

Report and decision of Hearings Commissioner Les Simmons. 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 25 September 2014.

The Hearings Commissioner heard the resource consent application lodged by K Rouse and J Beuker relating to two lot subdivision of the property at 153 Harris Road, Glenbervie. The application, made in accordance with the Resource Management Act 1991 ('the Act') was lodged with Whangarei District Council and referenced as (SD 1300086 P125128).

Present	Hearings Commissioner Les Simmons
Applicant	Keihl Rouse Alister Trimmer – Simpson Shaw Surveyors Pat Smith – Simpson Shaw Surveyors
Consent Authority	Whangarei District Council Heather Shannon – Reporting Planner Kelly Ryan – Team Leader (Consents) Dean Murphy – Senior Environmental Engineering Officer
Submitters In attendance	None

Description of the proposal

- [1] The proposal is to subdivide the existing 14.12 hectare site, legally described as Lot 3 DP 425376, into two lots. The existing dwelling was proposed to be contained on proposed Lot 2, being 1.0 hectares net site area (1.4 hectares gross) with proposed Lot 1 being 12.7 hectares. During the hearing process a revised scheme plan was submitted that varied the proposed lot sizes to 13.3 hectares for proposed Lot 1 and 0.5 hectares net (0.8 hectares gross) for proposed Lot 2.
- [2] A number of other amendments to the proposal were offered by the applicant during the hearing. These included a set of recommended conditions that were prepared in conjunction with the reporting planner, Ms Heather Shannon.

District Plan Rule(s) affected

- [3] The proposed activity does not comply with the following rules of the Whangarei District Plan, as set out below in Table 1 from section 3.1 of Ms Shannon's section 42A report:

Table 1: Assessment against Subdivision Rules

Operative District Plan:	Activity Status:
Chapter 73 Subdivision Rules – Countryside and Coastal Countryside Environments	
<p>Rule 73.3.1 Allotment Area Subdivision is a Controlled Activity if:</p> <ul style="list-style-type: none"> a) In the Countryside Environment, every proposed allotment has a minimum net site area of 20.0ha; <p>Or</p>	<p>Discretionary Activity Subdivision is a Discretionary Activity if:</p> <p>In the Countryside Environment the following three standards are met:</p> <ul style="list-style-type: none"> i. The minimum average net site area of all proposed allotments is 4.0ha, and

<p>c) In the Countryside Environment or Coastal Countryside Environment the subdivision complies with Rule 73.3.3 Boundary Adjustment.</p> <p>For the purposes of this rule, “existing allotment” is defined as an allotment which:</p> <p>a) Has a separate certificate of title,</p> <p>Or</p> <p>b) Is shown on a plan of subdivision which has been certified by the Council pursuant to section 223, and has not elapsed pursuant to section 224 of the Resource Management Act 1991.</p> <p>Comments: <i>The proposal cannot comply with Controlled Activity criteria above as the net site area of each allotment is below the 20.0ha threshold.</i></p>	<p>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, except where:</p> <p>a) Only two allotments are created by the subdivision, and one of those allotments has a net site area of less than 4.0ha while the other allotment has a net site area of 8.0ha or greater; or</p> <p>b) Proposed allotment is intended exclusively for reserve purposes and has a net site area of 8.0ha or greater; and</p> <p>ii. The minimum net site area of any proposed allotment is 4000m²; and</p> <p>iii. There are a maximum of three proposed allotments with a net site area of less than 3.0ha, of which:</p> <p>a) No more than two allotments may have a net site area of less than 2.0ha; and</p> <p>b) No more than one allotment may have a net site area of less than 1.0ha.</p> <p>Subdivision that does not comply with a standard for a controlled or discretionary activity is a Non-Complying Activity.</p> <p>Comments: <i>The proposal yields an average net site area of 6.5ha which complies with the minimum average size criteria for a Discretionary Activity. Neither allotment will have a net site area of less than 4000m². Therefore the proposed subdivision is to be considered as a Discretionary Activity. As above, the previous subdivision that created the subject site (SD0841192) was assessed as a Non-Complying Activity, therefore the current proposal is still able to rely on the discretionary averaging criteria.</i></p>
<p>Rule 73.3.7 Property Access</p> <p>Subdivision is a controlled activity if:</p> <p>a) Every allotment is capable of having vehicular access to a road; and</p> <p>b) Access shall be provided where it is shared by 2 or more allotments; and</p> <p>c) 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</p> <p>d) No more than 8 allotments, or 8 residential units, are served by a shared access.</p>	<p>Permitted Activity</p> <p>Comments: <i>The proposal will comply with the standard prescribed in the Environmental Engineering Standards 2010 edition in terms of formed width for the proposed ROW access.</i></p> <p><i>Both lots are proposed to gain vehicle access via proposed right of way A, B, C, D, E & F which has an existing unsealed formation width of approximately 3.0m except in the area of the existing culvert where the pavement is 2.5m wide. This access will be upgraded to comply with Table 3.7 Category E(alt)* which specifies a 4.5m wide carriageway width with a 4.0m surface width.</i></p>

