

Report and decision of Hearings Commissioner Giles Bramwell

Whangarei District Council has delegated all the functions, powers and duties as provided under the Resource Management Act 1991 to the Commissioner to consider and decide the application on behalf of Council. The application was heard in the May Bain room, Whangarei Library on Thursday 31 July 2014

In my capacity as a Hearings Commissioner appointed by Whangarei District Council, I heard the resource consent application lodged by Colin Holwell relating to the legalisation of a 25m² deck constructed adjoining an existing residential unit. The application, made in accordance with the Resource Management Act 1991 ('the Act') was lodged with Whangarei District Council and referenced as LU1400005 (P034085).

Present	Hearings Commissioner Giles Bramwell
Applicant	Colin Holwell
Consent Authority	Jason Hewson – Planning Consultant – Hewson Planning Ltd Whangarei District Council Katie Martin – Report Planner – Senior Specialist
Submitters	Linda Wheeler – Admin Team Leader/Hearings Administrator Russell Mortimer – Planning Consultant – Resource Management & Assessment Ltd acting on behalf of K & T Pow Kathy Pow
In attendance	Tom Pow Colin Webb – Observing Noel Dyer - Observing

1 Description of the proposal activity

The applicant proposes to legalise an existing 25m² deck constructed adjoining an existing residential unit. The deck was constructed without consent. While the deck is predominantly close to ground level and under 300mm in height, it has portions that vary in height from 300mm to 930mm.

2 Relevant District Plan Rules

The deck requires retrospective consent under the following rules:

- Rule 36.4.3 Building coverage (Discretionary)
- Rule 36.4.4 Building Setbacks (Restricted Discretionary)
- Rule 36.4.5 Building Setbacks from Waterbodies (Discretionary)
- Rule 56.2.1 Coastal Hazards (Restricted Discretionary)
- Rule 56.2.3 Flooding (Restricted Discretionary)

3 Notification and submissions received

The application was notified on limited basis pursuant to Section 95 of the Act. One submission was received. The submission was made by the K and T Pow of 7 Te Kapua Street, the immediate neighbour to north west of the application site. The submission opposed the application but included two requests which if agreed to by the applicant would satisfy their concerns.

These requests related to the construction of some screening on the part of the deck facing their property, and secondly sought that the ground level of the applicant's property be reinstated to its previous level, in line with their property and 11A Te Kapua Street (the neighbour to the south east). The submitter's concern in relation the earthworks was that the presently raised ground was preventing stormwater from dispersing.

Prior to the hearing an agreement was reached between the applicant and the submitter in relation to both of these matters. However, the applicant subsequently withdrew his agreement to undertake the restorative

earthworks, and instead offered to provide cut off drains (discharging to soakpits) along and within his boundary as a means of controlling stormwater. The Pows confirmed that they were not agreeable to that solution, hence the need for the hearing.

4 Procedural matters

At the commencement of the hearing Ms Martin (for the Council) tabled and presented an addendum to her Section 42A report. The report was prepared due to Ms Martin having received additional information from the applicant. This additional information was revised coverage calculations which showed that the overall building coverage for the applicant's property is 43.24%. rather than 34.6% as previously calculated. Mr Hewson subsequently (in his evidence) again revised this to 45.35%. Being in excess of the 35% permitted coverage threshold, the consequence of this is that the deck also requires consent (as a Discretionary activity) in respect of building coverage under Rule 36.4.3.

Ms Martin confirmed that her recommendation in respect of the application (i.e. to approve) remained unchanged.

During the course of the hearing Mr Mortimer raised the question of whether the application had been appropriately notified, and this question was also indirectly raised in Mr Webb's written statement. Having visited the property and viewed the deck in relation to the neighbouring properties, and in particular noting the very low level of the deck along both the north eastern and south eastern elevations of the building, it is my view that the notification assessment was sound.

