



**AGENDA FOR A MEETING OF THE HEARINGS COMMITTEE TO BE HELD IN THE  
CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,  
ON THURSDAY, 23 JUNE 2005, COMMENCING AT 9.30 AM.**

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**1 APOLOGIES**



**2 URGENT BUSINESS**

Section 46A(7) of the Local Government Official Information 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 Committee by resolution so decides; 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 and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

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



**3 CONFIRMATION OF MINUTES**

Meeting Minutes - Thursday, 12 May 2005  
Meeting Minutes - Thursday, 26 May 2005

**RECOMMENDATION**

That the minutes of the Meeting of the Hearings Committee held on Thursday, 12 May 2005 and the Meeting held on Thursday, 26 May 2005, as circulated, be taken as read and now be confirmed.



4 **NOTIFIED APPLICATION FOR RESOURCE CONSENT UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 BY K & L ROGERS TO UNDERTAKE A 2 LOT SUBDIVISION AT 28 AWHIORANGI PROMENADE, SWANSON**

**WARD WAITAKERE**

**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.**

**APPLICATION DETAILS**

Planner:	Steven McKenzie
Site Address:	28 Awhiorangi Promenade
Applicant:	K & L Rogers
Date Received:	20 December 2004
Resource Consent No:	RMA20042687 SPW22362
Legal Description:	Lot 11 DP 137580
Address for Service:	K & L Rogers 28 Awhiorangi Promenade Swanson WAITAKERE CITY
Site Area:	5.006ha
Proposed Lot Areas:	Lot 1 - 3.45ha Lot 2 - 1.6ha
Transitional Plan:	
Zoning:	Rural 3
Section:	City of Waitemata
Hazards:	Nil
District Plan:	
Human Environment:	Foothills
Natural Area:	General and Managed
Landscape Elements:	Stream and associated 20m riparian margin
Hazards:	Nil
Roading Hierarchy:	Local
Further Information Required:	No
Date Requested:	N/A
Date Received:	N/A

## **1.0 INTRODUCTION**

### **1.1 Nature of the Application**

Consent is sought to subdivide a site at 28 Awhiorangi Promenade into 2 (two) lots with net site areas of 1.60ha to 3.45ha within the Foothills Environment. The site is part of the Proposed Swanson Structure Plan Area which is subject to appeals to the Environment Court.

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 therefore the status of this application under the Foothills rules is non-complying. However, the subject property also falls within the Proposed Swanson 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 seven Lots which are equal to that indicated within the Proposed Swanson Structure Plan.

The Foothills Subdivision Rules of the Proposed District Plan were not part of the rules deemed Operative on 27 March 2003, and the Proposed Swanson Structure Plan is still subject to appeals including those seeking the withdrawal of the Proposed Swanson Structure Plan, therefore the Transitional Rules are still to be considered. Under the Transitional Plan the site is zoned Rural 2. The Rural 2 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 21 submissions, 19 of which were in objection, the remaining two were in support.

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

### **1.2 Resource Management Issues Raised**

The Resource Management Act 1991 requires that, when considering an application for a resource consent, a consent authority shall have regard to the environmental effects of the proposed activity, together with any relevant objectives, policies and rules of the District Plan.

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 Proposed Swanson Structure Plan and development in accordance with the number of sites allocated by the structure plan would be a limited discretionary activity if the Proposed Swanson Structure Plan was operative. Council has chosen to utilise structure plans as a means of controlling and enabling development on a catchment basis. However, there are a number of appeals against the Proposed Structure Plan, including the Auckland Regional Council which generally dispute the ability of the Swanson catchment to support the proposed level of development on technical (eg. stormwater analysis) and character/amenity grounds. Development of the site prior to the resolution of these appeals and a final determination of the Structure Plan would undermine the integrity of the planning process.

In addition to this, the application raises the issue of adverse cumulative effects resulting from a change in the character of the Foothills Environment as well as an increase in intensification within the catchment prior to the final determination of the Proposed Structure Plan in the Environment Court.

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 approval would be seen to circumvent the process of the Structure Plan through the Environment Court, particularly as it would create a precedent for the "Structure Plan" subdivisions currently before Council and future applications.

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

The planner who has prepared this report recommends that **consent be declined** to the application for a **2 Lot subdivision**.

It is considered that the actual and potential adverse effects of the subdivision on the environment would be significant, particularly in respect of amenity, character and cumulative effects. The granting of this application would undermine the integrity of the Structure Plan process in terms of the Proposed Structure Plan not being finalised through the Environment Court, as well as compromising the integrity of the relevant objectives and policies of the District Plan, and being inconsistent with relevant principles in the Regional Policy Statement. There are no unusual circumstances relating to the application. Jurisdiction to grant consent has therefore not been established.

## 2.0 LOCATION PLAN

Figure 1: Site Location Diagram - 28 Awhiorangi Promenade



Figure 2: Proposed Subdivision Layout



### 3.0 PROPOSAL

The proposal involves the creation of one additional lot at 28 Awhiorangi Promenade, Swanson.

