



**AGENDA FOR A MEETING OF THE HEARINGS COMMITTEE TO BE HELD AT WAITAKERE  
CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE,  
ON THURSDAY, 24 MAY 2007, 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 Chairman 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 - Friday, 13 April 2007  
Reconvened Minutes - Friday, 20 April 2007

**RECOMMENDATION**

That the minutes of the Meeting of the Hearings Committee held on Friday, 13 April 2007 and reconvened on Friday, 20 April 2007, 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 A & S NOGUEIRA TO ESTABLISH AND OPERATE A THEME PARK AT 31 WALLACE ROAD & 74-80 CANDIA ROAD (KNOWN AS CRYSTAL MOUNTAIN).**

**MASSEY WARD**

**RMA 20061687**

**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: Claire Gray

Site Address: 31 Wallace Road and 74-80 Candia Road, Swanson

Applicant: A & S Nogueira

Date Received: 21 September 2006

Building Consent No: Not yet lodged

Legal Description: Lot 1 DP 152054, Lot 51 DP 22288, Lot 7 DP 152054 (access lot)

Address for Service: Les Simmons  
261 Amreins Road  
Taupaki  
RD2 Henderson  
WAITAKERE 0782

Site Area: 31 Wallace Road - 73,924m<sup>2</sup>  
74-80 Candia Road - 29,122m<sup>2</sup>  
  
Total area - 103,046m<sup>2</sup> (10.3046 hectares)

District Plan:  
Human Environment: Living  
Natural Area: General / Restoration / Riparian Margins  
Landscape Elements: 15m Riparian Margin  
Hazards: Soil Contamination, Site affected by flooding  
Roading Hierarchy: Candia Road - Collector Road, Wallace Road - Local Road

Further Information Required: Yes

Date Requested: 27 September 2006, 25 October 2006, 05 March 2007

Date Received: 28 November 2006, 6 December 2006, 22 December 2006, 28 February 2007, 8 March 2007, 23 March 2007

## 1.0 INTRODUCTION AND RECOMMENDATION

### 1.1 Nature of the Application

The applicant seeks consent to establish and operate a theme park, including rides, a private zoo, retail sales associated with the activity, associated buildings and car parking. The proposal involves the construction of a mountain structure, rides, various buildings and the establishment of a new parking area and animal riding areas. The proposed development is in addition to an existing non-residential activity being a crystal gallery, café and associated activities.

The development requires resource consent for the establishment of a non-residential activity, building location, traffic generation, car parking and signage. Consent is also required for vegetation clearance, earthworks, development of a contaminated site and development on a site known to be subject to flooding.

The application is assessed as a Non-Complying Activity under the Operative District Plan.

### 1.2 Resource Management Issues Raised

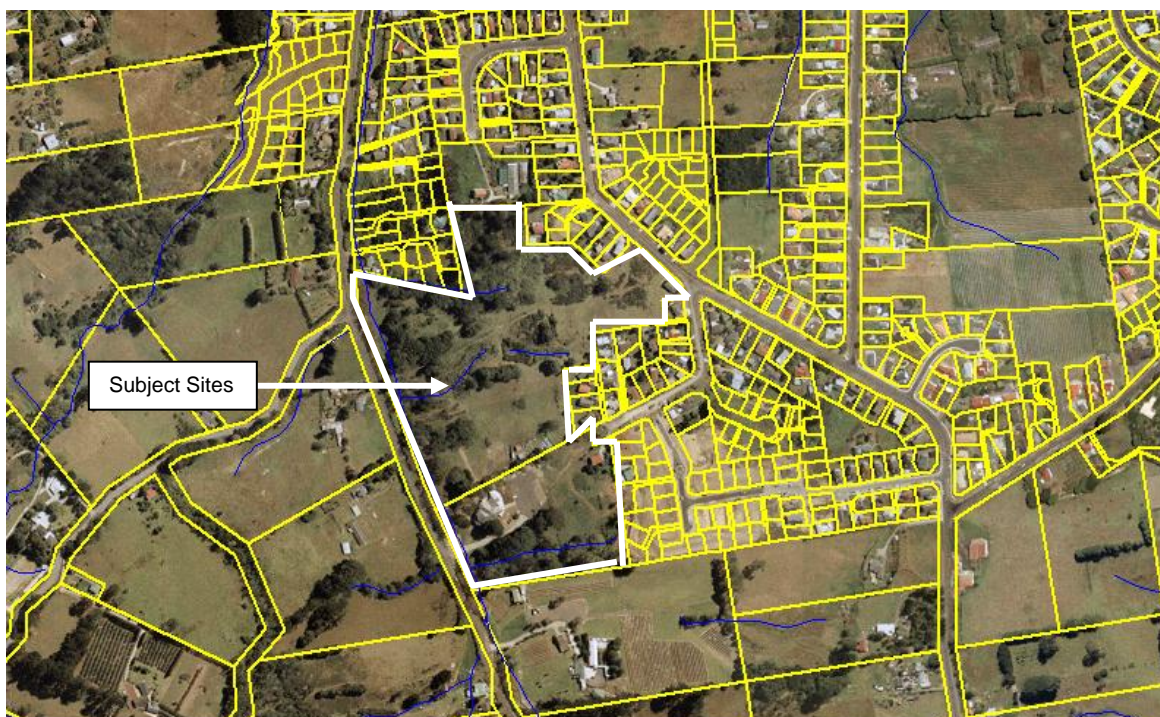
The Resource Management Act 1991 requires that, when considering an application for a resource consent, a consent authority shall have regard to the environmental effects of the proposed activity, together with any relevant Objectives, Policies and rules of the District Plan.

The significant resource management issues associated with the proposal relate to residential amenities, neighbourhood character, noise generation, visual amenities, parking, traffic generation, and the impact of increasing the scale and intensity of a non-residential activity within a Living Environment.

### 1.3 Planner's Recommendation

The planner who has prepared this report recommends that, subject to any contrary or additional evidence submitted at the Hearing, **consent be declined** to the application to develop and operate a theme park on the site. It is considered that the adverse environmental effects that would be generated by the activity would be more than minor and will not be adequately avoided, remedied or mitigated by conditions. In addition, the proposed activity is contrary to the relevant Objectives and Policies of the District Plan.

## 2.0 LOCATION PLAN



**Legal Description:** Lot 1 DP 152054, Lot 51 DP 22288,

**Human Environment:** Living

**Natural Environment:** General / Restoration / Riparian Margin

**Hazards:** Soil Contamination, Site affected by flooding

**Roading Hierarchy:** Candia Road -Collector Road, Wallace Road -Local Road

## 3.0 PROPOSAL

The applicant seeks consent to establish and operate a theme park on the site to be operated in association with the activities that are currently consented to on the subject site. The proposal involves the construction of a mountain structure, buildings, fun rides, and a new car parking area to facilitate the proposed use. It is also proposed to establish and operate a private zoo with areas for riding animals. This proposal would be in addition to the existing activities undertaken on the site which include a crystal and mineral gallery with museum, café and associated kitchen, office and amenity areas, miniature farm, Crystal Mountain Express Train, horse arena, outdoor children's play area, panning for crystals activity area, and the existing car park area.

The mountain structure would be no more than a maximum of 8 metres in height and would provide a covered venue for five fun rides for children. The five expected activities are: a kiddy plane ride, a train ride ('funky train'), a vertical bungee trampoline, a truck convoy ride, and a ride known as 'tea cups'. The mountain would have an external textured plaster finish of muted browns, greys and greens to give the appearance of natural stone.

The new buildings on site would consist of a ticket booth, storage shed for fun cars, stables, bumper cars building, animal antics building and associated stables, rapid river ride stations and a storage shed. Existing buildings on the site, to be retained are the existing Crystal Mountain building, a cottage, an animal barn, a shed and an existing residential dwelling.

The application details also outline that *“there may be extensions to existing buildings, as well as new buildings, structures and enclosures constructed and located within the theme park in future years”*. The applicant seeks to gain provision for these structures under this consent, and it is envisaged that further resource consents would not be required for such buildings. It is proposed that no buildings would exceed a maximum height of 8 metres.

Two additional car parking areas are proposed to the south-east of the site. These would be developed in two stages, the first would accommodate 123 car parking spaces, the second would accommodate a further 56 car parking spaces. A Traffic Impact Assessment prepared by Traffic Planning Consultants Limited (TPC) has been provided in support of the application.

It is also proposed to widen the existing access to the site. This access is currently provided from Candia Road, over a stream (Lonesome Brook), to the body of the site. The widening would involve retaining the existing culverts and bridge, and adding a 1.2 metre wide section to the northern side of the bridge. The extension would be supported by two piles, one at either end, which would be located within the riparian margin area, but not within the stream bed.

One mature pine tree is proposed for removal to accommodate the second stage of the car park, and one wattle tree is proposed for removal to accommodate the ‘kiddy coaster’ ride.

Two new, back to back signs are proposed along the Candia Road frontage. Each sign would have a maximum size of 1.2 metres by 2.4 metres. The signs are proposed along the northern side of the Candia Road entrance.

It is proposed to operate the theme park 7 days a week from 9.00am to 9.00pm October to March (during daylight saving) and 9.00am to 6.00pm April to September. These are also the existing permitted hours of operation for the gallery and café presently on site. No activities will take place beyond daylight hours that require outdoor lighting. Outdoor lighting is proposed for security purposes only and is proposed in specified locations relating to the entrances of particular buildings.

