

**AGENDA FOR A MEETING OF THE HEARING BY COMMISSIONER TO BE HELD AT
WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON THURSDAY, 14 DECEMBER 2006,
COMMENCING AT 1.30 PM.**

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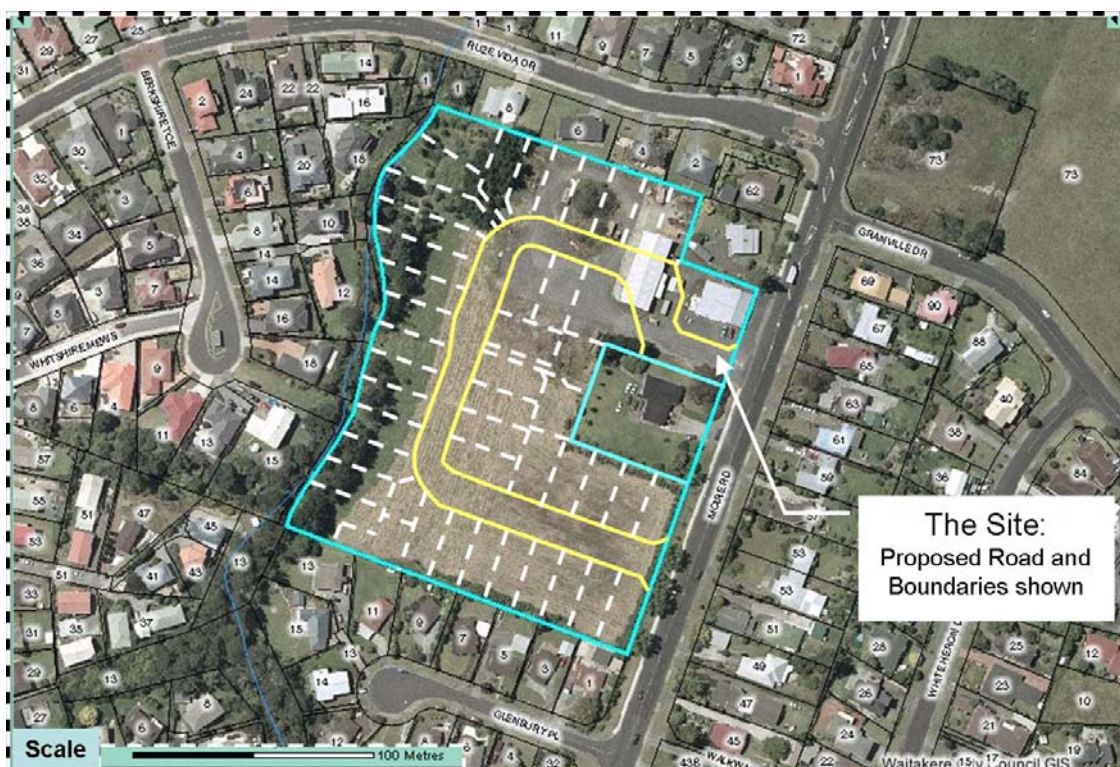
PRESENT:

IN ATTENDANCE:

**REPORT FOR NON-COMPLYING ACTIVITY APPLICATION SECTIONS 93, 94A –
94D, 104 AND 104D ASSESSMENT AND DETERMINATION IN ACCORDANCE WITH
THE RESOURCE MANAGEMENT ACT 1991**

