

Anthony Harper
Level 9, HSBC Tower
Christchurch City
CHRISTCHURCH 8140



Applicant	Anthony Harper
LIM address	158-164 Central Park Drive Henderson
Application number	8270118610
Customer Reference	285822-32
Date issued	11-Oct-2018
Legal Description	LOT 2 DP 464917
Certificates of title	618171

Disclaimer

This Land Information Memorandum (LIM) has been prepared for the applicant for the purpose of section 44A of the Local Government Official Information and Meetings Act 1987.

The LIM includes information which:

- Must be included pursuant to section 44A of the Local Government Official Information and Meetings Act 1987
- Council at its discretion considers should be included because it relates to land
- Is considered to be relevant and reliable

This LIM does not include other information:

- Held by council that is not required to be included
- Relating to the land which is unknown to the council
- Held by other organisations which also hold land information

Council has not carried out an inspection of the land and/or buildings for the purpose of preparing this LIM. Council records may not show illegal or unauthorised building or works on the land.

The applicant is solely responsible for ensuring that the land or any building on the land is suitable for a particular purpose and for sourcing other information held by the council or other bodies. In addition, the applicant should check the Certificate of Title as it might also contain obligations relating to the land.

The text and attachments of this document should be considered together.

This Land Information Memorandum is valid as at the date of issue only.

s44A(2)(a) Information identifying any special feature or characteristics of the land

This information should not be regarded as a full analysis of the site features of this land, as there may be features that the Council is unaware of. The applicant is solely responsible for ensuring that the land is suitable for a particular purpose including development.

Site Contamination

Because of associated previous land uses as orchards and vineyards high levels of DDT, copper, arsenic and zinc are likely in the soil. Soil investigations required prior to removal of any soil or development of the site. Refer to Environmental and Earth Sciences Ltd Report ref EES/RAP303031.doc dated 23rd October 2003 held on the Council's Hazards and Special Features Register.

Wind Zones

Wind Zone(s) for this property: Low wind speed of 32 m/s, High wind speed of 44 m/s

The wind zones are based on wind speed data specific to all building sites as outlined in NZS 3604:2011. Other factors such as topographic classes, site exposure and ground roughness determine the actual wind bracing demands and bracing elements required for the building. For further information refer to NZS 3604:2011 Section 5 — Bracing Design

Soil Issues

The Auckland Council is not aware of any soil issues in relation to this land. If any soil information/reports have been prepared in relation to this property, they will be available for viewing at an Auckland Council Service Centre or via the property file product services.

Flooding

This statement entitled "Flooding" appears on all LIMs.

Known flooding information is displayed on the map attached to this LIM entitled "Special Land Features – Natural Hazards - Flooding".

The information shown in the "Special Land Features - Natural Hazards - Flooding" map is also shown on the Auckland Council online map viewer (Geomaps), at www.aucklandcouncil.govt.nz, which is updated from time to time.

Any proposed development may require a flooding assessment to be provided by the applicant.

The absence of flooding on the "Special Land Features - Natural Hazards - Flooding" map does not exclude the possibility of the site flooding, particularly from Overland Flow Paths which may be on other properties.

Flood Prone Area

This site (property parcel) spatially intersects with a Flood Prone Area, as displayed on the map attached to this LIM entitled "Special Land Features – Natural Hazards - Flooding".

Flood Prone Areas represent depressions in the terrain with no natural outlet. The frequency of flooding within the Flood Prone Area is dependent on the upstream catchment area, the amount of rainfall and the outlet capacity.

Flood Prone Areas are determined from analysis of a Digital Terrain Model (DTM).

Any development within a Flood Prone Area may require a risk assessment.

Overland Flow Path

This site (property parcel) spatially intersects with one or more Overland Flow Paths, as displayed on the map attached to this LIM entitled “Special Land Features – Natural Hazards - Flooding”.

Overland Flow Paths are lines representing the predicted route of overland flow, based on analysis of a Digital Terrain Model (derived from aerial laser survey). Overland Flow Paths do not show the width or extent of flow.

Overland Flow Paths are based solely on the terrain and are indicative only.

Overland Flow Paths may flood depending on the amount of rain.

The Auckland Unitary Plan contains policies and rules relating to development and/or works within or adjacent to Overland Flow Paths.

Note: The terms “Flow Path” and “Flowpath” are used interchangeably.

Exposure Zones

New Zealand Standard 3604:2011E classifies all properties in New Zealand into zones based on environmental features including wind, earthquake, snow load and exposure. These zones are relevant to building requirements, such as strength of buildings, materials that should be used and maintenance. All building sites are classified as being in Exposure Zones Extreme Sea Spray, B, C, or D, depending on the severity of exposure to wind driven salt.

This property is classified as: Unknown or Unassessed Corrosion Zone

Unknown or unassessed - No known information is available relating to these sites. Recommended that specific sites and/or product designed and to consult suppliers information for specific durability requirements.

s44A(2)(b) Information on private and public stormwater and sewerage drains

Information on private and public stormwater and sewerage drains is shown on the **underground services map** attached.

Note: Private drainage is the responsibility of the land owner up to and including the point of connection to the public sewer or drain.

Effective Date	Description	Details
07/04/2009	Manhole on site	Council's as-built records indicate there is a manhole(s), for wastewater or stormwater services, located on your property. It is the property owners' responsibility to ensure that these manholes are accessible by maintenance staff at all times, and that each manhole lid is level with the adjacent ground. If you are unable to

		locate the manhole(s) or a lid level needs raising or lowering, please contact EcoWater - Council's Drainage Department who can arrange for the necessary work to be carried out. The property owner may be liable for the cost of this work.
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s44(2)(ba) Information notified to Council by a drinking water supplier under Section 69ZH of the Health Act 1956

Prospective purchasers should be aware of other drinking water systems connected to this property. There may also be private drinking water supply systems such as rainwater tanks or private water bores. You are advised to clarify the drinking water supply with the current landowner.

No Information has been notified to Council.

s44A(2)(bb) Information Council holds regarding drinking water supply to the land

For metered water information, please contact **Watercare (09) 422 2222** for services provided to this property.

s44A(2)(c) Information relating to any rates owing in relation to the land


Billing Number/ Rate Account:	12341585722
Rates levied for the Year 2018/2019 :	\$103,075.23
Total rates to clear for the current year (including any arrears):	\$78,439.17

The rates figures are provided as at 8 a.m. 11/10/2018. It is strongly advised these are not used for settlement purposes.

Retrofit Your Home Programme

The Retrofit Your Home programme provides financial assistance, advice and information to householders wanting to create an improved home environment.

The scheme contributes to the achievement of the Air Quality National Environmental Standards encouraging the installation of clean heat and insulation in homes as well as supporting access to central government grants and subsidies. The programme offers homeowners a retrofit plan for their homes and financial assistance up to \$5000 repaid through a targeted rate.

 Auckland Council (09) 890 7898 if you require further information

 retrofit@aucklandcouncil.govt.nz

s44A(2)(d) Consents, Certificates, Notices, Orders or Requisitions affecting the land or any buildings on the land(da) the information required to be provided to a territorial authority under section 362T(2) of the Building Act 2004:s44A and (2)(e) Information concerning any Certificate issued by a Building Certifier pursuant to the Building Act 1991 or the Building Act 2004

Note: if the land is part of a cross lease title or unit title, consents and permits for the other flats or units may be included in this LIM. If the land has been subdivided there may be consents and permits included that

relate to the original property.

It is recommended that the full property file is viewed and compared with the actual building and activities on the land to identify any illegal or unauthorised building works or activities.

Financial / development contributions

Financial and development contributions are relevant for recently subdivided land, vacant lots, new residential unit(s) or where there is further development of a site. If any financial or development contribution has not been paid, Council can recover outstanding amount(s) from a subsequent owner of the land.

Please note that financial contributions and development contributions may be paid in land, cash or a combination of these. The form of payment of contributions may be subject to negotiation but final discretion remains with the Council.

Resource Management

Planning

158-164 Central Park Drive Henderson

Application No.	Description	Decision	Decision Date
37240	Discharge Consent To discharge stormwater, connecting to existing reticulation system.	Superceded	
LUC-1991-16088	Re-erect office/showroom (removed)	Granted	16/08/1991
LUC-2009-969	Land Use Consent Proposed earthworks of 17,300 cubic metres and vegetation clearance in the general natural area, horticultural site	Granted(Construction Monitoring Underway)	30/11/2009
LUC-2009-847	Land Use Consent Land use associated with 4 lot subdivision in Working (Lincoln) Environment. Infringes: Contaminated sites; parking; landscaping.	Granted(Construction Monitoring Underway)	22/12/2009
LUC-2009-1096	Land Use Consent Construction & establishment of a Mitre 10 Mega Retail Outlet,	Granted(Construction Monitoring Underway)	22/01/2010
37593	Discharge Consent Application to carry out remediation of DDT and copper contamination for the redevelopment of a commercial property.	Granted	07/04/2011
37239	Land Use Consent to undertake approximately 4.7 ha of earthworks for a bulk retail development.	Granted	07/04/2011
39279	Discharge Consent To authorise discharge of contaminants to land to build a commercial complex	Granted	25/02/2013
REG-2013-1156	Change of Condition (s127) Variation to stormwater discharge regional permit 37240 under s127	Granted	08/10/2013

Application No.	Description	Decision	Decision Date
LUC-2013-1413	Change of Condition (s127) S127 application to vary condition GN1 of LUC 2009-847 and SUB 2009-849 Section 223 Clause 1A	Granted	11/12/2013
LUC-2014-56	Change of Condition (s127) S127 variation of consent conditions for LUC-2009-1096	Granted	04/12/2014
SUB-2015-1235	Right of Way Section 348 application creation of a ROW easement	Granted	14/08/2015
LUC-2015-1850	Land Use Consent Consent is sought to establish and operate a homewares store over a gross floor area of 27,273m2 providing 354 parking spaces where 1180 spaces are required, landscaping of 11.58% area, deep piling which may exceed vibration standards, 2 freestanding signs and two vehicular access points to the site.	Granted(Construction Monitoring Underway)	21/06/2016
LUC60019071-A	Change of Condition (s127) Conditions 1 Plan and information. 4 Building set back. 7 Landscaping.	Granted	08/03/2017

Subdivisions

158-164 Central Park Drive Henderson

Application No.	Description	Decision	Decision Date
SUB-2009-849	Subdivision Consent 4 lot subdivision in working environment	Granted	21/07/2009
SUB-2009-849	Subdivision survey plan ((s)223) LT471769	Granted	24/10/2014
SUB-2009-849	Subdivision completion cert ((s)224C) 4 lot subdivision in working environment	Approved	19/12/2014
SUB-2009-849	Subdivision survey plan ((s)223) LT 464917	Granted	15/04/2015
SUB-2009-849	Subdivision completion cert ((s)224C) 4 lot subdivision in working environment	Approved	30/10/2015

Engineering Approvals

158-164 Central Park Drive Henderson

Application No.	Description	Decision	Decision Date
ENG-2013-1188	Engineering Compliance Engineering approval - to divert wastewater and stormwater through the site and additional connection to service future buildings	Approved (Awaiting Payment)	11/10/2016
ENG-2014-527	Engineering Compliance Engineering approval for new road	Approved	19/10/2016

If there are any conditions, then only that portion of the consent will be included in the attachments section.

The applicant should satisfy themselves as to whether all conditions of resource consents for this property have been met.

Further Information

The Council may hold additional information for this property, for example concerning resource consents for discharges to air, land or water issued by the former Auckland Regional Council prior to 1 November 2010. If you would like Auckland Council to search for this type of information, please contact us.

Building

158-164 Central Park Drive Henderson

Application No.	Description	Issue Date	Status
BPM-1991-11269	Showhome and garage/storeroom (removed)	31/12/1991	Issued (See Note 1)
BPM-1992-12150	Sign (removed)	31/12/1992	Issued (See Note 1)
ABA-2013-886	COM 2: Proposed Stage 1 - development of retail and office - 4 storey building. Stage 1 - poles and footings only excluding slab and retaining walls.	28/03/2014	Lapsed (See Note 8)
ABA-2015-843	COM 1: Construction of proposed timber pole retaining wall to the North Eastern Quadrant	18/06/2015	CCC Refused (See Note 10)

Note	Description
1	Permit issued prior to the Building Act 1991 taking effect. Code Compliance Certificates (CCC) were not required.
8	No building work should have been carried out under this consent.
10	Code Compliance Certificate (CCC) refused as result of Building Industry Authority/Department for Building and Housing determination

Please note that prior to the Building Act 1991; Councils were not required to maintain full records of building consents [etc] issued under the Building Act. While Auckland Council has always endeavoured to maintain full records of pre-Building Act 1991 matters, not all records for this period have survived and in other cases where building work is documented, information may be incomplete. Council does not accept responsibility for any omission.

It is recommended that the Council property file is viewed and compared with the actual building and activities on site to identify any illegal or unauthorised building works or activities.

Compliance Schedules (Building Warrant of Fitness)

The Council has no record of a Compliance Schedule for this property/building.

If it is evident that any specified systems such as lifts or commercial fire alarms are present in the building,

the owner must ensure there is a current compliance schedule or building warrant of fitness.

Vehicle Crossing

158-164 Central Park Drive Henderson

Application No.	Description	Decision
VXG-2014-455	Vehicle crossing constructions - Commercial. x 2 crossings	Referred to Auckland Transport

The installation and maintenance of vehicle crossings is the responsibility of the owner of the land. The standard required is set out in by-laws for your area, these are available to view at: <https://at.govt.nz/about-us/working-on-the-road/vehicle-crossing-application/#standards>

Swimming/Spa Pool Barriers

The Council has no record of a swimming pool or spa pool being registered on this property. Swimming pools and spa pools must have a barrier that complies with the Building Act 2004.

Pool barrier information is available for viewing at <http://www.aucklandcouncil.govt.nz>

Licences

There are NO current licences recorded

s44A(2)(ea) Information notified under Section 124 of the Weathertight Homes Resolution Services Act 2006

The Council has not been notified of any information under Section 124 of the Weathertight Homes Resolution Services Act 2006 relating to this property.

s44A (2)(f) Information relating to the use to which the land may be put and any conditions attached to that use

Purchasers or those intending to develop the land should satisfy themselves that the land is suitable for any intended use or future development proposal. In addition to any site specific limitations recorded below, general restrictions that apply across the region may be relevant to any development proposals on this property.

Auckland Unitary Plan - Operative in Part (AUP:OP)

The **Auckland Unitary Plan - Operative in part(AUP:OP)** applies to this property and should be carefully reviewed and considered, as it may have implications for how this property can be developed and/or used. Those parts of the Auckland Unitary Plan that are operative replace the corresponding parts of legacy regional and district plans. However, certain parts of the AUP:OP are the subject of appeals and have not become operative. If a property is subject to an appeal this will be identified on the attached Unitary Plan Property Summary Report. Where this is the case, both the Auckland Unitary Plan Decisions version and the legacy regional and district plans will need to be considered.

The AUP:OP zones, controls, overlays, precincts, and designations that apply to this property are set out in the Property Summary Report, which is attached to this memorandum.

The AUP:OP can be viewed here:

<https://www.aucklandcouncil.govt.nz/unitaryplan>

The legacy regional and district plans can be viewed here:

<https://www.aucklandcouncil.govt.nz/districtplans>

<https://www.aucklandcouncil.govt.nz/regionalplans>

The appeals to the AUP:OP can be viewed here:

<https://www.aucklandcouncil.govt.nz/unitaryplanappeals>

Auckland Council District Plan - Hauraki Gulf Islands Section (Operative 2013) (DP:HGI)

While the regional provisions in the AUP:OP apply to the Hauraki Gulf Islands, and are set out in the Property Summary Report attached to this memorandum, the AUP:OP does not contain any district provisions for the Hauraki Gulf Islands. If the Property Summary Report attached to this memorandum lists its zone as "Hauraki Gulf Islands", the district provisions that apply are in the Auckland Council District Plan Hauraki Gulf Islands Section (Operative 2013) (DP:HGI).

The relevant maps of the DP:HGI are attached to this memorandum, if applicable. The text of the DP:HGI can be found here:

<https://www.aucklandcouncil.govt.nz/aurakigulfislands>

Plan Changes and Notices of Requirement

Changes to the AUP:OP and DP:HGI may be proposed from time to time. These proposed plan changes may relate to either the maps or the text of those plans. Any proposed changes to the AUP:OP relevant to this property will be listed as a modification in the Property Summary Report attached to this memorandum. However, proposed changes to the DP:HGI will not appear on the Property Summary report. That information can be found on the Auckland Council website.

Please refer to the AUP:OP for information on any proposed Plan Changes or see the Auckland Council modifications website at:

<https://www.aucklandcouncil.govt.nz/unitaryplanmodifications>

Information relating to any proposed Plan Changes to DP:HGI can be found here:

<https://www.aucklandcouncil.govt.nz/aurakigulfislands>

From time to time a requiring authority, such as a Ministry of the Crown or a council controlled organisation, may notify Auckland Council that they require certain land to be designated for a certain purpose. If this property is the subject of such a notice of requirement, that notice may have implications for how this property can be developed or used from the date it is received by Council.

If this property is not on the Hauraki Gulf Islands, any notices of requirement applicable will be listed as a modification in the Property Summary Report attached to this memorandum.

If this property is on the Hauraki Gulf Islands, any notice of requirement will be available on the Auckland Council Website.

Information on all current notices of requirement can be found on the modifications page here:

<https://www.aucklandcouncil.govt.nz/unitaryplanmodifications>

Copies of the appeals to the Auckland Unitary Plan can be viewed online at:

<https://www.aucklandcouncil.govt.nz/unitaryplanappeals>

Information concerning Caveat, Bond, Encumbrance, Consent Notice and Covenant

For any information concerning Caveats, Bonds, Encumbrances, Consent Notices or Covenants, please refer to the Certificate of Title for this property.

s44A(2)(g) Information regarding the land which has been notified to Council by another statutory organisation

No information has been notified to Council.

s44A(2)(h) Information regarding the land which has been notified to Council by any network utility operator pursuant to the Building Act 1991 or Building Act 2004

Underground Services and District Plan maps are attached.

Please note: Height restrictions apply where overhead power lines cross the site. Works near water services utilities may require approval. Works near high-pressure Gas, Oil or LPG pipelines create risk of damage and must first be approved. Please contact the relevant Utility provider in your area for further information.

Any escape of gas or liquid from the pipelines is potentially dangerous and requires immediate action as soon as discovered (Dial 111 and ask for the Fire Service).

Attachments

As the placement of the building/s on the attached maps is based on aerial photography we cannot guarantee the accuracy. A formal survey will indicate the exact location of the boundaries.

- Auckland Unitary Plan Property Summary Report
- Auckland Unitary Plan - Operative in part Maps and Map Legend
- Auckland Council District Plan - Hauraki Gulf Islands Section (if applicable)
- Underground Services & Utilities Map and Map Legend
- Special Land Features Map and Map Legend

Please note Map Legends have been created for use across the region and may contain features which were not captured by the previous legacy Councils; therefore the information may not be available for these maps. Please contact the Resource Management Planning Team in your area for further information on any features which may or may not appear on your map.

- Consent Conditions : SUB-2015-1235
- Consent Conditions : LUC-2009-969
- Consent Conditions : LUC-2009-847
- Consent Conditions : LUC-2009-1096
- Consent Conditions : LUC-2015-1850
- Consent Conditions : LUC-2013-1413
- Consent Conditions : LUC-2014-56
- Consent Conditions : LUC60019071-A

Auckland Unitary Plan Operative in part (15th November 2016) Property Summary Report

Address

158-164 Central Park Drive Henderson

Legal Description

LOT 2 DP 464917

Appeals

Modifications

Zones

Business - Light Industry Zone

Precinct

Controls

Controls: Macroinvertebrate Community Index - Rural

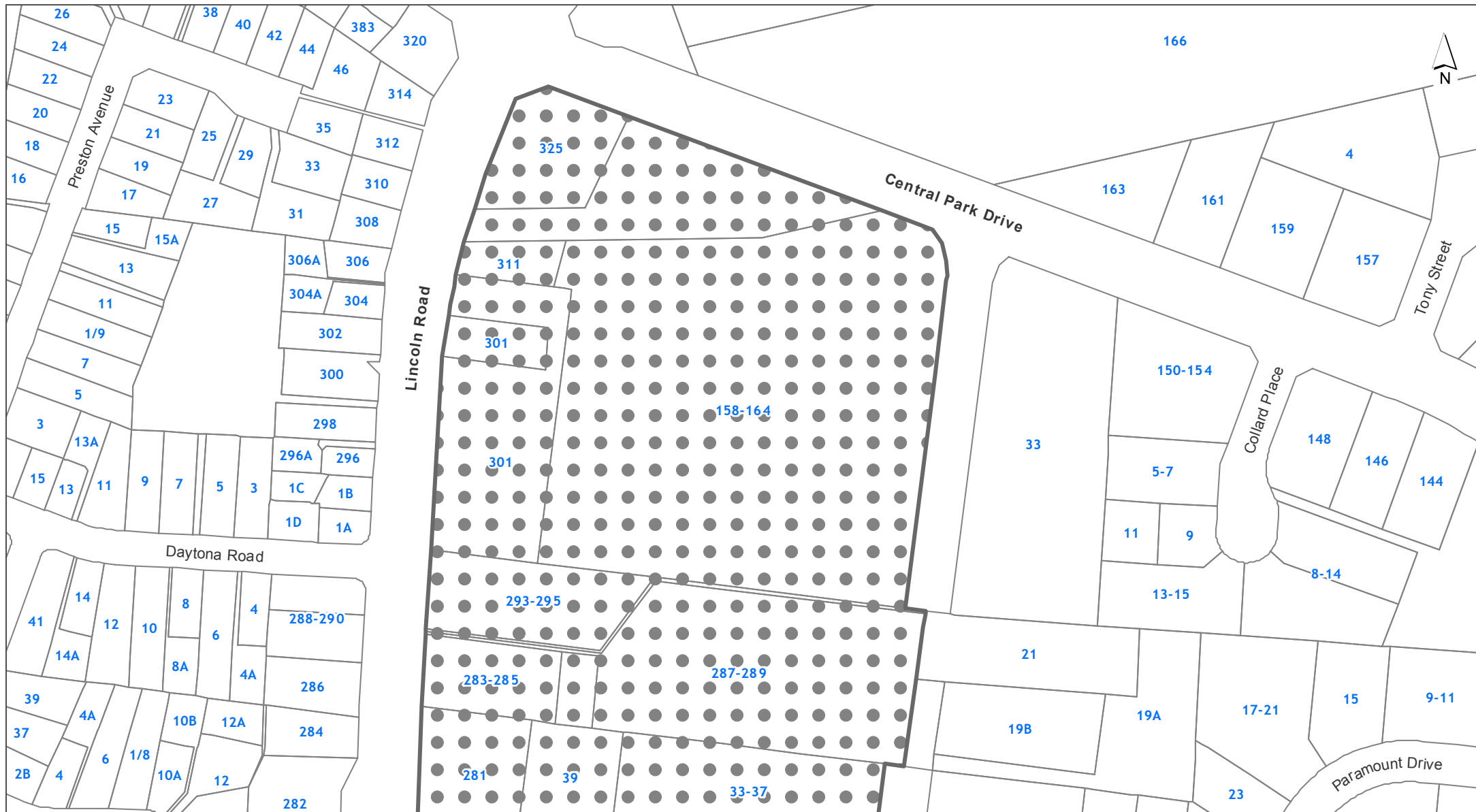
Controls: Macroinvertebrate Community Index - Urban

