

**AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD IN
THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON THURSDAY, 15 JULY 2004, COMMENCING AT 10.30 AM.**

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1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) and (7A) of the Local Government Official Information Act and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the item is a minor matter; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting; and
- (iii) the Committee resolves to deal with the item.

No resolution, decision, or recommendation may be made in respect of the item except to refer the item to a subsequent meeting for further discussion.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



**3 NOTIFIED APPLICATION FOR RESOURCE CONSENT UNDER SECTION 88 OF THE
RESOURCE MANAGEMENT ACT 1991 BY P LISPHAM TO SUBDIVIDE LOT 16 DP
312031 AT 146-148 PARKER ROAD TO CREATE THREE RESIDENTIAL LOTS
WITHIN THE ORATIA STRUCTURE PLAN AREA, AND TO CARRY OUT A
BOUNDARY ADJUSTMENT AFFECTING 144 PARKER ROAD, BEING LOT 1 DP
126045**

WAITAKERE WARD

RMA 20032494

N.B. This report sets out the advice of Consent Services to the Hearings Committee on the environmental issues raised by the application for resource consent. It is not the decision of the Council. The decision will be made after consideration of the application by the Hearings Committee.

1.0 INTRODUCTION

1.1 Nature of the Application

Consent is sought to subdivide an existing property within the Oratia Structure Plan area at 146-148 Parker Road, Oratia to create a total of three residential Lots of 1.82ha 7489m² and 1.01ha. This would be two additional Lots to that provided for by the Structure Plan.

Under the Proposed District Plan, the site falls within the Foothills Environment. A minimum lot size of 4 hectares is required for all subdivision of land within this environment. However, the subject property also falls within the Oratia Structure Plan Area of the District Plan. Any subdivision, not meeting the 4-hectare standard, which creates a density equal to that provided on a structure plan, is assessed as a Limited Discretionary Activity. The applicant seeks to establish three Lots which is two greater than that indicated within the Oratia Structure Plan. Consequently, the application must be assessed as a Discretionary activity.

The Foothills Subdivision Rules of the Proposed District Plan were not part of the rules deemed Operative on 27 March 2003, and the Transitional Rules are still to be considered. Under the Transitional Plan the site is zoned Rural 3. The Rural 3 zone permits the subdivision of land where each site created has a minimum net area of 5 hectares. The proposed sites would be less than 5 hectares, therefore the application is a non-complying activity under the provisions of the Transitional Plan.

Overall the application must be assessed as a **Non-Complying** activity.

Public Notification of the application attracted 124 submissions, 3 of which were in objection, the remaining 121 were in support.

Further details regarding the submissions are contained later in the report.

1.2 Resource Management Issues Raised

The application raises a number of resource management issues.

Firstly, the proposal requires consideration against the relevant objectives and policies of the District Plan instruments together with those of the Regional Policy Statement. If the proposed development is contrary to the objectives and policies of these plans and statements, then the granting of consent may compromise the integrity of the District Plan and Regional Policy Statement, and erode public confidence in their consistent administration.

The site falls within the Oratia Structure Plan and development to a higher density than that provided for by the structure plan would be a discretionary activity. Council has chosen to utilise structure plans as a means of controlling and enabling development on a catchment basis. Development of the site to a higher density than provided for would undermine the integrity of the plan and the structure planning process.

In addition to this, the application raises the issue of the potential cumulative effects and amenity considerations resulting from an increase in intensification within the catchment.

Finally, there is a need to ensure that the proposal is not inconsistent with the overarching purpose and principles of the Resource Management Act 1991.

The proposed subdivision would be contrary to the public interest under Section 406 of the Resource Management Act 1991, as it will be contrary to the intended level of site density for the Oratia Structure Plan area.

The relevant provisions of Part II of the Act cannot be satisfied and the development would not be consistent with the sustainable management principles of Section 5 of the Resource Management Act 1991.

1.3 Planner's Recommendation

A The planner who has prepared this report recommends that **consent be refused** to the application to create two additional lots at 144 - 146 Parker Road. It is considered that the actual and potential adverse effects of the subdivision on the environment would be significant, particularly in respect of amenity and cumulative effects. The granting of this application would undermine the integrity of the Oratia Structure Plan and the Structure Plan process, as well as compromising the integrity of the relevant objectives and policies of the Transitional and Proposed District Plan. There are no unusual circumstances relating to the application. Jurisdiction to grant consent has therefore not been established.

B The planner who has prepared this report recommends that **consent be approved** to the application to carry out a boundary adjustment of approximately 24% of the net site area at 144 Parker Road. It is considered that the effects on the environment would be no more than minor and no persons would be adversely affected by the granting of consent.

2.0 LOCATION PLAN



Figure 1: Site Plan



Figure 2: Proposed Boundaries

Legal Description: Lot 16 DP 312031 and boundary adjustment affecting Lot 1 DP 126045
 Human Environment: Foothills
 Natural Area: General / Managed
 Landscape Elements: Sensitive Ridge and 20 metre Riparian Margin

3.0 PROPOSAL

The proposed subdivision is at 146-148 Parker Road, Oratia. Consent is sought to subdivide an existing title into three new residential lots, with lot sizes of 1.82ha, 6490m² and 1.0ha respectively. The site is located within the Foothills Environment, in the Allen and Cochrane Stream catchment, within the Oratia Structure Plan. The property is in the upper part of the Oratia Catchment and the over riding character of the area is of large areas of mature bush, with houses generally placed along the main ridgelines. The top 100 metres of the property is situated on a sensitive ridgeline. The property is currently held in one title, and the proposal is to subdivide the land into three separate lots, resulting in two additional lots being created beyond what the structure plan provides for.

It is also proposed to carry out a boundary adjustment of greater than 10% to the property at 144 Parker Road. The existing area of the site size is 1017m² and it is proposed to increase the size by 333m². This would result in a land area of 1350m² which constitutes a boundary adjustment of approximately 24%. The boundary would be shifted in an eastern direction and would align itself with the eastern boundary of 142 Parker Road, to the north.

4.0 BACKGROUND

4.1 Section 94 Report - Decision to Notify

The Section 94 Report prepared by Chris Gorman determined that the adverse effects on the environment of the activity for which consent is sought would be no more than minor. In saying this, Mr Gorman determined that due to the site being located within the Oratia Structure Plan area, and the importance of this area as a buffer between the urban areas of the city and the Waitakere Ranges, that there was a wider public interest which pursuant to Section 94C constituted a special circumstance and warranted notification.

A428-A455

It is considered that the decision to notify the application was correct and has enabled Council to carry out a more detailed and accurate assessment of the actual and potential effects on the environment arising from the proposal, together with an assessment as to whether the application is consistent with relevant objectives, policies and rules of the District Plan instruments pursuant to Section 104 of the Resource Management Act. In light of carrying out a more detailed assessment of the effects of the proposal, and the findings of the specialist reports, as attached at pages A428 to A450 and A451 to A455, it is considered that the proposal would in fact have an adverse effect upon the environment.

