

Hearings Commissioner

Notice of Meeting

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

**Thursday
1 September 2016
9am**

**Application by
Paul and Lisa Roberts**

**Commissioner
Burnette Macnicol**

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Report to Hearings' Commissioner Burnette Macnicol on a Resource Consent Application

This land use consent application was lodged by Reyburn and Bryant Ltd on behalf of Paul and Lisa Roberts and was reported on by Council's Senior Specialist (Consents), Ueli Sasagi.

The proposal is for a three lots subdivision of the subject site creating Lot 1 of 1.420ha, Lot 2 of 1.28ha and Lot 3 of 1.065ha (1.015ha Nett).



10 August 2016

Ueli Sasagi – Senior Specialist (Consents)

Date

This report was peer reviewed by the following signatory:

**Murray McDonald – Acting Resource Consents
Manager**

Date

Statement of staff qualification and experience

Ueli Sasagi – Senior Specialist (Consents)

My name is Ueli Sasagi. I hold the qualifications of Master of Regional and Resource Planning, a Bachelor of Science (Forestry) and a Diploma in Agriculture. I am a full member of the New Zealand Planning Institute. I have been working in resource management and planning matters throughout New Zealand since 1996. I am currently employed as a senior specialist planner for the Whangarei District Council, and have worked for the Council since May 2013. I have been working in a wide range of statutory and policy planning functions, including all stages of the resource consent process in Local and Central Governments, the Private Sector and the Environment Court.

Dean Murphy – Council Senior Environmental Engineering Officer

My full name is Dean Murphy. I work as a Senior Environmental Engineering Officer for the Whangarei District Council in the last seven and half years. I hold the qualifications of NZCE (Civil) and graduate member of IPENZ (GIPENZ). I have five years of experience in civil construction site engineering and project management including earthworks, drainage, roading, water treatment plant, sewer scheme & roading maintenance.

The above staff members 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.

Foreword

The application has been prepared to an acceptable standard incorporating a number of expert assessments. In recognition of the standard of this application, this report will not unnecessarily repeat descriptions or assessments made in the application. If the descriptions or assessments provided on various aspects of the proposal are agreed the report will simply confirm agreement with these aspects. If there are differences in opinion or matters that need more assessment, consideration or discussion in the report or indeed there are matters that are considered inaccurate, incorrect or that have been missed or there is disagreement with opinion or approaches, the report will detail conflicting assessments and opinions (of those of Council experts) where relevant. Where appropriate extracts from the application material or from the Council expert reports will be included to enable this report and assessment to flow and be clearly understood.

Section 42A Hearing Report

Hearing By: Hearings' Commissioner Burnette Macnicol of a non-complying subdivision proposal by Paul and Lisa Roberts to subdivide the subject property into three new allotments. Proposed Lot 1 will have an area of 1.420ha, Lot 2 of 1.28ha and Lot 3 of 1.065ha (1.015ha Nett).

The site is located at 90 Pepi Road, Parua Bay legally described as Lot 1 DP 150222 (CFR NA89B/822). The total area of the site is 3.7650ha.

Evidence By: Ueli Sasagi, MRRP, BSc (Forestry), Dip (Agr), MNZPI
 File Refs: SD1500010, P062497, TRIM16/73022

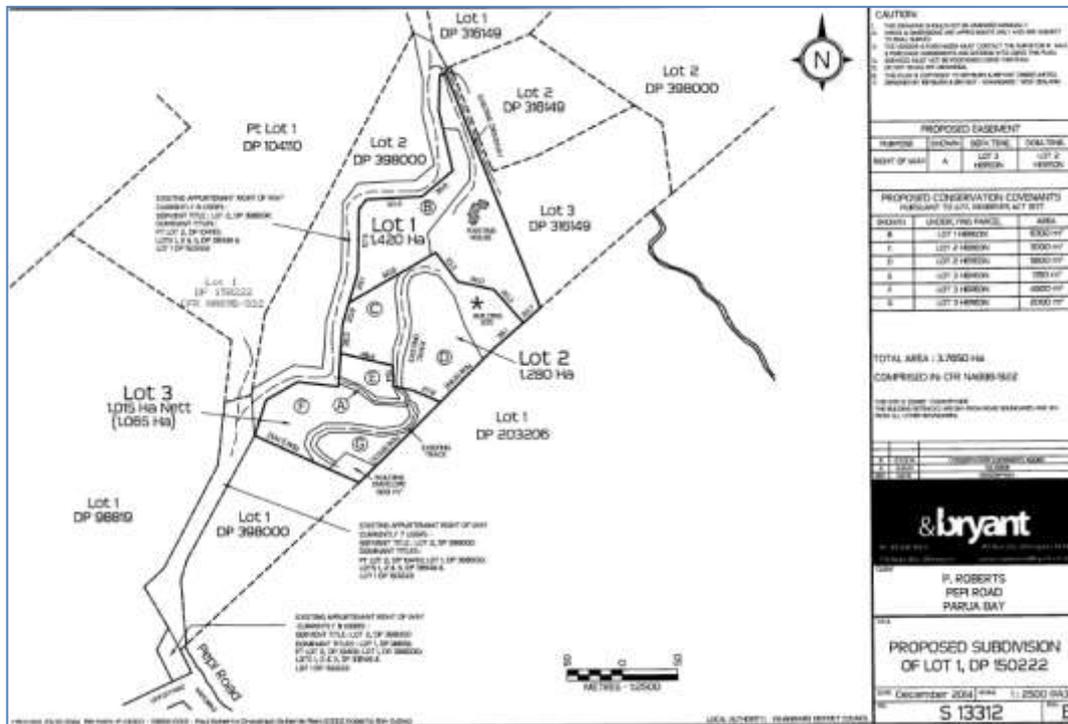
Dated: 8 August 2015

1.0 The Proposal & Background

1.1 The proposal

- 1.1.1 To subdivide the subject property into three new allotments. Proposed Lot 1 will have an area of 1.420ha, Lot 2 of 1.280ha and Lot 3 of 1.065ha (1.015ha Nett).
- 1.1.2 The scheme plan shows potential building sites on both Lots 2 and 3 and proposed covenanted areas B, C, D, E, F, and G. The total areas to be covenanted is 2.315ha (i.e. 62% of the total area of the site – 3.6750ha).

Figure 1: Proposed subdivision plan



- 1.1.3 Access to these new lots will be via a right of way over Lot 2 DP 398000 which is formed as a private extension to Pepi Road. The right of way currently serves seven properties and the formation of two additional residential lots will increase this number to nine.

1.1.4 The proposal includes the localised widening and surfacing of the existing access in accordance with the Council's Environmental Engineering Standards 2010 Edition (EES) comprising the following:

- Installation of a passing bay on Lot 2 DP 398000 on/or about the south-western portion of the property;
- Upgrading of the existing culvert crossing, generally located at the boundary between new Lot 2 and 3.

1.1.5 The scheme plan is in **Attachment 1** while the full application in **Attachment 2**.

1.2 Background

1.2.1 The application was lodged as a non-notified application on 19 January 2015. Included with the application was an Assessment of Effects on the Environment and supporting specialist reports for NES Contaminated Site Investigation, Site Suitability Report by Base Group Consulting, and a Landscape Assessment by Simon Cocker Landscape Architecture. These documents are in **Attachment 2** together with the original application.

1.2.2 Following the initial assessment, the agent was advised on 27 January 2015 that the proposal would require public notification.

1.2.3 While awaiting the balance of payment for notification of the application from the applicant, a section 92 letter requesting further clarification/information for specific engineering issues was sent on 5 February 2015. A response by email to this section 92 request was received on 16 February 2015.

1.2.4 Payment for the balance of notification was received by Council on 23 February 2015.

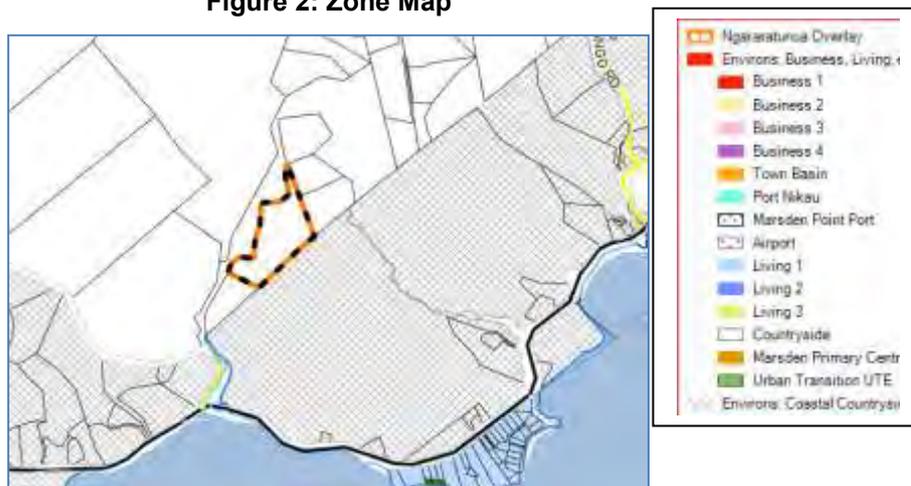
1.2.5 The application was publicly notified on 3 March 2015.

2.0 Site and Surrounds Description

2.1 Zoning, resource areas and other notations

2.1.1 The subject site is located in the Countryside Environment of the Operative District Plan. It is shown in Figure 2 below as directly joining the Coastal Countryside Environment to the south west.

Figure 2: Zone Map



2.1.2 An archaeological site affects the property on its north eastern boundary as shown in Figure 3 below. The notation 'Kiwi Presence' affects the entire site.

Figure 3: Resource Map



2.2 Site Description

- 2.2.1 The site is legally described as Lot 1 DP 150222 held in Computer Freehold Register NA89B/822. It has a total area of 3.7650 hectares.
- 2.2.2 The property is located down a long shared accessway off Pepi Road, a small metalled local road accessed from Whangarei Heads Road approximately 15 kilometres from Central Whangarei. The property is predominantly covered with areas of native bush and surrounded in the north and south by rural residential and lifestyle properties.
- 2.2.3 There is an existing residential dwelling on the site.

Figure 4: The Site and Environs

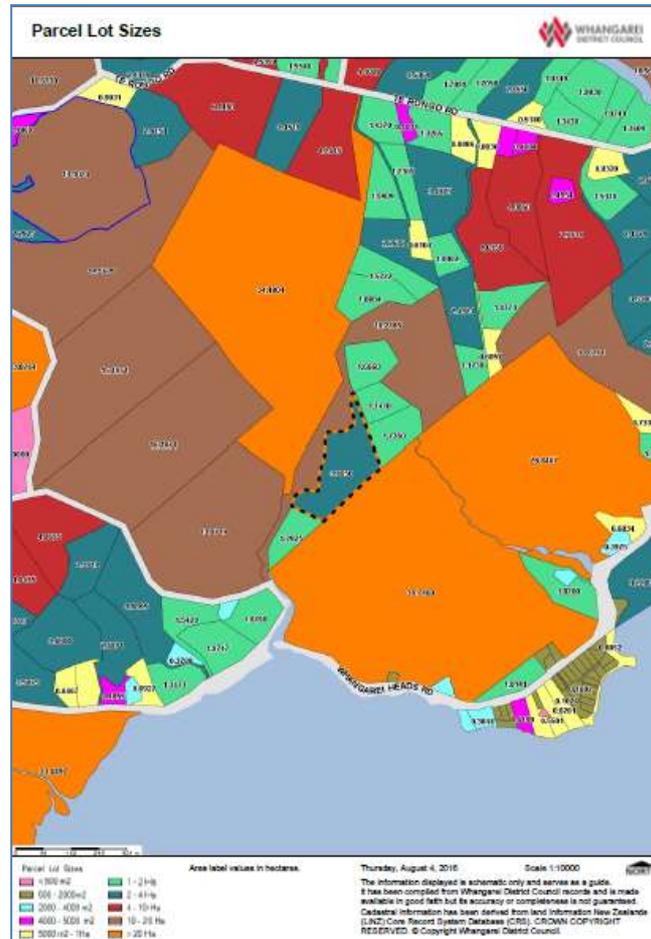


2.3 Surrounding Environment

- 2.3.1 The greater area adjoining the site to the north and northwest is predominantly characterised by larger areas of native forest that links with the forest associated with Mt Tiger. Adjoining the site in the south is an area characterised by steep ridge landform which separates the site from the coast.
- 2.3.2 The site is sandwiched between land parcels of 1.2925ha and 1.735ha and is located amongst land parcels with areas ranging from 0.3788ha and 7.7734ha. It forms a link that

joins the rural residential and lifestyle settlements on Whangarei Heads Road and Te Rongo Road.

