



DECISION OF THE QUEENSTOWN-LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	J Nicol and K Nicol
RM reference:	RM150810
Location:	710 Lake Hayes – Arrow Junction Highway, Wakatipu Basin
Proposal:	Subdivision of a site into two lots that breach of the minimum allotment size for the zone, together with land use consent to construct a dwelling that breaches the maximum site density and an internal boundary setback
Type of Consent:	Subdivision and Land Use
Legal Description:	Lot 1 Deposited Plan 9871 held in Computer Freehold Register OTB1/604
Zoning:	Rural Residential
Notification:	Publicly Notified
Commissioners:	Commissioner D Jane Taylor
Date:	22 April 2016
Decision:	The application is DECLINED

Decision following the hearing of an application for resource consent under the Resource Management Act 1991

Proposal

J Nicol and K Nicol have sought resource consent to subdivide a site at 710 Lake Hayes – Arrow Junction Highway, Wakatipu Basin, into two lots that breach the minimum allotment size required in the Rural Residential zone. In addition, land use consent is sought to construct a dwelling that would breach the maximum site density and an internal boundary setback.

Resource consent is **DECLINED**. The reasons are set out below.

Application number:	RM150810
Site address:	710 Lake Hayes – Arrow Junction Highway, Wakatipu Basin
Applicant:	J Nicol and K Nicol
Hearing commenced:	29 March 2016
Hearing panel:	Jane Taylor (Independent Commissioner)
Appearances:	<u>For the Applicant:</u> Mr Daniel Wells - Planning Consultant <u>Submitters:</u> Mr Tom Pryde <u>For the Council:</u> Ms Hanna Afifi – Reporting Officer Ms Mishka Banhidi – Planning Support Executive Assistant
Hearing adjourned:	29 March 2016
Commissioner's site visit	29 March 2016
Hearing closed:	8 April 2016

Introduction

1. This decision is made on behalf of Queenstown Lakes District Council (“the Council”) by Independent Hearing Commissioner Jane Taylor, appointed and acting under delegated authority pursuant to sections 34 and 34A of the Resource Management Act 1991 (“the Act”).
2. This decision contains the findings on the application for resource consent and has been prepared in accordance with section 113 of the Act.

Summary of proposal

3. J A and K M Nicol (“the Applicants”) have applied for resource consent to subdivide a site into two lots that are less than the minimum allotment size required in the Rural Residential zone. Land use consent is also sought to construct a dwelling on proposed Lot 2 that will breach the maximum site density and an internal boundary setback.
4. The legal description of the property is Lot 1 DP9871 held in Computer Freehold Register OTB1/604. The application site comprises 2,648 square metres and is located at 710 Lake Hayes – Arrow Junction Highway, Lake Hayes. Full details of the proposal can be found in the application prepared by Mr Daniel Wells of John Edmonds & Associates Limited at sections 1 and 2.
5. The property is currently zoned Rural Residential under the Operative District Plan (“the District Plan”). The Proposed District Plan was publicly notified on 26 August 2015, prior to lodgement of the application and the hearing. Accordingly, the relevant provisions of the Proposed District Plan, which are confined to the objectives and policies, have been considered in the planning evidence. The property retains its Rural Residential zoning under the Proposed District Plan.
6. A controlled activity consent application was recently approved to relocate a 26 square metre office to the site (RM150684). The approved building is accessory to and forms part of the existing residential unit on the site. Under the current proposal, the accessory building would become part of a new residential unit to be established on proposed Lot 2.
7. The site is accessed directly from the adjoining State Highway via a driveway that runs up the eastern boundary. It presently contains an existing small residential dwelling positioned around 40 metres from the State Highway, which appears to have been relocated to the site around the mid-twentieth century. There is also a detached garage near the western boundary.
8. The subject site forms part of a Rural Residential zone that is illustrated below:

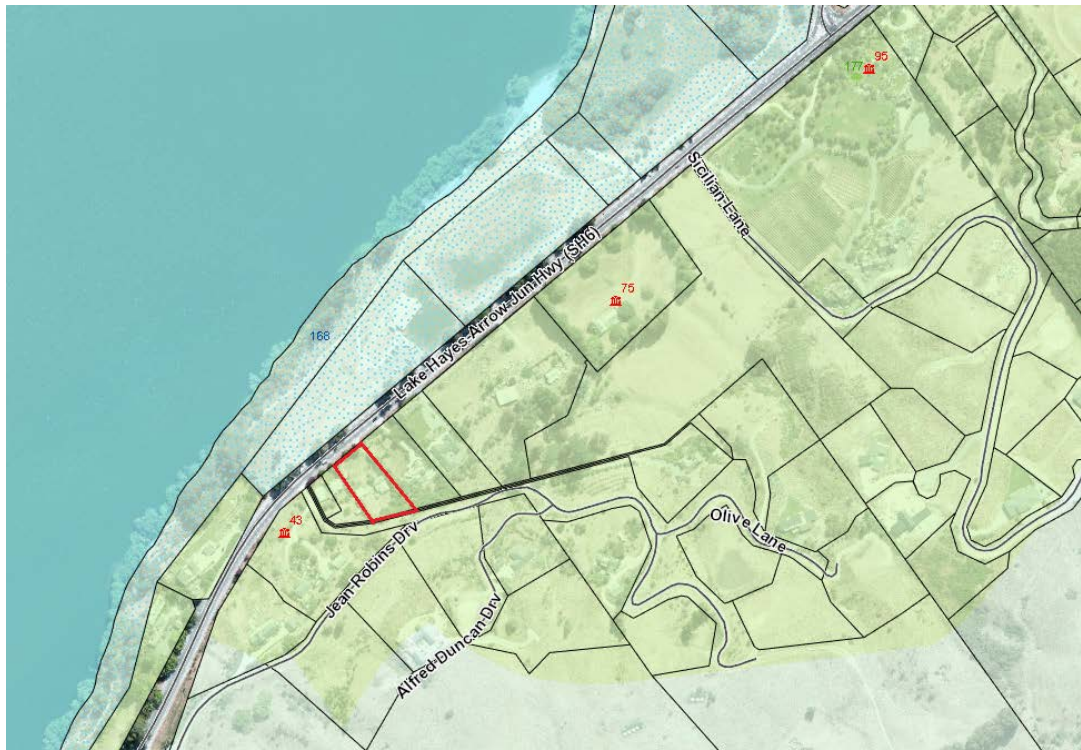


Figure 1 Subject site (red outline) and surrounds

9. To the north of the Lake Hayes - Arrow Junction Highway is the Lake Hayes Reserve and pavilion. Ms Afifi noted in her Section 42A Report that rural living is the predominant use in the immediate environs. As seen in the map above, the surrounding lots south of the Lake Hayes – Arrow Junction Highway range in size but are mostly 4,000 square metres in area or larger, other than the four lots immediately adjacent to the subject site, which range in size from 571 to 3,769 square metres.

10. The Council's Landscape Architect has described the receiving environment as follows:

"The application site is located at the foot of Morven Hill and is largely within the relatively level terrace that extends across the highway to Lake Hayes Showground Reserve and Lake Hayes. The lake and the upper slopes of Morven Hill are dramatic natural features, with strong aesthetic, scenic and natural values. The strip of rural living activities that edges the lake and highway (and extends partway up Morven Hill) has domesticated part of this wider landscape. A relatively high level of landscape amenity is however retained, as a result of the numerous mature exotic trees, the open space of the reserve and the views to the surrounding outstanding natural features and landscapes. The frequency, speed and noise of traffic on the highway, as well as intermittent activities on the reserve detract from the rural tranquillity and privacy of the rural living area.

The existing house and accessory buildings on the application site and the three dwellings to the west form a cluster of smaller scale buildings that are reminiscent of traditional 'cribs' in their height and mass. Together with the reserve and the historic cottage and historic structure to the west, they provide clues to historic settlement on this part of the lake edge."

11. I visited the site and the environs before the hearing, accompanied by Ms Afifi. I am satisfied that I obtained a good understanding of the subject site and the receiving environment.

Planning and assessment framework

12. The subject site is zoned Rural Residential. The purpose of Rural Lifestyle and Rural Residential zones is:¹

“To provide for low density residential opportunities as an alternative to the suburban living areas of the District.

The Rural Residential zone is anticipated to be characterised by low density residential areas with ample open space, landscaping and with minimal adverse environmental effects experienced by residents. Rural activities are not likely to remain a major use of land in the Rural Residential zone or a necessary part of the rural residential environment.”

13. Full details of the resource consents required and the status of the activity are set out at section 3.1 of the Assessment of Environmental Effects that accompanied the application. Two non-complying activity consents are required as follows:

- (i) A non-complying activity consent pursuant to 15.2.6.3(i)(a) *Zone Subdivision Standards – Lot Sizes and Dimensions*, which prescribes the minimum lot size of 4,000 square metres in this part of the Rural Residential zone;
- (ii) A non-complying activity consent pursuant to Standard 8.2.4.2(viii) *Residential Density*, which requires no more than one residential unit on a site of 8,000 square metres or smaller. This rule would only be breached if the construction of the house occurred before the subdivision is complete, which is considered unlikely but possible for a brief period of time.

14. Overall, the application was considered by both the Applicants’ Planner and the Reporting Officer to require assessment as a **non-complying** activity.

15. Ms Afifi noted at section 5.1 of the Section 42A Report that the District Plan provides guidance for the consideration of a non-complying activity with respect to the breach of a zone standard, which is applicable to this application. This provision states:²

“The Council has adopted through its District Plan a zoning technique based on standards and guidelines to avoid, remedy or mitigate potential adverse effects of activities and to achieve the Plan’s objectives and policies.

Zone standards are standards which are fundamental to environmental standards or character which are to be attained for a zone or area. **Because of their importance, all activities which fail to meet these standards are non-complying activities which face a more rigorous assessment if they are to obtain a resource consent (as compared with a discretionary activity).**”

[My emphasis]

16. The provisions of the Resource Management Act 1991 relevant to the assessment of this application as a non-complying activity are sections 104, 104D, 104B, 106, 108, 220 and Part 2 of the Act.

¹ Part 8.2 of the District Plan.