4.2 Background of Site

This property was previously part of a 17 lot subdivision (plus an additional 3 access lots). That subdivision was an amalgamation of the Gash, Lipsham and Keith properties - Nos. 132 - 140, 146 - 148 and 150 - 152 Parker Road. Under that subdivision, the Lipsham land was granted 5 lots (in accordance with the provision of the Oratia Structure Plan), with a house site proposed for each lot. 4 lots were allowed at the eastern end of the property, on the understanding that the larger parent lot up near the road would be retained as it is. This application seeks 2 additional lots, resulting in 7 potential lots being created for 146 - 148 Parker Road.

The resource consent application lodged in 2000 included an undertaking by the applicants that the parent lot of the subject site (ie. the site now being subdivided) would not be further subdivided. That undertaking was material and was relied upon by the Council in granting the resource consent in 2000. The applicant is bound by that undertaking and cannot now seek to undertake further subdivision. This provides a basis for Council to decline consent.

There has been a degree of development to date on the site, this can be summarised as follows:

Building Consents

- | | |
|------------------|--|
| 31 December 1986 | Consent granted for the construction of a flat/Unit 2 (ABA 86031691) |
| 31 December 1981 | Consent granted to construct a packing shed (ABA 81018002) |

Resource Consents

- | | |
|--------------|--|
| 18 July 2001 | Consent granted for a 17 lot subdivision in conjunction with adjoining properties, details outlined above (RMA 20002287) |
|--------------|--|

4.3 BACKGROUND OF THE ORATIA STRUCTURE PLAN

- Out of an extensive consultation exercise carried out in the Oratia valley between the end of 1993 and 1995 arose the concept of a 'structure plan' approach to subdivision which would protect and enhance natural features whilst at the same time enabling a degree of subdivision and development in appropriate places. The structure plan methodology meant that each site and its potential for subdivision and development could be considered on its merits. It provided a level of certainty regarding the potential density of development of the whole valley, which enabled consideration of the cumulative effects of the eventual level of development on landscape, ecology, water quality, downstream flooding, roading infrastructure and community facilities. The variable topography, bush cover and landscape of the valley and the cumulative effects of development could thus be recognised and planned for.
- The Proposed District Plan was publicly notified in October 1995, which identified much of the Oratia catchment as 'Foothills Environment'.
- The Oratia Structure Plan is applied over the catchment area of the Oratia Valley identified as the Foothills Environment. The minimum standard for subdivision in the Foothills is 4ha, with the structure plan acting as an overlay, which provides for additional subdivision. The structure plan defines on a map, areas of existing bush to be protected, and areas such as stream sides and steep areas to be revegetated, together with the location of new site boundaries around appropriate development locations.
- The Proposed District Plan that was notified in 1995 was open to submissions over much of 1996 and received a total of 312 submissions with regard to the structure plan.
- Eleven references to the Environment Court were received with regard to the Oratia Structure Plan.
- References were heard by the Environment Court August and November 1998, June and July 1999.
- Interim decision from the Environment Court released 6 March 2000 (Environment Court decision A21/2000).
- The interim decision identified appropriate activity categories for subdivision but did not address in detail the specific rules and assessment criteria relating to these. Council was directed by the Court to address and resolve these issues.
- Accordingly a consent order was finalised on June 26 2001 including the relevant rules and assessment criteria that this application will be assessed against.
- Further site specific consent orders for the properties at 180 Parker Road, 198 Parker Road, 71-75 and 105 Carter Road and 31 Cochran Road, 182,182A,182B and 184 Forest Hill Road were finalised between June 2001 and October 2002.
- There is still an outstanding District Plan Appeal that effects provision for structure planning in the entire Foothills Environment. Consequently the Transitional District Plan Provision still need to be considered.

5.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The site is located in the lower foothills environment of Parker Road, in the Allen and Cochrane Stream catchment. The land is divided by a steep sided stream gully that dissects the property from south west to north east. The land falls from Parker Road about 19m to the gully, and then rises up again (about 15m) to another ridgeline in the south east of the property. In terms of landscape character, the property can be divided into 3 main character areas - the very modified part of the site up near Parker Road, the orchard and bush are half way down, and the very natural bush covered area, with tamarillo orchard to the east. This eastern part has very steep landforms.

The site currently comprises a feijoa orchard on the higher slopes near Parker Road, positioned to the east of the houses and sheds along the road frontage. Moving east down the main access track there is a lower level, with a tamarillo orchard. There are areas of pasture between.

The track continues north east down into the stream gully where there is high quality bush including kahikatea, kauri and rimu. From some places along Parker Road this group of trees - Kahikatea and Kauri - are a distinctive feature. The bush is located in the gully and on the ridge to the east. At the eastern end of the site, there is a steep grassed slope up to the proposed house site on Lot 3 which has a kauri and mānuka group to the south.

The Lipsham property is positioned in the higher part of the catchment, almost at the southern boundary of the Oratia Structure Plan area. It is therefore located in the part of the catchment dominated by indigenous vegetation with some cleared areas. There are a number of houses and structures in the surrounding area, particularly along the fringes of Parker Road.

6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

6.1 Submissions

	Submitter	Address	Support / Oppose
1	RW Gash	140 Parker Road, Oratia	Support
2	R and J Sunde	138 Carter Road, Oratia	Support
3	EA Kerr	122-130 Parker Road, Oratia	Support
4	Royal Forest and Bird Protection Society	PO Box 45 144 Te Atatu Peninsula	Object
5	The Waitakere Ranges Protection Society Inc	C/- Ellis Gould - Barristers and Solicitors The ANZ Centre Level 31, 23-29 Albert Street	Object
6	P, JJ, K, KA and E Mitchell	198 Parker Road, Oratia	Support
7	V Andrews and D Francih	23a West Coast Road, Kelston	Support
8	AJ Rook	15 Strid Road, Te Atatu South	Support
9	R Scott	249 Glengarry Road, Glen Eden	Support
10	D Franich	23A West Coast Road, Kelston	Support
11	R Bell	2/30 Palmers Road, Manurewa	Support
12	R Sturgess	11 Newington Road, Henderson	Support
13	D Gash	72 Parker Road, Oratia	Support
14	M Latham and J Phillips	142 Parker Road, Oratia	Support
15	L Jones	263 Glengarry Road, Glen Eden	Support
16	G Dean	15 Holdens Road, Henderson	Support
11	C Glucina	49 Carter Road, Oratia	Support
12	G Orchard	37 Shaw Road, Oratia	Support
13	M and V.M Glucina	40 Shaw Road, Oratia	Support
14	L & S Sunde	8 Shaw Road, Oratia	Support

