

**AGENDA FOR A MEETING OF THE HEARINGS COMMITTEE TO BE HELD IN THE
CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON THURSDAY, 26 MAY 2005, COMMENCING AT 9.30 AM.**

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1 APOLOGIES



2 URGENT BUSINESS

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

- (i) the Committee by resolution so decides; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

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

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



3 CONFIRMATION OF MINUTES

Meeting Minutes - Thursday, 24 March 2005
Reconvened Minutes - Monday, 11 April 2005
Meeting Minutes - Thursday, 14 April 2005

RECOMMENDATION

That the minutes of the Meeting of the Hearings Committee held on Thursday, 24 March 2005 and Reconvened on Monday, 11 April 2005 and the Meeting held on Thursday, 14 April 2005, as circulated, be taken as read and now be confirmed.



4 **NOTIFIED APPLICATION FOR RESOURCE CONSENT UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 BY M & C BRICKELL AND W ASHTON AND L SCHWAB TO UNDERTAKE A 7 LOT SUBDIVISION AT 54-56, 58-60 CHRISTIAN ROAD, SWANSON**

WARD WAITAKERE

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

APPLICATION DETAILS

Planner:	Steven McKenzie
Site Address:	54-56 and 58-60 Christian Road, Swanson
Applicant:	W Ashton & L Schwab and M & C Brickell
Date Received:	12 July 2004
Resource Consent No:	RMA20041695 SPW22244
Legal Description:	Lot 1 DP 161541 and Lot 2 DP 161541
Address for Service:	54-56 Christian Road 58-60 Christian Road
Site Area:	11.1016ha
Proposed Lot Areas:	Lot 1: 1.05ha, Lot 2: 1.2ha, Lot 3: 0.75ha, Lot 4: 2.37ha, Lot 5: 2.66ha, Lot 6: 1.5ha
Transitional Plan:	
Zoning:	Rural 3
Section:	City of Waitemata
Hazards:	Nil
District Plan:	
Human Environment:	Foothills
Natural Area:	General and Managed
Landscape Elements:	
Hazards:	Nil
Roading Hierarchy:	Local
Further Information Required:	Yes
Date Requested:	17/02/05, 05/04/05
Date Received:	14/04/05

1.0 INTRODUCTION

1.1 Nature of the Application

Consent is sought to carry out a combined subdivision of two sites being 54-56 and 58-60 Christian Road into seven lots varying in size from 0.75ha to 2.66ha within the Foothills Environment. The site is part of the Proposed Swanson Structure Plan Area which is subject to appeals to the Environment Court.

Under the Proposed District Plan, the site falls within the Foothills Environment. A minimum lot size of 4 hectares is required for all subdivision of land within this environment therefore the status of this application under the foothills rules is non-complying. However, the subject property also falls within the Proposed Swanson Structure Plan Area of the District Plan. Any subdivision, not meeting the 4-hectare standard, which creates a density equal to that provided on a structure plan, is assessed as a Limited Discretionary Activity. The applicant seeks to establish seven Lots which are equal to that indicated within the Proposed Swanson Structure Plan.

The Foothills Subdivision Rules of the Proposed District Plan were not part of the rules deemed Operative on 27 March 2003, and the Proposed Swanson Structure Plan is still subject to appeals including those seeking the withdrawal of the Proposed Swanson Structure Plan, therefore the Transitional Rules are still to be considered. Under the Transitional Plan the site is zoned Rural 3. The Rural 3 zone permits the subdivision of land where each site created has a minimum net area of 5 hectares. The proposed sites would be less than five hectares, therefore the application is a non-complying activity under the provisions of the Transitional Plan.

Overall the application must be assessed as a Non-Complying activity.

Public Notification of the application attracted 39 submissions, 38 of which were in objection, the remaining one was in support.

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

1.2 Resource Management Issues Raised

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

Firstly, the proposal requires consideration against the relevant objectives and policies of the District Plan instruments together with those of the Regional Policy Statement. If the proposed development is contrary to the objectives and policies of these plans and statements, then the granting of consent may compromise the integrity of the District Plan and Regional Policy Statement, and erode public confidence in their consistent administration.

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

In addition to this, the application raises the issue of adverse cumulative effects resulting from a change in the character of the Foothills Environment as well as an increase in intensification within the catchment prior to the final determination of the Proposed Structure Plan in the Environment Court. Finally, there is a need to ensure that the proposal is not inconsistent with the overarching purpose and principles of the Resource Management Act 1991.

The proposed subdivision would be contrary to the public interest under Section 406 of the Resource Management Act 1991, as approval would be seen to circumvent the process of the Structure Plan through the Environment Court, particularly as it would create a precedent for the "Structure Plan" subdivisions currently before Council and future applications. The relevant provisions of Part II of the Act cannot be satisfied and the development would not be consistent with the sustainable management principles of Section 5 of the Resource Management Act 1991.

1.3 Planner's Recommendation

The planner who has prepared this report recommends that **consent be declined** to the application for a **7 Lot subdivision**.

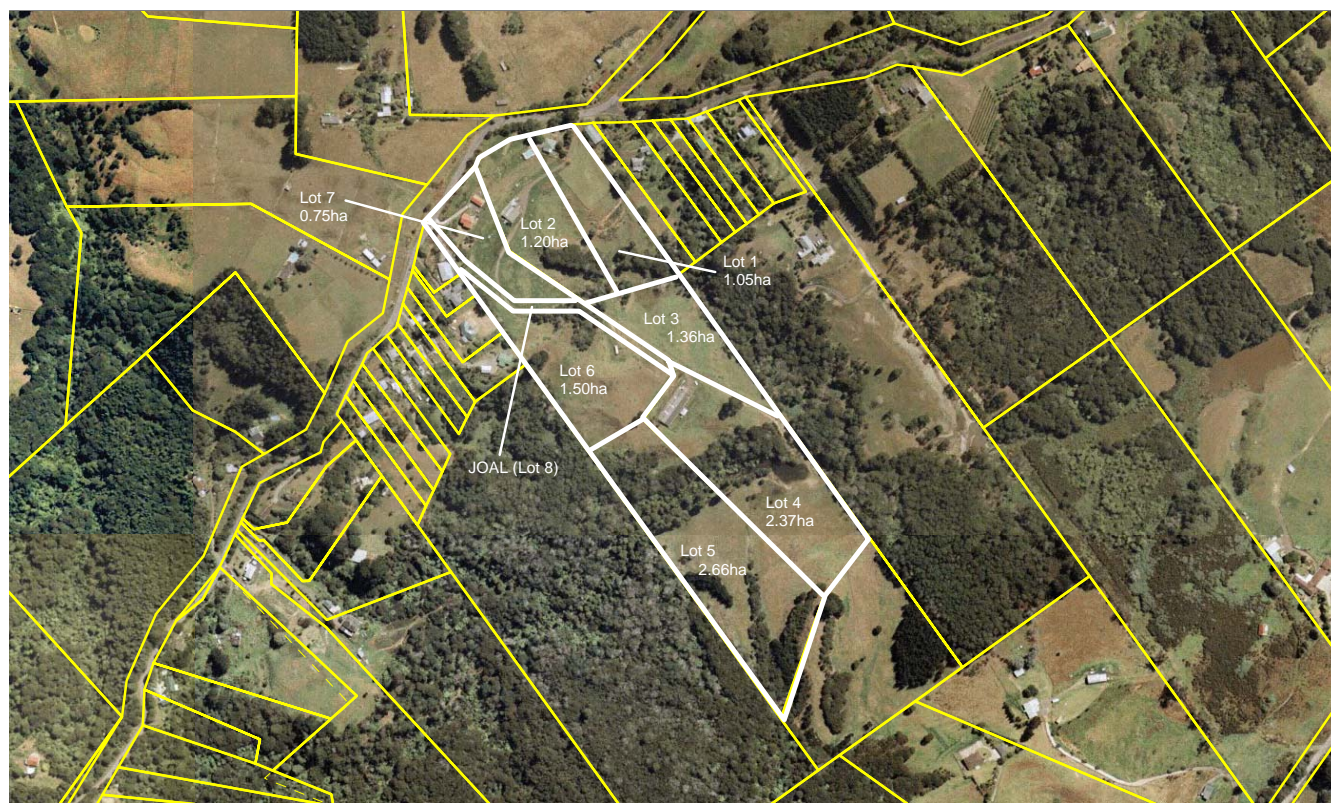
It is considered that the actual and potential adverse effects of the subdivision on the environment would be significant, particularly in respect of amenity, character and cumulative effects. The granting of this application would undermine the integrity of the Structure Plan process in terms of the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