Earthworks to establish the activity are required and an earthworks report has been provided with the application. This report was prepared by Mitchell Vranjes Consulting Engineers Limited and outlines that a total cut volume of 6,850m<sup>3</sup> and fill volume of 8,550m<sup>3</sup> would be required. This results in approximately 1,700m<sup>3</sup> of imported fill. Retaining walls would be required around the fun car track and also around the proposed car parking area. The heights of the retaining walls vary and final heights will depend on finished ground levels, however it is anticipated that the retaining walls required for the car parking area would be up to 3 metres in height, and retaining for the fun car track would be between 1-1.5 metres in height.

Areas of significant earthworks are: the car park extension, riding arena, bumper car building, rapid river ride, mountain structure, rapid river pond, kiddy coaster, fun car track, formation of pedestrian and train routes, show arena and stables. It is proposed to undertake the works in three stages.

Un-consented earthworks activities have previously been undertaken on the site. These works relate to the car park area proposed to the south-east of the site and the riding arena along the eastern boundary. Council’s Field Services team was previously involved with these un-consented works and it is understood that the Field Services action required retrospective consent to be gained for these works. This application addresses those areas of works.

Stormwater would be collected and treated on-site, then discharged into the watercourse (Lonesome Brook) that runs along the western side of the site, parallel to Candia Road.

An assessment of noise effects prepared by Hegley Acoustic Consultants has been provided with the application. This report indicates that the proposed development would comply with noise standards as specified in the District Plan.

The existing activities on the site were lawfully established through a notified resource consent process (LUC-1997-1743). Various other non-notified resource consents have been issued for the subject site which allow for an extension of a café (LUC-1999-2583), an all weather canopy (LUC-2001-855), storage area (LUC-2003-1282). It is also noted that some of the conditions of the previous consent (LUC-1997-1743) have not been met, in particular landscaping requirements and unauthorised earthworks have been carried out on the site. This application for consent intends to address illegal works undertaken by seeking retrospective consent for the works.

#### **4.0 REASONS FOR THE APPLICATION**

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

##### **Living Environment**

###### **Rule 8: BUILDING LOCATION / PRIVACY & AMENITY**

Discretionary Activity for a non-residential activity that is not screened from adjoining sites or the road.

The proposed non-residential development will be visible from adjoining sites and from Candia Road, Wallace Road and View Ridge Drive.

###### **Rule 10: NON-RESIDENTIAL ACTIVITIES**

Non-Complying Activity for a non-residential activity that includes retail sales.

The applicant proposes to establish a further non-residential activity on the site that involves retail sales. Retail sales proposed on the site are a food kiosk and a camera shop.

###### **Rule 11: TRAFFIC GENERATION (NON-RESIDENTIAL ACTIVITIES)**

Discretionary Activity for a non-residential activity on the site where traffic generation exceeds 50 vehicle movements per day.

It is estimated that the proposed theme park would generate an additional 430 vehicle movements per day. The combined non-residential activities on the site (existing and proposed) would generate a maximum total of 840 vehicle movements per day.

###### **Rule 12: CAR PARKING & DRIVEWAYS**

Limited Discretionary Activity for car parking associated with a non-residential activity on the site.

The applicant proposes to establish car parking areas, which would increase the total number of car parking space on the site to 254.

###### **Rule 15: SIGNS**

Non-Complying Activity for signs that exceed a maximum sign area of 1.5m<sup>2</sup>.

The applicant proposes to establish two back to back signs of 1.2m x 2.4m or 2.88m<sup>2</sup>.

### **General Natural Area**

#### Rule 2: VEGETATION CLEARANCE

Controlled Activity for the removal of vegetation (on the removable vegetation list) that exceeds 6.0m in height and would result in a total cleared area of more than 500m<sup>2</sup>.

The applicant proposes to remove one pine tree and one wattle tree. Works within the dripline of wattle trees is also proposed. The existing total cleared area exceeds 500m<sup>2</sup>.

#### Rule 3: EARTHWORKS

Discretionary Activity for earthworks that exceed a volume of 300m<sup>3</sup>, where the application is supported by an earthworks report.

The applicant proposes to carry out a total cut volume of 6,850m<sup>3</sup> and fill volume of 8,550m<sup>3</sup>. This results in approximately 1,700m<sup>3</sup> of imported fill. Retaining walls of up to 3 metres in height are also proposed.

### **Riparian Margins/Coastal Edges Natural Area**

#### Rule 7: BUILDINGS

Limited Discretionary Activity for the alteration of an existing building not exceeding 10% of the part of the site within the Riparian Margin.

A 15m Riparian Margin (Lonesome Brook) runs along the western boundary of the site. It is proposed to widen the existing driveway providing access to the site by 1.2m.

### **City Wide Rules, Natural Hazards**

#### Rule 1: GENERAL

Limited Discretionary Activity for development of a site that is known to Council to be subject to flooding.

### **City Wide Rules, Hazardous Facilities & Contaminated Sites**

#### Rule 2: CONTAMINATED SITES

Discretionary Activity for development of a site that is known to Council to contain contaminated soils.

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

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

### **5.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION**

The subject site is held in two certificates of title and is located between Candia Road to the west, and Wallace Road, View Ridge Drive, and Hetherington Road to the east. The site consists of 31 Wallace Road (Lot 1 DP 152054) and 74-80 Candia Road (Lot 51 DP 22288), which have a combined area of 10.3046 hectares. The site at 31 Wallace Road has frontage to both Wallace Road and Candia Road. The site at 74-80 Candia Road has frontage to Hetherington Road, Wallace Road and Candia Road.

An existing non-residential activity is currently being undertaken from the sites. This is known as 'Crystal Mountain' and consists of a crystal and mineral gallery with museum, café and associated kitchen, office and amenity area. There is also a miniature farm, Crystal Mountain Express Train, horse arena, outdoor children's play area, activity area to pan for crystals, and an existing car park area. These buildings and activities are located across the boundary of the two sites, and are accessed from Candia Road, through the centre of the site at 74-80 Candia Road.

A residential dwelling is located to the west of the site at 74-80 Candia Road which is accessed from Wallace Road.

The remainder of the site contains a mix of grassed areas and vegetated areas and slopes moderately down to the east where a watercourse (Lonesome Brook) runs along the western boundary, parallel with Candia Road. There are three tributaries of Lonesome Brook that feed into the stream from the body of the site.

The area surrounding the existing non-residential activity on the site is mainly grassed and slopes gently to moderately from the east down to the west. There is one mature pine tree located to the south of the existing car parking area on the site and a group of wattle trees around the eastern portion of the site.

Sites to the north and east of the subject site are residential and are zoned Living Environment under the District Plan. These sites are characterised by site areas of between 400m<sup>2</sup> and 1000m<sup>2</sup> and contain stand alone residential dwellings. It is noted that there are some larger sites in the immediate vicinity that have further subdivision potential, to permitted site areas of 450m<sup>2</sup> under the District Plan.

Sites to the south and west of the subject site are zoned Foothills Environment and are characterised by larger lot sizes (than those in the Living Environment), typically 2 hectares and over. These sites are outside the Metropolitan Urban Limits, and generally contain one residential dwelling, ancillary buildings, and extensive, grassed paddock areas. These sites are rural in character and are generally used as 'lifestyle blocks' for rural-residential living. The site to the immediate south has recently been in use as a vineyard.



**Photo 1:** (above) Site as viewed from Wallace Road with existing car park and 'Crystal Mountain' building visible.



**Photo 2:** (above) Site as viewed from View Ridge Road with existing car parking area, bungee trampoline and building visible.



**Photo 3:** (above) Wattle and Eucalyptus located to the west of the site.



**Photo 4:** (above) Mature pine tree located to the south of the site, adjacent to car parking area.



**Photo 5:** (above) Site as viewed from the south, looking toward the existing 'Crystal Mountain' building on the site.

## 6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

The application was publicly notified on 9 March 2007 and the period for submissions closed on 10 April 2007. 216 submissions were received. Three submissions supported the application, 212 submissions opposed the application, and one neutral submission was received.

Eight of these submissions were late (six opposing and two supporting the application).

The Hearings Committee needs to resolve whether to accept these submissions, pursuant to Section 37 of the Act. In making this decision, the Council 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 last submission was received 9 days late (on 23 April 2007). The Act allows a twenty day period within which submissions are to be made. Accordingly, these submissions were within the maximum time period specified in Section 37A(2)(a) of the Act.

The late submissions in opposition do not raise any new issues, however, the submission received in support do raise issues that have not already covered by other submissions received within the statutory timeframe. It is considered that no one would be prejudiced by the acceptance of these late submissions, and acceptance of the submissions would not result in any delays. It is therefore recommended that all late submissions are accepted.

A1-A2  
Volume 3  
A147-A781

A map showing the location of parties notified within the neighbouring area is attached at pages A1 to A2. Volume 3, contains full copies of all submission that were received as attached at pages A147 to A781.

A majority of the submitters were from the local area, however a number of submissions were received from further a field (Massey, Taupaki, Whangarei, Waimauku, Woodhill, Kelston, Glen Eden, Sunnyvale, Te Atatu Peninsula, Waitakere, Riverhead, Westmere, and Te Atatu South).

### 6.1 Submissions

A3-A28

A broad summary of submissions is discussed below and a summary of individual submissions are attached pages A3 to A28. It is noted that a number of submissions in opposition were pro forma, and therefore express the same issues.

Summary of issues raised in opposition:

#### General

- Character, intensity and scale will generate adverse effects that cannot be avoided, remedied or mitigated.
- No alternative sites addressed.
- Proposal is inconsistent with and contrary to the Objectives and Policies of the District Plan.

- Regional consents have not been identified or sought.
- Proposal does not meet the tests of Sections 104d and 105 of the Act.
- Proposal would scare away wildlife.
- Existing outstanding resource consent conditions.
- Inadequate fencing to contain animals on the site.

#### Traffic

- Effects on traffic environment and traffic safety.
- Traffic entering/exiting the site will cause congestion.
- Emergency vehicle access.
- Possibility of Crystal mountain entrances used as a through road.

