

NOTICE OF HEARING

HEARING BY COMMISSIONERS

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

DATE: Friday, 3 September 2010 **TIME:** 9.30 am

MEETING ROOM: Council Chamber

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

to consider a resource consent application for 39 Chamberlain Road, Massey and to take any necessary action connected therewith.



24 August 2010

Maea Petherick
COMMITTEE SECRETARY
Telephone (09) 836 8000 extn 8104

MEMBERSHIP:

Commissioners: Cr VS Neeson, JP
 Cr DQ Battersby, QSM, JP
 Cr JP Lawley, JP

(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 IN THE COUNCIL CHAMBER
AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE,
ON FRIDAY, 3 SEPTEMBER 2010, COMMENCING AT 9.30 AM**

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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 Commissioner.

APPLICATION DETAILS

Senior Planner:	Stuart Brooke																																																																								
Site Address:	9 - 39 Chamberlain Road, Massey West																																																																								
Applicant:	Chamberlain 2008 LTD																																																																								
Date Received:	22/5/2008																																																																								
Resource Consent No:	LUC 2008-807 / SUB 2008-808																																																																								
Legal Description:	Part Lot 30 DP 45620																																																																								
Address for Service:	Chamberlain 2008 C/- John Jiang CPG New Zealand LTD PO Box 11 -119 Auckland 1542																																																																								
Site Area:	6.0685 Hectares (more or less)																																																																								
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Operative District Plan:	Living 2 & Living 4 Environment																																																																								
Human Environment:	Living 2 & Living 4 Environment																																																																								
Natural Area:	General, Managed & Riparian Margin (5m) Natural Areas																																																																								
Hazards:	Slope instability, Flooding																																																																								
Roading Hierarchy:	District Arterial Rd (Don Buck Road) and Local Rd (Chamberlain Road)																																																																								
Proposed Plan Changes:	N/A																																																																								
Further Information Requested	Yes																																																																								
Site Visit	28 July 2009																																																																								

1.0 INTRODUCTION AND RECOMMENDATION

1.1 Nature of the Application

The applicant seeks land use and subdivision consent for a greenfield residential development on a 6 hectare site located within the Birdwood Urban Concept Plan. The proposal would involve the creation of 27 allotments of 450m² to 499m² located in the northern portion of the site, and the construction and vesting of a road and drainage reserve. A southern balance lot of 3.6575 hectares would be set aside for future development within the Living 4 Environment. Bulk earthworks and vegetation clearance are required to facilitate the proposed development. The site is subject to natural hazards, in this case land instability. Please refer to Section 3.2 of this report for a description of amendments which have been proposed following public notification of this application.

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.

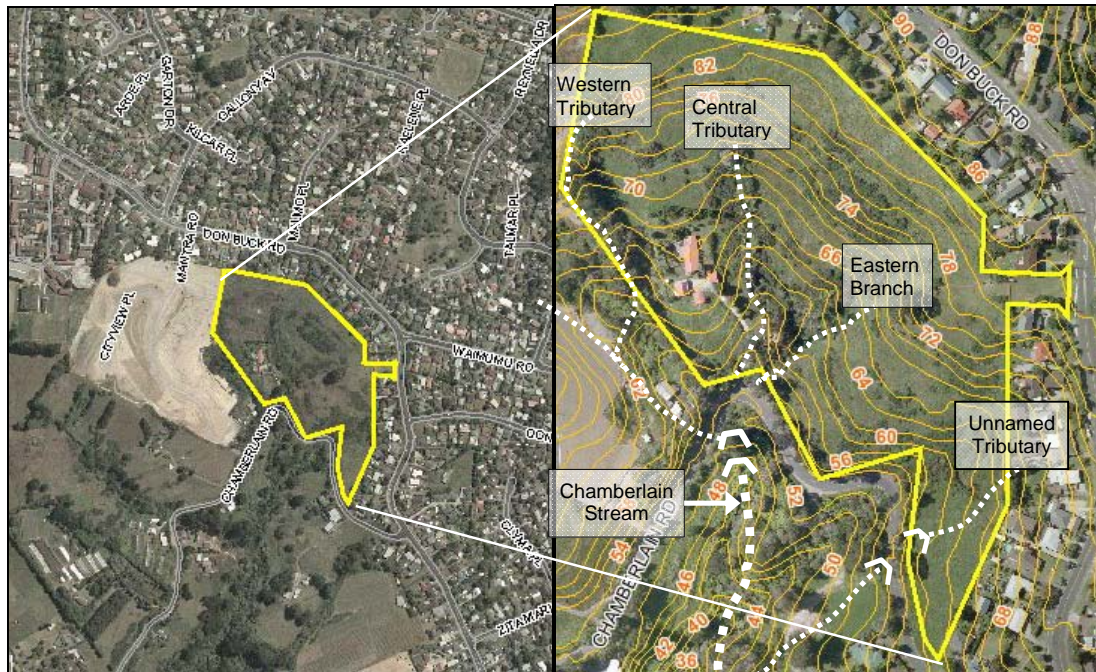
The current proposal must be assessed as a non-complying activity, and has the potential to give rise to the following adverse effects:

- ecological integrity of Chamberlain Stream and its downstream catchment;
- natural character of the Chamberlain Stream headwaters and associated landforms;
- health and safety effects associated with earthworks and site stability;
- traffic effects; and
- onsite amenity.

1.3 Planner's Recommendation

The planner who has prepared this report recommends that, subject to any contrary or additional evidence submitted at the Hearing, **consent be refused** to the application by Chamberlain 2008 LTD. It is considered that the environmental effects that may be generated by the activity would be contrary to the relevant objectives and policies of the District Plan and would give rise to more than minor adverse environmental effects. Furthermore it is considered that the activity would not satisfy the matters specified in Part 2 of the Resource Management Act 1991.

2.0 LOCATION PLAN



Photograph 1 (left): Aerial photograph (2005) of site and surrounding environment. Note the bulk earthworks associated with the recent subdivision of the west adjoining site.

Photograph 2 (right): Aerial photograph (2008) of site overlaid with contours (2.0m intervals) and watercourses.

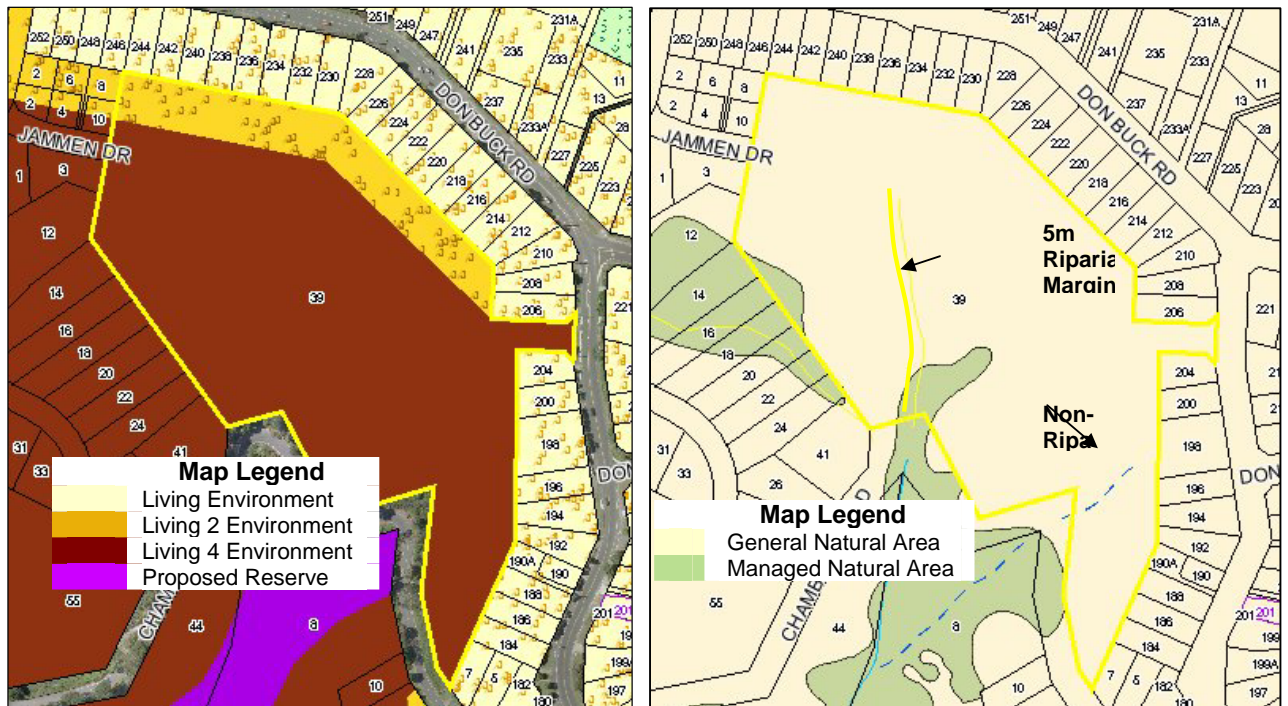


Figure 1 (left): The site as identified in the Operative District Plan Human Environment Maps

Figure 2 (right): The site as identified in the Operative District Plan Natural Area Maps. Note: only two of the four watercourses are identified on this map.

3.0 SITE AND PROPOSAL

3.1 Description of the site and surrounding environment

The site consists of a 6.0685 hectare irregularly shaped block of land, located on the south-western side of Don Buck Rd, Massey. The site is located within the northern portion of the Birdwood Urban Concept Plan ("BUCP") area, which is discussed in Section 4.2 below.

Adjoining the sites north and eastern boundaries are 31 well established residential properties located on Don Buck Road between Mantra Drive and Chamberlain Road, and the site has access/frontage to Don Buck Road between 204 and 206 Don Buck Road. The irregularly shaped southern boundary adjoins Chamberlain Road for approximately 320m. The site's western boundary adjoins the recently subdivided block of land previously known as 41-49 Chamberlain Road, which is also located within the BUCP. This development contains 76 residential lots ranging from 450m² to 2776m² in area. At the time of writing, most of these lots had houses that were either recently completed or under construction.

