

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
22 May 2014
10am**

**Application by
Uphof Investment Trust**

**Commissioner
Alan Withy**

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Report to Hearings' Commissioner Alan Withy on a Resource Consent Application

The Uphof Investment Trust seeks to convert an existing barn into an artisan cheese making facility incorporating a deli shop and 40 person cafe operating between the hours of 7am until 5pm for 5 unspecified days a week and 7am until 10pm on 2 unspecified days a week. A car park for 20 cars and a passing bay is also proposed to be constructed. The proposal is located within the Countryside Environment under the Operative District Plan.

This resource consent application was lodged by Resource Management and Assessment Ltd on behalf of the Uphof Investment Trust and was reported on by Council's Environmental Planner (Consents), Carine Andries.



**Carine Andries, Environmental Planner
(Consents)**

12 May 2014

Date

This report was peer reviewed by the following signatory:

**Alister Hartstone, Manager (Resource
Consents)**

Statement of staff qualification and experience

Carine Andries – Council Environmental Planner (Consents)

I hold the qualification of a Bachelor of Business (Management and Communications) from Manukau Institute of Technology and a Master of Resource and Environmental Planning (Honours) from Massey University. I am a Grad-3 member of the New Zealand Planning Institute. I have been employed as an Environmental Planner (Consents) with the Whangarei District Council since 1 August 2011, and prior to this held the role of Policy Planner (Urban) with the same organisation. Previous to working for the Whangarei District Council, I was employed by Duffill Watts and King as a Consents Planner assessing applications for the Kaipara District Council. Overall, my work experience has included reporting on a broad range of subdivision and land use consents, undertaking research and consultation for plan changes, preparing submissions on proposed higher level regulation and undertaking work for Whangarei's growth strategy.

Dean Murphy – 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 with a NZCE (Civil) and am a graduate member of the Institute of Professional Engineers New Zealand Inc (GIPENZ). I have 5 years experience in civil construction site engineering and project management, including earthworks, drainage, roading, water treatment plant, sewer scheme & roading maintenance. I have been employed with the Whangarei District Council for the last 7.5 years as a Senior Environmental Engineering Officer.

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 in relation to engineering matters.

The above staff members 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.

Section 42A Hearing Report

Hearing By: Hearing Commissioner Alan Withy of a proposal to convert an existing barn into an artisan cheese making facility incorporating a deli shop and 40 person cafe by the Uphof Investment Trust.

The application site is located at 1036 Cove Road, Waipu, legally described as Lot 1 DP 362756, contained in Computer Freehold Register 256009, and is located within the Countryside Environment under the Operative District Plan.

Evidence By: Carine Andries, Environmental Planner (Consents). MRP (Hons), BBus(Mgmt & Comms), MNZPI (Grad 3).

File Refs: LU1300140 P116331.LU

Dated: 9 May 2014

1.0 The Proposal & Background

1.1 The Proposal

- 1.1.1 The applicant proposes to establish and operate an artisan cheese production facility incorporating a cheese production kitchen, maturation areas, storage and handling areas. In conjunction with this activity, it is proposed to operate a deli shop and cafe providing seating for up to 40 people, including a fully equipped commercial kitchen for food manufacturing purposes.
- 1.1.2 The application, originally, proposed hours of operation to be “between 7am and 8pm or less, and a 7 day operation in peak weeks, reducing to fewer days matching area demand”. However, consent was sought to operate between 6am and 10pm, with the reason being that cheese production is to be undertaken most weeks of the year.
- 1.1.3 Following a request for further information, the applicant’s agent clarified that, at first, cheese making would be infrequent, and that in most instances it would be undertaken in the morning, although in certain circumstances could happen after evening milking. Maturation processing and packaging will happen 5 days a week during normal office hours. The deli shop and cafe hours would be between 7am and 2pm most week days, with Fridays, weekends and other specific days up to 10pm. In shoulder periods, activity may only be 3 to 5 days a week with opening hours reduced, but able to be booked out for groups. April to September, it would be likely for the shop and cafe to be closed for extended periods, or open only on weekends.
- 1.1.4 More recently (10 Feb 2014), the applicant’s agent has advised that Mr and Mrs Uphof have proposed to “limit the number of days that the site is open for visitors up to 2200 hours to a maximum of 2 days per week with standard hours of operation being between the hours of 0700 to 1700”.
- 1.1.5 The operation is to be undertaken in a 288m² existing barn which is to be converted and, later on, extended to a total of 498m² ground floor area, plus an additional 150m² basement. Bathroom facilities are to be added to the building, including associated effluent treatment and disposal system.
- 1.1.6 Some minor upgrading of the access and parking areas are proposed, including the installation of a passing bay, although surface areas are to remain as an unsealed aggregate formation. Originally, it was proposed to trim or remove vegetation on adjacent private

property to improve sight lines at the entrance on Cove Road. Written approvals had been obtained for this. However, these written approvals have since been withdrawn, and the applicant's traffic engineer now proposes to install a convex mirror on the opposite side of Cove Road to improve sight lines for exiting vehicles. Maximum traffic movements within any 24 hour period have been estimated to be 90.

1.1.7 Consent is sought to implement the proposal over a 10 year timeframe.

1.2 Background

1.2.1 The initial application (as contained within Attachment 2) was lodged on 7 November 2013. On 14 November, a request for further information (Attachment 3) was sent to the agent relating to the following issues:

- a) Clarification and reasoning for proposed operating hours given their extensive nature
- b) Assessment of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES), including the historic uses of the existing barn and stock yards.
- c) Copy of consent notice
- d) Activity status of the proposal
- e) Sight benching and vegetation clearance to improve sight lines.
- f) Proposed drainage flow paths from the vehicle access in relation to the proposed location of the effluent field
- g) Surface of proposed car park.

1.2.2 On 18 November 2013 an amended scheme plan was requested to clearly define the areas used for the cafe and retail purposes (Attachment 1).

1.2.3 Further information was received on 29 November 2013, which triggered further issues for clarification, particularly with regard to a closing time of 10pm, and matters with regard the NES (Attachment 3). This was requested on 6 December 2013.

1.2.4 On 11 December 2013, Council received information stating that the cafe was also intended to cater for small functions, and as such, a closing time of 10pm was proposed. Further information on the NES and practitioner qualifications were also provided.

1.2.5 The information that the proposal included catering for small functions generated concerns around noise, given the site's location within the Countryside Environment. Having consulted Council's Environmental Health Officers, it was decided, on 13 December 2013, to request a noise/acoustic assessment from the applicant. In their reply of 16 December 2013, the applicant's agent suggested that such a report was not necessary given the applicant is aware of the permitted activity thresholds for noise, as stipulated in the District Plan, and was confident these limits would not be breached. It was suggested that an advice note would suffice to address this issue. The agent also considered that the request for an acoustic assessment was a new and distinct issue from those raised in the further information request. An acoustic report would add significant costs to the project and would impose considerable time delays; and while consent was sought to operate up to 10pm, this upper time limit would be the exception rather than the rule. Functions were anticipated to happen only 'occasionally'.

1.2.6 Noting the applicant's reluctance to undertake a noise assessment, Council made further phone enquiries with the Styles Group, acoustic engineers, to determine how to proceed with the application. Based on this advice, the applicant was offered the option of not providing an acoustic report if confirming that all activities would be undertaken entirely indoors, and accepting relevant conditions of consent, including maximum capacity, no outdoor areas for use by patrons, and noise limits. If any outdoor areas were intended, Council's advice was that noise could become a significant issue.

