

# Hearings Commissioner

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## **Notice of Meeting**

A meeting of the Hearings Commissioner will be held in the Cafler Suit 1, Forum North, Rust Avenue, Whangarei on:

**Wednesday  
19 August 2015  
9am**

**Application by  
Yumin Song and Neil Engebretsen**

**Commissioner  
Giles Bramwell**

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## Report to Hearings' Commissioner Giles Bramwell on a Resource Consent Application

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This land use consent application was lodged by Green Experts on behalf of Yumin Song and Neil Engebretsen and is reported on by Council's Consultant Environmental Planner (Consents), Ian McAlley.

The proposal involves the redevelopment of an existing residential dwelling into a general store and cafe with associated car parking and signage. In addition, an existing ancillary building on the site will be converted into a residential dwelling for the use of the applicant. The site is located at 2302 Whangarei Heads Road, Whangarei Heads being legally described as Lot 9 DP 20308.

The site is located within the Living 1 Environment of the Whangarei Operative District Plan, there are no applicable resource areas. The proposal is assessed to be a non-complying activity. The District Plan Rules breached by the proposal include:

- Living 1 Environment – Rule 36.3.1: *Activities Generally*; Rule 36.3.4: *Provision of Parking Spaces*; Rule 36.3.6: *Traffic Movements*; Rule 36.3.7: *Signs*; Rule 36.3.11: *Noise*; Rule 36.4.11: *Landscaping*; and
- Road Transport – Rule 47.2.1: *Parking and Loading*; Rule 47.2.4: *On-Site Manoeuvring*; Rule 47.2.11: *Engineering Standards*.



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**Ian McAlley - Consultant Environmental Planner**  
(Consents)

4 August 2015

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**Date**

This report was peer reviewed by the following signatories:



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**Alister Hartstone – Resource Consents Manager**

7 August 2015

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**Date**

## Statement of staff qualification and experience

### **Ian McAlley – Consultant Planner (Consents)**

I hold the qualification of Bachelor of Planning (Honours) from Auckland University. I am a full member of the New Zealand Planning Institute. I have been working in the field of resource management since 1996 and have some 19 years' experience.

I am a director of McAlley Consulting Group, a planning consultancy based in Rotorua, servicing private and local/central government clients mainly in the central and upper North Island. My local government experience in planning covers district plan development and implementation, structure planning and strategic planning exercises and the development of policy and other council planning documents such as long-term plans.

With respect to my consultancy experience, I have prepared subdivision and land use consent applications, private plan change applications, structure plan assessments, notice of requirement applications, undertaken peer review work as well as assessments of performance of council regulatory functions to identify service improvements.

### **Vladimir Rozov – Senior Environmental Engineering Officer**

I am a civil engineer employed by Whangarei District Council in the Resource Consents department. I have the title of Senior Environmental Engineering Officer. I qualified from a Polytechnic University (in former USSR) in 1981 with a Bachelor degree in Industrial and Civil engineering and I am a graduate member of the Institute of Professional Engineers New Zealand Inc. I have many years 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 Environmental Engineering Officer since 1999. My position within the Resource Consent department requires me to assess all engineering aspects of resource consent applications using my technical knowledge and oversee construction works to ensure compliance with Council Standards.

### **Nick Marshall – Senior Roding Engineering (Traffic & Parking)**

I am a civil engineer employed by Whangarei District Council (Council) in the Roding Department, I started with WDC earlier this year. I have the title of Senior Roding Engineering (Traffic & Parking). I qualified from the New Zealand Institute of Highway Technology (NZIHT) via Waikato Institute of Technology in 2013 with a Bachelor Engineering Technology Highways degree, after first completing my Diploma in Engineering (Civil) through NZHIT in 2008 and then my National Diploma Civil Engineering Applied 2009. I have been an Associate member of the Institute of Professional Engineers New Zealand (IPENZ) since 2009 and I gained TIPENZ professional status with IPENZ in 2014. I worked for Opus International Consultants Ltd as a civil engineer from 2002 to 2014, where most of the projects I worked on were for WDC or the NZ Transport Agency. My main roles in these projects were: safety, geometric & road drainage design, and traffic engineering. I then worked for Transfield Services from 2014 to 2015 as a Project Manager overseeing two of Councils three road maintenance contracts. I am also a contract tutor for NorthTec since 2013, where I teach Highway Engineering I, Highway Engineering II and Traffic Engineering as part of their Diploma in Civil Engineering. My position within the Roding department requires me to assess engineering aspects for resource consents, where the proposal fall outside the Environmental Engineering Standards. In my role I also manage the minor safety, cycleway and major intersection improvement programmes and customer requests relating to traffic, parking and road safety issues.

The above staff/consultant 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 Giles Bramwell of a non-complying land use proposal by Yumin Song and Neil Engebretsen to redevelop an existing residential dwelling into a general store and cafe with associated car parking and signage and convert an existing ancillary building into a residential dwelling for the use of the applicant at 2302 Whangarei Heads Road, Whangarei Heads being legally described as Lot 9 DP 20308.

Evidence By: Ian McAlley, Bachelor of Planning (Honours).

File Refs: LU1500002, P40349.

Dated: 4 August 2015

### 1.0 The Proposal & Background

#### 1.1 The Proposal

1.1.1 The proposal involves the redevelopment of an existing residential dwelling into a general store and cafe with associated car parking and signage. The proposal also includes the conversion of an existing accessory building on the site into a residential dwelling for the use of the applicant. The site is located at 2302 Whangarei Heads Road, Whangarei Heads being legally described as Lot 9 DP 20308. The features of the proposal include:

- Conversion of an existing residential dwelling into a general store/shop and cafe (with seating for 12 people). The shop/café will also include a takeaway meal bar and Post Shop. Some additions to the building will be made to provide additional shop/storage area, covered entry and access, a customer (disabled) toilet and a new portion of deck at the rear of the building;
- Provision of 10 car parking spaces (including one disabled parking space) on-site (two of which are stacked) with a reverse manoeuvring area to be provided between the road boundary of the site and Whangarei Heads Road;
- Establishment of signage associated with the proposed use on the site, including a freestanding sign adjacent to the road boundary and signage attached to and on the front face and front veranda of the building;
- The hours of operation for both customers and deliveries are proposed to be 7 a.m. to 9 p.m. seven days per week; and
- The maximum vehicle movements are assessed to be in the order of 120 to 125 per day (at peak).

#### 1.2 Background

1.2.1 A copy of the original application lodged with Council on 18 December 2014 is attached as **Appendix 1**. The following further information requests/correspondence has occurred with the applicant and the applicant has provided information for clarification and in support of the application as follows:

- A further information request was sent to the applicant dated 15 January 2015. This is attached as **Appendix 2(a)**.
- Documentation was received from the applicant on 19 January 2015 (dated 16 January 2015) including details of consultation undertaken, in particular containing the written

approval of the owner of 4 Taurikura Street. On the same date a letter was received (dated 19 January 2015) requesting that the application be notified as soon as possible. Additional plans were received from the applicant on 5 February 2015. Further information was received from the applicant dated 17 March 2015, in particular this included 'Design Advice' (dated 16 March 2015) from Marshall Day Acoustics with regard to noise, also an assessment of traffic effects and stormwater management (dated 25 March 2015) was received. This information is attached as **Appendix 2(b)**.

- An email was sent to the applicant's agent on 10 June 2015 highlighting issues raised in submissions received, seeking further information to address those issues. This is attached as **Appendix 2(c)**.
- On 22 June 2015 the applicant's agent provided a response to the email from Council's consultant planner (sent on 10 June 2015). This is attached as **Appendix 2(d)**.
- On 6 July 2015 Council's Consultant Planner sent a further email to the applicant's agent seeking clarification with respect to some matters detailed in the applicant's agent response of 22 June 2015. This is attached as **Appendix 2(e)**.
- An email was received on 9 July from the applicant's noise consultant (Marshall Day) clarifying the 'Design Advice' provided. This is attached as **Appendix 2(f)**.
- A further email was received from the applicant's agent on 17 July 2015 providing an update on a number of outstanding matters. This is attached as **Appendix 2(g)**.
- Further information as detailed in the email from the applicant's agent on 17 July 2015 was received on 28 July 2015. This is attached as **Appendix 2(h)**.

1.2.2 The proposal was distributed internally to Council's Senior Environmental Engineering Officer (SEEO) and Senior Road Engineering (Traffic & Parking) (SRE) for their respective review of technical engineering, roading and traffic issues.

- The report from the SEEO is attached as **Appendix 3(a)**.
- The report from the SRE is attached as **Appendix 3(b)**.

## 2.0 Site and Surrounds Description

### 2.0

#### 2.1 The Site

2.1.1 The subject site is a regular shaped residential site with an area of 1012 m<sup>2</sup>, located on the southern side of Whangarei Heads Road within the Taurikura settlement.

2.1.2 A smallish bach style residential dwelling is located centrally on the site with a garage/accessory building located in the south-western corner of the property and a tool shed and cool store located adjacent to the western boundary. The property generally slopes downwards from west to east and from north to south. Apart from the dwelling area and some boundary vegetation, the majority of the site is in grass.

2.1.3 Vehicle access to the site is directly from Whangarei Heads Road via an existing vehicle crossing. The property is serviced with reticulated wastewater and water.

#### 2.2 Surrounding Environment

2.2.1 The Taurikura settlement is one of a number of small harbour edge settlements located on the northern side of Whangarei Harbour, predominantly serviced by Whangarei Heads Road. The Taurikura settlement is made up of a number of zonings, particularly Living 1, Living 3 and Coastal Countryside.