The site has undulating terrain with a topography that varies from gently sloping to moderately steep, and with very steep localised slopes within the three main gully systems in the middle of the site. There is also a fourth shallower gully system located in the southern corner. The site is known by Council to be stability sensitive, and a geotechnical investigation undertaken by Soil & Rock Consultants in 2006 ("the geotechnical report") identified that the site is affected by relic instability, weak soils, and high groundwater conditions.

The site is predominantly open pasture with significant areas dominated by gorse and blackberry. There are four watercourses within the site, as identified on Photograph 2 above. An ecological assessment of the site prepared by Keren Bennett of Bioresearches ("the Bioresearches ecology report") has been submitted with the application. The Bioresearches ecology report classifies the watercourses within the site in accordance with the ARC Proposed Regional Plan: Air Land & Water ("the Proposed Regional Plan") as follows:

- Western tributary - Category 2 (non-permanent) watercourse;
- Central tributary - upper: Category 2 watercourse;
- Central tributary - lower: Category 1 (permanent) watercourse;
- Eastern Branch - upper: Category 2 watercourse; and
- Eastern Branch - lower: Category 1 watercourse.

These watercourses are headwaters of the Chamberlain Stream. At the bottom of the site they pass through culverts under Chamberlain Road into Chamberlain Stream which then flows southward for 750m through a vegetated reserve before merging with the larger Swanson Stream. Swanson Stream continues for a further 2km through esplanade reserve before merging with Huruhuru Creek, Henderson Creek and the Waitemata Harbour. Historic ecological surveys of Swanson Stream and Chamberlain Stream identify this receiving environment as a valuable freshwater habitat; with records of various species of freshwater fish and macro invertebrates.

It is further noted that the central tributary has a 5m Riparian Margin Natural Area classification under the District Plan. The un-named tributary in the south-eastern corner of the site was not described in the Bioresearches ecology report, although it was identified as a Category 2 (intermittent) watercourse by the Council's Ecologist, Martin Sharp. There is a significant weed presence within and around all of the watercourses, which also contain pockets of native vegetation, consisting mostly of tree ferns and kanuka. Elsewhere, large exotic trees are dotted throughout the site.

The site currently contains one dwelling and associated buildings, which are clustered on the lower slopes of the site near the south-western boundary. Access to the dwelling is provided from Chamberlain Road.

3.2 Birdwood Urban Concept Plan

The site is located within the northern portion of the Birdwood Urban Concept Plan ("BUCP") area, which comprises 65 hectares of land on the western edge of Massey. While this land has been located within the metropolitan urban limits for a number of decades, it has remained undeveloped due to significant geotechnical and stormwater constraints. Following the commissioning of various technical investigations, the BUCP was introduced as a District Plan Change (Plan Change 4) in 2003 and was made operative in October 2008.

The purpose of the BUCP is to enable an appropriate scale of residential development subject to local physical and environmental constraints. This is provided via two separate residential zones:

- Living 2: standard lot sizes (450m² minimum) for land which while subject to minor instability is considered generally suitable for development; and
- Living 4: larger lot sizes (minimum average 2000m², minimum 1250m²) for land which is steeper and subject to significant slope stability issues.

The majority of the subject site is zoned as Living 4 Environment, though a 25m to 33m wide strip along the northern boundary has been zoned as Living 2 Environment (refer Figure 1 above). The BUCP also identifies riparian areas which are to be Streamside Enhancement Areas, and provides an indicative layout of key roads within the plan area. The entire length of the central tributary on the subject site is identified in the BUCP as a Streamside Enhancement Area. No indicative roads are identified on the site.

3.3 Proposal

It is proposed to subdivide the northern portion of the site into 27 residential lots that vary in size from 450m² to 499m². The proposed layout comprises of two rows of mostly square shaped blocks set against the northern boundary. The proposed lots comply with the minimum size requirements for the Living 2 Environment. The lower row of 14 lots would extend beyond the Living 2 zone and into the area of the site zoned as Living 4 Environment. As noted in Section 3.1 above, this is considered a non-complying activity under Subdivision Rule 4.

A 17m wide road reserve containing an 8m wide carriageway would be constructed immediately south of the proposed lots on an east west axis, and would link the recently established Jammen Drive with Don Buck Road. This Rd would be vested to Waitakere City Council ("the Council"). Access from the rear lots to the road would be provided via six shared driveways and one sole use rear access driveway.

It is proposed to construct a permanent stormwater treatment and detention pond within the lower portion of the central tributary. The pond would be vested to the Council, and would have access from Chamberlain Road. A balance block of 3.6575ha would incorporate the remaining land south of the proposed road, exclusive of the stormwater pond. Each of the residential lots would be required to install 6,000L roofwater tanks to attenuate the discharge of stormwater.

A significant amount of earthworks is proposed to establish the development. In total, approximately 37,100m³ of earthworks would be carried out over a 25,958m² area, with a balance of cut to fill. Proposed erosion and sediment control plans have been submitted which details measures that would be in accordance with Auckland Regional Council's ("ARC") Technical Publication 90: Erosion & Sediment Control Guidelines for Land Disturbing Activities ("TP90"), and include the following:

- sediment retention pond with chemical flocculation treatment;
- clean-water diversion bunds;
- contour and runoff drains; and
- stabilised entranceways and topsoil stockpile locations.

The proposed earthworks would be undertaken in two separate stages as follows:

Stage 1: Lower Earthwork Area

Form a sediment retention pond (to later be utilised as a permanent stormwater pond) within the lower reaches of the Central Tributary gully system in the middle of the site, involving maximum cut depth of 1.5m and maximum fill depth of 5.0m.

Stage 2: Upper Earthwork Area

- Excavate most of the area above the proposed road to a general depth of 1.0m – 1.5m (and up to 4m in parts). A circa 305m long retaining wall would be constructed along the majority of the northern boundary to stabilise this cut. The wall would be 1.0m in height over 295m, reducing to zero over the final 10m at its eastern end;
- Re-use most of the excavated material as fill to form the proposed road and to create a uniform 1:3 (H:V) sloped batter below the road to existing ground level. The maximum fill depth would be 7.3m where the upper reaches of the Central Tributary gully would be filled; and
- The formation of the road entry from Don Buck Road would result in filling and retaining to a depth of up to 2.4m against the northern boundary of 204 Don Buck Road.

An arboricultural assessment prepared by Karl Burgisser of Arborlab ("the arborist report") has been submitted with the application. This report identifies a variety of exotic and native vegetation (including both weeds and protected specimens) which would need to be cleared from within the General, Managed and Riparian Margin (5m) Natural Areas on the subject site to enable the proposed earthworks. The application does not quantify the total area of proposed vegetation clearance, though it would certainly exceed 500m². The proposed earthworks along the northern boundary would also involve works within the dripline of a number of generally protected trees located on north adjoining properties (see Section 4.2.2 below for detail).

The applicant proposes to establish approximately 9,000m² of bush planting within the following locations in the southern portion of the site:

- 2,600m² of bush planting southeast of the stormwater pond and adjacent to the Chamberlain Road boundary;
- 3,300m² against the western site boundary and 490m² around the eastern side of the stormwater pond to mitigate additional impermeable surfaces;
- Approximately 2,000m² on the embankments of the stormwater pond;
- A 5m wide re-vegetated strip in the general location of the central tributary, between the proposed Rd and stormwater pond; and
- Street tree planting on both sides of the proposed road.

Refer to Drawing 200 Rev E for the exact location of proposed planting. It is noted that planting and weed management plans have only been provided for the stormwater pond and the road reserve areas.

3.4 Background to Proposal

A pre-application meeting was held on 14 March 2008 to discuss the proposal. Resource management issues raised included:

- Subdivision layout;
- Earthworks;
- Visual effects;
- Stormwater and infrastructure design; and
- Roading design.

The resource consent application was received on 23 May 2008. Due to the complex nature of the application there were various requests made by the Council for a substantial amount of further information pursuant to Section 92 of the RMA. Responses were provided in due course and included were a few minor amendments to the proposal.

3.5 Amendments to Proposal Post Notification

The application was publicly notified on 11 March 2010 and submissions closed on 14 April 2010. After reviewing the submissions the applicant has proposed amendments to the application. It has been assessed that these changes (described below) have not changed the nature of the application or increased the extent of adverse effects. Rather, they have been proposed in response to matters identified in the determination for notification and concerns raised by submitters. These changes would have been unlikely to prompt submissions from any additional parties and it was therefore considered unnecessary to re-notify the amended version of the application.

Earthworks

The original earthworks proposal involved a volume of 43,855m³ over 25,120m² with a net export of 3,750m³ spoil to be removed from the site. The volume of earthworks has been reduced to 37,100m³ and the area of earthworks slightly increased to 25,958m². With the exception of 500m³ of unsuitable fill which would likely require removal from the site, the earthworks would achieve a cut to fill balance.

These changes are predominantly associated with a reduction in the depth of cut earthworks above the road. This will result in the height of Retaining Wall "A" being reduced from 2.0m - 1.0m, and its length reduced by 15m at the eastern end. The finished level of the road will not be altered, and the increased vertical distance (1.0m) between the road and the base of Retaining Wall "A" will be accommodated with an increased gradient (from approximately 1:7 to 1:6).

Below the road, the earthworks have been amended by increasing the length of the batter to reduce the gradient from 1:3 to 1:4. In addition, it is proposed to excavate and install a shear key along the base of the road batter between chainage 215.00 and 270.00 for additional stability, as recommended by Soil & Rock Consultants in an addendum report dated 17 June 2010.

