

Hearings Commissioner

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WHANGAREI
DISTRICT COUNCIL

Notice of Meeting

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

Friday
18 June 2010
9.15 am

Application by
Torin Orchids Limited

Commissioner

Robert Chan

Vision Statement

To be a vibrant, attractive and thriving District
by developing sustainable lifestyles based around
our unique environment; the envy of New Zealand
and recognised world wide.

Report to the Hearings Commissioner on an Application By:

Torin Orchids Limited to cancel the existing amalgamation condition that holds Lot 1 DP 324383 and Lot 3 DP 351137 in the same Certificate of Title and to subdivide Lot 3 DP 351137 and Lot 1 DP 324383 into six residential allotments and one road to dedicate. The property is located in the Countryside Environment.

This application was lodged by Reyburn & Bryant 1999 Limited on behalf of Torin Orchids Limited and was reported on by Kellie Roland (Consultant Planner)

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

Consultant Planner:



Date: 02 June 2010

Kellie Roland

Principal Planner
(Consents):



Date: 04 June 2010

Paul Lees

Resource Management Act 1991

Hearing By: The Whangarei District Council Hearings Commissioner of an application by Torin Orchids Limited to cancel the existing amalgamation condition that holds Lot 1 DP 324383 and Lot 3 DP 351137 in the same Certificate of Title and to subdivide Lot 3 DP 351137 and Lot 1 DP 324383 into six residential allotments and one road to dedicate.

Evidence By: Kellie Roland
BRS (Environmental Policy and Planning)
Consultant Planner

File Ref: SD0900076

Dated: 02 June 2010

1. The Proposal

- 1.1 The proposal as lodged sought to cancel the existing amalgamation condition that holds Lot 1 DP 324383 and Lot 3 DP 351137 in the same Certificate of Title and to subdivide Lot 3 DP 351137 into five residential allotments and one commonly owned access lot. The application was notified on this basis.
- 1.2 As a consequence of the public notification process, subsequent discussions with Council staff and neighbours, the application was amended as follows:
- One lot was removed from the subdivision to better align the lots with the surrounding development pattern and overall density.
 - The common access road has been changed to a 'road to be dedicated'.
 - The access to the neighbouring Lot 1 DP 351137 has been relocated so that it no longer passes Lot 2 DP 351137. Access is now by way of an access leg directly off the cul-de-sac head. The existing rights of way O, P and Q in favour of Lot 2 DP 351137 remain in place but will now be owned by Proposed Lot 6.
 - Lot 1 DP 324383 (now proposed Lot 3) has been provided with an entrance strip to the cul-de-sac head to facilitate future access in the event that the Tikipunga / Glenbervie Structure Plan is implemented (e.g. the area is rezoned to Living 1).

1.3 The proposed allotments are as follows:

Lot	Area	Purpose	Buildings	Title Interests
Lot 1	4515m ²	Residential Lot	Existing Shed	Easement (S) in favour of the Whangarei District Council for the purpose of providing pedestrian access to the existing esplanade strip.
Lot 2	3435m ²	Residential Lot	Nil	Nil
Lot 3	7908m ²	Residential Lot	Implement Sheds and Residential Dwelling	Nil
Lot 4	3345m ²	Residential Lot	Residential dwelling	Nil
Lot 5	5020m ² (gross) 4745m ² (Nett)	Residential Lot	Residential dwelling	Nil
Lot 6	3698m ² (gross) 2950m ² (Nett)	Residential Lot	Nil	Nil
Lot 7	2525m ²	Road to be Dedicate	Nil	Nil

1.4 In addition to the above, the application also seeks approval, pursuant to Section 243(e) of the Act, to provide for the cancellation of the conditional easements shown as (C) on DP 186050 and (J) on DP 351137. The purpose of these easements is for conveying sewage and water and to convey electricity and telecommunications respectively. They are also registered as Easements in Gross in favour of Northpower. The services affected by these easements will be rerouted to follow the proposed subdivision boundaries and new easements will be duly registered. It is noted that Northpower and Chorus have both provided their approval to this proposal.

1.5 A copy of the application is included at **Attachment 1**.

2. The Site and the Surroundings

2.1 The site is located at 47 Ngunguru Road, Glenbervie and comprises two existing parcels of land with a combined area of 2.4909. The parcels are held together by way of an amalgamation condition, pursuant to Section 241 of the Resource Management Act 1991. The property is located in the Countryside Environment.

