



# Resource Consent Hearing - 603F SH2 West Pikowai

*Te Komiti Whakatau Waeture*

Monday, 12 February 2024  
*Rāhina, 12 Huitanguru 2024*

Council Chambers  
Civic Centre, 14 Commerce Street, Whakatāne  
commencing at 9:00 am  
Chief Executive: Steph O'Sullivan  
Publication Date: 7 February 2024



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**1 Prayer - *Karakia***

**1 Prayer - *Karakia***

**2 Membership - *Mematanga***

Peter Reaburn (Chair)

Carolyn Hamill (Commissioner)

**3 Conflicts of Interest - *Ngākau kōnatunatu***

## 4 Hearing Process

### 4 Hearing Process

#### What happens at the Hearing?

1. The Chairperson opens the hearing, welcomes everyone, notes the nature of the application, introduces the other Commissioners (if appropriate) and Council officers, and briefly outlines the procedure.
2. The applicant presents his/her case to the Hearings Committee, either personally or through their representative. Witnesses/experts may be called as required. The Commissioner(s) may ask questions.
3. The submitters speak on their submissions either personally or through a representative. Witnesses/experts may be called as required. The Commissioner(s) may ask questions.
4. A Council planner (or Consultant Planner), followed by other Council officers or experts/witnesses if appropriate, present their reports. The Commissioner(s) may ask questions. The Chairperson will ask the Council officers whether they have any further comments to make in the light of the cases presented.
5. The applicant has a right of reply to any matters raised at the hearing. New matters may not be introduced.
6. The Chairperson closes the public part of the meeting.

#### What happens after the hearing?

The Commissioner(s) considers the original written submissions, the application and evidence previously circulated or presented at the hearing. If necessary, the Commissioner(s) can reopen the hearing to seek clarification or request further information. A copy of the decision made by the Commissioner(s) will be sent to the applicant and submitters. This will normally occur 15 working days after the hearing is closed.

#### Points to Note:

The Chairperson may conduct the hearing as they consider appropriate to enable the Commissioner(s) to make an informed decision. The following general rules will usually apply:

- Submitters can only speak to the matters raised in their written submission. No further matters can be raised. Points may be elaborated or explained.
- The applicant may not extend their proposal beyond the scope of the original application.
- Evidence is not given on oath
- Only the Commissioner(s) may question any party or witness. There will be no cross examination.
- If any party wishes to seek clarification of a matter raised by another party, the request for clarification can be directed to the Chairperson, who may, if considered appropriate, pursue the matter with the other party.
- The Commissioner(s) may question any party or witness. There will be no cross examination.
- The Commissioner(s) may request or receive advice.
- The hearing will be held in public unless it is necessary to protect sensitive information
- The Council Planner or Consultant Planner's report is only a recommendation, and the Commissioner(s) may reach a different decision

## **5 Submitters**

- The use of cellphones is not permitted
- The Hearings process is quasi-judicial and all conduct in a hearing should be appropriately respectful.

## **5 Submitters**

### **5.1 Submission - B McKenzie**

5.1 Submission - B McKenzie(Cont.)



**Limited Notified Resource Consent Application**

(Please refer to Notes on the back page)

*Have your say*

**YOUR DETAILS**

First Name: William and Kay  
Surname: McKenzie  
Organisation (if applicable)  
Phone: [REDACTED]  
Electronic Address for service: [REDACTED]  
Postal Address: [REDACTED]

**SUBMISSIONS CLOSE.....**

Post or deliver to: Whakatāne District Council  
Commerce Street  
Private Bag 1002  
Whakatāne 3158  
  
Email enquiries: planning@whakatane.govt.nz  
Phone enquiries: (07) 306 0500  
Website: www.whakatane.govt.nz

**DETAILS OF APPLICATION**

Type:	Subdivision & Land Use
Applicant:	Alec & Stephanie Bonner
Details:	Two lot subdivision and accessway
Address:	603F SH2 West, Pikowai

<input type="checkbox"/>	I am/am not* a trade competitor for the purposes of Section 308B for the Resource Management Act 1991
<input type="checkbox"/>	I am/am not* directly affected by an effect of the subject matter of the submission that: (a) adversely affects the environment; and (b) does not relate to trade competition or the effects of trade competition.

Please Tick box and \*Select one

**PRESENTING YOUR SUBMISSION**

<input type="checkbox"/>	I do not wish to speak to my submission	<input checked="" type="checkbox"/>	I wish to speak to my submission
<input checked="" type="checkbox"/>	If others make a similar submission, I will consider presenting a joint case with them at the hearing		

The specific part(s) of the application that my submission relates to are:

The changes to the accessway and the effects it will have on my property.  
The size of the area to be subdivided.  
The inconsistency in Council's advice regarding this application compared to advice received for our application.

OBJECTIVE: DATE: REF:

5.1 Submission - B McKenzie(Cont.)



YOUR SUBMISSION

We are opposing the proposed subdivision for 603F SH2 West, Pikowai on the following grounds:

1. It states in the District Plan Section 12.4.4.1 Rural Foothills Zone – Lot sizes to be 2 hectares or greater. The property at 603F is less than 2 hectares on its current title.

Section 4 of the WDC Notification report identifies two relevant discretionary rules and one restricted discretionary rule therefore determining the overall activity as discretionary. However, the Fergusson Planning document titled Proposed Subdivision, 603F SH 2 West Pikowai identifies the overall activity status as a controlled activity. This may indicate that the assessment has not recognised the abovementioned discretionary and restricted discretionary activity rules of the District Plan; unless the appropriate assessments are documented in another document that we may have missed.

We raise concerns that appropriate matters may have not been assessed by the Fergusson Planning document if it has failed to identify all relevant planning provisions. This has been highlighted by the lack of assessment of ‘road standard’ beyond road width. In light of this, we expect that if the proposal was to proceed, that diligence is applied by WDC to ensure the application is complete and appropriate.

2. We have lived at 603D SH2 West Pikowai since 2006. In late 2019 we began the process to subdivide our property (SS-2020-9199-00).

Initial approval was given to us by Council’s roading engineer Abner Salanguit, for the ROW to be tar-sealed to our property’s entranceway and remain metal beyond that.

On 11 September 2020 we received a request for further information letter from Council stating “that a ROW serving more than 8 lots must comply with the public road standard and that the balance of the ROW must comply with the Council’s Engineering Code of Practice”.

In June 2021, Bill McKenzie and Ross Haine attended a meeting with Abner Salanguit, Laura Swan and Mike Avery from Whakatane District Council to discuss the ROW. Despite the fact that the entrance to our proposed new lot would be through our own driveway, Council advised us that as our subdivision would make a 9<sup>th</sup> lot on the ROW, then the ROW would need to be vested as a public road. This is contrary to and inconsistent with Clause 1.4 of the applicant’s Resource Consent application where it states that Council **do not** require the ROW to be vested as a road for a 9<sup>th</sup> lot.

At the meeting Bill said to Council that if we needed to widen the ROW we would do whatever was required. Council said this was not discretionary and reiterated that the accessway would need to be a public road. We were, therefore never given the option by Council to have the ROW made to “public road standard”. We abandoned our subdivision plans as neither we, nor the other users of the ROW, wanted the ROW to be vested as a public road and thereby create further traffic, public interest, noise and speed.

It is unreasonable, and it is biased, that Council would require us to make the ROW a public road in our application for resource consent for a 9<sup>th</sup> lot, yet not require the ROW to be a public road in 603F’s application.

OBJECTIVE

**5.1 Submission - B McKenzie(Cont.)**



## Submission form

3. We oppose the upgrade and naming of the existing accessway. We wish the ROW to remain a private entranceway and private property. We have an avocado orchard on our property. Should the ROW be upgraded and named, this will encourage higher volumes of traffic, more public interest and may lead to avocado thefts.

The metal part of the ROW runs adjacent to the eastern boundary of our avocado orchard. When the ROW was originally constructed there were earthworks and levelling involved. The dig-out on the ROW has since caused our land slowly to subside due to an unretained bank 1.8m. Upgrading the ROW could cause our land to fall away. It would need to be retained.

There is already a high frequency of traffic along the metal part of the ROW past our property which creates dust. Any additional traffic (approximately 10 additional car equivalent movements per day) would greatly affect members of our household who have respiratory problems.

It is also noted that the activity of the subdivision will create extra traffic through the ROW. Additional traffic is likely to cause increased maintenance requirements of the ROW, the burden of this will fall on current residents.

The ROW is also used by pedestrians. We walk to each other's houses, the letterboxes and the beach and we walk our dogs. There are elderly residents and children in the neighbouring houses. Not all vehicles leaving the State Highway and using the ROW take notice of the speed limit signs at the entrance to the ROW. Additional traffic to our accessway would impact us majorly.

OBJECTIVE: DATE: REF:

**5.1 Submission - B McKenzie(Cont.)**



I seek the following decision from the consent authority:

That the proposed subdivision be declined on the grounds that:

- The size of the property is less than 2 hectares pursuant to current CT.
- Inconsistencies with Council’s requirements for 603F and 603D’s applications regarding public road standards.
- No change be made to the accessway and for it to remain as a private right of way.

Signature of submitter (or person authorised to signed on behalf of submitter)

Bill and Kay McKenzie

(A signature is not required if you make your submission by electronic means).

Date: 25 September 2023

If more space is required:	Please attach additional paper with your name, phone number and page number on each sheet.
Privacy:	In accordance with the Local Government Act 2002 your submission will be made available to the public.
Forwarding your comments:	Please note that your comments may be redirected where they relate to another process or to another organisation. If this occurs, you will be advised in writing.

SUBMISSION ID:

**NOTES TO SUBMITTER**

**Please include in your submission:**

- Whether you support or oppose the application or specific parts of it;
- Where you are neutral regarding the application or specific parts of it;
- The reasons for your views
- The decision you seek from Council

1.	You must serve a copy of your submission on the applicant as soon as reasonably practicable after you have served your submission on the Council.
2.	Please note that your submission (or part of your submission) may be struck out if the Council is satisfied that at least one of the following applies to the submission (or part of the submission): <ul style="list-style-type: none"> <li>• it is frivolous or vexatious;</li> </ul>

**5.1 Submission - B McKenzie(Cont.)**



	<ul style="list-style-type: none"><li>• it discloses no reasonable or relevant case;</li><li>• it would be an abuse of the hearing process to allow the submission (or the part) to be taken further;</li><li>• it contains offensive language;</li><li>• it is supported only by material that purports to be independent expert evidence, but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.</li></ul>
3.	The closing date for serving submissions on the Council is the 20 <sup>th</sup> working day after notification. This date is recorded in the public notice or on the letter you received. Please ensure you comply with this date as late submissions may not be accepted.
4.	If you are a trade competitor, your right to make a submission may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

OBJECTIVE: DATE: REF:

**5.2 Submission - G & S Hingston**

5.2 Submission - G & S Hingston

**5.2 Submission - G & S Hingston(Cont.)**



**Limited Notified Resource Consent Application**

(Please refer to Notes on the back page)

*Have your say*

**YOUR DETAILS**  
 Gavin & Suzanne  
 Hingston  
 Organisation (if applicable)  
 Phone: [REDACTED]  
 Postal Address:  
 [REDACTED]

**SUBMISSIONS CLOSE.....**  
 Post or deliver to: Whakatāne District Council  
 Commerce Street  
 Private Bag 1002  
 Whakatāne 3158  
 Email enquiries: [planning@whakatane.govt.nz](mailto:planning@whakatane.govt.nz)  
 Phone enquiries: (07) 306 0500  
 Website: [www.whakatane.govt.nz](http://www.whakatane.govt.nz)

DETAILS OF APPLICATION	
Type:	Subdivision & Land Use
Applicant:	Alec & Stephanie Bonner
Details:	Two lot subdivision and accessway
Address:	603F SH2 West, Pikowai

<input checked="" type="checkbox"/>	I am not* a trade competitor for the purposes of Section 308B for the Resource Management Act 1991
<input checked="" type="checkbox"/>	I am * directly affected by an effect of the subject matter of the submission that: (a) adversely affects the environment; and (b) does not relate to trade competition or the effects of trade competition. Please Tick box and *Select one

PRESENTING YOUR SUBMISSION			
<input checked="" type="checkbox"/>	I do not wish to speak to my submission	<input type="checkbox"/>	I wish to speak to my submission
<input checked="" type="checkbox"/>	If others make a similar submission, I will consider presenting a joint case with them at the hearing		

The specific part(s) of the application that my submission relates to are:

**Row**

**Amount of traffic**

**Not wanting Public Road**

**Land Size**

OBJECTIVE: DATE: REF:

**5.2 Submission - G & S Hingston(Cont.)**



YOUR SUBMISSION
<p><b>We oppose this Submission for a Two Lot subdivision and accessway for the following reasons:</b></p> <ol style="list-style-type: none"><li>1. We don't want the land sizes to be any smaller. We would like to keep the rural aspect of the sub-division as it currently is.</li><li>2. We don't want the ROW to have traffic. There is already a lot of traffic &amp; pedestrians on the current ROW and sub dividing would allow the risk of more traffic and pedestrians.</li><li>3. The submission doesn't appear to have any ROW users listed for our Forestry Block – It needs to be noted that we are up there most days along with on occasion; Bee Keepers, Pruners, Sprayers and Maintenance Contractors. When we harvest our trees, we also then need to include around 10 loaded logging trucks per day, transporters and harvesting crews and supervisors.</li><li>4. Mr &amp; Mrs Boner have already obstructed our ROW to the entrance of our property and they don't want to discuss or make good the trench and tailings that runs up the centre of the path to our access gate. There was no consultation with us before these works were carried out. Please see attached photos of our obstructed ROW. The Access to the proposed new lot will be directly affected by the earth works the Boners have carried out.</li></ol>

OBJECTIVE: DATE: REF:

**5.2 Submission - G & S Hingston(Cont.)**



I seek the following decision from the consent authority:

**We strongly oppose the proposed subdivision. We wish the Council to not let this go ahead.**

If Mr and Mrs Boner wish to proceed, we would like our solicitor to become involved to assist us.  
We feel if this is the case that Mr & Mrs Boner should pay for the solicitor to advise us with any decisions going forward.