- 1.2.7 On 18 December 2013, Council received confirmation from the applicant's agent stating that all activities are intended to be undertaken inside the building.
- 1.2.8 Following on from this information, a total number of seven affected parties were identified and on 23 December 2013, the applicant was provided with the opportunity to seek written approvals. On 23 January 2014, Council received six of the seven written approvals.
- 1.2.9 In the meantime, however, the reporting planner received a number of phone calls from identified affected parties wanting to discuss the proposal and see what it would mean for them. Council also received advice that another neighbouring party, with similar views of the application site as identified parties, had concerns about the proposal and were wondering why they had not been identified as being affected. Upon conducting a review of the neighbouring sites, it was concluded that this property should have been included as an affected party as they will be affected to the same degree as the other identified parties.
- 1.2.10 On 30 January 2014, the applicant was requested to seek one additional written approval, making a total of eight requested written approvals.
- 1.2.11 On 6 February 2014, Council received an email from one of the identified affected parties, withdrawing their approval for the proposal. This was followed by another party withdrawing on 10 February 2014, while at the same time receiving written notice stating that a number of neighbouring parties were withdrawing their approval for vegetation clearance on their land, which would have assisted in improving sightlines.
- 1.2.12 The applicant's agent was advised of these withdrawals. This prompted a reply from the agent requesting Council proceed with notification while offering revised operating hours, being from 7am to 5pm on most days, with only two days of 10pm closing times. The agent also suggested that, based on a discussion with their engineer, safe and effective access and egress to and from the site could still be achieved even without the vegetation clearance.
- 1.2.13 Council's Senior Environmental Engineering Officer, Dean Murphy, was of the opinion that the retention of the vegetation could have significant impact upon traffic safety, and requested that an amended Traffic Effects Assessment be provided investigating the effects of the proposed changes. As such, on 12 February 2014, the applicant's agent was requested to provide the necessary information to satisfy Mr Murphy's concerns. The request also outlined that if traffic safety issues could not be satisfactorily addressed, the application may need to be publicly notified. The applicant was again prompted that, should the application result in public notification, it might be advisable to re-assess the proposal with regard to the use of outdoor areas, should such plans exist for the future, and include them at this point, rather than face the notification process a second time later on. In this instance, a noise report would be required.
- 1.2.14 On 14 February 2014, Council received an addendum to the Traffic Effects Assessment prepared by the applicant's engineer (Attachment 3). This assessment concluded that the use of a convex mirror at the entry/exit of the application site would suffice. Advice was also received that there were to be no further changes to the application.
- 1.2.15 Council's Senior Roading Engineer, Greg Monteith, considered the use of a convex mirror to be acceptable, and as such, the application was limited notified on 26 February 2014.
- 1.2.16 On 6 May 2014, the applicant's agent provided Council with an acoustic report, prepared by Hegley Acoustic Consultants (Attachment 4), which determines that, based on the assumptions made in the report, noise levels associated with the proposed activities will comply with the permitted activity rules of the District Plan.

2.0 Site and Surrounds Description

2.1 Zoning, Resource areas and Other Notations

Whangarei District Council Operative Planning Maps 21 and 60 (Attachment 5) demonstrate the application site is located within the Countryside Environment.

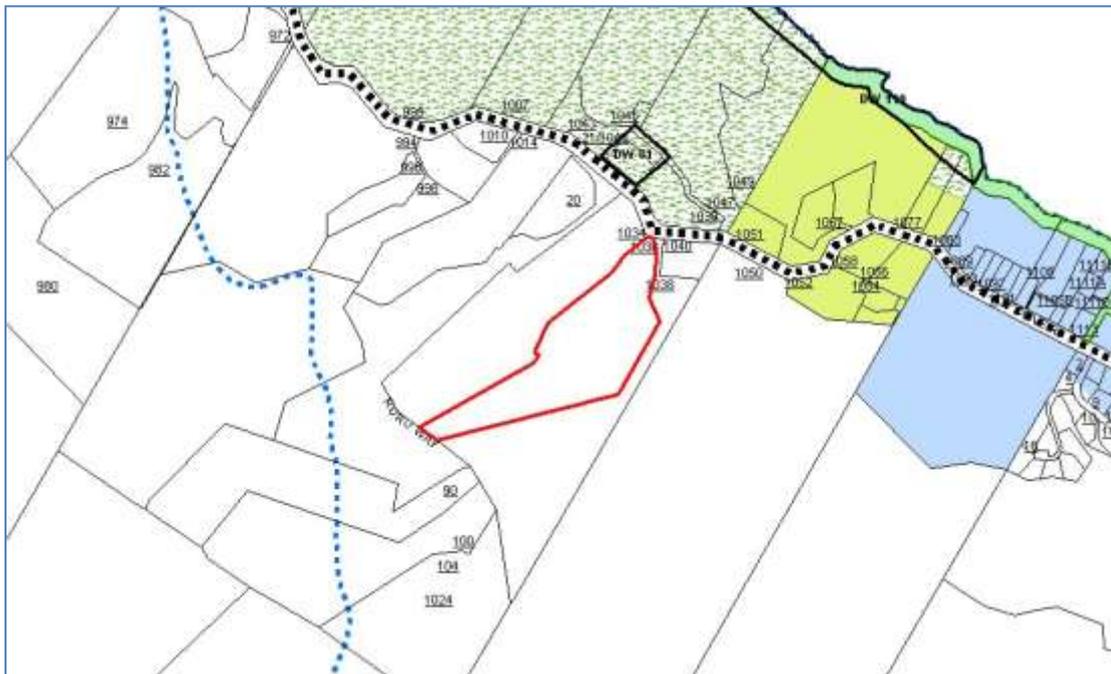


Figure 1: Environment (Zoning) of Application Site

- 2.1.1 In terms of land stability, Council's Geographic Information System, identifies the site as subject to a medium instability hazard. The southern half of the site is located within an area identified by the Department of Conservation as part of their Protected Natural Areas Programme (Q08/225g). This area also contains a stream which runs in a north-west to south-easterly direction.

2.2 Site Description

- 2.2.1 The application site comprises a total area of 3.7ha held in a single computer freehold register (CFR 256009). The land is legally described as Lot 1 DP 362756 and is located to the south of Cove Road and to the west of the coastal settlement known as Langs Beach. It has an undulating topography, sloping down from the road and culminating in a vegetated gully which forms part of ecological area Q08/225g, identified by the Department of Conservation as part of their Protected Natural Areas Programme.
- 2.2.2 The site has an unusual shape, which is somewhat triangular. There is little road frontage in comparison to the size of the lot. No residential unit has been established, although a barn is located along the north-western boundary together with an outdoor horse training arena and stock yards. The site contains some trees, mainly poplars, and shrubs around the barn, horse arena and stock yards, but is otherwise reasonably devoid of vegetation other than the gully in the southern part of the property.
- 2.2.3 The immediately surrounding area is characterised by the prevalence of lifestyle blocks of varying sizes. Further to the south/south-west a number of larger farming blocks remain. To the east, an area of land is zoned Living 3 Environment, which is at an approximate distance of 115m from the entrance of the application site. The Living 3 Environment leads on to the Living 1 Environment of the Langs Beach settlement. The distance to Waipu Cove is approximately 1.3km as the crow flies.

3.0 District Plan Assessment

3.1 Reasons for Consent

- 3.1.1 The proposal infringes items d) and e) of rule 38.3.1 'Activities Generally' insofar as the total gross floor area of the building will exceed the 500m² allowed for commercial activities, taking into account the proposed extension to the barn and addition of a 150m² basement. The definition of 'gross floor area', being "the sum of the total area of all floor areas of a building or buildings, including additional floors above ground level, measured from the exterior faces of the exterior walls or from the centre line of walls separating two buildings but excluding covered parking areas and covered vehicle loading and unloading areas", does not preclude floors below ground level, as opined by the applicant's agent. Even though underground floors are not specifically mentioned within the definition, it is considered that the wording 'all floor areas of a building' means exactly that, whether floors are below or above ground level. The proposed activities are also to be undertaken within 100m of an existing residential unit on a separate site.
- 3.1.2 Given the proposal will furthermore infringe rule 38.3.6 'Traffic Movements' by generating an approximate 90 vehicle movements within a 24 hour period, the application will need to be assessed as a discretionary activity pursuant to rule 38.3.1 'Activities Generally'. The proposal constitutes a restricted discretionary activity pursuant to rule 38.3.6 'Traffic Movements' as it cannot comply with the 30 vehicle movements allowed for within a 24 hour period. Additionally, the proposal infringes rule 47.2.11 'Engineering Standards' as it cannot comply with the requirements for vehicle crossings and sight lines, and as such requires consideration as a restricted discretionary activity.
- 3.1.3 The proposal complies with all other relevant rules of chapters 38 and 47.
- 3.1.4 Overall, the application is considered to be for a Discretionary Activity.

4.0 Notification, Submissions and Written Approvals

4.1 Written Approvals

- 4.1.1 Section 104(3)(a)(ii) of the Act requires that no consideration may be had of any effect on a person who has provided their written approval to the application. The application, as lodged, contained the written approvals of the following parties:

- G M Hobson of 1040 Cove Road (Lot 1 DP 139407);
- L & A Uphof of 1034 Cove Road (Lot 3 DP 141550), who are the applicants for the current proposal and happen to own and reside on the neighbouring property.

During the notification process, it transpired that the written approval received for 1040 Cove Road, could in fact, not be considered as a written approval given that Mr Hobson, who had made a statement that he was signing on behalf of all owners, had no right to do so. As such, the approval of all owners had not been received.

4.2 Notification

- 4.2.1 Having undertaken an assessment of the proposal's effects on the wider environment, it was determined that the adverse effects were less than minor, however, the effects on the localised environment were determined to be more than minor. As a result, the proposal was limited notified on 26 February 2014.

