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**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an application by RJ and JA Donald of 179 Simons Road, Poroti to Whangarei District Council for a two - stage, five lot subdivision consent of Lot 1 DP 69568, Part Whatitiri $12^{L}2^{B}$ and $12^{L}1$, and land use consent to exceed coverage on proposed Lot 4.

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**DECISION ON A SECTION 88 APPLICATION – SL 1300013 P039007.SD**

**RESOURCE MANAGEMENT ACT 1991**

**WHANGAREI DISTRICT COUNCIL**

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## 1.0 SUMMARY OF DECISIONS

1.1 Pursuant to sections 37 and 37A of the Resource Management Act 1991 the submission time period is extended for the late submissions from the New Zealand Fire Service Commission and the New Zealand Historic Places Trust, which are accepted accordingly.

1.2 Pursuant to sections 104, 104B, 106 and 108 of the Resource Management Act 1991, resource consent is refused for the discretionary activity subdivision and land use application by RJ and JA Donald for a two-stage, five lot subdivision of 179 Simons Road, Poroti, being Lot 1 DP 69568, Part Whatitiri $12^{L}2^{B}$ and $12^{L}1$.

1.3 A decision on the conjoint land use consent to exceed coverage on proposed Lot 4, located within the Countryside Environment zone under the Operative District Plan, is not therefore required.

## 2.0 APPLICATION AND PROPERTY DETAILS

| | |
|---|---|
| **Application Number:** | SL 1300013 P039007.SD |
| **Site Address:** | 179 Simons Road, Poroti |
| **Applicant's Name:** | RJ and JA Donald, Al-Zarah Limited |
| **Legal Description:** | Lot 1 DP 69568, Part Whatitiri $12^{L}2^{B}$ and $12^{L}1$ |
| **Total Site(s) Area:** | 22.0068 ha |
| **Zoning:** | Countryside Environment |
| **Lodgement Date:** | 27 September and 3 October 2013 |
| **Notification Date:** | 20 November 2013 |
| **Submissions Closed:** | 17 December 2014 |
| **Hearing:** | 27 February 2014 |
| **Site Visit:** | 27 February 2014 |
| **Hearing Closed:** | 12pm 7 March 2014 |

2.1 The application site ("**the site**") is located at 179 Simons Road, Poroti on the mid-flank of the extinct shield volcano known as Whatitiri Mountain. It is approximately 2.5kms from the settlement of Poroti and is accessed by the no-exit Simons Road from Mangakahia Road.

2.2 The site is zoned *Countryside Environment* under the operative provisions of the Whangarei District Plan ("**the ODP**"). The site is not subject to the ODP's Outstanding Natural Feature perimeter of Whatitiri Mountain or the Notable and Outstanding landscape classification. While Council's *Land Use Capability* maps indicate a soil classification of LUCII and LUCIII (i.e. moderate limitations for arable use; suitable for crops, pasture or forestry), which are deemed versatile/productive soils under the Northland Regional Policy Statement, the accuracy of this was disputed by the applicant because some of the topsoil had previously been stripped and sold off-site reducing that area's productive capability, and there is a significant area of lava outcropping and bouldering which inhibits the use of mechanical tools.

2.3 The site is managed into roughly three distinct uses – pasture and light grazing in the front 1/3 (which also contains the existing dwelling); orchid / hydrangea hothouses and associated outbuildings in the northern rear 1/3; and avocado orchard and associated shelterbelts in the southern 1/3. A row of shelterbelt trees separates the front from the rear activities.

## 3.0 INTRODUCTION

3.1 RJ and JA Donald ("**the applicants**") lodged their initial two-stage, five lot subdivision application for 179 Simons Road, Poroti on a non-notified basis on 27 September 2013. It was then re-lodged on 3 October 2014 as a combined subdivision and land use consent application following advice that an additional dwelling on proposed Lot 4 would exceed the permitted activity site coverage rule. The re-lodged application was publicly notified on 20 November 2013.

3.2 Three submissions were received, two of which were late. Those two late submissions from the New Zealand Fire Service Commission and the New Zealand Historic Places Trust are accepted.

