



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

HEARING BY COMMISSIONER

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

DATE: **Wednesday, 19 September 2007** **TIME:** **9.30 am**

VENUE: **The Trusts Stadium, Central Park Drive, Lincoln North, Waitakere**

to consider an application for resource consent: 587 West Coast Road, Oratia and to take any necessary action connected therewith.

Sharon Simiona

11 September 2007

Sharon Simiona
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8820

MEMBERSHIP:

Commissioner John Childs

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

**AGENDA FOR A HEARING BY A COMMISSIONER TO BE HELD AT
THE TRUSTS STADIUM, CENTRAL PARK DRIVE, LINCOLN NORTH, WAITAKERE,
ON WEDNESDAY, 19 SEPTEMBER 2007,
COMMENCING AT 9.30 AM**

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NEW LYNN WARD

**RMA SUB 2006-4042
LUC 2007-156**

N.B. This report sets out the advice of Consent Services to an Independent Commissioner 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 Independent Commissioner.

1.0 INTRODUCTION AND RECOMMENDATION

1.1 Nature of the Application

The applicant seeks subdivision and land use resource consent to subdivide an existing 1.0164ha property at 587 West Coast Road, Oratia, into two allotments. No vacant allotments would be created, rather the proposal would create separate title for the existing main dwelling and sheds (proposed Lot 1, being 7,520m² in size) and the historic cottage and minor household unit (proposed Lot 2, being 2,630m² in size). Proposed physical works include a new garage, driveway extension, and reinstatement of an existing section of driveway in grass on proposed Lot 2.

The historic cottage on-site is listed in the Heritage Appendix of the District Plan as a category III heritage building. The property is also an archaeological site, given that the cottage pre-dates 1900. The site is located within the Oratia Structure Plan and has previously been subdivided to its full potential under the provisions of the Structure Plan.

1.2 Resource Management Issues Raised

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

The current proposal must be assessed as a discretionary activity, and has the potential to give rise to effects in terms of density, rural character and catchment management given that it involves subdivision over and above that provided for in the Oratia Structure Plan. Assessment must also be made of the potential of the proposal to give rise to precedent effects (District Plan integrity), and adverse effects on heritage values. A full copy of the application as submitted has been circulated as Volume II.

1.3 Planner's Recommendation

It is recommended that **consent be refused** to this subdivision and land use resource consent application to undertake a two lot subdivision to create separate title for a historic cottage at a greater density than provided in the Oratia Structure Plan; with associated archaeological, density, yards, building coverage, vehicle crossing, earthworks, and impermeable surfaces land use infringements.

It is considered that the proposal is not unique and would be contrary to the assessment criteria, objectives and policies of the District Plan and to the provisions of the Regional Policy Statement given that it would constitute a peri-urban form of settlement outside the metropolitan urban limits. The proposal would undermine the integrity of the Oratia Structure Plan and contribute to a cumulative loss of rural amenity and character of the foothills of the Waitakere Ranges.

1.4 Revised Plans

A1-A4

Subsequent to notification of the proposal, additional information in the form of a drainage report and revised drainage plan were received at Council on 9 August 2007. These documents are attached at pages A1 to A4. It is not considered that submitters would be prejudiced by not receiving this information prior to distribution of the hearing agenda, given that the information is of a technical nature and no queries regarding drainage and/or wastewater disposal were raised in submissions.

2.0 LOCATION PLAN

Figure 1: Location



Legal description:	Lot 1 DP 314714 (CT NA5D/1158)
Human Environment:	Foothills
Natural Area:	General
Designations/Special Features:	Oratia Structure Plan Stormwater mitigation Wastewater maintenance Collector Road Heritage item CHI# 1372 (category III dwelling) Archaeological site

3.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The subject site at 587 West Coast Road is 1.0164ha in size and located some 200m west of Oratia Primary School.

The site is predominantly in pasture, and contains a main dwelling, heritage cottage, and minor household unit (referred to as the 'bach'). In addition to these three residential units are a number of sheds and outbuildings. Vehicle access to the site is obtained via four existing vehicle crossings on the western side of West Coast Road.

What little vegetation is present on the property is concentrated mainly along the road frontage. The site is flat to gently rolling and located above the level of West Coast Road.

Building consent for the main dwelling on-site was obtained in 1954 (ABA-1954-887), with various further approvals for a shed in 1968 and a garage in 1970. No record of building or resource consent for the minor household unit (the bach) could be found. It is noted that plans for a sign application in 1972 did not indicate the bach, although it appears on later building plans in 1994.

The subject site formed part of a two-lot subdivision (RMA20001511) approved on 23 January 2002. This previous subdivision created the subject site and the 1.1666ha site at 593 West Coast Road (which is currently vacant, pastoral land adjoining the Oratia Stream). In terms of other surrounding land uses, it is noted that the 10.5ha Dragicevich horticultural property is located across the road from the subject site, at 558 – 578 West Coast Road. Sharing common side boundaries with 587 West Coast Road are the following properties:

- 583 West Coast Road, being 0.80940ha and containing a dwelling and various sheds.
- 599 West Coast Road, being 0.41480ha and containing a dwelling and garage.
- 601 West Coast Road, being 1.4771ha and containing a dwelling.