5 Evidence heard

I heard evidence from the applicant, expert witnesses, submitters, and the Council's reporting officer. The following is a summary of the evidence heard at the hearing.

5.1 Applicant's evidence

Evidence of Jason Hewson (Planning)

Mr Hewson presented a written statement and explained the proposal with the aid of photographs taken at the property. He went on to explain the reasons for consent, noting the revised building coverage and additional requirement for consent under Rule 36.4.3.

His evidence canvassed the effects of the deck in terms of:

- a. Whether it is likely to pose a coastal hazard in an area prone to erosion within the next 50 years: with reference to an addendum to the engineering report prepared by Richardson Stevens (dated 30 July 2014) it was his view that the deck did not create an undue risk.
- b. Whether it would have any adverse effects in terms of natural character, the natural functioning of ecosystems, landscape values or heritage values: it was Mr Hewson's view that in respect of these matters, any adverse effects would be nil.
- c. Whether it would have any effect on public access, river maintenance and hazards or the protection of the conservation, ecological, recreation, access and hazard mitigation values esplanade areas. It was Mr Hewson's view that in respect of these matters, any adverse effects would also be nil.
- d. Whether it would have any adverse effect in terms of streetscape/landscape. It was Mr Hewson's view that it would not.

Mr Hewson then canvassed the effects of the deck on the immediate neighbours in terms of outlook, privacy and shading. Subject to the agreed mitigation measure of constructing a screen on the portion of the deck adjacent to the submitter's property, it was Mr Hewson's view that the overall effect would be either nil or positive.

Mr Hewson also considered the effects of the deck in terms of stormwater runoff generation. Based on engineering advice (Richardson Stevens Addendum letter dated 30 July 2014) which states that the deck – being made of timber decking – allows the free passage of rainwater to the sand below, it was his view that any affects would be nil.

Mr Hewson also commented on the Pows' concerns, which he stated related to privacy (upon which he had already canvassed) and the prior earthworks which had raised ground level of the property. In relation to the latter matter he noted that:

- a. The ground level was raised at the time of the construction of the house on the property, and has no relationship with the deck which is the subject of the current application.
- b. Lowering the ground level as sought by the Pows would result in complications in relation to existing utilities.
- c. While the raised ground level (and any resulting stormwater effects) are not pertinent to this application, the applicant is willing nevertheless to install cut off drains along the boundary of the property, and for this to be required by a condition of consent.

5.2 Submitters' evidence

Evidence of Russell Mortimer (Planning)

The key points of Mr Mortimer's evidence were as follows:

He confirmed that the issue of privacy had been addressed by the condition of consent (relating to screening), as set out in Ms Martin's S42A report.

He suggested that should consent be granted that a further condition should preclude the deck from being covered or incorporated as part of the internal floor of the building. In his right of reply, Mr Hewson advised that such a condition was acceptable to the applicant.

Mr Mortimer commented on the error in Mr Hewson's coverage calculations (since corrected) and the resultant additional reason for consent, and raised the question of whether this additional reason for consent would be cause for Ms Martin to reconsider her notification recommendation. As I have noted above, upon questioning she confirmed that it would not.

The balance of Mr Mortimer's evidence focussed on the earthworks that had been undertaken at the property; the effects of these and appropriate mitigation; and the appropriateness of applying a condition of consent in relation to these effects given the deck leads to a cumulative coverage infringement. Upon questioning Mr Mortimer acknowledged that the deck itself would not greatly influence stormwater generation.

Mr Mortimer's evidence had been prepared under the (it turns out incorrect) understanding that the earthworks had been undertaken without the necessary consent.

Evidence of Colin Webb

Mr Mortimer tabled a letter written by Mr Colin Webb who was also in attendance at the hearing. Mr Webb is the owner of 11 Te Kapua Street (the neighbouring property to the south east of the application property). Mr Webb's letter commented on the raised ground levels on the Howell property, and the effects of this on redirecting stormwater onto his property. He also noted that while he was not included as an affected party in the limited notification of the application, he was of the view that the deck was inappropriate.

