

Report to Hearings Commissioner on Resource Consent Applications to Whangarei District Council and Northland Regional Council

EXECUTIVE SUMMARY

Onoke Heights Limited have made application to Whangarei District Council for a residential subdivision and associated land use activities consisting of 93 residential lots with associated servicing, roading and reserve network. The subject site is located within the General Residential Zone and requires consent as a discretionary activity.

The application to the Northland Regional Council is for an earthworks consent covering all construction works associated with the subdivision development and a stormwater discharge consent. The application requires consideration under the proposed Regional Plan for Northland as a controlled activity.

The application was subject to joint public notification with Whangarei District Council as lead agency. A total of twenty-nine (29) submissions were received by both Councils. The majority of submissions received raise issues that span the jurisdiction of both Councils.

This planning report assesses the extent of potential adverse and positive effects that may arise from the proposal and considers the relevant planning provisions contained in various national, regional and district planning documents. Careful consideration has been given in particular to the Regional Policy Statement for Northland, proposed Regional Plan for Northland, and Whangārei District Plan Operative in Part 2022.

Based on the suite of technical reports and evidence provided, the recommendation on the application lodged with the Whangarei District Council is that it be declined. That recommendation is based on the potential adverse effects arising on cultural values associated with the site. The recommendation on the application lodged with the Northland Regional Council is that it be approved. That recommendation reflects the controlled activity status under the Regional Plan.

STATEMENT OF REPORTING PLANNER QUALIFICATIONS AND EXPERIENCE

Alister Hartstone – Reporting Planner

I am a director of Set Consulting Limited, a company established in early 2016 that provides planning consultancy services to both local government and private clients. I currently undertake work for private clients across the upper North Island and Hawkes Bay, and district and regional councils. I hold a Bachelor of Regional and Environmental Planning with Honours from Massey University. I am a Full Member of the New Zealand Planning Institute and an accredited Hearings Commissioner.

I have previously worked in local government across Manawatu and Northland, commencing in 1995. During that time, I have dealt with a wide range of planning-related matters. I was a Planner and Section Planner with Far North District Council from 1996 – 2005 and the Resource Consents Manager at Whangarei District Council from 2005 – 2016. I have managed a multi-disciplinary team overseeing the processing of all planning-related applications, as well as being involved in development and review of plan changes, presenting evidence at Environment Court hearings, development contribution policy development and implementation, and strategic projects across the council and communities. In addition, I

have been involved in several national working groups run by Local Government New Zealand and Ministry for the Environment.

I confirm that I am familiar with the subject site and undertook a site visit on the 17th December 2021. I confirm that the evidence on planning matters that I present is within my area of expertise and I am not aware of any material facts which might alter or detract from the opinions I express. I have read and agree to comply with the Code of Conduct for Expert Witnesses as set out in the Environment Court's Practice Note 2023. The opinions expressed in this evidence, are based on my qualifications and experience, and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that.



20 October 2023

Alister Hartstone,

Date

**Consultant Planner for Whangarei District
Council and Northland Regional Council**

This report was peer reviewed by the following
signatory:



20 October 2023

Kaylee Kolkman,

Date

Whangarei District Council



20 October 2023

Stuart Savill

Date

Northland Regional Council

ABBREVIATIONS USED IN THIS REPORT

NRC	Northland Regional Council
WDC	Whangarei District Council
RMA	Resource Management Act 1991
RPS	Operative Regional Policy Statement for Northland
RWSP	Operative Regional Water and Soil Plan for Northland
PRP	Proposed Regional Plan for Northland
WDP	Whangarei District Plan Operative in Part 2022
NTA	Northland Transport Alliance
NPS-UD	National Policy Statement on Urban Development 2020
CIA	Cultural Impact Assessment
CEL	Critical Electricity Line

Section 42A Hearing Report

APPLICATION DETAILS

Council Reference: Whangarei District Council SL2100055
Northland Regional Council APP.043305.01.01

Reporting Planner: A Hartstone, Consultant Planner

Applicant: Onoke Heights Limited

Activity Summary:

Whangarei District Council

93 lot residential subdivision located in the General Residential Zone, with roads and drainage and recreation reserve to vest, inclusive of construction and earthworks. The consent application specifically includes a land use consent for the construction of retaining walls (deemed to be 'major structures' to be located within road and side boundary setbacks in the General Residential Zone.

Northland Regional Council

Controlled activity consent pursuant to Rule C.6.4.3 of the Proposed Regional Plan for Northland to undertake stormwater discharge from a proposed stormwater management system to the Waitaua Stream, to be constructed as part of the residential development and vested in the Whangarei District Council, that does not comply with the permitted activity standards in C.6.4.1.

Controlled activity consent pursuant to Rule C.8.3.2 of the Proposed Regional Plan for Northland to undertake 134,349m³ of cut and fill earthworks over 6.8ha of land as part of a residential subdivision that will not comply with the permitted activity standards in Rule C.8.3.1.

Location: Dip Road and Tuatara Drive, Whangarei

Public Notification: 14th August 2023 to 8th September 2023

Submissions Received: Twenty eight (28) submissions in opposition or part opposition
One (1) neutral with conditions

REPORT APPENDICES

- **WDC Application as lodged**
- **NRC Application as lodged**
- **Section 92 responses**
- **Submissions received**
- **Council's Development Engineer Report**
- **Environment Court decision CDL Land New Zealand Limited v Whangarei DC A99/96 dated 25 November 1996**

ADEQUACY OF INFORMATION

1. Applications were formally received by the Whangarei District and Northland Regional Councils on the 29th November 2021. The applications were reviewed with a single Section 92 request issued by both Councils on the 29th December 2021. A partial response to the Section 92 request was received on the 11th February 2022. A further response was provided under cover of email dated 7th March 2022 inclusive of an archaeological assessment and a record of consultation with Ngati Kahu o Torongare. Minutes of an online hui held on the 15th March 2022 (involving the applicant, District Council staff and Te Parawhau) were subsequently provided.
2. A formal response to the information sought as part of the Regional Council application was provided under cover of email dated 1 May 2022. That response addressed cultural, archaeological, and ecological matters with the information previously provided to the District Council on the 7th March 2022.
3. The applicant has since provided an amended application to the Whangarei District Council under cover of email dated 19th April 2023. A request for clarification on a number of engineering matters (mainly geotechnical and stormwater-based) was issued to the applicant on the 8th May 2023. Following issuing of the request for clarification, but before a formal response was provided by the applicant, a decision was made that sufficient information is available to proceed with public notification.
4. Following the close of public notification, a formal response addressing the clarification sought was received under cover of email dated 1st September 2023. Confirmation from the Council's Development Engineer that the additional information provided is acceptable was issued to the applicant under cover of email dated 5th October 2023. A final set of engineering plans was provided under cover of email dated 10th October 2023. A final response confirming the scope of the Regional Council consent was provided under cover of email dated 11th October 2023.
5. Consideration has been given to the matters raised in the submissions received. There are no matters that have been raised that have not been adequately covered in the information provided. No new matters have been identified in submissions that require additional information from the applicant in order to be suitably considered. The additional information provided following the close of notification has not resulted in any material changes to the proposal that would warrant reconsideration of the decision to publicly notify the applications.
6. It is noted that WDC has used external consultants to review the more technical engineering information associated with geotechnical and stormwater matters, and NTA have reviewed the traffic engineering information.
7. In summary, the information provided with the application allows for consideration of the following matters on an informed basis:
 - The nature and scope of the proposed activities that consent is being sought for
 - The extent and scale of the actual and potential effects on the environment
 - Those persons and/or customary rights holders who may be adversely affected
 - The requirements of the relevant legislation and Regional and District Plan provisions

8. On this basis, it is considered that the application is supported by adequate information to determine the application in accordance with Section 104(6). The proposal has not changed or been revised in any material form or scale during the processing of the consent application such that re-notification is required.

