

Hearings Commissioner

Notice of Meeting

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

Friday
7 July 2023
09h30

Application by
Whangarei District
Council - Parks &
Recreation
LU2300005

Commissioner
Bill Smith

Report to Hearings' Commissioner Mr. William (Bill) Smith on a Resource Consent Application

This land use application was lodged by Christine Niblock on behalf of the Whangarei District Council Parks and Recreation Department and was reported on by Council's Consultant Planner (RMA Consents), Holly Jenkins.

The site consists of the existing road reserve of Brentwood Avenue, Kamo, Whangarei. Being road reserve, the site adopts the zoning of the adjoining land being the Open Space Zone and the General Residential Zone under the Whangarei District Plan – Operative in Part 2022.

The proposal is for the removal of 34 public trees from the Brentwood Avenue Road Reserve, and the replacement of these trees at a ratio of 3:1.

The land use is lodged under rule TREE-R6 of the Notable Tree (TREE) chapter of the District Plan – Operative in Part 2022.

The application was lodged with a plan illustrating the 34 trees which have been assessed and are seeking to have removed. A copy of this plan is included as **Appendix 1** of this report.

Overall, the proposal is considered to be a **Discretionary Activity**.



Holly Jenkins,

Consultant Planner - RMA Consents

This report was peer reviewed by the following signatory:



Kaylee Kolkman,

Team Leader - RMA Consents

16 June 2022

Date

16 June 2023

Date

Details of Expert Input

Reporting Planner

- **Holly Jenkins, Consultant Planner - RMA Consents**

Statement of Qualification and Experience

My name is Holly Elizabeth Jenkins, I am a Consultant Planner for the RMA Consents Team at the Whangarei District Council.

I have a Bachelor of Resource and Environmental Planning with Honours from Massey University. I am an Intermediate member of the New Zealand Planning Institute.

I have over 7 years of experience as a Consultant Planner, which includes experience processing resource consents on behalf of local authorities.

I am 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: Hearings' Commissioner Mr. William (Bill) Smith for a Discretionary Activity land use proposal by Whangarei District Council Parks and Recreation Department. The proposal is for the removal of 34 public trees from Brentwood Avenue Road Reserve and the replacement of the trees at a ratio of 3:1.

The land use is lodged under rule TREE-R6 of the Notable Tree (TREE) chapter of the District Plan – Operative in Part 2022.

Evidence by: Holly Jenkins
Consultant Planner - RMA Consents

File Refs: LU2300005 / P109348

The Proposal

1. The proposal is for the removal of 34 Public Trees from the Brentwood Avenue Road Reserve.
2. A copy of the site plan which provides an aerial view of Brentwood Avenue and identifies the location of the 34 public trees is attached to this report as **Appendix 1**.
3. Of the 34 public trees proposed for removal, 33 are *Magnolia grandiflora*, Magnolia trees and one is a *Knightia excelsa*, Rewarewa tree. All removal works are proposed to be carried out by a suitably qualified contractor in accordance with industry best practice. All trees are to be felled and the root ball removed.
4. The application proposes to replace the trees at a ratio of 3:1, with every tree within the Brentwood Avenue road reserve to be replaced, and an additional 2 trees planted in the Brentwood Avenue open space reserve.
5. A Street Tree Replacement Palette has been proposed as part of the application.
6. The application is titled "Application for Resource Consent to Whangarei District Council Tree Removals – Brentwood Avenue" and has been prepared by Christine Niblock on behalf of Whangarei District Council Parks and Recreation Department (the "applicant").
7. In addition, the following specialist reports have been provided in support of the application:
 - Arboricultural Report prepared by John Redfern of Arborlab

- Tree Replacement Species List reviewed by Paul Leyland, Technical Officer Whangarei District Council Parks and Recreation Department
- Ecology Memo prepared by Madara Vilde of Wild Ecology

Proposal Background

8. The background to this proposal is detailed in the s95 Notification Decision appended to this report as **Appendix 2**. By way of summary, the identified public trees have resulted in a number of public safety and infrastructure issues as a result of the trees' root systems uplifting pavements, kerbs, vehicle crossings, channels and pipes.
9. Temporary repairs have been undertaken by Whangarei District Council Roading Department, however generally the issue has not been resolved and the same issues continue to arise and/or worsen.
10. It is understood that this issue has been raised with Whangarei District Council over the past couple of years which has led to the Applicant now seeking resource consent for the removal and replacement of these trees.

Request for Additional Information (Section 92 of the RMA 1991)

11. The application was subject to a request pursuant to s92 of the Act for further information. This request has been adequately satisfied and details of the requests contents and relevant dates are outline in the s95 Notification Decision.
12. The notification decision was reviewed/signed under delegated authority by Ms. Kaylee Kolkman (WDC Team Leader – RMA Consents), concluding that the application can proceed on a public notification basis, as requested by the Applicant. A copy of the signed Section 95 report is contained in Appendix 2 of this report.

