



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

HEARING BY COMMISSIONERS

I hereby give notice that a Hearing by Commissioners will be held on:-

DATE: Thursday, 19 November 2009 **TIME:** 9.30 am

VENUE: Waitakere Central, 6 Henderson Valley Road, Henderson,
Waitakere

to consider a Resource Management Consent for 110 Parker Road, Oratia and to take any necessary action connected therewith.

6 November 2009

Maea Petherick
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8104

MEMBERSHIP:

Commissioners: Cr VS Neeson, JP
Cr DQ Battersby, QSM, JP
Cr LA Cooper, JP

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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 HEARING BY COMMISSIONERS TO BE HELD AT WAITAKERE CENTRAL,
6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON THURSDAY,
19 NOVEMBER 2009, COMMENCING AT 9.30 AM**

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AND DEVELOPMENT AT A SITE THAT MAY BE CONTAMINATED BEING
PREVIOUSLY USED FOR HORTICULTURAL ACTIVITY AT 110 PARKER ROAD,
ORATIA**

**RMA SUB-2008-1394
 LUC-2008-1392**

Waitakere Ward

N.B. This report sets out the advice of Consent Services to the Hearing Commissioners 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 Hearing Commissioners.

APPLICATION DETAILS

Planner:	Mandy Sherring
Site Address:	110 Parker Road, Oratia
Applicant:	Alex and Isabel Smillie
Date Received:	03 September 2008
Resource Consent No:	LUC 2008-1392
Legal Description:	Lot 2 DP 93386, Certificate of Title NA49D/1032
Address for Service:	Cato Bolam Consultants PO BOX 21-355 Henderson Waitakere 0650
Site Area:	5.438 hectares
Unit Site Area(s):	Lot 1: 1.07 hectares Lot 2: 0.3 hectares Lot 3: 1.96 hectares Lot 4: 2.08 hectares
Operative District Plan:	
Environment:	Human Foothills Environment
Natural Area:	General Natural Area Managed Natural Area 20 metre Riparian Margin
Landscape	Sensitive Ridge
Elements:	
Hazards:	Potentially Contaminated Site
Roading	Local
Hierarchy:	

Further Information Requested	Yes
Date Requested:	11 September 2008 28 October 2008
Date Received:	6 October 2009
Site Visit:	10 September 2008
Section 37 Applied:	Yes
Any Affected Persons:	Yes
Approval Given:	Consent from some neighbouring properties provided

1.0 INTRODUCTION AND RECOMMENDATION

1.1 Nature of the Application

The applicant seeks subdivision and land use resource consent to subdivide an existing 5.438 hectare property at 110 Parker Road, Oratia, into three allotments. Two vacant allotments would be created, and one allotment would include the existing residential dwelling (proposed lot one). Lot sizes would range from 1.4 hectares to 2.08 hectares. Proposed lots two and three contain substantial areas of native forest, the majority of which would be protected by covenant.

The physical works proposed as part of this landuse and subdivision consent include a new vehicle driveway over lot one to provide access to the rear lots two and three.

1.2 Resource Management Issues Raised

The Resource Management Act 1991 requires that when considering an application for 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 and any regional planning guidance.

A1-A96

The current proposal must be assessed as a non-complying activity, and has the potential to give rise to effects in terms of density, rural character and catchment management given that it involves subdivision over and above that provided for in the Oratia Structure Plan (OSP). Assessment must also consider the potential of the proposal to give rise to precedent effects (District Plan integrity). A full copy of the application as submitted is attached at pages A1 to A96 as Appendix 1.

1.3 Planner's Recommendation

It is recommended that **consent be refused** to this subdivision and land use resource consent application to undertake a three lot subdivision at a greater density than provided in the OSP. Council cannot support any subdivision or development beyond the OSP density for reasons of adverse cumulative effects on water quality and quantity, creating severe downstream flooding and erosion affecting many properties, and impacting on the ability of the entire catchment to treat and dispose of stormwater. These effects cannot be mitigated, and therefore must be avoided by declining this development proposal.

It is considered that the proposal is not unique and would be contrary to the assessment criteria, objectives and policies of the District Plan and to the provisions of the Auckland Regional Policy Statement given that the future development resulting from the subdivision may accelerate, worsen or result in inundation of other properties downstream in the Oratia catchment.

1.4 Revised Plans

AI-A118

An application for a four lot subdivision was lodged with Council in September 2008 (original scheme plan proposal is attached at pages A97 to A116 as Appendix 2). This proposal (for four lots) was notified in February 2009. A plan showing properties notified is attached at pages A117 to A118 as Appendix 3. Eight submissions were received, four in support and four in opposition. Subsequent to notification of the proposal the applicant elected to suspend the application and in October 2009 a new proposal with an associated report for three lots was submitted to Council. A copy of the amended proposal and supporting report was sent to all submitters on 21 October 2009. A copy of the revised scheme plan is also attached at pages A1 to A96 as Appendix 1.

