

Hearings Commissioner

Notice of Meeting

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

**Thursday
26 July 2012
10am**

**Application by
Martin and Carolyn Peters**

**Commissioner
Giles Bramwell**

Index

| | Page No |
|---|---------|
| Authorisation Sheet | 1 |
| Environment Planner (Consents) Report | 2 |
| Recommendation | 34 |
| Attachment 1 Copy of Application | 36 |
| Attachment 2 Engineering Assessment of Senior Environmental Engineering Officer | 151 |
| Attachment 3 Landscape and Visual Effects Assessment Review – prepared by Rebecca Skidmore (dated June 2012) | 157 |
| Attachment 4 Section 92 Request to Agent (dated 16 th March 2012) | 164 |
| Attachment 5 Copy of email requesting correct signatures on written approvals (Dated 21 st March 2012) | 166 |
| Attachment 6 Formal Response to Section 92 Request from Agent (dated 3 rd April 2012).... | 167 |
| Attachment 7 Email confirming that Council intended to fully notify the application (Dated 13 th April 2012) | 197 |
| Attachment 8 Planning Maps for the subject site | 198 |
| Attachment 9 Northland Regional Council Neutral Submission..... | 213 |
| Attachment 10 Copy of Environment Court J Blampied v Whangarei District Council and WJ Childs and LM O’Grady [2012] NZEnvC 54..... | 214 |
| Attachment 11 District Plan Chapters | |
| • Chapter 5: Amenity Values | 233 |
| • Chapter 6: Built Form and Development | 245 |
| • Chapter 8: Subdivision and Development | 265 |
| • Chapter 22: Road Transport | 277 |

Report to Hearings' Commissioner Giles Bramwell on a Resource Consent Application

Martin and Carolyn Peters propose to subdivide Lot 1 DP 102262 (Identifier: NA57B/1303) which has an area of 4.7955 hectares, in the Countryside Environment into two separate allotments with the following net site areas Lot 1- 2.10ha and Lot 2- 2.5024ha. Both proposed allotments will gain access from State Highway 14 via a single vehicle crossing and right of way. The vehicle crossing will be formed to meet Council's Environmental Engineering Standards 2010 and has been approved (subject to conditions accepted by the applicant) by the New Zealand Transport Agency.

The subdivision layout is as per the scheme plan identified within Figure 1 "*Lots 1 & 2 being a Proposed Subdivision of Lot 1 DP 102262*" prepared by Cato Bolam Consultants reference: WH29817 Revision R3 sheet no S1 dated 16th January 2012

The site is situated within the Countryside Environment under the operative provisions of the Whangarei District Plan. The proposal does not comply with the controlled or discretionary activity provisions relating to allotment area pursuant to Rule 73.3.1 and is therefore considered a non-complying activity on this basis.

This subdivision consent application was lodged by Cato Bolam Consultants Ltd on behalf of Martin and Carolyn Peters and was reported on by Council's Environmental Planner (Consents), David Badham.

David Badham – Environmental Planner (Consents)

Date

This report was peer reviewed by the following signatory:

Kelly Ryan – Team Leader (Consents)

Date

Statement of staff qualification and experience

David Badham – Council Environmental Planner (Consents)

I hold the qualification of a Bachelor of Planning (Hons- first class) from the University of Auckland. I am a graduate member of the New Zealand Planning Institute. I have been working at Whangarei District Council since I started as a scholarship planner on 7th April 2009, and have been working full time as an Environmental Planner (Consents) since 13th March 2011. Overall, my work experience includes assessing and reporting on a broad range of subdivision and land use consents within the Whangarei District.

Vlad Rozov – Council Senior Environmental Engineering Officer

I hold the role of a Senior Environmental Engineering Officer for the Whangarei District Council. I am a civil engineer, having qualified from a Polytechnic University (former USSR) in 1981 with a Bachelor degree in Industrial and Civil engineering. I am a graduate member of the Institute Of Professional Engineers New Zealand Inc. I have many years of experience in roading, drainage, earthworks, civil construction and I have worked for the Whangarei District Council as Environmental Engineering Technician, Support Officer, Officer and Senior Officer since 1999.

My position within the Resource Consents department requires me to assess all engineering aspects of resource consent applications based on the evidence provided by the Applicant, and to provide a report as to the viability of the proposal.

The above staff are familiar with the Environment Court's 'Code of Conduct' for expert witnesses and agree to comply with the Code of Conduct in presenting hearing evidence to the Commissioner.

In addition, Council has engaged Consultant Landscape Architect, Rebecca Skidmore to provide a visual landscape effects technical assessment of the proposal. Ms Skidmore's report is provided in Attachment 3 of this report. A statement of Ms Skidmore's qualification and experience is provided below:

Rebecca Skidmore – Urban Designer and Landscape Architect

I am an Urban Designer and Landscape Architect. I hold a Bachelor of Science degree from Canterbury University, Christchurch, a Bachelor of Landscape Architecture (Hons.) degree from Lincoln University, Christchurch and a Master of Built Environment (Urban Design) degree from Queensland University of Technology in Brisbane, Australia. I am a director of the consultancy R. A. Skidmore Urban Design Limited and have held this position for approximately nine years.

I have approximately 17 years experience in practice in both local government and the private sector. In these positions I have assisted with district plan preparation and I have reviewed a wide range of resource consent applications throughout the country. These assessments relate to a range of rural, residential and commercial proposals. Many proposals I have assessed relate to the introduction of structures in sensitive and highly valued landscape including coastal environments.

In my current role I regularly assist local authorities with policy and district plan development in relation to growth management, urban design, landscape, and amenity matters. I also have considerable experience in carrying out character assessments.

I regularly provide expert evidence in the Environment Court. I have appeared as the Court's witness in the past.

Section 42A Hearing Report

| | |
|---------------------|---|
| Hearing By: | Hearings' Commissioner Giles Bramwell of a proposed Non-Complying subdivision by Martin and Carolyn Peters to subdivide the subject site at 855 State Highway 14, Maunu being Lot 1 DP 102262 (Identifier: NA57B/1303) which has an area of 4.7955 hectares, in the Countryside Environment into two separate allotments with the following net site areas Lot 1- 2.10ha and Lot 2- 2.5024ha. |
| Evidence By: | David Badham <i>BPlan (Hons), MNZPI (Grad)</i> |
| File Refs: | SD1200021 P077329.SD TRIM: 12/50201 |
| Dated: | 26 th July 2012 |

1.0 The Proposal & Background

1.1 The Proposal

1.1.1 Martin and Carolyn Peters propose to subdivide Lot 1 DP 102262 (Identifier: NA57B/1303) which has an area of 4.7955 hectares, in the Countryside Environment into two separate allotments with the following net site areas:

- Lot 1- 2.10ha
- Lot 2- 2.5024ha

1.1.2 Both proposed allotments will gain access from the State Highway via a single vehicle crossing and right of way. The vehicle crossing will be formed to meet Council's Environmental Engineering Standards 2010 and has been approved (subject to conditions accepted by the applicant) by the New Zealand Transport Agency.

1.1.3 An assessment of visual landscape and amenity effects dated January 2011 has been provided with the application prepared by Simon Cocker from Simon Cocker Landscape Architecture. The assessment proposes the following mitigation measures which have been accepted by the applicant:

- Building sites have been nominated for each proposed allotment.
- A 5.0 metre wide planted strip measuring approximately 80 metres in length along the northern boundary of proposed lot 1 adjoining State Highway 14 (with species and planting distances specified in appendix 2 of the assessment).
- A 2.0 metre wide hedge screen to the west of the nominated building site for proposed lot 1 approximately 40.0 metres in length (with species and planting distances specified in appendix 2 of the assessment).
- A 2.0 metre wide hedge screen along the northern boundary of lot 2 for proposed lot 1 approximately 70.0 metres in length (with species and planting distances specified in appendix 2 of the assessment).
- A geotechnical report prepared by Dean Botica of Hawthorn Geddes Engineers and Architects reference 8470 dated 10th January 2012 was also submitted with the application. The report includes a detailed site investigation and concludes that subject to restrictions and recommendations regarding stability, foundations and effluent the subject site is suitable for development.

1.1.4 A copy of the scheme plan for the proposed subdivision is provided below in figure 1:



Figure 1- Copy of the scheme plan for the proposed subdivision

1.2 Background

1.2.1 The application was lodged with Council on 7th March 2012. The application (a copy of which is provided within attachment 1) is supported by:

- An Application Report prepared by Cato Bolam Consultants reference WH29817 dated 20th January 2012.
- A Geotechnical Report compiled by Hawthorn Geddes Engineers and Architects Ltd reference: 8470 dated 10th January 2012.
- An Assessment of Visual, Landscape and Amenity Effects prepared by Simon Cocker from Simon Cocker Landscape Architecture dated January 2011.
- Written approvals from 30 parties (including New Zealand Transport Agency approval) within the vicinity of the subject site (it is noted that some of these were missing signatures from all relevant land owners which were requested in a section 92 request dated 16th March 2012 and subsequently provided in the response from the applicant's agent dated 3rd April 2012).
- A letter dated 19th October 2011 from the New Zealand Transport Agency (NZTA) reference 8/3/4/4/44 providing its approval in principle subject to the conditions in a previous letter dated 18th November 2010 forming part of the consent conditions.

1.2.2 The application was assessed by Council's Senior Environmental Engineering Officer Vlad Rozov, who provided a report dated 16th March 2012 (see attachment 2).

1.2.3 On 20th March 2012 Council engaged Landscape Architect Rebecca Skidmore to undertake a technical review of the application and more specifically the Assessment of Visual, Landscape and Amenity Effects prepared by Simon Cocker. Ms Skidmore provided her final report on 25th June 2012 (see attachment 3).

1.2.4 On 16th March 2012 Council sent a section 92 request to the applicant's agent – Simon Reiher

requesting the following (see attachment 4):

- A comprehensive assessment of the actual and potential rural character and amenity effects in respect to the proposed subdivision.
- Identification of any unique, unusual or distinguishing qualities that serve to take the application outside of the generality of cases or similar sites in the vicinity of the wider Countryside Environment.
- Confirmation of acceptance of NZTA's conditions as mitigation measures along with unconditional written approval from NZTA for the proposed subdivision
- There was uncertainty regarding the written approval of one of the adjacent landowners- Kate O'Rourke. As such the applicant was requested to provide written confirmation from Ms O'Rourke acknowledging the withdrawal of her concerns and reconfirming her written approval of the proposed subdivision
- The letter also notified the applicant that Council was undertaking a technical assessment of the landscaping report prepared by Simon Cocker.

1.2.5 Further to the formal section 92 request, on the 21st March 2012 after undertaking a comprehensive audit of the written approvals provided with the application, an email was sent to Mr Reiher noting that 10 of the written approvals were missing the signatures of one or two of the owners as shown in Council's electronic system (see attachment 5) .

1.2.6 On 13th April 2012 Council received a formal written response to the section 92 letter and request for amended written approval forms from Mr Reiher (see attachment 6). More specifically the response included the following:

- A more comprehensive assessment of rural character and amenity effects including an attached plan showing density calculations at 200m, 400m and 600m radius from the subject site.
- Written approval from adjacent property owners including new property owners as indicated in the email dated 21st March 2012
- A description of what Mr Reiher considered to be, the unique circumstances which can justify consent as a non-complying activity and to negate a potential precedent effect.
- Confirmation that the applicant accepts NZTA's conditions regarding the placement and formation of vehicle crossing CP 38A and offering them as conditions of consent along with unconditional written approval from NZTA.
- A new approval from Ms O'Rourke and Mr Costello which acknowledges that their concerns have been met and reconfirming their written approval for the proposed subdivision.
- In line with WDC general procedures for clarity, the applicant's agent also provided a black and white copy of the scheme plan with no aerial photograph underneath it.

1.2.7 The information was assessed as being complete on 13th April 2012 and subsequently taken off hold from that date. Mr Reiher was subsequently sent an email on the same day confirming Council's intention to fully notify the application (see attachment 7). As such Mr Reiher was asked by Council whether the applicant wanted to proceed with their application as a non-notified application or whether they wanted to request full notification.

1.2.8 Mr Reiher confirmed on 16th April 2012 that the applicant wanted to proceed on the basis of full notification with confirmation of the deposit required for notification being provided on 18th April 2012.

