

# Decision following the hearing of an application for resource consent under the Resource Management Act 1991

## TREVOR GEORGE LINNELL – 143 Rangiora Road, Kaiwaka.

### Overall Proposal

- Subdivision consent to undertake four-lot subdivision of the application site, creating Lot 1 (4000m<sup>2</sup>), Lot 2 (5580m<sup>2</sup>), Lot 3 (1.5ha) and Lot 4 (105.46ha).
- Land use consent for future clearance of 3690m<sup>2</sup> of indigenous vegetation which is not protected under this application in order to provide access and building sites on proposed Lots 1, 2 and 3.

Consent, pursuant to section 104B and 104D of the Resource Management Act 1991, is **GRANTED**. The full decision and reasons are set out below.

<b>Application number:</b>	: 180212
<b>Site address:</b>	143 Rangiora Road, Oneriri Peninsula, Kaiwaka
<b>Applicant:</b>	T G Linnell
<b>Hearing commenced:</b>	7 April 2020
<b>Hearing panel:</b>	Mr Greg Hill
<b>Appearances – by Skype:</b>	<u>For the Applicant:</u> Mr Linnell – Owner and Applicant Mr O’Flaherty – Surveyor Mr Dunn – Planner  <u>For the Council:</u> Mr Chandra – Planning Manager Ms Nathan – Planner Ms Jones – Technical Support Officer Resource Consents
<b>Hearing Closed:</b>	24 April 2020

### Introduction

1. This decision is made on behalf of the Kaipara District Council (“the Council”) by Independent Hearing Commissioner Greg Hill appointed and acting under delegated authority under sections 34A of the Resource Management Act 1991 (“the RMA”).

2. This decision contains the findings from my deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The Hearing was undertaken via a Skype session, which was open to the public.
4. The application was dealt with on a notified basis. It was publicly notified on the 10 December 2019 with submissions closing on 29 January 2020.
5. Six submissions were received to the application; one in support and five in opposition. Four of the opposing submissions were received late (on the 11 February 2020). A decision was made on the 1 April 2020 not to extend the time limit or waive compliance with the time limit so as to be able to accept the late submissions. The reasons for this were set out in the Minute - Decision on the Late Submissions under Sections 37 and 37a of the Resource Management Act 1991.
6. Of the in-time submissions, the following is a summary of the issues raised by the opposing submitter:
  - Rural character – should not allow residential development
  - Amenity – Increase in residents and use of boat ramp
  - Traffic Safety – Rangiora Road is too narrow
  - Right of way at 271 Rangiora Road was never opened, and
  - Effects on cultural landscape.
7. The supporting submitter set out that there would be no effects on their property and minimal effects on the surrounding landscape and vegetation from the proposed subdivision development. This was due to the mitigation measures proposed, including bush protection, designation of building sites, and pest control.

### **Summary of proposal**

8. The Applicant proposes a four lot subdivision of the application site, creating Lot 1 (4000m<sup>2</sup>), Lot 2 (5580m<sup>2</sup>), Lot 3 (1.5ha) and Lot 4 (105.46ha). This includes:
  - The existing amalgamation covenant affecting Lot 3 DP 312676 and Lot 7 DP 468412 is to be cancelled and proposed Lot 4 and Lot 3 DP 312676 (CFR 49835) are to be amalgamated together by way of an amalgamation covenant.
  - Creation of conservation covenants of native vegetation, including an area of revegetation/restoration (mitigation) totalling 7,500m<sup>2</sup>.
9. Land use consent is also sought for future clearance of 3690m<sup>2</sup> of indigenous vegetation which is not protected under this application in order to provide access and building sites on proposed Lots 1, 2 and 3.

### **Activity Status**

10. The application site is located in the Rural Zone under the District Plan and within the Kaipara Harbour Overlay. The application site is also annotated as an Area of Significance to Maori and contains a Heritage Resource H44: Gittos House (Mission House (Category II)).
11. Consent is required for the following reasons under the operative Kaipara District Plan (2013):

Subdivision:

Rule 12.13.1 'Environmental Benefit' provides for subdivision as a **restricted discretionary activity** in the Rural Zone where:

- The permanent physical and legal protection of an ecological, public access, landscape or riparian margin Environmental Benefit within the site;
  - The entire feature shall be protected;
  - The Environmental Benefit meets the minimum size requirements relevant to the type of Environmental Benefit i.e. an 'Ecological' Environmental Benefit shall be a minimum of 0.5ha;
  - No more than three Environmental Benefit Lots can be created per site in perpetuity (these can be created by either one subdivision consent or up to three consecutive consents);
  - Each Environmental Benefit Lot shall have a minimum net site area of 4,000m<sup>2</sup> with an area of at least 2,500m<sup>2</sup> exclusive of the area being permanently protected, to accommodate a dwelling and associated wastewater treatment and disposal system;
  - Any balance lot created shall be a minimum net site area of 4,000m<sup>2</sup>;
  - The proposed subdivision complies with the relevant Performance Standards in Section 12.10 and 12.15 of this Chapter; and
  - Only one Consent for a Restricted Discretionary (subdivision) Activity in terms of an Environmental Benefit subdivision can be granted in respect of a site or any specified portion of a site and the provisions contained within this rule can be used only once for each specified portion of the site (noting a maximum number of Environmental Benefits Lots per 'site' shall remain a maximum of three overall).
12. The proposed subdivision does not meet the requirements of Rule 12.13.1 (above), as although each proposed allotment would be 4,000m<sup>2</sup> or greater in size, the entire feature is not proposed to be protected as 3,690m<sup>2</sup> of indigenous vegetation will need to be cleared, and therefore not proposed to be protected, as it to accommodate future development within the proposed vacant allotments. It is also noted that an area of vegetation located on the application site which forms part of Rangiora Road Forest

Remnants, Q08/166 is not proposed to be formally protected as part of this application (Figure 9 in the Section 42A report).

13. Furthermore, the proposed subdivision does not comply with rule 12.13.1 as the development does not meet the requirements of Rule 12.15.2 and 12.10.25. The subdivision therefore is a **non-complying activity** under Rule 12.9.4.
14. Rule 12.15.10 'Esplanade Management for Lots More than 4ha' requires, pursuant to Section 77 of the RMA, that a 20m wide esplanade reserve or strip be set aside where an allotment of 4ha or more adjoins a section of the Coastal Marine Area, a lake or river, and has important recreational values. In this case a lot adjoins a section of the Coastal Marine Area.
15. No esplanade reserve or strip is proposed to be set aside adjacent to Lot 4, therefore being assessed as a **discretionary activity** under this rule.

Land Use:

16. Rule 12.10.2a 'Indigenous Vegetation Clearance' provides for vegetation clearance as a permitted activity provided that the following is met:
  - a) It is not located within an indigenous wetland;
  - b) It is not part of:
    - i) a continuous area of predominantly indigenous vegetation over 1 hectare in area; or
    - ii) a continuous area of predominantly indigenous vegetation greater than 6m in height and greater than 1,000m<sup>2</sup>; and
  - c) It is not located within a site identified in Appendix F (Kiwi Density) of the District Plan; and
  - d) It is not located within an Outstanding Natural Landscape as identified in Map Series 2.
17. The proposal fails meet this rule as an area of 3,690m<sup>2</sup> of indigenous vegetation is not proposed to be protected to enable the provision of vehicular access and building platforms within proposed Lots 1 to 3, being assessed as a **restricted discretionary activity**.
18. Rule 17.10.3 'Development on a site listed in Schedule 17.2 'Nohoanga Areas and Areas of Significance to Maori' requires that any work requiring Consent (excluding Controlled Activity Consent) elsewhere in this Plan located within a Nohoanga Area or an Area of Significance to Maori identified in Schedule 17.2, be assessed as a **restricted discretionary activity**.
19. Overall, the proposed subdivision is assessed as a **non-complying activity**.