4.3 Submissions

- 4.3.1 The period for submissions opened on 26 February 2014 and closed on 25 March 2014. Copies of the application were served upon parties in the immediate vicinity of the application, the Patuharakeke Te Iwi Trust Board, and the Northland Regional Council.

- 4.3.2 Council received a total of seven submissions within the timeframe. Four of the submissions seek the application be declined, two were in support of the application, and one remained neutral.
- 4.3.3 The individual submissions are summarised as follows (a full copy of the individual submissions can be viewed in Attachment 6).

Submitter	Issues and Relief Sought
G and L French	<ul style="list-style-type: none"> • The submitters note that the proposal is out of character with the intentions of the Whangarei Coastal Management Strategy and structure plan for the Waipu Cove/ Langs Beach area, and believe the whole community should be able to have a say on whether industrial and commercial activities should be allowed. • The submitters question the scale of the operation based on the amount of milk required to make 1kg of cheese, and consider that waste generated through the process may become a problem in terms of disposal, as well as odour. • Issues of future expansion are raised with examples given, such as the Puhoi and Whitestone Cheese factories • The submitters question operating hours in light of a proposed on-site bakery and cafe opening time of 7am and the facilitating of events until 10pm. Noise, specifically, has been raised as an issue, particularly on summer evenings, and the realistic nature of not providing any outdoor facilities for visitors is queried in light of Northland’s summer conditions. • Submitters consider the traffic movements estimate to be conservative, especially when ‘events’ would be held; and consider the continued use of an aggregate formation for the driveway a nuisance in terms of both noise and dust. • Traffic safety is also raised as an issue, given the application site is located on a bad corner of Cove Road. • The submitters share the vehicle crossing/right of way with the applicant and consider the proposal, if granted, will make for an unbalanced use of this access, for which they are partly responsible. The submitters acknowledge that, should consent be granted, the use of the access will be a civil matter between them and the applicant with no responsibility for Council. <p>Relief sought: The application be declined.</p> <p>Submitters wish to be heard.</p>

Submitter	Issues and Relief Sought
D Witcombe & S Gibson	<ul style="list-style-type: none"> • The submitters note that the proposal is out of character with the intentions of the Whangarei Coastal Management Strategy and structure plan for the Waipu Cove/ Langa Beach area, and believe the whole community should be able to have a say on whether industrial and commercial activities should be allowed. • The submitters question the scale of the operation based on the amount of milk required to make 1kg of cheese, and consider that waste generated through the process may become a problem in terms of disposal, as well as odour. • The submitters question operating hours in light of a proposed on-site bakery and cafe opening time of 7am and the facilitating of events until 10pm. Noise, specifically, has been raised as an issue, particularly on summer evenings, and the realistic nature of not providing any outdoor facilities for visitors is queried in light of Northland's summer conditions. • Submitters consider the traffic movements estimate to be conservative, especially when 'events' would be held; and consider the continued use of a "metaled finish" for the driveway would add to noise pollution especially early mornings and late nights. • Traffic safety is also raised as an issue, given the application site is located on a bad corner of Cove Road. As people who use Cove Road consistently, the use of a mirror is not considered to be a preventative measure, and would not alleviate the danger. Concern is also expressed for pedestrians, joggers and cyclists who frequently use Cove Road over the summer months given the proposal is considered to increase overall traffic movements. • The submitters express concern for Mr and Mrs French who share the vehicle crossing/right of way with the applicant and consider the proposal, if granted, will make for an unbalanced use of this access. The submitter acknowledges that, should consent be granted, the use of the access will be a civil matter between the two parties, with no responsibility for Council. <p>Relief sought: The application be declined.</p> <p>Submitters wish to be heard.</p>

Submitter	Issues and Relief Sought
M and J Hirsch Cervus Trust	<ul style="list-style-type: none"> • The submitter questions the scale of the operation based on the amount of milk required to make 1 ton of cheese. • The submitter does not believe a car park for 20 cars will be sufficient based on their understanding that there will also be a market hall with stall holders on the property and that staff will have to work in shifts considering the long opening hours. • Submitter considers the traffic movements estimate to be conservative when taking into account shift changes for staff, long opening hours facilitating multiple sittings per day and the potential for events to be held. • The submitter believes there will be substantial noise associated with the proposal, including from music bands, announcements over speakers and early morning traffic of staff and delivery vehicles. Light pollution has also been highlighted as a concern together with the sun's reflection on cars and windscreens. • The submitter raises concerns relating to the effects on visual amenity from the use of outdoor stainless steel tanks and on their outlook, privacy, and considers the proposal will create offensive odours and change the landscape and views. • Concern is expressed about the amount of waste water to be created as part of the cheese making process, where it will be disposed of, the effects on the nearby native vegetation and creek, and the estimates provided in the application are queried. • Traffic safety is also raised as an issue, given the application site is located on a bad corner of Cove Road. Concern is expressed for pedestrians who frequently use Cove Road over the summer months. The proposal's traffic assessment is queried given it is based on a speed environment of 60km per hour, whereas this speed only applies to summer periods. Outside of this period, the speed environment is 80km per hour. <p>Relief sought: Decline the application</p> <p>Submitters wish to be heard.</p>
R Ogra, R Bhat and Winaki Ltd	<ul style="list-style-type: none"> • Submitters did not specify particular issues of concern. <p>Relief sought: Decline the application</p> <p>Submitters do not wish to be heard.</p>

Submitter	Issues and Relief Sought
J and J Bailey	<ul style="list-style-type: none"> • The submitters praise the applicant for being hard working and for having made numerous improvements to the property on which the applicant resides. • The submitters, being the closest neighbours, point out that they cannot hear any car doors from the Uphof property, nor can they hear their children when sitting on the deck which faces the Uphof's property. • The submitters consider the existing barn to fit perfectly within the landscape and are certain the Uphofs will make it look more attractive. • They understand all operations will be undertaken indoors and that the maturing of cheese will be done in a sustainable way by using an underground facility. • The submitters believe that they will not be affected by any traffic going down the driveway to the proposed cafe, and believe most early morning visitors would be on foot. • The submitters see the road planning as proposed as part of the proposal as being positive and will remedy the existing dangerous road visibility. <p>Relief sought: Approve the application</p> <p>Submitters do not wish to be heard.</p>
Watson Searle Family Trust, TW & CE Watson and Y & A Searle	<ul style="list-style-type: none"> • Submitters did not highlight any specify matters. <p>Relief sought: Approve the application</p> <p>Submitters do not wish to be heard.</p>
New Zealand Historic Places Trust	<ul style="list-style-type: none"> • The submitter notes that, although no recorded archaeology is identified on the subject site, there are recorded archaeological sites to the west of the site and further to the south at McKenzie Cove. • The submitter has no specific concerns regarding the proposal but recommends that an Accidental Discovery Protocol be included as a condition of consent, should consent be granted. <p>Relief sought: Not stated.</p> <p>Submitter did not state whether they wanted to be heard or not.</p>

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.*

6.0 Actual and Potential Effects on the Environment (s104(1)(a))

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 the Countryside Environment, the Plan permits commercial and industrial activities where a gross floor area of 500m² is not exceeded, and where these activities are not located within 100m of an existing residential unit on a separate site.

6.2.3 In this instance, the proposed activity will exceed the gross floor area by approximately 148m², and the building is located within 100m of two residential units on separate sites, one of these residences being the applicant's residence.

- 6.2.4 Any activity in the Countryside Environment is also permitted if it does not cause the total traffic generation to and from the site to be more than 30 movements in any 24 hour period. The traffic assessment provided with the proposal estimates a total of 90 movements in any 24 hour period, which is treble the number allowed for as a permitted activity.
- 6.2.5 Similarly, any activity in the Countryside Environment is permitted if the noise generated by the activity does not exceed the limits as outlined in rule 38.3.10 'Noise'. The applicant's agent has, in the last days of preparing this report, submitted an acoustic report which determines that, based on a number of assumptions, the noise levels associated with the proposed activities comply with the limits as set out in rule 38.3.10 (Attachment 4). It is considered that further clarification is required on the assumptions made in this report in order to make a definitive and well-informed decision on this issue. It is assumed that the further clarification will be discussed at the hearing. In particular, night time noise levels immediately after 10pm remain of concern.