- 2.2 The property is located on the urban fringe of Tikipunga, within a zone of transition between the suburban character residential area and the spaciousness of the rural land to the north east. Although the Hatea River forms an apparent boundary to the urban area, the character of development in the immediate area is more intense than rural residential, partially a consequence of dwellings being clustered close to the road corridor.
- 2.3 The site is set back slightly from Ngunguru Road and accessed via an existing 15.45m wide pan handled, shared access. There are existing rights of way and service easements over part of the pan handle that provide access to Lots 1 and 2 DP 351137 and Lot 1 DP 204453. Lot 1 DP 324383 has a separate access off Ngunguru Road via a right of way. Service easements exist over Lots 2 and 3 DP 324383. The eastern side of the site is screened by riparian vegetation associated with the Hatea River.
- 2.4 There is a low instability hazard designation over the entire site and a flood susceptible area on the north western corner of Lot 1 DP 324383 identified on Whangarei District Council's (WDC) GIS maps. The Applicant did not submit an engineering report in support of this application; however there is sufficient area outside of the flood susceptible designation for a suitable building platform on Lot 1 DP 324383.
- 2.5 The site is surrounded by residential development of a similar density and character to that proposed.
- 2.6 An aerial photo and map showing the locality of the site is included at **Attachment 2**; GIS maps showing zoning and other resource area notations of properties in the area are provided at **Attachment 3**; and a map showing the density of development in the area is provided at **Attachment 4**.

3. Consultation, Public Notification and Submissions

- 3.1 On the basis that the application was received by the Whangarei District Council on 31 August 2009, the application is subject to the Resource Management Act provisions of the Resource Management Act that existed prior to 01 October 2009.
- 3.2 Section 93(1) of the Resource Management Act 1991 (the Act) required a consent authority to notify an application for a resource consent unless they were satisfied that the adverse effects of the activity on the environment were minor.
- 3.3 Although a number of written approvals were provided with the application, the environmental effects of the proposal were considered to be potentially more than minor and as such the proposal was subject to public notification.
- 3.4 The application was notified in the Whangarei Leader on Tuesday 20 October 2009 and attracted three submissions from the following parties:

i. Paul and Rachel Herbert – Oppose – Wishes to be heard

The submission from Paul and Rachel Hebert raised a number of inconsistencies in relation to the application as stated and other planning documentation (i.e. Map 34). The submission focussed predominantly on the amenity effects that would result as a consequence of the proposal, noting that the site and wider area was predominantly rural or countryside in nature and that the proposed allotment sizes would be in conflict with those in the surrounding area.

The submission also suggested that the current right of way servicing the property (and others) was not capable of catering for the increased traffic promoted by the subdivision.

It was suggested that there is no clear access to the esplanade strip which has caused some tension between landowners. To avoid further altercations regarding access over private land to the esplanade strip, the submitters have suggested that a clearly marked walkway needs to be made available.

The issue of precedent was raised in the submission, noting that the proposed lots are almost half the size of any similar in the immediate surrounding area.

Relief was sought from the submitters, if Council was mindful of granting the application, which included:

- Building covenants requiring resultant buildings to be no smaller than 200m² with brick cladding and to be single storied;
- No further subdivision of the allotments;
- No temporary dwellings;
- Notice on all documents that Proposed Lots 1 - 3 (now Lots 1 -2) are susceptible to flooding;
- Lot 7 is to be widened to a two-laned carriageway and sealed in either concrete or hot mix to reduce dust and noise;
- Ngunguru Road to be widened to allow a safer driving experience;
- The minimum allotment size shall be maintained at 4,500m² to remain consistent with the immediate surrounding area;
- Clearly marked access to the Esplanade Strip;
- Maintain the shelterbelt height at between 2.5 – 3.5 metres to avoid excessive shading;
- Plant the missing shelter belt trees; and
- Remove the gate in the south eastern corner of the panhandle access, fence and plant with matching shelter belt trees.

ii. Northland Regional Council – Neutral – Does not wish to be heard

The Northland Regional Council (NRC) is neutral to the application however has concerns in relation to the proposed management of stormwater on the site. The submission noted that the site is located in an area covered by an existing resource consent relation to the Hatea River Catchment Drainage Plan and may have some impact on the existing resource consent.

iii. **New Zealand Historic Places Trust – Neutral – Do not wish to be heard**

The NZHPT noted in its submission that it is neutral on the matter of subdividing the property in the manner proposed and recommended that a standard advice note be included within the decision if the consent is granted.

- 3.5 A copy of the above submissions are included as **Attachment 5**. The issues raised in submissions are addressed in detail in Section 7 of this report.
- 3.6 As outlined above, as a consequence of the public notification process, subsequent discussions with Council staff and neighbours, the application was amended. The revised scheme plan and covering letter received by Council on 08 March 2010 is included as **Attachment 6**.

4. District Plan Requirements

- 4.1 The site is located in the Countryside Environment and is subject to the rules of this Environment. 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.
- 4.2 The proposal is for subdivision to create Lots 1 – 6 with net site areas of 4515m², 3435m², 7908m², 3345m², 5020m² and 3698m² respectively; thus the proposal does not meet the minimum net site area standard for a Controlled Activity. The minimum average net site area of the proposed allotments is 5074m²; hence the proposal does not meet the qualifying criteria for discretionary activities and as such is to be considered as a **Non-Complying Activity** under the provisions of the District Plan.

