

# Hearings Commissioner

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## **Notice of Meeting**

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

**Friday  
19 November 2010  
9.15 am**

**Part 1  
Planner's Report**

**Application by  
KJP & VKB Ltd**

**Commissioner  
Robert Chan**

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# **Planner's Report and Recommendation to the Hearings Commissioner on a Resource Consent Application:**

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KJP and VKB Ltd seeks subdivision consent for the following:

- To undertake a four-stage subdivision of Lot 2 DP 388274 in the Countryside Environment creating 10 residential allotments with net site areas ranging from 4940m<sup>2</sup> to 2.8326ha and one 23.8106ha balance allotment with proposed covenanted bush and wetland areas.
- To exceed the maximum number of users permitted to use a shared access.

**Overall, the application is considered to be a Non-Complying Activity requiring consent under the rules of the Operative Whangarei District Plan relating to allotment area and property access.**

This report was written and peer-reviewed by the following signatories:

Environmental Planner  
(Consents):

Amber Tsang

Date:

Team Leader  
(Consents):

Kelly Ryan

Date:

Principal Planner:

Paul Lees

Date:

# Resource Management Act 1991

Hearing By: Hearings Commissioner for the Whangarei District Council of a subdivision consent application by KJP and VKB Ltd. The application is considered to be a Non-Complying Activity requiring consent under the rules of the Operative Whangarei District Plan relating to allotment area and property access.

Evidence By: Amber Tsang  
BPlan (Honours)  
Environmental Planner (Consent)  
Whangarei District Council

File Ref: SD1000053 P120286.SD

Dated: 2 November 2010

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## 1. The Proposal

1.1 KJP and VKB Ltd seeks subdivision consent for the following activities in the Countryside Environment:

- To undertake a four-stage subdivision of Lot 2 DP 388274 at 171 Prescott Road in Ruakaka creating the following net site areas:

### Stage 1

Lot 12 4325m<sup>2</sup> to be amalgamated with Lot 1 DP 388274 creating a total area of 9133m<sup>2</sup>  
Lot 13 4.0933ha  
Lot 14 26.3829ha (26.8043ha gross site area)  
Lot 15 5.37ha

### Stage 2

Lot 1 7992m<sup>2</sup> (8455m<sup>2</sup> gross site area)  
Lot 3 4940m<sup>2</sup> (5407m<sup>2</sup> gross site area)  
Lot 4 9452m<sup>2</sup> (9910m<sup>2</sup> gross site area)  
Lot 6 1.4335ha (1.4557ha gross site area)

### Stage 3

Lot 7 8404m<sup>2</sup> (9988m<sup>2</sup> gross site area)  
Lot 8 1.0855ha (1.1448m<sup>2</sup> gross site area)  
Lot 9 7405m<sup>2</sup> (7816m<sup>2</sup> gross site area)  
Lot 10 1.0677ha  
Lot 11 1.3166ha (1.3771ha gross site area)

#### Stage 4

- Lot 2 2.8326ha (2.9183ha gross site area) with proposed covenanted bush area of 2.3767ha
- Lot 5 23.8106ha (24.1463ha gross site area) with proposed covenanted bush and wetland areas and riparian margin totalling 12.4828ha

- To exceed the maximum number of 8 users permitted to use a shared access with Right of Way A serving a total of 11 users.

1.2 A copy of the original application lodged with Council on 3 May 2010 is included in **Attachment 1** in **Part B**. The applicant has subsequently amended the proposal to amalgamate proposed Lot 12 (the former proposed Lot 1) with Lot 1 DP 388274 and the new proposed Lot 1 is now located to the south of proposed Lot 6, relocate the building area on proposed Lots 8 and 9 further down from the ridgeline, and include additional covenanted area totalling 14.8595ha in size (refer to the letter by Mr Hood dated 7 October 2010 and the amended scheme plan by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 provided at **Attachment 2** in **Part B**). This information has been circulated to all parties.

1.3 Specialist reports submitted in conjunction with the application lodged by Brett Hood of Reyburn and Bryant 1991 Ltd include:

- Site Suitability Engineering Assessment by Dean Botica of Hawthorn Geddes Engineers & Architects Ltd dated 18 January 2010 and supplementary assessment dated 6 October 2010 and 18 October 2010;
- Landscape and Visual Impact Assessment by Christine Hawthorn of Hawthorn Landscape Architects dated February 2010 and supplementary assessment dated 30 September 2010; and
- Ecological Assessment by David Wright of David Wright Ecological Services dated January 2010 and supplementary assessment dated 29 September 2010 and 14 October 2010.

Note: An amended scheme plan by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 rev N was provided as part of the supplementary assessment by Mr Wright dated 14 October 2010 showing an increased area of bush area M which now includes the wetland area on the northern portion of proposed Lot 4.

1.4 Key features of the application are stated as follows:

#### **Built Development and Design Guidelines**

- All buildings will be located within the designated building areas, with the exception of proposed Lot 5 where farm operation related buildings may be located elsewhere within the lot in low visibility areas.
- Proposed Lot 5 will be subject to a 'no further subdivision' covenant.
- The maximum height of all buildings will not exceed 6m applying the rolling height method.
- The roofs of all buildings will have a reflectivity value of less than 25% and the exterior walls of all buildings will have a reflectivity value of less than 35%.
- Other restrictions/guidelines on built development include architectural design and features, building form and siting, building materials and colours, rooflines and fencing.
- Compliance with the restrictions/guidelines will be addressed via a consent notice registered on the titles of the proposed allotments.

- Private 'built quality' covenants will be imposed by the applicant.

### **Landscaping**

- Landscaping will be undertaken around the designated building areas within the amenity planting areas as show on the subdivision scheme plan by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 rev N and subject to protection and on-going maintenance.
- An overall landscape development plan will be prepared and implemented.
- A consent notice will be registered on the titles of the proposed allotments requiring individual landscape planting proposal for each allotment to be provided at time of building consent.

### **Bush Protection and Wetland Restoration**

- The areas of bush, wetland and riparian margin totalling 14.8595ha in size as shown on the subdivision scheme plan by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 rev N will be protected and covenanted in perpetuity.
- A detailed overall ecological management plan will be prepared and implemented. This plan will include:
  - A wetland restoration management plan;
  - An ecological restoration planting plan;
  - An ecological pest management plan; and
  - A monitoring plan.

### **Roading and Access**

- All the proposed allotments will gain vehicle access via the proposed shared rights of way and the existing vehicle crossing off Prescott Road.
- Proposed Lot 5 will be the only allotment having legal access onto Sandford Road. It is proposed that the practical access will remain from Prescott Road.

### **Services**

- The proposed allotments will have onsite water supply.
- Onsite treatment and disposal of wastewater will be designed by a suitably qualified person and will be able to comply with the standards of the Northland Regional Water and Soil Plan.
- The existing pond located within proposed Lot 5 will be upgraded and fitted with an outlet structure to provide for stormwater attenuation. Attenuation of stormwater run-off from proposed Lots 4, 6, 7 to 10 will be via rainwater tanks and designed by a suitably qualified person.

- 1.5 Council's Senior Environmental Engineering Officer, Vladimir Rozov, Council's Consultant Landscape Architect, Kylie McLaughlin-Brown, and Council's Consultant Ecologist, Amy Bazeley, have assessed the application and the specialist reports, and the relevant information and submissions received after notification. Copies of their assessments are provided at **Attachment 1** in **Part A**. Their comments have been incorporated into the assessment and the relevant sections of this report.