Figure 5 – Parcel Areas



3.0 District Plan Assessment

3.1 Reasons for the application

3.1.1 Rule 73.3.1 *Allotment Area* provides for subdivision to be considered as a Discretionary Activity whereby the minimum average net site area of all proposed allotments is 4.0ha (for the purpose of calculating average net site area, any proposed allotment with a net site area greater than 8.0ha will be deemed to have a net site area of 8.0ha). In this instance, upon application of the averaging provisions of the rule, the average net site area is 1.255ha, and therefore the proposal requires consideration as a non-complying activity.

3.1.2 Rule 73.3.7 *Property Access* stipulates that subdivision is a controlled activity if vehicular access to a road is shared where there are 2 or more allotments in the subdivision; and the access complies, in all respects, with the relevant standards in Whangarei District Council's Environmental Engineering Standards 2010 and the relevant provisions in Appendix 9; and no more than 8 allotments or 8 residential units are served by a shared access. In this instance, the access as proposed will not comply with the relevant standards in Whangarei District Council's Environmental Engineering Standards 2010, and therefore consideration of this aspect of the proposal is required as a Restricted Discretionary Activity. Discretion is restricted to the following matters:

- The relevant provisions of the Whangarei District Council's Environmental Engineering Standards 2010;
- The adequacy of the access for the anticipated use;
- The ability of the access to contain required services;
- Traffic safety and visibility;
- The need for acceleration and deceleration lanes;

- Type, frequency and timing of traffic;
 - Access design, number and location of vehicle crossings;
 - Efficiency and safety of roads;
 - Need for forming or upgrading of roads in the vicinity of the site;
 - Need for traffic control, including signs, signals and traffic islands;
 - The additional matters listed in Chapter 70.3.
 - The need for access to the allotment;
 - The safe and efficient movement of people, vehicles and goods;
 - The ability of the road structure to withstand anticipated loads;
 - The effects of water runoff.
- 3.1.3 Rule 47.2.11 *Engineering Standards* stipulates that any activity is permitted if it complies with all the relevant Standards set out in Whangarei District Council's Environmental Engineering Standards 2010 Edition. Access to the proposed allotments does not comply with the standards and is therefore considered a restricted discretionary activity.
- 3.1.4 The proposal meets the relevant standards and terms as controlled activities under additional rules of relevance including Rule 73.3.5 *Existing Buildings*, Rule 73.3.6 *Sites of Significance to Maori* (none identified), Rule 73.3.8 *Vehicle Crossings*, Rule 73.3.10 *Provision for Extension of Services*, Rule 73.3.11 *Water Supply*, Rule 73.3.12 *Stormwater*, Rule 73.3.14 *Sewage*, Rule 73.3.15 *Electricity*, Rule 73.3.16 *Telecommunications* and Rule 73.3.17 *Earthworks*.
- 3.1.5 Overall, the application is considered to be for a non-complying activity.
- 3.2 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011**
- 3.2.1 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES Contaminated Soils) were gazetted on 13th October 2011 and took effect on 1st January 2012. Council is required by law to implement this NES in accordance with the Resource Management Act 1991 (RMA). The standards are applicable if the land in question is, or has been, or is more likely than not to have been used for a hazardous activity or industry and the applicant proposes to subdivide or change the use of the land, or disturb the soil, or remove or replace a fuel storage system.
- 3.2.2 The applicant provided a copy of a property search of Council held information relevant to the subject property which concluded that it has not identified any indication of current or previous activities in the area of the site that are included on the current version of the Hazardous Activities and Industrial List (HAIL) issued by the Ministry for the Environment.
- 3.2.3 Therefore, this proposal is not subject to the NES for Contaminated Soils.

4.0 Notification, Submissions and Written Approvals

4.1 Notification

- 4.1.1 The application was publicly notified on 3 March 2015.

4.2 Submissions

- 4.2.1 The period for submissions opened on 3 March 2015 and closed on 31 March 2015. Copies of the application were specifically served upon Ngati Wai Resource Management Unit, Ngati Kahu O Torongare, Northland Regional Council, Heritage NZ, Department of Conservation, Northland Health, NZ Fire Service and all the adjacent properties owners and occupiers.
- 4.2.2 The application was also circulated internally to the Senior Environment Engineering Officer and Group Planner of Council's Park Department.
- 4.2.3 Following closure of the notification period, Council received a total of seven submissions; five in opposition, one in support and one neutral.

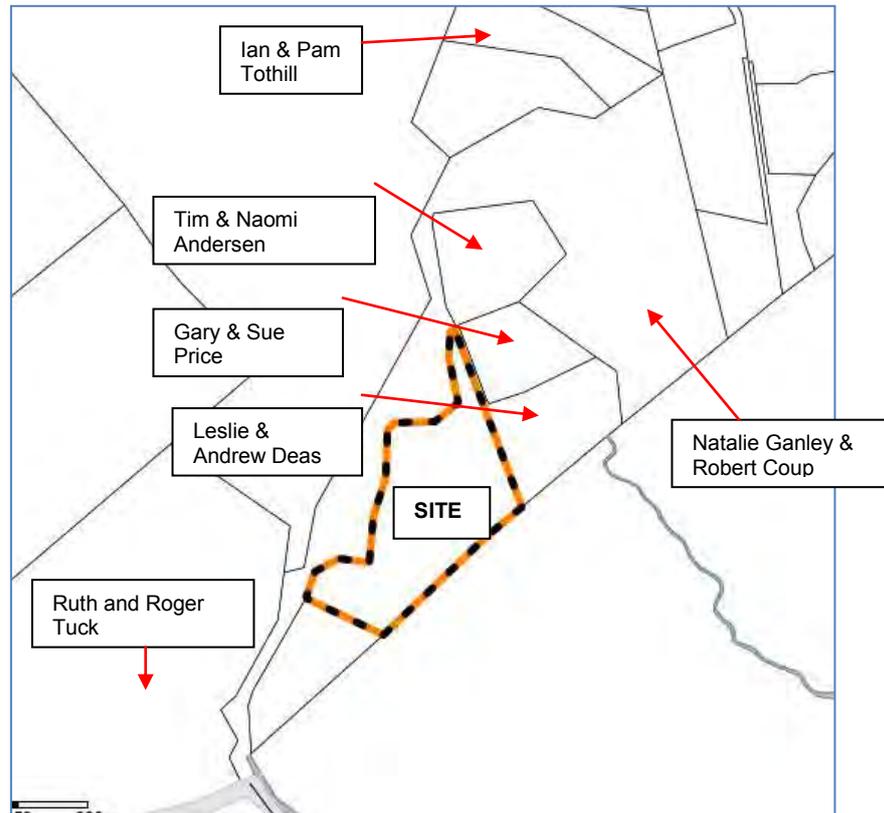
4.2.4 The individual submissions are summarised in the table below (full copy of the individual submissions can be viewed in **Attachment 4**. Figure 6 below shows the location of properties of those who made submission):

Table 1: Summary of Submissions

Name	Issues and Relief Sought	Wish to be Heard ?
Bev Parslow on behalf of Heritage New Zealand	Standard response advising the Council on the following: <ul style="list-style-type: none"> • Heritage is a matter of national importance under s6(f) of RMA; • Archaeological site Q07/646 under NZAA classification affects the site; • Heritage NZ recommended for an archaeological assessment to be undertaken; • Appropriate consent condition and/or advice notes shall be included in the consent based on the assessment. Relief sought is to address the above through consent conditions and/or advice note.	No
Ian and Pam Tothill	Support the proposal. Relief sought – grant consent	No
David Grindle of WRMK on behalf of Robert Coup & Natalie Ganley	Opposed the application because: <ul style="list-style-type: none"> • Proposal is a non-complying activity and is well below 20ha rule; • Proposal is contrary to the objectives and policies of the District Plan; • Proposal will have adverse effects on the amenities of the locality; • The proposed access will not meet the required standards (i.e. traffic safety and visibility, efficiency and safety of roads, movement of people, vehicle and goods and the ability to withstand anticipated loads). • The proposal does not adequately deal with the impact of surface water run-off; and • Effects on infrastructure (i.e. existing track, maintenance and culvert). Relief sought is to decline consent.	Yes
Gary and Sue Price	Opposed the application, because of the following issues: <ul style="list-style-type: none"> • Existing access is not suitable for additional traffic and vehicles; Relief sought is to decline consent. However, if consent is granted, they will like the following issues to be addressed in any decision: <ul style="list-style-type: none"> • Access to new Lot 2 and 3 can only be accessed through the now existing vehicle crossing and not through Lot 1; • The carriageway/driveway up to the new building sites on Lots 2 and 3 needs to be sealed and preferably; concreted. • New owners of the lots need to be aware that they are liable for a share of the costs for any repairs or maintenance to the road. 	No
Leslie and Andrew Deas	Opposed the application because of the following: <ul style="list-style-type: none"> • Increase number of users will correspondingly increase problems which thus questioned the safety 	No

	of the accessway. Relief sought – decline consent	
Tim and Naomi Anderson	Opposed the application because: <ul style="list-style-type: none"> The accessway is too narrow and unsafe for any more increase in the number of users. Relief sought – decline the application	Yes
Ruth and Roger Tuck	Opposed the application because of the following reasons: <ul style="list-style-type: none"> They don't want any more additional traffic past their house; The existing culvert near their house is inadequate and increases ponding in the area. Relief sought – decline consent.	Yes

Figure 6: Location of submitters' properties in relation to the site



4.2.5 On 11 January 2016, Steve Perkinson (Lawyer) advised the Council that the submission filed by Webb Ross McNab Kilpatrick on behalf of Robert Coup and Natalie Ganley is now handle by himself. Phillipa Campbell has been nominated as the planner dealing with future representation on planning matters.