5. Resource Management Act 1991

- 5.1 In considering this application, the purpose and principles set out in Part 2 are the primary point of reference. The purpose of the Act is set out in Section 5 as follows:

"5. Purpose—

(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."

5.2 Section 5(2) has two components, one enabling and one regulatory. The enabling component contained in Section 5(2) makes provision for people and communities to use, develop and protect resources in any way they desire in their pursuit of well-being provided that the regulatory component of that subsection in paragraphs (a) – (c) are satisfied. In undertaking this assessment, Sections 6, 7 and 8 of the Act are also relevant.

5.3 In respect of Section 5(2) of the Act, the development of the land in the manner proposed will allow the redevelopment of the site to create four additional allotments. The principle issue is whether the regulatory component can be satisfied.

Section 5(2)(a): "Sustaining the potential of natural and physical resources... to meet the reasonably foreseeable needs of future generations"

5.4 The proposal seeks to subdivide the subject property into six residential allotments by severing an existing amalgamation condition and re-subdividing the property comprising two titles. As a consequence of the proposal, four additional development rights will result. Servicing requirements will be met in respect to roading, sewage and stormwater infrastructure in such a way as to ensure that the surrounding receiving environment is not compromised for its use by future generations.

5.5 It is noted that due to the location of the site and its proximity to residential zoned land coupled with the overall size of the allotment, the agricultural/horticultural potential of the site is limited.

Section 5(2)(b): "Safeguarding the life-supporting capacity of air, water, soil, and ecosystems"

5.6 The second regulatory matter concerns the safeguarding of the life supporting capacity of air, water, soil and ecosystems. It is considered that this development does not threaten any of the matters mentioned above since the natural resources have already been modified in the past. It is considered that this development will have no more of an impact on the soil, water and ecosystems than those land use activities that have preceded, if the proposal is carried out as intended.

Section 5(2)(c): "Avoiding, remedying, or mitigating any adverse effects of activities on the environment"

5.7 The third and final regulatory matter is associated with avoiding, remedying and mitigating adverse effects. Any change in land use will have an effect, but the test is whether those effects are adverse, and whether they can be remedied, avoided, or mitigated. The assessment of effects contained in this report concludes that any adverse effects would be no more than minor.

5.8 Section 7 of this report will discuss the effects of the proposed subdivision in relation to rural character and amenity value effects, landscape and visual effects and wastewater and stormwater effects.

Section 6 – Matters of National Importance

- 5.9 Section 6 of the Act lists matters of national importance. No matters of national importance, as outlined in Section 6 of the Act, are considered relevant to this application.

Section 7 - Other matters

- 5.10 The following matters as outlined in Section 7 of the Act are considered relevant to this application:

(b) The efficient use and development of natural and physical resources;

(c) The maintenance and enhancement of amenity values;

(f) Maintenance and enhancement of the quality of the environment.

- 5.11 The proposal seeks to subdivide the subject property to create six residential allotments. Due to the sites current characteristics, it is difficult to consider it as a purely rural site. Ongoing use of the site for rural or horticultural purposes is limited by the intensification of residential activities in the area and around the subject site. It is considered that due to its proximity to the existing residential area of Tikipunga, the site is well suited for the development intensity proposed. It is noted that the site is included in the Tikipunga/Glenbervie Structure Plan as 'Living 1' Environment, however the Structure Plan currently does not have statutory effect.

- 5.12 Council's Consultant Landscape Architect considers that the development will be consistent with the previously established development character and will result in no more than minor effects on amenity and no more than minor visual effects.

- 5.13 Overall, it is considered that the development will not compromise the quality of the environment if undertaken in the manner proposed. Adequate access exists to each of the resultant allotments and each of the allotments is sufficiently sized for future dwellings to be serviced in accordance with District and Regional Council requirements.

Section 8 – Treaty of Waitangi

- 5.14 Section 8 of the Act requires council to take into account the principles of the Treaty of Waitangi. Local Iwi including Ngati Hau Resource Management Unit, Ngati Hau Trust Board, Pehiaweri Marae Committee, Ngati Kahu O Torongare me Te Parawhau Hapu Trust (Resource Consents) and Te Parawhau Ki Toetoe Otaika (Hauauru Trust) were served a copy of the application but no submissions were received regarding this application from these entities. It is therefore considered that through the course of processing this application, regard was had to the Treaty of Waitangi.

Section 104 – Consideration of Applications

- 5.15 As a non-complying activity the application is subject to the provisions of Section 104, 104B and 104D of the Act.