2.0 LOCATION PLAN

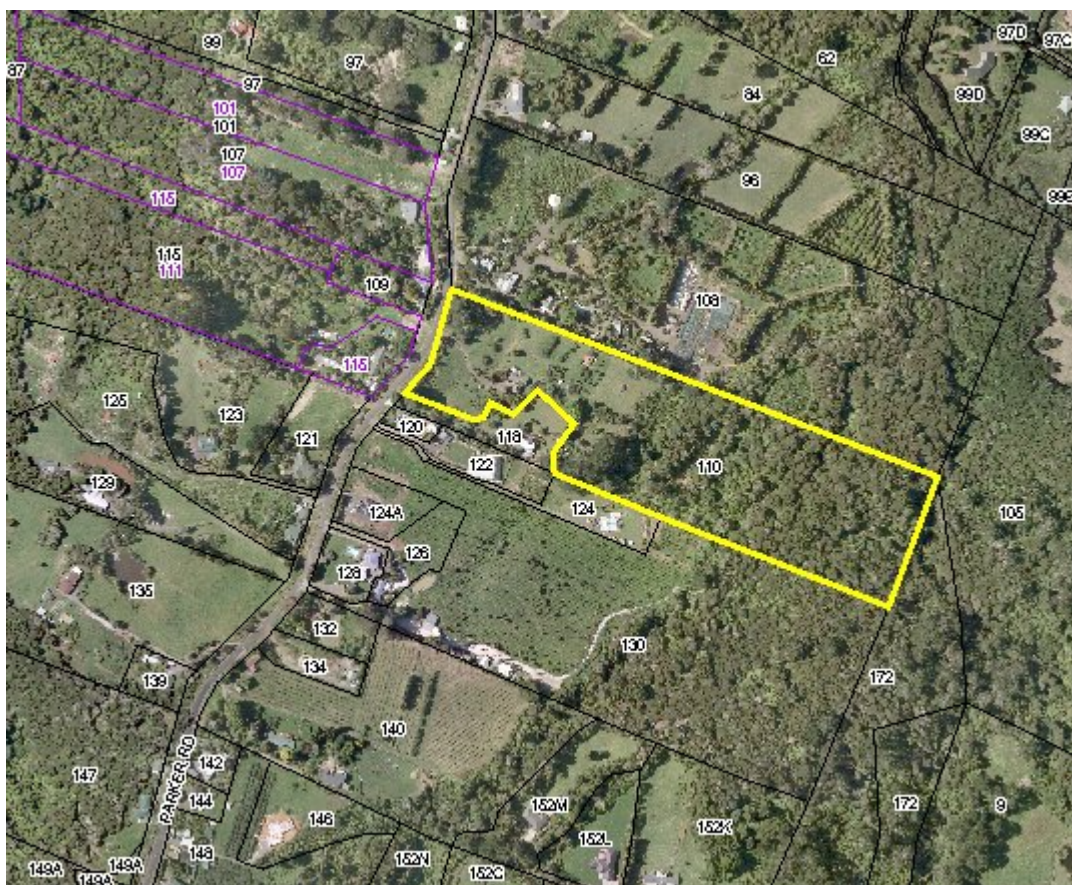


Figure 1: Aerial photograph showing location of subject property

Legal description:	Lot 2 DP 93386 (CT 49D/1032)
Site Area	5.438 hectares
Human Environment:	Foothills
Natural Area:	General and Managed Natural Areas
Designations/Special Features:	Oratia Structure Plan
	Sensitive Ridge
	Potentially Contaminated Site
	Waitakere Ranges Heritage Area
	Wastewater maintenance
	Lot Affected By Stream
	Local Road
	Site may contain an archaeological feature

3.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The subject site at 110 Parker Road, Oratia is 5.438 hectares in size located on the eastern side of the road and approximately 1.4 kilometres south from the intersection with West Coast Road. The site is roughly rectangular in shape and generally moderate in slope. The front portion of the site is mainly open, grassed and of a rural character typical of the surrounding area. This area is occupied by an existing dwelling approximately 50 metres from the public road. In addition to the dwelling is a shed and small greenhouse. The front portion of the site is interspersed by scattered native and exotic trees including the remnants of an orchard. A building consent was issued in 1985 for a farm shed and the building consent for the main dwelling on-site was obtained in 1988 (ABA-1988-3394).

A140-A141 The rear, approximately 60% of the property is clothed in native forest. This roughly corresponds with the Bush Protection Area shown on the OSP Maps, attached at pages A140 to A141 as Appendix 6. Approximately halfway between the bush edge and the rear boundary, running across the site in a southwest to northeast direction is the Allen Swamp being a tributary of the Cochrane Stream. The native forest is reasonably well established, with an emergent canopy of 15 metres or more being common.

The site is located within the foothills of the Waitakere Ranges. The area is characterised by rural-residential properties of various sizes, styles and ages. Generally the area has a strong history of horticultural use and this has resulted in large areas of land cleared of native vegetation for grazing and/or horticultural purposes together with stands of exotic vegetation and some regenerative native vegetation.

There is significant weed infestation where the cleared area meets the native bush / Managed Natural area approximately 210 metres from the Parker Road boundary. There is a natural stream, Allen Swamp, with a 20 metre riparian margin that crosses the site approximately 140 metres from the rear boundary. Parker Road itself follows a ridgeline which extends its influence as a sensitive ridgeline notating some 60 metres into the front portion of the site.

The property to the north, 108 Parker Road, Oratia, is used as a plant nursery (Landsendt) and has been identified in the Oratia foothills as being suitable for five lots, 108 Parker Road, Oratia to date has not applied for a subdivision. To the south is a cluster of four residential dwellings on lots ranging from 0.54 hectares to 0.1 hectares. Three of these dwellings were as a result of the subdivision of the original lot at 130 Parker Road, Oratia. A cluster style development was approved so that the balance lot could be maintained as a vineyard, 130 Parker Road, Oratia has no additional allocation under the OSP.