2.2.2 The area immediately surrounding the site is residentially zoned (Living 1 Environment). Built development in the area consists of predominantly residential dwellings of various sizes and types. The existing Taurikura store (2311 Whangarei Heads Road) is located north-east of the subject site approximately 50 metres from the subject site on the opposite side of Whangarei Heads Road.

### 3.0 District Plan Assessment

3.0

#### 3.1 Zoning, Resource Areas and Other Notations

3.1.1 The subject site is located in the Living 1 Environment of the Whangarei Operative District Plan (Map 53). There are no resource areas that apply to the site. The zoning of the site and surrounding area as per the District Plan maps is shown below.



3.1.2 The site is not flagged in the Council GIS system as being a Hazardous Activities and Industries List (HAIL) site under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES).

#### 3.2 Reasons for Consent

##### Living 1 Environment Rules<sup>1</sup>

3.2.1 **Rule 36.3.1 (Activities Generally)** requires that subject to rules 65.5.2 and 62.5.3, an activity is permitted if among other requirements:

- (e) Commercial or industrial activities do not operate or open for visitors, clients or deliveries before 0800 or after 1800 on any day (provided that this rule does not apply to residential activities); and
- (g) Commercial or industrial activities are screened from view from roads and adjoining sites by fences, planting or buildings; and
- (h) Commercial or industrial activities are carried out in conjunction with a residential activity on the site.

The activities on site are considered to fall within the definition of 'commercial activity'<sup>2</sup> as contained within the District Plan. Whilst the commercial activity will be undertaken in

<sup>1</sup> A copy of the Living 1 Environment Rules (Chapter 36 of the District Plan) is included as **Appendix 4a**

<sup>2</sup> Chapter 4, Whangarei District Plan. Commercial Activity "means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or services, and includes shops, markets, showrooms, restaurants, take-away food bars, professional, commercial, and administration offices, 15/73217

conjunction with a residential activity on the site, the proposed hours of operation are 7 a.m. to 9 p.m. on any day and the commercial activity will not be screened from view from roads and adjoining sites. As such the proposal is assessed to be a discretionary activity.

3.2.2 **Rule 36.3.4 (Provision of Parking Spaces)** requires that any activity is permitted if:

- (b) No formed parking space is constructed or provided within 2.0m of a road boundary.

Two of the proposed parking spaces will be located immediately adjacent to the road boundary of the subject site and a reverse manoeuvring bay will be within the road reserve. The proposal is therefore assessed to be a restricted discretionary activity with discretion restricted to those matters listed in Chapter 47 Road Transport Rules and those matters listed in rule 36.4.11 (Landscaping).

3.2.3 **Rule 36.3.6 (Traffic Movements)** requires that any activity is permitted if it does not generate more than 30 traffic movements in any 24 hour period, excluding residential or temporary activities. The proposal is assessed to generate up to 125 vehicle movements per day at peak use. As a result the proposal is assessed to be a restricted discretionary activity, with discretion restricted to:

- Manoeuvring requirements;
- Need for acceleration and deceleration lanes;
- Type, frequency and timing of traffic;
- Safety of pedestrians;
- The availability of other roads for access for proposals leading onto arterial roads or state highways;
- Traffic safety and visibility;
- Effects on the amenity of the locality;
- Effects of dust;
- Need for forming or upgrading roads in the vicinity of the site;
- Need for traffic control, including signs, signals and traffic islands.

3.2.4 **Rule 36.3.7 (Signs)** requires that any activity is permitted if, among other requirements:

- (b)(vi) No more than 1 sign is displayed per site; and  
(b)(vii) The sign is no higher than 2 m; and  
(b)(viii) The sign is no larger than 1 m<sup>2</sup>.

The signage proposed will exceed 1 m<sup>2</sup> in size and there are proposed to be more than two signs, as such the proposal is assessed to be a non-complying activity.

3.2.5 **Rule 36.3.11 (Noise)**<sup>3</sup> requires that any activity is permitted if:

- (a) Noise generated by the activity, measured within the boundary of any other site in the Environment, does not exceed:
- 45 dBA L<sub>10</sub> between 0700 and 2200; and
  - 35 dBA L<sub>10</sub> at any other time; and
  - 60 dBA L<sub>max</sub> on any day between 2200 and 0700, except for emergency service vehicles and the operation of emergency service call-out sirens;
- and
- (b) Sound levels shall be measured in accordance with NZS 6801:1991 Measurement of Sound and assessed in accordance with NZS 6802:1991 Assessment of Environmental Sound.

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*service stations, motor vehicle sales, visitor accommodation, the sale of liquor and parking areas associated with any of the above.”*

<sup>3</sup> Note: This rule is potentially subject to amendment with respect to Plan Change 110 currently being undertaken to the Whangarei District Plan.

A preliminary noise assessment undertaken by the applicant indicates the proposed use will exceed the daytime noise limit of 45 dBA L<sub>10</sub>, therefore, the proposal is assessed to be a restricted discretionary activity with discretion restricted to:

- Maximum level of noise likely to be generated;
- The nature and frequency of the noise, including any special audible characteristics;
- Effect on nearby residential units;
- Compatibility within the Environment;
- Compatibility with surrounding Environments;
- Length of time for which the specified noise level is exceeded, especially at night;
- Likely adverse effects on-site and beyond the site;
- Mitigation measures to reduce noise generation.

3.2.6 **Rule 36.4.11 (Landscaping)** requires that site redevelopment is permitted if:

- (a) All land, other than accesses, is planted in lawns, trees or shrubs within 2.0m of the road boundary in the Living 1 Environment.

As stated above, two car parks are proposed to be located immediately adjacent to the front boundary and no landscaping is proposed to be provided within 2.0m of the road boundary. Therefore, the proposal is assessed to be a restricted discretionary activity with discretion restricted to effects on neighbours, amenities of locality and alternative means of landscaping or screening.

#### **Transportation Rules<sup>4</sup>**

3.2.7 **Rule 47.2.1 (Parking and Loading)** stipulates that any activity is permitted if:

- (a) Off-street parking spaces, loading bays and associated manoeuvring areas, are provided in accordance with Appendix 6A and constructed in compliance with Whangarei District Council's Environmental Engineering Standards 2010;
- (b) Vehicles are not required to undertake more than one reverse manoeuvre when manoeuvring in or out of any required vehicle parking space or loading bay;
- (c) Parking spaces and loading bays are not located on any access, manoeuvring area or outdoor living court and they remain unobstructed at all times; and
- (d) Parking spaces and loading bays are located on the same site as the activity for which they are required

3.2.8 The proposal does not meet this rule because not all of the parking spaces provide on-site manoeuvring, some of the proposed car parking is stacked parking and the loading bay/reverse manoeuvring area for trucks is located on the road reserve. This non-compliance is assessed to be a restricted discretionary activity with discretion restricted to:

- Parking space numbers;
- Availability of parking spaces;
- Parking area location;
- Parking area design;
- Parking spaces for people with disabilities;
- Loading areas;
- Access design;
- Safety for pedestrians;
- Location of activity;
- Type and frequency of use;
- Efficiency and safety of roads;
- On-site manoeuvring.

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<sup>4</sup> A copy of the Transportation Rules (Chapter 47 of the District Plan) is included in **Appendix 4b**  
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- 3.2.9 **Rule 47.2.4 (On-site Manoeuvring)** requires that on-site manoeuvring is provided to ensure that no vehicle is required to reverse either onto, or off, a site where:
- (a) The site has vehicle access to a State Highway, Arterial or Collector Road, or
  - (b) The site requires three or more vehicle parking spaces
- 3.2.10 Whangarei Heads Road is a Collector Road and the use requires more than three vehicle parking spaces. It is not possible to manoeuvre on-site from all parking spaces, as such the proposal is assessed to be a restricted discretionary activity, with discretion restricted to manoeuvring areas, on-site manoeuvring, pedestrian safety, traffic safety and visibility and type and frequency of use.
- 3.2.11 **Rule 47.2.11 (Engineering Standards)** requires for an activity to be a permitted activity it must comply with all the relevant standards set out in the Whangarei District Council's Environmental Engineering Standards 2010. As this proposal does not meet the permitted activity standard, it is assessed to be a restricted discretionary activity, with discretion restricted to those matters that do not comply with the Whangarei District Council's Environmental Engineering Standards 2010.
- 3.2.12 Overall, the proposal is assessed to be a **Non-Complying Activity**.

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

- 3.3.1 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) were gazetted on 13<sup>th</sup> October 2011 and took effect on 1<sup>st</sup> January 2012. Council is required to implement this NES in accordance with the Resource Management Act 1991 (RMA). The standards are applicable if the land in question is, 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:

Question	Answer	Comment
Is an activity described on the HAIL currently being undertaken on the piece of land to which this application applies?	No	The site is currently used for residential activity.
Has an activity described on the HAIL ever been undertaken on the piece of land to which this application applies?	No	There is no record of an activity occurring on the site as described in the HAIL.
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	See comment above.
Is the activity involved removing or replacing a fuel storage system or parts of it?	No	Regulation 8(1) – the proposal meets this regulation.
Does the activity involve sampling soil?	No	Regulation 8(2) – the proposal meets this regulation.

Does the activity involve disturbing soil?	Yes	Regulation 8(3) - The proposal will require minimal earthworks considered to be in keeping with the requirements of this regulation.
Does the activity involve the subdivision of land?	No	Regulation 8(4) – the proposal is for land use and thus meets the regulation.
Does the activity involve changing the use of the land?	Yes	Regulation 8(4) - Because a detailed site investigation of the property does not exist, the proposal is assessed to be a discretionary activity under Regulation 11.