Retaining Wall "B"

The applicant proposed a two tiered retaining within the road reserve to reduce the dominance and potential intrusion of privacy upon the adjoining property at 204 Don Buck Road. The applicant has subsequently consulted with Leslie & Lucy Manyard, the owners of 204 Don Buck Road, and reverted back to the original proposal of a single retaining wall along the boundary with a 1.8m high fence to address privacy issues. The amended plans contain the written approval of L S Manyard of 204 Don Buck Road.

Bush Planting

The applicant has proposed a 3,300m² strip of bush planting against the western site boundary to mitigate the stormwater effects associated with the additional impermeable surfaces that would result from establishing 450m² - 499m² lots (which would be allowed 60% of site area in impermeable surfaces) within the Living 4 Environment.

3.6 Information Received

Documents considered for this report include the application documentation and the site visit checklist. The following information has been provided with the application and in response to further information requests:

- Application Form, Covering Letter and Assessment of Environmental Effects prepared by Siani Walker of Duffill Watts Consulting Group, dated May 2008, and supplementary Assessment of Environmental Effects prepared by Emma Turley of Duffill Watts Consulting Group, dated 1 May 2009.
- Proposed Scheme Plan prepared by TSE Group, dated May 2008, referenced as project 5569-01.
- Arboricultural Assessment prepared by Karl Burgisser of Arborlab, dated 31 March 2008 (ref: 14070) and subsequent response to further information request dated 21 August 2008.
- Records of Consultation with Te Kawerau a Maki.
- Archaeological Assessment prepared by Russell Foster & Associates, dated March 2008 (ref: 9 Chamberlain Rd).
- Preliminary Site (Contamination) Investigation prepared by Groundwater and Environmental Services, dated March 2008 (ref: 9-39 Chamberlain Rd).
- Ecological Report prepared by BIORESEARCHES dated 7 April 2008 (ref:0804) and subsequent responses to further information request dated 21 July 2008 and 12 August 2008.
- Transportation Assessment Report prepared by Traffic Design Group, dated March 2008 (ref: 9573ta.doc).
- Geotechnical Investigation Report prepared by Soil & Rock Consultants, dated June 2006 (ref: 06253), addendum report dated 17 June 2008, and subsequent responses to further information requests dated 14 July 2008 and 8 May 2009.
- Stormwater assessment prepared by Duffill Watts Consulting Group submitted with the original application, and subsequent responses to further information requests dated 18 September 2008, 13 March 2009 and 1 July 2009.
- Planting, Maintenance & Weed Management Programme prepared by Duffill Watts Consulting Group dated May 2008, including the following plans:
 - Landscape Plan: Street Planting Plan (Sheet L01, August 2008); and
 - Landscape Plan: Pond /Stormwater Detention (Sheet L02, August 2008).

- Drawings prepared by Duffill Watts Consulting Group/CPG referenced as Project No: 5569-01, including plans:
 - Drawing 200: Earthworks Plan (Rev E);
 - Drawing 201: Depth of Cut and Fill Plan (Rev B);
 - Drawing 202: Erosion and Sediment Control Plan Stage 1 (Rev B);
 - Drawing 203: Erosion and Sediment Control Plan Stage 2 (Rev B);
 - Drawing 204: Silt Control Details (Rev B);
 - Drawing 205-1: Earthworks Cross Sections Sheet 1 (Rev B);
 - Drawing 205-2: Earthworks Cross Sections Sheet 2 (Rev B);
 - Drawing 205-3: Earthworks Cross Sections Sheet 3 (Rev B);
 - Drawing 206: Catchment Plan for USLE (Rev B);
 - Drawing 207: Retaining Wall Long Sections (Rev B);
 - Drawing 300: Roading Plan (Rev A);
 - Drawing 301-1: Roading Typical Cross Sections & Details (Rev A);
 - Drawing 301-2: Roading Typical Cross Sections & Details (Rev A);
 - Drawing 302: Retaining Wall B Detail (Rev A);
 - Drawing 310: Road 1 Long Section (Rev A);
 - Drawing 311: Access ways 1-6 Long Sections (Rev A);
 - Drawing 400: Drainage Plan (Rev C);
 - Drawing 401-1: SW Pond & Access way Plan & Sections (Rev E);
 - Drawing 401-2: Stormwater Pond Cross Sections (Rev E);
 - Drawing 402: Stormwater Catchment Plan (Rev A);
 - Drawing 403: Stormwater Long Sections (No Rev listed);
 - Drawing 403-2: Stormwater Long Sections Sheet 2 (Rev A);
 - Drawing 403-3: Stormwater Long Sections Sheet 3 (Rev A);
 - Drawing 405: Stormwater Detention Tank Details (Rev B);
 - Drawing 410: Stormwater Catchment Plan (Rev A) *separate to Sheet 402*;
 - Drawing 411: 1% AEP Stormwater Overland Flowpath Plan (Rev B);
 - Drawing 412: Detention Tank Details (Rev B);
 - Drawing 413: Counterfort Drain Plan (Rev B);
 - Drawing 414: Existing Pond Upgrade Investigation Plan (Rev A);
 - Drawing 500-1: Sanitary Sewer Long Sections Sheet 1 (Rev A);
 - Drawing 500-2: Sanitary Sewer Long Sections Sheet 2 (Rev A);
 - Drawing 600: Water Supply Plan;
 - Drawing 800-1: Standard Details Sheet 1 (Rev A); and
 - Drawing 800-2: Standard Details Sheet 2 (Rev A).

A1-A84

A full copy of the application as submitted and subsequently amended is attached at pages A1 to A84 as Appendix 1.

The following person(s) peer reviewed the information provided:

- Daniel Thomas, Council's Drainage Engineer;
- Gordon Griffin, Landscape Architect;
- Martin Sharp, Ecologist;
- Paul Tyler, Environmental Monitoring Officer (earthworks assessment);
- John Seward & Russell Allison, Geotechnical Engineer (geotechnical review);
- John Carroll, Transport Engineer; and

- Simon Miller, Arborist (consultant).

It is considered that sufficient information has been provided to enable Council to fully assess the proposal and determine the application.

A111-A165

The specialist reports have been attached at pages A111 to A165 as Appendix 4.

4.0 REASONS FOR THE APPLICATION

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

4.1 Subdivision - Operative District Plan

Subdivision Rules 4: Greenfield Subdivisions

Non-Complying Activity consent is required for the subdivision of a site more than 1 ha in area and creating more than 10 new sites which does not meet the performance standards of Rules 4.1(b) and 4.2(b). In this instance it is proposed to create new sites within the Living 4 Environment which are less than 1,250m² in (net site) area.

4.2 Land Use - Operative District Plan

4.2.1 City Wide Rules

Natural Hazards Rule 1.1: General

Limited Discretionary Activity is required for earthworks or clearance of vegetation required by the Natural Area Rules to obtain resource consent, where the Council has knowledge that the land is or is likely to be subject to any natural hazard for which the Council has primary responsibility in terms of the of the relevant provisions of the Auckland Regional Policy Statement.

- The site is subject to geotechnical instability and also contains overland flow paths.

4.2.2 General Natural Area Rules

General Natural Area Rule 2.2(a): Vegetation Alteration

Controlled activity consent is required for the removal of:

- (i) vegetation which is less than 6m in height and less than 600mm in girth as measured at 1.4m of the ground; and
 - (ii) vegetation listed in the Removable Vegetation Appendix and the Environmentally Damaging Plants Appendix; to a total cleared area of greater than 500m² within the General Natural Area.
- At least 5,000m² of vegetation meeting the above criteria (excluding pasture) would be cleared from within the General Natural Area on 39 Chamberlain Rd, Massey.

General Natural Area Rule 2.2(b): Vegetation Alteration

Controlled Activity consent is required for works within the dripline of native vegetation greater than 6m in height.

- Earthworks would be undertaken within the dripline of 11 generally protected trees located at 206, 214, 218, 222, 224, 226, 228, 230 and 242 Don Buck Rd.

General Natural Area Rule 2.3: Vegetation Alteration

Limited Discretionary Activity consent is required for the clearance of vegetation exceeding 6m in height and 600mm in girth as measured at 1.4m of the ground.

- 19 generally protected trees would be removed from the portion of 39 Chamberlain Rd located within the General Natural Area. Refer to applicant's arborist report for specimen detail.

General Natural Area Rule 3.4: Earthworks

Discretionary Activity consent is required for earthworks associated with a subdivision and not meeting the performance standards of GNA Rule 3.3(a)(i).

- A total of approximately 37,100m³ of earthworks would be undertaken in association with a *Non-Complying Activity* Subdivision.

4.2.3 Managed Natural Area Rules

Managed Natural Area Rule 2.4: Vegetation Alteration

Discretionary activity consent is required for vegetation clearance associated with a subdivision requiring resource consent pursuant to Subdivision Rule 4 (Greenfields Subdivision).

- Approximately 1,000m² of vegetation would be cleared from within the Managed Natural Area onsite.

Managed Natural Area Rule 3.3: Earthworks

Discretionary activity consent is required for earthworks associated with a subdivision requiring resource consent pursuant to Subdivision Rule 4 (Greenfields Subdivision).

- Extensive earthworks would be undertaken within the Managed Natural Area associated with the formation of a stormwater treatment pond. It is impractical to calculate the volume of these earthworks which fall within the MNA as the pond would extend over two other adjacent Natural Areas.

4.2.4 Riparian Margin Natural Area Rules

Riparian Margin Natural Area Rule 2.4: Vegetation Alteration

Discretionary activity consent is required for vegetation alteration associated with a subdivision requiring resource consent pursuant to Subdivision Rule 4 (Greenfields Subdivision), where the vegetation alteration is necessary to provide for infrastructure and does not meet the standards of RMNA Rule 2.3(b).

- Approximately 1,450m² of vegetation would be cleared from within the Riparian Margin (5m) Natural Area to provide for the construction of a stormwater pond.