#### Noise

- Noise effects from operation of theme park.
- Construction noise over a period of time.

#### Character of area / Amenity values

- Effects on amenity values including: noise, visual amenity, number of people and animals at the site, traffic and parking, scale of lit area at night, cumulative effects.
- Commercial activity inappropriate in area.
- Theme park not appropriate in this area.
- Proposal is not a natural and progressive growth direction from the existing operation.
- Activity and effects not in keeping with existing character of area.
- Activity and effects not provided for or expected within the area.
- Henderson Valley is designated as Foothills Environment for wildlife and people.

#### Flooding / Stormwater / Water quality

- Flooding over Candia Road is not addressed in application.
- Environmental impact on stream along Candia Road.

#### Other (non-resource management issues)

- Increase in burglary.
- Reduction of residential house value.

Three submissions (including two late submissions) were received in support, with the following matters referred to:

- Creation of employment opportunities.
- Present West Auckland in a positive light.
- Generation of revenue.
- Fun place for local community.

One Neutral submission was received with the following matters referred to:

- Concern regarding noise generated from rides and children.
- Traffic generation at peak times.
- Hours of operation excessive.
- Positive aspects in terms of employment opportunities.

## 6.2 Affected Persons Approval

A136-A146

Following the close of submissions, the applicant submitted a number of written approvals in relation to the application (supplied 8 May 2007). A full copy of the written approvals and a plan showing site locations is attached at pages A136 to A146.

PERSON (owner/occupier)	ADDRESS
PJ Reece	19 Wallace Road
LR Pulman	23 Wallace Road
SI Grey	21 Wallace Road
SJ Lowndes	24 Wallace Road
C Heale and J Heale	1/25 Wallace Road
G Backhouse-Smith and S Backhouse-Smith	35 Wallace Road
SK Hurn	133 Simpson Road

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)).

## 7.0 STATUTORY REQUIREMENTS

### 7.1 Non-Complying Activities

The relevant policies and criteria which apply under the District Plan and the Resource Management Act 1991 are set out in more detail in sections 8.2.1 and 8.2.2 of this report. 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 the Operative District Plan.

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

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

A29-A66

Please note: All specialist’s reports referred to below are attached at pages A29 to A66.

#### **8.1.2 Water Quality and Quantity**

There is one watercourse that runs along the western boundary of the site, parallel to Candia Road, this is known as Lonesome Brook and is classified as a 15 metre Riparian Margin under the District Plan. Three tributaries lead from the body of the site down to the watercourse. These are all classified as non-riparian margins under the District Plan.

The site is not connected to Council’s reticulated stormwater system. The development proposes the establishment of new impermeable surfaces on the site. Council’s EcoWater Engineer, Mr Steven Rankin, has reviewed the application and comments that stormwater mitigation would be required on the site. Stormwater volumes would need to be limited to predevelopment levels for the two year storm event. Stormwater quality treatment would also be required, in accordance with Auckland Regional Councils Technical Publication 10 (TP10), to protect the receiving environments from damage and degradation from contaminants.

It is considered that limiting stormwater discharge volumes to pre-development levels would adequately mitigate the potential adverse effects on the environment. Potential adverse effects could include increased channel erosion and downstream flooding that may otherwise result from the additional impermeable areas discharging at an uncontrolled rate (without mitigation).

A29-A33

Mr Rankin's report is attached at pages A29 to A33.

### **8.1.3 Native Vegetation, Vegetation and Fauna Habitat**

The site presently contains cleared areas that exceed a total cleared area of 500m<sup>2</sup>. Any new clearance would result in a further cleared area, and would therefore require consent. It is proposed to remove one mature pine tree from the south of the subject site, in the proposed car parking area. It is noted from visiting the site that one Wattle would be required for removal to allow the establishment of the Kiddy Coaster. Work within the dripline of wattle trees in the west of the site is also proposed for the provision of a fun car track. Pine trees and wattle trees are listed on Council's Removable Vegetation Appendix and their removal does not necessarily require consent. However, in this case, given the existing cleared area, consent for the removal of the trees is required.

A landscape plan (prepared by Boffa Miskell, dated September 2006) and a planting schedule (prepared by Bridget Gilbert Landscape Architecture, dated September 2006) have been submitted with the application. These documents outline planting would occur on the site. This plan includes the provision of planting in the car parking area (as well as extensive planting elsewhere on site), which is considered to mitigate the loss of the Pine and wattle trees.

### **8.1.4 Land / Soil**

The proposal is expected to require earthworks over an area of 14,350m<sup>2</sup>. This results in a cut volume of 6,850m<sup>3</sup> and a fill volume of 8,550m<sup>3</sup>. Approximately 1,700m<sup>3</sup> of imported fill would be required.

The earthworks report, prepared by Mitchell Vranjes Consulting Engineers Limited, dated June 2006, proposes that earthworks are undertaken in three stages and outlines the areas of works that would occur in each stage. Stage I would comprise earthworks for the southern car park area, the riding arena, bumper car building, mountain structure and the fun car track (sub total area of 7,150m<sup>2</sup>). Stage II would involve works for the kiddy coaster, rapid river channel and rapid river reservoir (sub total area of 5,200m<sup>2</sup>). Stage III earthworks would be for the creation of the show arena/stable (sub total area of 2000m<sup>2</sup>).

Retaining is proposed around the car parking area, with walls of up to 3 metres in height. Retaining is also proposed around the fun car track with walls of 1-1.5 metres in height.

A34-A38

The earthworks report submitted with the application includes an earthworks management plan with sediment and erosion controls. This report has been reviewed by Dean Allen, Council's Monitoring Officer, who is satisfied that the proposed measures adequately mitigate potential adverse effects on water quality from sediment runoff. Suitable sediment and erosion control conditions would be imposed to ensure that any sediment and contaminant laden runoff entering the waterways is minimised. Mr Allen's report is attached at pages A34 to A38.

The subject site is known to Council to be potentially contaminated from past horticultural use. A site investigation and contamination report prepared by Environmental & Earth Sciences, dated December 2006, has been submitted with the application. The report outlines that concentrations of arsenic, copper, lead and organochlorine pesticides for the samples collected were below the relevant levels for the protection of human health.

A discrete sample from a chemical storage area of the site contained elevated concentrations of lead which exceed environmental and residential guidelines. Excavation around this area and removal of contaminated material is recommended.

This report has been peer reviewed by Kingett Mitchell Limited who generally concur that the site is suitable for the proposed development. However, outstanding issues have been raised with regard to the extent of excavation around the barn area (lead hotspot), and the subsequent disposal of this contaminated material.

A39-A45 This contamination report, review and subsequent correspondence are attached at pages A39 to A45.

### **8.1.5 Air**

Given the nature and scale of the proposal, dust will be generated from the earthworks on the site. Council's Monitoring Officer has recommended the inclusion of conditions of consent to ensure that dust nuisance is minimised.

### **8.1.6 Ecosystem Stability**

The development is proposed in what is currently a grassed, paddock area of the site, with the removal of one Pine tree and one wattle tree proposed. Several submitters commented that the proposed development would scare away wildlife. Council's Ecologist, Mr Martin Sharp, comments that areas of rank pasture grasses that are adjoined by large trees and associated ground debris, provides good habitat for native skinks. The disturbance that would occur when the area is developed would cause some skinks (if present) to relocate to adjacent areas.

Mr Sharp goes on to comment that given the large area to be developed, if skinks are present, significant losses would occur. It is therefore recommended that, if granted, a monitoring programme be undertaken prior to works commencing. This should be undertaken by an appropriately qualified and experienced ecologist/herpetologist to confirm the presence/absence of native skinks. If native reptiles are present then a 'catch and relocation' programme (designed and carried out by an appropriately qualified and experienced ecologist herpetologist) would need to be carried out. Relocation on the property itself may be possible if suitable sites are available.

Mr Sharp advises that given the size of the trees proposed for removal (pine and wattle), and their proximity to the watercourse, there is a possibility that native bats may be roosting in the tree. In order to reduce the potential disturbance to any bats, tree felling should occur between March to October.

If the above recommendations are undertaken, it is considered that the loss of grassed areas and trees would be unlikely to result in the loss of species, and would have no more than minor adverse effect on ecosystem stability.

It is also noted that the proposal will create a considerable amount of impermeable surfaces resulting in increased volume and rate of runoff which could potentially affect the receiving environment of the stream. Council's EcoWater Engineer has reviewed the application and is satisfied that the proposed stormwater mitigation measures will ensure that any adverse effects will be minor.

The proposed amount of earthworks could potentially have adverse effects upon the ecology of the aquatic receiving environment including Lonesome Brook, from erosion and sediment discharge. Given the sediment and erosion control measures proposed and the employment of stormwater mitigation measures, it is considered that the proposal will have no more than minor adverse effects on ecosystem stability.

### **8.1.7 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.

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

There would be no adverse effects in relation to the natural character of the coast and margins of lakes, rivers and wetlands arising from the proposed activity as it would be located within the urban area of the City. Appropriate placement of silt and erosion control measures during earthworks would prevent sediment laden runoff, and the subsequent installation of stormwater devices would minimise downstream effects from increased stormwater discharges.

### **8.1.9 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.

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

- *Establishment of a Non-Residential Activity/ Neighbourhood Character*

As outlined in the Site Description (Section 5) above, the subject site is located between a residential area to the north and east, and a rural area to the south and west. The subject site itself contains an existing non-residential activity of a mineral gallery, café, miniature farm and supporting activities/uses.

The proposal introduces a more intense non-residential use of the site than is currently undertaken. It introduces a theme park with a range of outdoor activities and rides, as well as buildings, structures, car parking areas and retail activities.

