

Hearings Commissioner

Notice of Meeting

A meeting of the Hearings Commissioner will be held in the Council Chamber, Forum North, Whangarei on:

**Tuesday
31 May 2011
10.00 am**

**Application by
Peter Black**

**Commissioner
Greg Hill**

Report to Hearings' Commissioner Greg Hill on Resource Consent Application By:



Peter Black seeking consent to subdivide a 4.5652 hectare site creating Lot 1 of 1.6 hectares including an existing residential unit and sleepout, and Lot 2 that is a vacant lot of 2.38 hectares (net). The lots shall be serviced via a network of existing rights of way extending from Matapouri Road, increasing the number of users from four to five on right of way A, and from three to four on right of way E.

Lot 2 includes an existing conservation covenant and the applicant is proposing to covenant 2,370 m² of bush within Lot 1 adjacent to Matapouri Road, shown as restrictive land covenant B.

The subdivision layout is as per the plan '*Proposed subdivision of Lot 4 DP 191024, Horseshoe Bay*' prepared by Simpson Shaw and Co, dated December 2010 and revised 23rd December 2010, reference 20045-21.

The site has a zoning of Coastal Countryside Environment under the operative provisions of the Whangarei District Plan and is not subject to any resource notation overlays. The proposal does not comply with the controlled activity provisions relating to allotment area and is a non-complying activity on this basis. Given the standard of access proposed, it has a restricted discretionary activity status under the property access and formation rules.

This report was peer reviewed by the following signatories:

Resource Consents Manager:

Date: 18th May 2011

A handwritten signature in black ink, appearing to read 'Alister Hartstone'.

Alister Hartstone

Statement of staff qualification and experience

Liz Jolley – Council Environmental Planner (Consents)

I hold the qualification of a Bachelor of Resource and Environmental Planning from Massey University. I have been employed as a planner in a variety of roles since 1994, including three years local authority experience as a resource consents planner (North Shore City Council and Waitaki District Council) and twelve years as a planning and resource management consultant based in Whangarei (Kensington Consulting Group Ltd, Boffa Miskell Ltd, M2 Planning Ltd, and Scope Environmental Planning Ltd). I am now employed by the Whangarei District Council, having commenced employment on the 31st August 2009 as an Environmental Planner (Consents).

My work experience includes the preparation of resource consent applications; reporting on subdivision and land use consent applications, and notices of requirement for district councils; and District Plan assessment and formulation of rules, objectives and policies.

Dean Murphy – Council Senior Environmental Engineering Officer

I hold the following qualifications, NZCE (Civil) and GIPENZ. I have been employed for the past four and half years by Council as a Senior Environmental Engineering Officer. Prior to this, I obtained five years civil construction, site engineering and project management experience in the private sector working for Works Infrastructure Ltd, Fulton Hogan, Donovan Drainage and Earthmoving, and earthworks HEB Construction Ltd. My private work experience has focused upon earthworks, drainage, roading, water treatment plant, sewer scheme and roading maintenance works.

Simon Cocker – Consultant Landscape Architect (Simon Cocker Landscape Architecture)

I hold a Bachelor of Arts in Geography and a Master of Philosophy in Landscape Design, both from the University of Newcastle upon Tyne. I have 17 years experience as a landscape architect, practicing primarily in the United Kingdom and New Zealand. In New Zealand I was employed from 1994 to 2002 as a landscape architect by Boffa Miskell Limited, both within their Auckland and Whangarei Offices. From 2002 to 2004 I was employed as Parks Landscape Officer within the Whangarei District Council and from 2004 until 2009 I was employed as a Senior Landscape Architect by Littoralis Landscape Architecture. Since November 2009 I have been operating as a sole practitioner and Principal of Simon Cocker Landscape Architecture.

I am an Associate (full and registered member) of the New Zealand Institute of Landscape Architects and a fully qualified member of the Landscape Institute in the United Kingdom

As a consultant with Boffa Miskell, Littoralis and latterly as Simon Cocker Landscape Architecture my primary focus of work has been landscape planning. This has involved assessing the visual or landscape effects of a range of development projects including subdivisions in both the coastal and rural environments, extensions to power stations, quarries, bridges, rail designations and other infrastructure projects and developing mitigation strategies for those activities. I have also assisted Whangarei, Rodney, Kaipara and Far North District Councils with the assessment of resource consents from a landscape and visual perspective and with the provision of landscape architectural advice with regard to consent matters.

The above staff/consultant are familiar with the Environment Court's 'Code of Conduct' for expert witnesses and agree to comply with the Code of Conduct in presenting hearing evidence to the Commissioner.