² Part 1.4 of the District Plan.

17. In accordance with section 104(1)(b)(i) to (vi) of the Act, I have determined that there are no relevant national environmental standards, other regulations or national policy statements applicable to the proposed development.
18. Relevant plan provisions are identified in the Section 42A Report at section 8.2. The objectives and policies relevant to this application are contained within Part 4 of the District Plan (*Districtwide Issues*), Part 8 (*Rural Living Areas*) and Part 15 (*Subdivision, Development and Financial Contributions*), which require assessment under sections 104 and 104D of the Act. Ms Afifi has also noted the assessment matters that are applicable to this application, which will be discussed further below where relevant.

Notification, submissions and affected party approvals

19. The application was publically notified on 16 December 2015. Submissions closed on 3 February 2016, with a total of three submissions in support of the application received.
20. Written approval was received from the following parties:
 - (i) L A Chandler, 708 Lake Hayes – Arrow Junction Highway, Wakatipu Basin (immediate neighbour to the west);
 - (ii) K S & J R Lazor, 712 Lake Hayes – Arrow Junction Highway, Wakatipu Basin (immediate neighbour to the east); and
 - (iii) New Zealand Transport Agency, Roadway Authority, Lake Hayes – Arrow Junction Highway, Wakatipu Basin.

Accordingly, any effects on the above parties have been disregarded in accordance with section 95D(e) of the Act.

Application information

21. The following information has been received and considered by the Commission in reaching its decision:
 - (a) The application as notified on 16 December 2015 titled “710 Lake Hayes – Arrow Junction Highway Resource Consent Application October 2015” prepared by John Edmonds & Associates Limited;
 - (b) The supporting information attached to the application, which included the Assessment of Environmental Effects, the Computer Freehold Register Title, legal instruments recorded on the title, site plan building elevations and landscaping plan, proposed easements, copies of the written approvals, computer-generated images of the proposed building and landscaping, email correspondence regarding the supply of electricity, email correspondence regarding telecommunications supply, and a sight distance diagram;
 - (c) A Section 42A Report dated 1 March 2016 prepared by the Reporting Officer Ms Hanna Afifi, Senior Planner, Queenstown Lakes District Council (“the Section 42A Report”);

- (d) The appendices to the Section 42A Report, which included a Landscape Assessment Report dated 18 April 2015 prepared by Ms Helen Mellsop, Consultant Landscape Architect and an Engineering Report dated 14 January 2016 prepared by Mr Michael Wardill.
22. The Reporting Officer, Ms Afifi, recommended that resource consent be refused pursuant to section 104 of the Act for the following reasons:
- (i) *Although the maintenance of landscape values and visual amenity can be maintained, the proposed development is likely to give rise to more than minor adverse effects on the environment in terms of character, density and rural amenity, appropriate to the Rural Residential zone. Given the existing density of development in the locality, the cumulative impact of these effects are considered to be more than minor;*
 - (ii) *The proposal is contrary to key subdivision objectives and policies of the District Plan, which seek to ensure that subdivision provides for land use development in keeping with the density of development anticipated. Both of the lots proposed are substantially smaller than the minimum lot area anticipated for the zone and, as such, the area of the lots do not provide for efficient and pleasant functioning as a Rural Residential lot, resulting in a subdivision pattern that has the potential to result in adverse effects on the anticipated character and level of rural amenity anticipated in the zone;*
 - (iii) *The proposal has the potential to set an unacceptable precedent;*
 - (iv) *In terms of Part 2 of the RMA, while aspects of the proposal are consistent with the purpose of the RMA, in its current form, the proposal is inconsistent with the primary purpose as alternative locations for rural residential development are available.*

Summary of the evidence heard

23. The Reporting Officer's Section 42A Report was circulated prior to the hearing and was taken as read. Prior to the hearing, the Applicant pre-circulated a statement of evidence of Mr Daniel Wells, a planning consultant based in Queenstown employed by John Edmonds & Associates Limited. Mr Wells' explained the background to the application, and provided a very full description of the receiving environment and the existing environment, together with an assessment of the application under section 104D of the Act. His evidence also responded to the issues and concerns identified in the Section 42A Report.
24. Mr Tom Pryde of 37 Arrowtown – Lake Hayes Road, Wakatipu Basin, spoke in support of the application at the hearing.

Evidence for the Applicant

25. The Applicant's case was presented by **Mr Daniel Wells**. Mr Wells summarised the background to the proposal and comprehensively evaluated the receiving environment, the surrounding properties and the existing environment. Mr Wells noted that there is an established cluster of small lots around the subject site, which he considered to be of particular relevance to the consideration of the application. In his view, the four smaller lots establish a "point of difference" from the larger rural residential-sized properties either side of

what he described as a “suburban enclave”. He noted that this enclave is contained by a steeper sloped area to the south and by the State Highway to the north (which he considered to have an adverse effect on the nature and character of the area in terms of noise).