2.0 Site and Surrounds Description

2.1 Environment, Resource Areas and Other Notations

Environment:



Countryside Environment

Resource Notations:

- Low Instability
- Medium unsuitability for effluent disposal
- The site has a 'Land Use Capability' (LUC) of III. Class III land has moderate limitations for arable use, and is suitable for cultivated crops, pasture or forestry.

Plan Changes:

No plan changes are considered relevant in this instance

Structure Plans:

No Structure Plans are considered relevant in this instance

2.2 Site Description

2.2.1 The site and its setting are described in:

- The "Site Description" section on page 5 of the Application Report prepared by Cato Bolam Consultants reference WH29817 dated 20th January 2012 (see attachment 1).
- "The Setting" section on pages 2-4 of the assessment of Visual, Landscape and Amenity Effects prepared by Simon Cocker from Simon Cocker Landscape Architecture dated January 2011 (see attachment 1).
- The "Site Description" section on Page 1 of the Geotechnical Report compiled by Hawthorn Geddes Engineers and Architects Ltd reference: 8470 dated 10th January 2012 (see attachment 1).
- "The Site and Context" section of the Landscape and Visual Effects Assessment Review prepared by Rebecca Skidmore (see attachment 3).

2.2.2 Having visited the subject site on 13th March 2012 I concur with the descriptions of the site and surrounding environment as contained within the above reports. The following comments are made in summary of these descriptions and my experiences during my site visit.

- 2.2.3 The subject site is located at 855 State Highway 14, where the road curves around the foot of the Maunu volcanic cone and is legally described as Lot 1 DP 102262 (NA57B/1303). The subject site is located approximately 2km to the north east of the Maungatapere settlement and approximately 4km west of Maunu and the boundary of Whangarei city. The total area of the subject site is 4.7955ha.
- 2.2.4 The topography of the site generally slopes from the northern boundary of the site adjoining State Highway 14 to the south. The site is covered in pasture with berberis hedges situated along the eastern and western boundary and a small cluster of bush located in the south western corner.
- 2.2.5 The land is currently utilised for agricultural practices- mainly for grazing by cows. In this regard the site has a 'Land Use Capability' (LUC) of III. Class III land has moderate limitations for arable use, and is suitable for cultivated crops, pasture or forestry.
- 2.2.6 There is no built development on the site. There are no recorded archaeological sites located in the site. A copy of relevant planning maps and property information maps (including hazard maps and effluent on-site disposal suitability) is provided in attachment 8. An aerial photograph of the site and surrounds from between 2002 and 2004 is provided in figure 2 below:



Figure 2 – Aerial Photograph of the Subject Site and Surrounding Environment

2.3 Surrounding Environment

- 2.3.1 The subject site is situated in the Countryside Environment, with properties in the vicinity also located within the Countryside Environment. Figure 3 on the following page provides a map showing parcel lot sizes within the vicinity, noting that the map relates to lot areas as opposed to title boundaries (therefore does not identify parcels subject to amalgamation). To the south and east of the subject site, the landscape displays a strongly rural character, with larger lots and a perception of openness characterised by agricultural activities and pockets of vegetation. As a result of the proposed subdivision the subject site would change from orange (4-10ha) to pastel blue (2-4ha) as shown in figure 3.

- 2.3.2 Contrastingly to the north of the subject site there is a cluster of 11 smaller allotments containing single detached dwellings and displaying a more typical residential character. Additionally to the west of the subject site, there are a cluster of properties along Newton Road that display a more rural-residential character, with medium sized allotments and hedgerow planting.
- 2.3.3 Irrespective of this in my opinion the subject site is epitomised by a strongly rural character in accordance with the findings of Ms Skidmore and Mr Cocker’s respective landscape reports.

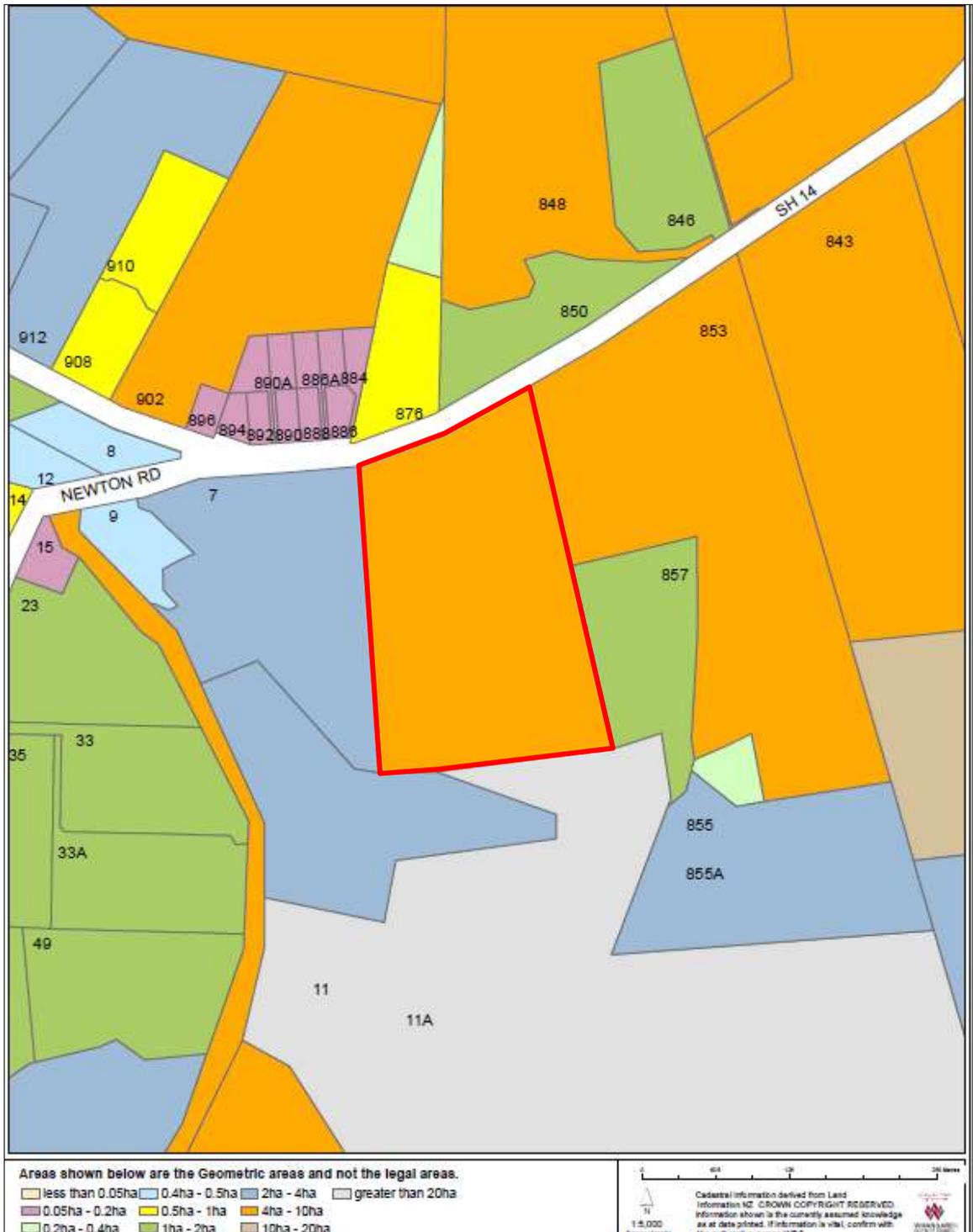


Figure 3 Map showing parcel lot sizes in the vicinity of the subject site

2.4 Certificate of Title Interests & Previous Resource Consents

- 2.4.1 The site is legally described as Lot 8 DP 149874, held under Computer Freehold Register NA57B/1303. It is noted that the certificate of title for Lot 1 DP 102262 (NA57B/1303) also has

a 1/5 share in Lot 6 DP 102262. There are no interests considered relevant to the determination of this application under the title.

2.4.2 There are no previous resource consent approvals for the subject site that are considered relevant to the proposed subdivision.

2.4.3 It is noted that there is an unimplemented subdivision consent for 23 Newton Road which was granted on 26th March 2012. The consent allows the subdivision of that site to create two lots being 1.032ha and 0.694ha in size.

3.0 Reasons for Consent

3.1 District Plan Assessment

3.1.1 The subject site is located in the Countryside Environment of the Operative Whangarei District Plan. The rules governing subdivision are contained within chapter 73 of the Plan. Table 1 highlights the relevant rules for the proposed subdivision and provides comments as to why they have been infringed:

Table 1: Assessment against Subdivision Rules

| Operative District Plan Rule: | Activity Status: |
|---|---|
| <p>Rule 73.3.1 Allotment Area</p> <p>Subdivision is a controlled activity if:</p> <ul style="list-style-type: none"> a) In the Countryside Environment, every proposed allotment has a minimum net site area of 20.0ha; <p>Or</p> <ul style="list-style-type: none"> c) In the Countryside Environment or Coastal Countryside Environment the subdivision complies with Rule 73.3.3 Boundary Adjustment. <p>For the purposes of this rule, “existing allotment” is defined as an allotment which:</p> <ul style="list-style-type: none"> a) Has a separate certificate of title, <p>Or</p> <ul style="list-style-type: none"> b) Is shown on a plan of subdivision which has been certified by the Council pursuant to section 223, and has not elapsed pursuant to section 224 of the Resource Management Act 1991. <p>Comments: <i>The proposal cannot comply with the controlled activity criteria above as the net site area of each allotment is significantly below the 20.0ha threshold.</i></p> | <p>Non-Complying Activity</p> <p>Subdivision is a discretionary activity if:</p> <p>In the Countryside Environment the following three standards are met:</p> <ul style="list-style-type: none"> i. The minimum average net site area of all proposed allotments is 4.0ha, and for the purpose of calculating average net site area, any proposed allotment with a net site area greater than 8.0ha will be deemed to have a net site area of 8.0ha, except where: <ul style="list-style-type: none"> a) Only two allotments are created by the subdivision, and one of those allotments has a net site area of less than 4.0ha while the other allotment has a net site area of 8.0ha or greater; or b) Proposed allotment is intended exclusively for reserve purposes and has a net site area of 8.0ha or greater; and ii. The minimum net site area of any proposed allotment is 4000m²; and iii. There are a maximum of three proposed allotments with a net site area of less than 3.0ha, of which: <ul style="list-style-type: none"> a) No more than two allotments may have a net site area of less than 2.0ha; and b) No more than one allotment may have a net site area of less than 1.0ha. <p>Subdivision that does not comply with a standard for</p> |

| | |
|--|--|
| | <p>a controlled or discretionary activity is a non-complying activity.</p> <p>Comments: <i>the proposal cannot comply with the criteria for a discretionary activity as the minimum site area associated with each site will be 2.3012ha, well below the 4ha threshold. Therefore the proposed subdivision is considered to be a non-complying activity.</i></p> |
| <p>Rule 73.3.7 Property Access</p> <p>Subdivision is a controlled activity if:</p> <ul style="list-style-type: none"> a) Every allotment is capable of having vehicular access to a road; and b) Vehicular access to a road is shared where there are 2 or more allotments in the subdivision; and c) The access complies, in all respects, with the relevant standards in Whangarei District Council's Environmental Engineering Standards 2010 and the relevant provisions in Appendix 9; and d) No more than 8 allotments or 8 residential units are served by a shared access. <p>Control is reserved over:</p> <ul style="list-style-type: none"> i. The relevant provisions of the Whangarei District Council's Environmental Engineering Standards 2010; ii. The adequacy of the access for the anticipated use; iii. The ability of the access to contain required services; iv. Traffic safety and visibility; v. The need for acceleration and deceleration lanes; vi. Type, frequency and timing of traffic; vii. Access design, number and location of vehicle crossings; viii. Efficiency and safety of roads; ix. Need for forming or upgrading of roads in the vicinity of the site; x. Need for traffic control, including signs, signals and traffic islands; xi. The additional matters listed in Chapter 70.3. <p>Comments: <i>The proposal complies with this rule as access to the State Highway will be shared in accordance with this rule</i></p> | <p>Controlled Activity</p> |

- 3.1.2 The proposed subdivision satisfies the controlled activity rules relating to building area, existing buildings, sites of significance to Māori (none identified), provision for extension of services, water supply, stormwater, sewage, electricity, telecommunications, and earthworks.
- 3.1.3 Overall the proposal is regarded as a **non-complying** activity.