Chapter 61 Resource Areas – Esplanade Area Rules	
<p>Rule 61.3.1 Esplanade Requirements</p> <p>Subdivision is a controlled activity if :</p> <p>a) Where any allotment of less than 4.0 ha in area is created, an esplanade reserve or esplanade strip of a minimum of 20.0 m in width is set aside along the landward side of the line of Mean high Water Springs of the sea, and along the bank of any river whose bed has a width of 3.0 m or more, except in the areas specified in Appendix 5; and</p> <p>b) Esplanade reserves or esplanade strips are vested in the Council, or registered, in accordance with Sections 231 and 232 of the Resource Management Act 1991.</p>	<p>Control is reserved over:</p> <ol style="list-style-type: none"> i. Whether an esplanade strip should be created instead of an esplanade reserve; ii. The width of an esplanade reserve or esplanade strip; iii. The need for an access strip joining an esplanade reserve or esplanade strip; iv. The matters to be provided for in an instrument creating an esplanade strip (Schedule 10 of the Resource Management Act 1991); v. Whether or not any works might be required prior to vesting; vi. The additional matters listed in Chapter 53.3. <p>Any activity that does not comply with a standard for a controlled activity is a Discretionary Activity.</p> <p>Comments: <i>The proposal does not include provision for an esplanade reserve for proposed Lot 2, where this lot is less than 4.0ha and encompasses part of the river which has a width of more than 3.0m.</i></p>
Chapter CEL Critical Electricity Lines Rules	
<p>Critical Electricity Lines (CELs) and Substations</p> <p>There is a CEL running through the middle of the property, therefore the subdivision of the site is a Restricted Discretionary Activity with respect to Rule CEL.1.4.</p>	<p>Restricted Discretionary Activity</p> <p>The matters of discretion relating to this rule are listed under CEL.1.5 as follows:</p> <ol style="list-style-type: none"> i. the safe and efficient operation and maintenance of the electricity supply network, including: <ol style="list-style-type: none"> a. The use, design and location of buildings; and b. The mature size, growth rate, location, and fall zone of any associated tree planting, including landscape planting and shelterbelts; and c. Compliance with NZECP 34:2001; and d. Effects on public health and safety; and e. Effects on access to CEL's, designated substations and associated infrastructure for maintenance purposes

The proposal meets all other relevant standards for assessment as a Controlled Activity under additional subdivision rules contained within Chapter 73 of the District Plan, specifically, Rule 73.3.10 *Provision for Extension of Services*, Rule 73.3.11 *Water Supply*, Rule 73.3.12 *Stormwater*, Rule 73.3.14 *Sewage*, Rule 73.3.15 *Electricity*, Rule 73.3.16 *Telecommunications* and Rule 73.3.17 *Earthworks*. The proposal is considered to satisfy all other rules in relation to subdivision and land use in the Countryside Environment. However, overall the proposal is regarded as a Discretionary Activity.

Notification and submissions received

- [4] The application was notified on 23 June 2014 pursuant to Section 95 of the Act. A total of eight submissions were received. The following is a summary of the written submissions received and the main issues raised as set out in section 4.0 of Ms Shannon's section 42A report:

Submitter	Issues and Relief Sought
New Zealand Fire Service Commission	<ul style="list-style-type: none"> • The submission relates to the provision of water supply for firefighting purposes. • While the submission indicates that all lots be connected to the local reticulated supply if available, alternative solutions are provided. • The submission requests that, should the consent be granted, conditions be imposed to ensure adequate supply of water for firefighting purposes and that this supply is accessible to emergency vehicles, which would involve the upgrade of the access. <p>Relief sought: Neutral but requests should the application be approved specific conditions of consent are imposed.</p>
Simon Koller, 144 Harris Road	<p>Relief sought: The application be approved.</p>
Cameron Leslie and Emma Gosling, 159 Harris Road	<p>Feel it is a good move for a property in the area.</p> <p>Relief sought: The application be approved.</p>
Roger Parsons, 195 Harris Road	<p>As servient tenement, has concerns over additional users over ROW.</p> <p>Relief sought: The application be declined.</p>
Heritage New Zealand	<ul style="list-style-type: none"> • The submitter notes that while there are no identified archaeological features within the subject site, nor in the vicinity. • As such, the submitter recommends that NZHPT's Accidental Discovery Protocol be included as an advice note. <p>Relief sought: Neutral but recommends advice note.</p>
Noel and Christine Donelley, Adams Road	<ul style="list-style-type: none"> • Submitters property used for plantation forestry and they are concerned about reverse sensitivity issues. • As such, the submitter recommends that NZHPT's Accidental Discovery Protocol be included as an advice note. <p>Relief sought: Decline but will reconsider if appropriate mechanism available to protect their forestry operations.</p>