Resource Management Act 1991

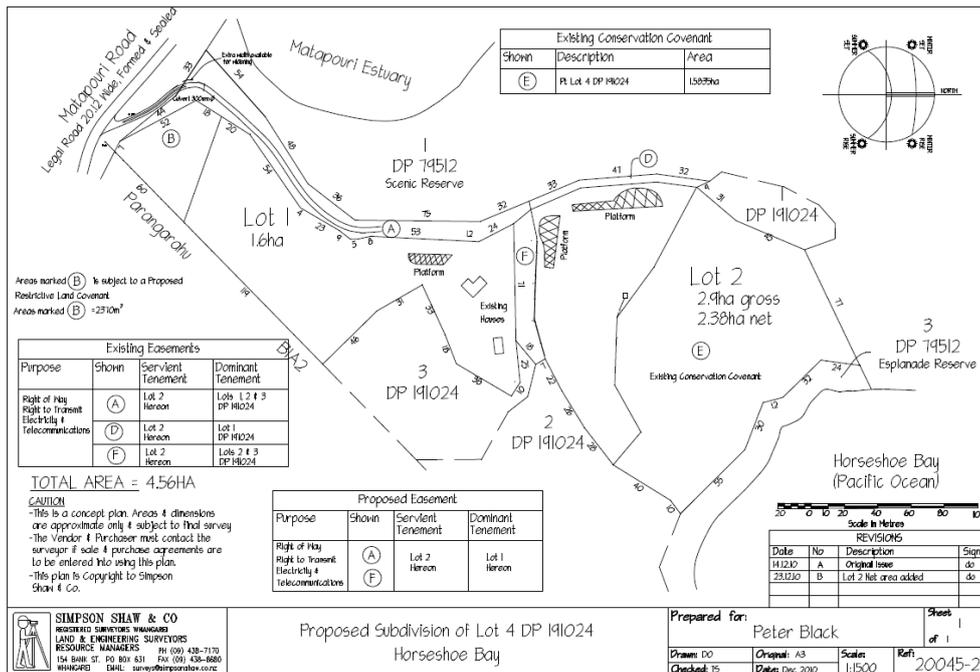
Hearing By: Hearings' Commissioner Greg Hill of a non-complying subdivision proposal by Peter Black seeking to subdivide a 4.5652 hectare site creating Lot 1 of 1.6 hectares including an existing residential unit and sleepout, and Lot 2 that is a vacant lot of 2.38 hectares (net).

The site is located at Matapouri Road, Matapouri, being legally described as Lot 4 DP 191024 (title identifier 120D/701).

Evidence By: Liz Searle
 File Refs: SD1000148 P037122.SD
 TRIM 11/41752
 Dated: 16th May 2011

1. The Proposal

- 1.1 Peter Black seeks resource consent to subdivide a 4.5652 hectare site located on Matapouri Road, Matapouri, creating:
- Lot 1 of 1.6 hectares including an existing residential unit and sleepout, and
 - Lot 2 that is a vacant lot of 2.38 hectares (net).
- 1.2 The subdivision layout is as per the plan 'Proposed subdivision of Lot 4 DP 191024, Horseshoe Bay' prepared by Simpson Shaw and Co, dated December 2010 and revised 23rd December 2010, reference 20045-21.



