



Waitakere City Council  
*Te Taiao o Waitakere*

## NOTICE OF MEETING

# HEARINGS COMMITTEE

I hereby give notice that a Meeting of the Hearings Committee will be held on:-

**DATE:**        **Thursday,    24 March 2005**                      **TIME:**                      **9.30 am**

**VENUE:**        **Civic Centre, 6 Waipareira Avenue, Lincoln, Waitakere City**

to consider the business as set out herein and to take any necessary action connected therewith.

16 March 2005

Owena Schuster  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8864

### **MEMBERSHIP:**

Councillors	DQ	Battersby, JP (Chairperson)
	WW	Flaunty, QSM, JP (Deputy Chairperson)
	PA	Hulse
	JP	Lawley
	VS	Neeson, JP
	CA	Stone

Ward Representative  
Mr    RE    Taylor                      (Waitakere Community Board)

Alternate Representative  
Mr    KJP    Witten-Hannah, JP    (Waitakere Community Board)

(Quorum 4 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A MEETING OF THE HEARINGS COMMITTEE TO BE HELD IN THE  
CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,  
ON THURSDAY, 24 MARCH 2005, COMMENCING AT 9.30 AM.**

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ON THURSDAY, 24 MARCH 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, 17 February 2005  
Meeting Minutes - Monday, 21 February 2005

**RECOMMENDATION**

That the minutes of the Meeting of the Hearings Committee held on Thursday, 17 February 2005 and Monday, 21 February 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 M & K DUNCAN TO UNDERTAKE A 3 LOT SUBDIVISION AT 46 CHRISTIAN ROAD, SWANSON**

**WAITAKERE WARD**

**RMA 20041698**

**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:	Chris Gorman
Site Address:	46 Christian Road, Swanson
Applicant:	M & K Duncan
Date Received:	12 July 2004
Resource Consent No:	RMA20041698 SPW22328
Legal Description:	Pt Allot. 173 DP 12931
Address for Service:	46 Christian Road, Swanson
Site Area:	2.711ha
Proposed Lot Areas:	Lot 1: 0.908ha, Lot 2: 0.902ha, Lot 3: 0.901ha
Transitional Plan:	
Zoning:	Rural 3
Section:	City of Waitemata
Hazards:	Nil
District Plan:	
Human Environment:	Foothills
Natural Area:	General and Managed
Landscape Elements:	
Hazards:	Nil
Roading Hierarchy:	Local (both Christian Road and O'Neills Road)
Further Information Required:	Yes
Date Requested:	21 July 2004
Date Received:	27 July 2004. Note, the applicant also agreed to have the application "held" until mediation which was held in December 2004. The request to proceed was made after mediation did not achieve an outcome.

## RECOMMENDATION

That pursuant to Sections 104, 105 and 108 of the Resource Management Act 1991, consent be refused in part to the application by M & K Duncan to subdivide a 2.711ha property at 46 Christian Road, Swanson 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) 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
- (iv) The proposed subdivision will result in an adverse precedent effect, particularly given that there are subdivision consents being sought for other sites within the Proposed Swanson Structure Plan Area.

## 1.0 INTRODUCTION

### 1.1 Nature of the Application

The applicant seeks consent to subdivide their site into 3 (three) lots of approximately 0.9ha in area 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. 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 three 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 for 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 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 81 submissions, 36 of which were in objection, the remaining 45 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. 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 from the Auckland Regional Council which generally dispute the ability for 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 the cumulative effects resulting from 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 **3 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 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 Transitional and Proposed District Plan. There are no unusual circumstances relating to the application. Jurisdiction to grant consent has therefore not been established.

### 2.0 LOCATION PLAN



Figure 1: 46 Christian Road, Pt Allot. 173 DP 12931 (Approximate proposed boundaries shown as dashed).



**Figure 2: Site with Human (Foothills) and Natural Area Environments shown (trees indicate Managed Natural Area, otherwise General Natural Area).**

### 3.0 PROPOSAL

The proposal is to create three lots, Lot 1, 9080m<sup>2</sup> being to the west accessed from Christian Road and associated with the existing dwelling, Lot 2, 9020m<sup>2</sup> and Lot 3, 9010m<sup>2</sup>, both to the east, access via one shared entrance, from O'Neills Road. Lot 1 is elevated above the eastern portion of the site and has lawns/gardens/trees that are well maintained. The lower, eastern portion of the site has a serious weed problem with kahili ginger, *Hedychium gardnerianum*, being extensive within the "cleared" area to the east. There are also Akmena, privet, and wattle within the vegetated area, and a number of other weed species, privet, Japanese honeysuckle have become established. The O'Neills Road frontage is lined with a mix of native re-growth, exotic and "weed" species trees.