Evidence of Mr Tom Pow

Mr Pow made a verbal presentation. He explained that while he is not too concerned about the privacy aspects of the deck (as mitigation of these had been agreed) he was concerned about the stormwater effects arising from the earlier raising of ground levels on the applicant's property, and flooding in the wider area (particularly during the summer when the sand surface is resistant to water).

I questioned Mr Pow as to the effect of the raised ground levels, and in particular whether there has been a resultant worsening of flooding in the area during summer storms. He confirmed that since the ground had been raised, there had not been any significant summer storms. Therefore any additional effect caused by the raising of ground levels in this instance was assumed rather than known.

5.3 Council's reporting officer's report and evidence

Ms Martin's S42A report, having being circulated prior the hearing, was taken as read. Ms Martin tabled and explained the addendum to her report relating to the revised coverage calculations, and confirmed that her recommendation to approve the application, and the recommended conditions remained unchanged. Upon questioning she confirmed that her recommendation regarding the notification of the application would also have remained unchanged.

In response to my questions (initiated by Mr Mortimer's assertion that the earthworks had been undertaken without the necessary consent) she confirmed that the earthworks had been properly consented. I asked Ms Martin to check the detail of the consent following the adjournment of the hearing which she did. The consent (WDC reference RC41021 P034085 dated 12 December 2008) was broadly worded and covered earthworks. Ms Martin confirmed that she could find no evidence to suggest that these earthworks had not been consented. Her comments and the consent were circulated to the submitters.

6 Principal issues

Much of the evidence presented was not contended. The two key issues raised in the Pows' submission and canvassed in evidence were:

- a The first relating to adverse effects of the deck on their privacy and the mitigation of those effects,
- b. The second relating to the pre-existing earthworks on the applicant's property; the effects of these; whether they had been consented; and if not what appropriate action was required to deal with the any potential effects on the dispersal stormwater .

Given that agreement on an appropriate condition of consent had been reached in respect of the first matter prior to the hearing, it was only the second matter that was an issue of contention.

7 Main finding of fact

I consider that the following are the main findings on the principal issue that was in contention relating to this application:

The deck construction itself, being constructed of decking timber and allowing rainwater to percolate to the sand below, will not have more than the most insignificant adverse effect in terms of stormwater diversion or flooding. These effects are of such an insignificant scale that they do not warrant the imposition of any mitigation measures by way of conditions.

Having reviewed the consent for the prior earthworks, I concur with Ms Martin's advice that the re-contouring of the applicant's property was provided for by a prior consent. Any potential effects of those earthworks are not, therefore, an appropriate matter upon which to impose conditions as part of the present application, unless the applicant has expressly agreed to the imposition of those conditions.

The applicant's proposed condition of installing cut off drains is an appropriate precautionary condition to apply in the circumstances.

8 Relevant statutory provisions

8.1 Policy statements and plan provisions

In considering this application, I have had regard to the matters outlined in Section 104 of the Act. In particular, I have had regard to the relevant provisions of the following planning documents:

- i the New Zealand Coastal Policy Statement
- ii the Northland Regional Policy Statement (RPS)
- iii the objectives and policies of the Whangarei District Plan (in particular Chapter 5 Amenity Values, Chapter 6 Built Form and Development and Chapter 10 The Coast)