3.2 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

- 3.2.1 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES Contaminated Soils) were gazetted on 13th October 2011 and took effect on 1st January 2012. Council is required by law to implement this NES in accordance with the Resource Management Act 1991 (RMA). The standards are applicable if the land in question is, or has been, or is more likely than not to have been used for a hazardous activity or industry and the applicant proposes to subdivide or change the use of the land, or disturb the soil, or remove or replace a fuel storage system. The following table assesses the proposal's compliance with the NES regulations:

Table 2: Assessment against NES Contaminated Soils

| Question | Answer | Comment |
|---|-------------|---|
| Is an activity described on the HAIL currently being undertaken on the piece of land to which this application applies? | No Evidence | <i>There is no evidence to suggest that an activity identified in the HAIL is currently being undertaken on the site</i> |
| Has an activity described on the HAIL ever been undertaken on the piece of land to which this application applies? | No Evidence | <i>There is no evidence to suggest that an activity identified in the HAIL has ever been undertaken on the site.</i> |
| Is it more likely than not that an activity described on the HAIL is being or has been undertaken on the piece of land to which this application applies? | No Evidence | <i>There is no evidence to suggest that an activity identified in the HAIL is or has ever been undertaken on the site. As such it is considered that it is not likely that a HAIL activity has or is being undertaken on the subject site</i> |

- 3.2.2 Overall, taking into account the above assessment, it is considered that the NES Contaminated Soils is not applicable in this instance.

4.0 Public Notification, Submissions and Written Approvals

4.1 Notification

- 4.1.1 As is detailed in section 1.2.8 of this report after discussion about Council's intentions for the notification of the application, the applicant requested full notification on 16th April 2012, with the deposit for notification being received on 18th April 2012. Pursuant to section 95A(2)(b) Council must notify an application if an applicant requests it. The notification decision was finalised and signed off by Council's Team Leader (Consents) Kelly Ryan on 18th April 2012.
- 4.1.2 The application was fully notified with a notice in Council's newspaper on Tuesday 24th April 2012 with the notification period closing on Wednesday 23rd May 2012.

4.2 Submissions

- 4.2.1 Council received 1 neutral submission within the timeframe from the Northland Regional Council (NRC) (See attachment 9). NRC's submission was intended to make the applicant aware that the proposed development is located on an "at risk" aquifer, as identified in the

Regional Water and Soil Plan for Northland. As such NRC requested that an advice note be placed on the consent recognising that an “at risk” aquifer is located beneath the proposed development and to ensure that the development does not result in contamination of the surrounding aquifer or a reduction in groundwater recharge. NRC did not request to be heard in support of their submission

4.3 Written Approvals

4.3.1 Pursuant to section 104(3)(a)(iii), when considering an application the consent authority must not have regard to any effect upon a person or party whom has given their written approval to an application (unless such approval has been withdrawn). With respect to the current application, written approvals have been provided from the following parties shown in table 3 below, and effects on these parties are therefore discounted for the purpose of the following assessment under section 104 of the Act:

Table 3: Parties who have given their written approval

| Name | Owner/Occupier | Address | Written approval secured |
|---|------------------|---|--------------------------|
| Brent & Sarah Bonner | Owners | 890A State Highway 14, RD9 Whangarei (Lot 4 DP 44161) | ✓ |
| Dwight Shepherd | Occupier | 890A State Highway 14, RD9 Whangarei (Lot 4 DP 44161) | ✓ |
| P. B. Covacich, Caryl Gaye Combe & Phillip Errol Combe | Owners/occupiers | 49 Newton Road, Maungatapere (Lot 2 DP 206337) | ✓ |
| D & K Langridge | Owner | 33 Newton Road, Maungatapere (Lot 1 DP 393017) | ✓ |
| Denise & Bryce Manderson | Owner | 23 Newton Road, Maungatapere (Lot 3 DP 14709) | ✓ |
| Bryce & Tracey Manderson and Eugene Sparrow | Owners | 15A Newton Road, Maungatapere (Lot 1 DP 405175) | ✓ |
| E. A. & M. Taylor | Owners | 896 State Highway 14, RD9, Whangarei (Lot 1 DP 20521) | ✓ |
| Te Awhina Komene | Owner | 894 State Highway 14, RD9, Whangarei 0179 (Lot 1 DP 44181) | ✓ |
| Jozef and Corrie Groot | Owners | 890B State Highway 14, RD9, Whangarei (Lot 3 DP 44161) | ✓ |
| Noel and BN Young | Owners | 888 State Highway 14, RD9, Whangarei (Lot 6 DP 44161) | ✓ |
| Carol Ann Head and Brian John & Beverly Francis Hutchings | Owners | 846 State Highway 14, RD9, Whangarei (Lot 3 DP 150910) | ✓ |
| Kate O'Rourke and Gavin Costello | Owners | 7 Newton Road, Maungatapere (Lot 2 DP 1911571) | ✓ |
| Suzanne Islay Gray | Owner | 857 State Highway 14, RD9, Whangarei 0179 (Lot 1 DP 411311 & Lot 3 DP 411311) | ✓ |
| Carol Rae Peters & Timothy Patrick Howard | Owners | 853 State Highway 14, RD9, Whangarei 0179 (Lot 2 & 4 DP 411311) | ✓ |
| Ian and Glennice Twichel | Owners | 51 Newton Road, Whangarei (Lot 1 DP 206337) | ✓ |
| Peter Bryan Cains | Owner | 848 State Highway 14, RD9, Whangarei (Lot 2 DP 150910) | ✓ |
| Garry and Yvonne McKinnon | Owners | 850 State Highway 14, RD9, Whangarei (Lot 1 DP 150910) | ✓ |
| R. J. Jones | Owner | 876 State Highway 14, RD9, | ✓ |

| | | | |
|-----------------------------------|----------|--|---|
| | | Whangarei (Lot 1 DP 30535 and Lot 2 DP 30535) | |
| E. A. Juddery | Owner | 886 State Highway 14, RD9, Whangarei (Lot 9 DP 44161) | ✓ |
| Maggie Lewthwaite | Owner | 886A State Highway 14, RD9, Whangarei (Lot 8 DP 44161) | ✓ |
| J. S. Steedman | Owner | 886B State Highway 14, RD9, Whangarei (Lot 7 DP 44161) | ✓ |
| Zane Evan and Toni Leeane Philips | Owners | 890 State Highway 14, RD9, Whangarei 0179 (Lot 5 DP 44161) | ✓ |
| C.M.G Moates Family Trust | Owner | 892 State Highway 14 RD9, Whangarei (Lot 2 DP 44161) | ✓ |
| Tunisia Shortland | Occupier | 894 RD9, Whangarei (Lot 1 DP 44161) | ✓ |
| D. P Laverick | Owner | 33A Newton Road, Maungatapere (Lot 2 DP 393017) | ✓ |
| G. Samuels | Owner | Newton Road, Maungatapere (Lot 2 DP 405175) | ✓ |
| Selwyn Adam & Lynee Petty | Owners | 53 Newton Road (Lot 2 DP 202068) | ✓ |
| Andrew and Tracy Knight | Owners | 53A Newton Road, RD10, Maungatapere (Lot 3 DP 206337) | ✓ |
| New Zealand Transport Agency | Owners | State Highway 14 roading network | ✓ |

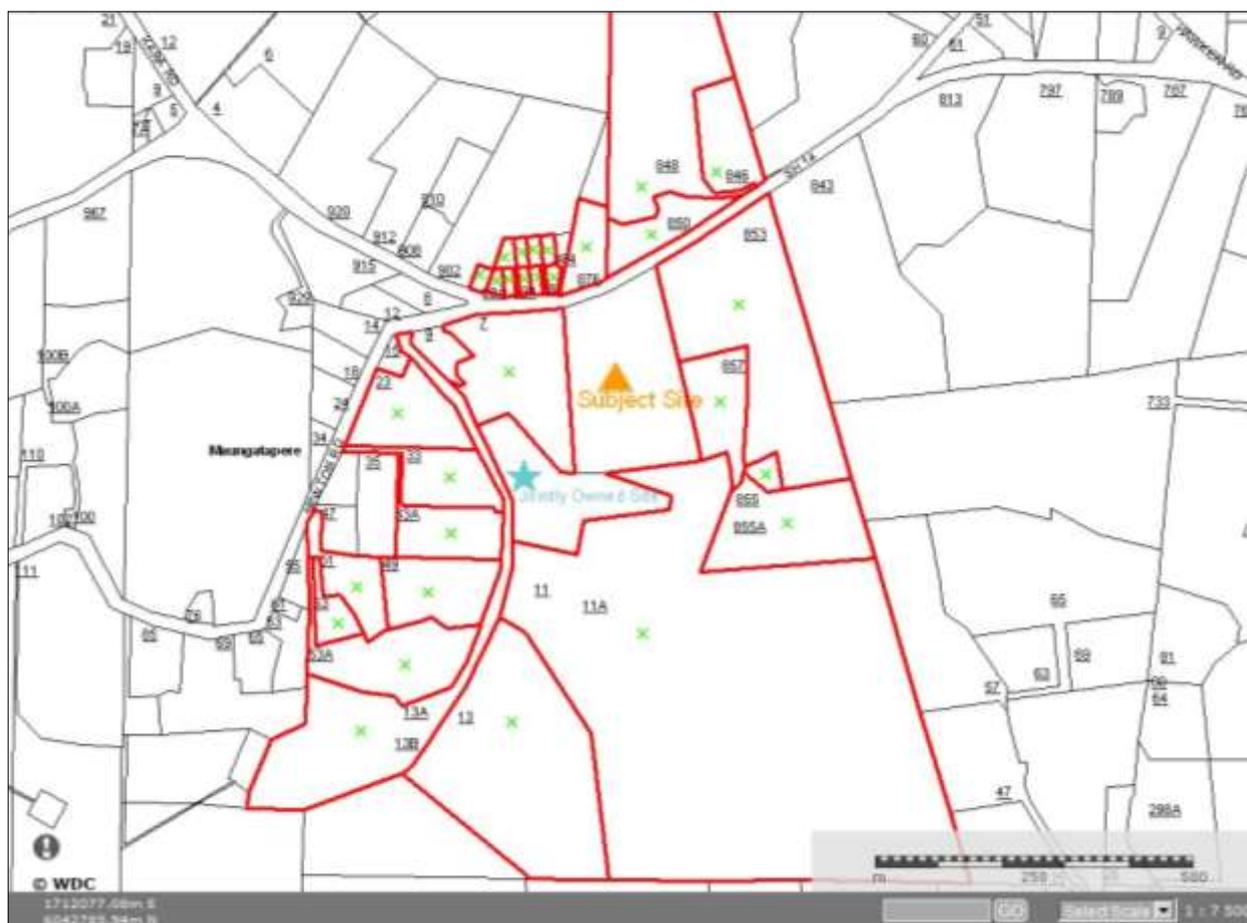


Figure 4 – Location of written approvals (shown by red boundaries and green x)

5.0 Resource Management Act 1991- Statutory Considerations

5.1 Section 104

5.1.1 Section 104 provides the matters, subject to Part 2 of the Act that Council must have regard to when considering and application for resource consent and any submissions received. These matters are:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- [[*(b) any relevant provisions of—*
 - (i) *a national environmental standard:*
 - (ii) *other regulations:*
 - (iii) *a national policy statement:*
 - (iv) *a New Zealand coastal policy statement:*
 - (v) *a regional policy statement or proposed regional policy statement:*
 - (vi) *a plan or proposed plan; and]]*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

5.2 Section 104B

5.2.1 Section 104B outlines Council's powers when making a determination on a discretionary or non-complying activity. Section 104B states that:

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](#).*

5.3 Section 104D

5.3.1 Being a non-complying activity, the proposal is subject to the thresholds outlined in section 104D of the Act, '*Particular restrictions for non-complying activities*'. Section 104D states:

- (1) *Despite any decision made for the purpose of [section 95A\(2\)\(a\)](#) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
 - (a) *the adverse effects of the activity on the environment (other than any effect to which [section 104\(3\)\(a\)\(ii\)](#) 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.*

- (2) To avoid doubt, [section 104\(2\)](#) applies to the determination of an application for a non-complying activity

6.0 Actual and Potential Effects on the Environment

6.1 Definition of Effect

6.1.1 Section 3 of the Act defines the term 'effect' as including –

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

6.2 Permitted Baseline

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

6.2.2 In this instance, given there are no 'permitted' forms of subdivision under the District Plan, the standards relating to land use activities may be taken into account in order to determine the extent to which the District Plan anticipates and provides for intensification or development 'as of right'.