Overlays

Built Environment: Identified Growth Corridor Overlay

Natural Heritage: Notable Trees Overlay - 1944 - English Oak

Designations

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Built Environment

158-164 Central Park Drive Henderson

LOT 2 DP 464917

0 10 20 30
Meters

Scale @ A4
= 1:2,500

Date Printed:
11/10/2018

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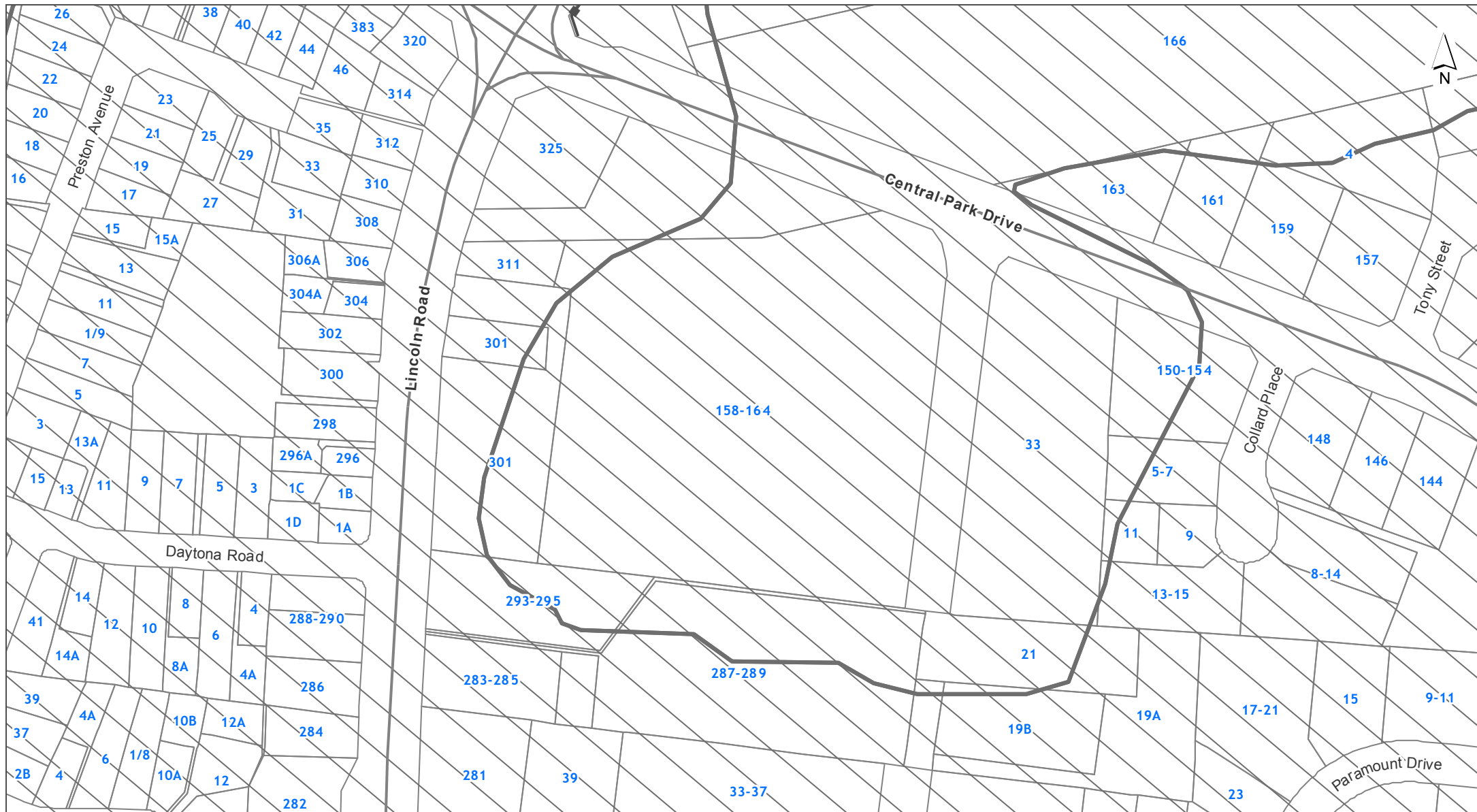
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Built Heritage and Character**158-164 Central Park Drive Henderson****LOT 2 DP 464917**

0 10 20 30
Meters

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Controls

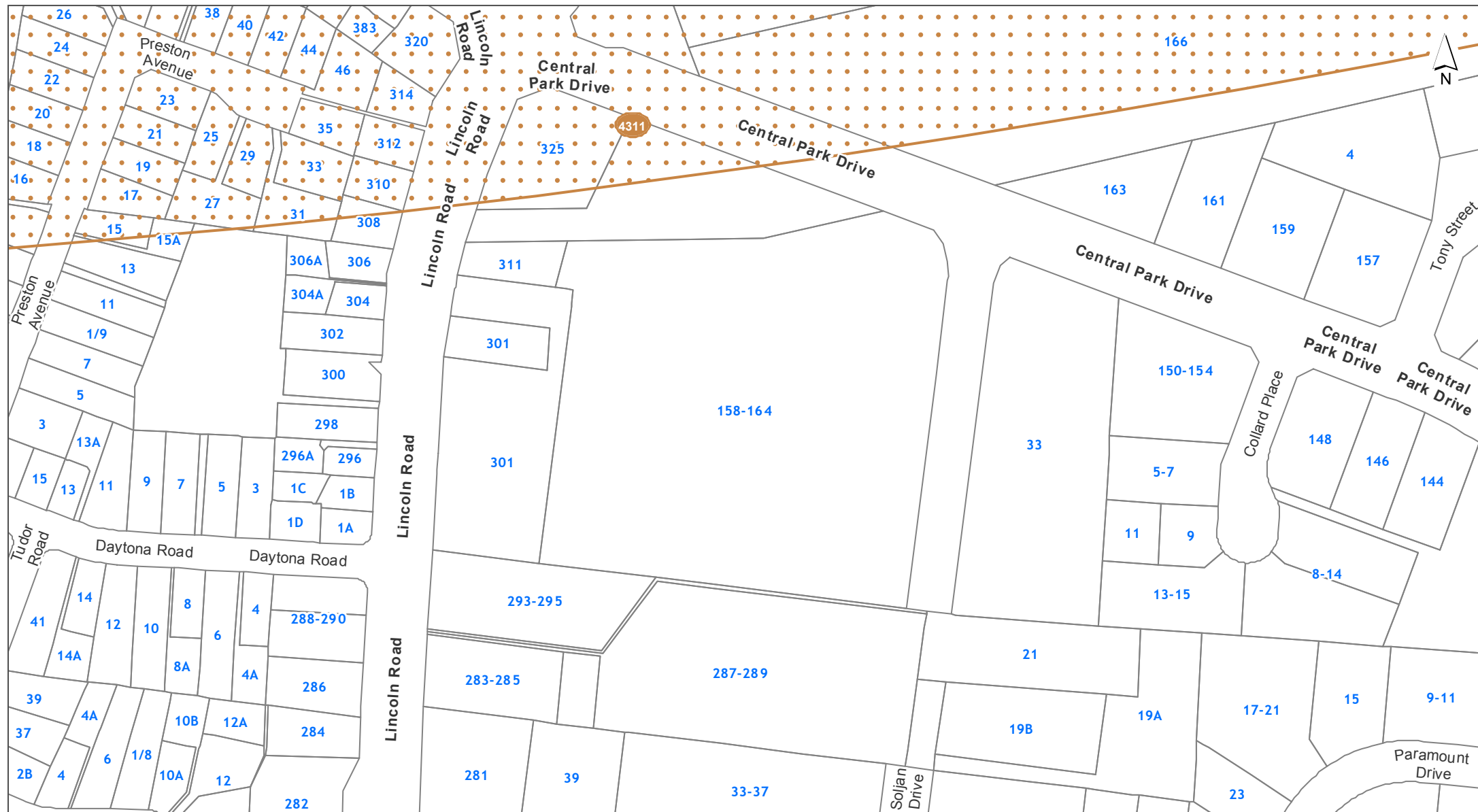
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Designations

158-164 Central Park Drive Henderson

LOT 2 DP 464917

0 10 20 30
Meters

Scale @ A4
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Infrastructure

158-164 Central Park Drive Henderson

LOT 2 DP 464917

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11/10/2018

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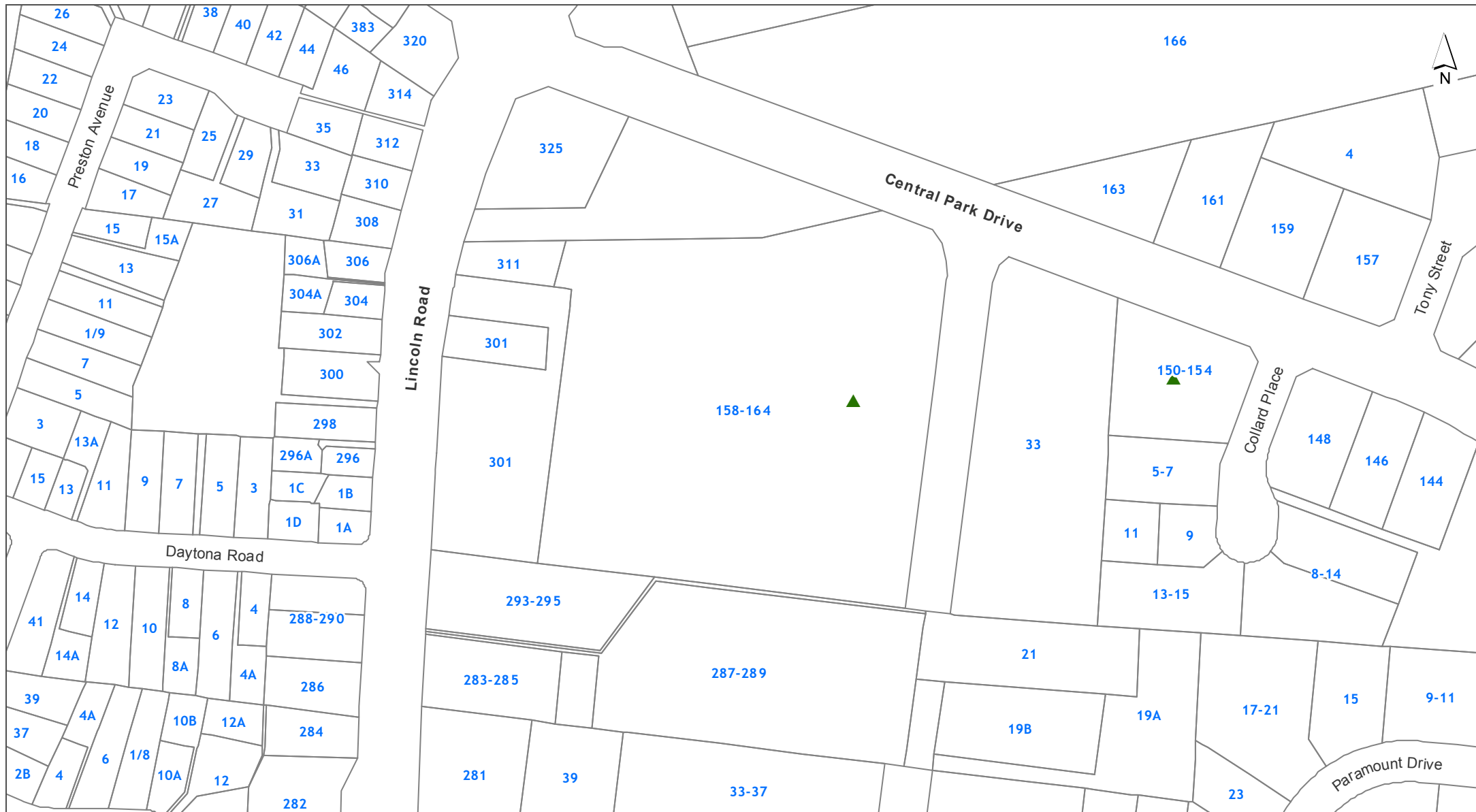
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Mana Whenua**158-164 Central Park Drive Henderson****LOT 2 DP 464917**

0 10 20 30
Meters

Scale @ A4
= 1:2,500

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Natural Heritage**158-164 Central Park Drive Henderson****LOT 2 DP 464917**

0 10 20 30
Meters

Scale @ A4
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Natural Resources

158-164 Central Park Drive Henderson

LOT 2 DP 464917

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Precincts

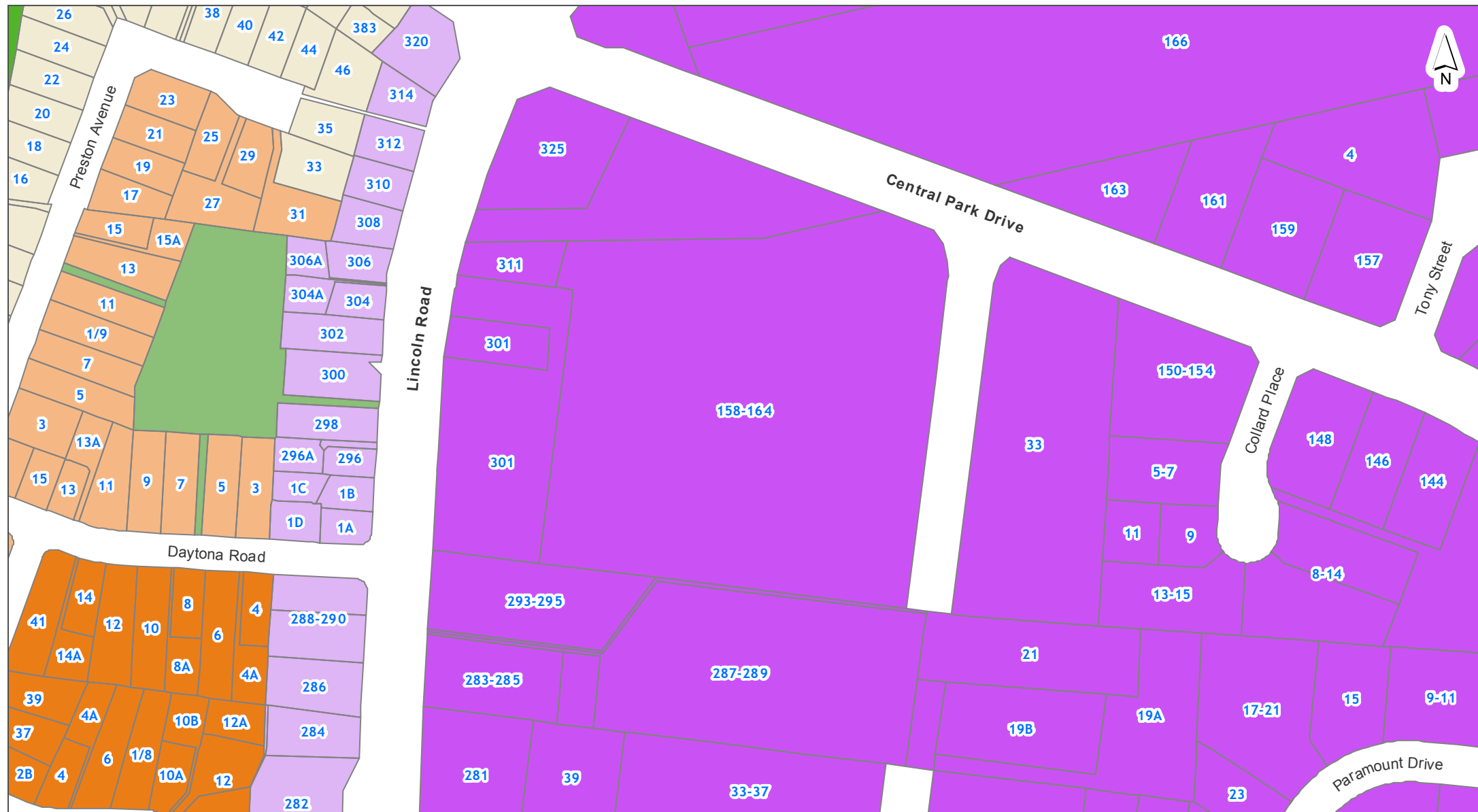
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Zones and Rural Urban Boundary

158-164 Central Park Drive Henderson

LOT 2 DP 464917



0 10 20 30
Meters

Scale @ A4
= 1:2,500



Date Printed:
11/10/2018

Auckland Unitary Plan Operative in part 15th November 2016 - LEGEND

Appeals

-  Properties affected by Appeals seeking change to zones or management layers
-  Properties affected by Appeals seeking reinstatement of management layers














Plan Modifications

-  Notice of Requirements
-  Plan Changes

ZONES

-  Residential - Large Lot Zone
-  Residential - Rural and Coastal Settlement Zone
-  Residential - Single House Zone
-  Residential - Mixed Housing Suburban Zone
-  Residential - Mixed Housing Urban Zone
-  Residential - Terrace Housing and Apartment Buildings Zone
-  Business - City Centre Zone
-  Business - Metropolitan Centre Zone
-  Business - Town Centre Zone
-  Business - Local Centre Zone
-  Business - Neighbourhood Centre Zone
-  Business - Mixed Use Zone
-  Business - General Business Zone
-  Business - Business Park Zone
-  Business - Heavy Industry Zone
-  Business - Light Industry Zone
-  Open Space - Conservation Zone
-  Open Space - Informal Recreation Zone
-  Open Space - Sport and Active Recreation Zone
-  Open Space - Civic Spaces Zone
-  Open Space - Community Zone



ZONES

-  Rural - Rural Production Zone
-  Rural - Mixed Rural Zone
-  Rural - Rural Coastal Zone
-  Rural - Rural Conservation Zone
-  Rural - Countryside Living Zone
-  Rural - Waitakere Foothills Zone
-  Rural - Waitakere Ranges Zone
-  Future Urban Zone
-  Green Infrastructure Corridor (Operative in some Special Housing Areas)
-  Coastal - General Coastal Marine Zone [rcp]
-  Coastal - Marina Zone [rcp/dp]
-  Coastal - Mooring Zone [rcp]
-  Coastal - Minor Port Zone [rcp/dp]
-  Coastal - Ferry Terminal Zone [rcp/dp]
-  Coastal - Defence Zone [rcp]
-  Coastal - Coastal Transition Zone
-  Special Purpose Zone- Airports & Airfields, Cemetery, Quarry, Healthcare Facility & Hospital, Tertiary Education, Maori Purpose, Major Recreation Facility, School
-  Strategic Transport Corridor Zone
-  Water [i]

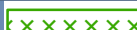



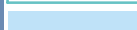

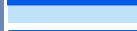




Tagging of Provisions:





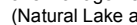

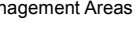
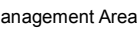

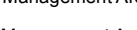
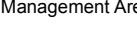


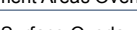
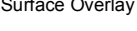


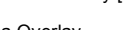
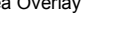




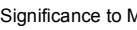


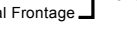
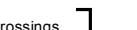
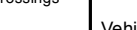

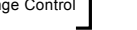
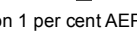

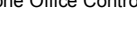
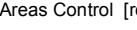
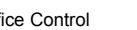

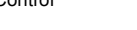


- [i] = Information only
- [rp] = Regional Plan
- [rcp] = Regional Coastal Plan
- [rps] = Regional Policy Statement
- [dp] = District Plan (only noted when dual provisions apply)


DESIGNATIONS

-  Designations
-  Airspace Restriction Designations









Natural Resources

-  Terrestrial [rp/dp]
-  Marine 1 [rcp]
-  Marine 2 [rcp]
-  Natural
-  Urban
-  Water Supply Management Areas Overlay [rp]
-  Natural Stream Management Areas Overlay [rp]
-  High-Use Stream Management Areas Overlay [rp]
-  High-Use Aquifer Management Areas Overlay [rp]
-  Quality-Sensitive Aquifer Management Areas Overlay [rp]
-  Wetland Management Areas Overlay [rp]

-  Significant Ecological Areas Overlay
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-  Lake Management Areas Overlay (Natural Lake and Urban Lake)












Infrastructure

-  Airport Approach Surface Overlay
-  Aircraft Noise Overlay
-  City Centre Port Noise Overlay [rcp / dp]
-  Quarry Buffer Area Overlay
-  National Grid Subdivision Corridor
-  National Grid Substation Corridor
-  National Grid Yard Compromised
-  National Grid Yard Uncompromised











Mana Whenua

-  Sites & Places of Significance to Mana Whenua Overlay [rcp/dp]

CONTROLS

-  Key Retail Frontage
-  General Commercial Frontage
-  Adjacent to Level Crossings
-  General
-  Motorway Interchange Control
-  Coastal Inundation 1 per cent AEP Plus 1m Control
-  Business Park Zone Office Control
-  Cable Protection Areas Control [rcp]
-  Centre Fringe Office Control
-  Height Variation Control
-  Arterial Roads

CONTROLS

-  Identified Growth Corridor Overlay
-  Hazardous Facilities
-  Infrastructure
-  Flow 1 [rp]
-  Flow 2 [rp]
-  Level Crossings With Sightlines Control
-  Macroinvertebrate Community Index
-  Parking Variation Control
-  Subdivision Variation Control
-  Surf Breaks [rcp]

Built Environment

Emergency Management Area Control

Stormwater Management Area Control

Level Crossings With Sightlines Control



















Macroinvertebrate Community Index

Parking Variation Control






Subdivision Variation Control

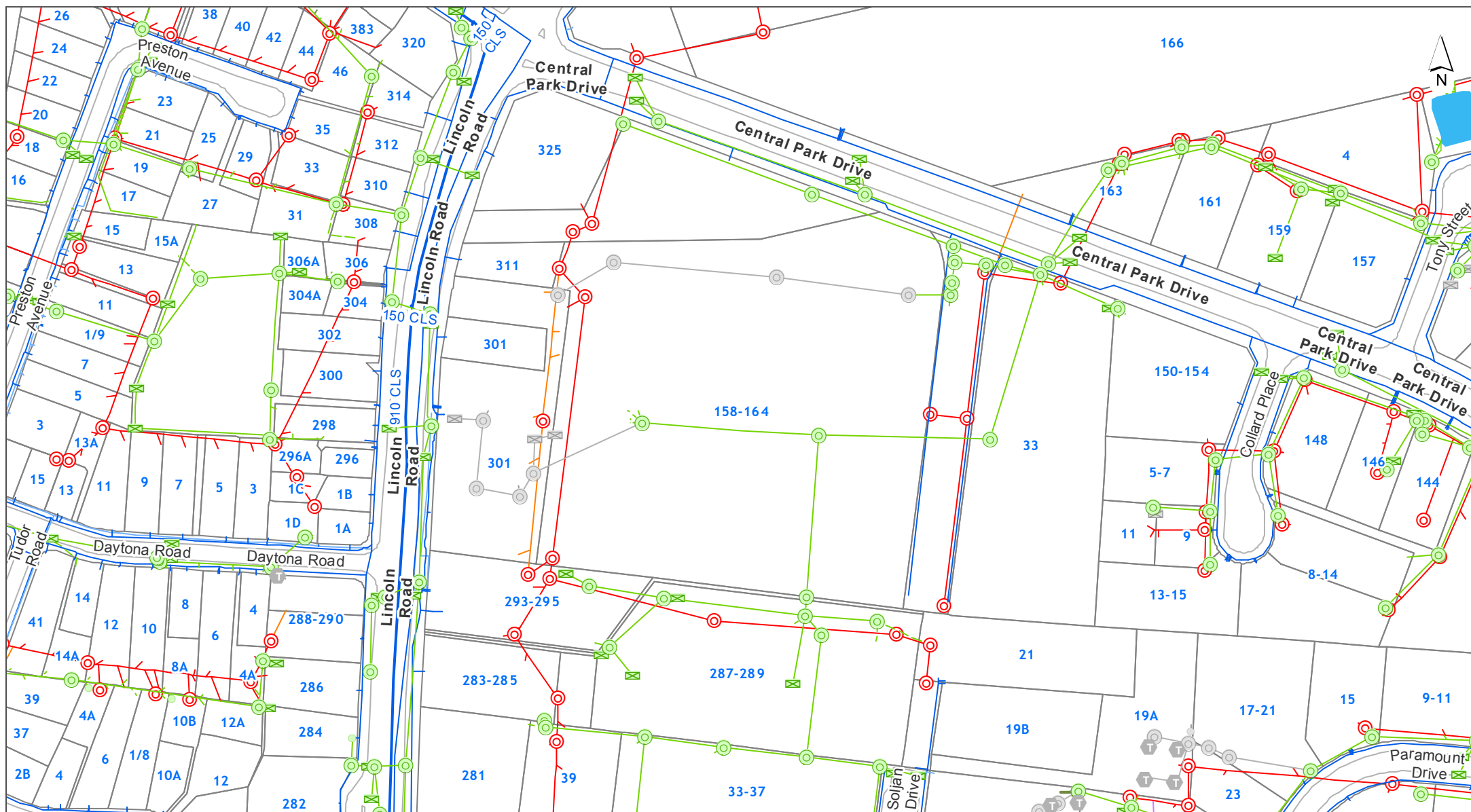
Surf Breaks [rcp]

