

## Report and decision of Hearings Commissioner, Burnette Macnicol

**Whangarei District Council has delegated all the functions, powers and duties as provided under the Resource Management Act 1991 to the Commissioner to consider and decide the application on behalf of Council. The application was heard in the May Bain room, Whangarei Library on 1 September 2016.**

The Hearings Commissioner, Burnette Macnicol, heard the resource consent application lodged by Paul and Lisa Roberts relating to a three lot subdivision at 90 Pepi Road Parua Bay. The application, made in accordance with the Resource Management Act 1991 ('the Act'), was lodged with Whangarei District Council and referenced as (SD1500010) (P062497).

<b>Present</b>	<b>Hearings Commissioner</b> Burnette Macnicol
<b>Applicant</b>	Joseph Henehan – Environmental Planner (Reyburn & Bryant) Paul Roberts – Applicant Brett Hood – Planner (Reyburn & Bryant) Aaron MacPherson – Engineer (Base Group Consulting) Simon Cocker – Landscape Architect Dean Scanlen – Traffic Engineer (Engineering Outcomes Ltd)
<b>Consent Authority</b>	<b>Whangarei District Council</b> Ueli Sasagi – Senior Specialist Planning Dean Murphy – Senior Environmental Engineering Officer Sonja Weston – Hearings Administrator
<b>Submitters</b>	Phillipa Campbell – Consultant Planner on behalf of Natalie Ganley & Robert Coup Natalie Ganley Robert Coup Gary Price Andrew Deas Ruth Tuck Roger Tuck Leslie Allan

### 1.1 The proposal

- 1.1.1 Consent is sought to subdivide the subject property at 90 Pepi Road, Parua Bay, legally described as Lot 1 DP 150222 into three 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 building sites on both Lots 2 and 3 and proposed vegetation covenant areas B, C, D, E, F, and G. The total area proposed to be covenanted is 2.315ha (i.e. 62% of the total area of the site – 3.6750ha). Lot 1 is to contain the existing household unit.
- 1.1.3 An amended scheme plan was presented at the hearing – S13312, Revision D. This scheme plan specified defined building areas that would be subject to land covenants – Areas H and I and also corrected references in relation to the rights of way access. A copy of the final revised scheme plan is shown below:

- 1.1.4 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 eight properties and the formation of two additional residential lots will increase this number to ten.
- 1.1.5 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.
- 1.1.6 The proposal, as presented in evidence, also specifically defines building sites on Lots 2 and 3 and proposes that land covenants be registered to secure the proposed design controls for built development on these sites.

## 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.
- 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.

## 1.3 District Plan Rule(s) affected

The proposed activity does not comply with the following rules of the Transitional/Proposed Whangarei District Plan:

- Rule 73.3.1 – Allotment Area – the proposal is a non-complying activity because the average allotment area is less than 4.0 hectares.
- Rule 73.3.7 – Property Access - this aspect of the proposal requires resource consent as a restricted discretionary activity because the proposed access does not comply with the relevant standards in the Whangarei District Council's Environmental Engineering Standards 2010, including the relevant provisions in Appendix 9 and also there will be more than 8 residential users and properties obtaining access over the shared right of way.
- Rule 47.2.11 – Engineering Standards – as above the proposed access does not comply with the Engineering Standards and this requires resource consent for a restricted discretionary activity.
- Other rules relating to subdivision are complied with as detailed in section 3.1.4 of the Council Officers' report contained in the hearings agenda.