3.3 Five written approvals were supplied from the following persons:

- Cliff Orchard Limited of 57 Croucher Road (Lot 2 DP 208028);
- E W Croucher of 164 Simons Road (Lot 2 DP 17956 and Lot 3 DP 28288);
- R B and R M Grieve of 165 Simons Road (Lot 4 DP 166655);
- N R and D A Cartwright of 427 Mangakahia Road (Lot 3 DP 343316 and Part Whatitiri 12L2B and 12L1);
- Wharekohe Farms Limited (Lots 3-5 DP 205248).

The details are provided in Ms Shannon's s42A report at section 4.3, prepared for the hearing. Any effects on those properties are thereby disregarded.

3.4 The hearing report, which included the reporting officer, Ms Heather Shannon's, s42A report, also included an infrastructure assessment by Mr Vladimir Rozov, Council's Senior Environmental Engineering Officer. Ms Shannon recommended that the application for subdivision be refused; Mr Rozov was satisfied that the infrastructure matters of concern to him could be satisfactorily managed through conditions of consent.

3.5 Whangarei District Council ("**Council**") appointed Independent Hearings Commissioner David Hill pursuant to section 34A of the Act to hear and decide the

application.

3.6 The hearing took place on 27 February 2014 in the May Bain Room of Whangarei Library. No submitters appeared. The Commissioner visited the site on the same day. The hearing was closed on 7 March 2014 following the exchange of recommended draft conditions between Council and the applicants.

## 4.0 IN ATTENDANCE

4.1 For the Applicants:

Mr Richard and Mrs Julie Donald
Mr Brett Hood (Planning Consultant – Reyburn & Bryant Limited)

4.2 For Council:

Ms Heather Shannon (Reporting Planner)
Ms Kelly Ryan (Team Leader – Resource Consents)
Mr Vladimir Rozov (Senior Environmental Engineering Officer)
Ms Linda Wheeler (Administration Team Leader)

## 5.0 THE PROPOSAL

5.1 The application is detailed in the application documentation and helpfully summarised in Section 3 of the application planning report prepared by Mr Hood ("**the AEE**") and in Sections 1 and 2 of Ms Shannon's section 42A report. That summary was not disputed and the main points are repeated here for context:

Proposed staging of a 5 lot subdivision as follows:

Stage 1:

Lot 1 of 2.97ha – direct access to Simons Road via new crossing;

Lot 2 of 1.59ha – access via right of way A;

Lot 3 of 1.50ha containing the existing dwelling - access via rights of way A and B;

Lot 6 (balance lot) of 15.7248ha net (15.9468ha) - access via rights of way A and B, and/or via a 4m access strip extending from Simons Road along the southern boundary of the site;

Stage 2:

Lot 4 of 8.9248ha net (9.0268ha gross) containing the existing hot houses – access via the 4m access strip extending from Simons Road along the southern boundary of this site

Lot 5 of 6.80ha net (6.92ha gross) - access via rights of way A and B created under Stage 1.

5.2 Ancillary matters relating to building site suitability, wastewater disposal, stormwater control, water supply, telecommunications, building coverage, on-site parking and manoeuvring, and fire fighting are addressed in the application documentation and Mr Rozov's report and were not materially in dispute.

## 6.0 ACTIVITY STATUS

6.1 It was common ground that the application is for an overall discretionary activity under Rule 73.3.1 Allotment Area, with a number of restricted discretionary activity rules applying in terms of building coverage (38.4.4 and 73.3.5), property access (73.3.7(b)), and vehicle crossings (73.3.8).

6.2 Following the provision of the preliminary site investigation undertaken by Hawthorn Geddes and submitted as part of the application Council was satisfied that no further assessment is required under the *Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011*. Having considered the matter I agree with that conclusion.

## 7.0 PERMITTED BASELINE

7.1 No materially relevant permitted baseline was advanced, although Mr Hood noted that construction of a minor residential unit and continued operation of the orchid growing commercial activity were permitted activities subject to meeting specified standards. I accept that there is no materially relevant permitted baseline.

## 8.0 RELEVANT STATUTORY PROVISIONS CONSIDERED

8.1 In accordance with section 104 of the Act, I have had regard to the relevant statutory provisions, being Part 2 and sections 104, 104B, 106 and 108.

8.2 Section 104 of the Act sets out the matters that must be considered, all of which are subject to the purpose and principles (Part 2) of the Act.

