

## NOTICE OF MEETING

# HEARINGS COMMITTEE

I hereby give notice that an Ordinary Meeting will be held on:-

**DATE:**        **Thursday, 21 March 2002**                      **TIME:**                **9.15 am**

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

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

28 February 2002

Sidney Hargis  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8864

### MEMBERSHIP:

Councillors	GE	Nash, JP (Chairperson)	
	RP	Dallow, QPM, JP (Deputy Chairperson)	
	BA	Brady, JP	
	PA	Hulse	
	VS	Neeson, JP	
	DA	Yates, JP	
9.15 am	Ward Representative		
	Ms EG Francke	(New Lynn Community Board)	
	Alternate Representative		
	Mr R Kernaghan	(New Lynn Community Board)	
10.30 am	Ward Representative		
	Mr RE Taylor	(Waitakere Community Board)	
	Alternate Representative		
	Ms DJ Goodley	(Waitakere Community Board)	

(Quorum 4 members)

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

**AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD  
IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,  
ON THURSDAY, 21 MARCH 2002, COMMENCING AT 9.15 AM.**

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**AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD  
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ON THURSDAY, 21 MARCH 2002, COMMENCING AT 9.15 AM.**

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**1 APOLOGIES**



**2 URGENT BUSINESS**

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

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

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

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



**3 CONFIRMATION OF MINUTES**

Ordinary - Thursday, 7 February 2002

**RECOMMENDATION**

That the minutes of the Ordinary Meeting of the Hearings Committee held on Thursday, 7 February 2002, as circulated, be taken as read and now be confirmed.



4 **APPLICATION FOR EXEMPTION - FENCING OF SWIMMING POOLS ACT 1987**

**NEW LYNN WARD**

**PURPOSE OF THE REPORT**

To present an application for an exemption from the requirements of the Fencing of Swimming Pool Act 1987. Such exemptions may only be granted by resolution of the Council. This power can be delegated to a Council Committee but not to Council Officers.

**BACKGROUND**

*A1-A2*

Yvonne Cleverly and Ken Yallop of 728B South Titirangi Road, Titirangi have made application for an exemption to requirements of the Fencing of Swimming Pool Act 1987 in relation to an existing spa pool at their above residence. A copy of their exemption application and a photograph of the spa pool location is attached at pages A1 to A2.

The spa pool is inground and is located outside on a raised rear lawn to the house that overlooks an inground swimming pool that the applicants intend to fence in accordance with the Act.

**ISSUES**

Under Section 6 of the Fencing Of Swimming Pools Act, a Council may only grant exemption, or impose special condition, if, after having regard to the characteristics of the pool and the property, it is satisfied that "such an exemption would not significantly increase danger to young children".

In coming to a decision it is desirable that the intent of the Act as borne in the title of the Act is contemplated - "*An Act to promote the safety of young children by requiring the fencing of certain pools*" and that current statistics and research on drownings of young children be considered. Previous reports to the Planning and Regulatory Committee have outlined these statistics.

The Injury Prevention Research Unit and Water Safety New Zealand are opposed to reliance on pool covers primarily on the basis that complying pool fencing with a self-closing self-locking gate does not require human intervention. On the other hand, spa pool covers require direct human intervention for them to be replaced and locked.

Additionally, Water Safety New Zealand quotes the following statistics:

Since 1 January 1980 twenty-five people have drowned in spa pools in New Zealand, sixteen of these were children under five years of age. Of those twenty-five spa pools only three were fenced in accordance with the Fencing of Swimming Pools Act while seven had spa pool covers (these were either floating insulation covers or soft covers).

Territorial Authorities such as Upper Hutt City Council, Westland District Council, and Wellington City Council do not make exemptions for lockable spa pool covers.

Conversely, Territorial Authorities such as Manukau City Council, Auckland City Council and Rodney District Council may favourably consider exemptions for spa pool covers that satisfy the following principal criteria:

Is of lightweight rigid construction able to support the weight of a six year old child.

- b. Can be easily secured in place by a single individual.
- c. The cover can be readily and securely locked in place.
- d. Does not allow access under the cover when it is locked in place.
- e. Will not sag or accumulate water on it.

If the exemption application satisfying these criteria is granted, conditions are typically imposed relating to the mandatory use of the cover, signage, and term of the exemption.

## CONCLUSION

In considering this application for an exemption to the Fencing of Swimming Pools Act the Hearings Committee must be satisfied that such an exemption would not significantly increase danger to young children.

While Water Safety New Zealand is opposed to the use of lockable spa pool covers some cities do grant exemptions for lockable spa pool covers while others do not.

## RECOMMENDATIONS

1. That the information be received.
2. That the Committee evaluate the application and either decline or approve (subject to conditions) the exemption.