Issues and Relief Sought	
Submitter	
New Zealand Fire Service Commission	<ul style="list-style-type: none"> Notes widening of access and provision of water for firefighting supply. <p>Relief sought: Approve with Consent Notice conditions covering access and water supply.</p>
Northpower Limited	<ul style="list-style-type: none"> Confirms requirements given in correspondence dated 9 October 2013 satisfy CEL.1.4 but notes easement requirement not shown on scheme plan. <p>Relief sought: Approve with conditions of consent requested being to include required easement.</p>
Friedrich Koch, 193 Harris Road	<ul style="list-style-type: none"> Reverse sensitivity concerns for his commercial business on site. <p>Relief sought: The application be declined.</p>

Procedural matters

- [5] The submission from Mr Friedrich Koch was received by the Council three days after the submission period had closed. The applicant supported the acceptance of the late submission. In terms of section 37 of the Act an extension of time was granted and the submission by Mr Koch was accepted for the reasons that the applicant was not prejudiced as they had been in discussions with Mr Koch and he had provided his written approval dated 22 September 2014. No unreasonable delay had arisen from the submission being late and the submission related to matters that had been raised by another submitter.
- [6] Written approvals were supplied from some neighbouring landowners and these were listed and discussed in section 4.3 of the section 42A report. At the hearing Mr Trimmer tabled further written approvals, including those from Mr Koch and Mr Parsons who had previously lodged submissions opposing the application. The overall outcome was that written approval had now been obtained from most of the surrounding landowners, the notable exception being Mr and Mrs Donelley who were submitters who opposed the application. Mr Trimmer advised that the applicant was prepared to offer a “no complaints covenant/consent notice” to be placed on the new titles and stated that this would overcome the concerns raised by Mr and Mrs Donelley.
- [7] The hearing was adjourned at 11.50am for the following reasons. Firstly to enable the Council reporting team to provide a set of recommended conditions for the applicant to consider and hopefully an agreed set of conditions, or an almost agreed set of conditions, could be tabled before the hearing would be closed. The purpose of these conditions was to provide me with an appropriate set of conditions in the event that consent was to be granted. In addition if agreement was not reached on all of the recommended conditions, the differences between the applicant and the Council would be clearly recorded for me to consider during my deliberations.
- [8] An initial set of conditions was forwarded to me on Friday 3 October, together with an amended scheme plan. While this set of conditions was agreed to by Mr Trimmer on behalf of the applicant, it was not clear to me if based on these recommended conditions Ms Shannon had revised her original advice which was to refuse consent. I therefore requested that Ms Shannon advise Mr Trimmer in writing what her final recommendation was. Following that Mr Trimmer was given the opportunity to submit in writing his final Reply. I received copies of Ms Shannon’s final response and Mr Trimmer’s final Reply on 15 October and the hearing was formally closed on that date.

Evidence heard

- [9] Evidence was heard from the applicant, expert witnesses, and the council's reporting officer. The following is a summary of the evidence heard at the hearing. The most relevant aspects of the evidence are discussed in the Main Findings of Fact section of this decision.