3.3.2 There is no record of a HAIL activity having occurred on the site, but because the proposal is a change of use, a detailed site investigation must exist (Regulation 10(2)(a))<sup>5</sup>. Therefore the activity is a discretionary activity under Regulation 11(1)<sup>6</sup>. In this instance, it is considered the risk of any contamination being on-site is low, as such it is considered appropriate that a detailed site investigation be provided prior to any earthworks occurring. This requirement is recommended to be included in any conditions of consent, should consent be granted.

## 4.0 Notification, Submissions and Written Approvals

### 4.0

#### 4.1 Written Approvals

4.1.1 Written approval to the proposal has been received from the owners of 4 Taurikura Street, being LM Messenger and JM Stanley.<sup>7</sup> No further consideration will be given to the potential effects of the proposal on this party pursuant to s104(3)(a)(ii) RMA which states “A consent authority must not when considering an application, have regard to any effect on a person who has given written approval to the application.”

#### 4.2 Notification

4.2.1 Pursuant to sections 95A-95F a consent authority may, using its discretion make a decision whether to notify an application for resource consent. In determining the notification decision the consent authority must firstly have regard to the likely adverse effects on the environment of the proposal and secondly whether any persons are considered to be adversely affected by the proposal.

4.2.2 If the consent authority decides that the adverse effects on the environment may be more than minor it must notify the application. If the decision has been made that the effects will not be more than minor, the consent authority must then identify any persons adversely affected by the proposal to determine whether limited notification is required.

4.2.3 In this instance, the applicant requested that the application be publicly notified. A copy of the Section 95 report is attached at **Appendix 5**. The application was publicly notified on 14 April 2015 and submissions closed on 13 May 2015. Total of 17 submissions were received with respect to the application and the details of those submissions are summarised below. Full details of the submissions are included in **Appendix 6**.

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<sup>5</sup> Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

<sup>6</sup> Ibid

<sup>7</sup> Refer **Attachment 2b**

### 4.3 Submission Summary

#### 4.3.1 LR Reyburn Family Trust - 6 Taurikura Street - Oppose/Decline - To Be Heard

- Oppose whole application, especially café. Consider application is not for relocation of existing store and query consultation results reported in application.
- Concern regarding privacy and overlooking to their adjoining property and see need for screening.
- Query opening hours detailed in application as these contradict those detailed in the traffic report. Request opening hours no later than 6 p.m.
- Concerns regarding noise from cafe operation and traffic.
- Query details regarding maximum number of patrons and have concerns regarding odour and waste/rubbish control.
- Query location of freezer/coolstore, where to be located and possible noise effects?
- Query takeaway operation and traffic generated from this.
- Concerns regarding stormwater run-off and the need for attenuation.
- Concerns regarding the adequacy of carparking/lack of roadside planting/lack of parking for large vehicles e.g. camper vans, cars towing boats, query parking for delivery vehicles and consider proposal requires road widening.

#### 4.3.2 G & N Mac Donald - 2295 Whangarei Heads Road - Oppose/Decline - Not To Be Heard

- Consider proposal is a duplication of the existing store.
- Query the appropriateness of the activity in a residential zone.
- Consider the proposal to be an intrusion of a commercial activity into a residential environment.
- Have concerns regarding traffic and car parking.

#### 4.3.3 J Fleming - 2304 Whangarei Heads Road - Oppose/Decline - Not To Be Heard

- Concerns regarding traffic safety, particularly high volume of traffic in mornings and afternoons and increased traffic at weekends with beachgoers, camper vans, trampers and boaties.
- Particular concern regarding sightlines and potential sun strike and requirements for pedestrians to cross from opposite foot path to site.
- Concern with regard to noise from vehicles, pedestrians and cafe use.

#### 4.3.4 A & J Morgan - 2299 Whangarei Heads Road - Oppose/Decline - Not To Be Heard

- Consider application substantially flawed.
- No evidence to suggest a second store is required.
- Concerns regarding precedent effect related to converting a residential property to a commercial use.
- Concerns that the project will be completed in stages, particularly conversion of the accessory building on site to a dwelling.
- Traffic concerns, particularly if two stores are operating at the same time.
- Particular concerns regarding manoeuvring in and out of proposed site, particularly for larger vehicles. Also concerns regarding ability for vehicles towing boats to park.
- Consider that the traffic assessment undertaken over Waitangi weekend is not as busy as during the Christmas/New Year period.
- Concerns regarding proposed hours of operation and effects on residential environment.
- Consider that the traffic movements and signage, lack of screening and noise will negatively impact on residents in the vicinity.
- Concerns regarding odour from food cooking.
- Overall consider effects to be more than minor.

#### 4.3.5 J Eagles – 161 Newton Road - Oppose/Decline - Not To Be Heard

- Concern that proposal will result in two shops located in close proximity to each other.

- Consider that the application overstates the activities occurring at the existing store and when those activities/services commenced.
- Cafe will affect local residents.
- Potential effects on privacy from overlooking.
- Potential effects from noise, particularly from cafe use and hours of operation.
- Concerns regarding traffic and car parking effects
- Concerns regarding odour, particularly from cooking.

**4.3.6 J & D Rintoul – 40 Ody Road - Oppose/Decline - Wish To Be Heard**

- Consider lease for existing store has not expired.
- Consultation has not occurred with submitter contrary to statement in application.
- Consider a number of the services provided at the current store, stated to have been introduced by the applicant, were introduced prior to the applicant being the operator of the current store.
- Consider photos included in traffic report do not give true indication of sightlines looking west.
- Query noise from after hours deliveries.
- Concern that deliveries will impact on ability to use car park and trucks parked on side of the road will negatively impact sightlines for vehicles trying to exit the site.
- No need for a second store.

**4.3.7 E & B Jagger - 40 Ody Road - Oppose/Decline - Wish To Be Heard**

- Consider proposed new location to be a traffic hazard with traffic coming over the rise from the north having limited visibility of vehicles entering and exiting the proposed shop.
- Insufficient room for safe parking on the roadside especially for boats and trailers, camper vans and large delivery vehicles.
- Proposed activity would negatively impact peace and privacy of existing neighbouring residents.
- Existing houses have established around the existing shop and owners have planted hedges/built fences to screen themselves from the existing shop activity.
- Concerns regarding precedent effect resulting from establishment of a commercial activity in a residential zone.

**4.3.8 J Flatres & U Flatres-Dudy – 2305 Whangarei Heads Road - Oppose/Decline - Wish To Be Heard**

- Refer to issues raised in submission of LR Reyburn Family Trust.

**4.3.9 M Quintard & P Bastien-Thiry - 2303 Whangarei Heads Road - Oppose/Decline - Wish To Be Heard**

- Refer to issues raised in submission of LR Reyburn Family Trust.

**4.3.10 L Ruffell - 2345 Whangarei Heads Road - Support/Approve – Do Not Wish to Be Heard**

- Consider a number of the services provided at the current store, stated to have been introduced by the applicant, were introduced prior to the applicant being the operator of the current store.
- Concerns regarding car parking and access and safety of pedestrians.
- Query the ability for the proposed building to accommodate the uses proposed.
- Would support the application if concerns regarding safety pedestrians and drivers can be addressed.
- Consider that car parking on opposite side of road should be provided.

**4.3.11 The Good Trust/V Rickard – 1 Taurikura Street - Oppose/Decline - Wish To Be Heard**

- Note that existing store is to remain.
- Proposed site is not zoned for the proposed activity.

- Limited consideration of objectives and policies of District Plan.
- Concerns regarding ability of site to adequately accommodate delivery trucks, pedestrians and customers who have a range of large and small vehicle types.
- Consider that peak traffic movements will be more than those stated in reports.
- No consideration is being given to the potential for two stores to be operating at the same time.
- Noise report provided states that District Plan noise levels may be exceeded.
- Proposed noise monitoring measures are unclear.
- Lack of clarity around staging and how consents would be given effect to over time.

4.3.12 **P & E Parker** – 2298 Whangarei Heads Road - Oppose/Decline – Do Not Wish To Be Heard

- Consider application is not for relocation of store, it is for a new business on a new site.
- Consider existing store is better sited for the proposed activity.
- Concerns regarding pedestrian safety and possible parking on the road.
- Concern regarding ability of site to adequately accommodate 10 parking spaces.
- Noise report provided states that proposal likely to exceed permitted noise level and consider that offer to mitigate this after the store has established is inadequate.
- Consider opening hours should be no later than 8 p.m. and concern regarding potential of cafe to become licensed in the future.
- Consider cumulative effects of the proposal will be more than minor.

4.3.13 **L Chitty (Fleming)** – 2304 Whangarei Heads Road - 18 Taiko St – Neutral - Do Not Wish to Be Heard

- The submitter is a neighbour on the east side of the site and the proposed deck of the cafe would overlook their property.

4.3.14 **Heritage New Zealand** - Neutral - Do Not Wish to Be Heard

- Request an accidental discovery protocol be attached to any granted consent.

4.3.15 **J Sime** – 57 Urquhart Bay Road - Support/Approve – Do Not Wish to Be Heard

- Consider the Taurikura Store provides a valuable service.
- Consider new store location will be better/safer for drivers.

4.3.16 **R Miller** – 2291A Whangarei Heads Road - Support/Approve –Wish to Be Heard

- Consider the new store will be better/safer for drivers.
- Seek some amendments to the entrance/exit and parking layout.

4.3.17 **R Newbold** – 2300 Whangarei Heads Road - Support/Approve

4.3.18 The plan below shows those properties in close proximity that have either made submissions on the proposal or have provided their written approval. Those properties shown with a 'tick' are either submitters in support and/or have provided their written approval and those properties shown with a 'cross' are submitters in opposition.