Report prepared by: Max Wilde, Manager: Field Services.



## 5 NOTIFIED APPLICATION FOR RESOURCE CONSENT UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 BY LB AND SK PEAT TO UNDERTAKE A 3 LOT SUBDIVISION AT 26 AWHIORANGI PROMENADE AND BOUNDARY ADJUSTMENT AT 35 PUKETAHA ROAD, RMA 20011687

### WAITAKERE WARD

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

### 1.0 INTRODUCTION AND RECOMMENDATION

#### 1.1 Nature of the Application

The applicant seeks consent to:

- Undertake a three lot subdivision with lot sizes of 2.06 ha, 1.84 ha and 1.20 ha, of Lot 12 DP 137580 which is a 5.55 ha lot with frontage to Awhiorangi Road; and
- Undertake a boundary adjustment to add approximately 4500 m<sup>2</sup> of Lot 12 to an adjoining residential lot with access to Puketaha Road (Lot 4 DP 132832, 3171 m<sup>2</sup>).

#### 1.2 Resource Management Issues Raised

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

The area which is the subject of the three-lot subdivision application is in the Foothills Human Environment which has a general minimum lot size of 4 hectares. Council has prepared and released for informal comment a **draft** structure plan for the Swanson area (including this site). As a draft, this plan has no statutory effect but its contents are widely known and been the subject of significant public consultation and feedback. At the time of preparation of this report, it was expected that the proposed structure plan would be publicly notified before the end of February 2002. Once it is notified, it would be open for submissions for not less than 20 working days, and following the public notification of those submissions, open for further submissions for not less than 20 working days. In due course, hearings would be held on submissions.

The significant issue raised here is that the proposed Swanson Structure Plan is at the very beginning of its statutory process. Therefore, how much weight should be given to its provisions?

In Burton v Auckland C.C. M1973/93, HC Auckland, [1994] 12 NZRMA 544, Blanchard J. held:

The extent to which the provisions of a proposed plan are relevant should be considered on a case by case basis and might include:

- i. the extent (if any) to which the proposed measure might have been exposed to testing and independent decision making;
- ii. circumstances of injustice;
- iii. the extent to which a new measure, or the absence of one might implement a coherent pattern of objectives and policies in a plan.

In this particular instance, the proposed structure plan has been through a form of preliminary testing through its release (possibly in a different form) as a draft. However, comments on a draft are really a means of shaping a proposal for public notification, and it is through the public notification and subsequent hearing process that the proposal is exposed to proper testing and independent decision-making. Further, approval of proposals on the basis that they could comply with the provisions of a **draft plan change** may have implications for the process of consultation. Major resource management issues therefore arise from the policy and administrative implications, in terms of the orderly administration of the Proposed Plan, the signal which a consent could give to other landowners in this and other areas which may at some time in the future be considered for a structure plan, and the future ability to use Drafts as a means of consultation prior to formulating proposed plan changes.

Other resource management issues arise from the environmental effects of closer subdivision. These are addressed in more detail in this report.

### 1.3 Planner's Recommendation

The planner who has prepared this report recommends that **consent be declined** to the application by LB and SK Peat to undertake a three lot subdivision at 26 Awhiorangi Promenade, being Lot 12 DP 137580 and undertake a boundary adjustment to increase the size of the adjoining site at 35 Puketaha Road, being Lot 4 DP 132832. The reasons for this recommendation are that the development is contrary to the objectives and policies for the locality, which provide for such development to be only carried out in accordance with a Structure Plan, which is a part of the District Plan. The Structure Plan for this area is still in its draft form and has not been through the public submission and hearing process. A consent at this stage would be ad hoc and it could tend to inhibit the transparent process of releasing discussion drafts of possible structure plans.



#### 4.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The site subject to the application involves two lots. The main lot is Lot 12 DP 137580, being 5.55 hectares at 26 Awhiorangi Promenade. This road is a rural cul-de-sac (local road) that links to Scenic Drive North (a District Arterial Road) about 800 metres north of Scenic Drive North's intersection with Swanson Road and Waitakere Road. While most of Awhiorangi Promenade is rural in character with a Foothills Human Environment, and lots generally in excess of 4 hectares, the 300 metres of the road closest to Scenic Drive North provides frontage to the northern end of a Bush Living Environment which extends about 2 kilometres along Scenic Drive North and includes Rangimarie and Puketaha Roads. Typically this locality includes dwelling sites of around 1000 m<sup>2</sup>. The applicant's site adjoins a number of these residential properties. Lot 4 DP 132832 (35 Puketaha Road) is one of these lots, with an area of 3171 m<sup>2</sup> - this is the lot where a boundary adjustment is proposed to increase the lot area.