8.3 Section 104B of the Act empowers the decision maker to either grant or refuse a discretionary activity application with or without conditions.

8.4 Section 106 of the Act details additional circumstances upon which a subdivision application might be refused. Council did not propose to rely upon this section for its recommendation to refuse consent and I agree that this section is satisfied (i.e. is not engaged) by the application as made.

8.5 Section 108 of the Act provides for conditions to be placed on any resource consent granted.

## 9.0 RELEVANT OTHER PLANNING PROVISIONS CONSIDERED

9.1 Apart from the matter discussed in paragraph 6.2 above, no provision of any National Policy Statement, National Environmental Standard or regulation was cited as being particularly relevant to this application. I accept that to be the case.

## 10.0 SUMMARY OF EVIDENCE HEARD

10.1 **Mr Richard Donald**, the applicant, gave useful background to their ownership and operation of the property since its 2000 purchase, the vicissitudes of their particular market, the investment made in the property since taking ownership, the reasons and rationale for the subdivision (including their unsuccessful attempts at marketing the property as a single unit), Simons Road development and resident occupations, and the widespread presence of lava/basalt boulders and rocks.

10.1.1 **Mr Brett Hood,** a planning consultant with Reyburn & Bryant Limited, Whangarei,

gave planning evidence for the applicants. He provided an overview of and conclusions from the AEE (which he had prepared), consultation, and addressed submitter concerns and the s42A report. Mr Hood concluded that the proposal was an efficient and effective use of the present and available resource and that there were no planning reasons for not granting consent.

## 11.0 PRINCIPAL ISSUES IN CONTENTION AND FINDINGS

11.1 This hearing was occasioned primarily because of a disagreement between applicant and Council as to how the provisions of the ODP with respect to the Countryside Environment zone should be read and applied to the subject site.

11.2 I have therefore categorised the principal issues in contention at the hearing under two headings:

(a) Consistency of plan interpretation, administration and subdivision determinations in the Countryside Environment zone; and

(b) Farming realities on / of the parent property.

**Plan Administration - consistency**

11.3 It is evident that the Countryside Environment zone has been somewhat problematic for all concerned since first drafted. It was the secondary subject of extensive appeals, determined if not resolved by the Environment Court in 2006 (the primary being the Coastal Countryside Environment) and to which I will refer directly. As noted in the s42A report, Council policy on minimum lot subdivision size in the Countryside Environment zone has changed markedly since the 1990s. Prior to 2001 the minimum lot size required as a controlled activity was 1ha; in 2001 this was amended to 4ha; in 2006 this was further amended by the Court to 20ha.

11.4 In response to a question at the hearing I was told that few, if any, subdivisions of the smaller size (i.e. less than 3 ha) had occurred in the Simons Road vicinity since at least 2006. While this matter was not substantiated by evidence it seemed to be accepted as a fact by all present.

11.5 In essence the point at issue for the applicant can be summarised as follows:

(i) The ODP anticipates the type of subdivision proposed as it satisfies the mathematical constraints stated in Rule 73.3.1 Allotment Areas for a discretionary activity.

(ii) The proposed subdivision conforms to the existing rural character, density and pattern of development of the surrounding area;

(iii) The proposed subdivision does not represent either sporadic subdivision or (because of the size of the proposed lots) rural-lifestyle development;

(iv) The proposal does not set a precedent.

11.6 That the application conforms to the ODP Rule 73.3.1 formula for a discretionary activity application was not in dispute. The average of the lots sought exceeds the Rule's minimum average net site area for all lots of 4ha – being 4.1720ha; no lot is less than 4,000m$^2$; and the three qualifying lots smaller than 3ha meet the requirement that only 2 lots may have a net area of less than 2ha – being 1.59ha and

1.5ha, with the larger at 2.97ha).