2.0 APPLICATION DETAILS

Planner: Chris Gorman
Site Address: 36-46 Moire Road, MASSEY
Applicant: HNZC PROPERTY DEVELOPMENTS LIMITED
Date Received: 26-Jun-2006
Resource Consent No: LUC-2006-1072 / SUB-2006-1073
Legal Description: PT LOT 1 DP 361549 - RESIDENTIAL
Address for Service: C/- Gary Blyth
Fraser Thomas Ltd
PO Box 23273
Hunters Corner
AUCKLAND 1730
Ward: Massey 1
Site Area: 2.7ha
Unit Site Area(s): Lots 1 – 9 (southern boundary) – 370m² - 400m²
Lots 10 – 23 (western boundary) – 375m² - 621m²
Lots 24 – 30 (northern boundary) – 356m² - 406m²
Lots 31 – 42, 44 & 45 (centre) – 360m² - 444m²
Lot 43 (house and playground) – 753m²
Lot 46 (existing fruit & vegetable shop) – 846m²
Lot 47 (new single house) – 2147m²
Lots 48 – 50 (access lots) – 106m² - 241m²
Lot 51 (new road) – 4726m²
Building Consent No:
District Plan: Human Environment: Living
Natural Area: General
Landscape Elements: 10 Riparian Margin
Hazards: Contaminated Site
Roading Hierarchy: District Arterial
Further Information Required:
Date Requested:
Date Received:
Site Visit: 02-Aug-2006 Any Affected Persons: Nil
Approval Given: N/A



2.1 Documents considered for this report include the application documentation and the site visit checklist.

3.0 REASON FOR APPLICATION- RELEVANT DISTRICT PLAN RULES

Extent of Infringement and Type of Activity Proposed

3.1 Subdivision - Operative Plan - March 2003

Limited Discretionary Activity consent for a subdivision of a site more than 1 ha in area (but not more than 3ha) or creating 10 or more new sites or is within an urban concept plan and the minimum net site area is in accordance with a net unit area specified in a resource consent and no more than 10 dwellings/1ha are served by any one driveway (Rule 4.1 Greenfields Subdivision). The proposed subdivision would create 45 new sites around proposed dwellings (considered concurrently with the subdivision)

3.2 Land Use - Operative Plan - March 2003

Controlled Activity Consent for the remediation and restoration of a contaminated site known to the Council (Rule 2.1 Hazardous Facilities & Contaminated Sites). The applicant proposes to remediate the site which is contaminated with metals, pesticide residues and hydrocarbons. A "Remediation Action Plan" has been submitted with the proposed development and remediation would be carried out as part of the proposed development of the site.

Controlled Activity for vegetation alteration meeting the Performance Standards contained in Rule 2.2(a) or Rule 2.2(b) or Rule 2.2(c) or Rule 2.2(d) of the General Natural Area Rules. The proposal would involve

Limited Discretionary Activity for vegetation alteration meeting the Performance Standards contained in Rule 2.3 of the General Natural Area Rules. The proposal would involve:

Discretionary Activity

Non-Complying Activity

Limited Discretionary Activity for earthworks meeting the Performance Standards contained in Rule 3.3(a) of the General Natural Area Rules. The proposal would involve 12,000m³ of cut and 10,000m³ of fill (total 22,000m³) as part of the proposed subdivision application.

Limited Discretionary Activity consent for residential activity which involves units with a net unit area of less than 450m² but more than 350m². (Rule 2.2, Living Environment). The proposal would involve a development containing 45 residential proposed dwellings with 8 dwellings being within net unit areas of 450m² or more, 9 dwellings being within net unit areas between 400m² and 450m² and 28 dwellings within net unit areas between 356m² and 400m².

Discretionary Activity consent for the infringement of the height in relation to boundary recession planes as described in Rule 5.3, Living Environment. Infringements along internal boundaries are as follows;

- Infringements of less than 0.5 metres above the recession plane;
 - Lot 1 – Western Boundary
 - Lot 30 – Western Boundary
 - Lot 31 – Western Boundary, Northern Boundary
 - Lot 32 – Eastern Boundary
 - Lot 34 – Western Boundary
- Infringements of 0.5 – 1.0 metres above the recession plane;
 - Lot 12 – Southern Boundary
 - Lot 40 – Southern Boundary
- Infringements of more than 1.0 metres above the recession plane;
 - Lot 14 – Southern Boundary (1.5m)
 - Lot 16 – Southern Boundary (1.8m)
 - Lot 18 – Southern Boundary (1.6m)
 - Lot 20 – Southern Boundary (2.0m)
 - Lot 22 – Southern Boundary (3.3m)
 - Lot 23 – Southern Boundary (4.3m)
 - Lot 43 – Western Boundary (1.2m)
 - Lot 44 – Southern Boundary (1.5m)

Discretionary Activity consent for development resulting in Building Coverage exceeding 35% of the net site area, pursuant to Rule 7.2 of the Living Environment. The proposed dwellings within the proposed Lots 26, 27, 28 and 42 would have 35.1%, 38.4%, 38.4% and 36.8% (respectively) of the net site area as Building Coverage.