## 1.4 Notification and submissions received

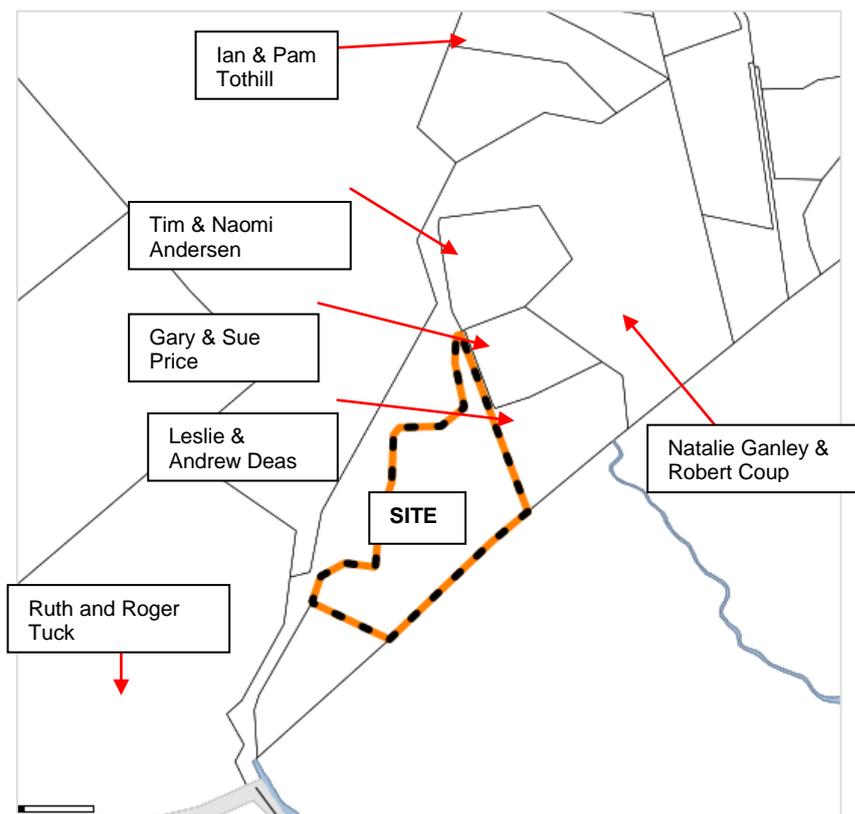
The application was notified on 3 March 2015 pursuant to Section 95 of the Act. A total of 7 submissions were received. The following is a summary of the written submissions received and the main issues raised:

**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"> <li>• Heritage is a matter of national importance under s6(f) of RMA;</li> <li>• Archaeological site Q07/646 under NZAA classification affects the site;</li> <li>• Heritage NZ recommended for an archaeological assessment to be undertaken;</li> <li>• Appropriate consent condition and/or advice notes shall be included in the consent based on the assessment.</li> </ul> Relief sought is to address the above through consent conditions and/or advice note.	No
Ian and Pam Tohill	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"> <li>• Proposal is a non-complying activity and is well below 20ha rule;</li> <li>• Proposal is contrary to the objectives and policies of the District Plan;</li> <li>• Proposal will have adverse effects on the amenities of the locality;</li> <li>• 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).</li> <li>• The proposal does not adequately deal with the impact of surface water run-off; and</li> <li>• Effects on infrastructure (i.e. existing track, maintenance and culvert).</li> </ul> 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"> <li>• Existing access is not suitable for additional traffic and vehicles;</li> </ul> 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"> <li>• Access to new Lot 2 and 3 can only be accessed through the now existing vehicle crossing and not through Lot 1;</li> <li>• The carriageway/driveway up to the new building sites on Lots 2 and 3 needs to be sealed and preferably concreted; and</li> <li>• 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.</li> </ul>	No
Leslie and Andrew Deas	Opposed the application because of the following: <ul style="list-style-type: none"> <li>• Increase number of users will correspondingly increase problems which thus questioned the safety of the accessway.</li> </ul> Relief sought – decline consent	No
Tim and Naomi Anderson	Opposed the application because: <ul style="list-style-type: none"> <li>• The accessway is too narrow and unsafe for any</li> </ul>	Yes

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

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



## 1.5 Procedural matters

There were no procedural matters raised at the hearing.

A supplementary document was provided that sought that the written approval provided by a submitter in opposition be withdrawn. It was explained that the submission took precedence over any written approval granted so the approval did not need to be formally withdrawn. In any event the person who provided the approval is within their right to withdraw the approval. As a notice in writing was provided from Andrew Deas and Leslie Allen seeking withdrawal of their written approval, the application has been considered on that basis.

## 1.6 Evidence heard

The commissioner heard evidence from the applicant, expert witnesses, submitters, and the council's reporting officer. The following is a summary of the evidence heard at the hearing.

### 1.6.1 Applicant's evidence

The applicant's case was presented by Mr. Joseph Henehan a planning consultant working for Reyburn and Bryant.

Mr. Henehan clarified changes to the scheme plan that are reflected in Revision D; namely with respect to the number of right of way users. Mr Henehan's evidence described the site and the surrounding environment in some detail. His evidence also detailed the key components of the proposal with respect to building restrictions; vegetation protection and the proposed right of way upgrades. These matters are detailed in paragraph 14 of his evidence.

Mr Henehan considered that the proposed subdivision passed both of the s104D threshold tests because he concluded that the proposed was not contrary to the relevant objectives and policies and also that the effects on the environment would not be greater than minor.

