

Report and decision of Hearings Commissioner Mr David Hill Whangarei District Council has delegated all the functions, powers and duties as provided under the Resource Management Act 1991 to the Commissioner to consider and decide the application on behalf of Council. The application was heard in the May Bain room, Whangarei Library on Thursday 26 June 2014

The Hearings Commissioner ('the Commissioner') heard the resource consent application lodged by M & G Pulham relating to a two lot subdivision at Ngunguru Road Glenbervie on Thursday, 26 June 2014, and conducted a site visit following the formal closing of the hearing. The application, made in accordance with the Resource Management Act 1991 ('the Act') was lodged with Whangarei District Council and referenced as SD1400002 (P098740).

Present	Hearings Commissioner David Hill
Applicant	Mr Graeme Pulham Mr Russell Mortimer – Resource Management & Assessment Ltd – Consultant Planner Mr Dean Scanlan – Engineering Outcomes – Traffic Engineer
Consent Authority	Whangarei District Council Mr Ueli Sasagi – Planning Senior Specialist Mr Vladimir Rozov – Senior Environmental Engineering Officer
Submitters	Mr Ross Flanagan emailed his apology and tabled a further submission.
In attendance	Linda Wheeler – Administration Team Leader – Resource Consents

1 Description of the proposal activity

The proposal is for the subdivision of the subject 1.0155ha site at 41 Ngunguru Road, Glenbervie (Lot 1 DP 204453), zoned Countryside Environment under the operative Whangarei District Plan, into two new allotments being Lot 1 of 4,398m² and Lot 2 of 5,755m² (5,238m² net). New Lot 1 will contain the existing residential unit.

Access to the new allotments will be via an existing shared vehicle crossing off Ngunguru Road serving 8 sites (4 existing residential activities plus 4 new residential activities consented under SD0900076). This proposed subdivision will increase the number of users to 9.

The proposed use of the newly created allotments will be for rural residential activities.

2 District Plan Rule(s) affected

The proposed activity does not comply with the following rules of the Whangarei District Plan:

- Rule 73.3.1 *Allotment Area* provides for subdivision to be considered as a Discretionary Activity whereby the minimum average net site area of all proposed allotments is 4.0ha (for the purpose of calculating average net site area, any proposed allotment with a net site area greater than 8.0ha will be deemed to have a net site area of 8.0ha). The application is therefore a non-complying activity under this rule.
- Rule 73.3.7 *Property Access* stipulates that subdivision is a controlled activity if vehicular access to a road is shared where there are 2 or more allotments in the subdivision; and the access complies, in all respects, with the relevant standards in Whangarei District Council's Environmental Engineering Standards 2010 and the relevant provisions in Appendix 9; and no more than 8 allotments or 8 residential units are served by a shared access. The application is therefore a restricted discretionary activity under this rule.

Overall the application is to be considered as a non-complying activity. This was accepted by all parties.

3 Notification and submissions received

The application was lodged on 7 January 2014; publicly notified pursuant to Section 95 of the Act on 8 April 2014; submission period closed on 9 May 2014; and one submission in opposition received from Mr Ross Flanagan of 39 Ngunguru Road, Glenbervie.

Mr Flanagan's concern related to traffic safety and the design of the present entrance.

Written approvals were presented from all contiguous neighbours at 33/35, 39A, 47 and 49 Ngunguru Road. Confirmation of approval from 37 Ngunguru Road was provided at the hearing.

4 Procedural matters

No procedural matters were raised for determination.

5 Evidence heard

The commissioner was addressed by the applicant, his expert planning and traffic engineering witnesses, and the Council's reporting officers. The following is a summary of the evidence heard at the hearing.

5.1 Applicant's evidence

Mr Russell Mortimer, author of the AEE, gave written planning evidence in support of the application, noting that he agreed with the reporting planner's overall assessment and recommendation to grant consent; provided an updated landscape mitigation plan showing the roadside screen planting in the correct location; adopted Mr Dean Scanlan's recommendation that a condition be added requiring a Type 2 entrance treatment as detailed in Council's Environmental Engineering Standards 2010 (Sheet 21); and presented a cadastral analysis of the surrounding Countryside Environment zone demonstrating that within 250m of the subject site 59% of properties are less than 1ha in size and 84% less than 2 ha, concluding that the proposed subdivision, while each lot of approximately 0.5ha in size, would not appear out of character. Mr Mortimer also concluded that the proposed subdivision was consistent with the non-statutory Tikipunga, Glenbervie and Vinegar Hill Structure Plan, was not contrary to the objectives and policies of the operative District Plan, and would have less than minor effects on the environment if granted.