4.2.6 Table 2 below outlines comments on submissions by the applicant's agents

Table 2: Applicants Comments on Submissions

Submitter	Concerns	Progress
Heritage NZ	1. Archaeological Sites	1. Archaeological report has been obtained.
L and A Deas	1. ROW Access <ul style="list-style-type: none"> A vehicle of theirs has slid off road. Also concerned that 	1. Engineering Outcomes Report has been obtained supporting the subdivision and has recommended

	<p>Lot 1 access will be used to access new building sites.</p> <ul style="list-style-type: none"> • ROW should be formed to standard. 	<p>mitigating measures to ensure the safety of all users is maintained.</p> <p>Lot 1 access will not be used.</p>
G and S Price	<p>1. ROW Access</p> <ul style="list-style-type: none"> • Lots 2 and 3 should be accessed via new crossing only as opposed to Lot 1 crossing. • New lot owners will need to be made liable for their share in costs of upgrading and maintaining driveway. <p>2. Stormwater</p> <ul style="list-style-type: none"> • Driveway to Lots 2 and 3 should be sealed and stormwater should be managed. • Stormwater runoff from clay and metal covering. 	<p>1. Lot 1 access will not be used. Pepi Road will not be used by Lots 2 and 3 beyond the created access. Maintenance liability is controlled by schedule 5 of the Property Law Act, 2007. Engineering Outcomes Report has been obtained supporting the subdivision and has recommended mitigating measures.</p> <p>2. Stormwater addressed in BGC report</p>
I and P Tothill	<p>1. Not stated</p>	
T and N Anderson	<p>1. ROW Access</p> <ul style="list-style-type: none"> • Have had previous accident on the road with the Roberts family. • Wants to see widening and re-sealing of road. 	<p>1. Engineering Outcomes Report has been obtained supporting the subdivision and has recommended mitigating measures. The crash occurred at the connection of the driveway for Lot 1 of the subdivision. Users will not be increased in this portion of the right of way.</p>
N Ganley and R Coup	<p>1. Contrary to Objectives and Policies</p> <ul style="list-style-type: none"> • Chapters 5 and 8 • Not consistent with density of the particular area and of the Countryside Environment. <p>2. Amenity</p> <ul style="list-style-type: none"> • Pepi Road has high rural amenity values • Precedent risk <p>3. ROW Access</p> <ul style="list-style-type: none"> • Not constructed to standard • Submitters own ROW land and they do all maintenance. <p>4. Stormwater Disposal</p>	<p>1. We consider the subdivision as consistent with existing density of the area, where rural residential allotments are common. Supporting Landscape report has been obtained.</p> <p>2. Amenity and precedent effects have been addressed in application report. Ecological report has recommended mitigation and maintenance conditions for proposed covenanted bush. SCLA report has recommended design controls and planting.</p> <p>3. Engineering Outcomes Report has been obtained supporting the subdivision</p>

	and Infrastructure <ul style="list-style-type: none"> Track that was created spilled out on to road 	and has recommended mitigating measures. Maintenance liability is controlled by schedule 5 of the Property Law Act, 2007.
		4. Stormwater addressed in section 5 of BGC report.
R and R Tuck	1. ROW Access <ul style="list-style-type: none"> Do not want more traffic past their house. Only dwelling that the new users will pass. 2. Stormwater <ul style="list-style-type: none"> Issue with culvert under the road by their entrance. Dams during heavy rain 	1. Access to this allotment is at very start of right of way. Little to no effects on this party. Engineering Outcomes Report has been obtained supporting the subdivision and has recommended mitigating measures.
		2. Stormwater addressed in section 5 of BGC report

4.2.7 Following closure of the submission period, it became apparent that more information was required to clarify some of the matters raised in submissions which were subsequently requested from the applicant. These include an Archaeological Assessment, Traffic Effects Assessment, and an Ecological Assessment.

4.2.8 The applicant's agent provided the following reports by email dated 20 April 2016 (see **Attachment 3**):

- Traffic Effects Assessment by Dean Scanlen of Engineering Outcome Ltd dated 18 April 2016;
- Ecological Assessment by David Wright of Ecology North dated February 2016;
- Archaeological Assessment by Geometria Ltd dated 24 May 2016; and
- Applicant's response to issues raised by submitters.

4.2.9 My review of the above reports has identified matters that needed further clarifications and/or assessment which was sent to the applicant's agent for consideration by email dated 10 May 2016.

4.2.10 After further clarification received from the authors of the above reports and a meeting with the applicant and their agent, it was agreed that, except for the landscape assessment by Simon Cocker, all other matters that was unclear have been resolved.

4.2.11 Council engaged Paul Quinlan (qualified landscape architecture) to peer review the landscape assessment report by Simon Cocker as agreed between the Council and the applicant. The peer review report was received on 27 June 2016.

4.3 Written Approvals

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

Table 3: Written Approvals

Name	Owner/Occupier	Property
Kate McInnes & James Hunt	Owners	26 Pepi Road
Andrew Deas & Leslie Allen	Owners	92 Pepi Road

Roger & Ruth Tuck	Owners	27 Pepi Road
David John Lewis	Occupier	49A Pepi Road

- 4.3.2 Gary & Sue Price and the applicant agreed to - (1) install a passing bay within the legal boundaries of easement C on DP 136907 on or about the south-western portion of their property; and (2) to upgrade the existing culvert crossing of right of way C on DP 136907, generally located at the boundary between proposed Lot 2 and 3. This has been officiated through a signed Memorandum of Understanding (MoU).
- 4.3.3 This MoU is considered as a private agreement between Gary & Sue Price and the applicant which cannot be considered as part of this application unless the applicant offers it to include as condition of this consent.
- 4.3.4 It is noted that Andrew Deas & Leslie Allen and Roger & Ruth Tuck have made submissions to the application during notification. Unless the written approvals are withdrawn prior to the hearing, the consent authority is unable to consider any effects on these parties. There is still an obligation however to consider their submission.

5.0 Resource Management Act 1991- Statutory Considerations

5.1 Section 104

- 5.1.1 The proposal is subject to Section 104 which provides the matters, subject to Part 2 of the Act that Council must have regard to when considering an application for resource consent and any submissions received.
- 5.1.2 The proposal is also subject to Section 104B which outlines Council's powers when making a determination on a discretionary or non-complying activity.
- 5.1.3 Being a non-complying activity, Section 104D (*Particular restrictions for non-complying activities*) requires the proposal to be subject to the two gateway tests outlined in this section:
- (i) The adverse effects of the activity on the environment will be minor; or
 - (ii) The application is for an activity that will not be contrary to the objectives and policies of the relevant plans.
- 5.1.4 If either of these gateway tests are satisfied, a consent authority can then consider whether or not to grant consent.

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

6.1 Definition of Effect

- 6.1.1 Section 3 of the Act defines the term 'effect' as including –
- (a) any positive or adverse effects; and
 - (b) any temporary or permanent effect; and
 - (c) any past, present or future effect; and
 - (d) any cumulative effect which arises over time or in combination with other effects – regardless of the scale, intensity, duration, or frequency of the effect, and also includes-
 - (e) any potential effect of high probability; and
 - (f) any potential effect of low probability which has a high potential impact.”

6.2 Permitted Baseline

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

- 6.2.2 The application site contains a residential unit which will be located on proposed Lot 1 and has “Existing Use Rights”.
- 6.2.3 There are no permitted forms of subdivision under the Operative Whangarei District Plan, and therefore the standards for land use activities within the Countryside Environment are relevant to the consideration of this application. In this Environment, the construction of a residential unit or a minor residential unit can be considered a permitted activity if:
- The residential unit, after completion, will be the only residential unit on the site; or
 - The residential unit will be an additional residential unit on the site; and there is at least 20ha of net site area associated with each residential unit; and
 - The minor residential unit, after completion, will be the only minor residential unit on the site and the minimum net site area of the allotment is 8000m²; and
 - It is not within a Mineral Extraction Area as shown on the Planning Maps.
 - It is not within 500m of a mineral Extraction Area.
- 6.2.4 A minor residential unit can be established on the site as of right. Minor residential unit is defined in the District Plan as:

“..a residential unit located no more than 15.0 metres from another residential unit on the same site/lot with a gross floor area of no more than 70.0m², excluding the gross floor area used exclusively for the storage of motor vehicles in association with the minor residential unit.”

6.3 Amenity Values

- 6.3.1 The District Plan describes amenity values as being the characteristics that influence and enhance people appreciation of a particular area. It also states that amenity values of an area are determined by natural and physical characteristics of the area, and the effects of activities.
- 6.3.2 As such, amenity consists of two components. One is ‘amenity attributes’ which are tangible matters such as noise, odour, density or shading. The other is ‘perceptions and expectations’ which are more intangible values which individuals and communities hold to their neighbourhoods such as their own perceptions of noise, culture, desires and tolerance.
- 6.3.3 The District Plan recognises the Countryside Environment to be used predominantly for primary production, but is also used for low-density residential purposes. When choosing to live in a rural area, people must expect and accept a certain level of odour, noise and other effects which are characteristic of primary production, recognising the scale and intensity of these activities which contribute to rural character. Rural areas do, however, tend to have high amenity values, due primarily to the following characteristics:
- The intermittent nature of most agricultural activities;
 - Open landscapes and views;
 - A low intensity of development;
 - Feelings of remoteness and community;
 - Low noise levels, particularly at night;
 - A high degree of privacy;
 - Daylight and sunlight access;
 - Low levels of vehicular traffic;
 - Green ‘unspoiled’ landscape with indigenous vegetation.
- 6.3.4 Therefore, for an informed and credible assessment of effects of the proposal on the environment, it is important to consider the ‘existing environment’ and the ‘permitted baseline’ to test the ideal situation as described above as to whether or not the effects arising from granting consent for the proposal are less or more than minor.
- 6.3.5 In this instance, it is acknowledged that the majority of the site is covered in vegetation (predominantly kanuka, kahikatea, totara and tanekaha). The site contains a residential dwelling situated on the ridge crest at the northern-most part of the site. The site also contains open land on the ridge crest which is in pasture where two areas have been identified as suitable building sites in the proposal. The flanks of the ridge crest are heavily

vegetated. The site is within the rolling hills that flank the northern edge of the Whangarei Harbour.

- 6.3.6 Within the wider context, native forests predominates the north and northwest of the site where it links with the forest associated with Mt Tiger. Simon Cocker's "Assessment of Visual, and Landscape Effects" (SCLA) described the site being situated within a landscape that display a more fragmented pattern of vegetation. SCLA report states "*Native remnants have been retained on the steeper gully slopes, but these areas of vegetation form a mosaic with plantations of pine and eucalyptus. Whilst this mosaic of vegetation provides a strongly patterned framework, it also lends the landscape a modified and settled character.*"
- 6.3.7 In terms of area character as reflected in the above statement, the presence of building structure, including dwellings contribute to the settled character where most of the established residential dwellings on he ridge top are orientated to the south and southeast. The built development north east of the site is generally associated with lots ranging from 0.6-7 hectares in area.
- 6.3.8 It is noted that the site is sandwiched between land parcels of 1.2925ha and 1.735ha and is located amongst land parcels with areas ranging from 0.3788ha and 7.7734ha. The site links the rural residential and rural lifestyle settlements on Whangarei Heads Road and Te Rongo Road.
- 6.3.9 Generally, the character of the site and the surrounding area can be summed up by the site being situated along the line of rural residential and rural lifestyle blocks land linking the two settlements on Whangarei Heads Road and Te Rongo Road. This stretch of rural residential and lifestyle blocks is flanked on both sides by heavily vegetated land of native forest which is dissected by a number of small stream catchments.
- 6.3.10 As such, it is considered that the ideal Countryside Environment situation that the district plan described does not exist anymore. The existing environment around the subdivision site has been 'compromised' according to SCLA's landscape assessments.
- 6.3.11 In terms of permitted baseline, I have discussed that in section 6.2 above.
- 6.3.12 In view of the above comments and my site visit I have assessed the proposal against the characteristic amenities (6.3.3 above) and then consider on balance as to whether or not the overall effects of the proposed subdivision on amenity values are less or more than minor:

The intermittent nature of most agricultural activities;

The Land Use Capability rating of the site is LUCVI which is suitable for forestry or pasture. In an ideal situation for the Countryside Environment, properties in the area should have been planted in forestry or used as pasture land. However, due to the undulating topography of the land with very steep slopes, much are left with native vegetation. Presently, the land adjoining the site to the north and south has been developed into rural residential and rural lifestyle blocks of small lot sizes with dwellings orientated to capture views of the ocean and coastal areas with steep slopes being covenanted for conservation purposes. Some properties in the area are used for lifestyle activities in combination with limited sheep grazing or small stands of forest for landscape/scenery purposes.