Photograph 1: Existing car port (to be removed) and historic cottage



Photograph 2: View of main dwelling and vehicle crossings from West Coast Road



4.0 PROPOSAL

The applicant proposes to subdivide the property into two allotments. Proposed Lot 1 would be 7,520m² in size and contain the main dwelling and shed. Vehicle access would be obtained via three existing vehicle crossings.

Proposed Lot 2 would be 2,630m² in size and contain the historic cottage and new garage, minor household unit and associated shed and garage. Vehicle access would be obtained via an existing vehicle crossing from West Coast Road located in proximity to the minor household unit. The new garage would be located 6m east of the cottage and a new driveway extension some 6m in length would provide access to this structure.

Four sheds and outbuildings located over the proposed internal boundary would be removed as a result of the proposal (some 68m²). These are indicated on Drawing C01/E.

An existing section of driveway within proposed Lot 2 (indicated as 'Driveway zone 4' on Drawing C06/F) would be removed and re-instated in grass. All other hard surfaced areas would remain as-is.

Earthworks of 103m² and some 20m³ would be required to reinstate Driveway zone 4 in grass. An additional 20m² and 4m³ would be required to form the driveway extension to service the proposed new garage. This results in a total of 123m² and 24m³ earthworks.

Services are proposed as indicated on Drawing C06/F. The subject site is located within the Oratia Twin Streams Catchment, and has a reticulated water supply but no sanitary sewer or stormwater connection.

No vegetation alteration is required as a result of the proposed subdivision and land use.

As part of the proposal the applicant has volunteered a heritage covenant in an attempt to secure the permanent protection of the cottage. Details of such are outlined in section 6.7 of the application document in Volume II circulated separately.

5.0 REASONS FOR THE APPLICATION

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

Discretionary activity for subdivision within the Oratia Structure Plan at a density of less than 4ha and/or the density shown in the Structure Plan, under Rule 7.3(b) of the Foothills Subdivision Rules. Proposed Lot 1 is 7,520m² in size and proposed Lot 2 is 2,630m². The site does not have any further subdivision potential under the Oratia Structure Plan.

Limited discretionary activity for alteration of an archaeological site, in accordance with Rule 4.2 of the City-Wide Heritage provisions. The heritage cottage is pre-1900 and therefore falls within the definition of an 'archaeological site' in the District Plan. The proposed earthworks and construction of a new garage therefore must be considered as alterations to this archaeological site.

Retrospective discretionary activity for density, under Rule 2.2 of the Foothills Environment. The proposal would result in Lot 2 containing a minor household unit (the 'bach') located over 6m from the main dwelling on-site (the heritage cottage), served by one driveway. The main dwelling and bach have a 15m separation distance. No previous records of approval for this infringement could be found, nor has a case for existing use rights been presented to the Council.

Discretionary activity for yard infringements under Rule 4.3 of the Foothills Environment (a minimum 3m setback is required for sites of less than 0.4ha in size). The cottage on proposed Lot 2 would be located 2.5m from the internal boundary and the main shed on proposed Lot 1 would be located 0.5m from the internal boundary.

Limited discretionary activity for building coverage greater than 300m² or 1% of the site area, under Rule 7.2 of the Foothills Environment. Building coverage for proposed Lot 1 would be 574m², which is greater than both 300m² and 1% of the site area (75.2m²), but less than 25% of the site area (at 7.6%).

Retrospective limited discretionary activity for more than one vehicle crossing to proposed Lot 1, under Rule 7.3 of the Transport Environment. There are currently three vehicle crossings serving proposed Lot 1.

Limited discretionary activity under Rule 3.3 of the General Natural Area for earthworks outside an approved platform of greater than 100m² and within 1m of the boundary. Some 123m² is required to reinstate Driveway zone 4 in grass and to construct the driveway extension to the proposed garage on Lot 2. The works to Driveway zone 4 would also be located within 1m of the proposed internal boundary.

Limited discretionary activity for impermeable surfaces of 18.2% for proposed Lot 2 (being above the 15% threshold for non-reticulated sites), under Rule 4.2 of the General Natural Area.

Overall the application is considered to be a discretionary activity. The proposal complies with all other development control rules under the District Plan.

6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

The application was publicly notified on 20 July 2007 and notice was served on neighbouring properties. The period for submissions closed on 20 August 2007, within which time a total of 57 submissions were received. Of these submissions, 55 were in support of the application and two were neutral. Two further late submissions in support of the application were received one day after the close of submissions, on 21 August 2007.

The Independent Commissioner will need to resolve whether to accept the two late submissions, pursuant to section 37 of the Act. In making this decision, the Commissioner is required to consider the provisions set out in section 37A(1), being:

- a) *The interests of any person who, in its opinion, may be directly affected by the extension or waiver, and*
- b) *The interests of the community in achieving adequate assessment of the effects of any proposal, policy statement, or plan, and*
- c) *Its duty under section 21 of the act to avoid unreasonable delay.*

Section 37A(2)(a) also requires that the extension of time shall not have the effect of exceeding twice the maximum period specified in the Act. It is noted that the two late submissions were received one working day after the close of the submission period. Given that the submissions were only one day late and do not raise any new issues not already covered by other submissions received within the statutory timeframe, it is considered that no parties would be prejudiced by the acceptance of these late submissions and accordingly, it is recommended that the Commissioner take these late submissions into account.