## 5.0 Resource Management Act 1991- Statutory Considerations

### 5.0

#### 5.1 Section 104

5.1.1 Section 104 provides the matters, subject to Part 2 of the RMA 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.

#### 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*

#### **5.4 Section 104 (6) & (7)**

5.4.1 It is noted that in the consideration of any application the following also apply:

- (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*
- (7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*

5.4.2 With respect to the requirements of s104D it is specifically noted the 'gateway' tests of s104D(1)(a) and (b) are disjunctive and as such an application need only satisfy one of the two limbs in order for it to be granted. Therefore, if an application is to be declined, the application would have to fail both limbs (or gateway tests) of s104D.

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

### **6.0**

#### **6.1 Definition of Effect**

6.1.1 Section 3 of the RMA 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 RMA 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 The permitted baseline approach to effects assessment enables Council to disregard any adverse effects on the environment if those effects are related to an activity or activities permitted by the District Plan. Existing activities and any activity which could be carried out as a permitted activity without being fanciful may be discounted as giving rise to any adverse effects.

6.2.3 In this case, the following activities are permitted as of right by the District Plan within the Living 1 Environment:

- A residential unit;

- Any commercial activities which are carried out in conjunction with a residential activity on the site; provided that the activities are operating between the hours of 8 a.m. and 6 p.m. and screened from view from roads and adjoining sites;
- Traffic movements associated with a residential activity;
- Up to 30 traffic movements on a 24 hour period associated with an activity other than a residential or temporary activity;
- A single sign no higher than 2 m and no larger than 1 m<sup>2</sup> related to goods or services available on the site; and
- Noise generated by an activity not exceeding 45 dBA L<sub>10</sub> between the hours of 7 a.m. and 10 p.m.

### 6.3 Assessment of Effects on the Environment

6.3.1 The applicant was previously the lease holder of the existing Taurikura Store located at 2311 Whangarei Heads Road. The purpose of the application when originally lodged was to “relocate the [Taurikura] store to a new site” being the subject site at 2302 Whangarei Heads Road.<sup>8</sup> The application documents state that the applicant has “become increasingly concerned with the number of safety, sustainability and servicing problems at the present site [2311 Whangarei Heads Road].”<sup>9</sup>

6.3.2 The further information request dated 15 January 2015 (**Appendix 2a**) requested that the applicant take into account the cumulative effects of the existing store and activities as well as the new store, the subject of the application. The response from the applicant’s agent (dated 17 March 2015) was that “the activities at the existing store only have existing use rights if they are of the same or similar character, intensity, and scale as those which existed in 2007.” The applicant’s agent in their response raises further issues related to potentially adverse effects from the operation of the current store, considering the existing use rights of the current site to have expired, or are doubtful, that the existing store requires a resource consent and that the present application provides “the opportunity to ... provide ... a modern, purpose-built, safer, sustainable, serviceable, and convenience store and cafe at a better site in Taurikura.” Overall, the applicant’s agent is of the opinion that the proposal will have no more than minor cumulative effects.

6.3.3 With respect to the activities at the current Taurikura Store (2311 Whangarei Heads Road) s9(3) RMA - Restrictions on Use of Land, requires that:

- (3) *No person may use land in a manner that contravenes a district rule unless the use—*
- (a) *is expressly allowed by a resource consent; or*
  - (b) *is allowed by section 10; or*
  - (c) *is an activity allowed by section 10A.*

6.3.4 Section 10 RMA - Certain Existing Uses in Relation to Land Protected allows that:

- (1) *Land may be used in a manner that contravenes a rule in a district plan or proposed district plan if -*
- (a) *either -*
    - (i) *the use was lawfully established before the rule became operative or the proposed plan was notified; and*
    - (ii) *the effects of the use are the same or similar in character, intensity, and scale to those which existed before the rule became operative or the proposed plan was notified;*
- (2) *Subject to sections 357 to 358, this section does not apply when a use of land that contravenes a rule in a district plan or a proposed district plan has been discontinued for a continuous period of more than 12 months after the rule in the plan became operative or the proposed plan was notified unless—*

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<sup>8</sup> Pg 1, Executive Summary, Resource Consent Application: Relocation of Taurikura General Store, Dated 17 December 2014 (refer **Appendix 1**)

<sup>9</sup> Ibid

- (a) *an application has been made to the territorial authority within 2 years of the activity first being discontinued; and*
- (b) *the territorial authority has granted an extension upon being satisfied that—*
  - (i) *the effect of the extension will not be contrary to the objectives and policies of the district plan; and*
  - (ii) *the applicant has obtained approval from every person who may be adversely affected by the granting of the extension, unless in the authority's opinion it is unreasonable in all the circumstances to require the obtaining of every such approval.*
- (3) *This section does not apply if reconstruction or alteration of, or extension to, any building to which this section applies increases the degree to which the building fails to comply with any rule in a district plan or proposed district plan.*

6.3.5 Further s134 RMA - Land Use and Subdivision Consents Attach to Land, states:

- (1) *Except as provided in subsection (2), a land use consent and a subdivision consent shall attach to the land to which each relates and accordingly may be enjoyed by the owners and occupiers of the land for the time being, unless the consent expressly provides otherwise.<sup>10</sup>*

6.3.6 With respect to the matters detailed above, it is noted, that the existing site does not have a specific resource consent for its use as a store. However, WDC has previously granted applications in 2007 for a liquor license and a certificate of compliance, which detail the existing store as *being "a general store stocking a full range of groceries; fishing supplies including bait and ice; postal agency; retailer of beer, wine, and spirits; local video library; and food takeaways".<sup>11</sup>*

6.3.7 With regard to the above-mentioned applications, s139A - Consent Authorities to Issue Existing Use Certificates, states:

- (1) *A person may request the consent authority to issue a certificate that—*
  - (a) *describes a use of land in a particular location; and*
  - (b) *states that the use of the land was a use of land allowed by section 10 on the date on which the authority issues the certificate; and*
  - (c) *specifies the character, intensity, and scale of the use on the date on which the authority issues the certificate.*

6.3.8 Therefore, Council has confirmed the existing uses of the Taurikura Store and in accordance with s139A(9) *"An existing use certificate is treated as an appropriate resource consent."*

6.3.9 Overall, with respect to the above matters I am of the opinion that:

- i. The applicant has no ability to transfer the activity, consents, rights or any effects (in terms of a permitted baseline) from the current Taurikura Store site to the subject site, because pursuant to s134 RMA, a consent is attached to the land;
- ii. The activities occurring at the existing store, detailed as being *"a general store stocking a full range of groceries; fishing supplies including bait and ice; postal agency; retailer of beer, wine, and spirits; local video library; and food takeaways"* can continue at the current store site because in accordance with s9 RMA those activities are expressly protected under s10 RMA;
- iii. The owner of the existing Taurikura Store has informed WDC that they will be reopening the store soon, if not already,<sup>12</sup> therefore complying with s10(2) RMA in terms of protecting those existing uses;
- iv. The existing store has all existing use rights as of the day activities ceased there despite any non-compliance with the current planning regime that applies to the site;

<sup>10</sup> In this instance I do not consider subsection 2 of s134 RMA to be applicable, because it relates to s13 RMA 'Restriction on Certain Uses of Beds of Lakes and Rivers'

<sup>11</sup> Refer **Appendix 8**

<sup>12</sup> Refer file note included as **Appendix 9**

- v. The issues raised by the applicant's agent with regard to possible non-compliance of the current store are not considered to be of relevance to this application; and
- vi. The use of both the existing store and the proposed store must be taken into account in the assessment of any effects.

#### 6.4 Effects of Traffic including Vehicle Movements and Parking

6.4.1 The potential traffic effects of the proposal principally relate to the number of vehicle movements, safe entry and exit from the site and the requirement for car parking to service the proposal.

6.4.2 As detailed previously, the number of vehicle movements exceed those allowed for in the Living 1 Environment (rule 36.3.6), with those proposed being four times the permitted standard. The proposal can provide the number of on-site car parks necessary, but not all relevant parking standards are met. Furthermore, potential traffic effects and issues related to traffic safety have been raised by a number of submitters.

6.4.3 An assessment of potential traffic effects has been provided by the applicant, prepared by Mr Dean Scanlan of Engineering Outcomes. This assessment has been reviewed by Mr Nick Marshall, WDC Senior Roding Engineering (Traffic & Parking) (refer **Appendix 3b**). The proposal is recommended for approval by the WDC Roding Division subject to specific matters being addressed, in particular:

- i. A minor modification is required to the entranceway (lifting the entranceway by  $\approx$  300mm for 4 - 5m back from the road edge) enabling the sightlines to the north-west to be substantially improved;
- ii. The entranceway (gap in the fence) is to be wide enough to allow a heavy goods vehicle to perform a 3-point turn off the road. To achieve this the entrance width may need widening to double width. Detail of vehicle turning movements on a plan should be provided to demonstrate compliance;
- iii. The splay of the entranceway onto the road needs to be wide enough to allow heavy goods vehicles (parked on the berm) to turn to a 70-90 degree angle to ensure appropriate sightlines when exiting the entranceway. Vehicle turning movements should be provided on a plan to demonstrate compliance;
- iv. The turning movements from all spaces using a 90% Car are to be confirmed. There is concern the southern-most car park space adjacent to the shop will not be able to perform this manoeuvre in a 3-point turn, but will require multiple 'back-and-forth's' to get around the shop ramp. Turning movements for a 7.5 m rigid heavy vehicle should also be reviewed. A plan of complying vehicle turning movements should be provided.
- v. The maximum grades in the car parking area are to be reviewed, particularly the lowest corner appears to need to be built up, perhaps a few hundred mm to half a metre.