Proposed lot 1 would have a net site area of 1.6ha and would utilise an existing gravel driveway which extends off Awhiorangi Promenade and accesses a level building platform which has been created via previously approved earthworks. The boundary of proposed lot 1 then crosses a small gully system before rising up in a southern direction which incorporates an area of existing native vegetation.

Proposed lot 2 contains the existing dwelling and associated buildings and is located on an elevated plateau above Awhiorangi Promenade. The site would have a net site area of 4.45ha and incorporates the remaining area of bush which rises up to the southern boundary of the site.

It is also proposed to re-vegetate approximately 2500m<sup>2</sup> of the site with native replanting which would serve as stormwater mitigation and partly also as visual screening. The area of proposed planting consists of a 20m wide strip adjoining Awhiorangi Promenade as well as a strip which follows the existing fence-line which runs along the southern boundary of the existing flat building area.

### 4.0 REASONS FOR THE APPLICATION

Consent is required under the following provisions of the District Plan for the following reasons:

Non-Complying Activity for a subdivision creating lots less than 4ha within the Foothills Environments (Rule 7.4, Subdivision Rules Waitakere City Council District Plan).

Non-Complying Activity for a Subdivision creating lots less than 5ha within the Rural 2 Zone (Rule 12.3:5.2 City of Waitemata Transitional Plan)

The 2 lots proposed would have net site areas of 1.60ha and 3.45ha, ie. below both rules listed above.

Limited Discretionary Activity under Proposed Variation 88 (Swanson Structure Plan) for a subdivision creating the number of lots as shown on a structure plan forming part of the Plan (Rule 7.2 (a) Subdivision Rules (Not Operative), Waitakere City Council District Plan). Variation 88 (Swanson Structure Plan) shows a total of 2 lots allocated to this site.

Overall, the application is considered to be a Non-Complying Activity. The proposal complies with all other development controls under the District Plan.

#### 4.1 History of Site

No reference	Application to deposit 1400m <sup>3</sup> of clean fill, being 700m <sup>3</sup> existing plus an additional 700m <sup>3</sup> . Approved 15 February 1993
RMA 981306	Relocate an existing galvanised shed for storage purposes Approved 6 July 1998.
RMA 20030123	To carry out earthworks involving a volume of 1000m <sup>3</sup> - 2500m <sup>3</sup> in area. Approved 15 May 2003

#### 5.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The site (legally described as Lot 11 DP 137580) is located on the southwestern side of Awhiorangi Promenade, Swanson. It comprises an irregular shaped property of 5.06ha.

The site comprises gently to moderately sloping terrain that descends down to a broad southeast to northwest tending gully feature situated over the central part of the property. An elevated ridge crest is situated parallel and adjacent to the northern boundary. The northern part of the property is predominantly grass covered, with bush covering the central and southern parts.

Three existing buildings consisting of the existing dwelling, storage shed and office building are located within the northeastern part of the site.

The northwestern part of the site comprises a stripped, near level platform, formed by cut-to-fill earthworks. An existing metal driveway extends south-westwards from Awhiorangi Promenade in this area.

#### 6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

A124-A198  
A216

The application was publicly notified on 07 February 2005. The period for submissions closed on 8 March 2005 and 20 submissions were received. 18 submissions opposed the application, and two submissions supported the application. Attached at pages A124 to A198 for copies of the submissions that were received. A map showing the location of the submitters is attached at page A216.

6.1 Submissions

	Submitter	Address	Support / Oppose
1	Waitakere Ranges Protection Society	Ellis Gould Barristers & Solicitors PO Box 1509 AUCKLAND	Oppose
2	Mike and Catherine Simpson	41 Coulter Road Henderson Valley WAITAKERE	Oppose
3	Elley de Lange	77 Coulter Road Henderson Valley WAITAKERE	Oppose
4	Paul Heimer	73 Coulter Road WAITAKERE WAITAKERE CITY	Oppose
5	Ron, Marlene and Paul Reid	19 Coulter Road Swanson WAITAKERE	Oppose
6	Arnold C Brown	183 Forest Hill Road WAITAKERE	Support
7	Norma Delgarno	10-12 Candia Road Swanson WAITAKERE	Oppose
8	Rosalie Yozin	PO Box 95041 Swanson WAITAKERE	Oppose
9	Auckland Regional Council	Vodafone House Private Bag 92 012 AUCKLAND	Oppose
10	Catherine Miller	86 O'Neills Road Swanson WAITAKERE	Oppose
11	Thomas Michael Jenkin	38 Christian Road Swanson WAITAKERE	Oppose
12	Mrs RA Meller	32 O'Neills Road Swanson WAITAKERE	Support
13	Paul and Jean Robinson	57 Christian Road Swanson WAITAKERE	Oppose
14	Trevor Haskell	55 Christian Road Swanson WAITAKERE	Oppose
15	Grant Henderson	10 Pitcher Place Glen Eden WAITAKERE	Oppose
16	Chris and Shirley Furneaux	69 Coulter Road Swanson WAITAKERE	Oppose
17	Preserve the Swanson Foothills Society Jean Berry (President)	C/- 5 Coulter Road Swanson WAITAKERE	Oppose