Mr Dean Scanlan, an engineer, had provided a letter report to the applicant, dated 5 June 2014 and provided to the hearing, concluding that a Type 2 treatment of the road entrance was appropriate in view of the current (and additional intended) frequency of left-turning traffic. He did not consider it necessary that a complete Type 2 treatment be imposed on both sides of Ngunguru Road. That recommendation was accepted by the applicant, offered as a condition, and supported by Mr Rozov. In answer to a question Mr Scanlan accepted that this was more in the nature of a "desirable" rather than "essential" requirement. Regardless, as the applicant proposed the condition, and it went quite some way toward satisfying the submitter's concern, I accept and impose that proposed condition.

5.2 Submitters' evidence

By tabled email, Mr Ross Flanagan sought two conditions – a) the type 2 treatment agreed; and b) a widening of the head of the entrance crossing. Mr Flannigan signalled that his objection would then be met.

5.3 Council's reporting officer's report and evidence

Mr Ueli Sasagi, Council's reporting officer, provided a full s42A hearing report, with supplementary reports from Mr Vladimir Rozov covering matters engineering (hazards, earthworks, roading, access, parking, wastewater, water supply, fire fighting and stormwater), and Mr Mike Farrow covering landscape and visual matters. Subject to conditions the s42A report recommended granting consent. That report was not contested and for present purposes is adopted in full.

6 Principal issues and Main findings of fact

As no submitter appeared at the hearing and matters were essentially agreed between the applicant and Council staff, there were no issues in contention at the hearing. However a couple of issues were raised and these are put on the record as follows:

a Does the application satisfy the gateway tests of section 104D of the Act?

Mr Sasagi made reference in his s42A report to the 2012 Blampied decision of the Environment Court ([2012] NZEnvC54), which involved a superficially similar 2 lot non-complying activity subdivision in the Countryside Environment zone and in the general area of the application now being considered. In that instance the Court had declined consent under section 104D because of adverse cumulative effects and the adverse precedent effect a grant might have on the Plan's objectives and policies in view of the fact that it would clearly be contrary to those provisions.

The question he sought to answer was whether those same parameters applied in this instance. Having analysed the particular nature of the site and its circumstance Mr Sasagi concluded that they did not and that the gateway tests were passed. While Mr Mortimer did not address the matter in written evidence he gave his opinion on the matter at the hearing, indicating essentially that he agreed with Mr Sasagi – and that was why he decided not to address the case formally.

In short, I agree with the two planners. It is clear from the evidence of Mr Farrow for Council (who did not appear) that the visual landscape does not have the same qualities as that discerned in the Blampied case; that the evident “enclave” cluster of subdivision in the immediate vicinity exists and that one more would not constitute a cumulative effect of any significance; and that no meaningful precedent would be established that has not already been established (i.e. that particular horse has already bolted in the immediate neighbourhood). In summary, while there are no evident unusual qualities whereby this subdivision might appear truly exceptional (barring, perhaps, the existing provision of infrastructure services – i.e. reticulated water and sewerage), such that its relative uniqueness precludes any precedent value and therefore poses no risk to a non-complying activity grant of consent, it is its very ordinariness relative to its surroundings that places it in the same category. The subdivision may not be entirely consistent with the relevant objectives and policies for the zone contained within the District Plan, but it is certainly not *contrary* to those same. By the same token its effects are minor.

Accordingly I find that the application passes both gateway tests of section 104D and can proceed to be assessed against section 104.

b Is it necessary to upgrade the entrance pavement?

Mr Flanagan maintained in his tabled submission that the existing entrance was deficient presently for the existing 4 lot-users, would become significantly so with the development of the additional, already approved, 4- lot subdivision, and those effects would be further exacerbated by the Pulham subdivision. He therefore sought both a wider approach entrance as well as redevelopment of the concrete entrance pad.