The application details also outline that future structures associated with the theme park are anticipated on the site, and consent is sought for these at this stage. At this stage the details of location, use and size of the structures are not known. It is therefore difficult to anticipate the effects of any future structures. For this reason, this consent, if granted, would not cover any future structures on the site. The provisions of the District Plan would apply to any future development.

The intensified use of the site for non-residential purposes is not considered to be in keeping with the existing land uses of the area. It is acknowledged that an existing non-residential use is undertaken from the site, and this forms part of the existing, receiving environment, however, the scale and intensity of the existing use is less (than that proposed). Over 30 residential properties directly abut the site, and the proposal would establish a non-residential enclave in an area where the character of land use is predominantly residential.

The proposal introduces structures that are not residential in character such as a mountain, kiddy coaster, rapid river ride, enclosed arena and a private zoo. At present, when viewed from Candia Road, the non-residential use of the site is not clearly identifiable and the site, with a driveway and (large) building could be interpreted as containing a residential activity. The scale and intensity of non-residential use of the site would increase with the proposed activity. The existing consented area covers approximately 1.0 hectare and the proposal would approximately triple this area (to 3.0 hectares), resulting in non-residential use of over approximately one-third of the 10 hectare site. The proposed rides, structures and signage would be visible from off the site, and would indicate that the site was used for non-residential activities.

It is considered that the proposed theme park would be of a scale and intensity that would not be in keeping with, and would detract from, the existing character of the area.

- *Visual Amenity, Landscape values*

A Landscape and Visual Assessment has been undertaken by Bridget Gilbert Landscape Architecture, dated September 2006.

Ms Gilbert's assessment outlines that when considering the landscape and visual impact of the proposed theme park, it is essential to acknowledge that the local area is a peri urban edge in transition.

It is noted that while the site is located between residential (north and east) and rural (south and west) land uses, approximately two-thirds of the site boundaries adjoin residential properties. It is further noted that the topography of the areas means that these properties are located above the subject site and look down on it. With reference to the above discussion, it is considered that the site would be a non-residential enclave in an area where the character of land use is predominantly residential.

Ms Gilbert comments that:

*"the proposed development has been designed to integrate with the local landscape and minimise impacts on neighbouring properties. Through careful siting of structures and buildings, the use of visually recessive colours, the retention of key mature trees in the medium term and, as the proposed enhancement planting (riparian, framework and amenity planting combined) matures, it is envisaged that the development will sit comfortably within this urban edge landscape."*

As outlined in the application details, the mountain structure would be visually recessive, to give the appearance of natural stone and would be in the form of an irregular, craggy rock outcrop. This land form (rock outcrops) is not naturally occurring in the area and is not present else where on the site. The application details show the proposed outdoor rides on the site in bright, non-recessive colours. For example, the kiddy coaster is shown as bright orange, and the fun cars are green, purple and orange. The existing Crystal Mountain building on the site is pink. It is considered that these elements would be visually obtrusive and would not be in keeping with surrounding area.

Ms Gilbert notes that the proposal would significantly change views from along the Wallace Road boundary. The development would see a change from an *"open rural outlook to a lushy planted landscape affording glimpses of the artificial mountain and rapid river ride at best"*. However, Ms Gilbert concludes that the *"character of the change associated with this proposal will give rise to no more than minor adverse visual effects"*.

This assessment has been reviewed by Council's Landscape Architect Mr Gordon Griffin. Mr Griffin comments that potential views of the development from Candia Road could result in visually obvious theme park activities. This could result in a change to the character of the area that may be at variance with the residential and rural character. However, Mr Griffin comments that:

*"although there are buildings on the site including the main building with café, the landscape is essentially rural, park like and large-scale, and comparable to the nearby Foothills landscape beyond. A framework of mature trees on the site provides screening and integration of buildings and paved areas, fencing and other activities relative to many views."*

Overall, Mr Griffin concludes that subject to further landscaping design and implementation, the development *"would be well integrated into the landscape setting, with a strong and complementary planting framework that would include those large trees already on the site"*.

Two submitters commented that the proposed landscaping was beyond that occurring in residential areas and was more in keeping with parks in the City. Mr Griffin comments that much of the planting is associated with water courses on the site, which is a Green Network objective of Council. He comments further that within the residential areas of the City, such planting does occur and is being encouraged. Finally, Mr Griffin comments that the proposed landscaping is appropriate to the intended purpose, and to providing a screen and buffer relative to adjacent land.

A46-A53 Mr Griffin's assessment is attached at pages A46 to A53.

- Noise

A54-A61 An Assessment of Noise Effects prepared by Hegley Acoustic Consultants, dated July 2006, has been supplied with the application. This report has been reviewed by Marshall Day Acoustics Limited. The review and subsequent correspondence are attached at pages A54 to A61.

Potential sources of noise, other than construction, include noise from: existing café, car park, fun cars, kiddy coaster, mountain structure, bumper cars, rapid river, train track, animal antics, public address system, animal noises, and children noise.

The noise generated from these sources would need to meet the noise requirements of the Living Environment, as specified in the District Plan.

These requirements have the following restrictions:

- Daytime (7.00 am - 7.00 pm, Monday to Saturday) limit of 50dBA (L<sub>10</sub>)
- Evening (7.00 pm - 10.00 pm), Sunday and public holiday daytime (7.00 am - 10.00 pm) limit of 45dBA (L<sub>10</sub>)

It is proposed that the theme park is open on Sundays, public holidays and until 9pm (October to March). Given these opening times, the 45dBA (L<sub>10</sub>) would apply at times and would need to be met to comply with the noise requirements.

It is noted that almost all submissions raised noise generated by theme park activities as a particular area of concern.

As outlined in the noise report supplied, the noise generated from each of these sources, and combined noise, is expected to comply with the District Plan noise requirements of the Living Environment. As stated in the Hegley report, it is expected that *“if all the activities occurred simultaneously the predicted noise level at the most exposed residential boundary would be up to 45dBA (L<sub>10</sub>).”* The proposed development would therefore comply with the District Plan noise limits.

The review of the Hegley report, undertaken by Marshall Day Acoustics Limited, notes that there is a “significant risk” that the fun cars will exceed District Plan limits at the nearest residence. The review does however note that the type of cars proposed will be quieter than those tested and it is possible that with suitable selection of cars and some mitigation (possibly barrier fence) compliance could be achieved. Marshall Day suggest that, if granted, before commercial operation of the fun cars, noise levels should be tested during a simulation of full operation to demonstrate that compliance is achieved.

The noise report prepared by Hegley states that noise from children will not influence the L<sub>10</sub> level. This is due to the short duration of the noise; the L<sub>max</sub> does not apply during operational hours of the theme park and therefore does not apply. Following a review of submissions received, Marshall Day indicate that it is difficult to comment on the intermittent noise generated by children (‘nuisance noise’) without undertaking measurements at a similar theme park. It is expected that this issue will be dealt with in more detail during the Hearing.

Construction noise was also raised as a concern through the submission process. If granted, conditions of consent would require compliance with the Construction Noise Standard NZS6803.

Given the above discussion, Council is yet to be satisfied that the proposal would comply with the relevant noise provisions of the District Plan.

- *Lighting*

The theme park is proposed to be open until 6pm from April to September and until 9pm from October to March. These hours are in line with daylight saving and it is therefore proposed that no activities would be taking place beyond daylight hours. The applicant has outlined (further information, received by email from Les Simmons, dated 28 February 2007) that *“apart from movement sensitive security lighting there will be no outdoor lighting installed as part of this proposal. Any daily cleaning activities or packing up activities will take place during daylight hours and will not require any outdoor lighting to be installed”*.

Security lighting will be installed above the entranceways/doorways of a number of buildings on the site and will be directed downwards to light the immediate area in front of each entrance point.

Security lighting is to be installed on the following buildings:

- Ticket booth/park entrance
- Fun car storage building
- Kiddy coaster
- Rapid river ride (pond area)
- Mountain Structure (above each entrance, three in total)
- Rapid River ride station
- Camera Shop
- Existing Barn
- Stables (both stables)
- Animal Antics Building.

The low level of lighting is considered to be consistent with lighting in residential areas, and subject to a condition of consent to install light shields, directing light down and into the subject site, the associated adverse effects are considered to be no more than minor.

- *Infrastructural capacity & availability*

EcoWater Engineer Mr Steven Rankin has reviewed the application and comments that the existing reticulated wastewater system is suitable and has the capacity to serve the proposed development.

Stormwater mitigation would be required, in accordance with Auckland Regional Council publication, TP90. Further details of the mitigation measures would be required at building consent stage. If granted, on-site stormwater mitigation measures would be required to limit stormwater run off to pre-development levels for the two year storm event.

- *Signage*

The applicant proposes to install a double sided sign along the northern side of Candia Road, close to the entrance. Existing signage would be removed. The proposed signs would each measure no more than 1.2 metres by 2.4 metres, to a sign area of 2.88m<sup>2</sup>. The bottom of the signs would be at a height of no less than 1.8 metres above ground level. The application details are unclear regarding the exact location of the signage, however it is noted that the signs would be required to be located within the property boundary (not within the road reserve).

- *On-site Parking on-street parking, driver safety, pedestrian safety, roading capacity and roading network, traffic noise, vehicle movements, access and driveway manoeuvring, driveway width & gradient, traffic generation & Road Safety*

A62-A66

The application has been reviewed by Council's Principal Engineer, Mr Sam Shumane whose report in full is attached at A62 to A66.

A Traffic Impact Assessment (TIA) prepared by Traffic Planning Consultants, dated September 2006, has been submitted with the application. This report outlines the total expected daily traffic movements generated by the proposed theme park and gives a combined total figure for the proposed use, in addition to the existing activities. This report discusses the impact on Candia Road and the surrounding roading network, as well as estimating car parking requirements based on expected patronage.