	Submitter	Address	Support / Oppose
15	K & J Parkin	86 Carter Road, Oratia	Support
16	D McLeod	76 Lone Kauri Road, Karekare	Support
17	V Fielden	204A White Swan Road, Mt Roskill	Support
18	B Hoffmann	51 Carter Road, Oratia	Support
19	D Vela	9 Bocage Lane, West Harbour	Support
20	K.M Vela	46 Huia Road, Pt Chevalier	Support
21	P Borich	22 Tinopai Road, Titirangi	Support
22	B Nola	474 West Coast Road, Oratia	Support
23	V McLea	3 Carter Road, Oratia	Support
24	A.C Nola	186 Great North Road, Glendene	Support
25	V.M Sunde	10 Atarua Gardens, Oratia	Support
26	J Davis	75 Parrs Cross Road, Oratia	Support
27	G.L Curtis	547 West Coast Road, Oratia	Support
28	J McGregor	1/63 Routley Drive, Glen Eden	Support
29	L Mihaljevich	45A Koromiko Street	Support
30	J.R Cave	114 Shaw Road, Oratia	Support
31	A.J Anderson	594 West Coast Road, Oratia	Support
32	N.P Vela	24 Holden Road, Henderson	Support
33	S & K Vitasovich	107 Forest Hill Road, Henderson	Support
34	G Vitasovich	266 Henderson Valley Road, Henderson	Support
35	M Pavlovich	4110 Great North Road, Glen Eden	Support
36	J Garelja	553 West Coast Road, Oratia	Support
37	L Painter	627 West Coast Road, Oratia	Support
38	J Nola	20 Kohekohe Street, Kelson	Support
39	G Painter	651 West Coast Road, Oratia	Support
40	D Gyde	30 Highfields Terrace, Henderson	Support
41	L.G Erne	44 Matuhu Rise, Henderson	Support
42	T.A Bass	3 Carter Road, Oratia	Support
43	P & D Garelja	553 West Coast Road, Oratia	Support
44	S Sapich	148 Forest Hill Road, Henderson	Support
45	I Sapich	152 Forest Hill Road, Henderson	Support
46	W Nola	119 Bruce McLaren Road, Henderson	Support
47	R Cooney	123 Parrs Cross Road, Oratia	Support
48	Kenlock Motors Limited	548 West Coast Road, Oratia	Support
49	A Sumich	643 West Coast Road, Oratia	Support
50	T.K Barbarich	26 Trevola Street, Blockhouse Bay	Support
51	D & F Nola	600 West Coast Road, Oratia	Support

	Submitter	Address	Support / Oppose
52	G.R Barnett	130 Shaw Road, Oratia	Support
53	M Vlasich	583a West Coast Road, Oratia	Support
54	A Bushell	96 Carter Road, Oratia	Support
55	K Parkin	86 Carter Road, Oratia	Support
56	R.T Brandt	131-149A Parker Road, Oratia	Support
57	J Letica	19A Saltburn Road, Milford	Support
58	C.J Botica	12 Fenwick Avenue, Milford	Support
59	A.V McKee	15 Kokiri Street, Te Atatu South	Support
60	A Dormer	124 Forest Hill Road, Henderson	Support
61	M.R Hope	128 Carter Road, Oratia	Support
62	C.A Botica	12 Fenwick Ave, Milford	Support
63	M Courtney	306 Glengarry Road, Glen Eden	Support
64	R.M Sunde	30 Shaw Road, Oratia	Support
65	A Key	62 Carter Road, Oratia	Support
66	P & D Parkin	89 Carter Road, Oratia	Support
67	A Walters	73 Carter Road, Oratia	Support
68	S Frank & M Botica	66 Carter Road, Oratia	Support
69	B Jones	9 Palomino Drive, Henderson	Support
70	K Edley	4F Shaw Road, Oratia	Support
71	S Lipsham	50 Glynnbrook Street, Te Atatu South	Support
72	R Viskovich	128 Parker Road, Oratia	Support
73	B Campbell	15 Princeton Parade, Albany	Support
74	B.J & E Lipsham	13 Sunnyside Place, Glen Eden	Support
75	G Cotterell	7 Blethyn Place, Te Atatu	Support
76	L Parkin	84 Carter Road, Oratia	Support
77	J & G Maddren	18 Burgundy Park Ave, Henderson	Support
78	A.J Keith	150 Parker Road, Oratia	Support
79	R Hall	180 Parker Road, Oratia	Support
80	L Eades	4307 Great North Road, Glendene	Support
81	J & G Eades	58 Hollister Lane, Tauranga	Support
82	S Eades	58a Hollister Lane, Tauranga	Support
83	K Dragicevich	356 West Coast Road, Oratia	Support
84	M Parkin	84 Carter Road, Oratia	Support
85	L Viskovich	16 Nicolas Ave, Glen Eden	Support
86	T Croft	122 Parker Road, Oratia	Support
87	M Lipsham	22 Waitaki Street, Sunnyvale	Support
88	L Jones	123 Parrs Cross Road, Oratia	Support

	Submitter	Address	Support / Oppose
89	I Parkin	13 Hydra Place	Support
90	F Viskovich	128A Parker Road, Oratia	Support
91	R Gash	144 Parker Road, Oratia	Support
92	C Boyle	183 Parker Road, Oratia	Support
93	B & M Allen	176 Parker Road, Oratia	Support
94	R.C Nola	511 West Coast Road, Glen Eden	Support
95	V Brown	60 Rosamund Ave, Auckland	Support
96	P Rowland	1/107 Seymour Road, Glen Eden	Support
97	B Bradford	47B John Davis Road, Mt Roskill	Support
98	T Metcalfe	29 Lagoon Way, West Harbour	Support
99	J.A Olsson	14 Withers Road, Glen Eden	Support
100	D.L Webster	29 Rhinevale Close, Henderson	Support
101	L Viskovich	128 Parker Road, Oratia	Support
102	R.T Reid	19 Nuimana Place, Te Atatu South	Support
103	D Campbell	15 Princeton Parade, Albany	Support
104	L Borich	115 Seymour Road, Henderson	Support
106	I Nola	25 Schnapper Rock Road, Albany	Support
107	I Jericevich	11 Alwyn Ave, Te Atatu South	Support
108	M Vlasich	583 West Coast Road, Oratia	Support
109	N Fistonich	235 Forest Hill Road, Waiaatarua	Support
110	D Radonich	886 New North Road	Support
111	N.J Leitch	41 Brigham Creek Road, Whenuapai	Support
112	G Ellenden & D.E Leitch	102 Shaw Road, Oratia	Support
113	N Guthrie	5 Bennett Street, Mount Albert	Support
114	J Mills	30 Daventry Street, Waterview	Support
115	P Nattrass	479 Ponga Road, Papakura	Support
116	V Stradnieks	23 Coyle Street	Support
117	J.F Heap	208 Garnet Road, Westmere	Support
118	Auckland Regional Council	Vodafone House Private Bag 90 012, Auckland	Oppose

A157-A415

Public notification of the application for subdivision consent attracted 118 submissions, as attached at pages A157 to A415 from the parties, which are listed above. Three submissions were in opposition and 115 were received in support of the application. The main issues arising through the statutory submission process can be summarised as follows:

6.1.1 Support of Proposal

- The Environment Court directed that subdivision within the Oratia Structure Plan Area, at greater densities be a discretionary activity only.
- Councils Section 94 assessment concludes that the overall adverse effect on the environment from the proposed subdivision would be no more than minor.
- Reasonable use of the land.