	Submitter	Address	Support / Oppose
18	Jean Berry	5 Coulter Road Swanson WAITAKERE	Oppose
19	Sidney James Lovell	28 Rangimarie Avenue Swanson WAITAKERE	Oppose
20	The Henderson Valley Residents Association Limited	PO Box 121 117 Henderson WAITAKERE	Oppose

### 6.1.1 Support of Proposal

Submissions supporting the subdivision considered the subdivision a good use of land in relation to the Proposed Swanson Structure Plan and also highlighted that no clearance of vegetation would result and in fact additional planting would occur.

### 6.1.2 Opposition to Proposal

Submissions opposing the subdivision gave numerous reasons, as follows:

- The proposal is contrary to the “sustainable management” purpose of the Resource Management Act 1991.
- The proposal is contrary to the strategic objectives and policies of the Auckland Regional Policy Statement (1999).
- The proposal is contrary to the objectives and policies of the Waitakere District Plan (2004).
- Reliance on Variation 88 (to the District Plan) – the Swanson Structure Plan, is inappropriate given the number of appeals to the Environment Court, including numerous appeals seeking its withdrawal.
- Given the Structure Plan has not been finalised, Subdivision would result in “ad-hoc” development in the area.
- Granting consent to the proposal would undermine public confidence in the consistent administration of the Waitakere City District Plan.
- Peat decision to which the Environment Court decision granted approval and related to another site within the Proposed Swanson Structure Plan area pertinent to that individual property and not intended as a precedent.
- Nothing unusual about the application which would warrant granting consent to the proposal
- Would result in adverse effects on the environment that cannot be avoided, remedied or mitigated by the applicant and that cannot be internalised on the application site.
- Fails to meet the tests required for approval of a Non Complying Activity.
- Detracts from the amenity, character and environment of the area to the detriment of the local community.
- Loss of buffer between the Ranges and urban part of the City.
- Loss of rural character and lifestyle
- Additional Traffic generation would occur
- Cumulative effects resulting from the precedent if approval is granted (prior to the determination of the Swanson Structure Plan in the Environment Court).
- Concern over land stability.
- Degradation of flora and fauna and increase in pests associated with urbanism.

### 6.1.3 Written Consents Accompanying the Application

A number of written approvals accompanied the application. The effects can therefore be dis-regarded on the following persons:

C & J Frehen	30 Awhiorangi Promenade, Swanson
SK & LB Peat	26 Awhiorangi Promenade, Swanson
B Robertson	37 Puketaha Road, Swanson
A.L Tittleton	44 Puketaha Road, Swanson
R.J Keane	39 Awhiorangi Promenade, Swanson
M.Eyles	41 Awhiorangi Promenade, Swanson

## 7.0 STATUTORY REQUIREMENTS

The Waitakere City District Plan became operative on 27 March 2003. However there were a few provisions and rules that were excluded from becoming operative as all references in relation to them had not been resolved. As the proposed activity relates to provisions in the District Plan that are not yet operative, regard must still be had to the relevant provisions of both the Transitional and Proposed District Plan prior to the Plan becoming operative.

In relation to this application the approach taken by both plans could be considered to be significantly different with the Transitional Plan not allowing for the activity within the zone. The weight to be attributed to the Transitional Plan must reflect the fact that it was prepared prior to the Resource Management Act 1991 and does not merit significant weight. However the Transitional Plan is relevant to the permitted baseline for the site, and is also relevant when considering the threshold test for non complying activities. These issues are discussed below.

As determined by case law the regard to be given to the different plans can be weighed up in relation to what stage in the process of becoming operative a proposed plan is, the weight generally being greater as a proposed plan moves through the notification and hearing process. In this case the rules/provisions in the Plan, relevant to this application, are not yet operative. The "general" Foothills Subdivision Rules are in the final stages before becoming operative, however Variation 88 (the Proposed Swanson Structure Plan) is still to be resolved in the Environment Court and there are a number of appeals against parts/all of the Structure Plan. Consideration should therefore be given to the rules/provisions in the proposed plan, the outcome sought by the references and the provisions of the Transitional Plan.

### 7.1 Non-Complying Activities

A1-A23

The relevant policies and criteria which apply under the District Plan and the Resource Management Act 1991 are set out in more detail attached at pages A1 to A23. 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 the Transitional and Proposed District Plans. Under the statutory permitted baseline Council may disregard an adverse effect of an activity on the environment if the operative rules under (in this case) the Transitional 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 Operative Plan permits an activity with that effect (Section 104(2)).