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

20. The site is not identified as being a contaminated site within the Northland Regional Council's Register of contaminated sites, nor has it previously been used for activities listed on the HAIL Register produced by the Ministry for the Environment. Therefore, consent is not required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.
21. No other National Environmental Standards are relevant to the proposal.

### **Procedural Issue - Late Submission.**

22. As already addressed, four late submissions were received – dated 11 February 2020. They were from

W Paikea	260B Rangiora Road
W W Morgan	260B Rangiora Road
D Paikea	260A Rangiora Road
R Morgan	260B Rangiora Road

23. A separate decision not to accept these late submissions was made on the 1 April 2020 under section 37 and 37A of the RMA. The reasons for not accepting these submissions are set out in that decision document.

### **Relevant statutory provisions considered**

24. As the application is a non-complying activity, I have addressed section 104D which states (in summary) that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either:
- 1(a) the adverse effects of the activity on the environment will be minor; or
  - 1(b) the application is for an activity that will not be contrary to the objectives and policies of:
    - (i) the relevant plan, or
    - (ii) the relevant proposed plan, or
    - (iii) both the relevant plan and the relevant proposed plan.
25. For the reasons that follow, I find the proposal satisfies both limbs of section 104D 1(a) and 104D 1(b) - that the proposal will have no more than minor adverse effects on the environment (and likely overall have positive effects), and is not contrary to the objectives and policies of the District Plan.

26. Accordingly, the proposal satisfies the non-complying 'gateway tests'. The proposal can therefore be assessed on its merits and decision made pursuant to section 104B of the RMA.
27. As required, I have considered the application in terms of the matters set out in section 104 of the RMA which requires me to, subject to Part 2, have regard to—
- (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.

- 21 Despite all section 104 considerations being “subject to part 2”, the Court of Appeal in the RJ Davidson case. It stated, amongst other things:

*"Having regard to the foregoing discussion we agree with Cull J's conclusion that it would be inconsistent with the scheme of the Act to allow regional or district plans to be "rendered ineffective" by general recourse to pt 2 in deciding resource consent applications, providing the plans have been properly prepared in accordance with pt 2. We do not consider however that King Salmon prevents recourse to pt 2 in the case of applications for resource consent. Its implications in this context are rather that genuine consideration and application of relevant plan considerations may leave little room for pt 2 to influence the outcome"<sup>1</sup>.*

- 22 In my view that judgment (in short) says that notwithstanding the King Salmon judgment, decision makers should consider Part 2 when making decisions on resource consents. However, where the relevant plan provisions have clearly given effect to Part 2, there may be no need to do so as it would not add anything to the evaluative exercise.

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<sup>1</sup>Court of Appeal Judgment - paragraph 83

- 23 I find that the District Plan, in relation to this application, has addressed the relevant Part 2 matters and therefore I have not had to 'rely' on the Part 2 provisions to provide 'guidance' in determining if the application would promote the sustainable management of the District's natural and physical resources. That is, in doing so would not add anything to the evaluative exercise I have undertaken.

### **Relevant standards, policy statements and plan provisions considered**

28. In accordance with section 104(1)(b)(i)-(vi) of the RMA, I have had regard to the relevant policy statements and plan provisions of the following documents.

- New Zealand Coastal Policy Statement;
- Regional Policy Statement; and
- Kaipara District Plan.

### **Summary of evidence heard**

29. The Council's reporting planner, Ms Nathan, set out in her Section 42A report and at the hearing her reasons for recommending the granting of the application. In summary, in her section 42A report she stated<sup>2</sup>:

*I consider that the proposed subdivision is consistent with the relevant provisions of the District Plan. The proposed density of development is anticipated by the relevant zoning and on balance, taking into account the permitted baseline and the proposed mitigation measures including vegetation restoration and protection along with implementation of design guidelines, adverse effects resulting from the proposal can be suitably mitigated, avoided and remedied.*

30. Ms Nathan remained of this view at the hearing. The difference of opinion between her and the Applicant (mainly Mr Dunn) was: the extent of mitigation required; the wording/phrasing for certain conditions; and the requirement for the payment of a financial contribution for roading improvements (addressed later).
31. Mr Linnell set out his overall philosophy to this application and his previous subdivision proposal, as well as his farming operation. This, in summary, was one of farming sustainably based on the principles of organics and permaculture (water, food and shelter), and taking a catchment based approach.
32. Mr O'Flaherty provided some history and context to the proposal given his current and previous involvement in Mr Linnell's subdivision proposals.
33. Mr Dunn provided expert planning evidence as well as supplementary statement of evidence in response to questions set out in my memorandum of 1 April 2020. In reviewing some of the questions with Mr O'Flaherty and Mr Linnell, Mr Dunn identified a number of other matters of concern that may assist me in making my decision. Mr Dunn also filed a written Reply following the adjournment of the hearing.

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<sup>2</sup> Section 42A Report - paragraph 1.7.

34. In his evidence-in-chief Mr Dunn largely responded to issues in section 42A report – notably in relation to the amount of land to be formally protected, the submissions lodged and in particular the late submissions, and some of the conditions recommended by Ms Nathan (I address the issue of conditions in more detail below).
35. In his supplementary statement of evidence Mr Dunn focused on the recommended design guideline conditions. He also addressed a range of other conditions, such as those relating to the Ecological Planting and Weed Control Management Plan. His concerns related more to the workability and details rather than whether they should be imposed or not.
36. As mentioned, Mr Dunn provided a closing Reply statement; and attached to it a suite of recommended consent conditions and an explanation of them<sup>3</sup>. In the Reply statement he set out that the Applicant and the Ms Nathan had agreed the majority of recommended conditions; several of which were in contention prior to and at the hearing. Those now agreed were addressed in the Reply statement.
37. Two issues remained in contention; these being the recommended height limitation on proposed lot 3 to 4.5 metres for buildings and structures, and the payment of a roading improvement financial contribution.
38. In the Reply statement Mr Dunn set out in some detail the reasons why the height limitation was unnecessary and should not be imposed. He also set out why no road improvement contribution should be payable as that condition recommended by Ms Nathan was neither fair nor reasonable due to the Council's flawed traffic information/inputs to the District Plan's formula.
39. It was Mr Dunn's opinion that the inputs to the calculation, to arrive at the recommended \$9,500.00, were so flawed that no condition should be imposed. However, while he set out what he considered to be more appropriate traffic inputs<sup>4</sup> and a dollar amount (\$5,000)<sup>5</sup> he did not suggest what the Applicant considered would be a fair and reasonable contribution in the circumstances.
40. A Minute was issued on the 20 April 2020 in relation to the matter of the roading improvement contribution; asking:
- What would the Applicant consider to be a fair and reasonable contribution using the District Plan's formula to calculate road improvement contributions, **or**
  - The reason why, in terms of road improvements as opposed to the Council's purported flawed calculation, no contribution should be imposed at all.
41. Mr Dunn replied to the Minute on the 24 April 2020. He set out in some considerable detail why, in his opinion, the roading improvement contribution condition was flawed

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<sup>3</sup> Including a statement from Mr O'Flaherty - explaining some of the conditions.