The proposed subdivision seeks to establish two building sites within the cleared area, and apart from creating an entrance into the site would require work only within the clearing. It is proposed to screen between the two house sites along the proposed dividing boundary.

Given the existing bush coverage, there is little opportunity for additional native planting to mitigate stormwater flows. However, EcoWater (refer emails 13 August and 12 October 2004) have confirmed a stormwater contribution in lieu of planting would allow EcoWater to undertake mitigation works elsewhere.

### 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 5ha within the Rural 3 Zone (Rule 12.3:5.2, City of Waitemata Transitional Plan).

Non-Complying Activity for a subdivision outside a Structure Plan Area creating lots less than 4ha within the Foothills Environments (Rule 7.4, Subdivision Rules (not Operative), Waitakere City Council District Plan).

The 3 lots proposed are all approximately 0.9ha, i.e. 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). Proposed Variation 88 (Swanson Structure Plan) shows a total of 3 lots allocated to this site.

A Controlled Activity Consent would also be required for vegetation alteration of Removable Vegetation and Environmentally Damaging Plants to a total cleared area greater than 500m<sup>2</sup>. Extensive weed clearance would be necessary to establish the building sites and outdoor areas.

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

## 5.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The underlying site is irregular in shape, with a small frontage along Christian Road and a wide frontage along O'Neills Road. Both roads are un-kerbed, with no footpaths. The existing dwelling has access onto Christian Road. The dwelling and lawn/garden area are elevated above the balance of the site to the east, and the area directly to the east of the house is heavily vegetated. The proposed subdivision would create two triangular lots and one near rectangular lot, all approximately 0.9ha in area.

The surrounding area is generally in pasture, but many sites (including the subject site) have extensively vegetated areas. The surrounding sites (bounded by Christian Road and O'Neills Road) have a range of site areas, 1700m<sup>2</sup> to 5.4 ha, with the smaller sites (less than 4000m<sup>2</sup>) being around existing dwellings.

## 6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

A75-A270

The application was publicly notified on 17 January 2005. The period for submissions closed on 15 February 2005. 79 submissions were received, as well as 2 general letters expressing concern over subdivisions within the Proposed Swanson Structure Plan Area. 45 submissions supported the application, and 34 submissions opposed the application. Attached at pages A77 to A270 for copies of the submissions that were received. A map showing the location of the submitters is attached at pages A75 to A76.

### 6.1 Submissions

The submissions in support of the proposal are summarised as follows;

L Rogers	28 Awhiorangi Prom	Suitable land use & screened
K Rogers	28 Awhiorangi Prom	Suitable land use & screened
A Holman	37 Awhiorangi Prom	Support Structure Plan
S Holman	37 Awhiorangi Prom	Allow development if no adverse effects
M Mawhinney	1161 Scenic Drive	Sites separate from house
G Olliver	59 Sunnyvale Road	Allow development if no adverse effects
M & S Hart	1014 Scenic Drive	Allow development if no adverse effects

