

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
27 August 2010
9.15 am

Application by
R McInnes

Commissioner
David Hill

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.

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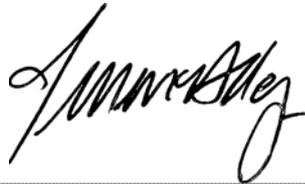
Report to the Hearings Commissioner on an Application By:

Roger McInnes to subdivide an existing 1.001 hectare site, being Lot 3 DP 206098, into 4 lots of between 2035m² and 3811m² (3292m² net site area) and have access arranged to the proposed lots where not all lots will be using the same access (right of way) in the Countryside Environment.

This application was lodged by Reyburn & Bryant Ltd on behalf of Roger McInnes and was reported on by Council's Consultant Environmental Planner (Consents), Ian McAlley.

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

Consultant
Environmental Planner
(Consents):



Date: 11 August 2010

Ian McAlley

Team Leader
(Consents):

Heather McNeal

Date: _____

Consents Manager:

Alister Hartstone

Date: _____

Resource Management Act 1991

Hearing By: The Whangarei District Council Hearings Commissioner of an application by Roger McInnes to subdivide an existing 1.001 hectare site, being Lot 3 DP 206098, into 4 lots of between 2035m² and 3811m² (3292m² net site area) and have access arranged to the proposed lots where not all lots will be using the same access (right of way) in the Countryside Environment.

Evidence By: Ian McAlley
BPlan (Honours)
Consultant Environmental Planner
(Consents)
Whangarei District Council

File Ref: SD1000026 P099633.SD

Dated: 10 August 2010

1. The Proposal

- 1.1 The proposal is to subdivide an existing 1.001 hectare site, being Lot 3 DP 206098 into 4 lots of between 2035m² and 3811m² (3292m² net site area) and have access arranged to the proposed lots where not all lots will be using the same access (right of way) in the Countryside Environment. A small (fifth) lot of 10m² will be created that will be vested in Whangarei District Council as a local purpose reserve (utilities) for the purposes of a sewage pump station.
- 1.2 The proposed net site areas are (referring to the revised plan of subdivision reference S 11847 dated July 2010, Attachment 2, also refer paragraph 3.8 this report) as follows:
- Lot 1 2035m² (nett)
 - Lot 2 2068m² (nett)
 - Lot 3 2086m² (nett)
 - Lot 4 3811m² (gross) 3292m² (nett)
- The average net site area of the proposed lots is 2370m².
- 1.3 Access to the proposed lots will be via a right of way serving Lots 3 and 4 and a dual (individual but located adjacent to each other) vehicle entrance crossing from Sands Road. Each lot will have connection to the WDC reticulated sewerage system, with provision of potable water by way of roof collection.
- 1.4 The proposal also seeks to cancel an existing water easement.
- 1.5 A copy of the application is included at Attachment 1.

2. The Site and the Surroundings

- 2.1 The property has an area of 1.0010ha and is contained within certificate of title NA134B/594. The legal description of the site is Lot 3 DP 206098.
- 2.2 The subject site is situated some 200m down Sands Road, which is located just beyond Tikipunga to the east of Whangarei. The property is roughly rectangular in shape, with a road frontage of approximately 50 metres. The site is in pasture and is divided into two paddocks separated by a shelterbelt. There are no buildings on the site and the contour rises gently toward the north.
- 2.3 The development on Sands Road is generally more intensive than that provided for in the provisions of the Countryside Environment of the District Plan, being a mixture of rural and rural-residential lifestyle activities with residential dwellings and other buildings scattered within the landscape. The subject site is situated amongst a cluster of ribbon type residential development which lines Sands Road and extends to Tuiglen Road, which is generally rural residential (large lot residential but not productive rural land uses) in nature whilst retaining rural character with "village like" attributes and open space.
- 2.4 While the subject site and the surrounding properties are located within the Countryside Environment, the surrounding area is characterised by different lot sizes and densities of built development (refer density map in Attachment 5).
- 2.5 There is significant variation in the size of properties in the wider area surrounding the subject site, with lots of between 800m² up to 8ha plus. In the cluster of development around the subject site there are lots of 800m², 2000m², 3000m² and 1.0 ha, with a 4 ha lot on the opposite side of Sands Road.
- 2.6 Prior to 2001, the Whangarei District Plan included a controlled activity subdivision standard with regard to allotment areas of 1 ha (minimum) in the Countryside Environment and a discretionary standard of 2000m². The minimum (controlled activity) lot size requirement was subsequently amended to require a minimum allotment area of 4ha in 2001, and amended again to require a minimum allotment area of 20ha in February 2006.
- 2.7 The subject site is considered to be within a 'lifestyle' area (by virtue of the development pattern that has occurred). The site is not proposed to be rezoned as Urban Transition Environment by way of Plan Change 93 but is shown within the Tikipunga, Glenbervie, Vinegar Hill Structure Plan as being proposed for rezoning to Living Three (large lot residential), with the area on the opposite side of Sands Road from the subject site detailed in the Structure Plan as being proposed to be rezoned Living One (urban residential).
- 2.8 An aerial photo and map showing the locality of the site is included as Attachment 3; District Plan maps showing zoning and other resource area notations of properties in the area are provided in Attachment 4; and a map showing the density of development in the area is provided as Attachment 5.

3. Consultation, Public Notification and Submissions

- 3.1 This application was lodged post the 2009 amendments to the Resource Management Act (RMA).
- 3.2 Pursuant to sections 95A - 95F of the RMA a consent authority may, using its discretion, make a decision whether to notify an application for resource consent. In determining the notification decision the consent authority must firstly have regard to the likely adverse effects on the environment of the proposal and secondly whether any persons are considered to be adversely affected by the proposal.

- 3.3 If the consent authority decides that the adverse effects on the environment may be more than minor it must notify the application. If the decision has been made that the effects will not be more than minor, the consent authority must then identify any persons adversely affected by the proposal to determine whether limited notification is required.
- 3.4 Notwithstanding the above, if special circumstances exist in terms of Section 95A of the RMA; if the applicant requests notification; or a rule in a Plan or Proposed Plan expressly provides that such an application should be publicly notified, then the application must be notified.
- 3.5 In this instance the applicant requested that the application be publicly notified.
- 3.6 Prior to the application being publicly notified a request for further information was made for information related to engineering matters, namely:
- i. The provision of details of an agreement with the Waste and Drainage Manager (WDC) for the provision of a public sewer pumpstation.
 - ii. Provision of basic details of the sewer pumpstation, e.g. depth, storage required, area served.
 - iii. Provision of an amended plan showing a single vehicle entrance serving the subdivision.
 - iv. Provision of a plan of the catchment that is likely to flow through the site in a Q100 event and details of a cutoff drain which would be capable of redirecting these flows.

The Environmental Engineering Team Leader, Mr William Bryant, who is assisting with the processing of this application is satisfied that the necessary information has been provided.

- 3.7 The application was publicly notified in the Leader on 27 April 2010 with the submission period closing on 25 May 2010. During this period, the application attracted seven submissions:

i. BG & JA Ward – Oppose – Wish to be heard

- Concerns regarding use of access to Proposed Lot 4 along common boundary and possible use of the site for a school.
- Consider that the proposal is contrary to the provisions of the District Plan and if approved would result in significant detrimental effects to the submitters living environment
- Concerns that the proposed subdivision is the first step toward establishing a school on the site
- Concerns that the application of the Countryside Environment Rules to future development on small sites will result in development that negatively impacts upon the surrounding environment
- Concerns that the proposal contains no provision for building controls and no proposals for planting or other measures which might mitigate impacts on amenity
- Consider that the information provided regarding stormwater management is insufficient
- Overall opposition to the proposal; consider that granting the application would result in a significant shift from an area of low density living to one of higher density

ii. P & D Graham – Oppose – Wish to be heard

- Opposition on grounds that the application does not comply with the provisions of the District Plan and would result in a significant detrimental effect to the submitters living environment
- Consider that the granting of the proposed subdivision would change the rural nature and open space character of the submitters property
- Recognise the potential for a future change in zoning but would expect this to be undertaken “in an orderly and considered fashion, rather than an ad-hoc manner” with full consideration of necessary engineering requirements
- Concern that the approval of the application would set a precedent for further development of this nature on Sands Road, is considered sporadic development and the granting of the application would negatively impact on the integrity of Council’s planning documents
- Concerns that the proposed subdivision is the first step toward establishing a school on the site
- Consider that the location of a sewage pump station in close proximity to the submitters house will have a negative impact on their site and also concerns related to be adequacy of stormwater control
- Concerns regarding traffic generation and the lack of footpaths on Sands Road and the potential for further increased traffic if a school were developed on site

iii. NG & V Mortimore – Do not state position – Do not state if they wish to be heard

- Consider that the property should only be subdivided into two lots

iv. GD Oldcorn & PM Palmer – Oppose – Wish to be heard

- Opposition on grounds that the application does not comply with the provisions of the District Plan and would result in a significant detrimental effect to the submitters living environment
- Consider that the granting of the proposed subdivision would change the rural nature and open space character of the submitters property and do not agree with the assessment in the application that no change to amenity values would result from the proposed subdivision
- The submitters have an expectation that the current District Plan provisions be adhered to and whilst they recognise the potential for a future change in zoning they would expect this to be undertaken “in an orderly and considered fashion, rather than an ad-hoc manner” with full consideration of necessary engineering requirements
- Consider that the proposal is contrary to Plan Change 92 and also notes that the area has not been included in the Urban Transition Environment (Plan Change 93)