6.3 Amenity and Character

- 6.3.1 The proposal is to operate an artisan cheese making facility, deli shop and cafe by converting an existing barn, and over time, extend this barn to enlarge the proposed operation. The subject site is located within a well-defined visual catchment where the property is situated on the lower land with adjacent lifestyle blocks rising to form a ridgeline. As a result, quite a number of neighbouring dwellings have direct line-of-sight with the subject site, the existing barn, and horse training arena.
- 6.3.2 Given that the barn is an existing feature of the site, any visual effects associated with this building have largely been established. It is considered that farm buildings of this nature are entirely appropriate within a rural and rural-residential setting such as this. As long as any proposed external additions to this building remain in keeping with the existing character, any visual effects associated with this building will be less than minor. Relevant conditions of consent can be included as part of any consent to ensure this is achieved.
- 6.3.3 The conversion of the existing horse training arena into a car park for 20 vehicles and the construction of a heavy goods vehicle turning bay and loading area represents a change from a 'natural' and 'rural' view to one that has more 'urban' connotations. Although the proposal offers no landscaping to mitigate the effects of the 'bulk' of 20 cars, or limit the view of the driveway or turning bay to mitigate the view of cars or trucks entering and exiting the site, recent discussions with the applicant have indicated that mitigation planting is acceptable. As such, it is considered that any visual effects associated with the car park, driveway and turning bay can be largely mitigated by appropriate landscaping conditions so that any remaining adverse effects would be less than minor.
- 6.3.4 One submitter, in particular, has raised concern about the potential for outdoor storage of stainless steel tanks as part of the cheese production process. Having requested that the applicant provide comment on the issues raised by submitters, the applicant has stated that there is no intention to have steel tanks located external to the buildings. As such, it is considered that adequate conditions of consent can be imposed to ensure this issue does not arise. The applicant's comments on the submissions are enclosed as Attachment 7.
- 6.3.5 On the issue of operating a 'market hall' with stall holders on the subject site, as suggested in a submission, the applicant has advised that this idea is based on a misunderstanding between the applicant and the submitter, and that this concept had merely emanated from 'blue sky' discussions between the two parties. The applicant has informed Council that there is no intention to use the site in this manner, and indeed, consent is not sought for such an operation.
- 6.3.6 On the whole, it is considered that any adverse visual effects associated with the proposal can be largely mitigated by appropriate conditions of consent, if consent is to be granted.
- 6.3.7 In terms of general amenity and character, the proposal represents a much more intensive land use than the current use of the site. Having no residential unit, and as such no permanent residents, the site creates little by way of disturbances, and thereby adds to the overall quiet nature of the area. Although the area as a whole can no longer be said to be

'rural' in the sense of being a 'productive' area, it still retains a large number of the amenity values associated with low-density residential living, due to the high presence of lifestyle blocks. The District Plan highlights the following values, which are still considered to be present here:

- A low intensity of development: the locality contains many lifestyle blocks and is considered to be more rural-residential in nature.
- Feelings of remoteness and community: although the locality is not 'remote' in the sense of being far removed from urbanised centres, the topography, landscape, native vegetation and (coastal) views afforded to this distinct visual catchment, still provide for a sense of calm and quietness that contribute to feelings of remoteness.
- Open landscapes and views: although the views from the application site are more rural in nature, adjacent elevated properties enjoy wide coastal views.
- The intermittent nature of most agricultural activities: No large productive farming activities appear to be located in the immediate vicinity of the application site, although activities such as fertilising pastures can still be carried out on smaller lifestyle blocks.
- Low noise levels, particularly at night: although no night time observation has been carried in the processing of this application, given the absence of any nearby industrial or commercial activities, it is considered that night time noise levels are likely to be low.
- A high degree of privacy: it is considered that a high degree of privacy is provided to most residences due to the topography of the area and the presence of large areas of native vegetation.
- Daylight and sunlight access: due to the low levels of development and relatively large size of properties, access to daylight and sunlight is readily available.
- Low levels of vehicular traffic: levels of traffic in this area are very seasonal, although overall, levels are considerably lower than what would normally be expected from an arterial road.
- Green 'unspoiled' landscape with indigenous vegetation: although the wider landscape has been modified over time due to human habitation, large areas of unspoiled native vegetation remain on the elevated southern areas of the locality.

6.3.8 With regard to the proposal, it is considered that establishing an artisan cheese making facility in conjunction with a cafe for 40 patrons and a deli shop will significantly increase the use of the site, and will change its character by virtue of being open to the general public, rather than retaining its private use. The cheese production side of the proposal can be undertaken entirely indoors, and is considered to create few adverse effects that cannot be mitigated by appropriate conditions of consent. Indeed, subject to floor area restrictions, this activity could be a permitted activity under current District Plan rules.

6.3.9 The applicant has recently provided further details in relation to the proposed scale of cheese production, and submitted that the proposed facility has a theoretical cheese making capacity of up to 40,000kg per year. At this capacity, delivery of milk only need occur once a day, and would consist, at most, of 2m³ which could be delivered via an appropriate trailer mountable small tank, or small refrigerated 3 ton truck.

- 6.3.10 Taking into account that by-products such as whey can be on-sold and that additional staff is required to assist in the cheese making process, the total number of vehicle movements associated with this activity is likely to sit below 15 movements per day, which by itself would fall within the permitted baseline for commercial activities. As such, any traffic disturbances associated with the production of cheese at this scale is considered to be acceptable within this environment.
- 6.3.11 A number of submitters have raised concern over odour emissions associated with the cheese making process. The applicant has addressed this issue by approaching the corporate tenants who occupy offices above the 'Over the Moon' cheese makers in Putaruru. One of the staff members there has provided Mr Uphof with a statement outlining that, although some smell was associated with the cheese making operation which was noticeable in the stairwell and hall of the building, this odour was by no means offensive and has never penetrated into the actual offices.
- 6.3.12 On this basis it is concluded that, given the proposed operation is of a similar scale and size as the 'Over the Moon' dairy, and that the closest neighbour is about 100m away, odour produced as part of the cheese making process is unlikely to be an amenity issue. The applicant has acknowledged, however, that if the whey by-product, which can be used as fertilizer for soils, were to be used in this manner, odour could result. This said, the property is located within a Countryside Environment, and as such, the fertilising of soils is considered to form part of everyday farming activities and as such, is considered an acceptable activity, whether conducted on large farms or on lifestyle blocks. The applicant has stated, however, that it is not the intention to use whey as a fertilizer as there are many other uses for this product, and given the applicant resides on the neighbouring site and runs a homestead with guest accommodation, such odours would not be considered attractive to visitors.
- 6.3.13 On the whole, it is considered that, provided appropriate conditions of consent are imposed, the artisan cheese making facility is entirely appropriate within this rural-residential setting and will not create undue adverse effects with regard to odour, noise, visual intrusions or general character and amenity that could not be sufficiently remedied or mitigated by conditions of consent.
- 6.3.14 The proposed cafe and deli shop, on the other hand, are considered to create significantly more adverse effects than the cheese production facility when considering existing character and amenity of the surrounding locality. The effects associated with these activities are less easily mitigated especially when considering operating hours from 7am until 5pm on five days a week, and 10pm on two nights a week.
- 6.3.15 Although the applicant's agent has recently provided an acoustic report, the assessment has been based on a number of assumptions, which require further clarification. Mr Hegley, in his report, states that the noise from vehicles and people in the car park has been based on field measurements undertaken at existing car parks, and that, in addition, the noise from the proposed cheese production kitchen, shop and cafe has been based on measurements of similar existing activities occurring at this site. It is unclear, however, whether these measurements include noise from vehicles moving across a metalled driveway and carpark, or whether the noise measurements are based on sealed surfaces.
- 6.3.16 Similarly, the report highlights that the permitted baseline for noise levels should take into account the fact that the property is located along an arterial road. Arterial roads are typically roads of high traffic volume or a significant component of through traffic (policy 22.4.1 of the District Plan). Although, in theory, this line of reasoning is accepted, it is also acknowledged that, in this instance, Council's Senior Roading Engineer, Greg Monteith, has advised that Cove Road, although classified as an arterial road, has low traffic volumes and a low operating speed, even in peak summer periods, which is more in line with a collector road than an arterial road. As such, it is considered that noise levels along Cove Road may not be as high as what may be expected from roads that operate at volumes representative of arterial roads.
- 6.3.17 This said, determining or assessing actual noise levels, is outside the planner's area of expertise and due to time constraints, these issues have been unable to be explored any

further. It is assumed that further discussion and clarification will be required during the hearing, particularly in relation to noise levels after 10pm, and potential licencing issues. Nevertheless, assuming that noise levels generated by the proposed activities can technically comply with the noise limits set by the District Plan, it is still questionable whether the sheer volume and frequency of these disturbances is acceptable in terms of character and general amenity, particularly on summer nights and on weekends.