## **2. The Site and the Surroundings**

- 2.1 The subject site is located on the south-eastern side of Prescott Road in Ruakaka. The 36.7ha site is legally described as being Lot 2 DP 388274 comprised in Certificate of Title NA139B/965.

- 2.2 Detailed description of the subject site has been provided in various specialist reports submitted in conjunction with the application. The key characteristics of the site are considered to be as follows:
- The site consists of two ridgelines both running in a west to east direction and parallel to the north-eastern and south-western boundaries of the site, and a shallow valley is located between the two ridgelines.
  - There is a wetland area at the centre of the site which adjoins the riparian margin of the stream which forms the south-eastern boundary of the site. A small portion of the riparian margin on the eastern corner of the site is within a Protected Natural Areas ref: Q07142 as identified by the Department of Conservation.
  - There is an existing residential dwelling located on the north-eastern portion of the site contained within proposed Lot 2.
  - The site contains three distinct bush areas as illustrated in Mr Wright's assessment (refer to Appendix 7 of the application):
    - Bush area K is approximately 2.33ha in size as shown on the subdivision scheme plan by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 rev N and is located on the southern corner of the site.
    - Bush area L is approximately 1.83ha in size as shown on the subdivision scheme plan and is located on the south-western portion of the site.
    - Bush area M is approximately 2.38ha in size as shown on the subdivision scheme plan and is located near the northern corner of the site.
  - There is also a mix of scattered individual trees and small clusters of mature indigenous trees within the site, as well as the riparian vegetation fringing the stream.
  - The soil types of the site do not meet the criteria for highly versatile soils and are classed as VI in terms of land use capability as shown on Council's GIS system.
  - The Wilson Dam is located across the road to the west of the site and the Ruakaka Forest is located to the south of the site.
- 2.3 The site is located within the Countryside Environment – a general rural zone which tends to be used predominantly for primary production, but is also used for low-density residential purposes (as described in Chapter 5 of the District Plan). The site is not subject to any resource area notations. A location map and an aerial photo showing the locality of the site and the GIS maps showing zoning and other resource area notations of the properties in the area are provided at **Attachment 2 in Part A**.
- 2.4 All surrounding properties are zoned Countryside Environment. However, the surrounding area is characterised by different allotment sizes and densities of built development (refer to the density map provided at **Attachment 3 in Part A**).

### **3. District Plan Requirements**

- 3.1 The site is located within the Countryside Environment of the District Plan and is not subject to any resource area notations.
- 3.2 Rule 73.3.1 Allotment Area specifies that subdivision in the Countryside Environment is a controlled activity where every proposed allotment has a minimum net site area of 20ha and a discretionary activity where the minimum average net site area is 4ha. Where these standards are not met, subdivision is a non-complying activity.



- 3.3 The proposal seeks to undertake subdivision to create 10 residential allotments with net site areas ranging from 4940m<sup>2</sup> to 2.8326ha and one 23.8106ha balance allotment with proposed covenanted bush and wetland areas. Hence the proposal does not meet the minimum net site area standard for a controlled activity. The average net site area of the proposed allotments is approximately 1.78ha (net site area of proposed Lot 5 – the balance allotment being 23.8106ha is deemed 8ha as required by Rule 73.3.1), hence the proposal does not meet the standard for a discretionary activity and is a non-complying activity.
- 3.4 Rule 73.3.2 Environmental Benefit specifies that notwithstanding the allotment area requirements of Rule 73.3.1 subdivision could be a restricted discretionary or a discretionary activity if certain allotment area requirements are met and an environmental benefit (as defined under Rule 73.3.2) is created by the protection of a significant natural feature.
- 3.5 While the proposal seeks to protect the areas of bush, wetland and riparian margin located within the subject site, it is confirmed by Mr Hood that the application is for a non-complying subdivision under Rule 73.3.1. In this instance, the application is not specifically assessed against Rule 73.3.2 and the protection of the identified natural features is regarded as a mitigation measure of the proposal.
- 3.6 Rule 73.3.7 Property Access states that subdivision in the Countryside Environment is a controlled activity if every allotment is capable of having vehicular access to a road; and 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 Appendix 6 and Appendix 9; and no more than 8 allotments or 8 residential units are served by a shared access.
- 3.7 All the proposed allotments will gain vehicle access via the proposed shared rights of way and the existing vehicle crossing off Prescott Road. Given that more than 8 users (i.e. 11 allotments) are being served by Right of Way A and the right of way does not, in all aspects, comply with the relevant standards in Appendixes 6 and 9 of the District Plan, the proposal does not comply with this rule and is a restricted discretionary activity, with Council's discretion restricted to:
- The matters over which control is reserved;
  - 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; and
  - The effects of water runoff.
- 3.8 It is stated in Section 6 of the application that the proposal complies with all other relevant rules of the Countryside Environment as a controlled or permitted activity, including extension of services and earthworks.
- 3.9 Overall, the application is considered to be a **Non-Complying Activity** requiring consent under the rules of the Operative Whangarei District Plan relating to allotment area and property access.

## 4. Consultation, Public Notification and Submissions

- 4.1 The application was lodged after 1 October 2009. Hence, the Resource Management (Simplifying and Streamlining) Amendment Act 2009 applies.
- 4.2 The application was suspended on 21 May 2010 for requesting information regarding landscaping and ecological mitigation pursuant to Section 92 of the Resource Management Act 1991 (the Act).

- 4.3 On 10 June 2010, the applicant requested public notification to be proceeded with, acknowledging that there is a possibility the application may require re-notification once the information requested has been received and assessed. On 15 June 2010, it was determined pursuant to Section 95A(2)(b) of the Act that the application be publicly notified as the applicant requested public notification of the application.
- 4.4 The application was publicly notified in the Whangarei Leader on 22 June 2010 with the submission period closing on 20 July 2010. During this period, the application attracted 19 submissions with 5 supporting the application, 11 opposing the application and 3 neutral submissions. Eight submitters have indicated that they wish to be heard.
- 4.5 One late submission was received from Ian and Helen Hilford on 21 July 2010. They support the application and have indicated that they wish to be heard. On 26 July 2010, it was considered and determined under authority delegated to the Team Leader (Consents) of the Whangarei District Council pursuant to Sections 37 of the Act that Council waives the requirement for the submission by Ian and Helen Hilford to be received by 20 July 2010. The Council extends the time period by one day to 21 July 2010 to allow this submission to be accepted as valid for the following reasons:
- The submission is in support of the application with reasons similar to those of other submitters in support;
  - It is considered unlikely that any parties would be unduly prejudiced by the acceptance of this late submission; and
  - It would not cause an unreasonable delay in processing the application.
- 4.6 Copies of all the submissions received are included at **Attachment 3 in Part B**. An individual summary of the submissions and a map which shows the location of the submitters with respect to the subject site is provided at **Attachment 4 in Part A**. In summary the submitters have raised the following matters which require consideration:
- Location and formation of the proposed rights of way;
  - Access off Sandford Road;
  - Effects on amenity values and character of the area;
  - Effects on views, privacy, noise and dust;
  - Quality of the potential dwellings;
  - Protection of bush and wetland areas;
  - Future subdivision and development on proposed Lot 5;
  - Effects on stormwater runoffs and discharges;
  - Layout of the proposed subdivision;
  - Non-compliance with the minimum lot size requirement;
  - Positive effects;
  - Enforcement of the proposed conditions; and
  - Consistency with the District Plan and District Plan integrity.
- 4.7 The matters raised in the submissions are addressed in the relevant sections of this report.