Site and Surrounding Environment Description

13. The applicant has provided a description of the site and surrounds on pages 2 - 6 of the Application Report. Having visited the site on 9 February 2023. I agree with the descriptions provided and note that during this site visit, evidence of tree root uplift and impact on adjoining public and private property was observed.
14. The site consists of the Brentwood Avenue Road Reserve which includes the road carriageway, footpath, and berm which is a mixture of planted trees and grass.
15. The surrounding environment includes the residential properties which line Brentwood Avenue, as well as the Brentwood Avenue open space reserve, and the Jane Mander Retirement Village which backs onto Brentwood Avenue.
16. The environment is zoned General Residential Zone, and the Brentwood Avenue open space reserve is zoned Open Space. There are no overlays or notations applying to the site or the surrounding properties which are of relevance to this application.

Figure 1 & 2: Aerial View of Brentwood Avenue; District Plan Map of surrounding environment



Reasons for Consent

Whangarei District Plan – Operative in Part 2022

17. The subject site is located within the road reserve. In accordance with HPW-R6, the road is zoned the same as the adjoining land being Open Space Zone and General Residential Zone. The proposal requires consent for the following reason:

Rule TREE-R6 – Removal of any Public Tree – Discretionary Activity

18. The proposal seeks the removal of 34 public trees within the Brentwood Avenue Road Reserve for reasons other than that which is due to the trees being dead, emergency tree works, or undertaken by a road controlling authority for the purposes of operation, maintenance or upgrade of overhead or underground networks utilities.

Overall Activity Status

19. Overall, the application is to be determined as a Discretionary Activity.

Notification, Submissions, Written Approvals and Hearing

Notification

20. Pursuant to Section 95A – 95F of the Act, Council assessed that this application shall proceed on a publicly notified basis, based on the following reasons:

- the applicant has requested that the application is publicly notified (s95A(3)(a))
- there are no outstanding or refused requests for further information (s95C and s95A(3)(b)), and
- the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977 (s95A(3)(c)).

21. Pursuant to Section 100(b) of the Act the application was publicly notified.

Submissions

22. The Application was publicly notified on 8 April 2023. Persons had 20 working days to make a submission on the application, with submissions closing 9 May 2023.

23. A total of 33 submissions have been received.

24. Submissions were received from the following parties:

Table 1: Summary of Submissions Received

#	Submitter	Address	Support/Oppose
1	Bruce Wilson	109/262 Fairway Drive	Support
2	Alan and Linda Lynch	5 Brentwood Avenue	Support*
3	Albert and Lois Smith	57/262 Fairway Drive	Support
4	Anthony and Alison Shrigley	12 Brentwood Avenue	Oppose
5	Barry and Raewyn	8 Scarborough Lane	Support
6	Bruce and Pamela Head	7 Brentwood Avenue	Support
7	Carol Bobb	13 Brentwood Avenue	Support
8	Cyril and Joan Reed	9 Brentwood Avenue	Support
9	Ethel Davis	Unknown	Support*
10	Frank and Coralyn West	6 Brentwood Avenue	Support*
11	Janet Knight	11 Brentwood Avenue	Support
12	Janice Johnson	42/262 Fairway Drive	Support
13	John & Kaye Tiller	30 Brentwood Avenue	Support*
14	Kenneth and Katherine Walker	32 Brentwood Avenue	Support*
15	Marguerite Wilson	109/262 Fairway Drive	Support
16	Mark and Donna Newman	3 Brentwood Avenue	Support*
17	Mark and Sheryl Cromie	24 Brentwood Avenue	Support*
18	Mohammed Hussain	10 Brentwood Avenue	Support
19	Pam & Brian Herbert	2 Brentwood Avenue	Support
20	Patricia Anderson	5 Timandra Place	Support
21	Percy Hollings	53/262 Fairway Drive	Support

22	Peter & Lynda Goulden	15 Brentwood Avenue	Support*
23	Peter Jackson	47/262 Fairway Drive	Position not stated
24	Rebecca Van Altvosrt	20 Brentwood Avenue	Support
25	Richard & Raewyn Ackers	7 Timandra Place	Support
26	Roy & Marlene Halford	28A Brentwood Avenue	Support
27	Trudy Keith	153 Prescott Road	Support
28	Unknown	Unknown Brentwood Avenue	Position not stated
29	Warner & Goldie Lin	1 Timandra Place	Support
30	Janet Knight	11 Brentwood Avenue	Support*
31	Mark & Sheryl Cromie	24 Brentwood Avenue	Support*
32	Allie Fry	206A Cemetery Road	Support*
33	Raymond Mason	4A Timandra Place	Oppose*

*Support or opposition of the Application is conditional or with amendments sought

25. Of the submissions received, 29 were in support of the application, 2 submissions opposed the application, and 2 did not identify their position. It is noted that submission number 17 and 31 are by the same persons and hold the same position in both submissions.