A5-A145

A summary of the 59 submissions is attached at pages A5 to A19, a map identifying the location of submitters in the immediate vicinity is attached at pages A20 to A21 and a full copy of submissions are attached at pages A22 to A145.

The main points arising from submissions were that the cottage was an important part of the history of Oratia and the Croatian community, and that the preservation of the cottage would be best achieved by an owner/occupier situation. Submissions stated that there would be no negative impacts of subdivision, and that the lack of economic viability of the status quo should be taken into account. The majority of submissions supported a heritage covenant on the title, to protect the cottage in perpetuity.

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

As noted, the proposal requires consideration as a discretionary activity under the provisions of the Resource Management Act 1991. In order to make a decision in terms of section 104 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 Plan permits an activity with that effect (section 104(2)).

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

7.1.1 Water Quality and Quantity

The proposed subdivision and land use at 587 West Coast Road has the potential to give rise to effects on water quality and quantity, given the sensitive nature of the Oratia Twin Streams catchment within which it is located. Through the Twin Streams Project, Council seeks to ensure that further development within the upper Oratia catchment does not exacerbate known downstream flooding and channel erosion, and nullify the extensive downstream remedial work undertaken to date. It is noted that the Oratia Stream is located some 90m from the rear boundary of the subject property.

Council's EcoWater Engineer has provided the following advice in relation to the proposal:

The proposed subdivision would result in a development at a density greater than what was envisaged within the Upper Oratia Catchment. The modelling for the Twin Streams catchment assumes the permitted level of intensification [in the Oratia Structure Plan] will take place in conjunction with the stormwater mitigation practises documented in the Waitakere City Council's "Countryside and Foothills Stormwater Management Code of Practice", which details best practical options for stormwater mitigation and is satisfactory for the mitigation of localised effects for the permitted level of development. However it is known to Council that these practises do not entirely mitigate additional runoff from development, this predicted cumulative runoff from the permitted level of development has been taken into account in the catchment plans for the Twins Stream catchment.

Densities over the permitted modelled baseline used in the development of catchment management plans will result in additional cumulative effects over and above the allowances made from the permitted density; developments which increase densities will have adverse effects which have been assessed to be more than minor, with increased downstream flooding and increased channel erosion. EcoWater is additionally concerned that such a development will set a precedent within the Upper Oratia Twin Streams catchment.

A146 - A148 Accordingly, EcoWater have advised that they are unable to support the application, refer attachments at pages A146 to A148.

Notwithstanding, it is noted that the proposal would result in a net decrease in impermeable surfaces on the site. The removal of Drivezone 4 and four existing sheds as proposed would remove some 171m² impermeable surfaces. While additional impermeable surfaces of 62.5m² are proposed (new driveway extension and garage), overall the activity would result in a net decrease in impermeable surfaces of 108.5m².

At this point it is important to make a distinction between 'cumulative effects' and 'precedent effects'. In *Dye v Auckland RC* [2002] 1 NZLR 337; (2001) 7 ELRNZ 209; [2001] NZRMA 513 (CA), noted [2001] BRM Gazette 145, the Court of Appeal held that the precedent effect that may result from the granting of a non-complying resource consent is not within the concept of cumulative effect. That concept is confined to the effect of the activity itself on the environment. The Court of Appeal found that the Environment Court was not required to have regard to the cumulative wastewater or other effects, resulting from the change in land use and increased population densities that might result from subsequent subdivision proposals (which might follow from allowing the particular proposal in question). It noted that such an inquiry would be a speculative exercise. Rather, the correct way in which to address concerns as to precedent effect are under para (b)(iv) or para (c) of section 104(1).

In the case of the proposed subdivision at 587 West Coast Road, the effect of the activity itself on water quality and quantity is considered to be no more than minor, given the resultant net decrease of impermeable surfaces proposed. Rather, the concerns raised by Council's EcoWater Engineer fall to be considered as precedent effects, which are addressed in section 7.4.1 of this report.

7.1.2 Native Vegetation, Vegetation and Fauna Habitat

Actual physical works involved with the proposal include the following;

- (i) Reinstatement of Driveway zone 4,
- (ii) Creation of the 6m long driveway extension to provide access to the new garage on proposed Lot 2,
- (iii) The construction of the garage on proposed Lot 2, and
- (iv) The removal of existing sheds on the property.

None of these works would require works to, or within the drip line of, protected vegetation and therefore no adverse effects on vegetation or fauna habitat are anticipated.

7.1.3 Land / Soil

Earthworks outside a building platform are required to reinstate Driveway zone 4 and create a 6m-long driveway extension to provide access to the new garage (both on proposed Lot 2). As identified in section 4.0 above, this involves a total of 123m² and 24m³ earthworks, within 1m of the proposed internal boundary.