Opposition to Proposal

- Continuing development resulting in an increasing number of long impervious drives, large buildings and paved areas leading to increased sediment and stormwater runoff to nearby streams, lowering the water quality, impacting on stream life and possibility of downstream flooding from increased flows.
- Landscape values of the Oratia valley are being threatened because of the accumulative effects of such development.
- Visual pollution through more buildings in a peri-urban area.
- The application is contrary to the sustainable management of natural and physical resources and otherwise inconsistent with the purpose and principles of the Resource Management Act 1991.
- The application could give rise to adverse effects on the environment, particularly cumulative effects in an environmentally sensitive catchment for which the Oratia Structure Plan sets a maximum appropriate level of subdivision and development.
- Contrary to the objectives, policies and other provisions in the Operative Waitakere District Plan.
- The site is located within the Oratia Structure Plan area which was developed in light of extensive catchment wide analysis of the capacity of the Oratia valley to cope with and accommodate development.
- Any proposal to exceed the intensity of development anticipated by the Structure Plan requires careful analysis not only in terms of the immediate environment of the subject site but also with respect to the cumulative effects throughout the Oratia Valley.
- Visual and other effects on the environment that cumulatively place further inappropriate and unnecessary pressure on the Oratia Valley as a whole.
- No special circumstances that distinguish it from the norm of sites in the OSP catchment and accordingly the granting of the consent would:
 - Compromise public confidence in the administration of the District Plan;
 - Compromise the ability of the City Council to prevent subdivision throughout the OSP at an intensity greater than that anticipated;
 - Allow the generation of cumulative effects beyond those anticipated by the Structure Plan;
 - Generate precedent effects.
- The proposed development represents urban development outside of the Metropolitan Urban Limits and exceeds the level of development envisaged by the Structure Plan and therefore contravenes the Auckland Regional Policy Statement and Waitakere City District Plan.

6.2 Pre Hearing Meeting

A468-A469

A pre-hearing meeting was held in the Council chambers at Waitakere City Council on the 18 May 2004. The minutes of the meeting are attached at pages A468 to A469.

7.0 STATUTORY REQUIREMENTS

7.1 Non-Complying Activities

A1-A22

The relevant policies and criteria which apply under the District Plan and the Resource Management Act 1991 are set out in more detail as attached at pages A1 to A22. This should be referred to as the legal framework within which the application should be addressed.

As noted, the proposal requires consideration as a non-complying activity under the provisions of the Resource Management Act 1991. Section 104D of the Resource Management Act 1991 sets a threshold test which all resource consent applications for non-complying activities must first pass before a consent authority has jurisdiction to grant consent, having regard to the matters specified in Section 104. In short, the proposal must be able to establish and operate without generating more than minor adverse effects on the environment, or must not be contrary to the relevant objectives and policies of both Transitional and Proposed District Plans. Council may disregard an adverse effect of an activity on the environment if the Proposed Plan permits an activity with that effect.

The matters to be considered when assessing an application for resource consent are set out in Section 104 of the Resource Management Act 1991. Amongst other things, these matters require consideration of any actual and potential effects on the environment arising from the proposal, together with an assessment as to whether the application is consistent with relevant objectives, policies and rules of the District Plan instruments. All considerations are subject to the provisions of Part II of the Resource Management Act 1991, which sets out the purpose and principles that guide this legislation.

However it should be noted that for council to grant consent to a non-complying activity application there should generally be some exceptional or unusual element to the proposal. If such unusual circumstances do not exist, then the proposal would effectively compromise the integrity of the District Plan and public confidence in the consistent administration of the plan may be undermined.

Council also has discretion to consider any precedent issues that may arise for a non-complying activity. According to the Court of Appeal decision in *Dye v Rodney District Council*, an adverse precedent effect can arise where the grant of a non-complying consent would influence the approach taken by Council to similar consent applications.

The District Plan has been prepared with an "effects based" emphasis, in keeping with the Resource Management Act 1991. As such, consideration of the application in relation to each of the assessment criteria relating to the various infringements would ensure that a number of the relevant matters contained in Section 104 of the Resource Management Act 1991 would have been addressed. In addition, a brief summary is presented below of the main effects on the environment generated by the application.

8.0 EVALUATION IN ACCORDANCE WITH SECTION 104 OF THE RESOURCE MANAGEMENT ACT 1991

In order to make a decision in terms of Section 104B of the Act it is necessary to undertake an analysis and assessment to determine whether the purpose and principles of the Act are being met (Part II) having regard to the matters set out in Sections 104, 104A - 104D as relevant, the Fourth Schedule and any other statutory considerations.

Section 104(1) of the Act requires that Council have regard to any actual or potential effects on the environment, any relevant objectives, policies, rules or other provisions of a plan or proposed plan and any relevant regional policy statement and regional plan or proposed plan, and any other matters the consent authority considers relevant and reasonably necessary to determine the application.

When considering an application Council must not have regard to any effect on a person who has given their written approval to the application (Section 104 (3)(b)) and may disregard an adverse effect of an activity on the environment if the Proposed Plan permits an activity with that effect (Section 104(2)).

8.1 Assessment of Environmental Effects (104(1)(a)): Actual and Potential Effects on the Environment.

8.1.1 Proposed Boundary Adjustment

The proposal involves two components, the first being the subdivision to create two additional lots at 146-148 Parker Road and the second, the boundary adjustment between No. 144 and No. 146-148 Parker Road. Both in the decision and discussion, it is important to distinguish between the two. To avoid confusion, the effects of the proposed boundary adjustment will be limited to this section, the remaining sections dedicated to the discussion of the effects of the creation of two additional Lots.

144 Parker Road consists of a 1017m² site located on the eastern side of Parker Road and contains an existing house. It is proposed to carry out a boundary adjustment of greater than 10% of the net site area which is considered a Discretionary activity under the provisions of the Proposed Plan. The proposal is to increase the site area by 333m², resulting in a net increase of 24%. The boundary would be moved to the east to align itself with the eastern boundary of No. 142 Parker Road, to the north of the site.

The proposed boundary adjustment would not result in any increase in development potential of the site, nor would there be any adverse effects associated with the enlarging of the site. The increase in land size would envelop an existing open grassed area to the west of the existing feijoa orchard near the road frontage of 146-148 Parker Road.

It is considered that the effects of the proposed boundary adjustment would be no more than minor and no parties would be adversely affected by the proposal. Jurisdiction to grant consent has been established.

8.1.2 Permitted Baseline

In terms of determining adverse effects on the environment and whether a person would be adversely affected by the proposed activity, Section 94A and 94B gives Council the discretion to make permitted baseline comparisons ie. a comparison between the environment as it exists at the time the application is considered and (the effects) of activities that are permitted by the Operative Plan even if hypothetical, as compared with the effects of the proposed activity. Case law has established that any such hypothetical developments must be not be "fanciful" in terms of what could reasonably be expected to establish there.

Section 104D confers a discretion on Council; to consider what activities may take place as of right under the Operative Plan. In this case, because the Transitional plan continues to apply (for subdivision), the permitted baseline for subdivision is determined by the Transitional Plan. There is no permitted subdivision allowed for as of right on the subject site (under both the Transitional and Proposed Plans) and the minimum lot size envisaged under the Transitional Plan is 5 hectares. Thus the proposed lot sizes for the additional lots, is significantly in excess of the permitted baseline. In addition, no additional dwellings are allowed for as of right under both the Transitional and Proposed Plans, meaning the effects of two additional dwellings also exceeds the permitted baseline. It is appropriate to have regard to the permitted baseline, in evaluating this application.

8.1.3 Earthworks, Water Quality and Quantity and Eco System Stability

8.1.3.1 Effects of Earthworks

The earthworks carried out as part of this subdivision would be limited to the upgrading of the existing vehicle tracks and short additional sections of driveway to access the proposed house sites. Some trenching works for services would also be undertaken. The application identifies that the volume of earthworks would be minimal in volume and less than the 50 cubic metres permitted by the District Plan.