Mr Henehan also noted relevant plan changes, namely Plan Change 85 and fairly considered the relative weighting to be applied to those provisions.

Overall Mr Henehan's opinion was that the application be granted subject to conditions. In response to a question Mr Henehan also confirmed that all necessary resource consents to give effect to the proposed subdivision and related upgrading works were included in this application.

In the right of reply he reiterated that the land to be subdivided was not an agricultural lot. The proposal involved bush protection, which in Mr Henehan's opinion was a characteristic of this landscape. Mr Henehan considered that the bush protection offered with the proposal would ensure that a sense of place was maintained.

Mr Henehan stated that the effects of additional users on the right of way had been assessed and the concerns of submitter's had been responded to.

Mr MacPherson, the applicant's engineer, advised that the effects of stormwater runoff from the new access and on the right of way would be addressed and that attenuation would be required for the new sites if impervious surfaces were greater than 5% of the site area. Mr McPherson agreed that this standard should be specified as a specific condition should consent be granted.

Mr Cocker, Landscape Architect presented a written statement of evidence. Mr Cocker summarised his assessment, the peer review undertaken by Council's landscape architect Mr Quinlan and the submissions.

Mr Cocker also described the character of the environment and the context of the subject site within that environment.

Mr Cocker concludes that the potential adverse visual and amenity effects of the proposal on surrounding land owners will be less than minor.

Mr Scanlen, Traffic Engineer, was also present for the applicant as was Mr McPherson the applicant's engineer. These experts were available for questions. Mr Scanlen confirmed through questioning that all proposed right of way upgrading can occur within the legal extent of the right of way. Mr Scanlen had identified the main area of concern being a portion of right of way A and this was the area that he had recommended upgrading. The upgrading works were as detailed in the report prepared by Mr Scanlen and were offered as conditions of any resource consent granted.

Following hearing from submitter's Mr Scanlen, in response to a question, advised that he had considered the effects associated with not upgrading the right of way to the Council standards.

An archaeological assessment, prepared by Geometria, was tabled at the hearing by the applicant. The report concluded that there was no archaeological impediment to granting consent to the subdivision. The report recommended that an advice note be added to any consent granted relating to accidental discovery.

### 1.6.2 Submitters' evidence

The submitters in attendance took turns to speak. Phillipa Campbell presented expert planning evidence on behalf of Natalie Ganley and Robert Coup.

Ms Campbell's evidence focussed on the effects of the proposed subdivision on amenity values, cumulative effects and an assessment in relation to the relevant planning documents including the Northland Regional Policy Statement and Proposed Plan Change 85A relating to the Rural Production Environment.

Ms Campbell concluded that *“The proposed subdivision would have adverse environmental effects; it is in an area of rural residential development and is a “step too far” in terms of the increases of built development that would ensue as a result of a grant of consent and the subsequent loss of amenity and cumulative effects”*. Overall Ms Campbell concluded that the application should be declined because of the above reasons and also because in her opinion a precedent would be created by granting of the consent.

Mr Coup also gave a written statement on behalf of himself and Ms Ganley. Mr Coup stated that there was considerable opposition to the subdivision from neighbours. Mr Coup raised concerns about the fact that tracks had been constructed on the applicant’s property without the knowledge of neighbours and also stated concerns about the proposed right of way widening and the effects of that on the loss of established trees, some of which had been planted by Mr Coup and Ms Ganley. Mr Coup and Ms Ganley own the land that the right of way is granted over. Additional concerns raised by these submitters’ were related to increased stormwater runoff that they say has occurred since the tracks were constructed on the applicant’s land. Mr Coup and Ms Ganley state that they are concerned with the downstream effects on ecology arising from stormwater runoff from the planned accessway if the subdivision is granted. Mr Coup summarised their concerns as relating to the driveway (stormwater and traffic) and ecological effects.

Mr Deas, spoke to the submission that he and Leslie Deas lodged. The Deas own 92 Pepi Road. Mr Deas stated that their concerns were primarily related to the standard and formation of the right of way and ongoing maintenance of the right of way.

Mr Roger Tuck spoke to the submission that he and Ruth Tuck had lodged in opposition to the proposal. The Tucks live at 27 Pepi Road. The Tuck’s stated that they live at the bottom of the hill and all traffic passes them. They were not supportive of any additional traffic and were also concerned about the downstream effects associated with additional stormwater and associated sedimentation. Mr Tuck specifically raised an issue with respect to a culvert and spillway that he says has been built up, such that Mr Scanlen, the applicant’s traffic engineer, describes the feature, as a bridge. Mr Tuck says the feature functions as a dam and floods their property. Mr Tuck advised that the existing track to the proposed lots had been cut in 2009.