- Concern that the approval of the application would set a precedent for further development of this nature on Sands Road and that there are no extenuating circumstances or unique features in relation to the site in question that would stop others from using any approval to support the own applications
- The submitter considers that the proposal is sporadic development that would compromise orderly and efficient future servicing and general development of the area and that the granting of the application would negatively impact on the integrity of Council's planning documents
- Concerns that the proposed subdivision is the first step toward establishing a school on the site and consider that the provisions of the Countryside Environment Rules would enable the establishment of a school on the site "to proceed easily"
- Consider that the location of a sewage pump station in close proximity to the submitters house will have a negative impact on their site and also concerns related to be adequacy of stormwater control
- Concerns regarding traffic generation and the lack of footpaths on Sands Road and the potential for further increased traffic if a school were developed on the site
- Concerns that the proposal contains no provision for building controls and no proposals for planting or other measures which might mitigate impacts on amenity
- Consider that the information provided regarding stormwater management is insufficient
- Overall concerns that the proposal does not comply with the District Plan and that granting consent would result in loss of amenity because of the increase in the density of development in the area

v. B & T Adair – Oppose – Do not wish to be heard

- Opposition on grounds that the application does not comply with the provisions of the District Plan and would result in significant detrimental effects on the submitters living environment and would compromise the rural environment that exists on Sands Road
- The submitters have an expectation that the current District Plan provisions be adhered to and that any future development would require council to address matters such as water supply, waste water and footpaths
- Concerns that the proposed subdivision is the first step toward establishing a school on the site that would result in extra traffic
- Concerns regarding traffic generation and the lack of footpaths on Sands Road and possible impacts regarding stormwater and wastewater management

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

- NRC is neutral with respect to the application, however requests that the Whangarei District Council take into account certain matters in the processing of the consent application, namely; the application states that "new dwellings on the proposed allotments will utilise roof-rainwater collection and private water supply for water".
- The NRC seeks further clarification as to what is meant by the above. Will the dwellings have both a rainfall collection and some other form of supplementary supply and if so, what is the source of the supplementary supply?
- NRC is concerned that the private dwellings will be required to install roof-rainwater collection as well as a bore. A proliferation of bore applications may not be the most appropriate outcome for managing water supply in this area. It is suggested that the statement be amended to "or" and it is noted that the installation of a bore requires consent from the NRC.

vii. New Zealand Historic Places Trust – Do Not Oppose – Do not wish to be heard

- The NZHPT notes that there is a 'native village' shown on older survey plans, some 500m to the northwest of the site and that the site is as yet undeveloped.
- The NZHPT consider that there is some possibility of archaeology in the area outside the village, but given the separation between the two and with no other indications NZHPT request that only a standard advice note relating to archaeology be attached to any granted consent.

3.8 Following the receipt of submissions a further information request was made requiring a landscape assessment of the proposal and this landscape assessment (by Simon Cocker Landscape Architecture) was received on 3 August 2010 (refer Attachment 7). Further to the landscape assessment a revised plan of the subdivision was provided with the following changes including:

- Proposed Lots 1 and 2 were amended, with their orientation being altered and the pan handle access to Proposed Lot 2 was deleted
- A shared double vehicle entrance crossing for both Proposed Lots 1 and 2 directly from Sands Road was included
- The area of Proposed Lot 3 was increased slightly
- No build covenants and planting covenants were added to the plan
- A small lot (Lot 5, 10m²) was added as a Lot to be Vested in the Whangarei District Council as Local Purpose Reserve (Utilities) for the purpose of accommodating a sewage pump station

3.9 It was assessed that the changes proposed did not potentially increase the effects of the proposal beyond the effects associated with the original application and the revised plan was not forwarded to submitters, but is included with this application (Attachment 2).

- 3.10 Also a landscape assessment of the revised proposal was undertaken by Council (Dream Planning Ltd) as part of the assessment process and this document is included with this report (Attachment 8).

4. District Plan Requirements

- 4.1 The site is located in the Countryside Environment of the District Plan and is subject to the rules of this Environment. Subdivision 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 (plus some other provisions re lot sizes). Where these standards are not met, subdivision is a Non-Complying Activity.
- 4.2 The proposal is for the subdivision to create four allotments with site areas of:
- Lot 1 2035m² (nett)
 Lot 2 2068m² (nett)
 Lot 3 2086m² (nett)
 Lot 4 3811m² (gross) 3292m² (nett)
- 4.3 The proposal does not meet the minimum net site area standard for a Controlled Activity (20ha) and the average net site area of the proposed lots is 2370m². Therefore the proposal does not meet the standard for a Discretionary Activity (average lot size 4ha) and is a Non-Complying Activity under Rule 73.3.1 of the District Plan.
- 4.4 The proposal does not comply with Rule 73.3.7(b) Property Access as access to a road is not shared where there are two or more allotments in the subdivision. In this instance Proposed Lots 1 and 2 will not share access with Proposed Lots 3 and 4. Non compliance with Rule 73.3.7 is assessed to be a Restricted Discretionary Activity.
- 4.5 The proposal complies with all other relevant subdivision rules of the Countryside Environment as a Controlled Activity, including, extension of services, water supply, stormwater, electricity and telecommunications.
- 4.6 Overall, the application is considered to be a **Non-Complying** Activity.

5. Resource Management Act 1991

- 5.1 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.
- 5.2 The principle purpose of the Resource Management Act (RMA) is to promote the sustainable management of natural and physical resources (Part 2, Section 5). It is considered that the purpose of the Act accords pre-eminence to promoting sustainable management of natural and physical resources, not just their "management".
- 5.3 After Section 5, Sections 6 – 8 of the RMA provide guidance to decision makers on a hierarchy of considerations, being:
- Matters of national importance
 - Other matters that must be given particular regard
 - Principles of the Treaty of Waitangi
- 5.4 The matters set out in Sections 6 – 8 while important, are all considered to be subordinate to the overall purpose of the RMA, set out in Section 5.

5.5 Section 5 – Purpose

5.5.1 Section 5 of the RMA 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.*

5.5.2 It is considered that the proposal is promoting development of land, however, the proposal is only considered to provide for economic wellbeing of individuals. The wellbeing of the wider community is considered to be provided for through the proposal adequately avoiding, remedying and/or mitigating all potential adverse effects of creating the four proposed allotments (along with attendant future development) on the surrounding environment. As a result the proposal is considered to be consistent with the principal of sustainable management of natural and physical resources.

5.5.3 Section 6 of this report will discuss the effects of the proposed subdivision in relation to rural character and amenity value effects, landscape and visual effects, servicing and access effects and cumulative effects.

5.6 Section 6 – Matters of National Importance

5.6.1 Section 6 of the RMA lists matters of national importance that must be recognised and provided for in the assessment of a consent application. In this particular instance no matters of national importance, as outlined in Section 6 of the Act, are considered relevant to this application.

5.7 Section 7 - Other Matters

5.7.1 Section 7 of the Act details those matters that a consent authority shall have particular regard to in the assessment of a consent application. With regard to this application the following matters as outlined below are considered to be 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.*

5.7.2 The view of the Environment Court as noted in *Shell NZ Ltd v Auckland CC*¹ is that section 7(c) does not require that the amenity in question be enhanced. The RMA contemplates applications for consent that not only fail to enhance amenity, but also fail to even maintain it.

5.7.3 In respect to this application, it is assessed that the subdivision of the site and the resultant addition of further built development within the environment to the level proposed, subject to the mitigation measures proposed to protect landscape values and visual amenity, will maintain amenity values and will maintain the quality of the environment and on this basis the application as presented is considered to satisfy the relevant requirements of Section 7 of the RMA.

5.8 Section 8 – Treaty of Waitangi

5.8.1 Section 8 of the RMA requires council to take into account the principles of the Treaty of Waitangi. The Pehiaweri Marae were served a copy of the application and no submission was received from this party, or from any other party raising the potential for cultural impacts from the proposal (it is noted that New Zealand Historic Places Trust had no opposition to the proposal).

5.8.2 It is considered that by notifying the aforementioned parties of this application and through the course of processing this application, there was regard had for the Treaty of Waitangi.

5.9 Section 104 – Consideration of Applications

5.9.1 As a non complying activity the application is subject to the provisions of Section 104, 104B and 104D of the RMA. When considering such an application and any submissions received the consent authority must, subject to Part 2, have regard to Section 104 of the RMA which states:

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to

(a) any actual and potential effects on the environment of allowing the activity; and

(b) any relevant provisions of:

(i) a national policy statement

(ii) a New Zealand coastal policy statement

(iii) a regional policy statement or proposed regional policy statement:

(iv) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

5.9.2 When forming an opinion a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect and when considering an application affected by section 124 of the RMA, the consent authority must have regard to the value of the investment of the existing consent holder.

