

Section 95 of the Resource Management Act 1991

Notification Decision – Discretionary Activity

1 Consent Application

Council Reference	SL2100055 and P35827
Reporting Planner	A Hartstone, Consultant Planner
Applicant	Onoke Heights Limited
Application	93 lot subdivision, with road and drainage and recreation reserve to vest, inclusive of construction and earthworks. Land use consent for retaining walls to be constructed within road and side boundary setbacks in the General Residential Zone (GRZ).
Property Address	Dip Road, Kamo, Whangarei
Legal Description	Section 1 SO Plan 65970
Date Lodged	26 November 2021
Site Visit	17 December 2021
Environment	General Residential Zone (GRZ)
Resource Notations	Part Flood Susceptible Area Critical Electricity Line ('CEL')
Other	N/a

Distributions

<i>Internal</i>	<i>Date sent</i>	<i>Amendments sent</i>	<i>Comments received</i>
Senior Environmental Engineering Officer	3/12/2021		22/12/2021
WDC Parks	3/12/2021		22/12/2021
NTA	3/12/2021		11/1/2022
<i>External</i>	<i>Date sent</i>	<i>Amendments sent</i>	<i>Comments received</i>
Ngararatunua Marae	3/12/2021		3/12/2021

2 Further Information

Requested	Received
29/12/2021 Section 92 request	11/2/2022 Partial response provided 19/4/2023 Final amended application response

3 Description of Proposal

The application as lodged has been amended such that the application now considered as part of this report is that prepared by Barker and Associates Limited dated 14 April 2023 ('the application'), to be read in conjunction with the plan prepared by Blue Wallace Surveyors Limited entitled 'Concept Scheme Plan' referenced 20253-01-PL-102 Revision 19 dated November 2021.

Briefly, the application seeks consent for 93 vacant residential allotments, a public road to vest, drainage and recreation reserves and two private jointly owned access lots ('JOALs').

The development is to be serviced with reticulated wastewater, water, and stormwater, with a through road connecting Dip Road to the end of Tuatara Drive, and internal roading with a cul-de-sac head. The recreation reserve will adjoin the Waitaua Stream along the southern boundary, noting that the stream is recorded as being less than 3 metre wide on average where it adjoins the site. The drainage reserve is intended to retain a stormwater pond in the southeastern corner of the site adjacent to the Waitaua Stream and Tuatara Drive.

A separate resource consent application is being processed concurrently with the Northland Regional Council. That consent addresses earthworks across the site for construction and stormwater discharges.

4 Site and Surroundings

Section 3.0 of the application provides a description of the site and surrounding area. Having undertaken a site visit, that description is accepted and adopted for the purpose of this report.

5 Reasons for Consent

Section 5.0 of the application provides an assessment of the relevant District Plan rules. The assessment provided is accepted and adopted for the purpose of this report. In summary:

- The subdivision application is a discretionary activity under Rule SUB-R2.1 where the land contains a site of historic heritage¹ and the proposed boundaries do not ensure that the site of historic heritage is entirely contained within one of the proposed allotments.
- The subdivision application is a controlled subdivision activity for subdivision in the General Residential Zone under Rule SUB-R5, noting that the proposal complies with the minimum lot sizes specified.
- The subdivision application is a restricted discretionary activity under the Transport Chapter as it requires a Integrated Transport Assessment and a road to vest is proposed.
- The subdivision application is a restricted discretionary activity under the Three Waters Management Chapter Overall, the subdivision application requires assessment as a discretionary activity.
- The subdivision application is a controlled activity under the Earthworks Chapter
- The subdivision application is a controlled activity under the Lighting Chapter
- The land use application is a restricted discretionary activity due to identified boundary setback infringements.

Overall, the application requires consideration as a discretionary activity consisting of several different activities in a bundled application.

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

The application has provided sufficient information to illustrate that no consent is required under the NESCS.

6 Notification Assessment (Sections 95A to 95E)

Public Notification - Section 95A

Section 6.0 of the application addresses the relevant provisions relating to public notification criteria under Section 95A and 95D. The assessment provided as it relates to Section 95A(3) ('Step 1'), and Section 95A(5) ('Step 2') are accepted and adopted for the purpose of this report.

The application is not subject to any rule requiring public notification as per Section 95A(8)(a).

The application provides an assessment of effects as per Section 95A(8)(b) in accordance with Section 95D. That assessment is provided in Sections 6.2 – 6.4 of the application. The assessments provided in Sections 6.2 and 6.3 of the application are accepted and adopted for the purpose of this report. Notably, the consideration of a relevant permitted baseline in the GRZ allows for a range of activities that may otherwise be expected in the GRZ. However, it is noted that the GRZ limits residential development on any site to two

¹ Infringement of this rule has been determined following discussions with the Councils Policy staff regarding definition of historic heritage, despite the subject site not being identified on any District Plan maps as containing historic heritage or being a Site of Significance to Maori.

residential units and a single minor residential unit as a permitted activity. This does limit the applicability of any credible and no-fanciful permitted baseline, such that it is not considered to readily assist in assessing the extent of adverse effects of the proposal for the purpose of Section 95D(b).

Section 95D(e) directs that effects on any person who has given a written approval must be disregarded as part of the assessment of adverse effects. The application records that no written approvals have been provided in support of the proposal. However, the application records that a written approval has been obtained from Northpower Limited as it relates to the CEL crossing the property. As per Section 95D(e), adverse effects on Northpower Limited are to be disregarded.