Applicant's evidence

- [10] Mr Keihl Rouse, applicant and joint owner of 153 Harris Road, presented written evidence. He explained how he and Mr Beuker had jointly purchased the property a little over a year ago. The existing house and sheds are clustered together at the southern end of the property (proposed Lot 2), with the remaining bare land located to the north of the existing buildings (proposed Lot 1). Mr Beuker was looking to buy his first home, while Mr Rouse was seeking a lifestyle property for his family. He stated that the proposed new house site would not be visible from any surrounding dwellings. The only new buildings he proposed on Lot 1 would be his new dwelling. He noted that most of his neighbours had provided written approval.
- [11] The design of the proposed subdivision resulted in boundaries that followed the existing stream and existing fence lines. Mr Rouse identified the planting that he had undertaken together with the fencing off of areas of native bush and the areas of planting he had undertaken along the banks of the streams on the property. He stated that he had no future plans for further subdivision. He was agreeable to *"any requirements that the Council finds necessary to put in place to provide protection from future development that would not be suitable to the area."*
- [12] Mr Alistar Trimmer, Survey Technician, presented written evidence that had been prepared in conjunction with Mr Trevor Shaw, Licensed Cadastral Surveyor. Mr Trimmer tabled an amended scheme plan that had been updated in response to the requirements of adjoining owners and possible mitigation measures that had been suggested by Council staff. The amendments included the deletion of proposed right of way easement H, the addition of areas V and W to be the subject of esplanade strips and the addition of areas X, Y and Z to be subject to bush protection covenants. He also tabled a set of proposed conditions of consent as no conditions had been recommended in the section 42A report, because the overall recommendation was for the consent to be refused. Thirdly a plan was tabled indicating the properties that written approvals had been obtained from.
- [13] It was Mr Trimmer's opinion that as a discretionary activity in relation to the minimum allotment area in the Countryside Environment, the rules anticipate in some areas, this density of development and increases in traffic movements. He outlined the consultation that had occurred with adjoining land owners and the amendments to the proposal that had been made as a consequence. In addition to the matters discussed above on the scheme plan, he stated that a "no complaints covenant/consent notice" would be placed on both new titles to enable the neighbouring forestry plantation and engineering operation to continue without complaints from the owners of the two new titles.
- [14] He stated that within a 1 km radius of the subject site no less than 17 properties exist with a smaller area than the 1.4 hectares proposed for Lot 2. He commented on various matters raised within the section 42A report before concluding that it was his opinion that consent should be granted because; the proposal meets the majority of the relevant objectives and policies and is a discretionary activity, written approvals had been obtained from a substantial number of the surrounding property owners, the concerns raised by submitters had been addressed to their satisfaction, that the additional dwelling proposed would be sufficiently screened from existing nearby dwellings by landform and existing vegetation and that suitable conditions of consent are able to be added to meet the concerns raised by the Council in the section 42A report.
- [15] After hearing the reporting planner's response Mr Trimmer by way of Reply agreed with Council Officers that the proposal was one that is finely balanced and stated that further conditions of consent would be accepted by the applicant. He agreed to work in conjunction with the reporting planner to prepare a set of recommended conditions for consideration in the event that consent was granted to the proposal.

Submitters' evidence

- [16] No submitters attended the hearing or tabled any evidence. The written submissions that had been lodged with Council by submitters have been considered and taken into account before reaching a decision.

Council's reporting officer's report and evidence

- [17] Ms Heather Shannon, the reporting planner, had prepared a comprehensive section 42A report in which she had recommended that consent be refused. The primary reasons for her recommendation were that in its current form the proposed subdivision would have unacceptable effects on rural character and amenity values and that the proposal was contrary to the overarching intent of the majority of the relevant objectives and policies which seek to avoid inappropriate, unconsolidated subdivision and development. At section 10.1.3 of her report she set out a summary of the additional matters that she considered the applicant needed to consider to address her concerns.
- [18] After hearing the evidence presented, as well as Mr Trimmer's suggested further conditions that could be imposed, Ms Shannon and Ms Kelly Ryan, Team Leader (Consents) stated that the recommendation to refuse consent was a finely balanced one. Until the final set of recommended conditions was prepared Ms Shannon was not prepared to give her final recommendation. After considering the final set of recommended conditions that had been prepared in consultation with Mr Trimmer, Ms Shannon recommended the grant of consent, with only one matter of disagreement between the two of them. This related to the offer on behalf of the applicant that there would be no further subdivision of proposed Lot 1. The applicant offered such a restriction for 10 years, whereas Ms Shannon recommended that further subdivision should only occur if a future change in zoning provided for more intensive subdivision.

Principal issues that were in contention

The principal issues that were in contention were:

- a) The extent of actual and potential adverse effects on the environment arising from the proposal.
- b) Whether the proposal is consistent with the relevant provisions of the District Plan.
- c) Whether the proposal merits the grant of consent in terms of section 104 of the Act.
- d) The conditions of consent that should be imposed to avoid, remedy or mitigate adverse effects on the environment.
- e) Whether the proposal will promote the sustainable management of natural and physical resources as contemplated by Part 2 of the Act.

Main findings of fact

- [19] The following are the main findings on the principal issues that were in contention.

The extent of actual and potential adverse effects on the environment arising from the proposal.

- [20] There were many aspects of the proposal that were not in contention. The site could be appropriately serviced in accordance with the relevant engineering standards, road safety and access effects were considered to be no more than minor and no cultural effects were identified.
- [21] The primary issues that were in contention related to the effects on rural character, amenity values and reverse sensitivity. With respect to reverse sensitivity effects the applicant offered a "no complaints" covenant or consent notice and Mr Koch provided his written approval as this adequately dealt with his concerns. For Mr and Mrs Donnelly their concerns in relation to their forestry activities remained at issue, even though they did not attend the hearing.
- [22] Of greatest concern to Ms Shannon, at least in her section 42A report, were the effects on rural character and amenity values that would arise from a new development occurring on proposed Lot 1. She summarised her concerns at section 6.9 of her report as set out below.