### 8.1.1 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 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 lot sizes for the proposed additional lots is significantly less than 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 one additional dwelling and likely associated accessory buildings also exceeds the permitted baseline. It is appropriate to have regard to the permitted baseline, in evaluating this application.

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

### 8.2.1 Water Quality and Quantity

#### 8.2.1.1 Stormwater

GDI Consultants has provided a Hydrological Assessment and planting plan as part of the Environmental Impact Assessment.

The Hydrological Assessment and Plan by CDI Consultants has due regard to the recommendations and opportunities contained within the Swanson Structure Plan Study and has also noted that with regard to stormwater management within the operative Oratia Structure Plan area, the Auckland Regional Council and Waitakere City Council have agreed that planting 2000m<sup>2</sup> of pasture or recognised weed area back into bush will be sufficient to mitigate each vacant Lot proposed for the extreme storm events. The applicant proposes to plant a total of 2,500m<sup>2</sup> of native vegetation on the property to fully address the hydrological neutrality issues associated with the creation of one additional Lot (Lot 1).

These planting areas as shown on the Amended Planting Plan by GDI Consultants dated 06/03/2005 are centred on the strengthening of the riparian margins of watercourse passing through the centre of the site along with a 20m wide by 100m long buffer planting zone along the northern (road) boundary of proposed Lot 1.

Further stormwater measures to mitigate the reduced time of concentration and increase in peak flows from the lesser storm events have also been proposed and include keeping the modifications to the existing natural drainage patterns to a minimum, no direct stormwater discharge to streams or piped systems, limiting the impervious areas and utilising appropriate methods to detain and attenuate stormwater runoff from impervious areas.

Stormwater quality treatment for proposed impermeable surfaces is a key component of the Swanson Structure Plan recommendations. This can be achieved on this site by the driveways and paved areas for the proposed dwelling, to have no formal stormwater controls, and shed stormwater continually along their length over the planted and grassed areas.

Soil Engineering Limited has undertaken a Geotechnical Investigation Report (ref E550) dated 21 October 2004 for the proposed subdivision, within the Assessment of Effects. The findings of this report include a recommendation that onsite stormwater disposal be utilised for all impermeable surfaces. This meets the recommendations of the Proposed Swanson Structure Plan Landscape and Ecology Study by Boffa Miskell Limited dated October 2000.

The specific designs of the stormwater disposal systems for the new Lot is best carried out at the stage of building consent application for each of the vacant Lots.

The application has been assessed by Councils Stormwater Engineer Mr Mark Iszard who comments on the proposal.

*“Based on the expected increase in impermeable areas on the site arising from the proposed subdivision and future development the planting shown on the Amended Planting Plan by GDI Consultants is considered to mitigate the expected increase in stormwater runoff from the extreme storm events.*

*The stormwater mitigation from the smaller stormwater events is noted as to be carried out at the stage of building Consents for Lot 1. This is inline with current practices for rural subdivisions such as this with mitigation for the erosion and contaminant loadings for the individual Lots being carried out at the stage of building consents for these Lots”.*

It should also be noted that the Auckland Regional Council has expressed concerns that the overall increase in development in the Swanson catchment would have adverse effects on the water quality within the catchment. The Auckland Regional Council considers that as the overall effects (which the site would contribute to) on water quality is yet to be determined and is to be resolved in the Environment Court, the subdivision should not proceed.

### **8.2.1.3 Wastewater**

Mr Iszard makes the following comments:

*“The proposed wastewater treatment and disposal system has been designed in accordance with Auckland Regional Councils Guidelines as per Technical Publication No 58 (ARC T.P. 58) a full review of this design will be carried out at the stage of Building Consent application by Councils wastewater treatment officer. All wastewater irrigation fields are required to be kept a minimum of 20m [from] any watercourse and should be located to be clear of any defined overland flow path or area below the stormwater disposal fields.*

*Based on the large Lot areas there are no anticipated problems or issues that will arise from this proposed development”*

It is considered that the effects associated with wastewater disposal would be no more than minor.

#### 8.2.1.4 Water Supply

Mr Iszard makes the following comments:

*“The site has recently been provided with 2 new water meters to serve 28 and 28A Awhiorangi Promenade through discussions with EcoWaters Assets and Network Manager. These water meters are located adjacent to 24 Awhiorangi Promenade with private service leads extending from these meters to serve the subject site. It is proposed to utilise these water meters for water supply for both proposed Lots. However to help minimise water importation and reduce stormwater runoff any proposed residential development on the proposed Lot 1 shall be required to re-use rainwater for toilets, laundry and outdoor taps as a minimum. It will be required that the developer extends the private water supply pipe to within the Lots that they are to serve and that they provide an easement over these private water lines if they pass through another Lot or property”.*

It is considered that the effects associated with the provision of water supply would be no more than minor.