On assessment, it is considered that any adverse effects of the works on the land/ soil resource would be de minimis for the following reasons:

- (a) The earthworks would involve predominantly scrape, to a depth of some 200mm.
- (b) The area involved is not overly large (at 123m²) within the context of the total site size, and is located within a developed section of the site.
- (c) The works are not located in proximity to a sensitive watercourse or other natural feature.
- (d) The site is not identified as being potentially stability sensitive or contaminated.

7.1.4 Air

No air emissions would arise as a result of the proposed activity, and therefore no adverse effects on air quality are anticipated.

7.1.5 Ecosystem Stability

As stated in section 7.1.2 above only minimal physical works are required as a result of the proposed subdivision, none of which would involve works to, or within the drip line of, protected vegetation or in proximity to any sensitive ecosystems. Therefore no adverse effects in terms of ecosystem stability are anticipated.

7.1.6 Outstanding Natural Features; Landforms, Geological Sites

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

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

Not applicable to this application.

7.1.8 Outstanding Landscapes

Not applicable to this application, the subject site is not identified within an 'outstanding landscape' area in the District Plan (map 3.6(B)).

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

The proposal involves little in the way of physical works, but rather would separate the two, smaller existing household units from the main dwelling on the property. The only new structure proposed would be a garage on Lot 2 to provide parking for the heritage cottage, and works would be required to form a short driveway extension.

The creation of two lots greater than the density provided for in the Oratia Structure Plan would lead to a number of infringements with the bulk and location requirements of the Foothills Environment and the General Natural Area; including yards, building coverage and impermeable surfaces. This is an indicator that the proposed lot sizes are too small to accommodate the type of development envisaged in the Foothills Environment, irrespective of the fact that the majority of buildings are existing.

Notwithstanding, individually these factors (infringements) would not give rise to adverse on-site amenity effects. For example, no overshadowing would arise as a result of the location of the proposed internal boundary, given that the removal of the existing garage and laundry would result in a minimum 3m separation distance between the main shed (single storey) on proposed Lot 1 and the heritage cottage (also single storey) on proposed Lot 2. Also, the proposal is non-compliant with building coverage and impermeable surfaces thresholds by minimal amounts (being 6.6% and 3.2% respectively). Therefore any potential on-site amenity effects of the proposal would be no more than minor.

With regard to off-site amenity effects it is noted that the application as submitted does not ascertain whether the bach on proposed Lot 2 was 'lawfully established', and a search of Council records indicates no previous building or resource consent approval for the structure. As such, it does not form part of the existing environment for the purposes of assessing the effects of the structure and must be considered anew. The proposed location of the bach further than 6m from the heritage cottage on proposed Lot 2 (having a separation distance of 15m) is considered to have effects on the wider Foothills Environment. The bach is in poor condition, is not in keeping with the design and appearance of the main dwelling and heritage cottage on-site, and despite a shelterbelt is visible from West Coast Road (particularly from the south-west). It therefore contributes to a pattern of urbanisation incongruous in the Foothills Environment and gives rise to cumulative adverse effects on the amenity and character of this rural landscape. One submission requested the removal of the bach, however this does not form part of the current application.

No mitigation of the above effects has been volunteered and it is considered that the location of the bach is such that total screening would not be possible. Indeed, the heritage covenant proposed by the applicant would in fact specifically preclude any further planting as a means of protecting views to the heritage cottage and by default, to the bach.

The bach is, however, located within a 'node' of settlement in the immediately surrounding area. The dwellings and multiple sheds on the subject site combine with those on the adjacent site at 583 West Coast Road (see Figure 1 of this report above) to form a historic pattern of land use consistent with the past use of the area for horticultural purposes and immigrant housing. It is therefore considered that the adverse effects of the bach on the surrounding environment cannot be considered to be more than minor. Notwithstanding, should this current resource consent application be declined as recommended, further resource consent would be required to legitimise the presence of the bach on the subject site and would be subject to further planning assessment.

7.1.10 Heritage

The heritage cottage on proposed Lot 2 is a category III listed structure, contained within the Heritage Appendix to the District Plan as CHI#1372. In addition, as the cottage is pre-1900 the property is defined as an archaeological site. The cottage forms an important part of the history of Oratia and its Croatian community, as identified by submitters.

The applicant identifies that the reason for undertaking the proposed subdivision and associated land use is to allow the cottage to be on-sold to a party who would maintain the cottage as they are no longer able to do. Protection mechanisms including a covenant are volunteered to ensure the protection of the cottage in perpetuity see section 6.7 of the application document circulated as Volume II, and an area of restricted building and planting is proposed to retain public views to the cottage. The applicant has undertaken extensive research on the cottage, including commissioning a Conservation Plan and archaeological report.