11.7 This takes us to the specific discretionary activity assessment criteria stated in the Rule:

> *Assessment criteria for **discretionary** activities undertaken in accordance with the rule above include:*
>
> *i. The matters over which control is reserved; and*
>
> *ii. The likely location of future rural and urban development, including the effects of sporadic subdivision and ribbon development and effects on the efficient provisions of infrastructure and services; and*
>
> *iii. The potential effects of the type and density of subdivision and development on rural amenity, landscape, open space, heritage value, ecological values, riparian management, and the natural character of the rural and coastal environment; and*
>
> *iv. The cumulative effects of subdivision and development on the environment and on the provision of infrastructure and services; and*
>
> *v. The risks from natural hazards.*
>
> *vi. Any other matters that council considers relevant.*
>
> ***Control is reserved over**:*
>
> *i. The location of vehicle crossings, access or right-of-ways and proposed allotment boundaries so as to avoid ribbon development;;*
>
> *ii. The location of proposed allotment boundaries and building areas so as to avoid potential conflicts between incompatible land use activities, including the avoidance of reverse sensitivity effects;*
>
> *iii. The location of proposed allotment boundaries, building areas and access ways or right-of-ways so as to avoid sites of historic and cultural heritage including Sites of Significance to Maori;*

11.8 Mr Hood provided an assessment of the proposal against these criteria in his evidence (paragraphs 25-44), concluding that none of these criteria were offended by the proposal with the conditions proposed (including the *no complaint* covenant proposed) and given the ability of the landscape to absorb present and additional development (because of the limited public viewing points and the enclosed (i.e. by vegetated screens and walls) nature of the landscape. I note also that it was common ground that no cumulative effect would arise from granting the application.

11.9 More at issue were the matters indicated in the second discretionary activity criterion relating to “sporadic subdivision”, and which derives directly from the ODP’s *amenity* policy 5.4.5, which states:

> **5.4.5 Countryside Environments**
>
> To ensure rural amenity values in the Countryside Environments are protected from subdivision, use or development that is sporadic or otherwise inappropriate in character, intensity, scale or location.
>
> *Explanation and Reasons: The rural environment possesses distinctive amenity values that are enjoyed by both rural and non-rural dwellers. However, conflict over amenity values often occurs when new residences locate in the rural environment. This conflict includes both the effects of newly locating activities on existing activities and the effects of existing activities on newly locating activities (reverse*

*sensitivity). These issues need to be managed both to avoid conflict and protect rural amenity values.*

11.10 For completeness I should also note ODP-generic policy 5.4.7 which states:

> **5.4.7 Intensity and Design of Subdivision and Development**
>
> To ensure that subdivision and development do not unduly compromise the outlook and privacy of adjoining properties, and should be compatible with the character and amenity of the surrounding environment. Particular regard should be given to:
>
> - The layout and intensity of subdivision;
> - The location, design and siting of buildings and structures except, where such buildings and structures provide a specific service for the surrounding environment. In the latter case, any building or structure shall be designed, laid out and located, so as to avoid, remedy or mitigate any adverse effects on the environment.
>
> Restrictions on density of development and subdivision size may be required to ensure new development does not increase population concentration in noise-sensitive areas.
>
> *Explanation and Reasons: The intensity, scale and design of subdivision, and buildings within subdivisions, have the potential to cause adverse environmental effects. Reverse sensitivity issues are relevant in determining appropriate density of development and subdivision. The layout, design and density of subdivision should be appropriate to the environment where it is located. New buildings should also be of a similar character to the buildings that exist in that particular environment. The scale, height and setbacks of new buildings also have the potential to adversely affect outlook and privacy of neighbouring activities.*

11.11 Mr Hood correctly notes that the policy outcome is the protection of rural amenity values, and gives his opinion[1] that the proposed subdivision is not "sporadic" when considered in the context of the landscape unit of which it is a part, and because the subdivision effectively consolidates existing development patterns. To that end he attached exhibits to his evidence showing existing cadastral patterns (exhibit 3), existing houses (exhibit 4), existing houses and other buildings (exhibit 5), and existing houses, other buildings, and potential future houses (exhibit 6). Mr Hood concludes that the existing pattern of development across Whatitiri Mountain (including permitted developments on established lots) indicates a rural amenity that could not be compromised by the proposed subdivision because the average lot size for the subdivision lies within the 78$^{th}$ percentile for all lots on the Mountain and is close to the overall average density.