Natural Heritage

-  Notable Trees Overlay
-  Outstanding Natural Features Overlay [rcp/dp]
-  Outstanding Natural Landscapes Overlay [rcp/dp]
-  Outstanding Natural Character Overlay [rcp/dp]
-  High Natural Character Overlay [rcp/dp]
-  Local Public Views Overlay [rcp/dp]
-  Viewshafts
-  Height Sensitive Areas
-  Regionally Significant Volcanic Viewshafts & Height Sensitive Areas Overlay [rcp/dp]
-  Regionally Significant Volcanic Viewshafts Overlay Contours [i]
-  Locally Significant Volcanic Viewshafts Overlay [rcp/dp]
-  Locally Significant Volcanic Viewshafts Overlay Contours [i]
-  Extent of Overlay
-  Subdivision Schedule
-  Modified
-  Natural
-  Waitakere Ranges Heritage Area Overlay
-  Ridgeline Protection Overlay

Built Heritage & Character

-  Historic Heritage Overlay Place [rcp/dp]
-  Historic Heritage Overlay Extent of Place [rcp/dp]
-  Special Character Areas Overlay Residential and Business
-  Auckland War Memorial Museum Viewshaft Overlay [rcp/dp]
-  Auckland War Memorial Museum Viewshaft Overlay Contours [rcp/dp]



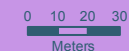
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Underground Services

158-164 Central Park Drive Henderson

LOT 2 DP 464917



Scale @ A4
= 1:2,500

Date Printed:
11/10/2018

Stormwater

Note: Unless otherwise specified in the text below, the *colour* of a Stormwater symbol is determined by the ownership or usage status, using the following colour scheme:

Public, **Private** or **Abandoned**

	Treatment Device		Overland Flowpath (Public)
	Septic Tank		Overland Flowpath (Private)
	Septic Tank (Hi-Tech)		Forebay (Public)
	Soakage System		Forebay (Private)
	Inspection Chamber		Treatment Facility (Public)
	Manhole (Standard / Custom)		Treatment Facility (Private)
	Inlet & Outlet Structure		Pump Station
	Inlet & Outlet (No Structure)		Planting
	Catchpit		Embankment
	Spillway		Viewing Platform
	Safety Benching		Bridge
	Culvert / Tunnel		Erosion & Flood Control (Other Structure)
	Subsoil Drain		Erosion & Flood Control (Wall Structure)
	Gravity Main		
	Rising Main		
	Connection		
	Fence		
	Lined Channel		
	Watercourse		

Water

	Valve
	Hydrant
	Fitting
	Other Watercare Point Asset
	Other Watercare Linear Asset
	Local Pipe (Bulk)
	Local Pipe (In Service)
	Local Pipe (Abandoned)
	Transmission Pipe (In Service)
	Transmission Pipe (Out of Service)
	Transmission Pipe (Proposed)
	Pump Station
	Reservoir
	Other Structure (Local)
	Chamber (Transmission)
	Water Source (Transmission)
	Other Watercare Structures and Areas

Wastewater

	Fitting
	Fitting (Non Watercare)
	Manhole
	Pipe (Non Watercare)
	Local Pipe (Main / Service Line)
	Local Pipe (Abandoned)
	Local Pipe (Future)
	Transmission Pipe (In Service)
	Transmission Pipe (Out Of Service)
	Transmission Pipe (Proposed)
	Chamber
	Structure (Non Watercare)
	Pump Station
	Wastewater Catchment

Utilities

	Transpower Site
	Pylon (Transpower)
	220kv Line (Transpower)
	110kv Line (Transpower)
	33kv Line (Transpower) & Underground Line (Mercury)
	Transmission Line (Vector)
	Oil Services Pipeline [Wiri]
	Liquid Fuels Pipeline [Wiri to Marsden]
	High-Pressure Gas Pipeline (Vector & Orion)
	Medium-Pressure Gas Pipeline (Vector & Orion)
	Indicative Steel Mill Slurry Pipeline
	Indicative Steel Mill Water Pipeline
	Fibre Optic Cable (ARTA)
	Contour Interval

Legend
updated:
9/05/2018

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Hazards

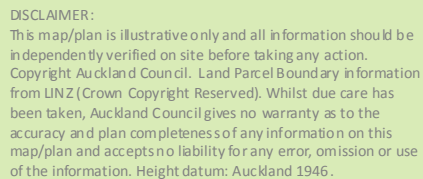
158-164 Central Park Drive Henderson

LOT 2 DP 464917

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Meters

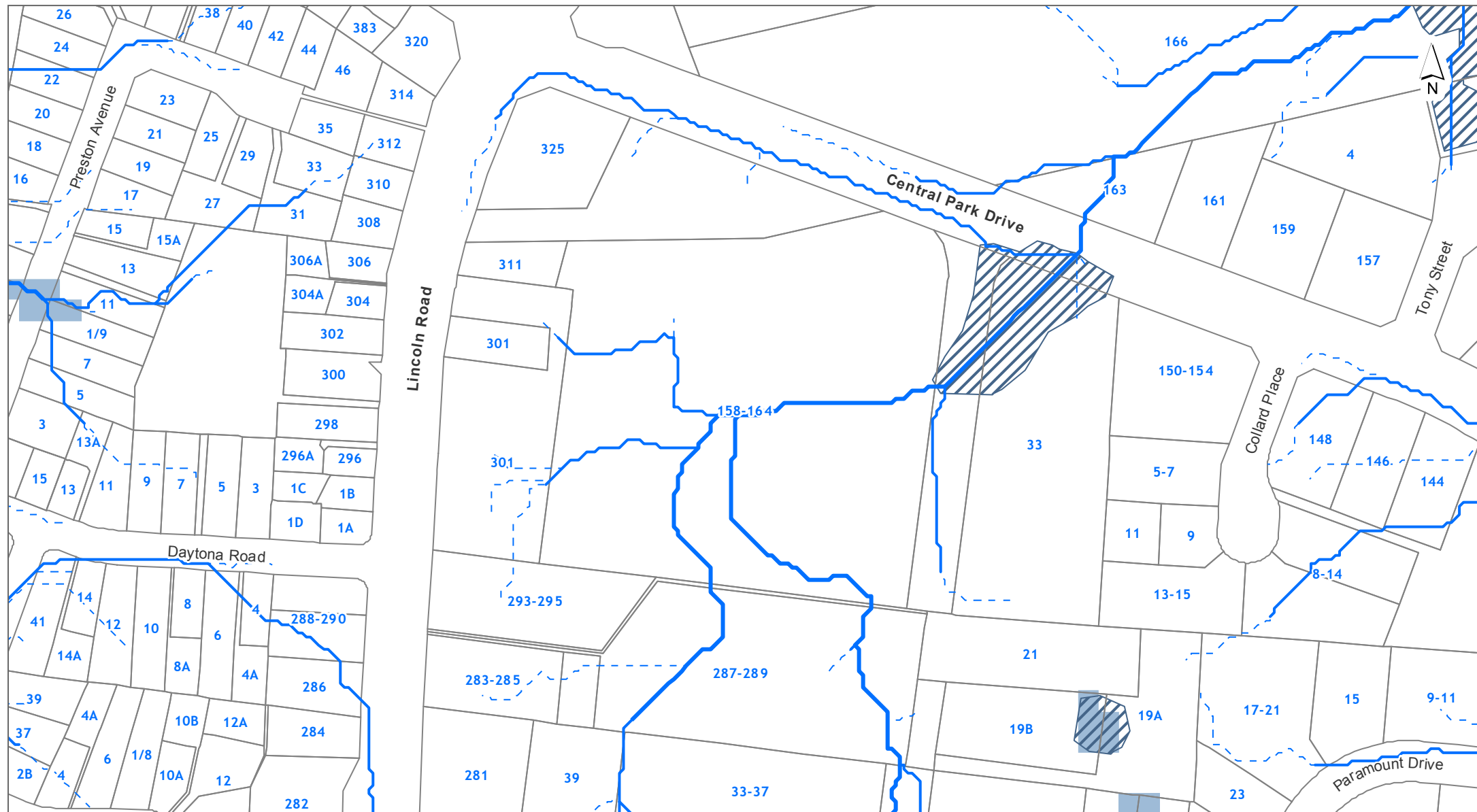
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Date Printed:
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LOT 2 DP 464917





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Natural Hazards - Flooding

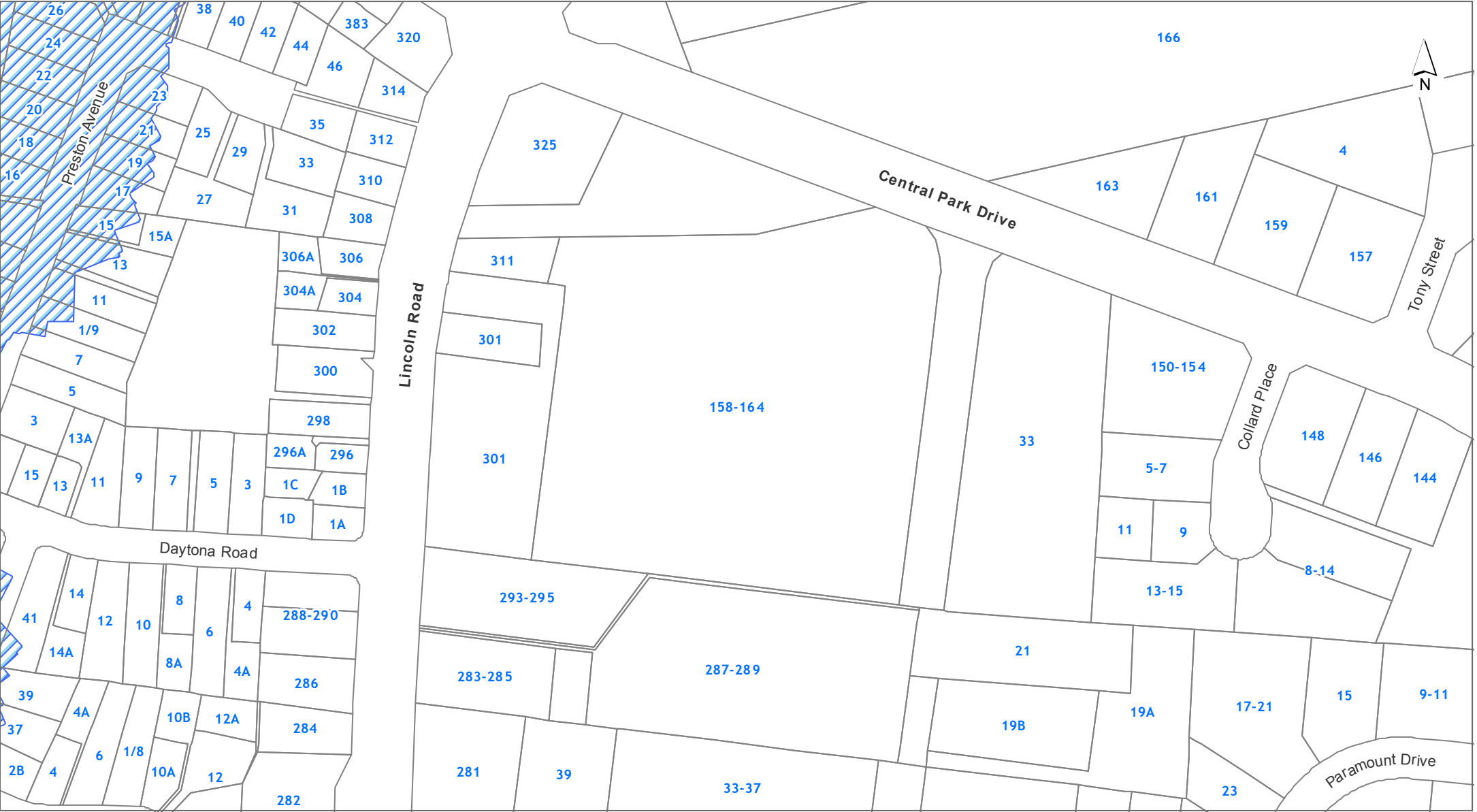
158-164 Central Park Drive Henderson

LOT 2 DP 464917

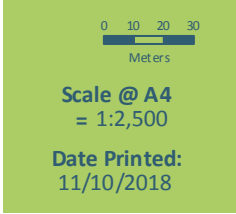
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Scale @ A4
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Date Printed:
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0 10 20 30
Meters

Scale @ A4
= 1:2,500

Date Printed:
11/10/2018

0 10 20 30
Meters

Scale @ A4
= 1:2,500

Date Printed:
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Natural Hazards - Volcanic Cones**158-164 Central Park Drive Henderson****LOT 2 DP 464917**

0 10 20 30
Meters

Scale @ A4
= 1:2,500

Date Printed:
11/10/2018

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Other

158-164 Central Park Drive Henderson

LOT 2 DP 464917


0 10 20 30
Meters

Scale @ A4
= 1:2,500

Date Printed:
11/10/2018
















Hazards

Soil Warning Area

-  Fill (Franklin District only)
-  Advisory (Franklin District only)
-  Contamination (Franklin District only)
-  Erosion (Franklin District only)
-  Hazardous Activities & Industries List (HAII) (Franklin District only)
-  Inundation (Franklin District only)
-  Rainfall Event (Franklin District only)
-  Slippage (Franklin District only)
-  Subsidence (Franklin District only)
-  Slippage / Subsidence / Erosion etc (Auckland City and Papakura District only)
-  Uncertified Fill (Auckland City and Papakura District only)
-  Organic Soil (Auckland City and Papakura District only)
-  Filled / Weak Ground (Auckland City and Papakura District only)
-  Refuse Tips Site / Weak Area (Auckland City and Papakura District only)
-  Unstable / Suspected Ground (Auckland City and Papakura District only)
-  Allochthon Waitemata (Rodney District only)
-  Motatau Complex (Rodney District only)
-  Puriri Mudstone (Rodney District only)
-  Mahurangi Limestone (Rodney District only)
-  Mangakahia Complex (Rodney District only)
-  Hukerenui Mudstone (Rodney District only)
-  Whangai Formation (Rodney District only)
-  Tangihua Complex (Rodney District only)
-  within 150m of Northland Allochthon (Rodney District only)




Hazards

Soil Warning Area continued

-  Soil D (Rodney District only)
-  within 150m of Soil D (Rodney District only)
-  Soil C (Rodney District only)
-  within 150m of Soil C (Rodney District only)
-  Soil B (Rodney District only)
-  within 150m of Soil B (Rodney District only)
-  Soil A (Rodney District only)
-  Gas Main Pipeline
-  Petroleum Pipeline
-  Closed Landfill (Auckland Council owned)
-  Closed Landfill (Privately owned)
-  Air Discharge (Franklin District only)
-  No Soakage (Franklin District only)
-  Indicative Steel Mill Slurry Line 20m Buffer (Franklin District only)
-  Indicative Steel Mill Water Line 20m Buffer (Franklin District only)

Natural Hazards

Overland Flow Path

-  Catchment area 2000m² to 3999 m²
-  Catchment area 4000 m² to 3 Ha
-  Catchment area 3 Ha and above

 1% AEP Flood Plain




 Flood Prone Areas

 Flood Sensitive Areas

 Sea Spray








 Volcanic Cones

Coastal Inundation

-  1% AEP
-  1% AEP plus 1m sea level rise
-  1% AEP plus 2m sea level rise

Other

Cultural Heritage Index

-  Archaeological Site
-  Hayward and Diamond
-  Historic Botanical Site
-  Historic Structure
-  Maori Heritage Area
-  Maritime Site
-  Reported Historic Site

The information Council holds in relation to Special Land Features differs based on the area a property is located in. Those areas where information is held on a Special Land Feature is denoted in the legend above.

Legend updated: 12/06/2018

Application for a Right of Way under Section 348 of the Local Government Act 1974



1. Application description

Application number:	SUB-2015-1235
Applicant's name:	Magsons Investments Ltd
Site addresses:	309 Lincoln Road, Henderson
Legal description:	Lot 1 DP 471769 in favour of Lot 5 DP 471769
Site area:	6,492m ² and 4.6504ha
Operative plan:	Auckland Council District Plan (Waitakere Section)
Zoning:	Working (Lincoln) Human Environment General Natural Area
Proposed Auckland Unitary Plan ("PAUP") Zoning & Precinct:	Mixed Housing Suburban
Special features, overlays etc:	High Land Transport Route – Noise Air Quality Transport Quality Separation Heavy Industry – Air Quality

Locality Plan



Figure 1: Site Location.

Background

The site has been subject to a number of resource consent applications (including variations to consent) to enable the establishment of a mixed-use commercial development containing a mix of retail, restaurants, cafes and a childcare.

Of particular relevance is LUC-2014-1428 which enabled the development of a commercial building (comprising of individual tenancies with varying floor areas and a second storey childcare), and a standalone fast food outlet on what is identified as Lot 1 DP 471769.

LUC-2014-1428 provided for access through to the adjoining Lot (Lot 5 DP 471769) which is understood to contain large format retail in the form of a home wares store. This access was assessed and approved by Council and included a noticeable “kink” to align with the layout (carpark) proposed for Lot 5 DP 471769. The layout for this carpark has since changed and Council has accepted the realignment of the access on Lot 1 DP 471769 to remove the “kink” in order to provide appropriate access through to Lot 5 DP 471769. As a result of this however, the realignment falls outside that of the subdivision approved Easement “A” and as such, the applicant has sought for this easement to be changed to reflect the changes to the access, of which this application seeks to achieve.

3. Statutory assessment

The amendment to the existing Right of Way requires consideration under Section 243(e) of the Resource Management Act 1991 (RMA) and Section 348 of the Local Government Act 1974 (LGA).

With respect to Section 243(e) of the RMA, the territorial authority may at any time, whether before or after the survey plan has been deposited in the Land Registry Office or the Deeds Register Office, revoke the condition in whole or part. In this instance, the applicant proposes to revoke Right of Way easement A in order to enable the realignment of the Right of Way being Easement Z.

With respect to Section 348 of the LGA, no person shall lay out or form any private way without prior permission for the council. In this instance, with the removal of Easement Area A, the applicant seeks Council’s permission to accept the realignment of the Right of Way as per Easement Z. This realignment will provide legal access for Lot 5 DP 471769 over Lot 1 DP 471769.

The assessment of the access has been undertaken as part of the original land use consent for a multi-unit commercial development under LUC-2014-1428. As this proposal does not involve any change to the physical construction/operation of this access, it is considered no further substantial assessment is considered necessary. The inherent purpose of this application is to formalise this access allowing a legal right for Lot 5 DP 471769 to gain access to their Lot over Lot 1 DP 471769.

4. Conclusion

The proposed Right of Way and service easements would legalise the intended use as described in Section 2 above to secure and register a Right of Way easement over Lot 1 DP 471769 in favour of Lot 5 DP 471769.

5. Recommended decision

That Right of Way Application Plan, SUB-2015-1235 being:

- The cancellation of Right of Way easement "A" as shown in approved survey plan 471769; and
- The establishment of a new Right of Way easement "Z" over Lot 1 DP 471769 in favour of Lot 5 DP 471769.

As shown on the scheme plan prepared by Axis Consultants Ltd, dated 29 July 2015 and referenced as 15255, Drawing Number RC01, Revision B, be **approved** pursuant to Section 348 of the Local Government Act 1974, and that:

6. Conditions

Section 348 Survey Plan Requirements

Provide a survey plan of the Right of Way easement to be certified by Auckland Council, pursuant to Section 348 of the Local Government Act 1974 and on payment of all outstanding fees as per Consent Condition 3 below.

General

1. The activity hereby approved shall be carried out in accordance with the plans and all information submitted with the application, being:
 - a. Application assessment prepared by Axis Consultants Ltd, dated July 2015, Referenced as 15255 and titled, *"Magsons Investments Ltd, 309 Lincoln Road, Henderson, Rights of Way Approval"*.
 - b. Scheme plan prepared by Axis Consultants Ltd, dated 29 July 2015 and referenced as 15255, Drawing Number RC01, Revision B.
2. The consent holder shall **cancel** Right of Way Easement "A" as shown in approved Survey Plan 471769 and **register** Right of Way Easement "Z" as shown on approved scheme plan prepared by Axis Consultants Ltd, dated 29 July 2015 and referenced as 15255, Drawing Number RC01, Revision B.

Fees

3. Pay to Council any administrative fees as incurred which will be charged at Councils advertised schedule of fees.

Invoices will be prepared by Western Resource Consenting Services. If paying by personal/company cheque the standard 5 days clearance will apply.

Expiry Date

4. This consent shall expire **three (3) years** following approval, being 14 August 2018.

Advice notes:

- (a) *Any agreements and arrangements to give effect to the Right of Way is the responsibility of the Consent holder and his neighbour/s. Council will not be liable for the internal agreement/s between the Consent holder and any other party(s) involved.*

(b) Pursuant to Section 348 of the Local Government Act 1974, unless given effect to earlier, this ROW consent shall lapse three (3) years after the granting of the consent.

Report Prepared by:



Jake Woodward

Intermediate Planner

Resource Consents

14 August 2015

Date

7. Consent granted as recommended

Acting under delegated authority and for the reasons set out in the above recommendation to SUB-2015-1235 at 309 Lincoln Road, Henderson shall be **granted** subject to the conditions set out in Section 5 above.

Approved By:



Sonja Lister

Team Leader

Resource Consents

14 August 2015

Date

13.0 RECOMMENDED DECISION

Pursuant to Sections 93, 94, 94A – 94D, 104, 104B, and 108 of the Resource Management Act 1991, **consent is granted** to the application by Margsons Hardware Ltd to undertake 17,300m³ of earthworks over an area of 43,000m², tree removals and development of a contaminated site (as more accurately defined in Sections 3 and 4 of this report) at 297-309 Lincoln Road, and 157 Central Park Drive being Lot 2 DP 131804 and Lot 1 DP 125187 for the following reasons pursuant to Section 113 of the RMA:

- (i) Any actual or potential effects on the environment by the proposal are considered to be minor because:
 - The proposed vegetation alteration would result in a no more than minor effect on subject to works being undertaken in accordance with modern arboricultural practices.
 - Earthworks proposed are temporary in nature only and can be adequately managed through appropriate sediment and erosion control measures to ensure water quality is maintained.
 - The proposed development would not detract from the visual or landscape amenities of the site or cause detriment to nearby amenity in terms of noise, or increased traffic generation.
 - The adverse effects of the proposed works will be adequately avoided, remedied or mitigated by the conditions of consent.
- (ii) The proposal is considered to be consistent with the relevant assessment criteria, objectives and policies of the Waitakere City Council District Plan.
- (iii) The proposal is not contrary to Part II of the Resource Management Act.