6.4.4 Response to these matters has been provided in **Appendix 2h**.

6.4.5 Notwithstanding the assessment undertaken by the WDC Roding Division, Rule 36.3.6 (Traffic Movements) of the District Plan contains a number of criteria used in the assessment of infringements of this rule. These assessment criteria are considered to be useful in assessing the potential effects of this proposal. Underneath each criteria is an associated assessment:

- i. Manoeuvring requirements  
Subject to confirmation, space for reverse manoeuvring can be provided which will avoid the requirement for vehicles to reverse onto the Whangarei Heads Road carriageway. It is recognised that reverse manoeuvring in particular for heavy goods vehicles will be provided between the road boundary of the subject site and the carriageway. WDC Roding Division has assessed this and is satisfied that this is an appropriate solution.
- ii. Need for acceleration and deceleration lanes  
No need for acceleration or deceleration lanes has been identified.

- iii. Type, frequency and timing of traffic  
The number of potential vehicle movements has been assessed. In addition, vehicle use on Whangarei Heads Road is currently low and a review of the accident data related to the stretch of road adjacent to the subject site and the existing store site show that there have been no accidents in the last five years. Overall it is considered that there will be no potential effects with respect to the type, frequency and timing of traffic.
- iv. Safety of pedestrians  
The existing pedestrian footpath is located on the opposite side of Whangarei Heads Road from the subject site. Therefore, pedestrians using the footpath will need to cross the road to access the subject site. The risk to pedestrians crossing the road is considered to be low, due to the complying sightlines at the entrance of the subject site, coupled with the low number of vehicle movements on Whangarei Heads Road.
- v. The availability of other roads for access for proposals leading onto arterial roads or state highways  
N/A
- vi. Traffic safety and visibility  
As stated, the number of vehicles using Whangarei Heads Road is considered to be low and the vehicle entrance is located in a position whereby complying sightlines can be achieved. Further, it has been recommended by WDC Roding Division that the level of the entranceway be raised, to further improve the sightlines.
- vii. Effects on the amenity of the locality  
These issues have been assessed in conjunction with other potential amenity issues later in this report.
- viii. Effects of dust  
Potential effects of dust are currently unclear as the applicant has made a request that not all of the parking area be sealed. Further confirmation has been requested from the applicant with respect to staging of any development. It is proposed to build the shop and the carparks on the western side as Stage I (as soon as consent is granted) and Stage II will be the cafe development and eastern carparks, proposed in April 2016. Should consent be granted it is considered appropriate that any car parking areas be sealed.
- ix. Need for forming or upgrading roads in the vicinity of the site
- x. Need for traffic control, including signs, signals and traffic islands  
There has been no need identified to form or upgrade roads in the vicinity of the site, nor to provide traffic control, signs, signals or traffic islands as a result of the potential effects of the proposal.

6.4.6 At the time of writing the matters identified by the WDC Roding Division as requiring clarification/further information had been responded to (refer **Appendix 2h**) but not all measures were agreed with. I do not consider it appropriate to make these matters of clarification conditions of consent, as some are considered to be fundamental to the safe and efficient operation of the activity. The inability to successfully address the matters may lead to non-compliance and potentially adverse effects. Without these matters confirmed it is not considered possible to adequately address the potential traffic effects of the proposal and these issues will need to be further debated at the hearing.

## 6.5 Effects on Services

6.5.1 Potential effects on services relate to the ability of the reticulated network to accommodate proposed demand and where a reticulated network does not exist, the ability to adequately provide on-site services to ensure there are no off-site effects.

6.5.2 The subject site is serviced with reticulated water and wastewater. On-site stormwater management will be required, as no reticulated system is provided. Further, some specific additional servicing requirements will be needed such as a grease trap to ensure that any waste from the kitchen is appropriately managed. All of these issues have been addressed by Mr Vladimir Rozov, WDC Senior Environmental Engineering Officer. Mr Rozov is of the opinion that the potential effects of the proposal with respect to services will be no more than minor, subject to the imposition of specific conditions of consent, as detailed in his report included as **Appendix 3a**.

## 6.6 Effects of Noise

6.6.1 There are a number of potential noise sources with respect to the proposal. These relate to the use of the carpark for customers and deliveries, the use of the building as a shop, takeaways and cafe and ancillary activities such as noise from air-conditioning and refrigeration units. Noise effects are a concern for a number of submitters.

6.6.2 The applicant was requested<sup>13</sup> to provide an acoustic report addressing the likely noise levels associated with the activity (both indoor and outdoor, plus noise from refrigeration and air-conditioning units), including an assessment of noise effects on adjoining properties. In response, the applicant has provided 'Design Advice' from Marshall Day Acoustic Consultants (dated 16 March 2015, refer **Appendix 2b**). The Design Advice concludes the café use is likely to infringe the applicable noise standards for the Living 1 Environment, with noise levels for a typical cafe operation assessed to be between 45 dBA  $L_{A10}$  and 55 dBA  $L_{A10}$  (noting these figures are based on preliminary calculations only). The Design Advice further notes that detailed calculations have not been undertaken.

6.6.3 I requested from the applicant written confirmation from Marshall Day whether in their professional opinion the Design Advice provided can be considered to be an assessment of all potential noise effects in accordance with Schedule 4, Clause 1 RMA. The response from Marshall Day (received via email, dated 9 July 2015, refer **Appendix 2f**) states that *"The design advice is not a full assessment as would typically be prepared for resource consent purposes. The design advice provides some indicative levels from activity (for client information), but should not be construed as definitive."*

6.6.4 It is noted that WDC has undertaken Plan Change 110 to the Operative District Plan, which reviews the current noise and vibration provisions of the District Plan. The hearing on this Plan Change was held on 15 and 16 June 2015 and at the time of writing no decisions have been released. When WDC made the decision to notify Plan Change 110, a decision was also made pursuant to Section 86B RMA that all rules in Plan Change 110 shall only have legal effect once the plan provisions become operative in accordance with Clause 20 of Schedule 1 RMA.<sup>14</sup> Therefore, at this time the amendments proposed by way of Plan Change 110 have no legal effect (or weight).

6.6.5 Rule 36.3.11 of the District Plan lists the following criteria to be used in the assessment of an infringement of this rule. Although this application is a non-complying activity and these are restricted discretionary activity criteria, they are considered to be useful in terms of providing an assessment basis for this matter. Underneath each criteria is an associated assessment:

i. Maximum level of noise likely to be generated

The maximum level of noise likely to be generated is unclear. Whilst preliminary Design Advice has been provided by the applicant, this is not considered to address all potential noise sources, in particular the cumulative effects associated with various activities occurring on the site together. The Design Advice provides some indicative levels *"but should not be construed as definitive"*, therefore it is not possible to determine what the maximum level of noise likely to be generated is.

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<sup>13</sup> Further information request dated 15 January 2015, refer **Appendix 2a**

<sup>14</sup> Item 3, Minutes of the WDC Planning Committee Meeting - Wednesday, 10 December 2014  
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- ii. The nature and frequency of the noise, including any special audible characteristics

The nature of any noise is considered likely to relate to the activities on the site, as previously described. The shop/café hours are proposed to be 7 a.m. to 9 p.m., seven days a week, therefore this would be the period in which potential noise effects would be experienced by surrounding properties. Without a definitive noise assessment, it is not possible to determine whether any special audible characteristics will exist.

- iii. Effect on nearby residential units

It has been identified that the proposal will likely infringe the applicable noise standards. Without a definitive noise assessment, it is not possible to determine the degree of effect on nearby residential units, recognising that the site and the surrounding sites are all residentially zoned and occupied by residential dwellings. Whilst the Design Advice provided recommends some forms of mitigation, there are potential limitations to the implementation of the proposed mitigation measures both from a technical perspective in terms of being able to practically address any noise issues and also from a design and compliance issue in terms of potentially creating additional rule infringements (e.g. a sound fence on the boundary higher than the applicable District Plan limit).

It is noted that the applicant has proposed a fence on the eastern boundary and part of the southern boundary of the site. However, it is unknown as to whether this fence is proposed to act as a means of noise attenuation.

- iv. Compatibility within the Environment

- v. Compatibility with surrounding Environments

The noise limits as they apply to the Living 1 Environment have previously been detailed. Without a detailed noise assessment, it is not possible to accurately determine the level of noise that will be generated by the activity, nor is it possible to determine the level of background noise and therefore whether or not the noise generated by the activity will be in keeping with, or out of character with the existing environment. It is therefore not possible from a noise perspective to determine whether the proposal will be compatible either within the Environment or with the surrounding Environment.

- vi. Length of time for which the specified noise level is exceeded, especially at night

While the proposed hours of operation for the activity are 7 a.m. to 9 p.m., the night-time noise standards for the Living Environment (rule 36.3.11) are from 10 p.m. to 7 a.m. Because the hours of operation are inside of the night-time noise standards it would be reasonable to expect that the proposed activity would be unlikely to exceed the night-time noise standards, but without definitive information regarding the operation of refrigeration units or the like this cannot be categorically determined.

- vii. Likely adverse effects on-site and beyond the site

As stated, it is not possible to accurately determine the level of potential effects associated with noise resulting from the proposed activity.