As noted above, Mr Scanlan (and the applicant) agreed that a Type 2 entrance was appropriate and was acceptable as a condition of consent, but disagreed that any further modification of the entrance pad was necessary. He measured that existing pad at 6m minimum width, which he considered sufficient for the purpose. Mr Rozov agreed with Mr Scanlan. As Mr Flanagan provided no engineering evidence to the contrary in support of his relief, and as I am persuaded by the evidence and expert opinions of Mr Scanlan and Mr Rozov, I find that relief not to be necessary and decline to provide that particular relief accordingly.

8 Relevant statutory provisions

8.1 Policy statements and plan provisions

In considering this application, the Commissioner has had regard to the matters outlined in Section 104 of the Act. The particular relevant provisions of the planning documents are as outlined in sections 5 and 6 of Mr Mortimer's application AEE, paragraphs 34 – 37 of his evidence in chief, and in sections 7.2 - 7.4 of Mr Sasagi's s42A report. In the interest of brevity (and as per section 113(3) of the Act) I do not repeat the detail of those provisions here. Furthermore, having considered those provisions, and as those provisions were not contested, I adopt them for the purpose of this decision.

8.2 Part II matters

In considering this application, the relevant principles outlined in Sections 6, 7 and 8 of the Act have been taken into account as well as the overall purpose of the Act as stated in Section 5.

I note that no section 6 or 8 matters were identified as being engaged by either Mr Mortimer or Mr Sasagi, although the latter noted that Ngati Hau Ki Whakapara, a local iwi, was identified as a potentially affected party and forwarded a copy of the application. No response was received. I accept that such is the case.

Mr Sasagi identified six section 7 *other matters* as relevant to the application at section 9.3 of the s42A report, but considered those to have been appropriately addressed. Having reviewed those matters I accept Mr Sasagi's conclusion.

It is my overall finding that this application satisfactorily passes the relevant tests of the Act, is consistent with its relevant principles, meets the requirements of the District Plan, and is not precluded from being granted by section 106 of the Act. Accordingly the sustainable management purpose of the Act is better met by granting subdivision consent to the application than by refusing the same.

9 Decision

Pursuant to sections 104, 104B, 104D, 106, 108 and 220 of the Resource Management Act 1991, the application by M & G Pulham (SD1400002) for a two-lot subdivision at 41 Ngunguru Road, Glenbervie (Lot 1 DP 204453) into two new allotments, being Lot 1 of 4,398m² and Lot 2 of 5,755m² (5,238m² net), is **granted** subject to the following conditions:

1 Prior to issue of a Section 223 certificate

- a. The consent holder shall ensure that the survey plan submitted for approval is given effect in general accordance with the following plans:
 - i. the layout shown on the subdivision plan 'Proposed Subdivision of Lot 1 DP 204453 at 41 Ngunguru Road, G and M Pulham' prepared by Beasley & Burgess Surveyors, reference 3022C, dated 11 November 2013; and
 - ii. the Landscape Mitigation Plan prepared by Resource Management and Assessment Limited, Ref PUL.01, revision dated 23 May 14, specifically showing land covenant areas for planting.
- b. The consent holder must submit a detailed set of engineering plans prepared in accordance with Council's Environmental Engineering Standards 2010 Edition. The engineering plans are to be submitted to the Senior Environmental Engineering Officer for approval.

Note: *Certain designs may only be carried out by an Independently Qualified Person (IQP) or Chartered Professional Engineer (CPEng) working within the bounds of their assessed competencies. IQP's must have been assessed by Council and hold current registration to submit engineering design work.*

All work needing design/certification by a Council approved IQP/CPEng will require the submission of a producer statement (design) on form EES-PS1 (or similar approved) to the satisfaction of the Senior Environmental Engineering Officer.

