

**Report and decision of Independent Hearings Commissioner
William (Bill) Smith.
Whangarei District Council has delegated all the functions, powers
and duties as provided under the Resource Management Act 1991
to the Commissioner to consider and decide the application on
behalf of Council.**

The Independent Hearings Commissioner (William (Bill) Smith) was due to hear the application lodged by the Whangarei District Council – Parks and Recreation Department on 7 July 2023. However, both submitters who wished to be heard and were in support of the application withdrew their request to be heard and the application has been dealt with on the papers after receiving the s42A Report and then expert evidence on behalf of the applicant and then the Council Reporting Planner's brief Addendum Report. The application made in accordance with the Resource Management Act 1991 ('the Act') was lodged with Whangarei District Council and referenced as LU2300005 and P109348. The subject site is located on Brentwood Avenue (public road), Kamo, Whangarei.

The decision is to grant consent to the application subject to conditions and for the reasons shown below in this decision report.

The Proposal

The application and supporting information as initially lodged was attached as an attachment to the s42A Report and the brief details of the proposal are shown below:

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**.*

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.

3. *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.*
4. *A Street Tree Replacement Palette has been proposed as part of the application.*
5. *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").*
6. *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 "*

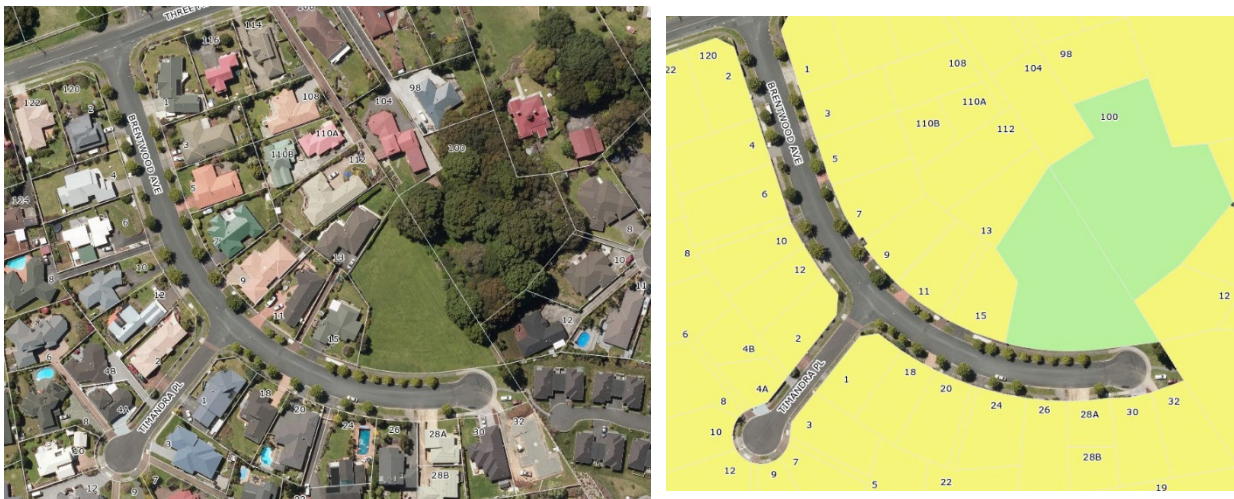
The Applicant, via Ms Christine Niblock's Statement of Evidence, altered the proposal so that the ratio of replacement planting is to be 1:1 within the Brentwood Avenue road corridor, with an additional 10 trees planted within the grassed area of the Brentwood Reserve.

Description – Site and Surrounding Environment

A description of the site and surrounding environment was outlined in the application and the S42A Report and the following is from the s42A Report:

1. *“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.*
2. *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.*
3. *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.*
4. *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



I am familiar with area and I agree and accept the descriptions provided by the various expert witnesses.

Reasons for the Applications

In regard to the reason for consent this was shown in Paragraphs 17 to 18 of Ms Jenkins Report which I have shown below. Ms Niblock for the applicant agreed with this reasoning:

“Whangarei District Council 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, the application is considered to be a **Discretionary Activity** and there was no dispute as to this status.

Notification and Submission

Following an assessment under Sections 95A – 95F of the Act by Council, it was concluded that the application should proceed on a publicly notified basis.