Riparian Margin Natural Area Rule 3.3: Earthworks

Discretionary activity consent is required for earthworks associated with a subdivision requiring resource consent pursuant to Subdivision Rule 4 (Greenfields Subdivision), where the earthworks are necessary to provide for infrastructure and does not meet the standards of RMNA Rule 3.1(b).

- Extensive earthworks would be undertaken within the Riparian Margin Natural Area associated with the formation of a stormwater treatment pond. It is impractical to calculate the volume of these earthworks which fall within the RMNA as the pond would extend over two other adjacent Natural Areas.

4.2.5 Living Environment Rules

Living Environment Rule 12.2: Shared Driveways

Controlled Activity consent is required for the construction of six shared driveways serving more than one dwelling which meet the performance standards of LE Rule 12.2.

Living Environment Rule 17.3: Infrastructure

Discretionary Activity consent is required for the establishment of infrastructure not meeting the performance standards of LE Rule 17.1 and 17.2, provided it is not located on a sensitive ridge, headland, cliff or scarp.

- It is proposed to establish a stormwater treatment pond.

4.3 Proposed Plan Changes

Plan Change 4: Birdwood Urban Concept Plan

Plan change 4 was made operative on 8 September 2008. There are no proposed plan changes which affect the proposal.

Overall the application is considered to be a Non-Complying activity.

5.0 OTHER RESOURCE CONSENTS

Resource consents have been obtained from the Auckland Regional Council for earthworks, discharge of stormwater and Streamworks (ref: 35843, 35841, and 37733).

6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

A87-A110

The application was publicly notified on 11 March 2010. The period for submissions closed on 14 April 2010. A total of seven submissions were received of which six were in opposition and one was neutral. A full copy of the submissions are attached at pages A87 to A110 as Appendix 3.

6.1 Submissions

The following persons have submitted on the proposal:

Submitter	Address	Support / Oppose
Richard John Parsons	200 Don Buck Rd	Oppose
Leslie Stephen Maynard	204 Don Buck Rd	Oppose
George Joseph & Rosemary Claire Borg	234 Don Buck Rd	Oppose
Brendon & Sheree Harkness	206 Don Buck Rd	Oppose
Robert Ford	5 Chamberlain Rd	Neutral
Valerie Jane Merritt	232 Don Buck Rd	Oppose
Brian Langley Merritt	232 Don Buck Rd	Oppose

6.1.1 Summary of Submissions

The submissions in opposition to the application raised the following matters (in summary):

Trees

- Removal of mature poplar trees (#33 and #34) will affect local amenity values, including loss of privacy and security for 204 Don Buck Road (associated with construction road adjacent to owners shared boundary with the site). Request replacement mature plants to offset effects.

Traffic Generation and Traffic Safety

- Potential safety issues associated with intersection of Don Buck Road and proposed spine road: proximity to private driveways on adjacent properties, Waimumu Road intersection and a blind corner. Request installation of traffic islands on flush median to reduce risk of collision between vehicles turning into Waimumu Road and the spine road. Request installation of a new vehicle crossing to 206 Don Buck Road;
- Increased traffic volume and vehicle speed along Don Buck Road;
- On-street parking sought for proposed spine road to improve lack of on-street parking in local area; and
- Errors identified in applicants Traffic Impact Assessment.

Stability Issues / Bulk Earthworks

- Concern that bulk earthworks will cause structural damage to dwellings on adjoining properties. Claims of damage associated with recent development of neighbouring subdivision (41-49 Chamberlain Road). Request independent inspection of adjacent dwellings prior to and following the completion of earthworks, with the consent holder to repair any damage. One of the submissions which raised this specific request contained the signatures of 21 adjoining property owners (some of whom did not make a formal submission);
- Privately-owned "maintenance free" subsoil drains which traverse multiple properties are not a robust solution to site stability. They are at risk of clogging with silt, tree roots and foundation piling and their long term effectiveness cannot be guaranteed. Request imposition of larger lot sizes and or a more robust site stability solution; and
- Adverse effects on the amenity values of local residents associated with dust, noise, vibration and heavy vehicle movements during the construction period.

Property Maintenance

- Sought requirement for ongoing control of rank pasture and weeds in the southern balance lot.

Lot sizes

- Proposed non-compliant lot sizes within the Living 4 Environment will create additional pressure on surrounding environment (geotechnical stability) and local infrastructure.

Recreational Reserves

- In the absence of any local reserve or playground facility on southern side of Don Buck Road between Red Hills Road and Glen Road, request that the drainage reserve also include provision of playground facilities and a suitable pedestrian/cycle linkage between the spine road and Chamberlain Road. Request local public consultation regarding provision of facilities.

The submission that was neutral to the application raised the following matters (in summary):

- Requested confirmation that the subdivision will result in widening of Chamberlain Road, provision of footpaths, stormwater drains and street lighting; and
- Queried whether future large (Living 4 Environment) lots will be limited to one dwelling per site.

7.0 STATUTORY REQUIREMENTS

A166-A173 The relevant policies and objectives which apply under the District Plan and the Resource Management Act 1991 are set out in more detail attached at pages A166 to A173 as Appendix 5. This should be referred to as the legal framework within which the application should be addressed.

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. 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.

As 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 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 Operative District Plan. Council may disregard an adverse effect of an activity on the environment if the Plan permits an activity with that effect. Furthermore, no regard to any person who has provided their written approval to the proposed activity.

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 and 104B 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)).

It is noted that the application is not supported by the written consent of any person, although Leslie Manyard of 204 Don Buck Road has given written approval to the design of Retaining Wall "B".

The consent authority may also disregard an adverse effect of an activity on the environment if the Operative Plan permits an activity with that effect (section 104(2)).

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

8.1.1 Effects permitted by the Plan

Pursuant to Section 104(2), Council may disregard an adverse effect on the environment if the plan permits an activity with that effect.

Earthworks

Within the General Natural Area, up to 100m² and 50m³ of earthworks are permitted outside of an approved building platform. Due to the scale of the proposed earthworks, it would be of no assistance to compare or consider the effects of the proposed earthworks with the effects permitted by the plan. Furthermore, the site is subject to instability and any earthworks or development on the site would require resource consent for the Citywide Natural Hazards Rule (limited discretionary activity).

Vegetation

With regard to the General Natural Area and the Managed Natural Area, it is permitted to remove vegetation listed in the Removable Vegetation Appendix, provided that the total clearance on the site does not exceed 500m². Within the Riparian Margin Natural Area, it is permitted to remove vegetation listed in the Removable Vegetation Appendix, provided that the total clearance does not exceed 10% of the Riparian Margin Natural Area.

The scale of the proposed vegetation clearance is significantly greater than that permitted by the plan and would not be limited to vegetation listed in the Removable Vegetation Appendix. The effects generated by this activity will sit noticeably above those effects permitted by the Plan, and any comparison would be of little assistance.

8.1.2 Effects on Ecosystems & Vegetation

Effects of Earthworks on the Receiving Environment

The amended proposal would involve a volume of 37,100m³ earthworks over a 2.6ha area of moderate to steeply sloping land within a gully system. Despite a reduction of 6,755m³ from the original proposal, it remains a significant scale of earthwork activity. Earthworks are proposed to be undertaken in accordance with a range of TP90 sediment and erosion control measures as described in Section 3.3 of this report, although the applicant has not provided an estimate of the sediment yields likely to be discharged from the site during the proposed earthworks. In the absence of this information, the Council has undertaken a Universal Soil Loss Equation (USLE) based upon two sub-catchments (upper and lower earthwork areas). The primary purpose of this exercise is to identify earthworks areas which are at high risk of sediment loss.

A total sediment loss of 90 tonnes was calculated, based upon a commonly accepted figure of 75% efficiency of sediment control measures over a 6 month earthwork period. With careful site management such as the staging of earthwork activities and the appropriate use of chemical flocculation (both of which have been proposed), sediment control methods can be as much as 95% efficient. This would reduce the calculated sediment loss to approximately 20 tonnes over a six month earthwork period. Potential effects associated with the sediment loss include degradation of waterways, smothering of benthic aquatic communities (e.g. shellfish, plants, arthropods), and loss of amenity associated with recreational use of the Chamberlain Stream, Swanson Stream, Henderson Creek and the Waitemata Harbour.

Due to the complex combination of variables associated with an earthwork activity (including unknown variables such as rainfall), a USLE assessment is unable to accurately predict the actual amount of sediment loss. Despite this, it is assessed that the proposed earthworks are excessive for the scale of the development and due to the steeply sloping nature of the site the sediment discharge will be relatively high regardless of the mitigation measures, and would have at least a minor effect downstream receiving environment.

Effects on Vegetation

The proposed earthworks will require significant vegetation clearance from the site. The application is supported by an arborist report which was prepared by Karl Burgisser of Arborlab, dated 31 March 2008 ("the Arborist Report"). The Arborist Report provides an inventory of existing vegetation located on the subject site and concludes that there are no individually significant trees on the subject site. Councils Arborist Simon Miller has assessed the application and concurs that from an arboricultural perspective there are no individually significant tree specimens. However, Mr Miller considers that taken as a whole, the onsite vegetation contributes significantly to local ecology. The ecological effects associated with vegetation clearance are discussed holistically in the following section.

The proposed earthworks include excavating a 1.0m cut along the full length of the northern boundary which is to be supported by a timber pole retaining wall. These works would encroach upon the dripline of 11 generally protected trees located on various north adjoining properties identified in the table below (taken from Mr Burgisser's report). In an addendum report prepared by Karl Burgisser on 21 August 2008, Mr Burgisser assessed the subject trees and confirmed that many are likely to be adversely affected due to their size and close proximity to the boundary. It is noted that no submissions raised concerns regarding the potential impact of the earthworks on these 11 trees, which indicates that they are not of a particularly high amenity value.