26. In terms of the existing environment of the site, Mr Wells described the property as being “in transition”, with Applicant recently “investing in various improvements”. A gabion basket wall, which follows the line of the proposed boundary between proposed Lots 1 and 2, has been erected. With respect to proposed Lot 2, the Applicant has given effect to a controlled activity consent in terms of the detached sleepout presently on the site. Mr Wells stated that:

“The lawfully established wall and accessory building have already created a sense of division along the proposed boundary and have established a visible building near the road edge. I believe that assessments of visual effects and character need to account for these established effects and consider what is proposed over and above this existing environment.”

27. Mr Wells then addressed the gateway test required pursuant to section 104D. In relation to the adverse effects of the activity on the environment (section 104D(1)(a)), he gave evidence with respect to the density of development and rural residential character, rural amenity, lot sizes and dimensions, and the positive effects of the proposal, concluding that any adverse effects on the environment would be less than minor. I will discuss Mr Wells’ evidence on these issues further in my assessment section.
28. Turning to section 104D(1)(b), Mr Wells concluded that the activity would not be contrary to the objectives and policies of either the Operative District Plan or the Proposed District Plan. In reaching this conclusion, Mr Wells emphasised the objectives and policies associated with residential affordability, which in his view promoted the proposed subdivision of the site. In his opinion, as the proposal meets both of the section 104D threshold tests, the assessment falls to be considered in accordance with section 104.
29. Mr Wells then carried out an assessment of the proposed development against section 104. In terms of section 104(1)(c), he addressed the integrity of the District Plan, which was raised by Ms Afifi in the Section 42A report, together with the potential for the proposed development to create a precedent. He concluded that the integrity of the Plan was not at risk from a grant of consent to this application as, in his view, this was a “valid exception”. With respect to precedent, it was Mr Wells’ view that the particular set of circumstances surrounding this application would distinguish it from others that may follow as:
- (a) The site is in an area that has historically already been subdivided below the minimum lot size for the zone;
 - (b) Affected parties, including the immediate neighbours and the New Zealand Transport Authority, have given written approval to the proposed development; and
 - (c) The proposal has a supporting landscape assessment which describes how the character of the site and neighbouring properties can be distinguished from other areas further afield within the Rural Residential-zoned area south of Lake Hayes. In Mr Wells’ view, these factors are sufficiently specific to the site that they are unlikely to be replicated in a similar manner elsewhere in the District.

Submitters appearing in person

30. **Mr Tom Pryde** spoke in favour of the proposed development. Mr Pryde is a resident of 37 Arrowtown – Lake Hayes Road, Wakatipu Basin, is the lawyer for the Applicant and has owned property in the Wakatipu Basin for 43 years. Mr Pryde considered that the adverse effects of granting the application would be minor or less than minor. In his view, the proposed two new lots would be entirely appropriate in their location near the shore of Lake Hayes, where the clear trend has been for subdivision of the limited amount of land available into smaller and smaller lots; a trend which he considers has been *“totally supported by and is acceptable to the Lake Hayes community”*. In his view, the proposed development would be positive for the community and would not compromise the amenity of any other property.

Council response

31. The Reporting Officer, Ms Afifi, stated that notwithstanding Mr Wells’ evidence, she stood by the recommendation contained in her Section 42A Report. In her opinion, the additional volunteered condition that the building coverage be limited to 15 percent of each lot, together with a covenant preventing further subdivision, simply mirrored a rule in the current District Plan and did not therefore add anything significant to the proposal.
32. Although Ms Afifi acknowledged that there would be positive effects of the proposal, in her view these would be insufficient to outweigh the adverse effects that had been identified.

Applicant’s right of reply

33. Mr Wells provided a verbal right of reply on behalf of the Applicant. He reinforced the “atypical” nature of the historical pattern of development (of which the site forms part) and the circumstances that had led to the application. He reiterated that, in his view, the proposal would not set a precedent, as the two neighbouring sites to the west were already close to the maximum site coverage. In his view, the proposal would improve the amenity of the site by “tidying up” and consolidating the existing buildings on the site, which would be further enhanced by the proposed landscaping.
34. Following the Applicant’s right of reply, the hearing was adjourned pending any further information that may be required by the Commission.
35. The hearing was closed on 8 April 2016.

The principal issues in contention

36. A wide range of matters were traversed in the application, submissions, the Section 42A Report and supporting material, and during the hearing.
37. After analysis of the application and supporting evidence (including proposed mitigation measures and volunteered conditions), a full review of the Section 42A Report, consideration of the submissions and my site visit, I have determined that the proposed activity raises a number of issues that require consideration. The principal issues in contention are as follows:
- (i) The extent to which the proposed development will have adverse effects on the density of development and rural residential character, and rural amenity;
 - (ii) The extent to which the proposal will negatively impact on the rural amenity of the site and the receiving environment;

- (iii) The extent to which the provision of affordable housing should be considered as a positive effect in the context of this particular application (which is located in the Rural Residential zone);
- (iv) Whether or not the proposal is contrary to, or inconsistent with the relevant objectives and policies of the District Plan; and
- (v) The extent to which the proposal will undermine the integrity of the District Plan and set a precedent for further subdivision within the immediate environs and/or the Rural Residential zone generally.