The main site (Lot 12) is in mixed pastoral and indigenous forest vegetation, with some exotic species. It is moderately to steeply sloping. The site is on the headwaters of the McEntee Stream, which flows to the Kumeu River. Its upper part contains a sensitive ridgeline, (broad, natural) and the site is within both the Managed and General Natural areas. The site has an estimated 3.7 hectares of native vegetation (two-thirds of the site area). On the front north-eastern corner of the site is a substantial mound of unconsolidated fill.

Lot 12 has one dwelling, in which the applicants reside.

Lot 4, the residential property, contains a dwelling and is largely clear of significant native vegetation. It is largely within the General Natural Area but a small corner of the site is within the Managed Natural Area. It is totally encompassed by a sensitive ridgeline, which also affects many other residential properties in this Scenic Drive North locality.

#### 5.0 PROPOSAL

The applicant seeks consent to subdivide an existing 5.55 hectare lot into three, and to adjust the boundary between this lot and an adjoining lot to increase the adjoining lot's size.

Each of the three proposed sites would be provided with individual access to Awhiorangi Promenade. Lot 1 includes the existing dwelling. Lot 2 has a building location well to the rear of the site on a cleared spur. This site is within the sphere of influence of a sensitive ridgeline. Lot 3's building site is on the cleared front portion of the proposed lot, well forward on the site.

Driveways would include:

- The existing driveway to lot 1;
- A new driveway for Lot 2, based on an existing farm track, approximately 170 metres long with an average gradient of 1 in 5.4 but in parts would exceed that (long sections have not been provided);
- A new driveway for Lot 3, approximately 70 metres long, with an average gradient of 1 in 10.

There is an estimated 3.7 hectares of native vegetation on Lot 12. Approximately 4000 m<sup>2</sup> of additional planting is proposed, in accordance with a vegetation management plan. This re-planting is proposed principally on ridge-tops (with an area immediately to the west of a property in Rangimarie Road proposed for low-growing plants) with some planting in lower-lying areas and along an existing bush edge.

It is intended, that the planted area will serve to mitigate the adverse effects of up to 600 m<sup>2</sup> of impermeable surface on each lot.

Onsite effluent disposal treatment systems are noted as being necessary, with soil conditions indicating that evaporation and evapotranspiration methods will be required. A specific design would be provided at the time a future dwelling is designed.

A full description of the proposal is contained in the information, further information and plans received with the application, found in Appendices One and Four attached to this report.

## **6.0 REASONS FOR THE APPLICATION**

Consent is required under those provisions of the Transitional and Proposed District Plans for the following reasons:

### **6.1 Proposed District Plan**

Subdivision Rules: Rule 7.0 Foothills Environment: provides for subdivision:

- With a minimum site area of 4 ha as a controlled activity (Rule 7.1 (a));
- Generally in accordance with a structure plan as a limited discretionary or discretionary activity (Rules 7.2(a) and 7.3).

A structure plan has to be prepared for a structure plan area. Structure plan areas have to be included as part of the District Plan.

At the time of the application (and at the time of preparing this report), there was no Structure Plan formally included in the District Plan for this area, therefore the application is considered as a non-complying activity.

Even if a structure plan was to be proposed as a variation through public notification, the proposal would still need to be considered in accordance with the Proposed Plan before introduction of the variation (ie. as a non-complying activity), although it would be possible to give some consideration to the provisions of the variation particularly where these have been subject to a degree of testing.

### **6.2 Transitional District Plan**

The Transitional Plan's Rural 3 zoning provides for subdivision of 5 hectare lots or smaller lots containing existing glasshouses. The current proposal is not provided for. Therefore the proposal is non-complying in respect of the Transitional Waitemata Section of the District Plan.

**6.3 Overall, the application is considered to be a non-complying activity. The proposal complies with all other development controls under the Transitional and Proposed District Plans.**

**6.4 No other consents are required in respect of this application.**

## **7.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS**

*A114-A143*

The application was publicly notified on 21 November 2001, and the period for submissions closed on 19 December 2001. Nine submissions were received. Five submissions supported the application, two submissions opposed the application, and two submissions sought specific changes or conditions for the proposal. Please refer to Appendix Three, as attached at pages A114 to A143 for copies of the submissions that were received.

## 7.1 Submissions

*A112-A113* Submissions were received from the following people. Refer to the map found in Appendix Two, as attached at pages A112 to A113 for the location of submitters. This map also shows the boundaries of the Draft Swanson Structure Plan Area and the parties notified.

### Submissions in Support

	Map reference		
<i>A115-A116</i>	1	Sin-Heng Dallow	35 Awhiorangi Promenade
<i>A117-A118</i>	1	James Dallow	35 Awhiorangi promenade
<i>A119-A120</i>	2	PA and SM Holman	37 Awhiorangi Promenade
<i>A121</i>	(not shown)	IH and RJ Smillie	45 Christian Road, Swanson
<i>A122</i>	3	Lisa and Keith Rogers	28 Awhiorangi Promenade

In general, submissions in support note that the proposal is generally in accordance with the draft Swanson Structure Plan.