Earthworks for the proposed house sites are not included as part of this application. If approved, the future development effects and subsequent earthworks would be assessed at the time of any building proposals.

The effects of the earthworks activities as part of the proposed subdivision would be no more than minor.

8.3.1.2 Effects of Stormwater

Subdivisions have the potential to alter the patterns of stormwater generation due to increases in impermeable surfaces, once new lots are built on. There are some serious issues surrounding erosion and flooding of the Oratia Stream and tributaries, therefore adverse effects of increased runoff from development must be mitigated. The Oratia Structure Plan requires that stormwater runoff from any development in the Oratia Structure Plan area is limited to pre-development runoff rates, volumes and timing for all storm events (2, 10 and 100 Year) to achieve hydrological neutrality. Through the consent process EcoWater requires that stormwater quality and quantity is managed in accordance with the Countryside and Foothills Stormwater Management Code of Practice.

The expected flood levels in the lower Oratia catchment are based on the density of subdivision allowed for in the Oratia Structure Plan. The Twin Streams Project has been based on these expected flood levels and is working to mitigate flooding effects and protect the Oratia Stream. The subdivision is proposing to exceed the number of Lots allowed for in the Oratia Structure Plan, therefore the stormwater effects are beyond those anticipated by flood modelling, Catchment Management Plans, and the Twin Streams Project. A financial contribution is not an option to mitigate effects because this subdivision would increase flood levels beyond those mitigated by the Twin Streams Project. Stormwater must be mitigated on-site.

There are a number of acceptable methods for mitigating the various storm events including, reducing impermeable surfaces, bush planting, rainwater reuse and detention of flows through various methods. The applicant, through a combination of the above measures, has illustrated that hydrological neutrality for the 2, 10 and 100 year storm can be achieved for this subdivision.

Shelley Renkema, Water and Drainage Engineer for EcoWater has assessed the proposal and Makes the following comments:

“As a stand-alone subdivision, the effects of two additional dwellings (as proposed by this subdivision) can be mitigated on site and may be minor in scale. On a wider scale, however, the issue of cumulative effects must be considered.

The density of settlement provided for in the Oratia Structure Plan can be catered for with existing infrastructure. Should population density exceed that provided for in the Oratia Structure Plan, pressure for additional services will ensue, including:

- *public stormwater systems where natural drainage is currently used;*
- *public wastewater systems where private on-site treatment is currently used;*
- *upgraded water supply systems;*
- *road widening needed due to increased traffic;*
- *kerb and channelling of roads (including additional stormwater systems) to remove ditches;*
- *footpaths to provide safety for increased traffic and pedestrian numbers.*

Potential cumulative effects on the environment from services (above) required for population densities beyond those provided for in the Oratia Structure Plan include:

- *tree removal and earthworks for construction of public infrastructure;*
- *concentration of stormwater discharges;*
- *increase in rate, volume and timing of stormwater runoff;*
- *increase in erosion of stream banks;*
- *increase in flood levels and flood frequency downstream;*
- *increase in levels of contaminants from traffic and development;*
- *increase in levels of siltation in streams from earthworks and construction;*
- *higher density of wastewater disposal fields;*
- *reduced water quality, habitats and biodiversity.*

On an individual site basis it would be possible to demonstrate that effects could be mitigated to the point that they are no more than minor. However, when the total area is considered, it becomes clear that there are effects beyond the individual site boundaries that cannot be mitigated. All of these add incrementally to the adverse effects, with the resulting cumulative effect being far greater than the sum total of the individual effects.”

Shelley Renkema concludes:

“Stormwater effects arising from subdivisions beyond the Oratia Structure Plan density are beyond those mitigated by the Twin Streams Project, therefore hydrological neutrality must be achieved on each site.

The stormwater mitigation measures proposed by City Design and the owner will achieve hydrological neutrality within the site in accordance with accepted practices. If this application is considered as a stand-alone subdivision, then EcoWater can support the application.

However, if granting this application would set a precedent for further subdivisions beyond the density allowed by the Oratia Structure Plan, then EcoWater cannot support the application due to the cumulative adverse effects which would arise”.

If the application is granted the applicant can carry out measures to achieve hydrological neutrality for the 2, 10 and 100 year storm events for the two additional dwellings. However, it is considered that there is the potential for adverse effects in relation to stormwater within the catchment arising from the cumulative effects of incremental development which is not provided for under the Structure Plan. The adverse cumulative effects would be exuberated if the granting of this application established a precedent that encouraged the approval of similar applications.

8.1.4 Native Vegetation, Vegetation and Fauna Habitat

The subject site contains Bush Protection and Revegetation areas as indicated by the Oratia Structure Plan. The proposed subdivision would include bush covenants (shown as C, D and E) on the A. B. Matthews Surveyors Proposed subdivision plan which would ensure protection of the native bush and stream bank vegetation. Some revegetation of a wetland area is proposed in the north-eastern corner of the site.

As part of the stormwater mitigation measures proposed on site in order to achieve hydrological neutrality, 508m² of existing impermeable farm track will be planted with native vegetation and protected by means of a covenant. This would positively contribute to the existing vegetation on site by expanding the bush areas.

The proposed house site on Lot 2 is situated to the side of a small grassy knoll with revegetating native bush on the slope below.

The access track continues north east down into the stream gully where there is high quality bush including kahikatea, kauri and rimu. The bush is located in the gully and on the ridge to the east.

The indicative building platform shown on proposed Lot 3 is in a cleared area which has a kauri and mānuka group to the south. There is very small amount of flat grassed area before dropping away steeply in a northern direction. No specific details of any future building have been provided, however, in order to maximise the flat area to construct a dwelling, some vegetation clearance may be necessary. Whilst the effects of any subsequent dwelling would be assessed at the building and/or land use consent stage, approval of the subdivision as submitted, may potentially result in bush clearance within the covenanted area on Lot 3.

Overall it is considered that the proposed subdivision application as submitted, would have no more than minor effects on native vegetation and fauna habitat.

8.1.5 Outstanding Landscapes and Outstanding Natural Features

The subject site is not identified in the District Plan as being within an area identified as containing "outstanding landscapes" or "outstanding natural features" within the City. The activity would not therefore adversely affect any identified outstanding landscape or natural features.

8.1.6 Natural Character of Coast and Margins of Lakes, Rivers and Wetlands

A123-A137

A report assessing the ecological values and issues has been prepared by Boffa Miskell as attached at pages A123 to A137. The report identifies that *"there are two water courses on the property, one through the marsh central gully, the other is ephemeral and discharged from the small bush covered basin to the southeast of the property and running near the eastern boundary northwards. The second water course, upon leaving the tree fern canopied lower bush section passes into an underground (pipe) system for some 100m to emerge in a small open area at the northern access track. Here it passes under the track via a culvert and joins (off property) with the central gully stream to form a second order tributary to the Cochrane stream."*

Based on the implementation of the stormwater mitigation measures designed to maintain stormwater to pre-development levels, it can be concluded that the natural character of the water courses on the property would not be adversely affected by the application as submitted.

