

Hearings Commissioner

Notice of Meeting

A meeting of the Hearings Commissioner will be held in the Whangarei Library, May Bain Room, Rust Avenue, Whangarei on:

**Thursday
8 November 2012
10am**

**Application by
B J McQueen**

**Commissioner
Les Simmons**

Index

	Page No
Authorisation Sheet	1
Environment Planner (Consents) Report	3
Recommendation	33
Attachment 1 Copy of Application as lodged	35
Attachment 2 Suitability Report for Lot 2 of Subdivision of Lot 7 DP 44007 16 Ford Ave, Kamo prepared by Richardson and Stevens Consulting Engineers reference 11500 dated 26 September 2012.....	62
Attachment 3 Site Plan and Floor plan showing potential residential development for proposed Lot 2 prepared by Dawson Design Drawing Code L0.1 and L1.2.....	91
Attachment 4 Council's Senior Environmental Engineering Office Vlad Rozov's two reports dated 1 st May 2012 and 2 nd October 2012	93
Attachment 5 Copy of Section 92 request sent to the applicant's agent on 14 th May 2012 ...	103
Attachment 6 Planning Maps for subject site and surrounding locality	105
Attachment 7 Copies of submissions received.....	115
Attachment 8 Copy of emails to/from Kate Wood regarding potential mitigation measures ..	131
Attachment 9 District Plan Chapters.....	135
• Chapter 5: Amenity Values	
• Chapter 6: Built form and Development	
• Chapter 8: Subdivision and Development	
• Chapter 22: Road Transport	
Attachment 10 Kamo, Springs Flats, Three Mile Bush and Whau Valley Structure Plan.....	186

Report to Hearings' Commissioner Les Simmons on a Resource Consent Application

This combined land use and subdivision consent application was lodged by Stratton Bentley Surveyors ('the agent') on behalf of Bruce John McQueen ('the applicant') and was reported on by Council's Environmental Planner (Consents), David Badham.

The applicant is proposing to subdivide Lot 7 DP 44007 (NA7374/91) which has an area of 893m², in the Living 1 Environment into two separate allotments with the following net site areas:

- Lot 1- 397m²
- Lot 2- 325m²

The proposal is assessed as a combined subdivision and land use application as the applicant is proposing to allow for 45% building coverage for each lot to accommodate for the garage to be added to lot 1 and for the future development of lot 2. Overall the proposal requires resource consent pursuant to the following rules:

- **Rule 38.4.3 (Building Coverage)** – The applicant is proposing to allow total building coverage of 45% which is 10% above the permitted 35% specified for the Living 1 Environment, and is therefore considered a restricted discretionary activity in this regard.
- **Rule 38.4.8 (Building to Access Setbacks)** – There will be a nil setback from the eaves of the existing dwelling on Lot 1 to the boundary of proposed Right of Way A, infringing the 1m minimum setback and therefore making the proposal a restricted discretionary activity pursuant to this rule.
- **Rule 71.3.1 (Allotment Area)** – the proposal cannot comply with this rule as the net site area of each allotment does not equate to 500m² and is therefore considered a discretionary activity pursuant to this rule.

Overall the proposal is considered to be a **discretionary activity**.



David Badham – Environmental Planner (Consents)

30th October 2012

Date

This report was peer reviewed by the following signatories:

Kelly Ryan – Team Leader (Consents)

Date

Statement of staff qualification and experience

David Badham – Council Environmental Planner (Consents)

I hold the qualification of a Bachelor of Planning (Hons- first class) from the University of Auckland. I am a graduate member of the New Zealand Planning Institute. I have been working at Whangarei District Council since I started as a scholarship planner on 7th April 2009, and have been working full time as an Environmental Planner (Consents) since 13th March 2011. Overall, my work experience includes assessing, reporting at presenting evidence at hearings on a broad range of subdivision and land use consents within the Whangarei District.

Vlad Rozov – Council Senior Environmental Engineering Officer

I hold the role of a Senior Environmental Engineering Officer for the Whangarei District Council. I am a civil engineer, having qualified from a Polytechnic University (former USSR) in 1981 with a Bachelor degree in Industrial and Civil engineering. I am a graduate member of the Institute Of Professional Engineers New Zealand Inc. I have many years of experience in roading, drainage, earthworks, civil construction and I have worked for the Whangarei District Council as Environmental Engineering Technician, Support Officer, Officer and Senior Officer since 1999.

My position within the Resource Consents department requires me to assess all engineering aspects of resource consent applications based on the evidence provided by the Applicant, and to provide a report as to the viability of the proposal.

The above staff are familiar with the Environment Court's 'Code of Conduct' for expert witnesses and agree to comply with the Code of Conduct in presenting hearing evidence to the Commissioner.

Section 42A Hearing Report

Hearing By: Hearings' Commissioner Les Simmons of a discretionary combined subdivision/land use proposal by Bruce John McQueen to undertake a two lot subdivision of the 893m² site within the Living 1 Environment into two allotments with net site areas of 397m² and 325m². The applicant is also applying for building coverage of 45% across the two sites and to infringe building to access setbacks.

Evidence By: David Badham

File Refs: SL1200002 P043172.SL

Dated: 26th October 2012

1.0 The Proposal & Background

1.1 The proposal

1.1.1 Bruce John McQueen proposes to subdivide Lot 7 DP 44007 (NA7374/91) which has an area of 893m², in the Living 1 Environment into two separate allotments with the following net site areas (a copy of the scheme plan is provided below in figure 1):

- Lot 1- 397m²
- Lot 2- 325m²

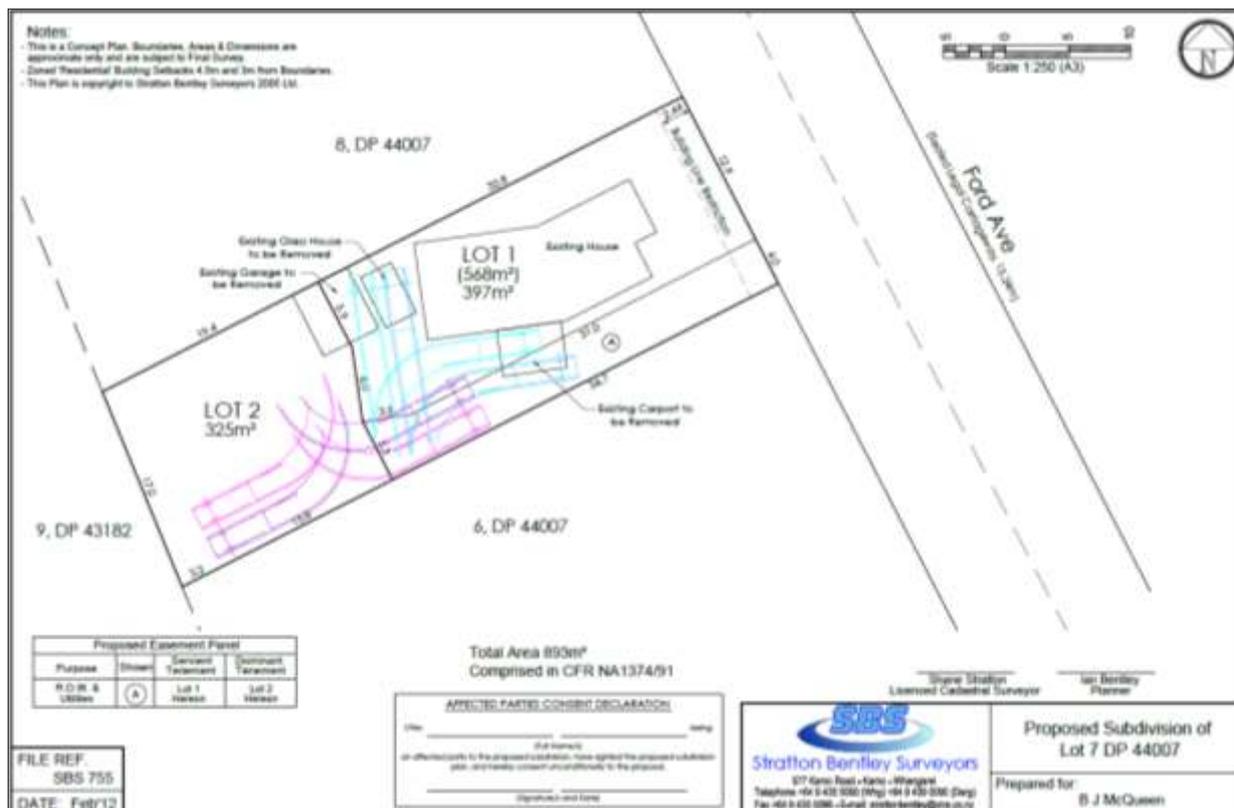


Figure 1: Copy of scheme plan for proposed subdivision

1.1.2 The application is a combined subdivision and land use application as the applicant is also proposing to allow 45% building coverage for lot 2 and as there will be a nil setback from the eaves of the existing dwelling on Lot 1 to the boundary of proposed right of way A.

- 1.1.3 Both allotments will gain access from Right of Way A which runs along the southern boundary of the subject site, which will be upgraded in accordance with Council's Environmental Engineering Standards 2010.
- 1.1.4 The existing dwelling on the subject site will be contained within proposed Lot 1. The existing garage, small glass house and carport will be removed as part of the application. In order to provide an idea of what kind of residential development is intended for Lot 2, the applicant provided the site plan below in figure 2 via email on 11th September 2012. However the applicant has stated that they do not wish for the site plan to form part of the consent as this would preclude any minor complying changes that any future purchaser may want.

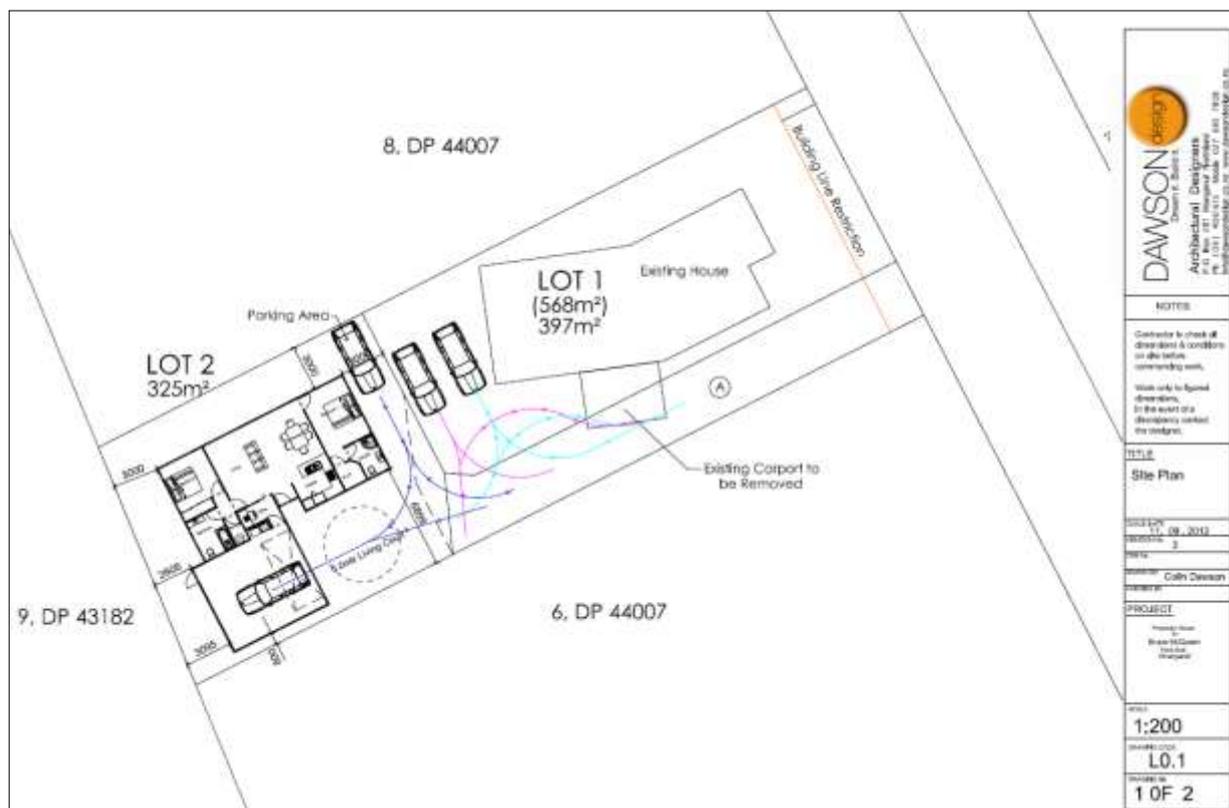


Figure 2: copy of site plan submitted by the applicant to show what is intended in terms of residential development for Lot 2.

- 1.1.5 The applicant has put forward the following mitigation measures:
- A consent notice will be registered on the title of proposed lot 2 to allow only single storey development only.
 - Stormwater will be attenuated on proposed lot 2, with specific design to be provided at building consent stage, which will be noted as a consent notice on the title in order to draw the attention of the owners to this requirement.

1.2 Background

- 1.2.1 The application was lodged with Council on 16th April 2012. The application (a copy of which is provided within attachment 1) is supported by:
- An Application Report prepared by Stratton Bentley Surveyors reference SBS 755 dated April 2012.
 - Written approvals from two properties at 19 Ford Ave and unit A, 14 Ford Ave.
 - Suitability Report for Lot 2 of Subdivision of Lot 7 DP 44007 16 Ford Ave, Kamo prepared by Richardson and Stevens Consulting Engineers reference 11500 dated

26th September 2012 (copy in attachment 2). This was provided in response to a section 92 further information request.

- Site Plan and Floor Plan showing potential residential development for Lot 2 prepared by Dawson Design Drawing Code L0.1 and L1.2 (copies in attachment 3). These plans were provided in order to show the type of development intended for proposed Lot 2 and to demonstrate complying on-site manoeuvring and parking arrangements in response to a section 92 further information request.
- 1.2.2 Initially the application was lodged requesting that it proceed on a limited-notified basis. However Council's Team Leader (Consents) – Kelly Ryan contacted the applicant's agent on 26th April 2012 and confirmed that an applicant is unable to request limited notification pursuant to the Resource Management Act 1991, but is entitled to request full notification. As such the applicant amended the proposal to request full notification. As such the application was notified with an advertisement in Council's news section of the Leader on Tuesday 15th May 2012 with the notification period closing on 13th June 2012.
- 1.2.3 The application was assessed by Council's Senior Environmental Engineering Officer Vlad Rozov, who provided two reports dated 1st May 2012 and 2nd October 2012 (see attachment 4).
- 1.2.4 In accordance with the recommendations of Mr Rozov's first report, further information was requested from the applicant on 14th May 2012 pursuant to section 92 (see attachment 5). The applicant was requested to provide a site suitability report for Lot 2 from a suitably qualified and experienced geo-specialist in accordance with Section 2.2.3.1 Low Stability Hazard of Council's Environmental Engineering Standards 2010. It was requested that this investigation cover (as a minimum) the proposed building site and required on-site stormwater attenuation for all impervious surfaces (access and associated parking & manoeuvring areas plus potential buildings) with possible restrictions on the size of any future dwelling. As the applicant had requested full notification and the application had already been notified, it was not considered necessary to put the application on hold from 14th May 2012 pending receipt of the requested information. However the applicant was advised that should the information still be pending beyond the end of the notification period the application would be put on hold from 13th June 2012.
- 1.2.5 Stratton Bentley Surveyors responded on 22nd May 2012 requesting longer than the 15 working days provided under section 92 of the Act to provide the requested information. As such no response was received after the close of the notification period; therefore the application was put on hold from 13th June 2012.
- 1.2.6 On 11th September 2012 the applicant's agent provided a site and floor plan showing a dwelling complying with on-site parking and manoeuvring requirements (see attachment 3). This was forwarded onto Mr Rozov who confirmed on 17th September 2012 that the proposed car parking and manoeuvring arrangements comply with the relevant requirements in the District Plan and Environmental Engineering Standards 2010.
- 1.2.7 On 27th September 2012 the applicant's agent forwarded on a copy of the Suitability Report for the subdivision (see attachment 2). This was reviewed by Mr Rozov who confirmed that the report along with the site plan and floor plan prepared by Dawson Design meet the requirements of his further information request and that the application could be subsequently taken off hold. As such the application was taken off hold from 27th September 2012 being the date the information was received.

2.0 Site and Surrounds Description

2.1 Zoning, resource areas and other notations

Environment:



Living 1 Environment

Resource Notations: - Low Instability

Plan Changes: No plan changes are considered relevant in this instance

Structure Plans: The subject site is situated within the Kamo Structure Plan boundary and is earmarked as future Living 2 Environment

2.2 Site Description

2.2.1 The subject site is located at 16 Ford Avenue on the western side of the road within the Kamo area.

2.2.2 The topography of the 893m² site is generally flat with the exception of the northeast end of the site that slopes gently towards the north. Landscape vegetation is located along the southern and northern boundary. A stone wall is located along the western boundary adjoining the Council recreation reserve to the west.

2.2.3 At present the subject site has a dwelling with attached carport located near the front of the section and a sealed driveway along the southern boundary. To the west of the existing dwelling is a glasshouse and garage which are proposed to be removed as part of the application. The rear of the subject site where proposed Lot 2 will be located is undeveloped and is currently maintained as a grassed lawn.

2.2.4 There are no recorded archaeological sites located in the site. A copy of relevant planning maps and property information maps (including hazard maps and effluent on-site disposal suitability) is provided in attachment 6. An aerial photograph of the site and surrounds from 2008 is provided in figure 3 below:



Figure 3: Aerial photograph of the subject site and surrounding environment from 2008

2.3 Surrounding Environment

- 2.3.1 The subject site is situated within the Living 1 Environment with properties in the vicinity along Ford Ave and Three Mile Bush Road also being situated within the Living 1 Environment and being characterised by suburban residential development with a mixture of single detached dwellings and party wall units. The 'Hodges Park' recreation reserve zoned Open Space administered by Council's Parks Department adjoins the western boundary of the subject site. The Kamo suburban centre is located 300 metres to the south east with the Kamo sports fields located approximately 100 metres to the east.
- 2.3.2 Figure 4 on the following page provides a map showing parcel lot sizes within the vicinity, noting that the map relates to lot areas as opposed to title boundaries (therefore does not identify parcels subject to amalgamation and does not show units subject to cross lease or unit title arrangements). The map shows that to the south of the subject site there are a number of allotments which are below the 500m² allotment area that is typically associated with the Living 1 Environment. In addition to this it is noted that a number of other allotments within the vicinity along Ford Avenue have multiple units (refer to page 6 of the application report in attachment 1). As such while Ford Avenue is specified as Living 1 Environment, it has been developed in a manner that is more in keeping with the higher density anticipated with the Living 2 Environment. As a result of the proposal the subject site would change from 0.05ha – 0.2 ha (pastel pink) to less than 0.05ha (beige) in terms of the map in figure 4.



Figure 4: Map showing partial lot sizes in the vicinity of the subject site

2.4 Certificate of Title Interests & Previous Resource Consents

2.4.1 The 893m² site is legally described as Lot 7 DP 44007 and is comprised in Certificate of Title NA1374/91. It is noted that the site is subject to a Building Line Restriction (K58895) affecting the 2.5 metre strip adjoining Ford Avenue along the eastern boundary of the subject site.

2.4.2 There are no previous resource consent approvals for the subject site that are considered relevant to the proposal.

3.0 District Plan Assessment

3.1 Reasons for consent

3.1.1 The subject site is located in the Living 1 Environment of the Operative Whangarei District Plan. The rules governing subdivision are contained within Chapter 71 of the Plan with the rules governing land use located in Chapter 36. Table 1 highlights the relevant rules for the proposal and provides comments as to why they have been infringed:

Table 1: Assessment against Subdivision Rules

Operative District Plan:	Activity Status:
Chapter 71 – Living 1, 2 and 3 Subdivision Rules	
<p>Rule 71.3.1 Allotment Area Subdivision is a controlled activity if:</p> <ul style="list-style-type: none"> a) In the Living 1 Environment, every allotment connected to a reticulated sewerage system has a net site area of at least 500.0m²; or b) In the Living 2 Environment, every allotment connected to a reticulated sewerage system has a net site area of at least 350.0m²; or c) In the Living 3 Environment every allotment has a net site area of at least 2000.0m²; or d) Every allotment in a Living Environment not connected to a reticulated sewerage system has a net site area of at least 2000m² ; and e) Within the Air Noise margin of the Whangarei Airport, every allotment has a net site area of at least 1000m². <p>Control is reserved over:</p> <ul style="list-style-type: none"> i. The likely location of future buildings and their potential effect on the amenity of the locality; ii. The efficient provision of services to the land being subdivided and to nearby land that might be subdivided in future; iii. The additional matters listed in Chapter 70.3. <p>Definition of net site area in the plan:</p> <p><i>“means the total area of the site excluding any part of the site:</i></p> <ul style="list-style-type: none"> a) <i>Subject to a building line restriction;</i> b) <i>Containing a right-of-way servicing other sites;</i> c) <i>Used for access less than 6m wide.”</i> <p>Comments: <i>The proposal cannot comply with this rule as proposed lot 1 has a net site area of 397m² (minus area used for right of way and building line restriction at the front of the subject site) and lot 2 325m².</i></p> 	<p>Discretionary Activity</p> <p>Any activity that does not comply with a standard for a controlled activity is a discretionary activity.</p> <p>Comments: <i>since the proposal cannot comply with the controlled requirements of this rule it is thus considered a discretionary activity.</i></p>
71.3.8 Property Access	Controlled Activity

<p>Subdivision is a controlled activity if:</p> <ul style="list-style-type: none"> a) Every allotment is capable of having vehicular access to a road; and b) Access shall be provided where it is shared by 2 or more allotments; and 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 d) No more than 8 allotments, or 8 residential units, are served by a shared access. <p>Control is reserved over:</p> <ul style="list-style-type: none"> i. The relevant provisions of the Whangarei District Council's Environmental Engineering Standards 2010; ii. The adequacy of the access for the anticipated use; iii. The ability of the access to contain required services; iv. Traffic safety and visibility; v. The need for acceleration and deceleration lanes; vi. Type, frequency and timing of traffic; vii. Access design, number and location of vehicle crossings; viii. Efficiency and safety of roads; ix. Need for forming or upgrading of roads in the vicinity of the site; x. Need for traffic control, including signs, signals and traffic islands; xi. The additional matters listed in Chapter 70.3. <p>Comments: <i>The proposal complies with this rule as access to Ford Ave will be shared in accordance with this rule.</i></p>	
Chapter 36 – Living 1, 2 and 3 Environment Rules	
<p>36.4.3 Building Coverage</p> <p>Construction or alteration of a building is a permitted activity if building coverage on the site does not exceed:</p> <ul style="list-style-type: none"> a) 35% in the Living 1 Environment; or b) 45% in the Living 2 Environment; or c) 25% in the Living 3 Environment. <p>Comments: <i>The applicant is proposing that both sites have maximum coverage of 45% therefore not complying with the 35% threshold for the Living 1 Environment.</i></p>	<p>Restricted Discretionary Activity</p> <p>Construction or alteration of a building that does not comply with a condition for a permitted activity is a restricted discretionary activity.</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> i. The scale and bulk of the building in relation to the site; ii. The existing built density of the neighbourhood; iii. Effect on the open space appearance of the particular neighbourhood; iv. Control of stormwater runoff; v. The availability of useable outdoor living space on-site. <p>Comments: <i>the applicant has specifically applied to infringe the Permitted requirements</i></p>

	<p>of this rule to allow 45% building coverage across both allotments thus the application is considered a restricted discretionary activity.</p>
<p>36.4.8 Building to Access Setbacks</p> <p>Construction or alteration of a building is a permitted activity if:</p> <p>a) There is a minimum separation distance of 1.0m between the building and any right of way or common access.</p> <p>Comments: as a result of the subdivision there will be a nil setback from the eaves of the existing dwelling on proposed lot 1.</p>	<p>Restricted Discretionary Activity</p> <p>Construction or alteration of a building that does not comply with a condition for a permitted activity is a restricted discretionary activity.</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> i. Noise and vibration effects on occupants of buildings erected within 1.0m of accesses; ii. The use of accesses if obstructed by building overhangs or opening windows. <p>Comments: since the proposal cannot comply with the Permitted requirements of this rule it is thus considered a restricted discretionary activity</p>

3.1.2 The proposal is considered to satisfy all other rules in relation to subdivision and land use in the Living 1 Environment. However, overall the proposal is regarded as a **discretionary** activity.

3.2 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

3.2.1 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES Contaminated Soils) were gazetted on 13th October 2011 and took effect on 1st January 2012. Council is required by law to implement this NES in accordance with the Resource Management Act 1991 (RMA). The standards are applicable if the land in question is, or has been, or is more likely than not to have been used for a hazardous activity or industry and the applicant proposes to subdivide or change the use of the land, or disturb the soil, or remove or replace a fuel storage system. The following table assesses the proposal's compliance with the NES regulations:

Table 2: Assessment against NES Contaminated Soils

Question	Answer	Comment
Is an activity described on the HAIL currently being undertaken on the piece of land to which this application applies?	No Evidence	<i>There is no evidence to suggest that an activity identified in the HAIL is currently being undertaken on the site</i>
Has an activity described on the HAIL ever been undertaken on the piece of land to which this application applies?	No Evidence	<i>There is no evidence to suggest that an activity identified in the HAIL has ever been undertaken on the site.</i>
Is it more likely than not that an activity described on the HAIL is being or has been undertaken on the piece of land to which this application applies?	No Evidence	<i>There is no evidence to suggest that an activity identified in the HAIL is or has ever been undertaken on the site. As such it is considered that it is not likely that a HAIL activity has or is being undertaken on the subject site</i>

3.2.2 Overall, taking into account the above assessment, it is considered that the NES Contaminated Soils is not applicable in this instance.

4.0 Notification, Submissions and Written Approvals

4.1 Notification

- 4.1.1 As is detailed in section 1.2.2 of this report the applicant initially requested that the application proceed on a limited notified basis. However Council's Team Leader (Consents) – Kelly Ryan contacted the applicant's agent on 26th April 2012 and confirmed that an applicant is unable to request limited notification pursuant to the Resource Management Act 1991, but is entitled to request full notification. Pursuant to section 95A(2)(b) Council must notify an application if an applicant requests it. As such the applicant amended the proposal to request full notification. The notification decision was finalised and signed off by Council's Team Leader (Consents) Kelly Ryan on 3rd May 2012.
- 4.1.2 The application was subsequently notified with an advertisement in Council's news section of the Leader on Tuesday 15th May 2012 with the notification period closing on 13th June 2012.

4.2 Submissions

- 4.2.1 Copies of the application were specifically served upon 32 properties along Ford Avenue, Northland Regional Council and the New Zealand Historic Places Trust.
- 4.2.2 Council received 6 submissions within the notification period, with 4 in support seeking approval of the application, and 2 in opposition requesting that the application be declined. 1 of the submitters has requested to be heard in support of their submission.
- 4.2.3 The individual submissions are summarised as follows (a full copy of the individual submissions can be viewed in attachment 7 and figure 5 provides a map showing the location of the submitters in respect to the subject site):

Table 3: Summary of Submissions Received

Submitter	Wish to be heard?	Issues and Relief Sought
Arthur Clinton Laurence	NO	The submitter, who owns the property at B – 27 Ford Avenue, supports the application and wishes that it be approved by Council.
E. L. Rosemary Davis	NO	The submitter, who owns the property at 18 Ford Avenue, supports the application and wishes that it be approved so long as any dwelling on Lot 2 will be single storey only. The applicant has put forward a consent notice in this regard as a mitigation measure.
Cyril Roger & Linda Rachel Hardie	NO	The submitter, who owns the property at 4 Ford Avenue, supports the application and requests that Council approve it. In particular the submitter notes that the Council should change the street to Living 2 Environment and be done with it.
George Roberts	NO	The submitter, who owns the property at 6B Ford Ave, supports the application noting that can only be a good thing for Kamo and requests that Council approve it.
Ross Adams	NO	The submitter, who owns property at 14 Ford Avenue opposes the application noting the following issues: <ul style="list-style-type: none"> • The applicant has not given Council and landowners a complete picture of the proposal as they have not provided plans to detail what kind of residential development would be located on Lot 2.

Submitter	Wish to be heard?	Issues and Relief Sought
		<ul style="list-style-type: none"> • The submitter highlights that the Stratton Bentley Surveyors report on page 6 and 3.1.1 and 3.1.2 claims that the application should be granted because of other development on the western side of Ford Ave. He is concerned that this claim does not take into account that most if not all of these developments would have been proposed and approved under very different regulations and different territorial authorities before the enactment of the Resource Management Act 1991. • The submitter is concerned about the lack of mention of the bush reserve in Hodges Park and it is in close proximity to any dwelling constructed on proposed Lot 2. He notes that the area of bush in this reserve is substantial and is a feeding area for several species of native birds and another dwelling so close could interfere with their habitat. <p>The submitter wishes that the proposal be declined.</p>
Dorothy Carol Mayes, Jocelyn Joy Blackwell and Peter Laurence Mayes	YES	<p>The submitter who owns 14B Ford Avenue which directly adjoins the subject site, opposes the application noting the following concerns:</p> <ul style="list-style-type: none"> • The submitter raises concerns regarding the shading effects that any dwelling on proposed Lot 2 would have on her north-facing unit noting that the northern boundary is the only area that provides direct sunlight to the unit. • When the submitter purchased the unit in 2006, it was their understanding that the previous owner of number 16 had applied to Council and was told that the land was too small to be built on. As such if Council grants the consent allowing the subdivision it will be unfair and represents “moving the goal posts.” Will affect resale of their property • Additional traffic movements are unnecessary and the location of the driveway is too close to the existing house and will be very dangerous to young children or elderly people who are entering and exiting the house. Additional traffic movements will also affect residential amenity and outlook • The applicant has not presented any specific plans for a dwelling for the submitter to review. <p>As such the submitter wishes that the proposal be declined.</p>

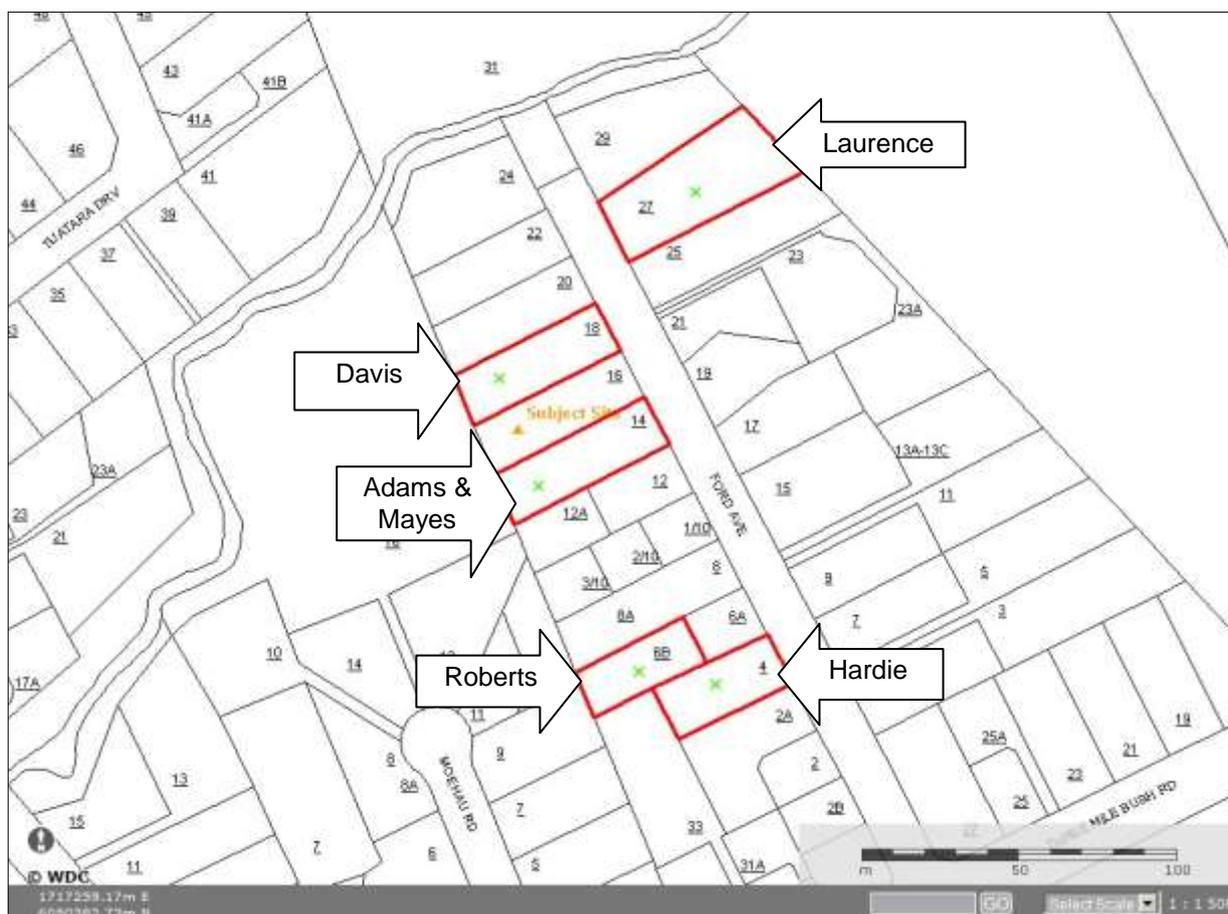


Figure 5: Location of submitters in respect to the subject site

4.3 Written Approvals

4.3.1 Pursuant to section 104(3)(a)(iii), when considering an application the consent authority must not have regard to any effect upon a person or party whom has given their written approval to an application (unless such approval has been withdrawn). With respect to the current application, written approvals have been provided from the following parties shown in table 4 below, and effects on these parties are therefore discounted for the purpose of the following assessment under section 104 of the Act (locations can be viewed with reference to map in figure 5 above:

Table 4: Parties who have provided their written approval with the application

Name	Owner/Occupier	Address	Written approval secured
Barbara Jobe	Owner	19 Ford Avenue, Kamo – Lot 1 DP 58965	✓
R. B. Ellis and R. J Ellis	Owners and occupiers	Unit A, 14 Ford Ave – Lot 6 DP 44007	✓

5.0 Resource Management Act 1991- Statutory Considerations

5.1 Section 104

5.1.1 Section 104 provides the matters, subject to Part 2 of the Act that Council must have regard to when considering and application for resource consent and any submissions received. These matters are:

(a) any actual and potential effects on the environment of allowing the activity; and

[(b) any relevant provisions of—

- (i) a national environmental standard:
 - (ii) other regulations:
 - (iii) a national policy statement:
 - (iv) a New Zealand coastal policy statement:
 - (v) a regional policy statement or proposed regional policy statement:
 - (vi) a plan or proposed plan; and]]
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

5.2 Section 104B

5.2.1 Section 104B outlines Council's powers when making a determination on a discretionary or non-complying activity. Section 104B states that:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- (a) may grant or refuse the application; and
- (b) if it grants the application, may impose conditions under [section 108](#).

6.0 Actual and Potential Effects on the Environment (s104(1)(a))

6.1 Definition of Effect

6.1.1 Section 3 of the Act defines the term 'effect' as including –

- (a) any positive or adverse effects; and
- (b) any temporary or permanent effect; and
- (c) any past, present or future effect; and
- (d) any cumulative effect which arises over time or in combination with other effects – regardless of the scale, intensity, duration, or frequency of the effect, and also includes-
- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact.”

6.2 Permitted Baseline

6.2.1 In terms of determining the adverse effects of the proposal, section 104(2) of the Act provides that Council 'may' have regard to the permitted baseline in order for effects on the environment that are permitted under the Plan (or by way of resource consent) to be disregarded.

6.2.2 In this instance, given there are no 'permitted' forms of subdivision under the District Plan, the standards relating to land use activities may be taken into account in order to determine the extent to which the District Plan anticipates and provides for intensification or development 'as of right'.

6.2.3 The subject site is 893m² and is currently occupied by a residential unit. The construction of residential units within the Living 1 Environment is managed by *Rule 36.3.1 Residential Units* which requires 500m² net site area for each residential unit to be constructed. Likewise *Rule 71.3.1 Allotment Area* requires 500m² net site area for each allotment to be considered a controlled activity subdivision. Therefore there is no provision for a second residential unit on the subject site as of right. Additional development rights provided under the District Plan are therefore listed as follows:

- Building coverage (specified in *Rule 36.4.3 Building Coverage*) of 35% of net site area. Net site area excludes any building line restriction on a subject site. A building line restriction applies to the front 2.44metres of the subject site (a total area of 31.47m²). As such the net site area of the subject site is actually 861.53m² and 35% of this is 301.53m² which represents permitted building coverage on the subject site at present.
- Bulk and location criteria applying within the Living 1 Environment include a 4.5 metre road setback and 3 metre setback from other boundaries with one setback of 1.5 metres. A height limit of 8 metres is prescribed within the Living 1 Environment and buildings are required to comply with daylight angle requirements. For accessory buildings (defined in chapter 4 – includes garages and car ports) the District Plan provides for 1.5 metre setbacks from boundaries and 2.5 metre setbacks from a habitable room on any other site. However it is noted that there is specific provision for the construction of one accessory building setback nil for a maximum building length on any single boundary and a maximum total building length on all boundaries.

6.2.4 Therefore, if Council was to consider the permitted baseline applying to the development of the subject site at present, it would be restricted to building coverage of 35% (301.53m²) complying with relevant setback, height and daylight angle restrictions.

6.2.5 Taking the above into account it is also considered beneficial to consider the permitted baseline that will be created should the proposal be granted consent. This is considered below in respect to both of the proposed allotments in terms of the District Plan and what the applicant is proposing in terms of the increased building coverage infringement and one storey height limit on proposed Lot 2.

- **Lot 1:** the following development would be permitted as of right under the District Plan on Lot 1 (397m²) should the proposal be granted:
 - Lot 1 already contains a residential unit.
 - Building coverage of 45% which would allow a total area of 178.65m² of the allotment to be covered in buildings.
 - Buildings that comply with building coverage above and the relevant bulk and location controls in 6.2.3.
- **Lot 2:** the following development would be permitted as of right under the District Plan on Lot 2 (2.5024ha) should the subdivision be granted:
 - One residential unit complying with bulk and location requirements.
 - Building coverage of 45% which would allow a total area of 146.25m² to be covered in buildings.
 - Buildings that comply with building coverage above and the relevant bulk and location controls in 6.2.3.
 - One storey height limit as proposed by the application.

6.2.6 Thus the permitted baseline that would be created by the proposed development is effectively one additional residential unit complying with building coverage (45% on both allotments) and bulk and location restrictions, beyond what is currently permitted. In terms of the 45% building coverage being requested by the applicant, it is noted that the total building coverage permitted across both allotments after the completion of the subdivision will be 324.9m² which is 23.37m² more than the 301.53m² permitted on the subject site at present.

6.3 Residential Amenity and Character Effects

6.3.1 “Amenity values” is defined in section 2 of the Resource Management Act 1991 as “...*those natural and physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence and recreational attributes.*” As such the

amenity values of an area can be described as those special attributes, relating particularly to natural and physical characteristics that make an area or neighbourhood unique.

6.3.2 The protection of residential amenity and character is a prominent resource management issue. Residential character and amenity can have a number of subjective meanings that derive specifically from tangible elements such as density of development, noise, odour and low traffic volumes, and the more intangible elements that derive from peoples' own perceptions and associations with the residential environment. The District Plan recognises that the amenity values of an area are determined by the natural and physical characteristics of an area, and the effects of activities. In defining residential character and amenity, the District Plan (5.2 Overview) highlights that the Living Environments within the District tend to be passive environments with twelve central characteristics which influence the high amenity values typically experienced. These characteristics are identified below and are discussed in relation to the application to the subject site and surrounding residential environment along Ford Avenue.

- *Low intensity development;*
While the subject site and area along Ford Avenue is situated within the Living 1 Environment, it is noted that the locality along Ford Avenue has been developed over time in a manner more in keeping with the higher density Living 2 Environment which provides for one allotment/residential unit per 350m². This is apparent upon walking or driving down Ford Avenue with many sites containing multiple units with a proliferation of letterboxes on the street frontage that give a perception of a more intensely developed residential area. This can be viewed also from the aerial photograph in figure 3 which shows that a number of units are located within properties on the street which are not divided into smaller allotments. While it is acknowledged that the intensity of development appears to lessen towards the northern end of Ford Avenue it is my consideration that a low intensity of development does not dominate the perception of Ford Avenue.
- *Presence of trees and private gardens;*
Due to the more intensive development of the subject site it is noted that the level of landscaping in terms of the presence of trees and private gardens is generally less than what is typical of a Living 1 Environment. In terms of the subject site it is noted that the presence of trees is improved by the adjoining Hodges Park bush reserve.
- *Landscaped frontages and street set backs;*
The majority of sites along Ford Avenue provide setbacks from the road boundary and landscape frontages that are typically anticipated for in the Living Environments. However it is noted that due to the intensity of development, the presence of built form on the street frontage appears dominant near the entry to Ford Ave to the south of the subject site.
- *Off-street parking; Safe environment for children, cyclists and pedestrians; Low levels of vehicular traffic; Low levels of noise, visual pollution, odour and nuisances;*
Ford Avenue is an unmarked (in terms of road markings) residential cul-de-sac with ample off-street parking provided on both sides. It experiences low levels of vehicular traffic and appears to be a safe environment for children and pedestrians. This contributes to a generally low level of noise, visual pollution and other nuisances.
- *High degree of privacy; Daylight and sunlight access;*
Due to the presence of more intensive development along Ford Avenue it is noted that many sites along Ford Avenue have a lesser degree of privacy and daylight and sunlight access than what would generally be associated with the Living 1 Environment. However in regards
- *A high proportion of private and public open space;*
The subject site and properties along Ford Avenue are serviced by open space areas at Hodges Park and the Kamo Sports fields which are located in proximity to the subject site. In terms of private open space I note that each property appears to have adequate outdoor living court areas in accordance with the requirements of the District Plan.

- *Non-residential support activities, such as business and community activities, of an appropriate scale; Feeling of community;*
There appears to be no business activities operating along Ford Avenue (there is a retirement village at the end of Ford Avenue but it is acknowledged that this activity falls within the definition of residential activity within the District Plan). It is noted that Ford Avenue is located within close proximity to and is serviced by the Kamo suburban centre, the Kamo Sports Park and primary, intermediate and secondary schools which contribute to the feeling of community .

6.3.3 While it is apparent that the subject site maintains many of the characteristics referred to in the District Plan, it is noted that the existing environment along Ford Avenue is characterised by a higher density and intensity of development than what is anticipated for the Living 1 Environment. Mr Adams notes in his submission that the creation of smaller allotments and multiple units contributing to a higher intensity of development along Ford Avenue is likely attributed to approval under more permissive planning regimes prior to the implementation of the District Plan and Resource Management Act 1991. While there is some merit in Mr Adams' comments, the Act and case law direct Council to look at existing activities that form part of the existing environment, and no consideration is required as to how the existing activities came about. As such Council is required to consider the effects of the proposal in addition to that in the existing environment.

6.3.4 In this regard the application proposes to subdivide the subject site into two allotments and allow building coverage of 45% across both allotments. While this represents a significant departure from what is anticipated for the Living 1 Environment, it is considered to be consistent with existing density and intensity of development along Ford Avenue. As such it is considered that the allotments created and the development that they will allow is compatible with the existing residential character and amenity values in the wider receiving environment (it is noted that specific consideration in relation to amenity factors such as privacy and shading is assessed in relation to adjoining properties in section 6.6)

6.3.5 For these reasons it is considered that the effects of the proposal on residential amenity and character values along Ford Avenue will be less than minor and acceptable in this instance.

6.4 Landscape Character and Visual Effects

6.4.1 It is important to consider the effects that development may have on the various visual and landscape characteristics (as a subset of wider character and amenity) that contribute to the amenity and character of the receiving environment.

6.4.2 In this instance the subject site is situated in a suburban residential environment along Ford Avenue that has been heavily modified with little natural character left. The subject site is not considered to be located in a prominent location in the wider landscape as it is only visible from Ford Avenue. It is also noted that Lot 2 where a residential unit would be permitted should the subdivision be granted is located at the rear of the subject site, and visibility to it from the receiving environment will be generally restricted to adjoining properties at 14 and 18 Ford Avenue.

6.4.3 Overall, it is considered that the proposed subdivision and the development that it will allow (on Lot 2 in particular) will maintain the existing landscape character of the receiving environment as the allotments will remain consistent with the predominant suburban residential character along Ford Avenue. As such the landscape character and visual effects of the proposal are considered to be less than minor and acceptable in this instance.

6.5 Effects on the Ecological Functioning of the Hodges Park Bush Reserve

6.5.1 It is noted that the subject site adjoins Hodges Park to the west which provides an important open space with areas of vegetation for the surrounding area. Mr Adams has raised concerns regarding the close proximity of any future dwelling on Lot 2 to the bush reserve in this Park and the effect that may have on several species of native birds that nest in the reserve. While I can understand Mr Adams' concerns I consider that any effect on the bush reserve and the nesting of native birds will be less than minor and acceptable in this instance as the proposed

development is consistent with residential development along Ford Ave and will not create any perceivable barrier to the ecological functioning of the bush reserve.

6.6 Effects on Immediate Neighbours

- 6.6.1 There are two properties immediately adjoining the subject site being 14, Lot 6 DP 44007 (which includes 3 units 14, 14A and 14B) and 18 Ford Avenue, Lot 8 DP 44007 which require specific consideration in terms of the effects of the proposal. The effects of the proposal are likely to be more acute in these locations as they will directly view Lot 2 and are likely to be subject to privacy and shading effects.
- 6.6.2 The owner of 18 Ford Avenue Ms Davis has provided a submission on the application noting that she supports the application and wishes it be approved provided that a one story height limit on Lot 2 is provided. The applicant has put this forward as a mitigation measure for the proposal and it is considered that Ms Davis request is sufficiently accommodated.
- 6.6.3 The property adjoining the southern boundary of the subject site, 14 Ford Avenue is presently occupied by 3 residential units. The owners of 14A, R. B. and R. J. Ellis have provided their written approval to the application and therefore any effects on them have been disregarded. However the owners of 14 and 14B have provided submissions in opposition to the proposal, the reasons for which are summarised in table 3. Both of the submissions request that the application be declined.
- 6.6.4 Mr Adams' (owner of 14 Ford Avenue) submission identifies three main issues, two of which have been addressed in section 6.3.3 and 6.5.1 of this report. The remaining issue requiring consideration is Mr Adams concern regarding the lack of clarity in terms of residential development on proposed Lot 2. In this regard it is noted that the applicant has provided a site plan (figure 2) showing a two bedroom residential unit in order to demonstrate what kind of development the applicant is intending for Lot 2. On 2nd October the applicant's agent, Kate Wood from Stratton Bentley Surveyors confirmed that the applicant intended to deliver a copy of the proposed site plan to the submitters in order to provide some indication to Mr Adams and Mrs Mayes as to what sort of development can be expected should the application be approved (a copy of this correspondence is provided in attachment 8). However as noted in section 1.1.4 the applicant does not wish for the site plan to form part of the consent as this would preclude any minor complying changes that any future purchaser may want. As the applicant is unwilling to provide a floor plan and elevations for the subject site it is considered that there is merit in Mr Adams concern regarding the lack of clarity in terms of what the applicant intends. This is addressed further in relation to Mrs Mayes concerns in section 6.6.6.
- 6.6.5 Mrs Mayes' owns 14B which is located at the rear of the property and directly adjoins the southern boundary of proposed Lot 2. One concern of Mrs Mayes that requires attention is her claim that the previous owner had applied to Council for a subdivision and was told that the land was too small to build on. As such Mrs Mayes has expressed that if Council grants the consent it will be unfair in that it effectively moves the "goal posts" and will affect the resale value of her property. Firstly in terms of the claim regarding a previous application relating to an additional unit on the subject site, I can confirm that I have undertaken a full review of Council's information system and no such application or reference to anything in this regard was found. Secondly it is noted that Mrs Mayes concern regarding the resale of her property is not a relevant consideration. While the Environment Court has not developed a consistent approach as to whether or not diminishing property values can be taken into account, there is general consensus that there is no obvious connection between property values and the sustainable management purpose of the Act in Part 2.
- 6.6.6 One of the major concerns expressed in Mrs Mayes submission is the privacy and shading effects that a dwelling on Lot 2 could have on her unit. Mrs Mayes' notes that any dwelling on Lot 2 will be located on her northern boundary which is the only open boundary for her unit, and the primary source of daylight and sunlight access. Mrs Mayes expressed further concern that the applicant has not provided any plans for development on Lot 2. As noted above in section 6.6.4 the applicant has delivered a copy of the proposed site plan for Lot 2 to Mrs Mayes' to review. While these plans provide an idea of what type of development is anticipated on Lot 2, they provide no certainty for Mrs Mayes or Mr Adams as to the specific scale and design elements for the dwelling. It is worth noting at this point that a lack of

certainty of proposed development is not usually a concern for subdivisions, however in this instance the applicant is applying for a combined subdivision land use application with provision made for a 45% building coverage allowance across both allotments. Building coverage infringements assessed at land use stage are typically accompanied by plans including site, floor and elevations so that consideration can be given to matters such as the bulk and scale of the proposed building. In this regard it is noted that no elevations have been provided and there is no certainty as to how buildings on the boundary adjoining 14 and 14B will be designed; for instance will there be windows along the southern facade of any residential unit? Will the roof be pitched in a manner to ensure maximum daylight access to Mrs Mayes unit?

- 6.6.7 In an email on 28th September 2012 Ms Wood was specifically asked whether the applicant had considered any additional mitigation measures to address the concerns raised by Mrs Mayes in her submission, and subsequently to address potential effects on this adjoining property. Ms Wood responded on 2nd October stating the following (see attachment 8):

“The applicant has already offered planting and/or fencing along the southern boundary to both submitters when consulting with them prior to lodging the application. The offer of planting or fencing for the purposes of retaining privacy still absolutely stands and can be discussed further at the hearing. Whilst there is still little scope to relocate the garage or dwelling further from Mrs Mayes boundary, we remind you that we offer a single storey covenant for the dwelling and garage on Proposed Lot 2, to ensure that the daylight angles rule will not be compromised.”

- 6.6.8 While I acknowledge that the applicant has put forward the one storey height limit on Lot 2 to help address shading concerns, I am still not convinced that the applicant has provided a sufficient scope of mitigation measures to ensure that any effects on Mrs Mayes property will be mitigated to an acceptable level. I am also concerned by the lack of certainty presented by the applicant in terms of the design of a residential unit on Lot 2. While I acknowledge that the site plan provided by the applicant in figure 2 provides a representation of what is intended, I reiterate that no elevations have been provided to provide a level of detail to comfortably address Mrs Mayes and Mr Adams concerns.
- 6.6.9 Overall on this basis, it is my professional opinion that the effects on immediate neighbours, in particular Mrs Mayes the owner of the rear unit of Lot 6 DP 44007, will not be sufficiently mitigated and will therefore be unacceptable in this instance, unless a greater degree of certainty can be provided either by providing plans and elevations showing development on Lot 2 and/or appropriate mitigation measures being provided by the applicant.

6.7 Access and Traffic Effects

- 6.7.1 Council's Senior Environmental Engineering Officer Vlad Rozov has assessed the potential access and traffic effects of the proposal in his assessment dated 2nd October 2012 (see attachment 4).
- 6.7.2 Ford Avenue is classified as a local road with a sealed surface in the area of the proposed vehicle access with a speed environment of between 50 to 60 km/h requiring sight lines of 40 to 55m. Mr Rozov has concluded that the potential effects on the existing roading network are considered to be less than minor in this instance.
- 6.7.3 In terms of access arrangements Lots 1 and 2 will all gain vehicle access via the existing right of way 'A' which is to be upgraded in accordance with Table 3.7 Category A of Whangarei District Council Environmental Engineering Standards. This proposal complies with Rule 71.3.8 Property Access as vehicle access will be shared. Mr Rozov has assessed the existing vehicle crossing onto Ford Avenue has complying site lines. He has also concluded that the proposal can achieve complying on-site parking and manoeuvring arrangements in accordance with the relevant provisions of the District Plan and Environmental Engineering Standards 2010.
- 6.7.4 It is considered appropriate at this point to consider one of the concerns raised by Mrs Mayes in her submission regarding the affect that additional traffic movements will have in terms of danger to young children or elderly people who are entering or exiting the house. In response

to this concern I note that Mr Rozov has assessed the application from an engineering perspective and has not identified any issues in terms of traffic safety with the proposal.

- 6.7.5 Overall for these reasons it is considered that the access and traffic effects that will result from the proposed subdivision will be less than minor and acceptable in this instance.

6.8 Site Suitability and Servicing Arrangements

- 6.8.1 The suitability of the subject site is assessed in the Suitability Report prepared by Richardson and Stevens Consulting Engineers reference 11500 dated 26th September 2012 (copy in attachment 2). Mr Rozov, has undertaken a site visit, reviewed the application and this Report, and subsequently has assessed site suitability and servicing arrangements in his report (attachment 4).

- 6.8.2 In terms of hazards Mr Rozov has identified that the subject site has a low instability hazard designation identified on Whangarei District Council's Geographic Information System maps. Originally the applicant had not submitted an engineering report with the application as is required in accordance with Section 2.2.3.1 Low Stability Hazard of the Whangarei District Council Environmental Engineering Standards to confirm the actual hazard designation of the site. However as mentioned the applicant has submitted the Richardson and Stevens Suitability Report which includes a detailed site investigation and concludes that subject to restrictions and recommendations the site is suitable for the proposed development.

- 6.8.3 Mr Rozov's report has also provided an assessment in terms of wastewater and water supply. He notes that there is already an existing fully serviced dwelling on Lot 1 and that Lot 2 will be connected to Council reticulation in Ford Avenue. As such Mr Rozov has confirmed that the proposal would comply with Rule 71.3.12 Water Supply and Rule 71.3.14 Sewage. Mr Rozov has recommended conditions requiring engineering plans be submitted showing design details of sewer and water connections to Lot 2 in accordance with the Environmental Engineering Standards 2010.

- 6.8.4 In relation to stormwater Mr Rozov has concluded that onsite stormwater attenuation will be required to limit flows from each lot in accordance with Chapter 4 of the Whangarei District Council Environmental Engineering Standards 2010, and more specifically Section 4.11. Mr Rozov has agreed with Richardson Stevens that the specific design for on-site stormwater attenuation on proposed Lot 2 can be better addressed at building consent stage.

- 6.8.5 Having regard to the above matters, the application site is considered developable in the manner proposed and satisfies Section 106 of the Act having regard to matters relating to natural hazards, wastewater, water supply, and stormwater. Therefore, the site is suitable for the development proposed in this regard, and no adverse effects beyond the subject site have been identified.

6.9 Cumulative Effects

- 6.9.1 *Dye v Auckland Regional Council [2002] 1 NZLR 337* is regarded as the leading case on cumulative effects. In considering the characteristics of cumulative effects, the Court stated:

"A cumulative effect is concerned with things that will occur rather than with something that may occur, that being the connotation of a potential effect... The concept of cumulative effect arising over time is one of a gradual build up consequence.

The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration."

- 6.9.2 With reference to *Dye*, the determination of cumulative effects requires the consideration of any adverse effects of the proposal when added to any adverse effect of an existing activity or activities that forms part of the existing environment. As such the assessment of cumulative effects should be undertaken with reference to the environment that presently exists.

- 6.9.3 In accordance with Mr Rozov's assessment (see section 6.7) I am satisfied that the receiving roading environment has sufficient capacity to accommodate the potential traffic effects

associated with the creation of an additional allotment in the vicinity, and that the application will not represent a significant cumulative effect in this regard.

- 6.9.4 Additionally, the applicant has demonstrated to the approval of Mr Rozov (see section 6.8) and subject to his recommended conditions, that the proposal can be adequately serviced in terms of section 106 of the Resource Management Act 1991. Therefore I am satisfied that the application will not represent a significant cumulative effect in this regard.
- 6.9.5 The principle area of concern in regards to cumulative effects in this instance, is the proposal's potential to result in the cumulative deterioration of the residential character and amenity values within the receiving environment beyond an acceptable level.
- 6.9.6 In this instance the applicant is applying to undertake a two lot subdivision of one allotment and to allow 45% building coverage across both allotments. As has been extensively discussed in section 6.3 of this report it is clear that residential development along Ford Avenue has advanced to a level of density and intensity that is not anticipated or provided for in the Living 1 Environment. As such the overall character and amenity of the subject site is more akin to that of a Living 2 Environment which represents the District Plan's most intensified zone for residential development. While one of the submitters Mr Adams, has raised concerns that this is likely the result of more permissive planning regimes, it is reiterated that the assessment of cumulative effects as advanced in *Dye* requires consideration of the proposal in relation to the existing environment. No provision is made to consider how the existing environment came to be, as that is something that is effectively unavoidable; it is what it is. In this regard it is my professional opinion that the proposal will not present a significant cumulative effect in the receiving environment along Ford Avenue, as it will allow a level of density that is compatible with the prevailing amenity and character values within the receiving environment along Ford Avenue and will represent the appropriate consolidation of the site rather than sporadic intensification. As such it is considered that the granting of this application will not "*tip the balance*" at which the residential character and amenity values currently experienced will be further deteriorated to an unacceptable level.
- 6.9.7 Overall taking into account the above, I consider that the proposal will not result in an adverse cumulative effect on residential character and amenity values in the vicinity.

6.10 Effects summary

- 6.10.1 The existing environment along Ford Avenue is characterised by a higher density and intensity of development than what is anticipated for the Living 1 Environment, and is more akin to the density of development anticipated in the Living 2 Environment. While the proposal represents a significant departure from what is anticipated for the Living 1 Environment, it is considered to be consistent with existing density and intensity of development along Ford Avenue. As such it is considered that the allotments created and the development that they will allow is compatible with the existing residential character and amenity values in the wider receiving environment and will not "*tip the balance*" at which the residential character and amenity values currently experienced along Ford Avenue will be further deteriorated to an unacceptable level.
- 6.10.2 In regard to localised effects, and irrespective of the above I maintain concerns regarding the effects of the proposal. Particularly the level of effect on immediate neighbours adjoining the southern boundary of the subject site. While I acknowledge that the applicant has put forward a one storey height limit on Lot 2 to help address shading concerns, I am still not convinced that the applicant has provided a sufficient scope of mitigation measures to ensure that any effects on these immediate neighbours will be mitigated to an acceptable level. I am also concerned by the lack of certainty presented by the applicant in terms of the design of a residential unit on Lot 2. On this basis, it is my professional opinion that the effects on immediate neighbours, in particular Mrs Mayes the owner of the rear unit of Lot 6 DP 44007, cannot be adequately assessed and furthermore will not be sufficiently mitigated and are therefore unacceptable in this instance. I can however advise the Commissioner that I believe that there is still scope for the applicant to present adequate mitigation measures that may result in a different recommendation.

7.0 Relevant Policy Statements, Plans or Proposed Plans (s104(1)(b))

7.1 Introduction

7.1.1 The following sections assess whether the proposal will be consistent with the relevant objectives and policies of the relevant plans for the subject site being the Northland Regional Policy Statement (both the operative and proposed), the Regional Water and Soil Plan for Northland and the Operative Whangarei District Plan.

7.2 Northland Regional Policy Statement

7.2.1 The Northland Regional Policy Statement (RPS) covers the management of natural and physical resources across the Northland region. The provisions within the RPS give guidance at a higher planning level in terms of the significant regional issues. As such it does not contain specific rules that trigger the requirement for consent but rather give guidance to consent applications on a regional level.

7.2.2 Having reviewed the current operative RPS it is considered that there are no significant conflicts between the proposal and the provisions within the RPS.

7.2.3 It is also worth noting that the new proposed Northland Regional Policy Statement ('proposed RPS') was notified in October 2012. It is acknowledged that the proposed RPS is still in the early stage of notification and is still a way off becoming operative. Thus while consideration to the proposed RPS is useful and necessary, it should be attributed little weighting in this regard.

7.2.4 Amongst other things the proposed RPS presents new objectives and policies regarding 'regional form' which are relevant for the consideration of the proposal. In particular policy 5.1.1 states that:

"Development should be located, designed, and built in a planned and co-ordinated manner which:

- (a) Is guided by the 'Regional Form and Development Guidelines' in Appendix 2;*
- (b) Is guided by the 'Regional Urban Design Guidelines' in Appendix 2;*
- (c) Recognises and addresses potential cumulative effects of subdivision, use, and development, and is based on sufficient information to allow assessment of the potential long-term effects of development;*
- (d) Is integrated with the development, funding, implementation, and operation of transport, energy, water, waste, and other infrastructure;*
- (e) Should not result in incompatible adjacent land uses and avoids the potential for reverse sensitivity; and*
- (f) Maintains or enhances the sense of place and character of the surrounding environment.*

Note: in determining the appropriateness of subdivision and development (including development in the coastal environment – see next policy), all policies and methods in the Regional Policy Statement must be considered, particularly policies relating to significant natural areas, landscape, heritage, natural hazards, indigenous ecosystems and fresh, and coastal water quality."

7.2.5 As has been contended within the effects assessment, it is considered that the proposal can be accommodated within existing infrastructure within the receiving environment and will be adequately serviced in terms of wastewater disposal, stormwater, water supply and access. Furthermore it is considered that the proposal is consistent with the pattern and density of development within the vicinity and will therefore maintain the sense of place and character elements within the locality. Furthermore having considered the development guidelines in

appendix 2 of the proposed RPS it is considered that the proposal is not inconsistent with any of the matters within these guidelines. In particular matters c), f) and s) are of particular relevance to the proposal. These matters state that new development should:

- “c) *Connect well with existing development and make use of opportunities for urban intensification and redevelopment to minimise the need for urban development in Greenfield (undeveloped) areas.*
- f) *if of a residential nature be, wherever possible, located close to or sited in a manner that is accessible to a broad range of social infrastructure; and*
- s) *where appropriate, encourage housing choice and business opportunities, particularly within urban areas.”*

7.2.6 It is my professional opinion that the proposal provides for these matters as it will represent intensification of a residential area that is adequately serviced by physical and social infrastructure, with the Kamo suburban centre located in proximity, which will minimise the need for urban development in Greenfield areas while encouraging housing choice within an urban area.

7.2.7 Overall for the above reasons it is considered that the proposal is consistent with the relevant objectives and policies within the operative RPS and proposed RPS.

7.3 Regional Soil and Water Plan for Northland

7.3.1 The Regional Soil and Water Plan for Northland (RSWP) provides strategic direction for the management of soil and water resources within the Northland region. It controls discharges onto land and water and land disturbance activities and aims to prevent and control activities occurring within the Northland Region which may result in unacceptable adverse effects.

7.3.2 Council’s Senior Engineering Officer- Vlad Rozov has considered matters relating to the servicing of the site, including the management of wastewater, stormwater and water supply (see section 6.8), and has recommended appropriate conditions of consent that will mitigate any potential adverse effects of the proposal in terms of discharges onto land. A copy of the application was also sent to the NRC during the notification period. No submission was received so it is assumed that they have no issue with the proposal in terms of compliance with the RSWP.

7.3.3 Taking the above into account I am satisfied that the proposal will satisfy the requirements of RWSP.

7.4 Operative Whangarei District Plan

7.4.1 The relevant objectives and policies in the Operative Whangarei District Plan (‘the plan’) for the proposed subdivision are located in *Chapter 5 – Amenity Values, Chapter 6 – Built Form and Development, Chapter 8 – Subdivision and Development and Chapter 22 – Road Transport* (a copy of these chapters is included in attachment 9 of this report).

7.4.2 Table 4 below assesses the proposed subdivision against the relevant objectives and policies within these Chapters:

Table 4 – Assessment of Relevant Objectives and Policies within the District Plan

Chapter 5 – Amenity Values	
<i>This Chapter describes the expectations of the various Environments (zones) in terms of amenity values. In terms of the Living Environments the overview in 5.2 describes them broadly as passive environments where people relax and interact on a social basis and have generally high amenity values as a result of a combination of the characteristics highlighted in section 6.3.2 of this report.</i>	
Objective	Comment
5.3.1 The characteristic amenity values of each	<i>This objective represents the overarching objective for the</i>

<p>Environment are maintained and, where appropriate enhanced.</p>	<p><i>Amenity Values chapter. The District Plan incorporates three Living Environments, with differing density levels, with Living 1 covering the 'general' urban areas, Living 2 covering two small areas close to the centre of the city that have traditionally been developed as high density areas, and Living 3 covering areas where development is restricted due to physical constraints or landscape values. As is demonstrated in the effects assessment it is considered that the receiving environment along Ford Avenue has been developed in a way that is more akin to the intensity of development anticipated for the Living 2 Environment. The characteristic amenity values identified in 5.2 (see 6.3.2) apply to all of the Living Environments. While the low intensity of development is no longer prevalent it is considered that the proposal is consistent with the amenity values that characterise the receiving environment along Ford Avenue many of which are consistent with the remaining characteristics in 5.2. As such it is my professional opinion that the proposal is consistent with this objective.</i></p>
<p>5.3.5 The actual or potential effects of subdivision use and development is appropriately controlled and those activities located and designed, are to be compatible with existing and identified future patterns of development and levels of amenity in the surrounding environment.</p>	<p><i>Ford Avenue is a residential street that contains a number of smaller allotments and allotments with multiple units that give a perception of a higher density residential environment. As has been concluded previously it is considered that the proposal is consistent with this higher density development and will consolidate it rather than see the inappropriate expansion of this existing pattern of development. Furthermore a review of Council Planning documents shows that Ford Avenue and the area of residential development to the south east along the beginning of Three Mile Bush Road adjacent to the Kamo suburban centre, have been earmarked for intensification (rezoning to Living 2 Environment) in the Kamo Structure Plan. While structure plans are generally attributed minimal weighting as they are not considered a legal document, they do provide a useful indication of Council's intentions (see section 8.1 for further discussion on the Kamo Structure Plan). Overall I believe that the proposal is consistent with this objective.</i></p>
<p>Policy</p>	<p>Comment</p>
<p>5.4.1 Effects on the Local Environment To ensure that activities do not produce, beyond the boundaries of the site, adverse effects that are not compatible with the amenity values characteristic of the surrounding and/or adjacent environment unless, such effects are authorised by a district plan, a designation, a resource consent or otherwise. The following effects should be given particular consideration in this respect:</p> <ul style="list-style-type: none"> • Noise and effects; • Shading; • Glare; • Light spill; • Dust; • Smoke; • Odour; • Vibration; • Spray drift; • Visual amenity. <p>Where internalisation of effects cannot be wholly achieved, the Council will consider a Best Practicable Option approach.</p>	<p><i>The consideration in the effects assessment directly relates to the determination of the consistency of the proposal with this policy. In this regard the effects assessment has concluded that the effects on wider residential character and amenity values will be less than minor and acceptable in this instance as the proposal will be consistent with the existing values along Ford Avenue which have been influenced by a higher density of development than what is anticipated in the Living 1 Environment. However there is a level of uncertainty as to whether the effects on immediate neighbours (owners of 14 and 14B Ford Avenue) can be sufficiently mitigated in terms of shading and visual amenity (privacy) in particular. As such it is my professional opinion that the proposal will not be wholly consistent with the intentions of this policy.</i></p>

<p>5.4.3 Activities in Living Environments To ensure activities in Living Environments do not have adverse effects that are significantly greater than those associated with residential activities, whilst acknowledging that adverse effects of activities from outside the living Environments, e.g. the Airport, may not be avoidable altogether and may affect amenity values.</p>	<p><i>In this instance the proposal provides for residential activity and no business activity is proposed. As such it is considered that the proposal will be consistent with the intentions of this objective.</i></p>
<p>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:</p> <ul style="list-style-type: none"> • 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. <p>Restrictions on density of development and subdivision size may be required to ensure new development does not increase population concentration in noise-sensitive areas.</p>	<p><i>As discussed in the assessment of the proposal against policy 5.4.1 above and within the effects assessment in section 6.6 I have concerns with the level of effects that the proposal will have on immediate property owners to the south of the subject site (in particular shading and privacy effects on Mrs Mayes unit). As such I am not convinced that the proposal will be consistent with the intentions of this policy which seeks to appropriately avoid, remedy or mitigate the effects of subdivision and development on adjoining properties.</i></p>

Chapter 6 – Built Form and Development

This recently developed chapter primarily provides policy direction for the urban areas of the Whangarei District and represents the most recent statement of Council's intention for the consolidation of the District's urban areas.

Objective	Comment
<p>6.3.1 Accommodate future urban growth with an emphasis on urban consolidation of the central business district (CBD) and in and around existing suburban nodes.</p>	<p><i>This objective provides a clear statement of Council's intention for urban intensification. The subject site and Ford Avenue in general is not considered to be located within the CBD, however it is located directly adjacent to the Kamo Suburban Centre which is one of the major suburban centres in the District. As is contended elsewhere in this report, it is my belief that the proposal represents the appropriate consolidation of residential development along Ford Avenue which is in an ideal location for consolidation adjacent to an existing suburban node. As such it is considered that the proposal is wholly consistent with the intentions of this policy.</i></p>
<p>6.3.2 Subdivision and development that ensures consolidated development in appropriate locations and avoids sprawling or sporadic subdivision and ribbon development patterns in the coastal and rural environment.</p>	<p><i>As contended above it is considered that the proposal will represent the appropriate consolidation of development in a location adjacent to a suburban node that is appropriately serviced in terms of infrastructure. The proposal is not located in a coastal or rural environment; thus the second element of this objective is irrelevant.</i></p>
<p>6.3.6 Provide accessible and convenient suburban centres, and focus future intensive residential growth in and around those centres.</p>	<p><i>In the same vein as above it is my consideration that the proposal focuses residential intensification around the Kamo suburban centre and as a result will provide accessible and convenient access to the centre as intended in this objective.</i></p>

Policy	Comment
<p>6.4.2 Consolidated Development To consolidate urban development by:</p> <ul style="list-style-type: none"> i. Further develop within existing built up areas, so as to avoid sporadic or sprawling subdivision and ribbon development patterns, particularly in rural areas and along the coast. ii. Directing rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas. 	<p><i>There are obviously two components to this objective. The first is relevant to the consideration of this proposal. Ford Avenue clearly represents an existing built up area that is adequately serviced in terms of physical and social infrastructure (with the Kamo suburban centre being located to the south east). As such I believe that the proposal will provide for the appropriate consolidation of this built up area while consequently avoiding sporadic or sprawling and ribbon development patterns in rural areas and along the coast. The second element is irrelevant as the proposal is not considered to be promoting rural lifestyle or rural residential development. On this basis I am confident that the proposal is consistent with the direction of this policy.</i></p>
<p>6.4.3 Infill Development To provide for infill development in areas appropriately serviced, to accommodate future urban growth, and in a manner that is consistent with maintaining and improving the character and amenity value of neighbourhoods and quality of the built environment.</p>	<p><i>It is my consideration that the proposal will provide for appropriate infill development to accommodate future urban growth in a manner that is consistent with and that will maintain the prevailing character and amenity values of the Ford Avenue neighbourhood which have been described previously. In addition it is noted that this area is earmarked for future intensification in the Kamo Structure Plan. Irrespective of this I believe that the proposal is consistent with the intentions of this policy.</i></p>
<p>Chapter 8 – Subdivision and Development <i>This chapter provides a policy framework to address the effects of subdivision and development on the environment, and acknowledges that subdivision and development can have both positive and negative effects.</i></p>	
Objective	Comment
<p>8.3.1 Subdivision and development that achieves the sustainable management of natural and physical resources whilst avoiding, remedying or mitigating adverse effects on the environment.</p>	<p><i>This objective effectively restates the purpose of the Resource Management Act 1991 in Part 2. In this regard while the proposal will allow for the consolidation of a residential area that is appropriately serviced adjacent to a suburban centre, I am not convinced that the proposal will adequately mitigate effects on immediate neighbours adjoining the southern boundary of the subject site. As such I believe that the proposal does not meet the intentions of this objective in its entirety.</i></p>
<p>8.3.2 Subdivision and development that does not detract from the character of the locality and avoids conflicts between incompatible land use activities.</p>	<p><i>As is contended elsewhere in this report, it is considered that the proposal is consistent with the amenity and character values in the locality along Ford Avenue. Furthermore as the proposal promotes residential activity, it is considered that it will avoid conflicts between incompatible land use activities as is directed in this objective. As such the proposal I believe that the proposal is consistent with this objective.</i></p>
<p>8.3.7 Subdivision and development that provides for comprehensive development of land with a range of allotment sizes and is appropriate to the character of the Environment in which it is located.</p>	<p><i>Ford Avenue currently contains a range of allotment sizes with a number of allotments falling below the 500m² net site area calculations (see figure 4). In addition it is noted that a number of properties along Ford Avenue contain multiple units which present a higher density of development. It is considered that the proposal is consistent with the amenity and character elements apparent in the locality and is therefore consistent with the direction provided within this objective.</i></p>
Policy	Comment
<p>8.4.3 Density of Development To ensure that</p>	<p><i>It is considered that the proposal will result in a pattern of</i></p>

<p>subdivision and development results in a pattern and density of land use which reflects flexibility in allotment size, and is of a density appropriate to the locality.</p>	<p><i>density of residential land use which provides flexibility in allotment size, and is of a density appropriate to the amenity and character elements in the locality. As such I consider that the proposal is consistent with the approach promoted in this policy.</i></p>
<p>8.4.4 Cumulative Effects To ensure that the cumulative effects of on-going subdivision and development do not compromise the objectives and policies of this Plan, in particular those objectives and policies relating to reducing conflicts between incompatible land use activities, the consolidated and orderly development of land and the density of development.</p>	<p><i>An assessment of the cumulative effects of the proposal is provided in section 6.9 of this report. In this assessment it was concluded that the cumulative effects of the proposed development on residential character and amenity values will be acceptable in this instance. This policy requires additional consideration of cumulative effects as they relate to objectives and policies in the plan, with particular emphasis on certain ones referenced within the policy. With regard to these particular policies it is my professional opinion that the proposal will not result in an adverse cumulative effect that would cause conflicts between incompatible land use activities, the consolidated and orderly development of land and the density of development for reasons expressed previously in this assessment.</i></p>
<p>8.4.12 Services and Infrastructure To ensure that all subdivision and development is capable of being provided, by the subdivider or developer, with adequate services and infrastructure having regard to Whangarei District Council's Environmental Engineering Standards 2010 (except where the subdivision or development is for specific protection purposes), including:</p> <ul style="list-style-type: none"> • Vehicle access, including emergency service vehicle access; • Water supply, (including for fire fighting purposes), storm water and sewage disposal; • Energy and telecommunication connections; • Useable open space in urban areas; • During the design and construction of the subdivision, measures to reduce storm water run off. 	<p><i>Council's Senior Environmental Engineering Officer- Vlad Rozov has assessed the site servicing arrangements of the proposal in accordance with the Whangarei District Council Environmental Engineering Standards 2010 in terms of access, water supply, provision of telecommunications and power, wastewater management and stormwater management (see section 6.7 and section 6.8). Having regard to these matters, the application site was assessed as being developable in the manner proposed and satisfies Section 106 of the Act. Therefore, the suitability of the site for the development proposed is not in question, and it is consequently considered that the proposal is consistent with this policy.</i></p>
<p>Chapter 22 – Road Transport.</p>	
<p>Objective</p>	<p>Comment</p>
<p>22.3.1 Establish and maintain a safe and efficient road transport network.</p>	<p><i>Mr Rozov has assessed the proposal from an engineering perspective in terms of the actual and potential effects on the roading network (see section 6.7 of this report). Overall Mr Rozov concludes in his assessment that "the potential effects of proposal on the existing roading network are considered to be less than minor in this case." On that basis I am satisfied that roading network in the vicinity of the site can sufficiently accommodate the additional allotment without compromising the safe or efficient operation of this roading network.</i></p>
<p>22.3.3 Protect the road transport network from the adverse effects of adjacent land use, development or subdivision.</p>	

7.4.3 Overall, the objectives and policies relevant to the District's residential areas generally seek to ensure the maintenance and possible enhancement of amenity values and the sustainable management of natural and physical resources while avoiding, remedying or mitigating adverse effects on the environment, in line with principles of the Resource Management Act 1991. Emphasis is placed on appropriate control, location and design of subdivision and development, and a density that results in land use that is consistent with the surrounding area. The design and siting of buildings that are 'appropriate' to the Environment in which they are located and that do not unduly compromise the outlook and privacy of adjoining properties are similarly emphasised. In addition new direction provided from chapter 6 directs future

intensification of residential development in appropriate areas earmarked for growth adjacent to existing settlements that are adequately serviced by physical and social infrastructure.

- 7.4.4 In this instance, while the assessment in table 4 demonstrates that the proposal is consistent with many of the relevant objectives and policies, particularly relating to urban consolidation in accordance with the chapter 6 provisions, it is my professional opinion that the proposal is not consistent with several key provisions (namely 5.4.1, 5.4.7 and 8.3.1) as I am not convinced that the effects on immediate neighbours adjoining the southern boundary will be sufficiently mitigated within the proposal. However it is reiterated that this position could change subject to further mitigation measures presented by the applicant.

8.0 Other Matters

8.1 Kamo, Springs Flat, Three Mile Bush and Whau Valley Structure Plan

- 8.1.1 The subject site falls within the boundaries of the Kamo, Springs Flat, Three Mile Bush and Whau Valley Structure Plan ('the Structure Plan'). The Structure Plan, which was formally adopted by Council in February 2009, relates to the area north of Whangarei City encompassing the Whau Valley Shopping Centre and Kamo Village. The boundaries border the Pukenui Forest to the south, and some of the Hikurangi Swamp to the north-west (a copy of the Structure Plan and related map is provided in attachment 10.)
- 8.1.2 The Structure Plan is a result of the Urban Growth Strategy which was commissioned in 2002 and adopted by Council in 2003. The Strategy divided Whangarei City into eleven distinct districts which became Structure Plan Study Areas, with each having its own detailed study of future development and growth. The subject site falls within the area covered by the Structure Plan. Public meetings were held with local residents and special interests groups in these areas to discuss specific planning proposals for the area.
- 8.1.3 Specific land use proposals are discussed in section 4 of the Structure Plan, of which section 4.4. is specifically relevant to the subject site. In this section the Structure Plan proposes the creation of high density residential intensification (Living 2) at Kamo. In this regard the following is stated on page 40:

"It is proposed to create a high density residential development around the expanded Kamo shopping centre. This is infill development that is intended to make use of the existing infrastructure and provide for high density residential redevelopment within walking distance of services.

This zoning will allow for up to two additional sections on an original quarter acre section. The existing infrastructure (sewerage, water and roading) is able to accommodate this further development, with no additional cost.

This is considered to be appropriate, as it provides for compact accommodation close to services, thereby reducing dependency on vehicles."

- 8.1.4 The subject site is located in one of the areas to the west of the Kamo shopping centre which have been identified for rezoning to Living 2 Environment, in order to accommodate this residential intensification proposed in the Structure Plan (see figure 6). This provides an indication that Council intends for this area to be intensified in the future and is a relevant consideration in light of the proposal, which would allow the intensification of the subject site in a manner anticipated for the Living 2 Environment.
- 8.1.5 However at this point it is important to acknowledge that while structure plans are a useful technique that have gained acceptance as a way of promoting integrated resource management, they are non-statutory policy documents that are not required or enforced within the Resource Management Act 1991. As such the provisions of the Structure Plan do not have statutory or legal status until they incorporated into Council's statutory documents such as the District Plan.

8.1.6 As such while it is considered that the proposal is consistent with the intentions of the Structure Plan in terms of future residential intensification, it can be attributed no weighting in regards to the substantive assessment required pursuant to section 104 of the Act.



Figure 6: the subject site is identified in an area identified for future Living 2 Environment rezoning within the Kamo, Springs Flat, Three Mile Bush and Whau Valley Structure Plan

9.0 Part 2 Matters

9.1 Section 5 – Purpose

9.1.1 Part 2 of the Resource Management Act 1991 details the overarching purpose and principles of the Act

9.1.2 In terms of Part 2 of the Act, the proposed activity must meet the purpose of the Act set out in section 5 which is “to promote the sustainable management of natural and physical resources.” As outlined in section 5(2), “sustainable management” means:

“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while -

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

9.1.3 The proposal is considered to be inconsistent with the purpose of the Act as the proposal does not recognise and provide for the sustainable management and development of natural

and physical resources or enable people and communities to provide for their social, economic and cultural well being in a way or at a rate that will avoid, remedy or mitigate adverse effects on the receiving localised environment. As has been demonstrated in the previous sections of this report, while it is considered that the proposal will allow the intensification of the subject site in a manner that is consistent with amenity and character elements of the wider area along Ford Avenue, I am not satisfied that the adverse effects of the activity on adjoining property owners to the south of the subject site will be sufficiently mitigated as the proposal currently sits. For this reason it is my opinion that the proposal is not wholly consistent with the section 5 purpose of the Act.

- 9.1.4 Section 5 of the Act is supported by a number of other ancillary principles contained in sections 6, 7 and 8 in Part 2 of the Act that provide decision makers with a set of guidelines that reflect current government policies and ideologies in regards to resource management, and assist in the interpretation of sustainable management. The relevance of these sections to the proposed subdivision is assessed below.

9.2 Section 6 – Matters of National Importance

- 9.2.1 Section 6 of the Act highlights matters of national importance that shall be recognised and provided for in order to achieve the sustainable management purpose of the Act. No matters provided under section 6 are considered to be relevant to consideration of this application.

9.3 Section 7 – Other Matters

- 9.3.1 Section 7 of the Act lists other matters that particular regard shall be given to in order to achieve the purpose of the Act. Section 7 of the Act lists other matters that particular regard shall be given to in order to achieve the purpose of the Act. The following matters as outlined in Section 7 of the Act are considered particularly relevant to the consideration of this application;

(b) *The efficient use and development of natural and physical resources;*

(c) *The maintenance and enhancement of amenity values;*

(f) *Maintenance and enhancement of the quality of the environment*

- 9.3.2 In regards to section 7(b) it is considered that in accordance with the assessment in previous sections of this report that the proposal does represent the efficient use and development of natural and physical resources, as it will promote the intensification of a residential area which is adequately serviced in terms of physical and social infrastructure with the Kamo suburban centre located to the east of the subject site.

- 9.3.3 However in terms of section 7(c) and (f) it is considered that the proposal does not represent the maintenance and enhancement of amenity values or the quality of the environment, as the proposal will result in a level of effect on the amenity values of adjoining neighbours which have not been sufficiently mitigated in this instance.

9.4 Section 8 – Treaty of Waitangi

- 9.4.1 Section 8 requires that decision makers take into account the principles of the Treaty of Waitangi in managing the use development and protection of natural and physical resources. Section 8 is considered irrelevant to this application as the proposal does not affect the principles of the Treaty of Waitangi.

10.0 Conclusion & Recommendation

10.1 Conclusion

- 10.1.1 Section 104B of the Act requires that after considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

(a) *may grant or refuse the application; and*

(b) if it grants the application, may impose conditions under section 108.

- 10.1.2 In accordance with 104(1)(a), it is concluded that the effects on the environment as a result of the proposal will not be sufficiently mitigated and are therefore unacceptable in this instance. While it is considered from the wider environment that the proposal will be consistent with existing density of development along Ford Avenue and in turn the existing residential and character values currently experienced along Ford Avenue, I maintain concerns regarding the effects of the proposal on immediate neighbours adjoining the southern boundary of the subject site. While I acknowledge that the applicant has put forward a one storey height limit on Lot 2 to help address shading and privacy concerns, I am still not convinced that the applicant has provided a sufficient scope of mitigation measures to ensure that any effects on these immediate neighbours will be mitigated to an acceptable level. I am also concerned by the lack of certainty presented by the applicant in terms of the design of a residential unit on Lot 2.
- 10.1.3 In accordance with 104(1)(b), it is concluded that while the proposal is consistent with many of the relevant objectives and policies in the Operative District Plan, particularly relating to urban consolidation in accordance with the chapter 6 provisions, it is my professional opinion that the proposal is not consistent with several key provisions (namely 5.4.1, 5.4.7 and 8.3.1) as I am not convinced that the effects on immediate neighbours adjoining the southern boundary will be sufficiently mitigated within the proposal.
- 10.1.4 The proposal is considered to be inconsistent with the purpose and principles of the Resource Management Act set out within Part 2 as the proposal does not incorporate sufficient means to avoid, remedy or mitigate adverse effects on adjoining neighbours to the south of the subject site.
- 10.1.5 Having considered the application against the relevant provisions of the Act, it is therefore recommended that this application be **declined**.
- 10.1.6 I can however advise the Commissioner that I believe that there is still scope for the applicant to present adequate mitigation measures that may result in a different recommendation.

10.2 Recommendation

THAT pursuant to sections 104 and 104B of the Resource Management Act 1991, it is recommended that Commissioner Les Simmons **decline** consent SL1200002 to Bruce John McQueen to subdivide Lot 7 DP 44007 (NA7374/91) which has an area of 893m², in the Living 1 Environment into two separate allotments with the following net site areas: Lot 1- 397m² and Lot 2- 325m². The proposal is assessed as a combined subdivision and land use application as the applicant is proposing to allow for 45% building coverage for each lot to accommodate for the garage to be added to lot 1 and for the future development of lot 2.

The subject site is situated within the Living 1 Environment pursuant to the Operative District Plan. The proposal requires consent as a discretionary activity because: it cannot comply with the controlled allotment area requirements in Rule 71.3.1; the applicant is applying for a 45% building coverage across both allotments pursuant to Rule 38.4.3 and; to because the subdivision will result in an infringement relating to Building to Access Setbacks pursuant to Rule 38.4.8.

Reasons for the Recommendation:

That pursuant to section 113 of the Resource Management Act 1991 the reasons for this decision are as follows:

- 1 The effects on the environment as a result of the proposal will not be sufficiently mitigated and are therefore unacceptable in this instance. While it is considered from the wider environment that the proposal will be consistent with exiting density of development along Ford Avenue and in turn the existing residential and character values currently experienced along Ford Avenue , I maintain concerns regarding the effects of the proposal on immediate neighbours adjoining the southern boundary of the subject site. While I acknowledge that the applicant has put forward a one storey height limit on Lot 2 to help address shading concerns, I am still not convinced that the applicant has provided a sufficient scope of mitigation measures to ensure that any effects on these immediate neighbours will be mitigated to an acceptable level. I am also concerned by the lack of certainty presented by the applicant in terms of the design of a residential unit on Lot 2.
- 2 In accordance with 104(1)(b), it is concluded that while the proposal is consistent with many of the relevant objectives and policies in the Operative District Plan, particularly relating to urban consolidation in accordance with the chapter 6 provisions, it is my professional opinion that the proposal is not consistent with several key provisions (namely 5.4.1, 5.4.7 and 8.3.1) as I am not convinced that the effects on immediate neighbours adjoining the southern boundary will be sufficiently mitigated within the proposal.
- 3 The proposal is considered to be inconsistent with the purpose and principles of the Resource Management Act set out within Part 2 as the proposal does not incorporate sufficient means to avoid, remedy or mitigate adverse effects on adjoining neighbours to the south of the subject site.

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.
- 2 Section 357B of the Resource Management Act 1991 provides a right of appeal 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.

11.0 Attachments

1. **The application (as lodged)**
2. **Suitability Report for Lot 2 of Subdivision of Lot 7 DP 44007 16 Ford Ave, Kamo prepared by Richardson and Stevens Consulting Engineers reference 11500 dated 26th September 2012.**
3. **Site Plan and Floor Plan showing potential residential development for proposed Lot 2 prepared by Dawson Design Drawing Code L0.1 and L1.2**
4. **Council's Senior Environmental Engineering Officer Vlad Rozov's two reports dated 1st May 2012 and 2nd October 2012.**
5. **Copy of section 92 request sent to the applicant's agent on 14th May 2012.**
6. **Planning Maps for subject site and surrounding locality.**
7. **Copies of submissions received.**
8. **Copy of emails to/from Kate Wood regarding potential mitigation measures.**
9. **District Plan Chapters**
 - **Chapter 5 – Amenity Values**
 - **Chapter 6 – Built Form and Development**
 - **Chapter 8 – Subdivision and Development**
 - **Chapter 22 – Road Transport**
10. **Kamo, Springs Flat, Three Mile Bush and Whau Valley Structure Plan.**