Conditions imposed on the consent are as follows:

GENERAL

- (1) The development shall proceed in accordance with the plans titled:
 - 'Collards Mixed Use Development 297-309 & 156 Central Park Drive, Henderson', Sheet title – 'Earthworks Plan', prepared by B Xiao, dated August 2009. Project Number – 5548-03 Sheet 200 Revision A.
 - 'Collards Mixed Use Development 297-309 & 156 Central Park Drive, Henderson', Sheet title – 'Cut-Fill Depth Plan', prepared by B Xiao, dated August 2009. Project Number – 5548-03 Sheet 201 Revision A.
 - 'Collards Mixed Use Development 297-309 & 156 Central Park Drive, Henderson', Sheet title – 'Earthworks Cross Sections Plan 1 of 4', prepared by B Xiao, dated August 2009. Project Number – 5548-03 Sheet 202-1 Revision A.
 - 'Collards Mixed Use Development 297-309 & 156 Central Park Drive, Henderson', Sheet title – 'Earthworks Cross Sections Plan 2 of 4', prepared by B Xiao, dated August 2009. Project Number – 5548-03 Sheet 202-2 Revision A.
 - 'Collards Mixed Use Development 297-309 & 156 Central Park Drive, Henderson', Sheet title – 'Earthworks Cross Sections Plan 3 of 4', prepared by B Xiao, dated August 2009. Project Number – 5548-03 Sheet 202-3 Revision A.
 - 'Collards Mixed Use Development 297-309 & 156 Central Park Drive, Henderson', Sheet title – 'Earthworks Cross Sections Plan 4 of 4', prepared by B Xiao, dated August 2009. Project Number – 5548-03 Sheet 202-4 Revision A.

- o 'Collards Mixed Use Development 297-309 & 156 Central Park Drive, Henderson', Sheet title – 'Silt Control Plan', prepared by B Xiao, dated August 2009. Project Number – 5548-03 Sheet 203 Revision A.
- o 'Collards Mixed Use Development 297-309 & 156 Central Park Drive, Henderson', Sheet title – 'Silt Control Details 1 of 2', prepared by B Xiao, dated August 2009. Project Number – 5548-03 Sheet 204-1 Revision A.
- o 'Collards Mixed Use Development 297-309 & 156 Central Park Drive, Henderson', Sheet title – 'Silt Control Details 2 of 2', prepared by B Xiao, dated August 2009. Project Number – 5548-03 Sheet 204-2 Revision A.

and all referenced by Council as LUC 2009 – 0969 and the information, including further information, submitted with the application.

- (2) Pursuant to section 125 of the Resource Management Act 1991, this consent shall lapse after a period of five years after the commencement of the consent.
- (3) A copy of this Resource Consent shall be held on site throughout the period of work. Prior to works commencing, it shall be the responsibility of the consent holder to **explain the Conditions of Consent to all contractors, sub-contractors and work site supervisory staff who are carrying out any works associated with the project.** The contractor(s) shall hold a copy of the documentation on site and shall make all employees (including subcontractors) aware of their legal obligations to carry out all works in accordance with this documentation at all times. A copy shall be available for viewing in the site office.

MONITORING CHARGE

- (4) A consent compliance monitoring fee of **\$1500.00** (inclusive of G.S.T.) has been paid to the Council. This fee is to recover the actual and reasonable costs incurred ensuring compliance with the conditions of this consent. If, on inspection all conditions have not been satisfactorily met, a reinspection shall be required at the relevant hourly rate applicable at the time the reinspection is carried out. The resource consent holder shall be advised of any further monitoring fees if they are required.

Pre-Start Conditions

- (5) **Prior to works commencing**, organise a Pre-Start meeting onsite with Council's Environmental Monitoring Officer (EMO) and Parks Technical Officer Huw Hill-Male (Phone Council's Call Centre 839 0400 to arrange an inspection) to discuss the following:
 - The conditions of Resource Consent
 - The final location and design of the sediment and erosion controls.
 - Provide the name, phone number and signed confirmation that a road sweeping contractor has been engaged to sweep the roads on an as-needed basis to ensure storm water quality is not affected.
 - Designated site entry and stabilisation requirements.
 - Stockpile locations.
 - Earthworks Methodology
 - Location of tree protection fencing (See condition 23)
 - Any other matters arising

The Consent Holder's representative works arborist and chief site works Contractor are to be present. The Consent Holder's representative shall minute the meeting and circulate those minutes to all in attendance including the Council's EMO.

- (6) **Prior to works commencing**, a Traffic Management Plan (TMP) shall be submitted to Council's Roading Officers for approval. The TMP must be prepared by a qualified and experienced Site Traffic Management Supervisor (STMS) and shall be approved in writing prior to works commencing.
- (7) **Prior to works commencing** a contaminated soils Remediation Action Plan (RAP) is to be provided to the satisfaction of the Manager Resource Consents. This is to detail the methodologies for dealing with the contamination on site and should include the specific provisions and recommendations identified in the report by Groundwater & Environmental services, dated 9th August 2009 'Preliminary Environmental Site Investigation, 297 Lincoln Rd, Henderson'.

Earthworks Conditions

- (8) Unless altered by condition of consent, or written approval from the EMO, the earthworks shall be carried out in accordance with the Earthworks Management Plan submitted with the application, dated 28th August 2009, by CPG New Zealand Ltd. (Attached as Appendix One to the Consent)
- (9) Before commencement of any works and until completion of exposed site works, adequate sediment and erosion control measures in accordance with the Auckland Regional Council Technical Publication No. 90 "Erosion and Sediment Control Guideline for Earthworks" (latest edition) shall be constructed and maintained by the consent holder. The consent holder shall notify Council's Monitoring Officer – Resource Management (ph 8390400) when controls are in place. Work shall not commence until approval has been gained in writing from the Manager Resource Consents. The control measures must be maintained until the site has been adequately stabilised against erosion and sediment-laden run off.
- (10) The consent holder shall submit a certificate signed by an appropriately qualified and experienced professional engineer, or provide documented evidence from the ARC, to certify that the erosion and sediment controls have been constructed in accordance with the Auckland Regional Council Technical Publication No. 90 "Erosion and Sediment Control Guideline for Earthworks" (latest edition) within 7 days following the construction of the controls. Certified controls shall include sediment retention ponds, diversion channels/bunds and check dam structures. This requirement shall also apply to sediment retention facilities that are constructed during the site development as specified above.
- (11) At all stages of work, copies of all the documentation as specified in the recommendation shall be given to the contractor(s). The contractor(s) shall hold a copy of the documentation on site and shall make all employees (including subcontractors) aware of their legal obligations to carry out all works in accordance with this documentation at all times. A copy shall be available for viewing in the site
- (12) All dirt tracked onto the surrounding roads as a result of the development covered by this consent shall be cleaned by sweeping on a daily basis at the expense of the applicant. The applicant shall also nominate a road sweeping contractor and provide Council's EMO with the contact details. In the case of repeated non-compliance the road sweeping contractor maybe engaged by Council's EMO at the applicants cost. Wheel wash facilities must also be employed by the applicant if deemed necessary by Council at the time. At no time shall any dirt on the roads be washed down with water
- (13) Footpaths, berms and kerbs shall be protected from damage by crossing or parking vehicles to the satisfaction of the Manager Resource Consents. Any damage which is attributed to the earthworks operation shall be rectified at the cost of the consent holder and at the direction of Council.

Contamination Conditions

- (14) Dust mitigation shall be utilised onsite for the entire duration of the earthworks and shall include but not be limited to:
- the use of wheel wash facilities
 - the watering of all haul roads
 - the immediate mulching/grassing of stockpiled materials
 - staging of works where necessary
 - watering of any trouble spots identified onsite by Council staff
 - location of haul roads and stockpiles away from residential properties
- all to the satisfaction of the Manager, Resource Consents.
- (15) All areas of exposed earth shall be top-soiled and grassed or otherwise stabilised against erosion as soon as practicable and in a progressive manner as works are complete but no later than one week following the completion of works.
- (16) Any material to be removed from site shall be stockpiled, covered and tested for horticultural contaminants (As, Cu, Pb, and Organo-chlorines) prior to disposal. Soils containing contaminant concentrations exceeding the ARC Permitted Activity Criteria shall be sent to a specialised wastes landfill. Soils containing contaminant concentrations within the ARC Permitted Activity Criteria may be disposed of to another registered landfill. Evidence of correct disposal by way of invoices or tip receipts are to be provided to the satisfaction of the EMO.
- (17) All vehicles shall have the tyres checked and cleaned if required prior to leaving the site to prevent deposition of material beyond the site boundaries. Any material inadvertently deposited on the street in the vicinity of the site shall be removed immediately and disposed of appropriately, at the expense of the consent holder, to the satisfaction of the Manager, Resource Consents. It cannot be washed into Council's stormwater drains.
- (18) At the completion of all earthworks at the site, a Site Validation Report (SVR) shall be provided to the satisfaction of the Manager Resource Consents. The remaining soils shall be sampled and tested for arsenic, copper, lead and organo-chlorines to the standards set out in the ARC (2002) Draft Soil Sampling Protocol for Horticultural Sites, to show that the remaining soil on site meets ARC criteria for human health and discharge requirements as per the ARC Permitted Activity Criteria.

Public Drainage Infrastructure

- (19) Design, provide and install on-site stormwater management devices to mitigate against adverse effects on the environment, increased downstream flooding, or adverse effects on public infrastructure systems. Specific Requirements:
- (i) Maintain stormwater runoff flows, volumes, and timing to pre-development levels for the 100 year storm event(s).
 - (ii) Rainwater runoff from the future development must be collected and reused for non-potable purposes.
 - (iii) Construction of private drainage requires a building consent. Provide a private drainage As-Built plan for the property, prepared by a Chartered Professional Engineer, showing the stormwater management device(s) for each proposed Lot/Unit to the point of discharge.
- (20) Pursuant to Section 108(2)(d) a covenant is to be entered into, in favour of Council, to record that to mitigate against adverse effects on the environment, increased downstream flooding, increased stream channel erosion, or adverse effects on public infrastructure systems, on-site

stormwater management systems are required on a on-going and meet the following specific requirements:

- (i) Maintain stormwater runoff flows, volumes, and timing to pre-development levels for the 100 year storm event(s).
- (ii) Rainwater runoff from the future development must be collected and reused for non-potable purposes.
- (iii) On the second anniversary of the date of this consent, and at two yearly intervals thereafter, the owner (at the owner's expense) must provide to the Council a report from a Chartered Professional Engineer or Registered Drainlayer demonstrating that the stormwater management system, including mitigation measures and devices installed as the condition of this consent or as a condition of any future building consent for the proposed buildings, are functioning in accordance with their intended purpose.

Note: Council's Hazards and Special Features Register will be advised of the above requirements.

Vegetation Alteration

- (21) Vegetation alteration shall be limited to the removal of two protected trees being 1x *Camellia Camellia sp.* tree and 1x Manuka *Leptospermum scoparium* tree, and work within the dripline of four protected trees being 1x Common Oak *Quercus robur* tree, 2x Cork Oak *Quercus suber* trees and 1x Liquidambar *Liquidambar styraciflua* tree as also identified within the application and Arboricultural Assessment by Simon Miller for Peers Brown Miller Limited, dated August 2009.
- (22) All works pertaining to this Resource Consent shall be executed in accordance with the Arboricultural Assessment by Simon Miller for Peers Brown Miller Limited, dated August 2009, except where superseded by the following conditions:
- (23) Prior to works commencing a meeting shall be arranged by the consent holder so that the tree protection and proposed works procedures relating to retained vegetation can be explained by the consent holder and Works Arborist to any contractors and sub-contractors who shall be engaged to carry out any works associated with this consent. The minutes of this meeting shall be forwarded to Waitakere City Council Environmental Monitoring Officer (EMO) within 3 days of the meeting.
- (24) The removal of any protected trees as described in the application shall be undertaken by appropriately trained and skilled persons in accordance with modern arboricultural practices to avoid damage to or death of other protected vegetation growing beneath or alongside.
- (25) Immediately following the clearing works and prior to the commencement of any site works temporary protective fences shall be erected around vegetation on the site which is to be retained, in particular the Common Oak on the eastern boundary. The tree protection fence shall be robust and for the Oak located 1 metre beyond the dripline edge, or as far as practical beyond the edge of the dripline. The temporary protective fences shall remain in place throughout the duration of all site works. The position of the protective fence shall not be altered without the prior consent of Councils Environmental Monitoring Officer (ph 839 0400).
- (26) No works, storage of materials, cement/concrete washings and leaching of chemicals, tracking of any machinery, stockpiling of spoil, trenching or alteration of soil grade, or other contamination shall occur within those areas demarcated by a temporary protective fence.
- (27) Where excavation work is required beneath the dripline of any retained protected vegetation the works shall be undertaken in the best interest of the physiological and structural welfare of

the protected vegetation. All roots measuring 35mm or greater in diameter are to be retained, carefully worked around and protected. All roots less than 35mm diameter exposed in the course of excavation works, shall be pruned back cleanly using a sharp saw or a pair of secateurs past any point of fracture or damage. All retained and or cut roots shall be protected from drying out by a covering of hessian or similar material that is to be kept damp until the excavated area can be backfilled.

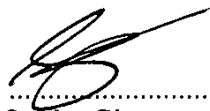
- (28) In any instance where the above condition cannot be met, approval for the removal of tree roots measuring 35mm or greater in diameter located within the dripline of any protected vegetation shall be obtained from the Works Arborist, prior to works commencing or continuing. The Works Arborist may carry out the removal of such roots only when he/she are satisfied that the health and safety of the subject vegetation will not be compromised.
- (29) When backfilling around retained roots a layer of at least 100mm of sand or topsoil shall surround all retained roots. All backfilling around retained roots shall be lightly compacted by hand.

Street Trees

- (30) The consent holder to contact the Parks Technical Officer (Huw Hill-Male on 836 8000 extn. 8513) at least 10 working days prior to any works commencing including clearance and construction works to determine site management conditions and works commencement.
- (31) Two (2) street trees Pohutukawa 'Maori Princess' (*Metrosideros excelsa*) shall be planted within the re-instated berm to the satisfaction of the Environmental Monitoring Officer and Parks Technical Officer. The planting shall be implemented in accordance with the Waitakere City Council Code of Practice for City Infrastructure and Land Development, published by the Council. In particular, street trees should be planted:
 - to avoid conflict with street lighting, street trees should not be planted within 10 metres of a street light
 - a minimum distance of 3 metres from driveways
 - that are of best nursery stock, healthy, vigorous and eco-sourced
 - that are a minimum street tree grade of PB 95.
- (32) Prior to the planting of the street trees required by condition 3 above, the consent holder shall contact Mr Roscoe Webb (Team Leader Operations and Contracts on 836 8000 extn. 8768) or Parks Technical Officer (Huw Hill-Male on 836 8000 extn. 8513) to determine the placement and condition of the trees. The name of the works contractor shall also be provided at this stage.
- (33) The consent holder is to be responsible for the maintenance of all street trees for a period of two years (from the date of its certified establishment from Council) including the replacement of any dead or dying vegetation, to the satisfaction of the Parks Consent Planner. The consent holder is to advise the Parks Consent Planner of a maintenance schedule and the name of the qualified person/company responsible for the planting maintenance.

Advice Notes:

- *Where indicated in the conditions it is the consent holder's responsibility to inform the Environmental Monitoring Officer when inspection is required. Inspections can be requested through the Call Centre on 839 0400.*
- *Prior to work commencing signage should be placed in appropriate locations to warn pedestrians and other road users of potential hazards.*
- *The consent holder will be required to obtain an Approval for Work Over Parkland consent.*



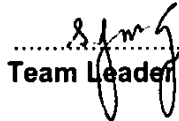
.....
Senior Planner
Sarah Glen

26/11/09

.....
Date:

14.0 CONSENT GRANTED AS RECOMMENDED

Acting under delegated authority and for the reasons set out in the above recommendation
LUC 2009 0969 consent shall be granted subject to the conditions set out in Section 13.0 above.



.....
Team Leader Consents

30/11/2009

.....
Date:

Please contact Sarah Glen (Ph 839 0400) if you have any queries about this resource consent and associated report.

14.0 RECOMMENDED DECISION

A. LAND USE – LUC 2009-847

Pursuant to Sections 93, 94, 94A – 94D, 104, 104B, and 108 of the Resource Management Act 1991, being satisfied that no body or person is adversely affected, **consent is granted** to the application by Magsons Hardware Ltd to undertake a four lot subdivision on land that is known to be contaminated (as more accurately defined in Sections 3 and 4 of this report) at 297-309 Lincoln Road and 156 Central Park Drive being Lot 2 DP 131804, Lot 1 DP125187 for the following reasons pursuant to Section 113 of the RMA:

- (i) The proposal provides adequate on-site amenities.
- (ii) Earthworks are consistent with the scale of development being undertaken and the immediate locality,
- (iii) The proposal would not cause detriment to matters of road safety, the functioning of Central Park Drive or Lincoln Road, or to the access / egress of neighbouring and nearby properties.
- (iv) The proposal is considered to be appropriate and will not adversely affect the amenity values of the surrounding environment. Any actual or potential effects on the environment are considered to be no more than minor and can be adequately avoided, remedied or mitigated by the conditions of consent.
- (v) The proposal satisfies the relevant objectives, policies, rules and other provisions of the Waitakere City Operative and Proposed District Plan
- (vi) Would not be contrary to Part II of the Resource Management Act 1991

Conditions imposed on the consent are as follows:

GENERAL

(GN 1) The development shall proceed in accordance with the plans titled:

- Titled 'Lots 1 to 4 being a proposed Subdivision of Lot 1 DP 125187 & Lot 2 DP 131804', Project No: 554803 - 002 Sheet 1 Revision B.

and all referenced by Council as LUC 2009 - 847 and the information, including further information, submitted with the application.

(GN 2) A copy of this Resource Consent shall be held on site throughout the period of work. Prior to works commencing, it shall be the responsibility of the consent holder to **explain the Conditions of Consent to all contractors, sub-contractors and work site supervisory staff who are carrying out any works associated with the project.**

MONITORING CHARGE

(MN 1) A consent compliance monitoring fee of \$728.00 (inclusive of G.S.T.) has been paid to the Council. This fee is to recover the actual and reasonable costs incurred ensuring compliance with the conditions of this consent. If, on inspection all conditions have not been satisfactorily met, a reinspection shall be required at the relevant hourly rate applicable at the time the re-inspection is carried out.

PRE-START CONDITIONS

(P 1) **Prior to works commencing**, organise a Pre-Start meeting onsite with Council's Environmental Monitoring Officer (EMO) (Phone Council's Call Centre 839 0400 to arrange an inspection) to discuss the following:

- The conditions of Resource Consent
- The final location and design of the sediment and erosion controls.
- Provide the name, phone number and signed confirmation that a road sweeping contractor has been engaged to sweep the roads on an as-needed basis to ensure storm water quality is not affected.
- Designated site entry and stabilisation requirements.
- Stockpile locations.
- Earthworks Methodology
- Location of tree protection fencing (See condition 23)
- Any other matters arising

The Consent Holder's representative works arborist and chief site works Contractor are to be present. The Consent Holder's representative shall minute the meeting and circulate those minutes to all in attendance including the Council's EMO.

(P 2) **Prior to works commencing**, a Traffic Management Plan (TMP) shall be submitted to Council's Roading Officers for approval. The TMP must be prepared by a qualified and experienced Site Traffic Management Supervisor (STMS) and shall be approved in writing prior to works commencing.

(P 3) **Prior to works commencing** a contaminated soils Remediation Action Plan (RAP) is to be provided to the satisfaction of the Manager Resource Consents. This is to detail the methodologies for dealing with the contamination on site and should include the specific provisions and recommendations identified in the report by Groundwater & Environmental services, dated 9th August 2009 'Preliminary Environmental Site Investigation, 297 Lincoln Rd, Henderson'.

EARTHWORKS (REFER TO LUC-2009-969)

(E 1) Before commencement of any works and until completion of exposed site works, adequate sediment and erosion control measures in accordance with the Auckland Regional Council Technical Publication No. 90 "Erosion and Sediment Control Guideline for Earthworks" (latest edition) shall be constructed and maintained by the consent holder. The consent holder shall notify Council's Monitoring Officer – Resource Management (ph 8390400) when controls are in place. Work shall not commence until approval has been gained in writing from the Manager Resource Consents. The control measures must be maintained until the site has been adequately stabilised against erosion and sediment-laden run off.

(E 2) The consent holder shall submit a certificate signed by an appropriately qualified and experienced professional engineer, or provide documented evidence from the ARC, to certify that the erosion and sediment controls have been constructed in accordance with the Auckland Regional Council Technical Publication No. 90 "Erosion and Sediment Control Guideline for Earthworks" (latest edition) within 7 days following the construction of the controls. Certified controls shall include sediment retention ponds, diversion channels/bunds and check dam structures. This requirement shall also apply to sediment retention facilities that are constructed during the site development as specified above.

(E 3) At all stages of work, copies of all the documentation as specified in the recommendation shall be given to the contractor(s). The contractor(s) shall hold a copy of the documentation on site and shall make all employees (including subcontractors) aware of their legal

obligations to carry out all works in accordance with this documentation at all times. A copy shall be available for viewing in the site

- (E 4) All dirt tracked onto the surrounding roads as a result of the development covered by this consent shall be cleaned by sweeping on a daily basis at the expense of the applicant. The applicant shall also nominate a road sweeping contractor and provide Council's EMO with the contact details. In the case of repeated non-compliance the road sweeping contractor maybe engaged by Council's EMO at the applicants cost. Wheel wash facilities must also be employed by the applicant if deemed necessary by Council at the time. At no time shall any dirt on the roads be washed down with water
- (E 5) Footpaths, berms and kerbs shall be protected from damage by crossing or parking vehicles to the satisfaction of the Manager Resource Consents. Any damage which is attributed to the earthworks operation shall be rectified at the cost of the consent holder and at the direction of Council.

CONTAMINATION (REFER TO LUC2009-969)

- (C 1) Dust mitigation shall be utilised onsite for the entire duration of the earthworks and shall include but not be limited to:
- the use of wheel wash facilities
 - the watering of all haul roads
 - the immediate mulching/grassing of stockpiled materials
 - staging of works where necessary
 - watering of any trouble spots identified onsite by Council staff
 - location of haul roads and stockpiles away from residential properties
- all to the satisfaction of the Manager, Resource Consents.
- (C 2) All areas of exposed earth shall be top-soiled and grassed or otherwise stabilised against erosion as soon as practicable and in a progressive manner as works are complete but no later than one week following the completion of works.
- (C 3) Any material to be removed from site shall be stockpiled, covered and tested for horticultural contaminants (As, Cu, Pb, and Organo-chlorines) prior to disposal. Soils containing contaminant concentrations exceeding the ARC Permitted Activity Criteria shall be sent to a specialised wastes landfill. Soils containing contaminant concentrations within the ARC Permitted Activity Criteria may be disposed of to another registered landfill. Evidence of correct disposal by way of invoices or tip receipts are to be provided to the satisfaction of the EMO.
- (C 4) All vehicles shall have the tyres checked and cleaned if required prior to leaving the site to prevent deposition of material beyond the site boundaries. Any material inadvertently deposited on the street in the vicinity of the site shall be removed immediately and disposed of appropriately, at the expense of the consent holder, to the satisfaction of the Manager, Resource Consents. It cannot be washed into Council's stormwater drains.
- (C 5) At the completion of all earthworks at the site, a Site Validation Report (SVR) shall be provided to the satisfaction of the Manager Resource Consents. The remaining soils shall be sampled and tested for arsenic, copper, lead and organo-chlorines to the standards set out in the ARC (2002) Draft Soil Sampling Protocol for Horticultural Sites, to show that the remaining soil on site meets ARC criteria for human health and discharge requirements as per the ARC Permitted Activity Criteria.