However, as discussed previously in this report, there is the potential for adverse cumulative effects relating to stormwater which would subsequently, adversely impact upon the natural character of the rivers both within, and downstream from the Oratia catchment.

8.1.7 Amenity Values - Health and Safety, Landscapes, Local Areas and Neighbourhood Character

Landscape, Visual, Natural and Neighbourhood Character

The Resource Management Act defines the term “amenity value” to mean *“those natural or physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence, cultural and recreational attributes”*.

It should be recognised that any residential development will diminish natural values. These values include rural and natural qualities associated with undeveloped and unoccupied land. Settlement density and character, with its associated roading, human activities, noise, exotic plants, weeds and animals will modify the qualities of a site. This modification increases its effects with increasing intensity of development. In the case of Jill Corson and Claran Keogh v Taupo District Council (A061/2002) Judge Whiting comments that *“rural properties require a level of curtilage greater than that required by serviced town dwellings. Access ways, garages, implement sheds, waste disposal and water collecting services contribute to a larger amenity footprint. Inevitably this has a cumulative effect which may undermine the aesthetic coherence of a rural landscape”*.

Mary Buckland from LA4 Landscape Architects has undertaken an evaluation of the potential landscape and visual and natural character effects of the proposal and makes the following comments:

“Both of the proposed additional lots would be reasonably well screened from Parker Road, though the house on Lot 3 is likely to be visible from further up Parker Road, through a gap in the houses and vegetation adjacent to No 158 Parker Road. Adjacent to 142 - 148 Parker Road, the existing house, and sheds, as well as adjacent houses and sheds, and the small adjacent hillock screen the proposed house sites from the road.

The viewing audience would comprise people driving or walking up and down Parker Road, and also people living in houses that overlook this part of Parker Road. Whilst people travelling by may only get glimpses of the new houses, people living on Parker Road, particularly those higher up the catchment will see one or both these houses.

However, in considering the landscape effects of this application, there is more to be considered than just whether the houses can be seen. The main effects will be an increase in density of houses, over and above what is allowed under the OSP, and the change in landscape character that will result. The increased density will also affect the natural character ...”

This point is reinforced in the decision of FPM Van Brandenburg and Waikato Environmental Society Inc v Queenstown Lakes District Council (C212/2001) in which the court held that considerations of effect on landscape go well beyond whether or not buildings can be seen and accepted that too many houses, even if hidden behind screening or mounds, can clutter the landscape and thus reduce its naturalness. The court was also concerned by the cumulative effect of the proposal.

Mary Buckland also notes *“The proposed house on Lot 2 will add to the existing number of buildings up near Parker Road, which includes three houses along the frontage, a large green shed, and large shed and outbuildings, and a couple of sheds further down the property. The house would be sited in the orchard area on the slope below these structures. This house site would represent further intensification of the area adjacent to Parker Road, as well as further intensification of the Oratia area and the Foothills Environment.*

The house on Lot 3 would be sited on the ridge top across the stream from the other two lots, in the part of the site which has the largest natural character values. It would have an access leading off the adjacent driveway, and the erection of the house would adversely affect the adjacent good quality bush. It would also introduce a house into what is a high quality bush area with high natural character.

If this subdivision is allowed it will undermine all the work done for the Oratia Structure Plan. Other landowners will want to do the same, and it will set a precedent, which will have significant adverse effects over the whole catchment”.

The subject site was created as a result of a previous subdivision (details outlined in Section 4 of this report), in which the creation of 4 lots were created at the eastern end of the property, on the understanding that the larger parent lot up near the road would be retained. The previous subdivision allowed the creation of smaller rural-residential size lots at the eastern end of the property on the basis that the larger parent lot was required to maintain the viable orcharding activity carried out on site and on the basis that this lot contained the majority of the significant vegetation on site. The retention of the larger parent lot was clearly mitigating the effects of the small site sizes to the eastern end of the property. In terms of the amenity of the site, it was not envisaged that the site would be developed further. The proposed subdivision would add two additional units into the landscape. Whilst some planting is proposed for the purposes of stormwater mitigation in order to achieve hydrological neutrality on site, there is no additional planting proposed to mitigate the visual impacts of the proposed houses.

Mary Buckland makes the following comments regarding the neighbourhood character: *“Within the immediate area of the Lipsham property, ie. 500m north and south, along Parker Road, there are about 13 houses along the edge of the road, and several houses sited down on the lower slopes, within the property’s themselves. To the immediate north of proposed Lot 2 is a house sited on a small knoll, and the roof of another house or large shed can be seen alongside it. Looking back up to Parker Road from within the Lipsham site there is a line of houses along the ridgeline. Under the amalgamated proposal, an additional 13 houses would be added within the immediate area.*

Between the houses along Parker Road there are a number of sheds and utility structures used as packing sheds, also a small nursery, and one of the sheds appears to be being used as a dwelling. This gives Parker Road quite a built up appearance. This is mitigated to a certain degree by the trees and shrubs between and around the buildings.

Bearing in mind that the aim of the original structure plan was to retain the rural bush character of the area, and also control the density and number of houses in the immediate vicinity, both now and in the future, development in this area has reached the point where the addition of 2 more houses, over and above the 13 permitted under the amalgamated plan, and the existing houses and structures in the immediate vicinity, plus the associated driveways and access ways, would change the existing character, and there would be significant adverse effects on bush/rural character of the Oratia area”.

Approval of the submitted application would result in further intensification of an already built up area of ribbon development in the foothills. The over-proliferation of buildings would adversely affect the natural and visual character of the site, and would adversely impact upon the neighbourhood character. There would also be an adverse cumulative effect associated with permitting development to a greater density than that stipulated by the Oratia Structure Plan, on an ad hoc basis. The adverse effects on the natural, visual and neighbourhood character would be magnified if this scenario were repeated throughout the catchment. The cumulative effects of the proposal are addressed in the following section of this report.

It is also important to note that the provision of smaller sites is likely to lead to maximisation of the permitted building coverage controls and the potential for greater numbers of home occupations and minor household units which are provided for on a per site basis. Consequently further subdivision is more likely to lead to a situation where the built environment is no longer subservient to the natural environment.

8.1.8 Cumulative Effects

Section 3 of the Resource Management Act states that the term 'effect' includes:

"Any cumulative effect which arises over time or in combination with other effects, regardless of scale, intensity, duration or frequency of the effect, and also includes:

*Any potential effect of high probability; and
Any potential effect of low probability which has a high potential impact"*

An effect is generally taken to mean the result or consequence of an activity. Cumulative effect is a broad term, which may cover a single effect which grows over time, or to which other effects are added. It is not only the effects in the immediate term which must be taken into account but also those which may arise in the future from the activity under consideration and in combination with other existing activities.

The concept of cumulative effect presupposes the setting of environmental thresholds. In other words, there is an environmental limit up to which development will be allowed. Thresholds may be absolute, such as Environmental Bottom Lines beyond which the effects of an activity would cause irreparable or irreversible damage to the environment. On the other hand, many environmental thresholds will be those determined by community preference, eg. thresholds of amenity values. In determining the cumulative effect of an activity, the effects of the activity itself, combined with the effects of existing and future activities should be taken into account. Each subsequent activity should be evaluated with respect to its own effects on the environment, together with the effects of existing and future activities, and a determination made whether an acceptable threshold has been exceeded.