- viii. Mitigation measures to reduce noise generation

The Design Advice from Marshall Day includes potential mitigation measures where noise limits are exceeded (although none of the mitigation measures specifically propose measures by which to reduce noise generation), proposing the following methods:

- a) Erection of a noise barrier along site boundaries, noting that such would only be effective where the barrier blocks line-of-sight from the café to adjacent dwellings;

- b) Erection of a noise barrier around the edge of the outdoor deck;
- c) Increasing the amount of acoustic absorption within the café; and
- d) Improving the sound insulation of the eastern facade, which may require improvements to doors or windows or changing access and egress parts to the café.

As stated earlier, the applicant has included in the proposal a fence on the eastern and part of the southern boundary. However, it is not known whether this fence would assist in the attenuation/mitigation of noise.

- 6.6.6 In terms of effects from noise within the Living Environment the Principal Reasons for Rules/Explanations for 'Noise' (rule 36.3.11)<sup>15</sup> states:

*Noise is one of the principal factors that can adversely affect the appreciation of amenity. It can have an affect on people's health in a psychological and physiological sense ... A high level of amenity, in respect of noise is required to meet the objectives of the Living Environments.*

- 6.6.7 In terms of s 3 RMA, potential noise effects of the proposal could be permanent effects, adverse effects, temporary effects and could occur in combination with other noise effects to be a cumulative effect. In particular is noted that the assessment criteria detailed above specifically refer to effects on nearby residential units, compatibility with the Environment and compatibility with the surrounding Environment. Therefore, as the subject site and the surrounding area is zoned Living Environment (residential) the potential noise effects of the proposal would need to be in keeping with that Environment in terms of the maximum level of noise, the type of noise and the frequency of noise.

- 6.6.8 Whilst the type of noise likely to be experienced, being vehicles coming and going, people talking while at the café etc could be considered not to be out of character with a residential environment, frequency of use will be. The traffic assessment undertaken has determined that the use of the site at peak will be in the order of four times the permitted standard. Therefore, there will be considerably more noise in terms of ongoing activity on the site than could reasonably be expected from either a residential activity, or a complying home occupation. Without a detailed noise assessment it is not possible to determine that the noise effects will be minor (s104D(1)(a) RMA).

- 6.6.9 It is further noted under s16 RMA there is an overarching obligation for "every occupier of land ... and every person carrying out an activity [to] adopt the best practicable option to ensure that the emission of noise from that land ... does not exceed a reasonable level."

- 6.6.10 In response to issues raised regarding noise, the applicant's agent has proposed a condition<sup>16</sup> be attached to any consent granted, requiring the following:

*The consent holder will commission a noise monitoring report from a suitably qualified noise engineer to measure and report on noise from patrons, car parking activity, and mechanical plant during one peak day of the 2015-2016 summer season. The report will also recommend noise mitigation measures required if monitoring shows that these are necessary to achieve a reasonable level of noise. The consent holder will complete any necessary noise mitigation works by 30 November 2016.*

- 6.6.11 With regard to the proposed condition, I am not satisfied it is an appropriate means by which to address any potentially adverse effects with regard to noise. In particular, the application as proposed enables a maximum use on the site, but it is not possible to predict that the day on which the noise assessment is proposed to occur will coincide with an intensity of use equal to that allowed for as a maximum under the conditions of any granted consent. Furthermore, as previously mentioned, undertaking mitigation works in order to address any assessed effects may of themselves create further infringements (a noise fence greater than 2 m in height

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<sup>15</sup> Refer section 36.5 of the District Plan

<sup>16</sup> Refer **Appendix 2d**

infringing rule 36.3.8), which require additional resource consents. Obtaining such consents could include consultation/requests for written approval from potentially affected parties. It is therefore not possible to ensure that the means necessary to mitigate any effects can be put in place. Finally, the condition as drafted proposes a time period of approximately 10 months between the assessment and any mitigation works being completed. I consider this to be unsatisfactory.

- 6.6.12 Overall, it is not possible to quantify the potential noise effects, therefore it is not possible to assess what the necessary mitigation would be, to conclude that the effects will be minor. Furthermore, it is noted that the neighbours to the rear and to the east of the subject site have submitted in opposition to the proposal and the applicant has not provided written approval from these parties, or negotiated the withdrawal of the submissions.

## 6.7 Effects on Amenity Values and Residential Character

- 6.7.1 Section 2 RMA defines amenity values as those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence and cultural and recreational attributes. While amenity attributes represent tangible and measurable matters such as physical noise measurements; amenity values represent the less tangible matters such as people's perceptions of noise, culture, expectations, desires and tolerance. Typically a person would view amenity to be matters such as "privacy", "pleasantness", "clean air" or "peace and quiet", with matters such as noise, odour, density of development and shading attributing to amenity. Furthermore perceptions and expectations that people hold influence amenity also. Submitters to this proposal have stated how they consider the proposal will affect the amenity values that they consider are attributable to the local area.

- 6.7.2 Chapter 5 of the District Plan describes the characteristics of the Living Environments as being:

*Passive environments where people relax and interact with each other on a social basis. In general, they have high levels of amenity as a result of a combination of some or all of the following characteristics:*

- *Low intensity development;*
- *Presence of trees and private gardens;*
- *Landscaped frontages and street set backs;*
- *Off-street parking;*
- *High degree of privacy;*
- *Daylight and sunlight access;*
- *A high proportion of private and public open space;*
- *Low levels of noise, visual pollution, odour and nuisances;*
- *Safe environment for children, cyclists and pedestrians;*
- *Low levels of vehicular traffic;*
- *Feeling of community;*
- *Non-residential support activities, such as business and community activities, of an appropriate scale.*

*Some areas of Living Environments are compromised by the effects of activities located in other environments. Where there are conflicts between existing legitimate land use activities, a balance is required to be struck between the achievement of high levels of amenity in living environments, and the efficient use of existing resources.*

- 6.7.3 Furthermore and with particular regard to the location of commercial/non-residential activities with the Living Environments, the Principal Reasons for Rules/Explanations for 'Activities Generally' (rule 36.3.1) in the Living 1 Environment<sup>17</sup> states:

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<sup>17</sup> Refer section 36.5 of the District Plan  
15/73217

*The restriction on opening hours for commercial and industrial activities ... limits the adverse effects to times when the effects are likely to be more acceptable. This restriction sustains a higher level of amenity within the Living Environments. The rule recognises that non-residential activities should be located so that adverse effects that are incompatible with the Living Environments; such as interrupting the sense of community and cohesion within neighbourhoods, noise, traffic generation, odour, vibration, dust and visual impact; are avoided, remedied or mitigated. If this is not possible, then these activities should not be located within the Living Environments.*

- 6.7.4 In my opinion, residential character is provided for in Living Environment through the permitted activity status of residential activities and other activities, particularly small scale commercial activities, considered to be in keeping with residential uses. Furthermore, the Living Environment contains a set of bulk and location controls which allow for development, to a scale whereby the majority of any individual property is free of built development and therefore provides for a reasonably low intensity of development.
- 6.7.5 Specifically, the Living Environment limits development and uses to:
- i. Commercial activities that operate between 8 a.m. and 6 p.m. and are screened from roads and adjoining sites;
  - ii. Activities (other than residential or temporary activities that only generate 30 traffic movements in a 24 hour period; and
  - iii. Activities that provide for an open/landscaped front yard.
- 6.7.6 Due to the non-compliance with the permitted activity standards of the District plan, the proposal has the potential to affect the amenity values of the area, with the Living Environments considered to have *“high levels of amenity”*. It is noted that one of the characteristics of Living Environments is considered to be *“low levels of noise”* and *“visual pollution”*. The issue of noise has been addressed above. In terms of visual pollution, it is noted the proposed signage is a non-complying activity. Due to the desire that such signage be visible from the road, it is therefore not possible to mitigate any effects on surrounding sites and/or passers-by from such.
- 6.7.7 At peak use, the potential number of vehicle movements is considerably greater than those enabled as a permitted activity (including for home occupations). Potential effects on amenity relate to vehicle movements on and off the site, car doors opening and closing, use of the car park area and headlight wash, particularly from the use of the carpark during the evenings.
- 6.7.8 Whilst it is recognised that from a traffic safety perspective the site (subject to some confirmation) can accommodate the number of movements proposed, there is no demonstrated ability from the application documents to avoid or remedy any amenity effects associated with vehicle use. It is further noted that *“landscaped frontages and street set backs”* are a characteristic of the Living Environment. Provision for this characteristic is provided by way of rule 36.3.4 which requires that *“no formed parking space is constructed or provided within 2 m of the road boundary”* and rule 36.4.11 which requires that *“all land, other than accesses, is planted in lawns, trees or shrubs within 2 m of the road boundary in the Living 1 ... Environment”*. This issue was raised with the applicant’s agent via email on 10 June 2015 (refer **Appendix 2c**). Their response (refer **Appendix 2d**) being that the lack of setback and/or landscaping was a trade-off between traffic safety and visual amenity and that a landscaping plan was being prepared in consultation with neighbours.
- 6.7.9 The fencing/landscaping plan provided via email on 28 July 2015 (refer **Appendix 2h**) provides details of fencing and retaining to be established on the eastern and southern boundaries, the combined fencing and retaining being between 1.5 and 1.9 m in height with a bamboo fence/hedge on the majority of the southern boundary to a height of 4 m. It is noted that no detail is provided of fencing and/or landscaping on the road boundary. However, from the plans provided it appears that a retaining wall of 0m - 0.4 in height would be established as part of the car parking.
- 6.7.10 The result therefore is that on the front boundary vehicles parked on the eastern side of the site will be elevated above the road level, potentially with no screening to the road and

properties on the opposite side of the road. From the information provided it appears the use on the site will clearly be commercial with little or no ability to integrate the development into the surrounding residential environment. Even though the built development on the site complies with the relevant controls in terms of height and building coverage I consider the proposal will *'interrupt the sense of community and cohesion within the neighbourhood'*.