"While there may be capacity within the existing environment to absorb the potential effects of the subdivision from a visual and infrastructural viewpoint, I am not satisfied that the proposal appropriate in this location given that the proposal lies on the boundary between an area of smaller lifestyle type lots and larger land holdings.

While being a Discretionary Activity, the proposal as configured will serve to extend the existing pattern of higher residential surrounding Harris Road and introduce a density of development that is higher than is typical of the surrounding environment and will erode the existing rural amenity of the wider area. Therefore taking into account the above assessment, overall I am of the opinion that the adverse effects on character and amenity arising from the proposal are not wholly acceptable in this instance."

[23] In relation to cumulative effects Ms Shannon stated at 6.8.3 that:

"For a cumulative effect to be significant, it must breach a threshold or 'tip the balance'. In this instance, the proposal is considered to extend the existing area of higher density development into a more rural part of the locality and as such is likely to be eroding the character of this area, and also lead to potential conflicts between land uses."

[24] Mr Trimmer did not specifically respond in his evidence to the above adverse effects identified by Ms Shannon. Instead he concentrated primarily on the consultation that had taken place with submitters and to address the specific concerns they had raised, leading to the majority of them providing written approval. In the AEE, that Mr Trimmer and Mr Shaw had jointly prepared, a number of general comments were made to support the statement at section 4.0 of the AEE, that the effects on "Character and Views" would be "Nil." These comments include the following.

"The proposed subdivision, by meeting the objectives and policies of the District Plan will not compromise the established amenity values of the neighbourhood. Surrounding landform and vegetation will continue to screen the subject site from most viewing locations."

"The proposal is consistent with the existing density and subdivision development in the Harris Road area. The subdivision does not adversely affect the aesthetic attributes of the area, nor does it affect traffic flow or safety."

"The surrounding neighbourhood is a well established low-medium density residential area which has a variety of lot sizes and quality homes. The subdivision is consistent with the existing pattern of development along Harris Road."

[25] Section 104(3) of the Act clearly states that no regard must be given to "any effect on a person who has given written approval to the application." I have had no regard to any effects on those persons who have provided written approvals.

[26] In section 2.3 of her report Ms Shannon provided the following description of the site and the surrounding environment.

"The site is located approximately halfway along Harris Road which runs between Ngunguru Road and Whareora Road, and lies approximately 3.5km by road from the outskirts of Whangarei and the suburb of Tikipunga."

Within the localised area along Harris Road the pattern of development is made up of predominantly rural-residential and lifestyle lots extending away from the road to a depth of approximately 1-2 lots. Beyond this, rising up from the flatter area of flood plain along which Harris Road runs, are larger lots that are used for a mixture of pastoral and forestry purposes, and also contains tracts of native vegetation and a quarry to the south-west, known as Dicksons Quarry. Smaller lots in the vicinity of the road also contain a range of commercial uses such as a small-scale timber mill, a cattery and hothouses."

[27] At her sections 6.3.3 to 6.3.6 she went on to state that:

"It is acknowledged that part of the existing locality within which the subject site is created does generally display a much higher density of development (0.5ha to 2ha) than the present Countryside zoning of the area anticipates. This includes some more recent subdivisions that have occurred within the last five years. As such there is a development character surrounding Harris Road that is far more rural-residential in nature than the above environment description would indicate. While there are a

number of established shelterbelts along the northern side of Harris Road which assist in screening the majority of existing residential units from the road, the existence of a substantial number of vehicle crossings and associated letterboxes still provides an indication of the level development in the vicinity.

Beyond this cluster immediately adjoining Harris Road to the north and south in the vicinity of the subject site, this pattern of higher density development is considered to extend approximately 150-200m northwards of the road with the subject site representing a transition to larger balance lots more in the order of 10ha or greater. Indeed, the four recent subdivisions referred to in Section 2.0 have consisted of the creation of small lots towards Harris Road and the larger balance lot behind. While the current proposal is for a similar development, the smaller lot being created is considered to lie behind the existing cluster of higher density development, located further into larger landholdings to the north, away from the road.

These landholdings beyond, due to their increased size and use, contribute towards a more open, green landscape and are elevated such that they provide a backdrop to development along Harris Road. While these areas are predominantly pasture covered, or in production forestry, there are some remaining tracts of native vegetation on elevated areas away from road on both the northern and southern sides of the valley. One of these areas of native vegetation exists on the subject site towards the south-western corner of site and covers an area in excess of 2ha (this area is indicated on the scheme plan).

Taking the above into account, I have concerns that the proposal may start to erode the surrounding more rural areas of land that lie on more elevated land to the north and south of the Harris Road valley by continuing a pattern of smaller lot sizes further from the existing cluster centred around Harris Road.”