<sup>4</sup> Para 42 of the Reply Statement

<sup>5</sup> Paragraph 44 of the Reply Statement.

and was unreasonable; and that no contribution condition should be imposed. He stated<sup>6</sup>:

*Mr O'Flaherty and I have reviewed our records of recent subdivision consents in the Kaipara District and been unable to find any that include a road upgrading contribution, like being recommended by the Council consultants here, other than on Mr Linnell's earlier 6 lot subdivision. All of the consents have had the standard Local Government Act roading development contribution, which Mr Linnell is happy to pay here. They are clearly explained in Council documents, but the additional RMA based contribution here is not.* (Underlining added for emphasis).

42. Following the Applicant's response, the hearing was closed on the 24 April 2020.

### **Principal issues in contention**

43. The entire proposal was in contention with respect to Mr Blewett's submission. Mr Blewett sought that the application be refused. He raised the issues that have been set out earlier in the **Introduction** section.
44. The Applicant agreed with Ms Nathan's opinion that the proposal was consistent with the rural zone's objectives and policies, and that the proposal would have minor visual, amenity and character effects, and would fit into the surrounding environment; and would have positive benefits in terms of ecological protection and enhancements. However, the issues in contention related to the suite of conditions recommended by Ms Nathan; the Applicant (and in particular Mr Dunn from a planning perspective) disagreeing with a number of them either being too restrictive and/or unnecessary.
45. As has been set out in the **Summary of Evidence** above, two issues remained in contention at the time of the Reply statement being provided; these being the recommended building and structures height limit on proposed lot 3 to 4.5 metres, and the payment of a roading improvement financial contribution. I address these below.
46. In terms of the matters (recommended conditions of consent) that have been agreed between the Council and the Applicant, I agree with those changes as set out in the Reply statement.

### **Main findings on the principal issues in contention and reasons for granting consent**

47. My findings on the principal issues in contention and reasons for granting consent are set out below.
48. Prior to specifically addressing the issues in contention, I record that I adopt Ms Nathan's section 42A report pursuant to section 113(3)(b) of the RMA, except where I express a different view in relation to the conditions necessary to address the adverse effects of the proposal, and cross reference to that material accordingly. This is particularly in relation to the sections addressing the:

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<sup>6</sup> Paragraph 14 of the Supplementary Rely Statement.

- Proposal
- Application Background
- Consent History
- Site and Locality
- Submissions
- Reason for Consent
- National Environmental Standards
- Statutory Requirements
- Actual and Potential Effects on the Environment (section 104(1)(a))<sup>7</sup>
- Relevant Policy Statements, Plans or Proposed Plans (section 104(1)(b)(i), (ii) and (iii))
- Objectives and Policies (section 104(1)(b)(iv))<sup>8</sup>
- Other Matters (section 104(1)(c))
- Other Relevant RMA Provisions
- Section 104D
- Part 2 Matters, and
- Conclusion.

49. Adopting the section 42A report and cross-referencing to it, means there is no need to repeat what was addressed in a comprehensive manner in that report. This includes the issue of not requiring an esplanade reserve<sup>9</sup> in relation to proposed Lot 4 – which has an area greater than 4 hectares.

50. I address the broader issues set out in Mr Blewett's submissions – namely his concerns about :not allowing residential development and the increase in residents and people using the boat ramp due to amenity and character reasons, traffic safety and the issue of the right of way, and cultural landscape effects.

51. I then address the remaining issues in contention between the Council's reporting officer and the Applicant. These only relate to the conditions of consent that should be imposed if consent was to be granted. Both Ms Nathan and Mr Dunn agreed that the proposal was: not contrary to, and generally consistent with, the District Plan's

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<sup>7</sup> I agree with the effects identified, but in some cases I come to a different view about the extent of mitigation required.

<sup>8</sup> There were no specific issues in contention with respect to the relevant provisions of the District Plan.

<sup>9</sup> Rule 12.15.10

objectives and policies; and subject to appropriate conditions, the adverse effects of the proposal would be avoided, remedied or mitigated. Following the hearing and the Applicant's Reply the outstanding matters (conditions) relate to:

- The height of the building and structures on proposed lot 3, and
- The roading improvements financial contribution.

### **Mr Blewett's Submissions**

52. Mr Blewett did not support the application, seeking that it be refused consent on a number of grounds. While I understand Mr Blewett is seeking to retain what he considers to be the existing character and amenity of the area, the District Plan specifically provides for the type of subdivision Mr Linnell has proposed. The District Plan enables subdivisions based upon "Environmental Benefit"<sup>10</sup> where, among other things, there is permanent physical and legal protection of ecological areas (native bush) within the site.

53. On this basis, as set out in the preceding paragraph, the District Plan envisages the form of development proposed, which will allow more people to live in this environment. Furthermore, in terms of character and amenity, the conditions of consent, including the design guidelines and other conditions ensure that the development 'fits' into the existing environment and with the permanent protection of important ecological areas.

54. The traffic and access effects have been assessed by the Ms Tang (the Council's Consultant Engineer). Ms Nathan set out in the section 42A report that<sup>11</sup>:

*"....although Rangiora Road does not meet the 5.5m formed width required to meet the Council's Engineering Standards, the road has reasonable shoulders with adequate width to provide for vehicles to pass each other safely, provided sight distances are improved. As such, a financial contribution is considered appropriate in this instance, to improve the safety on Rangiora Road. Such improvements would include vegetation removal and benching of banks to improve sight lines. Financial Contributions can be required under Chapter 22 of the District Plan and are discussed in Section 14 of this report.*

*Overall, it is considered that safe and practicable vehicle access to the proposed lots can be achieved without impacting the existing road transport network subject to conditions of consent.*

55. I address the issue of the payment of a financial contribution later in this decision.

56. The issues of the "cultural landscape" have been addressed by Ms Nathan and Mr Dunn. Ms Nathan has addressed this in her section 42A report. Section 11 of that

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<sup>10</sup> Rule 12.13.1

<sup>11</sup> Paragraph 11.52 and 11.53 of the Section 42A report.

report contains sections on Archaeological/Heritage Values<sup>12</sup> and Cultural Effects<sup>13</sup>. Mr Dunn, in relation to these matters, has set out in his evidence the following:

*The first section notes the Clough & Associates report submitted with the applications and the nearest (previously recorded) shell midden being approximately 140m to the north west of the Lot 2 building site. This site will not be affected, nor will any pa/cemetery on the adjacent farm. As outlined in the S42A report the subdivision consent application does not provide an opportunity for submitters to request the return of such sites to Maori or other possible past landowners.*

*The second section records the generally supporting Cultural Impact Assessment (CIA) prepared by Environs Holdings Ltd and appended to the AEE and resource consent package. This CIA does not from my reading give any support to the submitters concerns about the possible adverse effects of the proposed subdivision on cultural values.<sup>14</sup>*

57. I agree with both Ms Nathan and Mr Dunn in terms of the effects on any cultural matters; and that matters have been appropriately addressed in the Applicant's Assessment of Environmental Effects and in the Council's assessment of the proposal. Any adverse effects on cultural matters would be no more than minor.