There are currently 79 car parking spaces on the site. The proposal initially includes the provision of a further 123 car parks (initial total of 202 car parking spaces). There would be the potential to increase the car parking by a further 56 spaces, resulting in a total of 254 spaces. The TIA estimates patronage to be 400 people, which would require 133 car parking spaces. The development is expected to require 30 staff members, who would require a further 20 car parking spaces. The total expected car parking demand (including that for existing activities) is 181 spaces.

The application has been reviewed by Council's Principle Roading Engineer, Sam Shumane, who comments that the traffic survey on which the parking demand was originally calculated, was conducted on Queen's Birthday Weekend in 2004, a winter day, where attendance may not have been at its peak. Mr Shumane goes on to summarise that "the likely parking demand of 180-181 spaces can be serviced by the proposed 202 space facility". Mr Shumane comments that the parking demand should be reviewed following commencement of operation, and if needed, the Stage 2 car parking area (accommodating 52 spaces, to a total of 254) should be completed.

Many of the submitters raised concerns regarding the additional traffic generation that would result from the proposed development. The TIA submitted with the application outlines that 430 vehicle movements per day are expected to be generated by the proposed activity. This would almost double the vehicle movements generated by the existing activity on the site. The total resulting vehicle movements per day would be 840. The proposed activity would increase the current traffic volumes on Candia Road by 10%, which is not considered a significant increase. Mr Shumane comments that “the expected traffic generation is unlikely to be significant and can be accommodated within the existing road network”.

Mr Shumane highlights that right turning into the site is not fully examined or addressed by the TIA, and comments that during peak periods, “right turning vehicles may be subjected to delays of up to 43 seconds”.

Mr Shumane comments:

*“These delays are not significant but the roadway is marked out with one lane in each direction. The possibility of a vehicle travelling northbound on Candia Road arriving at this location within the 43 second-period is not high but remains a possibility. The level of turning movements does not justify the installation of a right turn pocket, but a certain level of safety is needed, which can be achieved by widening the shoulder on the west side of Candia Road to 1.5 metres for a distance of 80 metres (40 metres on each side). This widening together with the proposed left turn deceleration lane would ensure a safe access operation.”*

Given this, if granted, conditions would be imposed requiring the consent holder to widen the shoulder of the road to ensure a safe and efficient operation of the roading network.

### **8.1.7 Summary**

With reference to the above discussion, it is acknowledged that individually the effects of this proposed development are minor. However, the meaning of “effect” as specified under section 3(d) of the Act specifically refers to:

*“Any cumulative effect which arises over time or in combination with other effects - regardless of the scale, intensity, duration, or frequency of the effect...”*

Given this, it is necessary to consider not only the individual effects that may arise, but also the effects of the proposed activity when considered as a whole. It is considered in this instance, that when the individual effects arising from the proposed development are considered as a whole, the adverse effects would be more than minor. Specific reference is made to the discussion in Section 8.1.10 above, regarding the establishment of a non-residential activity and the neighbourhood character.

Overall, it is considered that the proposed non-residential use of the site would be of a size, scale and intensity that is not in keeping with, and would detract from, the rural/residential character of the area. It is therefore considered that the potential adverse effects arising from the proposed theme park would be more than minor.

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

### **8.2.1 District Plan Policies and Objectives**

It is considered that the proposed development would not be consistent with the Objectives and Policies of the District Plan.

The relevant Objectives and Policies in relation to this proposal are listed below along with a discussion regarding the proposal in relation to them.

### Non-Residential Activities

- Objective 10

*“To maintain and enhance those natural and physical characteristics (amenity values) that contribute to the wellbeing of residents and workers, including maintaining:*

- *an acceptable level of quiet and freedom from nuisance created by noise, odour, dust and vibration;*
- *adequate levels of daylight and sunlight in dwellings;*
- *adequate levels of darkness for sleep;*
- *a safe environment;*
- *an accessible environment, which includes enhancing public access to and along the coast and waterways and between areas of public land;*
- *adequate levels of on-site privacy;*
- *healthy air quality.*

*This Objective is intended to achieve, at the very least, a minimum level of physical health and wellbeing for residents, workers and visitors. The Resource Management Act requires the District Plan to manage the effects of activities on the environment and humans. It also requires the Plan to have particular regard for the maintenance and enhancement of those natural and physical characteristics that contribute to people’s appreciation of, amongst other things, its pleasantness. Any enjoyment or sense of pleasantness derived from the environment is fundamentally dependent on whether residents, workers and visitors find it a healthy place to be.”*

### Discussion

Council is not satisfied that residents will have an acceptable level of quiet regarding nuisance noise. It is proposed to operate the theme park up to 12 hours a day, seven days a week. The nearest ride would be located 20 metres from a residential boundary. The closest ride is the open air rapid river ride where boat/barrels would be transported by the gravity flow of water within a channel. Up to 8 boats/barrels would operate on the ride and a maximum of 48 people could be accommodated on the ride at any one time. It is likely that this ride, and others such as the kiddy coaster, bumper cars and fun cars would be enjoyable to children, make them excited and cause them to yell and scream.

- 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 (including building) features which contribute to the amenity value and the neighbourhood character of an area, including maintaining and enhancing:*

- *the quality and character of different patterns of settlement within the City’s intensively settled residential areas;*
- *the pedestrian-oriented amenity values of the town centres and the character of those areas as retail centres;*
- *the utilitarian nature and character of the industrial areas;*
- *the natural and physical features that give each rural and coastal village its particular and unique character;*
- *the pastoral/rural character of the northern parts of the City;*
- *the complex, mixed landscape of the foothills.”*

### Discussion

The scale of the proposed buildings is not considered to be in keeping with the dominant physical environment of single residential dwellings and would result in an inappropriate quality and character of development. For example, the proposed large mountain structure (8 metres in height and approximately 70 metres in length), an indoor events centre accommodating up to 400 people, and large expanses of car parking is at odds with the surrounding, intensively settled, residential area.

- **Policy 11.10**

***“Non-residential activities should be designed and managed in a way that:***

- ***maintains the visual amenity values of the Environment they are in;***
- ***maintains the amenity of the site and surrounding area when viewed from the street;***
- ***adequately screens any associated car parking, vehicle access and storage areas from view, from residential sites.”***

### Discussion

The development involves the establishment of large structures for non-residential use. The structures are not in keeping with the environment in which they are to be located. The mountain structure (a craggy rock outcrop) is not naturally found in the area, nor are the bright colours of the open air rides or large expanses of car parking. Large scale, non-residential use of the site would be visually obvious and would not maintain the visual amenity values of the area. It is considered that the proposed development is inconsistent with this Policy.

- **Policy 11.18**

***“Non-residential activities (other than retail activities) may be located within residential areas of the City, provided that the individual and cumulative impacts of such a provision do not adversely affect amenity values and neighbourhood character or fragment residential activities to the point that essential residential character is lost, and the safety of residents is harmed.”***

### Discussion

The application has been made for the establishment and operation of a theme park, which is to be operated in association with the non-residential activities that are currently consented to on the site. This would see the establishment of a non-residential activity on a site zoned primarily for residential purposes, covering a site area approximately three times that of the existing non-residential activity. The non-residential operation would cover approximately 3.0 hectares of residentially zoned land.

The Living Environment anticipates the operation of some non-residential activities, in general these are home occupations where the activity is subsidiary to the residential use of the site, involving no more than 5 persons, and is carried out within an existing building. The type of non-residential activities anticipated would sit comfortably within a residential area and would be in keeping with the residential character of the area.

Adverse effects can be tangible or intangible and both are valid resource management considerations. Tangible adverse effects often associated with non-residential developments can include: increased noise and traffic generation, signage and large expanses of car parking areas. Intangible adverse effects can include a perception that the character of the neighbourhood is changing.

A number of the submissions received commented on the impact the theme park would have on the character of the area and the (in)appropriateness of a theme park on the subject site and in the neighbourhood. While some of the effects on amenity values raised are considered to be have been adequately addressed (ie., night lighting and traffic), the submitter's perception that the non-residential use of the site is inappropriate and that the character of the neighbourhood would change can not be mitigated against. The above Policies and Objectives are formulated to ensure these concerns are adequately considered by the District Plan, however I am not satisfied that the application meets the relevant Policies and Objectives, and am not satisfied that all submitter's concerns have been or can be adequately addressed.

With reference to the above discussion, Objective 10, and the relevant associated Policies, are concerned with the protection and enhancement of the natural and physical environment that are valued by the community. Objective 11, and the relevant associated Policies, recognises that while particular elements and characteristics of areas are important and require protection, there is also the opportunity for change and flexibility. For example, with reference to Policy 11.18 above, the establishment of some non-residential activities is anticipated within residential areas of the City, provided that the activities do not adversely affect amenity values and residential character.

This proposal is not considered to be in keeping with the residential character of the surrounding area and introduces structures, car parking areas, rides and activities that are non-residential in appearance and use. Overall, due to the scale and non-residential character of the proposed activities on the site, it is considered that the proposal would adversely affect amenity values and neighbourhood character.