¹ *Shell NZ Ltd v Auckland CC* [1995] NZRMA 490 - upheld by Court of Appeal, *Shell New Zealand Ltd v Auckland CC* (1996) 2 ELRNZ 147, [1996] NZRMA 189 (CA)

- 5.9.3 When considering a non-complying application a consent authority must not have regard to trade competition or the effects of trade competition, or any effect on a person who has given written approval to the application (so long as they have not withdrawn that approval).
- 5.9.4 Section 104B of the RMA states:
- Determination of applications for discretionary or non-complying activities*
- After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—*
- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108.*
- 5.9.5 With particular regard to the assessment of non-complying activities (pursuant to Section 104D), despite any decision made for the purpose of section 95A(2)(a) of the RMA, in relation to adverse effects, a consent authority may only grant a resource consent for a non-complying activity 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 –*
- (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
- (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
- (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
- 5.9.6 For a non-complying application a consent authority may decline an application on the grounds that it has inadequate information to determine the application and in making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available. In this instance all further information requests have been satisfied and it is considered that the consent authority has adequate information to determine the application.
- 5.9.7 In accordance with section 104D(b), when assessing an application for a non-complying activity the application must be assessed with regard to the objectives and policies of the plan (or proposed plan), notwithstanding that there is a responsibility to 'have regard to the relevant provisions of a plan or proposed plan' under Section 104(1)(b)(vi). The assessment against objectives and policies is contained in Section 7 of this report.
- 5.9.8 As a result, consent for non-complying activities may only be granted if at least one of two 'gateway' tests is satisfied: either that the adverse effects of the activity on the environment will be minor; or that the application is for an activity that will not be contrary to the objectives or policies of the relevant plan. It follows that the application must fail both 'tests' before the consent authority is obliged to refuse consent.

6. Assessment of Environmental Effects

- 6.1 As detailed above, as a Non-Complying Activity the proposal must satisfy one of the 'tests' in Section 104D of the RMA and for consent to be granted, it must be assessed that the effects on the environment are no more than minor.
- 6.2 Section 3 of the RMA defines the term 'effect' as including –
- Any positive or adverse effect; and*
- (a) *Any temporary or permanent effect; and*
- (b) *Any past, present or future effect; and*
- (c) *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 –*
- (d) *Any potential effect of high probability; and*
- (e) *Any potential effect of low probability which has a high potential impact.*
- 6.3 As the assessment of effects relates to effects on the environment it is therefore necessary to understand the 'environment' that the proposal relates to. Section 2 of the RMA defines the 'environment' to include:
- (a) *Ecosystems and their constituent parts, including people and communities; and*
- (b) *All natural and physical resources; and*
- (c) *Amenity values; and*
- (d) *The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:*
- 6.4 Natural and physical resources include "*land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures*" (Section 2, RMA)
- 6.5 In terms of the Courts (both the Environment Court and the High Court) consideration of 'environment', there have been three distinct decisions highlighting what matters are to be considered in terms of "the environment".
1. Environment refers to the existing environment. A consideration of the effect on the environment of the activity for which consent is sought requires an assessment to be made of the effects of the proposal on the environment as it exists not just those aspects of a development which have had the effect of requiring a discretionary [or non complying] activity consent (Aley v North Shore CC²).

² Aley v North Shore CC [1999] NZLR 365, (1998) 4 ELRNZ 227, [1998] NZRMA 361

2. The High Court held that the Environment Court had failed to consider the potential development of a neighbouring property. The principal ground of appeal which was upheld was that the Environment Court was materially affected by an error of law by refusing to consider the potential of a neighbouring property to have dwellings erected on it, on the grounds that it should consider only the receiving environment as it then existed (Wilson v Selwyn DC³).
 3. The Court of Appeal stated that the definition of “environment” embraces the future state of the environment as it might be modified by permitted activities and by resource consents which have been granted where it appears likely that those consents will be implemented (Queenstown Lakes DC v Hawthorn Estate Ltd⁴).
- 6.6 Therefore in attempting to establish the character and/or amenity values that are applicable to a particular area or environment, it is necessary to consider: the existing environment; the neighbouring environment; and those changes that could occur to the environment in terms of permitted activities and the implementation of granted, but unimplemented resource consents.
- 6.7 The future state of the environment is a particular consideration where subdivision consents have been granted but not yet implemented, but there are none in the area in close proximity to the subject site (additionally refer to the Permitted Baseline Assessment in Section 6.10 of this report).
- 6.8 In terms of understanding the character and amenity values that relate to the Countryside Environment, within the overview (section 5.2) Chapter 5, Amenity Values of the District Plan, the following statement is provided to describe in general terms the characteristics of the Countryside Environment:

The Countryside Environment tends to be used predominantly for primary production, but is also used for low-density residential purposes. When choosing to live in a rural area, people must expect and accept a certain level of odour, noise and other effects which are characteristic of primary production, recognising the scale and intensity of these activities which contribute to rural character. Rural areas do, however, tend to have high amenity values, due primarily to the following characteristics:

- *The intermittent nature of most agricultural activities;*
- *Open landscapes and views;*
- *A low intensity of development;*
- *Feelings of remoteness and community;*
- *Low noise levels, particularly at night;*
- *A high degree of privacy;*

³ Wilson v Selwyn DC [2005] NZRMA 76

⁴ Queenstown Lakes DC v Hawthorn Estate Ltd (2006) 12 ELRNZ 299, [2006] NZRMA 424

- *Daylight and sunlight access;*
- *Low levels of vehicular traffic;*
- *Green 'unspoiled' landscape with indigenous vegetation.*

The Countryside Environment is sensitive to activities which have continuous or ongoing effects, or that are located in close proximity to other land uses such as residential units.

The potential effect of this proposal on the character and amenity values that relate to the Countryside Environment will be discussed in later sections of this report.

- 6.9 In terms of this application, the actual and potential effects arising from the proposed development relate primarily to effects on rural character and amenity values, landscape and visual effects, servicing, traffic and access effects and cumulative effects.

6.10 The Permitted Baseline

- 6.10.1 As a starting point, in terms of determining whether the adverse effects of the proposal are minor or more than minor, Section 104(2) of the RMA provides that the council may have regard to a permitted baseline comparison i.e. a comparison between the environment as it would exist if the land were used in a manner permitted as of right.
- 6.10.2 The permitted baseline approach to effects assessment enables the council to disregard any adverse effects on the environment if those effects are related to an activity/activities that are permitted by the Plan. Existing activities and any activity which could be carried out as a permitted activity may be discounted as giving rise to any adverse effect(s).
- 6.10.3 Pursuant to section 104(2) of the RMA, a permitted baseline assessment is discretionary i.e. it is not mandatory for council to adopt the permitted baseline approach. It is commonplace for a permitted baseline assessment to occur as part of land use applications and in this case, as no subdivision is permitted by the District Plan, the only relevant consideration would be in relation to built development and built density i.e. the consideration of resultant development on the proposed lots, assuming the subdivision consent were granted and implemented. The assessment of the permitted baseline accords with the assessment of the 'future environment' previously referred to in the Queenstown Lakes DC v Hawthorn Estate Ltd case.
- 6.10.4 As stated the subject site is within the Countryside Environment of the District Plan. In this Environment, the construction of a 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) It is not within a Mineral Extraction Area as shown on the Planning Maps.
 - d) It is not within 500m of a Mineral Extraction Area.

Also minor residential units are permitted where the lot size is greater than 8000m² net site area.

- 6.10.5 Given the site has only one existing allotment of 1.001ha, 1 residential unit and 1 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.
- 6.10.6 Approval of the proposed subdivision would create further development rights and allow a total of 4 residential units to be constructed on the subdivided site. Minor household units would not be permitted on any of the proposed lots as they are not 8000m² or greater.
- 6.10.7 Therefore the level of residential development permitted after the proposed subdivision is greater than the residential development allowed now as-of-right.

6.11 Rural Character and Amenity Effects

- 6.11.1 The Resource Management Act defines 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"* (Section 2, RMA).
- 6.11.2 While amenity attributes represent tangible and measurable matters such as physical noise measurements, amenity values represent the less tangible matters such as people's perceptions of noise, culture, expectations, desires and tolerance. According to the Ministry for the Environment's publication "Managing Rural Amenity Conflicts" (February 2000), *'it is the differences in people's perceptions and expectations that lie at the root of most amenity conflicts and these vary significantly within rural communities and between different communities.'* Typically a person would view amenity to be matters such as "privacy", "pleasantness", "clean air" or "peace and quiet". Matters such as noise, odour, density of development, and shading attribute to amenity. Secondly, perceptions and expectations that people hold influence amenity.
- 6.11.3 In the case of Phantom Outdoor Advertising v Christchurch CC⁵ the Court considered that in terms of the definition of amenity values the words "pleasantness, aesthetic coherence and cultural and recreational attributes" are not some form of combined absolute value which members of the public appreciate to a greater or lesser extent. The definition embraces a wide range of elements and experience and the appreciation of amenity values may change, depending on the audience and the experience of the audience may be different in each case.
- 6.11.4 The case above introduces an element of flexibility in terms of what constitutes 'amenity values', recognising that different people value different things and that an assessment of such matters should be made on balance.
- 6.11.5 The rural character and amenity values of the Countryside Environment is primarily associated with features such as open spaces and pasture land, productive farming/cropping and horticultural activities, dwellings and structures used for farming purposes and low-density residential development (as described in Chapter 5 of the District Plan and repeated in paragraph 6.8 above). It is recognised that the intensification of subdivision and development in an incremental manner can erode an area's rural character and amenity values.
- 6.11.6 The pattern of existing development in the area surrounding the subject site has a mixture of lot sizes, with significant variation in the size of properties in the wider area surrounding the subject site. Existing lots range from 800m² up to 8ha plus and in the cluster of development around the subject site there are lots of 800m², 2000m², 3000m² and 1.0 ha, with a 4 ha lot on the opposite side of Sands Road.