11.12 While this exhibit evidence was not challenged by Council, Ms Shannon did not resile from her s42A conclusion that the development pattern was, in fact, dominated by lots larger than 4ha, the site is surrounded by lots larger than 10ha, that there is a perceptual difference between rural working buildings and residential buildings, and that "*The rural amenity that currently exists will be challenged by the introduction of a series of small lots in a setting hereby it constitutes sporadic development*"[2]. Furthermore she considered the smaller Lots 1-3 of the proposed development more redolent of rural residential lifestyle - a characterisation rebutted by Mr Hood[3] on the ground that in the Whangarei context these are provided for in the Urban Transition

[1] Hood, EIC, paragraph 57(b)
[2] Shannon, s42A report, Table 2, page 22
[3] Hood, EIC, paragraphs 86-88

Environment zone at an average lot size of 5,000m$^2$ (inclusive of the balance lot) and a maximum lot size of 2,500m$^2$ – significantly smaller than Lots 1-3 as proposed.

11.13 The only reference to what "sporadic" might mean in the context of the ODP is an "explanation" in the *Significant Issues* section of Chapter 8 – Subdivision and Development, where it notes that "Sprawling or sporadic subdivision is a term used in the New Zealand Coastal Policy Statement", which is not particularly helpful (and which document does not apply to this location).

11.14 The Oxford dictionary defines "sporadic" as "*Occurring at irregular intervals or only in a few places; scattered or isolated*".

11.15 I note in passing that the Court, in disposing of the appeals on this matter in 2006, confirmed[4] the use of this term, its then associated objective 7.3.3 (now revised as policy 5.4.5), and that it might take its ordinary plain meaning. As the Court then stated:

> *[52] We find that the contested terms are suitable in the context of Objective 7.3.3. The objective is concerned to ensure subdivision and development are consolidated in appropriate locations and that the antithesis, namely sprawling/sporadic/ribbon development is avoided. It is necessary for achieving the purpose of the Act that effects, which would otherwise occur in conjunction with the latter, are effectively managed.*

11.16 I also note that the Court was constrained in its ability to amend the relevant discretionary activity criteria relating to the allotment area rule by the fact that, and at some irritation to it as the two matters had not been joined, the Court had confirmed an earlier Ngatiwai Consent Order (ENV A0143/04) which provided at paragraph 10 that "*There be no change to the wording of the assessment criteria for discretionary activities in Rule 50.4 allotment area*" (that rule now being the amended 73.3.1 Allotment Area).

11.17 Certainly taking the wider roading catchment used by Mr Hood in his exhibits (i.e. bounded by Mangakahia, Tatton, SH14, Whatitiri, and Kerehunga Roads), it would be stretching definition to term the proposed subdivision "sporadic" given the apparently higher density of development in the southern and south-eastern quadrants of the Mountain. But that of course is the nature of scale-effects; the more one "zooms out" the more fine-grained detail is lost. Similarly, as per Ms Shannon, the more one "zooms in" the greater the fine-grained detail such that four additional residential dwellings takes on greater significance, and the subdivision is more "sporadic" etc. At their respective scales, both planners are "correct".

11.18 In my view the proper axis for this consideration is Simons Road itself, being the only public road access to Whatitiri Mountain. From the available information it seems that there are very few lots with residential dwellings accessed directly from the approximately 2.8 kms of Simons Road. In that sense, the subdivision pattern of "residential" lots is relatively sporadic – and there are, as Ms Shannon notes, numerous lots considerably larger than 4ha "hanging off" those access points. Indeed between the 200m and 340m contours shown on Mr Hood's exhibit 2 (i.e. between the site and the top of the Mountain) along Simons Road, only 3 existing houses are shown (including that on the site).

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[4] *The Director General of Conservation anors v Whangarei District Council*, Env A024/2006, paragraphs [47]-[52]

11.19 I conclude that the rural amenity of Simons Road is, therefore, characterised, at least in part measure, by a relative absence of residential dwellings, to which an additional 4 would have some significance – and certainly could not be assessed on its face as being of minor effect.

**Precedent effect**

11.20 Mr Hood disagreed with Ms Shannon that the issue of precedent effect was a relevant consideration – noting that this more commonly arises with respect to non-complying activity applications and the section 104D RMA tests.

11.21 In particular he disagreed that a discretionary activity application should be required to demonstrate that it had ”evident unusual qualities” (rather than being “unique” as suggested by Ms Shannon) before it could be granted – in order not to create a precedent. As he correctly noted, every application must stand on its own merits as assessed against the provisions of the relevant planning documents and the RMA.