- 4.8 Following the receipt of submissions the applicant has amended the proposal as discussed in Section 1.2 of this report. Further information has been received and is included at **Attachment 2 in Part B**:
- A letter by Mr Hood dated 7 October 2010 regarding the amended proposal and the amended scheme plans by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 rev M.
  - The supplementary engineering assessment by Dean Botica of Hawthorn Geddes Engineers & Architects Ltd dated 6 October 2010 and 18 October 2010.
  - The supplementary landscape and visual impact assessment by Christine Hawthorn of Hawthorn Landscape Architects dated 30 September 2010.
  - The supplementary ecological Assessment by David Wright of David Wright Ecological Services dated 29 September 2010 and 14 October 2010, and an amended scheme plan by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 rev N.
  - A letter by Mr Hood dated 22 October 2010 regarding the comments by Council's Consultant Landscape Architect, Kylie McLaughlin-Brown, and Council's Consultant Ecologist, Amy Bazeley.
  - An email by Mr Hood dated 27 October 2010 regarding the various conditions and associated mechanisms proposed to give effect to the proposed mitigation measures (this is provided at **Attachment 5 in Part A**).

## 5. Statutory Context

- 5.1 Section 104 of the Act sets out those matters that, subject to Part 2, the Consent Authority must have regard to when considering an application for resource consent. These matters include any actual or potential effects on the environment of allowing the activity, any relevant provisions of a plan or proposed plan, and any other matter the Consent Authority considers relevant and reasonably necessary to determine the application.
- 5.2 Pursuant to Section 104B of the Act, after considering a non-complying resource consent application, the Consent Authority may grant or refuse the application, and if it grants the application, may impose conditions under Section 108 of the Act.
- 5.3 Pursuant to Section 104D of the Act, the Consent Authority may grant a non-complying activity resource consent application only if it is satisfied that either the adverse effects of the activity on the environment will be minor, or the activity will not be contrary to the objectives and policies of the relevant plan or proposed plan.
- 5.4 The following sections of this report address those matters considered relevant to this application, including an assessment of environmental effects, an analysis of the proposal against the relevant provisions of a plan or proposed plan, and consideration of any other relevant matters, in order to reach a conclusion and recommendation as to whether the application should be granted or declined pursuant to Sections 104, 104B and 104D of the Act.

## 6. Assessment of Environmental Effects

- 6.1 As detailed above, as a non-complying activity the consent may only be granted if at least one of two 'gateway' tests set out in Section 104D of the Act is satisfied: either that the adverse effects of the proposal on the environment will be minor; or the proposal will not be contrary to the objectives or policies of the relevant plans.
- 6.2 Section 3 of the Act defines the term effect as including –
- (a) *Any positive or adverse effect; 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 conjunction with other effects –  
–  
regardless of 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.*

### **The Permitted Baseline**

- 6.3 When considering any actual and potential effects of the proposed activity, Section 104(2) of the Act provides that Council may have regard to permitted baseline comparisons i.e. a comparison with the environment as it would exist if the land were used in a manner permitted as of right.
- 6.4 The permitted baseline approach to effects assessment enables Council to disregard any adverse effects on the environment if those effects are related to an activity or activities permitted by the District Plan. Existing activities and any activity which could be carried out as a permitted activity without being fanciful may be discounted as giving rise to any adverse effects.
- 6.5 While no subdivision is permitted by the District Plan, consideration in relation to built density would be relevant. The subject site is within the Countryside Environment of the District Plan. In this Environment, the construction of a residential unit or a minor residential unit could be considered as a permitted activity if:
  - a) The residential unit, after completion, will be the only residential unit on the site; or
  - b) 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
  - c) 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 8000m<sup>2</sup>; and
  - d) It is not within a Mineral Extraction Area as shown on the Planning Maps; and
  - e) It is not within 500m of a Mineral Extraction Area.

Note: A minor residential unit, as defined in Chapter 4 of the District Plan, means a residential unit located no more than 15m from another residential unit on the same site/lot with a gross floor area of no more than 70m<sup>2</sup>, excluding the gross floor area used exclusively for the storage of motor vehicles associated with the minor residential dwelling.

- 6.6 With the existing allotment (Lot 2 DP 388274) being 36.7ha in size, only one residential units and one minor residential unit could theoretically be permitted as of right on the subject site, without a resource consent provided that all other bulk and location requirements of the Plan were complied with.

### **Traffic Safety and Efficiency**

- 6.7 All the proposed allotments will gain vehicle access via the proposed shared rights of way and the existing vehicle crossing off Prescott Road. It is proposed that the existing vehicle crossing will be upgraded to the required standards. Council's Senior Environmental Engineering Officer, Mr Rozov, has commented on the roads and the speed environments in the area and confirmed that the existing vehicle crossing can achieve complying sight lines.

- 6.8 As discussed in Sections 3.6 and 3.7 of this report, the proposal does not comply with Rule 73.3.7 Property Access. For instance, a shared access serving more than 8 users is required to be formed to a local road standard with a minimum road reserve width of 20m, a minimum sealed carriageway width of 6m and unsealed shoulders of 2 x 0.5m. It is proposed that Right of Way A will be formed with a minimum road reserve width of 12m, a minimum sealed carriageway width of 5.5m and unsealed shoulders of 2 x 0.25m.
- 6.9 The Engineering Assessment by Dean Botica of Hawthorn Geddes Engineers & Architects Ltd dated 18 January 2010 and supplementary assessment dated 6 October 2010 and 18 October 2010 have been provided in support of the application. Mr Botica has provided comments in his reports with regard to the location and formation of the proposed rights of way. In particular, he concludes that the relaxation of the minimum formation standards for Right of Way A is appropriate given the following reasons:
- The traffic demand is likely to be less than 50 movements per day;
  - Visibility is generally good and users are likely to be familiar with the access;
  - The geometry of the first section of the right of way will not provide a conflict on any aggressive corners; and
  - The proposed width is sufficient to pass two heavy goods vehicle's operating under normal load width criteria.
- 6.10 Mr Rozov concurs with the conclusion reached by Mr Botica and confirms that the relaxation of the minimum formation standards for Right of Way A will have effects that are no more than minor.
- 6.11 DJ and GM Collins and Ms Russell in their submissions raised concerns regarding access off Sandford Road and the need to seal Sandford Road. It is confirmed by Mr Rozov that no upgrade is required for Sandford Road as a result of the proposal because proposed Lot 5 will be the only allotment having legal access onto Sandford Road and it is proposed that proposed Lot 5 will be subject to a 'no further subdivision' covenant. Therefore, no additional allotments will have legal access onto Sandford Road as a result of the proposal and the existing situation remains unchanged. It is concluded by Mr Rozov that any potential effects on the existing roading network are no more than minor.
- 6.12 No other submitters have raised specific concerns with regard to the effects on traffic safety and efficiency.
- 6.13 Based on the comments provided by Mr Botica and Mr Rozov and the recommended condition, it is considered that the effects on traffic safety and efficiency are no more than minor.