The site is currently used for residential activity with the majority being covered in native vegetation. The proposed subdivision will result in lots averaging 1.2ha with over 60% of existing vegetative areas to be permanently covenanted for bush protection. Arguably, the potential use of 2 additional lots for residential dwellings could remove some of the existing agricultural activity land. That removal may result in changes to the intermittent nature of agricultural activity on the site. Considered in isolation, the removal of land may change the nature of the agricultural activity if viewed within the confines of the site boundaries. However, such change may not be noticeable if taken in context given the character of the site and adjoining properties with their agricultural uses in combination with

Open landscapes and views;	residential activities. As such it is considered that the effects are no more than minor.
	<p>Simon Cocker's "Assessment of Visual and Landscape Effects" has included a comprehensive description on how the wider landscape context in this part of Whangarei district is viewed (see page 2 section 2 of the report dated November 2014). Paul Quinlan shared the same description through his peer review. Paul Quinlan described the local context and why it is viewed as such <i>"...the topography determines that building sites are generally located on the ridges and spurs, or on the lower slopes of the landform, but above the flood-plains of the gullies. The steep flanks and gullies of the landform are often vegetated and un-built. Consequently, the dwellings appear either as a series of individual residential buildings or as a loose cluster of buildings along the ridges and spurs."</i></p>
	<p>I consider the site to sit well within the above character and features of the landscape and amenity values.</p>
	<p>The question remains whether the creation of two additional allotments with associated built development affects the open landscapes and view of the area. In my view, if this proposal is viewed in isolation, then it is likely that the effects may be considered significant. However, if considered within the context of surrounding environment and the retention of existing vegetation by way of restricted bush covenants, I consider the effects on open landscapes and view to be no more than minor.</p>
	<p>In support of the above conclusion, Paul Quinlan commented that <i>"...the vegetation plays a significant role in providing a cohesive element that enables a level of built-development to be visually absorbed. As long as this broader visual landscape pattern is maintained, the actual sizes of the individual lots are of little relevance in respect to visual impact."</i></p>
A low intensity of development;	<p>The site could be replanted as a forest stand or converted to pasture land in accordance with its landuse capability classification. Such development would result in low intensity with less built development and associated development elements i.e. new access roads, cars, light, buildings, etc. The current character is of highly vegetated on flanks of the ridge crest covered in pasture. The introduction of residential activities and associated effects may change that site character. However, the surrounding environment does not have a low intensity of development. The existing environment should therefore be a consideration for assessing the level of development intensity acceptable on the subject site. Considered in isolation, the effects of the proposal in relation to the intensity of development would likely be considered significant. However, considered within the context of the surrounding environment, the effects of the proposal are considered acceptable. Furthermore, the retention of existing vegetation by way of restrictive bush covenants will absorb any built-form and thus retain the low intensity of development for the site.</p>
Feelings of remoteness and community;	<p>At present, the site has an existing feeling of remoteness and of rural character. However, changes brought about by built-form and associated activities may change that feeling due to elements associated with development. Considered in isolation, the changes may have an impact on the feeling of remoteness. However, with the existing vegetation covering the majority of the site to be covenanted and the built development to be nested within this vegetation and if this is considered within the context of the surrounding environment, the effects of the proposal are considered</p>

Low noise levels, particularly at night;	<p>acceptable.</p> <p>Noise emission may not be an issue given that agricultural activities often produce noise over and above that expected to be created by residential activities. As such the effects of the proposal in terms of noise emission may be less than minor.</p>
A high degree of privacy;	<p>The development rights for this site are that of one main residential unit and a minor residential unit. Granting consent for the subdivision will enable two additional residential units plus three minor residential units on the site. Considering the changes between one main dwelling and minor dwelling with two extra main dwellings and three minor dwellings, privacy will be compromised due to the introduction to the site of new accessways with more car movements, lights, noise, etc. It is unlikely that the retention of existing vegetation and other associated mitigation measures can avoid, remedy or mitigate the internal effects of the proposal on privacy. However, if the effects on privacy are assessed from the surrounding area, then I think the effects are acceptable given the lifestyle character of adjacent properties.</p>
Daylight and sunlight access;	<p>Not an issue given the adjoining residential dwellings will appropriately be set back from boundaries and the accessway.</p>
Low levels of vehicular traffic;	<p>The level of vehicular traffic will increase due to additional residential activities expected on the site. However, in view of the surrounding area being largely use for lifestyle living, vehicular traffic presence in the area is not unusual. Coupled with normal traffic use associated with agricultural activity, traffic may not be seen as an activity in the area that creates effects which are considered to be more than minor.</p>
Green 'unspoiled' landscape with indigenous vegetation.	<p>Simon Cocker described the site as predominantly vegetated with an existing dwelling. It is located within the rolling hills that flank the northern edge of the Whangarei harbour. Therefore, the site does possess green 'unspoiled' landscape with native vegetation. This area of 'unspoiled' landscape with indigenous vegetation is bisected by an area of rural residential and rural lifestyle blocks stretching from Te Rongo Road and Whangarei Heads Road. Provided that existing native vegetation is protected by way of a covenant together with locating built developments in less exposed locations, I do not consider that the change of use of the site will have effects on the surrounding environment that are considered to be more than minor.</p>
6.3.13	<p>Despite effects identified on some amenity characteristics as being questionable and may cross the more than minor effects threshold, I consider them as site specific and if considered in isolation they are significant. However, if considered within the context of the surrounding environment, then effects are acceptable.</p>
6.3.14	<p>In support of the above comment, I have also assessed the proposal against the character of the area referring specifically on the principal reasons for the 'Allotment Area' rule of the Countryside where it states <i>"Subdivision that does not comply with a standard for a controlled or discretionary activity is a non-complying activity. Consequently, for any such proposal to be assessed as acceptable, the applicant would first need to show that the proposed subdivision would have no more than minor effects on the overall level of density appropriate to the Environment in question, and/or was <u>consistent with the density of development in the immediate area surrounding the proposal. In other words, the proposed subdivision would need to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes</u>"</i>.</p>
6.3.15	<p>It is my view that the proposal is in keeping with the surrounding allotment sizes already in existence in the area. The pattern of rural residential and rural lifestyle blocks stretch from a settlement on Whangarei Heads Road linking a similar pattern on Te Rongo Road in the</p>

north. Subdividing the subject site into lots averaging to 1.2ha provides the 'missing link' between the property at bottom of Pepi Road and the other three properties at the top.

- 6.3.16 In addition, Simon Cocker provided an assessment of visual and landscape effects report which was peer reviewed by Paul Quinlan. Both experienced and qualified landscape architectures share the same conclusion and support my assessment above. Simon Cocker concludes:

"...the proposal reflects the pattern of subdivision in the vicinity – being a cluster of settlement integrated into the landscape by virtue of the characteristic vegetation patterns. As such it will not detract from the existing landscape or rural character of the area. Since the proposal will be consistent with the existing built pattern of the landscape, and will only require limited physical landscape change, it is my opinion that the potential landscape effects will be less than minor overall."

Paul Quinlan in his peer review report concludes:

"I concur with the overall assessment of Mr Cocker. Overall, in relation to the wider landscape context of Parua Bay, the proposal will result in less than minor adverse effects on the landscape character, rural amenity and natural character values."

- 6.3.17 Therefore, in summary and on balance, I consider that the effects of the proposal as it is currently presented on the amenity values and the character of the environment will be no more than minor.

- 6.3.18 The above assessment addresses the submission by N Ganley and R Coup.

6.4 Cultural and Archaeological Effects

- 6.4.1 The application was forwarded to Ngati Wai Resource Management Unit and Ngati Kahu O Torongare for review and provides any comments on it. No response was received from either of the group.

- 6.4.2 An archaeological site record Q07/646 under NZAA classification identifies four pit sites and two terraces located to the north of the subdivided site. Consultation with the local Iwi would assist in assessing effects. However, the local Iwi did not to make a submission on this proposal. It is noted that the assessment by Geometria, who conducted an archaeological study of the area, concluded that the subdivision proposal and associated built development would not affect this archaeological record. Such conclusion is considered adequate in addressing the matters from the local Iwi perspective.

- 6.4.3 It is relevant to consider any accidental discovery of unknown sites of significant to Maori during development of the site. As such the inclusion of an advice note will aid to bring obligations under the Heritage New Zealand Pouhere Taonga 2014 to future owners' attention, and the Accidental Discovery Protocol indicates what actions should be undertaken if an archaeological site is discovered. As such I consider that should consent be granted the inclusion of such advice note is a reasonable request by Heritage New Zealand in its submission.

- 6.4.4 Taking the above into account, the effects of the proposal on cultural and archaeological matters are considered to be less than minor.

6.5 Reverse Sensitivity

- 6.5.1 Reverse sensitivity is more likely to arise if the land is used predominantly for production use (permitted activity) with residential activities located amongst that production use where residential activity (not permitted) is affected by the production use e.g. spray drift from orchards, high level of noise from forestry operation, etc. In view of the proposed subdivision creating average lot sizes of 1.2 hectares with the surrounding environment being largely used for lifestyle living and covenanted land for conservation, it is unlikely that reverse sensitivity issues will arise.

6.6 Ecological Assessment

- 6.6.1 The scheme plan submitted with the application shows 6 separate areas proposed to be covenanted for conservation purposes. The application as notified did not include an assessment of the proposed covenanted area in terms of ecological values and any impact of

potential built development on these proposed covenanted areas which was requested under s92 for further information.

6.6.2 David Wright of Ecology North provided an 'Ecological Assessment of Proposed Conservation Covenant' dated February 2016. The report discusses ecological pests, ecological significance, potential effects of the new built development on the proposed covenant areas, and mitigation measures for identified effects.

6.6.3 The report concludes that:

- These survey areas are worthy of protection. They show a moderate-high level of ecological significance at a district level based on the Ecological Benefits criteria set out in schedule 17D of the District Plan;
- The site should also be considered significant for the confirmed presence of one regionally significant species (kukupa) and the potential presence of a Nationally Threatened species (North Island brown kiwi);
- Provided that the management recommendations outline in the report are implemented to a high standard, it is my opinion that the potential ecological threat should be adequately mitigated to a level where the impacts should be less than minor.

6.6.4 Overall, upon imposing the relevant conditions as discussed, the effects created by the proposal on ecological values will be no more than minor.

6.7 Site Suitability and Servicing

6.7.1 The application is supported by a Subdivision Assessment report (engineering report) compiled by Base Group Consulting (reference 14051 dated 24 October 2014) which provides consideration and comments on the existing site stability, proposed development effects on site stability, geotechnical suitability for foundation, access arrangement, natural hazards, stormwater management, onsite wastewater management and portable water supply.

6.7.2 The report concludes that the identified building sites are safe, stable and suitable for residential development. The site is also considered to be suitable for onsite wastewater and stormwater management. The existing access has varying degree of formation standard and will need upgrading. Individual households will utilise rainwater harvesting to source water for consumption.

6.7.3 Council's Senior Environmental Engineering Officer (SEEO) reviewed the engineering report and concluded that the proposal has effects in regards to engineering aspects which are less than minor (see **Attachment 5**).

6.8 Road Safety and Access Effects

6.8.1 Most submissions have identified access as the main issue in contention. The applicant was requested to provide a traffic assessment addressing concerns raised by the submitters.

6.8.2 The applicant engaged Dean Scanlen of Engineering Outcomes to undertake the Traffic Effects Assessment. A report dated 18 April 2016 was provided to Council on 20 April 2016. The report considers traffic generation, crashes, an assessment of traffic effects and proposed mitigation measures. The report concluded overall that with the improvements recommended in the report, it is concluded that the risks associated with the generated traffic will be well within acceptable limits and are not a barrier to the granting of consent.