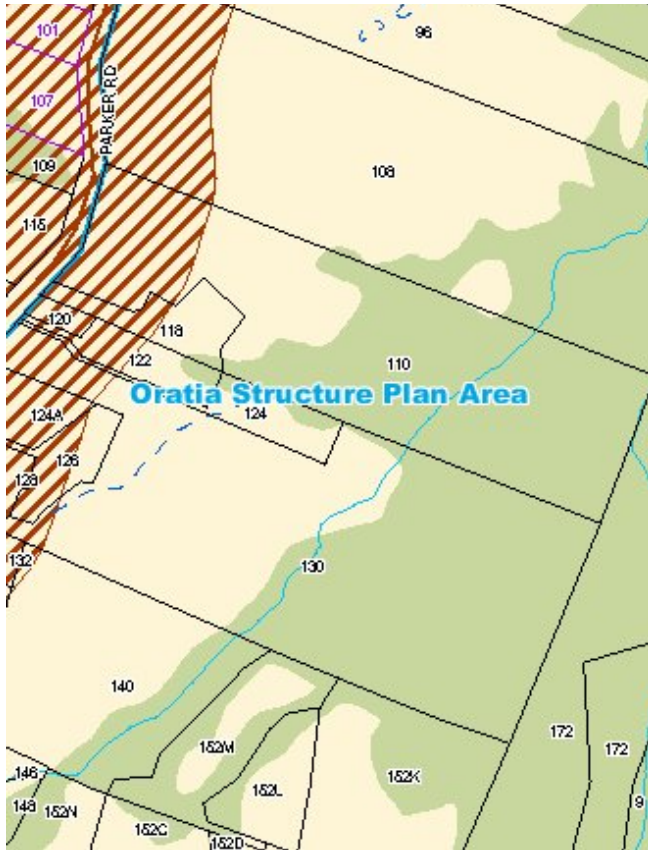


Figure 2: plan showing General and Managed Natural Areas, sensitive ridge along north western boundary and stream running through Managed Natural Area

Photograph 1:



Figure 2: Driveway to existing dwelling, proposed driveway will divert at this location towards the northern boundary. Front portion of the site shown cleared area

Photograph 2:



Figure 3: Cleared area (proposed lot two) at rear of property in front of Managed Natural Area

4.0 PROPOSAL

The applicant proposes to subdivide the property into three allotments. Proposed lot one would be 1.4 hectares in size and contain the existing main dwelling and would be located within the front part of the site which is already significantly modified. Vehicle access would be obtained via the existing vehicle crossing which would then fork to provide a driveway to the existing house and a new driveway running along the northern boundary to service proposed lots two and three at the rear. Lots two and three contain substantial areas of native forest the majority of which would be protected by covenant.

The proposed subdivision includes the construction of a driveway to provide access to the rear lots. Earthworks for the driveway total 700m². No more than 30m³ will be within the sensitive ridge. The driveway does not require any retaining structures.

4.1 HERITAGE FEATURES

Relevant Heritage Features within the subject site or within the immediate area are listed below. Heritage Features are detailed in Section 7 of the Waitakere Ranges Heritage Area Act 2008.

- Terrestrial and aquatic ecosystems of prominent indigenous character that include large continuous areas of primary and regenerating rainforest with intact ecological sequences. These ecosystems provide intrinsic value to the Waitakere Ranges Heritage Area and provide habitats for indigenous flora and fauna;
- A tributary, Allen Swamp, of the Cochrane Steam passes through the bottom third of the lot, therefore the site contributes to the collection of high quality water and the functions of natural streams that rise in the eastern foothills and contributes positively to downstream urban character, stormwater management, and flood protection;

- The site as viewed from Parker Road, Oratia is predominantly rural in character and being located in the eastern foothills acts as a transitional buffer between metropolitan Auckland and the forested ranges and coast;
- The current density and development within the area represents a subservience of the built environment to the area's natural and rural landscape, which is reflected in the rural character of the foothills and their intricate pattern of farmland, orchards, vineyards, uncultivated areas, indigenous vegetation, and dispersed low-density settlement with few urban-scale activities; and
- The low density rural character of the location contributes to the historical, traditional, and cultural relationships of people, communities, and tangata whenua with the area.

5.0 REASONS FOR THE APPLICATION

Subdivision and land use resource consent is required for the proposal under the District Plan for the following reasons:

Non-Complying Activity for a residential activity / density not in accordance with Rules 2.1 and 2.2 of the Foothills Living Environment. It is proposed to subdivide the subject site into three freehold lots from one existing lot. The subject site is located within the OSP area but no lots were nominated for this site. Therefore the minimum permitted site area under the District Plan is 4.0 hectares.

Discretionary Activity for development / subdivision of a site that may be subject to contamination. A review of horticultural sites by Waitakere City Council indicated that the site may have previously been used for horticultural purposes.

Limited Discretionary Activity for earthworks in the General Natural Area for the construction of a driveway and infrastructure. Earthworks are within one metre of the boundary with the adjoining property.

Subdivision Foothills Environment

Discretionary Activity for a subdivision in the OSP area not meeting the standards of Rule 7.1 or 7.2. The subdivision creates sites at a density exceeding that shown on the OSP.

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

6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

The original application for four lots was publicly notified on 19 February 2009, and notice was served on neighbouring properties. The period for submissions closed on 19 March 2009, within which time a total of eight submissions were received. Of these submissions, four were in support of the application and four submissions were in opposition. The submitters were advised in writing on the 21 October 2009, of the amended proposal being a three lot subdivision.