C Caruana	53 O'Neills Road	Consistent with Structure Plan
M Lyes	109 Sturges Road	Support Structure Plan
JV Dallow	35 Awhiorangi Prom	Has neighbours' approval & good use of site
SH Dallow	35 Awhiorangi Prom	Has neighbours' approval & good use of site
KR & JD Hagan	12 Yelash Road	Unsuitable for glasshouses & time to resolve SSP
R Morey	27A Yelash Road	Supports development rights
JI Morey	27 Yelash Road	Unsuitable for glasshouses
N Cusack	20 Yelash Road	General support
M Cusack	20 Yelash Road	Other Structure Plans in place
T Cusack	20 Yelash Road	General support
N Brabant	14 Yelash Road	Consistent with Structure Plan
E Brabant	14 Yelash Road	Allow development if no adverse effects
C Boyle	14 Yelash Road	Support Structure Plan
M G Kearney	70 Coulter Road	Consistent with Structure Plan
JL & KE Matthews	54 Coulter Road	Consistent with Structure Plan
G & S Harfield	29 O'Neills Road	Consistent with Structure Plan
L B Peat	26 Awhiorangi Prom	Consistent with Structure Plan
S Lewins	80 O'Neills Road	Consistent with Structure Plan & neighbours' approval
R Duncan	10 Bond Street	Consistent with Structure Plan
LT & AL Pauling	31 O'Neills Road	Consistent with RMA & effects mitigated
J E Powell	20B Ranui Station Road	Consistent with Structure Plan
L Wicks	4 Waitakere Road	Consistent with Structure Plan
J & J Newick	70 O'Neills Road	Consistent with Structure Plan
B Crocker	182 Bethells Road	Consistent with Structure Plan
C Crocker	182 Bethells Road	Consistent with Structure Plan
E & J Cooper	2/63 Bolton Street	Consistent with Structure Plan
H & R Backhouse-Smith	25 Christian Road	Consistent with Structure Plan
S Lewins	80 O'Neills Road	Consistent with Structure Plan
G Richards	18 Waitakere Road	Consistent with Structure Plan
S Wood	42/26 Mary Street	Consistent with Structure Plan
B Healy	757 Swanson Road	Consistent with Structure Plan
L & M Wilson	780 Swanson Road	Consistent with Structure Plan
T Silvester-Clark	17 Welsh Hills Road	Consistent with Structure Plan & effects mitigated
A & R Wagstaff	57 O'Neills Road	Will enhance environment through

		weed eradication
A Naber	51 Christian Road	Consistent with Structure Plan
I Naber	51 Christian Road	Sites will be screened
J Law	23 Mudgeways Road	No negative impact on environment
R Law	23 Mudgeways Road	Allow to proceed under Structure Plan

The submissions in opposing the proposal are summarised as follows;

G & V Binning	27 Coulter Road	Change to rural environment
C Tucker (via Meridian)	82 O'Neills Road	Various
N Delgarno	10-12 Candia Road	Structure Plan not operative
P Laird	409 Henderson Valley Road	Not consistent with current District Plan
G & G Young	77 O'Neills Road	Various
J Berry	5 Coulter Road	Various
S & C Furneaux	69 Coulter Road	Various
M Yozin	112 Christian Road	Not consistent with current District Plan
A Hissey	6 Coulter Road	Presupposes outcome of Proposed Structure Plan
Henderson Valley Residents Assoc.		Contrary to RMA, ARPS, District Plan
Waitakere Ranges Protection Soc.		Based on Structure Plan that is subject to appeals
Auckland Regional Council		Opposed to Structure Plan as not consistent with ARPS
Preserve The Swanson Foothills Soc.		Will affect rural character
A & L Byrne-King	74 Coulter Road	Will affect rural character
B & G Loos	66 Christian Road	Structure Plan still in mediation & traffic effects
C Miller	86 O'Neills Road	Structure Plan still in mediation & effects on character/environment
E de Lange	77 Coulter Road	Will affect rural character & traffic
P Heimel	83 Coulter Road	Adverse environmental & traffic effects
S J Lovell	28 Rangimarie Avenue	Degrade character & traffic effects
R Yozin	PO Box 95041 Swanson	Consent should not progress during mediation of Structure Plan
K & H Wallace	103 Christian Road	Cumulative effects & loss of character
PK & RE Stubbs	45 Coulter Road	Structure Plan is subject to appeals, so application should not proceed
M Wallace	37 Coulter Road	Effects on rural character
L Lawrence	37 Coulter Road	Effects on rural character
T M Jenkin	38 Christian Road	Consent should not progress during mediation of Structure Plan
PA & JAM Charles	16 Coulter Road	Visual & infrastructure effects

M Simpson	41 Coulter Road	Effects on rural environment
C MacKenzie-Simpson	41 Coulter Road	Inappropriate lot sizes & traffic effects
DG Watts	40 Coulter Road	Precedent for other subdivisions
A Berman	53 Welsh Hills Road	Further development will put stress on Foothills
RA Melles	32 O'Neills Road	Not consistent with current rules
LR Melles	32 O'Neills Road	Not consistent with current rules
P & J Robinson	57 Christian Road	Various
T Haskell	55 Christian Road	Various

### 6.1.1 Support of Proposal

Submissions supporting the subdivision considered the subdivision appropriate as it was consistent with the Proposed Swanson Structure Plan in terms of the number of sites allocated and that there were limited or no adverse effects beyond the site, with any effects mitigated (with respect to weed removal and further screening).

