



Waitakere City Council  
*Te Taiao o Waitakere*

## NOTICE OF HEARING

# HEARING BY COMMISSIONERS

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

**DATE:**            Monday,            3 November 2008                            **TIME:**                    11.30 am

**MEETING**

**ROOM:**            Council Chamber

**VENUE:**            Waitakere Central, 6 Henderson Valley Road, Henderson,  
Waitakere

to consider an Objection Under Section 357A (1) (b) of the Resource Management Act 1991 in respect of two applications for subdivision consent at various properties on Anzac Valley Road, Waitakere and to take any necessary action connected therewith.

*Sharon Simiona .*

13 October 2008

Sharon Simiona  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8820

**MEMBERSHIP:**

Commissioners:	Cr	DQ	Battersby, JP
	Cr	PA	Hulse
	Cr	JP	Lawley, JP

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

**AGENDA FOR A HEARING BY COMMISSIONERS TO BE HELD IN THE COUNCIL  
CHAMBER AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD,  
HENDERSON, WAITAKERE, ON MONDAY, 3 NOVEMBER 2008  
COMMENCING AT 11.30 AM**

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**1 OBJECTION UNDER SECTION 357A (1)(B) OF THE RESOURCE MANAGEMENT ACT 1991 BY LONDON AND GREENWICH GENERAL TRADING COMPANY LIMITED; NORTH KAIPARA NOMINEES LIMITED, PETER WILLIAM MAWHINNEY PERCEPTUS LIMITED; STAHPAK LIMITED, SUNRISE 2006 PROPERTY LIMITED, SWANSON HEIGHTS LIMITED; AND WAITAKERE RESOURCE CONSENTS LIMITED IN RESPECT OF TWO APPLICATIONS FOR SUBDIVISION CONSENT AT VARIOUS PROPERTIES ON ANZAC VALLEY ROAD**

**WAITAKERE WARD**

**N.B. This report sets out the advice of staff to the Hearing Commissioners in respect of a section 357A(1)(b) objection.  
It is not the decision of Council.  
The decision will be made after consideration of the objection by the Hearing Commissioners.**

**INTRODUCTION**

*A1-A122* The objector lodged two applications for subdivision consent in relation to the development of 13 properties and three access parcels at Anzac Valley Road. The two applications are attached at pages A1 to A122. A schedule of the properties that are the subject of these applications are attached at pages A4 to A5 and A64 to A65.

Council is aware that a number of the objector companies have been struck off the Companies Register and are unable to continue to participate in this process. Mr Mawhinney is requested to clarify for the Commissioners at the Hearing which of the companies listed above are still in existence.

The applications have been given the following numbers by Waitakere City Council.

**SUB 2008-0570**      Controlled / Limited Discretionary subdivision consent application.  
**SUB 2008-0571**      Non-complying subdivision consent application.

The two applications were received by the Council on 7 April 2008. The applications were assessed by consultants contracted by Council, and it was determined that the information supplied by the applicant for each of the applications was deficient and further consents from the Auckland Regional Council were required. The contracted staff initially requested further information from the applicants on 8 May 2008. Following correspondence with the applicants, the section 92 information request (and section 91 deferral decision) were re-issued by Council officers acting under delegated authority on 8 July 2008. The objector did not respond to further correspondence dated 29 July 2008 from the Council seeking confirmation that the objector wished to continue to proceed with the objections, despite the re-issuing of the information request. In the absence of any such confirmation, the Council has proceeded to a hearing on this matter.

*A123-A128* A full copy of the letters requesting additional information are attached at pages A123 to A128.

The applicant has lodged an objection to the request for information under section 357A(1)(b). While the remedy the applicant is seeking is not stated, it appears that the applicant is seeking the assessment of the two applications by the Council without any further information, other than that supplied with the application itself.

A129-A134 A copy of the two objections are attached to this report at pages A129 to A134.

In addition, the objector has lodged separate proceedings in the Environment Court challenging the section 91 decision to defer the application. The objector disputes the requirement for further regional consents, and seeks a revocation of the deferral decision. Council is in the process of lodging documents in opposition to that application with the Environment Court.