⁵ Phantom Outdoor Advertising Ltd v Christchurch CC C090/01

- 6.11.7 The area has developed over time into a lifestyle area with rural residential elements. Not all surrounding lots appear to have some form of rural activity occurring on them, therefore the predominant land use character is large (rural) residential lots within a rural environment. The subdivision of the subject site in the manner proposed would not be incongruent with the established pattern of development in the area, but would add a number of 'smaller' lots into the environment when the existing pattern of development is considered.
- 6.11.8 The character of the subject site and the surrounding area has been described in detail in the applicant's landscape architects report; particularly paragraphs 5 – 11 (refer Simon Cocker Landscape Architecture report Attachment 7). It is considered that "the cluster of development (the site and surrounding sites) which forms a ribbon along the northern part of the road, extending as far south as the junction with Tuiglen Place, shares a character with the suburban ribbon development" on Ngunguru Road and "the cluster sits as an 'island' within the surrounding open rural/rural residential character landscape. Residential development, primarily along the eastern edge of the road, is softened by vegetation within gardens. Often this vegetation is dense and includes tree species, with the dwellings set back from the road. Within many lots, supplementary buildings such as sheds and barns contribute to the perception of a greater density of development than the cadastral pattern suggests." It is noted that the landscape assessment undertaken by Dream Planning Ltd (on behalf of Council, refer Attachment 8) concurs with the applicant's landscape architects assessment of the site and surrounding area.
- 6.11.9 Overall "the cluster of residential development retains a rural character, which feels somewhat 'village-like', albeit on a small scale" (paragraph 9, Cocker report, Attachment 7). The assessment considers that the perception of character is the result of a number of contributing elements, namely:
- i. the prevalence of vegetation within gardens and along the road boundary, views to the open pasture on the southern side of Sands Road and to the north of the residential strip,
 - ii. the wide road berm along the eastern edge of Sands Road,
 - iii. the lack of kerb and channel and footpaths,
 - iv. the 'low key' character of entrances, fences and accessways,
 - v. the relatively small scale of visible built development within individual lots.
- 6.11.10 However, there are examples of elements which contradict the assessment above, in particular recent residential development located at the eastern end of Tuiglen Place which displays a more suburban character, but overall the predominance of the elements listed above ensure a prevailing (rural) character is maintained.
- 6.11.11 Recognising that the subject site is assessed to have 'rural character' it is considered necessary to assess the site and surrounding area against the overview (Section 5.2 of the District Plan) of the Countryside Environment contained in the District Plan.
- 6.11.12 It is assessed that the site and the surrounding area is not one of "open landscapes and views". The area is punctuated by built development and the surrounding pattern of development is of lot sizes significantly less than the 20 ha controlled activity subdivision standard in the Countryside Environment. It is also assessed that the immediately surrounding area is not one that contains "a green unspoilt landscape with indigenous vegetation".

- 6.11.13 The immediately surrounding area is not one of low intensity development, with virtually all nearby lots being of a site size significantly less than the discretionary activity subdivision standard of the Countryside Environment (under 4ha). While this lack of low intensity development would minimise "feelings of remoteness" (recognising that this would be a highly subjective matter) it is considered that such an intensity of development could foster "feelings of community".
- 6.11.14 The proximity of neighbouring development due to the density pattern that has developed would be likely to impact upon feelings of privacy, although it is observed that plantings and screen vegetation on existing sites would assist in maintaining individual landowners privacy, when viewed from neighbouring properties.
- 6.11.15 In terms of vehicle traffic, the proposal does not include any high traffic producers and in Council's assessment of the proposal it is not considered to have negative effects on the safe and efficient operation of Sands Road and/or the intersection of Sands Road and Ngunguru Road.
- 6.11.16 The application proposes a density of development which is assessed as a non-complying activity under the District Plan. Approval of the proposed subdivision to allow more intensive development on the subject site is considered capable of negatively impacting upon the amenity of the area (paragraph 53, Cocker report, Attachment 7). Subsequent built development has the capacity to impact upon the perceptions and expectations that people hold towards the Countryside Environment i.e. open landscapes and views and a low intensity of development. However, in this instance it is assessed that the effects of future built development can be mitigated by the application of appropriate protection and mitigation measures.
- 6.11.17 The proposal can be considered to represent consolidated development of lifestyle type development within an area that already contains this type of development. The density map contained in Attachment 5 shows that the surrounding lot sizes are not indifferent to those proposed, however it is recognised that the proposed lot sizes would be at the smaller end of the scale in comparison to the particular cluster of existing development established on Sands Road. Therefore, the size of the lots proposed is not out of character with the existing pattern of development.
- 6.11.18 Overall the effects of the proposed subdivision, in regard to amenity and rural character, are considered to be no more than minor. There is potential for this proposed subdivision to negatively impact on the rural character and amenity of the area, through the location of built development on the proposed lots without any protection or mitigation measures to protect those factors that contribute toward the amenity values and the rural character of this particular site and area. However, the mitigation measures, namely no build covenants and landscaping requirements, are considered to assist in maintaining the key characteristics of the existing pattern of development and to effectively mitigate potential effects on natural character and amenity.

6.12 Landscape and Visual Effects

- 6.12.1 This subdivision application is supported by an assessment of visual and amenity effects (refer Attachment 7) in which paragraphs 36 through 45 and the associated tables specifically address the matter of visual effects.

The assessment defines the effects of the application upon the site and setting, with consideration of how the proposal would impact upon the experience of people viewing the development from outside of the site, assessing the level of affect upon landscape character and visual amenity that will be experienced. To assist with predicting the level of visual effects that the proposal would generate, publicly accessible vantage points in the area were visited and the potential impact of the proposal considered from each.

- 6.12.2 Visual impacts are considered to constitute an intrusion into, or change to an existing view, with the significance of effects measured as the bearing of that effect upon identified viewing audiences with visual effects considered a subset of rural amenity values.
- 6.12.3 The visual catchment of the site is assessed to be an extensive area to the west, north and east of the site. A number of potentially affected individual viewer groups have been identified and are detailed in the report. The assessment undertaken considers the different viewer groups and with regard to those groups/viewpoints assesses the existing landscape context and the result of the proposal in that context.
- 6.12.4 The report concludes that the proposal seeks to reflect the landscape character and development pattern already established along the northern side of Sands Road and that this will be achieved through the subdivision design and the creation of 'no build areas' within specific lots.
- 6.12.5 It is assessed that the mitigation planting proposed along the side boundaries and the 10 metre wide planted buffer along the front boundary will reflect the existing vegetated character of the road frontages of nearby lots. Whilst the proposal has the potential to generate adverse visual and amenity effects for adjoining neighbours, these effects can be mitigated through the establishment, retention and maintenance of the plantings detailed in the assessment and offered as conditions of any granted consent by the applicant. Any adverse effects will be mitigated within 5 years.
- 6.12.6 However, the planting proposed will in some respects block views of the subject site and the surrounding landscape from neighbouring sites. As previously stated, section 7 of the RMA requires all persons exercising functions and powers under the Act to have particular regard to the efficient use and development of natural and physical resources (section 7(b)); the maintenance and enhancement of amenity values (section 7(c)); and the maintenance and enhancement of the quality of the environment (section 7(f)).
- 6.12.7 With regard to landscapes, the Environment Court has held that "an important point in respect of the protection of landscapes is that the Act does not necessarily protect the status quo"⁶. In considering this particular application, the Court has held (in *Pacific Investment v Banks Peninsula DC*⁷) that as a matter of law, the protection of views is not just for other landowners, but also passers-by (including future generations) and in (*Ruru v Gisborne DC W100/93*) the Court concluded that extensive planting designed to screen an activity from adjoining properties may, in itself, be an unacceptable intrusion into the adjoining owners' and occupiers' amenity and quality of life.

⁶ *Wakatipu Environmental Soc Inc v Queenstown Lakes DC* [2000] NZRMA 59

⁷ *Pacific Investment Trust v Banks Peninsula DC C086/00*

- 6.12.8 In the instance of this application it is proposed that landscape planting, including hedgerows, be used as a mitigation measure, to (over time) screen future development occurring on the subdivided lots from the view of neighbouring landowners and passers-by. With regard to the cases cited above, this planting could be considered to do be "an unacceptable intrusion into the adjoining owners and occupiers amenity and quality of life".
- 6.12.9 In this instance the plantings proposed are considered to be in keeping with the pattern of development that exists in the area. It is correctly assessed in the landscape report provided that there are no controls in the District Plan limiting planting of the nature proposed. It is therefore considered that this planting is an acceptable mitigation measure.
- 6.12.10 The mitigation proposal has been reviewed by Dream Planning Ltd (refer Attachment 8), who concur with the applicant's landscape architect (albeit with a minor amendment to the plantings proposed). Therefore, overall it is considered that potential effects resulting from the proposed subdivision (and the future development of the lots) on landscape and visual amenity values of the subject site and surrounds are no more than minor.