### 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.
- 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.
- Application does not address traffic safety (on O'Neills Road), and has insufficient information with regards to stormwater and sewer disposal (and the potential effects of these).
- Cumulative effects resulting from the precedent if approval is granted (prior to the determination of the Swanson Structure Plan in the Environment Court).
- Has not considered future adverse effects of future development on the sites (including minor household dwellings).

## 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.

However 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, which 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

The relevant policies and criteria which apply under the District Plan and the Resource Management Act 1991. 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 Operative Plan permits and 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 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.

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

### **8.2.1 Water Quality and Quantity**

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. Generally mitigation of the 2 and 10 year storm events can be provided via detention methods as part of the development of the future development that would occur on the sites created under the subdivision. The 100 year storm event is normally mitigated via native bush planting. As it is the additional impermeable areas that require mitigation to be undertaken, existing areas of bush cannot be included in the required areas of planting, although new planting may expand on the existing vegetation. The proposal shows limited "cleared" areas available for additional planting and the applicant has requested Council considers a contribution in lieu of planting.

EcoWater has indicated that the site is within a catchment where catchment wide work can be undertaken to mitigate increases in Stormwater flow.

Thus there is the potential for minor adverse effects immediately downstream from the site, but overall there would be de-minimis adverse effects within the catchment.

It should 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.

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

The applicant proposes to establish the new building sites within the existing cleared (weed covered) area. With the exception of the need to "break through" the existing vegetation along the O'Neills Road frontage for access, no trees of any significance (exotic or native) would be affected. While minimal planting is proposed in the application, it should be noted that a typical requirement of "Structure Plan" subdivisions is the removal of weed/environmentally damaging vegetation, and this would lead to an overall improvement in the quality of vegetation.

### **8.2.3 Land / Soil**

The earthworks carried out as part of this subdivision would be limited to the providing the entranceway to the sites and for some trenching works for services would also be undertaken. The volume of earthworks would be minimal.

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.

### **8.2.2 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**

There would be no adverse effects in relation to the natural character of the coast and margins of lakes, rivers and wetlands arising from the proposed activity as it would not be near the coast, water body or wetland.

### **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 site is within the urban area of the city and the environment is already extensively modified and therefore 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 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".

Gordon Griffen, Landscape Architect (Consents Services) notes (refer to memorandum dated 23 December 2004) "*Subdivision as per the Swanson Structure Plan was seen as a means to address the pressure for subdivision, allowing some to occur, via a structure plan approach, while ensuring that the character of the area would essentially remain unchanged.*

*If the site is left un-subdivided the existing character of the site would continue and it would contribute unchanged to the overall role of the foothills as a visual and ecological buffer between the City and the Ranges. There is a case to delay any subdivision in the Swanson Structure Plan area until the Swanson Structure Plan appeals have been resolved.*

*The subject site is an exceptionally weed infested site however, and there may be some benefits in proceeding with the subdivision at this stage, particularly with regard to weed control and to rehabilitation of the natural cover. It would be undesirable however to 'reward' land owners who have neglected weed control on their sites by favouring them for structure plan subdivision ahead of other landowners who may have better managed their sites.*

*The proposed shared entrance driveway would involve a low visual impact in a visually separate part of the site, accessed from a different road from that of the existing dwelling. The proposed location for each new dwelling site would require relatively short access drives and hence minor earthworks for the driveways, and would use existing roadside vegetation to give some screening of the dwellings and driveways."*

While it is accepted that the adverse effects on the local amenity would be minimal, it is also considered that there are potential adverse effects on the local character in granting a 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.

It is noted that visibility along O'Neills Road from the proposed entrance/exit point for the new sites would be half that stated in the Parking Guidelines for the speed limit on O'Neills Road (70km/h). However, it is noted that a relatively sharp bend contributes to the shortfall in visibility and this may slow oncoming vehicles down to a more safe speed to ensure the new entranceway does not adversely affect traffic safety.

#### **8.2.10 Heritage**

These are 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 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 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. 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.

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.

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 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) involves 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, 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 1.4

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 1.1 applies to controls on settlement to protect water quality also).