In this instance, the effects on the environment of allowing the creation of two additional Lots over and above what the structure plan provides for, is relatively small in isolation (as outlined in the previous environmental assessment). However, when looked at in the context of this occurring on surrounding properties within the Oratia catchment, the effects are magnified.

It is relevant to consider the issue of cumulative effects. According to the Court of Appeal decision in *Dye v Rodney District Council*, cumulative effects are effects that would happen as a result of the proposed subdivision. In this case, there will be a cumulative effect on the subject site, as the additional lots would tend to alter the character and amenity values of the subject site, in the manner outlined by Mary Buckland in her report.

According to recent case law (Clifford Bay v Marlborough District Council^{*} and Emerald Developments v North Shore City Council) the concept of cumulative effects should also allow for limited consideration of future potential effects arising from proposed subdivision, These adverse cumulative effects are outlined in the reports of Mary Buckland and Councils stormwater Engineer, and are of a more than minor nature.

There would be cumulative effects on the natural and visual character of the area as a result of granting this consent as well as the continuing undermining of the Oratia Structure Plan and the Structure Planning process itself. The adverse effects would be intensified if a similar density of development were to be carried out within the catchment.

8.1.9 Precedent Effect

According to the Court of Appeal decision in *Dye* a 'precedent effect' is concerned with the influence that granting approval to this application may have on future applicants, and on Council, as consent authority, to grant approval to similar applications. Precedent effect is a relevant consideration under both Section 104B and Section 104(1)(c) of this Act. If an applicant can demonstrate that its proposal has evident unusual qualities then it may be able to demonstrate that no precedent effect arises.

Based on the test for precedent, it is considered that the subject site does not have sufficiently unusual characteristic and that the proposal would result in an adverse precedent effect. Again this is confirmed by the reports of Mary Buckland and Councils Stormwater Engineer.

8.1.10 Plan Integrity

Plan integrity is a relevant consideration under Section 104B and 104(1) involves consideration as to whether the proposal would challenge public confidence in the integrity of the plan. In this case, having regard to the reports assessment that the proposal would be contrary to relevant objectives and policies in both the Transitional and Proposed Plans, it is considered that an adverse plan integrity effect will arise.

8.1.11 Oratia Structure Plan

The Oratia Structure Plan has been developed through a process of comprehensive consultation and detailed assessment of the area. The Structure Plan has been incorporated within the District Plan and forms an overlay, controlling subdivision within the Oratia Catchment, which occupies an important position between the urban area and the Waitakere Ranges.

Council has chosen to adopt the structure planning tool as a means of controlling development on a catchment basis; the granting of this application would question this approach. This is even more so the situation where the development potential of each site has been looked at on an individual basis, in some detail, as has occurred with the structure plan approach.

8.2 Any Relevant Provisions of the District Plan 104(1)(b)(iv):

As outlined in more detail in Section 4.1 of this report (Background of the Oratia Structure Plan), there is still an outstanding District plan Appeal that effects provision for structure planning in the entire Foothills Environment. Consequently the Transitional District Plan Provisions still need to be considered. Therefore, whilst in every other respect the District Plan is operative, in terms of this report it will continue be addressed as the Proposed District Plan.

^{*}This decision has recently been the subject of a decision in the High Court in relation to a different issue to cumulative effects hence the decision of the Environment Court on cumulative effects remains good law.

8.2.1 Transitional District Plan

The objective of the Transitional District Plan (Waitemata Section) for subdivision in rural areas is “to protect rural land for primarily farming use and avoid, wherever possible, the likelihood of non-usage or under-usage of an important resource. In particular, further fragmentation of rural land for predominantly or solely residential purposes must be prevented”.

The intended purpose of the Rural 3 zone is to protect land for continued or future farming use, to protect the special quality of the rural environment, and to prevent development which could detract from the important amenity role the Rural 3 zone plays between the predominantly built environment of the urban area and the predominantly natural environment of the Waitakere Ranges. While the land is fragmented into small average site sizes and is generally of low productive potential, intensive farming use has established due to historical development and management. Existing development and future potential is recognised by the range of farming uses permitted. The proposed subdivision which establishes smaller sites than could be used for farming purposes would be contrary to the objectives and policies of the Transitional Plan.

8.2.2 Proposed District Plan Objectives, Policies, Rules and Assessment Criteria

The Operative District Plan is “effects-based” in its approach to the management of natural and physical resources. The objectives, policies and rules reflect this emphasis.

A1-A22

The relevant policies and objectives of the Proposed District Plan are attached at pages A1 to A22. Of most relevance are Policies 1.4, 5.5 and 9.2, which state as follows:

Policy 1.4

Settlement within the Foothills Environment, ... should be designed and located, and be of a density that recognises their key positions in relation to protecting valued natural resources, including freshwater quality and quantity ... Particular regard should be had for the cumulative impacts of settlement in these areas, the comprehensive design and management of settlement, and the relationship of individual sites with the surrounding catchments and natural and physical resources.

Policy 5.5

Activities within Structure Plan areas must have regard to ecosystem stability. Structure Plans should be designed in such a way that protects and enhances the quality of natural resources, including native vegetation and amenity plantings and the re-establishment of linkages between areas of native vegetation and fauna habitat. Structure plan design should protect the overall resilience, biodiversity and ecological integrity of indigenous ecosystems.

Policy 9.2

Settlement within the foothills Environment should be designed and located and be of a density, that recognises their key positions in relation to the surrounding natural and physical resources. Structure plans in these areas should provide opportunities to protect and enhance the outstanding landscape qualities of the Waitakere Ranges and Bush Living Environment. Within the Foothills Environment structure plans should reflect a building density and level of development that does not compromise the significance of the foothills as an ecological and visual buffer between the urban area of the City and the bushed area of the Waitakere Ranges. The level of intensification of development must be appropriate to the capacity of the landscape to absorb that level of development without degrading of the essential landscape qualities of these areas.

Discussion

The rules of the District Plan give effect to these policies by imposing restrictions on the density of settlement within the Oratia catchment. The density provided for by the structure plan has been developed with consideration given to the 'cumulative impacts of settlement in these areas' and the 'relationship of individual sites with the surrounding catchment'. It is considered that allowing development to a greater density than that provided for by the structure plan, on an ad hoc basis, would undermine the structure plan process and not have regard to the catchment as a whole. This would directly contradict the objectives and policies of the Plan.

It is important to recognise that the proposed application has Discretionary status under the Oratia Structure Plan. Given its discretionary status, it may be consistent with the District Plans intent if it can be demonstrated the proposal would not result in adverse effects and is suitable for the subject site. However, because it has non-complying status overall, and because the application will result in adverse environmental effects, it is considered that it is contrary to key objectives and policies of the Proposed Plan. In addition, although the applicant has offered to covenant bush areas, these are already intended to be protected under the Resource Consent granted 2000, and in any event are protected by Councils natural environment rules. Hence there is no off set of adverse effects (and no environmental net benefit) provided by this application. That can be distinguished from the five lots already subdivided on the subject site, where (in keeping with the approach required by the structure plan) protection and enhancement of bush and natural areas was provided. It is noted that additional planting is being provided to achieve hydrological neutrality hence the additional planting cannot be seen as providing a net positive environmental effect.