INFRASTRUCTURE

- (I 1) All infrastructure (including financial contributions) relating to stormwater treatment and disposal, wastewater disposal, and water supply shall be to the satisfaction of Eco-Water. Compliance with the Waitakere City Council Code of Practice for City Infrastructure and Land Development is deemed to be in accordance with this condition. Refer to Subdivision Conditions below in the associated subdivision SUB-2009-849 for further details.

FEES, BONDS & CONTRIBUTIONS

- (FC 1) Pursuant to Section 108(2)(b) and Section 108A, and in accordance with Council's Code of Practice for City Infrastructure and Land Development, the applicant is required to provide a maintenance bond to Council, equivalent to 2½% (minimum \$2500.00) of the value of works being taken over by Council. Maintenance of these assets are the responsibility of the developer during the maintenance period. At the end of the maintenance period the QA Supervisor will undertake a maintenance inspection to ascertain whether the assets are still in satisfactory condition and if so, will instruct the bond to be released, and Council will take over maintenance responsibilities from that time forward. Where defects occur during the developer's maintenance liability period, the costs of repairing such defects are the full responsibility of the developer. Where the developer does not repair the defects, Council will retain the bond monies for use in repairing the defects, and refund any residual monies held to the developer. The developer's liability is not limited to the amount of the maintenance bond, and any additional costs will be invoiced to the developer and will become a debt due to the Council.

Advice Notes:

- (AV 1) Where indicated in the conditions it is the consent holder's responsibility to inform the Environmental Monitoring Officer when inspection is required. Inspections can be requested through the Call Centre on 839 0400.
- (AV 2) Pursuant to section 125 of the Resource Management Act 1991, this consent shall lapse after a period of five years after the commencement of the consent.
- (AV 3) Subject to the specific approval of the Senior Drainage Engineer and Senior Water Engineer, Council may contribute towards the cost of the developer constructing catchment wide stormwater treatment devices and one of the 180dia water mains that are above the minimum standard required in the Code of Practice to service their subdivision, and where there are benefits to Council and community beyond the limits of their development. Based on the information submitted with the application, Council will contribute 60.7% of the construction cost towards the catchment-wide treatment device and 50% of the construction cost (not on the design etc) 180dia water main on one side of the road (On the side of proposed Lot 3 on the Water Supply Plan (Sheet: 600; Rev: B, dated October 09, by CPG New Zealand Ltd)), of providing the works specified in the subdivision conditions (DE 3) and (DE 5). The applicant is required to obtain three separate quotes for the approved engineering works, and submit these quotes to Council for approval prior to commencing works. Council reserves the right to specify which quote the applicant is required to accept. Upon issue of the QA Completion Certificate, or application for 224c certificate, the applicant is required to provide copies of all invoices relative to construction of the works that Council has agreed to contribute towards. The final contribution amount will be based on the actual invoiced costs of providing the agreed services, and payments will only be made after issue of the QA Completion Certificate.

B. SUBDIVISION – SUB 2009-847

That Subdivision Consent Application SUB 2009-847 being a controlled activity and being a 4 - Lot Subdivision of Lot 1 DP 125187 and Lot 2 DP 131804 comprised in CT NA 73A/303 and CT NA77B/52 situated at 297-309 Lincoln Road and 156 Central Park Drive by Magsons Hardware Ltd be granted subdivision consent pursuant to Section 104, 104C, 108 and 220 of the Resource Management Act 1991, and that:-

Pursuant to Section 113 of the Resource Management Act, the reasons for granting consent are as follows;

- 1) No persons may be adversely affected by the proposal.
- 2) The proposal has been considered in terms of the relevant assessment criteria, meets the relevant policies and objectives of the District Plan, and would create no more than minor adverse effects on the environment.
- 3) The proposal is not contrary to Part II of the Act.

Conditions imposed on the consent are as follows:

1: SECTION 223 REQUIREMENTS

A survey plan of the subdivision will be approved pursuant to Section 223 of the Act provided that the survey plan signing fee has been paid and that the following conditions have been complied with to the satisfaction of Council.

- (a) The Survey Plan shall be in accordance with the plans titled 'Lots 1 to 4 being a proposed Subdivision of Lot 1 DP 125187 & Lot 2 DP 131804', Project No: 554803 - 002 Sheet 1 Revision B. and all referenced by Council as SUB 2009-847 and the information submitted with the application (including further information).
- (b) Provide drainage easements (for the services through Lots to protect the existing or proposed connections) in a Memorandum of Easements endorsed on the survey plan. Include in the Section 223 approval on the plan, "subject to the granting or reserving of the easement(s) set out in the Memorandum hereon."
- (c) Provide Right of Way access over Lot 1 in favour of Lot 2 for future access arrangements.
- (d) Provide for Underground Services easements for Lots 1, 2, 3 and 4 in the Memorandum of Easements endorsed on the survey plan.

Advice Notes

Take note that street numbers for the lots on the survey plan will be allocated by Council subsequent to Section 223 approval, and these numbers must be used for future applications for building consent. A copy of the survey plan with the Council allocated numbers will be provided.

The application requesting the 223 certification shall be in writing, shall state the LINZ allocated number, shall have attached a cheque for the advertised S223 processing fee, shall address how each of the following conditions have been satisfied. The Landonline documentation shall include the S223 and any other TA Certificates applicable. Note that the TA Ref. is SUB 2009-847.

The applicant must ensure that placement of the services and driveway/s occurs entirely within the easement/s and/or lot boundaries as shown.

2: SECTION 224C REQUIREMENTS

Prior to the release by the Council of the Section 224(c) compliance certificate for this subdivision the applicant shall comply with the following conditions to the satisfaction of Council:-

Note: The application requesting the 224 release shall be in writing, shall include the advertised processing fee, shall address how each of the following conditions have been satisfied, and shall be accompanied with Compliance Certificates from each of Council section(s) named below.

PUBLIC DRAINAGE INFRASTRUCTURE

- (DE 1) Design, provide and install a complete public wastewater reticulation system to serve all Lots/Units in compliance with Council's Code of Practice for City Infrastructure and Land Development (Refer Section 5.0). Provide engineering plans and calculations to Council for approval prior to commencing works. Specific requirements:
- (i) Provide each Lot/Unit with a separate public connection at the lowest point within the boundary.
 - (ii) Reroute public drains outside building platforms and large commercial buildings.
- (DE 2) Design, provide and install a complete public stormwater drainage system to serve all Lots/Units in compliance with Council's Code of Practice for City Infrastructure and Land Development (Refer section 4.0). Provide engineering plans and calculations to Council for approval prior to commencing works. Specific requirements:
- (i) Provide each Lot/Unit with a separate public connection at the lowest point within the boundary.
 - (ii) Reroute public drains outside building platforms and large commercial buildings.
 - (iii) The abandoned drainage must be either removed or grout filled under a structural engineer. If removed, provide certification from Geotech engineer for trench filling. In case of grout filling, certification must be provided by Chartered professional engineer for that.
- (DE 3) Design, provide and install a complete stormwater quality treatment system for the site in accordance with the Auckland Regional Council's TP10 'Stormwater Management Devices Design Guideline Manual', and WCC Code of Practice for City Infrastructure and Land Development (refer Section 4). Provide a copy of the ARC consent conditions, engineering plans and calculations to Council for approval prior to commencing works. Specific requirements:
- (i) Provide in the design of the device for treatment of a fully developed upstream catchment.
 - (ii) Provide a surveyed as-built plan of the device showing all lid and invert levels and permanent water level.
 - (iii) Provide a maintenance manual for the treatment device.
 - (iv) Provide a utility reserve / easement over the entire area occupied by the treatment device and all areas necessary to access and maintain the treatment device.

- (DE 4) Design, provide and install a complete public water supply reticulation system and fire fighting services to serve all Lots/Units in compliance with Council's Code of Practice for City Infrastructure and Land Development (Refer section 6). Provide engineering plans and calculations to Council for approval prior to commencing works. Specific requirements:
- (v) All Lots/Units are to be individually metered at the road reserve boundary. Ducting of private lines is recommended where they cross driveways.
 - (vi) Locate all water connections at the same position as the power and telephone connection to each Lot/Unit.
 - (vii) Construct 180OD water mains both sides of the proposed public road, to allow connection to the mains in Soljan Drive, and also construct a road crossing at the dead end of the proposed public road at Soljan Drive's side. Install new Fire Hydrants within the proposed road to service the proposed development.
 - (viii) Pay to the Council the cost of supervising the shut down of Council's water supply mains. This service includes Council providing written advice to all affected property owners and tenants.
- (DE 5) **Engineering Approval and Quality Assurance Process:** Public infrastructure works, as conditioned above, require Council's approval of engineering plans and specifications prepared by the applicant's engineer in accordance with Council's Code of Practice for City Infrastructure and Land Development.
- (ix) Submit full engineering plans, long sections and calculations, prepared in accordance with Council's Code of Practice, to Council for approval.
 - (x) Provide an assessment (via CCTV inspection) the condition of the existing downstream stormwater drains extending to the outlet prior of engineering approval to confirm the assumed capacity of the drains.
 - (xi) Advise the name of the appointed developer's representative fulfilling engineering responsibilities as detailed in section 1.4.1 of the Code of Practice.
 - (xii) After engineering approval has been given and prior to commencing construction, contact Council's Call Centre on 839 0400 to arrange a QA Pre-Start Meeting. Allow 3 working days for the QA Pre-Start Meeting to be booked.
 - (xiii) The applicant is required to ensure that the contracted drainlayer and developer's representative attend the QA Pre-Start Meeting, and that construction materials are on-site for inspection.
 - (xiv) EcoWater's QA Supervisor will then undertake random site inspections throughout the construction process.
 - (xv) Upon completion of construction the applicant's surveyor is required to prepare As-Built plans in accordance with the Code of Practice, and CCTV inspection of the drains are to be carried out.
 - (xvi) The developer's representative is required to fully inspect the drainage including overseeing the drainage tests, view the cctv's and check against the as-builts, and ensure that any remedial works are completed.
 - (xvii) When the developer's representative is satisfied that all works meet Council standards, they are required to complete the 'QA Final Inspection Request Form' and lodge this at Council together with As-Builts, CCTV (all footage on one DVD), log sheets, chlorination certificate for water mains, and inspection reports.
 - (xviii) EcoWater's QA Supervisor will check all information against the approved design and Code of Practice, then undertake a field check and testing of the new drainage systems in conjunction with Council's approved maintenance contractor.
 - (xix) When all public works and documentation are completed to Council's satisfaction the QA Completion Certificate will be issued to the applicant.
 - (xx) Submit a copy of the QA Completion Certificate with the application for s224c Certificate as evidence of compliance with the conditions of consent requiring construction of infrastructure to public standards.

- (xxi) Pay all of Council's engineering fees and costs associated with engineering approvals, quality assurance site inspections, as-built & cctv approvals, final inspections, testing and bond management.

TRANSPORT ASSETS

Please contact the Transportation Engineer on 836-8000 (extension 8793) to book an inspection.

- (TA 1) Before commencement of work, obtain the approval of Council to engineering plans and specifications prepared in accordance with Council's "Code of Practice for City Infrastructure and Land Development" detailing the nature and extent of any proposed work; and pay the
- (TA 2) Before commencement of work, obtain the approval of Council to a traffic management plan (TMP) and apply for a road opening notice (RON). These approvals are provided by the Field Services unit.

ROADING

- (RD 1) Take note that the street intersection geometry, street furniture and safety features will be finalised through the engineering plan approval process.
- (RD 2) Design, form and completely construct the proposed new road (Lot 4) in accordance to Council's Code of Practice for City Infrastructure and Land Development to the satisfaction of the Council and at the full costs of the applicant.
- Notes:
- (1) Street tree planting shall be carried out (subject to prior approval of a plan showing the location and the species to be used) to the satisfaction of the Service Manager: Parks & Open Spaces.
 - (2) The intersection geometry, street furniture and safety features will be finalised through the engineering plan approval process.
 - (3) Footpath and grassed berm shall be provided full length on both sides of the road.
 - (4) Design a basic future traffic signalisation layout for the intersection with Central Park Drive to the satisfaction of the Manager Transport Services and provide agreed underground cable ducting only as part of the road construction.
- (RD 3) Ensure, where practicable, that not less than a 150mm deep layer of topsoil free of deleterious material is replaced on all allotments to the satisfaction of the Council.

ROAD TO VEST

- (RD 4) Take note that Lot 4 shall vest in the Waitakere City Council as road pursuant to Section 238 of the Act.
- (RD 5) Provide to Council prior to the release of the 224 Certificate, all RAMM as-built plans & data for the new road formed (electronic and compatible with WCC GIS system). This will be inclusive of kerb lines, cesspits, street lighting, footpaths, intersection control devices, pavement markings and signs, street furniture, landscaping and property boundaries.

PARKS/STREET TREES

- (PK 1) A Street Tree Plan is to be provided to the Parks Consent Planner for approval at least two months prior to landscape works commencing. All trees will be located in accordance with the requirements of the Code of Practice and tree species should be selected from the tree selected provide in section 7 of the Code of Practice and final species to be approve by the Parks Consent Planner. The following tree species are considered to be most appropriate for the proposed new road:
- *Alectryon excelsus*, Titoki;
 - *Magnolia grandifolia*
 - *Metrosideros excelsa*, Pohutukawa (near the intersection with Central Park Drive)
- (PK 2) The consent holder is to ensure there is sufficient space within the berm to allow for planting street trees to the satisfaction of the Parks Consent Planner and must provide cross section drawings showing the location of the berm, underground services and street trees to be provided to the Parks Consent Planner together with the street tree plan.
- (PK 3) A pre-start meeting shall be held on site with the Parks Consent Planner prior to landscape works commencing. This meeting will discuss the site layout, species and works methodology. At the same time please advise the name of the nursery where plants are to be sourced and arrange for a pre-planting inspection to ensure the plant stock complies with the requirements of section 7 of the Code of Practice.
- (PK 4) All landscape works carried out in respect of this consent must comply with the relevant specifications of section 7 of the Council's Code of Practice and the Council's Native to the West publication. All plants must be staked and tied (if specimen trees), mulched (with aged wood mulch), eco-sourced (where possible), of healthy nursery stock and irrigated if required, to the satisfaction of the Parks Consent Planner. As well all edges within the road berm must be completed and finished to a level contour in line with the footpaths and will be grassed or vegetated up to the edge of the footpaths to the satisfaction of the parks consent planner.
- (PK 5) All areas of the road and reserve that have been grassed under this consent must be, on the completion of the works required under this consent and prior to the issue of a certificate under section 224(c) of the Resource Management Act 1991, mowed and weed free and have an 80% grass rate strike to the satisfaction of the parks consent planner.
- (PK 6) The consent holder is to be responsible for the maintenance of all street trees for a period of two years (from the date of its certified establishment from Council) including the replacement of any dead or dying vegetation, to the satisfaction of the Parks Consent Planner.
- (PK 7) The consent holder will pay to the Council a refundable maintenance bond in respect of all landscape planting approved under this consent and rubbish removal as well as a maintenance bond for weed management prior to the Issue of a section 224(c) certificate. The bond, based on \$7 per sq metre per annum for gardens/shrubbery, and \$75 per tree per annum, will be required to ensure the satisfaction of this condition. The consent applicant is to advise the Parks Consent Planner of a maintenance schedule and the name of the qualified person/company responsible for the planting maintenance.

Note: The consent holder may alternatively elect, rather than paying a maintenance bond, to pay a maintenance fee to the Council and the Council will carry out all maintenance work once

the works are completed under the landscape plan and the street tree planting plan. The consent holder will have no ongoing maintenance responsibility if this is elected.

ENVIRONMENTAL MONITORING CONDITIONS

These conditions will be signed off by Councils Environmental Monitoring, Consent Services. If any conditions require inspection prior to making an application for a certificate pursuant to 224(c), or as part of ongoing monitoring require inspections after the 224(c) certificate has been issued, please contact the duty planner on 839 0400 to arrange an inspection.

LEGAL DOCUMENTATION

These conditions will be signed off by Consent Services.

- (LD 1) Where any condition imposed upon this consent to subdivision is to be complied with on an ongoing basis by the subdividing owner and subsequent owners after the deposit of a survey plan (not being a condition in respect of which a Bond is required to be entered into by the subdividing owner of a completion certificate is capable of being or has been issued) the subdividing owner shall pay the Council's Solicitors legal costs and disbursements relating to the preparation and registration of a Consent Notice pursuant to Section 221 of the Resource Management Act 1991, and shall do all acts and things necessary to enable registration of such Notice to be completed.

FEES, BONDS & CONTRIBUTIONS

Invoices will be prepared by Consent Services. If paying by personal/company cheque the standard 5 days clearance will apply. If you require the 224C certificate immediately, you must provide a bank cheque.

- (FC 1) Pay to Council any engineering, works supervision, monitoring, 224(c) processing and administrative fees as incurred which will be charged at Councils advertised schedule of fees.
- (FC 2) Pay a reserve fund contribution equal to 6% of the market value, assessed at the date of s223 approval, of the additional allotments created by the subdivision.

(Note: The market value(s) will be assessed by a registered valuer engaged by the Council at the applicant's expense. If the applicant proposes to lodge applications for s223 approval and the s224(c) certificate contemporaneously the valuation process may delay issue of the s224(c) certificate and the applicant should consider that possibility when considering the timing of the valuation request. Payment of reserve fund contribution, and the costs of the valuation, must be made prior to the issue of the s224(c) certificate.)

- (FC 3) Pay to Council a street damage bond of \$5000 prior to the commencement of work. This bond shall be refunded in full after inspection by Council's Construction Supervisor confirms no damage to Council's roading assets has occurred. The inspection is to take place once all work is completed.
- (FC 4) Pay 2.5% maintenance deposit on the value of the works being taken over by Council which is refundable upon final acceptance of the works at the end of the maintenance period.

GENERAL

These conditions are to be signed off by Consent Services, fees will be charged on an hourly basis.

- (GL 1) Advise Council of the Land Transfer plan number allocated by Land Information New Zealand.
- (GL 2) Satisfy all requirements of the Inland Revenue Department in respect of Goods and Services Tax including any requirements that may be made in respect of proposed public services and land to vest in and be transferred to the Council.
- (GL 3) Advise Council the name of the Consultant and/or person/s who will be the developers representative fulfilling engineering responsibilities as detailed in section 1.4.1 of Councils Code of Practice for City Infrastructure and Land Development.
- (GL 4) Provide confirmation from a Licensed Cadastral Surveyor that all services and driveways have been located entirely within easement/s and/or lot boundaries to the satisfaction of the Manager: Resource Consents.
- (GL 5) Liaise with the Electrical Network Operator & Council and install for the subdivision site, an 'extension of the network' to a 'point of supply', acceptable to the Network Operator & Council. . Also install the reticulation of electric power to the body of Lot(s) X by underground methods.
- (GL 6) Install the reticulation of telecommunication services to the body of Lot 2 by underground methods. The completed installation is to be installed in compliance with the requirements of the Telecommunications Network Owner.

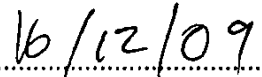
Advice Notes

- (AV 1) A Development Contribution is payable for this subdivision. This Development Contribution must be paid prior to the grant of a Certificate under S.224(c) Resource Management Act. The Development Contribution will be assessed at the time of payment. The estimate of the amount payable at the date of this consent is \$ **\$2,163,706.98** incl GST
- (AV 2) The granting of this resource consent does not in any way allow the applicant to enter and construct drainage within neighbouring property, without first obtaining the agreement of all owners and occupiers of said land to undertake the proposed works. Any negotiation or agreement is the full responsibility of the applicant, and is a private agreement that does not involve Council. Should any disputes arise between the private parties, these are civil matters which can be taken to independent mediation or disputes tribunal for resolution. It is recommended that the private agreement be legally documented to avoid disputes arising. To obtain sign-off for the resource consent, the services described by the conditions below are required to be in place to the satisfaction of Council.
- (AV 3) It is the applicant's responsibility to obtain stormwater discharge consent and all other necessary consents, or evidence of dispensation, from the Auckland Regional Council, pay all associated costs and comply with any conditions imposed by the Regional Council. Provide EcoWater with a copy of the ARC consent conditions. It may be necessary to apply for a variation to this WCC consent if the documentation or consent conditions approved by WCC and ARC are conflicting in any way. The applicant is required to obtain full signoff from ARC stating that the pipe network, outfall, treatment device and any other items covered by the consent have been established in accordance with the consent conditions, and pay all fees and charges from ARC up-to-date. Once this has been achieved, apply to transfer ownership of the ARC discharge consent to Waitakere City Council. Provide copies of relevant documentation from ARC to demonstrate that this has been completed.

- (AV 4) Pursuant to Section 125 of the Resource Management Act 1991 this consent shall lapse five (5) years after the grant date of the consent, if not given effect to earlier.

Note: The above time frame would be extended by the application and approval of the survey plan pursuant to Section 223 of the Act. However, work required for the completion of the subdivision that is subject to the land use consent above is subject to the timeframe specified in that consent. Should that time period lapse/expire prior to the completion of such works, then a new consent will be required before such work may (re)commence."


.....
Senior Planner
Sarah Glen


.....
Date:

15.0 CONSENT GRANTED AS RECOMMENDED

Acting under delegated authority and for the reasons set out in the above recommendation(s) A & B to LUC 2009-847 and SUB 2009-849 consent shall be granted subject to the conditions set out in Section 14.0 above.


.....
Team Leader Consents


.....
Date:

Please contact (Ph 839 0400) if you have any queries about this resource consent and associated report.

BEFORE THE ENVIRONMENT COURT

Decision No: [2011] NZEnvC **248**

IN THE MATTER of an appeal under Section [120] of the
Resource Management Act 1991

BETWEEN Laidlaw College Inc
(ENV-2011-AKL-000049)

New Zealand Retail Property Group
(NZRPG)
(ENV-2011-AKL-000051)

Magsons Hardware Ltd
(ENV-2011-AKL-000052)

Canam Corporate Holdings Ltd & The
Whitby Trust
(ENV-2011-AKL-000053)

New Zealand Transport Agency
(ENV-2011-AKL-000058)

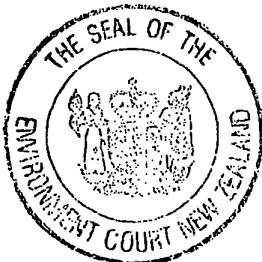
Appellants

AND Auckland Council (formerly Waitakere
City Council)

Respondent

AND Magson's Hardware Ltd

Applicant



Hearing at: Auckland, 24-27 January and 1 February 2011

Court: Environment Judge M Harland
Environment Commissioner K Edmonds
Environment Commissioner H McConachy

Appearances: Mr Brownhill for Magsons Hardware Ltd
Mr Braggins and Ms Obushenkova for New Zealand Retail
Property Group
Mr Lanning and Ms Hartley for New Zealand Transport Agency
Mr Casey, QC and Ms Davidson for Auckland Council

Date of Decision: 1 September 2011

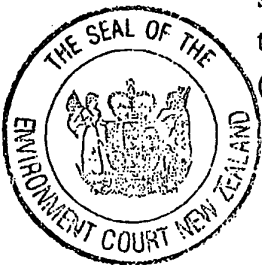
INTERIM DECISION OF THE ENVIRONMENT COURT

- A. Final consideration of the appeals is deferred to allow Magsons to advance the details of the proposed traffic mitigation with Auckland Transport and NZTA for the reasons outlined in this decision.
- B. A judicial telephone conference is to be convened in one month's time to review progress.