6.8.3 Council's SEEO, Dean Murphy, has reviewed the traffic assessment and provided the additional comments below:

- *The site gains vehicle access from Pepi Road via 3 existing rights of way over Lot 2 DP 398000. Proposed lot 1 has an existing vehicle crossing at the northern end of the right of way over Lot 2 DP 398000 at the turning head. Proposed lots 2 and 3 will gain vehicle access from Lot 2 DP 398000 via proposed right of way A*

WDC EES ROW Assessment				
Section of ROW over Lot 2 DP	Increase in users	Existing formation standard	WDC EES Standard	Proposed upgrading

398000				
Termination of Pepi Road to the Lot 1 DP 98819 vehicle crossing	8 to 10	Approx 4.0m wide metalled pavement	Table 3.2 Class A (7.0m carriageway width & 6.0m seal)	Nil
Lot 1 DP 98819 vehicle crossing to the Pt Lot 1 DP 104110 vehicle crossing	7 to 9	Approx 4.5m wide sealed pavement with passing bay area widened to approx 5.5m	Table 3.2 Class A (7.0m carriageway width & 6.0m seal)	Nil
Pt Lot 1 DP 104110 vehicle crossing ROW A vehicle crossing	6 to 8	Approx 3.5m wide sealed pavement	Table 3.7 Category G (6.0m carriageway width & 5.5m seal)	4.5m carriageway width & 4.0m surface width

- The applicant has confirmed that right of way A will be upgraded to comply with WDC EES Table 3.7 Category E(Alt)* (4.5m carriageway with a 4.0m surface width).
- Noting the above table the proposal does not comply with Rule 73.3.7 Property Access; however the adverse effects of this noncompliance are considered to be less than minor noting that the WDC public section of Pepi Road does not meet the WDC EES Table 3.2 requirements.
- Written approval has been provided from the NZ Fire Service noting that a 4.5m wide carriage way with a 4.0m surface width is required to provide complying access for fire fighting appliances.
- The proposed vehicle crossing can achieve complying sight lines.

6.8.4 Overall, subject to complying with conditions of consent, traffic effects arising from the proposed subdivision will be no more than minor.

6.8.5 The above technical engineering comments address concerns in submissions from: G & S Price, T & N Andersen, and N Ganley & R Coup.

6.8.6 The applicant has also commented on the access issues as included in Table 2 above.

6.9 Cumulative Effects

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

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

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

6.9.2 Having regard to the above, the following assessment considers whether the residual effects of the proposed activity (after mitigation by conditions) will give rise to unacceptable cumulative adverse effects that are beyond the carrying capacity of the receiving environment,

including supporting infrastructure and the amenity and character values that define the locality.

6.9.3 For a cumulative effect to be significant, it must breach a threshold or ‘tip the balance’. In this instance, the proposal is considered to extend the existing area of higher density development into a more rural part of the locality which is currently undeveloped and as such it is likely the proposal will create adverse cumulative effects with an incremental change in the character of the rural environment.

6.9.4 However, will it ‘tip the balance’ to a level where it can be determined that the overall effects cross an unacceptable level? I do not think it does, based on further comments by Paul Quinlan who peer reviewed Simon Cocker’s assessment and provided the following key observation:

“...subdivision is a process that effects apparent intensity of built-development within a landscape, and in this case, will result in the addition of another two dwellings. However, I am in agreement with Mr Cocker, that the resulting pattern of development of development will be consistent with the existing pattern. As to appropriateness, this is closely bound to an assessment of whether any such further development – albeit consistent with the existing pattern, would create adverse cumulative effects. In my opinion, it would not....I do not consider that the proposed subdivision and development would result in adverse cumulative effects on the wider landscape, or natural character values of Parua Bay.”

6.9.5 It is clear from the above comment that although there may be cumulative adverse visual and landscape effects arising from the proposal, it will not entirely result in a more than minor effect if the existing vegetative areas are covenanted.

6.10 Effects summary

6.10.1 While there may be capacity within the surrounding area (including the site) to retain its rural character and avoid sporadic effects from future subdivision, I am not satisfied that would be the most appropriate use of the site. This is based on a balanced consideration of the site’s land use categorisation and the professional views expressed by two experienced landscape architects, an ecologist, an archaeologist and a traffic engineer.

6.10.2 I have also considered whether or not the sizes of the proposed lots averaging to 1.2 hectares could tip the balance and cross the more than minor effect threshold particularly in terms of amenity. In my view it does not based on the following reasons:

- Although the proposal is assessed as a non-complying activity, there is strong indication that applying the reasoning behind developing the ‘Allotment Areas’ rule of the Countryside Environment could influence any assessment. The Principal Reason states *“Subdivision that does not comply with a standard for a controlled or discretionary activity is a non-complying activity. Consequently, for any such proposal to be assessed as acceptable, the applicant would first need to show that the proposed subdivision would have no more than minor effects on the overall level of density appropriate to the Environment in question, and/or was consistent with the density of development in the immediate area surrounding the proposal. In other words, the proposed subdivision would need to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes”*. In this instance, the pattern of the proposed subdivision is reflected in the above and therefore concludes that allowing the subdivision will not increase the existing density and will create the ‘missing link’ of similar density lots linking the rural residential and rural lifestyle block between Whangarei Heads Road and Te Rongo Road.
- Every subdivision proposal is to be considered on its own merits taking into account the particular characteristics and features of the environment within which the site is located. With careful implementation of mitigation measures suggested by the landscape architect and the ecologist (covenanted areas, build design controls, etc), effects on ecology, landscape values and visual aspects will be no more than minor.

6.10.3 I have considered the character and features of the rural residential and rural lifestyle areas between Te Rongo Road and Whangarei Heads Road in assessing the overall impact of the proposed subdivision. In a traditional sense, settlements have a distinct ‘sense of place’,

identity and individuality accentuated by their spatial separation and sense of containment within their own unique respective landscape features. This pattern is common within the coastal areas of the district which is already weakened and compromised as can be seen in this instance according to two experienced landscape architects. This confirms my overall assessment that the effects of the proposal on the surrounding environment will be no more than minor.

- 6.10.4 Therefore taking into account the above assessment, overall I am of the opinion that the adverse effects of the proposal are acceptable in this instance and will be no more than minor.

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

7.1 Statutory Gateway Test

- 7.1.1 Section 104D(1)(b) directs that Council consider 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 against the relevant objectives and policies of the relevant plans for the subject site- being the Northland Regional Policy Statement (both the operative and proposed) and the Regional Water and Soil Plan for Northland and the Operative Whangarei District Plan.

7.2 Operative Regional Policy Statement for Northland (RPS)

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

- 7.2.2 The content of the RPS is reflected in and given effect to through the provisions of the Whangarei District Plan and as such the relevant matters are considered further in subsection 7.5.

- 7.2.3 The Northland Regional Council formally adopted the changes to its Regional Policy Statement which renders it fully operative in May 2016. Of relevance in terms of controlling the effects of subdivision, Policy 5.1.1 *Planned and Co-Ordinate Development* of the PRPS seeks to ensure that:

Subdivision, use and development should be located, designed and built in a planned and co-ordinated manner which:

- a) *Is guided by the 'Regional Form and Development Guidelines' in Appendix 2;*
- b) *Is guided by the 'Regional Urban Design Guidelines' in Appendix 2 when it is urban in nature;*
- c) *Recognises and addresses potential cumulative effects of subdivision, use, and development, and is based on sufficient information to allow assessment of the potential long-term effects of development;*
- d) *Is integrated with the development, funding, implementation, and operation of transport, energy, water, waste, and other infrastructure;*
- e) *Should not result in incompatible adjacent land uses in close proximity and avoids the potential for reverse sensitivity; and*

- f) *Ensures that plan changes and subdivision to / in a primary production zone, do not materially reduce the potential for soil-based primary production on land with highly versatile soils, or if they do, the net public benefit exceeds the reduced potential for soil-based primary production activities; and*
- g) *Maintains or enhances the sense of place and character of the surrounding environment except where changes are anticipated by approved regional or district council growth strategies and / or district or regional plan provisions.*

- 7.2.4 In terms of maintaining the opportunity for soil based primary production, Land Use Capability Maps identify the subject site as having LUC VI which denotes land not considered suitable for arable use, but suitable for pasture or forestry. The Operative Regional Policy Statement identifies land use classes LUC I to LUC III as being considered versatile/productive soils.
- 7.2.5 The average allotment area for this subdivision is 1.2ha of which can still be use for forestry or grazing on limited basis. All the newly created lots will however be predominantly bush covenant, and as such the proposal is not considered to unduly compromise the use of Class VI soils.
- 7.2.6 As previously discussed within Section 6.0, the proposal is considered to reflect a density and pattern of subdivision which is currently found in the adjoining area. Due to the rural character and coastal features being weakened and compromised, this proposal will consolidate the existing cluster of higher density development in the area.
- 7.2.7 Overall, the proposal is not considered to be inconsistent with the RPS (as given effect to through the Whangarei District Plan), as required to be considered under Section 104(b)(v).

7.3 Regional Soil and Water Plan for Northland

- 7.3.1 The Regional Water and Soil Plan for Northland (RWSP), which is administered by the Northland Regional Council, covers the land and water resources of the Northland region, it controls discharges and land disturbance activities. The Plan aims to prevent activities occurring which would result in unacceptable adverse effects.
- 7.3.2 No comments were received from the Northland Regional Council in response to the application that was served upon them. The site is not located upon an At-Risk Aquifer, although the application proposes that any new residential development be serviced by way of tank supply.
- 7.3.3 Council's Senior Environmental Engineering Officer, Dean Murphy, has considered matters relating to site servicing, including the engineering recommendations within the application. Mr Murphy is satisfied that subject to appropriate conditions of consent, future development will achieve the environmental results anticipated by the RWSP.
- 7.3.4 For any potential discharges to land and air, the consent holder will have to make sure discharge permits are required for the Northland Regional Council.

7.4 Operative Whangarei District Plan

- 7.4.1 Those objectives and policies of relevance to the proposal are included within Chapter 5 *Amenity Values*, Chapter 6 *Built Form and Development*, Chapter 8 *Subdivision and Development*, and Chapter 17 *Indigenous Vegetation and Habitat*. Full copies of these chapters are included in **Attachment 6**.
- 7.4.2 The following table assesses the proposed subdivision against the relevant objectives and policies within these Chapters:

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

Chapter 5 – Amenity Values	
Objective	Comment
5.3.1 The characteristic amenity values of each Environment are maintained and, where appropriate enhanced.	The objectives and policies of Chapter 5 focus on maintaining the amenity values of localities and avoiding/preventing inappropriate subdivision throughout the district. This is to be achieved through
5.3.5 The actual or potential effects of subdivision use and development is	

<p>appropriately controlled and those activities located and designed, are to be compatible with existing and identified future patterns of development and levels of amenity in the surrounding environment.</p>	<p>appropriate intensity and design of the subdivision and promoting development that is sustainable and avoids, remedies or mitigates adverse effects through consolidated (non-sporadic and non-sprawling) development.</p>
<p>Policy</p>	
<p>5.4.5 Countryside Environments</p> <p>To ensure rural amenity values in the Countryside Environments are protected from subdivision, use or development that is sporadic or otherwise inappropriate in character, intensity, scale or location.</p>	<p>As discussed in Section 6.0 of this report the proposal can arguably be considered in line with the existing patterns of landholdings and developments in this locality. Note that consideration was given to changes to the areas to the north and south of the site occurring within the last 10 years (from rural to rural residential and lifestyle character). Those changes have weighed significantly in considering this proposal being able to be absorbed into the existing land fragmentations and incremental cumulative changes to the pattern and character. It is further noted that the proposed subdivision for three lots averaging 1.2ha will match the adjoining properties to the south and north of the subdivided site. I am satisfied that this is unique enough to consider this proposal to stand the test of 'uniqueness' in similar situation occurring within the Countryside Environment. The assessment of the effects on balance concludes that effects are no more than minor.</p>
<p>5.4.7 Intensity and Design of Subdivision and Development</p> <p>To ensure that subdivision and development do not unduly compromise the outlook and privacy of adjoining properties, and should be compatible with the character and amenity of the surrounding environment. Particular regard should be given to:</p> <ul style="list-style-type: none"> • The layout and intensity of subdivision. • The location, design and siting of buildings and structures except, where such buildings and structures provide a specific service for the surrounding environment. In the latter case, any building or structure shall be designed, laid out and located, so as to avoid, remedy or mitigate any adverse effects on the environment. 	<p>That view was further expressed in Paul Quinlan's peer review of Simon Cocker's landscape report who stated that:</p> <p><i>"...The site itself is not prominent, or located in close proximity to any of the most defining landscape elements or features of that wider area. In this respect it is not located in a particularly sensitive part of that landscape. Furthermore, with the broken topography and the extent and character of the existing bush and vegetation cover the local landscape in that area has a moderate capacity to visually absorb some built development, without resulting in significant visual effects on the wider landscape of Parua Bay. In my opinion, the potential adverse visual effects arising from this subdivision, and the consequential built development, are of negligible consequence to the existing landscape, rural amenity and natural character values associated with the wider Parua Bay area."</i></p> <p>Moreover, the assessment of the proposal on the characteristic amenities in section 6 confirms that the proposal as presented will not have adverse effects on open landscape and view, low intensity of development and feeling of remoteness that are considered on balance to be no more than minor. As such,</p>