**The Outstanding Issues between Ms Nathan and Mr Dunn in relation to the conditions of consent.**

Height Limit on Building and Structures on Proposed Lot 3

58. Ms Nathan set out in some detail in her Section 42A report and supplementary statement why, in her opinion, a height limitation of 4.5 for all buildings and structures on proposed lot 3 was appropriate. In coming to her opinion she relied on the expert opinion of Mr Cocker – the Council's landscape architect. Mr Cocker's opinion was, in part, informed by the work of Ms Williams' the Applicant's landscape architect.
59. Mr Dunn addressed the issue of height limit in his evidence-in-chief, and again, in some detail in his Reply statement. Having carefully reviewed and considered all of the evidence before me, I am more persuaded by Mr Dunn's evidence and his opinion on this matter. I do not consider it necessary to go into any detail about each set of evidence as it 'stands for itself'. However, I find the following paragraph of Mr Dunn's Reply as particularly important to my finding<sup>15</sup>:

*I have reviewed these same photographs in Attachment 3 to Ms Williams landscape report. Whilst they do 'demonstrate the visual nature' of the different existing buildings and approved/proposed building sites, they do not in my view clearly demonstrate a 'minor or more adverse effect', that warrants imposition of*

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<sup>12</sup> Paragraphs 11.68-11.72

<sup>13</sup> Paragraphs 11.73-11.79

<sup>14</sup> Mr Dunn's evidence-in-chief, paragraphs 25 and 26.

<sup>15</sup> Paragraphs 11 of the Reply Statement

*the recommended condition. From reading Ms Williams LVIA I do not believe she was of this opinion either.*

60. It is my finding that a height limit does not need to be imposed to mitigate any potential visual amenity effects arising from buildings or structures on proposed lot 3. The imposition of the design guidelines is sufficient on their own to mitigate any potential adverse effects.

#### Road Improvement Financial Contribution

61. Mr Dunn addressed the issue of the financial contribution condition in his evidence-in-chief, his Reply statement, and again in his supplementary Reply statement. Having carefully reviewed and considered all of the evidence before me, I am persuaded by Mr Dunn's evidence and his opinion on this matter; that the imposition of a financial contribution as proposed by Ms Nathan (relying on Ms Tang's advice) is neither fair nor reasonable.
62. Like the issue of the height limit on building and structures on proposed lot 3, I do not consider it necessary to go into any further detail about Mr Dunn's evidence and Reply statement on this matter as they 'stand for themselves, and I accept his reasoning why a financial contribution condition is not justified. I note Mr Linnell is not opposed to paying a contribution. As set out in the supplementary Reply statement, Mr Dunn has stated that Mr Linnell is happy to pay the "*Local Government Act roading development contribution*"<sup>16</sup> as set out as Advice Note 1 attached to the conditions of consent.

#### Section 106

63. Pursuant to Section 106 the Council may refuse subdivision consent in certain circumstances. These include if the land is likely to be subject to material damage by erosion, falling debris, subsidence, slippage or inundation from any source or inadequate legal and physical access.
64. The site is not identified as being susceptible to flooding in the Kaipara District Plan, nor is it identified as being subject to a flooding hazard within the Northland Regional Council hazard maps. Also sufficient provision has been made for legal and physical access to each allotment to be created by the subdivision.
65. Taking into account the above there are no matters under Section 106 which would have precluded the granting of this consent.

#### **Part 2 of the RMA**

66. As I set out earlier, the District Plan, in relation to this application, has addressed the relevant Part 2 matters and I have not had to 'rely' on them to provide guidance in determining this application. In doing so would not add anything to the evaluative exercise I have undertaken. Notwithstanding this, I agree with the Part 2 assessment undertaken by Ms Nathan in her section 42A report.

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<sup>16</sup> See paragraph 41 of this decision report.

## Decision

67. I have found that the proposal satisfies both limbs of the section 104D gateway test, and therefore the proposal has been assessed on its merits in terms of section 104 and 106 of the RMA.
68. In terms of section 104 I have had regard to the effects of the proposal and the relevant objectives and policies of the District Plan. For the reasons set out above, and subject to the conditions imposed, the actual and potential effects of this proposal can be appropriately avoided, remedied or mitigated and the proposal is consistent with the 'environment benefit' provisions of the District Plan which seek to protect and enhance (where appropriate) significant ecological areas.
69. In exercising my delegation under section 34A of the RMA and having regard to the foregoing matters, including sections 104 and 106 the RMA, and having checked the proposal against Part 2 of the Act, I have determined that resource consent application by T G Linnell is **granted** for the reasons set out above.



Greg Hill

Chairperson – Independent Hearing Commissioner.

28 April 2020

## CONDITIONS OF CONSENT

<b>Application number:</b>	: 180212
<b>Site address:</b>	143 Rangiora Road, Oneriri Peninsula, Kaiwaka
<b>Consent Holder :</b>	T G Linnell

1. *The activity shall be carried out in accordance with the application formally received by Kaipara District Council ("Council") on 13 June 2018 and the plan(s) attached to this consent as 'Attachment A', as follows:*

- a) Titled 'Proposed Subdivision of Lot 7 DP 468412' Rangiora Road, Oneriri', prepared by Buckton Consulting Surveyors Ltd, reference 2587 Revision J, dated 22 August 2019.*

*and the following documents:*

- b) Geotechnical Investigation report prepared by Ashby Haigh Workman Ltd dated December 2018.*
- c) Landscape Visual Assessment prepared by AE Williams Landscape Architects Ltd dated 15 October 2019.*
- d) Ecological Site Assessment & Environmental Benefit report prepared by Scrub Consultants Ltd dated 10 June 2019.*
- e) Assessment of Terrestrial Effects report prepared by Scrub Consultants Ltd dated 14 October 2019.*
- f) Mitigation Plan prepared by Scrub Consultants Ltd dated 10 June 2019.*
- g) Archaeological Assessment Report prepared by Clough & Associates Ltd dated November 2018.*
- h) Cultural Impact Assessment prepared by Environs Holdings Ltd dated January 2018.*

2. *This consent (or any part thereof) shall not commence until such time as the following charges, which are owing at the time the Council's decision is notified, have been paid in full:*

- a) All fixed charges relating to the receiving, processing, granting and monitoring of this resource consent under section 36(1) of the Resource Management Act 1991 (RMA); and*