REASONS FOR DECISION

Introduction

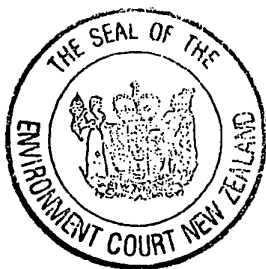
[1] Magsons Hardware Ltd ("Magsons") wants to build what may be the biggest store in New Zealand, a Mitre 10 Mega on the corner of Lincoln Road just off the motorway. As part of the development Magsons also proposes commercial office space on the rooftop of the Mitre 10 Mega store. The land is not zoned for a store of this scale and nature and is non-complying under the Waitakere City District Plan ("the District Plan").



[2] The Waitakere City Council ("**the Council**") granted consent to the proposal subject to conditions on 22 January 2010. Magsons appealed some of the conditions, and the New Zealand Transport Agency ("**NZTA**") and New Zealand Retail Property Group ("**NZRPG**") appealed the granting of consent, seeking that it be declined. Settlement was reached with three neighbouring landowners, Laidlaw College, Canam Corporate Holdings Limited and the Whitby Trust, who had also appealed the Council's decision, and the Court had consent memoranda in front of it to give effect to those settlements if it is minded to grant consent.

[3] Broadly speaking the main issues in contention related to the traffic effects arising from the proposal and whether or not the proposal was contrary to, or inconsistent with, the policies and objectives of the relevant planning instruments. The focus of the appeal by NZTA was (not surprisingly) on the traffic issue, with the NZRPG appeal concentrating on the planning issues. The NZRPG case included an argument that if consent was granted it would create an undesirable precedent affecting the integrity of the District Plan and lead to inappropriate use of industrial/commercial land. The approach taken by NZRPG invoked the response from Magsons that we should consider NZRPG's case against the backdrop of trade competition, given its commercial interest in providing large-format retail opportunities at its shopping centre/s. The Council took a neutral position on the appeals, but provided information particularly on the proposals for the road network in the vicinity of the site.

[4] The facts required to be considered under the legal criteria overlap, even though the analysis and evaluation of them is distinct and different tests apply. To avoid repetition of the facts, we intend to deal with them as topics under the headings of "traffic" and "planning", with the detailed issues and arguments specified and decided under each topic. Before doing so, an outline of certain background matters is required in order to give a context to them. The background matters include describing the site and its surrounding environment, summarising the details of the proposal and outlining the statutory and planning framework that applies. There is also a preliminary issue concerning the weight that should be given to NZRPG's case as Magsons contended it was a trade competitor.



Background

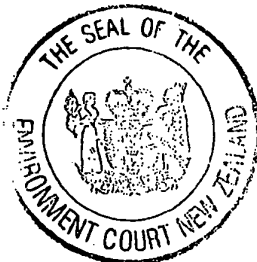
The site and its surrounding environment.

[5] The site upon which the development is proposed comprises 5.3 hectares. Previously it was owned by Collards' Vineyard, with the land being used predominantly for the growing of grapes. The bulk of the land is now bare, but it is largely surrounded by industrial-type development. The site borders Central Park Drive to the north and Lincoln Road to the west. Lincoln Road is a regional arterial route which has recently been identified as an intensive corridor under the Auckland Regional Policy Statement – Plan Change 6 (“**ARPS Plan Change 6**”). Lincoln Road joins onto the north-western motorway not too far from the site and is the gateway to Henderson, an important suburban centre in west Auckland. The site is a very desirable one with its exposure to the high volumes of vehicle traffic travelling along Lincoln Road, and the motorway.

[6] The site has been subdivided into four lots, but this proposal only concerns Lots 2 and 4. Lot 2 is the proposed development site comprising 3.15 hectares, and Lot 4 is the anticipated principal access road through the site, the entrance to which is from Central Park Drive. This road could in the future link into a proposed road extending from Paramount Drive and Universal Drive should it be designated, but this is uncertain and we give it no weight in our consideration. Lots 1 and 2 will remain undeveloped and may be sold at a future date.

[7] The proposed Mitre 10 building is set back from Central Park Drive, with a Hirepool and the Mobil service station in front of it, and Lincoln Road behind Lot 1 that will have other development on it. There are still pockets of viticulture or horticultural land uses and undeveloped land close to the motorway,¹ but the area is now dominated by business uses with a mix of warehouse storage, small manufacturing companies, specialist activities and industrial type retail services, health services, educational services, office and light industrial use. Examples of the

¹ Mr Barbour gave a figure of 70-80,000 m² as a rough bulk and location analysis of other areas of land which may be available for development in the immediate environment. That included all the pieces of land to the north of Central Park Drive that abut the motorway including the site and an area north of Triangle Road between Triangle Road and the motorway with BCNZ's transmission tower (Transcript pages 417 - 420).



types of activities undertaken nearby include an automotive business (Partmaster), an electrical retail sales business (Cory Electrical), mechanics, building and hardware supply businesses (Carters, Heritage Tiles, Repco, Humes, Dulux), hire equipment businesses, office developments and vehicle sales yards. The buildings in the vicinity are typically of small to medium size, comprising either two levels or are high-studded one level warehouse-type buildings. The impression we gained on our site visit is that the area is clearly "in transition" with activities meeting the directions for this zone.

[8] Slightly south of the site and on the west and opposite side of Lincoln Road is the Lincoln North Shopping Centre. The existing Mitre 10 Mega which this proposal seeks to replace, is situated across Universal Drive some 650m north of the proposal and next to a supermarket.

The proposal

[9] Mr Kumar, a director and shareholder in Magsons outlined for us the background to the development of business. Over the last 20 or so years he and his family have worked hard to establish a very successful business with the Mitre 10 franchise, such that his family interests now include a number of Mitre 10 stores at Botany, Henderson and Westgate shopping centre.

[10] The proposal is for a large warehouse-type building, to accommodate mixed retail/office development, with a total floor area of 26,821m², including office space on the ground floor and mezzanine levels and a further 8000m² of commercial office space on the rooftop.² The Mitre 10 Mega is intended to serve both trade and retail customers for which 686 car parks will be provided.

[11] The existing Mitre 10 Mega owned by Magsons just down the road is said to be too small for further development. In particular Magsons wishes to increase the trade component of its business, which is not able to occur at the current site given its layout. Magsons also wants more retail space for the display of larger items. Overall, Magsons believes there is sufficient market demand to justify almost doubling the floor area of its business. It emphasised that this would provide another choice for the



² Opening Submissions of Counsel for Magsons Hardware, paragraph 1.2. While there was some difference in the areas referred to in evidence and submissions, the differences are not material.

market, and would provide potential economic benefits associated with the employment of about 200 general retail workers,³ although this figure may include those currently employed at the existing Mitre 10 Mega which will be closed.

[12] The commercial office space was initially proposed to be completed after the development of the Mitre 10 Mega store, but Magsons have now agreed to complete the entire development, including offices, before the commencement of trading, should consent be granted. Such a condition could not extend to requiring the office space to be occupied before the commencement of trading, as that would depend on the state of the market and other factors beyond Magson's control.

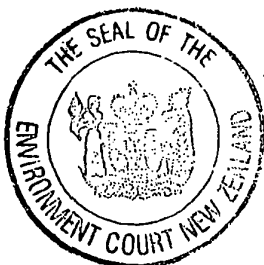
[13] Leaving aside the scale of the proposal, the nature of it would not necessarily be out of character with the mixture of light industrial and business activities conducted nearby.

Statutory and planning framework.

[14] The proposal requires consent as a non-complying activity in the Lincoln Working Environment zone of the District Plan because of the scale of the retail activity involved. The provisions of ARPS-Plan Change 6 as it relates to the Lincoln Road corridor are also relevant.

[15] As the proposal is a non-complying activity, we must consider whether it meets the threshold test outlined in s104D of the Resource Management Act 1991 ("the Act"), before considering the matters referred to in sections 104(1) and 104B of the Act. This requires us to consider whether or not the adverse effects of the activity on the environment will be minor, or the proposal is for an activity that will not be contrary to the objectives and policies of the District Plan. If either of these tests is met we must consider the proposal against the matters outlined in s104, the provisions of which are subject to Part 2 of the Act and its overall purpose of sustainable management.

[16] We signal that we have decided that the proposal can meet the threshold test outlined in s104D(1)(b) and the reasons for our conclusion are set out below, but firstly we need to address the issue of trade competition.



³ Mr Foy evidence-in-chief, paragraph 6.1

What weight should we give to NZRPG's case and evidence?

[17] NZRPG owns land in west Auckland concentrated around the Westgate town centre and owns the Westgate shopping centre.⁴ Mr Barbour, a registered property valuer and a registered property consultant, who is part of the executive team within NZRPG⁵ described NZRPG's position in relation to the appeal as follows:

NZRPG's submissions in relation to this hearing should in no way be construed as being anti-competitive towards Mr Kumar or Mitre 10, but are directed at what are significant inconsistencies in the application of the District Plan so as to have a significant impact on the pattern of land use development in the sub-region and NZRPG's confidence in the administration of the District Plan, *placing in jeopardy the aspirations of the Westgate Town Centre*⁶ (as a result of the implications arising from this application being granted).

[18] Not far away from Westgate is the site upon which a new town centre is proposed which is referred to as Massey North. NZRPG referred to an appeal in relation to a plan change concerning part of the proposed town centre at Massey North which was recently determined by the Court.⁷ The appeal dealt with the extent to which certain types of retail and development could be dealt with in one of the five precincts that form part of the proposed town centre. One of the issues the Court had to determine was how to apportion the total proposed retail space comprising 38,000m². The Court apportioned 22,000m² for large-format retail in precinct C. NZRPG used this case as a comparison, submitting that it was an example of a properly integrated planned approach to the siting of large-format retail.

[19] Both the Westgate shopping centre and the proposed town centre at Massey North are down the motorway, but reasonably near as the crow flies to Lincoln Road.

[20] Magsons questioned the motives behind NZRPG's appeal and its involvement in the case, acknowledging that the proposal was lodged before 1 October 2009 with recent amendments to the Act designed to deal with trade competitor appeals.

⁴ Mr Barbour, evidence-in-chief, paragraph 4.5.

⁵ Mr Barbour, evidence-in-chief, paragraph 1.6

⁶ Mr Barbour, evidence-in-chief, paragraph 4.4

The National Trading Company of New Zealand v Auckland Council [2011] NZEnvC 13



[21] Section 104(3)(a) of the Act requires the Court to have no regard to trade competition. Magsons submitted that we should give little or no weight to the evidence of the NZRPG because of its position as a trade competitor.

[22] NZRPG countered by pointing out that it does not participate in retail trading and is not a direct competitor, nor does it have any tenants who are competitors. We were also advised late in the proceedings of Mr Kumar's interests in the Mitre 10 store at Westgate. Furthermore, Magsons own evidence was that there is room for a Mitre 10 Mega at both Westgate and Lincoln Road.

[23] Whilst the issue was raised by Magsons it was not vigorously pursued by it. We remain mindful of the need not to have regard to trade competition in making our decision.

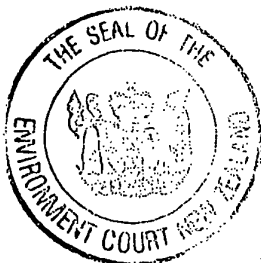
Traffic effects.

The issues and the evidence

[24] The Council in its decision found that the existing road network would be of sufficient capacity to accommodate the additional traffic movements without detriment to the road's function or safety, provided that the road improvements required by the conditions of consent were implemented. NZTA did not agree and appealed.

[25] Between the Council's decision and the hearing for this appeal the Auckland Council came into existence and with it a new regional framework. Auckland Transport is now the agency responsible for dealing with traffic matters within the Auckland region, not the Council.

[26] In this Court, both traffic witnesses (Mr Philip for Magsons and Ms Crafer for NZTA) agreed that before the proposal could be granted, additional mitigation measures over and above those contained in the Council's conditions of consent were required, so that the Central Park Drive/Lincoln Road intersection could accommodate the traffic generated by the development.



[27] Accordingly, Magsons proposed:

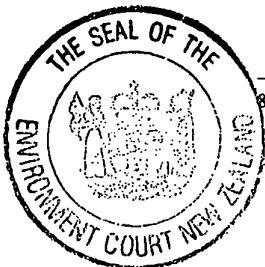
- (a) a new west-bound lane on Central Park Drive along with associated changes at the Central Park Drive/ Lincoln Road intersection; and
- (b) widening Central Park Drive to provide an additional east-bound traffic lane on the approach to the intersection with Lincoln Road and Triangle Road, which would provide significant benefit to the operation of the Triangle Road intersection.⁸

The proposed mitigation would require the consent of Auckland Transport which has not yet been obtained, nor discussed with it in any detail.

[28] Ms Crafer considered that if the above could be implemented, it would provide additional capacity which could potentially mitigate the traffic-related effects arising from the development in the weekday/evening peak period, but she did not agree that it would be adequate to cope with the Saturday peak. At the heart of the Saturday peak issue is a difference of opinion between the experts about how much traffic will be generated by the proposal and if delay is caused by it, how much delay is reasonable.

[29] There are therefore two overall issues for us to determine under this topic, whether or not the traffic effects during the Saturday peak are able to be mitigated to an acceptable level and overall whether the mitigation proposed has been sufficiently identified or can indeed be provided. The issue raised by NZTA relating to the consistency or otherwise of the proposal with the relevant planning documents will be dealt with by us when we consider planning matters.

[30] We intend to commence by first identifying the relevant roading network around the site and determining how far it should extend in relation to traffic effects arising from the proposal. We will then consider what traffic might be generated from an activity able to be undertaken from the site as of right, and decide whether we should take this into account as a lawful "bottom-line" when considering what is proposed by Magsons ("the permitted baseline" argument). We will next consider whether or not the mitigation proposed overall will be sufficient to mitigate adverse traffic effects arising from the proposal and then we will specifically deal with the Saturday peak issue— what it comprises and whether the effects from it are able to be



⁸ Mr Philip, evidence-in-chief, paragraph [6.3]

satisfactorily mitigated. Lastly we will determine whether the mitigation proposed is certain enough for us to rely on, given that Auckland Transport has not approved it.

The road network around the site

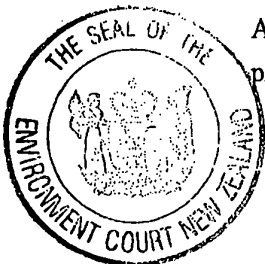
[31] The site is bounded by Lincoln Road, a regional arterial road, to the west and Central Park Drive, a district arterial road, to the north. Access to the site is to be from Central Park Drive. Lincoln Road is one of the main roads to Henderson, a town centre in west Auckland. Both it and Central Park Drive are part of a primary arterial route in the strategic freight network for the Auckland Region.

[32] The traffic-signal-controlled intersection of Lincoln Road, Central Park Drive and Triangle Road is close to the site. The Lincoln Road interchange, and access to and from the SH16 north-western motorway, is located to the north of the site. These two junctions are key elements within the surrounding road network and form an effective gateway for large volumes of traffic at various periods. Universal Drive and Paramount Drive, south of the site and with access to Lincoln Road are also important elements in the road network in the vicinity.

[33] Bus services operate along Lincoln Road, with northbound and southbound bus stops close to the site. The Council has recently installed improved cycle facilities/lanes on Central Park Drive and Triangle Road, including on the westbound approach to the intersection with Lincoln Road.

[34] The surrounding network performs poorly during peak periods, with the intersection of Lincoln Road, Central Park Drive and Triangle Road typically experiencing the worst performance measured by the length of the delay. Overall the performance of this intersection is worse during the Saturday midday peak than during the weekday evening peak.

[35] There are upgrades to both the motorway and local road network planned respectively by NZTA and Auckland Transport which the parties agreed should be taken into account. NZTA plans to upgrade the Lincoln Road interchange and widen the motorway. This work is to be completed by 2016 and will provide additional capacity in the network. Mr Edwards (the traffic expert for the Council) set out Auckland Transport's proposals in relation to the local road network, which include providing an additional lane in each direction along Lincoln Road from the motorway



interchange to south of Universal Drive, with the additional lanes allocated for bus and cycle traffic.⁹

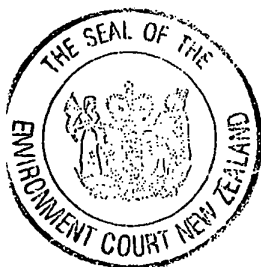
[36] It is fair to say, however, that the possible changes on Lincoln Road are at a preliminary stage and no funding is allocated for them.

What area should be considered in terms of adverse traffic effects?

[37] Magsons sought to limit the area for assessment of adverse traffic effects to the road network immediately surrounding the appeal site. It submitted that an applicant for resource consent is not required to resolve infrastructure problems outside its boundary. In support of this proposition it referred us to *Landco Mt Wellington Limited v Auckland City*¹⁰ (a large scale residential development on a major arterial road) and *Progressive Enterprises Limited v North Shore City Council*¹¹ (a supermarket on a major arterial road).

[38] The extent of the area that needs to be considered as being potentially affected by adverse traffic effects is a matter which needs to be decided in the context of each particular case. Whilst we agree with the general principle that an applicant is not required to resolve existing infrastructure problems, neither should it add significantly to them. The question is always one of degree depending on the facts of each case. The focus must be on the effects which arise from a particular proposal in the context of the particular environment into which it is sought to be transposed. Clearly, the roading network immediately around a proposed site will need to be considered, but equally, depending on the nature of the roading network and the potential for flow-on effects, a wider consideration of the network may be appropriate depending on the case.

[39] Ms Crafer considered the immediately affected road network surrounding the site to include the northern part of Lincoln Road north of Universal Drive, including the Central Park/Lincoln/Triangle Road, Paramount/Lincoln and Universal/Lincoln intersections and the Lincoln Road motorway interchange. Magsons appeared to suggest that traffic effects beyond the Central Park/Lincoln/Triangle intersection



⁹ Mr Edwards, evidence-in-chief, paragraphs [10]-[14]

¹⁰ A35/2007

¹¹ W75/2008

should not be considered; but we do not agree. Indeed, the traffic modelling and the traffic evidence provided by Magsons and NZTA took a wider approach.

[40] In our view, given the close and important relationship of the Central Park/Lincoln/Triangle intersection to all of these roads, the traffic effects arising from the proposal that should be considered encompass the northern part of Lincoln Road north of Universal Drive well beyond this intersection.

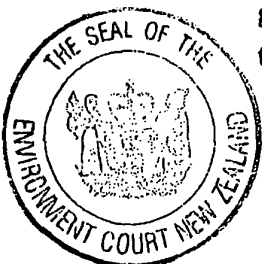
What is, and should we discount, the permitted baseline?

[41] The District Plan permits an office development to occur as of right on this site. Under s104(2) of the Act we may disregard any adverse traffic effects arising from a complying office development on this site, if we wish. Magsons made it clear it was not relying on the permitted baseline, because it considered any adverse effects arising from its development (including traffic effects) would be no more than minor.

[42] Mr Reaburn (the planner for NZRPG) and others considered that offices in this location would take a long time to be occupied, and that meant we should exercise our discretion to disregard the permitted baseline. Mr Osborne (the planner for NZTA) was of the opinion that the permitted baseline could not be applied to a Saturday, given that offices would not be operational at that time.

[43] In assessing the adverse traffic effects arising from this proposal, we have decided to take into account the fact that an office development could be built on this site as of right. Such an office development would generate additional traffic from Monday to Friday with potentially adverse effects. We accept that an office development may take time to be occupied, therefore any adverse traffic effects arising from it may be difficult to predict, but this does not mean that that it should be completely disregarded; rather it is a question of the degree to which such adverse effects should be taken into account as part of the permitted baseline. In this case our view is that it would be unrealistic to look at this site, (which is a "greenfields" site surrounded by existing urban development), without contemplating the potential future urban use of it, even if that occurs in stages.

[44] We accept and have taken into account that an office development would generate adverse traffic effects from Monday to Friday, but equally we accept that these effects are likely to be incremental.



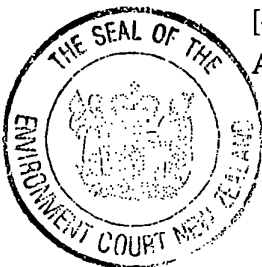
Is Magsons proposed additional mitigation sufficient?

[45] Mr Philip for Magsons did not provide any detailed design evidence for either the additional lane proposed on Central Park Drive or the design of the works that may be required to re-align the intersection. Neither had Mr Philip considered the future bus and cycle measures planned for Lincoln Road or the impacts on utility services within the road that might arise as a result of the proposed mitigation measures he had suggested. He failed to show how the additional lane (including cycle ways) could be accommodated within the existing road reserve. Mr Philip conceded that whilst these measures would assist to mitigate the traffic effects arising from the proposal, they might not be the most efficient or appropriate method/measure to be undertaken in relation to the wider traffic network, but he nonetheless thought they would be adequate.

[46] The additional mitigation proposed requires the approval of Auckland Transport. We asked the Council to explain the statutory role and functions of Auckland Transport under the new regime and we were told that the Local Government (Auckland Council) Act 2009 provides that, while ownership of local roads remains with the Council, Auckland Transport is responsible for managing the network. Certain functions and powers previously exercised by local councils are now assigned to Auckland Transport, including (with some minor exceptions) those under Part 21 of the Local Government Act 1974. It is therefore Auckland Transport who would be required to authorise any works proposed by Magsons within the road reserve. Prior to this hearing Auckland Transport has not been asked for, nor had it given any such approval.

[47] The Local Government (Auckland Council) Act 2009 is very careful to separate the functions of Auckland Transport from those of the Council. Whilst the Council may make rules about Auckland Transport's governing body and how it goes about making decisions it is prohibited from performing any function or exercising any power conferred on Auckland Transport. It would therefore be wrong to delegate decision-making on the certification of traffic conditions to the Auckland Council given that this role is to be fulfilled by Auckland Transport. Auckland Transport is not a party to these proceedings.

[48] The Council could therefore not provide any assurances about the views Auckland Transport might reach in deciding whether or not the proposed mitigation



works will be authorised. Nonetheless during the hearing the Council requested Auckland Transport to provide preliminary comment about the proposed additional mitigation, and it provided a letter¹² from it which suggested that there was no impediment to the proposal being potentially approved. The letter, however, asked a number of important questions including how public transport, pedestrian and cyclists would be affected by the additional mitigation measures suggested by Magsons. In our view the letter did no more than indicate a tentative, and possibly relatively uninformed, view about Magsons' suggested additional mitigation measures. We find it a long way from indicating approval.

[49] Overall we conclude that there is a large degree of uncertainty about whether the proposed additional mitigation measures can be implemented, and if they are, whether they would be effective. In addition, there is the uncertainty about whether or not Auckland Transport would allow the proposed mitigation. Foreshadowing this possibility arising, Magsons suggested that the approval of Auckland Transport could be a condition precedent to the development occurring. It referred to *Westfield (New Zealand) Ltd v Hamilton City Council*¹³ where such a mechanism was used to deal with certain traffic effects which involved Transit NZ, who was not a party to the proceedings.