2.0 LOCATION PLAN

Figure 1: 54-56 and 58-60 Christian Road



Figure 2: Proposed Subdivision Layout



3.0 PROPOSAL

The proposal involves the creation of seven lots which would be broken down into four lots at 54-56 Christian Road and three lots at 58-60 Christian Road.

Proposed Lot 1 would be 1.05ha in size and contains an existing 1900's weatherboard cottage which fringes and would have direct access to Christian Road.

Lot 2 being 1.2ha in area would occupy the central portion of the property adjoining Christian Road and contains an existing dwelling of 215sqm which is the residence of W Ashton and L Schwab (applicants). A shed of 178sqm also occupies this site and is located between the dwelling and the road. The applicant has confirmed that this shed is currently inhabited. The site is bounded by Christian Road to the north, proposed Lot 7 to the southwest, proposed Lot 3 to the southeast and proposed Lot 1 to the northeast.

Lot 3 being 1.36ha in area is located to the south of proposed Lots 1 and 2 and is triangular in shape. The site is bounded by the partly formed access way along the south-western boundary and the boundary with the adjoining property, No 82 O'Neills Road to the east. There is existing native vegetation in the northern part of the site which would be subject to further replanting.

Lot 4 would have a net site area of 2.37ha and is bounded to the west by lot 5, the north by lot 6, the east by lot 3 and runs to the rear of the site where it bounds 43 Coulter Road. The site contains an existing large shed with a unit area of 606sqm to the north of the site which is currently being used for commercial arts purposes. The site then slopes down to the Waimoko Stream which is fringed by existing native vegetation and has been historically dammed at this point. A causeway provides access across the Waimoko Stream to the rear of the site which slopes upwards to the rear of the property and is in pasture and utilised for grazing.

Lot 5 being 2.66ha runs parallel to Lot 4 and has similar site characteristics. The site is bounded by Lot 4 to the east, Lot 6 to the north and 74 Christian Road to the west. Access to the site would be via a driveway which runs to the north of the existing shed. This site contains the most significant area of existing native vegetation and on the southern side of the Waimoko Stream contains an existing cleared and grazed area than runs to the south of the site. This part of the site also contains ephemeral streams and fingers of vegetation following these systems. The proposed building platform would be in an existing cleared area to the north of the site.

Lot 6 continues from the northern boundaries of Lots 4 and 5 and is bounded by the property at 74 Christian Road to the west and the existing shared driveway to the east. The site slopes up steeply in a north-western direction and the proposed building platform would be located on a plateau midway up this ridge.

Lot 7 continues from the northern boundary of Lot 6 and bounds Christian Road to the north and has a net site area of 0.75ha. The property contains an existing 300sqm dwelling and associated minor household unit and is the residence of the Brickells (applicants). The dwellings are located approximately 5-6m above the road. The proposed access way which runs off Christian Road runs down the south-western boundary of this site.

It is also proposed to re-vegetate approximately 12,200m² of the site with native replanting which would serve as stormwater mitigation and also includes planting for visual screening. The revegetative planting is to be established along riparian margins, in ecological linkages, and in a steep gully and wetland landform association.

4.0 REASONS FOR THE APPLICATION

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

Non-Complying Activity for a Subdivision creating lots less than 5ha within the Rural 3 Zone (Rule 12.3:5.2, City of Waitemata Transitional Plan).

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

The 7 lots proposed vary in size from 0.75ha to 2.66ha, i.e. below both rules listed above.

Discretionary activity for earthworks exceeding 300m³ in volume and are associated with the construction of a driveway (General Natural Area Rule 3.4). The total volume of earthworks being undertaken is identified as 337m³ over a plan area of 721m².

Limited Discretionary Activity under Proposed Variation 88 (Swanson Structure Plan) for a subdivision creating the number of lots as shown on a structure plan forming part of the Plan (Rule 7.2 (a) Subdivision Rules (Not Operative), Waitakere City Council District Plan). Variation 88 (Swanson Structure Plan) shows a total of 7 lots allocated to these two sites.

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

4.1 History of Site

54 - 56 Christian Road

04 September 2001 Consent granted to construct a dwelling and convert the existing dwelling into a studio (Reference RMA 20011116).

Note: Condition 28 of this consent requires the kitchen unit to be removed to ensure that this unit is not utilised as an additional dwelling. The applicant has confirmed that there is currently somebody residing in this premises, therefore it can be assumed that this condition has not been met.

60 Christian Road

01 August 1996 Consent granted to construct a garage for the main residence and a sleep out within 3m of the front boundary (Reference 2403).

1990 Application made to fill a gully located approximately 100m back from the road and approximately 23m from the south-western boundary with clean fill and/or hard fill over a period of 6 months. Estimated that 12,000m³ of fill would be required equating to 1200-1400 truck loads.

Not sure if this was approved as a un-signed report is the only evidence Council holds of this application however these works have taken place on site.

5.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The underlying site at 54-56 Christian Road is an unusual shape which consists of a roughly triangular parcel of land with a triangular segment removed approximately midway down the western boundary of the site, giving the property the shape of a key. The property slopes down from the ridge that runs along the road frontage of the site to the Waimoko Stream and then rises up gradually to the rear of the site. There is a line of existing native vegetation that runs in a south-western to north-eastern direction approximately one third the way down the site and another band of vegetation fringing the Waimoko Stream. The remaining area of land is predominantly grassed and utilised for grazing.