26. There were a number of issues raised by the submitters which can be categorised as follows:

- Health and safety
- Property damage
- Replacement planting and ratio
- Character and amenity values
- Precedent
- Financial

27. No late submissions were received.

28. Before commencing the following assessment, I would like address one matter which has been raised in a number of submissions on this application. That matter relates to the financial responsibility of this application. In considering this application under the Resource Management Act (1991) I have and will consider the actual and potential adverse effects of this proposal on the sustainable management of natural and physical resources. The financial responsibility of this application is not a matter that is able to be considered under the RMA. Any agreements or understanding regarding a financial resolution or responsibility are to be between the consent holder and the relevant party and sit completely independent of any resource consent decision.

Resource Management Act 1991- Section 104 Considerations

Section 104

29. Section 104 provides the matters, subject to Part 2 of the Act, that Council must have regard to when considering an 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.*

Section 104B

30. 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.*

31. In addition, Part 2 of the Act requires the Council to recognise and provide for matters of national importance (Section 6); have particular regard to other matters (Section 7); and to take into account the principles of the Treaty of Waitangi (Section 8).

32. An assessment against Part 2 of the Act will be undertaken later in this report.

Actual and Potential Effects on the Environment (S104(1)(a))

33. The first requirement under Section 104 of the Act is to assess the effects that the proposal may have on the surrounding environment (section 104(1)(a)). The following undertakes an assessment of the proposal on the surrounding environment, taking into account the application and submissions that have been received.

Permitted Baseline

34. In accordance with Section 104(2) of the Act, a consent authority may disregard an adverse effect that is permitted by a Plan and NES. The permitted baseline can be used to define the environment against which the degree of adverse environmental effects of a proposed activity will be considered.
35. In this case the permitted baseline is the removal of a Public Tree where this is undertaken by a network utility operator or road controlling authority as a requirement for maintenance or renewal of existing infrastructure and utilities; the tree is dead; for the purposes of emergency tree works; within a speed environment of 50km/h or more for the safe/efficient operation of the road network; or within a speed environment of less than 50km/h for the safe/efficient operation of overhead or underground network utilities. In the context of this application, this permitted baseline is considered to be of relevance.

Existing Environment

36. The existing environment includes permitted activities under the relevant plans, lawfully established activities (via existing use rights or resource consent), and any unimplemented resource consents that are likely to be implemented. The effects of any unimplemented consents on the subject site that are likely to be implemented (and which are not being replaced by the current proposal) also form part of this reasonably foreseeable receiving environment. This is the environment within which the adverse effects of this application must be assessed.
37. In the context of this application this is considered to include the existing residential environment of Brentwood Avenue as described in the Application. In summary, this is a residential environment where either side of the road carriageway is lined with well-established Magnolia trees which are approaching 30 years old and 6 -7m in height, creating a green corridor.

Character and Amenity Effect

38. The setting of the existing environment has been described above and in the Application. The existing trees within the Brentwood Avenue Road Reserve form part of that environment and in undertaking the site visit it was observed that this planting contributes to the residential character and amenity of this area with the established vegetation visually softening the built environment.
39. There are approximately 36 street trees within Brentwood Avenue Road Reserve, and this application seeks to remove and replace 34 of those trees, and place 68 additional new trees within the existing reserve at the terminating end of Brentwood Avenue. It is understood each tree will be felled which will take between 2 -3 days, and the root ball removed which will take a further 2 -3 days. The application has not indicated that this would be done in stages, therefore it is assumed that this timeframe is to fell and remove all 34 Public Trees. Following the tree removal, the Application outlines that the replacement trees will be installed as soon as practicably possible.

40. In considering the potential amenity effects of the proposal the Application considers that the proposal will have a noticeable impact on amenity values for residents and users of Brentwood Avenue, and considers the loss of shade, temporarily, will affect pedestrians until such time that the replacement trees reach a more established size. Page 9 of the Application goes on to say that the replacement of the trees with a more appropriate species will improve the amenity value of the streetscape overall.
41. There were only a few submissions received on this application which included commentary around amenity. Submissions which raised comments around amenity noted that they wanted to maintain a tree lined avenue but also wanted a safe environment. For the reasons that are discussed below I consider the proposal will uphold a 'tree lined avenue'.
42. I do consider the proposal will result in a noticeable change to the residents and visitors of Brentwood Avenue. A streetscape that was previously lined with mature vegetation will have these removed leaving a significantly more open streetscape environment. Replacement species are proposed, and the conditions of consent have proposed that at the time of planting replacement species must be a minimum size of PB95/140L – it is understood that a tree this size upon planting would be approximately 1.5-2.0m in height. It is acknowledged that the planting of these replacement trees will take time to grow and develop to be similar to the existing situation. However, it is considered that the immediate replacement planting will enable Brentwood Avenue to maintain a planted green corridor, that provides to uphold a suitable level of character and amenity for residents and persons passing through this environment. For this reason, I consider the proposal will result in a no more than minor effect on the character and amenity of the environment in the immediate future. I also consider this effect will continue to reduce over time to a less than minor effect once vegetation is matured.