8.2 Part II Matters

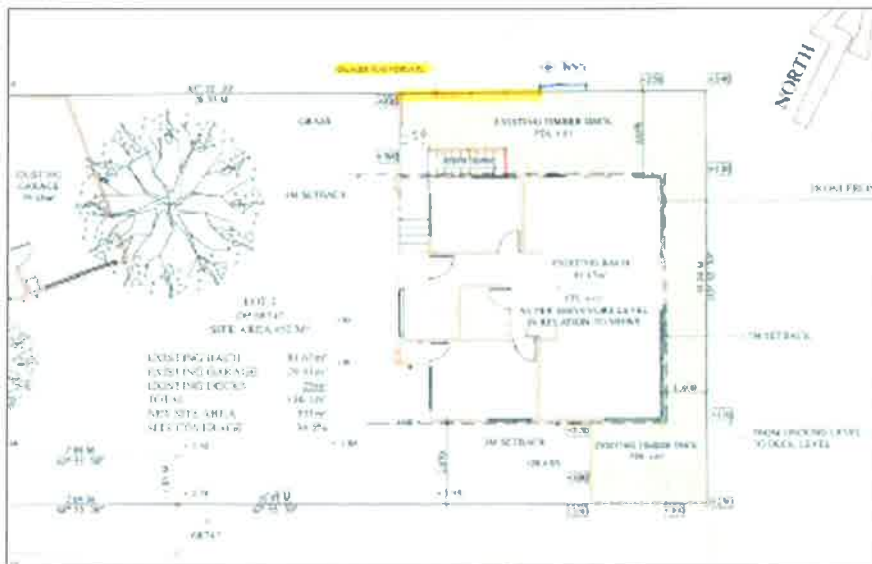
In considering this application, I have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act as well as the overall the purpose of the Act as presented in Section 5.

9 Decision

Pursuant to sections 104 and 104B of the Resource Management Act 1991, in my capacity as a Hearings Commissioner appointed by Whangarei District Council, I **GRANT** consent, subject to the conditions below to Colin Holwell (LU1400005 P034085) to legalise a 25m² deck constructed adjoining an existing residential unit. The timber deck is predominantly at ground level but has portions that vary in height from 300mm to 930mm and is constructed in a position that has a 0m setback off the northern, eastern and southern side boundaries, and results in the overall site building coverage being 45.35%. The deck is classified as a building by virtue of the District Plan definition and requires consent under the Building Setback, Building Setback to Water Bodies, Building Coverage, Coastal Hazard and Flooding rules and requires Discretionary Activity consent.

Conditions of consent

- 1 Subject to changes required by the conditions below, the proposed development shall conform to the site plan, elevations and accompanying details submitted with this application by Architectural Services Northland Limited reference 1353 dated 10 February 2014.
- 2 Within 3 months of the date of this decision the applicant shall erect a solid screen to a height of 1.8m (as measured from the finished floor level of the deck) along the edge of the existing deck located on the northern side of the existing dwelling and adjoining the common boundary with Lot 10 DP 24542. The screen shall be constructed using aluminium supports and obscured glass panels and shall be to length equal to the existing glass balustrade plus one additional metre toward the eastern site boundary as marked on the plan below:



Evidence that the works have been completed shall be provided to the satisfaction of the Resource Consents Manager.

- 3 Unless otherwise provided for as a permitted activity by an operative district plan, the 58m² deck shall remain uncovered in perpetuity and shall not be covered by either a moveable or immovable all-weather or shade structure (with the exception of a temporary shade umbrella).
- 4 Within 3 months of the date of this decision the applicant shall install cut-off drains along the northern boundary between the subject site and Lot 10 DP 24542 and the southern boundary between the subject site and Lot 3 DP 68747 and an overflow soak pit for the purpose of storm water control. This work shall be completed in accordance with plan drawn by Architectural Services Northland Limited

Dated Monday 10 February 2014 Job No. 1353 and attached to evidence presented at the hearing by Jason Hewson. Completion of this work shall be verified by a letter from suitably qualified engineer to the satisfaction of the Team Leader Compliance.

10 Reasons for the decision

- 1 Subject to adherence with the consent conditions any actual or potential effects on the environment and more specifically the adjoining landowner's privacy are considered to be appropriately remedied and mitigated to a point where they can be considered as less than minor.
- 2 The proposal is considered consistent with the objectives and policies of the operative District Plan because the scale of the deck is not out of character with the location and the existing built development along the coastal fringe.
- 3 Condition 4, as offered by the applicant, is a means of addressing any pre-existing potential stormwater runoff effects.
- 4 There are no other relevant matters relevant to the consideration of this application.