[50] *Westfield* involved an appeal in relation to the Hamilton City Proposed Plan Change 39, which sought to re-zone 10.59 hectares of land at Te Rapa to commercial services to enable a large-format shopping complex, then referred to as a "super-centre" to be developed. The Council declined the application for the plan change and the appeal ensued. There were potentially adverse traffic effects, given that the proposed super-centre was to exit at several points onto State Highway 1. For a number of years before the decision, the Council and Transit NZ had undertaken studies that had been carried out in conjunction with the development of urban growth strategies and structure plans, to ensure coordination of land use and transport planning. There was a difference of opinion about the proposed traffic mitigation, but the proposal by the applicant's traffic expert had been accepted by the Council and Transit NZ. The Court imposed a condition (which later became a subject of appeal)



¹² Memorandum from Auckland Transport 28 January 2011 headed 297 Lincoln Road: Proposed widening of Central Park Drive (attached to respondent's submissions)

¹³ *Westfield (New Zealand Limited) v Hamilton City Council*, [2004] NZRMA 554

that any retail activity could not commence until certain works had been completed by Transit NZ, who was a third party and not involved in the appeal.

[51] The High Court¹⁴ on appeal agreed with the Environment Court that a condition precedent which defers the opportunity for an applicant to embark on the activity until a third party carries out some independent activity, is not invalid.¹⁵

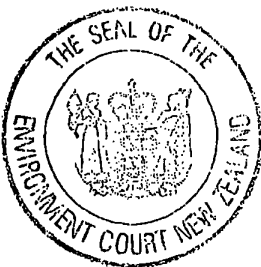
[52] Whilst clearly, therefore, a condition precedent is a legally available mechanism,¹⁶ the factual situation as outlined in *Westfield* is somewhat different from the position with which we are faced. Not only did that case concern plan change appeals, but a particular feature of it was that the traffic experts for the Council and Transit NZ had agreed with the proposed mitigation. This case is quite different, because there is no agreement that the mitigation proposed would be effective, because Auckland Transport has not been able to properly assess the extent of the proposed mitigation. In our view, the letter from Auckland Transport, to which we have already referred, is insufficient to create the kind of certainty we would need to satisfy us that a condition precedent was appropriate at this stage.

[53] We were concerned about whether Magsons had been prejudiced by the local government reorganisation in Auckland. We specifically asked Mr Casey, QC if he could address this point. For whatever reason (and none was advanced for Magsons) there was no approach by it to either the Waitakere City Council, or Auckland Transport as the road controlling authority, in relation to the additional mitigation it proposed. The Council submitted that Magsons was on notice about the possible shortcomings in the level of detail provided by it in relation to the proposed mitigation works, therefore any uncertainties arising lie at its feet. We find the approach taken by Magsons to be somewhat unusual, and with the benefit of hindsight, unwise, especially in relation to enquiries being made to the former Waitakere City Council. Whilst we are not satisfied that Magsons has been prejudiced by the local government reorganisation, we accept that there may have been confusion about who to approach between October and this hearing date. This is evident from the record, which shows

¹⁴ *Westfield and ors v Hamilton City Council* HC Ham, CIV 2003 485 000956, 17 March 2004, Fisher J

¹⁵ Ibid at paragraph 56

¹⁶ Ibid



that we required evidence to clarify the role of Auckland Transport. This evidence was provided by Mr Edwards.¹⁷

The Saturday peak

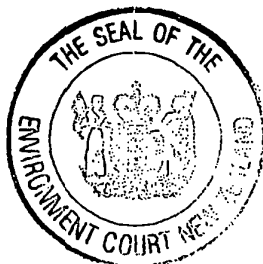
[54] The Saturday peak does not affect the motorway traffic, which Ms Crafer told us runs fairly freely on a Saturday. The main traffic effects on a Saturday are experienced on the local road network, with the flow along Lincoln Road being the main concern but only between 12 noon and 1pm (referred to in the evidence and now by us as "*the Saturday peak*.")

[55] Whilst both Mr Philip and Ms Crafer agreed that there was a Saturday peak, the level to which it would be increased by the development was disputed. Both undertook modelling to estimate the likely traffic that would be generated by the proposal and its effects on the local traffic network. Both reached different conclusions about what level of delay would result from the increased traffic generated by the development and what the significance of these effects were likely to be in terms of the statutory tests, with Ms Crafer maintaining that the effect would be more than minor and unable to be mitigated by what was proposed, and Mr Philip maintaining the opposite.

[56] We will begin by considering the trip generation rate that should apply, followed by the effects that flow from the rate we accept. We will next consider the significance of these effects and lastly whether or not they can be mitigated.

What is the "trip generation rate" for shoppers at the Mitre 10 Mega is likely to be?

[57] The modelling used to inform the traffic witnesses on the likely adverse effects arising from the proposal had a "*trip generation rate*" as a key input. Both Mr Philip and Ms Crafer agreed upon a base year of 2016, which allowed for and assumed that the Lincoln Road motorway intersection and lane extensions had been completed. There was no dispute that the modelling undertaken was robust, rather the issue was what trip generation rate should have been used.

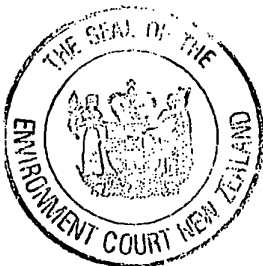


¹⁷ Mr Edwards, evidence-in-chief dated 26 January 2011

[58] Mr Philip (for Magsons) initially suggested that 6.43 trips per 100m² gross floor area¹⁸ (expressed as 6.43/100m² GFA) would be generated by the proposal, but amended the trip generation rate to a figure of 4.60,¹⁹ stating that the higher figure “*is so extreme that it is unrealistic*” and submitting that the lower figure would still be conservative. His reasons were:

- (a) The proposal is to expand an existing store for which the actual known traffic generation rate is 4.60 and it is common practice to use actual rates rather than generic rates if these are known;
- (b) The trip generation rate was applied to the total covered floor area of the development which includes about 2,200m² GFA of inwards goods area which, at the higher trip generation rate of 6.43 would result in an additional 140 movements per hour during a Saturday peak period for the inwards goods area. He believed this to be an extreme over-estimate of likely deliveries during this time;
- (c) The proposed percentage increase in floor space modelled is approximately 103%, but expansion of existing stores does not result in traffic directly proportional to the increase in floor space;
- (d) Applying the 40% increase in turnover estimated by the applicant’s business analysis would result in an increase of about 240 additional trips to and from the new site compared to an increase of about 1,120 trips if the higher trip rate of 6.43 is applied to the total GFA of the new store;
- (e) A significant proportion of the increase in turnover is expected to come from trade customers, with 80% having their orders delivered, typically during a weekday, with delivery trucks often carrying multiple orders at a time.

[59] Magsons case was that the proposed store would have the potential to draw more customers than the existing store as it would be more visible and offer a better shopping experience. Mr Smith (the architect for Magsons) said the proposed store would “*exhibit... prominence as a significant new commercial building for Waitakere*



¹⁸ Mr Philip, evidence-in-chief, paragraph [4.5]

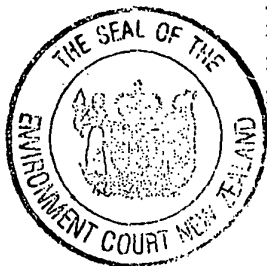
¹⁹ Mr Philip, rebuttal, paragraphs [2.26-2.27]

City".²⁰ Mr Kumar gave evidence that the new store would have a less intensive layout, with more display and circulation space and increased product lines. He anticipated an increase in turnover of up to 40 percent, although the increased floor space is approximately 100%.

[60] Mr Warren, a planner experienced in large scale retail developments, also gave evidence for Magsons, and considered the increased turnover to be more in the order of 30 percent. Mr Warren agreed with Mr Philip that it was appropriate to use the existing store generation rate of 4.60 rather than 6.43 trips per 100m² GFA. In his view, the traffic generation rate of 6.43 would only be achieved if the turnover of the new store represented an increase of 184% (or nearly three times) of the turnover achieved by the existing Mitre 10 Megastore. This he considered to be a fanciful basis for assessing traffic generation rates.²¹

[61] We are dealing with a predicted increase in turnover with high levels of uncertainty on what might happen in practice. If the store is highly successful, the turnover may exceed the estimates provided to us. The new enterprise is also, to some extent, uncharted waters for turnover given its size and potential attractiveness to customers.

[62] Mr Philip also provided comparative trip generation rate data from large hardware superstores both in New Zealand and Australia. This data was presented in a table²² which we now reproduce:



²⁰ Mr Smith, evidence-in-chief, paragraph 16

²¹ Mr Warren, evidence-in-chief, paragraphs [110]-[114]

²² Mr Philip, evidence-in-chief, Table 3, page 9

Table 3 – Peak Hour Trip Generation Rates for Hardware Superstores (trips/100m² GFA)

Store/Location	GFA (m ²)	Peak Hour Rate		Data Source
		Weekday	Saturday	
Mitre 10 Mega Glenfield	8,091		4.80	ITA – Albany Block (TPC)
Bunnings Constellation	9,100		6.49	ITA – Bunnings Wairau (TDG)
Generic Mitre 10 Mega	9,400		4.78	ITA – Mitre 10 Lunn Ave (Beca)
Bunnings Parramatta	9,800	2.30	6.69	RTA database (2009)
Bunnings South Nowra	9,948	1.99	4.22	RTA database (2009)
Mitre 10 Mega Botany	11,335	1.70		ITA Albany Block (TPC)
Bunnings Botany	11,900	2.44	5.20	ITA – Bunnings Wairau (TDG)
Bunnings Minchinbury	11,915	2.84	6.33	RTA database (2009)
Bunnings Hamilton	12,400	2.43	4.98	ITA – Bunnings Wairau (TDG)
Mitre 10 Mega Henderson	13,119	2.20	4.60	ITA for Albany Block (TPC)
Bunnings Bankstown	14,111	2.05	5.98	RTA database (2009)
Average generation rate		2.24	5.41	
85 th ile generation rate		2.44	6.43	

[63] Ms Crafer reviewed the data provided by Mr Philip. She observed that trip rates do not correlate to store size, and highlighted that the data is based on single counts, which might be undertaken on a rainy day or a dry day, and different seasons, affecting how busy the home improvement business would be. Her opinion was that a trip generation rate of 6.43 was appropriate given the location of the store next to the motorway interchange, and the additional transport access benefits that afforded.

[64] We do not agree that it is appropriate to simply apply the trip generation rate of the existing store to this proposal, given the proposed store's location, the convenient access it would have from the motorway, and the likelihood that the range of products it stocks will attract a greater customer base from a wider proportionate catchment, resulting in a higher turnover. Indeed Mr Philip acknowledged that his assessment did not take into account Mr Kumar's evidence about the potential for the proposed new store to draw more customers because it would be more visible and a better shopping experience than that experienced at the existing store.

[65] Even with its limitations, a figure of at least 5.4 (the average generation rate Mr Philip provided for the 10 hardware superstores outlined in the above table) is more credible than the 4.60 for Saturday, notwithstanding the likelihood that trade sales are



likely to result in a reduced traffic generation rate and be more likely to occur during weekdays. It seems to us that the Saturday peak trip generation rate of 6.49 obtained from the Bunnings Constellation hardware superstore (which is close to a motorway interchange) is instructive. We therefore consider both the traffic generation rates of 6.43 and 5.4 when looking at the likely adverse effects and their significance.

What are the likely adverse effects and their significance?

[66] Magsons invited us to apply a contextual approach to the assessment of traffic effects as was adopted by the Court in *Progressive Enterprises Ltd v North Shore City Council*,²³ and submitted that it was inappropriate to decline consent simply because the proposal would be adding to existing traffic conditions at Saturday midday peak, as customers will still buy their hardware supplies somewhere else using their cars. Magsons submitted that the adverse effects would be small in magnitude, limited in duration, and minor when considered in the context of the traffic situation on the surrounding road network.

[67] While the "Saturday noon to one" is the peak period identified, both witnesses accepted that in reality the peak would last longer. Ms Crafer referred to four or five hours as a possibility, but we had no definitive evidence supporting this opinion.²⁴

[68] The modelling of the trip generation rate of 6.43 predicted a minute and a half to three minutes extra journey time for people during the peak period on a Saturday, as opposed to a predicted minute to a minute and a half extra journey time if a trip generation rate of 4.6 was adopted. The 5.4 trip generation rate would result in a figure somewhere between the two ends of the range.

[69] Mr Philip considered that the adverse effects for Saturday would be less than minor at any of the above trip generation rates with the addition of the lane on Central Park Drive. He considered the predicted increase in delay at the intersection of Lincoln Road and Universal Drive to be relatively high and, combined with the level of service change, to have a more than minor effect during the Saturday peak (at the 6.43 trip generation rate). Mr Philip also considered that with an extra lane on Central



²³ W075/2008

²⁴ Transcript page 362

Park Drive (if allowed), the delay would reduce at the Lincoln/Central Park/Triangle intersection.

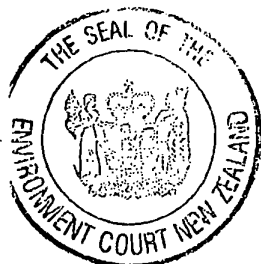
[70] Ms Crafer considered the delays would be more than minor at the 6.43 trip generation rate, the average (5.4) and even the lower rate (4.6). Ms Crafer considered that the adverse effects from the additional travel time of a minute and a half over a four minute journey to be quite a way past "*more than minor*", given the regional arterial road status and function of Lincoln Road. When pressed, she said "*quite a way past more than minor*,"²⁵ but did not go so far as to state the adverse effects to be significant. We take minor as meaning "*lesser or comparatively smaller in size or importance*"²⁶.

[71] Ms Crafer referred to the cycle-time of the signalised intersections at Universal Drive and Lincoln Road/Central Park Drive/Triangle Road. Her evidence was that, if the cycle-time was around 120 seconds and the green light for the northbound movement was about 50 seconds, this would mean the non-green (amber/red) time is about 70 seconds. Because of this, there could be an extra 90 second delay, which would mean that a motorist might get through the first intersection on the first green light, but would be held up at the second intersection for more than a whole cycle, and vice versa. This, she said could be repeated at the next intersection, which would result in even longer queues. Ms Crafer considered that motorists would not expect this sort of delay, given that the road is a strategic route typified by little significant delay.

[72] Mr Philip invited us to look at traffic delays in context. He highlighted that every trip contains variable elements, and significant delays can occur even on well-managed routes. He reminded us that on any network the time a trip takes can be affected by traffic signalling. Mr Philip considered the Saturday delay times would be within people's normal expectations. In his opinion, looking at traffic delays across the week and not just focussing on the Saturday peak, there would be less than minor adverse traffic effects.

²⁵ Transcript page 362

²⁶ *Bethwaite and Christchurch Property Trustees v Christchurch City Council*, C85/93, 10 November 1993.



[73] Magsons submitted that the timing of trips to hardware stores tends to be more discretionary as customers can choose the time of the day and route they use, would act rationally, learn from their experience and adjust their behaviour to avoid congested traffic conditions. Mr Philip's opinion was that customers could and would choose to visit such a store at different times if congestion on Saturday peak times was known. Mr Philip reminded us that trade customers would use the road network less in the weekend, as deliveries occur during the week.

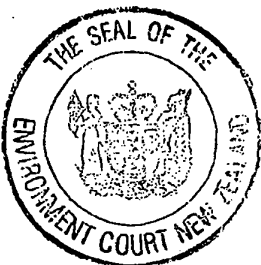
[74] Whilst accepting that shopping or recreational trips might be discretionary, Ms Crafer's opinion was that the evidence does not suggest that people are trying to avoid the current Saturday peak. Ms Crafer said that people's expectations of Saturday travel would be for a more consistent travel time, but again we do not know the basis for this assumption. Ms Crafer drew our attention to the sports fields and facilities in the area, with the netball and tennis facility on Te Pai Place and the Trusts Stadium offering soccer, cricket and other sports. She said because these sorts of activities generally have very fixed times, reliability of travel time is important.

[75] We conclude that there could be more than minor adverse traffic effects from the proposal on a Saturday at peak periods, which could worsen the existing traffic situation, particularly given we are not clear on the feasibility and effectiveness of the proposed mitigation measures. While we accept that some people may adjust the timing of their visits to the Mitre 10 Mega so as not to contribute to the traffic delays during peak hours on Saturday, the more important point is that the delays should not be unreasonable. The delays on a Saturday may not be unreasonable, but this depends on the overall traffic mitigation proposed being feasible and effective.

Overall conclusion in relation to traffic effects

Section 104D evaluation

[76] The adverse traffic effects on traffic, pedestrians and cyclists are more than minor for Saturday, and also for the weekday peak periods, because of the uncertainty over whether the additional mitigation proposed would be feasible or effective, or even be allowed by Auckland Transport. A condition precedent would not provide the necessary assurance for the operation of a key intersection in the local and regional road network. It would be difficult to frame such a condition precedent, and there are questions about the ability to delegate a decision that should be made in the



first instance to a third party, Auckland Transport. This means that the proposal would not pass the first part of the test under s104D. As we have signalled, however, we find the proposal to meet the s104D test as it is not contrary to the objectives and policies of the District Plan, so we therefore need to evaluate traffic effects under s104(1)(a).

Section 104(1)(a) evaluation

[77] Our preliminary overall assessment of traffic effects under s104(1)(a) is that the traffic delays on Saturday may not be unreasonable in the circumstances if satisfactory mitigation measures (included in the proposed consent conditions) can be put in place. In making that preliminary assessment we take into consideration:

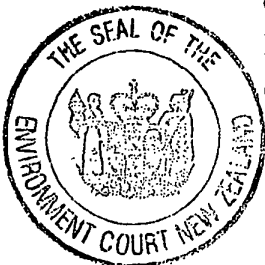
- Trade traffic occurring outside Saturday
- Traffic effects over the whole week, not just the Saturday
- The traffic context, with the high volumes on Lincoln Road
- The concern is not the performance of the motorway interchange and motorway.

[78] However, we cannot make a final assessment without more certainty about the feasibility and effectiveness of, and particularly Auckland Transport's position on, the potential mitigation of adverse traffic effects on traffic, pedestrians and cyclists for both the weekday peak periods and for Saturday. How we have decided to deal with this is outlined at the end of this decision.

Planning issues

[79] We now turn to consider the overall topic relating of planning. We were helped in our consideration of planning issues by the evidence of Mr McPherson and Mr Warren for Magsons, Mr Osborne for NZTA and Mr Reaburn for NZRPG.

[80] Before analysing the actual relevant objectives and policies to determine whether or not the proposal is contrary to them, we need to deal with Magsons contention that the proposal is not contrary to the objectives and policies of the District Plan, because the Working Environment zone provides for retail as a non-complying activity.



Interpretation of retail as a non-complying activity in the Working Environment zone.

[81] The land is zoned Working Environment, and provides for a certain scale of retail activities as permitted (largely convenience stores) and discretionary (within a particular floor area and radius), with other retail activities as non-complying. Magsons advanced an argument that because there is a specific non-complying rule based on size, that rule must mean that anything considered under it is provided for in the Plan and is therefore not contrary to the objectives and policies for the purposes of s104D(1)(b).

[82] In the sense of an activity needing to be "*described*" in a District Plan under s87A, being "*provided for in the Plan*" is a pre-requisite for all activity statuses (permitted through to non-complying and even prohibited). All land use restrictions must be clearly stated in a District Plan because of the presumption in s9 RMA that any land use activity that does not contravene a District Plan can be undertaken as of right. That is as far as "*provided for in the Plan*" can be taken. A non-complying catch-all or default rule, which the Plan also has for activities in other 'zones', is as much "*provided for*" as a specific non-complying rule. In the Working Environment zone the Council has simply identified an upper threshold above which it wishes to have maximum control, and has sensibly not tried to list all situations in which an activity may not meet its expectations in the lower activity lists.

[83] Mr Reaburn helpfully described the reasons for the approach the Council had taken to including non-complying activities in its first District Plan prepared under the RMA, as he had been involved in writing it. Under the structure of the Plan, where there is an upper limit on a particular activity, the non-complying activity rule is included so people know where they need to go under the RMA when their activity exceeds a threshold in a lower consent category.

[84] We find that the evidence of Mr Reaburn establishes the reason why the District Plan is structured as it is, and this interpretation does not support the argument advanced by Magsons. We reject Magsons argument on this point.



Is the proposal contrary to the objectives and policies of the District Plan?(s104D(1)(b))

[85] Policies 1.2, 1.3 and 4.1 encourage the establishment of retail activities in a way which will minimise vehicle trip lengths and numbers and support major town centres as key transport destination points.

[86] Policy 11.17 sets out the range of outcomes expected of retail activities:

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 oriented 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;
- 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-oriented 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.



[87] There is no question that the shopping experience that would be provided by the Mitre 10 Mega would enable people and communities to provide for their social and economic wellbeing. The other matters which follow in Policy 11.17 address the wider social and economic wellbeing considerations and we will consider each of them in turn.

Would the proposal support urban consolidation and mixed use development in locations which are accessible by private and public transport modes, and discourage development which could be better located in respect of accessibility?

[88] The proposal is vehicle rather than pedestrian-oriented, but there is access to public transport services nearby. The proposed site is accessible by private transport, even if there are questions about the ability of the road network in its vicinity to efficiently accommodate the traffic likely to be generated by the proposal. Generally we accept that the proposal would support urban consolidation and mixed use development.

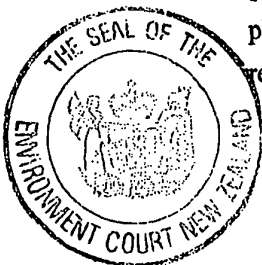
Would the proposal promote the pedestrian-oriented amenity values of town centres including pedestrian precincts, pathways and parks, landscaping, street furniture and shop display frontages?

[89] The proposal has none of these features and does not support any town centre. This is not surprising given, however, that everyone accepts that a proposal of this nature and size would not be an appropriate "fit" in a town centre.

Would the proposal encourage, 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?

[90] A positive effect arising from the proposal is that a link road is to be provided from Central Park Drive that will assist in accessing the subject site and adjoining sites.

[91] Mr Reaburn's opinion was that the proposal is situated in an area with no planning or strategy relating to a large retail presence, that it is unrelated to existing retail activities and other community resources and activities in the same area, and it



is not integrated with any town centre. He acknowledged however, that stores of the proposed type cannot be expected, for instance, to create a significant active street frontage through display windows and pedestrian entrances as is typically expected for stores in town centres. Nonetheless Mr Reaburn considered it appropriate and necessary that an attempt be made to achieve this as much as is possible. In his opinion there had been no attempt to create a connection or link with the suburban shopping centre at Lincoln North, although we note that this is not a town centre.

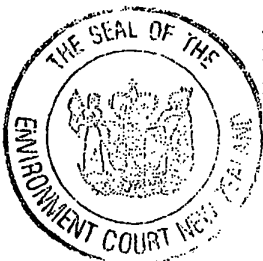
[92] Mr Warren's opinion was that it would be impractical to consider any direct connection with the Lincoln North shopping centre which is on the opposite side of Lincoln Road and about 330m further south. His opinion was that given that the main existing retail facilities in the vicinity are themselves major destinations operating in a vehicle oriented environment," *near at hand connection by road is a suitable means of integration.*"²⁷

[93] We agree with Mr Warren that it would be impractical, and therefore inappropriate, to consider any direct connection between this proposal and the Lincoln North Shopping Centre, given that Lincoln Road divides them, and the kinds of retail experience delivered by both are different.

Would the proposal establish and enhance the quality and design of buildings?