On the contrary, submissions were received in opposition to the removal of two mature poplar trees which are located in the site's access strip to Don Buck Road (referenced as trees #33 and #34 in the Arborist Report) due to the amenity and privacy they provide. It is acknowledged that their removal may adversely affect local residents but the planting of appropriate street trees in a similar location would mitigate these effects, in the long term.

Ecological Effects of Habitat Modification

As described in Section 4.1 above, the site contains four watercourse tributaries which drain into Chamberlain Stream. The upper earthworks area would remove the upper portions of the western tributary, central tributary and the eastern branch. These watercourses within the upper earthworks area are all classified as Category 2 (non-permanent) streams with generally no defined channel, and are located within rank pasture with no significant riparian vegetation. The Bioreserches Ecology Report considered that the upper portions of these watercourses to be of low ecological value, and therefore associated ecological affects in this area would be minimal.

The lower earthwork area will take place within the lower portion of the central tributary, of which the lowest 20 m or so meets the criteria of a Category 1 (permanent) stream. The proposed earthworks would form a permanent "on-line" stormwater treatment & detention pond within the stream course, resulting in the removal of an 80m length of stream (approximately) and the removal of a significant area of riparian vegetation. It appears from the proposed plans that the earthworks would also affect the lowest portion of the eastern branch, of which the lowest 5m - 7m is also classified as a Category 1 stream and contains riparian vegetation. The applicant has not provided an assessment of ecological effects associated with the removal of these Category 1 Streams.

The Council's Ecologist Martin Sharp has reviewed the application and is in general agreement with the assessment of vegetation and streams provided in the Bioreserches Ecology Report; however he identified that vegetated watercourses met the District Plan criteria of Significant Fauna Habitat and had ecological merit as follows:

The open watercourses do still have some value, provide habitat for invertebrates and water quality benefits. Adverse effects (and potential adverse effects) would include permanent loss of stream habitat, protected vegetation removal, increased stormwater runoff and effects from erosion and sedimentation from earthworks. The combined adverse effects on ecosystems from earthworks, stream removal and protected vegetation removal would be more than minor.

I accept Mr Sharp's expert assessment that the actual and potential ecological effects of the proposal would be more than minor. Furthermore, I note that this assessment relates to the existing environment which comprises a network of waterways and riparian vegetation in a significantly degraded state.

A fundamental expectation of the BUCP is that subdivision design will result in a settlement pattern that maintains and enhances the Chamberlain Stream including its headwaters (District Plan Policy 1.21). Indeed, the BUCP has identified the entire length of the Central Tributary within the subject site (including the upper Category 2 section) as a Streamside Enhancement Area. As a minimum requirement, a typical streamside enhancement regime would include comprehensive weed management and replanting with ecologically appropriate native vegetation within the riparian margin. In a similar location to the Central Tributary, the application proposes to construct a dish drain between the road and pond, with a 5m wide strip of vegetation. This will neither mitigate the loss of the stream nor meet the requirements of a streamside enhancement regime because it will not serve any meaningful ecological function.

Because the BUCP planning map and associated plan provisions are unequivocal, it is considered neither too speculative nor fanciful to reasonably expect that the future ecological state of the Central Tributary would be significantly improved from its current degraded state as a result of the future development of the site. The proposal to permanently remove this stream would preclude any opportunity for streamside enhancement, and it is considered that this represents a significant adverse ecological effect on the future environment.

The applicant has proposed a number of measures to mitigate the environmental effects associated with the removal of the waterways and large scale clearance of existing native and non-native vegetation (estimated from aerial photographs to be approximately 8,000m², which includes areas of gorse and blackberry). This includes establishing approximately 9,000m² of native vegetation over the lower portions of the site, although it is noted that a planting plan and weed management plan has only been provided for the circa 2,000m² area around the stormwater pond.

If planted and maintained correctly, this native vegetation would mature to provide valuable habitat for terrestrial fauna, however it does not remedy or mitigate the loss of ecological function associated with a stream habitat and its margins. For example, it is proposed to replace the upper portion of the Central Tributary with a dish drain between the road and the stormwater pond which would be planted with a 5m wide strip of vegetation. Notwithstanding the fact that a 5m Riparian Margin Natural Area should have a total width of 10m (5m each side of the stream bank), the dish drain would not support any significant macro invertebrate community due to the fact that it would have a uniform grade and would only carry stormwater from the road during 10 year rainfall events or greater.

Overall and with regard to the proposed mitigation, it is considered that the adverse effects discussed in this section will cumulatively have a more than minor adverse effect on the ecological integrity of Chamberlain Stream and its margins.

8.1.3 Effects on Water Quality and Quantity

The Birdwood Special Area No.1 Stormwater Management Plan (BSASMP) was produced in 2002 in association with the preparation of the BUCP. It is the most detailed catchment wide study available for the Birdwood area, and is the guiding document for the management of stormwater runoff within this catchment. Two key and interrelated issues identified in the BSASMP are:

- The need to retain watercourses and enhance riparian vegetation to protect habitat values; and
- The potential for stream erosion generated during two-year storm events due to the deeply incised and erosion prone stream banks along Chamberlain Stream and its headwaters.

The first issue has been discussed in 8.1.1 above and need not be discussed further here, other than to state that the proposal is contrary to this key aspect of the BSAMP. With regard to the potential for stream erosion, the BSASMP recommends a range of low impact design (LID) objectives, including:

- Limiting total impervious surface area within the catchment to 15.7 Ha, achieved through the specific allocation of Living 2 and Living 4 Environments and limiting impermeable surfaces within these zones to 60% and 20% respectively (gross);
- Use rainwater tanks for all impermeable roof areas within the catchment to maintain the 2 year Annual Exceedence Probability (AEP);
- 3 specifically located stormwater quality wetlands to treat runoff from Living 2 zones (achieving 75% removal of total suspended solids); and
- Riparian margin protection and enhancement along existing waterways.

The applicant seeks to effectively double the yield of Living 2 Environment sized lots the BUCP anticipated for this site by extending a row of 14 lots measuring 450m² - 499m² into the Living 4 Environment. The total area encroached upon the Living 4 Environment is approximately 2,700m². Such small lots could not feasibly be limited to a maximum of impermeable surface ratio of 20% of site area, and the standard ratio of 60% is considered to be more appropriate. This would result in approximately 1,080m² of additional impermeable surfaces not anticipated by the BSAMP. The applicant proposes to mitigate the associated stormwater effects by carrying out 3,300m² of bush planting along the western site boundary and 490m² of bush planting around the eastern side of the stormwater pond. It is noted that the proposed bush planting area already contains native vegetation and any mitigation planting would have to be additional to this existing area.

As discussed in Section 3.3 of this report the application proposes the installation of 6,000L roof water tanks for each dwelling to maintain the 2 year Annual Exceedence Probability (AEP), and the construction of an online stormwater pond to treat stormwater to the prescribed standards. Council's Drainage Engineer Daniel Thomas has assessed the application and acknowledges that the proposed stormwater treatment and detention devices would achieve the required engineering standards for water quality and quantity, although he is unable to support the application because it fails for the following reasons:

The BSASMP Recommendations and the BUCP Policies in the district plan make it clear that if urban development is to occur then it should be subject to the natural and physical constraints that apply to the site. It is the assessment of the EcoWater development engineer that the proposal does not adequately identify and protect the natural and physical features of the site.

I accept the expert comments of Mr Thomas. However I note that while the proposal is inconsistent with the BSASMP and the District Plan Policies associated with the BUCP (discussed in Section 8.2.1.2 of this report), and notwithstanding the adverse effects discussed in Section 8.1.1 above, it is considered that adverse effects of stormwater discharge on the downstream receiving environment would be no more than minor.

8.1.4 Land Stability & Soil Contamination

Effects on Land Stability

The application is supported by a geotechnical report which was prepared by Soil & Rock Consultants in 2006 with an addendum report in 2009 (together “the Geotechnical Report”). The Geotechnical Report assessed the site as being affected by relic instability, weak soils and extremely high groundwater conditions. The Geotechnical Report recommended a suite of remedial engineering works to achieve the necessary level of slope stability for the proposed development, including:

- Remove weight from the top of the slope with a 2.0m cut along northern boundary;
- Construct a retaining wall along northern boundary to stabilise cut and divert upland groundwater;
- Bench existing ground prior to placement of engineered fill;
- Install counterfort drains to prevent extreme rises of groundwater;
- Form uniform batters no steeper than 1V:3.5H (16°); and
- Form a stormwater water pond at base of the slope with up to 5.0m of fill to act as a toe buttress.

In addition to the remedial works, the Geotechnical Report also recommended a number of ongoing requirements for future earthworks and built development. The Geotechnical Report concluded that:

Provided proper earthwork techniques are carried out on the site, and all recommendations contained herein with regard to development are adhered to, then no particular post construction constraints are envisaged in terms of land stability.

Geotechnical Engineer John Seward of GHD Limited initially assessed the 2006 and 2009 reports, and confirmed that they used appropriate parameters in assessing the stability of the site and considered that the proposal is provisionally suitable for the site, subject to recommended conditions of consent.

Subsequent to public notification, the applicant amended the earthworks proposal by reducing the depth of cut along the northern boundary to 1.0m, and subsequent changes to gradients both above and below the road as detailed in Section 3.5 of this report. In response to submissions, the applicants Civil Engineer Mr Phillip Bellard of CPG has stated that the proposed site works would have a positive effect on the existing stability of the site and properties adjoining the site's northern boundary.

A further Geotechnical assessment relating to the amended proposal was provided from Soil & Rock Consultants (dated June 2010). It provided a range of options and recommendations to stabilise the site, including the installation of a shear key at the base of the battered slope below the road which is the preference of the applicant. The amended earthworks and geotechnical report was reviewed by Russell Allison of GHD Limited in July and August 2010. Mr Allison stated in his review that the conditions recommended in Mr Seward's assessment remain appropriate. I accept the expert assessment of Mr Allison.