A119-A139 A map identifying the location of submitters in the immediate vicinity is attached at page A119 as Appendix 4, and a full copy of submissions attached at pages A120 to A139 as Appendix 5. A summary of the submissions is as follows;

Name of Submitter	Location Address	Submission Points / Comments	Request to be heard
Submissions in Support			
Roy Sunde	138 Carter Road	Mr Sunde did not support a proposed lot being 0.3 hectares (original lot two) as proposed in the original application but otherwise supported the application if this lot was increased in size or removed from application.	No
Diederik Jan Willem Endt	108 Parker Road	No reasons given	No
Anne Marie Endt	108 Parker Road	No reasons given	No
Russell William Gash	140 Parker Road	Lived in Oratia since 1933; since that time there has been no mention of cultural significance on property. The applicant was in Jakarta when the OSP was initiated.	Yes
Submissions in Opposition			
Auckland Regional Council		The density exceeds the level for which provision has been made under the OSP and will have potential effects of rural character and amenity. Not in accordance with Auckland Regional Policy Statement. Not in accordance with Waitakere Ranges Heritage Area Act (WRHA Act).	yes
Lacey Graham	118 Parker Road	Dwellings on lot one and lot three will be clearly visible from 118 Parker Road. Light spill from these two properties will be visible from 118 Parker Road. Not in accordance with Objectives and Policies of District Plan. Not in accordance with the purpose and principles of the Waitakere Ranges Heritage Area Act (WRHA Act). No allocation of lots under the OSP. Adverse impacts as a result of additional impermeable surfaces. Increased traffic movements.	yes

Waitakere Ranges Protection Society Incorporated		Not in accordance with the purpose and principles of the Waitakere Ranges Heritage Area Act (WRHA Act). Adverse cumulative effects from development within OSP area. Not in accordance with Objectives and Policies of District Plan. Granting such a subdivision (not anticipated within the Structure Plan) would generate precedent effects.	Yes
Josef and Lydia Hoerzer	131 Carter Road	Opposed to a proposed lot being 0.3 hectares (original lot two) as proposed in the original application, may support a two lot subdivision. Waitakere Ranges are polluted already, subdivision should be stopped completely.	No

In addition to the formal limited notification of the application by Council the applicant submitted the following consent forms as part of the application for resource consent.

PERSON (owner/occupier)	ADDRESS	APPROVAL OBTAINED
Diederik J W Endt Annemarie Endt	108 Parker Road	Yes
Donna Lowrie Bruce Lowrie	109 Parker Road	Yes
Chris Futter	111-115 Parker Road	Yes
Peter R Bunting	120 Parker Road	Yes
S D Wood and Thomas Wood	122 Parker Road	Yes
Paul Kite	124 Parker Road	Yes

7.0 STATUTORY REQUIREMENTS

7.1 INTRODUCTION

Matters to be considered by the Council when assessing an application for resource consent under section 104 of the Resource Management Act include, (subject to Part II), any actual and potential effects on the environment and any relevant objectives, policies, rules or other provisions of a Plan or Proposed Plan.

As part of the assessment process when considering an application for a non-complying activity, the consent authority shall be satisfied that the threshold tests outlined in section 105(2A) of the Resource Management Act will be fulfilled, and that all the relevant matters have been considered under section 104.

Section 105(2A) states that:

“a consent authority must not grant a resource consent for a non-complying activity unless it is satisfied that:

- (a) The adverse effects on the environment (other than any effect to which section 104(6) applies) will be minor; or*
- (b) The application is for an activity which will not be contrary to the objectives and policies of:*
 - (i) Where there is only a relevant plan, the relevant plan; or*
 - (ii) Where there is only a relevant proposed plan, the relevant proposed plan; or*
 - (iii) Where there is a relevant plan and a relevant proposed plan, either the relevant plan or the relevant proposed plan.”*

The proposal is therefore considered against the above requirements in section 7.3 of this report, following an assessment of the proposal in terms of its actual and potential effects on the environment and in terms of the objectives and policies of the Waitakere City Council District Plan.

7.2 NON-COMPLYING ACTIVITIES

As earlier noted, the proposal requires consideration as a non-complying activity under the provisions of the Resource Management Act. Section 105(2A) of the Resource Management Act 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 the Plan.

Section 104 of the Resource Management Act sets out those matters to be considered when assessing an application for resource consent. 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. All considerations are subject to the provisions of Part II of the Resource Management Act, which sets out the purpose and principles that guide this legislation.

The Plan has been prepared with an “effects based” emphasis, in keeping with the requirements of the Resource Management Act. As such, and although the proposal is a non-complying activity overall, consideration of the application in relation to each of the assessment criteria relating to the various infringements will ensure that all the relevant matters contained in section 104 of the Resource Management Act would have been addressed. In addition, an assessment is presented below of the main effects on the environment generated by the application.

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

7.3.1 Water Quality and Quantity

The application is supported by a Stormwater Management Report prepared by Cato Bolam Consultants. This report and the proposed subdivision have been assessed by Council EcoWater Engineer: Ravinesh Chand who makes the following assessment and conclusion;

'The OSP requires that stormwater runoff from any development in the OSP area is limited to pre-development runoff rates, volumes and timing for all storm events (2, 10 & 100 year) to achieve hydrological neutrality. Through the consent process EcoWater requires that stormwater is managed in accordance with the Countryside and Foothills Stormwater Management Code of Practice, and that supporting calculations show hydrological neutrality can be achieved. This Code of Practice is only suitable for managing development up to the density provided for in the structure plan because it was developed specifically for this purpose. Beyond the structure plan density this Code of Practice no longer applies because it does not provide for mitigation of cumulative effects, therefore a site specific and much more stringent assessment is necessary. This is also reflected in the need for such subdivisions to obtain a stormwater discharge consent from the Auckland Regional Council.

A combination of methods is proposed to mitigate effects of the proposed subdivision. The Stormwater Management report by Cato Bolam Consultants does not adequately address the stormwater disposal or hydrological neutrality issues. The report submitted with this application has relied upon the Code of Practice and has not addressed the issue of cumulative effects on water quality and quantity.

EcoWater cannot support this application due to more than minor adverse effects arising from subdivision beyond the density allowed for in the OSP area, particularly cumulative effects on stream systems and significant downstream flooding in the lower catchment. Full impacts of development and the effectiveness of the mitigation proposal have not been quantified in terms of full hydrology calculations. These issues were well documented at the time the OSP was prepared.