6.2.3 The subject site is 4.7955 hectares and is void of any built development. The construction of residential units on the site (excluding a minor residential unit) is managed by the provisions of Rule 38.4.1 *Residential Units* which requires at least 20.0ha of net site area associated with each residential unit. In addition Rule 38.4.2 *Minor Residential Units* allows the construction of one minor residential unit per site, provided that the site has a minimum of 8000m². A minor residential unit is defined in Chapter 4 as:

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

6.2.4 As such as of right the permitted baseline dictates that at present one residential unit and associated minor residential unit would be able to be constructed as of right on the subject site. Additional development rights applying to the subject site under the District Plan are therefore listed as follows:

- Building coverage (specified in Rule 38.4.4) of 500.0m² or 5% of the net site area of the property (whichever is the greater). 5% of the 4.7955 hectare area of the subject site is 2397.75m². This figure is greater than the 500m², and therefore would be the permitted building coverage for the subject site.
- One minor residential unit (Rule 38.4.2) to be constructed on the subject site in compliance with bulk and location controls. This minor residential unit must be no larger than 70m², and located within 15m of the residential unit.
- There is no limit upon the number of accessory buildings provided that the bulk and location criteria applying within the Countryside Environment are satisfied, including an 8.0m road setback and 3m setback from other boundaries. A height limit of 10m is prescribed within the Countryside Environment.

6.2.5 Therefore, if Council was to consider the permitted baseline applying to the development of this lot at present, residential development permitted under the District Plan is restricted to a residential unit complying with bulk and location controls and a minor residential unit with a maximum gross floor area of 70 m² within 15 metres of any minor residential unit.

6.2.6 Taking the above into account it is also considered beneficial to consider the permitted baseline that will be created should the proposed subdivision be granted consent. This is considered below in respect to both of the proposed allotments in terms of the District Plan (therefore this does not take into account other potential restrictions such as the nominated building locations proposed by the applicant):

- **Lot 1:** the following development would be permitted as of right under the District Plan on lot 1 (2.1ha) should the subdivision be granted:
 - One residential unit complying with bulk and location requirements.
 - One minor residential unit (Rule 38.4.2) to be constructed on the subject site in compliance with bulk and location controls. This minor residential unit must be no larger than 70m², and located within 15m of the residential unit
 - Building coverage (specified in Rule 38.4.4) of 500.0m² or 5% of the net site area of the property (which ever is the greater). 5% of the net site area for proposed lot 1 is 1050m² and would be the permitted building coverage for the proposed allotment.
 - There is no limit upon the number of accessory buildings provided that the bulk and location criteria applying within the Countryside Environment are satisfied, including an 8.0m road setback and 3m setback from other boundaries along with the total permitted building coverage specified above. A height limit of 10m is prescribed within the Countryside Environment.
- **Lot 2:** the following development would be permitted as of right under the District Plan on lot 2 (2.5024ha) should the subdivision be granted:
 - One residential unit complying with bulk and location requirements.
 - One minor residential unit (Rule 38.4.2) to be constructed on the subject site in compliance with bulk and location controls. This minor residential unit must be no larger than 70m², and located within 15m of the residential unit.
 - Building coverage (specified in Rule 38.4.4) over 500.0m² or 5% of the net site area of the property (which ever is the greater). 5% of the net site area for proposed lot 1 is 1251.2m² and would be the permitted building coverage for the proposed allotment.
 - There is no limit upon the number of accessory buildings provided that the bulk and location criteria applying within the Countryside Environment are satisfied, including an 8.0m road setback and 3m setback from other boundaries along with the total permitted building coverage specified above. A height limit of 10m is prescribed within the Countryside Environment.

6.2.7 Thus the permitted baseline that would be created by the proposed development, is effectively one additional residential unit and associated minor residential unit with associated building coverage and bulk and location restrictions, beyond what is currently permitted.

6.2.8 Notwithstanding the above, it is considered that the permitted baseline is of limited relevance to the consideration of this application for a non-complying activity subdivision.

6.3 Landscape and Visual Effects

6.3.1 “Amenity values” is defined in section 2 of the Resource Management Act 1991 as “...*those natural and physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence and recreational attributes.*” As such the amenity values of an area can be described as those special attributes, relating particularly to

natural and physical characteristics that make an area or neighbourhood unique. Therefore it is important to consider the effects that development may have on the various visual and landscape characteristics (as a subset of wider character and amenity) that contribute to the amenity and character of the receiving environment.

6.3.2 The applicant has provided an Assessment of Visual, Landscape and Amenity Effects prepared by Simon Cocker from Simon Cocker Landscape Architecture dated January 2011 (“the Cocker Report”- see attachment 1). As noted previously Council elected to obtain a technical assessment on this report and the application in general due to the complexity of the application in terms of landscape issues. This technical assessment was provided by Rebecca Skidmore from RA Skidmore Urban Design Ltd in her report titled Maungatapere Subdivision Landscape and Visual Effects Review dated 25th June 2012 (“The Skidmore Report”- see attachment 3). Rather than providing unnecessary repetition of the contents of both reports, the following sections will detail the relevant areas where the reports agree and also detailing where there is disagreement between the two expert witnesses.

6.3.3 By way of introduction, the Cocker Report is generally structured under the following headings:

- **Introduction** – Establishes the scope and methodology utilised for the report.
- **The Setting** – Provides a comprehensive physical description of the site and the surrounding environment and provides an analysis of its character.
- **The Application** – Describes the proposal and mitigation measures which include planting and design controls for the future development of the sites.
- **Assessment of Visual and Amenity Effects** – provides an assessment of landscape and visual effects for the three groups identified as comprising the viewing audience
- **Conclusions** – provides an conclusion for the application based on the findings of the previous.
- **Appendices** – Includes a “Landscape Integration Plan” in Appendix 1, with planting details in Appendix 2 and recommended design guidelines in Appendix 3.

6.3.4 The Skidmore Report is structured in a manner that goes through these sections of the Cocker Report and identifies areas that both experts agree on and provides more specific attention to the sections of the report that Ms Skidmore is in disagreement with.

6.3.5 In terms of the description of the site and its surrounding environment it is apparent that both reports are in general agreement, with Ms Skidmore concurring with the statement in paragraph 6 of page 4 of the Cocker report that in the area of the subject site “*the openness and rural character of the landscape is dominant.*” I also concur with this assessment as has already been highlighted in section 2.3 of this Hearing Report.

6.3.6 The first area of contention between the reports is in the introduction on paragraph 2 page 2 of the Cocker Report where Mr Cocker states:

“A resource consent application is to be lodged by Cato Bolam Consultants as agents for the applicant. The covering information that accompanies that application contains an outline of relevant provisions of the District Plan, so this assessment will focus primarily upon a description of the site, the characteristics of the proposal and an analysis of the visual and amenity effects of the activity.”

6.3.7 The Skidmore Report is critical in respect to this approach and states in section 2.3 on page 2 that:

“...the report is silent on an analysis of the proposal in relation to the District Plan framework. In my opinion, it is relevant to consider the proposal in the context of the relevant District Plan framework and the analysis should be provided.”

- 6.3.8 In this regard the Skidmore Report provides an assessment of the statutory context of the proposed subdivision in terms of the District Plan in section 3 on pages 3 and 4. Ms Skidmore notes that the District Plan acknowledges that areas within the Countryside Environment zone tend to have high amenity values, due to the presence of the 9 characteristics which are identified on page 2 of chapter 5 of the District Plan (see section 6.4.1):
- 6.3.9 With these characteristics in mind the Skidmore Report identifies Objectives 5.3.1 and 5.3.5 and identifies their link to Policy 5.4.5 (these objectives and policies can be viewed in section 7.4 of this report where they are discussed in greater detail). These provisions are further supported within the policy framework for the Countryside Environment which makes provision for subdivision to a 20ha minimum net site area as a controlled activity and to 4ha minimum net site area as a discretionary activity. Ms Skidmore concludes that:
- “In my opinion these objectives and policies provide important guidance in considering the relevant policy framework to consider the proposal. They have not been identified in the application AEE as being relevant.”*
- 6.3.10 It is clear that both of the reports are in general agreement about the visual effects assessment for the proposed subdivision. The Skidmore Report notes in section 5.1 that no consideration has been given to the effects on parties who have given their written approval to the proposal (which include most of the properties contained in the first of the three groups that comprise the viewing audience as defined by the Cocker Report). Ms Skidmore also concurs with the assessment in relation to the third group identified as comprising the wider viewing audience. The only area of dispute is in regards to the second viewpoint from State Highway 14 where Ms Skidmore states in section 5.3 of her report that:
- “I generally concur with the assessment provided in relation to effects on those driving along SH14. However, while views across the site are transitory, the establishment of a dwelling on proposed Lot 1 together with associated site elements and the screen planting proposed will potentially result in a change to the outlook from rural to more rural residential. The mitigation planting will also diminish the outlook across the site”*
- 6.3.11 The main area of disagreement between the two reports is in terms of landscape effects. The Cocker report concludes that the potential landscape effects will be less than minor taking into account the perceived minimal scale of the subdivision and the proposed mitigation measures presented by the applicant. The Skidmore report disagrees with this conclusion noting in section 5.5 that *“the creation of two sites of a scale less than 2.6ha (net) and their subsequent use for residential purposes will diminish the rural characteristic identified in Section 3.”*
- 6.3.12 In this respect section 5.7 of the Skidmore report is critical of the mitigation measures proposed in the Cocker Report, noting the fact that despite their imposition the creation of relatively small sites will result in a change of the rural character of the area.
- 6.3.13 The Skidmore Report raises further concern in section 5.8 about the potential precedent that the granting of this consent could set in relation to future subdivision and development in the surrounding area. Likewise section 6.3 concludes that the smaller allotment sizes would be contrary to the policy framework relating to the protection of amenity values. These comments are not expressly relevant to this section of the report, but will be discussed further in sections 7.4 and 8.2.
- 6.3.14 Overall the Skidmore Report concludes in section 7.2 that:
- “Overall, it is concluded that the proposal will not result in significant adverse visual effects. However, it will result in a fundamental change in the rural character values of the land. It will contribute to a gradual diminishing of the rural character of the area.”*
- 6.3.15 After reviewing the application report, and supporting material and having visited the subject site and surrounds I concur with Ms Skidmore’s overall assessment and conclusions. As such while the potential visual effects of the proposed are considered to be less than minor, the landscape effects associated with the diminishment of rural character and amenity are considered to be **more than minor** in this instance. This position will be discussed further in the following section on rural amenity and character effects.

6.4 Rural Amenity and Character Effects

6.4.1 The protection of rural amenity and character is a prominent resource management issue. Rural character and amenity can have a number of subjective meanings that derive specifically from tangible elements such as density of development, noise, odour etc. and the more intangible elements that derive from peoples' own perceptions and associations with the rural environment. In defining rural character and amenity, it is useful to refer to page 2 of chapter 5 of the District Plan which highlights nine central characteristics which influence the high amenity values typically experienced within the Countryside Environment. These 9 characteristics are identified below and are discussed within both of the assessments provided from Ms Skidmore and Mr Cocker:

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

6.4.2 In this instance it is clear that there is consensus between both experts that in the subject site and area *"the openness and rural character of the landscape is dominant."* This rural character in relation to the characteristics highlighted above is best summarised on page 6-7 of the Skidmore Report which states:

"The site sits on the lower flanks of the Mauna volcanic cone and has visual connections to the wider landscape and its numerous topographical features. Within this natural context, the area contains a range of land-use patterns. While a relatively high intensity of residential activity has established to the north of SH14 and along the Newtown Road corridor, SH14 forms a strong edge. The subject site forms part of an area to the south of that edge that retains a strong rural character. This is largely determined by:

- *Clear patterns of the underlying topography;*
- *Visual connections to the wider landscape;*
- *Productive use;*
- *A high ratio of open space to built structures;*
- *Stands of native vegetation;*
- *Simple boundary treatments of post and wire fencing and hedgerows;*
- *Few accessways."*

6.4.3 From this description it is apparent that the site maintains a number of the characteristics identified on page 2 in chapter 5 of the District Plan. It is acknowledged that, in order to protect these characteristics of rural amenity and character, the District Plan has established a 20ha controlled limit for subdivision, with a 4ha discretionary limit for subdivision in appropriate areas. In this instance the applicant seeks to form two allotments with net site areas of 2.1ha and 2.5024ha, and therefore is considered a non-complying activity on this

basis, as the proposed allotments are significantly below the 4ha discretionary threshold specified in Rule 73.3.1 (Allotment Area). In considering a non-complying subdivision in the Countryside Environment Section 73.4 (principle reasons for Rules/Explanations) states the following:

“Subdivision that does not comply with a standard for a controlled or discretionary activity is a non-complying activity. Consequently, for any such proposal to be assessed as acceptable, the applicant would first need to show that the proposed subdivision would have no more than minor effects on the overall level of density appropriate to the Environment in question, and/or was consistent with the density of development in the immediate area surrounding the proposal. In other words, the proposed subdivision would need to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes.”