### Submissions in Opposition

<i>A123-A130</i>	4	Sidney Lovell	28 Rangimarie Avenue
<i>A131-A136</i>	4	Jane Lovell	28 Rangimarie Avenue

Submissions in opposition note the structure plan is not yet in effect and consider the proposal has adverse effects particularly affecting the lifestyle enjoyed by the submitters.

### Submissions Seeking Specific Changes/Conditions

<i>A137-A138</i>	5	Thor and Alice Hemming	24 Awhiorangi Promenade
			Opposes location of building platform on Lot 3.
<i>A139-A140</i>	6	WJ and KT Haaeh	31B Puketaha Road

Seeks restriction of tree species on Lot 2 near southern boundary to low-growing species.

### Late Submissions

<i>A141-A142</i>		BJ and JL Cosgrave	26 Rangimarie Road	(Oppose)
<i>A143</i>		ML and JE Lyes	109 Sturges Road	(Support)

### Comment

Submissions in support of the application are generally from residents of the Foothills Environment who would be within the Draft Swanson Structure Plan Area.

Submitters seeking specific modifications or opposing the application generally are residents of the adjoining Bush Living Environment.

## 8.0 STATUTORY REQUIREMENTS

*A161-A175* The relevant policies and criteria which apply under the Transitional and Proposed District Plan and the Resource Management Act 1991 are set out in more detail in Appendix Nine as attached at pages A161 to A175. This should be referred to as the legal framework within which the application should be addressed.

## **8.1 The Weighting of District Plans**

The Act requires the consideration of both the Transitional and Proposed District Plan prior to the Proposed Plan becoming operative. In relation to this application neither the Transitional Operative Plan nor the Proposed District Plan provide for the activity. However any provisions of the Proposed Plan, which has been prepared under the auspices of the Resource Management Act, relevant to this proposal have been considered via the District Plan submission process. Therefore the Proposed Plan is considered to have greater weight in this particular case.

## **8.2 Non-Complying Activities**

As noted, the proposal requires consideration as a non-complying activity under the provisions of the Resource Management Act 1991. Section 105(2A) of the Act sets a threshold test which all resource consent applications for non-complying activities must first pass before a consent authority has jurisdiction to grant consent, having regard to the matters specified in Section 104. In short, the proposal must be able to establish and operate without generating more than minor adverse effects on the environment, or must not be contrary to the relevant objectives and policies of either the Proposed District Plan or the Transitional District Plan.

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

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

## **9.0 EVALUATION IN ACCORDANCE WITH SECTION 104 OF THE ACT**

### **9.1 Assessment of Environmental Effects (104(1)(a)): Actual and potential effects on the environment.**

#### **9.1.1 Water Quality and Quantity**

The emphasis in the application is to provide for hydrological neutrality, such that runoff from impermeable surfaces does not give rise to additional stream flows (ie. post-development stream flows do not exceed pre-development flows). This is important in the Kumeu River catchment.

This hydrological neutrality is generally obtained through on-site dispersal to the ground. To this end, significant additional planting is proposed.

A151-A153 The following comments have been provided by Mr Richard Thomas, Subdivision Engineer, EcoWater Solutions, refer to Appendix Five, as attached at pages A151 to A153:

*"The proposed subdivision is located in the headwaters of the McEntee Stream which drains into the Kumeu River Catchment. Due to significant downstream flooding in this catchment developments are required to limit stormwater runoff flows, volume and timing to predevelopment levels. The method of achieving this outcome as outlined in the "Stormwater Hydrological Neutrality Report" prepared by Cato Bolam Consultants Limited dated 8 October 2001 and further details e-mailed 12 February 2002 complies with Councils Countryside and Foothills Stormwater Management Code of Practice.*

*The applicant proposes to use bush planting to mitigate the effects of increased stormwater runoff from new impermeable areas that will result from new driveways, manoeuvring areas and buildings on Lots 2 & 3. The bush planting proposed is sufficient to mitigate the effects of up to a further 600m<sup>2</sup> of impermeable area on these Lots. In addition it is proposed to construct dual strip driveways to minimise impervious areas.*

*Stormwater runoff from driveways and buildings is to be dispersed in a way that mimics natural runoff patterns rather than concentrating flows to a watercourse, open drain or roadside water table. The proposal is considered effective and with the conditions below rigorous enough to ensure ongoing compliance."*

#### **9.1.2 Native Vegetation, Vegetation and Fauna Habitat, Ecosystem Stability**

The applicant's site is identified in the "Waitakere City: Swanson Structure Plan Landscape and Ecology Study" (Boffa Miskell Limited October 2000) as being in Ecological Unit 3A - Farmed Area with some Consolidated Natural Features. This unit is described as containing a mix of streams, with poorly managed riparian margins, some quite large stands of tall kanuka/kauri, with between these stands, open pastures.