If one were to continue along Christian Road in a south-western direction for approximately 70m and then run a line parallel with the north-eastern boundary of the above property, the underlying property at 58-60 Christian Road forms the other half of this rectangle. This site has the same characteristics as the above property and the native vegetation on site builds upon what was outlined above. The area of bush is wider along the Waimoko Stream and there is also a few fingers of vegetation extending from the southern corner of the site which follow the ephemeral streams. The remaining areas of this site are also grassed and currently utilised for grazing.

The surrounding area is similar in character to the subject site although the property at 74 Christian Road to the west of the site is almost completely vegetated. The subject sites form a breaks the continuous ribbon type development which fringes Christian Road.

6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

A91-A236

The application was publicly notified on 17 January 2005. The period for submissions closed on 15 February 2005 and 39 submissions were received. 38 submissions opposed the application, and one submission supported the application. Attached at pages A93 to A236 for copies of the submissions that were received. A map showing the location of the submitters is attached at pages A91 to A92.

6.1 Submissions

	Submitter	Address	Support / Oppose
1	Auckland Regional Council	Vodafone House Private Bag 92 012 AUCKLAND	Oppose
2	Meridian Planning on behalf of Mr C Tucker	82 O'Neills Road Swanson Contact: Meridian Planning Consultants Limited PO Box 8960 Symonds Street Auckland	Oppose
3	G and V Binning	27 Coulter Road Swanson WAITAKERE CITY	Oppose
4	N Delgarno	10-12 Candia Road Swanson WAITAKERE CITY	Oppose
5	G and G Young	72 O'Neills Road Swanson WAITAKERE CITY	Oppose
6	P Laird	409 Henderson Valley Road Henderson WAITAKERE CITY	Oppose
7	J Berry	5 Coulter Road Swanson WAITAKERE CITY	Oppose
8	S and C Furneaux	69 Coulter Road Swanson WAITAKERE CITY	Oppose
9	M Yozin	112 Christian Road Swanson WAITAKERE CITY	Oppose
10	A HISSEY	6 Coulter Road Swanson WAITAKERE CITY	Oppose
11	The Henderson Valley Residents Ass Inc	PO Box 121 117 Henderson WAITAKERE CITY	Oppose
12	C Tucker	82 O'Neills Road Swanson WAITAKERE CITY	Oppose

	Submitter	Address	Support / Oppose
13	Waitakere Ranges Protection Society	Ellis Gould Barristers & Solicitors PO Box 1509 AUCKLAND	Oppose
14	Preserve the Swanson Foothills Society	C/- 5 Coulter Road Swanson WAITAKERE CITY	Oppose
15	A and L Byrne-King	74 Coulter Road Henderson WAITAKERE CITY	Oppose
16	G and B Loos	66 Christian Road Swanson WAITAKERE CITY	Oppose
17	C Miller	86 O'Neills Road Swanson WAITAKERE CITY	Oppose
18	E de Lange	77 Coulter Road Henderson Valley WAITAKERE CITY	Oppose
19	P Heimel	73 Coulter Road Henderson WAITAKERE CITY	Oppose
20	SJ Lovell	28 Rangimarie Avenue Swanson WAITAKERE CITY	Oppose
21	R Yozin	PO Box 95041 Swanson WAITAKERE CITY	Oppose
22	K and H Wallace	103 Christian Road Swanson WAITAKERE CITY	Oppose
23	R and C van Pypen	90 O'Neills Road Swanson WAITAKERE CITY	Oppose
24	PK and RE Stubbs	45 Coutler Road Swanson WAITAKERE CITY	Oppose
25	T and M Black	62 Christian Road Swanson WAITAKERE CITY	Oppose
26	M Lawrence	37 Coulter Road Swanson WAITAKERE CITY	Oppose
27	L Lawrence	37 Coulter Road Swanson WAITAKERE CITY	Oppose
28	TM Jenkin	38 Christian Road Swanson WAITAKERE CITY	Oppose

	Submitter	Address	Support / Oppose
29	D and G Ford	64 Christian Road Swanson WAITAKERE CITY	Oppose
30	R Cooke and C Holt	62 Christian Road Swanson WAITAKERE CITY	Oppose
31	PA and JAM Chanles	16 Coulter Road Swanson WAITAKERE CITY	Oppose
32	C Mackenzie-Simpson and M Simpson	41 Coulter Road Henderson Valley WAITAKERE CITY	Oppose
33	DG Watts	40 Coulter Road Swanson WAITAKERE CITY	Oppose
34	A Berman	53 Welsh Hills Road Swanson WAITAKERE CITY	Oppose
35	RA and LR Melles	32 O'Neills Road Swanson WAITAKERE CITY	Oppose
36	P and J Robinson	57 Christian Road Swanson WAITAKERE CITY	Oppose
37	T Hoskell	55 Christian Road Swanson WAITAKERE CITY	Oppose
38	T Horring	PO Box 60031 Titirangi WAITAKERE CITY	Support
39	G Kunin	81 Christian Road Swanson WAITAKERE CITY	Oppose

6.1.1 Support of Proposal

Submissions supporting the subdivision considered the subdivision appropriate as it was consistent with the Proposed Swanson Structure Plan.

6.1.2 Opposition to Proposal

Submissions opposing the subdivision gave numerous reasons, as follows;

- The proposal is contrary to the “sustainable management” purpose of the Resource Management Act 1991.
- The proposal is contrary to the strategic objectives and policies of the Auckland Regional Policy Statement (1999).
- The proposal is contrary to the objectives and policies of the Waitakere District Plan (2004).

- Reliance on Variation 88 (to the District Plan) - the Swanson Structure Plan, is inappropriate given the number of appeals to the Environment Court, including numerous appeals seeking its withdrawal.
- Given the Structure Plan has not been finalised, Subdivision would result in “ad-hoc” development in the area.
- Granting consent to the proposal would undermine public confidence in the consistent administration of the Waitakere City District Plan.
- Peat decision to which the Environment Court decision granted approval to and related to another site within the Proposed Swanson Structure Plan area pertinent to that individual property and not intended as a precedent.
- Would result in adverse effects on the environment that cannot be avoided, remedied or mitigated by the applicant and that cannot be internalised on the application site.
- Fails to meet the tests required for approval of a Non Complying Activity.
- Detracts from the amenity, character and environment of the area to the detriment of the local community.
- Loss of buffer between the Ranges and urban part of the City.
- Loss of rural character and lifestyle.
- Application does not address traffic safety (on Christian Road) including effects of increased volume of traffic, and has insufficient information with regards to stormwater and sewer disposal (and the potential effects of these).
- Cumulative effects resulting from the precedent if approval is granted (prior to the determination of the Swanson Structure Plan in the Environment Court).
- Has not considered future adverse effects of future development on the sites (including minor household dwellings).
- Stream Works modifications including the damming of the stream have already been carried out on site; further development has the potential to exacerbate these adverse effects.
- No reference has been made to the former dump on site.
- Concern over land stability.
- Degradation of flora and fauna and increase in pests associated with urbanism.
- Process for ensuring re-vegetation establishment not robust.