### **SUMMARY OF COUNCIL'S TWO INFORMATION REQUESTS**

The following is a summary of the information that was requested in the Council's letter to the applicants. Both applications were considered to have information requirements, and as the two applications were somewhat similar (albeit that the applicant presented applications with differing activity status), the same information requirements were identified in both applications.

The applications lacked the following information:

- (a) Adequate plans;
- (b) Earthworks information;
- (c) Wastewater information;
- (d) Storm water information (for the proposed sites and for the whole land area of the subdivision);
- (e) Land Stability;
- (f) Ecological information; and
- (h) Landscape information.

This report recommends that the Commissioners uphold Council's original decision to request the identified information from the applicants in relation to both resource consent applications.

### **STATUTORY REQUIREMENTS**

A141-A142 The relevant provisions of the Resource Management Act 1991 are comprised in sections 357 (Right of objections to local authorities against certain decisions) and 357A (Right of objections to consent authority against certain decisions or requirements). A copy of these sections of the Act are attached at pages A141 to A142 for the information of the Commissioners. These sections are explained below.

Under section 92(1), if an application for resource consent does not include adequate information, the Council may, at any reasonable time before a hearing or decision on a consent application, request that further information relating to the application be provided by the applicant. The Council is required to notify the applicant in writing of its reasons for requesting further information - s 92(3).

Section 357A(1)(b) allows the applicant to lodge an objection against the request for further information made by the Council.

The jurisdiction to consider the objections pertaining to information requests arises from s357C.

Objections under section 357, 357A, and 357B are generally considered and determined at Waitakere City by Council officers acting under delegated authority. However, these matters have been directly referred to the Hearing Commissioners for a determination.

Section 357D provides that after considering an objection, the consent authority may dismiss the objection, or uphold it either partly or wholly. If the applicant who lodged the objection is dissatisfied with the consent authority's decision, it has the right of appeal to the Environment Court.

## **BACKGROUND**

The applicant has sought the following in two applications:

### **Application 2008-0570 (referred to as the Controlled / Limited Discretionary Subdivision)**

Subdivision consent for issue of fee simple titles as depicted on plan FS11 (no new roads) or alternatively titles as shown on plan FS 12 (with new roads)

### **Application 2008-0570 (referred to as the Non-complying Subdivision)**

Subdivision consent seeking consent to subdivisions as depicted on plans FS3 and FS4.

The two applications relate to the same area of land.

It is not clear how the two applications relate to each other. It may be that the applicant has lodged the two applications at the same time and that the applications are unrelated, and so if one of the applications is not successful, the other application may be granted. No obvious reference is made in each application to the other application.

Nevertheless, the information required to assess both of the applications is the same, and the section 92 information request sought the same information for both applications.

## **DISCUSSION**

The objector/applicant has lodged separate objections in respect of each of the two applications made to the Council. The report writer considers that there are common elements to each application and it is more efficient in this report to deal with the resource consent applications together. There is a commonality in the information deficiencies of each subdivision application, as set out below.

### **Applications for Subdivision Consents**

The objector's bases for the two objections lodged in respect of the subdivision consent applications are addressed below.

#### **Information Requirements for Subdivision**

The objector has singled out the District Plan's City Wide Information Requirements for Resource Consents Rule 1.2 in the discussion of the effects that apply to the subdivision applications.

The application includes this discussion in its section 14 (the Controlled / Limited Discretionary Subdivision) and in its section 13 (the Non-complying Subdivision) information requirements for each application.

The land subject to the applications is located within the Foothills Environment. Neither application addresses all of the relevant performance standards and assessment criteria of the Foothills Environment Rules. Neither application addresses all of the relevant performance standards and assessment criteria of the relevant Natural Area Rules.

In the case of both activities, the applications were deficient in the information requirements (including the assessment of effects) and lack the specific and detailed information requirements necessary for the Council to adequately assess each application.

### **Grounds for Objection**

The objector provides five different grounds for the objection. These are listed as items 4.1 – 4.5 in both objections. Items 4.1-4.4 in both objections are identical, and so will be addressed only once in this report. Items 4.5 in both objections raise similar issues, but require separate consideration.