#### **Landscape and Visual Effects**

- 6.14 A Landscape and Visual Impact Assessment by Christine Hawthorn of Hawthorn Landscape Architects dated February 2010 and supplementary assessment dated 30 September 2010 have been provided in support of the application. Council's Consultant Landscape Architect, Ms McLaughlin-Brown, has reviewed the application and the assessment by Ms Hawthorn.
- 6.15 In terms of landscape character, the Whangarei District Council Landscape Assessment by LA4 in 1995 (WDCLA 1995) identifies, describes and rates different landscape units within the district and is referred to in both Ms Hawthorn's and Ms McLaughlin-Brown's assessment. The document identifies and describes the units on the basis of landscape character and the main visual and physical characteristics. The document also rates the units based on its visual absorption capability and its vulnerability to change, scaled from 1 to 7; with rating 7 being more sensitive and rating 1 being less sensitive.

- 6.16 The WDCLA 1995 identifies the site as being located within Unit T22 – South West Hill Country which is accommodated within the Rolling to Steep Pasture with Pockets of scrub/bush/forestry category and has a sensitivity rating of 3, which is considered moderate. The site is not located within any Outstanding or Notable Landscape Area under the District Plan or listed as being an Outstanding Natural Feature.
- 6.17 Both Ms Hawthorn and Ms McLaughlin-Brown agree that the site is located within a modified landscape which contains rural lifestyle development. In particular, Ms McLaughlin-Brown considers that:
- The subject site is located on Prescott Road, which consists of ribbon type development along the Prescott Road ridge. Rural lifestyle development is also evident around Heatherlea Road and Sandford Road providing a landscape which is relatively fragmented by past land use and development.*
- 6.18 Section 4 of Ms Hawthorn’s assessment commented on the visibility and the potential viewing audience of the site. Section 6 of Ms Hawthorn’s assessment detailed the proposed enhancement and mitigation measures which include designated building envelopes, mitigation planting, bush and wetland protection, and architectural design guidelines. It is concluded by Ms Hawthorn that:
- The recommendations outlined above aim to avoid, remedy or mitigate any possible negative visual effects associated with the subdivision of the site by ensuring visual integration of the ten proposed building sites.*
- If the recommendations are adopted then it is considered that any potential negative landscape and/or visual effects relating to the proposed subdivision will be no more than minor.*
- 6.19 While Ms McLaughlin-Brown agrees that the landscape and visual effects can be avoided or mitigated, she considers that additional mitigation planting on proposed Lots 1, 3, 7 and 8 (in line with those originally proposed by Ms Hawthorn in her assessment dated February 2010) is required to provide a backdrop to the building areas and further assist in softening and screening the potential structures from Prescott Road. The additional mitigation planting recommended by Ms McLaughlin-Brown is detailed and shown on her email dated 28 October 2010 and the attached plan provided at Attachment 1 in Part A.
- 6.20 It is concluded by Ms McLaughlin-Brown that the proposed mitigation measures along with the additional mitigation planting recommended will ensure that the potential landscape and visual effects will be no more than minor. However, given the location of building areas and the nature of the site, if the additional mitigation planting is not provided for, the landscape and visual effects could potentially be more than minor.
- 6.21 Paul Barry Family Trust, G and S Booth, and Ruakaka Ridge Trust in their submissions raised concerns regarding the proposed planting heights and the effects on views. The applicant has therefore relocated the building area on proposed Lots 8 and 9 further down from the ridgeline and replaced the originally proposed tall planting on these lot with lower growing species to ensure views are not blocked from the neighbouring properties (refer to the letter by Mr Hood dated 7 October 2010 and the amended scheme plan by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 provided at Attachment 2 in Part B).
- 6.22 In terms of the additional mitigation planting recommended by Ms McLaughlin-Brown, while Ms McLaughlin-Brown considers that the additional planting is unlikely to impinge significantly on the views of the neighbouring properties given the topography of the area, the location of the building areas and the proposed planting areas, she recommends that the mitigation planting on proposed Lots 7 and 8 should be lower growing species no higher than 6-7m in height. It is noted that there are no controls under the District Plan restricting planting of the nature proposed in the application and recommended by Ms McLaughlin-Brown.

- 6.23 Based on the comments provided by Ms Hawthorn and Ms McLaughlin-Brown, the proposed mitigation measures and the recommended conditions, it is considered that the landscape and visual effects are no more than minor.

### **Ecological Effects**

- 6.24 An Ecological Assessment by David Wright of David Wright Ecological Services dated January 2010 and supplementary assessment dated 29 September 2010 and 14 October 2010 have been provided in support of the application. Council's Consultant Ecologist, Ms Bazeley, has reviewed the application and the assessment by Mr Wright.
- 6.25 Mr Wright has provided a detailed description and ecological assessment of the three bush areas and the wetland area within the site. In summary, it is concluded by Mr Wright that:
- Both bush areas K and L are of **moderate** value and bush area M is of **moderate-high** value in terms of the criteria under Schedule 17D in Chapter 17 of the District Plan .
  - While the wetland area at the centre of the site has a limited mix of indigenous plant species and required reintroduction of a wider range of plant species, it is of **high** ecological and connectivity value. In particular, the wetland area contains a small section of peat bog which is a rare habitat type in the Waipu Ecological District (a detailed discussion of the significant ecological value of peat or sphagnum bog is provided in Ms Bazeley's assessment dated 18 October provided at Attachment 1 in Part A).
- 6.26 Mr Wright has recommended the following mitigation measures:
- Bush areas K, L and M, and the wetland area as marked on the subdivision scheme plan by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 rev N shall be legally protected and fenced as either Reserves Act Conservation Covenants or QE II National Trust Open Space Covenant.
  - A 10m wide riparian margin located on the western side of the stream which forms the south-eastern boundary of the site shall be fenced and excluded from stock.
  - All plants used on the site for revegetation purposes shall be eco-sourced from the Waipu Ecological District.
  - A detailed overall ecological management plan shall be prepared and implemented. This plan will include:
    - A wetland restoration management plan;
    - An ecological restoration planting plan;
    - An ecological pest management plan; and
    - A monitoring plan.
  - Keeping of cats and mustelids shall be banned on the proposed lots.
  - Building materials shall be stored at least 10m away from the forest edges to reduce root damage.
  - Introduction of soil from off-site shall be avoided to minimise the introduction of new weeds to the site. If soil from off-site is needed it shall be sterilised first. All earth moving machinery shall be cleaned prior to entering the site.
  - Any stream crossings shall comply with the Northland Regional Water and Soil Plan and minimise any bank disturbance, and shall not impede fish passage.
  - Any sediment generated from earthworks shall be contained and not lost to the adjacent bush, wetland or stream environments.

6.27 It is concluded by Mr Wright that the implementation of the mitigated measures as outlined above will mitigation the potential ecological effects. Ms Bazeley concurs with the conclusion reached by Mr Wright and confirms that the proposal has sufficiently addressed all the ecological features on the property and provided linkage between them.