### **Retail Activities**

- **Policy 11.17**

**“Retail activities should be managed to enable people and communities to provide for their social and economic wellbeing in a way that sustains and enhances the quality of commercial and community facilities and services, amenity values and general vibrancy of the City’s town centres, having particular regard to the following:**

- **supporting urban consolidation and mixed use development in locations which are accessible by private and public transport modes, and discouraging development which could be better located in respect of accessibility;**
- **promoting the pedestrian orientated amenity values of town centres including pedestrian precincts, pathways and parks, landscaping, street furniture and shop display frontages;**
- **encouraging, where appropriate, the integration of new retail activity with existing retail and other community resources and activities in the same area, and in particular in town centres including site and building design integration and pedestrian and road linkages;**
- **establishing and enhancing the quality and design of buildings;**
- **recognising the importance that arises from the role of town centres as community nodes in the City;**
- **recognising that the development of inappropriate retail activity can create adverse effects on the function served by, and the amenity values of, town centres;**
- **ensuring that the development of new retail activity does not result in adverse social and economic effects by causing a significant decline in amenity in town centres of the positive contribution made by town centres to the social and economic wellbeing of people and communities in the city;**
-

- enabling potentially incompatible retail activities, including those which will compromise pedestrian-orientated amenity values or residential amenities, to establish in locations where adverse effects can be remedied or mitigated;
- enabling competition between retailers and types of retailing.

A sequential approach to the location of retail activity is adopted which favours locations in town centres (particularly major town centres) where retailing is generally a permitted activity. There is only limited provision for permitted retail activity outside town centres. However proposals for retail activity in working environments at the edge of town centres and on major roads, are subject to resource consent or plan change procedures which require it to be shown that a town centre location would not better serve the Plan's objectives and policies."

#### Discussion

It is considered that the retail activities are consistent with this Policy. In this case, the retail activities proposed as part of the application, snack foods and camera supplies, are ancillary to the primary theme park activity. Theme Park visitors would drive to the site to visit the theme park, rather than to shop. The retail activities proposed on the site are not therefore in direct competition with existing town centres and are unlikely to undermine the long term viability and amenity of those retail locations. The existing café on site has previously been consented to and will remain unchanged as part of this application.

#### Noise

- Policy 10.2

***"Activities should not emit noise such that it causes a nuisance to occupants of surrounding properties."***

- Policy 11.13

***"Activities should be carried out in a way that maintains the characteristic levels of quiet of each Human Environment."***

#### Discussion

Noise, in terms of both single intensive noise sources and background or ambient noise sources has been identified by residents as one of the most significant concerns that affect health. Noise levels can contribute to stress, which can become a significant factor that affects people's health.

Noise generated from the proposed activity has been consistently raised as an issue in the submissions received. The assessment of noise effects received with the application (prepared by Hegley Acoustic Consultants, dated July 2006) show expected noise levels to be within permitted guidelines for the Living Environment. Following the submission process, and comments from Marshall Day in relation to children's noise, it is unclear whether the development would create noise that is a nuisance to occupants of surrounding properties and whether the levels of quiet associated with the Living Environment would be maintained.

Council is yet to be satisfied in relation to this matter.

- **Parking, Traffic Generation, Road Safety**

**Policy 10.8**

*“Land use development and subdivision must recognise the need for a transportation strategy which provides for the safe and efficient movement of people through private and public transport in a way that avoids, remedies or mitigates potential adverse effects on the environment and which does not compromise the needs of future generations, through ensuring the:*

- *safe movement of pedestrians, cyclists and vehicles around the City;*
- *recognising and providing for the interdependence between transportation and other activities;*
- *supporting the creation of an efficient public transport network which provides an integrated system with appropriate levels of convenience and services;*
- *protection of the transport corridor for public transport purposes, conveyance of goods and communications;*
- *ensuring that the impact of activities on the capacity and safety of the road system is adequately catered for;*
- *maintaining amenity values that contribute to the well-being of residents and workers;*
- *integrating roads with safe and efficient pedestrian cycle routes;*
- *minimising impacts of noise and traffic movement on the amenity of surrounding sites;*
- *contributing where required to an upgrading of the transport system, proportionate to the pressures on that system created by the development proposed.”*

**Policy 10.11**

*“Activities should provide for:*

- *the on-site parking and loading of motor vehicles;*
- *the location and design of access to car parking and loading areas, including areas for reverse manoeuvring to ensure that the safe and efficient functioning of adjacent roads, according to the positioning of that road in the Roding Hierarchy, is not adversely affected;”*

**Policy 10.14**

*“Activities should be of a scale and located and managed in a way that:*

- *any traffic generated by the activity, including heavy traffic, does not detract from the capacity of the road to cater safely for motor vehicles, pedestrians and cyclists, and the wellbeing of residents occupying surrounding sites;*
- *the safe and efficient functioning of the road network is not adversely affected.”*

**Policy 10.16**

*“Driveways, carriageways and car parking areas should:*

- *be laid out in a way that provides for the safe circulation of vehicles and pedestrians;*
- *be of sufficient design quality to ensure the safe passage of motor vehicles, cyclists and pedestrians and discharge of stormwater;*
- *be designed to avoid edge fretting;*
- *allow safe, ready access to adjoining sites.”*

## Policy 11.12

***“Activities should be of a scale, and located and managed in a way, that does not increase the number of vehicle trips, including heavy vehicle trips, to a level that adversely affects the amenity values of the surrounding Environment or neighbourhood, taking into account the location of the site in relation to the roading hierarchy and the characteristic levels of quiet found in these areas.”***

### Discussion

A62-A66

The applicant has submitted a Traffic Impact Assessment (TIA) with the application (prepared by Traffic Planning Consultants, dated September 2006) that shows the proposal would not adversely effect the safe and efficient functioning of Candia Road and the surrounding roading network. The TIA also demonstrates that sufficient parking is available within the site to accommodate peak parking demands. Council's Roading Engineer, Mr Shumane, generally concurred with TIA submitted, however, Mr Shumane did comment that the safety of the right turn into the site from Candia Road could be enhanced through the widening of the road berm. Mr Shumane has suggested conditions of consent to ensure that the proposal would be consistent with the above policies. A detailed Transport Assets report is attached at pages A62 to A66.

It is therefore considered that the application is consistent with those relevant Policies relating to traffic.

### **8.2.2 Rules and Assessment Criteria**

The District Plan Assessment Criteria have been developed to address the issues covered in the Objectives and Policies and are a useful guide in assessing the effect of an activity. The proposed activity is assessed in relation to each of the relevant criteria as follows:

#### **Living Environment**

##### **Rule 8: BUILDING LOCATION / PRIVACY & AMENITY**

*Assessment Criteria 8(a) – 8(c) where relevant*

- 8(a) The extent to which privacy is maintained between the main indoor and outdoor living areas of adjoining sites.*
- 8(b) The extent to which Non-Residential Activity creates adverse visual effects on adjoining sites and the road.*
- 8(c) The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through the provision of works and services on or off the site and/or through the payment or provision of a financial contribution.*

The proposed development on the site would be visible from various view points off the site. Views of the development would be gained from Candia Road, from the View Ridge Road area and from properties immediately adjoining on Wallace Road.

As previously discussed, this application is supported by a Landscape and Visual Assessment prepared by Bridget Gilbert, dated September 2006. This report acknowledges that there will be some changes to the (visual) character of the area, however it is concluded that through the design of the development and the growth of planting over time, the development would sit comfortably within the landscape.

Council's Landscape Architect, Mr Griffin, has reviewed the application and generally concurs with Ms Gilbert's assessment. Mr Griffin has commented that the framework planting of larger trees would create a backdrop for the development and help to screen it from off-site. Mr Griffin has recommended conditions of consent to ensure a suitable landscape plan is implemented, if granted.

Based on the above discussion, the non-residential activity is not considered to create adverse visual effects on adjoining sites or the road.

#### Rule 10: NON-RESIDENTIAL ACTIVITIES

*Assessment Criteria 10(a) - 10(d) where relevant*

- 10(a) *The extent to which the character, scale and intensity of Non-Residential Activities are compatible with amenity values and neighbourhood character.*
- 10(b) *The extent to which the effects of Non-Residential Activities on infrastructure can be accommodated without the need for public upgrading.*
- 10(c) *The extent to which Non-Residential Activities create adverse effects on the residential coherence and the safety of residents of the neighbourhood.*
- 10(d) *The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through the provision of works and services on or off the site and/or through the payment or provision of a financial contribution.*

The character, scale and intensity of the proposed development as a whole are not considered to be compatible with the amenity values of the area or the neighbourhood character. As previously discussed, the neighbourhood character to the north and east is residential, and the character to the south and west is rural. A non-residential activity of the proposed scale and intensity is not in keeping with either the residential land use or the rural land use.

The development retains large areas of open space, which occurs within the rural context of the local area to the south and west. However, the proposal would result in open air rides, retail sales, a private zoo, large car parking areas and four large buildings/structures which include: a large imitation mountain structure that does not reflect the naturally occurring landscape in the surrounding area, a 260m<sup>2</sup> bumper car building, a 400 seat arena, and the existing pink Crystal Mountain building on the site. It is considered that the proposed non-residential use on the site introduces characteristics that are incongruous with the surrounding neighbourhood character of predominantly small lots with singular household units.

It is considered that the proposal is not consistent with Assessment Criteria 10(a).

#### Rule 11: TRAFFIC GENERATION (NON-RESIDENTIAL ACTIVITIES)

*Assessment Criteria 11(a) - 11(b) where relevant*

- 11(a) *The effects of traffic generation on:*
- *the capacity of roads giving access to the site, having regard to the road's function in the Roding Hierarchy*
  - *the amenity of residential front sites from traffic generated by the non-residential use of rear sites*
  - *the safety and efficiency of road intersections*
  - *the safety of road users, including cyclists and pedestrians*
  - *the reduction of overall levels of traffic and encouragement of other, less polluting forms of transport such as walking, cycling and public transport*

- 11(b) *The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through the provision of works and services on or off the site and/or through the payment or provision of a financial contribution.*

Candia Road is designated as a Collector Road under the District Plan Roading Hierarchy. Candia Road currently carries approximately 4,100 vehicle movements per day. The proposed development would introduce an additional 430 vehicle movements per day which would result in combined (existing and proposed activities) total of 840 vehicle movements per day. This increase in vehicle movements would represent an increase in the current volume by approximately 10%. Council's Principal Roading Engineer, Sam Shumane has approved the application and comments that this is not considered a significant increase and can be accommodated within the existing road network.