- 5.16 Section 104 of the Act sets out those matters that, subject to Part II, a 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.
- 5.17 Pursuant to Section 104B of the Act, after considering an application for resource consent, a Consent Authority may grant or refuse the application, and if it grants the application, may impose conditions under Section 108 of the Act.
- 5.18 Pursuant to Section 104D of the Act, despite any decision made for the purpose of Section 93 in relation to minor effects, a Consent Authority may grant a resource consent for a non-complying activity only if it is satisfied that either:
- (a) The adverse effects of the activity on the environment (other than any effect to which Section 104(3)(b) applies) will be minor; or
 - (b) The application is for an activity that will not be contrary to the objectives and policies of both the Plan and Proposed Plan.
- 5.19 An assessment against the relevant Section 104, 104B and 104D matters is undertaken in the following sections of this report.

6. Objectives and Policies

- 6.1 Pursuant to Section 104(1)(b) of the Act, when considering an application for resource consent and any submissions received, the consent authority must, subject to Part II, have regard to any relevant provisions of the District Plan.
- 6.2 The Objectives and Policies of relevance to this application are contained in Section 5 (Amenity Values), Section 8 (Subdivision and Development) and Section 22 (Road Transport) of the District Plan.
- 6.3 The objectives and policies of relevance are concerned with the protection and enhancement of amenity values associated with the site and surrounds, that development is appropriate for its intended use and is not out of character with the surrounding environment and ensuring that the effects of development do not compromise road user and pedestrian safety. The relevant objectives and policies of the District Plan are detailed as follows:

Chapter 5: Amenity Values

Objective 5.3.1

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

Objective 5.3.2

Adverse effects on amenity values do not result in a reduction of amenity value below that which is desirable for people's health and safety.

Objective 5.3.5

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

Policy 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.

5.4.7 Intensity and Design of Subdivision and Development

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

- *The layout and intensity of subdivision;*
- *The location, design and siting of buildings and structures except, where such buildings and structures provide a specific service for the surrounding environment. In the latter case, any building or structure shall be designed, laid out and located, so as to avoid, remedy or mitigate any adverse effects on the environment.*

Restrictions on density of development and subdivision size may be required to ensure new development does not increase population concentration in noise-sensitive areas.

Chapter 8: Subdivision and DevelopmentObjective 8.3.1

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

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 8.3.3¹

Subdivision and development that ensures consolidated development inappropriate locations and avoids sprawling or sporadic subdivision and ribbon development.

¹ Introduced under Plan Change 92

Objective 8.3.4

Subdivision and development that provides for the protection of, and where appropriate enhances, the District's:

- *versatile soils;*
- *mineral resources;*
- *water quality;*
- *nature features;*
- *landscapes (including coastal landscapes);*
- *open spaces;*
- *significant ecological areas;*
- *biodiversity;*
- *public access to coast, lakes and rivers;*
- *historic, cultural and amenity values, including the cultural values of tangata whenua.*

Objective 8.3.6

The avoidance of subdivision and development in areas where the existing and potential adverse effects, in particular of, noise and natural hazards, cannot be avoided, remedied or mitigated.

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 8.4.2 Consolidated Development¹

To further develop, within existing built up areas, so as to avoid sporadic subdivision and ribbon development, particularly in rural areas and along the coast. Any development adjacent to existing built up areas must be confined to appropriate locations and otherwise be consistent with the policy framework of this Plan.

Policy 8.4.3 Density of Development

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

Policy 8.4.7 Design and Location

To ensure subdivision and development is designed and located so as to avoid, remedy or mitigate adverse effects on, and where appropriate, enhance:

- *Natural character of the coastal environment, indigenous wetlands, lakes and rivers and their margins;*
- *Landscape values;*
- *Ecological values;*
- *Amenity values and sense of place;*
- *Archaeological, cultural (including tangata whenua) and heritage features;*
- *Sites of Significance to Maori;*
- *Heritage areas of significance to Maori;*
- *The relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;*
- *Infrastructure, particularly roads and the Airport;*
- *Water and soil quality;*
- *Versatile soils;*
- *Mineral resources;*
- *Business growth and development opportunities within defined Business Environments;*
- *Cross boundary coordination;*
- *Human health and safety.*

Comments on Objectives and Policies

- 6.4 The objectives and policies of the Plan seek to ensure development in Countryside Environments is appropriate, maintains and enhances the amenity values of the District and avoids conflict between incompatible activities and landuses.
- 6.5 The intensity, scale and design of subdivision and buildings within subdivisions have the potential to cause adverse environmental effects. On this basis, reverse sensitivity issues are also relevant in determining the appropriate density of development and subdivision.
- 6.6 Furthermore, it is considered that the layout, design and density of subdivision should be appropriate to the environment where it is located because overall environmental quality can be compromised by inappropriate subdivision and development. Subdivision and development that is sensitive to the surrounding environment is an important means of achieving sustainable management.
- 6.7 With respect to the subdivision as proposed, the intensity, scale and design of subdivision and the lot sizes proposed are generally characteristic of the lot sizes that exist in the surrounding environment and therefore the proposal will not be out of character with the existing environment and the subdivision pattern that has developed over time. It is noted that the submission received from Paul and Rachel Hebert suggested that the proposed allotments would be out of context with the surrounding environment and the resultant allotments would be significantly smaller than others in the surrounding environment.