- [28] I was advised that subject site had been created as part of a 2008 consent (SD0841192). This consent also created two new small sites that had frontage to Harris Road. In addition I was advised that other recent consents had also been granted in the vicinity of the application site. Each of those consents had also created additional smaller sites with frontage to Harris Road, with the larger balance sites being located beyond the smaller sites clustered along Harris Road. These recent consents had been granted on a non-notified basis and the written approvals of adjoining landowners had been provided.
- [29] A common aspect of the previous consents was that the newly created small sites were additions to and abutted the cluster of existing small sites along Harris Road. In each case consent appears to have been granted on the basis that the rural land beyond the cluster of small sites along Harris Road, would be retained as much larger lots, therefore continuing and reinforcing the established pattern of subdivision and development.
- [30] It was Ms Shannon’s overall summary of effects, in her section 42A report at 6.9.2, that *“the proposal as configured will serve to extend the existing pattern of higher residential surrounding Harris Road and introduce a density of development that is higher than is typical of the surrounding environment and will erode the existing rural amenity of the wider area. Therefore taking into account the above assessment, overall I am of the opinion that the adverse effects on character and amenity arising from the proposal are not wholly acceptable in this instance.”*
- [31] Her final recommendation, after taking into account the mitigation measures that had been offered by way of the recommended conditions of consent, was that consent could be granted on that basis.
- [32] I have preferred and accepted Ms Shannon’s evidence as set out in her section 42A report with respect to the effects on rural character and amenity values. At present the pattern of subdivision and development in the vicinity of the application site consists of sites predominantly of less than 2 hectares along Harris Road. Larger sites, in the ranges of 4 to 20 hectares, sit behind the cluster of smaller sites, with even larger sites behind those. I accept Ms Shannon’s evidence that the rural character and amenity values therefore progressively move from rural residential, to lifestyle, to rural pastoral and forestry in this locality. Ms Shannon’s paragraphs 6.9.1 and 6.9.2 quoted earlier in this decision states that, *“...the proposal lies on the boundary between an area of smaller lifestyle type lots and larger land holdings”* and *“... will serve to extend the existing pattern of higher residential density surrounding Harris Road and introduce a density of development that is higher than is typical of the*

surrounding environment and will erode the existing rural amenity of the wider area.” I accept and adopt her evidence on these matters.

- [33] As to the scale or magnitude of the effects on rural character and amenity values, I do not accept the evidence on behalf of the applicant in the AEE that they will be “Nil.” While Ms Shannon did not specifically state that these effects would be “less than minor,” “minor,” or “more than minor,” she concluded that they “are not wholly acceptable in this instance.” I find that the adverse effects on rural character and amenity values to be in the range of “minor” to “more than minor.”
- [34] In relation to any cumulative effects that will occur from the grant of consent, the only evidence presented was that from Ms Shannon in her section 42A report at paragraphs 6.8.1 to 6.8.3 inclusive. She concluded that there would be cumulative effects as this proposal will *“extend the existing area the existing area of higher density development into a more rural part of the locality and as such is likely to erode the character of this area, and also lead to potential conflicts between land uses.”*
- [35] I accept this evidence, particularly in relation to the effects of this proposal when considered alongside the effects of previous consents that have been granted. A gradual increase in the intensity of subdivision and development has been occurring in this locality and this proposal adds a further site and will lead to an additional new dwelling. As stated by Ms Shannon, the primary difference between this proposal and the earlier consents, is that instead of consolidating the existing cluster of rural residential and lifestyle development, it extends the outer edge of the cluster. This proposal if granted consent would expand the cluster whereas previous consents have essentially “filled in some of the gaps” along Harris Road.
- [36] It was essentially the case for the applicant that there were no adverse effects arising from the proposal. In support of this the applicant relied on written approvals and a package of mitigation measures that were largely put forward during the hearing and generally agreed in writing before the hearing was formally closed. For the reasons to be discussed later in this decision, I have not been convinced that the recommended conditions have in fact appropriately avoided, remedied, or mitigated the adverse effects on rural character and amenity values, including the cumulative effects discussed above.
- [37] Overall therefore I find that there are adverse effects in relation to these matters and that these effects are in the range of being “minor” to more than minor.” I also find that these effects extend beyond the properties that have provided written approvals.

Whether the proposal is consistent with the relevant provisions of the District Plan.