6.13 Engineering

- 6.13.1 Sands Road is serviced by a reticulated waste water system and connection to the system will be enabled with this proposal, with the requirement for a pump station to be provided. All proposed lots will also be required to provide their own water supply and onsite stormwater treatment will be required as no public system is currently available for connection in the area.
- 6.13.2 An engineering report from Hawthorn Geddes dated 1 March 2010 (refer Attachment 1) was provided with the application and a further report dated 9 April 2010 (refer Attachment 9) was provided following a further information request.
- 6.13.3 These reports address matters related to site stability including geology, flooding, stormwater management, waste water disposal and recommendations regarding building foundations. These reports and their conclusions have been reviewed by Mr William Bryant, Council's Environmental Engineering Team Leader who is satisfied (his report is Attachment 10) that development undertaken in accordance with the recommendations of his report will adequately address any engineering matters.
- 6.13.4 The Northland Regional Council (NRC) in its submission to the application dated 24th February 2010 (refer Attachment 6) state NRC is neutral with respect to the application, however requests that the Whangarei District Council take into account certain matters in the processing of the consent application regarding water supply.
- 6.13.5 NRC seek further clarification as to whether new dwellings will have both a rainfall collection and some other form of supplementary supply, and if so the source of the supplementary supply.
- 6.13.6 NRC is concerned that the private dwellings will be required to install roof-rainwater collection as well as a bore. A proliferation of bore applications may not be the most appropriate outcome for managing water supply in this area and it is suggested that the statement be amended to "or" and it is noted that the installation of a bore requires consent from the NRC.

- 6.13.7 Confirmation from the applicant's agent is that water supply is proposed only by way of roof collection to private water tanks and no bores or other water supply methods are proposed.
- 6.13.8 With regard to stormwater disposal it is proposed that a portion of the storage capacity for water supply (water tanks) be made available for attenuation purposes. This on-site stormwater attenuation will be required to limit flows from each of the lots to predevelopment levels. It is noted that the issue of stormwater management was of particular concern to a number of submitters.
- 6.13.9 The supplementary engineering report from Hawthorn Geddes (stated 9 April 2010) has made an assessment of the up slope catchment of the site and the estimated peak flow from this catchment. A perimeter swale is proposed in order to manage stormwater flows from this catchment and the calculations confirm that the proposed swale has sufficient capacity to cater for a 1 in 100 year rainfall event.
- 6.13.10 With regard to wastewater disposal, as mentioned, all lots will connect to the existing WDC reticulated waste water system. The Waste and Drainage Department of WDC has confirmed that sufficient capacity exists in the Ngunguru Road gravity sewer to accommodate the proposed connections and WDC is considering a cost share proposal with the applicant in order to provide sufficient capacity within the proposed pump station to enable future reticulation of the Sands Road area.
- 6.13.11 The submission of P & D Graham raises particular concerns with regard to the location of the pump station in close proximity to their dwelling (25 Sands Road) and possible effects related to this.
- 6.13.12 The establishment of or extension to underground network utility services (i.e. pump stations) is a permitted activity by virtue of Rule 38.3.4 Network Utility Services (Countryside Environment). Although the establishment of the pump station is a permitted activity, the operation of this piece of infrastructure is still required to comply with the other relevant rules of the District Plan, such as Rule 38.3.10 Noise (Countryside Environment). As part of the amendments to the application the pump station location has been altered and is now proposed to be located on the other side of the subject sites road frontage, further from the Graham's site. Therefore it is assessed that the concerns of the Graham's with regard to this matter have been satisfied.
- 6.13.13 In conclusion it is possible to provide necessary services to the site and through appropriate conditions of consent ensure any effects of the proposed subdivision on engineering/services aspects will be no more than minor.

6.14 Archaeology and Heritage Values

- 6.14.1 The submission of the New Zealand Historic Place Trust raises no concerns with regard to the possible impact of the proposal on archaeology and heritage values, therefore it is assessed that the possible effects of the proposed subdivision with respect to archaeological heritage and values will be no more than minor.

6.15 Traffic and Access

- 6.15.1 The proposal does not comply with Rule 73.3.7(b) Property Access, as access from the proposed lots to Sands Road is not shared where there are two or more allotments in the subdivision. In this instance Proposed Lots 1 and 2 will not share access with Proposed Lots 3 and 4.

- 6.15.2 The original proposal had a shared access for Proposed Lots 3 and 4, a pan handle access for Lot 2, with Lot 1 having direct access to Sands Road. The revised proposal still has a shared access for Lots 3 and 4 with Lots 1 and 2 both having individual access points (i.e. not a shared access), but they will be sharing a double width vehicle crossing. Council's Environmental Engineering Team Leader has liaised with the WDC Roothing Division regarding the proposal and is satisfied that the proposed access arrangements will not have a negative impact on traffic safety on Sands Road.
- 6.15.3 A number of submitters raised concerns about pedestrian safety due to the lack of a foot path along Sands Road. From my assessment of the submissions, concerns relating to pedestrian safety appeared to particularly relate to a possible increase in pedestrian traffic if a school were located on one of the proposed lots (previously mooted). It is noted that this application is for the subdivision of the subject site and contains no detail with regard to any proposed school, therefore the effects of such are not a consideration in this application. However, in the WDC engineering assessment of this proposal the issue of a footpath was considered, but due to there being no other existing footpath on Sands Road it was not considered practical to request this applicant to provide such. The WDC Roothing Division is of the opinion that the provision of footpaths would occur at the time the area were more intensively developed, should that happen in the future following the possible rezoning of the area, signalled in the WDC Glenbervie, Tikipunga and Vinegar Hill Structure Plan.
- 6.15.4 In conclusion it is assessed that the possible effects of the proposed subdivision with regard to traffic and access effects will be no more than minor.

6.16 Cumulative Effects

- 6.16.1 The authoritative pronouncement on precedent and cumulative effects is found in the Court of Appeal decision in *Dye v Auckland Regional Council* [2002] 1 NZLR 337. In that decision, the court determined that a cumulative effect is not appropriate to describe the nature of a precedent concern. A cumulative effect is limited to the consequences of granting a particular application. For a cumulative effect to be significant, it must have breached a threshold, or 'tipped the balance'.
- 6.16.2 As discussed in the previous sections of this report, there is a mixed pattern of development in the area surrounding the subject site, with significant variation in the size of properties in the wider area surrounding the subject site. Existing lots range from 800m² up to 8ha plus and in the cluster of development around the subject site there are lots of 800m², 2000m², 3000m² and 1.0 ha, with a 4 ha lot on the opposite side of Sands Road.
- 6.16.3 The existing development in the area is of site sizes that would either be considered a discretionary activity or in the main a non-complying activity for subdivision under the current subdivision standards of the Countryside Environment. This current pattern of development maintains a degree of rural amenity in the area, however the subject site and the surrounding area is also considered to have a residential characteristics and as such is not considered to be particularly sensitive to change in terms of further subdivision.
- 6.16.4 I am of the opinion that the surrounding rural area is already significantly compromised with regard to the establishment of lots less than the controlled activity standard, however the possible approval of the proposed subdivision to allow more intensive development on the subject site, without measures in place that will mitigate possible effects on the rural character and landscape values of the site and the surrounding area, would potentially result in a negative change to the rural character of the site and the surrounding area.

6.16.5 Overall, subject to the imposition of conditions requiring the mitigation measures proposed in the Cocker report (refer to paragraph 53 of Attachment 7) it is considered that the cumulative effects of this proposal will be no more than minor when considering the current density and development pattern in the area.

6.17 Summary

6.17.1 Overall, it is considered that the proposal has the potential to generate more than minor effects on the environment; however these potential effects can be effectively mitigated by conditions of consent.

6.17.2 The proposed density of development is not considered to be incongruent with the current pattern and density of development. The potential environmental effects of the proposal on the existing character and amenity with mitigation, will be no more than minor.

7. Objectives and Policies

7.1 As previously detailed, as a Non-Complying Activity the proposal has to be tested against the objectives and policies of the Plan. In undertaking this test it must be concluded that the activity will not be "contrary" to the objectives and policies of the Plan.

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 following objectives and policies are considered to be relevant in the assessment of this application:

7.4 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 - Subdivision, use and development is appropriately controlled, located and designed, 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.

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 to be appropriate to the Environment in which it is located. Particular regard should be had 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.

7.5 Comments on Amenity Values Objectives and Policies

7.5.1 Within the overview (section 5.2) Chapter 5, Amenity Values of the District Plan the following statement is provided to describe in general terms the characteristics of the Countryside Environment:

The Countryside Environment tends to be used predominantly for primary production, but is also used for low-density residential purposes. When choosing to live in a rural area, people must expect and accept a certain level of odour, noise and other effects which are characteristic of primary production, recognising the scale and intensity of these activities which contribute to rural character. Rural areas do, however, tend to have high amenity values, due primarily to the following characteristics:

- *The intermittent nature of most agricultural activities;*
- *Open landscapes and views;*
- *A low intensity of development;*
- *Feelings of remoteness and community;*
- *Low noise levels, particularly at night;*
- *A high degree of privacy;*
- *Daylight and sunlight access;*
- *Low levels of vehicular traffic;*
- *Green 'unspoiled' landscape with indigenous vegetation.*

The Countryside Environment is sensitive to activities which have continuous or ongoing effects, or that are located in close proximity to other land uses such as residential units.