Gary Price spoke on behalf of himself and Sue Price who live at 94 Pepi Road. Whilst their submission canvassed a broader range of issues Mr Price stated he also had concerns with the safety of the proposed right of way in relation to additional traffic as he tows a boat and considers additional traffic will pose a safety issue because of the formation of the right of way.

### 1.6.3 Council’s reporting officer’s report and evidence

In response to the evidence presented by the applicant and submitters Mr Sasagi, Senior Specialist, summarised and clarified that he had placed little weighting on Plan Change 85 and the only provisions that had legal effect were the objectives and policies.

Mr Sasagi’s advised that his draft conditions did not include the landscape conditions because the Council landscape consultant, Mr Quinlan, had advised that the effects were less than minor and the subject area was not identified as a ‘landscape area’.

I was advised, in response to a question, that Mr Quinlan agreed with Mr Cocker based on the proposal and the landscape protection conditions that were offered, namely built development controls relating to location as well as finishing colours and reflectivity and also the area of vegetation offered for protection.

## 1.7 Principal issues

The principal issues that were in contention were:

- a The effects of the subdivision on landscape and amenity.
- b Traffic safety on the shared right of way.
- c Stormwater effects associated with the additional sites, access to those sites and upgrading works proposed on the right of way.
- d Ecological effects – downstream effects related to stormwater and increased sedimentation.

- e Cumulative effects associated with granting the consent.
- f Precedent – whether or not granting consent to the subdivision would establish a precedent that would lead to undesirable effects on the environment.
- g How the proposed subdivision fits with the objectives and policies of the planning documents.

## 1.8 Main findings of fact

The commissioner considers that the following are the main findings on the principal issues that were in contention relating to this application:

- a Effects on Landscape and Amenity Values:

After hearing the evidence and visiting the subject site, some of the submitter's sites and the surrounding area; including Te Rongo Road and surrounds I consider that the effects of the subdivision in relation to effects on landscape quality, landscape values and visual amenity are less than minor. Effects on amenity values overall are minor.

I agree with the evidence presented by Mr Henehan, Mr Cocker and Mr Quinlan that the character of this area is informed by a settlement pattern of dwellings along ridgelines and dominated by vegetation up ridge slopes and in gullies.

Mr Cocker determined that the proposed subdivision would be in keeping with this character. I concur with the findings of the landscape architects that, subject to the design controls offered, and the specified building sites; that the landscape character, rural character and visual effects will be less than minor. I note that Mr Sasagi did not consider conditions necessary to secure the outcomes recommended by Mr Cocker. I consider that conditions are necessary to secure the outcomes because both Mr Quinlan and Mr Cocker relied on these factors in forming their opinions and the conditions are key to ensuring that the scale of effects in relation to built development are known and limited. I also note that Mr Cocker advised that the identified building areas are intended to contain all buildings and therefore conditions have been amended to secure this outcome.

It is accepted that the proposed Lot 2 building site will be visible, particularly when driving down the right of way from the Ganley / Coup residence however there is existing built development in that view and the area of pasture and water tank, visible from this vantage point does not contribute in any significant way to retaining rural character. The one additional dwelling that will be visible will be in the context of a cluster of existing dwellings and any effects associated with this change are considered to be less than minor.

Ms Campbell states that she considers granting consent to this proposal to be a 'step too far'. Rather than this proposal being the break point I have viewed it as consistent with the existing type of development in the immediate environment as well as further afield such as along Te Rongo Road. The change in character will not be sufficiently great to create any effect that could be described as minor or more than minor.

Traffic safety for users of the right of way has also been considered as a component of amenity values. I have relied on the expert evidence presented by Mr Scanlen and consider that so long as the upgrading that he recommends is undertaken that amenity effects in this regard will be less than minor.

I have stated that effects on amenity overall are minor and this is because additional traffic will have a minor impact for properties lower down on the right of way. Any such effects will be minor at worst and potentially not appreciably different from what could occur in conjunction with established dwellings that utilise the right of way.

b Traffic Safety:

As stated I have relied on the expert evidence presented by Mr Scanlen. No expert evidence was provided by the submitter's however I have considered the lay evidence of those who made submissions and presented at the hearing. Overall effects on the safety of the right of way are considered to be less than minor. Mr Scanlen states that *"...the traffic effects of the proposal will be well within acceptable limits, especially if the following work is carried out:*

- *General vegetation trimming to open up maximum visibility through bends.*
- *The installation of a single –lane bridge marking and signage at the culvert and ford at a distance of 30 metres, in conjunction with vegetation trimming; and*
- *The installation of a speed bump at distance 320 metres – ahead of the final bend before the proposed connection of ROW A (which is the proposed shared access to Lots 2 and 3)."*

I consider that the works recommended by Mr Scanlen will not impinge on private property or private property amenity, or other values. Vegetation trimming is fairly standard practice and the additional physical works are minor in nature.