Advice Notes

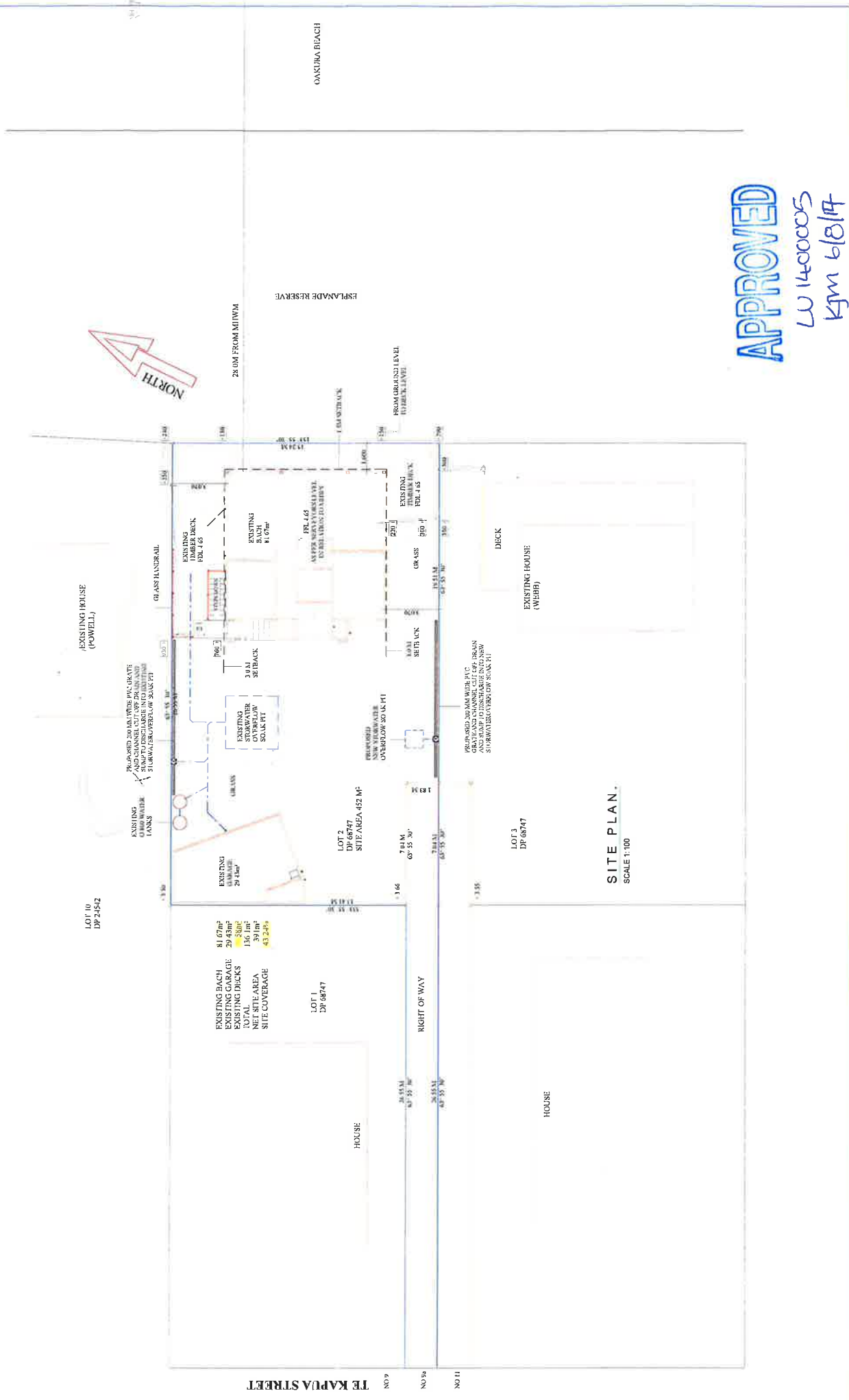
- 1 This resource consent will lapse five years after the date of commencement of this consent (being the date of this decision) unless:
 - It is given effect to before the end of that period; or
 - An application is made to Council to extend the period after which the consent lapses and such application is granted prior to the lapse of consent. The statutory considerations which apply to extensions are set out in Section 125 of the Resource Management Act 1991.
- 2 A copy of this consent should be held on site at all times during the establishment and construction phase of the activity.
- 3 All archaeological sites are protected under the provisions of the Historic Places Act 1993. It is an offence under that act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to the New Zealand Historic Places Trust for an authority to modify, damage or destroy an archaeological site(s) where avoidance of effect cannot be practised.
- 4 The consent holder shall pay all charges set by Council under Section 36 of the Resource Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The applicant will be advised of the charges as they fall.
- 5 Pursuant to Section 102 of the Local Government Act 2002, Whangarei District Council has prepared and adopted a Development Contributions Policy. Under this policy, the activity to which this consent related is subject to Development Contributions. You will be advised of the assessment of the Development Contributions payable under separate cover in the near future. It is important to note that the Development Contributions must be paid prior to commencement of the work or activity to which consent relates or, in the case of a subdivision, prior to the issue of a Section 224(c) Certificate. Further information regarding Councils Development Contributions Policy may be obtained from the Long Term Community Consultation Plan (LTCCP) or Council's web page at www.wdc.govt.nz.
- 6 Section 357B of the Resource Management Act 1991 provides a right of appeal to this decision. Appeals must be in writing, setting out the reasons for the appeal, and lodged with the Environment Court within 15 working days after the decision has been notified to you. Appellants are also required to ensure that a copy of the notice of appeal is served on all other relevant parties.