Please advise if you think this needs to be directed to our solicitor.

Signature of submitter (or person authorised to signed on behalf of submitter)

(A signature is not required if you make your submission by electronic means).

Date:  
25/09/2023

If more space is required:	Please attach additional paper with your name, phone number and page number on each sheet.
Privacy:	In accordance with the Local Government Act 2002 your submission will be made available to the public.
Forwarding your comments:	Please note that your comments may be redirected where they relate to another process or to another organisation. If this occurs, you will be advised in writing.
SUBMISSION ID:	

<b>NOTES TO SUBMITTER</b>	
<b>Please include in your submission:</b>	
<ul style="list-style-type: none"> <li>• Whether you support or oppose the application or specific parts of it;</li> <li>• Where you are neutral regarding the application or specific parts of it;</li> <li>• The reasons for your views</li> <li>• The decision you seek from Council</li> </ul>	
1.	You must serve a copy of your submission on the applicant as soon as reasonably practicable after you have served your submission on the Council.
2	Please note that your submission (or part of your submission) may be struck out if the Council is satisfied that at least one of the following applies to the submission (or part of the submission):

5.2 Submission - G & S Hingston(Cont.)



	<ul style="list-style-type: none"> <li>• it is frivolous or vexatious;</li> <li>• it discloses no reasonable or relevant case;</li> <li>• it would be an abuse of the hearing process to allow the submission (or the part) to be taken further;</li> <li>• it contains offensive language;</li> <li>• it is supported only by material that purports to be independent expert evidence, but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.</li> </ul>
3.	The closing date for serving submissions on the Council is the 20 <sup>th</sup> working day after notification. This date is recorded in the public notice or on the letter you received. Please ensure you comply with this date as late submissions may not be accepted.
4.	If you are a trade competitor, your right to make a submission may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

OBJECTIVE: DATE: REF:

**5.2 Submission - G & S Hingston(Cont.)**



**5.2 Submission - G & S Hingston(Cont.)**



**5.3 Submission - P Walsh**

5.3 Submission - P Walsh

5.3 Submission - P Walsh(Cont.)



**Limited Notified Resource Consent Application**

(Please refer to Notes on the back page)

*Have your say*

**YOUR DETAILS**

First Name: Peter  
Surname: Walsh  
Organisation (if applicable) On behalf of myself and co-owners  
Susan Walsh, John McEwen and Judith McEwen  
Phone: [REDACTED]  
Electronic Address for service: [REDACTED]  
[REDACTED]

**SUBMISSIONS CLOSE.....**

Post or deliver to: Whakatāne District Council  
Commerce Street  
Private Bag 1002  
Whakatāne 3158  
  
Email enquiries: planning@whakatane.govt.nz  
Phone enquiries: (07) 306 0500  
Website: www.whakatane.govt.nz

**DETAILS OF APPLICATION**

Type:	Subdivision & Land Use
Applicant:	Alec & Stephanie Bonner
Details:	Two lot subdivision and accessway
Address:	603F SH2 West, Pikowai

I am/am not\* a trade competitor for the purposes of Section 308B for the Resource Management Act 1991

I am/am not\* directly affected by an effect of the subject matter of the submission that:

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition.

Please Tick box and \*Select one

**PRESENTING YOUR SUBMISSION**

<input type="checkbox"/>	I do not wish to speak to my submission	<input checked="" type="checkbox"/>	I wish to speak to my submission
<input type="checkbox"/>	If others make a similar submission, I will consider presenting a joint case with them at the hearing		

The specific part(s) of the application that my submission relates to are:

The access way  
Traffic volumes  
Power supply (electricity)  
Water supply

OBJECTIVE: DATE: REF:

5.3 Submission - P Walsh(Cont.)



YOUR SUBMISSION

I do not consider that the following matters have been fully addressed in the application:

1. Traffic Volumes: Increased traffic volumes on a small, quiet residential shared driveway are detrimental to the safety and quiet enjoyment of the current semi rural lifestyle for other adjacent property owners. The application does not address any safety aspects of the proposed changes. Pedestrians, both young children and the elderly, use the accessway. Extending the length of the sealed accessway will likely lead to increased speed of vehicles. A speed bump should be installed just beyond the entrance way to 603 and 603A, adjacent to property 579.
2. Accessway: no detailed plan has been given for the road widening for the first section of the accessway from the state highway (that section of the accessway adjacent to 603), particularly relating to:
  - (i) What parts of the accessway are to be widened and how does this affect either side of the accessway. If widening affects the stability of the adjacent bank or the fenceline on top – then this must be remedied by the applicant. No detail has been provided on what trees or vegetation are to be removed. Detailed design of the widening should have been undertaken and provided to landowners.
  - (ii) Widening in the Waka Kotahi letter of approval states the driveway to be widened from 5m to 6.5m. The applicant is proposing to widen the access to 6m (5.5m and 0.5m shoulder). This appears to be inconsistent.
  - (iii) No detail is given on how the additional accessway width will be formed. If the seal is to be widened, then just sealing the additional width will not be stable in the long term and subject to failure. Any sealing of the accessway should be across the whole accessway width not just the extended portion, so that the extension is an integral part of the accessway.
  - (iv) While not stated in the application, I want to re-affirm that we definitely do not wish the accessway to be a public road or named as such.
3. Power Supply: power is supplied to all residences via a small pole mounted transformer on our property, 603. I believe that the size of the transformer may not be adequate for an additional residence. An electrical engineers report should be undertaken to prove the adequacy of the electrical supply. If the transformer, and/or power cables are found not to be adequate, then the applicant should have the transformer and/or power cables upgraded at their cost.
4. Water supply: the application states in 6.35 that water supply can be from bore or roof water. I believe that this must be confirmed that water supply will be from bore or roof water.

OBJECTIVE: DATE: REF:

5.3 Submission - P Walsh(Cont.)



I seek the following decision from the consent authority:

Decline the application or ensure that all matters in our submission are addressed.

Signature of submitter (or person authorised to signed on behalf of submitter)



(A signature is not required if you make your submission by electronic means).

Date: 24<sup>th</sup> September 2023.

If more space is required:	Please attach additional paper with your name, phone number and page number on each sheet.
Privacy:	In accordance with the Local Government Act 2002 your submission will be made available to the public.
Forwarding your comments:	Please note that your comments may be redirected where they relate to another process or to another organisation. If this occurs, you will be advised in writing.

SUBMISSION ID:

**NOTES TO SUBMITTER**

**Please include in your submission:**

- Whether you support or oppose the application or specific parts of it;
- Where you are neutral regarding the application or specific parts of it;
- The reasons for your views
- The decision you seek from Council

1.	You must serve a copy of your submission on the applicant as soon as reasonably practicable after you have served your submission on the Council.
2.	Please note that your submission (or part of your submission) may be struck out if the Council is satisfied that at least one of the following applies to the submission (or part of the submission): <ul style="list-style-type: none"> <li>• it is frivolous or vexatious;</li> </ul>

OBJECTIVE: DATE: REF:

**5.3 Submission - P Walsh(Cont.)**



	<ul style="list-style-type: none"><li>• it discloses no reasonable or relevant case;</li><li>• it would be an abuse of the hearing process to allow the submission (or the part) to be taken further;</li><li>• it contains offensive language;</li><li>• it is supported only by material that purports to be independent expert evidence, but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.</li></ul>
3.	The closing date for serving submissions on the Council is the 20 <sup>th</sup> working day after notification. This date is recorded in the public notice or on the letter you received. Please ensure you comply with this date as late submissions may not be accepted.
4.	If you are a trade competitor, your right to make a submission may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

OBJECTIVE: DATE: REF:

**5.4 Submission - R Allan**

5.4 Submission - R Allan

5.4 Submission - R Allan(Cont.)

# Submission form

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**Limited Notified Resource Consent Application**  
Whakatane District Council

(Please refer to Notes on the back page)

**YOUR DETAILS**

First Name: Rodger

Surname: ALLAN

Organisation (if applicable): CO-OWNER  
LEABANE PHILLMORE

PI: [REDACTED]

Electronic Address for service: [REDACTED]

Postal Address: [REDACTED]

**25 SEP 2023**

*Have your say*

**SUBMISSIONS CLOSE.....**

Post or deliver to: Whakatane District Council  
Commerce Street  
Private Bag 1002  
Whakatane 3158

Email enquiries: [planning@whakatane.govt.nz](mailto:planning@whakatane.govt.nz)

Phone enquiries: (07) 306 0500

Website: [www.whakatane.govt.nz](http://www.whakatane.govt.nz)

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**DETAILS OF APPLICATION**

Type:	Subdivision & Land Use
Applicant:	Alec & Stephanie Bonner
Details:	Two lot subdivision and accessway
Address:	603F SH2 West, Pikoawai

---

I am/am not\* a trade competitor for the purposes of Section 308B for the Resource Management Act 1991  
I am/am not\* directly affected by an effect of the subject matter of the submission that:

(a) adversely affects the environment; and  
(b) does not relate to trade competition or the effects of trade competition.

Please Tick box and \*Select one

---

**PRESENTING YOUR SUBMISSION**

<input type="checkbox"/> I do not wish to speak to my submission	<input type="checkbox"/> I wish to speak to my submission
<input checked="" type="checkbox"/> If others make a similar submission, I will consider presenting a joint case with them at the hearing	

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The specific part(s) of the application that my submission relates to are:

Traffic Volume  
The Access Way  
Power Supply  
Concerned how subdivision & accessway  
is going to change to what we have come to enjoy  
My concerns are exactly the same as our Neighbours  
so I have just put a copy of their concerns. 😊

**25 SEP 2023**

Whakatane District Council

5.4 Submission - R Allan(Cont.)



YOUR SUBMISSION

I do not consider that the following matters have been fully addressed in the application:

1. Traffic Volumes: Increased traffic volumes on a small, quiet residential shared driveway are detrimental to the quiet enjoyment of the current semi rural lifestyle for other adjacent property owners. While not stated in the application, I want to re-affirm that we definitely do not wish the accessway to be a public road or named as such.
2. Accessway: no detailed plan has been given for the road widening for the first section of the accessway from the state highway (that section of the accessway adjacent to 603), particularly relating to:
  - (i) What parts of the accessway are to be widened and how does this affect either side of the accessway. If widening affects the stability of the adjacent bank or the fenceline on top – then this must be remedied by the applicant. Detailed design of the widening should be undertaken and provided.
  - (ii) Widening in the Waka Kotahi letter of approval states the driveway to be widened from 5m to 6.5m. The applicant is proposing to widen the access to 6m (5.5m and 0.5m shoulder). This appears to be inconsistent.
  - (iii) No detail given on how the additional accessway width will be formed. If the seal is to be widened, then just sealing the additional width will not be stable in the long term and subject to failure. Any sealing of the accessway should be across the whole accessway width not just the extended portion.
  - (iv) Safety: the application does not address any safety aspects. Pedestrians use the accessway and extending the sealed accessway will lead to increased speed of vehicles. A speed bump should be installed just beyond the entrance way to 603 and 603A, adjacent to property 579.
3. Power Supply: power is supplied to all residences via a small pole mounted transformer on property 603. I believe that the size of the transformer may not be adequate for an additional residence. An electrical engineers report should be undertaken to prove the adequacy of the electrical supply. If the transformer, and/or power cables are found not to be adequate, then the applicant should have the transformer and/or power cables upgraded at their cost.
4. Water supply: the application states in 6.35 that water supply can be from bore or roof water. I believe that this must be confirmed that water supply will be from bore or roof water.

OBJECTIVE: DATE: REF:

**5.4 Submission - R Allan(Cont.)**



I seek the following decision from the consent authority:

Decline the application or ensure that all matters in our submission are addressed.

Signature of submitter (or person authorised to signed on behalf of submitter)

*[Handwritten signatures]*

(A signature is not required if you make your submission by electronic means).

Date: 25/9/23

If more space is required:	Please attach additional paper with your name, phone number and page number on each sheet.
Privacy:	In accordance with the Local Government Act 2002 your submission will be made available to the public.
Forwarding your comments:	Please note that your comments may be redirected where they relate to another process or to another organisation. If this occurs, you will be advised in writing.
SUBMISSION ID:	

**NOTES TO SUBMITTER**

**Please include in your submission:**

- Whether you support or oppose the application or specific parts of it;
- Where you are neutral regarding the application or specific parts of it;
- The reasons for your views
- The decision you seek from Council

1. You must serve a copy of your submission on the applicant as soon as reasonably practicable after you have served your submission on the Council.
2. Please note that your submission (or part of your submission) may be struck out if the Council is satisfied that at least one of the following applies to the submission (or part of the submission):
  - it is frivolous or vexatious;
  - it discloses no reasonable or relevant case;

OBJECTIVE: DATE: REF:

**6 Planning Officers Report**

**6 Planning Officers Report**

6.1 Planning Officers Report

**6.1 Planning Officers Report(Cont.)**



**Application for Resource Consent**  
Officer's report in accordance with Section 42A of the Resource Management Act 1991

<b>RESOURCE NUMBER:</b>	<b>CONSENT</b>	<b>REFERENCE</b>	SS-2023-9807-00/LL-2023-9808-00
<b>APPLICANT:</b>			A & S BONNER LIMITED
<b>AGENT:</b>			FERGUSON PLANNING LIMITED
<b>PROPOSAL:</b>			TWO LOT SUBDIVISION (RURAL FOOTHILLS) LAND-USE – NON-COMPLIANCE WITH RULES 13.2.4.11 & 13.2.2 ACCESSWAY STANDARD – (NINE LOTS)
<b>SITE ADDRESS:</b>			603F STATE HIGHWAY 2 WEST, PIKOWAI
<b>LEGAL DESCRIPTION OF SITE:</b>			LOT 2 DP 534063
<b>SITE AREA:</b>			1.9276 HECTARES
<b>ZONING:</b>			RURAL FOOTHILLS
<b>SPECIAL FEATURES / POLICY AREAS / HAZARDS OR REFERENCES ON THE RT:</b>			LIMITED ACCESS ROAD ESPLANADE STRIP
<b>REPORTING PLANNER</b>			ANN NICHOLAS

**1 SUMMARY**

- 1.1 Subdivision consent is sought to create one additional lot (two lot subdivision) within the Rural Zone (Foothills). As the accessway will serve more than 8 lots, the subdivision does not comply with rules 13.2.4.11 and 13.2.2. therefore, the subdivision must be assessed as a non-complying activity under rule 12.2.1.1.17.
- 1.2 Land use consent is also identified as necessary to authorise non-compliance with the accessway standards as this subdivision would exceed the eight lots, being the maximum permitted under rule 13.2.4.10 of the District Plan. Rule 13.2.4.11 requires that access to 9 or more lots must meet the standard for a public road, as set out in rule 13.2.2..
- 1.3 There was a previous application (SS-2022-9612-00) lodged in June 2022 and this was subsequently withdrawn. The current application (SS-2023-9807-00) was lodged on 9 May 2023 on the basis that applicant will upgrade the existing accessway to a road standard for the portion serving nine lots. Further information was requested and updated written approval was obtained from NZTA / Waka Kotahi dated 5 July 2023.
- 1.4 The key issue has been the formation and status of the accessway which would serve 9 lots if consent is granted. The applicant now proposes to upgrade the right-of-way to a road standard which requires a 6.5m road formation width including shoulders. It will remain in the private ownership. The evaluation completed as part of the s95 process concluded that the effects of the ongoing maintenance requirements and increased density would be minor for the other landowners relying on the right-of-way. Therefore, it was recommended the application be processed on a limited-notified basis with notice served on the other right-of way users.