REPORT FORMAT AND METHODOLOGY

9. This report has been prepared as a single document covering the applications lodged with both the Northland Regional and Whangarei District Councils. It is necessary in this report to refer to the 'NRC application' and 'WDC application' where required to distinguish the two applications.
10. As detailed above, the information provided with the applications covers all relevant matters associated with the proposed activities. Technical assessments are provided within the application and comments have been provided from WDC and NRC staff addressing particular technical matters where required. Therefore, this report has been written in a manner to avoid any undue repetition or descriptions where suitable reference can be made to information in the application as provided for under Section 42A(1A) of the RMA.
11. Where there is agreement on any particular matter, including any technical assessment, this is identified in the report. Where there are any points of disagreement or difference of opinion, these are identified and the relevant points of difference of approach, assessment, or conclusions detailed.
12. Assessment of the proposed activities requires reference to a number of sections of the RMA and provisions in various planning documents. Unless considered necessary, reference will be made to the section and/or planning provision without a copy of that section or provision being included in the report in full.

THE PROPOSAL AND BACKGROUND

13. The WDC application is set out in Section 4 of the amended application prepared by Barker and Associates Limited dated 14 April 2023. Briefly, the application for subdivision involves the following activities:
- Creation of 93 vacant residential allotments – lots 1 – 93 ranging in size from 321m² to 768m².
 - Road to vest in the WDC – Lot 300.
 - Jointly owned access lots (JOALs) – Lots 301 and 302
 - Drainage reserve to vest in the WDC containing a stormwater pond – Lot 200
 - Recreation reserve along the length of the Waitaua Stream from Dip Road to the proposed drainage reserve, to contain a formed pedestrian footpath - Lot 201
 - Construction of roads and reticulated water, sewer and stormwater services to each lot, and provision of electricity and telecom connections to each lot.
 - No staging of the subdivision is proposed.
14. In conjunction with the subdivision, a landuse consent is sought for retaining wall structures exceeding 2 metres in height to be located within the 3 metre road setback from the Dip Road boundary and along the northern boundary within the 1.5 metre yard setback. Those walls are intended to be constructed as part of the subdivision works. The location of the proposed

retaining walls is illustrated on a plan provided as part of the amended engineering plans provided under cover of email dated 10th October 2023.

15. A summary of the information provided including Section 92 responses that is considered to form part of the WDC application and supporting information at the time of preparing this report is set out below:
- 'Updated Assessment Of Environmental Effects And Statutory Analysis – 93 lot subdivision and associated works' prepared by Barker and Associates dated 5th April 2023
 - Scheme Plan prepared by Blue Wallace Surveyors Limited referenced as 20253-01-PL-102 Rev 20 dated 31st August 2023.
 - Engineering Plans prepared by Blue Wallace Surveyors Limited provided under cover of email dated 10th October 2023.
 - 'Integrated Traffic Assessment' prepared by Engineering Outcomes Limited dated 24th November 2021 and 'Response To Comments From Northland Transportation Alliance' prepared by Engineering Outcomes Limited dated 28th January 2022.
 - 'Three Waters Design Report' prepared by LDE Limited dated 2nd February 2022 (updated report) and 'Civil RFI response' prepared by LDE Limited dated 31st August 2023.
 - 'Geotechnical Investigation Report' prepared by LDE Limited dated 2 July 2021, 'Geotechnical Review response' prepared by LDE Limited dated 2 February 2022, and 'Geo-RFI Responses' dated 1 September 2023.
 - 'Archaeological Assessment – Archaeological Assessment of the Proposed Subdivision of Section 1 SO 65970' prepared by Geometria Limited dated 28th February 2022.
 - 'Critical Electricity Line and Resource Consent Requirements' provided from Northpower Limited dated 19th November 2021.
 - 'Cultural impact Assessment' prepared by Landform Limited on behalf of the Te Parawhau Hapu dated October 2022.
 - 'Ecology Memo – Onoke Heights Subdivision' prepared by Wild Ecology Limited dated December 2022.
16. The NRC application provides for bulk earthworks across various parts of the site. This work is described as requiring 134,349m³ of cut and fill earthworks over 6.8ha of land, and includes works to construct the roading network and stormwater pond. It is understood that the volume of earthworks has been amended slightly following minor redesign of the stormwater pond as per amended plans provided under cover of email dated 10th October 2023. The applicant may wish to clarify what the total amended volume of earthworks will be for completeness.
17. Stormwater generated by the proposal is to be directed to a stormwater detention pond located in the eastern-most corner of the property adjoining the proposed roading connection to Tuatara Drive. The internal stormwater reticulation and pond are proposed to be constructed and then vested to WDC. Water from the pond is proposed be discharged into the Waitaua Stream.
18. A summary of the information provided that is considered to form part of the NRC application and supporting information at the time of preparing this report is set out below (inclusive of the Section 92 responses received):
- 'Assessment Of Environmental Effects And Statutory Analysis – Regional Consent - Landuse' prepared by Barker and Associates dated 26th November 2021

- Scheme Plan prepared by Blue Wallace Surveyors Limited referenced as 20253-01-PL-102 Rev 20 dated 31st August 2023.
- Engineering Plans prepared by Blue Wallace Surveyors Limited provided under cover of email dated 10th October 2023.
- 'Three Waters Design Report' prepared by LDE Limited dated 2nd February 2022 (updated report) and 'Civil RFI response' prepared by LDE Limited dated 31st August 2023.
- 'Geotechnical Investigation Report' prepared by LDE Limited dated 2 July 2021, 'Geotechnical Review response' prepared by LDE Limited dated 2 February 2022, and 'Geo-RFI Responses' dated 1 September 2023.
- 'Archaeological Assessment – Archaeological Assessment of the Proposed Subdivision of Section 1 SO 65970' prepared by Geometria Limited dated 28th February 2022.
- 'Cultural impact Assessment' prepared by Landform Limited on behalf of the Te Parawhau Hapu dated October 2022.
- 'Ecology Memo – Onoke Heights Subdivision' prepared by Wild Ecology Limited dated December 2022.

REASONS FOR CONSENT AND ACTIVITY STATUS

19. The WDC and NRC applications include detailed assessments of the relevant planning provisions. An updated assessment addressing the relevant rules of the WDP was provided under cover of email advice dated 19th April 2023, while a final confirmation of the relevant Regional Plan rules was provided under cover of email dated 10th October 2023.
20. The assessment of the relevant rules and associated activity status provided for both the WDC and NRC applications is accepted and adopted for the purpose of this report. Briefly, the activity status is set out below:

WDC Application

- The subdivision activity, inclusive of servicing, earthworks, transport, general construction works, and proposed reserves is a discretionary activity.
- The construction of retaining walls within the road and yard setback is a restricted discretionary activity.
- The activity of subdivision where it will affect a Critical Electricity Line is a restricted discretionary activity.

NRC Application

- Discharge of stormwater from a public stormwater network is a controlled activity.
- Earthworks where the exposed area exceeds 5000m² at any time at a particular location is a controlled activity.

SITE AND SURROUNDS DESCRIPTION

21. Section 3 of the WDC application provides a description of the site and surrounding locality. Briefly, the site is vacant with a southerly aspect, and in pasture with several native trees scattered across the site. The Waitaua Stream forms the southern boundary of the site. The property has frontage to Dip Road on its western boundary and Tuatara Drive in the eastern corner. The Onoke Scenic Reserve abuts the majority of the eastern and northern

boundaries, with the WDC water reservoir located adjacent to the northern corner of the site, which is the highest elevation on the property.