6.28 In terms of the positive ecological value generated by the proposal, it is considered by Ms Bazeley that the protection of the bush areas K, L and M is of moderate value and the protection of the wetland area is more significant. In particular, she considers that:

*This is a large area of a wetland habitat, albeit currently degraded, in close proximity to other wetlands. Wetlands are threatened in the district, regionally and nationally. To my knowledge, there are not many wetlands of this size protected in the Waipu Ecological District. Further, peat bog (a pocket of which is found here) is rare in the Ecological District. If restored correctly there is good potential to provide ecological benefit here with High significance values.*

*Linking all these habitat types and protecting the riparian margins of the stream on the eastern property boundary further add to the values of the protection proposal.*

6.29 Based on the comments provided by Mr Wright and Ms Bazeley, the proposed mitigation measures and the recommended conditions, it is considered that the adverse ecological effects are no more than minor. With the proposed mitigation measures being successfully implemented, it is considered that high positive ecological values could be achieved.

#### **Rural Character and Amenity Values**

6.30 Section 2 of the Act defines the term **amenity values** as –

*Those natural or physical qualities and characteristics of an area that contribute to ones appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*

6.31 Typically a person would view amenity include matters such as pleasantness, privacy, quietness and clean air. Therefore, addition to visual impact, matters such as noise, dust, light spill, volume of traffic and intensity of development influence amenity values. People's perception, expectation, desires, and tolerance also influence amenity values.

6.32 While the character and amenity values of the Countryside Environment are primarily associated with features such as agricultural activities, open landscape and views, feelings of remoteness, a low intensity of development and green unspoiled landscape with indigenous vegetation (as described in Chapter 5 of the District Plan), it is considered appropriate to take into account the existing character and amenity values of the local environment, those changes that could occur in the environment in terms of permitted activities and the implementation of granted, but unimplemented resource consents, in assessing the character and amenity values that are applicable to an particular area or environment.

6.33 The area surrounding the site is characterised by a mixture of allotment sizes and density of built development (refer to the density map provided at Attachment 3 in Part A and the cadastral map in Appendix 3 of the application provided at Attachment 1 in Part B). As discussed in paragraph 6.17 of this report, both Ms Hawthorn and Ms McLaughlin-Brown consider that the site is located within a modified landscape which contains rural lifestyle development. I agree that the rural character which contributes to the amenity values enjoyed by the area has been modified with the introduction of lifestyle blocks and the creation of some smaller rural residential allotments. The character of the local environment is considered to be a mix of rural and rural-residential.



- 6.34 This section of Prescott Road is characterised by a ribbon development of rural residential allotments. The majority of the allotments along the frontage of this section of Prescott Road range from 1 to 2ha in size with some smaller allotments being approximately 5000m<sup>2</sup> in size. Heatherlea Road and Sandford Road – the two roads located in close proximity of the site are also characterised by lifestyle blocks development with the majority of the allotment sizes ranging from 1 to 4ha.
- 6.35 In particular, the site is adjoined by 15 properties; only 2 of these properties are bigger than 20ha in size, the other adjoining properties range from 954m<sup>2</sup> to 4.4715ha in size. In addition, the property located immediately to the south-west of the site being Lot 4 DP 337919 is subject to an unimplemented subdivision consent RC38764 granted on 20 September 2005 for a two-stage subdivision to create 11 allotments with proposed Lot 3 to be amalgamated with an existing nearby allotment. Stage 1 of the subdivision creating Lots 1 to 4 DP 337919 has been completed. Stage 2 of the subdivision will further subdivide Lot 4 DP 337919 into 8 allotments with allotment sizes ranging from 2.9ha to 15.8ha. A copy of the subdivision scheme plan of RC38764 is provided at **Attachment 6 in Part A**.
- 6.36 The proposed subdivision seeks to create 10 residential allotments with net site areas ranging from 4940m<sup>2</sup> to 2.8326ha and one 23.8106ha balance allotment, achieving an average density of approximately 1 residential unit per 3.3ha. While it is recognised that some of the proposed allotment sizes would be at the smaller end of the scale in comparison to the existing allotment sizes in the area, the intensity of development proposed is not considered out of character with that existing in the area.
- 6.37 It is not specified in the application whether the construction of a minor residential unit on the proposed allotments is restricted. Rule 38.4.2 of the District Plan states that the construction of a minor residential unit could be a permitted activity if 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 8000m<sup>2</sup>. If a minor residential unit along with a residential unit were to be constructed on each of the eight proposed allotments which are 8000m<sup>2</sup> or bigger in size and a residential unit were to be constructed on the other three proposed allotments, the proposal would only be able to achieve an average density of approximately 1 residential unit per 1.9ha which is significantly higher than the 3.3ha as assessed previously. In this case, the resultant intensity of development would be less in keeping with that existing in the area. Therefore, in order to avoid this potential adverse effect I consider a consent notice shall be included prohibiting a minor residential unit to be constructed on the proposed allotments.
- 6.38 In addition to the landscaping and ecological mitigation measures as discussed previously, I consider that the design and the layout of the proposed subdivision will further mitigate the potential adverse effects of the proposed subdivision with regard to rural character and amenity values:
- The 10 proposed residential allotments are located to the back of the existing allotments along the frontage of Prescott Road and confined along the two ridgelines which run parallel to the north-eastern and south-western boundaries of the site. It is considered that the proposed subdivision will avoid further ribbon development along the frontage of Prescott Road and maintain the open view from this frontage of Prescott Road.
  - The balance allotment – proposed Lot 5 has a net site area of 23.8106ha which meets the minimum allotment area requirements of the Countryside Environment and is subject to a ‘no further subdivision’ covenant. It is considered that the large balance allotment will maintain a degree of rural character and open landscape currently displayed by the site.
  - The layout of the proposed subdivision allows the bush and wetland areas and the riparian margin totalling 14.8595ha in size to remain in the same titles – proposed Lot 2 and Lot 5 which enhances the ongoing management of these ecological features.

- 6.39 Several submitters have raised concerns regarding the quality of the potential dwellings. The proposed architectural design guidelines have been assessed by Ms McLaughlin-Brown and are considered appropriate. It is concluded by Ms McLaughlin-Brown that the potential visual effects will be no more than minor. In addition, it is stated in the letter by Mr Hood dated 7 October 2010 (provided at Attachment 2 in Part B) that private 'built quality' covenants will be imposed by the applicant.
- 6.40 Paul Barry Family Trust, IEH and U Mertens, CLJ Mertens Trust Ltd and Ruakaka Ridge Trust in their submissions raised concerns regarding the effects of noise and dust relates to the location and formation of the proposed rights of way. It is stated in Mr Botica's assessment dated 18 January 2010 (in Appendix 5 of the application provided at Attachment 1 in Part B) that the proposed rights of way are located along the centreline of the ridges to minimise the earthworks required. The location of the proposed rights of way has been assessed by Mr Rozov and is considered appropriate.
- 6.41 In terms of the formation of the proposed rights of way, it is proposed that Right of Way A will be sealed. It is not specified in the application whether Rights of Way E, F, G, H and I serving proposed Lots 7 to 11 will be sealed. While it is acknowledged that sealing of the proposed rights of way may mitigate the effects of noise and dust, Mr Rozov advises that sealing of the rights of way serving up to 5 allotments and where the gradient does not exceeds 18% is not required under Council's Environmental Engineering Standards 2007. Mr Rozov also advises that sealing of the rights of way may have implications on stormwater runoff. The applicant may wish to consider this matter and comment on it further at the hearing.
- 6.42 In terms of effects on amenity values relates to vehicle traffic, the proposal does not include any high traffic producers. It is commonly accepted that a residential unit would only generate between 6 to 9 traffic movements in any 24 hour period. The effects on traffic safety and efficiency are considered to be no more than minor as assessed by Mr Botica and Mr Rozov and discussed previously.
- 6.43 As shown on the stage plans of subdivision by Reyburn and Bryant 1991 Ltd reference S12055 dated October 2010 (provided at Attachment 2 in Part B), the applicant proposes to create Lots 1, 3, 4 and 6 in Stage 2 of the subdivision with the protection and enhancement of the bush and wetland areas and riparian margin contained within the balance lot being implemented in Stage 3. I consider that the recommended conditions in Stage 2 of subdivision (including those which address landscape, visual and engineering matters) as provided at **Attachment 7 in Part A** are sufficient to ensure that the potential adverse effects of the subdivision will be no more than minor.
- 6.44 Taking into account the existing character and pattern of development in the area, the proposed landscaping and ecological mitigation measures, the design and layout of the proposed subdivision with no minor residential unit being allowed on the proposed allotments, I consider that the potential adverse effects of the proposed subdivision with regard to rural character and amenity values are no more than minor.