### **No Reasons**

The objector's states that there are no reasons for the information request. The reasons are, however, detailed in paragraph 4 of the "Application Clarity" part of the Council's letter dated 8 May 2008 (re-issued on 8 July 2008), which is then expanded upon in the subsequent paragraphs 1-8 under the "Further Information" heading. Consequently the objector's contention that the Council has not notified the applicant of the reasons for the further information is not accepted.

### **Out of Time**

The objector's states that the requests for information are outside of the 10 day time limit inferred by section 95 of the Resource Management Act 1991 (RMA).

Section 95 provides:

*If an application for a resource consent is required to be publicly notified or notice of the application is required to be served on any person, that notice must be given or served within 10 working days of the date the application is first lodged.*

This section places a time limit on *notification* of applications. The 10 day limit is subject to the provisions of sections 88B and C, which exclude from the calculation of time the period it takes to provide information following a section 92 request for further information.

The time for making of information requests is governed by section 92(1) which states:

*"A consent authority may, at any reasonable time before the hearing of an application for a resource consent or before the decision to grant or refuse the application (if there is no hearing), by written notice, request the applicant for the consent to provide further information relating to the application".*

The Council considers that the date on which the information request was issued amounts to a reasonable time.

While the Council provided the applicants with some preliminary views on public notification, a determination under section 93/94 has not yet been made, because of the information deficits that exist within both of the applications. Should the information requested be provided (and no further information deficits are identified as a result of the information received in response to the first request), then on the basis of all the relevant information, the activity status of the two applications will be able to be confirmed. The applications will then proceed on to a determination about notification under section 93/94 of the Resource Management Act 1991. Consequently the objectors' contention that the Council is out of time is not accepted.

### No Delegated Authority

The Council notes that the original request for information was signed by a Council contractor. In correspondence dated 27 May 2008, Mr Mawhinney challenged the ability of the contractor to issue the request for further information. In response to this, the Group Manager: Consents re-issued the section 92 request on 8 July 2008. The Group Manager has the required delegation to issue requests for information under section 92. Consequently the matter of lack of delegated authority in relation to the original information requests has been corrected. Consequently this matter is no longer relevant to the objection.

A135-A140 A copy of the relevant extract from the Council's Delegations Register is attached to this report at pages A135 to A140.

### Request is Ultra Vires section 92 of the Resource Management Act 1991

The objector states that there are no applications being sought for the matters identified in the section 92 request. The Commissioners will recall that the information requested relates to:

- (a) Adequate plans;
- (b) Earthworks information;
- (c) Wastewater information;
- (d) Storm water information (for the proposed sites and for the whole land area of the subdivision);
- (f) Land Stability;
- (h) Ecological information; and
- (i) Landscape information.

The objector contends that all that is being sought is a subdivision, which has no physical activities. This reasoning is akin to a view that a subdivision is only "lines on a plan". That view is not accepted by the Council. The Council has a responsibility to assess all subdivision applications in terms of the alignment of the proposal with the objectives and policies of the District Plan and the effects on the environment arising from the proposed changes to the "lines on a plan". Therefore this assessment is based upon the policy and rule framework within the District Plan, and that policy and rule framework provides the basis for the section 92 request.

The "lines on a plan" argument has been rejected in previous High Court litigation involving entities associated with Mr Mawhinney: *Waitakere City Council v Kitewaho Bush Reserve Co Limited* [2005] 1 NZLR 208. At [99] Randerson J stated:

*"Finally, I deal with the "lines on a plan" argument. I am satisfied that this argument is an entirely artificial construct and does not conform with the practical realities of a subdivision. Effectively, Mr Mawhinney seeks to treat this argument as another means of short cutting the subdivision process so that he may obtain a form of consent which Kitewaho can then rely upon in disposing of the land. I reach that conclusion for a number of reasons. First, it is well recognised that the subdivision of land enables a more intensive use of the land than previously existed. Ordinarily, one dwelling is permitted on each new lot. The WCC's district plan and proposed district plan so provide. There are other physical effects of subdivision which are routinely the subject of consent conditions imposed under ss 108 and 220 of the RMA. These ordinarily include provisions for roading and other infrastructure;*

....