#### 8.2.2 Native Vegetation, Vegetation and Fauna Habitat

It is proposed to revegetate approximately 2500m<sup>2</sup> of the site with native planting. This exceeds the 2000m<sup>2</sup> which would generally be required to comply with the Countryside and Foothills Stormwater Management Code of Practice for Stormwater Mitigation.

A Planting Plan has been prepared by GDI Consultants to this report. The makeup and location of the proposed planting is as follows:

- A buffer along the Awhiorangi promenade boundary approximately 100m x 15m which equates to 1500m<sup>2</sup> of planting;
- Planting along the southern bank of the of property approximately 100m x 10m equating to 1000m<sup>2</sup> of planting.

Whilst not addressed in the planting plan or accompanying information, in order for the above planting to be successful, weed control will need to be undertaken and any plant losses will need to be replaced.

All areas of additional planting, and areas of existing bush which are to be protected would be required to be protected by means of a covenant which would be imposed as a condition of consent, if consent were to be granted.

No clearance of any existing vegetation would be required to facilitate the proposed subdivision.

As stated in the submitted planting plan, screen planting in the form of 2 species of pittosporum has been carried out along the top of the ridge which forms the proposed boundary between the lots.

It is acknowledged that the proposed planting plan exceeds the amount of planting required for the purposes of stormwater mitigation on site and the proposed planting would have a number of positive outcomes (as outlined above).

### **8.2.3 Land / Soil**

#### **8.2.3.1 Earthworks**

As outlined in Section 4.1 of this report, significant historical earthworks have been carried out on site which has led to the creation of a level building platform on proposed lot 1. There is also an existing gravel driveway to Awhiorangi Promenade which would provide access to the site. No additional earthworks is therefore required as part of the subdivision.

The effects of the earthworks activities as part of the proposed subdivision would be de-minimis.

#### **8.2.3.2 Geotechnical Stability**

A Geotechnical Appraisal has been prepared by Soil Engineering Limited dated 21 October 2004 and submitted as part of the application. This report acknowledges the background Geotechnical Constraints Report which was prepared by Tonkin and Taylor Ltd (ref. 18201 dated July-August 2000) and prepared as part of the background information for the Swanson Structure Plan. That report identified the site to be considered generally suitable for residential development with geotechnical site investigation and specific building foundation design.

The report by Soil Engineering Limited investigates the proposed building platform on lot 1 and access to the site and concludes that the site is generally stable and suitable for subdivision and future residential buildings provided that the recommendations contained within this report are adhered to. It is also noted that any earthworks being undertaken on site should be kept to a minimum and any cut or fill exceeding 1.0m in height shall be referred to a geotechnical engineer.

The report has been reviewed by Councils Consultant Geotechnical Engineer Mr Garry Law who concurs with the above findings and includes conditions should the application be approved.

Air

The proposed activity does not include air emissions of any kind, there would be no adverse effects on air quality.

#### **8.2.5 Ecosystem Stability**

As noted in 8.2.2 above, no clearance of significant native vegetation is required, and weed removal as part of a subdivision would improve the viability of existing native vegetation and ecosystem.

#### **8.2.6 Outstanding Natural Features; Landforms, Geological Sites**

The subject site is not identified in the District Plan as being within an area identified as containing "outstanding natural features" within the City (refer Maps 3.5D & E) and therefore the proposed activity would not adversely affect any identified outstanding natural features.

### 8.2.7 Natural Character of Coast and Margins of Lakes, Rivers and Wetlands

A stream bisects the site in an east-west direction roughly midway down the site and has a 20m wide riparian associated with it. The northern edge of the riparian margin roughly follows the existing line of vegetation on site.

Any subsequent development on proposed lot 1 would utilise the existing level area to the north of the site which would be well clear of the stream.

Should the application be approved, the conditions of consent imposed by Mark Iszard of Ecowater stipulate that a consent notice be registered on the new titles of lots 1 and 2 requiring that stormwater runoff is to mimic natural runoff patterns and not to discharge directly to a watercourse, open drain or piped system.

It is considered that the proposal would have a no more than minor adverse effect upon the existing stream on site.

### 8.2.8 Outstanding Landscapes

The subject site is not identified in the District Plan as being within an area identified as "outstanding landscape" within the City (refer Map 3.6B). The proposed activity would not adversely affect any identified outstanding landscapes.

### 8.2.9 Amenity Values - Health and Safety, Landscapes, Local Areas 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 Ciaran 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. Accessways, 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".