#### **Cultural and Heritage Values**

- 6.45 The site is not identified as being subject to any archaeological features or listed as being of significance to iwi in the District Plan. There is no knowledge or evidence of previous habitation or reference to cultural or environmental issues on this site.
- 6.46 The New Zealand Historic Place Trust (NZHPT) in their submission noted that there is no recorded archaeological site in the general area of the proposed subdivision and raised no concerns with regard to the potential effects of the proposed subdivision on archaeology and heritage values. No other submitters have raised specific concerns with regard to the effects on cultural and heritage values and no submissions from local Iwi were received.

- 6.47 Therefore, it is not considered that the proposed subdivision would impact upon archaeology and heritage values or the relationship of Maori and their culture and traditions with their ancestral lands, water, sites of waahi tapu and other taonga.

#### **Hazards and Services**

- 6.48 Mr Rozov has commented on the matters relating to hazards and services, and recommended several conditions of consent to address the effects associated with hazards and services (refer to Mr Rozov's report dated 28 October 2010 provided at Attachment 1 in Part A).
- 6.49 The Northland Regional Council (NRC) in their submission recommended that the location of stormwater discharges for each allotment shall be well away from the wastewater disposal areas and be clearly shown on a plan. JS Goodman in his submission raised concerns regarding stormwater runoff. Mr Rozov advises that Mr Botica's assessment has sufficiently addressed the matters regarding wastewater and stormwater and recommends that a consent notice be put on the title of the proposed allotments to require restrictions and recommendations as identified in the engineering report by Hawthorn Geddes Engineers & Architects Ltd dated 18 January 2010 and 18 October 2010 be complied with.

#### **Cumulative Effects**

- 6.50 The definition of effect under the Act as stated in paragraph 6.2 of this report includes *any cumulative effect which arises over time or in conjunction with other effects regardless of scale, intensity, duration or frequency of the effect*. Cumulative effects may result in a receiving environment becoming more sensitive, or less capable of absorbing adverse effects over time. For a cumulative effect to be more than minor, it must have breached a threshold, or 'tipped the balance'.
- 6.51 The character of the area surrounding the site is based on a mixture of rural and rural-residential uses with the majority of the allotment sizes being significantly less than the 20ha minimum allotment area as a controlled activity in the Countryside Environment. In particular, 13 of the 15 properties adjoining the site are of a size ranging from 954m<sup>2</sup> to 4.4715ha. In my opinion, the rural character which contributes to the amenity values enjoyed by the area has been compromised with the introduction of lifestyle blocks and the creation of some smaller rural residential allotments.
- 6.52 As discussed in the previous sections of this report, the proposed and recommended mitigation measures will ensure that the potential visual effects associated with the future built development will be no more than minor. The intensity of development proposed with only one residential unit being permitted on the proposed allotments is not considered out of character with that existing in the area. In addition, the design and layout of the proposed subdivision, with the proposed residential allotments being confined with the neighbouring lifestyle blocks and a 23.8106ha balance lot subject to a 'no further subdivision' covenant, will maintain a degree of rural character and open landscape currently displayed by the site.
- 6.53 Taking into account the existing character and pattern of development in the area, the proposed mitigation measures, the design and layout of the proposed subdivision with no minor residential unit being allowed on the proposed allotments, I consider that the proposed subdivision will not 'tip the balance' of the amenity and character of the immediate area or have cumulative effects that are more than minor.

## **7. Objectives and Policies of the District Plan**

- 7.1 The other test set out in Section 104D of the Act relates to the activity not being contrary to the objectives and policies of the relevant plans. In order for consent to be granted it must be concluded that the proposal will not be contrary to the objectives and policies of the relevant plans.

- 7.2 The meaning of **contrary** has been defined in the decision of *Monowai Properties Ltd v Rodney District Council (A215/03)*. The court determined that “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*”.
- 7.3 The objectives and policies assessment provided in Section 9 of the application is relatively brief. I have cited the following objectives and policies of the District Plan which, in my opinion, are considered relevant to the proposal and require consideration.

### **Chapter 5 Amenity Values**

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

*Objective 5.3.5 – The actual and potential effects of Subdivision, use and development is appropriately controlled and those activities located and designed, are to be compatible with existing and identified future patterns of development, and levels of amenity in the surrounding environment.*

#### *Policy 5.4.1 – Effects on the Local Environment*

*To ensure that activities do not produce, beyond the boundaries of the site, adverse effects that are not compatible with the amenity values characteristic of the surrounding and/or adjacent environment unless such effects are authorised by a district plan, a designation, a resource consent, or otherwise. The following effects should be given particular consideration in this respect:*

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

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

#### *Policy 5.4.5 – Countryside Environments*

*To ensure rural amenity values in the Countryside Environments are protected from subdivision, use or development that is sporadic or otherwise inappropriate in character, intensity, scale or location.*

#### *Policy 5.4.7 – Intensity and Design of Subdivision and Development*

*To encourage 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 had to:*

- *The layout and intensity of subdivision;*
- *The location, design and sitting 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.*

## **Chapter 6 Built Form and Development**

*Objective 6.4.2 – 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.*

### *Policy 6.5.2 – Consolidated Development*

*To consolidate urban development by:*

- (i) Focusing residential development on those urban areas with demand, where the landscape and natural character have already been compromised.*
- (ii) Further develop within existing built up areas, so as to avoid sporadic or sprawling subdivision and ribbon development patterns, particularly in rural areas and along the coast.*
- (iii) Directing rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas.*
- (iv) Promoting clustered, mixed use activity that focus on existing urban and coastal centres.*
- (v) Retaining and encouraging a distinctive sense of place.*

### *Policy 6.5.19 – Environmental Protection and Enhancement and Public Benefit*

*To provide incentives to achieve protection and enhancement of degraded natural and physical resources and wider public benefits including:*

- (i) Protecting and enhancing native bush, wetlands, riparian and coastal margins; and*
- (ii) Providing public access to those areas created above where appropriate.*

## **Chapter 8 Subdivision and Development**

*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.*

*Objective 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.*

### *Policy 8.4.3 – Density of Development*

*To ensure that subdivision and development results in a pattern and a density of land use which reflects flexibility in allotment size and is of a density appropriate to the locality.*