A total of 33 submissions were received and they were attached to the s42A Report and have been taken into account by me when making my decision. Most (29) of the submissions were in support of the application, 2 submissions opposed the application and 2 submissions did not identify their position.

The issues raised by the submitters were categorised as follows: Health and Safety, Property Damage, Replacement Planting and Ratio, Character and Amenity Values, Precedent, and Financial.

No late submissions were received.

Ms Jenkins at paragraph 28 of her report addressed one issue raised in a number of submissions on this application relating to the financial responsibility of the application. In considering this application under the Resource Management Act (1991) she stated that she would consider the actual and potential adverse effects of the proposal on the sustainable management of natural and physical resources, that the financial responsibility of the application is not a matter that is able to be considered under the RMA and that any agreements or understandings regarding a financial resolution or responsibility are to be between the consent holder and the relevant parties and sit completely independent of any resource consent decision. I agree with this approach/opinion.

Initially Two (2) of the submitters indicated that they wished to be heard and a hearing was arranged to start at 9.30am on Friday 7 July 2023. After Ms Jenkins s42A Report was circulated and which recommended approval subject to conditions and then Ms Niblock's expert evidence was also circulated and which also supported approval subject to conditions (with minor amendments) the Applicant undertook dialogue with the two (2) submitters who wished to be heard and as a consequence the submitters withdrew their request to be heard and the Applicant and Council requested that the application be considered on the papers. Ms Jenkins provided a brief supplementary addendum report in response to the suggested minor amendments to the conditions.

Pursuant to Section 100(b) of the Act it was determined that a hearing need not be held.

Evidence Considered

In reaching my decision on the application I have taken into account all of the information supplied to me by the Council including the application and the attachments, Ms Jenkins s42A Report and all the attachments, the submissions, expert evidence of Ms Niblock and her attachments, the written response from the submitters stating that they no longer wish to be heard and Ms Jenkins brief response on the suggested minor amendments to the conditions.

Principal Issues

The principal issues that were in contention and which I have taken into consideration were comprehensively covered in the s42A Report, in the application, evidence and the submissions. Ms Jenkins and Ms Niblock were both of the opinion that the application should be approved subject to conditions and I note that the two (2) submitters who withdrew their right to be heard also considered that the application should be approved.

The expert planning evidence was supported by specialist reports from:

- 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; and
- Arboricultural Memo prepared by Roscoe Webb of Arborlab.

After the request for a hearing was cancelled Ms Jenkins did an addendum to her report which was circulated to the applicant and Ms Jenkins addendum included some draft conditions for my consideration and also an attachment showing the palette for the proposed tree replacements which had been accepted by the applicant. Ms Jenkins recommendation had not changed from that included in her s42A Report but she had amended the draft conditions to take into account the reduction in the number of replacement trees on the reserve and also the schedule of the works. Her addendum only discussed those matters of the Application which had changed through the submission of the Applicant's evidence while all other assessments and conclusions of her original s42A report, dated 16 June 2023 remained as reported.

In regard to character and amenity effects Ms Jenkins agreed with and adopt the assessment made by Ms Niblock in paragraphs 7.7 and 7.8 of her evidence, and considered character and amenity effects in this regard will be upheld by the change to the replacement ratio.

However, in regards to Ms Niblock's evidence regarding the timing of the replacement trees, physical works, health and safety and roading/footpath infrastructure Ms Jenkins acknowledged that there is a need to mitigate the potential for physical repairs to the road reserve to not harm the health of the trees, she considered that in the context of this application there is also a need to balance the timing in which this occurs to ensure the character and amenity of the environment is not reduced on a longer term duration and she provided a recommended condition of consent which provides time for the Applicant and Council Departments to identify and plan for remedial works, and carry out all tree removal, remedial and replacement works within a suitable timeframe. Her opinion was that the condition would enable a balance between character and amenity effects, and timely health and safety remediation.

Ms Jenkins maintained her opinion that the proposal will result in a no more than minor effect on the character and amenity of the environment in the immediate future and that this effect will continue to reduce over time to a less than minor effect once vegetation is matured.

In regards to ecological effects Ms Niblock had included further comment from a Suitable Qualified and Experience Arborist - Mr Redfern whose opinion was that the replacement ratio and additional replacement trees within the reserve, will adequately compensate for the loss of the mature trees from the road reserve over time. Ms Jenkins accepted and adopted Mr Redfern's assessment and considered that ecological effects to be no more than minor.