6.4.4 It is widely accepted by the Environment Court that there is a direct correlation between a decreasing average lot size and loss of rural character (as affirmed in *Foster v Rodney District Council* [2010] NZRMA 159). To this end, the District Plan places significant emphasis on allotment size as a mechanism for maintaining amenity and character. In this regard section 73.4 directs that lot sizes should be in keeping with the surrounding allotment sizes already in existence, and should not increase the existing density of development by producing smaller allotments.

6.4.5 The subject site is situated within an area that has been subject to numerous subdivisions in the past which has created a haphazard environment with varying lot sizes. By way of context it is important to recognise that many of these allotments have been created by subdivisions that have occurred over time under more permissive planning regimes which did not have the same strong focus on avoiding sporadic and sprawling subdivision and development that the current District Plan holds. More specifically in the period between 1998 and 2001 the then Proposed District Plan provided for subdivision down to 1 ha as a controlled activity. It wasn't until the Environment Court released a decision dated 28th February 2006 regarding the subdivision rules in the Countryside Environment which saw the controlled activity standard in the Countryside Environment increase from 4 ha to 20 ha per residential unit. To a certain extent this provides an explanation for the number of smaller allotments in the vicinity.

6.4.6 Notwithstanding the above, Mr Reiher has in section 1 of his section 92 response (see attachment 6) utilised the presence of smaller allotments in the vicinity of the subject site to justify the smaller allotment sizes proposed by the applicant. To this end Mr Reiher concludes that:

“It is our opinion that the intended land use of scattered ‘lifestyle’ residential development as a result of the proposed subdivision (average lot area being approximately 2.4ha) can be comfortably accommodated into the surrounding environment and existing rural character of this locality. The proposal will not result in a material change to the character of the area given the existing pattern of subdivision and development. This opinion is supported by the visual assessment report prepared by Simon Cocker (submitted as part of the application

The proposed subdivision creates only one additional allotment and it is noted that the permitted baseline for the property within the Countryside Environment provides for one residential dwelling on the site as of right, noting that a minor residential unit could be constructed on the site as a permitted activity. Such development would create a much greater cluster effect in this area than the proposal.”

6.4.7 Ms Skidmore's effectively disagrees with this assessment and in section 5.7 of her report she states:

“The potential for continued rural productive use will be reduced with the reduced scale of the sites. The effect on reduced rural character will come about not only through the introduction of dwellings to the site but also other elements that contribute to increased domestication of the dwelling cartilage, including accessways, recreational facilities such as pools, tennis courts etc., ornamental gardens, and ornamental boundary treatments.”

6.4.8 The Environment Court has recently taken a similar position to Ms Skidmore in *J Blampied v Whangarei District Council and WJ Childs and LM O'Grady* [2012] NZEnvC 54 (see attachment 10 for a copy of this decision). In that case the Environment Court was considering a subdivision application to subdivide a property of 6285m² into two allotments within the Countryside Environment, the property being located at 43 Clapham Road, Whareroa, Whangarei. When considering effects of the proposed subdivision on the environment the Environment Court drew a similar conclusion in paragraph 52 to Ms Skidmore in terms of the mitigating hedgerows proposed by the applicant:

“Mr Farrow conceded that the planting of hedgerows or other vegetation along the straight boundaries of rural-residential sized lots, could present a somewhat regimented appearance in a rural locality, a little like that found on the outskirts of the Northland town of Kerikeri. He accepted that that would be a change in visual amenity. Similarly, he accepted that clusters of letterboxes could comprise an indicator of the extent of development that might be substantially screened from view. Those objective concessions were correctly made in our view. We find that the extent of lines of screening trees proposed would of itself draw attention to the presence of incongruous development, as much or potentially more than an additional letterbox.”

6.4.9 While it is clear that there are smaller allotments in the vicinity of the subject site, it is my professional opinion that the smaller size of the proposed allotments along with proposed hedgerow planting and the development opportunities that the subdivision creates (see section 6.1 on the permitted baseline) represents a further decrease in allotment sizes that will result in an unacceptable deterioration of the rural character and amenity values in this area (as identified in section 6.4.2.)

6.4.10 Overall having regard to the above matters I consider that the adverse effects on rural character and amenity will be **more than minor** in this instance.

6.5 Access and Traffic Effects

6.5.1 Council's Senior Environmental Engineering Officer Vlad Rozov has assessed the potential access and traffic effects of the proposed subdivision in his assessment dated 16th March 2012 (see attachment 2).

6.5.2 State Highway 14 is classified as a State Highway with a sealed surface in the area of the proposed vehicle access with a speed environment of between 90 to 100 km/h requiring sight lines of 210 to 250m.

6.5.3 Mr Rozov notes that the application includes a letter from NZTA ref: 8/3/4/44 dated 19 October 2011 confirming approval in principle subject to the requirement that crossing CP 38A would be formed to Diagram C standard in accordance with the conditions set out in NZTA's early letter dated 18 November 2010. Mr Rozov further observes that NZTA have requested that a condition requiring the applicant to obtain a Section 93 Notice from the NZTA be included in the conditions of consent, if granted. As such Mr Rozov has concluded that the potential effects of the proposal on the existing roading network are considered to be less than minor in this instance.

6.5.4 After Mr Rozov assessment was completed, Council received on 13th April 2012 a formal written approval from NZTA for the proposed subdivision. In this instance the written approval was given as the applicant accepted NZTA's conditions and offered them as conditions of consent to Council for the proposed subdivision.

6.5.5 In terms of access arrangements Mr Rozov notes that both Lots 1 & 2 will gain vehicle access via the proposed rights of way which are to be constructed in accordance with Table 3.7 Category E(alt) of Whangarei District Council's Environmental Engineering Standards 2010 and associated shared vehicle entrance crossing CP 38A on SH14 (to be constructed to NZTA's Diagram C standard). Mr Rozov highlights that the engineering report ref: 8470 compiled by Hawthorne Geddes Engineers & Architects Ltd dated 10 January 2012 states that the right of way access will require the construction of approximately 1.5m depth of fill against an existing gabion wall that is located within the SH14 road boundary, to provide access to a suitable grade into the property. Mr Rozov raises no concerns with this approach

and agrees with the conclusion of the 19th October 2011 letter from NZTA that the vehicle crossing can achieve complying sight lines.

- 6.5.6 Overall for these reasons it is considered that the access and traffic effects that will result from the proposed subdivision will be **less than minor**.

6.6 Site Suitability and Servicing Arrangements

- 6.6.1 Site suitability and servicing arrangements have been detailed within the Application report provided in support of the application prepared by Cato Bolam Consultants. This is supported by an engineering report for the subject site provided with the application ref: 8470 compiled by Hawthorne Geddes Engineers & Architects Ltd dated 10 January 2012 (“the engineering report”). Council’s Senior Environmental Engineering Officer, Vlad Rozov, has undertaken a site visit on 16th March 2012, reviewed the application and compiled a report dated 16th March 2012 (see attachment 2).
- 6.6.2 In respect of the hazards applicable to the site Mr Rozov has identified that the site has a low instability hazard designation identified on Whangarei District Council’s Geographic Information System maps. The engineering report includes a detailed site investigation and concludes that subject to restrictions and recommendations that the site is suitable for the proposed development. Mr Rozov has assessed this report and concluded that, with the recommended conditions of consent, the proposal satisfies Section 106 of the Resource Management Act 1991 in respect to natural hazards.
- 6.6.3 In terms of wastewater Mr Rozov has noted that the new proposed lots will require onsite treatment and disposal as there is no public system available for connection. The engineering report includes an onsite soil assessment and a general assessment of onsite effluent disposal capability for proposed lots 1 and 2 in accordance AS/NZS 1547: 2000 including effluent field slope gradient, soil category, overland flow path separation, water table depth, and recommended design options. Subject to including these restrictions and recommendations as part of a consent notice that will be registered on the Computer Freehold Register of Lot 1 and 2, Mr Rozov raises no issue with the wastewater service arrangements for the subject site.
- 6.6.4 Having regard to water supply, Mr Rozov has specified that onsite supply will be required as there is no public system available for connection. Rain water will be utilised from roof top collection and bore water supply may be available; therefore the application complies with Rule 73.3.11 Water Supply. Additionally Mr Rozov notes that upon construction of any habitable dwelling, sufficient water supply for fire fighting purposes will need to be provided by way of tank storage or other approved means, and that this water supply will need to be accessible by fire fighting appliances in accordance with Whangarei District Council’s Environmental Engineering Standards 2010 and more particularly with the New Zealand Fire Service Fire Fighting Code of Practice SNZ PAS 4509:2008.
- 6.6.5 Mr Rozov has also provided an assessment of the stormwater management arrangements on site. He has assessed that onsite stormwater attenuation will not be required for the proposed development as the area of proposed Lots 1 and 2 exceeds 1ha and the total area of impervious surfaces (roof, driveways, hard standing areas) related to the development will not exceed 2% of the total site. However, Mr Rozov has stated that the disposal of any stormwater off site is not to exceed that which existed pre-development. As such he has recommended the imposition of a consent notice on both titles requiring that any future land holder will need to demonstrate this at the time of any future building consent application.
- 6.6.6 Mr Rozov further notes that the Engineering Report states that there are no watercourses within the property boundaries. However irrespective of this he has recommended the construction of surface water cut-off drains above the effluent disposal fields to reduce the risk of hydraulically overloading disposal areas.
- 6.6.7 The area of the proposed allotments exceeds 1ha therefore Mr Rozov has concluded that no easements will be required over existing overland flow paths at subdivision stage. However Mr Rozov has recommended that a consent notice be registered on the appropriate titles requiring the applicant to demonstrate at building consent stage that further development will be undertaken in a manner that will not result in the obstruction or diversion of any existing

overland flow path, unless a specific design has been done by a IQP or Chartered Professional Engineer which mitigates any potential adverse flooding effects on any neighbouring properties from the obstruction or diversion and is approved in writing by the Senior Environmental Engineering Officer.

- 6.6.8 In accordance with the provisions for subdivision in the District Plan, Mr Rozov has also recommended the imposition of standard conditions requiring written confirmation from power and telecommunications utility service operators that their conditions have been met and that all necessary easements have been shown on the survey plan to the approval of Council's Senior Environmental Engineering Officer or delegated representative.
- 6.6.9 Having regard to the above matters, the application site is considered developable in the manner proposed and satisfies Section 106 of the Act having regard to matters relating to natural hazards, wastewater, water supply, stormwater and provision of telecommunication and power utility services. Therefore, the site is suitable for the development proposed in this regard, and no adverse effects beyond the subject site have been identified.