Mr Shumane expressed concern with the right-turn from Candia Road into the subject site and comments that there may be times when the turning vehicle will have to wait for northbound vehicles to pass before turning. The frequency of turning movements is not considered to justify the installation of a right turn pocket, however Mr Shumane comments that a certain level of safety is needed. This level of safety could be achieved by widening the shoulder on the west side of Candia Road to 1.5m for a distance of 80 metres (40 metres on either side). The shoulder would ensure the safety of all road users.

Given the location and the nature of the activity, it is expected that most visitors to the site would access the site using private motor vehicles. It is however noted that at present, Crystal Mountain offers a service whereby a free shuttle service (mini-van) runs between the Ranui Train Station and Crystal Mountain (when ordered by phone). No public transport service currently accesses the site.

The proposal is considered to generally be in accordance with the relevant Assessment Criteria.

#### Rule 12: CAR PARKING & DRIVEWAYS

*Assessment Criteria 12(a) - 12(d) where relevant*

- 12(a) *The extent to which driveways provide safe, maintenance-free, adequately drained, efficient, effective and visually attractive vehicular access from the road to the buildings.*
- 12(b) *The extent to which car parking accommodates expected peak demand of an activity, having regard to the position of the site in relation to public transport routes and the parking capacity of adjacent roads, and the road's function in the Roading Hierarchy.*
- 12(c) *The extent to which driveways and car parking create adverse visual or aural effects on adjoining sites.*
- 12(d) *The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through the provision of works and services on or off the site and/or through the payment or provision of a financial contribution.*

It is proposed to establish a two-staged new parking area. The first stage (in addition to the existing parking on site) would provide for 202 parking spaces, and the second stage would provide for 254 spaces. Based on an expected patronage of 400 people, the Traffic Impact Assessment provided with the application, states that this parking provision would be adequate. Council's Principle Traffic Engineer, Mr Shumane, concurs that this parking provision would be adequate to accommodate expected peak car parking demands.

The proposed car parking area to the south-east of the site will be visible from the residential properties to the east of the site (at View Ridge Drive). The topography of the land in this area means that these properties are elevated on a hill above the subject site and look directly onto the car park. A Landscape and Visual Assessment prepared by Bridget Gilbert, dated September 2006, has been submitted with the application that addresses visual effects and views into the site. Council's Landscape Architect, Mr Gordon Griffin has reviewed the application and comments that from View Ridge Drive, the car parking area would be visible. Planting along the eastern boundary, adjacent to the car parking area, includes trees that grow to a height of 18 metres which would grow over time to screen the proposed parking area from those sites higher on View Ridge Drive, and would not create adverse visual effects.

The proposed car parking area is considered to be in accordance with the relevant Assessment Criteria.

**Rule 15: SIGNS**

*Assessment Criteria 15(a) - 15(d) where relevant*

- 15(a) The extent to which signs are visually appropriate to amenity values and neighbourhood character.*
- 15(b) The extent to which signs create a situation hazardous to the safe movement of traffic.*
- 15(c) The extent to which signs are of a height which avoids the sign dominating the neighbourhood and nearby structures.*
- 15(d) The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through the provision of works and services on or off the site and/or through the payment or provision of a financial contribution.*

Mr Gordon Griffin, Council's Landscape Architect has commented on the visual appropriateness of the proposed signs in this environment. He comments that the signs are large and from a visual perspective, a smaller sign would be preferable.

Mr Sam Shumane, Council's Principle Traffic Engineer, has viewed the application and supports the erection of the proposed signs. Mr Shumane comments that given the signs are located within the subject site (not in the road reserve) and the bottom of the sign has a minimum height of 1.8 metres above ground level, the signs would not create a situation hazardous to the safe movement of traffic in the area.

The proposed signs are not considered to be in accordance with Assessment Criteria 15(a), however it is not considered that they present a hazardous situation and are therefore in accordance with Assessment Criteria 15(b).

**General Natural Area**

**Rule 2: VEGETATION CLEARANCE**

*Assessment Criteria 2(a) - 2(m) where relevant*

- 2(a) The extent to which vegetation alteration adversely affects amenity values and neighbourhood character.*
- 2(b) The extent to which vegetation alteration will threaten natural ecosystems.*
- 2(d) The extent to which development is located or can be designed in a way that avoids the need to remove vegetation, and in particular the removal of any trees which are notable examples of their species.*

- 2(e) *The extent to which the proposed vegetation alteration is necessary:*
  - *to accommodate development otherwise permitted by the Plan*
  - *to ensure the safety or integrity of existing development on the site*
  - *for pruning to provide light*
  - *for pruning to preserve public views.*
- 2(f) *The extent to which the vegetation alteration adversely affects plant health.*
- 2(g) *The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through provision of works and services on or off the site and/or through payment or provision of a financial contribution.*
- 2(i) *The extent to which vegetation alteration reduces the ability to create linkages between native vegetation, fauna habitats, or natural features or landforms.*
- 2(j) *The extent to which vegetation alteration can be offset by restoration or enhancement around and within the area subject to the application.*
- 2(k) *The extent to which vegetation alteration adversely affects the significance, natural character or landscape value of any natural features.*

The development would involve the removal of one mature pine tree and one wattle tree. Both of these trees are considered weed species and are on Council's Removable Vegetation Appendix. The removal of these trees would involve further clearance on the site (over and above a total cleared area of 500m<sup>2</sup>). The removal of these trees creates effects associated with large areas of clearance, rather than loss of a significant or notable species.

The application includes a landscape plan and planting schedule and it is considered that the successful implantation of this planting would mitigate for the loss of these two trees. Council's Landscape Architect Mr Gordon Griffin, has reviewed the application and is satisfied that subject to further landscaping plans and implementation, the proposed framework planting would be desirable on the site and that an increased number of larger trees would mitigate the loss, in visual terms, of the pine tree and the willow.

### Rule 3: EARTHWORKS

*Assessment Criteria 3(a) – 3(s) where relevant*

- 3(a) *The extent to which the scale of earthworks is consistent with the scale of development being undertaken.*
- 3(b) *The extent to which earthworks adversely affect the potential for restoration or enhancement around the area of earthworks.*
- 3(c) *The extent to which earthworks reduce the amount, range and linkages between representative vegetation, fauna habitat and natural features.*
- 3(d) *The extent to which earthworks adversely affect the significance or landscape value or natural character of natural landscape elements or other natural features.*
- 3(h) *The extent to which earthworks adversely affect the visual amenity of the site or adjoining sites.*
- 3(i) *The extent to which cut and fill activities involving earthworks are confined to the site rather than being transported off the site.*
- 3(j) *The extent to which earthworks may harm the health and safety of residents.*

- 3(k) *The extent to which heavy vehicle traffic generated to the site by earthworks activities creates:*
- *physical damage to a road*
  - *a situation hazardous or unsafe to road users.*
- 3(l) *The extent to which earthworks are necessary to accommodate development otherwise permitted by the Plan.*
- 3(o) *The extent to which earthworks are avoided.*
- 3(p) *The extent to which unavoidable earthworks are minimised.*
- 3(q) *The extent to which the duration of earthworks is minimised.*

As discussed above, the applicant proposes to carry out a total cut volume of 6,850m<sup>3</sup> and fill volume of 8,550m<sup>3</sup>. This results in approximately 1,700m<sup>3</sup> of imported fill. Retaining walls of up to 3 metres in height are also required.

Given the level of development proposed on the site and considering the size and topography of the site, it is considered that the scale of the proposed earthworks is consistent with the scale of the development being undertaken. Council's Environmental Monitoring Officer (EMO), Mr Dean Allen, has reviewed the application and the proposed sediment control measures. Mr Allen has suggested conditions of consent to ensure the following:

- That the consent holder arrange a pre-start meeting with Council's EMO.
- That the sediment and erosion controls are designed in accordance with the Mitchell Vranjes June 2006 Earthworks Report and with TP90.
- That the consent holder construct a stabilised entranceway
- That all temporary stockpiles of earth are approved by Council's EMO at a pre-start meeting.
- That all necessary action be taken to avoid dust nuisance.

Given the nature and scale of the proposal, dust will be generated from the earthworks on the site. If granted, conditions of consent would be imposed to ensure necessary action is taken to prevent dust nuisance.

The earthworks proposed would be undertaken in three stages which would limit the extent of earthworks and exposed earth at any one time.

The proposal will result in increased traffic movements during construction. It is expected that the works would result in 333 truck movements to import fill to the site. The Traffic Impact Assessment submitted with the application makes reference to traffic generated by construction activities and concludes that *"the effects of the construction will be able to be accommodated on the road network without impacting adversely on other road users"*.

Overall, it is considered that the scale of earthworks is appropriate for the proposed development and is in accordance with the relevant assessment criteria.