Main findings on the principal issues in contention

38. My main findings on the principal issues in contention, and the reasons for my findings, are as follows.

Effect on residential density and rural residential character

39. It is plain that the proposal breaches the site density provisions of the District Plan. At 2,648 square metres, the site is already considerably less in area than the minimum allotment size permitted in the Rural Residential zone of 4,000 square metres, primarily as a result of the historical pattern of development in this small pocket of land that comprises the properties located at 706 to 714 Lake Hayes – Arrow Junction Road.
40. I concur with Ms Afifi that the predominant character of the receiving environment is that of a rural living area with lots that are sized at or above 4,000 square metres. The properties located at 706 to 714 Lake Hayes – Arrow Junction Road are clearly an exception, as these properties comprise of historic lots that range between 571 square metres and 3,769 square metres.
41. The imposition of a minimum allotment size and dimension is designed to protect the character and viability of the Rural Residential zone. A breach of the site density or minimum allotment size is a breach of a zone standard and, accordingly, is not an anticipated activity in this zone.
42. If the proposed development were to proceed, the site density would be one residential unit per 1,324 square metres, which is significantly below the minimum allotment size anticipated in this zone. Ms Afifi considered that although a “residential character” would be maintained on the site overall, the proposed lot sizes of 1,666 square metres and 982 square metres (gross) would fail to exhibit the *rural residential* character anticipated in the Rural Residential zone. She was of the opinion that the historic cluster of small properties (of which the subject site forms part) is an anomaly in the context of the Rural Residential zone south of the highway and does not reflect the typical pattern of development anticipated or generally existing in this zone in the wider environs. I concur with Ms Afifi that, given the existing size of the site, the extent of the breach will introduce a density of residential development that does not reflect the character anticipated in the Rural Residential zone. The proposed subdivision will result in fragmentation of the site and will introduce additional cues to domestication, such as increased traffic movements, albeit that these are relatively insignificant.
43. Mr Wells accepted that the proposed lots are below the minimum lot size for the zone but argued that “*this in itself says little about the effects of the rule breach*”. He considered that

were breaches of rules automatically deemed to constitute more than minor adverse effects (i.e. merely as a result of the breach), this would make it very difficult to ever meet the threshold test in section 104D(1)(a). However, I am not persuaded by Mr Wells' evidence in this respect. While it was common ground that the landscape and visual amenity effects would be no more than minor, the absence of a material visual effect is not in itself a justification for more intensive development than is anticipated in this zone. The same argument could equally be applied to other areas of the existing Rural Residential zone in the District generally, particularly where existing plantings and landscaping is mature and could arguably absorb additional residential development without impacting on visual amenity. Mr Wells' further argument that the proposal "consolidates the existing suburban rather than rural character of the site" is somewhat disingenuous in this context. While it may be true that the historic pocket of small lot subdivision is more reflective of suburban than rural residential character, this does not amount to a reason to reinforce this by further "suburban" intensification of the site. Neither is the existing development on the site (the accessory building and gabion basket wall), which Mr Wells refers to as "*the effects of fragmentation*", a reason to authorise a breach of the minimum site density rule.

44. I am persuaded by Ms Afifi's evidence that the area is particularly vulnerable to loss of character in a cumulative manner by the introduction of further density. I consider that fragmentation is an issue and that if the proposed development was to proceed, the site would be perceivable as two small separate residential properties, further compromising the rural residential character of the existing environment and adding cumulatively to the adverse effects on rural residential character. Accordingly, I have found that the proposal will result in a density of residential development that is not characteristic of the Rural Residential zone and which will result in more than minor adverse effects on the environment.
45. I have had regard to Mr Pryde's submission that the Lake Hayes area is suitable for a higher density of development than currently exists, and that this is supported by the community. However, the proper process for achieving intensification of development desired by the community is via a Plan Change application (or, at this time, through submissions on the Proposed District Plan currently under review) and not through ad hoc resource consent applications which seek to take advantage of anomalous historic patterns of development.

Effect on rural amenity

46. Ms Afifi noted that anticipated and therefore appropriate levels of rural amenity in the context of the Rural Residential zone are derived primarily from the density of development, as directed by the District Plan zone standards. She considered that due to the significant shortfall in the existing lot area available to provide for two residential units (noting that a minimum area of 8,000 square metres would be required for a two lot subdivision in this zone), rural amenity would be adversely impacted. In this context, it is important to note that rural amenity is a much wider concept than visual amenity, although visual amenity is clearly an important aspect of rural amenity.
47. The *Rural Living Areas* section of the District Plan (Part 8) emphasises the protection of amenity and environmental values which are particular to all rural zones, including privacy, rural outlook, spaciousness, ease of access, clean air and, at times, quietness. However, levels of noise, dust, traffic generation and odour that are associated with rural activities are considered to be an integral part of rural amenity values and must be accepted as anticipated

components of rural amenity.³ The District Plan further recognises that unmanaged residential living in rural areas can give rise to adverse effects on rural amenity and rural activities. Pressure for further random development, inefficiencies in services and the peripheral extension of existing towns and settlements must be managed.⁴