NOTIFICATION AND SUBMISSIONS

22. The application was subject to joint public notification, with WDC as lead agency. Public notification commenced on the 14th August 2023 and closed on the 10th September 2023.
23. The following table summarises the submissions received and accepted within the submission period (in no particular order):

Name of Submitter	Oppose/ Support	Wish to be Heard	Relief Sought
Duncan Scott	Oppose	Yes	Decline
Julienne Atkinson	Oppose	No	Decline
Danielle Henwood	Oppose	No	Decline
Andy Sinclair	Oppose in part	Yes	Amend application so Tuatara Drive is a slow street
Anna Henare	Oppose	No	Decline
Arla Kerr	Oppose	No	Decline
Bianca Buchanan	Oppose	Yes	Decline
Chantez Connor-Kingi	Oppose	Yes	Decline
Emma Wilson	Oppose	No	Amend so less density
Grant Little	Oppose in part	Yes ¹	Amend to address stormwater and flooding
Irene Lindsay	Oppose	No	Decline
Janine Whitelaw	Oppose	Yes	Decline
Julie and Dean Guerin	Oppose	Yes	Decline
Kathryn Heape	Oppose in Part	Yes	Amend so less density
Krystal Riley	Oppose	No	Decline or amend so less density
Marion Carter	Oppose	No	Amend so less density
Michael Judd	Oppose	Yes	Decline
Harping Bowker	Oppose	No	Decline
Richard Horwood	Oppose	No	Decline
Ross Grant	Oppose	No	Decline
Roy Davidson	Oppose	No	Approve subject to conditions
Ruth Smallwood	Oppose	No	Decline
Shaughan Anderson	Oppose	Yes	Amend as set out in submission
Sheryl Grant	Oppose	No	Decline
Tania Dunn	Oppose	Yes	Approve subject to conditions
Taryn McQuinn	Oppose	Yes	Decline
Te Parawhau Resource Management Unit	Oppose	Yes	Decline
Vivienne Judd	Oppose	Yes	Decline
Fire and Emergency New Zealand	Neutral	Yes	Approved with conditions

¹ Grant Little confirmed his wish to speak following the close of the notification period.

24. Full copies of submissions received are attached. All of the submissions were received within the specified notification period.
25. Issues that have been raised in the submissions in opposition that are relevant to the application and can be considered are summarised below:
 - Residential character and density of development
 - Traffic effects on the existing roading network, including associated safety and amenity concerns
 - Flooding and stormwater management, particularly associated with downstream areas
 - Maintaining integrity of Onoke and Waitaua Stream and adverse effects on Onoke as sacred site to tangata whenua
 - Infrastructure capacity (water, sewer and stormwater) accommodating additional development
 - Construction noise
 - Geotechnical matters including land stability
 - Provision of adequate water supply for firefighting and access for fire appliances
 - Ecological effects from increased house pets and loss of native birds and trees
26. Three matters have been identified in the submissions received that are considered to fall outside the scope of the current applications. These matters are addressed briefly below.
27. The submission received from Tania Dunn indicates opposition to the proposal if the development is used for public housing. It is not possible nor lawful for WDC or NRC to specify what type of housing the subdivision may contain should it be consented and developed.
28. The matter of potential property devaluation as result of the proposal being granted and developed is raised in several submissions. Any potential effect on property values is not an environmental effect and therefore cannot be considered by either WDC or NRC.
29. Several submissions raise questions about retaining open space. Notably, the submission from Shaughan Anderson suggests setting aside additional land as reserve. The WDC has no ability to require reserves to be set aside by the applicant where they are not provided for esplanade purposes (ie. beside a river, lake or coastal marine area), other than where the applicant has offered them as part of the proposal. The proposed recreation and drainage reserves identified in the proposal are offered by the applicant and are intended to form part of the public infrastructure and open space of the development.

STATUTORY PROVISIONS

30. Both the WDC and NRC applications require consideration under the provisions of Section 104 of the RMA to determine whether consent can be granted. Section 104(1) of the RMA requires that, subject to Part 2 of the Act, regard should be had to the following matters:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from 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.*
31. The WDC application is assessed as a discretionary activity. Therefore, Section 104B applies which allows a consent authority to grant or decline an application. If it grants consent, then conditions may be imposed under Section 108.
32. The NRC application is assessed as a controlled activity. Therefore, Section 104A applies which requires a consent authority to grant consent, unless it has insufficient information to determine whether or not the activity is a controlled activity. In granting consent, conditions may only be imposed where control is reserved in any relevant NES, other regulation, or (in this case) regional plan. Having assessed previously in this report that there is sufficient information to confirm the controlled activity status, it is considered that the NRC application must be granted in this case. The grant of consent, and recommended conditions that may be imposed, is addressed further in this report.

SECTION 104(1)(A) - ACTUAL & POTENTIAL EFFECTS ON THE ENVIRONMENT

Trade Competition

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

Written Approvals

34. With regard to Section 104(3)(a)(ii), a consent authority must not have regard to the effects on those persons who have given written approval to an application. As part of the WDC application, written advice under cover of letter dated 19th November 2021 from Northpower has been provided. While it does not explicitly provide approval to the development as it relates to the CEL, it appears to be implied that approval is given on the basis that it sets out Northpower requirements for the subdivision. It is considered appropriate to accept this documentation as a written approval, noting that no submission has been received from Northpower during the notification period. Therefore, no regard is had to any effects on Northpower Limited or the CEL (as a Northpower asset) resulting from the WDC application.

Receiving Environment and Permitted Baseline

35. When considering the effects of a proposal, consideration of the 'environment' that will 'receive' the effects of any proposal needs to be considered. In identifying the receiving environment, it is necessary to consider the environment as it is at the time of application, and the likelihood of change to that environment in the future, based upon the activities that could be carried out as of right or with respect to resource consents that have been granted (where it is likely that they will be given effect to).
36. There are three components that inform the receiving environment:
- what lawfully exists in the environment at present;
 - activities (being non-fanciful activities) which could be conducted as of right; i.e. without having to obtain resource consent ('permitted baseline'); and,
 - activities which could be carried out under a granted, but as yet unexercised, resource consent.
37. The existing environment is well-described in the application and supporting documents.
38. In accordance with Section 104(2), the Council may disregard an adverse effect of an activity on the environment if the Plan or a National Environmental Standard permits an activity on the site with that effect (the 'permitted baseline' test). The baseline has been defined by case law as comprising non-fanciful (credible) activities that would be permitted on the application site as of right by the plan in question.
39. As it relates to the WDC application, the site is zoned GRZ which anticipates a level of residential development on the site. There is no permitted residential subdivision activity provided for in the WDP. The land use rules for the GRZ allow for a maximum of two residential units and a minor residential unit per site as a permitted activity.
40. In addition to built structures, bulk earthworks are not controlled under the WDP as a land use activity. Earthworks can therefore be undertaken as a permitted activity unless it triggers consent under the PRP. Vegetation clearance, including removal of the existing mature trees on the site, is a permitted activity in the GRZ.
41. Given the extent of the proposal and resulting number of lots to accommodate future residential units, the permitted baseline allowing for two residential units and a minor residential unit is of limited assistance in assessing the extent of effects of the proposal.
42. At the time of preparing this report, Onoke Heights Limited has sought consent by way of a Certificate of Compliance under Section 139 of the RMA to remove the mature indigenous trees, consisting of five individual mature puriri trees, one individual totara tree, and small stand of mamaku and mahoe, on the site. This application was confirmed as a permitted activity by the WDC on the 13th September 2023. It is reasonable to assume that this Certificate will be relied on to provide for removal of the trees should the subdivision consent be granted and given effect to.
43. A permitted baseline is not considered to be relevant when assessing the effects associated with the NRC application. As a controlled activity, consent must be grant.