6.1.3 Written Consents Accompanying the Application

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

R Cooke & C Holt	62 Christian Road (Occupiers)
A & B Maitland	68 Christian Road
C & B Crocker	60A Christian Road
IH Smillie (for Arbis Trust)	45 Christian Road
AF & IM Naber	51 Christian Road
D & D Potton	52 Christian Road
B & S Vaughan	48 Christian Road

A submission in opposition to the proposal has since been received from R Cooke & C Holt with supersedes the written approval outlined above.

7.0 STATUTORY REQUIREMENTS

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

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

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

7.1 Non-Complying Activities

The relevant policies and criteria which apply under the District Plan and the Resource Management Act 1991. This should be referred to as the legal framework within which the application should be addressed.

As noted, the proposal requires consideration as a non-complying activity under the provisions of the Resource Management Act 1991. Section 104D of the Resource Management Act 1991 sets a threshold test which all resource consent applications for non-complying activities must first pass before a consent authority has jurisdiction to grant consent, having regard to the matters specified in Section 104. In short, the proposal must be able to establish and operate without generating more than minor adverse effects on the environment, or must not be contrary to the relevant objectives and policies of both the Transitional and Proposed District Plans. Under the statutory permitted baseline Council may disregard an adverse effect of an activity on the environment if the operative rules under (in this case) the Transitional Plan permits an activity with that effect.

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

However it should be noted that for council to grant consent to a non-complying activity application there should generally be some exceptional or unusual element to the proposal. If such unusual circumstances do not exist, then the proposal would effectively compromise the integrity of the District Plan and public confidence in the consistent administration of the plan may be undermined.

Council also has discretion to consider any precedent issues that may arise for a non-complying activity. According to the Court of Appeal decision in *Dye v Rodney District Council*, an adverse precedent effect can arise where the grant of a non-complying consent would influence the approach taken by Council to similar consent applications.

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

8.0 EVALUATION IN ACCORDANCE WITH SECTION 104 OF THE RESOURCE MANAGEMENT ACT 1991

In order to make a decision in terms of Section 104B of the Act it is necessary to undertake an analysis and assessment to determine whether the purpose and principles of the Act are being met (Part II) having regard to the matters set out in Sections 104, 104A - 104D as relevant, the Fourth Schedule and any other statutory considerations.

Section 104(1) of the Act requires that Council have regard to any actual or potential effects on the environment, any relevant objectives, policies, rules or other provisions of a plan or proposed plan and any relevant regional policy statement and regional plan or proposed plan, and any other matters the consent authority considers relevant and reasonably necessary to determine the application.

When considering an application Council must not have regard to any effect on a person who has given their written approval to the application (section 104 (3)(b)) and may disregard an adverse effect of an activity on the environment if the Operative Plan permits and activity with that effect (section 104(2)).

8.1.1 Permitted Baseline

In terms of determining adverse effects on the environment and whether a person would be adversely affected by the proposed activity, Section 94A and 94B gives Council the discretion to make permitted baseline comparisons ie. a comparison between the environment as it exists at the time the application is considered and (the effects) of activities that are permitted by the Operative Plan even if hypothetical, as compared with the effects of the proposed activity. Case law has established that any such hypothetical developments must be not be “fanciful” in terms of what could reasonably be expected to establish there.

Section 104D confers discretion on Council; to consider what activities may take place as of right under the Operative Plan. In this case, because the Transitional Plan continues to apply (for subdivision), the permitted baseline for subdivision is determined by the Transitional Plan. There is no permitted subdivision allowed for as of right on the subject site (under both the Transitional and Proposed Plans) and the minimum lot size envisaged under the Transitional Plan is 5 hectares. Thus the lot sizes for the proposed additional lots is significantly in excess of the permitted baseline. In addition, no additional dwellings are allowed for as of right under both the Transitional and Proposed Plans, meaning the effects of two additional dwellings also exceeds the permitted baseline. It is appropriate to have regard to the permitted baseline, in evaluating this application.

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

8.2.1 Water Quality and Quantity

8.2.1.1 Stormwater

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

Based on the expected development on each of the vacant residential lots and the formation of the Jointly Owned Access Lot, the increase in impermeable surfaces is calculated to be 3,177m². This is based on limiting the impermeable surfaces on the vacant Lots to 600m² and the formation of a 2.5m wide sealed drive-way to serve Lots 3-6. The Auckland Regional Council and the Waitakere City Council have agreed that planting 2000m² of pasture or recognised weed area back into bush would be sufficient to address hydrological neutrality for each vacant lot for the extreme storm events. The applicant proposes to plant a total of 12,200m² of native vegetation on the property to fully address the hydrological issues. The detail of the proposed planting is illustrated on the proposed planting plan prepared by Michelle Tyrrell that has been submitted with the application and discussed in more detail in section 8.2.2 below. Further stormwater measures to mitigate the reduced time of concentration and increase in peak flows from the lesser storm events have also been proposed which include keeping the modifications to the existing natural drainage patterns to a minimum, no direct stormwater discharge to streams or piped systems, limiting the impervious areas and using appropriate methods to detail and attenuate stormwater runoff from impermeable areas.

The details of the proposed dwellings are not known at this stage and therefore the specific designs of the stormwater disposal systems is best carried out at the stage of building consent application for each of the vacant lots. At this stage of subdivision the only impermeable surfaces will be associated with the construction and formation of the Jointly Owned Access Lot (Lot 8). It has been demonstrated that through the use of dispersion trenches and small wetland areas that stormwater from the Jointly Owned Access Lot can be successfully mitigated.

It is considered that the effects from the additional stormwater runoff from the anticipated 3177m² increases in impermeable surfaces can be adequately mitigated on site subject to conditions which have been drafted by Mr Iszard and would be imposed if the application were to be approved. It should be reiterated that the proposed level of planting actually exceeds the amount required for stormwater mitigation, outlined in Councils Code of Practice for City Infrastructure and Land Development.

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

8.2.1.2 Existing Dam on Site

The lower section of the Waimoko Stream which is one of the tributaries of the Swanson Stream has been historically dammed utilising an earth bund across the stream bed. The earth dam is approximately 2.5-3.0m high and there is a 3m wide crest of the dam which is currently being utilised for access to the rear of the property. The culvert which runs beneath the causeway has since broken and the owner has recently attempted to remediate the issue by excavating a drainage channel through the side of the dam. This causes the stream flow to be diverted from its natural course and to discharge onto the downstream property at 82 O'Neills Road at a slightly different point.