7.5.2 The objectives and policies relating to amenity values aim to maintain and enhance the characteristic amenity values of the Countryside Environment by ensuring development in the environment is appropriately controlled, located and designed. The characteristics of the Countryside Environment detailed in the District Plan are not considered to be evident in the environment surrounding the subject site (refer assessment contained in Section 6.11 of this report). However, the characteristics that do exist in the area are considered to be maintained by the proposed subdivision and future development, subject to the proposed mitigation.

- 7.5.3 The subdivision does not promote a low intensity of development and whilst the proposed mitigation has the potential to impact upon perceptions of, and the enjoyment of open landscapes and views of neighbouring landowners, these effects could occur as-of-right. The subdivision of the site into four allotments and the addition of built development on these allotments will not negatively impact the amenity of the area.
- 7.5.4 The rules of the Plan have been formulated to ensure that subdivision within the Countryside Environment can satisfy these objectives and policies. Whilst it is recognised that the proposed subdivision is a non-complying activity, due to the existing character and amenity of the subject environment, it is considered that the impact of the extra allotments can be adequately avoided, remedied and/or mitigated to a level considered appropriate within this particular area of the Countryside Environment. It is considered that the proposed subdivision will not compromise the character and amenity of the surrounding environment even though the level of development is greater than that anticipated by the District Plan.
- 7.5.5 Based on the above considerations, the proposal is considered consistent with objectives 5.3.1 and 5.3.5, policies 5.4.1, 5.4.5 and 5.4.7, because even though the proposal is introducing a level of development which is greater than that anticipated by the District Plan, the proposal is considered to be maintaining the rural character and amenity values of the Sands Road area.

7.6 Chapter 8 – Subdivision and Development

Objective 8.3.1 - Subdivision and development that allows for 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 is complementary to the character of the locality and avoids conflicts between incompatible land use activities.

Objective 8.3.3 - Subdivision and development that ensures consolidated development in appropriate locations and prevents sporadic subdivision and ribbon development.

Objective 8.3.4 - Subdivision and development that provides for comprehensive development of land with a range of allotment sizes but does not compromise either the overall average density of subdivision considered appropriate for each Environment or sense of place of the area.

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 Development

To consolidate development in existing built up areas, or specifically identified areas, so as to avoid sporadic subdivision and ribbon development, particularly in rural areas and along the coast.

Policy 8.4.3 - Density of Development

To ensure that subdivision and development results in a density of land use which is consistent with the surrounding area and which reflects flexibility in allotment size without compromising the overall form and density of development appropriate to the Environment in which it is located.

Policy 8.4.4 – Cumulative Effects

To ensure that the cumulative effects and precedent effects of ongoing subdivision and development do not compromise the objectives and policies of this Plan, in particular those objectives and policies relating to reducing conflicts between incompatible landuse activities, the consolidated and orderly development of land, the density of development and the protection of natural values. The cumulative effects of ongoing subdivision and development should not compromise the overall average density appropriate to the Environment in which it is located.

Policy 8.4.17 – Consolidated Residential Development

To focus residential development on those areas with demand, where the landscape and natural character values have already been compromised.

Policy 8.4.18 – Consolidated Rural-Residential Development

To direct rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas.

7.7 Comments on Subdivision and Development Objectives and Policies

- 7.7.1 Consideration of the relevant objectives and policies relating to subdivision in the Countryside Environment highlights an aim to balance the demand for residential development with the need to preserve rural amenity as a unique and valued character of the Countryside Environment. The objectives and policies outlined above aim to ensure the maintenance and possible enhancement of amenity values and the sustainable management of natural and physical resources in the District's rural areas while avoiding, remedying or mitigating adverse effects on the environment, in line with the principles of the RMA.
- 7.7.2 Objectives 8.3.2, 8.3.7 and policy 8.4.3 give particular regard to allotment size and density of development. The area surrounding the subject site is characterised by different allotment sizes and densities of development, that are not dissimilar to the lot size and density of development proposed through this subdivision.
- 7.7.3 The intensity of development in the Countryside Environment after the Environment Court Decision A024/2006 is a minimum of 20ha per allotment as a Controlled Activity, with scope for consideration as a Discretionary Activity where the average allotment size is a minimum of 4ha. These lot sizes have been set at a level considered to maintain the existing amenity values of rural areas as they have come to be accepted in the rural parts of the District.
- 7.7.4 In this instance the lot sizes are significantly less than the controlled and discretionary standards of the District Plan rules, but are not dissimilar to those in the surrounding area. Ongoing and subsequent subdivision and development of land can potentially result in cumulative adverse effects as the volume and nature of development exceeds the carrying capacity of the environment to absorb these effects. However, as discussed in Section 6.11 of this report, it is considered that the proposal, through appropriate mitigation has the capacity to maintain the particular character and amenity values of the surrounding environment, therefore being in alignment with policy 8.4.4 Cumulative Effects.

- 7.7.5 Objective 8.3.3, policies 8.4.2, 8.4.17 and 8.4.18 promote the consolidation of residential development in existing built-up areas and in areas with demand, where landscape and natural character has been compromised, which is assessed to be the case in this instance. Consolidated rural-residential development is directed to appropriate locations adjacent to existing settlements, with sporadic and ribbon development discouraged.
- 7.7.6 It is clear following assessment of the surrounding area that the vast majority of allotments are less than the 20 ha controlled activity standard and it is also noted that the site is indicated in the Glenbervie, Tikipunga, Vinegar Hill Structure Plan as being set aside for future rezoning for large lot residential development. Whilst very little weight is placed on the Structure Plan (refer assessment in Section 8.4 of this report) the proposal is considered to achieve effective consolidation of (rural) residential development in an area already displaying residential characteristics.
- 7.7.7 Based on the above considerations, it is concluded that the proposal is in keeping with the relevant subdivision and development objectives and policies of the District Plan.

7.8 Summary

In summary the proposal is considered to be consistent with the relevant objectives and policies of the District Plan, particularly those relating to Amenity Values and Subdivision and Development.

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

- 8.1 Section 104 of the Act requires that a consent authority must have regard to a number of different matters when considering an application for resource consent. These matters include actual or potential adverse effects, and relevant provisions of policy statements, regional and district plans and any other matters considered relevant.
- 8.2 An assessment of the effects of the proposal and the District Plan provisions has been considered in the previous sections of this report. Specific to this application, precedent effect and the applicability of the Glenbervie, Tikipunga, Vinegar Hill Structure Plan are considered to be other relevant matters requiring consideration.
- ### **8.3 Precedent Effect**
- 8.3.1 Strictly speaking, the granting of a consent does not constitute a legal precedent and each application is to be treated on its merits. However, the matter of precedent in a general sense can be relevant, particularly where applications seek to infringe minimums or maximums (i.e. height limits, controls on density for subdivision) detailed within a district plan.
- 8.3.2 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.

- 8.3.3 The Environment Court considers precedent effect a relevant consideration and in *Murphy v. Rodney District Council* [2004] confirms the need for consistent administration of plans, stating "human experience is that not to treat similar cases alike will give rise to suspicion and a deep sense of injustice which it is the duty of the Courts, as well as others who make decisions on behalf of the public, to avoid."
- 8.3.4 The precedent effect of granting a resource consent is not an effect on the environment that can be considered under section 104(1)(a), because the effect is not related to a direct impact on the environment. Precedent effect is considered to relate to the outcome of possible future applications, so the precedent effect is a relevant issue for a consent authority to take into account when considering an application for a consent under section 104(1)(c) "any other matter the consent authority considers relevant and reasonably necessary to determine the application".
- 8.3.5 In an instance where, even though the adverse effects of the particular application may not be significant and could be assessed to be minor, if there is a potential to set a precedent that would undermine the objectives and policies of the relevant plan, which may specify rules related to defined matters and there is the potential that other similar applications could be made, then precedent effect should be considered.
- 8.3.6 The approval of the proposed subdivision, where the lot sizes proposed are below the controlled and discretionary activity standards of the District Plan, could lead to lot sizes which are generally inconsistent with the character of development in the Countryside Environment. If the effects of such a proposal are not adequately mitigated approval may lead to the creation of sites which have the potential to compromise the character and amenity values of the area.
- 8.3.7 Reduced lot sizes, such as those proposed, are readily capable of replication in the surrounding environment, with economic incentive for landowners to do so. It is considered that the proposed subdivision if allowed (without adequate mitigation) may set a precedent and be in direct conflict with Policy 7.4.4 Cumulative Effects.
- 8.3.8 By allowing a subdivision that infringes the rules in the way this application does, would enable this area to be developed into a pattern of more intense development than has been provided for in the Plan, notwithstanding that existing developments in the area have occurred, creating lot sizes that are less than the controlled and discretionary activity standards.
- 8.3.9 While smaller rural allotments with net site areas less than 20ha and less than 4ha do exist in the area, it is common that they were either approved under a more permissive regime or approved as a result of discretionary and/or non-complying activity applications and as such are not considered to create a precedent for this application.
- 8.3.10 A common matter taken into account in the assessment of the potential approval of a non-complying activity application is whether the proposal and/or the site as it stands demonstrates an obvious, unique or site-specific quality that distinguishes the subject site from other sites in the vicinity and as such the application warrants approval under such circumstances. In this instance, the ability for the subject site and the resultant development on the subject site to be serviced by reticulated sewerage is considered, within the Countryside Environment, to be a unique or site-specific quality, as the ability to potentially connect to reticulated sewerage is very uncommon within the Countryside Environment of the Whangarei District.