Historical and Cultural Effects.

43. As outlined in the Application, the Applicant states that they have not undertaken any consultation with Iwi or Hapu as the proposal does not involve the removal of any native tree species and the replacement works are to be undertaken within a developed urban area.
44. A copy of this application was circulated to Hapu following the receipt and acceptance of this application for processing. Two Hapu groups were provided a copy of the application, Ngati Kahu o Torongare and Te Parawhau Correspondence was initially received from Georgina Olsen on behalf of Te Parawhau noting that Te Parawhau have an interest in this area however this should be directed to Ngati Kahu O Torongare for their input. Ngati Kahu O Torongare were included in that correspondence, however no further interest or comments were received in relation to this application except a further item of correspondence from Mrs Olsen indicating that the application had been confused with another.

45. I agree with the reasoning provided by the Applicant and note that any land disturbance works associated with the tree removal are understood to be generally minimal and shallow. Notwithstanding this, should any accidental discoveries be made during the undertaking of these works then the provisions of the Heritage New Zealand Pouhere Taonga Act 2014 would be required to be adhered to.
46. For these reasons, I consider the actual and potential historical and cultural effects of the proposal on the environment to be less than minor.

Ecological Effects

47. As part of this Application the application has been accompanied by an Arboricultural Report prepared by Mr Jon Redfern, Principal Arborist Consultant of Arborlab, and an Ecological Assessment prepared by Ms Madara Vilde, Principal Ecologist at Wild Ecology. Both of these reports should be read in conjunction with the Application and this report.
48. Before undertaking an assessment of the ecological effects of the proposal, I note that it is my understanding that the Arboricultural Report was prepared prior to a decision being made to remove and replace all the trees. Further I understand this report was instead prepared to inform the Applicant on the existing situation and make an informed decision on the options available to remedy the concerns raised with respect to these Public Trees. Mr Redfern's report therefore does not make any recommendations on the best or most appropriate option, it instead provides a balanced assessment to the Applicant on the positive and negatives of each option.
49. The application as lodged seeks the removal of 34 Public Trees from Brentwood Avenue Road Reserve and therefore in undertaking this assessment I have assessed the effects of this option only and will not revisit the other options detailed in Mr Redfern's report.
50. The application notes that there would be significant but temporary impacts on ecological values resulting from the proposed works however no further discussion was included in the application. As part of the processing of this application, further information was requested to understand any actual or potential ecological effects resulting from this proposal.
51. In her assessment, Ms Vilde notes that Brentwood Avenue does not contain any relevant ecological overlays and is located over 500m separated from the nearest Significant Natural Areas. Ms Vilde considered that the site appears to have distinctively low existing ecological value. Ms Vilde considers that the existing vegetation lining the margins of Brentwood Avenue were generally bull bay magnolia (*Magnolia grandiflora*), one rewarewa (*Knightia excelsa*), and possibly a single frangipani (*Plumeria sp.*) trees. Ms Vilde states that these trees are all primarily exotic (non-native), apart from the single rewarewa tree, and therefore the current ecological value is assessed as low and the trees are primarily valued for their visual amenity rather than ecological value.
52. Further Ms Vilde adds that from a review of their descriptions within the supporting Arborlab report, the trees are unlikely to support any 'threatened' or 'at risk' flora and fauna,

noting that they are likely periodically utilised by common and highly mobile bird species. Ms Vilde considers that given similar vegetation type and structure is plentiful within the surrounding environment, the proposal removal is unlikely to have any adverse effects on the common fauna utilising these trees.

53. In undertaking her assessment Ms Vilde has considered the effects of the removal and their associated replanting works with and without 'best practice' measures. Ms Vilde considers the magnitude of effects of the removal of the trees without best practice methods adopted are to be low. Ms Vilde makes a number of comments around best practice measures for implementation. Many of these measures are considered to be similar to those already offered by the Applicant as a condition of consent, however Ms Vilde has also noted number of best practice measures that would further reduce the level of effect from a complete ecological perspective. These measures include:

- to undertake the removal outside of the peak bird breeding season (September to February) where practicable.
- No tree listed in the invasive weed species in the National Pest Plant Accord is to be planted as part of the off-set replacement planting
- All replacement plants are to be eco-sourced locally and inspected for diseased, pest organism presence, and pest weeds prior to planting

54. In concluding her assessment, Ms Vilde finds that the proposed removal of trees will not result in any adverse ecological effect, provided best practice measures are employed during clearance and replanting to ensure that disturbance to common avifauna is kept to a practicable minimum.

55. On the basis of the assessment undertaken and advice provided by Ms Vilde, with added input from the information included in the Arboricultural Report, I consider ecological effects of this proposal on the environment to be no more than minor. In accordance with Ms Vilde's advice, her best practice recommendations have informed draft conditions of consent should the Independent Commissioner be of the view to grant this consent.