#### 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 access ways 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.

### 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 has been challenged by appeals (from the Auckland Regional Council) in regards to the effects of increased stormwater. 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 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, however, the Auckland Regional Council has challenged the Proposed Swanson Structure Plan in its current form.

The proposed development represents urban development outside the Metropolitan Urban Limits and until the Proposed Swanson Structure Plan is determined in the Environment Court it is considered to contravene 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) on the grounds that;

- 8.4.1 Once notified, Variation 88 was deemed to amend the (proposed) district plan, meaning that the Swanson catchment now has a ‘structure plan’ in place, in terms of the Foothills rules for subdivision.
- 8.4.2 Given that Council had released its decisions on Variation 88 it was appropriate to place weight on the variation, despite the existence of references in opposition;
- 8.4.3 Neither the Auckland Regional Policy Statement nor the (proposed) district plan require that a structure plan be operative before reliance can be placed upon it. Thus subdivision in accordance with the lot sizes set by the structure plan is not contrary to either the (proposed) district plan or the Auckland Regional Policy Statement.

8.4.4 Fairness to owners of land within the Swanson structure plan area is a relevant consideration when evaluating a subdivision application; it is unfair to require land owners to await the outcome of references on Variation 88. They are entitled to apply to subdivide land now.

However, it is noted that this 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.

Also, while Council did not appeal the above decision, it is considered fairness to the submitters opposing the Structure Plan was not considered and approval of this application, and others (as this would set a precedent) could result in "ad-hoc" subdivision should the Structure Plan be substantially modified or withdrawn through the decision of the Environment Court. In making the determination of the Peat decision, the Court acknowledges the outcome of the Swanson Structure Plan is uncertain.

#### **8.5.1 Other Issues Raised by Submitters Not Covered Elsewhere in Report**

Reference has been made by one supporter of the proposal to the other Structure Plans (eg. Birdwood Structure Plan). It is noted that the first applications under the Birdwood Structure Plan were made prior to the Environment Court Decision on the Structure Plan, but after Council had resolved the appeals seeking the withdrawal or reduction of development potential in the Birdwood Structure Plan. It is therefore consistent with the Structure Planning process to ensure objections have been considered prior to subdivisions occurring within the Structure Plan.

A number of opposing submitters have questioned the ability of the proposed sites to operate in a manner consistent with the rural environment as they consider the sites could not adequately accommodate the needs of stock (horses, cows and sheep), which would lead to the decline of the cleared areas as without stock the sites would be difficult to manage (ongoing weed clearance, upkeep of grassed areas). It is not appropriate to predict how future owners of the sites would manage their land, and if the Swanson Structure Plan is confirmed in its current form (more or less), it is accepted that there would be some change in the rural character, with native bush planting being used for stormwater management, which in turn reduces the pasture area that would need to be maintained.

Council would concur with the submission that allocation of street numbers to the O'Neills Road frontage is not an acknowledgement that future development would occur, and it is standard practice to allocate alternative street names where there are multiple street frontages.

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

It is acknowledged that there is both a review of the landscape assessment within the Swanson Structure Plan and proposed legislation with respect to the Waitakere Ranges. However, until such time these effect changes in the Structure Plan (as an amendment) or become law, it is considered that these would not be relevant considerations to the current application.

## **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.

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 as 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, in that until the Proposed Swanson Structure Plan has been resolved in the Environment Court the adverse effects on the environment of the proposal on the existing landscape and rural character will be more than minor and the proposal is contrary to the relevant objectives and policies of the 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 3 lot subdivision prior to the resolution of the Proposed Swanson Structure Plan 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 (until such time as a change in the character may be brought about via the determination of the Proposed Swanson Structure Plan in the Environment Court). Therefore the subdivision would not meet the thresholds under S104D of the Act.

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

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 104,104B, 104D, 108 and 113 of the Resource Management Act 1991, and subject to additional or contrary information being presented at the hearing, **consent be declined** to the application by M and K Duncan to subdivide the site at 46 Christian Road, being Pt Allot. 173 DP 12931, into 3 lots for the following reasons:

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 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 Transitional and Proposed District Plan. There are no unusual circumstances relating to the application. Jurisdiction to grant consent has therefore not been established.

Report prepared by: Chris Gorman, Resource Planner - Subdivisions.