11.22 On the other hand, in reply, Mr Hood provided a number of examples of subdivisions granted between 2008 and 2012 in the Countryside and Coastal Countryside Environments (2 discretionary activity applications and 6 non-complying activity applications) illustrating the point that such was not itself uncommon, and urging consistent administration of the ODP’s provisions.

11.23 In response Ms Ryan made the observation that the discretionary activity examples provided were two lot subdivisions with a relatively minor parcel.

11.24 I found Mr Hood’s argument a little confused in that while suggesting a precedent effect is not created by the present application, he urged me to accept the examples he provided as, effectively, precedents requiring a grant in the present instance.

11.25 There is no doubt that consistent administration of the provisions of a plan is fundamental to public confidence. For that very reason it seems evident to me that any decision on an application has potential precedent effect *unless*, as the Courts have determined, evident unusual qualities pertain. In the present instance the only such “qualities” advanced related to the physical characteristics of the site – i.e. the nature of the lava/basalt underlying the site and the previous removal of topsoil. However, upon further questioning I was advised, unsurprisingly since this is a volcano, that the lava/basalt outcropping etc was evident and was an issue more broadly.

11.26 I therefore conclude that any decision on this application must (indeed, should) have a precedent effect for other properties on the Mountain to the extent that the discretionary activity provisions of the ODP are consistently administered. A precedent precisely because, as I understood from those present at the hearing, no other comparable subdivision applications have been determined in this locality since the 2006 Court decisions on the appeals.

**Farming Realities**

11.27 Mr Donald told the hearing at some length about the problems currently experienced by flower and horticultural farmers in his primary market areas of *cymbidia*, *hydrangea* and *avocados* (notwithstanding the light cattle grazing on their front pasture). This, together with a clear indication of no family succession, i.e. the children not being interested in a career in horticulture, led the applicants to consider

their options. As no interest was forthcoming when the property was marketed as a single prospect, the present proposal emerged whereby the main hothouse block would be retained and the remainder divided along practical lines, retaining the avocado orchard also in a single title. I have already alluded to the physical properties of the land as a further impediment to some forms of farming.

11.28 While one must have sympathy for farming families who find themselves in similar predicament, smaller lot subdivision cannot constitute an automatic planning response to such circumstance. That may well be one of the futures for this area but it requires a more deliberate process of consideration than a market-response reaction might suggest. I return to this point below.

## 12.0 SECTIONS 104 AND 106 RMA CONSIDERATIONS

12.1 Section 104 requires a consideration of the actual and potential effects of allowing the activity, and taking into consideration a series of statutory documents – national environmental standards and policy statements, regional and district plans, and any other matter considered relevant and reasonably necessary.

12.2 Taking all relevant s104 matters into consideration I find that while there is an undoubted logic in the subdivision scheme and its associated boundaries proposed, the wider off-site effect of the application cannot be determined with sufficient reliability. It is not clear to me from the planning provisions that this “area” is or should be opened up to small lot subdivision – and certainly not in the absence perhaps of more detailed planning process through which a more considered future can be determined if, as appears to be the case in this instance, the area’s future for rural productive uses is in question.

12.3 I have already indicated that there are no section 106 matters that would lead to a conclusion that the application should be refused.

## 13.0 PART 2

13.1 The final matter is the overall Part 2 consideration.

13.2 Section 6 of the Act states a number of matters of national importance for which, if they apply, decision makers must recognise and provide. No section 6 matters are identified for consideration.

13.3 Section 7 of the Act contains a list of other matters that decision makers must have particular regard to in determining an application. To the extent that sections 7(b) *The efficient use and development of ...physical resources*; 7(c) *The maintenance and enhancement of amenity values*; and 7(f) *Maintenance and enhancement of the quality of the environment* apply, the effects are probably minor on balance.

13.4 Section 8 of the Act relates to the principles of the Treaty of Waitangi. No relevant affected principles were identified.

13.5 In turning my mind to the overall judgement required I have referred back to the decision of the Court on the Countryside and Coastal Countryside Environments

provisions, given in its 2006 appeal determinations[5].