Tree Replacement Effects

56. The second part to this proposal is the replacement of the trees following their removal from the Brentwood Avenue Road Reserve. The application proposes to replace these existing trees at a ratio of 3:1 three trees being planted for every one tree removed. Of these replacement trees, every tree removed from Brentwood Avenue will be replaced, and two additional trees being planted in the Brentwood Avenue open space reserve. At this ratio this would require 68 trees to be planted in this reserve.

57. The replacement ratio has been proposed by the Applicant which the Application considers will offset the effects of removing the proposed mature trees and replacing them with species which will take time to grow and mature. The ratio within the road reserve will remain as is and therefore I consider this ratio appropriate. All additional planting which is proposed for the Council owned open space reserve within Brentwood Avenue is

considered a positive outcome which will further enhance the vegetation within this environment.

58. Further information has been sought in relation to the proposed replacement species to minimise the potential for these issues at the centre of this application from arising. In reviewing the application, Ms Vilde considers this list appropriate for the berms of Brentwood Avenue, however considers that should indigenous species be utilised within the berms that this is limited to titoki (*Alectryon excelsus*) or Pohutukawa 'Māori Princess' (*Metrosideros excelsa*). Ms Vilde considers these species have been shown to be compatible within the urban environment as they have a conical upright form and do not develop aerial roots making these species great for streets or narrow berms. Further to this, the further information response noted that Council's in house arborist considered Upright Ginkgo (*Ginkgo biloba* 'Fastigiata') and Magnolia Aurora to be appropriate. Ms Niblock has suggested a condition of consent may be appropriate which allows residents (facilitated through Council) to make the tree replacement suggestion from the tree planting palette with final approval required by the Parks Manager before planting.
59. A condition has been included which requires the replacement species to selected from the planting palette. I consider that should the Applicant wish to consult residents on this selection that this occur outside of this consent process. I have not included this requirement as a condition of consent as I consider greater consideration by the Applicant should be given to which 'residents' such consultation would involve as this application has attracted interest from more than just residents of Brentwood Avenue. Furthermore, on the understanding that the replacement palette is appropriate for this environment, the selection of any species from this list is considered appropriate to replace the existing tree with and achieve an appropriate level of amenity.
60. The replacement species and ratio of replacement is a matter which has been raised by many submitters. With respect to the ratio of replacement planting, both submissions which are in support and opposition to this application have generally raised concerns with this replanting from a financial perspective. For the reasons discussed at the outset, I cannot and will not consider this element any further and this will need to be resolved outside of this consent process.
61. With respect to replacement species, submissions by Mrs & Mr Shrigley, Mr & Mrs West, Ms Davis, Mr & Mrs Tiller, Mr & Mrs Walker, Mr & Mrs Newman, and Mrs Fry have all made suggestions regarding the type of species that should or shouldn't be included in the replacement palette. From a review of these submissions, there appears to be some disagreement around species which are and are not appropriate for planting in the road reserve to minimise this issue from arising again. These submissions conflict with the recommendations of Council's further information response and Ms Vilde. As Ms Vilde is a qualified Ecologist, I am placing greater weight on her advice. Based on this advice I consider the replacement planting palette should be revised so that the inclusion of any native species is limited to titoki (*Alectryon excelsus*) or Pohutukawa 'Māori Princess'

(*Metrosideros excelsa*) only. The replacement palette included in the conditions of consent in **Appendix 3** has been amended to reflect this.

62. Overall, I generally considered that the replacement of the Public Trees as proposed by this application to have a positive effect. Provided the replacement species are appropriate for the Brentwood Avenue Road Reserve berms I consider the actual and potential effects of the replacement of these trees to be less than minor.

Construction Effects

63. As outlined above it is understood that the felling and removal of the trees and their root balls will be undertaken over a period of 4-6 days (2-3 days for felling/removal and 2 – 3 days for root ball removal). As part of this work the Application outlines that minimal earthworks will be involved with only the earth material attached the root ball being disturbed during these works. The Application outlines that all works will be undertaken in accordance with industry best practice and erosion and sediment control measures will be implemented during the course of the works. The Application includes volunteered conditions of consent to ensure such measures are undertaken and to minimise construction effects on the surrounding environment. These conditions have been included in the recommended conditions included attached to this report as **Appendix 3**, should the Hearings' Commissioner decide to grant consent for this proposal.

64. As with all construction activities, I consider a level of noise will be associated with such works. Construction noise is required by the District Plan (NAV 6.2) to comply with the guidelines and recommendations of NZS 6803:1999 "Acoustics – Construction Noise". Given the scale and temporary nature of these works, I consider undertaking this work in accordance with these standards appropriate and no further measures of mitigation to be required.

65. The construction activities are also anticipated to result in construction works within the roading corridor. Council's standard condition which requires the consent holder to obtain a Corridor Access Request from Council's Development Engineer has been included as volunteered by the Applicant. This is considered appropriate to manage works within the road corridor.