Issued this 7th day of August 2014



Giles Bramwell
Hearings Commissioner

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APPROVED

LW 1400005
KJM 6/8/14

ARCHITECTURAL SERVICES NORTHLAND LTD.	OWEN JONES 47 NORFOLK STREET P.O. BOX 200 AUCKLAND PH - FAX 09 435 7279 EMAIL o.jones@okou.net.nz	EXISTING BACH & DECK FOR HOLWELL FAMILY TRUST 9A TE KAPUA STREET - OAKURA	ISSUE FOR RESOURCE CONSENT	SCALES AS SHOWN @ A1 10/07/2014 Monday 10 February 2014 SHEET NO. 1 OF 2 REVISION
	DIGNELL	1353	DESIGNED BY DRAWN BY	JOB NO. 1 OF 2

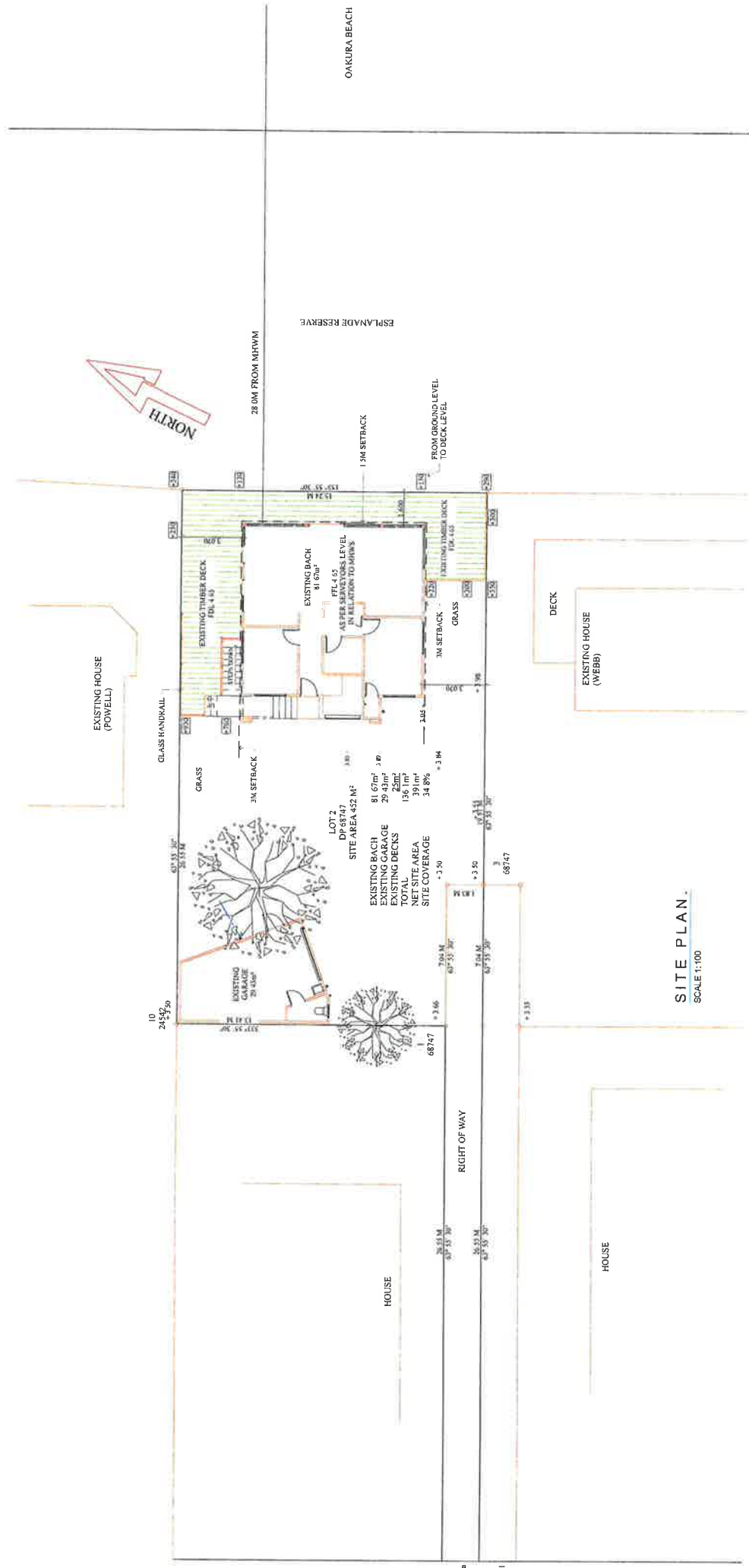
SITE PLAN
SCALE 1:100

- EXISTING BACH 81.67sqm
- EXISTING GARAGE 24.17sqm
- EXISTING DECKS 38.6sqm
- TOTAL 144.51sqm
- NET SITE AREA 391sqm
- SITE COVERAGE 43.24%

TE KAPUA STREET

NO 9
NO 9A
NO 11

TE KAPUA STREET



APPROVED

LU 1400005

KJM 6/8/14

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EXISTING BACH & DECK FOR HOLWELL FAMILY TRUST
9A TE KAPUA STREET - OAKURA