- b) *All additional charges imposed under section 36(5) of the RMA to enable the Council to recover its actual and reasonable costs in respect of this application, which are beyond challenge.*
- 3. *The consent holder shall pay any subsequent further charges imposed under section 36 of the RMA relating to the receiving, processing, granting and monitoring of this resource consent within 20 days of receipt of notification of a requirement to pay the same, provided that, in the case of any additional charges under section 36(5) of the RMA that are subject to challenge, the consent holder shall pay such amount as is determined by that process to be due and owing, within 20 days of receipt of the relevant decision.*
- 4. ***Prior to the sealing of the Survey Plan pursuant to Section 223 the following conditions shall be complied with:***
  - a) *The survey plan shall be generally in accordance with the plan of subdivision titled 'Proposed Subdivision of Lot 7 DP 468412' Rangiora Road, Oneriri', prepared by Buckton Consulting Surveyors Ltd, reference 2587 Revision J, dated 22 August 2019, and submitted in support of the application.*
  - b) *The survey plan shall show all necessary easements for the provision of access, drainage and utility services to all lots.*
  - c) *Written confirmation shall be provided from the appropriate network utility providers that satisfactory arrangements can be made for the separate provision of electricity and telecommunications, in particular with respect to any required easements for the proposed lots.*
  - d) *The survey plan shall show the proposed covenanted areas generally as indicated as Areas 'C', 'D', 'E' and 'F' on the plan of subdivision titled 'Proposed Subdivision of Lot 7 DP 468412' Rangiora Road, Oneriri', prepared by Buckton Consulting Surveyors Ltd, reference 2587 Revision J, dated 22 August 2019, as being land subject to Conservation Covenants pursuant to Section 77 of the Reserves Act or other instrument of similar effect to the approval of Council. The proposed covenanted areas shall be submitted to Council for approval.*

e) *A design for the construction of the proposed Rights of Way A & B (ROW A & B) shall be submitted to Council for approval. The design shall take into account:*

- (i) The driveway – general accordance with standards set out in Table 5.1: Roads and Private Ways Design Standards and drawings, S01 of Kaipara District Council's current Engineering Standards.*
- (ii) Pavement design shall be in accordance with The Kaipara District Council's current engineering standards clause 5.2.13 and drawing S03.*

*The plans, specifications and calculations shall specifically address the following matters:*

- Sight distances*
- Pavement design*
- Surfacing*
- Drainage Details, and*
- Earthworks.*

f) *An Ecological Planting and Weed Control Management Plan (EPWCMP) shall be prepared by a suitably qualified ecologist and submitted to the Council for approval (in a certifying capacity) taking into account the recommendations of the Ecological Site Assessment & Environmental Benefit report prepared by Scrub Consultants Ltd dated 10 June 2019 submitted in support of the application. The purpose of the EPWCMP is to ensure long term environmental benefit objectives are achieved. The EPWCMP shall, as a minimum, contain or provide for the following:*

- (i) Prior to planting, the removal or management of all invasive weed species and their replacement with native, eco-sourced species that will enhance ecological values of local habitat.*
- (ii) A revegetation maintenance programme to be undertaken annually for at least five years, to include weed maintenance, inspection of plants for losses and replacement planting during the planting season.*
- (iii) Works undertaken for maintenance should include watering, weed control, cultivation, control of pests and diseases, removal of litter,*

*checking of stakes and ties, trimming, pruning, topping up mulch and other works required to ensure planting maintains healthy growth and form.*

- The measures to be adopted to achieve, as far as is practicable 90% survivorship of planted species.*

*(iv) The control of animal pests to ensure, as far as practicable, that the ecological gains achieved via the EPWCMP are not compromised.*

*(v) All plant material should be eco-sourced from the Otamatea Ecological District preferably within close proximity to the site.*

*(vi) A planting hygiene protocol to be imposed while all planting is being undertaken to ensure that plant diseases e.g. kauri dieback and myrtle rust are not brought to the site.*

*g) The survey plan shall show the identified building areas on Lots 1, 2 and 3 as indicated on the plan of subdivision, titled 'Proposed Subdivision of Lot 7 DP 468412' Rangiora Road, Oneriri', prepared by Buckton Consulting Surveyors Ltd, reference 2587 Revision J, dated 22 August 2019 and submitted in support of the application. The survey plan is to include dimensions, area and boundary reference for accurate siting.*

*h) The survey plan shall show the following amalgamation covenant:*

*'Lot 4 hereon and Lot 3 DP 312676 (CFR 49835) are to be held together by way of a Covenant pursuant to Section 220 (2) (a) Resource Management Act 1991. (LINZ reference: 1531085).*

**5. Before a Certificate is issued pursuant to Section 224(c) of the Resource Management Act 1991, the following conditions are to be complied with:**

*a) Written confirmation shall be provided from the appropriate network utility providers that electricity and telecommunication services are available to the boundary of the proposed lots.*

- b) ROW A & B shall be constructed/upgraded in accordance with the design approved under condition 4(e) and in accordance with Table 5.1 of Council's current Engineering Standards.

*The consent holder shall ensure adequate construction monitoring of all construction works in accordance with the Kaipara District Council's Engineering Standards 2011. This shall include as a minimum:*

- i) *Detailed supervision and certification upon completion as complying with the required standards by the consent holder's engineer.*
- ii) *Council's engineers undertaking suitable inspections during construction at key hold-points to enable them to confirm that the certification provided by the consent holder's engineer matches the design submitted. As a minimum, hold points shall include:*
  - *Inspection and approval of subgrade, including review of subgrade testing.*
  - *Inspection and approval of compacted base course (prior to sealing if required).*
  - *If concrete is to be used, pre pour and boxing inspection.*

*No work shall proceed beyond the above hold points until specifically approved by Council's engineers.*

*The consent holder's engineer shall be a suitably qualified competent engineer, surveyor or contractor with recent and ongoing experience in road design and construction to the specific approval of Council.*

*Any necessary permit procedures shall be complied with.*

- c) *All works described in the approved Ecological Planting and Weed Control Management Plan (EPWCMP), required under condition 4(f), shall be implemented to the satisfaction of the Council or their delegated representative.*

*Written confirmation shall be provided from an ecologist confirming that the ecological environmental benefit works as described in the Ecological Planting and Weed Control Management Plan (EPWCMP), required under condition 4(f) of this consent, have been completed in full.*

- d) *Conservation covenants in accordance with Section 77 of the Reserves Act 1977 shall be prepared for registration against the titles of the land depicted on the Survey Plan as being subject to a conservation covenant. The conservation covenant shall require compliance with the provisions listed in Schedule 2 of the approved Council conservation covenant document.*

*ADVICE NOTE: Clause 3 of Schedule 2 calls for fencing of the Covenant Area to prevent entry of grazing animals. The standard of fencing is to be as defined in paragraph 7 of the second schedule of the Fencing Act 1978. Where the existing fence meets this standard it will satisfy the condition and not need to be re-erected on the drip line of the outermost trees. Any new fence erected will not be closer to the bush than the dripline of the outermost trees.*

- e) *Consent Notices pursuant to Section 221 of the Act shall be prepared for registration against the title of Lots 1, 2 and 3 of the subdivision. The consent notices shall draw attention to and require compliance with respect to the following matters:*

- (i) *Earthworks, the location of buildings, building foundations and stormwater and wastewater disposal (including secondary wastewater treatment) shall be subject to specific engineering design by a suitably qualified Chartered Professional Engineer having regard to any soil instability/saturation issues that may exist or arise as a result of the development. Design shall take into account the recommendations identified in the Geotechnical Investigation report prepared by Ashby Haigh Workman Ltd dated July 2017 and submitted to Council with subdivision consent RM180212.*

- (ii) *At the time of lodging a building consent for a habitable building on the lots and before issuing a Code of Compliance for that building, evidence of a driveway must be provided to the Council which meets*