EcoWater cannot support any subdivision or development beyond the OSP density for reasons of adverse cumulative effects on water quality and quantity, creating severe downstream flooding and erosion affecting many properties, and impacting on the ability of the entire catchment to treat and dispose of stormwater. These effects cannot be mitigated, and therefore must be avoided by declining this development proposal.'

A financial contribution is not an option to mitigate effects because this subdivision would increase flood levels beyond those mitigated by the Project Twin Streams.

7.3.2 Native Vegetation, Vegetation and Fauna Habitat

Actual physical works involved with the proposal include the construction of a driveway to provide access to the rear lots two and three. The driveway will come from the existing vehicle crossing then fork off to the north running parallel with the northern boundary. There are pine trees and a bamboo hedge along the northern boundary but these are not protected under the District Plan. None of the works proposed for the subdivision would require works to, or within the dripline of protected vegetation and therefore no adverse effects on vegetation or fauna habitat are anticipated.

There are areas of cleared land on both proposed lots two and three which provide the opportunity for future development outside the Managed Natural Area at the rear of the property.



Figure 4: Location of vehicle driveway along northern boundary

7.3.3 Land / Soil

Earthworks outside a building platform are required to create a driveway providing access to proposed Lot two and three towards the rear of the site. As identified in section 4.0 above, this involves a total of 700m² of earthworks, within 1 metre of the boundary with the adjoining site.

On assessment, it is considered that any adverse effects of the works on the land/ soil resource would be no more than minor for the following reasons:

- (a) The earthworks would involve predominantly scrape, to a depth of some 200 millimetres;
- (b) The area involved is not overly large within the context of the total site size, and is located within a developed and modified section of the site; and
- (c) The site is not identified as being potentially stability sensitive.

The application included a soil contamination assessment report prepared by EnviroWaste Consulting Group which concluded that concentrations of arsenic, copper, lead and organo-chlorine pesticides are below residential guideline values and the site poses no significant risk to human health and is considered suitable for the proposed re-development without remediation. Should the development be approved conditions of consent requiring control measures to ensure that sediments from earthworks do not enter the surface water would be required.

The application included a geotechnical report prepared by Ormiston Associates. The report concluded that the site is suitable for residential development provided that recommendations contained in the report are adopted at time of building consent for future residential developments. This report was peer reviewed by external specialist GHD Limited who general supported the findings by Ormiston Associated and concluded that effects would be no more than minor subject to conditions of consent should be consent be granted.

7.3.4 Air

No air emissions above what is permitted by the Plan would arise as a result of the proposed activity, and therefore no adverse effects on air quality are anticipated.

7.3.5 Ecosystem Stability

The application included a weed and pest control plan prepared by Cato Bolam Consultants. Council's Ecologist: Martin Sharp has reviewed this report and following a site visit is in general agreement with the findings and recommendations of this report.

Martin Sharp detailed that the potential impacts from the development are:

- *impacts on water quality from erosion and sedimentation resultant from earthworks; and*
- *vegetation removal and pressure created for future vegetation removal from the creation of additional lots and impacts on the ecology of the watercourse from these sources and stormwater discharges.*

It is concluded that subject conditions of consent that protected vegetated areas by covenant, Arborist input regarding works in the dripline and clearance of vegetation (during the construction of the driveway), stormwater and wastewater management and sediment controls the proposed development would have no more than minor adverse impacts on the stability of the existing ecosystem. Council's Ecologist is able to support the application as adverse effects on ecosystems would be no more than minor and the activity would be in accordance with the relevant objectives and policies of the Plan.

7.3.6 Outstanding Natural Features; Landforms, Geological Sites

The subject site does not contain any specific outstanding natural features and therefore no adverse effects on such are anticipated as a result of this development (map 3.5(D) of the District Plan).

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

Not applicable to this application.

7.3.8 Outstanding Landscapes

The subject site is not identified in the District Plan as being within an area of "outstanding landscape" within the City (refer Map 3.6B of the District Plan). Notwithstanding this the site is located close to the Waitakere Ranges outstanding landscape and properties within the foothills providing a buffer between the urban area of the City and the ranges environment. The Foothill Environment has its own unique character and this is identified and acknowledged in Council Policy of the District Plan and the Waitakere Ranges Heritage Area Act.

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

The creation of two lots greater than the density provided for in the OSP may lead to an infringement to the bulk and location rules of the District Plan. Given the dimensions of the lots and the location of existing cleared areas it is likely that future dwellings would not meet rules required under the District Plan for setbacks from the proposed boundary between lots one, two and three. Notwithstanding this potential infringement the future owners would be aware of potential building envelopes at the time of purchase. Residential development on lots two and three is likely to be visible from the adjoining properties to the north and south. The owners of 108 Parker Road, Oratia to the north have provided their consent to the subdivision. The adjoining property to the south, 130 Parker Road, Oratia did not make a submission in regards to the proposed development. Given the location of the proposed lots and the presence of vegetation along the front boundary of the site it is unlikely that future dwellings would be clearly visible from Parker Road, Oratia.

The application has provided a landscape assessment report prepared by Woodhouse Associates, Landscape Architects. When assessing the impact on adjoining properties the landscape report concludes that *“the change may form a recognisable new element within the overall scene in my opinion it will have little impact on the viewer because it will be effectively screened. This type of subdivision is anticipated by the OSP in the neighbourhood and is in keeping with the intent and nature of the OSP.”*

While it is agreed that future residential development on site will be mostly screened from adjoining properties it is not correct to say that development of the site is anticipated by the OSP as the subject lot has no allocation under the OSP. The applicant claims that the lot has no allocation as they were out of New Zealand at the inception of the OSP consultation and therefore they were not engaged in the process. Indications from Council officers involved in the initial formulation of the OSP indicate that all lots within the OSP area were assessed for subdivision potential based on individual merits regardless of the response of owners. It is likely that no allocation was afforded the lot due to the degree of Managed Natural Area and constraints from stream and overland flow paths across the site. Notwithstanding this, it is acknowledged that the average lot size for subdivision within the OSP area is 1.65 hectares which is only slightly higher than the lot size proposed for lot one.