## 6.1 Planning Officers Report(Cont.)

- 1.7 The application was limited notified and four submissions were received from other owners on the right of way. The submitters have requested that consent is declined or only approved if the issues identified can be addressed.
- 1.8 This report has been prepared with advice from Council's Roding Team as well as Building and GISs, as well as advice from Bay of Plenty Regional Council. Subject to information that may be presented to or arise from the hearing, it is my recommendation at this time that the application maybe approved subject to appropriate conditions.

### 2 PROPOSAL

- 2.1 The application seeks resource consent to create one additional rural lifestyle lot from an existing lifestyle lot, being Lot 2 DP 534063, located at 603F State Highway 2 West, Pikowai. The site has an area of 1.9276ha and was created by subdivision in 2018. The site is located at the southern end of a right of way serving 8 lots. There is a 20m wide esplanade strip applying along the boundary with the Herepuru Stream.
- 2.2 A subdivision application (SS-2022-9612-00) was lodged on 21 June 2022. That application did not propose to upgrade the ROW to a complying road standard. Through the further information process the application was amended on 10 November 2022 to upgrade the existing right-of-way with a "minor" non-compliance proposed. The current lane width was 5.2-5.4m at the northern end with an accessway width of 10m and no formed shoulders. The applicant proposed to upgrade the right-of-way to a 5.5-5.7m width. No shoulders were proposed. The required formation width under the District Plan is a minimum road width of 9m and a lane width of 5.5-5.7m plus 1m of shoulder spread over each side, i.e., formed to 6.5m minimum including the two shoulders. The Agent was advised that the written approval of the other right-of-way users was required due to the ROW not being upgraded to the required road formation width and not being vested as road.
- 2.3 The Agent advised on 2 December 2022 that the applicant agreed to upgrade the ROW to a complying road formation standard. The Agent also queried if the Council wanted the ROW to be vested as road. Council Engineers advised that the Council did not require the ROW to be vested as road and the Agent was advised accordingly.
- 2.4 A new application (SS-2023-9807-00) was lodged on 9 May 2023, and the previous application (SS-2022-9612-00) was withdrawn. The applicant now proposes to upgrade the existing accessway to a road standard for the portion serving nine lots, being a 6.5m road formation width including 0.5m shoulders.
- 2.5 It is therefore proposed to create a second lifestyle lot (Lot 2) as follows, with the proposed scheme plan shown below.

Proposed Lot	Area	Comment
Lot 1	9450m <sup>2</sup>	Lot 1 contains an existing dwelling and Totalspan shed. Access is proposed via an existing right of way from the existing vehicle crossing from State Highway 2 (Limited Access Road).
Lot 2	9820m <sup>2</sup>	Lot 2 is a vacant lot. As part of the application a building platform has been identified, based on the accompanying geotechnical report. Access is proposed via an existing right of way from the existing vehicle crossing from State Highway 2 (Limited Access Road), with a new ROW over proposed Lot 1.

6.1 Planning Officers Report(Cont.)

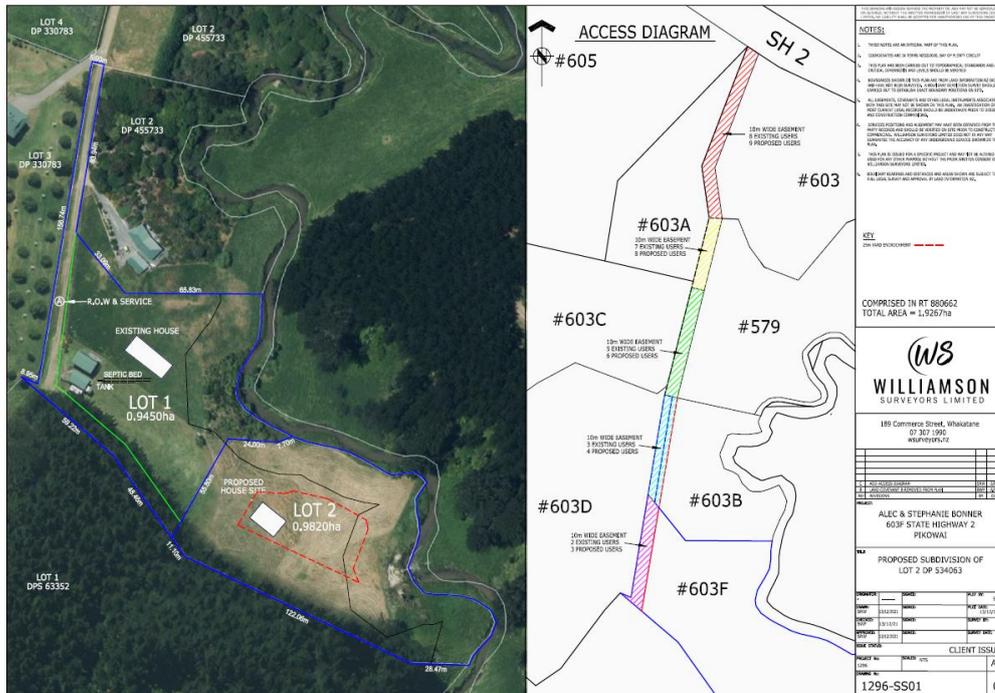


Figure 1: Scheme Plan of proposed subdivision

- 2.6 A request for further information was sent on 26 May 2023 and asked for written approval from NZTA/Waka Kotahi, an updated title plan diagram and a scaled plan of the right of way, plus an amended scheme plan showing the 25m setbacks and esplanade reserve strip and effluent disposal field. Under the further information process updated written approval was obtained from Waka Kotahi dated 5<sup>th</sup> July 2023.
- 2.7 The existing ROWs (A-H) are identified on the title plan (DP 455733) below. It is now proposed to upgrade parts A, B & C (comprising approximately 120m) which would serve 9 lots to a rural road standard formation width.

6.1 Planning Officers Report(Cont.)

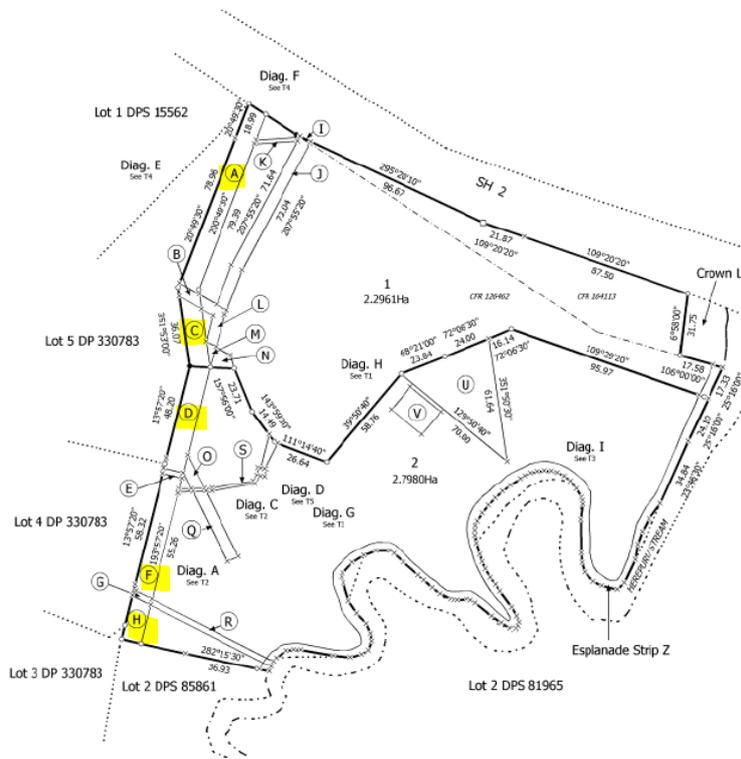


Figure 2: Title Plan DP 455733 and ROW sections A-H

- 2.8 The proposed formation widths for each portion of accessway are shown on Figure 3 below. It is noted above that the first part serving 9 lots will be widened to 6.5m, to include 5.5m movement lane with a 0.5m shoulder on each side. The third portion will be sealed, being currently unsealed.

6.1 Planning Officers Report(Cont.)

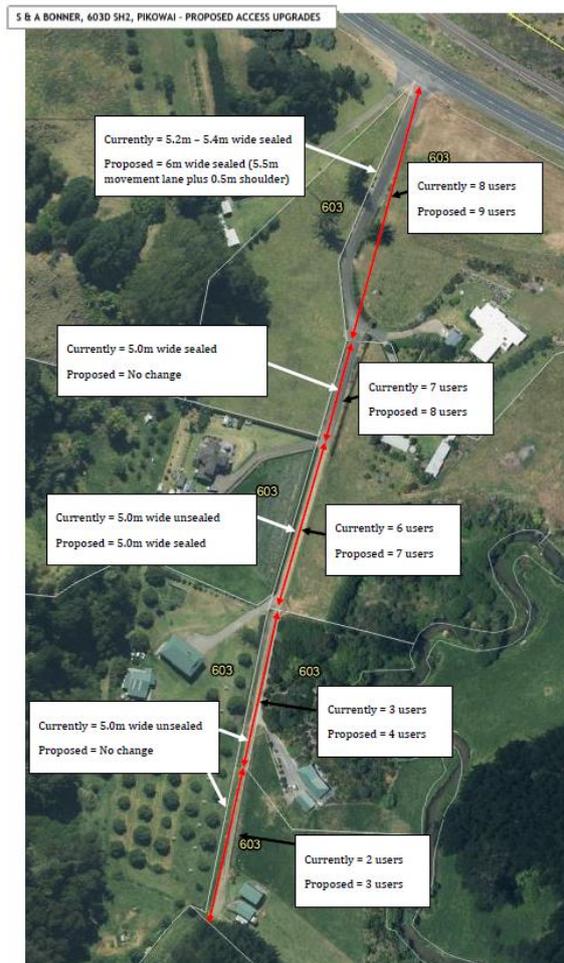


Figure 3: ROW Upgrade Plan – Tim Fergusson

**3 DESCRIPTION OF SITE AND SURROUNDS**

3.1 The application is located at 603F State Highway 2, on the southern side of State Highway 2 West. State Highway 2 West is a Limited Access Road. Access is provided to the site by way of a sealed and metallised right-of-way. An existing single storey dwelling is located within the northern half of the site. The dwelling is orientated north-west to south-east with an outlook to the northeast. A 17.5m x 9.5m Totalspan shed is located within the south-western corner adjacent to the right-of-way. Another shed and water tanks are located to the south of the dwelling.

**6.1 Planning Officers Report(Cont.)**



**Figure 4:** View looking down accessway, dwelling and Totalspan shed (Source: Real Estate Website)

- 3.2 The site is fenced into paddocks with established hedging along the ROW and northern boundary. The site slopes down to the south and east to the Herepuru Stream. There is a 20m esplanade strip applying along the stream. The streambanks have been fenced but the riparian margin contains predominantly willows and weed species.



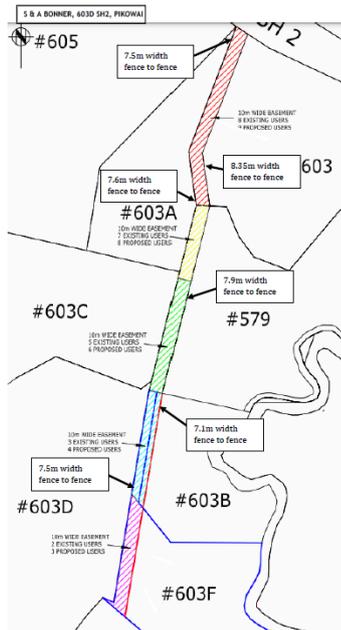
**Figure 5:** View of south-eastern corner of site (Source: Real Estate Website)

**6.1 Planning Officers Report(Cont.)**

3.3 The subject site and all adjoining properties are zoned Rural Foothills. There are currently seven small lifestyle lots served by the un-named private ROW. A forestry block comprising over 71ha is located to the west and south of the site. This also has use of the ROW. The lots served by the ROW are as follows:

Address (WDC)	Legal Description	Area
603 SH2	Lot 1 DP 455733	2.2961
603A SH2	Lot 2 DP 455733	2.7980
603B SH2	Lot 1 DP 534063	0.7187
603C SH2	Lot 4 DP 330783	1.8647
603D SH2	Lot 3 DP 330783	3.2204
603E SH2	Lot 5 DP 330783	0.8422
603F SH2	Lot 2 DP 534063	1.9267
629 SH2 (Forestry block)	Lot 1 DPS 63352	71.3000

3.4 A diagram showing the distance between the existing fences located along the right-of-way has been provided by the applicant as shown in Figure 8 below:



**Figure 6:** Plan showing ROW and existing fencing widths

3.5 Photographs of typical sections along the right-of-way are shown in Figure 7 below:

**6.1 Planning Officers Report(Cont.)**

	<p>ROW A-C Sealed portion adjacent to SH 2</p>
	<p>Unsealed ROW D Looking towards SHWY 2</p>
	<p>Unsealed portion – D-H – Looking towards site (south)</p>

**Figure 7:** Photographs of Existing ROW Formation

## 6.1 Planning Officers Report(Cont.)

3.6 This proposal is the fifth application for subdivision consent since 1 January 1998, affecting the parent site, which was Pt Lot 1 DPS 15562 and had an original area of 43.31ha:

- July 1998 consent (24.3.03.83) - subdivide Lot 2 DPS 15562 into two lots (one additional) of 13.35ha (Lot 3 DPS 81965) and 29.96ha (Lot 2 DPS 81965).
- 1999 (24.3.99.40) - Lot 3 DPS 81965 into two lots (one additional) of 10.65ha and 2.7ha.
- November 2001 (24.3.00.24) - Lot 1 DPS 85861 into 5 lots of 0.8433 – 2.798ha. In 2004 this was subsequently changed to 4 lots.
- November 2011 (SS-2010-7834-00) - Lot 1 DP 330783 and Allot 1352 Matata into 2 lots, being Lots 1 and 2 DP 455733.
- November 2018 (SS-2018-8730-00) - Lot 2 DPS 85861 into 2 lots of 0.7193ha (Lot 1 DP 534063) and 1.92ha (Lot 2 DP 534063).