Gordon Griffin, Landscape Architect (Consents Services) has reviewed the application and makes the following comments (refer to memorandum dated 04 May 2004):

*"It is desirable to maintain the Foothills Environment as per the Policies and Objectives .... In this regard, no development would best maintain the status quo. The Swanson Structure Plan provides for some further subdivision on the basis of maintaining the existing landscape character and role played by the Foothills Environment as a buffer between the urban area and the bush clad ranges. There is scope on the subject site to have subdivision of one additional site while maintaining an appropriate landscape character, hence its provision within the structure plan.*

*The site is discretely located on a blind road at the edge of the Swanson Structure Plan area, with little exposure to the public and with a landform that screens much of the site from public view. Furthermore, the site is overlooked by only a few private properties. There is scope for further planting for screening, as needed.*

*Because the proposal at this stage is for subdivision only, with no specific building platform, access road or building(s) proposed, potential effects on landscape character cannot be assessed yet. Requirements for planting for screening and landscape integration of such a proposal cannot be assessed at this stage either.*

*A dwelling in the prominent, western frontage area of the upper terrace would not be desirable, since this would be associated with diminished rural landscape values and would not utilise the potential screening that placement closer to the upper terrace and away from the road would enable.*

*To consider granting approval for subdivision, I consider that some restriction in the area where building(s) could be located in the lower terrace area would need to be required, with any building restricted to the eastern half of the lower terrace and desirably placed towards the base of the slope leading to the upper terrace and associated with the two existing buildings nearby and back from the road. There would be no need at this stage to carry out any roadside frontage planting west of the existing access drive to the lower terrace area. Further planting of the sloping land between the two terraces, ie. west - north-west of the two buildings edging the upper terrace, would be desirable at this stage however, and planting of the weed-infested northern edge to the bush area”*

While it is accepted that the localised effects on the amenity of the site itself and directly adjacent sites would be minimal, it is also considered that there is an adverse effect on the character of the Foothills Environment in granting approval to an ad hoc subdivision prior to the resolution of the Swanson Structure Plan in the Environment Court. The decision/consent order would determine the accepted level of rural amenity within the Swanson catchment, and until such time, it is considered the proposed subdivision would adversely affect the current rural amenity values.

#### **8.2.9.1 Rooding and Traffic**

The application has been assessed by Councils Subdivision Engineer Mr John Carroll who concludes that the proposed subdivision should have negligible effect upon the local roading network.

Mr Carroll makes the following comments:

*Parking - The existing dwelling will have existing use rights for parking 2 cars or more, and the proposed dwelling site will easily provide 2 car parks and onsite turning at building consent stage.*

*Driveways - Both lots 1 & 2 are to utilise the existing driveways and vehicle crossings “established some years ago, with ideal sight lines”.*

As both sites have existing driveways and vehicle crossings onto Awhiorangi Promenade, it is considered that the effects of the proposed subdivision would be no more than minor.

#### **8.2.10 Heritage**

This is considered to be no heritage matters affected by this proposal.

### 8.2.11 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 will 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, e.g. 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 localised environment of the subject site and directly adjacent sites of allowing the creation of one additional lot prior to the determination of the appeals against the structure plan, 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 Swanson catchment, the effects are magnified.

It is relevant to consider the issue of cumulative effects. There would be cumulative effects on the natural and visual character of the area as a result of granting this consent. Separate to this cumulative effect, is an adverse precedent effect associated with the undermining of the Structure Planning process itself. The adverse effects would be intensified if similar “Structure Plan” subdivisions were to be carried out within the catchment prior to the final determination of the Proposed Swanson Structure Plan in the Environment Court.

### 8.2.12 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.

In this instance, the concern of the precedent effect, is approval of this application prior to the determination of the Swanson Structure Plan in the Environment Court could lead to “ad-hoc” subdivision should the level of intensification under the Structure Plan be substantially reduced, or the Structure Plan be removed altogether.

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, particularly given Council has before it applications to subdivide five other sites within the Proposed Swanson Structure Plan Area.

### **8.2.13 Plan Integrity**

Plan integrity is a relevant consideration under Section 104B and 104(1) involving consideration as to whether the proposal would challenge public confidence in the integrity of the plan and the process involved in its formation. The acceptance of a variation to a District Plan into the rules of the plan must follow the due process of notification, submission, Council decision, and if necessary appeals and determination in the Environment Court (and possibly the High Court). In this case, having regard to the uncertainty that still exists with respect to Variation 88 (the Proposed Swanson Structure Plan) which is the basis of this application and the possibility that the Environment Court may alter (reduce or withdraw) the Structure Plan, the proposal would be contrary to the current relevant objectives and policies in both the Transitional and Proposed Plans, it is considered that an adverse plan integrity effect will arise.

### **8.2.14 Summary**

It is considered that the actual and potential adverse effects of the proposed activity are *more than minor* and cannot be adequately mitigated through appropriate conditions of consent as the proposal would affect the existing rural character of the area, and the character and amenity to be established under the Proposed Swanson Structure Plan has not been determined via the Environment Court, noting there are a number of submissions seeking the withdrawal of the Structure Plan.