Transport Assets have assessed the development and it is concluded that the additional dwellings would not have an adverse impact to the safety and functioning of the roading networks.

While it is not anticipated that the proposed development will have adverse effects to the health and safety of adjoining properties the expected flood levels in the lower Oratia catchment are based on the density of subdivision allowed for in the OSP. Project Twin Streams has been based on these expected flood levels and is working to mitigate some flooding effects and protect the Oratia Stream. This subdivision is proposing to exceed the number of lots allowed for in the OSP, therefore the stormwater effects are beyond those anticipated by flood modelling, Catchment Management Plans, and that Project Twin Streams therefore have the potential to increase flooding and erosion downstream.

7.3.10 Heritage

The proposed subdivision has been assessed by Council's Heritage Specialist Alina Wimmer who concluded that no identified archaeological feature or heritage item would be affected by this proposal. The rear of the lot will be protected by covenant and future development is anticipated in an area already modified therefore it is considered that there would be no more than minor adverse effects in respect of the heritage integrity of the area as a result of the proposed subdivision.

7.3.11 Waitakere Ranges Heritage Features

In considering the features of the area (detailed in section 4.1 above) that are identified in the Waitakere Ranges Heritage Area Act as having national significance including:

- Continuous areas of primary and regenerating rainforest with intact ecological sequences;
- The rural character of the eastern foothills which acts as a transitional buffer between metropolitan Auckland and the forested ranges and coast; and
- Density within the area that represents a subservience of the built environment to the area's natural and rural landscape.

Generally it is considered that these features of the foothills will not be compromised by the subdivision and the proposed lots can accommodate future residential development that, subject to the rules of the District Plan, will not significantly compromise the features of the Heritage Areas as listed above.

Notwithstanding the issues of visual amenity it is considered that development resulting from such a subdivision has the potential to adversely affect the functions of natural streams that contribute positively to downstream urban character, stormwater management, and flood protection.

The Council has been in the process of formulating the Oratia Local Area Plan, and while the plan may result in future changes to the rules of the District Plan in relation to permitted uses within the area it does not propose any changes to density prescribed in the OSP.

7.3.12 Comment on Submissions

Some of the concerns raised by the submissions including Mr and Ms Hoerzer, Mr Sunde and Ms Graham have been addressed by changing the proposal from a four lot subdivision to a three lot subdivision with proposed lots having an area generally in line with the average lot areas anticipated within the structure plan area.

There will be a vegetation buffer between any future dwelling and the existing dwelling at 118 Parker Road, Oratia (objector - Ms Graham) but it is likely that there will be some effects from additional noise and light spill but these effects would be mitigated to some degree by conditions of consent such as a requirement for additional planting along the southern boundary.

The OSP did go through a lengthy consultation, notification and appeal process and does generate a legitimate expectation that development within Oratia will be in accordance with the OSP. While Council does have discretion to approve development outside the OSP it is considered that in this instance the applicant has failed to demonstrate that there are exceptional circumstances that warrant a deviation from the lot provision under the OSP. Approving such a subdivision could present a precedent for future applications.

7.3.13 Summary

Overall and for the reasons outlined above, while it is considered that the visual and acoustic effects of the proposed subdivision and land use proposals on amenity on the Oratia area will be no more than minor, there is the potential to give rise to adverse effects on the environment as a result of increased impermeable surfaces resulting in increased stormwater generation that would be more than minor. The applicant has not demonstrated that effects from stormwater can be mitigated totally on site. The full impacts of development and the effectiveness of the mitigation proposed have not been quantified in terms of full hydrology calculations.

The development also has the potential to affect heritage features relating to the functions of natural streams.

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

The Auckland Regional Policy Statement ('the ARPS') incorporating proposed Plan Change 6 contains various objectives and policies of relevance to the current proposal.

ARPS Plan Change 6 page 2-4 provides some context of the subject area, stating:

"The Waitakere Ranges and including their associated foothills and coastal village settlements are a dominant and highly valued iconic landform of the Auckland region. The bush clad rainforest area of the landform is considered to be of international importance and significance. The foothills of the Waitakere Ranges have landscape value in their own right as a conglomerate of natural, rural and cultural landscapes. The foothills also play a significant role as a buffer and transition to the outstanding natural landscape and features of the upper ranges. The area is under unique pressure for subdivision, use and development due to its close proximity to Auckland [emphasis added]."

Strategic Objective 2.6.1(19) seeks to protect the Waitakere Ranges including the foothills from inappropriate subdivision, use and development. Policy 2.6.17(3) further states that Countryside Living will only be provided where it is demonstrated that there is insufficient capacity available within the north/west or south sectors rural areas to cater for anticipated growth. In this case the proposed subdivision would not achieve the intent of the Objective, as no evidence has been presented to identify that there is insufficient capacity for growth within the north/west or south sectors rural areas.

Policy 11.4.1(5) states that development shall not be permitted if it is likely to accelerate, worsen or result in inundation of other property, unless it can be demonstrated that the adverse effects can be avoided or mitigated. In this case and as identified in section 7.1.1 above, the proposal would set a precedent in terms of density in the OSP area that would be detrimental to the extensive catchment modelling undertaken to date by Waitakere City Council. The Oratia catchment is extremely susceptible to downstream flooding and channel erosion, and deviation from the densities provided for in the Structure Plan would exacerbate this situation.