Ms Jenkins opinion/conclusion in her addendum was that the effects of the proposal on the environment will be no more than minor, no further assessment (Relevant Policy Statements, Plans or Proposed Plans (s104(1)(b))) was considered necessary and in regards to Part 2 of the Act she maintained all assessments and conclusions reached in her s42A report with no further assessment being considered necessary.

The Resource Management considerations, the actual and potential effects on the environment as a result of the application and the statutory considerations of the relevant policy statements, plans or proposed plans were comprehensively covered in the s42A Report, the application and expert evidence and as I agree and accept the assessments and opinions of Ms Jenkins and Ms Niblock I have not

repeated the details here. Taking into account the assessments I consider that the effects of the proposal on the environment will be no more than minor, that the proposal is generally consistent with the applicable objectives and policies of the District Plan and that it meets Part 2 of the Act.

As I have decided to grant consent, I consider that appropriate conditions should be imposed. With the imposition of the conditions, I consider that the effects of the proposal will be less than minor and in doing so I have taken into account the evidence and submissions I received.

Overall, I consider that any adverse effects of the proposal can be avoided, remedied or mitigated through the imposition of conditions to a level that is no more than minor and also that the proposal (based on all of the evidence before me) is consistent with the relevant statutory provisions, including the relevant provisions of the Northland Regional Policy Statement and the Whangarei District Plan Operative in Part 2022.

Relevant Statutory Considerations

In considering this application, I have had regard to the matters outlined in Section 104 of the Act – any relevant provisions. The proposal is subject to Section 104 which sets out the matters that the Council must have regard to when considering an application for resource consent and any submissions received. As a discretionary activity, Section 104B sets out a consent authority's discretion in determining a decision.

The planning experts had undertaken an assessment and I do not intend to repeat this in full here.

With regard to Section 104(3)(a)(i), there are no known issues raised in the consent application or as a result of the submission process that raise questions of trade competition or the effects of trade competition.

With regard to Section 104(3)(a)(ii), the consent authority must not have regard to the effects on those persons who have given written approval to the application. No written approval to the application was received.

With regard to Section 104(6), it is considered that there is adequate information available on which to make a decision on the application.

Under Section 104(1)(a), the actual and potential effects on the environment of allowing the activity must be assessed. This includes an assessment of the existing environment, and consideration of matters that may fall under Section 104(2) as adverse effects that may be disregarded where they are permitted by a national environmental standard or plan ('permitted baseline'). I agree with the assessments provided by the relevant experts.

Under Section 104(1)(b), the relevant provisions required consideration and were considered by the various experts I agree and accept their assessments as far as they align with my decision to approve the application.

Under Section 104(1)(c), any other matters that may be relevant or reasonably necessary to determine the application require consideration. It was considered that there were no other matters of relevance. I agree.

Part 2 of the Act

Any consideration of an application under Section 104(1) of the RMA is subject to Part 2.

In the context of this discretionary activity application for land use, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and are designed to achieve clear environmental outcomes. As discussed above and for the reasons shown in this report my view having taken all of the evidence into account is that this resource consent application achieves the Purpose of the Act and can therefore be granted subject to conditions.

Decision

THAT pursuant to Sections 104 and 104B of the Resource Management Act 1991, the resource consent application lodged by Whangarei District Council Parks and Recreation Department (LU2300005 and P109348) to remove 34 public trees on Brentwood Avenue, Kamo and replace trees (on the road reserve and Brentwood Avenue Reserve) is granted consent subject to the following conditions and for the reasons shown below:

General Accordance Condition

1. This resource consent shall be carried out in general accordance with the documents and drawings and all supporting additional information submitted with the application, including the details below, and all referenced by the council as resource consent number LU2300005:
 - Application Form and Assessment of Environmental Effects prepared by Infrastructure Planners, dated 28-01-23.
 - Further Information Response titled 's92 Response:LU2300005', dated 23 March 2023.

Duration of Consent

2. Under Section 125 of the RMA, this consent lapses five (5) years after the date it is granted unless:
 - a) The consent is given effect to; or
 - b) The council extends the period after which the consent lapses.