The issue of the dam has been raised as a concern by both the Auckland Regional Council and by the submitters. Mr Iszard makes the following comments:

“The area into which the diversion discharges is located only 5.0m downstream of the existing stream channel. The diversion of the stream is thought to have no more than a minor effect on the downstream property as the area into which the stream enters is a widely spread wetland area with well established wetland vegetation. However as this diversion channel has only been constructed within the last four months it is not possible to accurately ascertain the long term effects of this stream diversion.”

“Discussions with the Auckland Regional Council have confirmed that this dam does not have existing resource consent. Under the current legislation all dams with a catchment area of over 40 hectares require Resource Consent from the Auckland Regional Council, irrespective of the age the dam. The Auckland Regional Council are currently in negotiations with the owners and have issued a letter (dated 13 April 2005) to Ashton advising him of this issue and suggesting means of resolving this matter. These range from the removal of the dam and reinstatement of the natural watercourse to applying for an Auckland Regional Council Dam Consent and ensuring that the Dam meets all relevant criteria as set out by the Auckland Regional Council in the Dam Assessment Guide.”

“The removal of this dam and the reinstatement of the natural stream channel would have a quantifiable short term effect on the surrounding EcoWater system and downstream reaches of the Waimoko Stream. This would include high sediment loadings and possible contaminants that have accumulated behind the pond. A detailed methodology would need to be provided to both Auckland Regional Council and Waitakere City Council of how the removal of the dam and reinstatement of the natural stream bed and banks would be achieved with minimal environmental effects.”

The proposed subdivision would not utilise the rear sections of proposed Lots 4 and 5 and the ‘Plan of Extent of Proposed earthworks’ ref No. 5481-SS01 Rev B prepared by Barry Satchell shows the track that leads to the south-eastern side of the Waimoko Stream to be grassed or landscaped over. It is therefore considered that the proposed subdivision would not directly impact upon the existing dam and the resolution of this matter can be independently resolved whilst not impacting upon what is proposed. The effects of any such work would be assessed as part of any subsequent Auckland Regional Council consent.

8.2.1.3 Wastewater

Mr Iszard makes the following comments:

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

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

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

8.2.2 Native Vegetation, Vegetation and Fauna Habitat

It is proposed to revegetate approximately 12,200m² of the site with native planting and to enable a further 9489.5m² to regenerate naturally. This exceeds the 8000m² which would generally be required to comply with the Countryside and Foothills Stormwater Management Code of Practice for Stormwater Mitigation, and would apply to the four new lots which don't contain existing dwellings.

The proposed replanting would also involve landscape planting for visual screening.

A Planting Plan has been prepared by Michelle Tyrrell, Environmental Consultant dated 1 July 2004 and submitted with the application. The makeup and location of the proposed planting is as follows:

- Approximately 1350m² of riparian planting along the Waimoko Stream (across Lots 4 and 5);
- Ecological Linkage planting of approximately 100m² along part of the eastern boundaries of proposed Lots 3 and 4 between the neighbouring boundary and the existing causeway over the Waimoko Stream;
- Wetland planting of approximately 1650m² in a thin strip that runs through the centre of the proposed lots 2, 3 and 7;
- The wetland planting would be surrounded by an additional 8200m² of planting on proposed Lots 2 and 7 to the east of the proposed access way;
- There are fragments of screen planting spread throughout the property which will be discussed in more detail below;
- An additional area of existing native bush containing a grazed under storey with an area of 9489m² is also identified which would be allowed to revegetate naturally.

As identified in the planting plan, in order for the above planting to be successful, weed control will need to be undertaken three times a year and any plant losses will need to be replaced. All planting areas, and areas that are to be allowed to revegetate naturally, will also be required to be fenced to exclude stock. The planting would be carried out at densities of one plant per 1m².

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

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

The planting plan has been reviewed by Councils Consultant Arborist Mr Simon Miller who comments that the proposal would have a number of positive outcomes including: *"increasing the net vegetated area on site, strengthening ecological linkages and the existing riparian margin, mitigating the effects of future impermeable surfaces and lessening edge effects and degradation of the existing bush areas"*.

Mr Miller concludes *"While there is no guarantee that future development of the site will not result in incursions into these areas or areas of existing protected vegetation, it is considered the effects of the proposed subdivision on the protected vegetation environment will be no more than minor provided the submitted planting plan is undertaken"*.

In order to lessen the visual effects of the existing built environment on site, and what would potentially be built if consent were granted, consideration has been given within the proposed planting plan to screen planting. It is identified that all screen planting would be to a width of approximately 4m and comprise 80% of species that grow to a minimum of 4m in height. The proposed screen planting is located around existing built structures including the existing shed on site, along the Christian Road frontage of the site and fringes the proposed access way in various places. It is considered that the proposed planting would help mitigate the visual impacts of additional development on site and is discussed in more detail in Section 8.2.9 below.

The Swanson Structure Plan Ecology Review has been prepared by Sarah Flynn from Kingett Mitchell dated March 2005 and looks at planting for ecological and stormwater purposes, and recommends extensive planting, particularly in the headwaters. In terms of the subject property the recommended planting outlined in Figure 3.1 of the Kingett Mitchell report corresponds with the Streamside and Bush Protection Areas outlined in the SSP. The proposed planting plan does not directly correspond with the required planting shown on the SSP. There is a finger of 'Streamside Enhancement Area' that runs from the southern boundary of the site to follow an ephemeral stream to the approximate location of the existing dam on site. The submitted application does not show this area to be re-vegetated or protected and is inconsistent with the SSP in this regard.

It is acknowledged that the proposed planting plan exceeds the amount of planting required for the purposes of stormwater mitigation on site. Additional planting has been provided for the purposes of screening both existing and proposed buildings. Whilst the proposed planting would have a number of positive outcomes (as outlined above), it is considered that the proposal is not totally consistent with the required planting outlined in Appendix XIII of the SSP.

8.2.3 Land / Soil

8.2.3.1 Earthworks

The earthworks carried out as part of this subdivision would be limited to the Jointly Owned Access Lot (Lot 8) and individual driveways extending off this to serve each proposed building platform.

Further to a Section 92 request regarding the volumes of earthworks being undertaken on site, an engineering plan has been prepared by Barry Satchell Consultants Limited dated 11 April 2005.

The submitted plan illustrates how each of the proposed building sites would be accessed and it is stated that only access to the building platform on proposed Lot 1 would require any earthworks to be undertaken, identified as being a cut of 22m³. Individual driveway lengths branching off the main access way and the subsequent need for associated earthworks have been kept to a minimum.

Formation of the Jointly Owned Access Lot (Lot 8) from Christian Road and upgrading of the existing formed access track will require further earthworks to be undertaken. In order to comply with Councils Code of Practice for City Infrastructure and Land Development it is proposed to cut 171m³ and fill an additional 19m³ over a 15 metre section as indicated on the submitted Plan Reference 5481-SS01 Rev B.

Given the above, the cut to fill balance would result in a volume of 174m³ of soil which would be required to be disposed of off site. It is considered that this would be at the lower end of what could be reasonably expected on a development of this scale within the rural environment.

The effects of the earthworks activities as part of the proposed subdivision would be no more than minor.

8.2.3.2 Geotechnical Stability

A Preliminary Geotechnical Appraisal has been prepared by Soil Engineering Limited, dated 9 July 2004 and submitted as part of the application. This report acknowledges the background Geotechnical Constraints Report which was prepared by Tonkin and Taylor Limited (ref. 18201 dated July-August 2000) and prepared as part of the background information for the Swanson Structure Plan. That report identified the site to be of predominantly land of more marginal stability and/or potentially subject to flooding, erosion and/or slope movement.

The report by Soil Engineering Limited investigates the proposed building platforms on Lots 3, 4, 5 and 6 and concludes that the proposed platforms are considered suitable for residential development and that any buildings should be subject to specific investigation and foundation design at the time of building consent. The report also concludes that piles are most likely to be required. The use of a pole platform structure would also serve to minimise the amount of earthworks required to facilitate the proposed structures. The report has been reviewed by Councils Consultant Geotechnical Engineer Mr Garry Law who concurs with the above findings and includes conditions should the application be approved.

8.2.4 Air

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

8.2.5 Ecosystem Stability

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

8.2.6 Outstanding Natural Features; Landforms, Geological Sites

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

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

As discussed in Section 8.2.1.2 earlier in this report, the Waimoko Stream which is one of the tributaries of the Swanson Stream bisects the site. The lower section has been historically dammed and the stream diverted from its natural course. Discussions between the applicant, the Auckland Regional Council and the Waitakere City Council have confirmed that this dam does not have existing resource consent and the resolution of this matter is subject to Auckland Regional Council consent. The rear sections of proposed lots 4 and 5 are not proposed to be utilised as part of this application and the existing track which accesses the southern side of the Waimoko Stream is proposed to be grassed or landscaped over. It is therefore considered that the proposed subdivision would not directly impact upon the existing dam and the resolution of this matter can be independently resolved whilst not impacting upon what is proposed. The effects of any such work would be assessed as part of any subsequent Auckland Regional Council consent.

Furthermore, the stormwater mitigation measures proposed by the applicant stipulate that there would be no direct discharge of stormwater to the Waimoko Stream.

8.2.8 Outstanding Landscapes

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

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

The Resource Management Act defines the term “amenity value” to mean “those natural or physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence, cultural and recreational attributes”.

It should be recognised that any residential development will diminish natural values. These values include rural and natural qualities associated with undeveloped and unoccupied land. Settlement density and character, with its associated roading, human activities, noise, exotic plants, weeds and animals will modify the qualities of a site. This modification increases its effects with increasing intensity of development. In the case of *Jill Corson and Ciaran Keogh v Taupo District Council (A061/2002)* Judge Whiting comments that “rural properties require a level of curtilage greater than that required by serviced town dwellings. Access ways, garages, implement sheds, waste disposal and water collecting services contribute to a larger amenity footprint. Inevitably this has a cumulative effect which may undermine the aesthetic coherence of a rural landscape”.

Karen Pengrume, Landscape Architect (Consents Services) has reviewed the application and makes the following comments (refer to memorandum dated 4 May 2004):

“The key question to resolve is how much value the current rural character has placed on the required outcome of the Swanson Structure Plan, and how much of the current rural character is acceptable to be altered to a new more urbanised (peri urban) Character. The density and style of the built form are key issues that have not yet been resolved.”

Ms Pengrume draws on the example of the Oratia Structure Plan to highlight the fact that the built form in Oratia has clearly changed the open rural character, and the houses are a lot more visible and dominant than was probably anticipated. The parallels between Oratia and Swanson are appropriate given that they represent similar foothills environments and it provides us an insight into what can be expected, also given that Oratia is the only current Operative Structure Plan (notwithstanding the outstanding appeals to the Foothills Environment as a whole). The experience in Oratia has illustrated that the dwellings that have been constructed are significantly large and the landscape modification has often been substantial. It is therefore reasonable to expect that similar landscape modification could be expected within the Swanson catchment. It should also be noted that of the 7 lots proposed, 5 of these are less than 2ha in area, the smallest being only 0.75ha which is a significant departure from the existing character of the site. Furthermore, this 0.75ha site would contain both a dwelling and associated minor household unit.

Karen Pengrume continues:

“Whilst each individual lot that is proposed may satisfy issues based on privacy and immediate viewing audience and is balanced with bush protection and replanting, when the effects are assessed on a cumulative basis then it is apparent that unless a conservative approach is taken on Lot numbers and sizes allowed within each development site the Rural Character that has currently been assessed as desirable to keep will be completely eroded.”

“Whilst careful design requirements could ensure a high amenity outcome, the density and lot sizes proposed is too high to be able to ensure the retention of the rural character that is expected to be retained and the amenity values associated with them. The applicant has not adequately assessed the cumulative degradation of the rural character the proposal would have within the Swanson Structure Plan Area.”

“I am unable to support the application because of the proposed density and degradation of the rural character that would result.”

The above comments have been formulated in conjunction with the Landscape Report prepared by Melean Absolum dated March 2005 which has been adopted as Council's formal position with regard to the Swanson Structure Plan. It should be noted that this report does not form part of the Plan, it doesn't carry any statutory weight. The scope of Ms Absolum's report considers only landscape and visual effects which might be generated by further development and seeks to determine from a visual point of view the extent to which further residential development could be accommodated without imparting negatively on the rural landscape. Whilst this report encompasses the entire SSP area, with reference to the applicant's site it is recommended a reduction in density by 2 lots as provided for in the proposed SSP over the subject sites.

Melean notes that there are a number of properties which currently have more than one dwelling and makes the assumption that these are 'minor dwellings' or 'minor household units' (mhus).

“The existence of these mhus is already contributing to a level of built development within the study area. The level of built development in turn imparts on the rural character and thus is a limiting factor on the potential for further residential development in the study area. As a result, for the purposes of this assessment, all dwellings, including mhus identified, have been counted in considering what level of development a particular landscape unit can accommodate without the loss of rural character.”

There are a number of existing buildings on the subject property. Proposed Lot 7 which contains the residence of the Brickell family contains an existing minor household unit. There is a large shed with a net site area of 606m² on proposed lot 4 which was traditionally a chicken shed but is currently being utilised for commercial art making purposes. The applicant also confirms that there is somebody currently residing in the building identified as a shed on proposed Lot 2. The existing level of development is therefore already relatively high on site and the proposal would further increase this to a degree which would adversely impact the rural character of the site. The draft addendum that has been submitted by the applicant dated 5 May 2005 has offered amongst other things (discussed in more detail below), that a covenant be placed on the titles of lots 3, 4, 6 and 7 prohibiting the construction of minor household units. This would be consistent with Ms Absolum's recommendation which is based on their being no capacity for mhus in the future in any case. Furthermore, Melean also recommends that one site is dropped off each of the subject properties, reducing the density by 2 lots over the proposed subdivision, whilst acknowledging that the site includes some degree of potential development.

It is considered that the proposed density of development combined with the existing level of built development on site would serve to undermine the appreciation of the rural characteristics of the area. Melean concludes *“As anticipated in the WRLS, subdivision below the minimum 4ha carries with it the potential to undermine rural and landscape values. The particular characteristics of an area, and even of individual sites, will influence the ability of a landscape to successfully absorb subdivision below this level...In the case of the areas considered here, the level of subdivision anticipated by the SSP is, in my view, likely to result in the loss of rural character.”*

8.2.9.1 Addendum to the Application

Whilst it has been concluded that the density of development would adversely impact upon the visual amenity and rural character of the area, it should be noted that in a number of specific mitigation measures have been proposed by the applicant.

These include Covenants covering the following:

- Forbidding further subdivision for a period of 50 years;
- Unless prohibitively difficult by reasons of geotechnical difficulty, fixing the location of the building platform to that shown on the plan;
- Prohibiting the construction of minor household units on Lots 3, 4 and 6;
- Prohibiting the construction of any further minor household unit on Lot 7;
- Prohibiting the height of the dwelling on Lot 6 from exceeding 5.5m above ground level.

The applicant also offers the following conditions:

- Painting the former chicken shed on Lot 4 in earthy tones;
- Painting of any dwellings on Lots 3, 4, 5 and 6 in earthy or farm tones
- Addition of further screen planting on the eastern side of the proposed building platform on Lot 6 and between Lot 6 and the property of Mr. C Tucker. Planting alongside the building platform is proposed to be 8m by 4m in width.

The mitigation measures proposed above would reduce the visual impact of the development as viewed between proposed dwellings on site and also from outside the subject property however does not address the fundamental issue of the appropriateness of the density of development. If the application were to be approved, the above measures as offered by the applicant would be imposed as conditions of consent.

8.2.9.1 Roading and Traffic

The submissions received raised concern about the adverse effects associated with the increased volume of traffic that would utilise Christian Road, given its status as primarily a rural road without urban amenities such as footpaths. Councils Principal Transport Engineer Mr Adam Moller has reviewed the application and makes the following comments:

"The proposed subdivision takes the potential number of residential units on the site from 3 to 7. These 4 additional units would produce an estimated 35-40 additional trips per day. However as a proportion of the total number of residential units served by Christian Road (more than 100 and therefore more than 900-1000 trips per day) it is unlikely that this small amount of additional traffic will create a noticeable difference on the road network."

The above comments do not take into account the existing mhus on site or the potential for new mhus that would be permitted upon subdivision of the site. In saying this, the applicant has proposed a consent notice which prevents the construction of additional mhus on proposed lots 3, 4 and 6. Combined with the fact that if this application were to be approved, a condition would be imposed preventing the 'shed' on proposed lot 2 from being inhabited, it is considered that the total number of units would not exceed 7 in any case. The above comments therefore remain valid.

It should be noted that a combined application which combines two sites and utilises one Jointly Owned Access Lot from Christian Road represents good design. This also serves to limit the length of individual driveways serving each proposed building platform.

8.2.10 Heritage

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

8.2.11 Cumulative Effects

Section 3 of the Resource Management Act states that the term 'effect' includes:

"Any cumulative effect which arises over time or in combination with other effects, regardless of scale, intensity, duration or frequency of the effect, and also includes:

Any potential effect of high probability; and
Any potential effect of low probability which has a high potential impact."

An effect is generally taken to mean the result or consequence of an activity. Cumulative effect is a broad term, which may cover a single effect which grows over time, or to which other effects are added. It is not only the effects in the immediate term which must be taken into account but also those which will arise in the future from the activity under consideration and in combination with other existing activities.

The concept of cumulative effect presupposes the setting of environmental thresholds. In other words, there is an environmental limit up to which development will be allowed. Thresholds may be absolute, such as Environmental Bottom Lines beyond which the effects of an activity would cause irreparable or irreversible damage to the environment. On the other hand, many environmental thresholds will be those determined by community preference, eg. thresholds of amenity values. In determining the cumulative effect of an activity, the effects of the activity itself, combined with the effects of existing and future activities should be taken into account. Each subsequent activity should be evaluated with respect to its own effects on the environment, together with the effects of existing and future activities, and a determination made whether an acceptable threshold has been exceeded.

In this instance, the effects on the localised environment of the subject site and directly adjacent sites of allowing the creation of five additional lots prior to the determination of the appeals against the structure plan, is relatively small in isolation (as outlined in the previous environmental assessment). However, when looked at in the context of this occurring on surrounding properties within the Swanson catchment, the effects are magnified.

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

8.2.12 Precedent Effect

According to the Court of Appeal decision in *Dye* a 'precedent effect' is concerned with the influence that granting approval to this application may have on future applicants, and on Council, as consent authority, to grant approval to similar applications. Precedent effect is a relevant consideration under both Section 104B and Section 104(1)(c) of this Act. If an applicant can demonstrate that its proposal has evident unusual qualities then it may be able to demonstrate that no precedent effect arises.

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

Based on the test for precedent, it is considered that the subject site does not have sufficiently unusual characteristic and that the proposal would result in an adverse precedent effect, particularly given Council has before it applications to subdivide five other sites within the Proposed Swanson Structure Plan Area.

8.2.13 Plan Integrity

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

8.2.14 Summary

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

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

8.3.1 District Plan Policies and Objectives

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

Policy 1.1

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

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

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

Policy 1.4

Settlement within the Foothills Environment, ... should be designed and located, and be of a density that recognises their key positions in relation to protecting valued natural resources, including freshwater quality and quantity ... Particular regard should be had for the cumulative impacts of settlement in these areas, the comprehensive design and management of settlement, and the relationship of individual sites with the surrounding catchments and natural and physical resources.

Policy 2.2

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

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

Policy 5.5

Activities within Structure Plan areas must have regard to ecosystem stability. Structure Plans should be designed in such a way that protects and enhances the quality of natural resources, including native vegetation and amenity plantings and the re-establishment of linkages between areas of native vegetation and fauna habitat. Structure plan design should protect the overall resilience, biodiversity and ecological integrity of indigenous ecosystems.

Policy 9.2

Settlement within the Foothills Environment should be designed and located and be of a density, that recognises their key positions in relation to the surrounding natural and physical resources. Structure plans in these areas should provide opportunities to protect and enhance the outstanding landscape qualities of the Waitakere Ranges and Bush Living Environment. Within the Foothills Environment structure plans should reflect a building density and level of development that does not compromise the significance of the foothills as an ecological and visual buffer between the urban area of the City and the bushed area of the Waitakere Ranges. The level of intensification of development must be appropriate to the capacity of the landscape to absorb that level of development without degrading of the essential landscape qualities of these areas.

Objective 11

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

- The complex, mixed landscape of the foothills.

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

Policy 11.1

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

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

Policy 11.29

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

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

It is considered that the proposed development would not be consistent with the objectives and policies of the District Plan. While a comprehensive "Section 32" analysis has been undertaken by Waitakere City Council in forming the Swanson Structure Plan, aspects of this has been challenged by appeals (from the Auckland Regional Council) in regards to the effects of increased stormwater. Until an outcome has been determined by the Environment Court, the effects of increased development cannot be fully quantified, and until such time, the Auckland Regional Council considers the Proposed Structure Plan, and any subdivision undertaken in accordance with the Proposed Structure Plan contrary to its Regional Policy Statement.

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

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

The Auckland Regional Policy Statement sets out the broad resource management issues, objectives and policies for the Auckland Region to achieve the integrated management of its natural and physical resources. The Policy Statement functions as an umbrella policy document for environmental planning and policy development within the Region, under which the Waitakere City Proposed District Plan has been prepared.

As noted above, until the Environment Court has made a determination of the Proposed Swanson Structure Plan, it is considered that the proposal would be contrary to the policies of the Auckland Regional Policy Statement. The potential cumulative impact on the rural character and landscape features on the area while the outcome of the Structure Plan is uncertain compromises the integrity of the District Plan and Auckland Regional Policy Statement.

The subject site is located in an area that is recognised for its rural environment and forms an important buffer between the urban part of the city and the Waitakere Ranges. Low density residential development in rural areas such as this is encouraged, provided it is sensitively undertaken and the landscape qualities of the area are not compromised. The Policy Statement advocates a structure plan approach, which prescribes the level of development appropriate to the character and environmental features and constraints of the area, however, the Auckland Regional Council has challenged the Proposed Swanson Structure Plan in its current form.

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

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

Peat v Waitakere CC (A082/2004)

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

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

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

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

Resolution 26 April 2005

At a workshop held on 26 April 2005, the Planning and Regulatory Committee resolved:

2. *That, having considered the further technical information presented at the 26 April 2005 workshop, the Council confirms its support for the Swanson Structure Plan but, in response to the references that have been lodged with the Environment Court, amends and clarifies the Council's position in the following ways:*
- *By adopting the recommendations contained within Melean Absolum's landscape assessment (March 2005), with a resultant reduction in lot numbers; and*
 - *By adopting the recommendations contained within Sarah Flynn's ecological report (March 2005), which would result in additional planting; and*
 - *Supporting the use of prohibited activity status for any additional lots; and*
 - *Supporting in principle the taking of financial contributions to facilitate required planting on properties without subdivision entitlements; and*
 - *Supporting the use of covenants or similar legal mechanisms to ensure a permanent subdivision pattern, once Structure Plan entitlements have been utilised.*

The Waitakere Ranges Landscape Study Review prepared by Melean Absolum dated March 2005 recommends that each of the subject properties is reduced by one lot respectively. This reduces the overall density of the proposed subdivision by two lots and represents Council's adopted position with regard to this matter. The proposed subdivision therefore exceeds the number of lots which is considered appropriate over these two sites. This highlights the fact that the SSP is still subject to change and reinforces that it would be pre-emptive to grant consent to the proposal prior to the final Court decision on Variation 88.

The Swanson Structure Plan Ecology Review has been prepared by Sarah Flynn from Kingett Mitchell dated March 2005 and looks at planting for ecological and stormwater purposes, and recommends extensive planting, particularly in the headwaters. In terms of the subject property additional riparian buffer areas are recommended to be planted as well as additional areas of bush protection. These correspond with ephemeral streams that run from the southern corner of the site to the Waimoko Stream and is consistent with that shown in Swanson Structure Plan Appendix XIII. Whilst significant planting is proposed, this doesn't totally match up with SSP Appendix XIII or the areas recommended in the Kingett Mitchell report.

8.5 Any Other Relevant Non-Statutory Documents

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

9.0 PART II OF THE RESOURCE MANAGEMENT ACT 1991

It is considered that the proposal would be inconsistent with relevant provisions in Sections 5, 6 and 7 of the Resource Management Act 1991.

The purpose and principles of the Resource Management Act 1991 have primacy over all other considerations that are set out in Section 104 of the legislation. In summary, sections 5, 6 and 7 require that resources must be sustainably managed in such a way that any adverse effects on the environment can be avoided, remedied or mitigated. Furthermore, the Resource Management Act 1991 requires that amenity values and the quality of the environment are to be maintained and enhanced.

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

10.0 EVALUATION IN ACCORDANCE WITH SECTION 104D OF THE RESOURCE MANAGEMENT ACT 1991

The threshold test in Section 104D of the Resource Management Act 1991 states that a consent authority must not grant consent to a non-complying activity unless it is satisfied that the adverse effects on the environment will be minor (104D(a)) or the activity will not be contrary to the objectives and policies of a plan or proposed plan (104D(b)).

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

11.0 CONCLUSION

It is considered that the proposal does not meet the criteria for granting consent as the potential adverse environmental effects are more than minor and cannot adequately be mitigated through the imposition of appropriate conditions of consent. It is considered that the 7 lot subdivision will lead to a decline in the current amenity values of the area.

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

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

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

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

RECOMMENDATIONS

That pursuant to Sections 104, 105 and 108 of the Resource Management Act 1991, consent be refused to the application by M & C Brickell and W Ashton & L Schwab to subdivide a 11.1016ha property at 54-56 and 58-60 Christian Road, Swanson being Lots 1 DP 161541 and Lot 2 DP 161541 for the following reasons:

- (v) The proposed subdivision would result in adverse environmental effects, particularly in relation to amenity values, landscape and character impacts and cumulative effects. It is appropriate to have regard to the permitted baseline for the subject site. Under the baseline, no additional lots are allowed for as of right. Accordingly the present application represents a five fold increase of the effects otherwise allowed for under the baseline.

- (vi) The proposed subdivision would be contrary to the relevant objectives and policies of the Transitional and Proposed District Plan (Note that the District Plan is operative with the exception of the Foothills provisions), and the Auckland Regional Policy Statement, which seek to ensure that development within the area does not degrade the landscape and character qualities of the area. As such, the proposal would challenge the integrity of the Plan and undermine public confidence in its consistent administration.
- (vii) The proposed subdivision will result in an adverse precedent effect, particularly given that a number of subdivision consents are being sought for other sites within the Proposed Swanson Structure Plan Area.
- (viii) Allowing subdivision in the interim, pending release of a final Court decision on Variation 88, would be unfair to the large number of referrers and s274 parties that are opposed to the Swanson Structure plan as well as those land owners who have elected to await the outcome of the structure plan litigation before applying for consent. In particular, allowing ad hoc subdivision will result in permanent changes to the amenity and character of the Foothills Environment despite the fact that Variation 88 may ultimately be substantially modified or cancelled by the Environment Court. This is a relevant consideration under s406 (public interest) and confirms that it would be inappropriate to grant approval.

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