The ARPS states that:

"The Waitakere foothills are an important visual foreground to the bush clad hills. Development beyond the Hobsonville Ridge would need to take account of the pollution-sensitive upper Waitemata Harbour, a regionally significant estuarine area. Development in the Kumeu, Oratia, Opanuku and Swanson catchments would need to address the potential for effects on or by flooding in those catchments."

The ARPS as amended by Plan Change 6 provides clear policy guidance in terms of development outside the metropolitan urban limit. That is, the foothills of the Waitakere Ranges are highly valued and prone to subdivision pressure such that proposals for further fragmentation (including that for which consent is sought) are inappropriate and inconsistent with this policy direction.

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

7.5.1 District Plan Policies and Objectives

A number of objectives and policies of the District Plan are relevant to the current proposal, particularly with regard to the density provisions of the OSP and heritage values.

The District Plan Policy 1.1 requires that settlement in the OSP area should be of a type and density that avoids, remedies or mitigates adverse impacts on water quality and quantity. In particular:

- Settlement should be located away from riparian margins and areas prone to flooding and flood hazard areas; and
- Development shall be managed to avoid further adverse effects, including cumulative effects.

Policy 1.7 requires that activities should be managed in a way that encourages the absorption of rainfall and surface water runoff on-site, avoids the creation or exacerbation of stormwater flooding problems off-site and minimises runoff of surface water into stream catchments and waterways.

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

If considered in isolation as a stand-alone subdivision, the effects of three additional dwellings plus driveways (as proposed by this subdivision) could possibly be mitigated on site. On a wider scale, however, the issue of cumulative effects must be considered. The density of settlement provided for in the OSP can be catered for with existing infrastructure.

When the total area is considered, it becomes clear that there are effects beyond the individual site boundaries that cannot be mitigated on site. Full impacts of development and the effectiveness of the mitigation proposal have not been quantified in terms of full hydrology calculations. The applicant has failed to demonstrate that adverse impacts on the stormwater catchment are mitigated on site.

Policy 9.14 seeks to ensure that subdivision is designed in a way that minimises adverse effects on natural features, including heritage. Policy 9.2 is more specific, stating that:

“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. 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 the essential landscape qualities of these areas.”

Also of relevance are Policies 11.1 and 11.29. These state as follows:

“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 permanent pattern of settlement in the Foothills Environment that is in keeping with complex, varied and overall natural character of the area”.

“Structure Plans 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:..

- recognition, protection and enhancement of the quality of the landscape within and around each Structure Plan Area;*
- 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; and*
- a level of development and density of population that does not increase demands for an urban level of infrastructure, roading and servicing.*

In recognition of the above, structure plans shall be prepared in a way which establishes a permanent density of development to be shown on a structure plan forming part of the Plan.

As previously stated in this report, the property at 110 Parker Road, Oratia has no lot allocation under the provisions of the OSP. Further subdivision as proposed would give rise to adverse amenity effects through spread development, and would undermine the urban containment policies for the Auckland region as specifically identified in Policy 11.29. The density of the subdivision may be compatible with the pattern of current settlement but the additional future development has the potential to increase demands on infrastructure not anticipated under the OSP.

The District Plan provides clear policy in terms of the sensitive Foothills Environment and in particular, Oratia. While the application will likely have only minor adverse impacts to the character and amenity of the area, the OSP has been formulated after detailed assessment public consultation and judicial review and such a deviation from the Structure Plan has the potential to undermine the integrity of the District Plan. It is considered that in this case the overall proposal is not consistent with the policy direction of the District Plan and therefore cannot be supported.

7.5.2 Assessment Criteria

Assessment criteria 7(zc) of the Foothills Subdivision rules requires that in the OSP area, assessment should be made of the extent to which it can be shown that a proposal avoids, remedies or mitigates any adverse effects (including any cumulative adverse effects) generated by an increase in the number of proposed sites on:

- landscape character;
- amenity values;
- natural features;
- protection and/or enhancement of vegetation generally as indicated on the OSP;
- access;
- native vegetation and ecological corridors;
- streams and the quality of water they contain;
- the ability of each proposed site, and the entire Structure Plan catchment affected by any increase in the number of proposed sites, to treat and dispose of stormwater;
- the ability of each proposed site to treat and dispose of wastewater; and
- heritage sites, buildings and trees.

As identified by Council's Ecowater Engineer and outlined in section 7.1.1 of this report above, the precedent created by the current subdivision proposal to a size below that provided for in the Foothills Environment and OSP has the potential to compromise the ability of the catchment to treat and dispose of stormwater. Such effects cannot be avoided, remedied, or mitigated.

7.6 Any Other Matters the Consent Authority considers relevant and reasonably necessary to determine the Application (104(1))(c)

7.6.1 Oratia Structure Plan & Precedent Effects

The OSP was confirmed by the Environment Court in decision A21/2000 (see Appendix 11), paragraph [53] of which states:

"It is clear from the evidence that the OSP is the product of several years of exhaustive research and analysis by Waitakere City Council officers and community consultation on a range of matters. The structure plan attempts to reconcile pressures for subdivision and development at the same time defining the optimum environmental threshold for development. The research and analysis has formed the basis of much of the expert evidence we have heard. We are satisfied on the evidence that the Oratia area is extremely sensitive with respect to ecological, landscape and stormwater and wastewater management issues".

With regard to density greater than provided for in the OSP, the Environment Court considered that a discretionary activity status was appropriate and would provide Council with sufficient discretion to ensure that such development would not lead to a series of incremental increases in density on an ad hoc and non-integrated basis.