A156-A161

Dave Pearson Architects Ltd provided comment on the proposal on behalf of the applicant. As a result, the subdivision layout was amended to include the bach in proposed Lot 2 (as opposed to with the main dwelling on proposed Lot 1 as originally intended), to allow retention of views to the cottage from West Coast Road and to avoid the need for a fence in close proximity to the front verandah of the cottage. Dave Pearson concluded in a letter dated 18 June 2007 that "*the proposed subdivision would assist in the long-term preservation of the cottage as a new owner is likely to use the cottage as their main dwelling*" and further that "*the subdivision layout as shown on the Cato Bolam plan R19490/S1/R4 would have no more than a minor effect on the heritage values of the cottage at 587 West Coast Road*". It is noted that the Historic Places Trust has also reviewed the proposal, and raised no concerns with regard to the subdivision of the property. The Trust has granted an authority pursuant to section 14 of the Historic

Places Act 1993 to modify or damage part of an archaeological site at 587 West Coast Road refer to attachments at pages A156 to A161.

Should the status quo remain in perpetuity (i.e. no future development), the proposal is not likely to give rise to adverse effects on heritage values. However this is unrealistic, and as the proposed subdivision would create separate title for the historic cottage and bach, additional 'permitted activities' would be created that are not currently applicable due to the fact that the property is held in one title and the development potential has largely been utilised. For example, a minor household could be constructed on proposed Lot 1 and/or the bach removed and a new minor household unit constructed on proposed Lot 2, or other accessory sheds or structures erected, without the need for further resource consent (or consent limited only to matters such as archaeology). Such activities cannot be undertaken without the need for resource consent at present, as there is already two dwellings and a minor household unit on the property which restricts further development.

Therefore creating separate title could lead to a further proliferation of buildings which do not require resource consent (or resource consent limited only to matters such as archaeology), thereby eroding the setting of the heritage cottage and the overall rural heritage character that the Oratia Structure Plan seeks to retain and protect. This cumulative effect is considered to be more than minor on the wider foothills environment and on that basis, subdivision cannot be supported.

While a condition could be considered to impose a consent notice or covenant to restrict any future development on the proposed allotments, this is not a long term solution and future owners can seek to have such restrictions removed. This would shift the density/character debate for consideration by future Councils, when it is most appropriately dealt with at the outset to avoid ad hoc decisions and the over-proliferation of structures in this rural area. Such a condition could also not be supported given that the significant scale of conditions would be such that the validity of the proposal must be questioned in the first instance, and could not be considered an effective mechanism to avoid, remedy or mitigate adverse effects in the long term.

The support of the proposal by the local community is noted, with 59 submissions in support of the application stating that they considered the best way of protecting the heritage cottage to be via subdivision and an owner/occupier situation. However this cannot be guaranteed. For example, even if consent were to be granted, the new owner is still able to rent the property and/or further develop the site.

Therefore overall, it is considered that the creation of separate title for the historic cottage would not necessarily lead to its protection, but rather would remove the ability to control future development on the site with subsequent adverse cumulative effects on rural heritage values.

7.1.11 Summary

Overall and for the reasons outlined above, it is considered that the proposed subdivision and land use proposals have the potential to give rise to adverse effects on the environment that would be more than minor and unable to be fully avoided, remedied or mitigated by conditions of consent.

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

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

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

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

Strategic Objective 2.6.1(19) seeks to protect the Waitakere Ranges including the foothills from inappropriate subdivision, use and development. Policy 2.6.17(3) further states that Countryside Living will only be provided where it is demonstrated that there is insufficient capacity available within the North/West or South sectors rural areas to cater for anticipated growth. In this case the proposed subdivision would not achieve the intent of the Objective, as the small size of the proposed lots (2,630m² for proposed Lot 2) would embody peri-urban development incongruous with the character of the foothills and Waitakere Ranges. The proposal therefore also constitutes ‘countryside living’, and no evidence has been presented to identify that there is insufficient capacity for growth within the North/West or South sectors rural areas and the proposal is contrary to these provisions of the RPS.

Policy 11.4.1(5) states that development shall not be permitted if it is likely to accelerate, worsen or result in inundation of other property, unless it can be demonstrated that the adverse effects can be avoided or mitigated. In this case and as identified in section 7.1.1 above, the proposal would set a precedent in terms of density in the Oratia Structure Plan area that would be detrimental to the extensive catchment modelling undertaken to date by Waitakere City Council. The Oratia catchment is extremely susceptible to downstream flooding and channel erosion, and deviation from the densities provided for in the Structure Plan would exacerbate this situation. No measures can be taken to avoid or mitigate such a precedent, which would be detrimental to established catchment wide flood management techniques.

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

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

7.3.1 District Plan Policies and Objectives

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

Policy 9.14 seeks to ensure that subdivision is designed in a way that minimises adverse effects on natural features, including heritage. Policy 9.2 is more specific, stating that: *“Settlement within the Foothills Environment, should be designed and located, and be of a density, that recognises their key positions in relation to the surrounding natural and physical resources. Within the Foothills Environment structure plans should reflect a building density and level of development that does not compromise the significance of the foothills as an ecological and visual buffer between the urban area of the City and the bushed area of the Waitakere Ranges. The level of intensification of development must be appropriate to the capacity of the landscape to absorb that level of development without degrading the essential landscape qualities of these areas”*.