This description of the Ecological Unit generally fits the applicant's site, although the site would appear to lack the taller trees. In addition the riparian margins of the McEntee Stream appear to be in better condition than those of the wider area.

The proposal, through additional planting and weed management, will improve the quality and quantity of native vegetation and fauna habitat.

#### **9.1.3 Land / Soil**

The geotechnical report accompanying the application has identified potential issues pertaining to Lots 2 and 3.

The building platform for Lot 2 is located on a broad ridge which has steep slopes on its western and eastern sides. These slopes are bush-clad but show evidence of scarp and shallow surface instability, with potential for upslope regression towards the building platform. Recommendations are made regarding barrier pile walls to the east and west of the building platform.

Lot 3 contains a cleared area to its front, of reasonably gentle slope apart from the edges of a large mound of uncontrolled fill. Behind this is a steep bush-clad slope. This fill poses relatively minor risks of settlement and shallow slumping and slipping on its steeper slopes. If the building platform were to be located in the area of the fill, it would be necessary to remove and/or recompact the fill, or to use piles which reach through the fill.

The report also notes potential problems with the driveway to Lot 2 (recommending retaining the upslope and down slope sides of the driveway).

The report also notes that stormwater flows running onto or over slopes or saturating the ground would potentially affect slope stability or foundations, and initially recommended collection of stormwater flows and piping to the base of slopes to existing watercourses. This is at odds with the hydrological management proposals originally described elsewhere in the application, although this discrepancy has since been resolved through alternative design proposals.

*A157-A158*

In comment on the proposal, the Council's geotechnical engineer has noted that foundations, proposed barrier pile walls and driveway retention will require specific design and various excavations will require inspection, refer to Appendix Seven as attached at page A157 to A158.

#### **9.1.4 Natural Character of Coast and Margins of Lakes, Rivers and Wetlands**

The site includes the headwaters of the McEntee Stream, which are less than 3 metres wide. The proposed additional planting and weed control measures will enhance the natural character of the margins of this stream.

#### **9.1.5 Outstanding Landscapes**

The Awhiorangi Promenade area is described in the Boffa Miskell report (referenced in 9.1.2 above) as being in Landscape Character Area 5B Undulating Vegetated Pastoral Mix. This character area is described as being of moderate visual quality with the varied topography creating a vivid landscape that is moderately intact. It is assessed as having a moderate to high ability to absorb change.

Therefore the area cannot be described as having an outstanding landscape in itself. However, the District Plan notes that foothills areas contribute to the outstanding landscape areas of the Waitakere Ranges.

#### **9.1.6 Amenity Values - Health and Safety, Landscapes, Local Areas and Neighbourhood Character**

As stated above, the Boffa Miskell report concluded that the Landscape Character Area which includes the applicant's site has a moderate to high ability to absorb change in landscape terms. This evaluation, which is quite broad-brush, did not give consideration to effects on amenities enjoyed by adjoining properties. The applicant's site is adjoined to the south and east by properties in the Bush Living Environment. The residential area is elevated above the applicant's site, and currently benefit from its proximity to land with low levels of development. Residents of this area enjoy outlook over this land and also in some cases enjoy access to the margins of this land. Should the development take place, there would be an overall reduction in amenity for a number of these properties.

It is the writer's opinion that the appropriate time to address the issue of effects on the amenities of the Bush Living Environment is through the Structure Plan submission process, where matters such as development potential and restrictions can be addressed. Granting consent to this application would pre-empt consideration of these wider issues.

More specifically, submitters raise two areas of concern - the location of the proposed building platform on Lot 3, and the possible height of planting near the southern boundary of Lot 2. These are seen as having potential for adverse effects on properties at (respectively) 27 Awhiorangi Promenade and 31 B Puketaha Road.

In considering the validity of these concerns, regard needs to be had to what could be expected from a "baseline" development on the applicant's site, given the site's current Plan provisions. It would not be fanciful to anticipate planting undertaken as of right near the southern boundary of the proposed Lot 2, even if the subdivision was not to proceed. Possibly less likely (although not entirely to be discounted) would be a building at the identified building location on the proposed Lot 3 if the subdivision did not proceed.

Therefore consent to the application would give rise to localised adverse amenity effects which may not arise otherwise. However given the permitted baseline and the opportunity to impose conditions, these effects are considered no more than minor. These are also typical of the sorts of issues that would be assessed through the resource consent that would be required for any subdivision once the Structure Plan was operative. The draft structure plan only identifies the number of lots that would be appropriate but does not identify the boundaries of the lots.