Later Environment Court decision A136/2005 (see Appendix 12) tested the density debate, approving the subdivision of three lots at a density ranging from 7,500m² to 1.8 hectares in Parker Road. Paragraph [89] of this decision stated as follows:

“Density is able to be judged on a case by case basis as applications are made. Any applications for consent are likely to be judged very carefully in accordance with the assessment criteria of the City Plan, the Auckland Regional Policy Statement, and the provisions of the Resource Management Act. The greater the increase in density proposed from the OSP, the less likely the deviations are to find favour with the Council or the Environment Court.”

In the case of the current proposal, the size of the proposed lots ranging from 1.4 hectares to 2.08 hectares is not necessarily out of character with the pattern of urban development within the OSP but the increased impermeable surfaces may have the potential to increase downstream flooding and erosion. The expected flood levels in the lower Oratia catchment are based on the density of the subdivision allowed for in the OSP, therefore the stormwater effects are beyond those anticipated by flood modelling, Catchment Management Plans, and Project Twin Streams. On this basis the development is likely to give rise to adverse precedent effects. While the applicant has argued that they were out of the country at the time the OSP was formulated it is considered that in this instance this does not constitute unusual circumstances. An incremental pattern of increased density on such an adhoc basis would undermine the intent of the Oratia Plan, to the detriment of this sensitive area. An unhelpful precedent would also be established in terms of downstream flooding and channel erosion, as identified by Council's Ecowater Engineer. Conditions restricting future development are not considered to be achievable or enforceable in the long term, the scale of any potential conditions being of such significance that consent is not feasible in the first instance.

It is therefore considered that the Council should exercise its discretion to protect the integrity of the OSP.

7.6.2 Waitakere Ranges Heritage Area Act 2008

When considering a resource consent application for a non-complying activity in the heritage area, a consent authority:

- (a) Must have particular regard to:
 - (i) The purpose of the Waitakere Ranges Heritage Area Act and the relevant objectives; and
 - (ii) The relevant provisions of any national policy statement or New Zealand coastal policy statement; and
- (b) Must consider the objectives having regard to any relevant policies in the regional and district plans.

Under the objectives of the Waitakere Ranges Heritage Area Act Council must consider the following objectives of the Waitakere Ranges Heritage Area Act:

- to recognise and avoid adverse potential, or adverse cumulative, effects of activities on the area's environment (including its amenity) or its heritage features; and
- to recognise that, in protecting the heritage features, the area has little capacity to absorb further subdivision.

The functions of streams within the foothill are recognised as a heritage feature under the Waitakere Heritage Area Act and while it is generally accepted that the visual impact from the subdivision could be mitigated to an extent that the effects would be no more than minor the applicant has failed to demonstrate that additional development will not add to the cumulative negative effects of downstream flooding.

8.0 PART II OF THE RESOURCE MANAGEMENT ACT 1991

The purpose and principles of the Resource Management Act 1991 have primacy over all other considerations set out in section 104 of the legislation. Section 5 identifies that the purpose of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources; meaning managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

In the current case, it is considered that the subdivision of the property at 110 Parker Road, Oratia does not constitute sustainable management of natural and physical resources. Fragmentation of identified key land at the foot of the nationally significant Waitakere Ranges would set a precedent of urban development unlikely to meet the foreseeable needs of future generations. (These future needs include streams and water quality etc while avoiding flood risk and maintaining urban development within existing boundaries, as identified in the Waitakere City Council Oratia Structure Plan Decision Notice dated 22 April 1997).

It is not considered sustainable to assess the effects of rural fragmentation on a case by case basis indefinitely. Rather, a point must be reached where no further intensification is approved, and this has been identified in the OSP after extensive research, consultation, and testing through the Environment Courts. Although this density approach has since been challenged by the Environment Court (for example, A136/2005), it still holds that the current case does not present sufficient positive benefits to outweigh the wider scale adverse effects already identified in this report, in particular cumulative effects from stormwater downstream of the Oratia Catchment.

Overall the proposed development is considered to be inconsistent with the purpose and principles of Part II of the Resource Management Act.

9.0 CONCLUSION

The proposal is unlikely to safeguard the life-supporting capacity of water and soil. As identified by Council's Ecowater Engineer, the Oratia Catchment is extremely sensitive and over-density development is liable to contribute significantly to downstream flooding and channel erosion. Incremental subdivision without extenuating circumstances is therefore to be avoided in the first instance.

The proposal gives rise to wider policy issues at both a district and regional level. The subdivision is not in accordance with the intent of the OSP and does not constitute 'sustainable development' for the purposes of Part II of the Resource Management Act. *It is therefore concluded that for the above reasons, the application **does not merit consent** in accordance with section 104 of the Resource Management Act 1991.*

10.0 RECOMMENDATIONS

It is recommended that pursuant to section 104, 104B and 113 of the Resource Management Act 1991, that **consent be refused** to subdivision and land use resource consent applications SUB-2008-1394 and LUC-2008-1392, being a non-complying activity to undertake a three lot subdivision at a greater density than provided in the OSP; with associated archaeological, subdivision, earthworks land use infringements and development at a site that may be contaminated land use infringements at 110 Parker Road, Oratia (being Lot 2 DP 83386) for the following reasons:

- (i) The proposal is not unique and would not be consistent with the assessment criteria, objectives and policies of the District Plan or the Auckland Regional Policy Statement. The proposal may undermine the integrity of the OSP as such subdivision would create a precedent for similar future development, to the detriment of the wider foothills environment;
- (ii) Development beyond the OSP density for reasons of adverse cumulative effects may contribute to downstream flooding and erosion impacting on the ability of the entire catchment to treat and dispose of stormwater;
- (iii) No conditions are possible which would wholly avoid, remedy or mitigate identified long term adverse effects from stormwater on the environment;
- (iv) The proposal does not meet the tests for sustainable development contained in Part II of the Resource Management Act 1991; and
- (vi) The proposal does not accord with the objectives of the Waitakere Ranges Heritage Area Act.

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