[94] The proposed very large building presents no active frontage to either Lincoln Road or Central Park Drive, but there are requiring that to occur. The wall facing and very close to the proposed new street off Central Park Drive is 85 metres long, 12m high and punctuated only by two large loading entry doors. The wall facing Lincoln Road would be a blank wall over 130 metres long and up to 12 metres high. However, there is Lot 1, which is yet to be developed, between the building and Lincoln Road.

[95] We are mindful that, given the scale of the building, there could well be adverse amenity effects. This was discussed by Mr Reaburn²⁸ when he considered Policies 11.17(c) and 11.33 of the District Plan. Whilst we accept there are no specific design controls in the District Plan, there are still tensions evident in the



²⁷ Mr Warren, evidence-in-chief, Annexure B p6.

²⁸ Mr Reaburn, evidence-in-chief, paragraph [4.18]

policies between economics and design, that is encouraging design elements as in the policy above then providing, as a permitted activity, building up to the boundary line.

[96] *Rule 4 – Landscape Treatment in the Lincoln Working Environment*, whilst not applicable, is a useful guide in considering design elements and amenity effects. It lists a number of assessment matters including landscape treatment of car parking and manoeuvring areas, breaking up large/continuous building frontages, and a preference for trees over other sized plants.

[97] We were supplied with a landscape plan which provides a design outline for each landscaped area which, in total, would meet the area requirements for the plan. We were also provided with a comprehensive planting list. A new (and highly uncertain) planting condition L1 was offered in replacement to a previous version. We prefer the previous version that planting be undertaken in accordance with the planting plan supplied and based upon the provided plant lists.²⁹ The proposal will result in a loss of in situ trees and vegetation; as a result there should also be a link to the plans and plant list stated in any conditions, with an additional note that the planting of trees species is to be preferred.

[98] Amenity has been an issue, as an agreement by neighbours who have withdrawn their appeals illustrates. This agreement requires the building to be no more than 12 metres in height and set back at least 5 metres on the southern boundary, with a planting programme which provides for trees, shrubs and ground covers.

[99] We agree that the 5 metre planted set back would help break up the visual dominance of the south wall, but only if the trees, are a significant component of the planting.

Does the proposal recognise the importance that arises from the role of town centres as community nodes in the City?

Does the proposal recognise that the development of inappropriate retail activity can create adverse effects on the function served by, and the amenity values of, town centres?



²⁹ Exhibit 2 Plant Schedule with Grades

Does the proposal ensure 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?

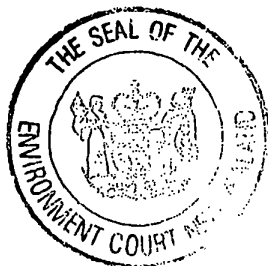
[100] The proposal does nothing to recognise or support the role of town centres, but that does not make it contrary to these outcomes. We accept the evidence of Mr Foy, a retail analyst who gave evidence for Magsons, that while there would be minor trade impacts on individual retail outlets, the proposal would not create noticeable impacts on the vitality, vibrancy and amenity of the nearby town centres.

Would the proposal enable 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?

[101] Policy 11.17(a) provides some background which assists us to consider what may be incompatible retail activities:

Retail activities within the Working Environment should be restricted to support the amenity values, community focal point and transport hub roles of town centres. Yard-orientated retail activities that may cause adverse effects on the amenity of town centres may be located within the Working Environment, along with shops selling goods manufactured on-site, automotive parts and food and convenience shops.

[102] The size of the proposed development, the goods it sells, and its vehicle-oriented nature make its location in a town centre location difficult. The combined retail and trade nature of a Mitre 10 Mega mean it may not be a good fit with other retail activities either in, or adjacent to, a town centre. Mr Warren's opinion was that certain kinds of large-format retail such as the one proposed could also adversely affect the amenity of town centres, by potentially disrupting its pedestrian-oriented environment and creating localised traffic effects. Mr Warren's opinion, which we accept, is that the proposal is not contrary to this policy because by being located out of a town centre, it avoids potential adverse effects on the amenities and functions of such centres.³⁰



³⁰ Mr Warren, evidence-in-chief, annexure B, pp 8-9

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 a 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.

[103] Magsons submitted the proposal accords with a sequential approach to the location of retail activity because Lincoln Road is identified as an intensive corridor in Schedule 1 of the ARPS, and to give effect to the ARPS a change to the District Plan would need to occur. We return to this point later. However, we note that the ARPS contains a list of matters we need to consider when assessing the appropriateness of the site for the proposed retail development and we also consider these shortly.

[104] A very large retail building, with a trade component has a character more akin to large-format retail that would not fit well with the Plan's objectives and policies for town centres. But the Plan has not ignored provision for such activities. One such location is Massey North, with its dedicated large-format precincts at the edge of the town centre provided for in the District Plan. But the fact that provision has been made elsewhere in the Plan for this kind of retail activity, does not of itself make this an unsuitable site for a similar type of activity.

[105] In our view, this policy foreshadows limited permitted retail activity outside town centres. It foreshadows that working environments at the edge of town centres and on major roads may be suitable for retail activity, but does no more than signal that this will be subject to resource consent or plan change procedures. This proposal complies with this policy to the extent that it is subject to a resource consent process. Accordingly we do not find the proposal to be contrary to, or indeed inconsistent with, this policy.

Overall conclusion under s104D

[106] We conclude that the proposal is not contrary to, or indeed inconsistent with, the overall thrust of the objectives and policies. We are particularly influenced by the Plan's recognition that proposals for retail activity in working environments at the



edge of town centres and on major roads deserve consideration. Accordingly, the proposal passes the second part of the gateway or threshold test.

Section 104(1)(b) evaluation

[107] Section 104(1)(b) requires us to have regard to certain statutory planning instruments and in this case they are the ARPS and the District Plan. Under this part of our evaluation we can consider other provisions in the District Plan not just the objectives and policies.

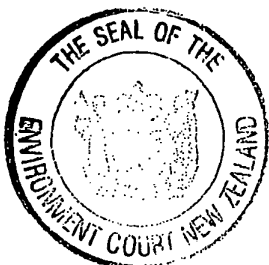
[108] We approach this part of the evaluation by analysing how the provisions of both the ARPS and the District Plan “fit” with the proposal.

The ARPS

[109] The ARPS is the highest level planning document relevant to the consideration of this proposal. There have been key changes to the ARPS since the Council hearing, as a consequence of the Local Government (Auckland) Amendment Act 2004 (“LGAAA”). In particular, Lincoln Road is now listed as a high intensity corridor which provides a basis for the establishment of high traffic generating activities as well as retail activities including large-format retail. The identified corridor includes the site.

[110] The ARPS (and the District Plan) identify commercial activity in general and retail activity specifically as high traffic generating activities, and activities that have the potential to affect sustainability, efficiency, air and water quality, a compact sustainable urban form, a competitive and efficient economy, a quality environment and amenity values.

[111] The ARPS also recognises a hierarchy of retail locations. Policy 1 of the strategic policies relating to urban structure³¹ refers to urban intensification being encouraged in the high density centres and intensive corridors identified in Schedule 1 or in the District Plan. As we have already outlined, Lincoln Road is identified as an intensive corridor in Schedule 1 to the ARPS.



³¹Part 2.6.5

[112] Policy 4 outlines that development of high density centres and intensive corridors should primarily support or serve compact mixed-use environments. The combination of retail and office in the proposal would therefore contribute towards achieving this policy by providing a mixed-use environment.

[113] Policy 6 elaborates on the development expected in high density centres and intensive corridors, referring to compact mixed-use environments where this is compatible with the movement function of the corridor.

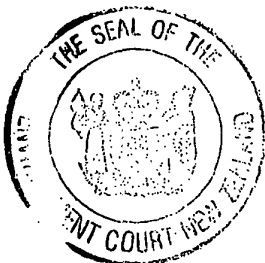
[114] Policies 7 to 11 set out a five level hierarchy of provisions for the location of commercial activities (including retail). The first four levels of provisions concern the location within high density centres and intensive corridors:

- (a) Commercial activities are to be encouraged in high density centres (policy 7);
- (b) The outwards expansion of the commercial core of high density centres where suitable is to be encouraged (policy 8);
- (c) Commercial activities are, where appropriate, to be enabled in business and mixed use zones along intensive corridors (policy 9);
- (d) New high density centres are to be enabled to be developed in locations which meet listed criteria (policy 10).
- (e) Commercial activities are, where appropriate, to be enabled in business and mixed use zones in locations other than high density centres and intensive corridors (policy 11).

[115] Each successive layer in the hierarchy is subject to a list of matters to be assessed.³²

[116] Under Policy 9, commercial activities (including retail) are '*where appropriate, to be enabled*' in intensive corridors, having regard to the following matters:

- (a) any effects on high density centre function and their role;



³² Mr Warren, evidence-in-chief, paragraphs 26-27

- (b) social and economic enablement and accessibility;
- (c) the efficient use and provision of infrastructure;
- (d) the impacts on transport efficiency, including but not limited to effective public transport throughout the region;
- (e) the effects on the road network;
- (f) the impacts of the development on the efficient use of any scarce industrial land resource;
- (g) the effects on residential activity and planning for residential intensification along intensive corridors; and
- (h) reverse sensitivity effects.

[117] Mr Warren addressed each of the matters outlined in Policy 9.³³ His opinion was that the proposed development is consistent with all of them, and he commented that Mr Reaburn did not comment or address the matters outlined in Policy 9.

[118] We accept the evidence of Mr Foy that the proposal would not detract from Massey North, New Lynn and Henderson being the high density centres in the vicinity. There would be an element of social and economic benefit, including the possibility of an enhanced and accessible shopping experience for customers of the Mitre 10 Mega store. There would be efficient use of infrastructure (other than roading which is as yet unknown) and no reverse sensitivity effects.

[119] In addition, the Working Environment zone is only in part an industrial land resource, as the District Plan provides for a wide range of business activities in the zone and the land would be efficiently used for a business purpose as well. Public transport is of relatively low importance for the activity. The accessibility and impacts on transport efficiency and the road network may not be such as to make the site inappropriate.

[120] For the reasons expressed above, we find that the proposal would not be inconsistent with the ARPS.



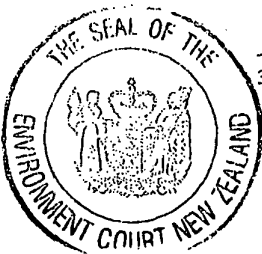
³³ Mr Warren, evidence-in-chief, paragraph 29, Annexure A, page 4

What influence should the high intensity corridor in the ARPS have on the District Plan?

[121] Magsons put considerable store on the inclusion of Lincoln Road as a *high intensity corridor*, reminding us that a district plan has to *give effect to* a regional policy statement. Section 73(4) requires a local authority to amend a district plan to give effect to regional policy statement if the statement contains a provision to which the plan does not give effect within the time specified in the statement (not the case here) or as soon as reasonably practicable.

[122] NZRPG's position is that the Council is now, or will soon be, obliged to reassess the District Plan provisions for Lincoln Road Working Environment to determine whether they give effect to the ARPS, and if not the Plan will need to be amended as soon as possible. NZRPG therefore submitted we should not place too much weight on references to development of corridors in the ARPS, but rather we should exercise caution before allowing the ARPS policies to effectively "trump" the District Plan provisions before such re-assessment. On a district wide basis, NZRPG submitted that the District Plan is up-to-date in terms of identifying and providing for large-format retail, because it does so at Massey North and New Lynn.

[123] Mr Reaburn's opinion was that because Lincoln Road had been established as a *high intensity corridor* and this was a "high level decision", a plan change was needed to carry this through into the District Plan, so that the implications of development such as this could be looked at strategically across the area of the former Waitakere City. He described this as a "top down" approach rather than a "bottom up" approach, the latter being the approach taken here where a specific proposal is being considered in relation to a specific site which may or may not end up being appropriate in terms of planning for the entire area. He identified the risk of not following a "top down" approach as follows: "... the risk you run in that your infrastructure responses are determined by what I have referred to as an *ad hoc* proposal rather than a properly planned approach."³⁴ Mr Reaburn pointed out that there are only two high intensity corridors identified in the ARPS (Hobsonville Road is the other one), but there could be others within the former Waitakere City Council area. He described what he would see as the approach that should now be followed to convert such high level



³⁴ Transcript p 463, lines 2-4

strategy/policy decisions into suitable District Plan provisions, and the way to do this he thought was by a plan change.

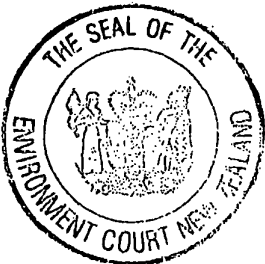
[124] Whilst the approach taken by Mr Reaburn might be the optimal theoretical approach, the commercial world should not necessarily be obliged to wait for the wheels of local government to action something which a higher level strategic document has signalled as being appropriate. Therefore in this case, we conclude that while the identification of Lincoln Road as a high intensity corridor is at an early stage in the process, the ARPS policy on intensive corridors is relevant to our consideration of this proposal and would also be relevant to any changes to the District Plan to give effect to the ARPS. It could also be some time before the process to review the District Plan described by Mr Reaburn gets underway. When considering this site in its context we do not think the applicant should have to wait for this kind of strategic assessment for which there is no clear timeframe, when the ARPS has given a clear policy direction to which the District Plan is obliged to give effect.

Are there other locations for such a development?

[125] Magsons put a great deal of reliance on the unique aspects of this location. It submitted that it was significant that a large block of land was available to it to develop close to its existing Mitre 10 store and therefore within the existing store's customer catchment. Magsons contended that the periphery of a town centre was not an appropriate location for its proposed development and we agree.

[126] NZRPG challenged the need for the development in this location, relying on the availability of land at Massey North town centre and also referring to Mr Kumar's evidence that he had not fully investigated alternatives, or obtained expert advice, before settling on this site.

[127] Mr Warren gave evidence that using a cut-out scale of the site and laying it over town centre blocks in Henderson and New Lynn, he had ascertained that it would be extremely difficult if not impossible to find a site of the necessary size.³⁵ He told the Court that both town centres are essentially built-up, with not a lot of available space for a proposal of this nature. He was also concerned that, should such a proposal proceed in a town centre, adverse traffic effects could arise as well as a risk



³⁵ NOE page 289

that the pedestrian amenity of the centre could be degraded. His evidence was that such a proposal would need to be situated at an independent peripheral location. Finally, his evidence was that a combination of trade building supplies, hardware and home improvement activities (as is the case here) would more usually be located in an industrial area rather than in a town centre.

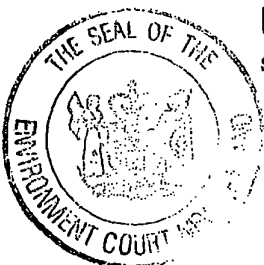
[128] In Mr Reaburn's view, the proposal was similar to a number of individual large-format retail stores which could be located on periphery of town centres or within areas specifically providing for large-format retail such as the Massey North town centre. He said that the new Massey town centre provides for extensive areas of large-format retail adjoining and complementing the core town centre and extending the existing Westgate Shopping Centre. The new motorway links and improvements mean that the proposed sub-regional Massey North town centre will be more accessible. Mr Reaburn also said that the design requirements (introduced through Plan Change 18) for sub-regional town centres will result in a higher quality environment for the community.

[129] While several witnesses made reference to Massey North town centre as an alternative location, we had no evidence on where such a development could be located, and its activity status. Even if there is space for such a large-scale development, the proposal would take up a large area of land at Massey North town centre, which would not be available for more conventional large-format retail development.

[130] We do not accept Mr Reaburn's view that this proposal is in effect akin to a number of individual large-format retail activities given its scale and the large area it would require. As for locating it at the proposed Massey North town centre, there would be insufficient land available for it and there is already a Mitre 10 nearby in which Mr Kumar has an interest. We accept the point made by Mr Warren that there is nothing in the planning documents that requires large-format retail developments to be located in and alongside town centres. To the contrary, the planning documents allow for the consideration of the merits of a location along the Lincoln Road corridor.

Overall conclusion under s104 (1)(b)

[131] We have had regard to both the ARPS and the District Plan provisions. We are satisfied that overall the proposal is not inconsistent with them, although this



conclusion depends on the traffic mitigation proposed being effective and able to be implemented and landscaping to provide for amenity effects.

Other matters (s104(1)(c))

What do other documents say about the proposal?

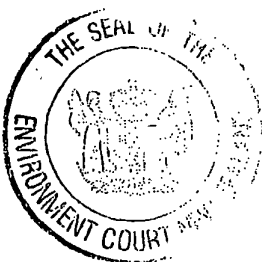
[132] We now consider other matters that are relevant under section 104(1)(c). Mr Reaburn drew to our attention the *Economic Wellbeing Strategy for Waitakere* adopted by the Policy and Strategy Committee June 2009. We take no more from this than it is a recent confirmation of the continued thinking/approach on the need to provide for retail development. It does, of course, predate the new Auckland Council.

[133] Another document referred to in the course of the hearing and provided to us at our request was the *'Industrial and commercial building design guidelines for developers'* March 2009, with case studies of Massey North and Hobsonville Corridor Industrial and Employment Areas. The Council said that the guidelines are a Council best practice guide to urban design which does not form part of the District Plan or any other document against which an application is required to be assessed. We find it to be of no relevance to the proposal as it refers to commercial buildings in sub-regional centres, such as Massey or Hobsonville. There are no guidelines for the Lincoln Working Environment area.

Would, and what if, the proposal encouraged other similar developments?

[134] NZRPG's position was that this proposal could open the door to a large retail development likely to attract similar retail developments. NZRPG submitted that the proposal is of an ad hoc nature and would have implications beyond the site and compromise the integrity of the Lincoln Working Environment.

[135] Cases such as *Dye v Auckland RC*³⁶ make it clear that while there is no precedent in the strict sense in this area of the law, there is an expectation that like cases will be treated alike and that the Council will consistently administer the provisions of the Plan. And cases such as *Rodney DC v Gould*³⁷ also make it clear



³⁶ [2001] NZRMA 513

³⁷ [2006] NZRMA 217

that it is not necessary for a proposal being considered for a *non-complying* activity to be unique before Plan integrity ceases to be a potentially important factor. Nevertheless as that judgment goes on to say, a decision-maker in such an application would look to see whether there might be factors which take the particular proposal outside the generality of cases.

[136] Magson's position was that there were several factors taking the proposal outside the generality of cases: its scale, the relocation of an existing business in an established catchment and the employment generation. Magsons submitted that those circumstances and the characteristics of the proposal would not call into question the integrity of the District Plan for regular activities and sites.

[137] Mr Foy considered that the Mitre 10 Mega might attract other hardware and home improvement activities, but not other types or retail such as comparison retail. In his opinion, the Mitre 10 Mega, by moving north, is coming to the party by joining an existing significant aggregation of trade-based businesses in the area.

[138] Mr Reaburn referred to the paucity of land in the Auckland region available for industrial purposes as well-documented, and reflected in a number of provisions in the ARPS and the District Plan. Mr Barbour gave evidence that the value of the surrounding land would increase on the back of an expectation of further large-format retail developments in the area, and this would make the land too expensive for industrial uses. Mr Warren considered that industrial development was better placed on the periphery of the city. That is not a factor that weighs heavily with us given the wide range of activities catered for in the zone and the potential for office development.

[139] There is still substantial undeveloped land surrounding the site and Mr Reaburn considered that similar arguments to those presented by Magsons could be presented for the retail development of that land. He said that from a planning perspective there are no factors which could distinguish this proposal from other typical large-format retail development, and this site from other working environment sites in the adjacent area. He said that the large-format retail development should be looked at as a number of individual large-format developments, and their being under one roof is not a sufficient distinguishing feature. Neither is the proximity of the proposal to the existing Mitre 10 Mega, which has already relocated three times. He considered the trade element of the enterprise to be secondary to the retail emphasis and therefore not



similar to the existing aggregation of trade-based businesses in the area. He concluded that the outcome of the threat to Plan integrity could be a substantial shopping complex which undermines the vibrancy and vitality of the town centres and their peripheries.

[140] We find that the above overstates the potential consequences of establishing a large home improvement store in this location, even though the store is to have a greater retail than trade emphasis given the type of development that already exists in the vicinity of the site. We see the proposal as a reasonable use of a large greenfields site close to public transport and accessible by trade and private vehicles, if the adverse traffic effects can be satisfactorily resolved. Moreover, the subdivision of the site to accommodate the development and the new road link is already approved.

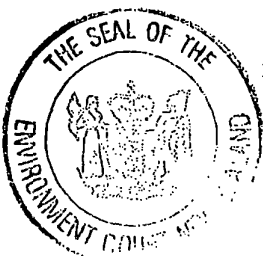
[141] We conclude that the proposal would neither cut across the District Plan policy framework nor the directions contained in the ARPS, in such a way as to compromise the proper consideration of future proposals in the general area in the future.

Is the proposal sustainable management?

[142] The applicant contended that development of the proposal would better enable residents of the catchment to provide for their social and economic wellbeing and does not offend the principles in Part 2. We acknowledge the positive effects of an alternative shopping experience for customers, the choice and convenience of a one-stop shop, the associated employment, and the contribution to the local economy with its flow-on effects.

[143] However, there needs to be effective mitigation of the traffic effects in order for the proposal to be an efficient use and development of the existing roading resource (7(b)) and not have major negative consequences for the finite characteristics of the road network (s7(g)), recognising the importance of Lincoln Road as an intensive corridor. There is also the question of the maintenance and enhancement of amenity values (s7(c)) which requires amendment to the conditions to protect neighbours and the streetscape, as proposed in consent memoranda before us. The traffic effects are also important in terms of the planning documents.

[144] We find that the proposed social and economic benefits of a Mitre 10 Mega may outweigh any adverse effects and enable sustainable management of natural and



physical resources, provided that satisfactory mitigation relating to adverse traffic effects (including on pedestrians and cyclists) for weekday and Saturday peaks is effective and certain.

Section 290A

[145] Section 290A RMA requires us, in making our decision, to have regard to (but not to follow) the first instance decision. NZRPG submitted that little weight should be placed on the Council's decision given the Council did not call any evidence in support of that decision. We do not agree with this approach. The Council's neutral position should count neither for nor against the weight to be placed on the first instance decision. However the proposal we have had to consider was considerably different from that which was before the Council. Therefore, whilst we have had regard to it, we do not give it significant weight.

Result

[146] We have carefully considered whether or not we should decline consent at this point given that we are not satisfied that the traffic mitigation proposed and outlined in paragraph [27] will be effective and certain. We are not satisfied that a condition precedent approach is appropriate, given the total lack of discussion with Auckland Transport or its predecessor. We are left, however, with the conundrum that the mitigation might solve the problem, and evidence from one traffic expert (Mr Philip) that it would, and the indication from Auckland Transport that, subject to certain matters being investigated, it could see no impediment to approval being given. Bearing in mind that the Council decision approved consent (albeit accepting the proposal was presented to it on a different basis), and bearing in mind that if the proposed mitigation is effective and feasible it would be a waste of everyone's resources to re-litigate this matter, we have decided to issue this interim decision but postpone reaching a final decision at this time. This will allow Magsons the opportunity to advance the details of the proposed traffic mitigation with Auckland Transport and with NZTA.

[147] We are aware in so deciding that Magsons have been granted a significant indulgence, one which would normally not be so extended, however we cannot completely rule out that the timing of the local government reorganisation in



Auckland and the timing of the hearing have meant that some confusion may have existed about who needed to consider what.

[148] We have also referred to certain landscape matters which need to be addressed.

[149] The future course of these proceedings will be closely managed. There will be a judicial telephone conference convened in one month's time to review progress.

SIGNED at AUCKLAND this 1st day of September 2011

For the Court:



M Harland

Judge M Harland
Environment Judge