*the requirements of the Kaipara District Council Engineering Standards 2011.*

- (iii) The keeping of stock is prohibited within the lots.*
- (iv) The keeping of cats, mustelids and rodents on the lots is prohibited.*
- (v) Within these lots, dogs shall not be kept on the lot unless the following conditions are complied with:*
  - 1. Prior to the keeping of a dog on the lot, the owner shall provide details of the dog, including registration number, to the Council's Team Leader Monitoring and Compliance for ongoing monitoring purposes; and*
  - 2. Any dog kept on the lot shall be secured/contained at all times to ensure that they cannot roam into the covenant area on the lot or beyond the boundaries of the lot. Containment shall be demonstrated to the satisfaction of the Council's Team Leader Monitoring and Compliance and may be in the form of a secure fenced area or dog run.*
  - 3. Ongoing compliance with this condition will be monitored by Council. There will be a Council charge for this monitoring payable by the lot owner.*
- (vi) All buildings must be located within the identified building areas shown on the survey plan.*
- (vii) Sufficient firefighting water supply shall be provided for any single residential dwelling on the lot(s) with a minimum volume of 10,000 litres and shall remain accessible and available all year round.*
- (viii) The following design guidelines shall apply to development on the lots and shall be confirmed via a design statement from a suitably qualified and experienced landscape architect in support of a building consent application:*

*Site Planning – Lot development*

- *Buildings and structures shall have a maximum height of 8m above ground level.*

*Building controls:*

- *The exterior surfaces of all buildings shall be finished in subdued natural colours that will blend in with the rural landscape.*
- *External surfaces of buildings shall have a Light Reflectance Value (LRV) of no more than 37% (in greyness groups A and B. Colours from greyness groups C and D are not permitted – refer to BS5252 – Resene Total Colour Range).*
- *Building and paving materials shall have a natural reflectivity of no greater*
- *than 37% (BS5252 Groups A and B) and be of natural recessive colours to ensure that they are not highly visible in the landscape.*
- *Roofs and Rooftop structures shall have a Light Reflectance Value (LRV) of no greater than 25% (in BS5252 greyness G groups A and B) . Colours from greyness groups C and D are not permitted – refer to BS5252 – Resene Total Colour Range).*
- *External paving surfaces, including sur faces of access and manoeuvring areas shall be constructed from a material that has a dark and recessive finish such as seal or concrete combined with a black oxide additive and be of natural recessive colours to ensure that they are not highly visible in the landscape.*
- *All heating and air conditioning equipment should be enclosed within the building envelope.*
- *Ancillary rooftop structures (such as hot water tanks, solar collectors, satellite dishes and antennae) shall be limited in size (with satellite dishes not being over 1m diameter)*
- *Water tanks located above ground are to be finished in visually recessive dark or muted earth tones if visible from neighbouring properties or public areas.*

*Landscape Controls*

- *Minor earthworks are permitted for the creation of level building platforms.*
- *Cut and fill practices shall be undertaken as included in the recommendations of the Ashby Haigh Workman Geotechnical Investigation report (ref 8273, dated July 2017)*
- *Retaining walls shall be constructed in timber, finished with a dark and natural coloured stain or using dark recessive natural materials. Retaining walls shall be no greater than 2.0m in height (above ground) and be designed in accordance with recommendations provided in the Geotechnical Investigation Report prepared by Ashby Haigh Workman Ltd (ref 8273, dated July 2017).*
- *Lighting shall be confined to the building site and the accessway in from the access road. There shall be no pole-lights, or no floodlights mounted on any side of any structure.*
- *Any lighting on buildings shall be fitted with a directional shield that confines light spill to the building curtilage.*
- *If lighting is required along the accessways into each Lot, these shall be ground mounted solar lights no more than 500mm high.*

*f) Consent Notices pursuant to Section 221 of the Act shall be prepared for registration against the title of Lots 1, 2, 3 and 4 of the subdivision. The consent notices shall draw attention to and require compliance with respect to the following matters:*

- (i) All planting on site shall be maintained in accordance with the approved Ecological Planting and Weed Control Management Plan (EPWCMP). Evidence of compliance with this requirement shall be provided to Council in writing by a suitably qualified ecologist five years from the date of issue of titles for RM180212*

*Maintenance of planting will be monitored by Council for a period of five years from the date of issue of s224(c). There will be a Council charge for this monitoring payable by the lot owner*

- (ii) *Ongoing weed and pest control shall be undertaken in accordance with the approved Ecological Planting and Weed Control Management Plan (EPWCMP) in perpetuity. Evidence of compliance with this requirement shall be provided to Council in writing by a suitably qualified ecologist five years from the date of issue of titles for RM180212.*

*Weed and pest plant control will be monitored by Council for a period of five years from the date of issue of titles for RM180212. There will be a Council charge for this monitoring payable by the lot owner.*

- g) *The cancellation of the existing amalgamation covenant affecting Lot 3 DP 312676 and Lot 7 DP 468412 shall be registered against the relevant titles.*

- h) *A solicitor's undertaking shall be provided to Council confirming that all consent notices and covenants prepared for registration under the relevant conditions of this resource consent will be duly registered against the new titles to be issued for the subdivision.*

*All consent notices and covenants to be prepared for registration under the relevant conditions of this resource consent shall be prepared by a Solicitor at the consent holder's expense and shall be complied with on a continuing basis by the subdividing owner and subsequent owners after the deposit of the Survey Plan unless specifically limited in time by any conditions of this resource consent.*

- i) *A cash contribution in lieu of reserves shall be paid based on 5 % of the assessed value of a "nominal" building site on Lots 1, 2 and 3 of the subdivision, such value to be determined by a registered valuer appointed by Kaipara District Council, at the applicant's expense.*

*At the time of payment of the contribution, the valuation upon which the cash contribution is calculated shall be no more than 3 months old.*

- j) *The consent holder shall pay all charges set by the Council under Section 36 of the Resource Management Act 1991, including any administration,*

*monitoring and supervision charges relating to the conditions of this resource consent. The consent holder will be advised of the charges as they fall.*