Assessment of Effects – WDC Application

44. Section 6.4 of the WDC application provides an assessment of environmental effects addressing a number of matters, informed by technical reports forming part of the application. The WDP includes a requirement under HPW-R8 Assessment of Discretionary Activities that discretionary land use and subdivision activities shall include an assessment of matters listed as a. – x. While the WDC application does not include an assessment of effects that explicitly addresses the criteria under HPW-R8, it is considered that all relevant matters are suitably addressed.

45. For the purpose of the following assessment, the format and headings provided in the WDC application are generally adopted for ease of reference.

Positive Effects

46. The positive effects listed in 9.1 of the WDC application are accepted and adopted for the purpose of this report. In addition, the provision of a revegetation planting plan on proposed reserve land as set out in the ecological information provided will potentially generate some positive ecological effects.

Character and Amenity

47. Section 6.4.1 of the WDC application addresses the expected character and amenity of the development recognising that the site is zoned for residential development.

48. Insofar as the site will be developed for residential-scale built development, the extent of adverse effects are anticipated by the District Plan, albeit not as a permitted activity. Several submissions have queried the density of the development with various suggestions made or offered as to how the density may be reduced. The density proposed is complying with the WDP requirements for the zone, and is similar to other recent subdivisions granted in the urban areas of the District. Given the general compliance with the subdivision rules in the zone, it is considered that there is no necessity to reduce density of lots and resulting development.

49. The provision of street trees and landscaping, reserves, and a walkway through the site linking Dip Road and Tuatara Drive offer features that are of benefit to the community and will form a positive part of the character and amenity of the area in that respect.

50. The proposed retaining walls located within the road and yard setback have been identified as requiring restricted discretionary land use consent under Rule GRZ-R4 Building and Major Structure Setbacks. The matters (1) – (4) that discretion is restricted to under the Rule relate to character and amenity matters, such as outlook and privacy, shading, visual dominance, and impacts on public walkways. The road setback requires additional consideration of streetscape character and safety and efficiency of the adjacent transport network. The proposed walls adjoining Lots 72 – 76 will be cut below the existing ground level, as will the short portion of infringing wall adjoining Lots 46 and 60 and Dip Road. These are not expected to generate any off-site adverse effects, noting that the WDC as adjacent owners at both locations, has not objected to the proposal.

51. Overall, any adverse effects on residential character and density are considered to be minor and acceptable on the basis that the site is zoned for residential development and therefore the associated effects of the development are anticipated.

Transportation

52. Section 6.4.2 of the WDC application details the features associated with the proposed roading design and addresses effects associated with increased traffic generated by the proposal. Reliance

is placed on the traffic engineering information provided by Engineering Outcomes Limited in support of the application. NTA have reviewed the information provided in support of the application and confirmed (via the Council's Development Engineer) that subject to suitable conditions the effects associated with additional traffic generation and pedestrian safety on the roading network will be acceptable.

53. A number of submissions have raised concerns regarding the effects on increased traffic, particularly related to safety. These submissions have been viewed in the context of the information provided and advice provided from NTA. The advice regarding the proposal and associated traffic effects are recorded in the Council's Development Engineer report attached to this report. It is expected that Fire and Emergency NZ will be able to access all areas of the development as necessary for emergency purposes. Development contributions are payable by the applicant for road upgrading purposes that may be used to upgrade the local network in future if required. While submitters have expressed concerns regarding the changing traffic environment, the previous zoning of the land in the area for residential development has accounted for future residential development and has therefore been anticipated by the Council. Overall, it is considered that the adverse roading and traffic effects will be minor subject to conditions of any consent.

Infrastructure and Servicing

54. Section 6.4.3 of the WDC application addresses the provision of reticulated sewer, water, and stormwater services and provision for power and telecom connections. The provision of these services, including provision for stormwater attenuation and treatment ponds, are assessed as complying with the WDC requirements.
55. Council's Development Engineer has confirmed that such servicing can be suitably achieved subject to the imposition of conditions addressing various requirements. It is noted that the stormwater management system has been subject to a technical review by an external consulting engineer on behalf of WDC. On this basis, any such adverse effects are expected to be less than minor and therefore acceptable.
56. A number of submissions raise issues regarding stormwater management and flooding. The Council is relying on the engineering advice provided by the applicant and reviewed by Council engineers to confirm that the provision of stormwater infrastructure will not increase the level of downstream stormwater flows. The applicant has responded to detailed requests from the Council engineers with additional engineering designs and plans information to ensure this is achieved. Conditions of consent can ensure that all works are undertaken and completed in accordance with the engineering reports and designs provided.

Construction Effects

57. Sections 6.4.4 and 6.4.5 of the WDC application identify earthworks, dust, noise and vibration, and construction traffic as potential adverse effects associated with construction of the development. The extent of effects associated with earthworks and dust need to be read in the context of the NRC application, which addresses dust management, sediment and erosion control, including site stabilisation for construction traffic, and revegetation of any bare areas of land to minimise dust and sedimentation.
58. A number of submissions raise concerns associated with construction activities, given the scale of the development. Generally, there is a level of tolerance for construction activities given they are temporary and sometimes intermittent, noting that it is not possible to undertake development such as that proposed in any location without generating some effects such as noise.

59. Suitable site management during all construction works can be achieved by way of development and implementation of a Construction Management Plan as a condition of any consent. This is a common practice adopted for larger scale development where specific controls around matters associated with noise, dust, and traffic may be required. Such a Plan may be complementary to any Erosion and Sediment Control Plan that may be required as a condition of any NRC consent for earthworks.
60. Noise and vibration are potential nuisance effects generally arising from vehicles involved in construction works. Rule NAV.6.2 addresses Construction Noise and specifies standards in accordance with New Zealand Standard NZS6803:1999 'Acoustics – Construction Noise'.
61. With regard to construction traffic, while this is not quantified it is understood that for projects of this nature and scale any heavy machinery is transported onto the site at the commencement of works and remains onsite for the duration of construction or at least until it is no longer required. Any additional traffic generated will therefore relate mainly to contractors entering and exiting the site on a daily basis. It is anticipated that all construction and contractor vehicles will be parked and operated within the subject site and not parked or stored on any other property.
62. It is expected that through a proposed Construction Management Plan condition, these matters can be suitably addressed such that any off-site adverse effects will be minor and acceptable.

Geotechnical

63. Section 6.4.6 of the WDC application refers to the specific geotechnical engineering report provided with the application. The purpose of the report is to ensure that the site is suitable for residential development. Importantly, the report addresses the provisions under Section 106 of the RMA which requires consideration of natural hazards – that is addressed further in this report. It is noted that some submissions have raised questions regarding the steepness of the site and appropriateness of development in this location.
64. Council's Development Engineer has advised that there are no specific geotechnical engineering concerns and that the design of earthworks can be covered by conditions of consent, including the construction of retaining walls and building platforms. The geotechnical information has been reviewed on behalf of the WDC by an external consulting engineer. On this basis, any such effects are assessed as less than minor and acceptable.
65. It is note that WDC has raised concerns with the applicant regarding on-going stability associated with the WDC's existing water supply reservoir located adjacent to the north of the site, particularly where the WDC may wish to expand the reservoir in future. This issue is intended to be dealt with by way of a separate agreement between the Council and the applicant outside the resource consent process (as a civil matter) to resolve that issue.