*Secondly, there will often be a need for other resource consents as discussed already in relation to the s 91 issue. Thirdly, the Court of Appeal has accepted (at least in the case of non-complying subdivision applications) that precedent effects may be relevant: Dye v Auckland Regional Council [2002] 1 NZLR 337 (CA). Fourthly, there are other provisions in the legislation which recognise that the subdivision of land may have adverse effects. For example, s 106 provides that a consent authority shall not grant a subdivision consent if it considers that insufficient provision has been made to avoid material damage by erosion, falling debris, subsidence, slippage, or inundation. As well, there are the transitional provisions in s 406 already identified which expressly recognise that subdivision of certain land may not be suitable or in the public interest and may not be appropriate where inadequate provision is made for stormwater drainage, disposal of sewage, or the supply of water or electricity.*

....

*Without commenting on the merits of the provisions of the proposed district plan, the identified provisions recognise not only the practical realities of the subdivision of land, but also add colour to the provisions of the RMA itself which establish that the subdivision of land is not merely an exercise of drawing lines on a plan but has ramifications for the environment which are properly to be considered under district plans and in decisions made under the RMA. That approach is also consistent with the integrated management of the effects of activities on the environment which is a central concept of the RMA”.*

The Environment Court also held in Kitewaho that Council is not required to act as an ‘automaton’ and process the application strictly in accordance with the type of activity applied for. The Council is free to decide the appropriate category of activity, so that it may apply the statutory provisions correctly.

As can be seen from the case law, the Environment Court has established that subdivision has real effects. As a consequence of this, the Council has requested the information to enable it to adequately assess the effects of the proposed subdivision. Consequently the objector’s contention that the request is ultra vires the Resource Management Act 1991 is not accepted.

### **Section 77(2)(b) and (3), Section 104A and 104C of the Resource Management Act 1991**

This aspect of the two objections differ, and so will be discussed separately.

### **SUB 2008-0570 Controlled / Limited Discretionary Application**

The objector states in paragraph 4.5(a) and 4.5(b) that the information request seeks further information over matters that the Council has not reserved its control or the matters are outside its discretion. The objector claims that the Council has not restricted its discretion over plans, earthworks, waste water, land stability, ecology (except for certain matters) and landscape (except for certain matters). This is not accepted. Each of these items of information are discussed below.

### **Plans**

The operative part of the District Plan contains a City Wide Rule entitled “Information Requirements for Resource Consents”. Within this City Wide Rule, the Council may require, at Rule 1.2(b),

*“...a plan drawn to scale clearly showing the proposal.”*

The matter of plans is addressed by the applicant at paragraph 14.6 of Schedule B attached to the application. Some of the plans provided with the application state that the scale is 1: 6,000 when measured on an A3 size piece of paper. Other plans have no scale identified, including plans FS11 and FS12, which the objector refers to as meeting the requirements of Rule 1.2(b). None of the plans indicate that they have been prepared by a registered surveyor. The section 92 request seeks plans at 1:4,000, and a contour map with 1.0m contour lines. The section 92 request also notes that larger scale plans may be necessary.

The ability to request plans is established by the City Wide Rule, and the applicant has provided some plans that are considered to be insufficient. The request for plans at a scale that enables the appropriate assessment of the applications is considered to be reasonable, and within the discretion of the Council.

### **Earthworks**

Following on from the case law discussed above, the effects associated with earthworks are a relevant matter.

The applicant refers to earthworks in paragraphs 35.3 – 35.12 of Schedule B attached to the application. The applicant states three provisions that enable earthworks as a permitted activity, or as an existing use protected by section 9(1) or 10 of the Resource Management Act 1991.

The first relates to the General Natural Area Rules. Most of the area of land associated with these two applications are identified as General Natural Area, and so the Earthworks Rule for that Natural Area apply where relevant.

The applicant draws attention to three matters, the first being permitted activity status of earthworks within a permitted building platform. The establishment of permitted building platforms occurs either via a resource consent or a certificate of compliance. This subdivision application does not seek consent to establish buildings, and so paragraphs 35.4 - 35.8 are not relevant to the subdivision application.