This may be correct in the immediate locale to the extent that the proposed allotments will be the smallest allotments. However, in the wider context of the locality, the area is characterised by a number of allotments which are smaller than 1 hectare in area. This is illustrated on the density map, included as **Attachment 4** to this report.

- 6.8 It was considered that the proposal had the potential to generate adverse landscape and visual effects through the intensification of landuse promoted by the development. On this basis, Council's Consultant Landscape Architect reviewed the application and is satisfied that the proposal can proceed in the manner proposed, noting that:

The site is located on the urban fringe of Tikipunga, within a zone of transition between the suburban character residential area and the spaciousness of the rural land to the north east. Although the Hatea River forms an apparent boundary to the urban area, the character of development in the immediate area is more intense than rural residential - partially a consequence of dwellings being clustered close to the road corridor.

The site is set back slightly from Ngunguru Road and future development will be difficult to discern when viewed from the road, being obscured by foreground elements including existing dwellings. On its eastern side the site is screened by riparian vegetation associated with the Hatea River and views from the sports fields on the opposite bank of the river are limited to glimpses.

The site is surrounded by residential development of a similar density and character to that proposed. Whilst occupants of dwellings on these properties have the potential to gain views of the proposal, all but two of the adjoining neighbours have provided their written approval. Occupants of a dwelling on Lot 2 DP35117 have not provided written approval, and will be located immediately to the north east of proposed Lot 6. This dwelling appears to be, however orientated away from proposed Lot 6 with views primarily focused to the northwest and north.

I am of the opinion that the character of the proposal will be consistent with the previously established development character and will result in no more than minor effects on amenity and no more than minor visual effects.

- 6.9 The proposal has been assessed with respect to its ability to be adequately serviced. A supplementary letter and plan was provided by the Applicants Agent with respect to wastewater disposal from the site. Councils Senior Environmental Engineering Officer has assessed the application and has recommended conditions of consents in relation to wastewater, stormwater, utilities and access. On this basis, it is considered that the subdivision can be adequately serviced without generating offsite effects that are more than minor or compromising road user or pedestrian safety.
- 6.10 As illustrated on the revised subdivision scheme plan, the Applicant proposes to provide pedestrian access over Lot 1 in favour of the Whangarei District Council. It is noted that the submission received from Paul and Rachel Hebert suggested that access should be provided as part of this application. It is considered that the amended proposal satisfactorily addresses this request and provides a public benefit by allowing further access to the riparian margins of the Hatea River.
- 6.11 Based on the above discussion, it is considered that the proposal is not contrary to the relevant Objectives and Policies of the District Plan.

7. Assessment of Environmental Effects

7.1 Pursuant to Section 104(1)(a) of the Act, when considering an application for a resource consent and any submissions received the consent authority must, subject to Part II, have regard to any actual and potential effects on the environment of allowing the activity.

7.2 On the basis that the application was notified and attracted a number of submissions, it is considered appropriate to address the matters raised as follows.

Roads and Traffic Effects

7.3 Lots 1 to 6 will all gain vehicle access via the proposed Lot 7 (proposed to be dedicated as road) which is to be upgraded from the existing 3.0m wide metal formation which currently provides access to four users. The proposal will increase the number of users from four to eight. Through the dedication of the proposed road members of the public will then be able to access the proposed pedestrian 'walkway' which in turn accesses the Hatea River 'walkway'.

7.4 Council will not accept any proposed road to vest or access lot proposed to be dedicated as road unless it is created and constructed in accordance with WDC EES Local Road Standards. It is not clear from the information submitted whether the Applicant proposes to upgrade proposed Lot 7 in accordance with WDC EES Local Road Standards or not. If not, the Applicant will need to clarify the legal status of Proposed Lot 7 at the Hearing.

7.5 In addition to the above, the existing concrete vehicle crossing will require upgrading to a complying double width crossing and has complying sight lines.

7.6 The legal status of proposed Lot 7 is not considered to be crucial in the assessment of the application. However, if Lot 7 is to be retained as a commonly owned access lot (as originally proposed), an additional amalgamation condition will need to be shown on the survey plan. If public access is to be facilitated, an easement in gross will need to be registered over the lot and the maintenance costs apportioned between the owners and Council.

7.7 It is considered that complying access can be provided to the site in accordance with Council's Standards. Overall, the road and traffic effects associated with the proposal are considered to be no more than minor.