### **Riparian Margins/Coastal Edges Natural Area**

#### Rule 7: BUILDINGS

Assessment Criteria 7(a) - 7(p) where relevant

- 7(a) *The extent to which the building will adversely affect the overall resilience, biodiversity and integrity of the Green Network.*
- 7(b) *The extent to which the building will reduce the extent, range and linkages between vegetation, fauna habitat, and natural features.*
- 7(f) *The extent to which the building will adversely affect the significance or landscape value or natural character of any natural features.*
- 7(g) *The extent to which the building will adversely affect amenity.*
- 7(h) *The extent to which the building can be offset by restoration or enhancement around and within the area subject to the proposed development.*
- 7(i) *The extent to which the building creates, contributes to, or exacerbates flooding, erosion stability problems or the potential for flooding, erosion or stability problems.*
- 7(j) *The extent to which the building will exacerbate or contribute to degradation of natural watercourses in a way that destroys or reduces their ability to support instream vegetation and fauna; their ability to be used as a healthy food source; their clarity; water quality and flow and their suitability for swimmers.*
- 7(k) *The extent to which the building is necessary to provide access to a site that will avoid the need to pipe or culvert a stream or natural watercourse or waterbody.*
- 7(m) *The extent to which the building affects or may affect the water quality and aquatic ecosystem health of any part of the waterway, adjacent to, upstream of or downstream of, the building.*

The proposed development involves the widening of the bridge providing access over Lonesome Brook. It is proposed to increase the width of the bridge by 1.2 metres, on the northern side. The existing culverts under the bridge would remain and pile foundations would be constructed on the banks of the stream area.

The addition to the bridge represents a small increase in coverage of the riparian area and it is not considered that it would adversely affect the amenity of the area. In addition, the proposal involves the provision of riparian planting around the area of works. This would enhance the area surrounding the development.

It is considered that the proposed bridge widening is consistent with the relevant assessment criteria.

### **City Wide Rules, Natural Hazards**

#### Rule 1: GENERAL

Assessment Criteria 1(a) - 1(f) where relevant

- 1(a) *The extent to which subdivisions are designed to avoid natural hazards or at least provide for reasonable development, (taking into account the Human Environment applying to the land), on areas of the proposed site not subject to natural hazards.*
- 1(b) *The extent to which buildings can be located on areas of a site not subject to natural hazards.*

- 1(c) *The extent to which any subdivision or building:*
- *will or may result in damage to property or harm to people*
  - *will or may result in more than minor adverse effects on existing landforms or coastlines*
  - *will or may result in more than minor adverse effects on water quality*
- 1(d) *The extent to which, in relation to areas subject to inundation, any subdivision or building:*
- *will or may result in damage to property or harm to people*
  - *will or may result in more than minor adverse effects on existing landforms*
  - *will have more than minor adverse effects on the natural qualities of the water system*
  - *will have more than minor adverse effects on the ability of the catchment to dispose of water in an efficient manner*
  - *will result in the floor level of any habitable building room being less than 0.5 metres above the 1 in 100 year (1% AEP) (flood level).*
- 1(f) *The extent to which more than minor adverse effects can be adequately avoided, remedied, mitigated or offset through the provision of works and services on or off the site and/or through payment or provision of a financial contribution.*

*A 1 in 100 year overland flowpath runs along the western boundary (Lonesome Brook). The application was reviewed by Council's Drainage Engineer, Mr Steven Rankin who supports the application subject to the inclusion of recommended conditions of consent requiring that all buildings be located entirely outside the 1 in 100 year floodplain / overland flow path area, and with a flood level RL of 30.31.*

*Subject to conditions, it is considered that the effects of the proposed development would be no more than minor.*

### **City Wide Rules, Hazardous Facilities & Contaminated Sites**

#### **Rule 2: CONTAMINATED SITES**

*Assessment Criteria 2(a) - 2(c) where relevant*

- 2(a) *The extent to which any proposal for remediation and restoration of a contaminated site gives regard to:*
- *the extent to which the site is contaminated*
  - *health and safety standards covering the intended work*
  - *the measures by which the site will be remediated and restored*
  - *safety standards for the intended use of the site*
  - *the means by which any adverse on the environment will be avoided or mitigated.*
- 2(b) *The extent to which any proposal for the development, redevelopment or use of a contaminated site known to the Council meets the requirements of the "Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites" (NB: this publication is available from the Council).*
- 2(c) *The extent to which any proposal for the development, redevelopment or use of a contaminated sites known to the Council demonstrates that there will be no more than minor off-site adverse effects and that measures will be taken to ensure the safe operation of the proposal on the contaminated site.*

As previously stated in this report, the application is supported by a site investigation and contamination report (prepared by Environmental & Earth Sciences Ltd). This report has been reviewed by Kingett Mitchell who are generally satisfied, subject to further information regarding the lead hotspot in the barn area, that contamination levels are below human health guidelines and contaminated material is adequately disposed of.

### **8.3 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 District Plan has been prepared.

The aim of the document is to achieve integrated, consistent and co-ordinated management of the region's resources. It also provides greater certainty over the way natural and physical resources are to be managed, and creates awareness of the constraints and opportunities in the Auckland region. The focus is on restricting further settlement and development outside the Metropolitan Urban Limits. The subject site is located within the Metropolitan Urban Limits, is considered to be of local significance, and would not create any regionally significant issues.

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

#### **8.4.1 Other Issues Raised by Submitters Not Covered Elsewhere in Report**

- **Property Values**

Through the submission process, the potential issue of detriment to property values as a result of the proposal were raised. The Resource Management Act and the associated resource consent process deals with the environmental effects of the development and therefore does not directly consider property values. Case law on the effects that such a development would have on property values, has been clear that the economic value of property cannot be considered as an environmental adverse effect.

- **Animal Welfare**

Animal welfare was raised as an issue through the submission process. This mainly with regard to the treatment of animals currently kept on the site as part of the existing miniature zoo operation. The Resource Management Act does not directly consider animal welfare issues, however in the application details it is noted that in order to undertake the proposed activities on the site, further approval, outside the Act is required in the form of a zoo licence.

## **9.0 PART II OF THE RESOURCE MANAGEMENT ACT 1991**

It is considered that the proposal would be inconsistent with Sections 5, 6, 7 and 8 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.

The District Plan, through its policies and objectives, is concerned with the protection and enhancement of the natural and physical environment, while providing for activities that do not adversely affect amenity values and residential character. This proposal would have more than minor adverse effects on the residential character of the surrounding area.

It is therefore considered that the proposal is inconsistent with Section 5 of the Resource Management Act 1991.

## **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 in relation to the proposal. It is considered that the effects on the environment are more than minor and that the proposal is contrary to the relevant Objectives and Policies of the District Plan. Jurisdiction to grant consent has therefore not been established.

## **11.0 CONCLUSION**

### **11.1 Establishment of Theme Park**

The applicant seeks consent to establish and operate a theme park on the site at 31 Wallace Road and 74-80 Candia Road. The site is located within the Living Environment. The development requires resource consent for the establishment of a non-residential activity, building location, traffic generation, car parking and signage. Consent is also required for vegetation clearance, earthworks, development of a contaminated site and development on a site known to be subject to flooding.

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 establishment and operation of a theme park **will** lead to a decline in the residential amenity values and character of the neighbourhood in which it seeks to locate.

Individually, aspects of this proposal are acceptable in terms of both the provisions of the District Plan and, as has been shown, in terms of the level of adverse effects. This particularly relates to issues arising from, traffic generation, infrastructural capacity, visual amenity and earthworks. It is also noted that the proposal presents positive aspects and effects, particularly in terms of employment opportunities and social benefits.

However, when the application is considered as a whole, the proposal is not considered to relate well to the surrounding residential sites (within the Living Environment). This is due to the scale and non-residential nature of the proposed activity which, in particular involves large expanses of car parking, open air rides, operation of a 400 seat arena, potential noise effects, and buildings and structures with a large combined bulk. The adverse effects on residential character are considered to be more than minor.

The proposal is considered to be contrary to the Objectives and Policies of the District Plan which seek to protect and enhance the natural and physical environment, while providing for activities that do not adversely affect amenity values and residential character. This proposal is not considered to be in keeping with the residential land use character of the surrounding area and introduces structures, car parking areas, rides and activities that are non-residential in appearance and use.

Overall, due to the scale and non-residential character of the proposed activities on the site, it is considered that the proposal would adversely affect amenity values and neighbourhood character to a more than minor degree and is therefore contrary to the Objectives and Policies of the District Plan.

It is considered that the threshold test to approve non-complying activities under Section 104D of the Resource Management Act has not been met as the adverse effects on the environment are considered to be more than minor, and the activity is contrary to key Policies and Objectives of the District Plan.

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

## 11.2 Retrospective Earthworks

Although this aspect of the application has not been discussed in detail or separated out from the rest of the application, I consider that consent should not be granted to the unauthorised earthworks that has already occurred. The applicant has pre-empted the resource consent process and presumed that consent would be granted for future intensification of non-residential activities on the site. Therefore, I consider that this aspect of the proposal would be addressed more appropriately under a separate application.

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.

## 12.0 RECOMMENDATIONS

That pursuant to Sections 104,104B, 104D, 108 and 113 of the Resource Management Act 1991, and subject to additional or contrary information being presented at the hearing, **consent be declined** to the application by A & S Nogueira to establish and operate a theme park at 31 Wallace Road and 74-80 Candia Road, being Lot 1 DP 152054 and Lot 51 DP 22288, for the following reasons:

- (i) The proposed development would introduce a non-residential activity to the site that is of a scale that would not be consistent with the surrounding residential land use character of the area.
- (ii) The proposal would be contrary to the Objectives and Policies of the District Plan relating to establishing non-residential uses in residential areas.
- (iii) The relevant provisions of Part II of the Act can not be satisfied and the development would not be consistent with the sustainable management principles of Section 5 of the Act.
- (iv) The non-residential activity is of a scale, character and intensity that is inconsistent with the residential nature of the surrounding sites to the north and east.
- (v) The proposed land use would result in more than minor adverse effects on the environment, particularly in relation to noise. Council is not satisfied that the noise generated on the subject site can be avoided, remedied or mitigated.
- (vi) The activity is unable to pass the threshold test as set out in Section 104D(1)(a) and (b) and, as such, Council can not grant consent to the application.

Report prepared by: Claire Gray, Resource Planner.