With regard to the proposed counterfort (buttress) drains, the Council's EcoWater department has advised that the Council are not willing to undertake the ownership or maintenance of the drains or their outlets. While the drains have been designed to be "zero maintenance", the ongoing maintenance of their outlets will be required to ensure that they do not become blocked. The applicant has not provided a satisfactory legal mechanism (body corporate or similar) that would confer ownership and maintenance responsibilities upon private parties. It is considered that the lack of a maintenance regime for the drain outfalls poses an unacceptable risk to the effective stability that would otherwise be provided by the counterfort drains.

Effects of Soil Contamination

The site is not known to the Council to be subject to soil contamination. The application is supported by a preliminary site investigation for soil contamination which was prepared by Mr Andrew MacDonald of Groundwater and Environmental Services on March 20th 2008. The investigation comprised a "desk top" review of the site history including previous environmental reports, the Council's property file and aerial photographs. A site visit was also undertaken by Mr MacDonald to inspect areas of interest identified in the desktop study. The only item of note was asbestos sheet fragments found at the top of the unnamed tributary in the south-eastern corner of the site. This part of the site would not be subject to any earthworks.

The Groundwater & Environmental Report concludes that there are no indications of previous commercial horticultural activities, significant fill or refuse dumping on the site, and recommended that no further environmental investigation is necessary for the proposal. I accept the expert assessment of Mr MacDonald, however I note that the 2006 Soil and Rock Report identified areas of uncontrolled fill within the proposed works area. The Soil & Rock Report recommended that this material should be exported from the site as it is not suitable for re-use as engineered fill. The applicant has confirmed that the total volume of unsuitable material is 500m³, and it is considered prudent to recommend a condition (if the application is approved) that all material to be exported from the site shall be disposed of at a certified landfill, unless the material is tested prior to leaving the site and is found to be within the recommended guidelines for clean fill.

8.1.5 Amenity Values - Health and Safety, Landscapes, and Neighbourhood Character

Effects of Construction Works

The scale of the proposed earthworks is significant and may extend beyond a single earthwork season (October – April inclusive). It is considered that this activity has the potential to cause more than minor adverse effects on amenity values and health & safety, including dust and noise nuisance, heavy traffic movements and the tracking of sediment onto the roading network.

While most of the excavated material would be re-used onsite, approximately 500m² of unsuitable material is proposed to be exported from the site. It is considered that the scale of heavy vehicle movement required to remove this material is consistent with the overall scale of proposed earthworks, particularly as the proposal would nearly achieve a balance of cut to fill. Due to the close proximity of the site to an arterial road, it is considered that the heavy vehicle movements associated with the site works would have no more than minor adverse effects on the safe operation of the roading network.

It is noted that no earthworks management plan or traffic management plan has been submitted with the application. The Council's Environmental Monitoring Officer and Earthworks Technical Advisor Paul Tyler has assessed the application and has advised that these would certainly be required as conditions of consent, if the application were granted.

It is likely that the earth-working period would cause disruption to the existing amenity values of the local environment with noise and vibration, and potentially dust and odour. Due to scale of the proposed activity, these adverse effects cannot be avoided. However, Mr Tyler has advised that with careful site management and conditions of consent, these effects could be appropriately mitigated. I accept Mr Tyler's assessment and consider these effects would be no more than minor.

Effects of Landform Modification

The scale and extent of the proposed earthworks would significantly modify the existing landform of the site, which is broadly characterised by moderately to steeply sloping pastoral land with deeply incised gully systems and associated vegetated margins. Proposed earthworks would involve cut and fill activities up to a height of 5.0m and 7.3m respectively to form the proposed road, stormwater pond, and uniformly graded slopes. Most cut activity would occur above the road and most fill would occur within and below the road.

The application states that the earthworks are necessary to ensure the stability of the site for future residential development and the construction of the road and stormwater pond. I accept that the site is subject to serious geotechnical issues and bulk earthworks would be inevitable to establish the site for residential use. However I am not satisfied that the application has adequately considered alternative design options to minimise the scale and extent of earthworks. An alternative design option may have involved reducing the number of small allotments to a single row not extending into the Living 4 Environment and locating the road above the gully system, thereby reducing the level of fill required and consequently reducing the steepness of the battered slope between the road and the stormwater pond. Irrespective of potential alternatives, this proposal has been assessed on its relative merits.

As already discussed, it is proposed to undertake a 1.0m cut along the northern site boundary which would be scraped at a uniform slope of between 1:6 and 1:7 southward to the proposed road. It is proposed to stabilise this cut with a 1.0m high x 305m long retaining wall ("Retaining Wall A"). This retaining wall and the slope below would provide continuity to the west adjoining sites; however the retaining wall would create a division relative to the natural landform which would be located along a visually prominent ridge. Over time, it is considered that the development and domestication of the proposed lots adjacent to the northern site boundary would partially screen and break up the strong horizontal elements of this structure.

It is proposed to construct a second long timber retaining wall ("B") along the northern boundary of 204 Don Buck Road to stabilise fill earthworks which are required to form the proposed road. Due to the undulating ground level on 204 Don Buck Road, the height of the retaining wall will vary significantly (0.2m – 2.3m – 0.1m) over the course of its 42m length; however the top of the wall will remain level with the surrounding ground level. The owner of 204 Don Buck Road has given his written approval of the proposed wall on the basis that the applicant constructs a 1.8m timber fence to address privacy issues. While the retaining wall will be visible from Don Buck Road, it will not cause any wider visual effects because it will generally be located below the ground level of the surrounding road reserve, and "deepest" portion of the wall will be at least 15m from the Don Buck Road boundary.

It is proposed to establish a steep uniform battered slope of 1:4 (H:V) over a substantial area below the proposed road (circa 5,000m²) to support the road embankment. This uniform embankment would have a manicured appearance which would be out of character with the undulating topography of the surrounding area. It is noted that the proposed bush planting would not extend onto this slope so it would not be hidden or blended into the surrounding environment.

The southern half of the central gully below the road embankment would be in-filled (up to 5m depth) to create a permanent stormwater pond, thus removing the Central Tributary stream. The southern side of the pond would extend in a uniform slope to the southern site boundary and would serve as vehicle access to the pond. The sloped sides of the pond would be planted with native bush.

The Council's Landscape Architect has assessed the application and provided the following comments:

Although I agree that the landscape has no outstanding features, it does have a distinct landform that at present flows and integrates with the wider landform and landscape. Proposed earthworks south of the road would modify the landscape significantly and the existing watercourse would be significantly altered to serve the stormwater functions. The proposed treatment of the watercourses, earthworks and engineering works to create the stormwater pond, vehicle access and fencing would all entail modification and diminishment of natural features within this landscape, and would alter the site's most significant natural feature to an engineered feature.

I accept Mr Griffin's expert comments, and consider that the cumulative effect on the natural character of the Chamberlain Stream headwaters and associated landforms would be more than minor. In reaching this conclusion, I have considered that the character of the local area is transitioning toward a more urban environment (albeit on the edge of the rural/urban interface) as provided for by the BUCP, and have considered the positive visual effects that would result from the large area of bush planting.

Effects on Onsite Amenity and Future Development within the Site

Living 2 Environment

Whilst the BUCP provides for the urban development of the site, the provision to subdivide down to 450m² is not a given and must be assessed against the natural and physical constraints of the site, particularly where these allotments extend into the Living 4 Environment. In addition to the geotechnical constraints which have been discussed elsewhere in this report, the site faces south and is therefore constrained by solar access. The proposed retaining wall along the northern boundary will compound shading constraint (particularly if a 1.8m close-boarded fence is built above), although it is accepted that this may be unavoidable due to required stabilisation works.

The 27 allotments consist mostly of square shaped sites of either 456m² or 461m² with the odd larger irregular shaped lot. They are arranged into two equal rows consisting of front lots and rear lots, and will each slope toward the road at a gradient of 1:6 or 1:7. It is considered that this layout is a poor response to the physical constraints of the site, because the depth (north – south axis) of the rear lots would barely allow sufficient setback of buildings from the north boundary retaining wall, and will likely result in adverse shading of the outdoor space and ground floor rooms during winter.

No building plans have been provided with the subdivision and there is no certainty that the built development will be comprehensively planned. Whilst all future applications for building and resource consent would be assessed against the provisions of the District Plan, it will be difficult to mitigate adverse effects of development on a piecemeal basis, particularly with regard to additional earthworks and retaining on individual lots. A more suitable response to the physical constraints of the site may have involved a single row of rectangular shaped lots which were elongated on their north-south axis to allow greater flexibility in house design, particularly in relation to solar access.

Living 4 Environment

The proposed balance block of 3.6 ha (Lot 200) is zoned as Living 4 Environment and should yield approximately 18 further lots subject to further design. The applicant has not provided any information relating to the likely manner in which the remaining balance block would be developed, and I am concerned that the current design will constrain the future development opportunities of Lot 200.

It is anticipated that many of these future lots would either have frontage to the southern side of the proposed road or at least gain vehicle access from this road. It is considered that this would negatively impact upon the ability for future residential activities potential amenity of those future lots that would be located along this road, for the following reasons:

- Non-complying outdoor courts based on slope factor.
- Despite the generous lot sizes, building platforms would be restricted to the roadside to avoid steep non-complying vehicular access gradients and poor solar access that would result from being located further off the road.
- Overall poor on-site amenity and utility due to the uniformly steep slope.

It is likely that substantial further earthworks and associated retaining would be proposed by future lot owners in an attempt to improve onsite amenity and stability. This would likely result in adverse cumulative visual effects. It is also noted that the proposed bush planting areas will limit access options to the eastern side of Lot 200 from Chamberlain Road.

