliance with the subdivisional standards for the Rural Zone, a non-compliance that is accentuated by the presence of prime agricultural land on the site.

Policy RS69B

To ensure dwellings are not located in areas where reverse sensitivity effects and conflict with existing or potential rural land use activities may arise.

Any subdivision may not be approved, if it is likely to result in development which is incompatible with surrounding land use and may create reverse sensitivity effects, unless the adverse effects can be mitigated appropriately.

The proposal effectively provides for two dwellings (on proposed Lots 1 and 3) in close proximity to an intensive farming operation. This may result in reverse sensitivity effects due to the establishment of a rural-residential land use adjacent to an intensive ferret breeding operation. These are considered to be incompatible uses and intensification of residential land use around factory farming should generally be discouraged.

Policy SU12

To provide for subdivision to facilitate public works, the preservation of natural values, the protection of sites, buildings, and objects listed in Appendices 10 to 14 and to facilitate the development and operation of significant activities for which discretionary or non-complying resource consent has been granted or given effect to.

This is the policy that is relevant to the proposal by the applicant to subdivide the existing ferret farming consent. In this case, a Specified Departure (Non-Complying Activity) was granted and given effect to in order to establish a ferret farming operation. It is not the intent of Policy SU12 to provide an avenue for rural residential living or subdivision of farming activities, factory farming or forestry. It is considered that the ferret farming operation most closely fits with the definition of factory farming (see definition). Notwithstanding the fact that the land use consent granted in 1985 to establish the ferret farming operation was a specified departure, the ferret farming operation cannot be defined as a "significant" activity in a District context.

Following the subdivision of proposed Lots 2 and 3 as proposed by the applicant, Lot 1 would be the balance area, which effectively provides an

avenue for rural-residential living because the resultant size of proposed Lot 1 would be 7,805m². This is in direct conflict with Policy SU12.

Policy SU13

To prevent the further subdivision of rural land except in the situations covered by Policies SU14-SU16 and SU22 below.

Policy SU15

To provide for the subdivision of lots for a dwelling for a person who has had a long association with rural land, surplus dwellings and Maori dwellings.

The subdivision of lots for the above activities recognises that they are an accepted part of the rural environment. Conditions on development are required in order to avoid the fragmentation of land into small titles on which a dwelling could be erected. The rules are designed to allow a lot for the above activities but to ensure that the balance area of the title remains large enough for productive purposes. The maximum lot size provided for in this case is 5,000m², the purpose of which is to protect the rural land associated with that dwelling for productive purposes. The applicant proposed to subdivide for a dwelling for a person who had a long association with rural land (the applicant), with a lot size of 7,525m². The subdivision report recommended approval of this aspect of the application, provided the lot created by the Long Association rule was reduced to the maximum 5,000m². In particular, given that the site is currently vacant, there are no particular features of the site that would warrant allowing the larger lot size.

Policy SU16

To encourage the amalgamation of small rural lots in the District by allowing the creation of a rural-residential lot where a house may be built provided the balance of the lot is amalgamated with an adjoining lot.

The intent of encouraging amalgamation under Policy SU16 is to offset the effects of smaller lots in the Rural Zone. The creation of proposed Lot 1 in addition to the Long Association Lot would in direct conflict with the intent of this policy and the Plan.

Policy SU16A

To discourage the subdivision of any site within the Rural Zone which is likely to result in a dwelling being erected within the Outer Noise Control Boundary at Hamilton Airport, within a Special Landscape Character Area, within 500 metres of Industrial Zones, adjacent to a State Highway or a 'Primary Road' (as shown on the District Planning Maps), within an Environmental lot buffer area and within 500 metres of a mineral extraction zone.

Mystery Creek Road is defined as a 'Primary Road' under the District Planning Maps. Subdivision along this type of road is discouraged because

considerable volumes of traffic can have adverse effects on residences sited close to those roads. These adverse effects can include noise, dust, vibration, and air discharges. There is also safety concerns associated with vehicle movements created by intensified rural-residential activities on a road with high traffic volumes. Approving the subdivision of proposed Lot 2 and the resultant creation of the balance (proposed Lot 1) has the potential to create additional traffic movements on Mystery Creek Road which is inconsistent with Policy SU16A.

Policy SU22

To provide for the subdivision for rural-residential development of land which is not prime agricultural land and which cannot be properly managed as part of a farm holding.

Lots 1 and 3 are not required for ferret farming operation, and Council approved the Long Association Holding at a reduced size 5,000m² to the size proposed, which was 7,525m². This is the only additional lot that should be created as a result of this subdivision because in effect the creation of Lot 2 (and thus Lot 1) is inconsistent with Policy SU22 which restricts further subdivision within a 10-year period.

Policy SU25

To ensure that reasonable financial contributions are made at the time of rural subdivision to make provision for protecting, maintaining and enhancing the District's roading infrastructure.

Policy SU26

To require financial contributions at the time of rural subdivision based on recouping roading infrastructure or costs that are likely to arise directly or indirectly from the subdivision.

Financial contributions for roading would be imposed on the Long Association Holding approved at 5,000m² to make provision for protecting, maintaining or enhancing the District's roading infrastructure.

7 RECOMMENDATION

That

- a) *The report from R M Eng, Consultant Planner, Beca Planning on behalf of the Planning Services Department, dated 30 May 2005 be received; and*
- b) *That the objection by B.N. Hollamby to Council's decision under delegated authority dated 6 April 2005 which approved a 2 lot subdivision of Lot 1 DPS 57287 be dismissed pursuant to Section 357(7)(a) of the Resource Management Act 1991 for the following reasons:*

Reasons for Decision:

- 1 The application for two additional lots as proposed is for an activity that is contrary to the objectives and policies of the Waipa District Plan.
- 2 It is considered that granting the application would not represent the consistent administration of the District Plan, particularly with regard to the creation of proposed Lot 1, which would effectively be the balance lot after subdivision of the Land Use consent (proposed Lot 2).
- 3 It is considered that the proposed subdivision would adversely affect the amenity characteristics of the area through a change in character and outlook brought by the potential future use of the sites, notwithstanding the potential safety risks of intensifying the use of a site adjacent to a Primary Road.
- 4 It is considered that cumulative adverse effects will arise as a result of continued subdivision.
- 5 There are no circumstances precluding approval of the Long Association Holding pursuant to Rule 10.3.2.2(a), provided the size of the lot is reduced to 5,000m².

RM Eng
CONSULTANT PLANNER

Approved for Regulatory Committee Agenda

Garry Dyet
Deputy Chief Executive