6.7.11 Overall, I am of the opinion that potential effects on residential character and amenity values will not result in the proposal maintaining and enhancing amenity values<sup>18</sup> or maintaining and enhancing the quality of the environment<sup>19</sup>. In particular, the following characteristics of the Living Environment will not be demonstrated by this proposal:

- i. Low intensity development
- ii. Landscaped frontages and street set backs
- iii. High degree of privacy
- iv. Low levels of noise, visual pollution and nuisances
- v. Low levels of vehicular traffic
- vi. Non-residential support activities, such as business and community activities, of an appropriate scale

6.7.12 Therefore I do not consider the potential effects on residential character and amenity values will be minor.

## 6.8 Cumulative Effects

6.8.1 Cumulative effects are included in the definition of 'effect' in s3 RMA as effects that can build up over time or occur in combination with other effects. In this instance there is the potential for cumulative effects to arise with regard to effects on community infrastructure, a change in character and effects on amenity values. Cumulative effects related to the establishment of a second store in Taurikura and the potential cumulative effects of both operating together, particularly effects on traffic, have been raised by submitters.

6.8.2 Assessing a cumulative effect is limited to the consequences of granting a particular application. For a cumulative effect to be significant, it must have breached a threshold, or 'tipped the balance'.

6.8.3 As stated previously, there is an existing store in the Taurikura settlement which has existing use rights. I therefore consider that the existing store is part of the existing environment. With particular regard to traffic effects, there have been no recorded accidents at the site in the last five years. Therefore, it is not considered likely that the addition of a second store would lead to cumulative adverse effects on traffic safety. In terms of residential character, the addition of a second store could be considered to impact the residential character of the Taurikura settlement. However, I have assessed this separately above.

6.8.4 Overall, I am of the opinion that the proposal will not lead to any adverse cumulative effects.

## 6.9 Other Matters

6.9.1 Some submitters have raised issues with respect to the need for a second store and others have stated that the store provides a valuable service. Other submitters have also raised concerns with respect to odour.

6.9.2 As previously stated the existing store has existing use rights and therefore can operate as of right, providing the same or similar services to the Taurikura settlement. There has been no need demonstrated (by way of assessment) for a store, or for two stores and no requirement by way of zoning or other provisions in the District plan to provide a store. Therefore, I do not consider this to be a relevant matter to be considered.

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<sup>18</sup> Section 6(c) RMA

<sup>19</sup> Section 6(f) RMA

6.9.3 With respect to odour, there are no rules in the District plan that relate to this. Although, “low levels of ... odour” is detailed as a characteristic of the Living Environment. The café and takeaway activities would require a food license from the District Council. To obtain a food license the applicant would have to demonstrate that they have an appropriate kitchen etc in place and with appropriate extraction and filters, it is considered that any odour effects can be appropriately managed.

## 6.10 Effects Assessment Summary

6.10.1 The applicant's agent has provided information that demonstrates that potential effects on traffic safety can be managed in such a way that the effects will be no more than minor. However, at the time of writing information has not been provided in order to be able to ascertain as to whether other effects will be successfully avoided, remedied and/or mitigated. It is not possible to determine the potential effects of noise and I consider it is not possible to conclude that the effects of the proposal will be minor.

6.10.2 I recognise that the intended use of the site is for a commercial activity. However, the site is not zoned for that purpose. In my opinion, the proposed activity will not successfully integrate into the surrounding environment. The signage and car parking associated with the activity will be clearly visible from the road and the hours of operation will extend into the evening beyond those enabled for permitted commercial activities within the Living Environment. Potential noise effects of the proposal have not been quantified and vehicles entering and exiting the site into the evening will in my opinion be out of character with the surrounding environment. Therefore, I conclude that the potential effects of the proposal will be more than minor.

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

7.0

### 7.1 Statutory Gateway Test

7.1.1 Section 104D (b) requires consideration as to whether the proposed activity will not be contrary to the objectives and policies of the relevant plans.

7.1.2 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”.

7.1.3 The following sections assess whether the proposal will be contrary to the relevant objectives and policies of the Operative Whangarei District Plan.

### 7.2 Operative Whangarei District Plan

7.2.1 The relevant objectives and policies in the Operative Whangarei District Plan for this proposal are located in Chapter 5 – Amenity Values, Chapter 8 – Subdivision and Development, and Chapter 22 – Road Transport (a copy of these chapters is attached as **Appendix 4c** in this report).

7.2.2 **Chapter 5 – Amenity Values:** This chapter addresses issues resulting from land uses that can produce effects which potentially adversely affect the amenity values of the surrounding environment. Chapter 5 also addresses inappropriate development, including the bulk, siting and design of buildings that can compromise amenity values of a locality, especially through effects on access, vehicular, pedestrian and personal safety, day lighting, outlook and privacy. Following are objectives and policies assessed as relevant to the proposal with an associated consideration as to whether or not the proposal is consistent with these objectives and policies.

### 7.2.3 Objective

5.3.1 *The characteristic amenity values of each Environment are maintained and where appropriate enhanced.*

5.3.5 *The actual or potential effects of .... 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.*

### 7.2.4 Policy

5.4.1 *Effects on the Local Environment – To ensure that activities do not produce, beyond the boundaries of the site, adverse effects those 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:*

- *Noise and effects;*
- *Shading;*
- *Glare;*
- *Light spill;*
- *Dust;*
- *Smoke;*
- *Odour;*
- *Vibration;*
- *Spray drift;*
- *Visual amenity.*

*Where internalisation of effects cannot be wholly achieved, the Council will consider a Best Practicable Option approach.*

5.4.2 *Character and Timing of Activities – To allow activities where their nature, timing and duration do not result in adverse effect on amenity values beyond the extent compatible with the characteristics of the surrounding and/or adjacent Environment/s.*

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.*

5.4.7 *Intensity and Design of .... and Development – To ensure that subdivision and development do not unduly compromise the outlook and privacy of adjoining properties, and should be compatible with the character and amenity of the surrounding environment. Particular regard should be given to:*

- *The 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.*

5.4.8 *To encourage sites to present frontage to the street that is appropriate to the function of the site, is compatible with and enhances the overall character of the streetscape, and does not visually dominate the road.*

#### 5.4.11 Signs

- a) *To ensure signs are located, designed and of a scale that avoids, remedies or mitigates adverse effects on amenity values of the surrounding environment, and should not compromise the safety of vehicles and pedestrians.*
- b) *To promote the use of clear and unambiguous signage that ensures that members of the public are adequately informed of directions and amenities, irrespective of their travel mode.*

*5.4.12 Traffic – To encourage vehicle movements and parking demand, where it does not adversely affect the amenity values of the particular environment in which it is located, having regard to the characteristics of that environment and adjacent environments, and the range of activities for which it makes provision for.*

7.2.5 The District Plan employs zoning and rules as the main methods to manage the effects of use and development of resources. This provides a degree of certainty for people as to the activities and resultant amenity to be expected in a particular area and potentially avoids mixing of incompatible activities.

7.2.6 Objective 5.3.1 of the District Plan requires that *“the characteristic amenity values of each Environment are maintained and, where appropriate enhanced”* (emphasis added). To meet this objective the minimum threshold test is that the characteristic amenity values be “maintained”.

7.2.7 This surrounding area is zoned Living Environment, described in Chapter 5 of the District Plan and detailed above. The Living Environment is a high amenity environment and with the increase in activity proposed by the development it is considered likely the low intensity development, high degree of privacy, low levels of noise and nuisances characteristics considered to be prevalent in the Living Environment will not be maintained. I therefore do not consider the proposal can be assessed to be a business activity of an ‘appropriate scale or intensity.’

7.2.8 It has not been demonstrated that the actual and potential effects of the use will be appropriately controlled to an extent compatible with existing and identified future patterns of development and levels of amenity in the surrounding environment (Objective 5.3.5). It is not possible to ensure the activity will not produce beyond the boundaries of the site adverse effects not compatible with the amenity values characteristic of the surrounding environment (Policy 5.4.1) and the nature, timing and duration of the activity will potentially result in adverse effects on amenity values beyond the extent compatible with the characteristics of the surrounding Environment (Policy 5.4.2). The lack of landscaping and/or screening from the road does not result in development that does not unduly compromise the outlook of adjoining properties (Policy 5.4.7) and the frontage of the site to the street will not enhance the overall character of the streetscape (Policy 5.4.8).

7.2.9 The signage proposed is in keeping with Policies 5.4.11 (a) and (b), but at the same time will not achieve Policy 5.4.8. With respect to traffic, the vehicle movements proposed at peak periods are significantly greater than the maximum allowed for in this Environment and there is the potential for this frequency of movement to adversely affect the amenity values of this particular locality, therefore not achieving Policy 5.4.12.

7.2.10 Overall, I consider the use as proposed has not been demonstrated to be able to achieve the relevant objectives and policies of Chapter 5 of the District Plan. Moreover, because of the intensity of development and the lack of any landscaping or design methods to mitigate the potential effects of the proposal, the adverse effect on amenity values will be such that they will detract from the surrounding environment. I therefore conclude that the proposal is contrary to the relevant objectives and policies of Chapter 5.