The second part of the earthworks text in Schedule B (paragraphs 35.9-35.10) refers to some unidentified, purported existing access ways that the objector claims are used for forestry purposes. The objector concedes in paragraph 35.10 that not all of the access ways have been formed. Therefore the information detailing the nature and extent of the formation of an unspecified number of additional access ways is not provided in the application. Further to this, and the information detailing the nature and extent of work required to upgrade the purportedly existing access ways is also not established in the application.

The third part of the earthworks text in Schedule B (paragraphs 35.11 – 35.12) refers to the Council's Infill Subdivision Rule 3. Rule 3.0 states that the Infill Rules shall apply to the subdivision of land situated in the Living Environment, and that subdivision applies to sites less than one hectare in size or which creates less than nine lots. This subdivision application is located in the Foothills Environment, and so the Infill Subdivision Rules do not apply to this application.

Consequently the request for information about the earthworks required for roads, driveways and infrastructure works enables the appropriate assessment of the applications and is considered to be necessary for the Council to assess the application.

### **Waste Water**

The matter of waste water is included in Schedule B attached to the application in paragraphs 41.9-41.12, 56.1-56.5, 57.1-57.4, 58.1-58.4 and 75.1-75.2.

In terms of paragraphs 41.9-41.12, the objector provides an assurance that the proposed sites have sufficient area to install a domestic waste water treatment system. This assurance is unsupported by technical information prepared by a recognised expert in the waste water field.

In terms of paragraphs 56.1-56.5, 57.1-57.4, and 75.1-75.2, the applicant is incorrect in the statement that the Council has not reserved control over waste water as part of Foothills Environment Rule 7.1. This Rule includes assessment of infrastructure. Infrastructure is defined in the City Wide Rule Section includes:

*“... any structure that relates to waste water or storm water treatment or disposal.”*

The Council requires information on the waste water system(s) that will be utilised by the lots created by subdivision, to both protect public health and to avoid or mitigate adverse effects of waste water on the environment. The applicant provides an assurance that the proposed sites have sufficient area to install a domestic waste water treatment system. This assurance is unsupported by technical information prepared by a recognised expert in the waste water field.

In terms of paragraphs 58.1-58.4, the required information has not been provided, and so any decisions about consent notices cannot be made.

Consequently the request for information about waste water treatment and disposal is a matter over which the Council has reserved its control and/or limited its discretion to, and therefore the request for the information is considered to be necessary for the Council to assess the application.

### **Storm Water**

The matter of storm water is addressed in paragraphs 41.4-41.8, 53.1-53.4, 55.1-55.4, 74.1-74.5 and 82.1 - 85.10.

In terms of paragraphs 41.4-41.8 and 74.1-74.5, the applicant provides an unsupported assurance in paragraphs 41.7 and 74.4 that the subdivision design enables efficient provision of storm water infrastructure. This assurance follows assertions that the subdivision has been designed so that “dry attenuation ponds” can be installed. Three potential storm water detention ponds are identified on Plan AD8, but there is no information about whether these three are all that are required, and whether other ponds are required throughout the subdivision remainder of the area subject to this proposal. The downstream effects of these ponds are unknown. The applicant refers to one such pond located at 54 Anzac Valley Road (Lot 2 DP 166619) as an example. It is not clear from the application how the existing pond services “...part of the subject land...”, or which areas of the subject land are being referred to. Should, following assessment of the application, it is determined that the ponds suggested by the applicant are actually required, there is no engineering information about the size and location of such ponds, and expert advice that those locations are appropriate. The information in these sections of the application is therefore inadequate.

In terms of paragraphs 53.1-53.4, and 55.1-55.4, the applicant is incorrect in the statement that the Council has not reserved control over storm water as part of Foothills Environment Rule 7.1. This Rule includes assessment of infrastructure. Infrastructure is defined in the City Wide Rule Section includes:

*“... any structure that relates to waste water or storm water treatment or disposal.”*

The Council requires information on the storm water system(s) that will be utilised by the lots created by subdivision, to avoid or mitigate adverse effects of storm water on the environment. The applicant provides an assurance that the proposed sites have sufficient area to install storm water treatment systems. This assurance is unsupported by technical information prepared by a recognised expert in the storm water field.