Plans are to include but are not limited to:

- i. Design details of water connections to Lot 2 in accordance with (2010 Edition) Sheet 46 or 47 including fire fighting coverage in accordance with Sheet 45 & Section 6.11; and
 - ii. Design details of the upgrade of the existing vehicle entrance crossing on the entrance side of Ngunguru Road in accordance with Rural Type 2 crossing, also in accordance with sheets 22 & 23 and the recommendations of the traffic effects assessment compiled by Engineering Outcomes Ltd dated 5 June 2014.
- c. The consent holder shall provide written confirmation from power and telecommunications utility service operators, including wireless internet telecommunication providers, of their consent conditions in accordance with Council's Environmental Engineering Standards 2010 Edition and show necessary easements on the survey plan to the approval of the Senior Environmental Engineering Officer or their delegated representative.
- d. The consent holder must create easements over services, rights of way etc to the approval of the Senior Environmental Engineering Officer (SEEO).
- e. The consent holder must create easements in gross over all overland stormwater flow paths that fall into areas proposed for development (i.e. house site, accessway from road to house site etc) and/or as directed by the Senior Environmental Engineering Officer. The easements are to cover the extent of the

1% Annual Exceedance Probability flows (+20% allowance for climate change) and are to be to the approval of the Senior Environmental Engineering Officer.

Note: *Overland flowpaths are to be assessed in accordance with Section 4.9 of Council's Environmental Engineering Standards 2010 Edition and are to be certified by an IQP/CPEng.*

2 Prior to issue of a section 224 (c) certificate;

- a All work on the approved engineering plans in condition 1(b) is to be carried out to the approval of the Senior Environmental Engineering Officer or their delegated representative.

All work needing design/certification by a Council approved IQP/CPEng will require completion of a producer statement (construction) on form EES-PS4 (or similar approved), to the satisfaction of the Senior Environmental Engineering Officer.

The consent holder, following completion of construction, shall provide producer statement(s) (e.g. form EES-PS4, Schedule 1B NZS4404:2010) from the suitably qualified contractors who constructed the individual works certifying that the works have been completed in accordance with the approved engineering plans, Council's Environmental Engineering Standards 2010 Edition and best trade practise to the satisfaction of the Senior Environmental Engineering Officer or their delegated representative. The consent holder shall also provide an overall completion certificate (e.g. EES-PS4, Schedule 1C NZS4404:2010) certifying that all works forming part of the resource consent conditions, have been completed.

In the case of works that are to remain in private ownership, these may be inspected and approved by a Council approved IQP who has been certified to design/construct such works. A producer statement (construction) on form EES-PS4 is to be provided by Council's approved IQP, along with copies of all test results/photographs etc. The Senior Environmental Engineering Officer is to be advised of any necessary inspections/testing of private works a minimum of 24 hours before they take place in order that the Senior Environmental Engineering Officer may observe the inspection/testing if so desired.

All works that are to be vested in Council require the presence of the Senior Environmental Engineering Officer (or their delegated representative) at all inspections/testing.

Note: *The Senior Environmental Engineering Officer (or delegated representative) will not carry out the inspection / testing, this will be the duty of the consent holder's IQP/project manager / contractor. The Senior Environmental Engineering Officer will simply observe the process.*

Failure to comply with these requirements may result in the work not being accepted as complying with the Resource Consent conditions/Environmental Engineering Standards 2010 Edition.

No construction works are to commence onsite until the engineering plans required in condition 1(b) have been approved and all associated plan inspection fees have been paid.

Note: *All works within Public Reserve will require written certification from the controlling authority.*

- b The consent holder shall submit a Road Opening Notice or Corridor Access Request application and receive written approval for all works to be carried out within Council's Road Reserve in accordance with Council's Environmental Engineering Standards 2010 to the approval of the Senior Environmental Engineering Officer (refer advice notes below).
- c The consent holder shall notify Council, in writing, of its intention to begin works, a minimum of seven (7) days prior to commencing works. Such notification shall be sent to the Senior Environmental Engineering Officer and include the following details:
- i Name and telephone number of the project manager/IQP.
 - ii Site address to which the consent relates.
 - iii Activities to which the consent relates.
 - iv Expected duration of works.

A copy of the approved engineering plans and a copy of the resource consent conditions and the above letter are to be held onsite at all times during construction. All personnel working on the site shall be made aware of, and have access to the resource consent and accompanying documentation.