6.7 Cumulative Effects

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

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

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

- 6.7.2 With reference to *Dye*, the determination of cumulative effects requires the consideration of any adverse effects of the proposal when added to any adverse effect of an existing activity or activities that forms part of the existing environment. As such the assessment of cumulative effects should be undertaken with reference to the environment that presently exists.
- 6.7.3 In accordance with Mr Rozov's assessment (see section 6.5) I am satisfied that the receiving roading environment has sufficient capacity to accommodate the potential traffic effects associated with the creation of an additional allotment in the vicinity, and that the application will not represent a significant cumulative effect in this regard.
- 6.7.4 Additionally, the applicant has demonstrated to the approval of Mr Rozov (see section 6.6) and subject to his recommended conditions, that the proposed subdivision can be adequately serviced in terms of section 106 of the Resource Management Act 1991. Therefore I am satisfied that the application will not represent a significant cumulative effect in this regard.
- 6.7.5 The principle area of concern in regards to cumulative effects in this instance, is the proposed subdivision's potential to result in the cumulative deterioration of the rural character and amenity values within the receiving environment beyond an acceptable level. It is considered that in accordance with the conclusions in section 6.4 of this report, the proposed subdivision would enable potential use and development of the subject site that would diminish the rural character and amenities of the locality to a more than minor degree.
- 6.7.6 The proposed subdivision seeks to form two allotments with net site areas of 2.1ha and 2.5024ha, and therefore is considered a non-complying activity on this basis. Whilst the District Plan identifies the need for flexibility in allotment sizes to allow for 'consolidated development' in appropriate locations, the onus is placed on maintaining the existing density levels and not increasing the existing density levels of development by allowing incrementally smaller allotments. This is highlighted in section 73.4 of the Plan which states that any non-complying subdivision within the Countryside Environment "*would need to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes.*"
- 6.7.7 In this instance there is clearly an existing enclave of rural residential development of significant intensity to the west along Newton Road and to the north on the opposite side of

State Highway 14. Therefore I acknowledge that the receiving environment consists of some smaller allotments in these areas. However both Ms Skidmore and Mr Cocker have agreed in their respective reports that the subject site and immediate vicinity to the south and east maintains a strong rural character. As such it is my professional opinion that the creation of two smaller allotments, each with the potential for a house and minor residential unit where presently only one of each would be permitted (see section 6.2 for further discussion on the permitted baseline), would effectively change the character of the subject site from rural to rural residential, and will in turn have an adverse cumulative effect that is more than minor within the receiving environment described by Ms Skidmore and Mr Cocker.

6.7.8 Therefore with respect to this application there does appear to be a clear adverse cumulative effect, and it is considered that the granting of this application will “*tip the balance*” at which the rural character and amenity values currently experienced will be further deteriorated to an unacceptable level.

6.7.9 Taking this into account, it is my opinion that the proposed subdivision will result in the further intensification of the site and surrounds in a sporadic manner that will cumulatively result in the unacceptable deterioration of rural character and amenity values within this area that is not identified for such growth within the District Plan.

6.7.10 Overall taking into account the above, I consider that the proposed subdivision will result in **more than minor** cumulative effects on rural character and amenity that are **unacceptable** in this instance.

6.8 Effects Summary

6.8.1 Overall, it is considered that the effects of the proposed subdivision are **more than minor** and ultimately **unacceptable** in this instance for the following reasons:

- After reviewing the application report, and supporting material and having visited the subject site and surrounds I concur with Ms Skidmore’s overall assessment and conclusions regarding the potential visual and landscape effects. As such while the potential visual effects of the proposed are considered to be less than minor, the landscape effects associated with the diminishment of rural character and amenity are considered to be more than minor in this instance.
- While it is clear that there are smaller allotments in the vicinity of the subject site, it is my professional opinion that the smaller size of the proposed allotments along with proposed hedgerow planting and the development opportunities that the subdivision creates represents a further decrease in allotment sizes that will result in an unacceptable deterioration of the rural character and amenity values in this area.
- I consider that the proposed subdivision promotes the further intensification of the site and surrounds in a sporadic manner that will cumulatively result in the unacceptable deterioration of rural character and amenity values within this rural area that is not identified for such growth within the District Plan.

6.8.2 Therefore the proposal does not pass the first gateway test in section 104D(a) of the Act.

7.0 Relevant Policy Statements, Plans or Proposed Plans

7.1 Statutory Gateway Test

7.1.1 Section 104D(b) directs that Council consider whether the proposed activity will not be contrary to the objectives and policies of the relevant plans.

7.1.2 The meaning of ‘contrary’ was considered in the decision of *Monowai Properties Ltd V Rodney District Council (A215/03)* where it was established:

“A non-complying activity will rarely, if ever, find direct support in the objectives and policies of a Plan but an absence of support does not equate to the activity being contrary to those provisions. Contrary to in this context means... repugnant to... or opposed to... the objectives and policies considered as a whole”.

7.1.3 The following sections assess whether the proposed subdivision will be contrary to the relevant objectives and policies of the relevant plans for the subject site- being the Operative Whangarei District Plan, Northland Regional Policy Statement (both the operative and proposed) and the Regional Water and Soil Plan for Northland.

7.2 Northland Regional Policy Statement

7.2.1 The Northland Regional Policy Statement (RPS) covers the management of natural and physical resources across the Northland region. The provisions within the RPS give guidance at a higher planning level in terms of the significant regional issues. As such it does not contain specific rules that trigger the requirement for consent but rather give guidance to consent applications on a regional level.

7.2.2 Having reviewed the current operative RPS it is considered that there are no significant conflicts between the proposed subdivision and the provisions within the RPS.

7.2.3 It is also worth noting that the new proposed draft Northland Regional Policy Statement ('proposed RPS') was released for public consultation in October 2011. Amongst other things the proposed RPS presents new objectives and policies regarding 'regional form.' In particular policy 5.1.1c) states that:

"Development should be located, designed and built in a planned and co-ordinated manner which recognises and addresses potential cumulative effects of subdivision, use and development and is based on sufficient information to allow assessment of the potential long-term effects of development;"

7.2.4 As is noted in the effects assessment and the assessment of the objectives and policies within the Operative District Plan, there are serious concerns that the proposed development does not promote planned and co-ordinated development and fails to address the cumulative effect that previous sporadic and ad hoc subdivision has had on rural amenity and character values in the past and cumulative effect this application will have if granted. Therefore there is a conflict within the proposed subdivision and policy 5.1.1c) of the proposed RPS.

7.2.5 However it is acknowledged that the proposed RPS is a working draft still in the early stage of consultation and is still a significant way off becoming operative. Thus while consideration to the proposed RPS is useful, it should be attributed no weighting in this instance as it is only a working draft in the early stages of consultation and not yet considered a legal document. Therefore on balance it is considered that the proposed subdivision is consistent with the relevant objectives and policies within the operative RPS.

7.3 Regional Soil and Water Plan for Northland

7.3.1 The Regional Soil and Water Plan for Northland (RSWP) provides strategic direction for the management of soil and water resources within the Northland region. It controls discharges onto land and water and land disturbance activities and aims to prevent and control activities occurring within the Northland Region which may result in unacceptable adverse effects.

7.3.2 NRC was forwarded a copy of the proposed subdivision application during the notification period. As noted Council received a reply from NRC on 14th May 2012 noting that the proposed development is located on an "at risk" aquifer, as identified within the RSWP (see attachment 9). The status of this aquifer is identified in the RWSP as being "at high demand" and as such NRC have identified that inappropriate development of the site through the diversion of stormwater and the use of impervious surfaces can reduce "aquifer recharge" and potentially contaminate the groundwater. In this regard NRC requested that an advice note be placed on the consent recognising that an "at risk" aquifer is located beneath the proposed development and to ensure that the development does not result in contamination of the surrounding aquifer or a reduction in groundwater recharge. I can see no issue with imposing the proposed advice note should the consent be granted. The correspondence from NRC did not raise any further concerns as to any inconsistencies or triggers regarding the proposed subdivision within the RWSP.

7.3.3 Furthermore it is highlighted that Council's Senior Engineering Officer- Vlad Rozov has considered matters relating to the servicing of the site, including the management of wastewater, stormwater and water supply (see section 6.5), and has recommended

appropriate conditions of consent that will mitigate any potential adverse effects of the proposed subdivision in terms of discharges onto land.

7.3.4 Taking the above into account I am satisfied that the proposal will satisfy the requirements of RWSP.

7.4 Operative Whangarei District Plan

7.4.1 The relevant objectives and policies in the Operative Whangarei District Plan ('the plan') for the proposed subdivision are located in *Chapter 5 – Amenity Values, Chapter 6 – Built Form and Development, Chapter 8 – Subdivision and Development and Chapter 22 – Road Transport* (a copy of these chapters is included in attachment 11 of this report).

7.4.2 Table 4 below assesses the proposed subdivision against the relevant objectives and policies within these Chapters:

Table 5 – Assessment of Relevant Objectives and Policies within the District Plan

| Chapter 5 – Amenity Values | |
|---|--|
| <p><i>This Chapter describes the expectations of the various Environments (zones) in terms of amenity values. In terms of the Countryside Environment the overview describes it broadly as the part of the Whangarei District that is predominantly utilised for primary production but also an area used for low density rural residential purposes. As noted in section 6.4.1 of this report, chapter 5 identifies nine central characteristics which influence the high amenity values typically experienced within the Countryside Environment.</i></p> | |
| Objective | Comment |
| <p>5.3.1 The characteristic amenity values of each Environment are maintained and, where appropriate enhanced.</p> | <p><i>This objective represents the overarching objective for the Amenity Values chapter. As is demonstrated in the effects assessment it is considered that the proposed subdivision will represent the continuation of sporadic and ad hoc subdivision that will result in more than minor effects on rural character and amenity values within the site and locality. It is therefore my professional opinion that the proposed subdivision is contrary to this objective as the amenity values associated with the locality and Countryside Environment will be degraded beyond an acceptable level.</i></p> |
| <p>5.3.5 The actual or potential effects of subdivision use and development is appropriately controlled and those activities located and designed, are to be compatible with existing and identified future patterns of development and levels of amenity in the surrounding environment.</p> | <p><i>The subject site is located in a wider area which contains a number of smaller allotments that have been created under previous more permissive planning regimes. However as is noted by both Ms Skidmore and Mr Cocker, the subject site and immediate vicinity to the south and east retains a predominantly rural character. More specifically in this regard Ms Skidmore notes on page 6 of her report that.</i></p> <p><i>“In my opinion the subject site forms part of an area that retains a clear rural character that is distinguished from the pattern of development on the northern side of SH14 and along the Newton Road corridor. The proposal will see an erosion of that character.”</i></p> <p><i>Furthermore a review of Council planning documents shows that the locality around the site is not earmarked for any future development or intensification. The proposed subdivision essentially continues the irregular nature of allotment sizes within the wider area in an ad hoc nature that will advance the cumulative degradation of rural amenity and character values within the surrounding environment. Therefore I consider that the proposed subdivision will not be compatible with existing and any future patterns of development and levels of amenity.</i></p> |

| Policy | Comment |
|---|---|
| <p>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.</p> | <p><i>While the proposal will only create one additional allotment, it is my opinion that the pattern of creating progressively smaller allotments in an area that maintains high rural character and amenity values will represent sporadic subdivision that is inappropriate in character and intensity within the locality. As such in accordance with the direction afforded in policy 5.4.5 I strongly believe that the proposed subdivision will represent the continuation of sporadic subdivision that is inappropriate as it allows the intensification of the site in a manner that is not provided for within the Countryside Environment and will result in the further cumulative deterioration of rural character and amenity values within the locality.</i></p> |
| <p>Chapter 6 – Built Form and Development</p> <p><i>This recently developed chapter primarily provides policy direction for the urban areas of the Whangarei District. However it is highlighted that objective 6.3.2 and 6.4.2 (provided below) are directly relevant as they refer to avoiding sprawling or sporadic and ribbon development in the rural environment. Furthermore in light of the Land Use Capability III rating for the soils on the subject site it is considered that Policy 6.4.10 is also relevant to the proposal.</i></p> | |
| Objective | Comment |
| <p>6.3.2 Subdivision and development that ensures consolidated development in appropriate locations and avoids sprawling or sporadic subdivision and ribbon development patterns in the coastal and rural environment.</p> | <p><i>Having regard to the existing density of development within the vicinity I consider that the proposal clearly does not represent the appropriate consolidation of that development, but rather promotes the extension of sporadic subdivision and ribbon development in a rural environment that has not been identified for such intensification within the District Plan, nor is it adjacent to any existing settlement.</i></p> |
| Policy | Comment |
| <p>6.4.2 Consolidated Development To consolidate urban development by:</p> <ul style="list-style-type: none"> i. Further develop within existing built up areas, so as to avoid sporadic or sprawling subdivision and ribbon development patterns, particularly in rural areas and along the coast. ii. Directing rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas. | <p><i>Council has recently undertaken Plan Change 93, which proposes to introduce a new Urban Transition Environment (UTE) into the District Plan. This Environment identifies areas which Council believe are appropriate for potential intensification on the fringe of Whangarei’s urban areas, and allows smaller lot sizes subject to compliance and assessment with a number of matters. Plan Change 93 is currently pending resolution of appeals, and therefore should be attributed little weighting. However in this instance it is useful as it clearly expresses where Council believes that further intensification in rural areas on the fringe of Whangarei is appropriate. In this instance the subject site is not located within the proposed UTE environment and in having regard to the proposed intensity of the subdivision, I believe that the proposal represents the perpetuation of sporadic development in a rural area rather than appropriate consolidation.</i></p> |
| <p>6.4.10 Policy – Productive Soils</p> <ul style="list-style-type: none"> i. To identify and protect the district’s highly productive and versatile soils for their productive capacity. ii. To recognise the value of productive soils and economic farming units to the District’s economy. | <p><i>Council’s Geographic Information Systems maps have a “Land Use Capability” layer which categorises soils based on their usable productive qualities. The Maunu area is generally heralded as having productive soils that are valued for their productive qualities. In this instance the subject site has a “Land Use Capability” rating of III. Class III land is characterised as having moderate limitations for arable use, and is suitable for cultivated crops, pasture or forestry. While it is acknowledged that the District Plan has no specific rules on the protection of productive soils, provisions such as policy 6.4.10 clearly show that high quality productive soils are an integral element of the</i></p> |