It is noted that an application was lodged to subdivide Lot 3 DP 330783 into two lots (SS-2020-9199) into two lifestyle lots on 27 August 2020. The application has not progressed as the notification decision required limited notification and this did not proceed.

3.7 This subdivision takes the number of lots created from the original subject site since 1998 to nine. The original parent lot of 43.31ha has therefore been subdivided into eight lots with a minimum lot size of 0.8433ha and an average lot size of 5.4137ha. The proposed subdivision would reduce the average lot size to 4.8122ha when calculated in accordance with the Whakatāne District Plan provisions.

3.8 The immediate surrounding environment is characterised by large rural production lots interspersed with clusters of lifestyle lots near the State Highway and on ridges overlooking the coast.

3.9 The Record of Title has interests registered on it which are relevant to the proposal as follows:

- Subject to a right of way over part marked A and C on DP 534063 created by Transfer B113621.3 - 19.11.1992 at 9.10 am
- Appurtenant hereto are rights of way and rights to take and convey water, transmit telecommunications and transmit electricity specified in Easement Certificate B564501.3 - 31.8.1999 at 12.05 pm
- The easements specified in Easement Certificate B564501.3 are subject to Section 243 (a) Resource Management Act 1991
- 11439930.1 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 18.6.2019 at 8:06 am. This has a reverse sensitivity clause and a requirement for confirmation of a low risk by way of a risk assessment prior to residential development.
- Subject to a right of way over part marked A and a right to convey water over part marked A and C all on DP 534063 created by Easement Instrument 11439930.3 - 18.6.2019 at 8:06 am.
- The easements created by Easement Instrument 11439930.3 are subject to Section 243 (a) Resource Management Act 1991

## Independent Hearings Commissioner - AGENDA

**6.1 Planning Officers Report(Cont.)**

- 11439930.4 Esplanade Strip Instrument pursuant to Section 232 Resource Management Act 1991 - 18.6.2019 at 8:06 am
- 11498838.2 Mortgage to ASB Bank Limited - 23.7.2019 at 3:54 pm

3.10 It is understood that Council has received a complaint that the Totalspan shed is being used as a habitable building. No building consent has been granted for plumbing and drainage or change of use to habitable use. This matter relates to Council's Monitoring and Compliance role and is not addressed further through this process.

**4 RELEVANT RULES/ACTIVITY STATUS**

- 4.1 The application must be assessed under the Operative Whakatāne District Plan (the District Plan). The property is zoned Rural Foothills. The site is not located within the BOPRC Coastal Environment.
- 4.2 An assessment of compliance with the relevant rules of the District Plan has been completed. In summary, the table below outlines the relevant rules relating to the proposed subdivision.
- 4.3 Rule 12.4.4.1 of the District Plan provides for subdivision of land in the Rural Foothills Zone as a Controlled activity where all relevant standards are met. The minimum lot size of 5000m<sup>2</sup> and average lot size (of the original parent lot since 1998) are met. This would enable consideration as a Controlled Activity. However, as the access is from a limited access road, consent as a restricted discretionary activity would be required. In addition, the standards in relation to the access are not met.

Table 2: Summary of relevant rules - Subdivision

Rule #	Rule name	Status of activity	Comment
12.2.1.1.1	Subdivision complying with all standards unless otherwise stated in the standard or elsewhere in this table.	NA	Standards not met – refer below
12.2.1.1.17	Subdivision – Any other form of subdivision not otherwise provided for in this Table	Non-complying	The proposed subdivision does not comply with Rule 12.3.2.2.
12.2.1.1.10	Subdivision with direct vehicle access to the state highway and Limited Access Road	Restricted Discretionary	SH2 West is a Limited Access Road.
12.3.1.1	Building Platform	Complies	This provision states that each site/lot must contain identified potential building

## Independent Hearings Commissioner - AGENDA

## 6.1 Planning Officers Report(Cont.)

Rule #	Rule name	Status of activity	Comment
			<p>platforms through demonstrating compliance with the standards.</p> <p>A building platform has been identified on Lot 2 with 25m setbacks to the boundaries. Due to the required setback from the southern boundary (toe of slope) the platform is located on the edge of the slope down to the stream. A limited area is available when the yard setbacks, riparian margin and steeper contours are excluded.</p> <p>If consent is granted a geotechnical assessment will be required at the building consent stage which addresses slope stability. There is an existing consent notice requiring a risk assessment for residential development.</p>
12.4.4	<p>Lot Sizes</p> <p>a. One additional lot per certificate of title</p> <p>b. Average lot size of 2ha or greater</p> <p>c. Minimum lot size of 5000m<sup>2</sup></p>	Complies	<p>Complies – one additional lot</p> <p>Complies – average lot size 4.8122ha as above</p> <p>Complies – lots greater than 5000m<sup>2</sup></p>
12.3.2.2	Frontage	Does not comply	<p>Frontage is required either to a legal road of 20m or alternatively have legal access to a formed road over an accessway which complies with the Rules in 13.2.2.</p> <p>Proposed Lots 1 and 2 do not have legal access to a formed road. The standard in 13.2.2 is not met in full.</p>
12.3.5.1	Existing buildings	Complies	<p>For proposed boundaries existing and proposed buildings and building sites must comply with the bulk and location rules relevant to the zone and the New Zealand Building Code after subdivision. Where this requirement cannot be met, the subdivider must obtain a resource consent to allow the contravention. The consequence of subdivision shall not</p>

**6.1 Planning Officers Report(Cont.)**

Rule #	Rule name	Status of activity	Comment
			<p>increase the degree of non-conformity with the rules.</p> <p>The Totalspan shed and roofed structure are located over 5m from the proposed ROW boundary. This setback complies for non-habitable buildings.</p>
13.2.2	Roads	Does not comply	<p>Rule 13.2.2.2.a refers to Appendix 13.7.5. The table in 13.7.6 requires a width of 9m and is met by the 10m ROW. The formation width of 6.5m meets the minimum requirement.</p> <p>The formation width will comply for the relevant sections of the ROW but the accessway is not a road as defined.</p>
13.2.4.11	Access	Does not comply	<p>For subdivisions of nine or more lots the road standards apply. Access will be provided by a private accessway but not a road as defined in the Plan (by reference to s315 of the Local Government Act 1974) being a private accessway and all standards in 13.2.2.2 are not met.</p> <p>Non-compliance is specified as a Restricted Discretionary Activity but the subdivision becomes non-complying due to the non-compliance under rule 12.2.1.1.17.</p>

4.4 Rule 12.3.1.1.h requires that a potential building platform must meet all rules of the Plan.

*Table 3: Land use Consent Assessment – Land use*

Rule #	Rule name	Status of activity	Comment
7.2.3.1	Distance to boundaries	Complies	<p>25m setback required for habitable buildings to boundaries.</p> <p>The existing dwelling is located over 25m from the proposed common boundary and the non-habitable buildings are located over 5m from the ROW boundary.</p> <p>The building platform is located 25m from the proposed boundaries.</p>

**6.1 Planning Officers Report(Cont.)**

Rule #	Rule name	Status of activity	Comment
13.2.2	Design and Construction of accessways	Restricted Discretionary	Rule 13.2.2.2.a refers to Appendix 13.7.5. The table in 13.7.6 requires a width of 9m and is met by the 10m ROW. The formation width of 6.5m meets the minimum requirement .  The formation width will comply for the relevant sections of the ROW but rule 13.2.2.2.b imposes additional requirements.
13.2.4.11	Access	Does not comply	For subdivisions of nine or more lots the road standards apply. Access will be provided by a private accessway but not a road as defined in the Plan (by reference to s315 of the Local Government Act 1974) being a private accessway and all standards in 13.2.2.2 are not met.  Non-compliance is specified as a Restricted Discretionary Activity.

- 4.5 The subdivision must be considered as a **Non-complying** activity.
- 4.6 Land use consent is also required for the non-compliance with the access standards. This would require consideration as a Restricted Discretionary activity.
- 4.7 Overall, the proposal has been assessed as a **Non-complying** activity.

**National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)**

- 4.8 The [NESCS](#) seeks to manage actual and potential adverse effects of contamination in soil on human health from particular activities that have occurred on the site. The [NESCS](#) includes a [Hazardous Activities and Industries List \(HAIL\)](#) that sets out which activities may have potentially contaminated the soil. The [NESCS](#) applies when a person wants to undertake an activity described in subclauses (2) to (6) on a piece of land described in subclause (7) or (8).
- 4.9 Although the proposal is a subdivision, the application states that the site is not currently being used, has not been used in the past, or is unlikely to have been used for an activity described on the [HAIL](#). The site is not identified by BOPRC as a HAIL site.
- 4.10 Therefore, the [NESCS](#) does not apply.

**Other NES**

- 4.11 There are eight other National Environmental Standards that have been prepared under [Sections 43 and 44](#) of the Act and are in force as regulations. These cover [marine aquaculture](#), [fresh water](#), [air quality](#), [human drinking water](#), [plantation forestry](#), [telecommunications facilities](#), [electricity transmission](#), and [storing tyres outdoors](#).
- 4.12 No other NES apply.

## 6.1 Planning Officers Report(Cont.)

### 5 PROCESS

- 5.1 The application was lodged on 9 May 2023. Further information was requested on 26 May 2023 2021 and provided on 12 July 2023. Written approval was provided from NZTA/Waka Kotahi.
- 5.2 Comments were received from other Council sections as follows:
- **Building:** Advice in relation to the requirement for building consent with a specific geotechnical report including liquefaction. Services to include stormwater disposed of within the site, a complying BOPRC approved wastewater system and water from roof collection.
  - **GIS:** Advice that the Road Naming and Addressing Policy requires application for a road name as soon as possible for any private way where six or more addresses exist. Addresses would be confirmed after s224 and other owners would need to be informed an address change will result.
  - **Roading:** Further information was required in relation to the design of the accessway upgrade. Conditions have been recommended and included in the draft conditions below.
- 5.3 Advice from BOPRC related to the management of stormwater within the site, site stability, on-site effluent treatment system design and a preference for indigenous species to be used within the riparian margins. There was no expectation of flooding of the site within a 1% AEP event.
- 5.4 Further information was requested in relation to the following matters:

#	Request for Further Information	Response
1.	The activity status is restricted discretionary under Rule 12.2.1.1.10 due to access being from a State Highway. Please provide an assessment against the restricted discretionary activity matters and the written approval of Waka Kotahi for the proposed vehicle crossing/ intersection of the road and SHWY.	Written approval from NZTA/Waka Kotahi provided.
2.	Please provide the title plan diagram – page 2 for the subject site – DP 534063. The title plan identifies that the 10m wide ROW has been split into the subject site – Lot 2 – 5.9m and Lot 1 – 4.10m. An appurtenant ROW will be required over Lot 1 DP 534063. Please include the full site – Lot 2 DP 534063 on the scheme plan.	Title plan diagram provided
3.	Please provide a scaled plan detailing the various sections of the accessway (numbers of users) and legal/formation width of the carriageway within each section of the right-of-way. Please identify any fencing and/or planting on the plan which will require removal/modification to accommodate the carriageway. Note: Engineering (Abner) has advised that the forestry block will be	Updated plan provided

## Independent Hearings Commissioner - AGENDA

**6.1 Planning Officers Report(Cont.)**

#	Request for Further Information	Response
	considered as a ROW user and needs to be included in the scheme plan.	
4.	Please show the 25m yard setbacks (northern, western) and boundary of the esplanade strip and location of a future effluent disposal area on the scheme plan.	Updated scheme plan provided

**Consultation**

- 5.5 The applicant has not consulted with the owners and occupiers of adjoining properties and no written approvals were provided by the owners and occupiers served by the accessway.
- 5.6 Written approval was provided by Waka Kotahi (NZTA) in relation to traffic and access to and from the State Highway. Effects on Waka Kotahi (NZTA) and the State Highway network have been disregarded, noting that a condition was proffered by the applicant.
- 5.7 The applicant has also consulted with Ngāti Awa, Ngāti Pūkiao, Ngāti Rangitīhi, Ngāti Tūwharetoa (Bay of Plenty) and Ngāti Māhino. A Cultural Impact Assessment (CIA) has been provided from Ngāti Awa and Tūwharetoa. Ngāti Rangitīhi has provided their written support for the proposal and Ngāti Pūkiao have provided their support for Ngāti Rangitīhi. Ngāti Māhino have deferred their approval to Ngāti Awa.