### *Policy 8.4.4 – Cumulative Effects*

*To ensure that the cumulative effects of on-going subdivision and development do not compromise the objectives and policies of this Plan, in particular those objectives and policies relating to reducing conflicts between incompatible land use activities, the consolidated and orderly development of land and the density of development.*

### *Policy 8.4.9 – Protection of Features*

*To secure permanent protection and/or enhancement of:*

- Stands of indigenous vegetation or indigenous fauna habitat, including indigenous wetlands;*
- Areas of appropriately designed indigenous re-vegetation or enhancement;*

*In return for Environmental Benefit lots subject to a separate subdivision rule in the Countryside and Coastal Countryside Environments. Where such protection/enhancement is offered the number of environmental benefit lots that can be obtained is related to the value and areal extent to the items that are to be protected.*

### **Chapter 17 Indigenous Vegetation and Habitat**

*Objective 17.3.1 – Maintenance and enhancement of the life-supporting capacity of ecosystems, and the biodiversity of the District.*

*Objective 17.3.1 – Protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna from inappropriate subdivision, use and development.*

#### **Policy 17.4.1 Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna**

*To recognise as significant, and provide protection for, indigenous vegetation and habitats of indigenous fauna, including indigenous wetlands, which are of Moderate, Moderate-High, High and Outstanding value using the criteria set out in Schedule 17A.*

#### **Policy 17.4.2 Significant Ecological Areas**

*To maintain the ecological values of significant indigenous vegetation and the significant habitats of indigenous fauna in the Living 3, Countryside, Coastal Countryside and Open Space Environments.*

#### **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.*

- 7.4 The objectives and policies outlined above aim to balance the demand for residential development with the need to maintain and possibly enhance the rural amenity and natural features of the Countryside Environment within the district. Emphasis is placed on appropriate control, location and design of subdivision and development, and a density and intensity of development that is compatible with the surrounding area. In particular, consolidated development in appropriate locations is promoted. On the other hand, sporadic subdivision and ribbon development patterns are discouraged.
- 7.5 While the area surrounding the site is zoned Countryside Environment, the rural character which contributes to the amenity values enjoyed by the area has been compromised to some degree by with the introduction of lifestyle blocks and the creation of some smaller rural residential allotments. The character of the area is considered to be a mix of rural and rural-residential with the majority of the allotment sizes being significantly less than the 20ha minimum allotment area as a controlled activity in the Countryside Environment. In particular, 13 of the 15 properties adjoining the site are of a size ranging from 954m<sup>2</sup> to 4.4715ha.
- 7.6 Given the existing character and pattern of development of the area, the intensity of development proposed, achieving an average density of approximately 1 residential unit per 3.3ha (with no minor residential unit being allowed on the proposed allotments), is not considered out of character with that existing in the area.
- 7.7 In terms of the design and layout of the proposed subdivision, the 10 proposed residential allotments are located away from the frontage of Prescott Road and confined with the neighbouring lifestyle blocks with a large balance lot located in the middle of the site which contains the protected bush and wetland areas and the riparian margin and is subject to a 'no further subdivision' covenant.

It is considered that the design and layout of the subdivision will maintain the open view from this frontage of Prescott Road and a degree of rural character and open landscape currently displayed by the site, as well as enhancing the ongoing management of the protected ecological features.

- 7.8 Taking into account the existing character and pattern of development of the area and the design and layout of the subdivision, I do not regard the proposed subdivision as being a form of sporadic subdivision or ribbon development.
- 7.9 The adverse effects of the proposed subdivision with regard to landscape, visual effects, rural character and amenity values have been assessed and discussed in the previous sections of this report. It is considered that these effects could be sufficiently mitigated through the proposed mitigation measures and the recommended conditions. In particular, the designated building areas, the architectural design guidelines, and the proposed and recommended mitigation planting will ensure that the future built development sits well within the landscape and thus not creating any visual intrusion that is more than minor.
- 7.10 The proposal supports the protection and enhancement of bush and wetland areas and riparian margin totalling 14.8595ha in size. Ms Bazeley confirms that the proposal has sufficiently addressed all the ecological features on the property (of moderate to high ecological values) and provided linkage between them. With the proposed mitigation measures being successfully implemented, it is considered that high positive ecological values could be achieved.
- 7.11 Whilst I recognise that the proposed subdivision is a non-complying activity, the proposed subdivision is considered compatible with the existing character and pattern of development as well as the levels of amenity currently enjoyed in the area. It is considered that these adverse effects of the proposed subdivision on the environment could be sufficiently mitigated through the proposed mitigation measures and the recommended conditions, and high positive ecological values could be achieved. Based on the above considerations, I consider that the proposed subdivision would not be contrary to the objectives and policies of the District Plan, when considered as a whole.

### **Plan Change 92**

- 7.12 Plan Change 92 seeks to provide strategic policy direction on a sustainable growth pattern for the district and guidance on how Council will provide for sustainable development of the District's urban form. Specifically new objectives and policies are introduced under Chapter 6 Built Form and Development of the District Plan and some existing objective and policies are deleted from Chapter 8 Subdivision and Development.
- 7.13 Plan Change 92 was approved by Council on 8 September 2010 with the decision for the plan change being notified in the Whangarei Leader on 14 September 2010. The appeal period has lapsed and three appeals were attracted. The appellants have all sought additional provisions and other minor amendments to the wording as consequential changes required for consistency and legibility. The objectives and policies of particular relevance to the proposed subdivision would not be affected; I therefore consider full weight shall be placed on these provisions. The relevant objectives and policies of Chapter 6 have been cited and addressed.

## **8. Regional Policy Statement for Northland (RPS) and Regional Water and Soil Plan for Northland (RWSP)**

- 8.1 The subject site is not located within any Outstanding or Notable Landscape Area under the District Plan or listed as being an Outstanding Natural Feature. In addition, the soil types of the site do not meet the criteria for highly versatile soils. Given the location of the proposed development, the associated environmental effects as discussed in Section 6 of this report and the proposed mitigation measures, the RPS and RWSP are not considered of particular relevance to this proposed subdivision.

- 8.2 It is noted that shall the proposed subdivision not being able to comply with the standards of the RWSP, relevant resource consent will be required from the NRC.

## 9. Other Matters

- 9.1 As a non-complying activity the proposal may only be granted if at least one of two 'gateway' tests set out in Section 104D of the Act is satisfied: either that the adverse effects of the proposal on the environment will be minor; or the proposal will not be contrary to the objectives or policies of the relevant plans. As discussed in the previous sections of this report, the proposal would have no more than minor adverse effects on the environment subject to the proposed mitigation measures and the recommended conditions, and would not be contrary to the objectives and policies of the District Plan. In my opinion, the proposal meets both of the 'gateway' tests.