I note that the conditions formed part of the Council Planner's recommendation, including conditions requiring street names to be presented in accordance with Council's policy to provide a private road name for the right of way. No submissions raised any specific issue with the conditions as proposed.

c Stormwater and related Ecological Effects:

No ecological evidence was presented at the hearing however an ecological assessment was provided in response to further information requested during processing of the application.

The ecological concerns raised by Ecology North related to stormwater and waste water runoff effects on existing covenant areas. The Ecology North report concludes that *"...given the implementation of the mitigation and management recommendations outlined in table 4 of this report, the potential exists for the subdivision development to provide additional long-term ecological value to the site and the wider landscape (e.g. ecological corridors and steppingstones)".*

The submitter's stated that their ecological concerns related to stormwater runoff, and presumably increased sedimentation impacts on water quality.

I have relied on the ecological report prepared by Ecology North and the expert engineering evidence of Mr Murphy for Council and Mr MacPherson for the applicant who have concluded that subject to fairly standard conditions that the proposed subdivision is acceptable in terms of stormwater management.

It is also noted that the Ecology North report identifies North Island Brown Kiwi as present at the site and recommended restricted cats and dogs from the sites with the exception of the owner's existing dog. These outcomes are considered important in ensuring the positive ecological outcomes offered as part of the proposal and are therefore recommended as conditions.

Subject to the recommended stormwater management and site development conditions the effects of the proposed subdivision relating to stormwater and ecological effects are considered to be less than minor. Potentially the ecological effects are positive because of the proposal to covenant approximately 2.3 hectares of vegetation, weed and pest control and preventing cats and dogs from being kept on the sites.

d Cumulative effects:

A cumulative effect is an actual effect that may occur over time or in conjunction with other effects. In Ms Campbell's opinion the proposed subdivision would generate an adverse cumulative effect in relation to the loss of rural character and the accumulation of increases in effects on Ms Ganley and Mr Coup that she considers to be more than minor.

As stated above having the visited the Ganley Coup residence and the subject site I prefer the opinion of the applicant's witnesses.

It is accepted that there will be a change in character but in the context of the existing environment which includes built development, bush clad open space areas, traffic, noise, lighting etc I do not consider the effects of the additional change to be minor or more than minor.

e. Precedent:

A precedent may be set in granting consent to an application for a non-complying activity. A precedent could be set in granting consent if the proposal would be contrary to relevant objectives and policies and could lead to effects on the environment not anticipated in an area.

In this instance granting consent is unlikely to establish a precedent that would lead to adverse environmental effects because, subject to conditions, the subdivision will have less than minor effects on the environment in relation to visual effects, effects on landscape character and effects on rural character.

Additional traffic will use the right of way and this will increase vehicle movements passing properties lower on the right of way. This effect is localised and granting consent is unlikely to establish a precedent that would lead to adverse environmental effects elsewhere.

This proposal effectively represents a form of development that is consistent with the established development pattern in this area and the surrounding area, such as along Te Rongo Road.

Ms Campbell considers that granting consent will establish a precedent because the proposal is, in her opinion, contrary to the objectives and policies and the development proposed, and its surroundings are not unique.

Mr Sasagi states that he does not consider granting consent will establish a precedent because the subdivision will result in site sizes that are similar to sites to the north and south and in his opinion this situation cannot easily be replicated.

Mr Henehan addressed distinguishing characteristics in paragraphs 86 and 87 of his evidence. His opinion was similar to Mr Sasagi.

I consider that granting consent will not establish a precedent but the reasoning differs from the planner's opinion above. Rather than there being distinguishing factors I consider that a precedent will not be set by granting the consent due to the characteristics of the site and surrounding environment. Any adverse effects on rural character, landscape character and visual amenity will be less than minor. Granting consent presents no threat to the purpose or objectives or policies of the Countryside Environment and therefore it is unlikely that granting consent would establish a precedent.

f Objectives and Policies:

The proposed subdivision does not offend the provisions of the Northland Regional Policy Statement (RPS). This is a higher level policy document and given the scale of the proposal and related effects the proposal is not contrary to the RPS provisions. Ms Campbell considered that the proposal was inconsistent with provisions in the RPS relating to subdivision, use and development needing to be located, designed and built in a coordinated manner. Given the findings in relation to the effects of this proposal on the environment I do not find the proposal to be inconsistent with the provisions of the RPS that were highlighted.