66. From the information provided to me, I consider all construction works associated with this proposal will be relatively minor in scale and ultimately temporary in nature. For these reasons and those discussed above, I consider the proposal to have less than minor construction effects.

Health and Safety Effects

67. Health and safety is a matter that has been raised numerous times in the submissions received on this application, and is understood to be one of the key reasons that the proposal is being sought.

68. The assessment criteria of TREE-REQ2 directs the Applicant to consider the actual and potential risk of damage to people and property from the tree or trees. In the application it is assessed that there is an existing risk of damage to existing infrastructure and private property, and public health and safety if some trees are to remain without on-going management. It is understood that this risk arises from roots uplifting footpaths and infrastructure creating trip and fall hazards and damaging private property.

69. This resource consent is sought to enable the removal and replacement of the public trees within Brentwood Avenue only. This consent does not cover, include or direct any subsequent remediation of the roading environment within Brentwood Avenue. While I understand the removal of the trees will remove the roots which are considered to have resulted in the uplift and displacement of infrastructure, the removal in itself will not resolve this existing issue and that will need to be completed independently.

70. From the information provided to me I understand the removal of the proposed trees will remove the existing root structures which are considered to be associated with the current health and safety risk and prevent the exiting situation from worsening over time. For this reason, I consider the proposal to have a positive effect on the existing health and safety situation.

Effects Summary

71. Taking into account the assessment, overall, I consider the effects of the proposal on the environment will be no more than minor.

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

Statutory Consideration

72. Section 104(1)(b) of the Act requires Decision Makers to have regard to any relevant provisions of a National Environmental Standard, other regulations, a National Policy Statement, the New Zealand Coastal Policy Statement, a Regional policy Statement and a plan or proposed plan.

73. I consider the following statutory planning documents are applicable and relevant to this application:

- Regional Policy Statement for Northland (RPS 2016)
- Whangarei District Plan – Operative in Part 2022

Regional Policy Statement for Northland

74. The current Northland Regional Policy Statement (RPS) was declared operative on 9 May 2016 and covers the management of natural and physical resources across the Northland region. The provisions within the RPS give guidance at a higher planning level in terms of the significant regional issues. As such it does not contain specific rules that trigger the requirement for consent but rather give guidance to consent applications on a regional level.

75. The Application considered that the Regional Policy Statement for Northland contains objectives and policies which are of relevance to this application and considers these relate to the protection of indigenous ecosystems, biodiversity and natural character. Overall, the Application finds the proposal is not inconsistent with the objectives and policies of relevant within the Regional Policy Statement.

76. I generally agree, the Regional Policy Statement for Northland does identify a number of objectives and policies which are concerned with the protection of indigenous ecosystems, biodiversity and natural character. However, I consider the extent to which this is relevant to this application to be limited.

77. As discussed in the assessment of effects above, the Brentwood Avenue Road Reserve to does not contain any relevant ecological overlays and is located over 500m separated from the nearest Significant Natural Areas. Ms Vilde considers that the site appears to have distinctively low existing ecological value. The proposal does however include the replacement of this existing vegetation which provides the opportunity to improve the biodiversity of this area through the planting of indigenous species.

78. There are no other objectives and policies which I consider to be of particular relevance to this application. On this basis I consider the proposal is not inconsistent with the Regional Policy Statement for Northland.

Whangarei District Plan – Operative in Part (2022)

79. The relevant objectives and policies in the Whangarei District Plan – Operative in Part 2022 (the District Plan) for the proposed development are located in the following chapter:

- Notable Trees (TREE)

80. The following objectives and policies pertaining to the above-referenced chapters of the District Plan are considered to be relevant in the consideration of this application. The following assesses the proposal against the relevant objectives and policies within this Chapter.

Notable Trees (TREE)

81. This chapter contains objectives and policies which generally seek to protect and maintain Public and Notable Trees across the District.

82. The Application identifies the following objective and policy as relevant to the consideration of this application:

- TREE-O2 – Public Trees
- TREE-P2 – Public Trees

83. I agree with the Applicant that these are the only relevant objective and policy within this chapter as all other objectives and policies are concerned with Notable Trees and new

subdivision and development. I also generally agree with the assessment made by the Applicant, which acknowledges there is a conflict between the safe and efficient use, operation and maintenance of the roading network (including pedestrian use), and the existing planted trees which provide amenity value to this environment. Objective TREE-O1 seeks to achieve a balance between each of these.