Irrespective of the fact that the buildings at 587 West Coast Road are existing (although the bach does not have consent), the current proposal is considered to constitute a level of development inappropriate in the foothills environment. Subdivision as proposed would exacerbate this, by creating further development potential on both lots without the need for further resource consent, or resource consent limited only to, say, archaeological factors. The proposal and potential adverse effects that may be generated are therefore fundamentally inconsistent with Policy 9.2 in particular, of the District Plan.

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

“Settlement should be of a type and a density that protects amenity values, including neighbourhood character of different parts of the City, by providing for a permanent pattern of settlement in the Foothills Environment that is in keeping with complex, varied and overall natural character of the area”.

“Structure Plans should be designed so that subsequent development is compatible with landscape character, amenity values and the noted landscape features of the area including providing for:

- *recognition, protection and enhancement of the quality of the landscape within and around each Structure Plan Area;*
- *protecting the amenity values and privacy of each lot;*
- *protecting the amenity values, and character of each Structure Plan Area;*
- *retaining and protecting existing areas of indigenous vegetation;*
- *enhancing and restoring areas of indigenous and exotic vegetation for reasons of visual amenity and/or ecosystem stability, and/or soil retention;*
- *a density of development that does not compromise Council’s urban consolidation policies or undermine the urban containment policies of the Auckland Regional Policy Statement;*
- *a permanent pattern of subdivision that does not increase pressure for, or engender expectations of, further subdivision at a later time; and*
- *a level of development and density of population that does not increase demands for an urban level of infrastructure, roading and servicing.*

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

In the Foothills Environment minor household units should be located within 6.0 metres of the main dwelling to ensure there is only one area of residential activity on the site, and to ensure subdivision of the minor household dwelling from the main dwelling does not occur. This will help minimise the adverse amenity effects that can occur through spread development”.

As previously stated in this report, the property at 587 West Coast Road has already been subdivided to its full potential under the provisions of the Oratia Structure Plan. Further subdivision as proposed would give rise to adverse amenity effects through spread development, and undermine the urban containment policies for the Auckland region as specifically identified in Policy 11.29. The density of the subdivision is in no way compatible with the permanent pattern of settlement in the foothills identified above, and heritage considerations cannot outweigh the direct guidance of this policy direction.

Further such direction is provided by Policy 11.51, which states that:

“Subdivision shall be designed to avoid, remedy or mitigate the actual or potential adverse effects on amenity values, landscape character, and rural and neighbourhood character. Minimum lot sizes and dimensions created through the subdivision process will be determined with regard to the likely anticipated land uses upon those lots and the effects on environmental and amenity values (including the environment of the proposed subdivision).”

Subdivision within the Foothills... Environment should be of a scale, density, intensity and location that is sympathetic to and reflects the natural and physical qualities and rural or coastal character of the locality. The subdivision standards identified in the District Plan are appropriate thresholds for maintaining amenity, character, and environmental values”.

The District Plan therefore provides clear policy in terms of the sensitive Foothills Environment and in particular, Oratia. While the intentions of the applicant to preserve a heritage building are acknowledged and commended, in this case the overall proposal is not consistent with the policy direction of the District Plan and therefore cannot be supported.

7.3.2 Assessment Criteria

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

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

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

In addition, creating such a precedent for subdivision of heritage buildings has the potential to give rise to adverse effects on the foothills to the Waitakere Ranges. The reasons for exemption on which the applicant relies (maintenance of a heritage building) are not unique, as there are at least five other heritage dwellings within the Oratia Structure Plan area¹ and more in the wider Foothills Environment. The subdivision therefore has the potential to lead to an urban pattern of development outside the metropolitan urban limit with associated adverse effects on landscape character, amenity values and heritage sites, inconsistent with Assessment criteria 7(zc).

¹ 572 & 651 West Coast Road, 8 Shaw Road, 108 & 140A Parker Road

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

7.4.1 Oratia Structure Plan & Precedent Effects

A162-A203

The Oratia Structure Plan was confirmed by the Environment Court in decision A21/2000, refer attachments at pages A162 to A203, paragraph [53] of which states:

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

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

A204-A244

Later Environment Court decision A136/2005, refer attachments at pages A204 to A244, tested the density debate, approving the subdivision of three lots at a density ranging from 7,500m² to 1.8ha in Parker Road. Paragraph [89] of this decision stated as follows:

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

In the case of the current proposal, the size of proposed Lot 2 at 2,630m² is indicative of a pattern of urban development unacceptable within the Oratia Structure Plan and likely to give rise to adverse precedent effects. While the applicant has argued unusual circumstances, it is noted that five other residential heritage buildings are contained within the Oratia Structure Plan area ², who could utilise the same case for subdivision. This incremental pattern of increased density on such an ad hoc basis would undermine the intent of the Oratia Structure Plan, to the detriment of this sensitive area. An unhelpful precedent would also be established in terms of downstream flooding and channel erosion, as identified by Council's EcoWater Engineer.