Therefore the request for the information is considered to be necessary for the Council to assess the application.

In terms of the paragraphs 82.1-85.10, the applicant provides a discussion of the utilisation of the existing forestry as permanent bush. The applicant draws on commentary provided by storm water experts, contained in two reports referred to in paragraph 84.2 of the application. It appears from the limited information provided in relation to this matter that the reports referred to address catchment wide issues. There is no technical information prepared by a recognised expert in the storm water field providing the necessary information regarding the effects of storm water on site, and how any effects will be avoided and/or mitigated. This is required by Foothill Environment assessment criterion 7(o). Therefore the request for the information is considered to be necessary for the Council to assess the application.

### **Land Stability**

The applicant addresses this matter in paragraphs 69.1-69.3. The applicant provides an assurance that the proposed sites have sufficient area to provide the necessary geotechnical stability for building platforms and vehicle access ways. This assurance is unsupported by technical information prepared by a recognised expert in geotechnical mechanics. A statement from the applicant that the land is stable because it has not been eroded over past millions of years (as provided in paragraph 69.2 of Schedule B of the application) is not sufficient. Therefore the request for the information is considered to be necessary for the Council to assess the application.

### **Ecological Information**

The applicant discusses this matter under the heading "Green Network" in paragraphs 38.1-38.9. The applicant provides an assurance that the proposed sites will not adversely affect the Green Network, on the basis that the proposed sites are so large that any effects of the development will be able to be located so as to avoid any Green Network areas. This assurance is unsupported by technical information prepared by recognised experts that identify the existing ecological values present on the site.

This lack of information is further exacerbated by a lack of information about the earthworks, waste water treatment and disposal devices, and storm water treatment and disposal devices. The effects of all of these activities on the ecology of the site are not known, and are not addressed in the application. This is also true of the effects of roading and vehicle access ways.

The assurances in paragraphs 38.1-38.9 by the applicant (that are unsupported by technical and expert advice) are not sufficient to enable the assessment of the effects of the proposed subdivision on the ecology of the site. Therefore the request for the information is considered to be necessary for the Council to assess the application.

### **Landscape Information**

Landscape is addressed by the applicant in paragraphs 43.1-43.5, 44.1-44.7, and 77.1-77.8. The applicant takes the view that landscape is not a matter that the Council has reserved its control or limited its discretion to. The Council reserves its control and limits its discretion to "design", amongst other things. The term "design" is defined in the City Wide Definitions Section as:

*The external appearance of any building, structure, landform or any development, and includes material used, dimension and colour.*

The applicant contends, in paragraph 43.3, that subdivision is invisible, and has no effects on landscape character. This is incorrect. The High Court has stated in *Kitewaho* that subdivision is not a 'lines on a plan' exercise, and has environmental ramifications and effects which need to be fully assessed against the relevant district plan rules.

Consequently the request for the information is considered to be necessary for the Council to assess the application.

The applicant discusses the effects of vehicle access on landform in paragraphs 44.1-44.7. The applicant refers to the possibility of additional vehicle access ways being established, and claims that the effects of this will be minimal. The assurance in paragraph 44.5 and 77.6 by the applicant (that are unsupported by technical and expert advice) are not sufficient to enable the assessment of the effects of the proposed subdivision on the ecology of the site. Therefore the request for the information is considered to be necessary for the Council to assess the application.

The objector states in paragraph 4.5(c)(i) and (ii) that the request is of no use and will provide pointless information, because controlled activity resource consents are always approved subject to conditions, and limited discretionary activities can only be refused on the basis of the matters over which discretion has been retained.

The discussion above about the itemised information requests illustrate the need for the information to ensure that both of the applications can be adequately assessed (and its appropriate activity status determined as required by caselaw). The information has substantial role in both the assessment of the applications and the preparation of any conditions imposed on both the applications, if they are granted. Therefore this ground for not providing the information is not accepted by the Council. The request for the information is considered to be necessary for the Council to assess the application.