Having considered all the relevant objectives and policies of the District Plan, it is considered that the proposed subdivision is inconsistent with the policy direction of the Plan, which provides for development, in accordance with the Oratia Structure Plan. In particular, the proposal undermines the Oratia Structure Plan, which is endorsed through the District Plan.

8.3 Auckland Regional Policy Statement, Plan or Proposed Regional Plan (104(1)(b)(iii) and (iv))

The Auckland Regional Policy Statement sets out the broad resource management issues, objectives and policies for the Auckland Region to achieve the integrated management of its natural and physical resources. The Policy Statement functions as an umbrella policy document for environmental planning and policy development within the Region, under which the Waitakere City Proposed District Plan has been prepared.

It is considered that the proposal would be contrary to the policies of the Auckland Regional Policy Statement. The potential cumulative impact on the rural character and landscape features on the area compromises the integrity of the metropolitan urban limit.

The subject site is located in an area that is recognised for its rural/residential environment and forms an important buffer between the urban part of the city and the Waitakere Ranges. Low density residential development in rural areas such as this is encouraged, provided it is sensitively undertaken and the landscape qualities of the area are not compromised. The Policy Statement advocates a structure plan approach, which prescribes the level of development appropriate to the character and environmental features and constraints of the area.

The proposed development represents urban development outside the Metropolitan Urban Limits and exceeds the level of development envisaged by the Oratia Structure Plan and therefore contravenes the Auckland Regional Policy Statement and Waitakere City District Plan.

9.0 PART II OF THE RESOURCE MANAGEMENT ACT 1991

It is considered that the proposal would be inconsistent with Sections 5, 6, 7 and 8 of the Resource Management Act 1991.

The purpose and principles of the Resource Management Act 1991 have primacy over all other considerations that are set out in section 104 of the legislation. In summary, sections 5, 6 and 7 require that resources must be sustainably managed in such a way that any adverse effects on the environment can be avoided, remedied or mitigated. Furthermore, the Resource Management Act 1991 requires that amenity values and the quality of the environment are to be maintained and enhanced.

The District Plan, through the development of the Oratia Structure Plan has established that subdivision is appropriate in this area, as long as it is consistent with the density outlined by the structure plan and that development is sensitively undertaken. Obviously subdivision outside the structure plan limits must be evaluated as a discretionary activity. The proposal would have adverse effects on the visual amenity of the area and would result in adverse cumulative effects on the catchment as a whole. It is therefore considered that the proposal is inconsistent with Section 5 of the Resource Management Act 1991.

10.0 EVALUATION IN ACCORDANCE WITH SECTION 104D OF THE RESOURCE MANAGEMENT ACT 1991

The threshold test in Section 104D of the Resource Management Act 1991 states that a consent authority must not grant consent to a non-complying activity unless it is satisfied that the adverse effects on the environment will be minor (104D(a)), or the activity will not be contrary to the objectives and policies of a plan and proposed plan (104D(b)). Where there is both a Transitional Plan and Proposed Plan, under Section 104D(b)(iii) the proposal is required to be consistent with the objectives and policies of both relevant Plans.

It is considered that the threshold test for a non-complying activity has not been met for the proposed subdivision. It is considered that the effects on the environment are considered to be more than minor. Furthermore, it is considered that the activity is not consistent with the Objectives and Policies of both the Transitional and Proposed District Plans. Jurisdiction to grant consent has not been established.

CONCLUSION

The Oratia Structure Plan has been developed through a process of comprehensive consultation and detailed assessment of the catchment. The Structure Plan has been incorporated within the District Plan and determines the sustainable density to which the catchment can be developed. The applicant, through the approval of a previous consent, has already developed their site to the density provided for by the Structure Plan and now seeks approval for two additional lots. It is considered that the approval of this application would raise serious concerns regarding the consistent administration of the District Plan as it would call into question the whole integrity of the Oratia Structure Plan. Furthermore, it is considered that the proposal would be contrary to the policies of the Auckland Regional Policy Statement. The cumulative impacts on the rural character and landscape features of the site and wider catchment compromises the integrity of the metropolitan urban limit.

There is little inherently unusual to this site that would justify granting consent in the face of an integrated and comprehensive array of policies and rules determining that development is not appropriate. There would be cumulative adverse effects on the natural and visual character as well as potential effects in relation to stormwater as a result of granting this consent. The adverse effects would be intensified if the approval of this application constituted a precedent which allowed a similar density of development to be carried out within the catchment.

It is considered that the threshold test to approve a non-complying activity under Section 104D of the Resource Management Act has not been met as the effects on the environment are considered to be more than minor, and the activity is contrary to key Objectives and Policies of the Transitional and Proposed District Plan. Furthermore, the proposal does not satisfy any of the above tests. Jurisdiction to grant consent has not been established.

RECOMMENDATIONS

- A** That pursuant to Sections 104, 105 and 108 of the Resource Management Act 1991, consent be **refused in part** to the application by P Lipsham to subdivide a 3.714ha property at 146 - 148 Parker Road, Oratia being Lot 16 DP 312031 for the following reasons:
- (i) The proposed subdivision would result in adverse environmental effects, particularly in relation to amenity values, landscape impacts and cumulative effects. It is appropriate to have regard the permitted baseline for the subject site. Under the baseline, no additional lots are allowed for as of right. Accordingly the present application represents a three fold increase of the effects otherwise allowed for under the baseline.
 - (ii) The proposed subdivision would be contrary to the relevant objectives and policies of the Transitional and Proposed District Plan (Note that District Plan is operative with the exception of the Foothills provisions), and Auckland Regional Policy Statement, which seek to ensure that development within the area does not degrade the landscape qualities of the area. As such, the proposal would challenge the integrity of the Plan and undermine public confidence in its consistent administration.
 - (iii) The proposed subdivision would undermine the integrity of the Oratia Structure Plan, which has been established after extensive public consultation and must therefore be considered to reflect the appropriate level of development for this site.
 - (iv) The relevant provisions of Part II of the Act cannot be satisfied and the development would not be consistent with the sustainable management principles of Section 5 of the Resource Management Act 1991.
 - (v) The proposed subdivision would be contrary to the public interest under Section 406 of the Resource Management Act 1991, as it will be contrary to the intended level of site density for the Oratia Structure Plan area.
 - (vi) The proposed subdivision will result in an adverse precedent effect.
- B** That the proposed Discretionary boundary adjustment of Lot 1 DP 126045 comprised in CT NA73C/368 situated at 144 Parker Road, Oratia **be granted** subdivision consent pursuant to Sections 94, 104, 105, 108 and 220 of the Resource Management Act 1991, for the following reasons:
- (i) The adverse effects of the proposed boundary adjustment would be no more than minor
 - (ii) The proposed boundary adjustment would not result in any further development within the Oratia Structure Plan area and the re-alignment of the existing property boundaries would not adversely impact upon any adjoining properties.

Subject to the following conditions:

1: SECTION 223 REQUIREMENTS

A survey Plan of the subdivision will be approved pursuant to Section 223 of the Act within three years provided that the advertised survey plan signing fee has been paid.

2: SECTION 224C REQUIREMENTS

There are no 224c requirements necessary for this proposed subdivision.

Report prepared by: Steven McKenzie, Resource Planner.