- d The consent holder shall submit written confirmation from power and telecommunications utility services operators, including wireless internet telecommunication providers that their conditions for

this development have been satisfied in accordance with Council's Environmental Engineering Standards 2010 Edition to the approval of the Senior Environmental Engineering Officer or their delegated representative.

- e The applicant shall ensure that spoil from the site is not tracked out onto Council or State Highway Road formations to the approval of the Senior Environmental Engineering Officer.
- f Dust nuisance must be controlled onsite (by use of a watercart or similar) by the consent holder so as not to cause 'offensive or objectionable' dust at or beyond the boundary of the development.
- g The consent holder must provide written confirmation from a Licensed Cadastral Surveyor that all services and accesses are located within the appropriate easement boundaries.
- h All damage to the road stormwater drain, road carriageway formation, road berm and services caused by the demolition and construction works associated with the subdivision and land use activities shall be reinstated at the expense of the consent holder.
- i The consent holder must submit a certified and dated 'as built' plan of completed works and services in accordance with Council's Environmental Engineering Standards to the approval of the Senior Environmental Engineering Officer.
- j Provide written evidence from a suitably qualified person to illustrate that the 'Extension to road side planting' as identified on the Landscape Mitigation Plan under Condition 1(a)(ii) has been implemented and completed. Specifically, the evidence shall confirm that:
 - a) the planting has been established for a minimum of 12 months with suitable maintenance undertaken during that period;
 - b) that there is sufficient space between the Ngunguru Road boundary, the proposed planting, and the boundary of proposed Lot 1 adjoining to allow the planting to mature into a suitable vegetative screen, without unduly impeding vehicle access via the Lot 2 access leg; and
 - c) that the planting has been structured in such a way as to avoid any impacts on underground services (noting that existing and proposed reticulated services are located either close to or within the identified planting area).
- k Pursuant to Section 221 of the Resource Management Act 1991, a consent notice must be prepared and be registered on the Computer Freehold Register of Lot 2 at the consent holder's expense, containing the following conditions, which are to be complied with on a continuing basis by the subdividing owner and subsequent owners:
 - i At the time of building consent for a dwelling, provide suitable evidence/design to illustrate that stormwater attenuation will be provided for all impervious surfaces to ensure compliance with Chapter 4, and more specifically Section 4.11, of Council's Environmental Engineering Standards 2010, to the satisfaction of the Senior Environmental Engineering Officer; and
 - ii Any development shall comply with the restrictions and recommendations identified in the Richardson Stevens Consultants Ltd engineering suitability report, reference 12379 dated 13/03/2014 unless an alternative engineering report prepared by a suitably experienced Chartered Professional Engineer is approved in writing by Council.
 - iii Areas D, E, and F on Lot 2 as shown on the survey plan contain landscape planting provided as part of the subdivision. This planting is to be maintained and protected in perpetuity, with allowance for minor trimming only to ensure vehicle access and sightlines. Any planting within these areas that is damaged, dying, or is otherwise removed shall be replanted within 2 months of removal with same or similar species utilising a plant size not less than PB12. For avoidance of doubt, any intention to remove or change the extent of the planting as identified, which is outside the scope of this condition, will require prior approval from Council.

Advice Notes

- 1 The applicant shall pay all charges set by Council under Section 36 of the Resource Management Act 1991. The applicant will be advised of the charges as they fall due.
- 2 Section 120 of the Resource Management Act 1991 provides a right of appeal in relation to this decision. Appeals must be in writing, setting out the reasons for the appeal, and lodged with the Environment Court within 15 working days after the decision has been notified to you. Appellants are also required to ensure that a copy of the notice of appeal is served on all other relevant parties.