## **8.3 Any Relevant Provisions of the District Plan 104(1)(b)(iv):**

### **8.3.1 District Plan Policies and Objectives**

The relevant objectives and policies in relation to this proposal are:

#### Policy 1.1

Settlement should be of a type and density that avoids, remedies or mitigates adverse impacts on water quality. In particular, settlement should be:

- located away from coastal edges, riparian margins and areas prone to flooding, and these flood hazard areas within the Oratia, Opanuku and Swanson stream catchments;
- urban development should not occur in locations where such development will lead to significant adverse impacts on water quality and quantity. Urban development shall be avoided in the following general locations -
  - The Waitakere Ranges and West Coast;
  - The Foothills of the Waitakere Ranges;
  - The Countryside Area through Redhills, Hobsonville and Whenuapai;

provided that the consolidation of population within the urban area is within the capacity of any stormwater and waste management infrastructure. Limited settlement may occur outside the urban area where such settlement does not cause adverse impacts on the City's waterways and their margins.

#### 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 2.2

Settlement within ... ( the sewered parts of the Bush Living and Waitakere Ranges Environments) and within the Foothills Environment should be designed and located, and be of a density, that recognises their key positions in relation to surrounding natural and physical resources ..... This policy is intended to ensure adverse impacts on native vegetation and fauna habitat from subdivision and subsequent development are minimised through controlling the location and density of new subdivision that can occur  
....

The structure plan approach identifies areas of significant and outstanding vegetation and fauna habitat and indicates potential development locations that avoid these important natural resources. The location of the structure plan subdivision boundaries is designed to ensure that building platforms and accessways will be contained within existing cleared areas away from important native vegetation areas on a site .... Potential cumulative adverse effects of settlement on significant and outstanding native vegetation and fauna habitat such as the escape of environmentally damaging garden plants, the effect of pets, such as cats and dogs on indigenous fauna and the physical impact of higher population densities in terms of trampling and firewood collection should be taken into account in the setting of Structure Plan subdivision densities. It is expected that a subdivision carried out via a Structure Plan will result in an improvement in the overall resilience, biodiversity, integrity and extent of existing native vegetation and fauna habitat.

#### 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.

### Objective 11

To achieve a quality of settlement and associated activities within each of the City's Human Environments which is sympathetic to, and protects and enhances, the dominant natural and physical features which contribute to amenity value and the neighbourhood character of an area, including maintaining and enhancing:

- The complex, mixed landscape of the foothills.

As discussed in more detail in Section 8.2.9 of this report, it is considered that the proposed density of development, combined with the existing level of built development on site would serve to undermine the appreciation of the rural characteristics of the area.

### Policy 11.1

Settlement should be of a type and a density that protects amenity values, including neighbourhood character of different parts of the City, by:

- Providing for a pattern of settlement in the Foothills Environment that is in keeping with (the) complex, varied and overall natural character of the area.

### Policy 11.29

Within structure plan areas subdivisions should be designed so that subsequent development is compatible with landscape character, amenity values and the noted landscape features of the area including providing for:

- Protecting the amenity values and privacy of each lot;
- Protecting the amenity values, and character of each structure plan area;
- Retaining and protecting existing areas of indigenous vegetation;
- Enhancing and restoring areas of indigenous and exotic vegetation for reasons of visual amenity and/ or ecosystem stability, and/ or soil retention;
- A density of development that does not compromise Council's urban consolidation policies or undermine the urban containment policies of the Auckland Regional Policy Statement;
- A permanent pattern of subdivision that does not increase pressure for, or engender expectations of, further subdivision at a later time;
- A level of development and density of population that does not increase demands for an urban level of infrastructure, roading and servicing.

It is considered that the proposed development would not be consistent with the objectives and policies of the District Plan. While a comprehensive "S32" analysis has been undertaken by Waitakere City Council in forming the Swanson Structure Plan, aspects of this have been challenged by appeals (from the Auckland Regional Council) in regards to the effects of increased stormwater. Further site analysis in terms of landscape value has also been undertaken, providing a further layer of amenity value and environmental quality that should also be considered. Until an outcome has been determined by the Environment Court, the effects of increased development cannot be fully quantified, and until such time, the Auckland Regional Council considers the Proposed Structure Plan, and any subdivision undertaken in accordance with the Proposed Structure Plan contrary to its Regional Policy Statement.

It is also considered that the District Plan is more than a “technical” document designed to provide the development capacity of sites and catchments. It is also a document that sets out the community expectations and aspirations within the City. With respect to the Proposed Swanson Structure Plan (and the current application), appeals/objections have sought the retention of the existing rural character and until the appeals to the Environment Court have been resolved it is uncertain what changes to the existing rural character may be considered appropriate within the Swanson rural catchment.

### **8.3.2 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.

As noted above, until the Environment Court has made a determination of the Proposed Swanson Structure Plan, 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 while the outcome of the Structure Plan is uncertain compromises the integrity of the District Plan and Auckland Regional Policy Statement.

The subject site is located in an area that is recognised for its rural 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, however, the Auckland Regional Council has challenged the Proposed Swanson Structure Plan in its current form.