Critical Electricity Lines

66. The WDC application proposes relocation of an existing overhead CEL so as to be re-laid underground across the site. Northpower Limited, as the owner / asset manager of the CEL, have provided approval to this proposal.

Historic Heritage and Cultural Effects

67. Section 6.4.8 of the WDC application provides a detailed assessment of the cultural and historic effects of the proposal. The application records in some detail consultation with Ngati Kahu O Torongare and Te Parawhau, where both are considered to have mana whenua over the area in which the site is located.

68. Based on the CIA provided with the application and the submissions received, it is readily apparent that the site has significant cultural value. Despite not being mapped as a Site of Significance to Maori in the WDP, the CIA confirms that Onoke, inclusive of the whenua, native trees and the Waitaua Stream, are taonga and wahi tapu. This is considered to reconfirm a previous finding made by the Environment Court decision *CDL Land New Zealand Limited v Whangarei DC A99/96* dated 25 November 1996. A copy of that Court decision is attached to this report. That Court decision addressed a plan change proposal for the subject site, where it was intended to be rezoned for residential purposes. The Courts conclusion included the finding that ‘...*Ngati Kahu have a relationship in their culture and tradition with the subject land as ancestral land, water, sites, wahi tapu, and other taonga there.*’
69. The adverse effects of the proposal on the identified cultural values, including the wahi tapu status, are addressed in Section 8 of the CIA and concludes in Section 9. that the proposal will have significant adverse effects.
70. Several submitters have identified the cultural values associated with the site and raised concerns regarding adverse cultural effects. It is expected that this matter will be traversed further at the hearing with submitters able to speak to the concerns raised regarding the cultural values and potential adverse effects.
71. For the purpose of this report, it is considered that the evidence provided confirms the wahi tapu status of Onoke and Waitaua Stream. The proposal will result in significant and unavoidable adverse effects on those cultural values. There is no information available to suggest that these potential adverse effects can be avoided or mitigated in any way while allowing development of some or all of the site to proceed. On that basis, the adverse effects arising from the proposal on the cultural values associated with the site are considered to be unavoidable and unacceptable.

Natural Hazards

72. Section 6.4.9 of the WDC application addresses natural hazards. The identified hazard relates mainly to the small area of flood hazard associated with the Waitaua Stream channel. The engineering information provided with the application addresses the effects of retaining structures being located partially within the flood hazard area, the risk to the proposed lots, and the reduction in downstream flood hazards as a result of the proposed stormwater management system to be constructed as part of the subdivision. Subject to advice from an external consulting engineer acting for WDC, Council's Development Engineer has accepted the assessment provided as suitable addressing Section 106 of the Resource Management Act as it relates to identified hazards. It is noted that this matter overlaps to a large extent with the earthworks consent sought in the NRC application.

Ecology

73. Section 6.4.10 of the application addresses the ecological effects associated with the development. The assessment is based on the ecological assessment report prepared by Wild Ecology Limited provided with the application. Based on that report, any effects on existing ecological values arising from the proposal are assessed as less than minor, subject to a requirement for a revegetation planting plan to be prepared for the reserves to vest. This can be required and implemented as a condition of consent.
74. Submissions raise concerns regarding potential adverse ecological effects on flora and fauna, the existing mature native trees on the site and on the Waitaua Stream. As recorded previously, the applicant holds a certificate of compliance to remove the native trees on the site. Conditions of

consent, notably directed towards construction and earthworks, can address potential effects on the stream habitat. The revegetation plan will achieve some minor positive ecological effects where suitable native plantings can be provided across the proposed reserves in locations that are currently pasture and rank grass.

Assessment of Effects – NRC Application

75. The NRC application as lodged records that consent is required for stormwater discharge and earthworks as controlled activities under the PRP. It is recorded that no consent is required under the Operative Regional Water and Soil Plan as Section 86F applies to the PRP rules. The PRP rules are therefore treated as operative, and any previous rule under the Operative Plan is inoperative.
76. Rule C.6.4.3 Stormwater Discharges specifies five matters of control requiring consideration as directed by Section 104A of the RMA. These matters are set out in Section 7.3.2 of the NRC application. Section 4.2 of the NRC application sets out what is proposed, noting that the discharge activity results from the stormwater pond discharging into the Waitaua Stream, which will become the responsibility of the WDC as public infrastructure on completion of the subdivision.
77. The matters of control are addressed by way of engineering design of the stormwater system and discharge point design provided with the application, much of which is contained in the Three Waters Management' report prepared by LDE Limited. Conditions of consent can be imposed, where they relate to the matters of control, to address any potential adverse effects of the stormwater discharge.
78. Rule C.8.3.2 Earthworks specifies seven matters of control requiring consideration as directed by Section 104A of the RMA. Section 7.3.2 of the NRC application sets out these matters. With regard to matters 1) – 6) these are considered to be adequately addressed by the information provided and conditions that can be imposed, particularly as it relates to erosion and sediment control measures and management of flooding effects. As previously detailed in this report, a Construction Management Plan can be utilised as a condition of consent to address matters associated with the location, extent, timing and duration of earthworks. As recorded in the ecological information provided, a revegetation plan can be prepared and implemented, although that is better addressed through conditions of any consent granted to the WDC application.
79. Matter of control 7) refers to adverse effects on wahi tapu and the identified values of mapped Sites and Areas of Significance to Tangata Whenua, where they are present in adjacent freshwater bodies. The site is not mapped as an Area of Significance to Tangata Whenua in any regional policy statement or plan. However, evidence provided through the CIA and submissions received identifies the wahi tapu values associated with Onoke and Waitaua Stream. As recorded above, it is considered that unavoidable and unacceptable adverse effects will arise as a result of the subdivision activity being undertaken on the site.
80. However, for the purpose of the NRC application, as a controlled activity, there is no scope to decline the application – it must be granted. While the matter of control refers to adverse effects on wahi tapu where present in adjacent freshwater bodies, in this case it is not clear what, if any, condition/s could reasonably be imposed that address the identified potential adverse cultural effects. It is noted that the proposed erosion and sediment controls and post development stormwater controls will minimise, as far as is practicable, the discharge of contaminants into the Waitaua Stream, and that there is no actual physical intrusion into, or alteration of, the stream bed.

Conclusion regarding Environmental Effects

81. Careful consideration has been given to the environmental effects rising from the suite of activities that form the subdivision and land use proposals lodged with the WDC and NRC.
82. In summary, it is considered that the activities as set out in the WDC application will generate minor or less than minor potential adverse effects, subject to suitable conditions of consent, with the exception of those potential adverse effects arising on the cultural values associated with the site. The extent of adverse effects arising from the proposal on the identified cultural values are such that they cannot be mitigated or avoided and are therefore considered to be unacceptable.
83. As the NRC application provides for consideration of controlled activities which must be granted, the potential adverse effects, excluding cultural effects, are assessed as being minor and acceptable, subject to conditions of consent.

SECTION 104(1)(AB) – ENVIRONMENTAL OFFSETTING OR COMPENSATION

84. The application does not refer to any specific activity as part of the proposal requiring consideration under this section.