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| | <p><i>District's economy, and therefore form a relevant consideration in assessing any subdivision or development applications within areas that contain productive soils. In this instance I consider that at present the subject site is utilised in a productive capacity. As such I believe that the proposed subdivision will decrease the capacity of the site to be used in a productive capacity, and will therefore represent an inefficient use of a valuable natural resource.</i></p> |
| <p>Chapter 8 – Subdivision and Development</p> <p><i>This chapter provides a policy framework to address the effects of subdivision and development on the environment, and acknowledges that subdivision and development can have both positive and negative effects.</i></p> | |
| Objective | Comment |
| <p>8.3.1 Subdivision and development that achieves the sustainable management of natural and physical resources whilst avoiding, remedying or mitigating adverse effects on the environment.</p> | <p><i>It is considered that the proposed subdivision represents a continuation of an ad hoc approach to subdivision and development that does not represent the sustainable management of natural and physical resources. In my opinion, the effects of the subdivision cannot be avoided, remedied or mitigated as the subdivision results in the further degradation of rural character and amenity values beyond an acceptable level (see section 6 discussion).</i></p> |
| <p>8.3.2 Subdivision and development that does not detract from the character of the locality and avoids conflicts between incompatible land use activities.</p> | <p><i>This objective has two components. In regards to the first component, it is considered that the intensity of the subdivision will result in the further detracting of the rural character and amenity elements that are present in the locality. In respect to the second component it is acknowledged that previous subdivision within the locality has resulted in a number of smaller allotments that no longer possess sufficient area to provide for intensive rural use. However in relation to the subject site it is noted that it is still utilised in a productive capacity. However due to the nature and scale of this activity I believe that the proposed subdivision will not give rise to any significant reverse sensitivity concerns in this respect.</i></p> |
| <p>8.3.7 Subdivision and development that provides for comprehensive development of land with a range of allotment sizes and is appropriate to the character of the Environment in which it is located.</p> | <p><i>The proposed subdivision seeks to establish two allotments with net site areas of 2.1ha and 2.5024ha. Whilst the District Plan, and more specifically this objective, identify the need for flexibility in allotment sizes, the onus is placed on maintaining the existing density levels and not increasing the existing density levels of development by creating incrementally smaller allotments. This is highlighted in section 73.4 of the Plan which states that any non-complying subdivision within the Countryside Environment "would need to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes." While I acknowledge that the receiving environment has already been compromised by smaller allotments, I note that these 'sporadic' smaller allotments were generally approved under a less restrictive planning regimes, and arguably would have been viewed less favourably under the current regime. Irrespective of this, I believe that the intensification of the locality proposed by this subdivision will result in the further intensification of the site in a sporadic manner that will cumulatively result in the degradation of rural character and amenity within the locality.</i></p> |
| Policy | Comment |
| <p>8.4.3 Density of Development To ensure that subdivision and development results in a pattern and density of land use which reflects flexibility in allotment size, and is of a density appropriate to the locality.</p> | <p><i>As noted, I consider that the proposed allotment sizes are not of an appropriate density within the context of the receiving environment. While the District Plan allows flexibility in allotment sizes, it is recognised that this should only occur in appropriate areas or areas that have been earmarked for intensification in</i></p> |

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| | <p><i>the District Plan. In other words this flexibility provided within the District Plan is not intended to come at the cost of rural amenity and character elements that are apparent in the locality. In this instance it has been comprehensively demonstrated that the proposed subdivision has the potential to result in the further erosion of the rural amenity and character elements within the area beyond an acceptable level.</i></p> |
| <p>8.4.4 Cumulative Effects To ensure that the cumulative effects of on-going subdivision and development do not compromise the objectives and policies of this Plan, in particular those objectives and policies relating to reducing conflicts between incompatible land use activities, the consolidated and orderly development of land and the density of development.</p> | <p><i>As has been demonstrated previously it is considered that the proposed subdivision will result in more than minor cumulative effects. This is reinforced by the comments of Ms Skidmore on page 6 of her report where she states:</i></p> <p><i>“Incremental change will erode the rural landscape values of the area and will result in an increasing blurring between rural and urban settlement patterns.”</i></p> <p><i>Therefore in regards to this policy I strongly believe that the proposed subdivision does not represent “consolidated and orderly development of land” but rather represents the continuation of sporadic and ad hoc development in a rural area that is not identified for such growth within the District Plan.</i></p> |
| <p>8.4.12 Services and Infrastructure To ensure that all subdivision and development is capable of being provided, by the subdivider or developer, with adequate services and infrastructure having regard to Whangarei District Council’s Environmental Engineering Standards 2010 (except where the subdivision or development is for specific protection purposes), including:</p> <ul style="list-style-type: none"> • Vehicle access, including emergency service vehicle access; • Water supply, (including for fire fighting purposes), storm water and sewage disposal; • Energy and telecommunication connections; • Useable open space in urban areas; • During the design and construction of the subdivision, measures to reduce storm water run off. | <p><i>Council’s Senior Environmental Engineering Officer- Vlad Rozov has assessed the site servicing arrangements of the proposed subdivision in accordance with the Whangarei District Council Environmental Engineering Standards 2010 in terms of access, water supply, provision of telecommunications and power, wastewater management and stormwater management (see section 6.5 and section 6.6). Having regard to these matters, the application site was assessed as being developable in the manner proposed and satisfies Section 106 of the Act. Therefore, the suitability of the site for the development proposed is not in question, and it is consequently considered that the proposal is consistent with this policy.</i></p> |
| <p>Chapter 22 – Road Transport</p> | |
| <p><i>This chapter provides direction for ensuring a safe and efficient road transport network for the District.</i></p> | |
| Objective | Comment |
| <p>22.3.1 Establish and maintain a safe and efficient road transport network.</p> | <p><i>Mr Rozov has assessed the proposal from an engineering perspective in terms of the actual and potential effects on the roading network (see section 6.5 of this report). Overall Mr Rozov concludes on page 2 of his assessment (see attachment 2) that “the potential effects of proposal on the existing roading network are considered to be less than minor in this case.” On that basis I am satisfied that roading network in the vicinity of the site can sufficiently accommodate the additional allotment without compromising the safe or efficient operation of this roading network.</i></p> |
| <p>22.3.3 Protect the road transport network from the adverse effects of adjacent land use, development or subdivision.</p> | |

7.4.3 Overall, the overarching intent of the District Plan in terms of subdivision and development is to avoid ad hoc subdivision that is ‘sporadic’ in character or that is of a nature that gives rise to ribbon development. While it is acknowledged that the objectives and policies enable consolidated development, the prerequisite is that such development occur within existing

built up areas adjacent to settlements that the Council has earmarked for future growth and expansion, rather than allowing further ad hoc sporadic development throughout rural areas. In this instance, it is my professional opinion that the creation of two allotments, that are significantly lower than the minimum net site area required for subdivision in the Countryside Environment, within this area which has been identified (by both Mr Cocker and Ms Skidmore) as maintaining high rural character and amenity values, will be fundamentally contrary to the policy direction within the District Plan. Therefore, taking into account the considerations in the above table, I conclude that the objectives and policies of the District Plan do not support the further sporadic intensification promoted by this proposed subdivision.

7.4.4 Therefore for these reasons it is concluded that the proposed subdivision is contrary to the overarching intent of the aforementioned relevant objectives and policies of the Operative District Plan and therefore fails to pass the second gateway test in section 104D(b).

8.0 Other Matters

8.1 Non-statutory Planning Documents & Plan Changes

8.1.1 The Maunu Structure Plan is the closest structure plan to the subject site. The subject site falls outside of the area covered by the Maunu Structure Plan (see figure 5), and therefore this Structure Plan is considered irrelevant in this instance.

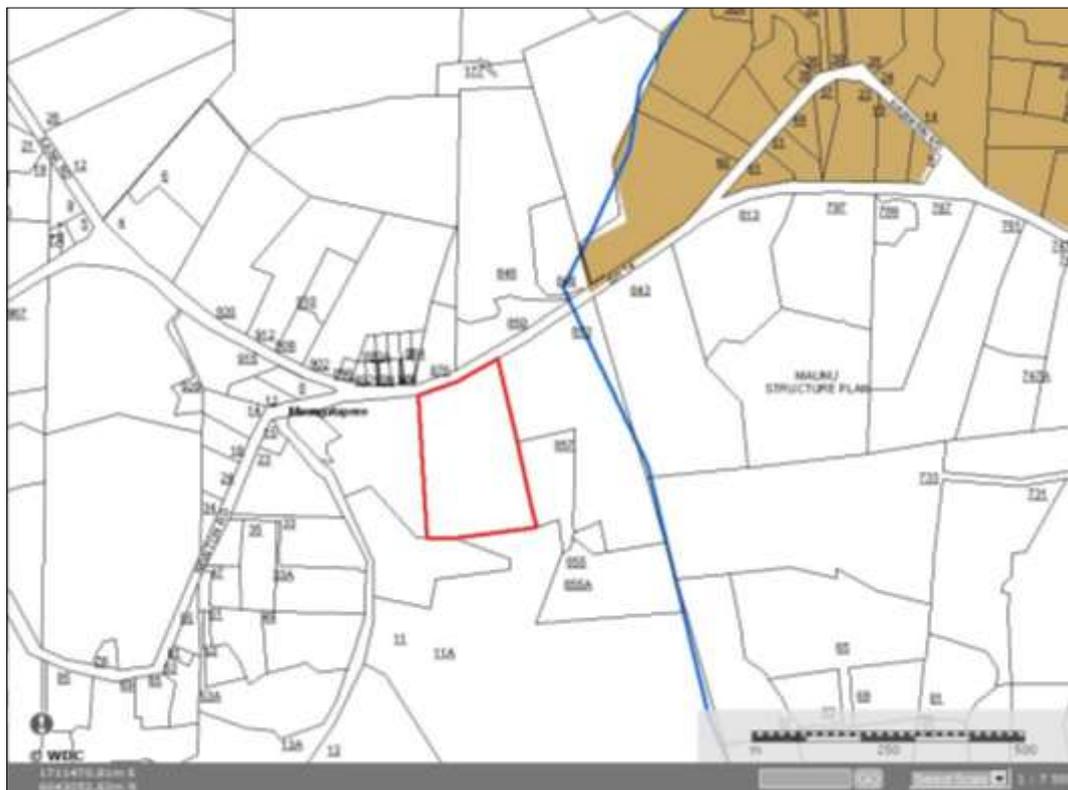


Figure 5- Location of the subject site in respect to the boundaries of the Maunu Structure Plan

8.1.2 The subject site and surrounds is not considered to be subject to any other plan changes nor is it specifically referred to in any other Council non-statutory planning documents

8.2 Precedent

8.2.1 Case law has established that the precedent of granting a resource consent is a relevant factor for a consent authority in considering whether to grant a non-complying resource consent. A precedent effect is likely to arise in situations where consent is granted to a non-complying activity that lacks the evident unique, unusual or distinguishing qualities that serve to take the application outside of the generality of cases or similar sites in the vicinity.

8.2.2 In the Countryside Environment the District Plan has established a 20ha minimum net allotment size for controlled subdivision, and a 4ha provision for discretionary subdivision in

appropriate areas (with further provision for 4000m² allotments if the average net site area of the subdivision is 4ha or more). Any subdivision outside of these limitations is considered a non-complying activity.