Effects on Neighbourhood Character

All of the proposed allotments are less than 500m², which is inconsistent with the character of the much larger established properties adjoining the northern site boundary. These adjoining lots are all relatively large because of infrastructural constraints which have prevented subdivision. This proposal would establish the necessary infrastructure to enable subdivision of these adjoining sites. This proposal is therefore likely to result in changes to the density and character of the neighbourhood beyond the subject site. Notwithstanding the adverse effects discussed elsewhere in Section 8.1.4, it is not considered that these changes are inherently negative, as it is in accordance with the reasonable expectations of the District Plan. It is further noted that the proposed allotments and roading pattern will integrate cohesively with the west-adjointing development at 41 - 49 Chamberlain Road.

Effects on Traffic Safety

The proposal would involve creating a road to be vested in the Council, which would connect between the eastern stub of Jammen Drive with Don Buck between 204 and 206 Don Buck Road. Lots 14 -27 would have frontage to the proposed road, and Lots 1-13 would be provided legal access to the road via rear access shared driveways (except Lot 9 which would be sole access).

This application is supported by a transport assessment report prepared by Mike Nixon, Senior Transportation Engineer and reviewed/approved by Leo Hills, Principal Transportation Engineer of Traffic Design Group; dated 12 March 2008. The report analysis includes existing site and traffic conditions, proposed development, traffic generation, parking, road and driveway geometry, District Plan provisions and conclusions/recommendations; stating "there are no transportation planning reasons to preclude acceptance of the development as intended."

The Council's Traffic Engineer John Carroll has assessed the application. Mr Carroll generally agrees with the findings of the report and considers that traffic volume surveys remain an accurate reflection of the current environment. He considers that the proposal will have no more than a minor adverse effect on the safe operation of the roading network, and notes that issues associated with safe ingress and egress from the site would be assessed at detailed design stage under a future engineering approval application. I accept the expert assessment of Mr Carroll, and agree that the proposal would have less than a minor adverse traffic effects.

8.1.6 Summary

A summary of the effects of the proposal are as follows:

- On balance, the cumulative effects of the proposal on the ecological integrity of Chamberlain Stream will be more than minor, and it would preclude the opportunity for the enhancement of at least two watercourses onsite;
- The cumulative effects of the proposal on the natural character of the Chamberlain Stream headwaters and associated landforms would be more than minor;
- The geotechnical and stormwater constraints affecting the site would be mitigated albeit via significant earthworks;
- The proposal is likely to significantly constrain opportunities for future residential development within the remaining Living 4 Environment;
- The size, shape and configuration of the allotments provides limited opportunities for adequate onsite amenity. The potential adverse amenity effects associated with future built development will be difficult to mitigate on a piecemeal basis, particularly with regard to additional earthworks and retaining on individual lots;
- The proposal would provide additional settlement appropriately located within the Metropolitan Urban Limits;
- The infrastructure associated with this proposal would provide opportunities for the subdivision of properties within the upstream catchment of the site; and
- The proposal would not adversely affect the safe operation of the transport environment and would provide pedestrian and vehicle connectivity between Jammen Drive and Don Buck Road.

In accordance with Section 104(1)(a) of the Act, it is considered that overall and subject to the recommended conditions, any adverse effects of the proposed development on the environment will be more than minor.

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

Part 5 of the District Plan contains the objectives, policies and methods by which the effects of activities on natural and physical resources are to be managed. The majority of the objectives and policies are concerned with managing the effects of activities on the natural environment including water, native vegetation and air. The objectives and policies that relate to the built environment focus on the effects of activities on amenity values.

Part 6 of the District Plan contains an explanation of the strategic direction of the District Plan.

A166-A173 Comments are provided below in relation to the relevant provisions under the headings which they appear in Part 5 of the Plan. Full copies of the relevant plan provisions are attached at pages A166 to A173 as Appendix 5 of this report.

8.2.1 District Plan Policies and Objectives

8.2.1.1 The Green Network

Objectives: 1, 2, 4, 7

Policies: 1.1, 1.5, 1.6, 1.9, 1.10, 1.11, 1.12, 1.16, 1.17, 1.21, 2.12, 2.13

The Green Network is the term used to describe the natural terrestrial and aquatic habitats throughout Waitakere City. They are identified through the Protected, Managed, Riparian Margin, Coastal Edge and Coastal Natural Area zones in the District Plan. Most of these environments have been significantly modified from the direct and indirect effects of settlement, although this is balanced with the ongoing processes of naturally occurring and assisted regeneration.

The District Plan contains following high level objectives which are relevant to the Green Network as it relates to this application:

- to maintain the life-supporting capacity of water (Objective 1);
- to protect the ecological integrity of the City's native vegetation and fauna habitat (Objective 2);
- to protect the processes of natural regeneration within the City and to promote and maintain links between areas of significant and fauna habitat (Objective 4);
- to preserve and enhance the natural character of the City's aquatic environments and their margins, including preserving the natural functions which contribute to their natural character (Objective 7).

The policies under each of these four objectives form an interrelated framework which seeks activities to avoid further modification to the structure and function of watercourses¹, including the clearance of vegetation within their margins² in order to avoid reducing to the extent, range and linkages of the Green Network³ and to allow for their preservation and enhancement⁴.

This ecosystem-based approach reflects a core principle of the Green Network to maintain and enhance ecological corridors between the Waitakere Ranges or its foothills and the Waitemata Harbour. It is my opinion that that the proposal is inconsistent with the core principles of the Green Network and is contrary to the above mentioned policies, given the proposed earthworks, clearance of vegetation and the removal of the upper stream systems.

Policy 5.7 states that "where activities result in an adverse effect on the overall resilience, biodiversity and ecological integrity of the Green Network and its constituent parts, there may be requirements to remedy or mitigate these adverse effects". The application proposes to mitigate the effects of the activity on the Green Network with the following measures:

- Undertaking a substantial amount of native replanting within the site; and
- Constructing an on-line stormwater pond and requiring roof water tanks for each lot.

If the bush planting areas were correctly established and maintained, the proposal would provide circa 9,000m² of native vegetative and fauna habitat for terrestrial fauna. The proposed stormwater devices would achieve the required flow rates and treatment of water discharged into Chamberlain Stream, and is therefore considered to be consistent with Policy 1.10 and mostly consistent with Policy 1.12.

¹ Policies 1.1, 1.9, 1.16, 7.1, 7.2

² Policies 1.5, 2.12, 5.4

³ Policies 1.6, 2.13, 5.4

⁴ Policies 1.11, 1.17, 2.13

The proposal would mitigate the effects associated with the loss of native vegetation and terrestrial fauna habitat, and would also mitigate the effects of stormwater discharge to Chamberlain Stream. However it would not adequately remedy or mitigate the ecological effects associated with the permanent loss of stream habitat, and it is therefore considered that the proposal is only partly consistent with Policy 5.7.

8.2.1.2 Birdwood Urban Concept Plan

Policies 1.17, 1.21, 3.7

The BUCP provides for the urban subdivision of the site subject to its natural and physical constraints. In essence, the BUCP requires that a low impact approach is incorporated into the design of any subdivision, including:

- Avoiding development on unstable land;
- Carefully managing increased stormwater runoff to avoid stream erosion; and
- Retaining natural features such as native bush and the natural character and function of the Chamberlain Stream including its headwaters.⁵

Policy 3.7 identifies that the BUCP is located within a stability sensitive area and stipulates the parameters for physical development. This Policy relates to development within the Living 4 Environment, and is relevant to this proposal given there are significant works proposed within the portion of the site zoned Living 4 Environment. The policy states that subdivision density and design should ensure that the margins of streams are protected from earthworks, and in general it seeks to ensure that where subdivision and development is undertaken on steeper and less stable land it doesn't generate adverse effects or necessitate significant land modification.

Policies 1.17 and 1.21 provide clear and unambiguous expectations that all watercourses located within the BUCP are to be protected and enhanced as part of the development of these areas:

Policy 1.17

"Subdivision and development within Structure Plan Areas and Urban Concept Plan Areas should be designed and managed in a way that emphasis is given to the protection and enhancement of streams, lakes, watercourses, wetlands and the coast and their margins in the development restoring low quality areas of vegetation or re-vegetating bare areas along waterway margins."

Policy 1.21

Within the Birdwood Urban Concept Plan area, subdivision design is expected to result in a settlement pattern that maintains and enhances the natural state of the Chamberlain Stream including its headwaters. Any piping of the stream will not be desirable and subdivision design will need to incorporate methods to ensure that stormwater runoff into the stream is minimised.

These two policies do not differentiate between permanent and non-permanent streams, but rather place importance on the preservation and enhancement of an entire watercourse including its headwaters. This ecosystem-based approach reflects a core principle of the Green Network, which is to maintain and enhance ecological corridors between the Waitemata Harbour and the Waitakere Ranges and its foothills.

⁵ District Plan Policy Section: Chapter 6 – Explanation of the Strategic Direction: Policies & Method (pages 6-7)

It is evident that the proposal has little regard to maintaining the site's natural features. Rather than avoiding development on unstable land such as the site's two central gully systems, it is proposed to undertake large scale fill earthworks within these steep areas to create a broad embankment to accommodate two rows of 450m² - 499m² allotments and a road. This platform extends 30m into the Living 4 Environment across the width of the development area, and beyond this a large 1:4 battered slope is required beneath the road to stabilise the embankment. The impact of this earthwork activity is significant modification to the natural form of the landscape including the removal of the upper portion of two gully systems. The on-line stormwater pond would be established immediately below this area, thus requiring the removal of the remaining portion of the Central Tributary and the lower portion of the Eastern Branch watercourse.

With respect to the above discussion, it is considered that the proposal is contrary to both the specific policies and overall philosophy of the BUCP.