**Notification**

- 5.8 A decision on notification was made on 24 July 2023 to serve notice on the owners of seven lots served by the ROW. Notice was served on 28 August 2023 and the submission period closed on 25 September 2023.
- 5.9 Four submissions were received. A summary of the concerns raised by submitters is as follows:

Name	Address	Submission	Decision sought
William and Kay McKenzie	603D State Highway 2 West, Pūkōwai	<ul style="list-style-type: none"> <li>The changes to the accessway and the effects it will have on my property.</li> <li>The size of the area to be subdivided.</li> <li>The inconsistency in Council's advice regarding this application, in relation to the requirement for the ROW to be vested as road.</li> <li>The naming of the existing accessway.</li> <li>The ROW to remain a private entranceway and private property to avoid higher volumes of traffic, more public interest and potential avocado thefts.</li> <li>The effect of upgrading the ROW adjacent to the site.</li> <li>The effect of dust on their property and members of their household who have respiratory problems.</li> <li>Increased maintenance costs arising from additional traffic.</li> </ul>	<p>That the proposed subdivision be declined on the grounds that:</p> <ul style="list-style-type: none"> <li>The size of the property is less than 2 hectares pursuant to current CT.</li> <li>Inconsistencies with Council's requirements for 603F and 603D's applications regarding public road standards.</li> <li>No change be made to the accessway and for</li> </ul>

## Independent Hearings Commissioner - AGENDA

## 6.1 Planning Officers Report(Cont.)

Name	Address	Submission	Decision sought
		<ul style="list-style-type: none"> <li>Potential safety effect on pedestrians, including elderly residents and children, as well as dogs.</li> </ul>	it to remain as a private right of way
Peter Walsh	603 State Highway 2 West, Pikowai	<p>The access way, traffic volumes, power supply (electricity) and water supply:</p> <ul style="list-style-type: none"> <li>Traffic volumes: Increased traffic volumes on a small, quiet residential shared driveway are detrimental to the safety and quiet enjoyment of the current semi rural lifestyle for other adjacent property owners.</li> <li>Safety aspects for pedestrians, both young children and the elderly, using the accessway.</li> <li>Increased speed of vehicles – need for a speed bump should be installed just beyond the entrance way to 603 and 603A, adjacent to property 579.</li> <li>Accessway: requirement for detailed plans for the road widening for the first section of the accessway from the state highway (that section of the accessway adjacent to 603), particularly relating to stability of bank and fenceline and vegetation removal.</li> <li>Oppose accessway to be a public road or named.</li> <li>Power supply: the size of the transformer may not be adequate for an additional residence. An electrical engineer's report should be provided.</li> <li>Water supply: confirmation required that water supply will be from bore or roof water.</li> </ul>	Decline the application or ensure that all matters in our submission are addressed.
Rodger Allan	603E State Highway 2 West, Pikowai	<p>The access way, traffic volumes, power supply (electricity) and water supply:</p> <ul style="list-style-type: none"> <li>Traffic volumes: Increased traffic volumes on a small, quiet residential shared driveway are detrimental to the safety and quiet enjoyment of the current semi rural lifestyle for other adjacent property owners.</li> <li>Safety aspects for pedestrians, both young children and the elderly, using the accessway.</li> <li>Increased speed of vehicles – need for a speed bump should be installed just beyond the entrance way to 603 and 603A, adjacent to property 579.</li> <li>Accessway: requirement for detailed plans for the road widening for the first section</li> </ul>	Decline the application or ensure that all matters in our submission are addressed

## Independent Hearings Commissioner - AGENDA

## 6.1 Planning Officers Report(Cont.)

Name	Address	Submission	Decision sought
		<p>of the accessway from the state highway (that section of the accessway adjacent to 603), particularly relating to stability of bank and fenceline and vegetation removal.</p> <ul style="list-style-type: none"> <li>• Oppose accessway to be a public road or named.</li> <li>• Power supply: the size of the transformer may not be adequate for an additional residence. An electrical engineer's report should be provided.</li> <li>• Water supply: confirmation required that water supply will be from bore or roof water.</li> </ul>	
Gavin & Suzanne Hingston	33 Cotswold Pl, Tauranga	<p>ROW, amount of traffic, not wanting Public Road, land size:</p> <ul style="list-style-type: none"> <li>• Land sizes should not be any smaller to keep the same rural aspect.</li> <li>• Oppose additional traffic and pedestrians on ROW.</li> <li>• ROW users for their Forestry Block include daily visits by owners plus Bee Keepers, Pruners, Sprayers and Maintenance Contractors. During harvest there are around 10 loaded logging trucks per day, transporters and harvesting crews and supervisors.</li> <li>• Applicants have obstructed the ROW to the entrance of our property by a trench and tailings that run up the centre of the path to our access gate. Access to the proposed new lot will be directly affected by the earth works the Bonners have carried out.</li> </ul>	<p>Strongly oppose the proposed subdivision and do not wish the Council to let this go ahead.</p> <p>Advice of solicitor may be required and the costs should be covered by the applicants.</p>

## 5.10 I would summarise the issues raised as follows:

- Lot size resulting.
- Requirement for naming the existing accessway.
- Change to public road opposed
- Security concerns from ROW upgrade and accessibility
- Effects of upgrade/increased traffic on vegetation removal, stability and dust for adjacent sites
- Increased maintenance costs arising from additional traffic.
- Traffic increase affecting pedestrian safety
- Traffic increase affecting amenity of adjacent sites
- Increased speed on ROW – need for a speed bump south of 603 and 603A, adjacent to property 579.
- Power supply upgrade costs.

## 6.1 Planning Officers Report(Cont.)

- Water supply source.
- Need to consider effect on traffic accessing forestry block on a daily basis - plus beekeepers, pruners, sprayers and maintenance contractors. Harvest volumes of around 10 loaded logging trucks per day, plus transporters and harvesting crews and supervisors.
- Inconsistent advice from Council's advice about need to vest ROW as road.
- Issue for forestry block of damage to ROW by applicants

5.11 The decision sought is to decline consent, although two submitters seek that alternatively consent is only granted should the issues be addressed. Gavin & Suzanne Hingston indicated that they do not wish to be heard but could be part of a joint presentation. The other three submitters seek to be heard.

### 6.0 STATUTORY REQUIREMENTS

#### Section 104, 104B and 104D

6.1 As a Non-Complying Activity, [Section 104D](#) of the RMA is a threshold test and both limbs of the test must be considered when assessing applications for non-complying activities. Consent may only be granted if at least one of the following tests is passed:

- a) the adverse effects of the activity on the environment (other than any effect to which [Section 104\(3\)\(a\)\(ii\)](#) applies) will be minor; or
- b) the application is for an activity that will not be contrary to the objectives and policies of—

both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

6.2 In addition, [Section 104B](#) states:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority;

- a) may grant or refuse the application; and
- b) if it grants the application, may impose conditions under [Section 108](#).

6.3 Subject to Part 2 of the RMA, section 104 requires the consent authority to have regard to:

- The actual and potential effects on the environment of allowing the activity,
- Any measures agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate any adverse effects,
- Any relevant provisions of a regional policy statement, proposed regional policy statement, a plan, or proposed plan, and
- Any other matters which the consent authority considers relevant and reasonably necessary.

#### Permitted Baseline

6.4 Under section 104(2) of the Act, effects of an activity that is permitted by the District Plan may be disregarded. There is no permitted subdivision and therefore there is no permitted baseline to be applied.

## 6.1 Planning Officers Report(Cont.)

### 7. ASSESSMENT OF ENVIRONMENTAL EFFECTS

7.1 The subdivision is to be assessed as a Non-complying activity and therefore all relevant matters can be considered in this assessment. The status of the land use component is a Restricted Discretionary activity but the overall assessment is undertaken as a non-complying activity.

7.2 In considering the actual and potential effects on the environment under section 104(1)(a), the Act requires consideration of:

- *All positive and adverse effects;*
- *Temporary or permanent effects;*
- *Past present or future effects, cumulative effects potential effects of high probability; and*
- *Potential effects of low probability, but high potential impact.*

7.3 From my assessment of the application, the receiving environment, the issues raised by the submitters, and the District Plan provisions, I consider that the effects on the environment relevant to this proposal are as follows and I have considered the issues identified by submitters as follows:

Actual and Potential Effects	Submission Points
Rural Character and Amenity	Lot size and density
Reverse sensitivity	
Site Suitability	
Services	Water supply confirmation & Power Supply Upgrade
Cultural Values	-
Access-Traffic Safety	Pedestrian Safety (elderly, children, dogs), increased traffic & speed
Access Upgrade – Amenity Effects	Increased traffic, dust
Status of Accessway and Road Naming	Vesting as public Road, requirement for naming, security, increased public access and maintenance costs

#### Effects on Rural Character and Amenity

7.4 The application contains an assessment of the actual and potential effects on rural character and amenity and notes that the resulting density will be consistent with that anticipated in the zone. This is accepted and it is noted that the proposed lot sizes are consistent with the size of similar lifestyle properties in the immediate area. In addition, the additional building platform is generally separated from the other rural lifestyle lots in this location and will not be visually intrusive or detract from rural character. While the accessway provides a separate constraint on the number of lots in this case, the overall effect on the scale and density of the rural environment will not be adversely affected to a degree that is inconsistent with the outcomes sought by the Plan.

Submitters have identified concern that the resulting lots sizes will be less than 2ha. However, the proposed subdivision exceeds the minimum lot size requirement for 5000m<sup>2</sup> and also the

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**6.1 Planning Officers Report(Cont.)**

average lot size since January 1998 of 2ha. As set out above, the overall density to date is 4.8122ha which is significantly above the minimum 2ha average. Therefore the proposed lot sizes are consistent with the density and scale anticipated and provided for in the Rural Plans Zone.

Overall, it is concluded that the adverse effects on rural character and amenity will be less than minor.

**Reverse Sensitivity**

- 7.5 Reverse sensitivity effects can arise when 'sensitive' new activities are introduced into an existing environment. Adverse effects can result if the presence of a new activity seeks to impose constraints (or tighter controls on the operation of the established legitimate activities.

The proposal would not introduce a new or different element into the area which is already characterised by small developed rural lifestyle lots within the valley. While there is a forestry operation adjacent that is served by the same accessway, this is well established. In addition, an existing consent notice prevents reverse sensitivity complaints being made to Council. This will be carried forward to the new titles.

**Site Suitability**

- 7.6 Under the previous subdivision process (SS-2018-8730) a slip hazard was identified in relation to the proposed building platform on Lot 2. Land hazards are identified on Council's GIS in relation to the adjacent properties to the north and south. Further geotechnical assessment was undertaken which concluded that a bund structure would be required to protect the building platform. As a result, the application was amended from a three lot subdivision application to a two lot subdivision application to remove the requirement to address the slip hazard risk issue. An alternative house site was identified on the subject site to the west of the proposed building platform and a dwelling has been constructed in this location.

A consent notice was imposed on the subject site which states that:

The Owner(s) of the Land referred to in the First Schedule shall, on a continuing basis:

- 1.0 That a risk based assessment (in accordance with the Bay of Plenty Regional Council "Regional Policy Statement, Appendix L – Methodology for risk assessment"), which shows that risks to the site are low risk, is required to be supplied to Council with any future residential development on site. Note, this will not excuse any other responsibilities of the consent holder when establishing any building (habitable, non-habitable, or extension(s) to existing buildings) on the site.

- 7.7 A geotechnical report by Mark Mitchell dated 21 October 2021 was lodged as part of the current application. noted that to the west of the building platform the ground slopes steeply upwards at angles of between 32 to 34 degrees to the horizontal located with a vertical height difference of about 45 metres.
- 7.8 Based on the conclusion of the 22/6/2018 EDC report it was considered that, if the building platform was proposed to be sited in the same location as the previous subdivision, then either a bund was required to protect it under this subdivision or justification was required to be provided as to why a bund was no longer required. Since the previous subdivision was granted, the hillside has been harvested and replanted, and buildings have been constructed on top of the hill. In response to a further information request the applicant provided a further evaluation from Mitchell Geocon Geotechnical, dated 5<sup>th</sup> April 2022. The geotechnical assessment

## 6.1 Planning Officers Report(Cont.)

concludes that the soil type will result in superficial slippage only of the top soil layers and that, given the setback from the building platform to the toe of the slope, the risk from a slip is low. A consent notice condition is recommended to require that the minimum 25m yard setback be maintained to the southern boundary for future buildings. A building specific geotechnical assessment will be required at the building consent stage to address slope stability effects

- 7.9 Rule 18.2.3.2 of the District Plan requires minimum platform levels for habitable buildings to be constructed to achieve the 1% AEP flood level plus 0.5m freeboard as per NZS4404. BOPRC has advised that there is no expectation of flooding in relation to external watercourses with respect to Lot 2.
- 7.9 On the basis of the information provided and subject to appropriate conditions, it is concluded that the site is suitable for subdivision and development.

### Services

- 7.10 The applicant has proposed that services are provided as follows:
- Stormwater – to be to ground within the site and subject to design at the time of building consent.
  - Water supply – roof collection will be relied on
  - On-site effluent treatment – a Schedule 5 assessment was provided with the application and confirms that a compliant system can be provided.

Submitters have identified that the water supply should be confirmed at this stage. The application states that the water supply for Lot 2 will be from roof collection and this is acceptable. In relation to the potential upgrading of the transformer, the subdivider would be responsible for providing power to the boundary of the new lot. Any cost to upgrade the infrastructure would fall on the subdivider to meet such costs.

Overall, the provision of services can be adequately addressed. A standard condition is recommended requiring the provision of power and telecommunications to Lot 2. Any cost to upgrade services will fall on the applicant.

### Cultural Values

- 7.11 The site is identified as being located within the rohe of Ngāti Rangitihi, Ngāti Awa, Ngāti Makino, Ngāti Tuwharetoa and Ngāti Piako. Archaeological sites are identified in the vicinity of the site, to the north and south. On that basis, the applicant has consulted with iwi who have provided their written response in support of the proposal. TRONA have provided a Cultural Impact Assessment. No adverse effects on cultural values have been identified through this process subject to conditions in relation to the following matters:

Effect	Response requested by TRONA	Agents response
Herepuru Stream	TRONA requests the Applicant adopt stringent erosion and sediment controls such as silt fencing the stream boundaries should they undertake earthworks as part of the Future Development. These measures will reduce impacts of	Erosion and sediment control would be adopted for future earthworks. Should consent be granted a condition can be imposed to address potential earthworks effects on the Stream.