The objector's grounds in paragraph 4.5(e) are discussed below under the SUB 2008-0571 heading. However the provision of the requested information will assist the Council to finally determine the correct activity status of both this application and SUB 2008-0571. Therefore this ground for not providing the information is not accepted by the Council. The request for the information is considered to be necessary for the Council to assess the application.

### **SUB 2008-0571**

The objector states in paragraph 4.5(a) that the information request seeks further information over matters that the Council has not reserved its control or the matters are outside its discretion.

The application is for a non-complying activity. Because of the non-complying nature of the application, the Council will apply section 104D(1)(b) when assessing the application. This includes an assessment of whether the application is contrary to the objectives and policies of the District Plan. The relevant policies for subdivision in the Foothills Environment are identified as policies 1.1, 1.4, 1.7, 1.10, 1.14, 1.15, 1.17, 1.20, 2.1, 2.2, 2.13, 3.1, 3.4, 3.5, 3.6, 4.3, 4.4, 5.2, 5.4, 5.5, 6.1, 6.4, 7.1, 7.2, 7.3, 8.3, 8.5, 9.1, 9.2, 9.3, 9.6, 9.7, 9.9, 9.14, 10.4, 10.7, 10.8, 10.9, 10.13, 10.15, 10.16, 10.17, 10.18, 10.20, 10.22, 10.23, 11.1, 11.2, 11.4, 11.5, 11.6, 11.9, 11.29, 12.4, and 12.8.

These policies contain a wide range of matters, all of which relate to the matters where additional information is sought from the applicant under section 92. Consequently all of the information requests relating to SUB 2008-0571 are necessary for the Council to assess the application.

The objector misunderstands the application of section 104(5) in paragraph 4.5(a) of the objection.

The objector presents a hypothetical scenario that if the proposed lots were amalgamated with the proposed common areas, the proposed lots would exceed the four hectare minimum lot size rule in Foothills Environment Subdivision Rule 7.1(a). As such this hypothesis proposes that it would be open to Council to assess the non-complying application under 104(5) RMA as a controlled or a restricted discretionary activity. On the basis of this hypothesis, the objector then pursues the same line of argument presented in relation to SUB 2008-0570.

This hypothesis is not accepted, because the application is seeking to subdivide the subject site to a greater level of density that envisaged by the District Plan. The application is not seeking the amalgamation of any resulting allotments. There is also no explanation of how the proposed rural residential allotments would be amalgamated with the common area (shown on Plan FS3) and, if so, how individual allotments would comply with the 4 hectare minimum lot size Rule. Even if the hypothesis was accepted (which it is not), the discussion of the basis for the information sought in SUB 2008-0570 would apply.

The objector then pursues this hypothesis in paragraphs 4.5(c) and 4.5(e). For the same reasons, the hypothesis is not accepted, and these grounds presented in these paragraphs for the objection are not accepted.

## **CONCLUSION**

A number of issues have been raised in the two section 357 objections, and they require a decision. The matters that require a determination are identified in the above report, and apply to subdivision applications 2008-0570 and 2008-0571.

For the reasons set out above, it is concluded that the objections to the section 92 requests for further information for resource consent applications 2008-0570 and 2008-0571 **should not be accepted**.

The two subdivision applications are deficient in information, as identified in the section 92 requests. For the reasons set out above, the section 92 request made under delegated authority by the Council and recorded in its letter dated 8 July 2008 is valid, and is necessary for the assessment of the applications.

The further information is required for officers to make notification and service decisions on the applications. If the applications are determined to not require notification, the information is still required to enable the Council to adequately assess the effects of the applications. If the applications are determined to require notification, the information is required for potential submitters to assess the possible effects arising from the proposed subdivisions on them, and for the Council to adequately assess the effects of the applications.

## **RECOMMENDATION**

That pursuant to section 357D of the Resource Management Act 1991, subject to additional or contrary information being presented at the hearing, the two objections made by:

London and Greenwich General Trading Company Limited;  
North Kaipara Nominees Limited;  
Peter William Mawhinney;  
Perceptus Limited;  
Stahpark Limited;  
Sunrise 2006 Property Limited;  
Swanson Heights Limited; and  
Waitakere Resource Consents Limited.

**be declined.**

**Report prepared by:** Eryn Shields, Principal Planner Resource Management.