I agree with Mr Henehan that the proposed subdivision is a consolidation of the established / existing development pattern and is not at odds with the existing environment. For the reasons stated the proposed subdivision is not contrary to relevant objectives and policies of the Whangarei District Plan relating to the amenity of the Countryside Environment; the requirement for compatible development or for subdivision and development to avoid conflicts between incompatible land uses and avoid detracting from the character of the locality. This is consistent with the opinion expressed by Mr Sasagi; that overall the proposal will not challenge the relevant objectives and policies of the Countryside Environment to a level where the proposal would be inconsistent with these provisions.

Ms Campbell also found the proposal to be inconsistent with, or not in alignment with relevant objectives and policies. Again the basis for difference in opinion relates to the findings as to the effects of the subdivision on the environment. Ms Campbell's opinion appears to be formed on the basis of what is intended for the Countryside Environment whereas the opinion of Mr Sasagi and Mr Henehan seem to be based on the existing environment.

Having considered the evidence and expert opinions as summarised above I consider that granting consent to the proposed subdivision subject to conditions that limit cats and dogs, require ecological enhancement; define the location of buildings and also specify design controls for built development, that the proposal is not inconsistent with, or contrary to the relevant objectives and policies.

## 1.9 Relevant statutory provisions

### 1.9.1 Policy statements and plan provisions

In considering this application I have had regard to the matters outlined in Section 104 of the Act. In particular, the Commissioner has had regard to the relevant provisions of the following planning documents:

- i the New Zealand Coastal Policy Statement
- ii the Northland Regional Policy Statement (RPS)
- iii the Operative Whangarei District Plan and Proposed Plan Change 85
- iv precedent effects.

### 1.9.2 Part II matters

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

Overall because of the findings in relation to the effects of the proposal on the environment the proposed subdivision is not contrary to the relevant provisions of the Act namely s.5; s.6 (c) as the areas to be protected have been identified as having a moderate – high level of ecological significance at district level and the site is also considered significant due to the presence of a Nationally Threatened species (North Island Brown Kiwi) and one regionally significant species (kukupa).

There are no known matters that would offend s8 of the Act and the effects in relation to amenity values and the quality of the environment (s7 matters) haven been determined to be acceptable.

The subdivision is in keeping with Part 2 of the Act.

## 1.10 Decision

Pursuant to Section 104D of the Act, the Commissioner grants consent subject to conditions as follows:

THAT pursuant to sections 104, 104B, 104D 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 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 D dated September 2016. The survey plan must show areas 'B', 'C', 'D', 'E', 'F', and 'G' as conservation covenant areas H and I as the defined build 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 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. Also required are design details of onsite stormwater attenuation for all additional impervious surfaces in accordance with Section 4.11.
- ii Design details of the upgrading of the existing right of way over Lot 2 DP 398000 from the Pt Lot 2 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. Also required are design details of onsite stormwater attenuation for all additional impervious surfaces in accordance with Section 4.11.
- 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/](http://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 Undertake works as described in Section 3 (Summary of Proposed Mitigation Measures) of the Traffic Effects Assessment compiled by Engineering Outcomes dated 18<sup>th</sup> April 2016 to the approval of Senior Environmental Engineering Officer or their delegated representative.
- e 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.
- f 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.
- g 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.
- h 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.
- i 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.
- j 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.
- k 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.
- l 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.

- iv Owners and / or occupiers of Lots 1, 2 and 3 shall not be permitted to keep cats or dogs with the exception that the current property owners existing dog may be retained for the remainder of its life; subject to being restrained at night time and also being excluded from the bush covenant areas.
  - v. Design Controls – Any buildings constructed on Lots 2 or 3 shall be located within land covenant Areas H and I and shall be subject to the Design Controls specified in Appendix One to the report prepared by Simon Cocker Landscape Architecture. A copy of the Design Controls shall be appended to, or included within the consent notice.
- m 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.

- n A conservation covenant 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.