13.6 In particular, and wishing to gain guidance from those decisions on the reasoning behind the discretionary activity application allotment size rule and criteria, I note that the Court expressed concern at several points that the appeals to hand dealt primarily and largely with the Coastal Countryside Environment matter rather than the Countryside Environment. As the Court noted:

> *[85] Regrettably we received little assistance to guide decision-making concerning the CE. This aspect of the hearing was somewhat unsatisfactory and does not reflect well on the parties, especially the council.*

13.7 This led the Court to impose the 20ha minimum lot size as a holding position until such time as an appropriate plan change is initiated. And with respect to the disagreement between Mr Hood and Ms Shannon on the rural residential lifestyle question, I also note the Court's comment on the matter of average lot size (in the context of the Coastal Countryside Environment) where it states:

> *[98] ...We struggle more than a little with his opinions on this aspect. A CCE subdivision that produces average 6 ha sites is more likely to be within the threshold commonly associated with lifestyle subdivisions than one at an average of 10 ha.*

and revised the activity threshold standards from 6ha and 12ha to 10ha and 20ha accordingly.

13.8 Finally, on the matter of the rule itself and possible amendments the Court noted:

> *[102] The Court has doubts, like a number of the witnesses, on whether the provisions are the most appropriate means of exercising council's function especially in the CE zone, in relation to which we once again heard little evidence. There is nothing in the CE provisions that preclude the district's rural areas from being subdivided uniformly into 4 ha blocks as a DA. Even with the broad assessment criteria available we cannot be confident that matters of the type earlier identified above will be secured on a sustainable basis. And the Ngatiwai Consent Order (paragraph 10) requires there be no change to the DA assessment criteria.*
>
> *[103] For these reasons we reluctantly find that the DA provisions for the CE should remain unchanged at this time.*

13.9 I have rehearsed the above for the reason that it appears that little progress or clarity on the issue has emerged since 2006. Accordingly, and while I accept that this is of no comfort to the applicant, I find that the status quo should be continued in line with the Court's determination in 2006. That does not mean that I find the proposed subdivision unacceptable in form or substance. At best it is premature. The matter is, in my opinion best resolved either through a plan change process for the Whatitiri Mountain rural catchment or through the less formal route of a structure plan-type approach. In the absence of that broader planning framework, to grant this application would, in my opinion, risk establishing a precedent for smaller lot subdivision that would be irrevocable.

13.10 I am satisfied that the application does not meet the Section 5 sustainable

[5] The Director General of Conservation anors v Whangarei District Council, ENV A024/2006

management purpose and relevant stated principles of the RMA, would not promote sustainable management, and therefore should not be granted. Consent is accordingly refused.

## 14.0 DECISIONS

14.1 Pursuant to sections 37 and 37A of the Resource Management Act 1991 the submission time period is extended for the late submissions from the New Zealand Fire Service Commission and the New Zealand Historic Places Trust, which are accepted accordingly.

14.2 Pursuant to sections 104, 104B, 106 and 108 of the Resource Management Act 1991, resource consent is refused for the discretionary activity subdivision and land use application by RJ and JA Donald for a two-stage, five lot subdivision of 179 Simons Road, Poroti, being Lot 1 DP 69568, Part Whatitiri $12^{L}2^{B}$ and $12^{L}1$.

14.3 A decision on the conjoint land use consent to exceed coverage on proposed Lot 4, located within the Countryside Environment zone under the Operative District Plan, is not therefore required.

## 15.0 REASONS

15.1 Pursuant to section 37A of the Resource Management Act 1991, accepting the two late submissions from the New Zealand Fire Service Commission and the New Zealand Historic Places Trust, which were received by Council respectively 1 working day and 3 working days late, was not opposed by the applicant, occasioned no delay to the processing of the application through to decision, and raised relevant matters that were not otherwise raised.

15.2 Pursuant to section 113 of the Resource Management Act 1991 the reasons for the primary decision are set out in the body of this decision and are generally that:

1. The activity proposed is not consistent with the relevant objectives and policies of the operative Whangarei District Plan.

2. The application is not consistent with the overarching purpose and principles of the Resource Management Act 1991 as set out in Part 2 of the Act.

David Hill
Independent Hearings Commissioner
For Whangarei District Council
28 March 2014