- 6.3.18 These times are typically recognised as leisure time when lifestyle residents may want to enjoy the outdoor opportunities on their properties, and it is questionable whether it is reasonable to expect neighbouring residents to adapt to the disturbances emanating from up to 40 people and 20 cars over the course of a night time and possibly beyond 10pm on two unspecified nights every week over the summer period. It also has to be kept in mind that these disturbances could possibly start again at 7 o'clock the next morning, given proposed operating hours.
- 6.3.19 Although the applicant has confirmed that all activities are to be undertaken indoors and has agreed to conditions of consent addressing maximum capacity, no outdoor areas for use by patrons, and noise limit restrictions, one submitter in particular has queried the feasibility of not providing outdoor areas for patrons given summer conditions in Northland, especially with laws prohibiting smoking indoors. It is considered that this is a reasonable concern, as it would not be possible to prohibit people from going outside, if they wished to do so. Similarly, it would not be possible to stop children from using available outdoor areas, even if designated play areas were not identified.
- 6.3.20 In the absence of specified 10pm closing nights, it is not considered fanciful to suggest that 10pm closing nights are more likely to occur on a Friday and/or Saturday thereby creating likely weekend disturbances for neighbouring residents, many of whom have chosen to live in an environment that is typically characterised as being peaceful and quiet.
- 6.3.21 Even during daytime hours, the volume and frequency of disturbances due to the number of vehicle movements moving up and down a metalled driveway, and people entering and leaving the site, is considerably larger than what currently occurs on the site, or what is permitted under the District Plan for a commercial activity.
- 6.3.22 The applicant's traffic engineer has estimated a total of 90 vehicle movements per day for all combined activities, which is three times the number of vehicle movements allowed for under the District Plan. Council's Senior Roading Engineer, Greg Monteith, has assessed the proposal's traffic report, and has concluded that the numbers submitted are reasonable for the proposed activities. A number of submitters, on the other hand, have queried this number, considering this to be a conservative figure. The issue of dust as a result of these vehicle movements on a metalled driveway has also been raised. This too is acknowledged as a potential nuisance, given the traffic numbers proposed.
- 6.3.23 Regardless of the accuracy of the estimated vehicle movements, this volume of traffic, on a site where previously there was no traffic to speak of, and taking into account the permitted baseline of 30 vehicle movements per 24 hours, the proposal constitutes quite a significant change in character. Although the effects associated with residential living and commercial activities not generating in excess of 30 vehicle movement in a 24 hour period, must be considered as entirely feasible on this site, these effects are considered to be quite different from the effects associated with commercial premises that are open to the public at large, including the effects of dust, traffic volumes and frequency of noise disturbances from various sources.
- 6.3.24 Returning to the proposed hours of operation, being from 7am until 5pm on 5 days, and 7am until 10pm on two unspecified days a week, the proposal provides for potentially continual disturbances for the best part of 9 to 14 hours per day, especially during summer months when the number of visitors to the area are the greatest, and when surrounding residents look forward to enjoying the outdoor living opportunities their properties provide.
- 6.3.25 Although zoned 'Countryside Environment', the area contains numerous lifestyle blocks which make for an environment that is potentially more sensitive to commercial ventures than what a more open rural area would be. As it stands, the area, being of a rural-residential nature,

does not lend itself well to new commercial activities with extended operating hours targeted at the wider general public. A more open rural environment, on the other hand, would typically provide for larger farming operations with fewer neighbouring residential opportunities, and as such, would be able to better absorb commercial activities that produce more frequent disturbances such as vehicle movements and noise associated with the general comings and goings of people. Certain urban and/or commercial areas are also deemed to be better locations for the kind of activities proposed here.

6.3.26 It is considered that, from a business perspective, one would want to rely on tourists and day visitors that frequent the area in the peak summer time periods, but this idea stands in conflict with the amenity values aspired to by the people on neighbouring sites, who care to enjoy the outdoors on their doorstep, at the same time of year. Existing amenity values have been highlighted by a number of submitters who have expressed concern for their quality of life in relation to this proposal.

6.3.27 It is acknowledged that traffic movements and patronage are likely to decrease considerably over non-peak periods, the effects of which may be entirely acceptable during daytime hours. However, the effects associated with the proposed deli shop and cafe for 40 patrons with extended opening hours from 7am until 10pm, are considered to create adverse impacts upon the amenity and character of the surrounding environment that cannot be adequately remedied or mitigated, particularly during summer periods. Revised maximum capacity and operating hours more compatible with the surrounding lifestyle environment, and sealing of metalled surfaces, may well result in a different assessment.

6.4 Landscape and Ecological Effects

6.4.1 Although the southern half of the property is identified as being part of a Protected Natural Area, the proposal is located a considerable distance outside of this area, and as such, will not create any adverse effects upon the ecological values; nor will landscape values be negatively affected given the barn is an existing feature of the site, and any extension will be in keeping with the character of this building.

6.5 Site Suitability and Servicing

6.5.1 The application is supported by a waste water report prepared by Naturalflow NZ Ltd, dated 22 October 2013, which provides an outline of the investigations undertaken to determine the recommended waste water system, including effluent field slope gradient, soil category and water table depth. In the absence of reticulated wastewater services, on-site wastewater disposal arrangements are required. The recommended system meets the requirements of the NZ Building Code 3604 and the relevant sections of the AS/NZS 1546.1:2008 and AS/NZS 1547:2000; and the proposed effluent fields will achieve complying separation distances from existing overland flowpaths, in accordance with the Northland Regional Council Water & Soil Plan requirements.

6.5.2 Although one submitter has raised concern with regard the volume of waste water to be produced by the activities and proposed disposal method, Council's Senior Environmental Engineering Officer, Dean Murphy, has assessed the application and proposed waste water system, and is satisfied that the recommended design is adequate for the proposed purposes. Mr Murphy's report is enclosed as Attachment 8.

6.5.3 In addressing this submitter's concern, the applicant's agent put forward the potential alternative of connecting to the municipal mains sewer line that runs down Cove Road, although this was not an actual proposal. Council Infrastructure and Services Department, however, cannot determine whether this option is actually feasible without further information from the applicant. It is considered that the waste disposal method, as proposed, will adequately deal with any waste water produced.

6.5.4 Stormwater generated by the proposal will require treatment and attenuation while on-site supply of water for fire fighting purposes will also be required.

6.5.5 Subject to the recommended conditions of consent to ensure on-site servicing does not give rise to externalised effects and proceeds in accordance with the details outlined in the

application, and Whangarei District Council Environmental Engineering Standards 2010, it is considered that the applicant has demonstrated that the site is suitable for the development proposed.

6.6 Road Safety, Access and Parking Effects

- 6.6.1 Three submitters have highlighted the dangerous nature of the Cove Road corner from where the application site gains access. Concern has been expressed about the number of vehicles entering and exiting the site as a result of the proposal, the sight lines and the frequent use of Cove Road by pedestrians, particularly over summer months.
- 6.6.2 Council's Senior Environmental Engineering Officer, Dean Murphy, has outlined in his report that the existing vehicle crossing is required to be widened to allow for two way vehicle movements to prevent vehicles making a right turn entrance from waiting on Cove Road. In addition, vegetation clearance is to be undertaken in Council road reserve to the north-west of the vehicle crossing. According to Council's Senior Roading Engineer, Greg Monteith, this will improve sight lines to the north-west and will allow for approximately 90m visibility.
- 6.6.3 Furthermore, Mr Monteith has outlined that, although Cove Road is classed as an arterial road, traffic volumes are typically low and the operating speed, at 60km/hour in summer months, is low, which is more in line with a collector road. Visibility requirements for a collector road are 65m. Mr Monteith considers that the use of a convex mirror, as proposed, will achieve the required visibility, and deems the occurrence of vandalism to the mirror, although possible, to be rare. And in the case of such a rare occurrence, Mr Monteith considers this potential situation to be easily identified and rectified by the applicant.
- 6.6.4 With regard to number of vehicle movements, Mr Monteith has assessed the estimate provided by the applicant's consultant as reasonable, based on the use of the New Zealand Trips and Database, which is accepted as standard practise. Mr Monteith does not believe the site will generate large volumes of traffic and, in peak periods, would expect to generate a significant number of walk-in customers.
- 6.6.5 Internally, the increase in vehicle movements are proposed to be accommodated by way of a passing bay to be constructed in a suitable location, while a heavy goods vehicle turning bay is proposed to the south-west of the existing barn. Relevant conditions of consent have been outlined by Mr Murphy in his report. Additionally, the applicant is to construct a car park accommodating 20 vehicles, which will comply with Council standards.
- 6.6.6 On the basis that internal access arrangements will be formed in accordance with the Whangarei District Council Environmental Engineering Standards 2010 and that the receiving road network has sufficient capacity to accommodate the proposal, any effects on the safe and efficient operation of the receiving road network are considered to be less than minor.