## 1.11 Reasons for the decision

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

- a) Pursuant to section 104(1)(a), the effects of the proposed subdivision on the environment are considered to be no more than minor for the following reasons:
- Subject to the conditions above, the effects of the proposal in relation to visual amenity, landscape character and rural character are less than minor. The proposal represents a consolidation of the existing development pattern and in this context the effects arising from the proposal in relation to character and visual amenity are less than minor.
  - The effects of additional traffic on the right of way will have less than minor adverse effects on traffic safety and appropriate measures that require minor upgrading works will ensure that the right of way functions in a safe manner now and into the future.
  - The cumulative effects of the proposal are less than minor because although there will be a visual change there is already built development in the environment and the subdivision fits with the established development pattern.
  - Although traffic on the right of way will increase and this will potentially create minor adverse effects for property owners that the additional traffic will pass, such effects do not outweigh the positive ecological effects that will be secured by the proposal over time, through the implementation of weed and pest control and the enhancement of the areas of vegetation that are proposed to be protected.
  - Subject to the recommended engineering related conditions adverse effects arising from onsite stormwater and wastewater disposal are considered to be less than minor.
- b) Pursuant to section 104(1)(b), the proposal is considered to be consistent with the relevant objectives and policies of the Operative District Plan for the following reasons:
- The adverse effects of the proposal in relation to amenity and the character of the existing environment are less than minor.
  - The defined building areas and design controls provide a degree of certainty in relation to the effects of built development arising from the subdivision and consequently it can be known that the location and form of that built development will be in keeping with the existing development pattern.
  - Positive ecological effects will be secured over time through the implementation of weed and pest control and the long term protection of the vegetation areas that will be subject to covenant.
  - Engineering conditions will ensure that the effects of the proposal in relation to traffic safety and stormwater are less than minor.
  - The proposal is not contrary to, or inconsistent with the provisions of the Operative Regional Policy Statement primarily because the outcomes of the subdivision will effectively consolidate the existing development pattern in this locality.
- c) A precedent that would lead to adverse environmental effects is unlikely to be set by granting consent to this proposal because the outcomes of the subdivision reflect existing development patterns and this existing environment situation is not likely to be easily replicated.