	it is considered that the proposal is not inconsistent with these objectives and policies of the District Plan.
Chapter 6 – Built Form and Development	
Objective	Comment
6.3.2 Subdivision and development that ensures consolidated development in appropriate locations and avoids sprawling or sporadic subdivision and ribbon development patterns in the coastal and rural environment.	The intention of this objective is to ensure subdivision and associated developments are consolidated to avoid sprawling or sporadic or ribbon development patterns. Consolidation aimed at directing subdivisions and developments of this magnitude to be located around the fringes of Parua Bay settlement. However this confined settlement and rural pattern has been progressively weakened by changes in character of the area between Te Rongo and Whangarei Heads Roads due to the historical granting of subdivision and development consents. If viewed from that angle, then the proposed subdivision as presented will result in adverse cumulative effects with incremental change to the character of the area due to sprawling and sporadic location of built development on an area that is currently vacant. However, considering together with an assessment in chapter 6 above relating to effects and the uniqueness of the site and the adjoining properties, I am satisfied that on balance and within the wider context, the proposal is not inconsistent with this policy.
Policy	Comment
6.4.2 Consolidated Development To consolidate urban development by: i. Further develop within existing built up areas, so as to avoid sporadic or sprawling subdivision and ribbon development patterns, particularly in rural areas and along the coast. ii. Directing rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas.	As discussed above, the proposal as it is presented is introducing rural lifestyle development that is not considered to be directly consolidating existing development patterns but could be described as incrementally changing the rural outlook of the site to a rural residential and lifestyle character. While overall this policy refers to urban development, it provides direction of where consolidation of developments in rural areas should be considered as a mean to avoid remedy or mitigate sprawl, sporadic and ribbon development patterns in the Countryside Environment. Despite the minimum lot size requirement of the Countryside Environment of 20 hectares, I am mindful of the application of the 'principal reasons' for consideration of non-complying subdivision in this Environment. There is a notion of applying flexibility under such reasoning which allows the subdivision of similar size lots in the Countryside Environment where consolidation suits.

	In view of the rural residential and lifestyle character in the area and the location of the subdivision site, it is considered that consolidation as promoted by this policy will not be challenged by the proposal.
<p>6.4.10 Productive Soils</p> <p>i. To identify and protect the district's highly productive and versatile soils for their productive capacity.</p> <p>ii. To recognise the value of productive soils and economic farming units to the District's economy.</p>	<p>Land Use Capability Maps identify the subject site as having LUC VI which denotes land not considered suitable for arable use, but suitable for pasture or forestry. The Operative Regional Policy Statement identifies land use classes LUC I to LUC III as being considered versatile/productive soils. LUC VI is outside the Regional Policy Statement.</p> <p>As LUC VI is not classified as versatile soil, subdivision of the land with proposed residential development can arguably be another suitable use for the site. The proposal is not inconsistent with this policy.</p>
Chapter 8 – Subdivision and Development	
Objective	Comment
8.3.1 Subdivision and development that achieves the sustainable management of natural and physical resources whilst avoiding, remedying or mitigating adverse effects on the environment.	As further discussed in Section 9.0 and my earlier assessment of effects of this proposal on the environment, I am satisfied that the proposal is consistent with the purpose and principles of sustainable management given the location of the subdivision site and the compromised character of the surrounding environment. In addition, both experienced landscape architects have suggested mitigation that can allow the proposal to adequately avoid, remedy or mitigate adverse effects of future development and protect landscape features and amenity values on the site. The proposal is not inconsistent with this objective.
8.3.2 Subdivision and development that does not detract from the character of the locality and avoids conflicts between incompatible land use activities.	Overall, the resultant allotment of 1.2 hectare average area that are adjoined by similar sized lots with associated developments, does reflect the character and density pattern within the locality; however the incremental change to the character of the area may raise a question as to whether or not it creates conflict between incompatible land uses (i.e. rural farming vs residential activities noting the area northwest and south of the site is rural in character while northeast and southwest is rural residential and lifestyle character).
<p>8.3.4 Subdivision and development that provides for the protection of, and where appropriate enhances, the District's:</p> <ul style="list-style-type: none"> • versatile soils; • mineral resources: • water quality; • nature features; • landscapes (including coastal landscapes); • open spaces; 	<p>Maintaining the amenity values of localities and avoiding/preventing inappropriate subdivision throughout the district is a core thrust of the objectives and policies. This is to be achieved through appropriate intensity and design of the subdivision and by the</p>

<ul style="list-style-type: none"> • significant ecological areas; • biodiversity; • public access to coast, lakes and rivers; • historic, cultural and amenity values, including the cultural values of tangata whenua. 	<p>promotion of development that is sustainable and avoids remedies or mitigates adverse effects through consolidated development.</p> <p>I have provided an assessment of effects of the proposal on the environment and concluded overall that the effects are acceptable. The reason for that conclusion was that:</p>
<p>8.3.7 Subdivision and development that provides for comprehensive development of land with a range of allotment sizes and is appropriate to the character of the Environment in which it is located.</p>	<p>Any visible built development on this property will inevitably add incrementally to the cumulative effects of sprawling and sporadic development between the traditional settlements. However, the character of the surrounding area has already compromised due to continuous 'residential and lifestyle' subdivision and development. In addition the majority of the site will remain vegetative under a covenant and the landscape architect recommended measures that will mitigate adverse visual and landscape effects arising from the proposal.</p> <p>Overall and based on the above comments, I consider that the proposal will not be inconsistent with these objectives.</p>
<p>Policy</p>	<p>Comment</p>
<p>8.4.3 Density of Development</p> <p>To ensure that subdivision and development results in a pattern and density of land use which reflects flexibility in allotment size, and is of a density appropriate to the locality.</p>	<p>Again, while the density proposed is considered commensurate with the developments in the surrounding environment, the pattern of the development is such that the area of lifestyle density is being extended, especially where an area of change to the character as argued in the landscape assessment. The measures suggested by the landscape architect coupled with the proposed vegetation covenant can mitigate the effects of the proposed development on the density which allow the proposal to be considered consistent with this policy.</p>
<p>8.4.4 Cumulative Effects</p> <p>To ensure that the cumulative effects of on-going subdivision and development do not compromise the objectives and policies of this Plan, in particular those objectives and policies relating to reducing conflicts between incompatible landuse activities, the consolidated and orderly development of land and the density of development.</p>	<p>It has been concluded in the assessment of effects that allowing this development will create adverse cumulative effects with incremental change to the character of the area. As such the proposed subdivision will not support this policy as it is considered contrary to it. However, the conclusion reached by the landscape architect assessment of which I concur, suggests that although some adverse effects would certainly arise from this proposal, it would nevertheless be an 'overstatement' to describe them as contributing a more than minor level of effects within this incrementally changing landscape context. As such, I do not consider the proposal will 'tip the balance' to an unacceptable level of cumulative effects.</p>

<p>8.4.5 Reverse Sensitivity</p> <p>To ensure that subdivision and development in, or adjacent to:</p> <ul style="list-style-type: none"> a. rural areas; b. existing commercial, industrial and mineral extraction activities; c. land zoned for commercial, industrial, or mineral extraction activities; d. existing infrastructure, including the state highway network and airport. • is designed and located to avoid, remedy or mitigate reverse sensitivity effects on existing or permitted activities. Such effects can include noise, odour, spray drift and dust, vibration and traffic. 	<p>Reverse sensitivity effects can be considered relevant on future residents of any residential activity undertaken on these lots. Having considered that the existing vegetation on the site will be protected by a vegetation covenant, it is unlikely that reverse sensitivity will be an issue for future residents.</p>
<p>8.4.7 Design and Location</p> <p>To ensure subdivision and development is designed and located so as to avoid, remedy or mitigate adverse effects on, and where appropriate, enhance:</p> <ul style="list-style-type: none"> Natural character of the coastal environment, indigenous wetlands, lakes and rivers and their margins; Landscape values; Ecological values; Amenity values and sense of place; Archaeological, cultural (including tangata whenua) and heritage features; Sites of Significance to Maori; Heritage areas of significance to Maori; 	<p>As previously discussed it is considered that the proposal could contribute to an expansion of the existing area of rural residential and lifestyle development that would start to undermine the more undeveloped rural character of the area in the northwest and south of the site. However, in view of weakening of the rural character by favouring residential and lifestyle developments, I consider the proposed subdivision to be of a design and within a location acceptable in this instance.</p> <p>Furthermore, the inclusion of conditions for covenanting the existing vegetation including ecological management will avoid, remedy or mitigate any adverse effects and possibly enhance the landscape values, ecological values amenity values and sense of place, etc.</p>
<p>8.4.12 Services and Infrastructure</p> <p>To ensure that all subdivision and development is capable of being provided, by the subdivider or developer, with adequate services and infrastructure having regard to Whangarei District Council's Environmental Engineering Standards 2010 (except where the subdivision or development is for specific protection purposes), including:</p>	<p>No constraints in terms of the on-site servicing arrangements proposed have been identified, and suitable conditions of consent pursuant to Sections 108 and 220 of the Resource Management Act 1991 can be imposed to ensure the development is undertaken in accordance with Whangarei District Council Environmental Engineering Standards 2010 and the relevant standards of utility providers.</p>

<ul style="list-style-type: none"> • Vehicle access, including emergency service vehicle access; • Water supply, (including for fire fighting purposes), storm water and sewage disposal; • Energy and telecommunication connections; • Useable open space in urban areas; • During the design and construction of the subdivision, measures to reduce storm water run off. 	
Chapter 17 – Indigenous Vegetation and Habitat	
Objective and policies	Comment
<p>Objective 17.3.2 Protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna from inappropriate subdivision, use and development.</p> <p>Policy 17.4.3 - Enhancement To promote the enhancement of areas of significant indigenous vegetation and significant habitats of indigenous fauna that have been, or may be, degraded by inappropriate subdivision, use and development.</p> <p>Policies:</p> <p>17.4.5A: To avoid the introduction of plant and animal pests where practicable.</p> <p>17.4.5B: To encourage programmes for plant and animal pest control in areas of ecological value.</p> <p>17.4.5C: To recognise that dogs, cats and mustelids are a significant threat to kiwi.</p>	<p>The intention of this objective and policies is to ensure any identified significant area of indigenous vegetation and habitat shall be protected and enhanced. Schedule 17D contains the District Plan's criteria for ranking the significance of area of indigenous vegetation, habitat and restoration potential.</p> <p>David Wright of Ecology North provided an assessment of the ecological values of the proposed covenanted land using the above criteria.</p> <p>In his assessment it considered that the bush meets the criteria set out in Schedule 17D. Therefore, formal protection of the bush area, is considered warranted as a reasonable condition of the subdivision. Therefore, the imposition of relevant conditions of consent will ensure that any identified habitat values are protected or enhanced which allows the proposal to be consistent with the objective and policies.</p>

- 7.4.3 While it is acknowledged that the surrounding environment exhibits an increased density of development that is in excess of the zoning of the area and the current proposal will create lots of similar sizes, it is the location of future dwellings that is of concern which may contribute to the intensification in the area. If consent is granted to allow built development in an area that is characterised by being heavily vegetated, clearing of land for buildings that can be visible from vantage points could give rise to an expansion of residential lifestyle development that is extending on Te Rongo and Whangarei Heads Road, rather than attempting to consolidate the pattern near Parua Bay settlement.
- 7.4.4 However, given the progressive and incremental change in the character of this area over the years, and the weakening of the traditional pattern of land settlements and character, I am satisfied that the additional change to be introduced by this proposal will not challenge the relevant objectives and policies of the Countryside Environment to an inconsistent level.