SECTION 104(1)(B) - PROVISIONS OF STANDARDS, POLICY STATEMENTS AND PLANS

85. Section 104(1)(b) requires a decision-maker to have regard to the relevant provisions of a suite of planning documents at a national, regional and district level. The policy statements and plans that are considered to contain relevant provisions requiring consideration in this report are as follows:
- National Policy Statement for Urban Development 2020 (NPS-UD)
 - National Policy Statement for Freshwater Management 2020
 - Northland Regional Policy Statement 2016
 - Proposed Regional Plan for Northland
 - Whangarei District Plan Operative in Part 2022

National Policy Statement for Urban Development 2020 (NPS-UD)

86. Section 10.1 of the WDC application provides an assessment of the NPS-UD which is accepted and adopted for the purpose of this report subject to the comments below. The NPS-UD sets out objectives and policies regarding development in the urban environment. Insofar as the WDC application involves the subdivision and use of land in the General Residential Zone (being an urban environment), this is considered to be supported by and consistent with the NPS-UD provisions set out in the WDC application.
87. Objective 5 and Policy 9 contained in the NPS-UD state as follows:

***Objective 5:** Planning decisions relating to urban environments, and FDSs, take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*

***Policy 9:** Local authorities, in taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in relation to urban environments, must:*

- (a) involve hapū and iwi in the preparation of RMA planning documents and any FDSs by undertaking effective consultation that is early, meaningful and, as far as practicable, in accordance with tikanga Māori; and*
- (b) when preparing RMA planning documents and FDSs, take into account the values and aspirations of hapū and iwi for urban development; and*

(c) *provide opportunities in appropriate circumstances for Māori involvement in decision-making on resource consents, designations, heritage orders, and water conservation orders, including in relation to sites of significance to Māori and issues of cultural significance; and*

(d) *operate in a way that is consistent with iwi participation legislation.*

88. Given the current application involves a resource consent application for subdivision of land zoned for residential purposes, Clause (c) and (d) under the Policy apply. It is acknowledged that the applicant has undertaken consultation with local iwi / hapu, the result of which has been a CIA that has set out the cultural values associated with Onoke and Waitaua Stream. With specific regard to the NPS-UD, the objective and policy are considered to signal that while land may be zoned for residential purposes, development of that land as provided for under the NPS-UD must take into account the principles of Te Tiriti o Waitangi.

National Policy Statement for Freshwater Management 2020 ('NPS-FW')

89. Section 10.2 of the WDC application and 10.1 of the NRC application both address the NPS-FW. Both commentaries assess the provisions as they relate to the Waitaua Stream and both conclude that *'For these reasons, it is considered that the proposal is consistent with the relevant NPS-FM policies and achieves objective 1.'*
90. Section 1.3 of the NPS-FW states that the fundamental concept of Te Mana o te Wai is applicable to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement. It is read as supporting consideration of the provisions of the NPS-FW on a wider basis across both the WDC and NRC applications, despite the discharge consent for stormwater being sought in the NRC application.
91. Section 6.3.1 of the CIA report addresses the NPS-FW as it relates to the proposal. For the purpose of this report, that assessment reflects what is understood to be the relevant provisions of the NPS-FW as it relates to cultural values and effects. In addition, it is noted that Appendix 1A 'Compulsory Values' includes reference to Mahinga Kai, while Appendix 1B 'Other Values that Must be Considered' includes Wai Tapu.
92. Overall, the NPS-FW is read as protecting the health of freshwater, and where water bodies such as the Waitaua Stream are identified as having Maori freshwater values (in this case mahinga kai and wai tapu), these require consideration as specific values of importance when making a decision on the applications.

Northland Regional Policy Statement 2016 ('RPS')

93. Section 10.3 of the NRC application and Section 10.4 of the WDC application provide an assessment of the respective RPS provisions relating to the applications to the two Councils. The assessments provided are generally accepted and adopted for the purpose of this report, subject to the comments below.
94. The RPS includes an objective and policies that address tangata whenua. These are considered relevant to the WDC application for two reasons:
- The WDP is considered to be potentially incomplete in terms of provisions relating to cultural values and tangata whenua. The WDP has yet to be amended to give effect to the RPS provisions as required under Section 75(3) and an intended plan change to incorporate mapping of Sites of Significance to Tangata Whenua has yet to be enacted.

- The evidence provided as part of the application and through submissions raises specific and significant concerns regarding potential adverse cultural effects resulting from the proposed activities.

95. Objective 3.12 and Policy 8.1.2 of the RPS state as follows:

3.12 Tangata whenua role in decision-making

Tangata whenua kaitiaki role is recognised and provided for in decision-making over natural and physical resources.

8.1.2 Policy – The regional and district council statutory responsibilities

The regional and district councils shall when developing plans and processing resource consents under the Resource Management Act 1991 (RMA):

- (a) *Recognise and provide for the relationship of tangata whenua and their culture and traditions with their ancestral land, water, sites wāhi tapu, and other taonga;*
- (b) *Have particular regard to kaitiakitanga; and*
- (c) *Take into account the principles of the Treaty of Waitangi including partnership.*

96. Based on the CIA provided and contents of submissions received, Clauses (a) and (b) in the Policy are relevant to the proposal. It is considered that the adverse cultural effects arising from the subdivision and land use proposal will be unavoidable and unacceptable. The proposal if granted would therefore be in direct conflict with the stated objective and policy of the RPS by not recognising the role of kaitiaki as it relates to the cultural values on the site, nor does it recognise and provide for the evident relationship between tangata whenua and the site, and the values it contains.

Proposed Regional Plan for Northland ('PRP')

97. The PRP provisions are relevant to the NRC application. As the activity status of both activities seeking consent under the PRP are controlled, the activities and associated effects are anticipated by the provisions of the PRP. The NRC application addresses Policy D.4.31 and that assessment is accepted and adopted for the purpose of this report.

98. In terms of addressing cultural values and effects, the PRP repeats Objective 3.12 contained in the RPS, but includes a separate set of policies under Section D.1 Tangata Whenua. Policies D.1.1, D.1.2, and D.1.5 are addressed by provision of the CIA. In accordance with Policy D.1.5, Onoko and the Waitaua Stream constitute a Place of Significance to tangata whenua under the Policy.

99. Policy D.1.4 'Managing effects on place of significance to tangata whenua' states as follows:

'Resource consent for an activity may generally only be granted if the adverse effects from the activity on the values of places of significance to tāngata whenua in the coastal marine area and water bodies are avoided, remedied or mitigated so they are no more than minor.'

100. This policy does not prevent the grant of all consents – the use of the term 'may generally only be granted' allows narrow scope to grant consent. It is understood that the intent of the policy is that only under exceptional circumstances should such an application be granted, and that this assessment should be undertaken on a case by case basis. In this instance, the controlled activity status of the applications made to the NRC does not allow NRC to consider declining the applications. It is also not known to what extent any proposed conditions may avoid or mitigate any cultural effects of the activity.

Operative Whangarei District Plan in Part 2022 ('WDP')

101. Section 10.7 of the WDC application provides a detailed assessment of the relevant provisions in the WDP. It identifies a number of relevant provisions and provides commentary on them as they relate to the proposal for the following Chapters:
- District Growth and Development Chapter
 - Urban Form and Development Chapter
 - Transport Chapter
 - Three Waters Management Chapter
 - Network Utilities Chapter
 - Natural Hazards Chapter
 - Historic Heritage Chapter
 - Tangata Whenua Chapter
 - Indigenous Vegetation and Habitat Chapter
 - Riparian and Coastal Margins and Water Bodies Chapters
 - Landscapes and Natural Features Chapter
 - Subdivision Chapter
 - Earthworks Chapter
 - Lighting, Noise and Vibration, and Signs Chapters
 - General Residential Zone Chapter
102. To avoid repetition, the assessment and commentary provided in the application addressing these matters is generally accepted and adopted for the purpose of this report as it relates to the activities (both subdivision and land use) proposed within the General Residential Zone. Many of the objectives and policies are aligned with matters addressed in the assessment of effects. Where the effects are assessed as less than minor/minor and acceptable, they generally fall to be consistent with the objectives and policies. Therefore, further commentary is provided below only where provisions are considered central to determination of the application, or they have not been directly addressed in the application.
103. The identified point of difference regarding the extent of adverse effects of the proposal relates to cultural values evident on the site and the potential adverse effects of the proposal on them. Provisions relating to historic heritage, tangata whenua, sites of significance to Maori, and cultural values are located across several chapters of the WDP. These are summarised as follows:
- District Growth and Development Chapter – Objectives DGD-O4 Historic Heritage and Sense of Place, DGD-O8 Cultural Values, and Policy DGD-P8 District-Wide Matters
 - Three Waters Management Chapter – Objective TWM-O5 Adverse Effects
 - Historical Heritage Chapter – Objectives HH-O2 Tangata Whenua, HH-O3 Identification and Protection, and HH-O4 Adverse Effects, and Policy HH-P3 Adverse Effects and Visual Effects.