It is therefore considered that the Council should exercise its discretion to protect the integrity of the Oratia Structure Plan and while assessing the current proposal on a case by case basis, realises the precedent set by such a proposal irrespective of whether buildings are existing or not. As identified earlier in this report, the subdivision would create separate title and therefore additional development rights as permitted activities under the rules of the District Plan. Conditions restricting future development are not considered to be achievable or enforceable in the long term, the scale of any potential conditions being of such significance that consent is not feasible in the first instance.

The intentions of the applicant with regards to conserving the heritage building on-site are commended, and indeed the land owners have gone to much time and expense commissioning heritage and archaeological reports. Notwithstanding, little evidence has been provided to indicate that subdivision is the only possible method of heritage protection and indeed when viewed against the context of potential effects on the Oratia and downstream catchments, consent cannot be supported.

² 572 & 651 West Coast Road, 8 Shaw Road and 108 & 140A Parker Road

7.4.2 Waitakere City Council Heritage Strategy (updated 2004)

Council's Heritage Strategy and Heritage Action Plan do not address the issue of subdivision of historic buildings and rural properties. Rather, these documents contain broad policy regarding the protection of general heritage, interpreting the City's heritage, and community involvement in heritage management. None of the policies are therefore specifically relevant to the current proposal.

The issue of heritage effects is addressed in section 7.1.10 of this report above. To reiterate, the application justifies the need to subdivide the category III heritage cottage from the main dwelling at 587 West Coast Road as a form of heritage protection. (The intent being that subdivision would ensure the cottage is the main dwelling on the property and thereby more likely to be maintained). Reference is made in the application to a density exemption in the Rodney District Plan for the subdivision of heritage properties. As identified by Council's Principal Heritage Advisor, however, the Waitakere District Plan has a different emphasis in terms of managing subdivision in the rural Foothills Environment. This is that such factors (heritage) were taken into account at the time of development of the Oratia Structure Plan. The Rodney District Plan is therefore not relevant in the Waitakere context, and the resource consent process is not an appropriate forum to revisit the subdivision rules of the Foothills Environment as this would lead to ad hoc and unmanaged development outside the metropolitan urban limits. If the applicant seeks an exemption from subdivision rules due to heritage factors, then a plan change should be sought so that the wider implications can be examined.

It is considered that heritage protection of the cottage would not necessarily be achieved by subdivision. For example, it cannot be guaranteed that any potential future owners of the property would reside in the property and/or be dedicated to its upkeep. Subdivision would lead to further development potential of the property, to the detriment of heritage values. The cottage is currently afforded protection via the heritage rules of the District Plan, and the property owner could also enter into a voluntary private covenant with regards to protection of the cottage and public views from West Coast Road. Such a mechanism does not necessarily need to be imposed through a subdivision process.

Also of relevance to the issue of subdivision for heritage purposes is Environment Court decision C039/2006. In that case, subdivision and land use resource consent was sought to create separate title for a heritage cottage on a lifestyle property in a rural area of the Wakatipu Basin, and to restore the cottage for use as a visitor accommodation business. While granting the land use component, the Court refused subdivision consent, paragraph [159] of the decision stating that subdivision was not necessary for the protection and enhancement of the heritage building.

The Court found that the proposed subdivision (in that case also a discretionary activity) would not conform with rural policies of the District Plan against over-domestication and for clustering, and would lead to adverse effects on the rural area. This clearly underlines that subdivision is independent of heritage protection, and as such cannot be used to outweigh the policy direction of district and regional planning documents (in this case to avoid peri-urban sprawl and an incongruous pattern of development in the foothills environment).

Some submissions suggested that Council should buy the heritage property and be responsible for its upkeep. However the cottage is not a high priority as a category III building, and Council does not have the resources to undertake this course of action.

The property owners at 587 West Coast Road are to be commended for their upkeep of the heritage cottage to-date. As noted by Council's Principal Advisor Heritage, the cottage is not under immediate threat of decay and is well-maintained. However in this case, there is not sufficient justification for subdivision to a greater density than provided for in the Oratia Structure Plan. Subdivision may not necessarily lead to the protection of the heritage cottage in perpetuity, and would have greater effects in terms of development outside the metropolitan urban limit and the character of the wider foothills environment.

7.4.3 Any Other Relevant Non-Statutory Documents

The Waitakere Ranges Heritage Bill covers that section of the foothills within which the subject site is located. Notwithstanding, the Bill is not yet ratified and is not a binding legal document to which Council may have regard under section 104 RMA. Therefore no comment on the Heritage Bill can be made.

7.4.4 Other Issues Raised by Submitters Not Covered Elsewhere in Report

Issues raised by submitters have been addressed in sections 7.1.10, 7.3 and 7.4 of this report. The majority of submissions were similar in content and focused on the belief that the preservation of the historic cottage would be best achieved by subdivision and an owner/occupier situation. However as previously stated, such a situation cannot be guaranteed through the resource consent process and any benefits arising from the proposal would be outweighed by the wider adverse effects of development outside the metropolitan urban limit in an ad hoc manner in the sensitive foothills environment. The fact that the cottage is an important part of the history of Oratia is not disputed, however the proposed form of heritage protection is not considered appropriate for the reasons stated above.