Landscape and Rural Amenity Values

7.8 The subject site and surrounding landscape is part of a modified landscape, characterised by a mix of landuses within close proximity of the subject site.

7.9 As above, Council's Consultant Landscape Architect has reviewed the application and is satisfied that the proposal can proceed in the manner proposed on the basis that the proposal will result in no more than minor adverse visual or rural amenity effects.

7.10 It is noted that the submission from Paul and Rachel Herbert sought a number of building controls to be included in the decision if consent to the proposal was granted. These included:

- Building covenants requiring resultant buildings to be no smaller than 200m² with brick cladding and to be single storied;

- No temporary dwellings;
- Maintain the shelterbelt height at between 2.5 – 3.5 metres to avoid excessive shading;
- Plant the missing shelter belt trees; and
- Remove the gate in the south eastern corner of the panhandle access, fence and plant with matching shelter belt trees.

7.11 While it is acknowledged that these measures may assist in enhancing the amenity afforded to the submitters property, they are not considered necessary in the context of the application as proposed. The Applicant may wish to consider these matters and comment on them further at the Hearing.

Stormwater and Wastewater Treatment and Disposal

7.12 With respect to wastewater, based on the further information supplied by the Applicants Agent with respect to wastewater disposal, it is considered that wastewater generated by the development can be adequately disposed of to the reticulated public system. Conditions of consent have been recommended in relation to the construction of the necessary infrastructure.

7.13 Council's Senior Environmental Engineering Officer has noted that if a building site is proposed on Lots 1, 2 or 3 in an area where gravity sewer reticulation cannot be provided, then a private pumping station will be required in this instance.

7.14 In terms of stormwater, the comments contained in the submission from the Northland Regional Council have been considered by Council's Senior Environmental Officer. Conditions of consent have been recommended which will ensure that stormwater from the development is managed to ensure that post-development flows are no greater than what existed pre-development.

7.15 Overall, the effects of wastewater treatment and disposal on the environment will be less than minor.

Pedestrian Access to Hatea River

7.16 As outlined above, the proposal seeks to create a pedestrian right of way over Lot 1 in favour of the Whangarei District Council. This means that public access will be facilitated to the esplanade strip that currently exists adjacent to the Hatea River.

7.17 The proposed walkway will be informal and will not be required to be formed. Rather, it will be retained as grass and likely to be delineated by vegetative features on Lots 1 and 2. The walkway will be surveyed as part of the overall surveying of the property.

7.18 The legal status of proposed Lot 7 will need to be considered and any resultant mechanism should provide for public access to the walkway. It is considered that this matter needs to be addressed further at the Hearing.

7.19 Council's Parks and Reserves Department have been consulted as part of the application and have no concerns in relation to it.

Conclusion of Effects

- 7.20 Overall, the effects of the activity are considered to be minor. It is noted that the lot sizes proposed are not considered to be out of character with the surrounding pattern of development that has been established. Each of the allotments can be adequately serviced. Further information has been provided to Council in respect to wastewater, which was a specific concern of the Northland Regional Council.

8. Other Matters – Section 104 (1) (c)

Other Matters – Precedent and District Plan Integrity

- 8.1 Although the Resource Management Act 1991 does not require resource consent applications to be assessed with reference to such matters as district plan integrity, consistent administration and precedent, it is a matter that is relevant in the consideration of non-complying activities, particularly in the case of this application.
- 8.2 From the analysis undertaken for the purposes of Section 104D, it is considered that if implemented in accordance with the scheme plan and proposed conditions, the application would not, as a whole, be contrary to the relevant objectives and policies of the Plan. Having reached that conclusion, it is then difficult to find a basis to conclude that the application will affect the integrity of the Plan or create an adverse planning precedent. It is accepted that the minimum lot size would not be achieved, however that is the reason why the application is non-complying and not a reason for it to be considered contrary to the objectives and policies.
- 8.3 An analysis of the application has been undertaken to identify its unusual and/or exceptional circumstances that in combination might distinguish it from other similar applications in the Countryside zone in the future. It is considered that the following reasons provide grounds for granting the application as sought:
- The site is set in an area where subdivision of lots to this size is relatively common;
 - The site is well contained with the landform and can support the increased density of development as proposed. Unlike other smaller allotments in this location, the subject site is set well back from Ngunguru Road and accessed via an existing shared access; and
 - The proposed development facilitates pedestrian access to the existing esplanade strip adjacent to the Hatea River.
- 8.4 Based on the above reasons, it is considered that this application displays sufficient unique characteristics that mitigates against any precedent being created, or any effect on the integrity of the District Plan occurring.