8.2.3 In this instance the proposed subdivision seeks to establish two allotments with net site areas of 2.1ha and 2.5024ha, which is not anticipated within the District Plan rules for subdivision in the Countryside Environment, thus representing a significant departure beyond what the District Plan intends for future subdivision and envelopment within the Countryside Environment

8.2.4 In assessing the potential precedent effect of this application the applicant's agent- Simon Reiher has commented as follows on page 2 of the section 92 response (see attachment 6)

"We consider that this application offers sufficiently unique circumstances which justify consent as a non-complying activity. The subject property is located in an area already influenced by more intensive rural-residential development and the proposal sits comfortably within this established development pattern. It is also considered that the proposed development has been designed and will be managed so as to have no more than minor effects on the receiving environs, whilst providing a number of benefits."

8.2.5 I disagree with this assessment and have strong concerns regarding the precedent that the granting of this consent will have for future applications of a like nature within the immediate vicinity and to an extent elsewhere in the Countryside Environment throughout the District. I believe that the proposed subdivision will contribute to a sporadic pattern of development within the locality that the District Plan is trying to avoid, and will contribute to an overall pattern of development in the locality that will diminish rural character and amenity values that the District Plan is striving to protect. While I acknowledge that smaller allotments exist in the vicinity of the subject site, I do not consider that this represents an evident unique, unusual or distinguishing characteristic or that there are any such characteristics in the subject site that serve to take this application outside of the generality of cases or similar sites in the vicinity, and therefore avoid potential precedent.

8.2.6 Without evidence of any site uniqueness, I believe that the local area may be significantly altered by the precedent set by this proposal, and then being potentially followed by others, with the longer term effects on the environment being the continued change in the character and amenities of the locality and a change in community expectations to even smaller allotments with an even higher intensity of development than currently exists.

8.2.7 Furthermore as has been eluded to by Ms Skidmore in section 6.2 of her report, there are a number of other productive farm blocks in the immediate locality, notably adjacent to the east and south of the subject site, which are roughly a similar size to the applicant's property, and which do not greatly differ in terms of their location within the visual catchment described by Mr Cocker and Ms Skidmore. In this regard I draw a similar conclusion to the Environment Court's assessment of precedent in paragraph 67 the *Blampied* decision (see attachment 9):

"In the nature of the land and environments, there will always be small points of difference, but those other properties are sufficiently similar in most respects, and sufficiently close, being in the same visual catchment, that owners of them would be likely to gain expectations of being able to subdivide if the present application was granted."

8.2.8 Therefore taking into account the above, it would be reasonable in this instance to assume that landowners of similar sites in proximity to the subject site would gain an expectation as a result of the approval of the proposed subdivision and would thus consider similar proposals to subdivide down to smaller allotments.

8.2.9 Overall I do not consider that there are any evident unique, unusual or distinguishing characteristics that serve to take this application outside of the generality of cases or similar sites in the vicinity or the wider Countryside Environment. Therefore for the above reasons, I consider that the proposal is likely to give rise to an unacceptable precedent for the approval of similar applications in the future which would lead to the continuation of ad hoc sporadic subdivision within this area and the associated cumulative deterioration of rural character and amenity values associated with it.

9.0 Part 2 Matters

9.1 Section 5 – Purpose

9.1.1 Part 2 of the Resource Management Act 1991 details the overarching purpose and principles of the Act

9.1.2 In terms of Part 2 of the Act, the proposed activity must meet the purpose of the Act set out in section 5 which is “to promote the sustainable management of natural and physical resources.” As outlined in section 5(2), “sustainable management” means:

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

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

9.1.3 The proposal is considered to be inconsistent with the purpose of the Act as the proposal does not recognise and provide for the sustainable management and development of natural and physical resources or enable people and communities to provide for their social, economic and cultural well being in a way or at a rate that will avoid, remedy or mitigate adverse effects on the receiving environment. As has been demonstrated in the previous sections of this report, the proposal represents the continuation of an ad hoc and sporadic approach to subdivision and will result in the erosion of rural character and amenity elements in the surrounding environment beyond an acceptable level. For these reasons, the proposal is not consistent with the short term, or long term integrated and sustainable management of the receiving environment in accordance with section 5 of the Act.

9.1.4 Section 5 of the Act is supported by a number of other ancillary principles contained in sections 6, 7 and 8 in Part 2 of the Act that provide decision makers with a set of guidelines that reflect current government policies and ideologies in regards to resource management, and assist in the interpretation of sustainable management. The relevance of these sections to the proposed subdivision is assessed below.

9.2 Section 6 – Matters of National Importance

9.2.1 Section 6 of the Act highlights matters of national importance that shall be recognised and provided for in order to achieve the sustainable management purpose of the Act. No matters provided under section 6 are considered to be relevant to consideration of this application.

9.3 Section 7 – Other Matters

9.3.1 Section 7 of the Act lists other matters that particular regard shall be given to in order to achieve the purpose of the Act. The following matters as outlined in Section 7 of the Act are considered particularly relevant to the consideration of 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

9.3.2 In regards to section 7(b) it is considered that in accordance with the assessment in previous sections of this report that the proposal does not represent the efficient use and development of natural and physical resources, as it promotes the continued sporadic and ad hoc subdivision of a rural environment that is not specifically provided for in Council statutory or non-statutory documents.

9.3.3 In terms of section 7(f) and (c) it is considered that the proposal does not represent the maintenance and enhancement of amenity values or the quality of the environment, as the subdivision will continue the cumulative degradation of the rural character and amenity values that contribute to the quality of the receiving environment beyond an acceptable level.

9.4 Section 8 – Treaty of Waitangi

9.4.1 Section 8 requires that decision makers take into account the principles of the Treaty of Waitangi in managing the use development and protection of natural and physical resources. Section 8 is considered irrelevant to this application as the proposal does not affect the principles of the Treaty of Waitangi.

10.0 Conclusion & Recommendation

10.1 Conclusion

10.1.1 Given its non-complying activity status, in order for Council to consider granting consent the application must pass one of the 'gateway tests' under section 104(D) of the Resource Management Act 1991. The two facets of section 104(D) require Council to assess whether the effects of the proposal will be no more than minor, or whether the proposal will not be contrary to the relevant objectives and policies of the relevant plans. In this regard, the proposal fails in both respects for the following reasons:

- It is considered that the effects of the proposed subdivision are **more than minor** in this instance for the following reasons:
 - In accordance with the assessment and conclusions from Landscape Architect-Rebecca Skidmore the landscape effects associated with the proposal are considered to be more than minor in this instance.
 - While it is clear that there are smaller allotments in the vicinity of the subject site, it is my professional opinion that the smaller size of the proposed allotments along with proposed hedgerow planting and the development opportunities that the subdivision creates represents a further decrease in allotment sizes that will result in an unacceptable deterioration of the rural character and amenity values in this area
 - The subdivision promotes the further intensification of the site and surrounds in a sporadic manner that will cumulatively result in the unacceptable deterioration of rural character and amenity values within this rural area that is not identified for such growth within the District Plan.
- It is considered that the proposed subdivision represents ad hoc sporadic subdivision in the Countryside Environment that is therefore **contrary** to the array of relevant objectives and policies of the District Plan, particularly those relating to *Chapter 5 – Amenity Values*, *Chapter 6 – Built Form and Development* and *Chapter 8 – Subdivision and Development*.

10.1.2 The proposal is considered to be inconsistent with the purpose and principles of the Resource Management Act set out within Part 2 as the proposal represents an ad hoc approach to the management of the rural land resource, given that the proposal represents an ad hoc and sporadic approach to subdivision that will result in the erosion of rural character and amenity elements in the surrounding environment beyond an acceptable level.

10.1.3 In terms of precedent the proposal represents a significant departure from the provisions of the District Plan pertaining to subdivision in the Countryside Environment and there are no evident unique, unusual or distinguishing characteristics that serve to take this application outside of the generality of cases or similar sites in the vicinity or the wider Countryside Environment. Therefore it is considered that the proposal is likely to give rise to an unacceptable precedent for the approval of similar applications in the future which would lead to the continuation of ad hoc sporadic subdivision within this area and the associated cumulative deterioration of rural character and amenity values associated with it.

10.1.4 Having considered the application against the relevant provisions of the Act, it is therefore recommended that this application be **declined**.

10.2 Recommendation

THAT pursuant to sections 104, 104B and 104D of the Resource Management Act 1991, Commissioner Giles Bramwell **declines** consent to Martin and Carolyn Rae Peters (SD1200021) to subdivide Lot 1 DP 102262 (Identifier: NA57B/1303) which has an area of 4.7955 hectares, into two separate allotments with the following net site areas Lot 1- 2.10ha and Lot 2- 2.5024ha.

The site is situated within the Countryside Environment under the operative provisions of the Whangarei District Plan. The proposal does not comply with the controlled or discretionary activity provisions relating to allotment area pursuant to Rule 73.3.1 and is therefore considered a non-complying activity on this basis.

Reasons for the Recommendation:

- 1 The proposal does not satisfy the statutory 'gateway tests' pursuant to Section 104D of the Act as:
 - a It is considered that the effects of the proposed subdivision are **more than minor** in this instance for the following reasons:
 - i In accordance with the assessment and conclusions from Landscape Architect-Rebecca Skidmore the landscape effects associated with the proposal are considered to be more than minor in this instance.
 - ii While it is clear that there are smaller allotments in the vicinity of the subject site, it is my professional opinion that the smaller size of the proposed allotments along with proposed hedgerow planting and the development opportunities that the subdivision creates represents a further decrease in allotment sizes that will result in an unacceptable deterioration of the rural character and amenity values in this area.
 - iii The subdivision promotes the further intensification of the site and surrounds in a sporadic manner that will cumulatively result in the unacceptable deterioration of rural character and amenity values within this rural area that is not identified for such growth within the District Plan.
 - b It is considered that the proposed subdivision represents ad hoc sporadic subdivision in the Countryside Environment that is therefore **contrary** to the array of relevant objectives and policies of the District Plan, particularly those relating to *Chapter 5 – Amenity Values*, *Chapter 6 – Built Form and Development* and *Chapter 8 – Subdivision and Development*.
- 2 The proposal is considered to be inconsistent with the purpose and principles of the Resource Management Act set out within Part 2 as the proposal represents an ad hoc approach to the management of the rural land resource, given that the proposal represents an ad hoc and sporadic approach to subdivision that will result in the erosion of rural character and amenity elements in the surrounding environment beyond an acceptable level.
- 3 In terms of precedent the proposal represents a significant departure from the provisions of the District Plan pertaining to subdivision in the Countryside Environment and there are no evident unique, unusual or distinguishing characteristics that serve to take this application outside of the generality of cases or similar sites in the vicinity or the wider Countryside Environment. Therefore it is considered that the proposal is likely to give rise to an unacceptable precedent for the approval of similar applications in the future which would lead to the continuation of ad hoc sporadic subdivision within this area and the associated cumulative deterioration of rural character and amenity values associated with it.

Advice Notes

- 1 The applicant shall pay all charges set by Council under Section 36 of the Resource Management Act 1991. The applicant will be advised of the charges as they fall.
- 2 Section 357B of the Resource Management Act 1991 provides a right of appeal to this decision. Appeals must be in writing, setting out the reasons for the appeal, and lodged with the Environment Court within 15 working days after the decision has been notified to you. Appellants are also required to ensure that a copy of the notice of appeal is served on all other relevant parties.

11.0 Attachments

1. **The application (as lodged).**
2. **Engineering Assessment of Senior Environmental Engineering Officer, Vlad Rozov.**
3. **Landscape and Visual Effects Assessment Review – prepared by Rebecca Skidmore (dated June 2012).**
4. **Section 92 Request to Agent (dated 16th March 2012).**
5. **Copy of Email requesting correct signatures on written approvals (dated 21st March 2012).**
6. **Formal Response to Section 92 Request from Agent (dated 3rd April 2012).**
7. **Email confirming that Council intended to fully notify the application (dated 13th April 2012).**
8. **Planning Maps for the subject site.**
9. **Northland Regional Council Neutral Submission.**
10. **Copy of Environment Court J Blampied v Whangarei District Council and WJ Childs and LM O’Grady [2012] NZEnvC 54**
11. **District Plan Chapters**
 - **Chapter 5 – Amenity Values**
 - **Chapter 6 – Built Form and Development**
 - **Chapter 8 – Subdivision and Development**
 - **Chapter 22 – Road Transport**