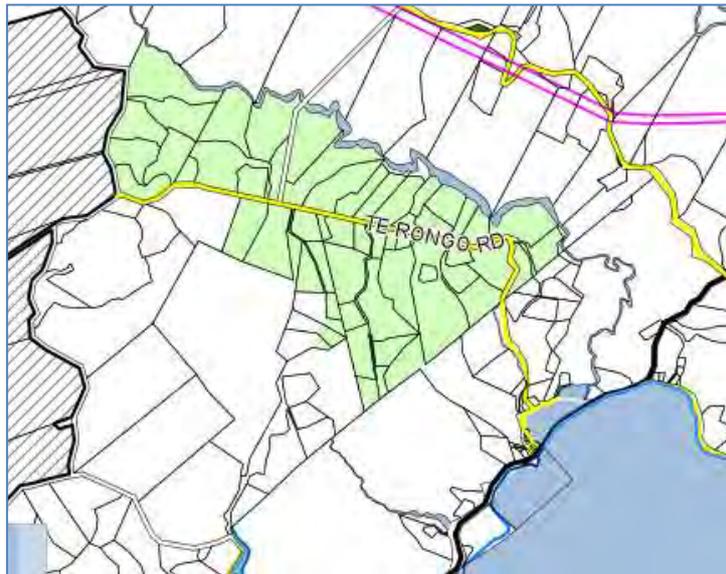
- 7.4.5 Overall, I am satisfied on balance that the proposal is consistent with most of the relevant objectives and policies of the Operative Whangarei District Plan and the Operative Regional Policy Statements as discussed above.

8.0 Other Matters

8.1 Rural Plan Change

- 8.1.1 Whangarei District Council publicly advertised Plan Change 85, A-D and 86A & B on 10 August 2016. Figure 7 below shows the proposed rezoning of the area coloured light green as Rural Living Environment while white denotes Rural Production.

Figure 7: Propose New Environment



- 8.1.2 It is noted that the site is not affected by the plan change which will remain Countryside Environment or the new zone call Rural Production in the plan change. Standards and criteria for new Rural Production will not differ much from the current Countryside Environment.
- 8.1.3 Views sought from the District Plan policy team confirmed that if someone makes a submission seeking to extend the Rural Living down the remaining 'V' shape of similar lot areas south of the proposed new zone; the submission will likely to gain support. Such comment reflects the uniqueness of this area.

8.2 Precedent

- 8.2.1 Case law has established that the precedent of granting resource consent is a relevant factor for a consent authority in considering whether to grant non-complying resource consent. A precedent effect is likely to arise in situations where consent is granted to a non-complying activity that lacks the evident unique, unusual or distinguishing qualities that serve to take the application outside of the generality of cases or similar sites in the vicinity.
- 8.2.2 While it is acknowledged that there are high densities residential areas on both sides of the site, the question remain as whether this is unique enough to qualify this proposal outside the generality and the norm of similar situation in the vicinity. With careful analysis of this site, it became clear that creating lots averaging 1.2ha, which will have similar lot areas to the adjoining lots in the south and north, will set this as a uniquely different scenario from any other situations in the district. Given that this proposal could not be reasonably be replicated for a number of sites in the vicinity, I am satisfied that the proposal is unique enough that it will not set an adverse precedent for the subdivision of other sites within the locality.

9.0 Part 2 Matters

9.1 Section 5 – Purpose

9.1.1 Part 2 of the Resource Management Act 1991 details the overarching purpose and principles of the Act. Part 2 of the Act requires that the proposed activity must meet the purpose of the Act set out in section 5 which is “to promote the sustainable management of natural and physical resources.” As outlined in section 5(2), “sustainable management” means:

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

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

9.1.2 Based on the conclusions reached in the foregoing assessment, the proposal is considered consistent with the purpose of the Act.

9.2 Section 6 – Matters of National Importance

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

9.2.2 The location of the site is not affecting any matters of national importance.

9.3 Section 7 – Other Matters

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

- Kaitiakitanga;
- The ethic of stewardship;
- The efficient use and development of natural and physical resources;
- The maintenance and enhancement of amenity values;
- Intrinsic values of ecosystems;
- Maintenance and enhancement of the quality of the environment;

9.3.2 Kaitiakitanga, being the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; includes the ethic of stewardship. It is recognised that Ngati Wai and Ngati Kahu O Torongare have mana whenua over the application site, and a copy of the proposal was subsequently forwarded to them.

9.3.3 Although these two Iwi did not submit to the proposal, I am not satisfied the overall intensity, scale and location of the proposal will maintain the character and amenity values of the locality. As such, it is considered the proposal upholds the matters outlined under Section 7.

9.4 Section 8 – Treaty of Waitangi

9.4.1 Section 8 requires that decision makers take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in managing the use, development and protection of natural and physical resources. The principles of the Treaty do not supersede the Treaty itself; rather they derive from the Treaty and assist the practical application of it. In this regard, the Court of Appeal has defined relevant principles as reflecting the purpose and intent of the Treaty in

the management of natural and physical resources; including the Principles of Kawanatanga; Rangatiratanga, Partnership; Active Protection and Hapu and Iwi Resource Development.

- 9.4.2 With respect to the current proposal, Ngati Wai and Ngati Kahu O Torongare were identified as local Iwi affected by the proposal. A copy of the proposal was subsequently sent to them for review and to obtain an indication as to whether or not they have any issue with the proposal. They did not respond.

10.0 Conclusion & Recommendation

10.1 Conclusion

- 10.1.1 This proposal is sitting on a very fine line and can swing either way in relation to the “more than minor” effects threshold. However in this instance, the current District Plan standard of 20 hectare standard for lot sizes in this zone is not strong enough to stand its ground. The ‘principal reasons’ of lots sizes having non-complying status in the Countryside Environment has weighed heavily in favour of the existing pattern and character of the environment. Considered with the other matters required for assessment of the proposal against the requirements of the Countryside Environment, the following conclusions have been reached in accordance with s104D of RMA.
- 10.1.2 Pursuant to section 104D(1)(a), the effects of the proposed subdivision on the environment has been assessed. It was considered that the effects are no more than minor for the following reasons:
- The assessment of the proposal on balance clearly demonstrates that the amenity values, the natural character of the area, and the landscape will not be adversely affected in a more than minor way. This is based on a balanced consideration of the site’s land use categorisation and the professional views expressed by two experienced landscape architects, an ecologist, an archaeologist and a traffic engineer.
 - The cumulative effects of the proposal are no more than minor and it does not ‘tip the balance’. It is clear from the assessment that although there may be cumulative adverse visual and landscape effects arising from the proposal, it will not entirely result in a more than minor effect if existing vegetation areas are to be covenanted.
 - Services for the new allotments can be adequately provided onsite.
 - The proposed subdivision is consistent with the principal reason for ‘Allotment Rule’ where it needs to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes. The characteristic of the area is clearly able to be continued by allowing the subdivision.
- 10.1.3 Pursuant to section 104D(1)(b), the proposal is considered to be consistent with the relevant objectives and policies of the Operative District Plan for the following reasons:
- In view of the progressive and incremental change in the character of this area over the years, and the weakening of the traditional pattern of land settlements and character, I am satisfied that the additional change to be introduced by this proposal will not challenge the relevant objectives and policies of the Countryside Environment to any significant level.
 - I am satisfied on balance that the proposal is consistent with most of the relevant objectives and policies of the Operative Whangarei District Plan and the Operative Regional Policy Statement as discussed above
- 10.1.4 With careful analysis of this site, it became clear that creating lots averaging 1.2ha, which will have similar lots areas to the adjoining lots in the south and north, this ‘missing link’ will set this uniquely different pattern that may differentiate this proposal from any other similar situation. Given that this proposal could not be reasonably be replicated for a number of sites in the vicinity, I am satisfied that the proposal is unique enough that it will not set an adverse precedent for the subdivision of other sites within the locality.

- 10.1.5 If the Commissioner accepts the expert reports upon which I rely, my overall conclusion reached after undertaking a full assessment of the proposal and to grant consent to the proposal; recommended conditions are provided below:

10.2 Recommendation

THAT pursuant to sections 104, 104B and 108 of the Resource Management Act 1991, it is recommended that consent is granted to Paul and Lisa Robert (SD1500010 P062497.SD) to undertake a subdivision of Lot 1 DP 150222 (CFR NA89B/822) creating new Lot 1 of 1.420ha, Lot 2 of 1.28ha and Lot 3 of 1.065ha (1.015ha Nett) in the Countryside Environment, as a non-complying Activity.

1 Prior to issue of a Section 223 certificate

- a The survey plan submitted for approval shall conform with the subdivision consent obtained and the plan of subdivision prepared by Reyburn and Bryant Reference S13312 Rev B dated December 201. The survey plan must show areas 'B', 'C', 'D', 'E', 'F', and 'G' as conservation covenant areas.
- b The consent holder must submit a detailed set of engineering plans prepared in accordance with Council's Environmental Engineering Standards 2010 Edition. The engineering plans are to be submitted to the Senior Environmental Engineering Officer for approval.

It is to be noted that certain designs may only be carried out by an Independently Qualified Person (IQP) or Chartered Professional Engineer (CPEng) working within the bounds of their assessed competencies. IQP's must have been assessed by Council and hold current registration to submit engineering design work.

All work needing design/certification by a Council approved IQP/CPEng will require the submission of a producer statement (design) on form EES-PS1 (or similar approved) to the satisfaction of the Senior Environmental Engineering Officer.

Plans are to include but are not limited to:

- i Design details of the construction of right of way A in accordance with Table 3.7 Category E(alt)* and Sheet 9 of Council's Environmental Engineering Standards 2010 Edition including a typical cross section, long section, culverts, drainage flow paths and overland flow. Note that design details of the stabilisation of the existing fill material are required in accordance with the engineering report compiled by Base Group Consulting Chartered Professional Engineers dated 10 February 2015.
- ii Design details of the upgrading of the existing right of way over Lot 2 DP 398000 from the Pt Lot 1 DP 104110 vehicle crossing to the right of way A vehicle crossing in accordance with Table 3.7 Category F and Sheet 9 with a 4.0m seal width of Council's Environmental Engineering Standards 2010 Edition including a typical cross section, long section, culverts, drainage flow paths and overland flow.
- c The consent holder shall provide written confirmation from power and telecommunications utility service operators of their consent conditions in accordance with Council's Environmental Engineering Standards 2010 Edition and show necessary easements on the survey plan to the approval of the Senior Environmental Engineering Officer or delegated representative.
- d The consent holder shall create easements over services and rights of way to the approval of the Senior Environmental Engineering Officer or delegated representative.
- e The consent holder shall provide a Weed and Pest Management Plan prepared by a suitably qualified ecologist, including all proposed rehabilitation planting and mitigation measures addressing matters outlined in David Wright's Ecological Assessment dated February 2016. The Weed and Pest Management Plan will be bonded for 3 years; therefore a full schedule of costs shall be submitted as part of the weed and pest management plan. The plan is subject to the approval of the Resource Consents Manager.
- f The consent holder must provide Council with three proposed street/road/access names in writing for the existing right of way over Lot 2 DP 398000 in accordance with Council's policy, and in order of preference, giving reasons for each proposed name, for approval by Council. A clear plan detailing the route of the proposed street/road/access should also be submitted and any

evidence of consultation relating to the proposed names. (Please refer to the road naming policy and guidelines available on Council's website www.wdc.govt.nz).