- 8.3.11 In addition, the Countryside Environment covers the vast majority of the District and contains within it areas that are substantially different in their character and makeup. Therefore, the application of one set of Plan provisions over almost the entire District brings with it difficulties with respect to consistent administration.
- 8.3.12 In the instance of this particular application, the subject site is located within a pocket of development along a discreet dead end road, where the existing pattern of development is significantly different to that envisaged by the current Countryside Environment rules. This application has included with it particular mitigation measures that have been designed to mitigate the potential effects of the proposal and assist in replicating the existing pattern of development, therefore ensuring that the potential effects are no more than minor.
- 8.3.13 As a result, it is my opinion that due to the specific mitigation measures proposed, coupled with the particular pattern of development that has occurred in the area immediately surrounding the subject site, being a pattern of development that is uncharacteristic of the Countryside Environment as a whole and the uncommon ability to connect to a reticulated sewerage system, ensures that the granting of this particular application will not set a precedent for other similar applications.

8.4 Glenbervie, Tikipunga, Vinegar Hill Structure Plan

- 8.4.1 The Glenbervie, Tikipunga, Vinegar Hill Structure Plan is one of 5 urban structure plans developed and adopted by WDC as Official Council Policy documents on 11 February 20098.
- 8.4.2 The Structure Plans have a long term horizon and their implementation depends on their eventual incorporation into statutory planning documents, such as the District Plan and the Long Term Council Community Plan. Additionally further feasibility studies may be required at the time of implementation of some of the proposals as circumstances will change over time.
- 8.4.3 Land identified for any particular use in the Structure Plans will be subject to legal processes of negotiated agreements, acquisition or designation. WDC is committed to following due process in making sure that all necessary procedures are followed before any land use change takes place, as proposed in the Structure Plans.
- 8.4.4 In terms of this application, the site is shown on the Glenbervie, Tikipunga, Vinegar Hill Structure Plan map (refer Attachment 11) as being Living 3 (large lot residential) and the opposite side of Sands Road as being Living 1 (urban residential).
- 8.4.5 Regarding implementation of the Structure Plans, this matter has been discussed with Mr. Nick Williamson, WDC Team Leader Policy. Mr Williamson stated that there is currently no work occurring on the implementation of any rezoning of the land related to, or adjacent to the subject site.
- 8.4.6 Due to the lack of any specific commitment by WDC at this point in time to implement the rezoning proposed in the Structure Plan, it is considered that very little weight should be given to the Structure Plan in the assessment of this application.

8.5 Plan Change 92 – Urban Form and Development

- 8.5.1 Plan Change 92 is designed to assist in updating, modernising and making the District Plan more relevant to the changes that growth demands in the District.

⁸ WDC Website

Specifically Plan Change 92 seeks to revise Chapter 6 of the District Plan (Urban Form and Development) to encompass principles of sustainability and WDC's Long Term Council Community Plan (LTCCP) Vision and Outcomes, as well as incorporating and responding to those matters (appropriate policies and objectives) that are addressed in the Urban Growth Strategy and the Coastal Management Strategy.

8.5.2 It is intended that the revised Chapter (once operative) will provide guidance on how WDC will achieve its LTCCP outcomes and provide for sustainable development of the District's urban form. The revised Chapter will provide policy direction on a sustainable growth pattern for the District, whilst recognising the contribution of:

- Transportation routes;
- A hierarchy of business development opportunities;
- Future urban expansion, activity nodes and infill visions;
- Opportunities for connections between work, play and living;
- Open space and reserve networks; and
- Community and social infrastructure and facilities.

8.5.3 Plan Change 92 is considered to be a very high order plan change, which will to a large degree be implemented through rezonings, indicated in the Structure Plans from the Urban Growth Strategy. A hearing has been held for this plan change, but as yet the decision has not been released. Due to the very high order nature of this plan change and the fact that no decision has been released, it is considered that little or no weight should be placed on the plan change as part of the processing of this application.

8.6 Plan Change 93 – Urban Transition Environment

8.6.1 The Urban Transition Environment plan change details a new zone to be included in the District Plan which will act as a transition from rural to urban areas. This new zone is one of a number of zone changes being undertaken by WDC with a number of further zone changes to be undertaken in the future.

8.6.2 The Urban Transition Environment does not apply to the subject site or the surrounding area and therefore this plan change is not considered to be of relevance to this application.

9.0 Cancellation of Easement

9.1 The applicant has requested the cancellation of an existing water easement that crosses the subject site diagonally. It is considered appropriate to cancel this easement as the plan of subdivision shows a new water easement being rerouted around the boundary of Proposed Lots 1 and 2. Therefore it is considered that there will be no negative effect on any other party that has rights to this easement as a new easement for the same purposes will be provided.

10 Conclusion

10.1 According to section 104B of the Resource Management Act 1991, after considering an application for a resource consent for a Non-Complying Activity, a consent authority:

- (a) may grant or refuse the application; and

- (b) if it grants the application, may impose conditions under section 108.
- 10.2 In considering the matters discussed in Section 6 of this report, it is assessed that the proposal is consistent with Part 2 of the Act as it represents sustainable management of natural and physical resources, particularly as the proposal avoids and mitigates any adverse effects of activities on the environment and maintains the amenity values of the site and the surrounding area (Section 7, RMA).
- 10.3 In terms of matters discussed in Section 7 of this report, it is concluded that the proposal is in keeping with objectives and policies of the District Plan, primarily those that relate to sustainable management of natural and physical resources, amenity, appropriateness of location and density of development and cumulative effects.
- 10.4 In considering the matters discussed in Section 6 of this report, it is concluded that the adverse effects of the proposal on rural character, landscape values, amenity and cumulative effects will be avoided, in particular because the proposal is considered to be in keeping with the existing pattern of development in the Sands Road area and will not detract from that pattern of development. Future built development can be successfully mitigated and overall the potential adverse effects of the proposal are considered to be no more than minor.
- 10.5 Given the applications non-complying activity status, in order for Council to consider granting consent the application must pass one of the thresholds under section 104(D). As the proposal is considered consistent with the relevant objectives and policies of the District Plan and will have effects on the environment that have been assessed to be no more than minor it is considered appropriate in this instance granted this application.

Recommendation

First Recommendation

That pursuant to Section 104, 104B, 104D, 108 and 220 of the Resource Management Act 1991, Council **GRANTS** the application by Roger McInnes, subject to conditions, to subdivide an existing 1.001 hectare site, being Lot 3 DP 206098 into 4 lots of between 2035m² and 3811m² (3292m² net site area) and have access arranged to the proposed lots where not all lots will be using the same access (right of way) in the Countryside Environment, plus the creation of a small (fifth) lot of 10m² to be vested in Whangarei District Council as a Local Purpose Reserve (Utilities) for the purposes of a sewage pump station at Sands Road, Glenbervie, Whangarei.

Second Recommendation

That pursuant to Section 243 of the Resource Management Act 1991, Council **GRANTS** consent to Roger McInnes to cancel an existing water easement.

1. Prior to Issue of a Section 223 Certificate

- a) That the survey plan submitted for approval shall conform with the subdivision consent obtained and the plan of subdivision prepared by Reyburn & Bryant Limited reference S11847 dated July 2010.
- b) The consent holder must submit a detailed set of engineering plans prepared in accordance with Whangarei District Council's (WDC) Environmental Engineering Standards (EES) 2007 Edition. The engineering plans are to be submitted to the SEEO for approval.

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

All work needing design/certification by a WDC approved IQP/CPEng will require completion of a producer statement (design).

Plans are to include but are not limited to:

- i. Design details of the construction of a right of way for Lots 3 & 4 in accordance with the Table 3.2 private way (1-4 lots) requirements including a typical cross section, long section, culverts, drainage flow paths and overland flow paths.
 - ii. Design details of the construction of a new vehicle crossing for Lots 3 & 4 in accordance with Sheet 7 Residential Single Width Crossing in the position shown on plan by Reyburn & Bryant ref S11847 dated July 2010.
 - iii. Design details of the construction of a new vehicle crossing for Lots 1 & 2 in accordance with Sheet 7 Residential Double Width Crossing in the position shown on plan by Reyburn & Bryant ref S11847 dated July 2010.
 - iv. Design details of sewer connections to all residential lots in accordance with Sheet 21 or 23 and Section 5.
 - v. Design details of a sewage pumpstation and mainline reticulation inclusive of any manholes, fittings and connections and calculations.
- c) The consent holder shall provide written confirmation from power and telecommunications utility service operators of their consent conditions in accordance with the Whangarei District Council Environmental Engineering Standards (WDC EES) and show necessary easements on the survey plan to the approval of the Subdivision Officer.
 - d) The consent holder must create easements over services and overland stormwater flow paths (1% AEP + 20%) to the approval of the Senior Environmental Engineering Officer (SEEO)
 - e) The consent holder is to submit a site specific Traffic Management Plan (TMP) for approval, compiled by a qualified Site Traffic Management Supervisor (STMS) for all works to be carried out within the WDC Road Reserve to the approval of the Subdivision Officer.
 - f) The consent holder is to submit a Road Opening Notice application for all works to be carried out within the WDC Road Reserve in accordance with WDC EES to the approval of the Subdivision Officer.
 - g) That the survey plan shall detail the no build areas and the planting areas as shown on the plan of subdivision prepared by Reyburn & Bryant Limited reference S11847 dated July 2010 and as detailed in the Assessment of Visual and Amenity Effects by Simon Cocker Landscape Architecture, dated July 2010.