Limited Discretionary Activity consent for the required outdoor space of Lot 43 not having a bearing north of between 135° and 225° and Lots 11 - 23 having less than 75% of the outdoor space with a maximum slope of 20% (1 in 5) pursuant to Rule 9.2, Living Environment. The outdoor space for Lot 43 would be south of the proposed dwelling and the outdoor spaces for Lots 11 – 23 would be at grades generally between 25% (1 in 4) and 20% (1 in 5).

Non-Complying Activity for a Non Residential Activity not meeting the standards of Rules 10.1 - 10.3 as it would involve retail sales. The proposed Lot 46 would contain an existing fruit and vegetable shop. While this is an existing “use” the site in which it is contained would change as a result of the subdivision and existing use rights would not apply.

Limited Discretionary Activity required for a *Non-Residential Activity* on *front sites* having traffic generation exceeding 20 *vehicle movements* per day but not more than 1% of the *road's* daily traffic volume (Rule 11.2 Living Environment).

Controlled Activity consent for shared driveways serving more than one dwelling (Rule 12.2, Living Environment). Lots 9 – 11, 22 and 23 and 44 and 45 would utilise jointly owned access lots to provide access.

Discretionary Activity for any vegetation alteration requiring a resource consent pursuant to Subdivision Rule 4 (Greenfields Subdivision) which is necessary to provide for infrastructure and does not otherwise meet the standards in Rule 2.3(b). (Rule 2.4 Riparian Margin / Coastal Edges Natural Areas). The proposal would public drainage to be installed along the western boundary, necessitating the removal of vegetation within the 10 metre riparian margin.

Discretionary Activity for earthworks associated with a subdivision requiring a resource consent pursuant to Subdivision Rule 4 (Greenfields Subdivision) which is necessary to provide for infrastructure, and does not otherwise meet the standards in Rule 3.1(b). (Rule 3.3 Riparian Margin/Coastal Edges Natural Areas). The proposal would earthworks within the 10 metre margin to install public drainage as part of the subdivision.

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

4.0 SITE AND PROPOSAL

4.1 Site Description

The rectangular shaped site is located on the western side of Moire Road and it is generally level with the road before it falls at initially a slight grade before dropping down to the stream at a moderate grade.

There is an existing fruit & vegetable shop at the road boundary with a large storage shed (to be removed) behind it. The area behind this is generally metalled (with grass beginning to grow through).

There are a number of trees on the site including rows of pine trees along the stream banks. The central area of the site is generally overgrown in grass.

The surrounding environment is residential in nature.

4.2 Proposal

The application is for a 47 lot subdivision, with 45 new 3, 4 and 5 bedroom dwellings proposed. The existing dwelling (under construction) located centrally along the site frontage and the existing fruit and vegetable shop at the northern corner of the road frontage. Earthworks would be required over the central and western “thirds” of the site, largely as a result of uncontrolled fill being placed on the site.

The proposed dwellings along the northern and southern boundaries would be single level three bedroom houses (with 3 four bedroom dwellings).

The dwellings along the western boundary would be generally “duplexes” with 4 bedrooms. The dwellings “fall” with the slope of the site (with garaging at the upper level, providing a flat gradient from the road).

The dwellings central to the site would be a mix of single and two level dwellings, with 3 – 5 bedrooms.

All dwellings would include a single attached garage, with “stack” parking in front for the second vehicle.

As past activities on the site have left contaminated residues on the site, the applicant is proposing to remediate the site as part of the proposal.

5.0 SECTION 94 ASSESSMENT

5.1 Statutory Context

As a Non-Complying Activity, the application for resource consent should be publicly notified in accordance with section 93 of the Resource Management Act, unless it can be demonstrated that the requirements of sections 93, 94 and 94A – 94D of the Act can be satisfied. Applications must be notified (either publicly or in a limited manner) if the adverse effects of the activity on the environment are more than minor or all persons who may be adversely affected have not given their written approval.