- 3 Any works carried out within Council's road reserve will require an approved road opening notice/traffic management plan or Corridor Access Request. A Corridor Access Request (CAR) is defined in the new "National Code of Practice (CoP) for Utilities access to the Transport Corridors". This CoP has been adopted by Council and will be phased in. It provides a single application for Traffic Management Plans/Road Opening Notice applications. Enquiries as to its use may be directed to Council's Traffic Management Co-ordinator on 430 4230 ext 8258.
- 4 The consent holder shall obtain all necessary building consents which may be required for the proposal.
- 5 All earthworks are required to comply with Section 32.2 (Environmental Standards for Earthworks) of the Northland Regional Council Regional Water and Soil Plan for Northland noting erosion & sediment control and dust suppression requirements.
- 6 All works to be carried out pursuant to condition 1(b) above shall be undertaken on public land unless written right of entry is obtained from the owners of all private land upon which work is to be carried out. Where any necessary written right of entry has not been obtained, any such infrastructure work shall be re-routed to achieve compliance with this condition.
- 7 A further site inspection of completed works will be required if a period greater than 3 months has passed since the last Council inspection prior to Council issuing the 224(c) certificate.
- 8 All archaeological sites are protected under the provisions of the Heritage new Zealand Pouhere Taonga Act 2014. It is an offence under that act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to the Heritage New Zealand for an authority to modify, damage or destroy an archaeological site(s) where avoidance of effect cannot be practised.
- 9 Pursuant to Section 102 of the Local Government Act 2002, Whangarei District Council has prepared and adopted a Development Contributions Policy. Under this policy, the activity to which this consent related is subject to Development Contributions. You will be advised of the assessment of the Development Contributions payable under separate cover in the near future. It is important to note that the Development Contributions must be paid prior to commencement of the work or activity to which consent relates or, in the case of a subdivision, prior to the issue of a Section 224(c) Certificate. Further information regarding Councils Development Contributions Policy may be obtained from the Long Term Community Consultation Plan (LTCCP) or Council's web page at www.wdc.govt.nz.

10 Reasons for the decision

Pursuant to section 113 of the Resource Management Act 1991 the reasons for this decision include the above matters and as follows:

1. With the conditions imposed, the application is consistent with overarching purpose and principles of the Resource Management Act 1991 set out under Part 2 of the Act; passes both limbs of section 104D; satisfies the requirements of sections 104 and 106; and its effects on the environment will be minor.
2. Conditions relating to on-site infrastructure and servicing requirements, and consent notices on meeting engineering standards for built development will avoid, remedy or mitigate any adverse effects of the activity on the environment.
3. The receiving environment, including supporting infrastructure, has sufficient capacity to accommodate the effects anticipated by the application.