## **ADVICE NOTES**

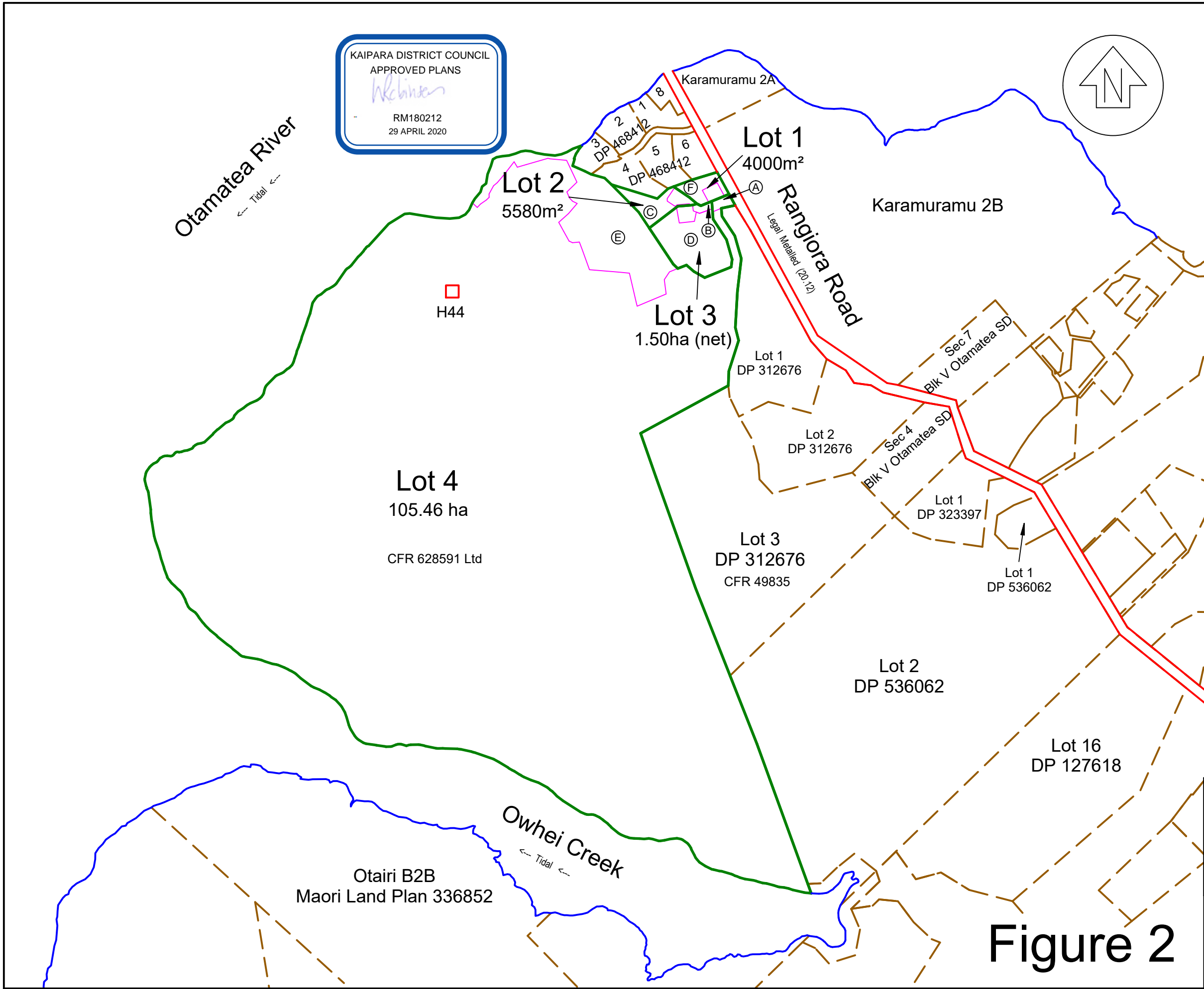
- 1. The consent holder shall be required to pay to Kaipara District Council a Development Contribution under the Local Government Act 2002 of \$106.00 plus GST (if any) for each additional lot for roading in Kaipara District.*

*The proposed development will result in 3 additional allotments. The Total Development Contribution will be \$318.00 plus GST (if any).*

*A copy of Council's policy on Development and Financial Contributions included within the Long-Term Plan 2018/2028 can be obtained from Council offices in Dargaville and Mangawhai or downloaded from Council's website [www.kaipara.govt.nz](http://www.kaipara.govt.nz).*

- 2. All archaeological sites are protected under the provisions of the Heritage New Zealand Pouhere Taonga Act 2014. It is an offence under that Act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to the Heritage New Zealand for an authority to modify, damage or destroy an archaeological site(s) where avoidance of effects cannot be practised.*
- 3. If subsurface archaeological evidence (shell, midden, hangi, storage pits, etc) should be unearthed during construction, work should cease in the immediate vicinity of the remains and the Heritage New Zealand should be contacted.*
- 4. In the event of koiwi (human remains) being uncovered, work should cease immediately and the tangata whenua of Te Uri O Hau shall be contacted so that appropriate arrangements can be made.*
- 5. The consent holder should implement, suitable measures to prevent depositing of earth on surrounding streets by trucks moving fill and other materials to and from the site, and should institute appropriate measures to control or mitigate any potential dust nuisance.*
- 6. The Consent Holder should obtain all other necessary consents and permits, including those under the Building Act 2004 for works prescribed in this consent and for works required under the Northland Regional Council consent.*

7. *The scope of this resource consent is defined by the application made to Council and all documentation supporting the application.*
8. *If you disagree with any additional charges relating to the processing of this application, you have a right of objection pursuant to sections 357A or 357B of the Resource Management Act 1991. Any objection must be made in writing to Council within 15 working days of notification of the decision.*



Memorandum of Easements			
Purpose	Shown	Servient Tenement	Dominant Tenements
ROW Electricity Telecom -unictions & Computer Media	(A)	Lot 4 hereon	Lots 1, 2 & 3 hereon
	(B)	Lot 3 hereon	Lots 1 & 2 hereon

Notes:

1/ All areas and dimensions are approximate only and are subject to survey.

2/ Zone : Rural (Harbour Overlay).

3/ Areas C, D, E & F are to be subject to a Land Covenant (bush protection).

4/ Amalgamation Condition: The owners of Lot 4 hereon and Lot 3 DP 312676 (CFR 49835) shall not without the consent of the Council, transfer, lease or otherwise dispose of any of those parcels or any part thereof except in conjunction with the other.

5/ See existing s240 covenant (DOC 9516478.7).

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100 0 100 200 300 400

RM 180212

**Buckton**  
CONSULTING SURVEYORS LTD

16 Mill Lane, P.O.Box 107, Warkworth 0941, Ph 09 4258950  
www.buckton.co.nz, E-mail surveyors@buckton.co.nz

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Scale		1:7500 (A3)	
Date Drawn 22/08/2019	Drawn by PS/JU	Chkd by RTO'F	Ref No. 2587

Revision Details:-		
Dwg No. SP02	Rev No. J	Sheet No. 1 of 3

Prepared for : TG Linnell  
Comprised in CFR 628591 Ltd  
Total Area 107.9794ha

Proposed subdivision of  
Lot 7 DP 468412, Rangiora Rd, Oneriri

Figure 2

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Memorandum of Easements			
Purpose	Shown	Servient Tenement	Dominant Tenements
ROW Electricity Telecomm- unications	Ⓐ	Lot 4 hereon	Lots 1, 2 & 3 hereon
	Ⓑ	Lot 3 hereon	Lots 1 & 2 hereon

- Notes:
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  - 2/ Zone : Rural (Harbour Overlay).
  - 3/ Areas C, D, E & F are to be subject to a Land Covenant (bush protection).
  - 4/ Amalgamation Condition: The owners of Lot 4 hereon and Lot 3 DP 312676 (CFR 49835) shall not without the consent of the Council, transfer, lease or otherwise dispose of any of those parcels or any part thereof except in conjunction with the other.
  - 5/ See existing s240 covenant (DOC 9516478.7).
  - 6/ Denotes proposed building site