8.2.1.3 Amenity – Health & Safety

Objective 10

Policies 3.4, 10.4, 10.5, 10.9, 10.10, 10.13, 10.16, 10.18, 10.20

Of relevance to the proposal, Objective 10 seeks to achieve a minimum level of physical health and mental well-being by maintaining and enhancing the following amenity values:

- an acceptable level of quiet and freedom from nuisance created by noise, odour, dust and vibration;
- a safe environment;
- adequate levels of daylight; and
- an accessible environment.

These matters are addressed below with reference to specific policies.

Earthworks & Natural Hazards

With regard to the first item, Section 8.1.4 of this report identified that the proposal would create a temporary nuisance during the earthwork period, however it was assessed that the extent of this nuisance could be adequately mitigated through careful site management and conditions of consent. It is therefore considered that the proposal is generally consistent with Policy 10.10.

Notwithstanding the undesirable nature and scale of the earthwork activity discussed elsewhere, these site works would mitigate the existing natural hazards associated with the site if undertaken in strict accordance with the recommendations of the geotechnical reports prepared by Soil & Rock Consultants and the conditions recommended by GHD Limited. The proposal is therefore consistent with Policies 3.4 and Policy 10.13.

Sunlight & Daylight Access

As discussed in Section 8.1.4 of this report, this site has limited solar access due to its south facing aspect and the shape of the lots provides limited opportunity to avoid shading effects. However, the amended design for Retaining Wall "A" which reduced its height from 2.0m to 1.0m high is a significant improvement, and is considered to be of an appropriate scale for residential use. On balance it is considered that the proposal is not inconsistent with Policies 10.4 and 10.5; however there is little certainty of the scale and extent of shading effects that would result from future built development within the subdivision.

Infrastructure, Roading & Access

Policies 10.9, 10.11, 10.16 and 10.18 set out the expectations that subdivisions will be adequately serviced with appropriate and safe infrastructure to ensure the health of future residents and the wider community, including the provision of safe and efficient access for pedestrians, cyclists and vehicles through the area. In general, the proposal meets these expectations. It will provide residents with appropriate vehicle access and manoeuvring, drainage, water supply, and connections to power and media.

With respect to the wider community, the proposal will create a safe and efficient road and footpath linkage between Jammen Drive and Don Buck Road which will also provide on street parking which is lacking in the area. However, the proposal would not provide any north - south pedestrian linkage through the site from the spine road to Chamberlain Road. Policy 10.20 states that subdivisions should be designed so that adequate public access is provided between areas of public land, and in particular alongside waterways where access will be compatible with protection of conservation values. This policy is adopted elsewhere in the BUCP area with large areas set aside for recreation reserves in order to provide pedestrian access along Chamberlain Stream. This proposal would preclude this network from extend through the site and considered to be contrary to Policy 10.20.

8.2.1.4 Summary of District Plan Policies and Objectives

On balance, it is concluded that the proposal is contrary to the policies and objectives of the District Plan, and it is particularly those which are of most relevance to the BUCP.

8.2.2 Rules and Assessment Criteria

The District Plan Assessment Criteria have been developed to address the issues covered in the objectives and policies and are a useful guide in assessing the effects of an activity. The proposal has been assessed comprehensively against the relevant objectives and policies as discussed in section 8.2.1 above. The proposal has separately been considered against the relevant assessment criteria; however this has been omitted from this report to avoid repetition of the discussions provided in Section 8.2.1

8.3.1 Regional Policy Statement or Regional Plan (104(1)(b)(iii) and (iv)

The Auckland Regional Policy Statement (ARPS) 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 District Plan has been prepared.

The Operative ARPS has been amended by Proposed Plan Change 6, which seeks to give effect to the growth concept set out in the Auckland Regional Growth Strategy ("ARGS"), as required by s40 of the LG(A)AA 2004. Due to the small scale of the scale of the proposed subdivision (in terms of allotments) and its location within the Metropolitan Urban Limits, it is not considered contrary to the ARGS.

The only other matter relevant to the ARPS is the effect of the proposal on Water Quality. Chapter 8 of the ARPS contains objectives, policies and methods which address maintenance of water quality and the effects of discharges of sediment and other contaminants. Of relevance to the proposal, Objective 8.3 seeks to enhance water quality in rivers and streams which are degraded, particularly for the protection of aquatic ecosystems, recreation, food gathering, and water supply, cultural and aesthetic purposes. The policies which seek to achieve this include:

Policy 8.4.1

Adverse effects on water quality caused by the discharge of contaminants (including non-point source discharges) shall be avoided, particularly the discharge of potentially toxic, persistent or bio-accumulative contaminants. Where it is not practicable to avoid discharges, they shall be adequately remedied or mitigated.

Policy 8.4.7

- 1. All new developments discharging stormwater, whether allowed as a permitted activity or by a resource consent, shall adopt appropriate methods to avoid or mitigate the adverse effects of urban stormwater runoff on aquatic receiving environments.*
- 2. The ARC will promote stormwater quality control on a catchment wide basis to avoid or mitigate the adverse effects of urban stormwater runoff on aquatic receiving environments.*
- 3. All land disturbance activities which may result in elevated levels of sediment discharge shall be carried out so that the adverse effects of such discharges are avoided, remedied, or mitigated.*

As discussed elsewhere in this report, it is assessed that the proposed earthworks are excessive for the scale of the proposed development (i.e. 27 small residential allotments) despite having already been reduced by 6,755m³. The proposed earthworks fail to avoid adverse effects of sediment discharge on the receiving environment; however the proposed sediment and erosion control will mitigate these adverse effects by removing most of sediment and other contaminants contained in the site's stormwater runoff. It is therefore concluded that the proposal is consistent with these policies and the ARPS in general.

8.4 National Policy Statement (104(1)(b)(i)(ii))

There is no national policy statement considered relevant in the determination of this application.

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

8.5.1 Hauraki Gulf Marine Park Act 2000

When considering an application for a resource consent within the Gulf's coastal environment, council's must "have regard" to sections 7 and 8 of the HGMPA as a NZCPS and they are therefore to be given the same weight as other provisions of the NZCPS.

The site is located within the northern catchment of the Henderson Creek, which flows into the Waitemata Harbour, which forms part of the Hauraki Gulf. Studies by ARC and NIWA⁶ have demonstrated that a considerable volume of sediment is discharged into the Waitemata Harbour from Henderson Creek as a result of earth disturbing activities within its catchment. Due to particular currents and tidal flows of the harbour, it has been observed that much of the discharged sediment is being retained within the Central Waitemata Harbour rather than being flushed out to the wider Hauraki Gulf. This is resulting in the accumulation of contaminants (sediment, zinc and copper) within the harbour and particularly around the tidal creeks and inter-tidal flats.

⁶ ARC TP109: Central Waitemata Harbour Contaminant Study, 2009

The accumulation of contaminants within the Waitemata Harbour, as a result of sediment laden run-off from earth disturbing activities, is adversely affecting the life supporting capacity of this environment and therefore the natural and physical resources of the Hauraki Gulf.

As discussed in Section 8.3.1 above, the proposed earthworks fail to avoid adverse effects of sediment discharge on the receiving environment; however the proposed sediment and erosion control will mitigate these adverse effects by removing most of sediment and other contaminants contained in the site's stormwater runoff.

8.5.2 Long Term Council Community Plan

Under the Local Government Act 2002, Councils were permitted to take development contributions towards the costs that capital growth imposes on the community. The financial contribution policy of the Waitakere City Council's Long Term Council Community Plan incorporates a development contribution based on the City's capital expenditure for infrastructure and community facilities for that ten year period. The development contribution estimated for this proposal is \$295,429.38 (incl. GST).

8.5.3 Reserve Contribution

The reserve contribution has been considered in accordance with the Resource Management Act 1991. The sum to be paid in lieu of reserves will be computed from 6% of the market value for Lot 1 to Lot 27 inclusive. Council would obtain the valuation at the time an application is made for approval under section 223 of the Resource Management Act 1991. A condition requiring payment of this contribution is recommended.

There are no other matters relevant to this application.

9.0 PART II OF THE RESOURCE MANAGEMENT ACT 1991

The purpose and principles of the Resource Management Act 1991 have primacy over all other considerations that are set out in section 104 of the legislation.

Section 5 in Part II of the Act identifies the purpose of the Act as being the sustainable management of natural and physical resources. This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.

It is considered that the proposal is inconsistent with the principles of sustainable resource management. Whilst the development of the site would enable the establishment of 27 residential lots which would provide for the social wellbeing of future residents, as well as the economic wellbeing of the applicant and a range of contractors employed in the development of the site; it would do so in a way that fails to sustain the natural and physical resources of the site for future generations. In particular the proposal would fail to protect and enhance the life supporting capacity, ecological integrity and natural character of the Chamberlain Stream headwaters.

The proposal is not considered to adversely affect any matters of national importance. It is considered that the adverse effects arising from the proposal and the proposed mitigation are limited in significance to the surrounding urban neighbourhood.

The proposal is not considered to impact upon the Treaty of Waitangi.

Section 7 identifies a number of “other matters” to be given particular regard by Council in the consideration of any assessment for resource consent, and includes the efficient use of natural and physical resources, and the maintenance and enhancement of amenity values.

The adverse effects of the proposal on the natural character and ecological function of Chamberlain Stream have been discussed in detail in the effects assessment contained in Section 8.1 of this report. It is concluded that the potential adverse effects would be more than minor.

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)).

As concluded in Section 8.1.5 of this report, it is considered that the cumulative effect of the proposal on ecological integrity and the natural character of the Chamberlain Stream headwaters would be more than minor. It is therefore considered that the proposal does not satisfy Section 104D(a).

As concluded in Section 8.2.1.4, it is considered that the proposal is contrary to the relevant policies and objectives of the District Plan. The ability to grant consent has therefore not been established and I am obliged to recommend that the **consent be refused**.

Report prepared by: Stuart Brooke, Resource Planner.

Peer reviewed by: Bronwyn Allerby, Manager Resource Consents