Section 6.4 of the application provides a comprehensive assessment of the actual and potential effects on the environment framed as an assessment under Section 104(1)(a). That assessment addresses the following matters:

- Character and Amenity
- Transportation
- Infrastructure and Servicing
- Construction Activities
- Noise Effects
- Geotechnical (Effects)
- Critical Electricity Lines
- Heritage and Cultural Effects
- Natural Hazards
- Ecological Effects

Section 6.5 of the application records that *'...it is considered on balance that any adverse effects on the environment relating to this proposal will be no more than minor.'* In all respects, with the exception of Heritage and Cultural effects, that conclusion is accepted and adopted for the purpose of this report. Matters such as infrastructure and services, geotechnical, transportation, and character and amenity generally will not generate adverse effects beyond the immediate adjacent properties given the site is zoned as GRZ, and noting the activity status under rules in the various chapters is either controlled or restricted discretionary.

In addressing the matter of heritage and cultural effects, Section 2.2 of the application provides background and context for engagement with tangata whenua. A Cultural Impact Assessment ('CIA') has been provided from Te Parawhau and provided to the Council. That CIA sets out Te Parawhau's association with Onoke and the Waitaua Stream, and states that *'Onoke and the adjacent Waitāua are identified as an 'Area of Significance' to Te Parawhau and other hapū.'* Further, the CIA states that *'...Onoke, surrounding whenua and the Waitāua are wāhi tapu and taonga. The whenua subject to this proposal is a 'Site of Significance'. It is a place where traditional activities in accordance with tikanga Māori such as the cleansing tūpāpaku and other activities were carried out.'* The significance includes the few existing Puriri trees on the whenua and the adjacent Waitaua Stream. The CIA addresses the effects on Te Parawhau's cultural values and concludes that *'The proposal conflicts with all of Te Parawhau Hapū cultural values. The Hapū do not support this kaupapa.'*

In addressing these concerns, the application records in Section 6.4.8 that *'It is considered that the proposed mitigation measures will ensure that the potential for the proposal to have adverse effects on the identified cultural values will be no more than minor particularly when considered in respect to the permitted baseline.'*

Section 95A(8)(b) requires an assessment of the matters under Section 95D in order to determine whether the adverse effects that the activity will have or is likely to have on the environment (excluding identified adjacent land) are more than minor. With regard to heritage and cultural effects, the following is considered relevant:

- All the information available to the Council confirms that Onoke, the surrounding whenua, and Waitaua Stream constitute a site of significance to Maori. The subdivision site is therefore located on a property that is, or is part of, a site of significance to Maori.
- There is no credible or readily applicable permitted baseline that can be adopted that accounts for any/all of the potential adverse effects on historic heritage associated with the proposal.
- The CIA provided records that the scope of the development, inclusive of matters such as earthworks, stormwater discharge to the Waitaua Stream, and occupation of the site for the living, as adverse effects on the cultural values. These activities are fundamental to the development and there is no evidence to suggest they are capable of being avoided, remedied, or mitigated to a level acceptable to address the stated cultural effects.

- While the CIA and associated consultation has primarily involved Te Parawhau, the site falls within the rohe of Ngati Kahu O Torongare as addressed in Section 2.2 of the application. This has been formally recognised by way an Environment Court Consent Order issued in 2004 involving the Ngararatunua Marae Committee, and remains valid at the time of preparing this report. While no specific assessment of cultural effects have been undertaken as it relates to Ngati Kahu O Torongare, it is understood that the cultural effects generally align with those stated in the CIA and is further informed by the findings of a previous Environment Court decision as addressed below.
- An Environment Court decision A99/96 *CDL Land New Zealand Limited v Whangarei DC* has been provided to the applicant. That decision is a matter of public record where the Environment Court considered an application for a private plan change to rezone Onoke Block (the current subdivision site) from rural to a zone suitable for residential development. The Court declined the application, recording that *'The value of the relationship of the Ngati Kahu with the subject land (being Onoke Block), and its traditional and cultural significance for them, is clear and strong.'* This supports the position adopted in this report that the property is, or is part of, a site of significance to Maori. Further, the Court records that *'To rezone the land in a way that would allow subdivision and residential occupation of it would not recognise, nor would it provided for, that cultural and traditional relationship. Quite the contrary.'*

On this basis, it is considered that the potential adverse effects on a site of significance to Maori will be more than minor and potentially significant where they cannot be avoided, remedied, or mitigated. It is therefore considered that public notification is required under Section 95A(8)(b), as the adverse effects likely to arise on the environment, notably those related to historic heritage and cultural values, will be more than minor. It is recorded that the extent of cultural values and effects identified in the CIA relate to those values held by Te Parawhau. Ngati Kahu O Torongare's relationship with the site and surrounding area is recorded, but no specific detail has been obtained during consultation regarding those values or potential adverse effects.

For completeness, it is recorded that the existence of the Environment Court decision A99/96 *CDL Land New Zealand Limited v Whangarei DC* referenced above, and the current context where the subject site is zoned GRZ, would be considered a special circumstance under Section 95A(9). This would warrant public notification even if the finding and recommendation under Section 95A(8)(b) was different.

7 Recommendation

That pursuant to Sections 95A(8)(b) of the Act, this application requires public notification as the adverse effects likely to arise on the environment, notably those related to historic heritage and cultural values, will be more than minor.



A Hartstone,
Consultant Planner

9th May 2023

Date



K Kolkman,
Team Leader RMA Consents

18th May 2023

Date