Tikipunga, Glenbervie and Vinegar Hill Structure Plan

- 8.5 The study area of the Tikipunga, Glenbervie and Vinegar Hill Structure Plan encompasses 3,540 hectares and lies to the north east of Whangarei City and includes the shops at the Kiripaka Road roundabout and Paramount Parade, while encompassing the Tikipunga, Glenbervie and Vinegar Hill areas and a range of residential, recreational, commercial and rural land uses.

- 8.6 Structure planning is an important tool in managing the orderly growth of the community to assure that adequate public services are provided, important natural and cultural assets are protected, and the area remains competitive for jobs and investment. The urban structure plans prepared by Council are a direct outcome of the growth philosophy expressed in the Urban Growth Strategy for Whangarei, which was adopted by Council in October 2003. They are a method by which the growth philosophy can be implemented at the local level.
- 8.7 The Tikipunga, Glenbervie and Vinegar Hill Structure Plan was adopted by Council on 11 February 2009. The subject site is illustrated in the Structure Plan as 'Living 1' Environment.
- 8.8 The Structure Plan is a non-statutory policy document. This means that the Plan is not required or enforced by legislation and the provisions in the Plan do not have statutory or legal status until they are incorporated into Council's statutory documents such as the Long Term Council Community Plan (LTCCP), District Plan, and Asset Management Plans.
- 8.9 However, structure planning is a technique that has gained acceptance in the Environment Court as a way of promoting the integrated management of environmental effects, and providing for the well-being, health and safety of current and future residents. While not a legal document, the provisions in a structure plan may be considered as 'other matters' when assessing a resource consent application.
- 8.10 A copy of the Structure Plan map is included as **Attachment 9** to this report.

9. Conclusion

- 9.1 Having considered the application against the relevant provisions of the Act, it is recommended that this application be granted, subject to conditions (relating to engineering matters) which will avoid, remedy or mitigate any adverse effects of the activity on the environment.
- 9.2 The lot sizes proposed are not considered to be out of character with the surrounding existing pattern of development that has been established and the possible effects of the proposal.
- 9.3 The proposal is considered consistent with the objectives and policies of the District Plan on the basis that the lots sizes are considered to be in keeping with surrounding existing development and the proposal is not demonstrative of ribbon development, sporadic development, or development in an area currently undeveloped.

Recommendation

- (a) That pursuant to Section 241(3) of the Resource Management Act, Council grants approval to the request to cancel the amalgamation condition holding Lot 1 DP 324383 and Lot 3 DP 351137 together.
- (b) That pursuant to Section 243(e) of the Act Council grants approval to cancel conditional easements shown as (C) on DP 186050 and (J) on DP 351137.
- (c) That pursuant to Section 104, 104B, 104D 106, 220, 221 and 241 of the Resource Management Act 1991, Council **APPROVES** the application by Torin Orchids Limited to subdivide Lot 3 DP 351137 and Lot 1 DP 324383 into six residential allotments and one road (to dedicate) at 47 Ngunguru Road, Whangarei, subject to the following conditions:
 1. That before the survey plan is sealed the following requirements are to have been satisfied:
 - a. That the survey plan submitted for approval shall conform with the subdivision consent obtained and the amended plan of subdivision prepared by Reyburn & Bryant 1999 Limited reference S10697 (Revision H) dated March 2010, except where modified by the following conditions of consent.
 - b. The survey plan shall show the following amalgamation condition:
That Lot 3 Hereon and Lot 1 DP 324383 (Residue CFR 209579) be held in the same Computer Freehold Register.
 - c. The consent holder must create easements over services and overland stormwater flow paths to the approval of the Senior Environmental Engineering Officer.
 - d. The consent holder must submit a detailed set of engineering plans prepared in accordance with council's Environmental Engineering Standards. The engineering plans are to be submitted to the Senior Environmental Engineering Officer for approval.
Plans are to include but are not limited to:
 - i. Design details of the upgrading of the Lot 7 private accessway in accordance with the Table 3.2 private way requirements for 6 – 8 lots including a typical cross section, long section, culverts, drainage flow paths and a suitable turning head to accommodate the turning curve for a car as detailed in Appendix 6D of the District Plan.
 - ii. Design details of a sealed or concrete double width vehicle crossing in accordance with sheet 3 or sheet 7 respectively.
 - iii. Design details of sewer connections to all residential lots in accordance with sheet 21 or 23 and section 5.
 - iv. Design details of water connections to all residential lots in accordance with sheet 30 or 31 including fire fighting coverage in accordance with sheet 29 & section 6.11.
 - e. The consent holder must provide written confirmation from power and telecommunications utility service operators of their consent conditions in accordance with council's Environmental Engineering Standards and show necessary easements on the survey plan to the approval of the Subdivision Officer.