- Tangata Whenua Policies Chapter – Objectives TWP-O1 Protection of Taonga of Tangata Whenua and TWP-O2 Enable Exercise of Rangatiratanga and Kaitiakitanga, and Policies TWP-P2 Sites of Significance to Maori, TWP-P3 Waterbodies, and TWP-P4 Consultation.
- Subdivision Chapter – Objectives SUB-O2 Valued Features and Resources and Policy SUB-P1 Zone Overlay and District-Wide Policies

104. As a general theme, the WDP provisions emphasise the consultation process to identify and protect sites of significance to Maori and historic heritage. Several of the provisions are considered to be directive and specific in respect of what is required, including the following provisions:

- ***'TWP-O1 Protection of Taonga of Tangata Whenua***

Within the respective domains of the exercise of rangatiratanga and kawanatanga, ensure that priority is afforded to the act of protection of taonga of tangata whenua, and to the relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.'

- ***'SUB-O2 Valued Features and Resources***

Subdivision provides for the protection and enhancement of the District's:

.....8. Sites of Significance to Māori.

9. Historical Heritage.'

- ***'HH-P3 Adverse Physical and Visual Effects***

To protect historic heritage from adverse physical and visual effects of internal and adjacent subdivision, land use and earthworks particularly where:

1. Proposals are in proximity to scheduled built heritage resources, known archaeological sites, or sites of significance to Māori.....'

105. The evidence provided by way of the CIA and submissions received as previously addressed in this report is that the activities will not protect or provide for the cultural values identified on the site. In the absence of any evidence indicating how such potential adverse effects may be avoided or mitigated by the proposal, those adverse effects on cultural values are considered to be unavoidable and unacceptable. The proposal is therefore considered to be contrary to the provisions in the WDP as they relate to protection of sites of significance to Maori and historic heritage.

Conclusion regarding Consistency with Planning Provisions

106. In summary, the WDP application is considered to be consistent with the hierarchy of planning documents where it is zoned for residential development and the proposal accords with the anticipated outcomes set out in the WDP for the zone. However, the application does not protect or provide for the cultural values identified on the site. The provisions relating to cultural values are located in several chapters of the Plan, which emphasises the importance and primacy afforded to tangata whenua values and Te Tiriti o Waitangi under Part 2 of the RMA. There does not appear to be an ability for the proposal to mitigate or avoid the adverse effects on the cultural values. On this basis, the proposal is considered to be directly contrary to the objectives and policies identified above.

107. With regard to the NRC application, the proposed activities are a controlled activity that must be granted. Despite this, the provisions contained in the PRP appear to direct detailed consideration of tangata whenua values, with an expectation that consents may not be granted where there are

adverse effects on cultural values. While recognising potential difficulty in reconciling this conflict, it is considered that Section 104A prevails in terms of requiring a grant of consent.

SECTION 104(1)(C) - OTHER MATTERS

108. Section 104(1)(c) allows the decision-maker to consider any relevant and reasonably necessary matters in order to determine the application. No matters have been identified that are relevant or reasonably necessary to consider at the time of preparing this report.

SECTION 106 ASSESSMENT

109. Section 106(1) states as follows:

(1) A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that—

(a) there is a significant risk from natural hazards; or

(b) [Repealed]

(c) sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.

110. These matters have been addressed previously in the application. The extent of flood hazard has been identified and addressed through engineering advice. The development will be provided with suitable legal and physical access via public road connections.

PART 2 OF THE ACT

111. Section 11 of the WDC and NRC applications provide assessments of Part 2 matters as they relate to each application. It is considered that an assessment of matters under Part 2 is only required where there is invalidity, incomplete coverage or uncertainty in the planning provisions. The assessment of the relevant national, regional and district planning documents all contain provisions that are relevant to the proposal, and there is no evidence to suggest the any provisions are invalid, incomplete, or present uncertainty in making any decision.

CONCLUSION AND RECOMMENDATION

112. Applications to the WDC and NRC have been lodged by Onoke Heights Limited to provide for a residential subdivision of a property with frontage to Dip Road and Tuatara Drive, Te Kamo. The application has been subject to joint public notification, with twenty nine submissions received during the notification period.

113. The information provided with the application covers a wide suite of effects, both positive and adverse. The substance of the submissions that are within scope have been considered, particularly in terms of effects on traffic, earthworks and construction, stormwater and flooding concerns, historic heritage, and cultural values. It is anticipated that further clarification regarding some of the concerns of submitters, particularly in terms of cultural effects, may be provided prior to or at the hearing.

114. With regard to the NRC application, as a controlled activity consent must be granted, but may impose conditions that fall within the matters of control reserved (in this case) under the PRP. A recommended set of conditions is provided as part of this report.
115. For the reasons set out in this report, it is considered that the purpose of the RMA is best served by applying discretion to decline the WDC application under Sections 104 and 104B of the RMA. It is recognised that the site is zoned for residential purposes. As previously assessed, the development aligns with the expectations of the WDP in that respect. The provision of roading and associated services and the intended density of lots can be provided in accordance with WDP and engineering standards.
116. The evidence provided by way of the CIA and submissions reconfirms a previous finding of the Environment Court that the site is of significance to tangata whenua. The objectives and policies throughout the hierarchy of relevant planning provisions reflect Part 2 of the RMA as they relate to Sections 6(e), 7(a), and 8. The proposal will not provide for or protect the cultural values associated with the site. It is considered that granting consent to the application would result in unavoidable and unacceptable adverse effects on those identified cultural values such that a recommendation to decline the application is necessary.
117. A suite of draft conditions will be available at the hearing should the Commissioner wish to consider these in deliberations for the WDC application.

RECOMMENDED NRC APPLICATION CONDITIONS

To undertake the following activities associated with development of a 93 lot residential subdivision located on a site legally described as Section 1 SO 65970 (Dip Road and Tuatara Drive, Whangarei).

- AUT.043305.01.01** **Earthworks for site development**
- AUT.043305.02.01** **Divert stormwater during land disturbance activities.**
- AUT.043305.03.01** **Discharge stormwater to land during land disturbance activities.**
- AUT.043305.04.01** **Discharge stormwater to water.**

Subject to the following conditions:

General Conditions:

- 1 At least two weeks prior to the commencement of any works authorised by these consents on-site, the Consent Holder must notify the council's assigned monitoring officer in writing of the date that the works are intended to commence. The Consent Holder must arrange for a site meeting between the Consent Holder's principal earthworks contractor and the council's assigned monitoring officer, which must be held on site prior to any earthworks commencing.

Advice Note: *Notification to the council may be made by email to info@nrc.govt.nz.*

- 2 A copy of these consents must be provided to every person who is to carry out the works authorised by these consents, prior to any work commencing.
- 3 The exercise of these consents must not cause any of the following effects on the water quality of the Waitaua Stream, as measured approximately 10 metres downstream of a discharge point into the stream, when compared to a site upstream of the discharge point or all land disturbance activities during the same sampling event:

- (a) The production of any conspicuous oil or grease films, scums or foams, floatable or suspended materials;
- (b) A conspicuous change in colour or visual clarity;
- (c) An emission of objectionable odour;
- (d) An increase in suspended solids concentration greater than 100 grams per cubic metre.