Until the Proposed Swanson Structure Plan is determined in the Environment Court it is considered the proposal contravenes the Auckland Regional Policy Statement and Waitakere City District Plan.

### **8.4 Any Other Matters the Consent Authority considers relevant and reasonably necessary to determine the Application (104(1)(c)).**

#### **Peat v Waitakere CC (A082/2004)**

This Environment Court decision granted approval to another site within the Proposed Swanson Structure Plan (26 Awhiorangi Promenade, RMA 20011687).

However, the writer has consulted with Council’s legal advisors in relation to the Peat decision. It is understood that the Peat application was considered under the Resource Management Act as it was prior to the amendments made in 2003 and there have been material changes to the law since then. In addition, the Peat site is factually distinct from the circumstances of the subject land.

Also, while Council did not appeal the Peat decision it is understood that the issue of fairness to the parties opposing Variation 88 (either in part or in whole) was not directly considered by the Court.

As outlined, approval of this application, and others that may rely upon this application as a precedent would result in “ad-hoc” subdivision within the Foothills Environment and permanent alterations to its character and amenity, with no opportunity for reversal of those changes even if Variation 88 is ultimately substantially modified or withdrawn by the Environment Court. It is relevant to note that the Court in Peat acknowledged that the outcome of the Swanson Structure Plan litigation was uncertain.

### **8.5 Any Other Relevant Non-Statutory Documents**

It is acknowledged that there is proposed legislation with respect to the Waitakere Ranges. However, until such time as these effect changes in the Structure Plan (as an amendment) or are introduced into Parliament, these would not be relevant to the current application.

### **9.0 PART II OF THE RESOURCE MANAGEMENT ACT 1991**

It is considered that the proposal would be inconsistent with relevant provisions in Sections 5, 6 and 7 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.

It is considered that the granting of this application would be contrary to the purpose of the Act. The proposal will conflict with the amenity values and communities’ social well-being. In addition the change in the rural character that would occur under the Proposed Swanson Structure Plan is still subject to appeals.

### **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 or proposed plan (104D(b)).

It is considered that the threshold test for a non-complying activity has not been met as the proposal would not satisfy section 104D, the adverse effects on the environment of the proposal will be more than minor and the proposal is contrary to the relevant objectives and policies of the Transitional and Proposed District Plan. Jurisdiction to grant consent has therefore not been established.

### **11.0 CONCLUSION**

It is considered that the proposal does not meet the criteria for granting consent as the potential adverse environmental effects are more than minor and cannot adequately be mitigated through the imposition of appropriate conditions of consent. It is considered that the 2 lot subdivision will lead to a decline in the current amenity values of the area.

The proposal is considered to be contrary to the objectives and policies of the District Plan which seek to protect the rural character of the area therefore the subdivision would not meet the thresholds under Section 104D of the Act.

It is considered that the issues raised by the submitters cannot be adequately addressed through the imposition of appropriate conditions.

While the proposed subdivision is consistent with the Proposed Swanson Structure Plan, the Structure Plan is subject to reference appeals to the Environment Court seeking the withdrawal of the Structure Plan or reduction in the level of development provided for under the Structure Plan. Approval of the subdivision prior to the resolution of these appeals would disregard those appeals against the Structure Plan and pre-empt the decision of the Environment Court. Granting approval would also create an ad hoc pattern of subdivision in the Swanson catchment prior to finalisation of Variation 88.

Subject to any additional and/or contrary evidence being presented at the hearing, it is concluded that the application does not merit consent in accordance with Section 104 of the Resource Management Act 1991.

### **RECOMMENDATIONS**

That pursuant to Sections 104, 105 and 108 of the Resource Management Act 1991, consent be refused to the application by K & L Rogers to subdivide a 5.006ha property at 28 Awhiorangi Promenade being Lot 11 DP 137580 for the following reasons:

- (i) The proposed subdivision would result in adverse environmental effects, particularly in relation to amenity values, landscape and character impacts and cumulative effects. It is appropriate to have regard to 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 two 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 District Plan, and the Auckland Regional Policy Statement, which seek to ensure that development within the area does not degrade the landscape and character 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 will result in an adverse precedent effect, particularly given that a number of subdivision consents are being sought for other sites within the Proposed Swanson Structure Plan Area.
- (iii) Allowing subdivision in the interim, pending release of a final Court decision on Variation 88, would be unfair to the large number of referrers and Section 274 parties that are opposed to the Swanson Structure plan as well as those land owners who have elected to await the outcome of the structure plan litigation before applying for consent. In particular, allowing ad hoc subdivision will result in permanent changes to the amenity and character of the Foothills Environment despite the fact that Variation 88 may ultimately be substantially modified or cancelled by the Environment Court. This is a relevant consideration under s406 (public interest) and confirms that it would be inappropriate to grant approval.

Report prepared by: Steven McKenzie, Resource Planner: Subdivisions.