**6.1 Planning Officers Report(Cont.)**

Effect	Response requested by TRONA	Agents response
	sediment discharge on the nearby waterbodies.	
Stormwater	TRONA requests the Applicant provide an adequate stormwater management plan that incorporates adequate treatment of stormwater before it is discharged from Site. TRONA requests the Applicant consider the use of low impact green infrastructure such as wetlands and treatment drains to treat stormwater.	Stormwater will be managed on site with discharge to ground soakage. Should consent be granted a site specific stormwater design will be required at the building consent stage which addresses SW disposal and any run off.
Wastewater	TRONA requests the Applicant considers the use of septic tanks to dispose of wastewater to avoid negative impacts to mauri from discharge to ground.	A compliant system will be installed at the building consent stage.
Natural hazards	TRONA considers any Future Development should achieve hydraulic neutrality. The potential building platform should be located at a distance from the Stream that ensures there are no flooding effects. Should the Future Development adhere to this and to the recommendations outlined in Appendix 4 regarding surface flooding then TRONA has no further concerns regarding flooding on Site.	The platform is well separated from the stream and on an elevated site above the 1% AEP.  A consent notice condition could be included to require building within the identified building platform.
Biodiversity	There is an area of indigenous vegetation on Site. Indigenous vegetation provides habitat for native taonga species to reside and TRONA requests that this vegetation is not removed during Future Development. If this is not possible, TRONA requests that the Applicant undertakes landscape planting that utilises native plants to broaden the ecosystem close to the Herepuru Stream to support native taonga species. TRONA supports the Applicant maintaining the existing esplanade strip along the margin of the Herepuru Stream to protect the conservation values of the riparian margins. TRONA requests that where planting needs to be done to maintain this	The indigenous vegetation area is contained within the existing esplanade strip which is subject to restrictions on the removal or damage of vegetation which will ensure its ongoing protection.

**6.1 Planning Officers Report(Cont.)**

Effect	Response requested by TRONA	Agents response
	strip, that native plant species are utilised to provide habitat for native species in the area.	
Cultural Heritage	Ngāti Awa Accidental Discovery Protocol are adopted as a consent condition	The inclusion of a condition requiring the adoption of an accidental discovery protocol is acceptable.

- 7.12 Herepuru Stream already has an esplanade strip and this will be carried forward. The on-site effluent treatment system, stormwater management and any earthworks will be required to comply with BOP Regional Council rules, including erosion and sediment control. On the basis of the written response from iwi and subject to appropriate conditions, the adverse effects on cultural values are concluded to be less than minor and acceptable.

**Access – Traffic Safety**

- 7.13 Vehicle access to proposed Lots 1 and 2 is from the State Highway. The applicant has obtained the written approval of NZTA/ Waka Kotahi for an additional lot to use the existing vehicle crossing and this will add 10 additional vehicle movements per day. This approval is given on the basis that the access is via a private accessway with a 6.5m minimum formation width. The applicant has agreed to this and a 5.5m formation width will be formed with 0.5m shoulders each side for the first section serving 9 lots.
- 7.14 The potential effect of the increased traffic on safety has been identified as a significant concern for submitters. It is noted that existing access currently serves seven lifestyle lots and one rural production lot. The rural production lot introduces a higher traffic flow, including, as advised by the owners of the lot, Gavin & Suzanne Hingston in their submission. Traffic relating to forestry operations includes daily visits by the owners together with less regular access by a range of contractors including beekeepers, pruners, sprayers and maintenance contractors. During harvest this increases to include approximately 10 loaded logging trucks per day, plus transporters and harvesting crews and supervisors. Therefore, the accessway already includes a highly variable range of vehicle types and traffic volumes.
- 7.15 Subdivision will bring the total number of lots served to nine, which exceeds the maximum number of lots allowed, without approval under the District plan. 10 additional light vehicle movements are identified as resulting.
- 7.16 Access effects on the wider environment beyond the directly adjacent properties are considered to be less than minor due to the use of the access being confined to specific ROW users and Waka Kotahi have provided their written approval for effects on the State Highway network.
- 7.17 For the immediately adjacent sites served by the accessway, the adverse effects relate to safety effects of increased traffic and potentially higher speeds for pedestrians (including elderly, children and dogs) using the accessway. The use of the accessway for the proposed lot has been identified by Council’s Engineers as acceptable and not resulting in adverse effects that are minor or more than minor. The upgrade is in accordance with Council’s formation width standard for the traffic flow resulting from the subdivision and addresses safety requirements

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**6.1 Planning Officers Report(Cont.)**

in terms of shoulders on each side for stepping out of the path of vehicles. The requirement for a speed bump has not been identified as necessary by the Roading engineers.

From the information provided in relation to the use of the right of way for the adjacent forestry block, it appears that traffic flows are already variable in number and vehicle types. Therefore, the inclusion of an additional 10 vehicle movements is less likely to be readily differentiated on a day to day basis, reducing the perceived potential effects.

- 7.18 For the sake of completeness, it is noted that, as a non-complying activity, Council's discretion is not limited. However, the non-complying status only arises because of the number of users served by the ROW as set out in rule 13.2.4.11. Therefore, rule 13.2.4.1 is identified as a restricted discretionary activity under rule 13.2.4.14 (if it was a land use consent only). Matters to which the District Plan restricts discretion are identified in 13.4.7.1, as follows and these provide an appropriate guideline for assessing effects of the subdivision:

#	Discretion	Comment
a.	traffic volumes and traffic mix relative to existing and future patterns, access, parking and loading on-site	The traffic patterns and volumes will be variable over time, with lifestyle lots generating a low level of traffic on a day to day basis and intermittently higher levels of forestry related traffic. The addition of one lifestyle lot will not change the nature or scale of traffic generation to a significant degree. The Council's engineers have identified this additional lot as acceptable.
b.	pedestrian and cyclist safety	The access way is generally straight and flat, allowing good visibility. There is space to enable pedestrians and cyclists to pull off the access as necessary.
c.	construction traffic volumes, traffic mix and hours of operation	Temporary construction traffic is likely to arise from the construction of a dwelling on the single additional lot. This is unlikely to result in an unacceptable increase in traffic or noise and will be managed through the building consent process. There is adequate land area within the lots to allow construction vehicles to park.
d.	the ability of the site to accommodate the traffic anticipated and the nature of the adjacent roading pattern, including the position of the road in the roading hierarchy	No adverse effects are identified by Council's Transportation team. The suggested conditions of consent require the ROW to be upgrade and formed to an appropriate standard to accommodate the anticipated mix and volume of traffic. NZTA has provided written approval to the intersection with the State highway.
e.	formation of the road or access	Council's Development Engineer has recommended conditions for improvements and does not identify any outstanding potential adverse effects.

**6.1 Planning Officers Report(Cont.)**

#	Discretion	Comment
f.	the total land area proposed to be used for access, parking and loading in the Rural Plains Zone	NA
g.	aspects of the proposal that could compromise the safety and convenience of pedestrians as well as individual and cumulative adverse effects associated with traffic movements	The cumulative development will exceed the number of lots permitted on a private ROW. However, the Council roading engineers have assessed the specific proposal and do not consider that vesting as public road is required. They have recommended that the design and formation standards required by conditions and this will manage the outcome appropriately. There are no outstanding safety concerns identified in relation to this proposal.

7.19 Overall, the scale and density of the lots will be consistent with that anticipated in the Rural Foothills Zone. As all further subdivision is non-complying, each proposal must be evaluated on a case by case basis. Overall, based on advice from Council’s Development Engineer and an evaluation of the matters identified in the District Plan relating to non-compliant access, my conclusion is that the adverse effects on traffic safety within the accessway will be less than minor.

**Accessway Upgrade – Amenity Effects**

7.20 Submitters have identified concerns relating to the effect of the upgrade on the stability and established vegetation within the first part of the accessway, as well as potential dust arising from increased traffic. It is suggested that final plans must be provided to Council by conditions recommended and construction must comply with the relevant standards. Therefore, the final formation and surfacing of the accessway must take into consideration any stability effects. While some vegetation may be affected, the accessway has a 10m width and therefore the additional width above the 6.5m formation may be available for planting and vegetation.

7.21 In relation to ongoing dust effects, the sealed portion of the accessway will extend to the entrance to #603D SH2 West and this may potentially reduce potential dust creation. Beyond that point the accessway is used by both residential and forestry related traffic. While light vehicle movements may increase by 10 vehicles per day, a similar pattern and type of traffic will continue.

7.22 Overall, it is considered that the ongoing effect for the adjacent sites will not change to a significant or unacceptable degree.

**Status of the accessway and naming**

7.23 Submitters have identified opposition to the accessway becoming public road and vested in Council, preferring private ownership. As a non-complying activity, each application is assessed on an individual basis and Council’s Roding Team has identified that vesting as public road is not required. Submitters requested consistency in relation to the application of the requirement, based on previous experience. As noted above, in that case the application reached a stage where limited notification would have been required to enable submissions from the other ROW users, as is this case for this application.

**6.1 Planning Officers Report(Cont.)**

- 7.24 Submitters have also opposed the requirement for the accessway to be named. Due to the number users, the ROW must be named. Council's Road Naming Policy already requires that the accessway be named, as it applies to any private way where there are six or more sites. Therefore, this requirement already applies to existing users irrespective of the decision on this application. Council's policy sets out the process for this to occur.
- 7.25 Submitters identified the potential naming of the accessway may attract a higher level of public use and threaten security. While naming may be perceived to imply the accessway is open to public use, this policy is applicable across the District and should not result in public use of the access, being clearly a small private access.
- 7.26 Submitters also raised the issue of increased maintenance as the first portion will be increased from 5.2m-4m to 6.5m in total including shoulders as well as sealing the third portion of the ROW. This will be undertaken by the applicant to comply with Council standards, should consent be granted. However, ongoing maintenance costs will fall to the ROW owners. On an ongoing basis the additional right of way user (10 car equivalent movements per day) is likely to result in minor increased loading on the ROW. On an ongoing basis the increased requirement for maintenance is likely to be minimal.

**Conclusions**

- 7.27 Overall, the effects of the proposal on the environment are considered to be less than minor. The proposed subdivision of the site is non-complying due to the number of lots served by the accessway. The scale and density of the lots does not exceed that anticipated in the Rural Foothills Zone. The additional traffic flow is concluded to be less than minor given the established use for rural production and rural lifestyle activities.

**8.0 STATUTORY PROVISIONS**

- 8.1 Under section 104 (1)(b), the Council must have regard to the relevant provisions of the statutory documents. These are considered in this section.

**National Environmental Standard:**

- 8.2 There are eight National Environmental Standards (NES) that have been prepared under sections 43 and 44 of the Act and are in force as regulations. These cover plantation forestry, air quality, human drinking water, telecommunications facilities, electricity transmission, outdoor storage of types, marine aquaculture and management of contaminants in soil. The NES regarding Contaminants in Soil has been assessed above and it was concluded that the NES does not apply.

**National policy statement:**

- 8.3 No relevant national policy statements apply. The site is not located within the Coastal Environment. The land use classification within the site is Class IV and therefore the NPS Highly Productive Land does not require consideration.

**BOP Regional Policy Statement:**

- 8.4 The Regional Policy Statement promotes sustainable management of the natural and physical resources of the Bay of Plenty. The Regional Policy Statement identifies that rural production activities are at risk from the establishment of sensitive or incompatible non-productive uses (including rural lifestyle activities). The Regional Policy Statement contains objectives and policies which seek to provide for the growth of rural production activities.

## 6.1 Planning Officers Report(Cont.)

*RPS Objective 26: The productive potential of the region's rural land resource is sustained and the growth and efficient operation of rural production activities are provided for.*

*RPS Policy UG20B: Managing reverse sensitivity effects on rural production activities and infrastructure in rural areas.*

- 8.5 In the Rural Foothills zone, the zone description in Section 3.1.2 of the Plan records that the land  
*"is still of high value of rural production. Provision is also made for other activities, including rural residential activity, where rural production activities are not compromised..."*

It is important that the activity does not constrain rural production activities. As discussed above, there is an existing consent notice in relation to reverse sensitivity effects and the adjacent sites already contain rural lifestyle activities.

- 8.6 As such, the proposal supports these Regional Policy Statement provisions.

### **BOP Regional Natural Resources Plan**

- 8.7 The BOPRC Natural Resources Plan contains provisions in relation to activities affecting water and land in the region. It recognises the role of tangata whenua in resource management decision making, it also promotes the integrated management of land and water. The proposed activity will not be inconsistent with the Regional Plan.

### **Whakatane District Plan – Objectives and Policies**

- 8.11 The objectives and policies relevant to the proposal are identified in section 6.3.1 of the application. The most relevant to the application are set out in Chapters 2, 7, 12 and 13. I concur that the application sets out the relevant objectives and policies and will not repeat them here.
- 8.12 Overall, I consider that the proposed subdivision will be consistent with the outcomes sought in the objectives and policies of the District Plan for the Rural Foothills Zone and within an established rural lifestyle location. While the compliance of the accessway is the key issue, in my opinion, the additional lot will not result in unacceptable adverse effects on the rural character and amenity of the surrounding area.

### **Other Matters and Considerations**

- 8.13 Other relevant matters to consider relate to:

#### **Iwi Management Plans**

The provisions of the Ngāti Awa Environment Plan Te Mahere Whakarite Matatiki Taiao o Ngāti Awa have also been considered. The proposed activity will not impact on the natural environment and consent is not sought for earthworks and the existing access track will be used.

The provisions of the Heritage NZ Pouhere Taonga Act apply to any accidental discovery of archaeological sites.

### **Financial Contributions for Roads and Public Reserves**

- 8.14 A financial contribution is not required for this proposal in this location.

**6.1 Planning Officers Report(Cont.)****Development Contributions**

- 8.15 Under the [Local Government Act 2002](#), Councils are permitted to take development contributions towards the costs that capital growth imposes on a community. This policy applies to any applications received for resource consent, building consent or authorisations for service connections on or after 1 July 2018, for the type of activity or within a defined area as stipulated in this policy.