Section 93 provides that applications for resource consent need not be notified where:

- (a) *The application is for a controlled activity; or*
- (b) *The consent authority is satisfied that the adverse effects of the activity on the environment will be minor.*

Section 94 provides for limited notification (unless all adversely affected persons have given their written approval,) whereby all affected persons will be notified (but not the public at large) and have the opportunity to make a submission and be heard. Section 94(2) also provides for an application to proceed on a non-notified basis without notice being served, “if all persons who in the opinion of the consent authority, may be adversely affected by the activity have given their written approval to the activity.”

Recent case law has indicated that consent authorities should give careful consideration to the question of notification, and should publicly notify applications for resource consent unless it can be clearly demonstrated that the criteria of sections 93 and 94(2) are met. A comprehensive assessment of any actual or potential adverse effects is required. This conservative approach is underscored by the relatively wide definitions of “environment” and “effects” that are set out respectively in sections 2 and 3 of the Act.

In determining whether or not an adverse effect on the environment of any activity will be minor or more than minor, Council must disregard any effect on any person who has given their written consent to the activity. In addition the Council may, disregard in its discretion an adverse effect of the proposed activity on the environment or on any person, if the Operative Plan permits an activity with that effect. (sections 94A and 94B).

In relation to adversely affected persons, case law has established that the Council is only able to disregard adverse effects that would be ‘de minimis’ (Bayley CA 115/98). This concept can be taken to describe effects that are negligible. In the case of the current application, this threshold has been adopted as the correct basis for assessing whether any person may be adversely affected by the activity.

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 i.e. 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 not be “fanciful” in terms of what could reasonably be expected to establish there.

When considering effects under Section 94A and 94B, regard may be had to any condition which, if imposed under any decision to grant consent would eliminate or reduce the adverse effect to one which would be minor for the purposes of section 94A or to a point where it would be de minimis for the purposes of section 94B.

5.2 ADVERSE EFFECTS ASSESSMENT

5.2.1 Water Quality and Quantity

The proposed development would create additional impermeable areas, and therefore runoff from the site would be increased.

However should approval be granted Council would be able to impose conditions to ensure that stormwater from the proposed road and dwellings would be controlled in a manner that would ensure any adverse effects would be de minimis.

5.2.2 Native Vegetation, Vegetation and Fauna Habitat

The majority of the trees within the site would be removed as part of this proposal. As these trees are exotics and are not significant specimens, it is considered that their removal would have no more than a de minimis adverse effect on vegetation habitat.

5.2.3 Land/Soil

There would be extensive earthworks within the site, mostly to remove unsuitable fill. This would be required regardless of the intensity of development. The site had previously contained horticultural activities and part of the site had been used as a depot for construction vehicles, both resulting in contaminants in the soil. Given the scale of earthworks that would otherwise be required, the applicant has proposed to remediate the site as part of the proposal. Given the site has already undergone modification in the past and both the earthworks and remediation would result in unsuitable material being removed, it is considered that there would be no more than de minimis adverse effects on soil/existing landform as a result of the proposed activity.

5.2.4 Air

As the site is within the urban area and the proposed activity does not include air emissions of any kind, there would be no adverse effects on air quality. The applicant has proposed that the soil be kept damp during earthworks to ensure no dust (particularly from the contaminated “hot spots”) drifts onto adjoining properties.

5.2.5 Ecosystem Stability

As the site is within the urban area and the existing environment is already modified there would be no more than de minimis adverse effects on the stability of ecosystems as a result of the proposal.

5.2.6 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). The site is within the urban area of the city and the environment is already extensively modified and therefore the proposed activity would not adversely affect any identified outstanding natural features.

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

While the proposal would require earthworks and vegetation removal within the riparian margin, the stream would be protected by the use of sediment control measures to prevent any adverse effects in relation to the natural character of the stream.

5.2.8 Outstanding Landscapes

The subject site is not identified in the District Plan as being within an area identified as “outstanding landscape” within the City (refer Map 3.6B). The site is within the urban area of the city and the environment is already extensively modified and therefore the proposed activity would not adversely affect any identified outstanding landscapes.