6.7 Effects summary

- 6.7.1 Although the proposal will not affect the ecological or landscape values of the site, and while appropriate conditions of consent can be imposed addressing matters of site suitability and servicing, and road access and safety, it is considered that the combination of the adverse effects identified above, over extended operating hours including night time and weekends, is considered to negatively impact the general amenity values and character of the locality for which no appropriate remedies or mitigation can be provided, and as such are not acceptable or appropriate in this environment.

7.0 Relevant Policy Statements, Plans or Proposed Plans (s104(1)(b))

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

7.2 Operative and Proposed Regional Policy Statement for Northland (RPS and PRPS)

- 7.2.1 The Regional Policy Statement for Northland (RPS) was made operative in July 2002; however in October 2012, a new Proposed Regional Policy Statement for Northland (PRPS) was publicly notified, which will (in its final form) supersede the 2002 document. These documents contain high level policy guidance for the development of lower order statutory documents, including the Regional Soil and Water Plan, and the District Plan. The Resource Management Act 1991 requires that district plans must “give effect to” the regional policy statement of a region and must “not be inconsistent” with regional plans.
- 7.2.2 The RPS sets out the objectives and policies in relation to issues of main concern to Northland. It is considered that the proposed activities will not have any impact on these issues of concern, and as such the proposal is not deemed to be inconsistent with the RPS.
- 7.2.3 On 17 September 2013 the Northland Regional Council formally adopted the independent Hearings Commissioners' recommendations on provisions and matters raised in submissions on the PRPS as a decision. The document has not been declared as operative at this point in time (pending appeals) so full weighting cannot be given to the provisions at this time, however it is considered to more accurately reflect the current issues relating to subdivision and development than the RPS which was prepared in 2002. Therefore, in terms of controlling the effects of land use and addressing economic activity, Policy 5.1.1 *Planned and Co-Ordinated Development* of the PRPS seeks to ensure that:

Subdivision, use and development should be located, designed and built in a planned and co-ordinated manner which:

- a) *Is guided by the 'Regional Form and Development Guidelines' in Appendix 2;*
 - b) *Is guided by the 'Regional Urban Design Guidelines' in Appendix 2 when it is urban in nature;*
 - c) *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;*
 - d) *Is integrated with the development, funding, implementation, and operation of transport, energy, water, waste, and other infrastructure;*
 - e) *Should not result in incompatible adjacent land uses in close proximity and avoids the potential for reverse sensitivity; and*
 - f) *Ensures that plan changes and subdivision to / in a primary production zone, do not materially reduce the potential for soil-based primary production on land with highly versatile soils, or if they do, the net public benefit exceeds the reduced potential for soil-based primary production activities; and*
 - g) *Maintains or enhances the sense of place and character of the surrounding environment except where changes are anticipated by approved regional or district council growth strategies and / or district or regional plan provisions.*
- 7.2.4 In terms of the Regional form and development guidelines, the PRPS encourages business opportunities particularly in urban areas. The current proposal is not located within an urban area, but apart from that cannot be said to be inconsistent with the guidelines.
- 7.2.5 In its current form, the proposal is not considered to maintain or enhance the existing sense of place or character of the surrounding environment, as assessed earlier in this report, nor is the site or surrounding area identified for future zone changes in Council's Growth Strategy Sustainable Futures 30/50, which is to be taken into account as per item t) of the PRPS Appendix 2, Part A). In relation to the Waipu Cove/Langs Beach area, the growth strategy has taken its lead from the existing Whangarei Coastal Management Strategy and the Waipu

Cove/Langs Beach Structure Plan, and envisages that business growth in Waipu Cove/Langs Beach is unlikely to be significant over the next 30 to 50 years, given the growth potential in both Waipu and Mangawhai. As such, the zoning of a small area of business land in Waipu Cove is considered appropriate to accommodate a small increase in business.

7.2.6 On the whole, no apparent conflicts have been identified between the issues of concern in the RPS and the proposal. Based on the above assessment, it is considered that, although the proposal does not find direct support within the PRPS, it cannot be said to be inconsistent with the overall policy direction.

7.3 Regional Soil and Water Plan for Northland

7.3.1 The Regional Water and Soil Plan for Northland (RWSP), which is administered by the Northland Regional Council, covers the land and water resources of the Northland region, it controls discharges and land disturbance activities. The Plan aims to prevent activities occurring which would result in unacceptable adverse effects.

7.3.2 Council's Senior Environmental Engineering Officer, Dean Murphy, has considered the application relating to matters of site servicing, including engineering reports submitted which detail the proposal will achieve the environmental results anticipated by the RWSP. Mr Murphy is satisfied that, subject to appropriate conditions of consent, the proposal will achieve RWSP outcomes.

7.3.3 It is noted that the Northland Regional Council was notified of the application and that no submissions were received.

7.4 Operative Whangarei District Plan

7.4.1 Those objectives and policies of relevance to the proposal are included within Chapter 5 'Amenity Values', Chapter 6 'Built Form and Development', Chapter 8 'Subdivision and Development' and Chapter 22 'Road Transport'.

7.4.2 The following table assesses the proposed subdivision against the relevant objectives and policies within these Chapters:

Table 2 – Assessment of Relevant Objectives and Policies within the District Plan

Chapter 5 – Amenity Values	
Objective	Comment
5.3.1 The characteristic amenity values of each Environment are maintained and, where appropriate enhanced.	As assessed earlier in this report, the proposal is not considered to maintain existing amenity values of the surrounding lifestyle area due to a combination of factors, being the 1) proposed operating hours, particularly during the summer period and the number of people to be accommodated, combined with the inability to control or restrict human voices and behaviour (other than for unlawful activities) especially in the outdoors, 2) the volume and frequency of disturbances due to vehicle movements on metalled road and parking surfaces, 3) the potential for dust generation as a result of the frequent use of the metalled driveway and parking area in summer months.
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.	As outlined earlier, the proposal, in its current form, is not considered to be compatible with the amenity levels of the existing surrounding lifestyle environment. The area has not been identified in any Council adopted strategies or documents for future development patterns that differ with the existing situation. It is considered that the adverse effects ascertained, cannot

Policy	Comment
<p>5.4.1 Effects on the Local Environment</p> <p>To ensure that activities do not produce, beyond the boundaries of the site, adverse effects that are not compatible with the amenity values characteristic of the surrounding and/or adjacent environment unless, such effects are authorised by a district plan, a designation, a resource consent or otherwise. The following effects should be given particular consideration in this respect:</p> <ul style="list-style-type: none"> • Noise and effects; • Shading; • Glare; • Light spill; • Dust; • Smoke; • Odour; • Vibration; • Spray drift; • Visual amenity <p>Where internalisation of effects cannot be wholly achieved, the Council will consider a Best Practicable Option approach.</p>	<p>be sufficiently remedied or mitigated.</p> <p>Although it is considered that issues of visual amenity and odour are able to be sufficiently controlled via appropriate conditions of consent, concerns remain with regard to the level of dust created by the number of vehicle movements on a metalled accessway and parking area; and with regard to the volume and frequency of disturbances created by vehicles and people over a period of 9 to 14 hours of operation. Assuming that, based on the acoustic report provided, noise levels comply with District Plan limits, concern still remains around the number of noise disturbances created by the number of vehicle movements and people visiting the site. It is considered that, on the whole, the proposal is not consistent with this policy.</p>
<p>5.4.2 Character and Timing of Activities</p> <p>To allow activities where their nature, timing and duration do not result in adverse effect on amenity values beyond the extent compatible with the characteristics of the surrounding and/or adjacent Environment/s.</p>	<p>It is considered that one of the issues of this proposal is the direct conflict between the nature, timing and duration of, particularly, the proposed cafe activities with the amenity values of the surrounding area over the summer period. Being located between the tourist destinations of Waipu Cove and Langs Beach, it makes perfect business sense for the proposed cafe, and deli shop, to want to take maximum advantage of the summer period when tourist and day visitors flock to these areas for holiday and recreational opportunities. However, the summer period also provides the best time of year for owners of lifestyle blocks to take advantage of the outdoor opportunities on their land, which is located in a usually quiet, peaceful and natural setting. As such, it considered the proposal is contrary to the intent of this policy.</p>
<p>5.4.5 Countryside Environments</p> <p>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>Although the proposed artisan cheese making facility is considered entirely appropriate within this Environment, provided appropriate conditions of consent are imposed, the proposed cafe and deli shop, in their current format, are considered inappropriate within this locality, particularly in terms of character, intensity and scale.</p>
<p>5.4.7 Intensity and Design of Subdivision and Development</p>	<p>Provided appropriate conditions of consent are imposed, the proposal is not considered to compromise the outlook or privacy of adjoining properties to a</p>