A development contribution would be imposed as there is a change or increase by one lot in the number of lots or dwellings.

**9 SECTION 104D ASSESSMENT**

- 9.1 [Section 104D](#) of the RMA is a threshold test and both limbs of the test must be considered when assessing applications for non-complying activities. Consent may only be granted if at least one of the following tests is passed:

- c) the adverse effects of the activity on the environment (other than any effect to which [Section 104\(3\)\(a\)\(ii\)](#) applies) will be minor; or
- d) the application is for an activity that will not be contrary to the objectives and policies of—

both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

- 9.2 Based on the evaluation above, it is considered that the adverse effects of the activity on the environment will be less than minor and that the proposal would not be contrary to the objectives and policies of the District Plan. Therefore, having passed at least one of the [104D](#) threshold tests, the consent may be considered for approval.

**10. SECTION 106**

- 10.1 In relation to subdivisions, the consent authority may refuse to grant a consent or impose conditions if:

- (1) There is a risk from natural hazards. This assessment requires consideration of (a) the likelihood of natural hazards occurring, (b) the material damage to the subject land, other land, or structures that would result from natural hazards, and (c) any likely use of the land that would accelerate, worsen or result in material damage of that sort.
- (2) Natural Hazards may include erosion, falling debris, subsidence, slippage or inundation from any source, or
- (3) Sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.

- 10.2 The land to be developed and subdivided is not subject to flooding or instability that cannot be addressed. The issue of significant risk from natural hazard, material damage and increase in material damage has been evaluated as part of this process. No significant risk has been identified that requires that consent should not be granted for the subdivision.

- 10.3 In the case of this proposal, conditions of consent will ensure that the any effects referred to above are avoided, remedied or mitigated. Legal and physical access can be provided to all lots. Overall, there is no reason to refuse consent under [Section 106](#) of the Act.

## 6.1 Planning Officers Report(Cont.)

### 11. PART 2 MATTERS

- 11.1 Part 2 of the Resource Management Act 1991 is only relevant insofar as it informs assessment of the matters of control or matters over which direction has been restricted. As a Non-Complying subdivision there is no restriction over the matters Council may consider.
- 11.2 Section 5 sets out the purpose of the Act which is to promote the sustainable management of natural and physical resources in a way that enables people and communities to provide for their social, economic and cultural wellbeing. The proposal is consistent with the expectation in the District Plan in relation to rural lifestyle subdivision anticipated to establish in the rural environment and not within highly productive land to achieve the purpose of the Act.
- 11.3 Section 6 describes matters of national importance to be recognised and provided for. There are no matters of national importance to consider in relation to this proposal.
- 11.4 Section 7 describes other matters that are relevant. In relation to this proposal these matters include:
- (b) the efficient use and development of natural and physical resources.
  - (c) the maintenance and enhancement of amenity values;
  - (f) maintenance and enhancement of the quality of the environment.
  - (g) the finite characteristics of natural and physical resources.
  - (i) the effects of climate change.

These matters have been evaluated through this process and are concluded to be acceptable.

- 11.5 Section 8 requires that the principles of the Treaty of Waitangi be taken into account. These relate to two key principles: partnership and active protection. These principles are essential to the plan development process and also are considered in the policy framework for applications. The written response of iwi has been taken into consideration.
- 11.6 It is concluded that the proposed subdivision and associated land use is consistent with the principles (section 6 – 8) of the Act. Overall, the application is considered to meet the relevant provisions of Part 2 of the Act as the proposal achieves the purpose (section 5) of the RMA, being sustainable management of natural and physical resources.
- 11.7 The proposal is therefore considered to be in accordance with the purpose and principles of the RMA.

### 12 CONCLUSIONS

- 12.1 The proposed subdivision will result in one additional rural lifestyle lot within an established environment of lifestyle activities. It will not lead to adverse effects on rural character and amenity that are unacceptable.
- 12.2 The main potential adverse effect identified and addressed through the process has been the increased use of the accessway, its upgrade and amenity and safety effects.
- 12.3 Given the established and variable use of the accessway for forestry vehicles and the established lifestyle lots, it is my conclusion that the adverse effects on other users of the accessway will not be unacceptable, subject to appropriate conditions.

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**6.1 Planning Officers Report(Cont.)**

- 12.4 Subject to information that may be presented to or arise from the hearing, it is my opinion at this time that the proposal will promote the outcomes sought in the relevant objectives and policies of the Operative Whakatāne District Plan.
- 12.5 I consider that appropriate conditions are required to manage the land use and subdivision and the following draft conditions are recommended, should consent be granted.

**RECOMMENDED DRAFT CONDITIONS****Land Use Consent**

1. Except where modified by any other condition of this consent, the proposed land use shall be carried out in general accordance with the application prepared by Fergusson Planning Ltd lodged on 9 May 2023, and information and further information submitted as part of this application as follows:
  - Fergusson Planning Ltd, Proposed Subdivision, 603F State Highway 2 West, Pikowai, Application for Resource Consent (Subdivision) dated May 2022 Final
  - Fergusson Planning Ltd, Email s92 letter - SS-2023-9807-00 Subdivision Consent – 603F State Highway Pikowai, dated 4 July 2023
  - Fergusson Planning Ltd, Email SS-2023-9807-00– 603F State Highway Pikowai, dated 12 July 2023

**Access**

2. The proposed access way/ right-of-way to Lots 1 and 2 (highlighted in “red” in the submitted plan no. 1296-SS01) shall be upgraded and constructed in accordance with rural road requirements of Chapter 3 – Table 3.3 (Public Rural Road Standard) of the Council’s Engineering Code of Practice and Chapter 13 – Item 13.7.6 (Rural Live and Play) of the Operative District Plan, with approved stormwater control.
3. The proposed access way/ right-of-way to Lots 1 and 2 (highlighted in “yellow” and “green” in the submitted plan no. 1296-SS01) shall be formed and constructed in accordance with rural road requirements of Chapter 3 servicing 5-8 lots and Standard Drawing R26 of the Council’s Engineering Code of Practice, with approved stormwater control.
4. The proposed access way/ right-of-way to Lots 1 and 2 (highlighted in “blue” and “magenta” in the submitted plan no. 1296-SS01) shall be formed and constructed in accordance with rural road requirements of Chapter 3 servicing 2-4 lots and Standard Drawing R26 of the Council’s Engineering Code of Practice, with approved stormwater control.
5. The proposed access way/ right-of-way to Lot 2 (marked as “A” in the submitted plan no. 1296-SS01) shall be formed and constructed in accordance with rural road requirements of Chapter 3 servicing 1 lot and Standard Drawing R26 of the Council’s Engineering Code of Practice, with approved stormwater control.
6. The consent holder shall contact the Council’s Transportation Team to arrange for an inspection to be carried out before any formation of the accessway and they will require 48 hours notice to perform the inspection.

## 6.1 Planning Officers Report(Cont.)

### Construction Noise

7. The consent holder shall ensure all construction works are undertaken in accordance with the requirements of NZS 6803:1999 Acoustics-Construction Noise, unless otherwise authorised by the CNMP in condition 10 below.
8. Construction works shall be restricted to the hours of:
  - 7.00 am to 6.00 pm—Monday to Saturday.
  - No work shall be undertaken on Sundays and public holidays.Advice Note: The above hours of operation do not apply to any measures necessary for stormwater/surface water and dust mitigation measures.

### Subdivision Consent

#### Conditions:

7. Except where modified by any other condition of this consent, the proposed subdivision shall be carried out in general accordance with Plan Number 1296-SS01 Revision C, and entitled “Proposed Subdivision of Lot 3 DP 330783” prepared for Alec and Stephanie Bonner, 603F State Highway 2 Pikowai, by Williamson Surveyors Ltd, dated 12/06/2023, and stamped “Approved by Planning” and information lodged with the application including the supporting information supplied, as follows:
  - Fergusson Planning Ltd, Proposed Subdivision, 603F State Highway 2 West, Pikowai, Application for Resource Consent (Subdivision) dated May 2022 Final
  - Mark T Mitchell Ltd, Geotechnical Assessment, Foundation Recommendations and Preliminary Recommendations for Stormwater and Wastewater Disposal, Proposed Subdivision – No 603F State Highway 2, Pikowai, dated 21 October 2021
  - Geocon Geotechnical Ltd, Site Investigation for Foundation Recommendations, Proposed Relocatable Dwelling, no 603F State Highway 2 West, Pikowai, dated 19 September 2019,
  - Envirolutions Ltd, Schedule 5 – On-site wastewater disposal site and soil evaluation Checklist, undated
  - MCG, Subdivision Consent Application – s92 Request for Further Information, letter dated 5 April 2023
  - Fergusson Planning Ltd, Email Bonner – 603F State Highway 2 West, Pikowai, dated 16 June 2023
  - Fergusson Planning Ltd, Email s92 letter - SS-2023-9807-00 Subdivision Consent – 603F State Highway Pikowai, dated 4 July 2023
  - Fergusson Planning Ltd, Email SS-2023-9807-00– 603F State Highway Pikowai, dated 12 July 2023

#### Easements

8. All easements required to protect access and services shall be duly granted and reserved.
9. In accordance with Section 220(1)(g) of the Resource Management Act 1991, any easements that are no longer required shall be extinguished.

#### Esplanade Strip

10. The existing 20m wide esplanade strip shall be carried to the new records of title.

**6.1 Planning Officers Report(Cont.)****Building Platform**

11. The Building Platform for Lot 2 shown on the approved plan shall be defined by survey and shown on the Land Transfer Plan. This shall be in the general location indicated on Plan 1296-SS01 Revision C, a minimum of 25m from the external boundaries of the site.

**Access**

12. The proposed access way/ right-of-way to Lots 1 and 2 (highlighted in “red” in the submitted plan no. 1296-SS01) shall be upgraded and constructed in accordance with rural road requirements of Chapter 3 – Table 3.3 (Public Rural Road Standard) of the Council’s Engineering Code of Practice and Chapter 13 – Item 13.7.6 (Rural Live and Play) of the Operative District Plan, with approved stormwater control.
13. The proposed access way/ right-of-way to Lots 1 and 2 (highlighted in “yellow” and “green” in the submitted plan no. 1296-SS01) shall be formed and constructed in accordance with rural road requirements of Chapter 3 servicing 5-8 lots and Standard Drawing R26 of the Council’s Engineering Code of Practice, with approved stormwater control.
14. The proposed access way/ right-of-way to Lots 1 and 2 (highlighted in “blue” and “magenta” in the submitted plan no. 1296-SS01) shall be formed and constructed in accordance with rural road requirements of Chapter 3 servicing 2-4 lots and Standard Drawing R26 of the Council’s Engineering Code of Practice, with approved stormwater control.
15. The proposed access way/ right-of-way to Lot 2 (marked as “A” in the submitted plan no. 1296-SS01) shall be formed and constructed in accordance with rural road requirements of Chapter 3 servicing 1 lot and Standard Drawing R26 of the Council’s Engineering Code of Practice, with approved stormwater control.
16. The consent holder shall contact the Council’s Transportation Team to arrange for an inspection to be carried out before any formation of the accessway and they will require 48 hours notice to perform the inspection.

**State Highway Access**

17. Prior to the issuing of a certificate pursuant to Section 224(c) of the Resource Management Act 1991, the consent holder shall provide to Council confirmation that NZ Transport Agency has been advised of relevant documentation (such as proposed title references, draft LT (Land Transfer) plan, ML plan (for Māori land) or SO (Survey Office) plan) to facilitate the registration of any new Crossing Place (CP) Notices against those new titles, under Section 91 of the Government Rounding Powers Act 1989.

**Services – Electricity and Telecommunications**

18. Provision of services or access for electricity, telecommunications and computer media shall be provided to Lot 2 in accordance with Council’s Engineering Code of Practice dated April 2008 or an alternative standard certified by the Manager Resource Consents

**6.1 Planning Officers Report(Cont.)****Consent Notices**

19. That a consent notice, or other form of legal covenant, shall be issued and registered against the Computer Register for Lot 1 to record that the owner(s) shall on an ongoing basis:
- i. That a risk based assessment (in accordance with the Bay of Plenty Regional Council 'Regional Policy Statement, Appendix L – Methodology for risk assessment'), which shows that risks to the site are low risk, is required to be supplied to Council with any residential development on site. Note, this will not excuse any other responsibilities of the consent holder when establishing any building (habitable, non-habitable, or extension(s) to existing buildings) on the site.
  - ii. Ensure that during any earthworks associated with development of the land (including those for the construction of a dwelling, other buildings, building platforms, access tracks, vehicle manoeuvring areas, stormwater, effluent disposal systems and services trenches), should an archaeological find be made or koiwi uncovered, work shall stop immediately, the appropriate iwi authority shall be advised, including Te Runanga o Ngati Awa, and an appropriate course of action shall be determined in accordance with the Heritage New Zealand Pouhere Taonga Act 2014 and the signed Ngāti Awa Protocol dated [insert date] and any other iwi protocols.
  - iii. Be aware that the property is located in a rural area where the predominant use of land is typically rural production and other rural based activities. The effects of lawful activities may result in the occupier experiencing effects such as odour, dust, noise, lighting, or increased traffic volumes and variety of vehicles. The owners of the land acknowledge that these effects are typical of the environment they live within and that the Council will not consider complaints regarding effects of lawful activities.
  - iv. Permit the Council's officers or contractors entry upon the land at reasonable times to ascertain compliance with these conditions;
  - v. Pay the Council's legal costs and disbursements directly attributable to the enforcement of the consent notice and the Council's conditions set out in the notice.
20. That a consent notice, or other form of legal covenant, shall be issued and registered against the Computer Register for Lot 2 to record that the owner(s) shall, on an ongoing basis:
- i. Confine all buildings for habitation to within the building platform shown on the Land Transfer Plan.
  - ii. That a risk based assessment (in accordance with the Bay of Plenty Regional Council 'Regional Policy Statement, Appendix L – Methodology for risk assessment'), which shows that risks to the site are low risk, is required to be supplied to Council with any residential development on site. Note, this will not excuse any other responsibilities of the consent holder when establishing any building (habitable, non-habitable, or extension(s) to existing buildings) on the site.