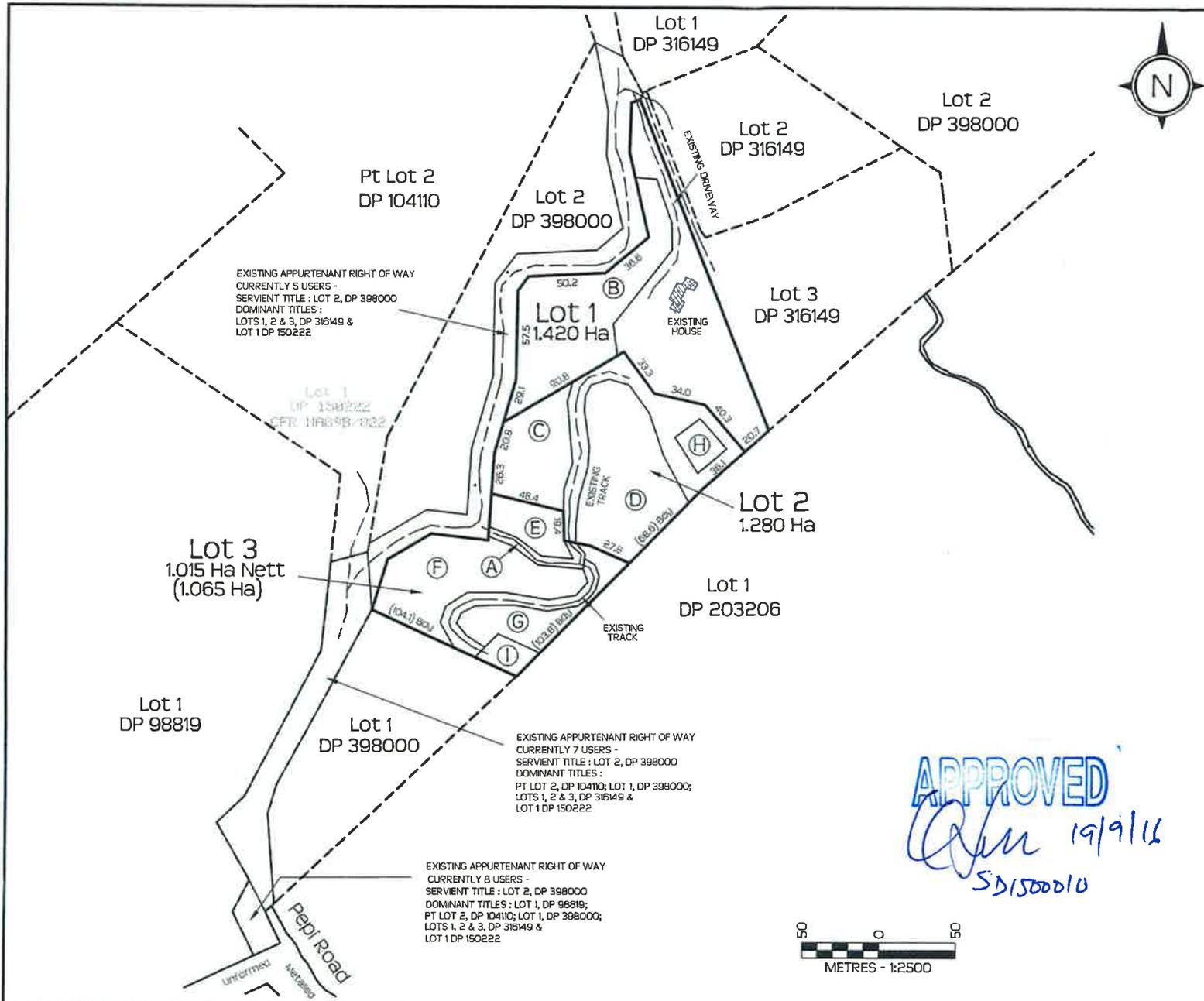
### Advice Notes

- 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 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](http://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.

Issued this 19 day of September 2016



**Hearings Commissioner**



- CAUTION:**
1. THIS DRAWING SHOULD NOT BE AMENDED MANUALLY.
  2. AREAS & DIMENSIONS ARE APPROXIMATE ONLY AND ARE SUBJECT TO FINAL SURVEY.
  3. THE VENDOR & PURCHASER MUST CONTACT THE SURVEYOR IF SALE & PURCHASE AGREEMENTS ARE ENTERED INTO USING THIS PLAN.
  4. SERVICES MUST NOT BE POSITIONED USING THIS PLAN.
  5. DO NOT SCALE OFF DRAWINGS.
  6. THIS PLAN IS COPYRIGHT TO REYBURN & BRYANT (1998) LIMITED.
  7. DESIGNED BY REYBURN & BRYANT - WHANGAREI - NEW ZEALAND

PROPOSED EASEMENT			
PURPOSE	SHOWN	SERV.TENE.	DOM.TENE.
RIGHT OF WAY	A	LOT 3 HEREON	LOT 2 HEREON

PROPOSED CONSERVATION COVENANTS PURSUANT TO S77, RESERVES ACT 1977		
SHOWN	UNDERLYING PARCEL	AREA
B	LOT 1 HEREON	6300 m <sup>2</sup>
C	LOT 2 HEREON	3000 m <sup>2</sup>
D	LOT 2 HEREON	5600 m <sup>2</sup>
E	LOT 3 HEREON	1350 m <sup>2</sup>
F	LOT 3 HEREON	4900 m <sup>2</sup>
G	LOT 3 HEREON	2000 m <sup>2</sup>

PROPOSED LAND COVENANTS DWELLING BUILD AREAS		
SHOWN	UNDERLYING PARCEL	AREA
H	LOT 2 HEREON	600 m <sup>2</sup>
I	LOT 3 HEREON	600 m <sup>2</sup>

TOTAL AREA : 3.7650 Ha  
 COMPRISED IN: CFR N889B/822  
 THIS SITE IS ZONED 'COUNTRYSIDE'  
 THE BUILDING SETBACKS ARE 8M FROM ROAD BOUNDARIES AND 3M FROM ALL OTHER BOUNDARIES

REV	DATE	DESCRIPTION
D	01/09/16	ADD BUILD COVENANTS
C	14/04/16	APPURT RW USERS & ADJ PARCEL, (C)C3312 AMENDED
B	23/12/14	CONSERVATION COVENANTS ADDED
A	5/12/14	SET ISSUE

**reyburn & bryant**

Ph: 09 438 3363 | PO Box 101, Whangarei 0146  
 7 Selwyn Ave, Whangarei | www.reyburnbryant.co.nz

CLIENT: P. ROBERTS  
 PEPI ROAD  
 PARUA BAY

TITLE: **PROPOSED SUBDIVISION OF LOT 1, DP 150222**

DATE: SEPTEMBER 2016 | SCALE: 1:2500 @A3

NO: **S 13312** | REV: **D**

**APPROVED**  
*Paul Roberts* 19/9/16  
 S/D 1500010