- 9.2 In terms of Section 104(1)(c) of the Act, the following matters are considered relevant in making an appropriate consideration of this application:

### **Precedent Effect**

- 9.3 The granting of a consent does not constitute a legal precedent in the strict sense and each application is to be determined on its merits. However, the matter of precedent in a general sense can be relevant, particularly where applications seek to infringe minimums or maximums (i.e. restrictions on the density for subdivision) detailed within a district plan.
- 9.4 In such situations it is legitimate for the consent authority to consider the precedent effect of granting an application, especially where it is likely that other similar applications will be made, with the expectation that consent will be granted as a matter of uniformity and fairness, with precedent effect described as a concern about plan integrity and consistent administration of the plan.
- 9.5 The main concern in terms of precedent effect relate to whether the application demonstrates unusual qualities to distinguish the application from others to warrant its approval under such circumstances.
- 9.6 In the instance of this particular application, the character of the area surrounding the subject site is considered to be rural and rural-residential with the existing pattern of development being relatively different to that envisaged by the rules and standard in the Countryside Environment under the District Plan. The application has included particular measures to ensure that the adverse effects on the environment will be no more than minor.
- 9.7 In addition, the wetland area sought to be protected by the application is uncommon in the Waipu Ecological District given its size, location and habitat type. It is acknowledged by Ms Bazeley that there are not many wetlands of this size (6.1995ha) are protected in the Waipu Ecological District. Also the wetland area contains a small section of peat bog which is a rare habitat type in the Waipu Ecological District. The wetland area along with the other ecological features sought to be protected by the application could potentially function as an ecological corridor encouraging the movement of the bird species between the Wilson Dam and the Ruakaka Forest which are located in close proximity to the subject site. Ms Bazeley advises that the linkage the ecological features including the bush and wetland areas and the riparian margin totalling 14.8595ha in size provided in the application further add to the ecological values created by the proposal.
- 9.8 In my opinion, the precedent effect of granting this application would be no more than minor given the unusual qualities demonstrated, and the integrity and consistent administration of the District Plan is not considered to be undermined.



## 10. Part 2 of the Resource Management Act 1991

10.1 Part 2 of the Resource Management Act 1991 details the purpose and principles of the Act and as such forms the backbone for all the documents and processes that are prepared under the Act.

10.2 Section 5 of the Act states:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act 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 wellbeing 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.*

10.3 The provisions of Section 5 are further strengthened by Section 6 which recognises seven matters of national importance in achieving the purposes of the Act. Section 7 sets out a list of other matters to which particular regard must be had. In particular, the following matters as outlined in Section 7 are considered relevant to this application:

- *The efficient use and development of natural and physical resources (7(b))*
- *The maintenance and enhancement of amenity values (7(c))*
- *Maintenance and enhancement of the quality of the environment (7(f))*
- *Any finite characteristics of natural and physical resources (7(g))*

10.4 As discussed in the previous sections of this report, the proposed subdivision is considered compatible with the existing character and pattern of development as well as the levels of amenity currently enjoyed in the area. It has been assessed that the proposed subdivision would have no more than minor adverse effects on the environment and these effects could be sufficiently mitigated through the proposed mitigation measures and the recommended conditions. In addition, the protection of the bush and wetland areas and the riparian margin totalling 14.8595ha in size will generate high ecological values and enhance the amenity values and the quality of the environment. I therefore consider that the proposal would be consistent with the purpose of the Act and the relevant matters outlined in Section 7 of the Act.

10.5 Section 8 of the Act requires Council to take into account the principles of the Treaty of Waitangi. Local Iwi, the Patuharakeke Te Iwi Trust Board, was served a copy of the application although no submissions from local Iwi were received. It is therefore considered that through the course of processing this application, regard was had for the Treaty of Waitangi.

## 11. Conclusion

11.1 KJP and VKB Ltd seeks subdivision consent for the following:

- To undertake a four-stage subdivision of Lot 2 DP 388274 in the Countryside Environment creating 10 residential allotments with net site areas ranging from

4940m<sup>2</sup> to 2.8326ha and one 23.8106ha balance allotment with proposed covenanted bush and wetland areas.

- To exceed the maximum number of users permitted to use a shared access.
- 11.2 Overall, the application is considered to be a Non-Complying Activity requiring consent under the rules of the Operative Whangarei District Plan relating to allotment area and property access.
- 11.3 Pursuant to Section 104D of the Act, the consent authority may grant a non-complying activity resource consent application if it is satisfied that either the adverse effects of the activity on the environment will be minor, or the activity will not be contrary to the objectives and policies of the relevant plans.
- 11.4 In considering the matters discussed in Section 6 of this report, it is concluded the proposed subdivision will have no more than minor adverse effects on the environment subject to the proposed mitigation measures and the recommended conditions. This includes the effects on traffic safety and efficiency, landscape and visual effects, ecology, rural character and amenity values, cultural and heritage values, hazards and services, and cumulative effects.
- 11.5 The protection and enhancement of the ecological features including the bush and wetland areas and the riparian margin totalling 14.8595ha in size provided in the application will generate high positive ecological effects.
- 11.6 In terms of matters discussed in Section 7 of this report, it is concluded that the proposed subdivision will not be contrary to the objectives and policies of the District Plan, specifically those relating to amenity values, built form, subdivision and development, and indigenous vegetation and habitat.
- 11.7 In terms of the matters discussed in Section 9 of this report, it is concluded the precedent effect of granting this application will be no more than minor given the unusual qualities demonstrated, and the integrity and consistent administration of the District Plan is not considered to be undermined.
- 11.8 In terms of the matters discussed in Section 10 of this report, it is concluded that the proposal will be consistent with Part 2, the purpose and principles of the Resource Management Act 1991.
- 11.9 Based on the above considerations, I conclude that the proposal will have adverse effects on the environment that are no more than minor and will not be contrary to the objectives and policies of the District Plan. Accordingly the proposal satisfies the statutory tests as set out in Section 104D of the Act. I therefore recommend that this application be approved.

## Recommendation

Having considered the application against the relevant provisions of the Act and having taken into account matters raised in the submissions received, the reporting planner recommends that the Whangarei District Council **GRANTS** the application by KJP and VKB Ltd to undertake a four-stage subdivision of Lot 2 DP 388274 in the Countryside Environment creating 10 residential allotments with net site areas ranging from 4940m<sup>2</sup> to 2.8326ha and one 23.8106ha balance allotment with proposed covenanted bush and wetland areas, and to exceed the maximum number of users permitted to use a shared access. **This is subject to the recommended conditions outlined in Attachment 7 of this report.**

Reasons for the Recommendation:

1. The adverse effects of the proposal on the environment will be no more than minor. This includes the effects on traffic safety and efficiency, landscape and visual effects, ecology, rural character and amenity values, cultural and heritage values, hazards and services, and cumulative effects.

2. The protection and enhancement of the ecological features including the bush and wetland areas and the riparian margin totalling 14.8595ha in size provided in the application will generate high positive ecological effects.
3. The proposal will not be contrary to the objectives and policies to the District Plan, specifically those relating to amenity values, built form, subdivision and development, and indigenous vegetation and habitat.
4. The proposal satisfies the statutory tests as set out in Section 104D of the Act.
5. The precedent effect of granting this application will be no more than minor given the unusual qualities demonstrated, and the integrity and consistent administration of the District Plan is not considered to be undermined.
6. The proposal will be consistent with Part 2, the purpose and principles of the Resource Management Act 1991.

**Attachments:**

1. Assessments by Council's Senior Environmental Engineering Officer, Vladimir Rozov, Council's Consultant Landscape Architect, Kylie McLaughlin-Brown, and Council's Consultant Ecologist, Amy Bazeley
2. Aerial photo and locality map, and District Plan maps
3. Density map
4. Individual summary of the submissions received and locality map showing the location of the submitters with respect to the subject site
5. An email by Mr Hood dated 27 October 2010 regarding the various conditions and associated mechanisms proposed to give effect to the proposed mitigation measures
6. A copy of the subdivision scheme plan of RC38764
7. Recommended Conditions