**6.1 Planning Officers Report(Cont.)**

- iii. Ensure that all works associated with design of buildings, construction of a building platform, access and installation of services are undertaken in accordance with the recommendations in a site specific geotechnical report prepared by a suitably qualified and experienced geotechnical engineer.
- iv. Ensure that during earthworks and works associated with the development of the lot, ensure that erosion and sediment measures are established and maintained to ensure that no sediment is carried to and deposited in the Herepuru Stream.
- v. Ensure that during any earthworks associated with development of the land (including those for the construction of a dwelling, other buildings, building platforms, access tracks, vehicle manoeuvring areas, stormwater, effluent disposal systems and services trenches), should an archaeological find be made or koiwi uncovered, work within 20m of the discovery shall stop immediately, the appropriate iwi authority shall be advised, including Te Runanga o Ngati Awa, and an appropriate course of action shall be determined in accordance with the Heritage New Zealand Pouhere Taonga Act 2014 and the signed Ngāti Awa Protocol dated [insert date] and any other iwi protocols.
- vi. Prior to lodgement of application for building consent, the new accessway to Lot 2 must be formed & constructed in accordance with rural road requirements of rule 3.1.2.4 (Rural private access ways), rule 3.1.2.5 (Rural private accessway construction) & chapter 3 (for 1 to 4 Lots), plus standard Drawing R26 of Councils Engineering Code of Practice, with approved stormwater control. The owner shall contact the Council's Roading Team to arrange for an inspection to be carried out prior to the formation and sealing of the accessway. They will require 48 hours notice to perform the inspection.
- vii. Be aware that the property is located in a rural area where the predominant use of land is typically rural production and other rural based activities. The effects of lawful activities may result in the occupier experiencing effects such as odour, dust, noise, lighting, or increased traffic volumes and variety of vehicles. The owners of the land acknowledge that these effects are typical of the environment they live within and that the Council will not consider complaints regarding effects of lawful activities.
- viii. Permit the Council's officers or contractors entry upon the land at reasonable times to ascertain compliance with these conditions;
- ix. Pay the Council's legal costs and disbursements directly attributable to the enforcement of the consent notice and the Council's conditions set out in the notice.

**Section 223 Certificate**

- 21. At the time of application for section 223 certificate for each stage, the consent holder shall submit to the Manager Resource Consents a Land Transfer Plan in either CAD (.dwg or .dxf) or GIS (.shp) format.

**General Administration**

**6.1 Planning Officers Report(Cont.)**

22. That a monitoring fee of \$400.00 shall be paid to the Council for the administration, monitoring and supervision of this consent. Notwithstanding the above, where there is good and reasonable cause for unprogrammed monitoring and additional site inspections, then the costs of that will be a charge on the consent holder. Such costs are recovered on an actual and reasonable basis as defined in the General Conditions and Notes of the Fees and Charges Schedule as approved by the Council in terms of Section 36 of the Resource Management Act 1991.
23. The consent notices shall be prepared by Council's solicitor and the consent holder shall pay the Council's legal costs and disbursements directly attributable to the preparation, execution, and registration of the consent notice.

**Advice notes**

- i. If you do not understand any conditions of this consent, please contact the Council's Planning Department for clarification before starting work.
- ii. Under [Section 125](#) of the RMA, this resource consent will lapse in five years, unless it is given effect to within that time.
- iii. In accordance with [Section 127\(1\)](#) of the RMA, the consent holder may apply to the consent authority for a change or cancellation of any condition of this consent.
- iv. It is the consent holder's responsibility to comply with any conditions imposed on this resource consents prior to and during (as applicable) exercising this resource consent.
- v. A development contribution fee is payable in accordance with Whakatāne District Council's Development Contribution Policy adopted on 28 June 2021. Please see Council's letter.
- vi. Building consent will be required for future building work on the allotments.
- vii. A geotechnical assessment will be required for any new buildings at the time of building consent application. The assessment will need to be prepared by a suitably qualified geotechnical engineer to confirm good ground and foundations/slab type.
- viii. Any new dwelling to be constructed will be required to have an approved on-site effluent disposal system designed and installed in accordance with requirements of the Bay of Plenty Regional Natural Resources Plan – On-Site Effluent Regional Plan.
- ix. Stormwater will need to be disposed of within the site unless the discharge is a permitted activity. The applicant should ensure they comply with Rule DW R20 (Discharge of Stormwater to Surface Water) and / or Rule DW R22 (Discharge of Stormwater to Land Soakage) of the RNRP. Otherwise resource consent from the BOPRC is required.
- x. In the event that during any earthworks, an archaeological find is made or koiwi uncovered, work shall stop immediately, the appropriate iwi authority shall be advised and an appropriate course of action shall be determined in accordance with the Heritage New Zealand Pouhere Taonga Act 2014 and the appropriate iwi protocols.
- i. It is an offense under Section 87 of the Heritage NZ Pouhere Taonga Act 2014 to modify or destroy an archaeological site without an authority from Heritage NZ irrespective of

**6.1 Planning Officers Report(Cont.)**

whether the works are permitted or consent has been issued under the Resource Management Act 1991 or Building Act 2004 or other legislation.

- xi. Water supply is proposed to be from roof water.
- xii. Section 7.1.2 in the Road Naming and Addressing Policy states that the Policy applies to any private way where six or more address sites exist (or the potential exists for six or more sites to be created).

This application meets that criteria and it is recommended that the applicant apply for a road name at the earliest possible opportunity. For further information about road naming, please contact the Transportation team - they are responsible for processing road naming applications.

- xiii. The consent holder must submit to Council, in either CAD (.dwg or .dxf) or GIS (shapefile or file geodatabase) format, a copy of the Land Transfer Plan that shows the new parcel boundaries as part of their application for a 223 certificate.
- xiv. Fire and Emergency New Zealand recommends that water storage volumes and delivery systems be installed in accordance with the New Zealand Fire and Emergency Service Firefighting Water Supplies Code of Practice: 2008. FENZ advises that often the best method to achieve compliance with this code of practice is through the installation of a home sprinkler system in accordance with Fire Systems for houses NZS 4517: 2003, in each new dwelling. The qualified staff of FENZ would be able to assist and advise.

**Reporting Planner:**

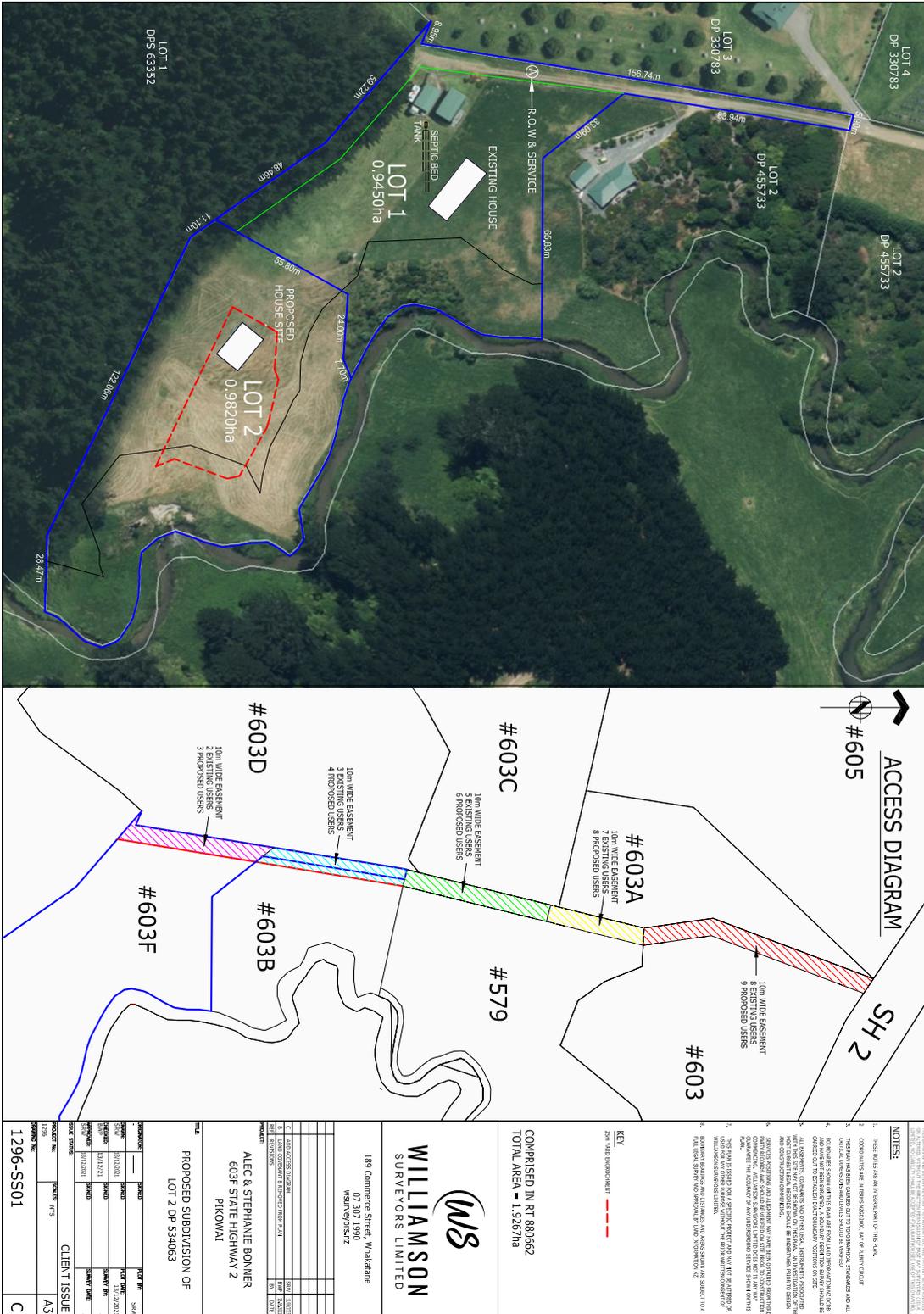


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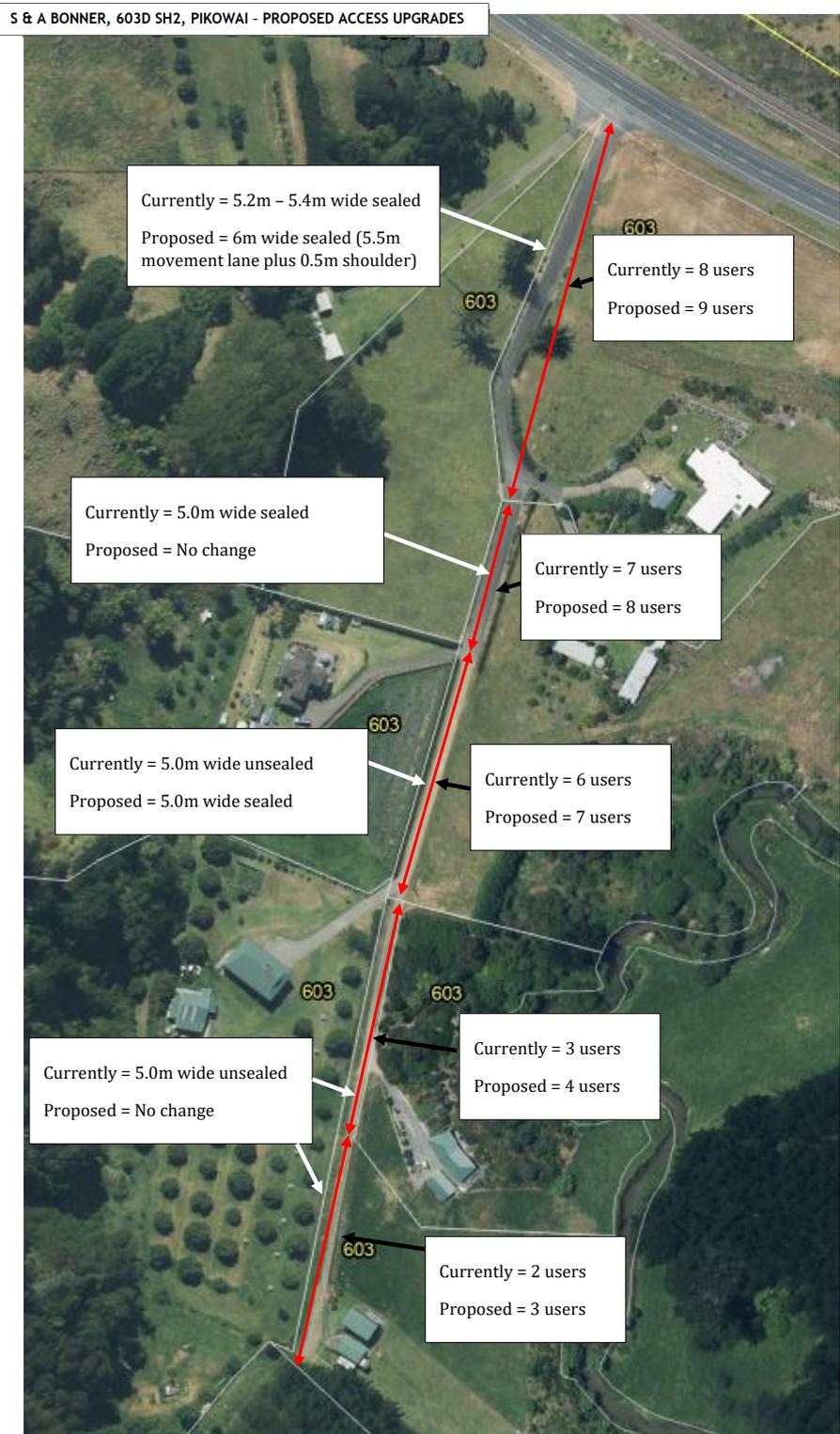
Ann Nicholas  
**Consultant Planner**

**Date: 18 January 2024**

6.1 Planning Officers Report(Cont.)



6.1 Planning Officers Report(Cont.)



## **7 Application**

### **7 Application**

Application Evidence Available [Here](#)

If you are unable to access the hyperlinks, please email - [planning@whakatane.govt.nz](mailto:planning@whakatane.govt.nz)