The proposed Lot 2 has a sensitive ridgeline identified across it. The proposed building platform is below this ridgeline so development would not encroach above that line.

The Council's roading and traffic engineer notes that a financial contribution would be due for road and drainage improvements along Awhiorangi Promenade. He also notes that compliance with driveway standards would be expected.

### 9.1.7 Summary

The proposed development involves the creation of two additional building sites. Whilst these sites will not be particularly visually prominent or out of character with the neighbourhood, they will have the potential for some adverse effects. These effects are however largely mitigated or offset by the addition of a substantial area of additional planting.

It is the report writer's opinion that the potential adverse effects of the proposed activity would be no more than minor, or could be adequately mitigated through appropriate conditions of consent. Further, having regard to the meaning of the word 'effect', the potential adverse effects would be such that this activity can meet the requirements of Section 104(1)(a).

## 9.2 District Plan Considerations (104(1)(d)): Relevant Objectives, Policies, Rules and other provisions of a Plan or Proposed Plan

As discussed in Part 7 of the report the Proposed Plan is considered to be the dominant document and discussion of the proposal in relation to the objectives, policies and rules of the District Plan has therefore been limited to those of the Proposed Plan.

### 9.2.1 Proposed District Plan

#### 9.2.1.1 Rules and Assessment Criteria

Assessment criteria in respect of subdivision in the Foothills Environment relate to controlled, limited discretionary and discretionary activities, and not to non-complying activities. Nevertheless, the criteria provided include:

7(a)	effect on green network, natural landscape elements, heritage features
7(b)	practical vehicle access
7(c)	shape of sites
7(d)	infrastructure
7(e)	landscape character
7(f)	location of roads and driveways
7(g), (h), (k), (l) and (m)	construction and design of carriageways
7(n)	network utility infrastructure
7(o) and (q)	stormwater treatment and disposal
7(r), (s) and (t)	wastewater treatment and disposal

Criteria 7(u) and 7(w) relate to subdivision within a structure plan area, and relate to the treatment of protection and enhancement areas within the structure plan.

### 9.2.1.2 Policies and Objectives

*A161-A175* Relevant Policies and Objectives are included in Appendix Nine, as attached at pages A161 to A175.

The proposed use of stormwater disposal techniques, which promote hydrological neutrality, is consistent with Policies 1.4 (relating to effects of settlement on water quality), 1.6 (seeking that activities do not adversely affect potential for regeneration of native vegetation and linkages), 1.7 (seeking minimisation of runoff), 1.10 (seeking design of impermeable surfaces to avoid adverse impacts on water quality), and 1.16 (seeking to protect riparian margins).

Policies 2.2, 2.12 and 2.13, relating to native vegetation and flora habitat, are promoted through the subdivision design, the fact that no clearance is proposed and that additional planting is also proposed.

The proposal is consistent with Policies 5.4 and 5.6 relating to natural regeneration and maintenance and enhancement of linkages, in that provides for the extension of indigenous vegetation.

Objective 9 relating to the City's outstanding landscapes includes Policy 9.2. This policy relates to development in those areas, which, while not having outstanding landscape value in themselves, are adjacent to areas of outstanding landscape. The policy states that within the Foothills Environment structure plans should reflect a building density and level of development that does not compromise the significance of the foothills as an ecological and visual buffer between the urban area of the City and the bushed area of Waitakere Ranges. Because the structure plan process has not been completed for this area, the proposal is inconsistent with the policy.

Section 6.2.1 of the Proposed Plan is entitled an "Explanation of Strategic Direction: Policies and Methods". This section notes that the Foothills Environment occupies a key position between the urban area and the Waitakere Ranges, that this area will not accommodate intensification to an urban density and that there is a need to establish settlement thresholds. These thresholds are based around a site size of 4 hectares, unless a higher intensity of development is provided for in a structure plan that applies to the area. Structure Plans are to relate development potential to the specific environmental and physical constraints and opportunities on each site within a catchment.

At present there is no Structure Plan, which is a part of the District Plan, although a Draft Plan is in existence.

*A154-A156* In her assessment of the application vis-à-vis the policies of the Proposed District Plan, Deanne Rogers, Locality Planner, states, refer to Appendix Six as attached at pages A154 to A156:

"The application deals with District Plan policy as encompassed within the Proposed District Plan. Whilst each objective and policy is addressed in respect of the subject site, in my opinion the application fails to consider the context within which these policies reside and the method by which they are intended to be implemented. The Proposed District Plan clearly states that settlement thresholds in the Foothills Environment below the 4 hectare minimum lot size will be established through structure plans (Policy Explanation 6.2.1 'Foothills'). It is not intended that these thresholds be established through the granting of non-complying subdivision consents. For this reason, I consider the application to be contrary to the strategic intent of the objectives and policies as they apply to the management of the Foothills Environment.