- 4 These consents lapse five years from the date of commencement, unless before this date the consent(s) have been given effect to.

Advice Note: *An application can be made to the council in accordance with Section 125 of the Resource Management Act 1991 to extend the date after which the consents lapse. Such an application must be made before the consents lapse.*

- 5 The Consent Holder must, on becoming aware of any discharge associated with the Consent Holder's operations that is not authorised by these consents:

- (a) Immediately take such action, or execute such work as may be necessary, to stop and/or contain the discharge; and
- (b) Immediately notify the council by telephone of the discharge; and

- (c) Take all reasonable steps to remedy or mitigate any adverse effects on the environment resulting from the discharge; and
- (d) Report to the council's Compliance Manager in writing within one week on the cause of the discharge and the steps taken, or being taken, to effectively control or prevent the discharge.

For telephone notification during the council's opening hours, the council's assigned monitoring officer for these consents must be contacted. If that person cannot be spoken to directly, or it is outside of the council's opening hours, then the Environmental Hotline must be contacted.

Advice Note: *The Environmental Hotline is a 24 hour, seven day a week, service that is free to call on 0800 504 639.*

- 6 The council may, in accordance with Section 128 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions annually during the month of March for any one or more of the following purposes:
- (a) To deal with any adverse effects on the environment that may arise from the exercise of these consents and which it is appropriate to deal with at a later stage; or
 - (b) To require the adoption of the best practicable option to remove or reduce any adverse effect on the environment.

The Consent Holder must meet all reasonable costs of any such review.

AUT.043305.01 to AUT.043305.03 Earthworks:

- 7 The location and nature of the earthworks shall be undertaken in general accordance with the **attached** documents titled:
- (a) *"Resource Consent Plan Design Contours"*, Drawing 20253-01-RC-201 Rev 6 dated 4th October 2023.
 - (b) *"Scheme Plan Cut / Fill Volume"*, Drawing 20253-01-PL-202 Revision 6 dated 4th October 2023.
 - (c) *"Earthworks Design Review"*, Report prepared by LDE Limited referenced 19103 dated 24 November 2021.
- 8 Sediment control measures must be constructed and maintained in accordance with the principles and practices contained within the Auckland Council document entitled *"2016/005: Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region"* (GD05). Where there are inconsistencies between any part of GD05 and the conditions of these consents, then the conditions of these consents prevail.
- 9 Sediment control measures must include use of chemical treatment in all sediment retention ponds and decanting earth bunds.
- 10 As part of the written notice required by Condition 1, the Consent Holder or its agent/contractor must submit an Erosion and Sediment Control Plan (ESCP) to the council for certification by the Council's assigned monitoring officer. As a minimum, the ESCP must include the following:
- (a) The expected duration (timing and staging) of earthworks, and details of locations of disposal sites for unsuitable materials, and clean water diversions if required;

- (b) Details of all erosion and sediment controls including diagrams and/or plans, of a scale suitable for on-site reference, showing the locations of the erosion and silt control structures/measures;
 - (c) A Chemical Treatment Management Plan providing details of the flocculant and/or coagulant chemical treatment methodology to be implemented to treat sediment laden stormwater entering/within the sediment retention pond and the decanting earth bund;
 - (d) The commencement and completion dates for the implementation of the proposed erosion and sediment controls;
 - (e) Details of surface revegetation of disturbed sites and other surface covering measures to minimise erosion and sediment runoff following construction;
 - (f) Measures to minimise sediment being deposited on public roads;
 - (g) Measures to ensure dust discharge from the earthwork's activity does not create a nuisance on neighbouring properties;
 - (h) Measures to prevent spillage of fuel, oil and similar contaminants;
 - (i) Contingency containment and clean-up provisions in the event of accidental spillage of hazardous substances;
 - (j) Means of ensuring contractor compliance with the ESCP;
 - (k) The name and contact telephone number of the person responsible for monitoring and maintaining all erosion and sediment control measures;
 - (l) Contingency provisions for the potential effects of large/high intensity rain storm events.
- 11 As a minimum, the erosion and sediment control measures must be constructed and maintained in accordance with the ESCP prepared in accordance with Condition 10 above. The Consent Holder may amend the ESCP at any time with the prior approval of the council's assigned monitoring officer. The recent approved version of the ESCP must be used for compliance purposes.
- 12 Prior to the commencement of earthworks on-site, a stabilised construction entrance to the site must be installed to minimise the tracking of spoil or debris onto off-site public road surfaces. All material tracked onto off-site surfaces as a result of the exercise of these consents must be removed as soon as possible, but at least daily. The stabilised construction entrance must be maintained throughout the duration of earthworks operations.
- 13 Erosion and sediment controls must be installed prior to the commencement of earthworks (other than those required for the erosion and sediment controls) within an area of works.
- 14 The installation of all erosion and sediment controls must be supervised by an appropriately qualified and experienced person. The Consent Holder must provide to the council's assigned monitoring officer certification from the appropriately qualified and experienced person who supervised the installation of the erosion and sediment controls that they have been installed in accordance with the requirements of GD05.
- 15 No works may be carried out between 1 May and 30 September in any year unless the prior written agreement of the council's Compliance Manager has been obtained.
- 16 Any request to undertake works between 1 May and 30 September in any year must be in writing and must be made at least two weeks prior to the proposed date that the works are required to be undertaken. This written request must include an amended ESCP for the works that has been prepared in accordance with Condition 10.

- 17 Drains and cut-offs constructed to divert stormwater must be capable of conveying stormwater during not less than the estimated 1 in 20 year rainfall event. All channels on grades greater than 2% must be protected to avoid erosion occurring.
- 18 All offsite stormwater must be directed away from earthworks areas and no drainage pathways must be constructed, or permitted to flow, over fill areas in a manner that creates erosion of the fill material.
- 19 No slash, soil, debris and detritus associated with the exercise of these consents must be placed in a position where it may be washed into any water body.
- 20 All bare areas of land and fill must be covered with aggregate, or topsoiled and established with a suitable grass/legume mixture to achieve an 80% groundcover within one month of the completion of earthworks. Temporary mulching or other suitable groundcover material shall be applied to achieve total groundcover of any areas unable to achieve the above requirements.
- 21 The exercise of these consents must not give rise to any discharge of contaminants, including dust, which in the opinion of a monitoring officer of the council is noxious, dangerous, offensive or objectionable at or beyond the property boundary.

AUT.043305.04 - Stormwater Discharge

- 22 The stormwater structures must be constructed in general accordance with the LDE Limited engineering report titled “*Three Waters Design Report*” dated 2 February 2022 and the **attached** LDE Limited drawings titled:
 - (a) “Stormwater Pond Section” Drawing 19103 Drawing C3 Revision A dated 16/11/2021;
 - (b) “Pond Outlet Long Section’ Drawing 19103 Drawing C5 Revision A dated 28/1/2022
- 23 The stormwater discharge must not cause any erosion or scouring of overland flow paths or watercourses.
- 24 The stormwater system must be adequately maintained so that it operates effectively at all times.

Advice Note: This consent does not authorise any structures within a watercourse.

EXPIRY DATE: 35 years from the date of commencement of these consents, as in accordance with section 116 of the RMA

Advice Note: *The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful for any person to destroy, damage or modify the whole or any part of an archaeological site without the prior authority of Heritage New Zealand Pouhere Taonga.*