Dated this 3rd day of July 2014



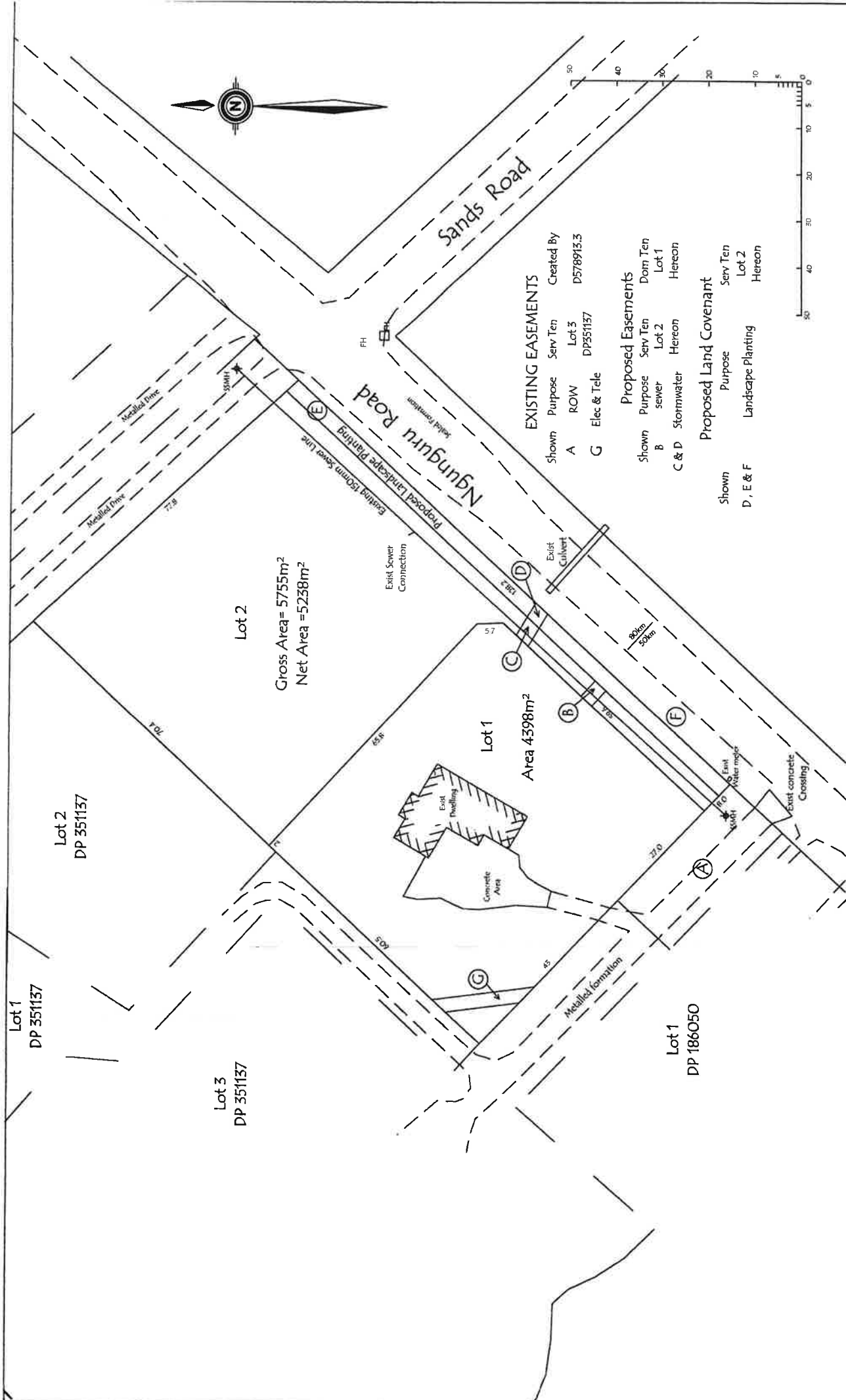
David Hill
Hearings Commissioner



Date:	Mon Nov 11 12:15:49 2013
A3 Scale:	1:750
Revisions:	
Ref:	3022C

**Proposed Subdivision of Lot 1 DP 204453
at 41 Ngunguru Road
G and M Pulham**

BEASLEY & BURGESS SURVEYORS
 102 Western Hills Dr, PO Box 5048, WHANGAREI
 Ph 09 437 6912 Mobile 027 224 5811



EXISTING EASEMENTS

Shown	Purpose	Serv Ten	Created By
A	ROW	Lot 3	D578913.3
G	Elec & Tele	DP351137	

Proposed Easements

Shown	Purpose	Serv Ten	Dom Ten
B	sewer	Lot 2	Lot 1
C & D	Stormwater	Hereon	Hereon

Proposed Land Covenant

Shown	Purpose	Serv Ten
D, E & F	Landscape Planting	Lot 2
		Hereon

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09 430 8855, rmal@rma.co.nz



Subdivision Plan
Sheet 2 of 6

G and M Pulham
41 Ngunguru Rd, Whangarei

Name	Size	Spacing	Quantity (150m ²)
Existing Planting Roadside (2 m wide swathe)		Not applicable as Established	Not applicable as Established
<i>Griselinia littoralis</i>	PB12	1.8 m	3
<i>Karaka (Corynocarpus laevigatus)</i>	PB12	1.8 m	3
<i>Puriri (Vitex lucens)</i>	PB12	1.8 m	3
<i>Akeake (Dodonaea viscosa)</i>	PB12	1.4 m	3
<i>Titoki (Alectryon excelsus)</i>	PB12	1.8 m	3
<i>Pittosporum (Pittosporum sp)</i>	PB12	1.4 m	6
Extension to Roadside Planting (2 m wide swathe)			
<i>Griselinia littoralis</i>	PB12	1.8 m	3
<i>Karaka (Corynocarpus laevigatus)</i>	PB12	1.8 m	3
<i>Puriri (Vitex lucens)</i>	PB12	1.8 m	3
<i>Akeake (Dodonaea viscosa)</i>	PB12	1.4 m	3
<i>Titoki (Alectryon excelsus)</i>	PB12	1.8 m	3
<i>Pittosporum (Pittosporum sp)</i>	PB12	1.4 m	6