84. Policy TREE-P2 provides further discussion and guidance of the protection of existing trees, enabling their on-going maintenance, encouraging the use of indigenous trees where planting is undertaken, and enabling works to existing trees where network utilities are concerned. Point 5 of Policy TREE-P2 speaks directly to the removal of a public tree and recognises this may be appropriate in certain circumstances. There are four criteria under Policy TREE-P2(5) as follows:

- a) *It is demonstrated that the tree or trees would not meet the threshold for protection pursuant to the STEM Criteria for Notable Tree Classification in TREE-Appendix 1.*
- b) *It is demonstrated that there is a risk to human health and/or property, or the safe and efficient operation of the roading network or network utility infrastructure, based on a risk assessment.*
- c) *It is demonstrated that there is no practicable alternative to the removal.*
- d) *Where necessary, an assessment is provided of suitable mitigation or offset for the removal.*

85. Based on my understanding of the tree clarification under the District Plan, I understand that the trees within this road reserve do not classify as Notable Trees. Based on the information included in the application, submissions, and in undertaking a site visit, I consider it has been demonstrated that there is a risk to human health and property. Furthermore because of this risk, the roading network which also includes the pedestrian network, is not able to operate in a safe and efficient manner for all persons. With regards to the demonstration of a practicable alternatives to removal, the Arborlab report submitted with this application has detailed three options available, two which are alternatives to removal. Although this demonstrates that alternatives are available, I do not consider I am appropriately qualified to determine what is and is not practicable. From the information provided to me I consider there is no quick fix to the identified risk and issue, instead it is a balance between mitigating the issue and mitigating effects on the environment on a long term basis. As part of the application, replacement planting is proposed which includes additional planting to offset the removal of these established trees.

Conclusion of Objectives and Policies Assessment

86. On balance I consider the proposal is generally consistent with the above objective and policy of the District Plan.

Section 104(1)(c) Other Matters

87. Section 104(1)(c) allows a decision maker to consider any other matter which is relevant and reasonably necessary to determine an application. I consider the relevant other matters to be:

- Precedent
- Whangarei District Council Public Tree Policy
- Alternative Methods

Precedent

88. Case law has established that the precedent of granting a resource consent is a relevant factor for a consent authority in considering whether to grant a non-complying resource consent. As identified above, this application is for a Discretionary Resource Consent. Notwithstanding this, I acknowledge a precedent effect is a matter that has been raised in the submissions and therefore I undertake the following assessment of this matter in the context of this application.

89. A precedent effect is likely to arise in situations where consent is granted to an activity that lacks the evident unique, unusual or distinguishing qualities that serve to take the application outside of the generality of cases or similar sites in the vicinity. In other words, if an activity is sufficiently unusual and sufficiently outside the run of foreseeable other proposals it avoids any precedent effect and can be approved.

90. Precedent refers to the fact that, if a decision is made, that any future similar application(s) should result in a comparable decision; this can be problematic if the outcomes undermine the integrity of the District Plan.

91. As a Discretionary Activity, a thorough assessment of all potential adverse effects has been undertaken to demonstrate the effects of the proposal. In my opinion, the effects are determined to be no more than minor. Further to this, my assessment of the relevant objectives and policies of the District Plan also finds that the proposal is generally consistent with the objectives and policies. Thus, the proposal is not considered to undermine the District Plan.

92. Council is required to assess every resource consent application on its own merits and shall turn on the specific facts relevant to any given application. This means that any subsequent consent application could only be approved if the effects were found to be acceptable in accordance with the tests of the RMA 1991. This inherently protects against any precedent set by approval of a prior consent application.

93. I do not consider the granting of this consent creates a precedent for this current application, nor do I consider that this application will create a precedent for future applications to come.

Whangarei District Council – Management of Public Trees Policy

94. The Management of Public Trees Policy provides guidance for dealing with the management of public trees that are generally located within road reserves, parks and reserves administered by Whangarei District Council. The policy includes four sub-policies with provisions around what they include and how they will be undertaken. These are Protection and Maintenance; Co-location of Trees and Infrastructure; New Trees and Succession Planting; and Tree Removal. The sections of this policy which are considered most relevant to this application are co-location of trees and infrastructure, tree pruning or removal.
95. The co-location of trees and infrastructure identifies there is a need to balance retention of public trees and the safe and efficient development, maintenance, operation and upgrading of infrastructure. The provision of this policy includes measures for Council to work with other departments to understand implications, and then directs Council on how works are to be undertaken in a practicable manner.
96. Tree pruning or removal section provisions discusses which circumstances Council may prune or remove a tree, and it is considered that those circumstances align with those detailed in this application.
97. The policy also includes a section on procedures, process, standards and guidelines for the replacement and payments of trees. As discussed earlier, the financial responsibilities of this proposal is not a matter that is to be considered under the RMA. I therefore will not comment any further on this element of the policy.
98. Submissions received by Mr & Mrs Reed, Mr & Mrs Tiller, Mr & Mrs Walker, and Ms Knight have made reference to replanting being undertaken in accordance with 'Street Tree Planting Clearance'. I am not familiar with nor have I been able to locate a copy of this policy. I am therefore only able to comment on the Management of Public Trees Policy.
99. Following my review of this policy, and the proposed application and supporting information, I generally consider the proposal is consistent with this policy.