<p>To ensure that subdivision and development do not unduly compromise the outlook and privacy of adjoining properties, and should be compatible with the character and amenity of the surrounding environment. Particular regard should be given to:</p> <ul style="list-style-type: none"> • The layout and intensity of subdivision; • The location, design and siting of buildings and structures except, where such buildings and structures provide a specific service for the surrounding environment. In the latter case, any building or structure shall be designed, laid out and located, so as to avoid, remedy or mitigate any adverse effects on the environment. 	<p>degree that is more than minor. However, as previously stated, the cafe and deli shop, as proposed, are not deemed to be compatible with the character and amenity of the surrounding environment.</p>
<p>5.4.12 Traffic</p> <p>To encourage vehicle movements and parking demand, where it does not adversely affect the amenity values of the particular environment in which it is located, having regard to the characteristics of that environment and adjacent environments, and the range of activities for which it makes provision for.</p>	<p>It is estimated the proposal will generate approximately three times the level of vehicle movements that is allowed for as a permitted activity under the Operative District Plan. Within this environment of mainly lifestyle blocks, it is considered that this level of traffic upon a metalled accessway and parking area can cause frequent disturbances that are generally out of place within this locality, and can potentially generate a level of dust that is outside of the norm for such an environment.</p>
<p>5.4.17 Activities Demanding High Amenity Values</p> <p>To ensure that activities are not permitted or acknowledged in areas where they may be adversely affected by existing land uses; or have adverse effects on (including compromising and restricting) existing land uses.</p>	<p>By their very nature and name, lifestyle blocks are associated with high amenity values in terms of low noise levels, open landscapes and views, a high degree of privacy and feelings of remoteness. It is considered that the current proposal will create adverse effects on these amenity values, as outlined earlier in this report.</p>
<p>Chapter 6 – Built Form and Development</p>	
<p>Objective</p>	<p>Comment</p>
<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>As the proposal is to be located between the settlements of Waipu Cove and Langs Beach, the proposed activity is not considered to represent 'consolidated' development. It is acknowledged, however, that neither of these settlements contain land zoned for business or commercial purposes. Nevertheless, the proposal is set to create a retail activity outside of nearby existing urbanised coastal nodes, thereby not contributing towards the vitality and viability of the existing centres.</p>
<p>6.3.10 Manage the location of retail activities to ensure they support a consolidated urban form, and support long-term vitality and viability of existing centres.</p>	

<p>6.3.14 Reduce energy consumption through energy efficiency in subdivision design and land development.</p>	<p>By virtue of locating the proposed activity outside of existing settlements, the proposal contributes to increased energy consumption in terms of vehicular use and, as such, is contrary to the intent of this objective.</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>Although the District Plan makes provision for some commercial activities in the Countryside Environment, to which the cheese making component of the proposal would be entirely suitable, it is considered that cafe and small retail activities are more appropriately located in urban environments to promote consolidation of development.</p>
<p>6.4.7 Business Activity</p> <ul style="list-style-type: none"> i) To encourage consolidation and development of the central business district (CBDs). ii) To avoid sporadic commercial development. iii) To promote agglomeration and clustering of businesses and industry. iv) To recognize and provide for the continued operation and appropriate further development of existing and commercial and industrial activities. 	<p>Taking into account the overall objectives as listed above, it is considered the proposed activities are more in line with sporadic commercial development, which is to be avoided.</p>
Chapter 8 – Subdivision and Development	
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>Although the proposal can be considered to represent the sustainable management of the land and built development of the site, the proposal does not sufficiently remedy or mitigate the adverse effects of the proposed activities to the extent that effects will be less than minor upon the surrounding environment.</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>As discussed previously, the proposal is not in keeping with the existing character of the locality, and by its very nature, creates a conflict with the residential and lifestyle uses of the surrounding area.</p>
Policy	Comment
<p>8.4.7 Design and Location To ensure subdivision and development is designed and located so as to avoid,</p>	<p>Many of the values listed in this policy are either not relevant to the proposal, or are not affected by the proposal. However, as for reasons outlined in previous sections of this report, the proposal contains</p>

<p>remedy or mitigate adverse effects on, and where appropriate, enhance:</p> <ul style="list-style-type: none"> • Natural character of the coastal environment, indigenous wetlands, lakes and rivers and their margins; • Landscape values; • Ecological values; • Amenity values and sense of place; • Archaeological, cultural (including tangata whenua) and heritage features; • Sites of Significance to Maori; • Heritage areas of significance to Maori; • The relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga; • Infrastructure, particularly roads and the Airport; • Water and soil quality; • Versatile soils; • Mineral resources; • Business growth and development opportunities within defined Business Environments; • Cross boundary coordination; • Human health and safety. 	<p>components that are considered to create adverse effects upon the existing amenity values and sense of place, which cannot be avoided or easily remedied or mitigated. Additionally, the proposal can be seen as taking away opportunities for growth in defined Business Environment, although it is acknowledged that such Environments do not exist in either Waipu Cove or Langs Beach. The nearest Business Environment is located in Waipu township.</p>
<p>8.4.12 Services and Infrastructure</p> <p>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>No constraints in terms of the on-site servicing arrangements proposed have been identified, and suitable conditions of consent pursuant to Section 108 of the Resource Management Act 1991 can be imposed to ensure the development is undertaken in accordance with Whangarei District Council Environmental Engineering Standards 2010 and the relevant standards of utility providers</p>

<p>8.4.15 Maintenance of Primary Industry</p> <p>To sustain a viable primary industry community within the District by maintaining opportunities for diversity of rural land use, without significant interference from adjacent residential, lifestyle or rural residential activities.</p>	<p>Although the cheese making component of the proposal has direct links to the primary dairy industry and could be undertaken on the site without creating significant adverse effects upon the surrounding environment, the high presence of rural lifestyle blocks in the immediate surrounding area has, in the planner's opinion, compromised the ability to establish business activities such as the cafe and deli shop, which are not directly related to the cheese making activity, but would have been desirable from a business viability perspective.</p>
<p>8.4.23 Design and Location</p> <p>To ensure that subdivision and development does not detract from, or compromise, identified landscape features (including the natural character of the feature(s) when viewed from the sea), or significant ecological features identified in the Plan or through assessment against Appendix 3 of the Regional Policy Statement.</p>	<p>The southern part of the subject site is identified as being within Protected Natural Area Q08/225g as identified by the Department of Conservation. The proposed activities are not located near this area and are not considered to create adverse effects upon the ecological values of this feature.</p>
<p>8.4.24 Environmental Engineering Standards</p> <p>To ensure that all infrastructure, servicing and engineering design has regard to Whangarei District Council's Environmental Engineering Standards 2010.</p>	<p>Should consent be granted, relevant conditions of consent, in line with the Whangarei District Council's Environmental Engineering Standards 2010 can be imposed.</p>
Chapter 22 – Road Transport	
Objective	Comment
<p>22.3.1 Establish and maintain a safe and efficient road transport network.</p>	<p>Council's Senior Roading Engineer and Senior Environmental Engineering Officer have assessed the application, and are satisfied that, provided appropriate conditions of consent are imposed, the proposal will not create any adverse effects or compromise the safety and efficiency of the adjacent transport network.</p>
<p>22.3.3 Protect the road transport network from the adverse effects of adjacent land use, development or subdivision.</p>	
Policy	Comment
<p>22.4.3 New Roads and Intersections</p> <p>To design and construct new public and private roads, intersections, vehicle crossing places and entranceways to meet the minimum standards in Appendix 9, to avoid, remedy or mitigate adverse effects on the environment and the roading network.</p>	<p>Council's Senior Environmental Engineering Officer has recommended appropriate conditions of consent in relation to the widening of the vehicle crossing in order to minimise adverse effects upon the adjacent road</p>
<p>22.4.5 Location of Activities</p> <p>To locate activities and developments in a manner that makes best use of the existing and proposed road transport infrastructure, and minimises adverse effects on traffic</p>	<p>The proposal makes use of existing road transport infrastructure and, provided appropriate conditions of consent are imposed, is not considered to create adverse effects on traffic flows.</p>

flows.	
<p>22.4.6 Pedestrian Safety</p> <p>To ensure that cyclists and pedestrians, including vulnerable groups, such as the young, the elderly and the disabled, are safe from vehicles and other road traffic.</p> <p>Suitable facilities for cyclists and pedestrians should be provided in new developments and within the existing roading hierarchy, as appropriate.</p>	<p>Council's Senior Roding Engineer is satisfied that the increase in vehicle movements generated by the proposal will not result in adverse effects upon the pedestrians and cyclists using Cove Road. Internally on the site, the applicant has proposed to form a separate walkway for pedestrian use.</p>
<p>22.4.7 Parking and Manoeuvring</p> <p>To provide adequate parking, turning and manoeuvring space on every site, other than sites in the areas shown in Figures 6A.1 and 6A.2 to Appendix 6, to accommodate traffic generated by the activity, and to maintain the safe and efficient operation of the transport network.</p>	<p>The proposal has been assessed as providing adequate parking, turning and manoeuvring space to accommodate the traffic generated by the activity.</p>
<p>22.4.8 Visual Obstruction</p> <p>To ensure that the design, location and extent of buildings, advertising signs and vegetation adjacent to roads does not compromise the safe and efficient operation of the road transport network.</p>	<p>The proposal contains provision for vegetation clearance to improve sight lines to the north-west. Appropriate conditions of consent can be included as part of any consent to ensure this outcome is achieved. No buildings or advertising signs are proposed which would compromise the safe and efficient operation of the road transport network.</p>
<p>22.4.9 Accessible Parking</p> <p>To require accessible parking to be provided for every activity in accordance with NZS 4121:2001 to increase access to the community for parking permit holders.</p>	<p>Accessible parking can be provided as part of the new car park to be constructed.</p>