- [38] It was the evidence of Mr Trimmer that the *“proposal meets the majority of the objectives and policies associated with rural development, and is a discretionary activity under Council’s planning rules.”* He relied on the AEE rather than directly responding to Ms Shannon’s section 42A report. She had concluded at her paragraph 7.4.3 that:
- “While it is noted that some elements of consistency can be found between the proposal and the objectives and policies, being those relating to servicing and the retention of a balance lot that could continue to be used for productive purposes, it is considered to be inconsistent with the overarching intention of the majority of them – to avoid inappropriate, unconsolidated subdivision and development – for the following reasons:*
- 1. Cumulative effects and the potential erosion of existing rural character further from Harris Road.*
 - 2. The impact of additional residential development on reverse sensitivity.*
 - 3. The proposal would not achieve consolidation of the existing level of development in this locality, instead appearing as an extension of this area of higher lot density.”*
- [39] In her reasons recommending the refusal of consent she *“...considered that the proposal is contrary to the overarching intent of the relevant objectives and policies – particularly those seeking to avoid inappropriate and unconsolidated subdivision and adverse effects on amenity and character.”*

- [40] In section 7.4 of her section 42A report she provided a detailed assessment of the relevant objectives and policies from Chapter 5 (Amenity Values), Chapter 6 (Built form and Development) and Chapter 8 (Subdivision and Development). Her assessment was comprehensive and her analysis more thorough than the assessment contained in the applicant's AEE. The primary difference between her and Mr Trimmer essentially came down to their difference in opinion on the effects the proposed subdivision would have on the existing pattern and density of subdivision and development in this locality.
- [41] Her overall assessment of the relevant objectives and policies of both the regional and district planning documents was not unexpected, given her earlier assessment of the effects on the environment. Ms Shannon, along with Ms Ryan, acknowledged that overall the assessment of the proposal was "finely balanced."
- [42] What is not clear to me is how the package of recommended conditions has managed to overcome all of the inconsistencies with the relevant objectives and policies identified by Ms Shannon. It would appear that the conditions that have provided for bush protection, stock exclusion, pest and weed control measures, controls on building coverage, building colour, the exclusion of minor residential units, no complaints covenants and the prevention of future subdivision, have collectively enabled Ms Shannon to recommend the grant of consent. However I am not convinced that these measures overcome the plan provisions relating to cumulative effects and the extension, rather than consolidation, of the cluster of more intensive subdivision and development that she had earlier identified in her section 42A report.
- [43] I have preferred Ms Shannon's assessment of the provisions of the District Plan to that of Mr Trimmer. Her assessment was more comprehensive and balanced than Mr Trimmer's. His effectively relied on his assessment that there were no effects on the established amenity values and character of the locality. I find that he placed too much weight on the written approvals and the proposed conditions of consent, whereas Ms Shannon has assessed the plan provisions on a more comprehensive basis.
- [44] Overall I find that the proposal is not consistent with the relevant objectives and policies and may well be contrary to those that seek to maintain amenity values, consolidate subdivision and development and ensure that subdivision and development results in a pattern and density of land use that is appropriate to this locality.

Whether the proposal merits the grant of consent in terms of section 104 of the Act.

- [45] In terms of section 104 (1) (a) of the Act I have had regard to the actual and potential effects of granting consent. I acknowledge that there will be positive effects for the applicant if the joint owners were able to each have separate titles and Mr Rouse's family were able to live in a new dwelling to pursue their rural lifestyle ambitions. I also acknowledge that there would be positive effects arising from the conditions of consent that have been proposed in terms of protecting and enhancing the ecological values of the property.
- [46] As discussed above however, I have found that there will be adverse effects on rural character and amenity values, including cumulative effects. The proposed subdivision will result in subdivision and development at the outer edge of the existing cluster of rural-residential and lifestyle development on Harris Road. The proposal will not consolidate development as has happened with other recent subdivision in this locality and as a consequence the grant of consent would intensify the pattern of subdivision and development into the surrounding larger rural sites, resulting in the erosion, rather than the maintenance or enhancement of the rural character and amenity values.
- [47] In terms of section 104 (1) (b) of the Act I have had regard to the relevant provisions of the regional and district planning documents. For the reasons set out above I have found the proposal is not consistent with the relevant objectives and policies and may well be contrary to those that seek to maintain amenity values, consolidate subdivision and development and ensure that subdivision and development results in a pattern and density of land use that is appropriate to this locality.
- [48] In terms of section 104 (1) (c) of the Act, Ms Shannon referred to recent case law, including *Rawlings v Timaru District Council*, with respect to the extent to which this proposal has any unusual or distinguishing qualities. It was her conclusion, under her heading "Precedent" at section 8.1 of her report, that it was appropriate to consider the integrity and consistent administration of the district plan for discretionary activities as well as non-complying activities. Having read the above Environment

Court case and noting the similarities of the proposed subdivision in that case and this application, I have accepted Ms Shannon's approach.