48. In her Section 42A Report, while acknowledging that matters relating to visual amenity have been addressed in the proposal and are not considered to create inappropriate adverse effects, Ms Afifi considered that rural amenity is derived from additional factors that would be affected by an increase in domestication of a site. In her view, the proposal would contribute cumulatively to the degradation of rural amenity, particularly as the site is immediately adjacent to the two small existing lots at 706 and 708 Lake Hayes – Arrow Junction Highway. Overall, Ms Afifi concluded that the extent of adverse effects on rural amenity in the context of the Rural Residential zone would be more than minor.
49. In his evidence, Mr Wells comprehensively addressed the various aspects that comprise rural amenity, concluding that the proposed activity would have a no more than minor effect on rural amenity values. In doing so, he relied to some extent on the written approval of the neighbouring property owners (particularly with respect to privacy).
50. Mr Wells noted that Part 8.2 of the District Plan (the preamble to the Rules section for the Rural Residential zone) states:

“The Rural Residential zone is anticipated to be characterised by low density residential areas with ample open space, landscaping and with minimal adverse environmental effects experience by residents. Rural activities are not likely to remain a major use of land in the Rural Residential zone or a necessary part of the rural residential environment.”

Mr Wells appears to have interpreted this statement to mean that “*a domesticated character is what is anticipated in this zone*”. While I accept that rural residential properties will exhibit some degree of domestication, it seems plain that the District Plan does not anticipate domestication to the extent that the site appears “suburban”. Accordingly, I do not accept Mr Wells’ argument that because the site has already been domesticated beyond what is anticipated in the Rural Residential zone, further intensification or domestication would, accordingly, have only minor effects. Whilst this might be true if the site was located in the Low Density Residential zone, it is plain that the vestiges of rural amenity that currently remain would be affected in a more than minor way by the proposed development.

51. Overall, I accept Ms Afifi’s evidence the proposal will result in inappropriate adverse effects on rural amenity in the context of the Rural Residential zone that would be more than minor.

The relevance of affordable housing

52. Mr Wells provided a very comprehensive argument as to the positive effects of the application, of which the most significant is the contribution of the proposal to the provision of affordable housing in the District. In Mr Wells’ opinion, Objective 4.10.1 and the related policies are instrumental to the determination of this application. In his evidence at the hearing, he noted that Assessment Matter 8.3.2(xv) “*makes it unequivocal that it is intended that these policies be considered in the context of the Rural Residential zone*”. Mr Wells’ argument relied in part on the conditional sale price of proposed Lot 2 of \$450,000 (plus a contract for a modestly-

³ Part 8.1.1(i) of the District Plan.

⁴ Part 8.1.1(iv) of the District Plan.

sized and affordably-constructed dwelling) as justification for the proposal's contribution to housing affordability and to residential activity affordability. He noted that the proposed lots will be relatively "affordable" compared to other sections in the immediate neighbourhood. Overall, he stated:

"I am strongly of the belief that this is a tangible example of the social and economic benefit of a relatively affordable section being made available. I believe this is an important positive effect that should be given regard to."

53. Ms Afifi acknowledged in her Section 42A Report that the addition of a residential unit to the housing stock in the District could be considered to contribute to housing affordability, in the context of supply and demand. However, she considered that the magnitude of this positive effect is *"significantly limited due to the fact that the proposal is for a single dwelling only, and supply is only one component of several factors that provide a tangible contribution to housing affordability."* Ms Afifi concluded that alternative locations exist within the immediate Rural Residential zone that could better accommodate an additional dwelling in compliance with the density provisions of the zone.
54. Overall, I accept Ms Afifi's evidence on this aspect of the application. While the proposal would contribute to residential affordability within the Rural Residential zone in a minor way, this would be in breach of the density provisions and, accordingly, to the detriment of the rural amenity that is anticipated in this zone. Accordingly, while I have had regard to the relevant objectives and policies highlighted by Mr Wells, I have ascribed very little weight to the positive effects generated by the provision of a further dwelling on this particular site. Although the subdivided site would offer land at a price in this area that is unlikely to be otherwise available through the subdivision of alternative rural residential sites (as Mr Wells has argued), it is my view that little weight can be given to the positive effect of affordability when this is created through a very clear breach of the density provisions of the zone, and the corresponding adverse effect on rural residential amenity that is anticipated.

Objectives and policies of the District Plan

55. Both Ms Afifi and Mr Wells have set out very comprehensive discussion of the relevant objectives and policies of both the Operative and the Proposed District Plan. Ms Afifi noted that there are three sections of the Operative District Plan that are relevant as follows:
 - (i) Section 4 – *District Wide Issues*;
 - (ii) Section 8 – *Rural Living Areas*; and
 - (iii) Section 15 – *Subdivision Development and Financial Contributions*.
56. I accept Ms Afifi's evidence that as a result of the breach of the density zone standard, the proposed subdivision and development will create a scale and intensity of residential development that will be unsympathetic in the context of the surrounding rural residential area. The proposal is contrary to the policy that seeks to encourage comprehensive and sympathetic development of rural areas, which plainly infers the retention of anticipated density and associated rural amenity and character. Accordingly, I have concluded that the proposal will result in adverse cumulative effects and is contrary to Policy 8, avoiding cumulative degradation.