NOTE: This condition will not be deemed to be satisfied unless Council has approved the submitted names in writing.

2 Prior to issue of a section 224 (c) certificate;

- a All work on the approved engineering plans in Condition 1(b) is to be carried out to the approval to the approval of the Senior Environmental Engineering Officer.

Compliance with this condition shall be determined by site inspections undertaken as agreed in Council's engineering plan approval letter for the engineering plans as required by Condition 1(b) and by provision and approval of supporting documentation provided by the developers representative/s in support of the constructed works – EES PS4 and producer statements including supporting evidence of inspections by those persons, works acceptance certificate, statement of compliance of as built works and as built plans, RAMM data, management plans, operation and maintenance plans and all other test certificates and statements and supporting information required to confirm compliance of the works as required by Council's QA/QC Manual and the Council's Environmental Engineering Standards 2010.

No construction works are to commence onsite until the engineering plans required in condition 1(b) have been approved and all associated plan inspection fees have been paid.

- b The consent holder shall notify council, in writing, of their intention to begin works, a minimum of seven days prior to commencing works. Such notification shall be sent to the Senior Environmental Engineering Officer and include the following details:
- i Name and telephone number of the project manager/IQP.
 - ii Site address to which the consent relates.
 - iii Activities to which the consent relates.
 - iv Expected duration of works.

A copy of the approved engineering plans and a copy of the resource consent conditions, and the above letter are to be held onsite at all times during construction. All personnel working on the site shall be made aware of, and have access to the resource consent and accompanying documentation.

- c The consent holder shall submit written confirmation from power and telecommunications utility services operators that their conditions for this development have been satisfied in accordance with Council's Environmental Engineering Standards 2010 Edition to the approval of the Senior Environmental Engineering Officer or their delegated representative.
- d The consent holder must provide written confirmation from a Licensed Cadastral Surveyor that the existing effluent disposal field for lot 1 is contained within the allotment boundaries so as to comply with Section 15.1 (Permitted Activities for Sewage discharges) of the Northland Regional Council Regional Water and Soil Plan for Northland, noting the required separation distances to boundaries, water bores, groundwater table & surface water to the satisfaction of the Senior Environmental Engineering Officer or delegated representative.
- e The consent holder must provide written confirmation from a Licensed Cadastral Surveyor that all services and accesses are located within the appropriate easement boundaries to the satisfaction of the Senior Environmental Engineering Officer or delegated representative.
- f The consent holder must supply and erect the Private street/road/access name for the existing right of way over Lot 2 DP 398000 in accordance with Sheet 25 of Council's Environmental Engineering Standards 2010 Edition, inclusive of the approved street/ road/access name. The sign shall be located in a position where it is most visible for road users to the satisfaction of the Senior Environmental Engineering Officer or delegated representative.
- g Where filling has occurred on any allotment the consent holder shall submit a Form EES PS1 compiled by a suitably qualified person including details confirming the location of such fill on the affected titles. This Form EES PS1 (and associated reports, plans and similar) will be registered against the relevant titles via a consent notice.

- h Upon completion of the development works, the consent holder must submit for approval a “Certificate of Completion of Development Works” (EES-PS4) to the Senior Environmental Engineering Officer.
- i Following completion of construction, the consent holder shall provide a works producer statement from the suitably qualified contractors who completed the works, certifying that the works have been completed in accordance with the approved engineering plans, Council’s Environmental Engineering Standards 2010 Edition and best trade practise, to the satisfaction of Whangarei District Council’s Senior Environmental Engineering Officer.
- j Provide written evidence from a suitably qualified ecologist within 12 months of implementing the approved plan that the weed and pest management requirements of the approved Weed and Pest Management Plan required by condition 1(e) have been implemented. The on-going planting and weed management requirements outlined in the Weed and Pest Management Plan shall form the basis of consent notice conditions (s221 conditions) relating to all relevant lots.
- k Pursuant to Section 221 of the Resource Management Act 1991, a consent notice must be prepared and be registered on the Computer Freehold Register of Lots 2 & 3 at the consent holder’s expense, containing the following conditions which are to be complied with on a continuing basis by the subdividing owner and subsequent owners:
- i Any development shall comply with the Restrictions and recommendations identified in by Base Group Consulting Chartered Professional Engineers dated 24 October 2014 Reference 14051 unless an alternative engineering report prepared by a suitably experienced Chartered Professional Engineer is approved in writing by Council.
 - ii Upon construction of any habitable dwelling, sufficient water supply for fire fighting purposes (minimum storage of 10,000 litres) is to be provided by way of tank storage or other approved means, and that this water supply be accessible by fire fighting appliances in accordance with Council’s Environmental Engineering Standards 2010 and more particularly with the ‘NZFS Fire Fighting Code of Practice SNZ PAS 4509:2008’. Demonstration of achievement of an alternative means of compliance with this standard will be considered to satisfy this requirement but note that written approval from the NZ Fire service is required.
 - iii The owner shall be responsible to ensure that any further development of the site including building sites, earthworks, drainage works, effluent disposal fields & vehicle access formations will be undertaken in such a manner that will not result in the obstruction or diversion of any existing overland flow path unless a specific design has been done by an IQP or Chartered Professional Engineer which mitigates potential adverse flooding effects on any neighbouring properties created by the obstruction or diversion and is approved in writing by the Senior Environmental Engineering Officer.
- Note Overland flow paths are to be assessed in accordance with Section 4.9 of Council’s Environmental Engineering Standards 2010 Edition and are to be certified by an IQP/CPEng.
- l Pursuant to Section 108(2)(b) and 108A of the Resource Management Act 1991 a bond shall be entered into to cover all aspects of the Weed and Pest Management Plan approved under condition 1(e) and implemented under this condition.
- The amount of each bond shall be based on the approved schedule of the costs supplied in the Weed and Pest Management Plan submitted under condition 1(e).
- The bond shall be prepared by the Council’s solicitor at the expense of the applicant and shall be drawn up if required by the council in a form enabling it to be registered pursuant to Section 109 of the Resource Management Act 1991 against the title to the land to which this bond relates (unless land affected is public land vested in Council).
- The bond may be either a cash bond or bond that is guaranteed by a recognised trading bank in New Zealand. The bond shall be reduced by 33% in any one year on certification by an appropriately qualified person that the recommendations and operations identified in the Weed and Pest Management Plan approved under condition 1(e) has been effectively carried out.

Notwithstanding any transfer of title by the consent holder to a new owner of any one or more of the lots, the consent holder or subsequent nominees or representatives are to continue the implementation of the Weed and Pest Management Plan approved in condition 1(e) for the 3 year period.

In the event that the total bond is less than \$1,500 this condition is not required to be met.

- m A conservation covenants in accordance with Section 77 of the Reserves Act 1977 or alternative instrument of similar effect to the approval of Council's Resource Consents Manager shall be prepared for registration, at the consent holder's expense, against the Titles of the land depicted on the survey plan as being subject to conservation covenants (area 'B', 'C', 'D', 'E', 'F', and 'G'). The conservation covenants shall require in respect of the covenanted area, but not limited to:
- i. No indigenous vegetation shall be cut down or destroyed;
 - ii. Invasive and/or woody weeds shall be controlled;
 - iii. Grazing by stock shall not be permitted.

Reasons for the Recommendation:

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

- a) Pursuant to section 104D(1)(a), the effects of the proposed subdivision on the environment has been assessed. It was considered that the effects are no more than minor for the following reasons:
- The assessment of the proposal on balance clearly demonstrates that the amenity values, the natural character of the area, and the landscape will not be adversely affected in a more than minor way. This is based on a balanced consideration of the site's land use categorisation and the professional views expressed by two experienced landscape architects, an ecologist, an archaeologist and a traffic engineer.
 - The cumulative effects of the proposal are no more than minor and it does not 'tip the balance'. It is clear from the assessment that although there may be cumulative adverse visual and landscape effects arising from the proposal, it will not entirely result in a more than minor effect if existing vegetation areas are to be covenanted.
 - Services for the new allotments can be adequately provided onsite.
 - The proposed subdivision is consistent with the principle reason for 'Allotment Rule' where it needs to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes. The characteristic of the area is clearly able to be continued by allowing the subdivision.
- b) Pursuant to section 104D(1)(b), the proposal is considered to be consistent with the relevant objectives and policies of the Operative District Plan for the following reasons:
- In view of the progressive and incremental change in the character of this area over the years, and the weakening of the traditional pattern of land settlements and character, I am satisfied that the additional change to be introduced by this proposal will not challenge the relevant objectives and policies of the Countryside Environment to any significant level.
 - I am satisfied on balance that the proposal is consistent with most of the relevant objectives and policies of the Operative Whangarei District Plan and the Operative Regional Policy Statement as discussed above
- c) With careful analysis of this site, it became clear that creating lots averaging 1.2ha, which will have similar lots areas to the adjoining lots in the south and north, this 'missing link' will set this uniquely different pattern that may differentiate this proposal from any other similar situation. Given that this proposal could not be reasonably be replicated for a number of sites in the vicinity, I am satisfied that the proposal is unique enough that it will not set an adverse precedent for the subdivision of other sites within the locality.

Advice Notes

- 1 The applicant shall pay all charges set by Council under Section 36 of the Resource Management Act 1991. The applicant will be advised of the charges as they fall.
- 2 Section 357B of the Resource Management Act 1991 provides a right of appeal to this decision. Appeals must be in writing, setting out the reasons for the appeal, and lodged with the Environment Court within 15 working days after the decision has been notified to you. Appellants are also required to ensure that a copy of the notice of appeal is served on all other relevant parties.
- 3 This resource consent will lapse five years after the date of commencement of this consent (being the date of this decision) unless:
 - It is given effect to before the end of that period; or
 - An application is made to Council to extend the period after which the consent lapses, and such application is granted prior to the lapse of consent. The statutory considerations which apply to extensions are set out in Section 125 of the Resource Management Act 1991.
- 4 A copy of this consent should be held on site at all times during the establishment and construction phase of the activity.
- 5 All archaeological sites are protected under the provisions of the Heritage NZ Pouhere Taonga 2014. It is an offence under that act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to the Heritage NZ for an authority to modify, damage or destroy an archaeological site(s) where avoidance of effect cannot be practised.
- 6 The consent holder shall pay all charges set by Council under Section 36 of the Resource Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The applicant will be advised of the charges as they fall.
- 7 To help fund additional assets or assets of increased capacity, the Local Government Act 2002 (LGA) allows a council to require development contributions if the effect of a development requires the council to provide new or upgraded infrastructure. Whangarei District Council has prepared and adopted a Development Contributions Policy. Under this policy, the activity to which this consent related is subject to Development Contributions. You will be advised of the assessment of the Development Contributions payable under separate cover in the near future. It is important to note that the Development Contributions must be paid prior to commencement of the work or activity to which consent relates or, in the case of a subdivision, prior to the issue of a Section 224(c) Certificate. Further information regarding Council's Development Contributions Policy may be obtained from the Long Term Plan (LTP) or Council's web page at www.wdc.govt.nz.
- 8 A Corridor Access Request (CAR) is defined in the new "National Code of Practice (CoP) for Utilities access to the Transport Corridors". This CoP has been adopted by Council. It provides a single application for Traffic Management Plans/Road Opening Notice applications. Enquiries as to its use may be directed to Council's Road Corridor Co-ordinator, ph 430 4230 ext 8231.
- 9 The applicant is advised that a further site inspection of completed works will be required if a period greater than 3 months has passed since the last Council inspection prior to Council issuing the 224(c) certificate.

11.0 Attachments

- 1. Scheme Plan**
- 2. The application (as lodged)**
- 3. Section 92 – Further Information including Specialist Reports**
- 4. Copies of Submissions**
- 5. SEEO Engineering Review Report**
- 6. District Plan Chapters**