- [49] She concluded at her paragraph 8.1.3 that, *"Given that the proposal could reasonably be replicated for a number of sites in the vicinity, I am not satisfied that the proposal is unique and therefore could have the potential to set an adverse precedent for the subdivision of other sites within the locality."*
- [50] While the test of "uniqueness" is perhaps too high, and the appropriate test is "unusual or distinguishing qualities" from the generality of cases or similar sites, I agree that this is a matter than can be considered under section 104 (1) (c) of the Act as a matter that is relevant and reasonably necessary to determine this application. The Whangarei District Plan provisions do not encourage, or support the creation of additional sites of the size proposed in the Countryside Environment. The plan provisions anticipate environmental outcomes that lead to a pattern of land use and development that is complementary to the established character of a locality in a manner that consolidates development and ensures a density appropriate to the location. I have accepted Ms Shannon's overall conclusion that there is nothing unusual or distinguishing about this site and this proposal. The reality is that most of the larger sites that surround the cluster of smaller sites on this portion of Harris Road would appear to be in very similar, if not identical circumstances, to the application site.
- [51] Overall therefore in terms of section 104 of the Act I find that the reasons to refuse consent outweigh the reasons to grant consent in this case.

The conditions of consent that should be imposed to avoid, remedy or mitigate adverse effects on the environment.

- [52] As discussed earlier the proposed conditions of consent go part way towards avoiding, remedying or mitigating the adverse effects on the environment, however in relation to the effects on rural character and amenity values, including cumulative effects there was no compelling evidence that the package of conditions would in fact appropriately avoid, remedy or mitigate these effects. The proposed conditions do not respond to the primary adverse effect that the subdivision will expand rather than consolidate subdivision and development in this locality.

Whether the proposal will promote the sustainable management of natural and physical resources as contemplated by Part 2 of the Act.

- [53] In reaching a broad overall judgement, sections 5 and 7 are the most relevant Part 2 matters in this case. The efficient use and development of natural and physical resources (7(b)), the maintenance and enhancement of amenity values (7(c)), maintenance and enhancement of the quality of the environment (7(f)) and any finite characteristics of natural and physical resources (7(g)) were identified as being greatest relevance. While the proposed conditions would go some way with respect to sustainably managing the application site itself, the key overall issue relates to the sustainable management of the wider environment and in particular the rural environment that surrounds the cluster of smaller sites along this portion of Harris Road. For essentially the same reasons discussed earlier in this decision, the grant of consent to this proposal would not promote the sustainable management of the wider Countryside Environment.
- [54] In terms of section 5 of the Act the sustainable management of the wider Countryside Environment, as contemplated by the provisions of the regional and district planning documents, would not be promoted and the adverse effects on the existing pattern of subdivision and development, rural character and amenity values, would not be avoided, remedied or mitigated.

Relevant statutory provisions

A - Policy statements and plan provisions

In considering this application, I had regard to the matters outlined in Section 104 of the Act. In particular, I have had regard to the relevant provisions of the following planning documents, as set out in section 7.0 of the section 42A report.

- i the Northland Regional Policy Statement 2002 (RPS) and the Proposed Regional Policy Statement for Northland.

- ii the Northland Regional Water and Soil Plan.
- iii the Whangarei District Plan.

B - Part 2 matters

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

Decision

Pursuant to Sections 104, 104B, 108 and Part 2 of the Act, consent is **refused** to K Rouse and J Beuker (SD1300086 P125128) to undertake a subdivision of Lot 3 DP 425376, being 153 Harris Road, Glenbervie.

Reasons for the decision

- (a) In terms of section 104 (1) (a) of the Act there will be adverse effects on rural character and amenity values, including cumulative effects. The proposed subdivision will result in subdivision and development at the outer edge of the existing cluster of rural-residential and lifestyle development on Harris Road. The proposal will not consolidate development as has happened with other recent subdivision in this locality and as a consequence the grant of consent would intensify the pattern of subdivision and development into the surrounding larger rural sites, resulting in the erosion, rather than the maintenance or enhancement of the rural character and amenity values.
- (b) In terms of section 104 (1) (b) of the Act the proposal is not consistent with the relevant objectives and policies and may well be contrary to those that seek to maintain amenity values, consolidate subdivision and development and ensure that subdivision and development results in a pattern and density of land use that is appropriate to this locality.
- (c) In terms of section 104 (1) (c) of the Act the integrity and consistent administration of the district plan is a matter that is relevant and reasonably necessary to determine this application. There is nothing unusual or distinguishing about this site and this proposal and most of the larger sites that surround the cluster of smaller sites on this portion of Harris Road would appear to be in very similar, if not identical circumstances, to the application site.
- (d) In terms of Part 2 of the Act the sustainable management of the wider Countryside Environment, as contemplated by the provisions of the regional and district planning documents, would not be promoted and the adverse effects on the existing pattern of subdivision and development, rural character and amenity values, would not be avoided, remedied or mitigated.

It is recorded that further more detailed reasons are set out in the section of this decision entitled "The Main Findings of Fact".

Issued this 4th day of November 2014



Hearings Commissioner