57. In relation to the objectives and policies found in Section 8 – *Rural Living Areas*, the Section 42A report found that the proposal is not contrary to the relevant Objective 2 and the associated policies. However, as set out above, I consider that rural amenity is a wider construct than visual amenity (which is the subject of Policy 2.2) and, accordingly, question whether the proposal is indeed consistent with Objective 2 which aims to avoid, remedy or mitigate the adverse effects of activities on *rural amenity*. When questioned at the hearing, Ms Afifi commented that none of the policies associated with Objective 2 are specifically directed to rural amenity but refer only to visual amenity. However, in my view, while policies inform the interpretation of an objective, they are not necessarily exhaustive in reaching a conclusion on the merits, particularly where the overall objective encompasses a wider dimension than is necessarily covered by the specific wording of associated policies.
58. In terms of the objectives and policies in Section 15 – *Subdivision, Development and Financial Contributions*, the Section 42A Report found that the proposed development was contrary to Objective 5, which is concerned with the maintenance or enhancement of the amenities of the built environment through the subdivision and development process. Ms Afifi noted that both of the lots proposed are substantially smaller than the minimum lot size anticipated for the zone and, as a result, do not provide for their “efficient and pleasant functioning” as rural residential lots. She further considered that the subdivision pattern has the potential to result in adverse effects on the anticipated character and level of rural amenity anticipated in the zone, and that the proposal does not maintain or enhance the amenities of the built environment of the local vicinity.
59. Mr Wells’ response to Ms Afifi’s evidence in relation to Objective 5 – *Amenity Protection*, was to reiterate the conditions that have been volunteered in relation to limitation of the site coverage to 15 percent, together with the submission of the proposed purchasers of Lot 2 in terms of their aspirations for the property. He relied on the existing state of the site (which he described as “*suburban in character, consolidating a small area of higher density development*”) to refute Ms Afifi’s conclusions. However, in my view, reliance on the existing degree of domestication of the site to support its further intensification or domestication is not an acceptable approach, nor does it avoid or negate cumulative degradation.
60. Having considered the planning evidence in relation to Objective 5, I consider that the most important policy is 5.2 which states:

“To ensure subdivision patterns and the location, size and dimensions of lots in rural areas, will not lead to a pattern of land uses which will adversely affect landscape, visual, cultural and other amenity values.”

The subdivision of a lot that is already well below the size anticipated in the Rural Residential zone is plainly inconsistent with this policy, irrespective of any conditions with regard to the future use or development of the subdivided lots. As part of the historic subdivision of a very small pocket of land, the present lot is arguably proportionate to and part of an existing pattern of land use. Further intensive subdivision of the subject site would run counter to the historical subdivision pattern which has been established in this vicinity (apparent in Figure 1), which, although of greater density than the minimum permitted Rural Residential lot size, is still considerably less intensive than that found in lower density residential zones. Accordingly, I accept Ms Afifi’s evidence that the proposal is contrary to Objective 5 and the associated policies, and that this objective in particular is central to consideration of this application.

The integrity of the District Plan and precedent effect

61. I concur with Ms Afifi that the integrity of the District Plan and the matter of precedent is a relevant consideration in relation to this proposal under section 104(1)(c). Presently, the subject site contains a single residential unit, which complies with the rural residential site density rule of one residential unit for any lot under 8,000 square metres. Ms Afifi notes that at 2,648 square metres, the subject site is significantly below the area of 8,000 square metres required to enable the establishment of a second residential unit on site, or the subdivision of lots with a minimum lot area of 4,000 square metres, as a controlled activity.
62. I agree with Ms Afifi that there are no particular qualities of the site or proposal that would set it apart from other potential developments in the surrounding Rural Residential zone, particularly sites with capacity to develop at a similar density to that proposed and which are located along the Lake Hayes – Arrow Junction highway with direct frontage to the road. Mr Wells relied on the extent of built form on the neighbouring properties to the west (712 and 714 Lake Hayes – Arrow Junction Highway) as grounds for concluding that these properties are unlikely to be the subject of a subdivision application; however, given the substantial additional value that could be created through a subdivision consent, this cannot be categorically ruled out in my view. The subdivision of a site that is already well below the minimum lot size for the zone, whether in the immediate historic subdivision or in other areas of the District, where only minor effects on visual amenity would result, plainly has the ability to set a precedent. I do not accept Mr Wells' proposition that the approval of the affected parties distinguishes this application as this is not, in my opinion, a relevant factor. On the contrary, I accept Ms Afifi's evidence that there would be potential for such a precedent to be taken advantage of by other landowners in the surrounding Rural Residential zone and, indeed, in other areas of the District.
63. Overall, I am not satisfied that there are any unique characteristics of the site that would distinguish the proposal such that the potential to create a precedent effect would be negated, not only for lots that are already below the minimum density for this zone (including those in the immediate vicinity), but also for lots which currently meet the minimum density prior to any application for subdivision consent. Accordingly, a grant of consent to this proposal would have serious implications for the integrity of the District Plan in relation to the Rural Residential zone.
64. I note that strategic planning for the area, as promoted by the provisions of the Proposed District Plan, seeks to maintain the Rural Residential zoning of the area while providing urban housing opportunities elsewhere within identified urban growth boundaries. Accordingly, there is no change to the density provisions anticipated in this zone through the District Plan Review.