2. Before a certificate is issued pursuant to Section 224(c) of the Act the following requirements are to have been satisfied:
 - a. 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 the WDC Environmental Engineering Standards to the approval of the Environmental Engineering Officer.
 - 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.
 - (ii) Site address to which the consent relates.
 - (iii) Activities to which the consent relates.
 - (iv) Expected duration of works.
 - c. 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.
 - d. All work on the approved engineering plans in **Condition 1(d)** is to be carried out to the approval of the Senior Environmental Engineering Officer. Compliance with this condition shall be determined by way of a site inspection by the Senior Environmental Engineering Officer or their delegated representative.
 - e. No construction works are to commence onsite until the engineering plans required in **Condition 1(d)** have been approved and all associated plan inspection fees have been paid.
 - f. Reinstate council berms similar to surrounding environment to the satisfaction of Council's Senior Environmental Engineering Officer or their delegated representative.
 - g. Pursuant to Section 221 of the Resource Management Act 1991, a consent notice must be prepared and be registered on the Certificate of Title of Lots 1 to 6 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) The location and foundations of any building shall be certified by a suitably experienced Chartered Professional Engineer prior to issue of any building consent, noting the location of low instability and flood susceptible areas on the council's Geographic Information Systems maps.
 - (ii) At the time of building consent, stormwater attenuation will be required for all impervious surfaces to ensure that the total peak runoff from each lot shall not exceed the peak runoff from the site pre-subdivision for both the 5 year and 100 year average recurrence interval (ARI) plus 20%, assessed using Auckland Regional Council (ARC) TP108 methodology for a 24 hour duration event to the satisfaction of the Senior Environmental Engineering Officer.
 - (iii) The owner shall be responsible for the supply, installation, and ongoing maintenance and associated costs for a private sewage

pumping station and pumping pipeline connecting into the existing council sewerage reticulation system noting the site plan compiled by Reyburn & Bryant dated 25/9/09, Sheet 1 of 1, E10697, Rev A detailing areas on Lots 1, 2 & 3 that cannot achieve a gravity flow sewer connection.

- h. The consent holder must ensure all fees have been paid.

Reasons for Recommendation

Pursuant to Section 113 of the Act the reasons for the decision are:

1. Any actual or potential effects on the environment will be minor because:
 - (i) The lot sizes proposed are not considered to be out of character with the surrounding; and
 - (ii) The proposed subdivision can be adequately serviced in terms of wastewater, stormwater, utility services and access. Safe and complying access can be provided to the site so as to ensure that road user and pedestrian safety will not be compromised.
2. The proposal is considered consistent with the objectives and policies of the District Plan because:
 - (i) The character of the proposal will be consistent with the previously established development character and will result in no more than minor effects on amenity and no more than minor visual effects;
 - (ii) The lots sizes are considered to be in keeping the with surrounding existing environment; and
 - (iii) The proposal is not leading to ribbon development, sporadic development, or development in an area currently undeveloped.

Advice Notes

1. Pursuant to Section 102 of the Local Government Act 2002, the Whangarei District Council has prepared and adopted a Development Contributions Policy. Under this Policy, the activity to which this consent relates 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 this consent relates or, in the case of a subdivision, prior to the issue at a Section 224(c) Certificate. Further information regarding Councils Development Contributions Policy may be obtained from the Long Term Community Consultation Plan (LTCCP) or Councils web page at www.wdc.govt.nz.
2. This resource consent will expire five years after the date of commencement of consent unless:
 - (a) It is given effect to before the end of that period; or
 - (b) Upon an application made prior to the expiry of that period (or such longer period as is fixed under Section 37 of the Resource Management Act 1991), the council fixes a longer period. The statutory considerations which apply to extensions are set out in Section 125 of the Resource Management Act 1991.

3. The consent holder must comply with the Council's specific practises before commencing any work on Council's roads and/or infrastructure.
4. The Consent Holder shall pay all charges set by Council under Section 36 of the Resource Management Act 1991, including any administration, monitoring, inspection and supervision charges relating to the conditions of this resource consent. The applicant will be advised of the charges as they fall.
5. Section 120 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. A copy of this consent should be held on site at all times during the establishment and construction phase of the activity.
6. Any works carried out within the WDC road reserve will require an approved road opening notice / traffic management plan.
7. All archaeological sites are protected under the provisions of the Historic Places Act 1993. 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 New Zealand Historic Places Trust for an authority to modify, damage or destroy an archaeological site(s) where avoidance of effect cannot be practised.
8. 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.

Attachments:

1. Copy of the Application
2. Aerial photo and Locality of the Site
3. District Plan Planning Maps
4. Density Map
5. Submissions Received
6. Further Information Received
7. Landscape report prepared by Council's Consultant Landscape Architect, Simon Cocker, dated 02 June 2010
8. Engineering report prepared by Council's Senior Environmental Engineering Officer, Dean Murphy, dated 02 June 2010
9. Tikipunga, Glenbervie and Vinegar Hill Structure Plan Map