In my opinion, the application gives undue weight to the status of the draft Swanson Structure Plan. The applicant is correct in stating that the density proposed in the application is the same as that proposed by Council staff in the draft structure plan. However for the Council to grant consent to a non-complying subdivision based on a draft plan that has not been subject to the scrutiny of a legal submission and decision making process under Resource Management Act and which does not form part of the Proposed District Plan would be, in my opinion, premature and inappropriate.

With respect to consultation, in my opinion it is incorrect to compare consultation that forms part of the development of a proposed plan change with public notification of that change under Resource Management Act. It is conceivable that public notification of the draft structure plan may attract a range of submissions that influence the final format of the Swanson Structure Plan and possibly the subject site. For this reason, it would be prudent to wait until the draft Swanson Structure Plan has had an opportunity to proceed through the submission and further submission process before considering an application of this nature.

It is intended that the Swanson Structure Plan be publicly notified as Variation 88 to the Proposed District Plan in February 2002. The public submission and further submission process will extend through to mid May with a hearing expected toward the end of June 2002”.

### **9.3 Auckland Regional Policy Statement (104(1)(c))**

Subdivision to the lot sizes proposed in the application is not contrary to the strategic direction of the Auckland Regional Policy Statement, which provides for countryside living in appropriate locations and to a scale and extent that would avoid or mitigate adverse effects. However the Auckland Regional Policy Statement is also concerned with the ensuring that countryside living and rural subdivision is provided in an integrated and comprehensive manner so that “piecemeal” or ad hoc development such as this is avoided.

*A161-A175*

It is considered that subdivision through the structure plan process would be consistent with the integrated management of resources envisaged in the Auckland Regional Policy Statement and that subdivision on an ad hoc basis, such as proposed, would be contrary to the Auckland Regional Policy Statement, refer to Appendix Nine as attached at pages A161 to A175 for the relevant policies and objectives.

### **9.4 Any Other Matters the Consent Authority Considers Relevant (104(1)(i)).**

#### **9.4.1 Effect on Perception of Consistent Administration of the District Plan**

While it may not be appropriate to have regard under Section 104 (1)(a) to the effect of granting consent, on public confidence in and the coherence of a Plan, such factors can still be given some weight by virtue of Section 104 (1)(i). Thus where the effect of granting consent “would create a serious conflict with the relevant objectives and policies of a Plan or adversely affect the public perception of its consistent administration”, it “may still be relevant and reasonably necessary” to have regard to those effects. (Reith v Ashburton DC C034/94 3 NZPTD 424)

In this particular instance, it is the writer’s opinion that giving consent to non-complying activity applications, which may be in accordance with Draft Structure Plan provisions, where the draft has been given wide circulation and obtained public comment, could adversely affect public perception of the Plan’s consistent administration. More significantly, it could adversely impact on the open process of preparing and circulating draft plan changes, if such actions would lead to applications for resource consent, which anticipate the provisions of the draft.

Although the draft structure plan has been the subject of wide public consultation it is still only a draft and is not yet in a form that has been finalised by Council and the community. Thus it is noted that while the application is consistent with the density provisions of the draft, submissions in opposition have still been received to the proposal, even though it is consistent with the provisions of the draft.

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

The proposal is in general accordance with the Draft of the Swanson Structure Plan. This Draft in particular provides for up to 3 possible sites on the applicant's site, and for a significant proportion of the site to be within a bush protection area.

*A154-A156*

Deanne Rogers, Locality Planner, reported: (refer to Appendix Six, as attached at pages A154 to A156)

"In terms of background, the Council initiated the Swanson Structure Plan via its Annual Plan in 1998. This was in response to a request for funding by a number of landowners along with the Swanson Residents and Ratepayers Association. The submissions referred to in Section 4.0 of the application were lodged by the applicant in respect of the Proposed District Plan in 1995. Their further submission supported submissions made by other landowners requesting a structure plan for Swanson. The Council did not choose to initiate a structure plan at this time, but instead make decisions on developing and funding structure plans through the Annual Plan process.

With respect to the applicant's current circumstances, the Council has been aware of Mr Peat's desire to subdivide his property for some time. The applicant approached the writer and the Service Manager: Resource Management and Building in March 2000. It was agreed that subdivision of the property be addressed through the development of the Swanson Structure Plan. The Swanson Residents & Ratepayers Association appointed Mr Peat, along with a number of other Swanson landowners to the Swanson Structure Plan Liaison Group. This group has been active in liaising between the Council and the community in respect of the development of a structure plan for Swanson.