It is considered that all concerns raised by submitters have been addressed in this report.

8.0 PART II OF THE RESOURCE MANAGEMENT ACT 1991

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

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

In the current case, it is considered that the subdivision of the property at 587 West Coast Road does not constitute sustainable management of natural and physical resources, irrespective of whether buildings are existing or not. Fragmentation of identified key land at the foot of the nationally significant Waitakere Ranges would set a precedent of urban development unlikely to meet the foreseeable needs of future generations. (These future needs include retention of rural character, native vegetation, streams and water quality etc while avoiding flood risk and maintaining urban development within existing boundaries, as identified in the Waitakere City Council Oratia Structure Plan Decision Notice dated 22 April 1997).

It is not considered sustainable to assess the effects of rural fragmentation on a case by case basis indefinitely. Rather, a point must be reached where no further intensification is approved, and this has been identified in the Oratia Structure Plan after extensive research, consultation, and testing through the Courts. Although this density approach has since been challenged by the Court (for example, A136/2005), it still holds that the current case does not present sufficient positive benefits to outweigh the wider scale adverse effects identified in the preceding paragraph. There are other heritage dwellings in the Oratia Structure Plan which have similar subdivision potential, and the Hall's cottage is not of outstanding heritage significance (at category III) to justify urban development in this sensitive rural/foothills context. Rather, it is considered that the proposal would "lead to a series of incremental increases in density on an ad hoc and non-integrated basis" (Environment Court decision A21/2000 [79]).

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

Creating separate title for particularly proposed Lot 2 (at 2,630m²) rather than being a form of heritage protection, has the potential to create future development opportunities which are not able to be wholly or effectively controlled via conditions of consent set at this point in time. Measures such as covenants restricting future development would undermine the integrity of the Oratia Structure Plan, as they would allow future owners to apply for releases from any such covenants on an ad hoc basis. This shifts the issue of density for consideration by future Councils when it is best avoided at the outset. For these reasons, it cannot be concluded that the proposal avoids, remedies or mitigates adverse effects on the environment as required by section 5(2)(c).

While relevant to the proposal, sections 6 – 8 (including section 6(f), historic heritage) do not give rise to any mitigating factors which contribute to, or outweigh, the underlying nature of the activity which is fundamentally inconsistent with section 5.

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

9.0 CONCLUSION

The intent of the applicant to retain and protect the category III listed heritage cottage at 587 West Coast Road is acknowledged and commended. The cottage forms part of the early pattern of settlement in Oratia and substantial effort has been invested in research into, and preservation of, the structure to-date.

Notwithstanding, it has been upheld in the Courts (C039/2006) that subdivision is not necessary for the protection and enhancement of heritage buildings. The proposal gives rise to wider policy issues on both a district and regional level. The peri-urban form of development proposed is not unique (there are other, similar heritage dwellings in the Oratia Structure Plan) and would lead to a series of incremental increases in density on an ad hoc and non-integrated basis. This goes against the intent of the Oratia Structure Plan and does not constitute 'sustainable development' for the purposes of Part II of the RMA. Fragmentation of land ownership as proposed would give rise to further development potential on the subject sites, unable to be efficiently or appropriately controlled in the long term via conditions of consent.

It is therefore concluded that for the above reasons, the application **does not merit consent** in accordance with section 104 of the Resource Management Act 1991.

RECOMMENDATIONS

1. It is recommended pursuant to section 37 of the Resource Management Act 1991, that the Independent Commissioner has regard to the late submissions received from F & P Swinburn and S Inverarity on 21 August 2007.
2. It is recommended pursuant to section 104, 104B and 113 of the Resource Management Act 1991, that **consent be refused** to subdivision and land use resource consent applications SUB-2006-4042 and LUC-2007-156, being a discretionary activity to undertake a two lot subdivision to create separate title for a historic cottage at a greater density than provided in the Oratia Structure Plan; with associated archaeological, density, yards, building coverage, vehicle crossing, earthworks, and impermeable surfaces land use infringements at 587 West Coast Road (being Lot 1 DP 314714) for the following reasons:

- (i) The proposal is not unique and would not be consistent with the assessment criteria, objectives and policies of the District Plan or the Regional Policy Statement. The proposal constitutes a peri-urban form of settlement outside the metropolitan urban limit and would undermine the integrity of the Oratia Structure Plan, contributing to a cumulative loss of rural amenity and character of the foothills of the Waitakere Ranges. Such subdivision would also create a precedent for similar future development, to the detriment of the wider foothills environment.
- (ii) The benefits of ownership of the historic cottage on separate title in terms of maintenance and preservation cannot be guaranteed and do not outweigh the fundamental adverse effects of the proposal outlined above. Subdivision is not considered a fail-safe method of heritage protection.
- (iii) No conditions are possible which would wholly avoid, remedy or mitigate identified long term adverse effects on the environment.
- (iv) The proposal does not meet the tests for sustainable development contained in Part II of the Resource Management Act 1991.

Advice Notes

Resource consent is required for the 'bach', or minor household unit on the property.

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