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

- **Overshadowing, loss of daylight and sunlight, scale, form, height, bulk, physical dominance, privacy:**

The proposal would involve the construction of 45 new residential dwellings, a new loop road and the continued use of the fruit and vegetable shop.

It is considered that the proposed dwellings would not overshadow any existing dwelling, as the proposed dwellings comply with the height to boundary recession plane control of the District Plan on the external boundaries. While there would be height in relation to boundary infringements within the development, the proposed design of the development would ensure that there would be no adverse loss of daylight access to the sites.

It is considered that the proposed dwellings would not physically dominate or compromise the privacy of the neighbouring sites to the north and south as the proposed dwellings along those boundaries would have a single level elevation, thus would be screened by the existing screening along these boundaries. The dwellings along the western boundary would be more visible to the adjoining sites, but are separated by the stream and its associated riparian margin, creating a 25 metre minimum distance between the existing houses on the western bank of the stream and the proposed dwellings on the eastern bank. It should be noted that the applicant has modified the design of these houses to provide a “two storey” elevation, whereas the designs as originally submitted would have had an effective elevation of three storeys.

- **Visual amenity, streetscape, sense of place, neighbourhood character, amenity values, views, on site amenity, adequate open space:**

The proposed development would be supported by its own internal road, and with the visual separation detailed above, the proposal would not adversely affect the surrounding neighbourhood and would provide a sufficient range of designs to avoid visual blandness within the development.

With the exception of one site, the proposal would provide Outdoor spaces with northerly aspects. The one site with the Outdoor space to the south would adjoin a “kids park” (private to this development) which would ensure the Outdoor space would have adequate daylight.

It is therefore concluded that there would be no more than de minimis adverse effects on visual amenity and neighbourhood character as the proposed development would be separate from existing adjoining development, and adequate open space would be provided.

- **Infrastructural capacity & availability:**

The applicant has had prior discussions with Ecowater, and Council can be satisfied that the receiving infrastructure has sufficient capacity to serve the development.

- **Traffic generation, on-street parking, driver safety, pedestrian safety, roading capacity and roading network, traffic noise, vehicle movements, access and driveway manoeuvring, driveway width & gradient:**

The proposed road and accesses off the road would be at relatively level grades, providing safe and easy access onto the proposed sites. The existing fruit and vegetable shop would be provided with sufficient parking to cater for staff and customers. The loop road would provide good internal traffic flow within the development and would give emergency vehicles an alternative access to the sites should one entrance become unusable.

While the proposal would increase the number of vehicles entering and exiting Moire Road, it should be noted that the proposal creates 45 residential dwellings, whereas a development at a "permitted" density of one dwelling per 450m² might yield 42 lots (assuming the road, the shop and the area around the existing dwelling are unchanged). Therefore the proposal would only have a de-minimis effect over and above the "permitted" level of traffic that might have been generated by a complying development.

5.2.10 Heritage

There would be no adverse effects in respect of heritage items as the proposed activity would not be located near, or impact on any identified heritage item.

5.3 Conclusion in relation to Sections 93(1)(b) and 94 A:

Overall the adverse effect on the environment of the activity for which consent is sought would be de-minimis for the reasons stated above.

5.4 Sections 94 and 94B - Adversely Affected Persons

There are no persons considered to be adversely affected by the proposed activity because as detailed in 5.2.9 above, adjoining sites are either visually separated by existing screening or distance.

5.5 Special Circumstances

In accordance with section 94C(2) of the RMA it is considered that there are no special circumstances that warrant notification of the proposal.

6.0 SECTIONS 93 AND 94 RECOMMENDATION

Pursuant to Sections 93 and 94 of the Resource Management Act 1991, it is recommended that this application be processed without being publicly notified for the following reasons:

The adverse effect on the environment of the activity for which consent is sought will be de minimis because the development of the site would be at a scale that is similar to that of a development at a permitted density.

There are no persons considered to be adversely affected by the activity.

There are no special circumstances to warrant notification of this application.

Reporting Planner
Chris Gorman

Date:

