

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
20 November 2014
9.30am**

**Application by
Green & Florian**

**Commissioner
John Childs**

Index

	Page No
Authorisation Sheet	1
Environment Planner (Consents) Report	3
Recommendation	28
Attachment 1 Scheme Plan	30
Attachment 2 The application as lodged	31
Attachment 3 Further Information Request	69
Attachment 4 District Plan Maps	78
Attachment 5 Copy of submissions received	80
Attachment 6 Report from SEEO	92
Attachment 7 Tikipunga Structure Plan	97

Report to Hearings Commissioner John Childs on a Resource Consent Application

Calvin Green and Annemarie Florian seek resource consent to undertake a three lot subdivision of the 3.5ha application site, located within the Countryside Environment under the Operative District Plan, in order to create Lot 1 with a net site area of 4555m², Lot 2 with a net site area of 2.9945 hectares, and Lot 3 with a net site area of 230m². Lot 3 is to become an access way to adjacent Lot 1 DP 396488 with which it is to be amalgamated, and right of way F is to be relinquished.

This resource consent application was lodged by Bentley Consultancy Northland Ltd on behalf of Calvin Green and Annemarie Florian, and was reported on by Council's Senior Environmental Planner (Consents), Carine Andries.



**Carine Andries, Senior Environmental Planner
(Consents)**

31 October 2014

This report was peer reviewed by the following signatories:



Alister Hartstone, Resource Consents Manager

3 November 2014

Statement of staff qualification and experience

Carine Andries – Council Senior Environmental Planner (Consents)

I hold the qualification of a Bachelor of Business (Management and Communications) from Manukau Institute of Technology and a Master of Resource and Environmental Planning (Honours) from Massey University. I am a Grad-3 member of the New Zealand Planning Institute. I have been employed as an Environmental Planner (Consents) with the Whangarei District Council since 1 August 2011, and prior to this held the role of Policy Planner (Urban) with the same organisation. Previous to working for the Whangarei District Council, I was employed by Duffill Watts and King as a Consents Planner assessing applications for the Kaipara District Council. Overall, my work experience has included reporting on a broad range of subdivision and land use consents, undertaking research and consultation for plan changes, preparing submissions on proposed higher level regulation and undertaking work for Whangarei's growth strategy.

Dean Murphy – 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 with a NZCE (Civil) and am a graduate member of the Institute of Professional Engineers New Zealand Inc (GIPENZ). I have 5 years experience in civil construction site engineering and project management, including earthworks, drainage, roading, water treatment plant, sewer scheme & roading maintenance. I have been employed with the Whangarei District Council for the last 8 years as a Senior Environmental Engineering Officer.

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 in relation to engineering matters.

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 John Childs of a three lot subdivision proposal by Calvin Green and Annemarie Florian.

The application site is located at 225 Ngunguru Road, Glenbervie, legally described as Lot 2 DP 396488, contained in Computer Freehold Register 384540, and is located within the Countryside Environment under the Operative District Plan.

Evidence By: Carine Andries, Senior Environmental Planner (Consents). MRP (Hons), BBus(Mgmt & Comms), MNZPI (Grad 3).

File Refs: SD1300052 P041472

Dated: 27 March 2014

1.0 The Proposal & Background

1.1 The Proposal

- 1.1.1 It is proposed to subdivide a 3.5 hectare site in the Countryside Environment into three lots, where one lot will form an access way to an adjoining property, being Lot 1 DP 396488. In addition, right of way F is to be relinquished. Proposed Lot 1 is located to the west of two previously created allotments of similar size. It contains an existing packing shed which has been used previously as a residential unit by the current owners while they were constructing their current residence located on proposed Lot 2. Proposed Lot 2 is the balance lot with a remaining net site area of 2.9945 hectares, which houses the applicants' dwelling and garage, and contains an orchard of approximately 350 avocado trees. A copy of the scheme plan is enclosed as Attachment 1.
- 1.1.2 A potential building platform for proposed Lot 1 has been identified in the area currently occupied by the existing shed, plus a further area of similar size directly adjoining the shed. This will allow for either a new dwelling in this location, or an extension of the existing building. The applicants have offered to retain a consent notice that currently applies to the site which would restrict all buildings and structures to recessive external colours, with the exception of the existing buildings to which the consent notice would only apply if alterations to the exterior cladding or colour were undertaken.
- 1.1.3 The applicants have also volunteered to restrict new development on proposed Lot 1 to be single-storey only, in order to limit visibility from neighbouring sites, other than the sites directly adjoining to the east. Additionally, the applicants have offered to forego the right to a minor residential unit on proposed Lot 2.

1.2 Background

- 1.2.1 The application was first lodged on 17 July 2013. A copy of the application can be found in Attachment 2. A request for further information, pursuant to section 92 of the Act, was sent to the agent on 30 July 2013. A copy of this request can be found in Attachment 3. This request was quite substantial, including the undertaking of a preliminary site investigation in order to determine the application's status under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. A notification assessment would not have been possible without such a report.

- 1.2.2 The information addressing the issues outlined in the s92 request was received at various stages, and in some instances, required further clarification, particularly in relation to engineering matters.
- 1.2.3 In the meantime, discussions were taking place between the Resource Consents Manager, Mr Alister Hartstone and Mr Calvin Green, one of the applicants, and the agent in relation to Council's concerns about the proposal for an additional small lot in the Countryside Environment; the issue of precedent; and finding support in the District Plan objectives and policies for the proposal. Discussions touched on specific examples such as the Blampied decision issued by the Environment Court and two Commissioner-issued decisions for non-complying proposals on Newton Road, one of which was approved while the other was declined.
- 1.2.4 The applicant expressed frustration in having spent a considerable amount of money on engineering reports and so on, and only being told at this point in the process that there is every chance the application would be declined. Council advised that we could not predict the outcome of the application with any certainty, but it is seen as good practice to advise applicants of potential difficulties sooner rather than later. In terms of the money spent on engineering reports, it was pointed out that the majority of the information requested should have been lodged with the application and that, perhaps, Council should have rejected the application under section 88 in the first instance. Council also advised that it was very likely that the application would be publicly notified, especially when considering rural amenity and character, precedent, and cumulative effects. In the end, it was up to the applicants to determine whether to proceed with the application or not.
- 1.2.5 On 22 January 2014, the applicants' agent requested for the application to be placed on hold for the time being. Council was contacted in early August 2014 advising that Mr Green was of a mind to continue with the application. The agent requested an interim invoice in the meantime. A couple of weeks later, the applicants' agent requested notification of the application.

2.0 Site and Surrounds Description

2.1 Zoning, Resource areas and Other Notations

- 2.1.1 Whangarei District Council Operative Planning Map 34 (provided within Attachment 4) demonstrates the application site is located within the Countryside Environment.



Figure 1: Environment (Zoning) of Application Site

- 2.1.2 Council's Geographic Information System reveals the site to be subject to a low stability hazard and adjacent to a HAIL site (horticultural activities). See Attachment 4 for the relevant maps.

2.2 Site Description

- 2.2.1 The application site comprises a total area of 3.58ha in the form of an L-shape. It is situated to the west of Ngunguru Road from where it gains access over a right of way that is shared with two other adjoining properties. The site lies north of a private way known as Hardie Road.
- 2.2.2 Topographically, the site contains a large flat knoll in the northern part with a general slope towards the south over the remainder of the site. The property houses several buildings: the main dwelling and garage are located toward the western boundary around the midpoint between the northern and southern boundary; a packing shed, previously used as a residential unit, is situated toward the corner formed by the northern and north-eastern boundary. A stone wall, running in a north-west to south-east direction, forms a separating feature between the packing shed and main dwelling.
- 2.2.3 The remainder of the site is used for horticultural purposes with approximately 350 trees, including avocado trees and a small olive grove in the southern corner. The exterior boundaries of the subject site are predominantly lined with high shelterbelt trees.

2.3 Surrounding Area

- 2.3.1 The surrounding environment is characterised by a variety of land uses such as rural residential properties, horticultural and agricultural activities. Located to the east of the subject site, on the opposite side of Ngunguru Road, is Glenbervie Hall. Glenbervie Primary School is approximately 400 metres to the south of the subject site whilst Huanui Orchard is approximately 450 metres to the north.
- 2.3.2 In terms of density, there are quite a number of small lots within the immediate vicinity of the application site, i.e approximately 18 sites within a nominal 600m radius are smaller than or equal to 1 hectare. Other properties generally have site areas of 2 to 4 hectares. Outside of the 600m radius, the site area of properties tends to increase with sites being mainly larger than 5 hectares, up to 14, 24, 31 and 79 hectares. Some clusters of smaller lots also occur in this wider area. Research into a number of these smaller lot subdivisions has revealed that the majority of these sites were created under previous planning regimes, as outlined later on in the report.
- 2.3.3 Of note are the two smaller allotments to the north-east of the subject site which, historically, formed one property with the subject site. In 2003, the applicants applied for a two lot subdivision, separating the two dwellings that were established at the time. This consent was granted and in 2007, the applicants proposed to have the balance lot further subdivided into four lots with proposed lot sizes ranging between 5,520m² and 1.4 hectares. This application was fully notified and submissions were received. In response to submitters' concerns, the applicants revised their proposal culminating in a two lot subdivision of a 4,575m² site and a balance lot of 3.42 hectares, which was then granted consent. It is this balance lot that is now proposed to be subdivided further.

3.0 District Plan Assessment

3.1 Reasons for Consent

- 3.1.1 The subdivision proposal requires consideration as a non-complying activity pursuant to rule 73.3.1 'Allotment Area' given the minimum average net site area is less than 4 ha. In addition, the proposal fails to comply with Rule 73.3.7 'Property Access' and Rule 73.3.8 'Vehicle Crossings' as neither the access nor the crossing comply with the requirements of the WDC Environmental Engineering Standards. The proposal, therefore, requires consideration as a restricted discretionary activity pursuant to these two rules.
- 3.1.2 The activity meets the relevant standards and terms under additional rules of relevance including Rule 73.3.4 'Building Area', Rule 73.3.5 'Existing Buildings', Rule 73.3.6 'Sites of Significance to Maori' (none identified), Rule 73.3.11 'Water Supply', Rule 73.3.12 'Stormwater', Rule 73.3.13 'Stone Walls' (the boundary between proposed Lots 1 and 2 follow

a stone wall and there is no proposal to destroy any part of this wall), Rule 73.3.14 Sewage, Rule 73.3.15 'Electricity', Rule 73.3.16 'Telecommunications', and Rule 73.3.17 'Earthworks'.

3.1.3 Overall, the application is considered to be for a Non-Complying Activity.

4.0 Notification, Submissions and Written Approvals

4.1 Written Approvals

4.1.1 Section 104(3)(a)(ii) of the Act requires that no consideration may be had of any effect on a person who has provided their written approval to the application. The application, as lodged, contained four written approvals from the following parties:

J I and J M Ah Mu – Lot 1 DP 332245 – 239 Ngunguru Road, Glenbervie

Z E Charlton – Lot 2 DP 68185 – 241 Ngunguru Road, Glenbervie

C and K Duncan – Lot 1 DP 105928 – 24 Hardie Road, Glenbervie

K E and M G Lomas – Lot 1 DP 396488 – 229 Ngunguru Road, Glenbervie - It is noted that, since lodging the application, there would now appear to be additional owners of this property, one of whom made a submission opposing the proposal, which was subsequently withdrawn.

4.2 Notification

4.2.1 The application was lodged requesting that it proceed on a non-notified basis. Following an assessment of the proposal, Council indicated its concerns in relation to actual and potential effects of the proposal. After a number of discussions, the agent requested for the application to be processed on a notified basis. The notification process was therefore instigated on 2 September 2014.

4.3 Submissions

4.3.1 The period for submissions opened on 2 September 2014 and closed on 30 September 2014. Copies of the application were served upon parties in the immediate vicinity of the application, the Ngati Hau Resource Management Unit, the Northland Regional Council and Whangarei District Council Policy Department.

4.3.2 Council received a total of four submissions within the timeframe, three of which are in support of the proposal. One submission, from Beca, on behalf of the New Zealand Fire Service, requests the inclusion of certain conditions, should Council be mindful of approving the subdivision.

4.3.3 One submission was received late, nearly one week after submissions closed. It is noted that this submission was made by a part owner of the adjacent property subject to the proposed amalgamation condition i.e. the property is proposed to be amalgamated with proposed Lot 3, which serves as an access way. The submission was subsequently withdrawn on 15 October 2014.

4.3.4 The individual submissions are summarised as follows (a full copy of the individual submissions can be viewed in Attachment 5).

Submitter	Issues and Relief Sought
M & C McKerrow	<ul style="list-style-type: none"> • No issues raised; submission indicated being neutral <p>Relief sought: not indicated.</p> <p>Submitters did not indicate whether they wished to be heard or not.</p>
T Sage	<ul style="list-style-type: none"> • The submitter states that the area is ridiculously exclusive and families are priced out. Large tracts of land are available, but too expensive for young families, therefore need smaller lifestyle blocks. • Council has spent a lot of money on a footpath through Glenbervie, presumably for kids and families to safely walk to school, Huanui Orchards, Glenbervie Primary etc. Therefore, more families should be let in. • Huanui College needs more students. <p>Relief sought: The application be approved.</p> <p>Submitter does not wish to be heard.</p>
E Jelsma	<ul style="list-style-type: none"> • The submitter notes she grew up in Glenbervie and would like to re-locate there with her family, but it is too expensive. • There is a real lack of affordable land and houses in the area, which has child care facilities, primary school and a college, making it perfect for families. • A recently improved pathway along the roadside is perfect for kids to walk to school and to Glenbervie Hall. The area is just crying out for more young families. • There is a way to retain the beautiful character of the area whilst allowing for sensible subdivision like this proposal. <p>Relief sought: The application be approved.</p> <p>Submitter does not wish to be heard.</p>
Beca, on behalf of NZ Fire Service	<ul style="list-style-type: none"> • The submitter highlights the Commission's responsibility under the Fire Service Act 1975 to provide for fire fighting activities in a safe, effective and efficient manner, and that the proposed subdivision should take into account the operational requirements of the Commission to provide for fire fighting activities in this manner. • The submitter emphasises the importance of having adequate water supply on site and/or having a home sprinkler system installed at the time of building a dwelling. • Additionally, the submitter stresses the importance of adequate access for emergency vehicles. <p>Relief sought: That the Consent Authority imposes the necessary consent notices should the application be granted.</p>

Submitter	Issues and Relief Sought
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Submitter wishes to be heard.

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 an 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](#).*

5.3 Section 104D

5.3.1 Being a non-complying activity, the proposal is subject to the thresholds outlined in section 104D of the Act, 'Particular restrictions for non-complying activities'. Section 104D states

- (1) *Despite any decision made for the purpose of [section 95A\(2\)\(a\)](#) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
 - (a) *the adverse effects of the activity on the environment (other than any effect to which [section 104\(3\)\(a\)\(ii\)](#) applies) will be minor; or*
 - (b) *the application is for an activity that will not be contrary to the objectives and policies of—*

- (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
- (2) *To avoid doubt, [section 104\(2\)](#) applies to the determination of an application for a non-complying activity*

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 whether the adverse effects of the proposal are more than minor, 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 terms of the lawfully existing environment, it is recognised that the application site is occupied by a lawfully established residential unit and accessory building which has previously been used as a temporary residence.

6.2.3 There are no granted, but as yet unexercised resource consents applying to the application site.

6.2.4 In determining the extent to which the District Plan anticipates for further intensification or development 'as of right', it is recognised that there are no permitted forms of subdivision under the Operative Whangarei District Plan, and therefore the standards for land use activities provide a relevant consideration in this regard. Permitted activities and additional development rights applying to the application site under the Operative District Plan are therefore identified as follows:

- Construction of one residential unit per site as a permitted activity pursuant to rule 38.4.1 'Residential Units'. Additional residential units may be constructed pursuant to the same rule but only where a net site area of 20ha is available to each unit. With regard to this application, the subdivision, if granted, would allow for an additional residential unit where currently this is not permitted without resource consent.
- Rule 38.4.2 'Minor Residential Unit' provides for the construction of a minor residential unit as a permitted activity on an allotment with minimum net site area of 8000m². Although the proposal would create a balance lot large enough to retain the right to a minor residential unit, the applicants have offered to forego the right to a minor residential unit on this allotment. Proposed Lot 1, due to its lot size, would not be entitled to establish a minor residential unit as a permitted activity.

- Building coverage of 500m² or 5% (whichever is the greater) of the net site area of the property, with buildings located in accordance with the prescribed setbacks, and within the maximum height limit of 10m. In this instance, there are two existing buildings on the site, and although the total building coverage is not known, it is clear that it is well below the 5% permitted coverage. Should consent be granted, buildings on proposed Lot 1 could be constructed up to a total of 500m² building coverage on a 4555m² site. It is noted that the applicants have offered height restrictions for buildings on proposed Lot 1 to single storey only.
- The ability to establish a commercial or industrial activity as a permitted activity on the application site is precluded by Rule 38.3.1(e) 'Activities Generally' which stipulates resource consent is required where such an activity is located within 100m of any existing residential unit on a separate site. The proposed building location on Lot 1 would be within 100m of at least three existing residential units on separate sites and, as such, the requirement for resource consent would be triggered under this rule.

The actual and potential effects arising from the proposed development relate primarily to effects upon density, rural character and amenity (including landscape and visual amenity effects), reverse sensitivity, effects of access arrangements, and cumulative effects, which are discussed as follows.

6.3 Effects Assessment

6.4 Development Patterns of the Receiving Environment

- 6.4.1 The majority of properties within a 600m radius from the subject site have a site area of between 4 and 5 hectares, although a number of smaller allotments can be found sprinkled in between. Outside of the 600m radius, allotment sizes are more varied with quite a number of larger properties, although a few 1 to 2 hectare sites are mixed in, as well as a number of allotments smaller than 1 hectare.
- 6.4.2 Within the block of land situated between Totara Park Lane, Ngunguru Road and Maruata Road (as per Figure 2 below), a total of eight allotments smaller than 1 hectare can be found. Five of these allotments share a boundary with the subject site, two of which were historically joined with the subject site as outlined in section 2 of this report.
- 6.4.3 Prior to 2001, the Proposed Whangarei District Plan included a controlled activity provision to enable allotment areas to have a minimum area of 1ha in the Countryside Environment. Council then issued a decision on the proposed Plan changing the 1ha to a 4ha minimum allotment area. This decision was amended again at the direction of the Environment Court in February 2006 to require a minimum allotment area of 20ha. These provisions therefore represent a substantial shift from 1ha under the former regime, to 20ha under the current provisions.

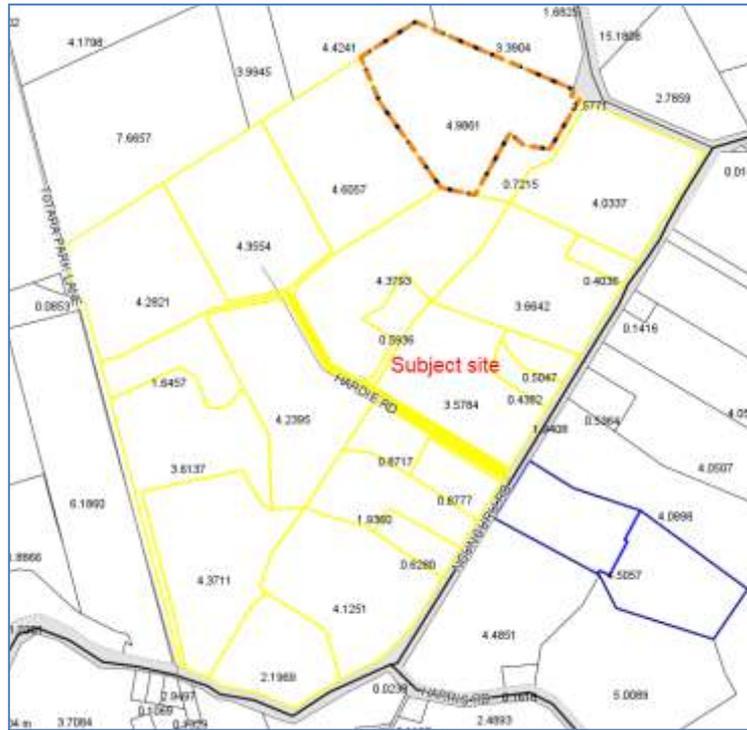


Figure 2 - Allotments smaller than 1 hectare in vicinity of subject site

- 6.4.4 Of the two sites that were originally joined with the subject site, Lot 1 DP 332245 was granted resource consent in 2003 under the provisions of the Proposed District Plan. As such, this allotment was granted consent under a planning regime that differs from the current Operative Plan. Lot 1 DP 396488 was granted subdivision consent in June 2007 under current subdivision rules, after the original four lot subdivision proposal was amended to a two lot subdivision to address submitters' concerns.
- 6.4.5 Lot 1 DP 105928, to the west of the subject site, received title in 1985, and as such, was established under a much earlier subdivision regime. In terms of the adjoining lots to the south, being Lots 1 and 2 DP 207767, subdivision consent was granted in 2000 under the Proposed District Plan which, at the time, facilitated the creation of 1ha allotments in the Countryside Environment. Lot 1 DP 182546 to the south, was created as a result of a consent granted in 1997, also under a different planning regime. Similarly, Lot 1 DP 68185 to the north of the subject site, was issued title in 1972. The map in Figure 3 below identifies the relevant allotments by legal description.
- 6.4.6 Recent Council decisions on similar small lot subdivision proposals in the Countryside Environment have resulted in refused consents. Copies of these decisions can be made available during the hearing, but examples include the Blampied (Environment Court) decision for a subdivision on Clapham Road, the Peters (Independent Commissioner) decision for a subdivision on Newton Road, and the Northland Admin Services Limited (Independent Commissioner) decision on Pyle Road East. A recent decision by an Independent Commissioner to decline the Donald subdivision at Simons Road, Whatitiri is currently subject to appeal. A decision is still pending from a Commissioner on a subdivision for Beuker and Rouse on Harris Road. It is noted that a recent decision was issued to grant consent to Torin Orchards at Glenbervie, although a clear distinguishing feature of that proposal was connection to reticulated sewer and water supplies.

6.5 Rural character, amenity and landscape

- 6.5.1 The application site is located in a rural area which is largely characterised by a horticultural landscape, featuring a lot of shelterbelt vegetation interspersed with areas of pastoral land and pockets of native vegetation. To the south and south-east of the subject site, larger areas of pastoral land are apparent. Wide open views for road users are often limited due to the large hedgerows protecting the orchards.
- 6.5.2 The subject site, currently used for horticultural activities, also presents with high shelterbelt vegetation along the boundaries of the site. This shelterbelt vegetation is also observed on the two sites to the north-east of the subject site, which previously formed one property with the subject site. In addition, these two smaller sites each have other well established trees to the east of the properties. This vegetation, in combination, has assisted in effectively screening any built development on these sites from the view of passing motorists.
- 6.5.3 Due to the slight elevation towards the west of the site, views become more extended from this part of the property, and development is able to be seen from certain private vantage points, albeit from a greater distance. The applicants have offered to place restrictions on any future development of proposed Lot 1, being height limitations and controls on the use of the exterior colour palette. It is agreed that, given such restrictions, and taking into account the distance at which the built development would be seen, the adverse effects from future built development on proposed Lot 1 would be minimal and, therefore, acceptable in this instance.
- 6.5.4 This said, the proposal, if granted, will produce a 'clustered' style of development of small allotments resulting in a number of residential dwellings being located in close proximity to one another. This type of development is generally considered to be at odds with the amenity values aspired to for rural areas. The District Plan has identified typical amenity values for the Countryside Environment, as follows:
- The intermittent nature of most agricultural activities;
 - Open landscapes and views;
 - A low intensity of development;
 - Feelings of remoteness and community;
 - Low noise levels, particularly at night;
 - A high degree of privacy;
 - Daylight and sunlight access;
 - Low levels of vehicular traffic;
 - Green 'unspoiled' landscape with indigenous vegetation.
- The creation of a 'hamlet', as it has been called by the applicants' agent, is not considered to represent a low intensity of development nor is it likely to invoke feelings of remoteness. Given the concentration of proposed households in close proximity to one another, noise levels associated with residential activities will increase to the extent they are no longer considered to be characteristic of a rural environment. The degree of privacy will also be diminished as a consequence of the proposal.
- 6.5.5 Overall, it is considered the proposal will not maintain the overall rural character of the surrounding environment as it will introduce a development pattern that is far more intense than what is currently experienced within the area. Typical rural amenity values will be eroded to a point where they can no longer be considered representative of a rural location.
- 6.5.6 In addition, it is noted that Council recently introduced a new zone in the District which specifically allows for and encourages this style of clustered development. This zone is the Urban Transition Environment and can be found on the periphery of Whangarei City's urban areas. The area of Glenbervie was not included as part of this re-zoning exercise.

6.6 Reverse Sensitivity

- 6.6.1 The proposal, if approved, will create an allotment intended for rural-residential purposes in the middle of a horticultural area. Although the application proposes to retain a consent notice currently listed on the title, including the need for a suitable water filtration system should rainwater be used for domestic purposes, the agent acknowledges that reverse sensitivity effects cannot be completely discounted, but contends that the proposal will not give rise to any reverse sensitivity issues over and above those that could already occur in this location.
- 6.6.2 It is the reporting planner's view that, the greater the increase in rural-residential development in the vicinity of a working rural environment, the more likely it is that reverse sensitivity effects will become an issue.
- 6.6.3 The current proposal has identified the existing packing shed on proposed Lot 1 as the future building platform, and although this building complies with all relevant bulk and location requirements, this platform is located in reasonably close proximity to a garage on proposed Lot 2, which is intended to be used as a packing shed in the future. It is considered that any horticultural activities carried out in the garage could have potential effects upon the residential activities associated with a future dwelling on proposed Lot 1.
- 6.6.4 Additionally, the access way to proposed Lot 1 traverses a large part of the orchard. Apart from the orchard being a working environment, horticultural activities often require the use of chemical sprays to combat pests or diseases affecting the trees. It is unknown at this stage how future owners may react to the use of such sprays, and the use of a consent notice cannot be a guarantee that people will not complain. Therefore, the potential for reverse sensitivity remains.

6.7 Site Suitability, Servicing and Access

- 6.7.1 The application is supported by a site suitability report prepared by Richardson Stevens Consultants Ltd (reference 12110, dated 8 October 2013) which provides an investigation of the stability of the soils, and servicing arrangements including water, wastewater and stormwater management.
- 6.7.2 The report highlights the presence of uncontrolled fill in the location of the identified house site for proposed Lot 1. The area used to contain a deep fishpond, which was filled with soil and rock obtained from the reconstruction of the driveway. Additionally, the existing wastewater system was assessed to be suitable for a two bedroom residence, but for any larger dwelling, the system would likely need to be assessed and extended to account for additional loading. An additional report prepared by Richardson Steven Consultants Ltd, dated 6 January 2014, confirms that there is no limitation on effluent disposal for the site and includes details of a site investigation for wastewater disposal. The report also confirms compliance with Northland Regional Council rules, including separation distances from the existing water bore.
- 6.7.3 In terms of the access way, the existing 2.5m wide metalled carriageway does not comply with WDC's Environmental Engineering Standards 2010. Beca, on behalf of the New Zealand Fire Service, have submitted that the right of way and driveway should meet the standards under the NZFS Fire Fighting Water Supplies Code of Practice. The applicants have proposed to construct 2 to 3 passing bays rather than upgrade the entire right of way to Council standard. An officer of the local Fire Service has advised that passing bays are not acceptable, and alternatively, a covenant requiring the installation of a complying sprinkler system at building consent stage will be needed. This may mean that, should consent be approved and future owners of proposed Lot 1 wish to convert the existing packing shed into a residential unit, a sprinkler system will have to be installed retrospectively.
- 6.7.4 In response to the local fire officer's advice, the applicants have suggested the use of a consent notice requiring a decision to be made at building consent stage that either the right of way be upgraded to comply with WDC Environmental Engineering Standard requirements, or a complying sprinkler system is installed in the dwelling for proposed Lot 1. It is noted Council's Senior Environmental Engineering Officer (SEEO), Mr Dean Murphy, does not favour this suggestion and is of the opinion that this decision should be made at subdivision consent stage. However, Mr Murphy has offered conditions of consent for both situations.

Should consent be approved, the Commissioner may then decide which option is preferred and include the associated proposed conditions.

6.7.5 Overall, Council's SEEO, Dean Murphy, whose report is enclosed as Attachment 6, is of the opinion that the adverse effects of the proposal will be less than minor in relation to any engineering matters, subject to appropriate conditions of consent.

6.7.6 Therefore, subject to the recommended conditions of consent to ensure on-site servicing does not give rise to externalised effects and proceeds in accordance with the site suitability report and Whangarei District Council Environmental Engineering Standards 2010, it is considered that the applicants have demonstrated that the site is suitable for the development proposed.

6.8 Cumulative Effects

6.8.1 *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."

6.8.2 Having regard to the above, the following assessment considers whether the residual effects of the proposed activity (after mitigation by conditions) will give rise to an unacceptable increase in cumulative adverse effects that are beyond the carrying capacity of the receiving environment, including amenity, character, landscape and ecological values that define the locality.

6.8.3 For a cumulative effect to be significant, it must breach a threshold or 'tip the balance'. In this instance, the proposal, by virtue of its design and proposed lot sizes, will establish a cluster of small lot development by connecting three other small lots of similar size. The intensity of this cluster is such that the proposal is considered to 'tip the balance' with regard to the density of allotments and resulting rural character and amenity of this locality, and will create adverse cumulative effects on amenity and character of this rural environment, notwithstanding the mitigation measures offered by the applicants.

6.9 Effects summary

6.9.1 Overall, having considered proposed mitigation measures and recommended conditions of consent, the adverse effects arising from the proposed development pattern and density are more than minor, resulting in adverse effects on rural character and amenity; while the potential for reverse sensitivity cannot be discounted. In addition, the proposal, through its design and allotment sizes will bring about cumulative effects on the environment, rendering the application unacceptable in this particular instance.

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

7.1.1 Section 104D(b) directs that Council consider whether the proposed activity will not be 'contrary' to the objectives and policies of the relevant plans. The meaning of 'contrary' was considered in the decision of *Monowai Properties Ltd v Rodney District Council (A215/03)* where it was established:

"A non-complying activity will rarely, if ever, find direct support in the objectives and policies of a Plan but an absence of support does not equate to the activity being contrary to those provisions. Contrary to in this context means... repugnant to... or opposed to... the objectives and policies considered as a whole".

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

7.2 Operative and Proposed Regional Policy Statement for Northland (RPS and PRPS)

7.2.1 The Regional Policy Statement for Northland (RPS) was made operative in July 2002; however in October 2012, a new Proposed Regional Policy Statement for Northland (PRPS) was publicly notified, which will (in its final form) supersede the 2002 document. These documents contain high level policy guidance for the development of lower order statutory documents, including the Regional Soil and Water Plan, and the District Plan. The Resource Management Act 1991 requires that district plans must “give effect to” the regional policy statement of a region and must “not be inconsistent” with regional plans.

7.2.2 On 17 September 2013 the Northland’s Regional Council formally adopted the independent Hearings Commissioners’ recommendations on provisions and matters raised in submissions on the PRPS as a decision. The document has not been declared as operative at this point in time as appeals are still pending. So, full weighting cannot be given to the provisions at this time. However, the PRPS is considered to reflect more accurately the current issues relating to subdivision and development than the RPS which was prepared in 2002. Therefore, the following comments are provided with regard to the relevant objectives and policies:

Objectives	Comments
<p>3.5 Enabling economic wellbeing</p> <p><i>Northland’s natural and physical resources are sustainably managed in a way that is attractive for business and investment that will improve the economic wellbeing of Northland and its communities.</i></p>	<p>Firstly, it is acknowledged that the reporting planner does not have any expert knowledge in the field of economics. However, given the PRPS highlights Northland’s economy as a major issue for the region, it is considered that some assessment is required for the sake of completeness.</p> <p>The subject site is located within an area characterised by horticultural activities, and does itself, contain avocado and olive orchard trees. Although proposed Lot 1 is not currently planted with orchard trees, it does contain the packing shed which has, up to now, been used as part of the horticultural activities. The land for proposed Lot 1 also contains highly versatile soils (NZLRI Land Use Capability Classification IIIe1).</p> <p>The productivity or economic viability of the current horticultural activity has not been discussed as part of the processing of this application. As such, any comments made here are of a general nature only.</p> <p>The PRPS identifies primary production as being a main contributor to Northland’s overall economy. By and large, it is considered that, where rural subdivision is undertaken to create rural-residential or lifestyle allotments, the value of land in the surrounding area tends to increase, thereby impinging on the viability of primary production activities. Additionally, any land that is approved for residential and/or lifestyle purposes, is land that is taken out of production. On the whole, the smaller a piece of land becomes, the less likely the horticultural activity will remain economically viable.</p> <p>In terms of the current proposal, prior to 2003, the property contained a total area of approximately 4.5ha. Since 2003, two small lots of 4 to 5000m² have</p>

	<p>already been created. The current proposal, if approved, will create a third allotment of similar size.</p> <p>Although it is acknowledged that the creation of rural-residential type properties has economic benefits for the owner at the time of selling; it is questionable whether this type of on-going subdivision improves, or even maintains, the overall economic well-being of the region in the long term, and as such, whether the proposal constitutes the sustainable management of Northland's natural and physical resources.</p> <p>The proposal is therefore generally considered contrary to this objective.</p>
<p>3.6 Economic activities – reverse sensitivity and sterilisation</p> <p><i>The viability of land and activities important for Northland's economy is protected from the negative impacts of new subdivision, use and development, with particular emphasis on either:</i></p> <p>(a) <i>Reverse sensitivity for existing:</i></p> <ul style="list-style-type: none"> (i) <i>Primary production activities;</i> (ii) <i>Industrial and commercial activities;</i> (iii) <i>Mining*;</i> or (iv) <i>Existing and planned regionally significant infrastructure;</i> or <p>(b) <i>Sterilisation of:</i></p> <ul style="list-style-type: none"> (i) <i>Land with regionally significant mineral resources;</i> or (ii) <i>Land which is likely to be used for regionally significant infrastructure.</i> <p><i>*Includes aggregates and other minerals.</i></p>	<p>It is difficult to comment on the specific viability of the subject land and horticultural activity in question without due expert comment. However, the following observations are made: 1) should the proposal be approved, the balance lot of approximately 3ha will be entirely surrounded on all sides, apart from the road side boundary, by rural-residential properties; 2) the accessway to proposed Lot 1 travels through a large part of the orchard which is an active working area where harvesting and spraying of crops occurs.</p> <p>Although the applicants have proposed the use of a consent notice drawing the attention of potential future purchasers to the fact the property is located within a working rural environment which includes the use of sprays, this does not necessarily prevent people from complaining and attempting to gain restrictions on certain activities.</p> <p>On the whole, the proposal, does not work to 'protect' the viability of the land and primary production activities that contribute to Northland's economy, and as such, is considered to be contrary to this objective.</p>
<p>3.11 Regional form</p> <p><i>Northland has sustainable built environments that effectively integrate infrastructure with subdivision, use and development, and have a sense of place, identity and a range of lifestyle, employment and transport choices.</i></p>	<p>This objective calls for well planned, coordinated development and good urban design to foster higher levels of amenity and greater community wellbeing. It promotes the consolidation of new urban development within and adjacent to existing settlements, and requires development in rural settings to be compatible with surrounding uses and values and appropriate within the context of the surrounding environment.</p> <p>Although the receiving environment does contain rural-residential allotments scattered among larger land holdings, the level of density that will be enabled through the approval of this proposal is not considered appropriate within the horticultural context of the surrounding environment. Proposed Lot 1 is of a size more akin to a residential lot and the proposal is not located adjacent to an existing settlement.</p> <p>The proposal is considered to be, at least, inconsistent with this objective, if not entirely contrary.</p>
Policies	Comments
5.1.1 Planned and coordinated development	In considering the PRPS' Regional Form and Development Guidelines, it is considered the proposal

<p><i>Subdivision, use and development should be located, designed and built in a planned and co-ordinated manner which:</i></p> <p><i>(a) Is guided by the 'Regional Form and Development Guidelines' in Appendix 2;</i></p> <p><i>(b) Is guided by the 'Regional Urban Design Guidelines' in Appendix 2 when it is urban in nature;</i></p> <p><i>(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;</i></p> <p><i>(d) Is integrated with the development, funding, implementation, and operation of transport, energy, water, waste, and other infrastructure;</i></p> <p><i>(e) Should not result in incompatible land uses in close proximity and avoids the potential for reverse sensitivity;</i></p> <p><i>(f) Ensures that plan changes and subdivision to / in a primary production zone, do not materially reduce the potential for soil-based primary production on land with highly versatile soils, or if they do, the net public benefit exceeds the reduced potential for soil-based primary production activities; and</i></p> <p><i>(g) Maintains or enhances the sense of place and character of the surrounding environment except where changes are anticipated by approved regional or district council growth strategies and / or district or regional plan provisions.</i></p>	<p>is generally in accordance with these guidelines. In relation to cumulative effects, as outlined in section 6.8 of this report, the proposal will establish a development pattern clustering a number of rural-residential type of allotments in an area characterised by horticultural activities while not adjacent to an existing settlement. This type of development is generally not anticipated within the Countryside Environment.</p> <p>In addition, the proposal cannot be said to avoid the potential for reverse sensitivity due to the location of proposed Lot 1 at the back of the property, requiring the use of the access way through the orchard. The proposed building platform for Lot 1 is also in reasonably close proximity to the garage, and future packing shed, on Lot 2.</p> <p>It is considered the subject site is located within an area of highly versatile soils, but it is unclear from the policy wording in the PRPS what exactly constitutes a 'material' reduction in the potential for soil-based primary production. The proposal will remove approximately 13% of the land area out of productive capacity and into a residential use while it is not considered to generate any public benefit, other than a financial benefit to the current owner.</p> <p>As highlighted earlier in the report, the proposal will result in a development pattern that will adversely affect rural character and amenity values of the locality, and as such, its sense of place, while the area has not been identified for future growth.</p> <p>In considering the various items under this policy, the proposal is deemed to be in line with item a), yet inconsistent with items c) and f). In relation to items e) and g), the proposal is thought to be contrary to these two matters, which provide clear direction.</p>
<p>5.1.3 Avoiding the adverse effects of new use(s) and development</p> <p><i>Avoid the adverse effects, including reverse sensitivity effects of new subdivision, use and development, particularly residential development on the following:</i></p> <p><i>(a) Primary production activities in primary production zones (including within the coastal marine area);</i></p> <p><i>(b) Commercial and industrial activities in commercial and industrial zones;</i></p> <p><i>(c) The operation, maintenance or upgrading of existing or planned regionally significant infrastructure; and</i></p> <p><i>(d) The use and development of regionally significant mineral resources</i></p>	<p>As stated above, the proposal is not considered to avoid reverse sensitivity effects on the horticultural activities of the primary production zone within which the land is located, and as such, is considered to be contrary to this policy.</p>

7.2.3 Taking into account the comments made above whereby the proposal was found to be inconsistent with a number of objectives and policies and contrary to others, it is considered that the level of conflict encountered is sufficient to determine the proposal to be generally contrary to the direction provided in the PRPS.

7.3 Regional Soil and Water Plan for Northland

- 7.3.1 The Regional Water and Soil Plan for Northland (RWSP), which is administered by the Northland Regional Council, covers the land and water resources of the Northland region, it controls discharges and land disturbance activities. The Plan aims to prevent activities occurring which would result in unacceptable adverse effects.
- 7.3.2 Following a request for further information, the applicants provided a Suitability Report prepared by Richardson Stevens Consultants Ltd, dated 8 October, followed by a letter dated 6 January 2014. Overall, the assessment undertaken confirms compliance with the RWSP.

7.4 Operative Whangarei District Plan

- 7.4.1 Those objectives and policies of relevance to the proposal are included within Chapter 5 'Amenity Values', Chapter 6 'Built Form and Development', and Chapter 8 'Subdivision and Development'.
- 7.4.2 The following table assesses the proposal against the relevant objectives and policies within these chapters:

Table 2 – Assessment of Relevant Objectives and Policies within the District Plan

Chapter 5 – Amenity Values	
Objective	Comment
5.3.1 The characteristic amenity values of each Environment are maintained and, where appropriate enhanced.	The proposal will result in a cluster of small, similarly sized allotments, which is not considered to maintain the amenity values typically anticipated within a rural environment. The development pattern and density of allotments that will result, should consent be approved, is not considered to be compatible with the existing pattern which presents small allotments scattered in among larger lots. The area has also not been identified for future growth and, therefore, a change in development pattern is not expected in the foreseeable future. The addition of another small, rural-residential lot in an area used for horticultural purposes will increase the potential for reverse sensitivity, notwithstanding the use of a consent notice on the title drawing attention of the rural land use activities.
5.3.3 Activities that demand a high level of amenity do not unduly compromise other land uses.	
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.	
Policy	Comment
5.4.5 Countryside Environments To ensure rural amenity values in the Countryside Environments are protected from subdivision, use or development that is sporadic or otherwise inappropriate in character, intensity, scale or location.	As outlined previously, the proposed subdivision is considered to be inappropriate for this particular locality in terms of the character of development that will ensue, the intensity of small, clustered allotments that will be created, and the location of proposed lot 1 connecting surrounding small allotments. Proposed mitigation measures are not considered to be sufficient to alleviate the adverse effects on amenity values, and as such, the proposal is considered contrary to this policy.
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	Given that the written approval from surrounding properties has been obtained, any adverse effects on outlook and privacy need not be considered further. However, as outlined elsewhere within this report, the proposal is not considered to be compatible with the character and amenity values

<p>properties, and should be compatible with the character and amenity of the surrounding environment. Particular regard should be given to:</p> <p>The layout and intensity of subdivision;</p> <p>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> <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>of the surrounding environment.</p> <p>The subdivision design will result in a layout that will facilitate the creation of a cluster of small, similarly sized allotments, intensifying a pattern of development that is generally not envisaged within the Countryside Environment.</p> <p>Due to the location of existing dwellings on neighbouring sites and the subject site, the proposal will also result in the clustering of built development that is likely to result in a diminished level of residential amenity typical of a rural area.</p>
<p>5.4.10 Trees and Vegetation</p> <p>To retain trees and vegetation (other than trees or vegetation grown for commercial production purposes) that contribute to the amenity values of an environment, unless the effects of removal are adequately remedied or mitigated.</p>	<p>The proposal does not involve the removal of any trees or vegetation.</p>
<p>5.4.17 Activities Demanding High Amenity Values</p> <p>To ensure that activities are not permitted or acknowledged in areas where they may be adversely affected by existing land uses; or have adverse effects on (including compromising and restricting) existing land uses.</p>	<p>It is considered that future residents of proposed Lot 1 may be adversely affected by the surrounding horticultural activities, particularly those carried out on the proposed balance lot, notwithstanding the use of a consent notice on the title. Conversely, it cannot be ruled out that the addition of another small, rural-residential allotment in this location will not result in restrictions on horticultural activities in the future, should complaints ensue.</p>
<p>Chapter 6 – Built Form and Development</p>	
<p>Objective</p>	<p>Comment</p>
<p>6.3.2</p> <p>1) 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>Although the proposal represents a consolidation of small allotments, the size of allotments is generally not anticipated within this Environment, while the particular location is considered to be inappropriate as the area is not adjacent to an existing settlement, nor has it been identified for future growth.</p>
<p>6.3.12</p> <p>Avoid conflict between incompatible land use activities as a result of subdivision and urban development.</p>	<p>Taking into account the Oxford dictionary definition of 'incompatible', being: "so different in nature as to be incapable of coexisting", it is considered that this meaning cannot be wholly applied to the context of creating a small, rural-residential allotment in the middle of a horticultural area. The two activities are able to coexist in some way, however, there remains a certain level of conflict in</p>

	such a scenario relating to matters of reverse sensitivity.
6.3.13 Minimise loss of productive soils and economic farming units from urban expansion.	By its very nature, the proposal to create an additional rural-residential allotment will result in land being removed from the productive capacity of the area. Although proposed Lot 1 may not be considered to be large, if approved, the land area associated with the allotment will no longer be available for productive purposes, whether the land is currently used for this purpose or not. Due to the on-going subdivision of the original 4.5ha property, it is considered that the loss of productive soils, in this instance, has not been minimised.
Policy	Comment
6.4.2 Consolidated Development To consolidate urban development by: i) Focusing residential development on those urban areas with demand, where the landscape and natural character have already been compromised. ii) 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. iii) Directing rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas. iv) Promoting clustered, mixed use activity that focus on existing urban and coastal centres. v) Retaining and encouraging a distinctive sense of place.	The proposal will initiate a development pattern of clustered rural-residential allotments that can be considered to be sporadic given the character of the surrounding area, and the fact it is not located adjacent to an existing settlement. This type of development is not considered to assist in retaining the sense of place of the locality.
7.4.8 Reverse Sensitivity and Incompatible Land Use i) To ensure that land use activities, subdivision and development are designed and located so as to avoid or mitigate conflicts between incompatible land uses. ii) To facilitate separation of incompatible land uses through location of District Plan Environments and Resource Areas, and specific requirements for land use activities.	As outlined earlier in this report, residential and horticultural activities cannot be considered as being entirely 'incompatible', given the Oxford dictionary definition of the word. However, locating a rural-residential allotment in the middle of a horticultural area cannot be considered as 'avoiding' any potential conflicts. It is also questionable whether the use of a consent notice on the title of any new proposed allotments is sufficient mitigation for such conflicts. The more rural-residential allotments that are created, the greater the potential for conflict.

Chapter 8 – Subdivision and Development	
Objective	Comment
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.	It is considered that the proposal, notwithstanding mitigation offered, will result in adverse effects on rural character and amenity that cannot be sufficiently avoided, remedied or mitigated. As such, the proposal is not seen as achieving the purpose and principles of sustainable management.
8.3.2 Subdivision and development that does not detract from the character of the locality and avoids conflicts between incompatible land use activities.	As per comments above, the proposal is considered to create adverse effects upon the rural character of the wider locality, and presents issues of reverse sensitivity.
8.3.4 Subdivision and development that provides for the protection of, and where appropriate enhances, the District's: <ul style="list-style-type: none"> • versatile soils; • mineral resources; • water quality; • nature features; • landscapes (including coastal landscapes); • open spaces; • significant ecological areas; • biodiversity; • public access to coast, lakes and rivers; • historic, cultural and amenity values, including the cultural values of tangata whenua. 	By its very nature, the proposal for subdivision does not protect the versatile soils associated with the subject site as an additional allotment will remove more land from potential productive capacity.
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.	Given the proposal is for a two lot subdivision only, it cannot be said to be 'comprehensive'. Furthermore, the proposal perpetuates the pattern for small allotments of similar size (approximately around 5000m ²) and creates a cluster of such allotments which is considered to be inappropriate to the character of the Environment in which it is located.
8.3.8 To ensure that the design of subdivision and development minimises potential risk to people and property from fire hazards.	Comments received from the local office of the NZ Fire Service indicate that the passing bays proposed as an upgrade to the existing right of way are not acceptable in the case of an emergency. As such, either the whole right of way requires upgrading or any future dwellings on proposed Lot 1 will need to be fitted with a fire sprinkler system. Given it is possible a future owner may choose to convert/extend the existing packing shed on the property, it is assumed that this building will need to be retrofitted with a sprinkler system. Relevant conditions of consent have been recommended by Council's SEEO. Provided these conditions are

	imposed, the potential risk to people and property from fire hazards should be acceptable.
Policy	Comment
<p>8.4.1 Incompatible Land use Activities</p> <p>To design and locate subdivision and development so as to avoid, as far as practicable, conflicts between incompatible land use activities.</p>	<p>As outlined earlier, the residential purpose of proposed Lot 1 is not necessarily 'incompatible' with the horticultural use of the wider area; however, the subdivision design will result in a building area in close proximity to the new proposed packing shed, which is the garage in the north-eastern corner of proposed Lot 2. It is assumed that there could potentially be quite some activity around this garage at harvesting time.</p>
<p>8.4.3 Density of Development</p> <p>To ensure that 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>As outlined earlier, the proposal will result in a pattern of similar sized lots, creating a density that is not considered appropriate to the locality.</p>
<p>8.4.4 Cumulative Effects</p> <p>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>This report has previously established that the proposal represents on-going subdivision that will result in adverse cumulative effects, particularly in relation to rural character and amenity and density of development patterns. Potential issues of reverse sensitivity also arise where small lots, designed mainly for residential purposes, continue to be created within areas characterised by primary industries.</p>
<p>8.4.5 Reverse Sensitivity</p> <p>To ensure that subdivision and development in, or adjacent to:</p> <ul style="list-style-type: none"> • rural areas; • existing commercial, industrial and mineral extraction activities; • land zoned for commercial, industrial, or mineral extraction activities; • existing infrastructure, including the state highway network and airport. <p>is designed and located to avoid, remedy or mitigate reverse sensitivity effects on existing or permitted activities. Such effects can include noise, odour, spray drift and dust, vibration and traffic.</p>	<p>Proposed Lot 1 is located in the middle of horticultural activities while the access way traverses through an existing orchard. The proposed building site is located in close proximity to the new proposed packing shed on Lot 2. As such, the proposal cannot avoid, mitigate or remedy potential effects from spray drift, or harvesting activities, notwithstanding the proposed use of a consent notice drawing attention to a working rural environment.</p>
<p>8.4.6 Buildings and Activities</p> <p>To ensure that allotments are capable of accommodating complying buildings and activities.</p>	<p>The proposed allotments are capable of accommodating complying buildings.</p>
<p>8.4.7 Design and Location</p> <p>To ensure subdivision and development is designed and located so as to avoid, remedy or mitigate adverse effects on, and where appropriate, enhance:</p> <ul style="list-style-type: none"> • Natural character of the coastal environment, 	<p>The property is located in an area with versatile soils where horticulture is a main activity. The subdivision will result in land being taken out of productive capacity while creating a rural-residential allotment in the middle of a horticultural area. The access to proposed Lot 1 traverses the orchard on proposed Lot 2. It is considered the</p>

<p>indigenous wetlands, lakes and rivers and their margins;</p> <ul style="list-style-type: none"> • Landscape values; • Ecological values; • Amenity values and sense of place; • Archaeological, cultural (including tangata whenua) and heritage features; • Sites of Significance to Maori; • Heritage areas of significance to Maori; • The relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga; • Infrastructure, particularly roads and the Airport; • Water and soil quality; • Versatile soils; • Mineral resources; • Business growth and development opportunities within defined Business Environments; • Cross boundary coordination; • Human health and safety. 	<p>overall design raises questions of health and safety keeping in mind the potential for spraydrift and potential dangers of a working environment.</p> <p>Furthermore, the proposal will initiate a development pattern that will result in adverse effects on the rural amenity values, and as such, the sense of place of the locality.</p>
<p>8.4.12 Services and Infrastructure</p> <p>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>Council's SEEO is satisfied that appropriate conditions of consent can be imposed to ensure all relevant engineering matters are suitably addressed.</p>
<p>8.4.14 Fire Safety</p> <p>To ensure that subdivision and development provides for fire safety matters (including appropriate design to ensure access for emergency service vehicles and an appropriate water supply for fire fighting purposes), in order</p>	<p>Council's SEEO has recommended a number of conditions of consent to address the concerns of the NZ Fire Service.</p>

to ensure the safety and well-being of the community.	
8.4.15 Maintenance of Primary Industry To sustain a viable primary industry community within the District by maintaining opportunities for diversity of rural land use, without significant interference from adjacent residential, lifestyle or rural residential activities.	The on-going subdivision of the original 4.5ha lot means that the balance lot retained for horticultural activities grows ever smaller. It is considered that smaller lot sizes reduce the opportunity and potential for other rural land uses
8.4.24 Environmental Engineering Standards To ensure that all infrastructure, servicing and engineering design has regard to Whangarei District Council's Environmental Engineering Standards 2010.	Council's SEEO is satisfied that appropriate conditions of consent can be imposed to address any engineering matters.

7.4.3 In weighing the comments made above against the overall direction set by the District Plan objectives and policies, it is considered the proposal is generally contrary to the overall policy direction of the Plan. In line with this finding, approval of the proposal is not considered appropriate.

8.0 Other Matters

8.1 Non-statutory Planning Documents & Plan Changes

8.2 Whangarei Growth Strategy

8.2.1 The Whangarei Growth Strategy, Sustainable Futures 30/50, presents a development framework for the next 30 to 50 years for the District as a whole. The Strategy was designed with significant public input and culminated in the chosen development model of a 5 tier settlement pattern including a strong CBD, a satellite town in Marsden Point/Ruakaka, five urban villages within greater Whangarei; one rural (Hikurangi) and two coastal growth nodes at Parua Bay and Waipu; and two rural villages along with eight coastal villages located along the coastline from Waipu Cove in the south to Oakura in the north.

8.2.2 Within this framework, the area of Glenbervie has generally not been identified for growth purposes, although Tikipunga forms one of the five urban villages. The Growth Strategy does note that further, more detailed and locality specific planning processes will need to be undertaken as part of the implementation process. A structure plan for the area already exists, and is commented on in the next section.

8.3 Tikipunga, Glenbervie and Vinegar Hill Structure Plan

8.3.1 Given the subject site is located within reasonably close proximity to Tikipunga, it is considered appropriate to take into account the development patterns envisaged for the area identified within the Tikipunga, Glenbervie and Vinegar Hill Structure Plan. A copy of the structure plan map is enclosed in Attachment 7.

8.3.2 Residential development is suggested up to approximately 175m north of Sands Road. Rural residential development has been proposed around the Vinegar Hill Road area, but this is not extended into the Glenbervie area. As such, the proposed subdivision does not find support in this document.

8.4 Draft Plan Change 85

8.4.1 Council is currently in the process of consulting the public on draft Plan Change 85 prior to notification. The intention of the Plan Change is to introduce a wider variety of zones within the current Countryside and Coastal Countryside Environments. These two existing Environments would be replaced by: a Rural Production Environment, a Rural Living Environment, a Strategic Rural Industry Environment, Rural Village Centres, and a zone for Rural Village Industry and Rural Village Residential.

- 8.4.2 Within the Glenbervie area, the Plan Change anticipates a Rural Living Environment along Ngunguru Road, around the Rockingham Road development, as depicted in the figure below.



- 8.4.3 The subject site falls outside of the identified area being located approximately 1.5 km to the west, as the road travels. As such, the proposed subdivision does not find support in this document.

8.5 Te Iwi o Ngatiwai – Iwi Environmental Policy Document

- 8.5.1 This Ngatiwai document outlines the issues, objectives and policies for matters of significance to the iwi. The majority of these matters relate to ecological and maori cultural issues, none of which will be impacted by the proposal.

8.6 Submissions

- 8.6.1 A couple of submitters have pointed out that Council has recently constructed a footpath/pathway through Glenbervie, and that given available educational facilities in the area, further growth should be allowed. As evidenced by the comments made on existing Council documents, no support can be found for further growth in the locality of the subject site at this time.

8.7 Precedent

- 8.7.1 Case law has established that the precedent of granting a resource consent is a relevant factor for a consent authority in considering whether to grant a non-complying resource consent. A precedent effect is likely to arise in situations where consent is granted to a non-complying activity that lacks the evident unique, unusual or distinguishing qualities that serve to take the application outside of the generality of cases or similar sites in the vicinity.
- 8.7.2 In this instance, it is considered the site does not display any evident unique or unusual qualities that would serve to take the application outside of the generality of similar sites in the vicinity. Being located within a horticultural area, the packing shed on the site cannot be deemed to be a unique feature, as claimed in the application. The fact that this shed is not readily visibly to road users or some neighbouring sites does not make this feature unique. Other sites in the vicinity, of similar size to the subject site, can be seen to have sheds and similar shelterbelt vegetation to screen built development.
- 8.7.3 Should consent be approved for this application, this decision may well lead to raise the expectations of owners of similar sites in the immediate area, that they could also subdivide to the same or similar degree. As such, the proposal, if approved, is considered to set a precedent for the subdivision of other sites within the locality that are zoned Countryside Environment.
- 8.7.4 As previously referenced in this report, a number of subdivision applications have been declined in the Countryside Environment through either Independent Commissioner or Environment Court decisions, particularly where precedent is an issue. Examples of these cases can be made available at the hearing.

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. Part 2 of the Act requires that 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.”

9.1.2 Based on the conclusions reached in the subsequent assessment, the proposal is generally not considered to be consistent with the purpose of the Act.

9.2 Section 6 – Matters of National Importance

9.2.1 Section 6 identifies seven matters of national importance that must be recognised and provided for. In summary, these relate to the preservation of the coastal environment, wetlands, rivers and their margins from inappropriate use and development, the protection of outstanding natural features and landscapes and areas of significant indigenous vegetation and habits; the maintenance and enhancement of public access to and along rivers; the relationship of Maori and their culture and traditions, and the protection of historic heritage.

9.2.2 No matters provided under section 6 are considered to be relevant to the consideration of this application.

9.3 Section 7 – Other Matters

9.3.1 Section 7 of the Act identifies eleven other matters to be had regard to in achieving the purposes of the Act. The following are considered to be of particular relevance to the proposal;

- The efficient use and development of natural and physical resources;
- The maintenance and enhancement of amenity values;
- Maintenance and enhancement of the quality of the environment;
- Any finite characteristics of natural and physical resources

9.3.2 As outlined earlier in this report, the proposal is not considered to maintain, nor enhance, the amenity values of the locality, and as such, will adversely affect the quality of the receiving environment. Additionally, questions arise about the finite characteristics of the versatile soils as, once these soils are subdivided for residential purposes, they are unlikely to ever be returned into productive use. This also brings into question whether the proposal represents the efficient use of this natural resource base.

9.3.3 Overall, the proposal is considered to be in conflict with a number of Section 7 matters.

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. No conflicts with the provisions of Section 8 have been identified.

10.0 Conclusion & Recommendation

10.1 Conclusion

- 10.1.1 In order for Council to consider granting consent, the application must pass one of the thresholds under section 104(D) of the Resource Management Act 1991 given its non-complying activity status. The two limbs of section 104(D) require Council to assess whether the effects of the proposal will be no more than minor, or whether the proposal will not be contrary to the relevant objectives and policies of the operative Whangarei District Plan. It is considered that the application fails to satisfy either of these limbs.
- 10.1.2 Having considered the application against the relevant provisions of the Act, it is recommended that this application be refused, on the basis that the adverse effects arising from the proposal will be more than minor, the proposal is generally contrary to the objectives and policies of the Whangarei District Plan and the Proposed Regional Policy Statement, and overall, will not serve the purpose of sustainable management as outlined in Section 5 of the RMA.

10.2 Recommendation

THAT pursuant to sections 104, 104B and 104D of the Resource Management Act 1991, it is recommended that the Commissioner **refuse** consent to Calvin Green and Annemarie Florian to undertake a three lot subdivision of the application site, located within the Countryside Environment, in order to create Lot 1 with a net site area of 4555m², Lot 2 with a net site area of 2.9945 hectares, and Lot 3 with a net site area of 230m². As a consequence of a refusal, the proposed amalgamation condition of Lot 3 with adjacent Lot 1 DP 396488 will not be required; while right of way F is not to be relinquished.

The reasons for this recommendation are as follows:

1. The proposal does not pass either of the gateway tests under Section 104D as the adverse effects on the environment will be more than minor, and is contrary to the objectives and policies relating to the Countryside Environment. In particular, the proposal does not protect the rural character and amenity of the locality, it is considered to be sporadic development that is inappropriate due to its intensity and location, and will result in cumulative effects.
2. There are no distinguishing or unique features of either the subdivision location or proposal itself that set it apart from the surrounding Countryside Environment. In the absence of such features, granting consent to the proposal would set a precedent that could undermine the integrity of the Countryside provisions of the District Plan, and therefore have more than minor precedent effects.
3. The proposal is considered to not meet the purpose of the Resource Management Act.

11.0 Attachments

1. Proposed Scheme Plan of Subdivision
2. Application- received by Whangarei District Council on 17 July 2013
3. Copy of the Section 92 requests
4. Operative District Planning Environment and Resource Area Maps, and additional property information contained within Whangarei District Council's Geographic Information System.
5. A copy of submissions received
6. Council's Senior Environmental Engineering Officer Dean Murphy's report dated 10 October 2014
7. Copy of the Tikipunga, Glenbervie and Vinegar Hill Structure Plan map