ISSUE FOR RESOURCE CONSENT

DESIGNED BY DRAWN BY: K. HAAG/D BIGNELL

JOB NO. 1353

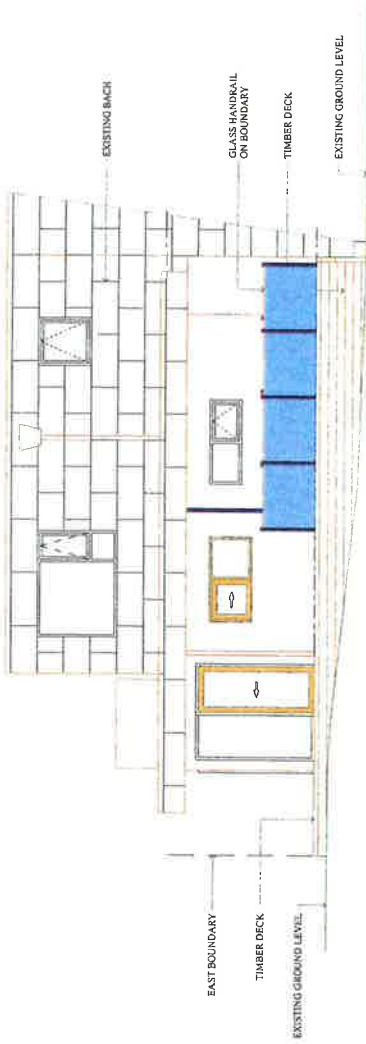
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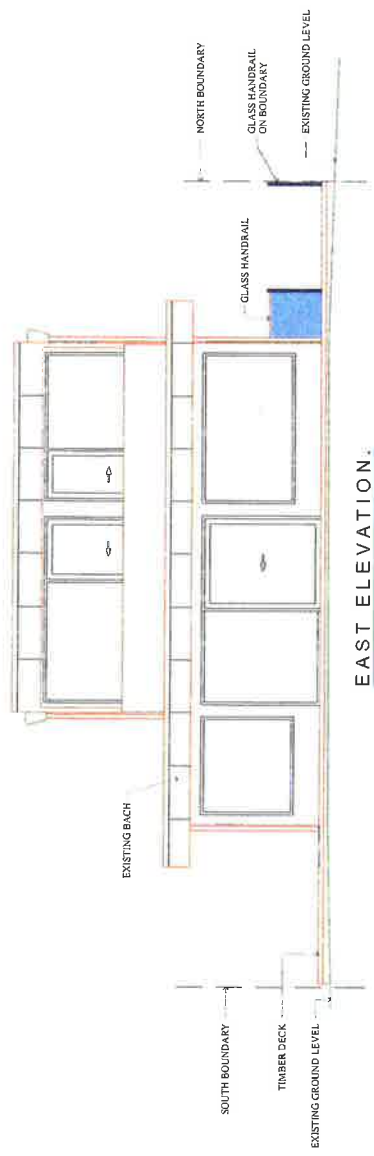
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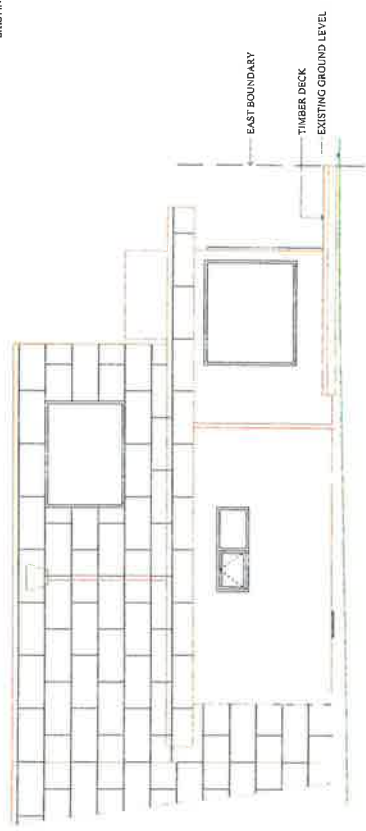
REVISION



NORTH ELEVATION.
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EAST ELEVATION.
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SOUTH ELEVATION.
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APPROVED

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KJM 6/26/14

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EXISTING BACH & DECK FOR HOLWELL FAMILY TRUST
9A TE KAPUA STREET - OAKURA

ISSUE FOR: **RESOURCE CONSENT**
DESIGNED BY: **K. HAAGID BIGNELL**
DRAWN BY: **K. HAAGID BIGNELL**
JOB NO.: **1353**

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MAY 2014
SHEET NO: **2 OF 2**
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