Prior to Commencement of Physical Works

The following conditions shall be met to the satisfaction of the Team Leader RMA Approvals and Compliance, or delegated representative; evidence of which is to be provided by email to RMACompliance@wdc.govt.nz.

3. The consent holder must advise in writing the residents of Brentwood Avenue and Timandra Place of the proposed tree removal works and replacement planting. The notice must be provided at least seven (7) working days before tree removal works start. The written advice must set out the expected duration of the works, any traffic management that will be implemented and any site safe requirements to ensure appropriate safety measures are implemented to prevent any damage to private property.
4. The consent holder shall submit a Corridor Access Request application to Council's Road Corridor Co-ordinator and receive written approval for all works to be carried out within Council's Road Reserve in accordance with Council's Engineering Standards 2022 to the satisfaction of the Development Engineer or delegated representative.
5. The consent holder shall notify Council, in writing, of their intention to begin works, a minimum of seven (7) working days prior to commencing works. Such notification shall be sent to the RMA Compliance Officer and include the following details:
 - i. Name and telephone number of project manager
 - ii. Project address to which the exercising of this consent relates
 - iii. Activities to which the consent relates
 - iv. Expected duration of works.

During Physical Works

The following conditions shall be met to the satisfaction of the Team Leader RMA Approvals and Compliance, or delegated representative; evidence of which is to be provided by email to RMACompliance@wdc.govt.nz.

6. All tree removals must be undertaken by a suitably qualified and experienced Tree Removal Contractor with Industry Recognised Arboricultural Qualifications.
7. All replacement tree plantings must be undertaken by a suitably qualified and experienced Tree Planting Contractor with Industry Recognised Horticultural / Landscape Qualifications.
8. Every Public Tree that is removed, must be replaced at a ratio of 1:1 by a tree which is of the species identified in Appendix A – Palette of Replacement Trees with:
 - Each replacement tree must be located in the same or similar location as the tree being removed and shall be a minimum size of PB95/140L.
 - Ten (10) additional trees shall be planted within the reserve on Brentwood Avenue, being Lot 6 DP 107035 and Lot 17 DP 137989.
9. The replacement trees to be located within the road reserve must be installed as soon as practicably possible following the removal of the existing trees.
10. The consent holder shall ensure that spoil from the site is not tracked out onto Council Road formations to the satisfaction of the RMA Compliance Officer or delegated representative.
11. Dust nuisances must be controlled onsite (by use of a water cart or similar) by the Applicant so as not to cause “offensive or objectionable” dust at or beyond the boundary development.

Post Physical Works

12. The replacement street tree planting and trees planted within Brentwood Avenue reserve shall be maintained in perpetuity. Where a replacement tree fails, this must be replaced with a tree of either the same species or from the “Palette of Replacement Trees” and be a minimum size of PB95/140L, by the consent holder as soon as practicably possible.

Advice Notes

1. *For the purpose of compliance with the conditions of consent, “the council” refers to the council’s monitoring officer unless otherwise specified.*
2. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to Sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
3. *Under Section 120 an Applicant, Consent Holder or person who made a submission on an Application can appeal to the Environment Court against the whole or any part of the decision of a consent authority for a resource consent. The scope of appeal within s120(1A) states if the consent was for a boundary activity then the decision cannot be appealed (unless the boundary activity is a non-complying activity).*
4. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*

5. *A Corridor Access Request (CAR) is defined in the new “National Code of Practice (CoP) for Utilities access to the Transport Corridors “. This CoP has been adopted by Council. It provides a single application for Traffic Management Plans/Road Opening Notice applications. Enquiries as to its use may be directed to Council’s Road Corridor Co-ordinator, ph 430 4230 ext. 8231.*
6. *Erosion and Sedimentation Control shall be designed and carried out in accordance with GD05 “Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region”.*
7. *The consent holder shall pay all charges set by Council under Section 36 of the Resource Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The Applicant will be advised of the charges as they fall.*
8. *All archaeological sites are protected under the provisions of the Heritage New Zealand Pouhere Taonga Act 2014. It is an offence under that act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to Heritage New Zealand for an authority to modify, damage or destroy an archaeological site(s).*

Reasons for this Decision:

That pursuant to Section 113 of the Resource Management Act 1991 the reasons for this decision are (in addition to those included above) as follows:

- It is concluded that the proposal will have acceptable adverse effects on the environment subject to measures outlined in the application and the recommended conditions of consent. This includes in particular the effects on amenity and character of the locality, historical and cultural effects, ecological effects, tree replacement effects, construction effects and health and safety effects.
- The actual and potential effects from the proposal are found to be acceptable with actual and potential effects able to be avoided, remedied or mitigated, through the imposition of conditions, to a level that is no more than minor.
- It is concluded that the proposal is not considered contrary to the objectives and policies of the Regional Policy Statement and the Whangarei District Plan Operative in Part 2022, primarily those that relate to sustainable management of natural and physical resources and amenity values.
- The approval of the proposal, subject to the conditions of consent, is considered to meet the requirements of Section 104 of the Act.
- In terms of the matters discussed in this report, it is concluded that the proposal is consistent with Part 2 of the Act.

Issued this

4 July 2023



William (Bill) Smith

Independent Hearings Commissioner

Appendix 1

WDC - Berm Tree Species List	Common Name	Height	Narrow Berm	Deciduous	Native	Description
Acer Red Palmatum 'Emperor'		6-10m		*		Broadly columnar, deciduous. Brilliant red colour.
Acer Palmatum 'Shindishojo'		3 - 5m	*	*		Red spring foliage, deciduous.
Acer R Bowhall						
Callistemon citrinus	Bottlebrush	5m				Bright Red Flowers Late Spring
Fraxinus griffithii	Evergreen Ash	5m				Panicles of white flowers in summer
Ginkgo biloba 'Fastigiata'	Upright Ginkgo	10m+	*	*		Upright form, deciduous. Yellow foliage in spring.
Gordonia " Moonlight Magic"	Gordonia	6m	*			Large White / Yellow Centred Flowers Late spring/ early summer
Hymenosporum flavum	Australian Frangipani	10m x 4m	*			Narrow Tree , Yellow scented flowers
Jacaranda mimosaeifolia	Jacaranda	8m+				Beautiful Mauve flowers late spring / early summer
Lagerstroemia indica " Bergerac "	Crepe Myrtle	4-6m	*	*		Bark and flower display, deciduous.
Lagerstroemia indica " Kimono "	Crepe Myrtle					
Liriodendron tulipifera 'Fastigiata'	Tulip Tree Upright	15m+		*		Compact upright form. Large tree, deciduous.
Magnolia Aurora		4m	*			Locally Bred (Oz Blumhardt), Large Deep Pink Flowers in Spring
Magnolia Black Tulip		6m				Large Dark Ruby Red Flowers in Spring. Vigorous Grower.
Magnolia Stellata and varieties	Star Magnolia	3-7m		*		Late winter/early spring flowering, deciduous.
Michela doltsopa " Silver Cloud "		8m				Evergreen , Scented White Flowers late winter
Pyrus calleryana Aristocrat	Ornamental Pear	8m x 6m		*		White Flowers Spring / Red Autumn Foliage
Stenocarpus sinuatus	Queensland Firewheel Tree	7m x 4m	*			Spectacular Red Wheel Shaped Flowers Late Summer
Trystaniopsis laurina	Kanooka	7m+				Yellow Flowers Summer
Quercus cercis	Turkey Oak	15m+		*		Character areas, large tree, deciduous.
Quercus robur " Fastigiata "	English Oak Upright	10m+		*		Deciduous
Alectryon excelsus	Titoki	7m+			*	
Dacrycarpus dacrydoidies	Kahikatea	10+			*	
Knightsia excelsa	Rewarewa	12m+	*		*	Upright form, gully and river link, evergreen.
Metrosideros excelsa 'var'	Pohutukawa	8+			*	
Metrosideros " Mistral "		6+			*	
Nestegis lanceolata	White Maire	7m+	*		*	Handsome tree with narrow leaves, evergreen.
Pennantia corymbosa	Kaikomako	6-10m	*		*	
Rhopalostylis chathamica pittii	Pitt Isl Nikau	6m+	*		*	
Sophora Chathamica	Kowhai	6-10m			*	Flowers, gully links, bird attractant, mostly evergreen.
Sophora microphylla	Kowhai	6-10m			*	Flowers, gully links, bird attractant, mostly evergreen.
Weinmannia racemosa	Kamaha	6-10m	*		*	