The applicant approached the Council in November 2000 via their agent Cato Bolam consultants about the prospect of preparing a 'mini' structure plan for several properties in Awhiorangi Promenade. At the time, the applicant was advised by Council staff to wait until the site reviews had been completed for all properties in Swanson and that development on the subject site continue to be considered as part of the wider Swanson Structure Plan."

#### **10.0 PART II OF THE ACT**

The purpose and principles of the Act have primacy over all other considerations that are set out in Section 104 of the legislation. In summary, Sections 5, 6 and 7 require that resources must be sustainably managed in a way or at a rate that, while people and communities can provide for their wellbeing, any adverse effects on the environment can be avoided, remedied or mitigated. Furthermore, the Act requires that amenity values and the quality of the environment are to be maintained and enhanced.

The Proposed Plan has determined that the appropriate method for subdivision below the 4ha minimum in the Foothills Environment is through a structure plan process. To the extent that an orderly development code, such as a structure plan, better enables people and communities to provide for their needs in a sustainable manner, than does ad-hoc development, it is considered that the proposal does not promote the sustainable management of resources.

## 11.0 EVALUATION IN ACCORDANCE WITH SECTION 105 OF THE ACT

The threshold test in Section 105(2A) of the Act 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 (105(2A)(a)) or the activity will not be contrary to the objectives and policies of a plan or proposed plan (105(2A)(b)). As discussed in Section 7.0 of this report very little weight shall be given to the objectives, policies and rules of the Transitional Plan as the Proposed Plan is considered to be the dominant document.

It is considered that the threshold test for a non-complying activity has been met as the proposal satisfies section 105(2A) in that subject to appropriate conditions of consent requiring mitigation the adverse effects on the environment of the proposal will be no more than minor.

However the proposal is contrary to the relevant objectives and policies of the Proposed District Plan, and in particular Policies and Methods: 6.2.1 Foothills Environment and Structure Plans, which clearly anticipates development of this nature proceeding only once a Structure Plan has been incorporated in the District Plan.

Jurisdiction to grant consent has therefore been established. However, the evaluation in Part 9 of this report indicates that consent is inappropriate.

### CONCLUSION

The applicant seeks consent to carry out a non-complying subdivision of a 5.55 ha lot into three, and carry out a boundary adjustment. The subject site is located at 26 Awhiorangi Promenade.

The site is zoned Rural 3 and Foothills Environment (Transitional and Proposed District Plans).

It is considered that the proposal **does not meet** the criteria for granting consent as, while the potential adverse environmental effects as assessed under Section 104(1) of the Resource Management Act 1991 are no more than minor or can adequately be mitigated through the imposition of appropriate conditions of consent, the proposal is considered to be contrary to the objectives and policies of the Proposed Plan which seeks to ensure such development is in accordance with a Structure Plan which has been prepared through the process described in the Plan.

Although the proposal meets the threshold set by Section 105(2A), the proposal has some conflict with Part II of the Act, which requires that resources be managed in a sustainable manner. Granting consent to the proposed development at this time would effectively pre-empt any submissions or decision regarding the Swanson Structure plan.

It is considered that the issues raised by the submitters, which relate to physical impacts **can** be adequately addressed through the imposition of appropriate conditions. However, some of the opposing submitters concerns can be best addressed through the structure planning process, and the submitters have only had limited opportunities to do this.

Subject to any additional and/or contrary evidence being presented at the hearing, it is concluded that the application **does not merit consent** in accordance with Sections 104 and 105 of the Resource Management Act 1991.

## RECOMMENDATIONS

That pursuant to Sections 104, 105, 108 and 113 of the Resource Management Act 1991, and subject to additional or contrary information being presented at the hearing, **consent be declined** to the application by LB and SK Peat to undertake a three lot subdivision at 26 Awhiorangi Promenade, being Lot 12 DP 137580 and undertake a boundary adjustment to increase the size of the adjoining site at 35 Puketaha Road, being Lot 4 DP 132832, for the following reasons:

- (i) The development is contrary to the objectives and policies for the locality, which provide for such development to be only carried out in accordance with a Structure Plan that is a part of the District Plan.
- (ii) Although a Draft Structure Plan has been prepared, it has not been through the process of public submission, hearing, decision, and incorporation in the Plan, and therefore the provisions of the Draft Structure Plan merit little weight at this stage.
- (iii) Consent to the application at this stage is not necessary to correct an injustice, and would be an ad hoc process, which pre-empts the agreed structure planning process, and could lead to a loss of public confidence in the consistent administration of the Plan.
- (iv) Consenting to the application would give rise to serious concerns about the future use of the relatively open process of consultation prior to notification of structure plans.

Report prepared by: Duncan McKenzie, Consultant Planner.