Sections 104D and 104(1) of the Act

65. I now consider the extent to which the proposal meets the test for a non-complying activity as set out in section 104D of the Act.
66. As set out above, I have concluded that the adverse effects on the density of development, rural residential character and rural amenity, will be more than minor. Accordingly, the proposed development fails the first gateway under section 104D(1)(a).

67. The extent to which the development is consistent with the objectives and policies of the District Plan was a matter of some debate between Ms Afifi and Mr Wells, both of whom carried out a very comprehensive analysis of the relevant objectives and policies. Having given this matter considerable thought, I am inclined to accept Ms Afifi's evidence, which is summarised on pages 15 and 16 of the Section 42A Report as follows:

"Overall, the Applicant has demonstrated that the proposed subdivision can be adequately serviced. In addition, matters relating to transport, roading and natural hazards have been adequately addressed. The proposal is not contrary to the relevant objectives and policies relating to these engineering matters.

There are objectives and policies in terms of subdivision and development within the Rural Residential zone that seek to provide for the maintenance of landscape and visual amenity values. The proposal is not contrary to these provisions.

However, the proposal is considered to be contrary to the subdivision provisions of the Plan that seek that lots are created to provide for their anticipated land use. In particular, the area of the lots do not provide for efficient and pleasant functioning as a rural residential lot, and the subdivision pattern has the potential to result in adverse effects on the residential character and rural amenity anticipated in the zone. Overall, giving a greater amount of weighting to objectives and policies that are specific to the density of development and the character and amenity outcomes of land use development anticipated for the Rural Residential zone, the proposal is considered to be contrary to the relevant objectives and policies of the District Plan."

68. The finding that a proposed development is contrary as a whole to the objectives and policies of the District Plan is a very high threshold, as has been made clear by the Environment Court in a number of cases. Notwithstanding this, it is my conclusion that this particular proposal fails the second limb of the threshold test and, accordingly, does not pass the gateway for consideration under section 104(1). However, I accept that my findings in relation to the second limb of the test (whether or not the proposal is contrary to the relevant objectives and policies of the plan) is finally balanced and relies on the apportionment of weight to the objectives and policies of the subdivision provisions of the District Plan. Accordingly, in case I am wrong, I will go on to evaluate the proposal under section 104(1).

Section 104(1) and Part 2 of the Act

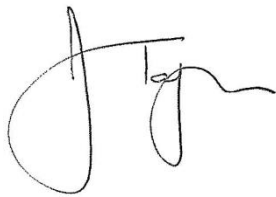
69. Contrary to my findings above, on the assumption that the proposal has passed the gateway test in section 104D I now turn to the merits of the proposed development. Section 104(1) sets out the matters that must be addressed in making a decision as to whether to grant or refuse consent.
70. I have concluded that the proposal will have significant adverse effects on the density of development and the corresponding rural residential character of the site, and on rural amenity, in this part of the Rural Residential zone. These adverse effects are not able to be remedied or mitigated (to the extent that they would be acceptable) and therefore, in my opinion, must be avoided. While the positive effects of the application are acknowledged, these are insufficient to outweigh the adverse effects of the proposed development.
71. Further, I have found that the application is contrary to the subdivision provisions of the District Plan that seek to ensure that lots are created to provide for their anticipated land use. This is an extremely important factor in considering the subdivision of a lot in the Rural Residential zone that is already below the minimum lot size per residential unit. The proposed

development would promote and be more representative of urban character found in a low density residential development, which is not an anticipated density in either this vicinity or this zone more generally. Any further subdivision of the site would also impact negatively on the historic pattern of subdivision, which is contained by a triangular piece of land that comprises Lots 706 to 714 Lake Hayes – Arrow Junction Highway, as shown in Figure 1.

72. An important factor, and one which carries significant weight, is my conclusion that a grant of consent for this proposal would have the potential to set a precedent for more intensive subdivision within Rural Residential zones where landscape and visual amenity effects can be adequately mitigated (to the extent that these are less than minor). Accordingly, the proposal would impact not only on the integrity of the Operative District Plan but potentially on the Proposed District Plan if the current proposed provisions remain unchanged during the District Plan review process. Whilst I appreciate that the site has some unusual characteristics for a Rural Residential property (as evidenced by the historic subdivision) and is located close to the low density Lake Hayes Residential zone, a more appropriate response to intensification of development in this area would be through the promotion of a change in zoning via the District Plan Review process.
73. In relation to Part 2 of the Act, whilst I accept that the proposal would provide for the economic well-being of the Applicant and the proposed purchaser of Lot 2, it would not support the sustainable management of the natural and physical resources of either the site or the immediate environs for the reasons set out above.

Decision

In exercising my delegation under sections 34 and 34A of the Act, and having regard to the matters discussed above under sections 104D, 104 and Part 2 of the Act, I have determined that consent to the non-complying activity application for subdivision and development of 710 Lake Hayes – Arrow Junction Highway be **declined** for the reasons given.



D J Taylor

Independent Hearings Commissioner

22 April 2016