- h) That a Landscape Mitigation Plan (LMP) be prepared and submitted to the satisfaction of the Resource Consents Manager. The LMP is required in order to reduce the visual impact of any future built development on the lots, is to be prepared in accordance with the Assessment of Visual and Amenity Effects by Simon Cocker Landscape Architecture, dated July 2010, and shall:
- i. detail the timing of installation of the required planting
 - ii. detail that mulch materials be included with the required planting to a minimum mulch depth of 100mm
 - iii. be implemented prior to the 224 being issued for any lots and be maintained for a period of three years thereafter to ensure that the planting is established
 - iv. include a 10 metre wide planted strip along the road boundary which will predominantly screen views of built development within Lots 1 and 2 from the road and replicate the roadside character of lots to either side. This planting will comprise a variety of species, both native and exotic so that a multi layered vegetative screen is created
 - v. include hedge screen planting (recommended species Lemonwood (*Pittosporum eugenioides*)) along the north western side boundary of Lots 1 and 3
 - vi. include hedge screen planting (recommended species Lemonwood (*Pittosporum eugenioides*)) along the south eastern boundary of Lots 1 and 3 to screen views from the adjoining dwellings at numbers 25 and 27
 - v. allow for the protection of the roots of the existing totara located on the adjoining property at number 17 by aligning the access on the eastern side of the strip away from the shared boundary

2. Prior to Issue of a Section 224 (c) Certificate

- a) All work on the approved engineering plans in condition 1 (b) are to be carried out to the approval of the Senior Environmental Engineering Officer (SEEO) or their delegated representative.

All work needing design/certification by a WDC approved IQP/CPEng will require completion of a producer statement (construction).

All staged details of construction works (e.g. road construction) shall be accompanied by the necessary test results in accordance with WDC EES 2007 Edition requirements and good engineering practice, to the approval of the SEEO.

In the case of works to remain in private ownership, these may be inspected and approved by a WDC approved IQP who has been certified to design/construct such works. A producer statement (construction) is to be provided by the WDC approved IQP, along with copies of all test results/photographs etc. The SEEO is to be advised of any necessary inspections/testing of private works a minimum of 24 hours before they take place in order that the SEEO may observe the inspection/testing if so desired.

All works that are to be vested in WDC require the presence of the SEEO or their delegated representative at all inspections/testing.

Failure to comply with these requirements may result in the work not being accepted as complying with the RC conditions/EES 2007 Edition (as applicable).

No construction works are to commence onsite until the engineering plans required in condition 1(b) have been approved and all associated plan inspection fees have been paid. (Note that all works within Public Reserve will require written certification from the controlling authority).

- 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 (SEEO) 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 during construction.
- d) 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 Whangarei District Council's (WDC) Environmental Engineering Standards (EES) 2007 Edition to the approval of the Environmental Engineering Officer (SEEO).
- e) The consent holder must provide written confirmation from a Licenced Cadastral Surveyor that all services and accesses are located within the appropriate easement boundaries.
- f) The consent holder must reinstate council berms similar to the surrounding environment to the satisfaction of Council's Senior Environmental Engineering Officer or their delegated representative.
- g) The consent holder must submit a certified and dated "as built" plan of completed works and services in accordance with Council's Environmental Engineering Standards to the approval of the Senior Environmental Engineering Officer.
- h) The consent holder must submit for approval a completed "statement of professional opinion as to the suitability of land for building development" (Form B or Form EES-P01) from a Chartered Professional Engineer or IQP specifying any site restrictions and confirming that the land is suitable for building development.

- i) Upon completion of the development works, the consent holder must submit for approval a "Certificate of Completion of Development Works" (Form C or similar) from a Chartered Professional Engineer or IQP certifying that the works have been completed in accordance with the approved engineering plans, the WDC Environmental Engineering Standards (EES) 2007 Edition and best trade practise to the satisfaction of the Senior Environmental Engineering Officer or their delegated representative.

- j) Pursuant to Section 221 of the Resource Management Act 1991, a consent notice must be prepared and be registered on the Computer Freehold Register (CFR) of Lots 1-4 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 restrictions and recommendations identified in the Hawthorne Geddes Engineers & Architects Ltd engineering report ref 7700 Rev A dated 1 March 2010 and supplementary report ref 7700 dated 9 April 2010 unless an alternative engineering report prepared by a suitably experienced Chartered Professional Engineer is approved in writing by WDC.
 - ii. Access to Lots 1 to 4 shall be restricted to the position of the vehicle crossings shown on plan by Reyburn & Bryant ref S11847 dated July 2010.
 - iii. A complying fire fighting water supply is to be provided at the time of building consent application for any dwelling on any of the 4 lots.
 - iv. At the time of building consent for any dwelling on any of the 4 lots, provide suitable evidence/design to illustrate that, stormwater attenuation will be provided 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.

- k) Any planting required to be undertaken in accordance with the landscaping plan detailed in condition 1(h) above is to be completed to the satisfaction of the Resource Consents Manager

- l) Pursuant to Section 221 of the Resource Management Act 1991, a consent notice must be prepared and be registered on the Computer Freehold Register (CFR) of Lots 1-4 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. That areas G, H and I, as shown on the plan of subdivision by Reyburn & Bryant Limited reference S11847 dated July 2010, are the subject of restrictive (no build) covenants
 - ii. That the areas of landscaping detailed in condition 1(h) above be maintained in perpetuity, with allowance made within the landscaping areas for the maintenance, trimming and removal of dangerous trees and replacement planting as required
 - iii. That no building on any lot is to be more than a single storeyed structure with a height above ground no greater than 6 m when measured in

accordance with the relevant height provisions of on the prevailing district plan at the time

Reasons for the Recommendation:

1. The adverse effects of the proposal on the environment in terms of character, maintenance of landscape values, amenity and cumulative effects will be no more than minor.
2. The proposal is assessed to be in keeping with the objectives and policies of the District Plan, primarily those that relate to sustainable management of natural and physical resources, amenity values, appropriate location and density of development and cumulative effects.
3. The proposal satisfies the matters contained in Part 2 of the Act, in particular Section 7. The form and intensity of the development proposed would not result in cumulative adverse effects on the environment, as adequate mitigation will be provided to adequately avoid, remedy or mitigate potential effects related to the future built development on the proposed sites.
4. The proposal is not considered to give rise to a potential precedent effect as the area surrounding subject site is not characteristic of the wider Countryside Environment and the proposed development is in keeping with the particular form of development that has occurred over time in the Sands Road area.
5. The site is considered to be unique in that it is serviced by a Council reticulated sewer system, a very uncommon feature in the Countryside Environment.
6. The proposal satisfies both of the 'tests' for approval of a Non-Complying activity in terms of Section 104D of the Resource Management Act 1991.

Advice Notes

1. 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.
2. 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.
3. Any works carried out within the WDC road reserve will require an approved road opening notice / traffic management plan.
4. Permits are required for drilling any bores in Northland. Therefore, resource consent will need to be gained from the Northland Regional Council if water is obtained in this way. If a bore is to be constructed, all areas used for sewage effluent disposal and reserve effluent disposal areas must be at least 20 metres away from any groundwater bore.
5. Upon construction of a habitable dwelling, sufficient water volume, pressure and flows be provided in accordance with "NZFS Fire Fighting Code of Practice SNZ PAS 4509:2008" and that this water supply be accessible by emergency vehicles for fire fighting purposes; and

6. If a fire fighting water supply is to be provided by way of tank storage, this tank must be located a safe distance away from any habitable dwelling in accordance with "NZFS Fire Fighting Code of Practice SNZ PAS 4509:2008".
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 effects cannot be practised.
8. 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 of a Section 224 (c) Certificate. Further information regarding Council's Development Contributions Policy may be obtained from the Long Term Community Consultation Plan (LTCCP) or council's web page at www.wdc.govt.nz.

Attachments:

1. Copy of the Application
2. Revised Subdivision Plan
3. Aerial Photo and Locality of the Site
4. District Plan Planning Maps
5. Density Map
6. Submissions Received
7. Landscape Report by Simon Cocker Landscape Architecture
8. Landscape Report by Dream Planning Ltd
9. Engineering Report Prepared by Hawthorn Geddes Ltd
10. Engineering Report Prepared by Council's Environmental Engineering Team Leader
11. Glenbervie, Tikipunga, Vinegar Hill Structure Plan Map