- 7.4.3 The above assessment highlights that the proposal is consistent with the objectives and policies of the Road Transport chapter of the District Plan, but does not necessarily find support in the objectives and policies regulating amenity values, built form and development and subdivision and development. In terms of amenity, the proposal is in direct conflict with a number of the policies and inconsistent with many others. Similarly, the assessment against the objectives and policies on built form and development indicates the proposal is contrary to the outcomes sought. Although the proposal does not stand in direct conflict with many of the policies on subdivision and development, it is considered generally inconsistent with the objectives.
- 7.4.4 Accordingly, it is considered that the proposal, overall, is inconsistent with the provisions of the District Plan.

8.0 Other Matters

8.1 Non-statutory Planning Documents & Plan Changes

8.2 Whangarei Coastal Management Strategy

- 8.2.1 Adopted in September 2002, the purpose of the Whangarei Coastal Management Strategy (CMS) is to "establish a strategic, integrated framework for managing the protection, use and development of the coastal environment within the Whangarei District". To this end, the document outlines a vision for the coastal environment for the next 50 years which was derived in consultation with the local population. Opportunities for economic growth are

encouraged within existing settlements, providing for mixed use communities that balance the needs to live, work and play. The maintenance and enhancement of the natural character, physical resources and special sense of place are considered to benefit and contribute to a sustained vibrant economy.

- 8.2.2 It is considered that the proposal does not contribute toward implementing the vision outlined in the CMS as it is taking cafe and retail opportunities outside of existing settlements which will not assist in creating vibrant communities.

8.3 Whangarei Coastal Management Strategy - Structure Plan: Waipu Cove/Langs Beach

- 8.3.1 Consultation on the structure plan was undertaken in conjunction with consultation on the Coastal Management Strategy. As such, the two documents present similar visions and seek similar outcomes.

- 8.3.2 The structure plan highlights the importance of strong urban limits and maintaining the rural surrounds around the 'living' environments. Although some expansion of the living environment is expected, this does not appear to extend to the application site. Consultation on outcomes for 'working' opportunities appeared to be consistent throughout, with Waipu Township identified as the main centre for commercial activities. Residents indicated that the lack of commercial activity was an important feature for the area; and that rural areas are to be retained for rural productive uses. The importance of coastal recreational tourism was emphasised, as well as opportunities for economic growth in this area.

- 8.3.3 Overall, it would seem the proposal does not find direct support in the structure plan for the Waipu Cove/Langs Beach area.

8.4 Section 16 Resource Management Act

- 8.4.1 Section 16 of the RMA directs every occupier of land, and every person carrying out an activity in, on or under a water body or the coastal marine area, shall adopt the best practicable option to ensure that emission of noise from that land or water does not exceed a reasonable level.

- 8.4.2 The proposal, supported by an acoustic report determining associated noise levels comply with District Plan limits, still raises concern in relation to the number of noise disturbances created over extended operating hours of between 9 to 14 hours per day, particularly in summer periods and night times, including after 10pm. Assuming the proposal does comply with the permitted activity rule for noise levels, section 16 is still relevant in terms of 'reasonableness'.

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. Part 2 of the Act requires that 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."*

- 9.1.2 Although the proposed commercial activities will enable the applicants to provide for their economic and social well-being, the adverse effects associated with the proposal cannot be

adequately avoided, remedied or mitigated, unless the proposal is revised so as to become more compatible with existing amenity values and character of the surrounding environment. Based on this conclusion, the proposal is not considered to be consistent with the purpose of the Act.

9.2 Section 6 – Matters of National Importance

9.2.1 Section 6 identifies seven matters of national importance that must be recognised and provided for. In summary, these relate to the preservation of the rivers and their margins from inappropriate use and development, the protection of outstanding natural features and landscapes and areas of significant indigenous vegetation and habitats; the maintenance and enhancement of public access to and along rivers; the relationship of Maori and their culture and traditions, and the protection of historic heritage.

9.2.2 It is considered that none of these matters are relevant to the proposal.

9.3 Section 7 – Other Matters

9.3.1 Section 7 of the Act requires that, in achieving the purposes of the Act, particular regard is given to eleven 'other matters', as outlined in the section. The following matters are considered to be of particular relevance to the proposal;

- The efficient use and development of natural and physical resources;
- The maintenance and enhancement of amenity values;
- Maintenance and enhancement of the quality of the environment;

9.3.2 Although the proposal is considered to represent the efficient use and development of the physical resources on the site, the adverse effects associated with the proposal, as presented, cannot be adequately avoided, remedied or mitigated so as to ensure the amenity values and quality of the surrounding environment are maintained or enhanced.

9.3.3 On the whole, it is considered that the overall intensity, scale and location of the proposal will not uphold the relevant matters outlined under Section 7.

9.4 Section 8 – Treaty of Waitangi

9.4.1 Council has not been made aware that the principles of the Treaty of Waitangi require specific consideration as part of this application.

10.0 Conclusion & Recommendation

10.1 Conclusion

10.1.1 As a Discretionary Activity, Council as a Consent Authority, under Section 104B, must determine, after having considered all relevant matters under Section 104(1), whether the proposal meets the overarching purpose of the Act as defined within Part 2.

10.1.2 Having considered the application against the relevant provisions of the Act, it is recommended that this application be declined. While the proposal is for a Discretionary Activity, the Plan is clear through its objectives and policies that any Discretionary proposal must still be appropriate to its location, particularly in terms of the nature, timing, duration and maintenance of existing amenity values, and that it must represent consolidated development around existing settlements rather than be sporadic. In this instance the proposal as presented is not considered to be appropriate in this location.

10.1.3 However, as previously indicated, a proposal that were to present revised operating hours, number of days with 10pm closing times, maximum capacity and sealing of currently proposed metalled surfaces, may result in an operation of lesser impact and intensity that could potentially be considered more appropriate to the character of the current environment.

10.2 Recommendation

THAT pursuant to sections 104, 104B and 108 of the Resource Management Act 1991, it is recommended that Commissioner Alan Withy **decline** consent to Uphof Investment Trust (LU1300140 P116331) to establish and operate an artisan cheese production facility incorporating a cheese production kitchen, maturation areas, storage and handling areas, in conjunction with a deli shop and cafe providing seating for up to 40 people, including a fully equipped commercial kitchen for food manufacturing purposes, with a consent period of 10 years, in the Countryside Environment, as a Discretionary Activity.

Reasons for the Recommendation:

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

1. Pursuant to section 104(1)(a) any actual or potential effects on the environment are considered to be inappropriate in particular those associated with the general character and amenity values of the surrounding environment in which the proposal is located. The proposal will result in adverse effects on the general character and amenity of the local environment that are more than minor and are unable to be adequately mitigated through consent conditions.
2. Pursuant to section 104(1)(b) it is considered that the proposal is inconsistent with the majority of the relevant objectives and policies – particularly those seeking to maintain or enhance amenity values and character.
3. The proposal is inconsistent with Part 2 of the Act because it will not avoid, remedy or mitigate the adverse effects on the local environment, and as such does not represent the sustainable management of the land and physical resources of the property.

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. Proposed Scheme Plan of proposal.
2. Original Application- lodged with Whangarei District Council on 7 November 2013.
3. Requests for further information and information received.
4. Assessment of Noise Effects prepared by Nevil Hegley of Hegley Acoustic Consultants.
5. Operative District Planning Environment and Resource Area Maps, and additional property information contained within Whangarei District Council's Geographic Information System.
6. A copy of submissions received.
7. Applicant's comments on issues raised in submissions.
8. Council's Senior Environmental Engineering Officer, Dean Murphy's report, dated 18 February 2014.