7.2.11 Chapter 8 – Subdivision and Development

7.2.12 Objectives:

8.3.1 *... development that achieves the sustainable management of natural and physical resources whilst avoiding, remedying or mitigating adverse effects on the environment.*

8.3.2 *.... development that does not detract from the character of the locality and avoids conflicts between incompatible land use activities.*

7.2.13 Policies

8.4.1 *Incompatible Land use Activities – To design and locate ... development so as to avoid, as far as practicable, conflicts between incompatible land use activities.*

8.4.7 *Design and Location – To ensure .... development is designed and located so as to avoid, remedy or mitigate adverse effects on, and where appropriate, enhance:*

- *Amenity values and sense of place*

7.2.14 The relevant objectives and policies in Chapter 8 seek to ensure that design and location of development avoids as far as possible conflict between incompatible land use activities. The question therefore is whether or not the proposed activity will conflict with residential activities in the adjacent properties at a level that cannot be avoided, remedied or mitigated.

7.2.15 As previously detailed, in terms of the effects assessment it is not possible to conclude that the proposal will avoid, remedy or mitigate adverse effects on the environment (Objective 8.3.1), in particular it is not possible to conclude that the proposal will not “*detract from the character of the locality*” (Objective 8.3.2). Moreover, I do not consider it has been demonstrated that the proposal avoids “*as far as practicable, conflicts between incompatible land use activities*” (Policy 8.4.1) and the proposal does not ensure development is designed and located to avoid, remedy or mitigate adverse effects on and where appropriate enhance amenity values and sense of place (Policy 8.4.7).

7.2.16 Because Chapter 8 addresses (in-part) similar issues to those contained in Chapter 5, I am of the opinion that the proposal is contrary to the relevant objectives and policies of Chapter 8 also.

7.2.17 Chapter 22 – Road Transport

7.2.18 Objectives:

22.3.2 *Avoid, remedy or mitigate any adverse effects of road transport activities on the surrounding environment.*

22.3.3 *Protect the road transport network from the adverse effects of adjacent land use, development ....*

7.2.19 Policies:

22.4.4 *Ecological, Landscape and Amenity Values - To ensure adverse effects of road transport activities on ecological, amenity and landscape values should be avoided, remedied or mitigated to the extent practicable.*

22.4.5 *Location of Activities - To locate activities and developments in a manner that makes best use of the existing and proposed road transport infrastructure, and minimises adverse effects on traffic flows.*

22.4.6 *Pedestrian Safety - To ensure that cyclists and pedestrians, including vulnerable groups, such as the young, the elderly and the disabled, are safe from vehicles and other road traffic. Suitable facilities for cyclists and pedestrians should be provided in new developments and within the existing roading hierarchy, as appropriate.*

22.4.7 *Parking and Manoeuvring - To provide adequate parking, turning and manoeuvring space on every site, other than sites in the areas shown in Figures 6A.1 and 6A.2 to Appendix 6, to accommodate traffic generated by the activity, and to maintain the safe and efficient operation of the transport network. To facilitate the provision spaces (owned by Council and/or private companies) in the areas shown in Figures 6A.1 and 6A.2 to Appendix 6, both on and off roads.*

22.4.8 *Visual Obstruction - To ensure that the design, location and extent of buildings, advertising signs and vegetation adjacent to roads does not compromise the safe and efficient operation of the road transport network.*

22.4.9 *Accessible Parking - To require accessible parking to be provided for every activity in accordance with NZS 4121:2001 to increase access to the community for parking permit holders.*

- 7.2.20 The relevant objectives and policies of this chapter seek to ensure that the function of the road network is not compromised. In terms of traffic safety, it has been demonstrated that the proposal can safely operate (subject to some confirmation). However, Objective 22.3.2 and Policy 22.4.4 seek to avoid, remedy or mitigate adverse effects of road transport activities on the surrounding environment, in particular amenity values. As previously detailed it is considered the volume of vehicle movements proposed by this activity is such that it has the potential to adversely affect the amenity values of the surrounding environment. Therefore, I consider the proposal neither achieves nor is contrary to the objectives and policies of Chapter 22 of the District Plan, when read as a whole.
- 7.2.21 Overall, I consider for the reasons detailed above that the proposal is contrary to the overarching intent of the aforementioned relevant objectives and policies of the Operative District Plan and therefore fails the second gateway test in section 104D RMA.

## 8.0 Other Matters

### 8.0

#### 8.1 Precedent

- 8.1.1 The potential precedent of granting a resource consent is not an effect on the environment that can be considered under section 104(1)(a), because the effect is not related to a direct impact of a proposal on the environment. Rather, precedent is considered to relate to the outcome of possible future applications, so is a relevant issue for a consent authority to take into account when considering an application for a consent under section 104(1)(c) *“any other matter the consent authority considers relevant and reasonably necessary to determine the application”*.
- 8.1.2 Strictly speaking, the granting of a particular consent does not constitute a legal precedent and each application is to be treated on its merits. However, the matter of precedent in a general sense can be relevant, particularly where applications seek to infringe minimums or maximums (i.e. height limits, controls on the density for subdivision) detailed within a district plan to an extent that creates conflict with the relevant plan objectives and policies.
- 8.1.3 In such situations it is legitimate to consider whether a precedent will be established by granting a particular application, especially where it is likely that other similar applications may be made, with the expectation that consent be granted as a matter of uniformity and fairness.
- 8.1.4 The issue of precedent is therefore described as a concern about plan integrity and the need for consistent administration of a plan. As the significant majority of the urban land within Whangarei District is zoned Living Environment I consider the issue of precedent must be considered.
- 8.1.5 In an instance where, even though the adverse effects of a particular application may not be significant and could be assessed to be minor, if there is a potential to set a precedent that would undermine the objectives and policies of the relevant plan, then precedent effect should be considered. For a consent to be granted under such circumstances, there should be a particular element(s) of the proposal that sets it aside from the generality of cases.
- 8.1.6 In this instance, I assess there are no particular elements of this proposal that would set it aside from the generality of cases. The site is for all intents and purposes a standard residential site that the applicant is wishing to convert to a commercial use. This proposal could be replicated over and over again on other similar properties and therefore I assess that the granting of this consent could result in a precedent, that in-turn undermines the integrity and consistent administration of the District Plan.

## 9.0 Part 2 Matters

### 9.0

#### 9.1 Section 5 – Purpose

9.1.1 The consideration of this land use application is “*subject to Part 2*”, which includes Sections 5 to 8 of the RMA. Part 2 RMA states the purpose and principles of the RMA and the matters that Council shall have particular regard to in achieving the purpose of the RMA (Sections 5, 6, 7 and 8).

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 Overall, I do not consider the proposal will achieve the purpose and principles of the RMA. The proposal will not promote the sustainable management of natural and physical resources in a way that enables people and communities to provide for their social well-being.

9.1.4 In particular, the proposal will not sustain the physical resources of adjoining landowners in terms of their ability to enjoy their residential properties in the manner considered to be consistent with the identified characteristics of the Living Environment. Furthermore, the proposal has been assessed in this evidence to not be capable of avoiding, remedying or mitigating adverse effects associated with activities on the environment (s5(2)(c)).

9.1.5 In terms of section 6 RMA, there are not considered to be any matters that require particular consideration.

9.1.6 With respect to section 7 RMA the proposal could affect the efficient use and development of physical resources, particularly neighbouring residential properties due to adverse effects from noise and effects on amenity values (s7(b)). The intensity of use proposed and other potential effects will not maintain or enhance amenity values (s7(c)), nor will the quality of the environment be maintained or enhanced (s7(f)).

9.1.7 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. There are no issues identified in the proposal that requires consideration of principles of the Treaty of Waitangi.

## 10.0 Conclusion & Recommendation

### 10.0

#### 10.1 Conclusion

10.1.1 I have assessed the potential effects of the proposal and conclude that the effects will be more than minor, therefore the proposal does not satisfy s104D(1)(a) RMA.

10.1.2 I have assessed the proposal against the relevant objectives and policies of the Whangarei District Council Operative District Plan and conclude that the proposal will be contrary to those

objectives and policies when considered as a whole, therefore the proposal does not satisfy s104D(1)(b) RMA.

- 10.1.3 In terms of s104D(1) RMA “a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either” of the gateway tests, being s104D(1)(a) and (b) are satisfied. In this instance, I have concluded that neither gateway test/limb of s104D is satisfied and therefore it must be recommended that this application be **declined**.

## APPENDICES

Appendix 1 – The application (as lodged)

Appendix 2(a) – Response to Further Information request (s92) dated 15 January 2015

Appendix 2(b) – Further Information Response, including Consultation Record, Additional Plans, Marshall Day Design Advice and Engineering Outcomes Traffic Engineering Report

Appendix 2(c) – Email from reporting planner to applicant regarding issues raised in submissions dated 10 June 2015

Appendix 2(d) – Further information received from applicant dated 22 June 2015

Appendix 2(e) – Email from reporting planner to applicant seeking clarification on matters dated 6 July 2015

Appendix 2(f) – Email from Marshall Day dated 9 July 2015

Appendix 2(g) – Email from applicant dated 17 July 2015

Appendix 2(h) – Further information received from applicant including fencing plan dated 28 July 2015

Appendix 3(a) – WDC Senior Environmental Engineering Officers Report

Appendix 3(b) – WDC Senior Roding Engineer’s Report

Appendix 4(a) – WDC District Plan Living Environment Rules (Chapter 36)

Appendix 4(b) – WDC District Plan Road Transport Rules (Chapter 47)

Appendix 4(c) – WDC District Plan Road Objectives and Policies (Chapters 5, 8 and 22)

Appendix 5 – Section 95 (Notification) Report

Appendix 6 – Submissions received

Appendix 7 – Attachment 5 to the s42A Report for Plan Change 110 (Noise and Vibration)

Appendix 8 – Liquor License and Certificate of Compliance for Taurikura Store

Appendix 9 – File note regarding phone call from Taurikura Store owner