RM 180212

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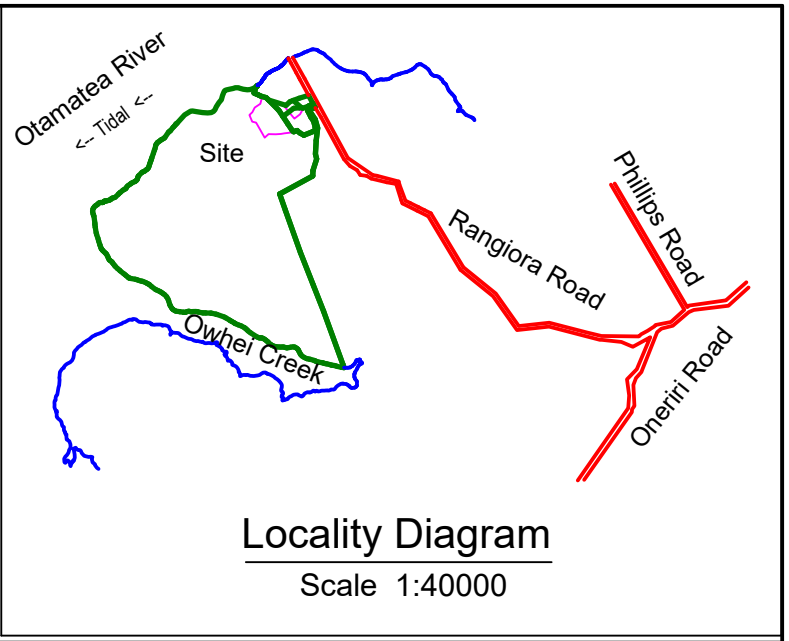
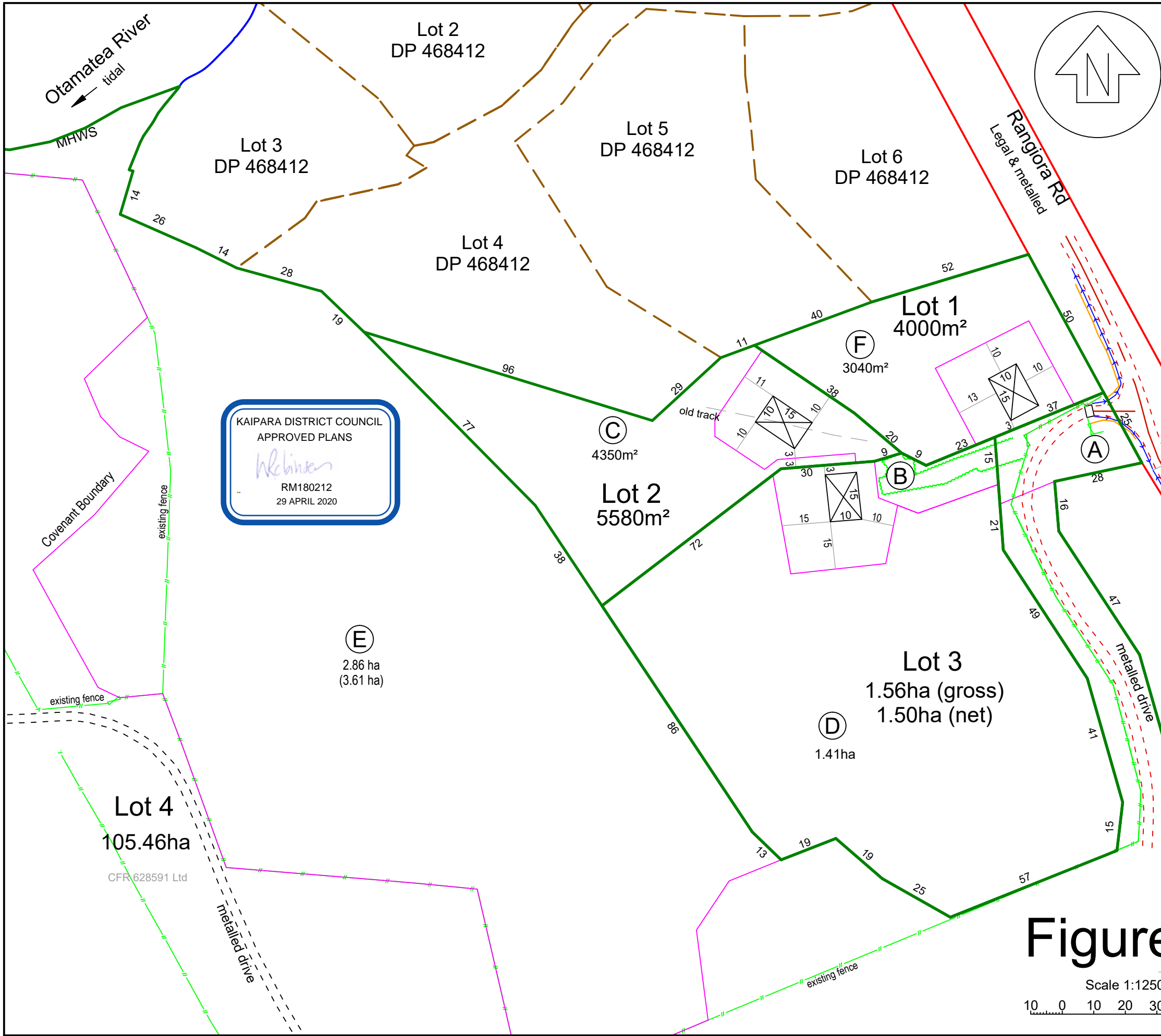
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Date Drawn	22/08/2019	Drawn by	PS/JU
Chkd by	RTO'F	Ref No.	2587

Revision Details:-		
Dwg No.	SP02	Rev No. J
Sheet No.	2 of 3	

Prepared for : TG Linnell  
Comprised in CFR 628591 Ltd  
Total Area 107.9794ha


Proposed subdivision of  
Lot 7 DP 468412, Rangiora Rd, Oneriri

Figure 3



KAIPARA DISTRICT COUNCIL  
APPROVED PLANS  
*Robinson*  
RM180212  
29 APRIL 2020

Memorandum of Easements			
Purpose	Shown	Servient Tenement	Dominant Tenements
ROW Electricity Telecomm -unications	(A)	Lot 4 hereon	Lots 1, 2 & 3 hereon
	(B)	Lot 3 hereon	Lots 1 & 2 hereon

- Notes:
- 1/ All areas and dimensions are approximate only and are subject to survey.
  - 2/ Zone : Rural (Harbour Overlay).
  - 3/ Areas C, D, E & F are to be subject to a Land Covenant (bush protection).
  - 4/ Amalgamation Condition: The owners of Lot 4 hereon and Lot 3 DP 312676 (CFR 49835) shall not without the consent of the Council, transfer, lease or otherwise dispose of any of those parcels or any part thereof except in conjunction with the other.
  - 5/ See existing s240 covenant (DOC 9516478.7).
  - 6/  Denotes proposed building site

RM 180212

  
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Scale 1:1250 (A3)

Date Drawn 22/08/2019	Drawn by PS/JU	Chkd by RTO'F	Ref No. 2587
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Revision Details:-

Dwg No. SP02	Rev No. J	Sheet No. 3 of 3
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Prepared for : TG Linnell  
Comprised in CFR 628591 Ltd  
Total Area 107.9794ha

Proposed subdivision of  
Lot 7 DP 468412, Rangiora Rd, Oneriri

Figure 4  
Scale 1:1250  
10 0 10 20 30 40 50

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