Alternative Methods

100. The consideration of alternative's has been established by case law to be required where it is considered a proposal is likely to have significant adverse effects. As assessed above, the proposal is assessed to have no more than minor effects. Notwithstanding this, in the context of this application, the assessment of TREE-REQ2 directs consideration of alternative methods to avoid the removal or pruning of trees.
101. I believe the intent of this criteria is to ensure all methods are thoroughly considered before seeking removal. As outlined in the Application and as informed by the Arborlab Report, three options have been considered to manage and mitigate the identified issue and risks and these have been considered by the Applicant before proceeding with this

application. As outlined in the Application, the option to remove and replace the existing trees as applied for in this application has been chosen as it is considered to remove the current risk and hazard. The Applicant adds that replacing the existing trees with more appropriate species is considered to reduce future risk and hazards, while enabling a consistent amenity along the street for the future. This criteria provides no further direction as to whether alternatives must achieve, just that these are to be considered.

102. For the reasons discussed above, I consider it appropriate to consider alternatives insofar as it relates to the criteria of the District Plan, however I do not consider it necessary to consider alternatives from an environmental effects basis.

Part 2 Matters

Section 5 – Purpose

103. 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 wellbeing and for their health and safety while -

- 1. Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- 2. Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- 3. Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

104. The purpose of the Resource Management Act 1991, as outlined in above, is to promote the sustainable management of natural and physical resources. I consider the proposal to be consistent with Section 5 of the Act. The proposal seeks to manage natural resources in a manner which enables people and communities to provide for their well-being, as well as the health and safety of this community. This will be undertaken in a manner that enables the natural resources to be sustained for the reasonably foreseeable needs of future generations and safe-guarding the life supporting capacity of the ecosystem as it relates to this application. Noting that the proposal also seeks to enhance the ecosystem through the replacement planting proposed in the application. The proposal has also been assessed above to appropriately avoid, remedy and mitigate adverse effects of the proposal on the

environment. For these reasons I consider the proposal achieves the purpose of the Act in accordance with Section 5.

Section 6 – Matters of National Importance

105. Section 6 of the Act highlights matters of national importance that shall be recognised and provided for in order to achieve the sustainable management purpose of the Act.

106. It is not considered that there are any matters of national importance applicable to this application.

Section 7 – Other Matters

107. Section 7 of the Act identifies other matters which all persons exercising functions and powers under the Act shall have particular regard to. I agree with the Applicant, as outlined on page 11 of the Application, other matters 7(b), 7(c), 7(d) and 7(f) are considered relevant to this proposal.

108. 7(b) requires particular regard be had to the efficient use and development of natural and physical resources. As outlined in the Application, the removal of the mature trees within Brentwood Avenue has been identified to manage and prevent long term conflicts between vegetation and infrastructure, with in the long term is considered to support the efficient use natural and physical resources.

109. 7(c) requires particular regard be had to the maintenance and enhancement of amenity values, and 7(d) requires regard to be had to the intrinsic values of ecosystems. As assessed above, it is acknowledged that in the short term the proposal will result in a noticeable change to the amenity of Brentwood Avenue which is assessed to have a no more than minor effect on the environment. In the longer term, as replacement species grow and mature it is expected that amenity values will be maintained and enhanced. With regard to effects on ecosystems, this has been assessed above to have a less than minor effect, with the replanting enabling this ecosystem to be maintained and improved.

110. 7(f) requires regard to be had to the maintenance and enhancement of the quality of the environment. As detailed above and in the submissions received on this application, the current quality of the environment is considered to provide a reasonable level of amenity to Brentwood Avenue, however this is understood to be at a cost to people and their health and safety, as well as public and private property. The proposal enables this conflict to be resolved, and the amenity maintained in the long term.

111. I therefore consider the proposal to be consistent with Section 7 of the Act.

Section 8 – Treaty of Waitangi

112. No matters pertaining to the principles of the Treaty of Waitangi, as outlined in Section 8 of the Act, are considered relevant to this application.

Conclusion & Recommendation

113. The application proposed to remove 34 public trees from the Brentwood Avenue Road Reserve and replace these with new public trees at a ratio of 3:1 within Brentwood Avenue and the adjoining open space reserve.
114. It is my opinion, as informed by the Application, supporting information, and submissions received, that subject to the recommended conditions of consent, the proposal will have no more than minor effects on the environment.
115. I also consider that the proposal will be consistent with the relevant objectives and policies of the District Plan, and Part 2 of the RMA 1991.
116. I recommend that the Hearings' Commissioner, acting under delegated authority from the Council, pursuant to Section 104B of the Resource Management Act 1991, **grant** resource consent for the proposal to remove 34 Public Trees from Brentwood Avenue Road Reserve, and replace these trees at a ratio of 3:1, subject to the conditions of consent attached herein as **Appendix 3**.
117. I note that my assessment and recommendation is based on the information submitted and provided to me to date. I reserve the right to reconsider this position, or any aspect thereof, should new information or expert evidence eventuate prior to or at the hearing.

Appendices

- 1. Aerial Site Plan**
- 2. Section 95 Report**
- 3. Recommended Conditions**
- 4. Replacement Palette List**