- 1.3 The application is supported by:
- ♦ An engineering assessment by Hawthorne Geddes Engineers and Architects Ltd, dated the 29th July 2010, addressing stability, on-site effluent treatment and disposal, and foundations available on Lot 2.
 - ♦ A '*Landscape and Visual Impact Assessment*' prepared by Hawthorn Landscape Architects dated August 2010.
- 1.4 The subdivision plan shows the 'existing houses' within proposed Lot 1 as well as a platform area to the southwest of the primary dwelling. As the lot already contains built residential development and the operative Whangarei District Plan would not allow for any additional residential units on the lot as a permitted activity, the following assessment does not consider the platform area to the southwest. Whilst Lot 2 is shown as including two elevated platform areas adjacent to right of way D and below the prominent ridgeline running north-south along the western boundary, the above engineering assessment only appears to consider the northern most of these platforms, showing it as a house site on the plan '*Proposed 2 Lot Subdivision, Horseshoe Bay, Matapouri*' prepared by Hawthorne Geddes Engineers and Architects Ltd, project 7833, Sheet C01, revision 2 dated 25th May 2010 and updated 13th September 2010.
- 1.5 The '*Landscape and Visual Impact Assessment*' comments on two possible building development areas, referred to as options A and B. These are shown on the '*Landscape Plan Lot 2*' prepared by Hawthorn Landscape Architects Ltd dated August 2010 (included as Appendix 5 to the assessment). Option A includes the two platform areas shown on the subdivision plan. Option B is not shown on the subdivision plan and has not been assessed by Hawthorne Geddes Engineers and Architects Ltd, the applicant's assumption being that if option B were the preferred option then a further engineering assessment would be undertaken relating to the building platform and access from right of way D. Option B is adjacent to an existing conservation covenant, occupying the eastern end of a gully that runs east-west, with the eastern end leading to Horseshoe Bay.
- 1.6 The site abuts a 5,000 m² 20 metre wide esplanade reserve that was created in 1975, being Lot 3 DP 79512. The '*Mean High Water Mark*', which refers to the identification of the average high water level of the sea during all high tides, was used to demarcate the boundaries of the reserve. Since 1991 however the approach has been to adopt the line of '*Mean High Water Springs*', which refers to the average height of successive spring tides. Whilst the applicant does not anticipate any significant changes to the coastline, this will be determined prior to lodging the new title plan.
- 1.7 The lots shall be serviced via a network of existing rights of way extending from Matapouri Road, increasing the number of users from four to five on right of way A, and from three to four on right of way E.
- 1.8 Lot 2 includes an existing conservation covenant abutting the coastal edge. The applicant is proposing to covenant 2,370 m² of bush within Lot 1 that is adjacent to Matapouri Road, shown as restrictive land covenant B.
- 1.9 The site has a zoning of Coastal Countryside Environment under the operative provisions of the Whangarei District Plan and there are no resource notations shown against the property. Overall, the proposal has a non-complying activity status under the allotment area rule, also requiring consent as a restricted discretionary activity under the rules relating to property access and formation.
- 1.10 '*Attachment 1*' includes a copy of the application as prepared by Christine Hawthorn Landscape Architects Ltd, Hawthorne Geddes Engineers and Architects Ltd, Phillipa Campbell Environmental Planning Ltd, and Simpson Shaw and Co (compiled in August 2010) and various further information submitted prior to notification of the application.

2. District Plan Assessment

- 2.1 The site is located in the Coastal Countryside Environment of the operative Whangarei District Plan, with no resource notations applying. For a controlled activity, Rule 73.3.1(b) requires that every proposed 'allotment' in the Coastal Countryside Environment has a minimum net site area of 20 hectares. Rule 73.3.1 also makes provision for subdivision as a discretionary activity where a number of qualifications are met and an average net site area of 10 hectares is achieved. As the applicant proposes an average net site area of 3.98 hectares the subdivision does not comply with the standards for a controlled or discretionary activity. Therefore given the lot areas proposed, the subdivision is a non-complying activity.
- 2.2 Rule 73.3.7, *Property Access*, provides that as a controlled activity access shall comply in all respects with the relevant standards in Appendices 6 and 9 of the District. The proposal does not comply with the standards as:

- ♦ Category F of Table 3.7 of Council's Environmental Engineering Standards (1st July 2010 edition) which applies to rights of way in the Coastal Countryside Environment servicing 3 to 5 lots requires a legal width of 6 metres and a minimum carriageway width (aggregate) of 4.5 metres (including a surfacing width of 4 metres and two 25 cm unsealed shoulders).

Access is to be via an existing gravel right of way varying in width between an estimated 3.5 metres and 5 metres, being typically less than 4 metres in width. The existing gravel surface will require improvement to comply with the engineering standards where the access is steeper than 18%. The engineer's report prepared by Hawthorn Geddes Engineers and Architects Ltd, dated the 29th July 2010 states '*It is proposed to minimise widening to reduce earthworks particularly where the existing batters are more than 2m high. Therefore it is likely that improvements to the access will involve construction of a passing bay.*

The land below the driveway is relatively steep and close to the property boundary so it is not practical to widen the existing access by filling over this slope. Therefore, any earthworks to widen the driveway will require excavating into the existing bank and removing spoil from the site."

- 2.3 The applicant does not propose to widen the right of way to full width, and hence the proposal will not meet Council's standards and is a restricted discretionary activity under Rule 73.3.7. Council's discretion is restricted to the following matters:

- i. *The relevant provisions of the Whangarei District Council's Environmental Engineering Standards 1998;*
- ii. *The adequacy of the access for the anticipated use;*
- iii. *The ability of the access to contain required services;*
- iv. *Traffic safety and visibility;*
- v. *The need for acceleration and deceleration lanes;*
- vi. *Type, frequency and timing of traffic;*
- vii. *Access design, number and location of vehicle crossings;*
- viii. *Efficiency and safety of roads;*
- ix. *Need for forming or upgrading of roads in the vicinity of the site;*
- x. *Need for traffic control, including signs, signals and traffic islands*
- xi. *The need for access to the allotment;*
- xii. *The safe and efficient movement of people, vehicles and goods;*

xiii. The ability of the road structure to withstand anticipated loads;

xiv. The effects of water runoff.

2.4 Rule 47.2.7, *Formation Standards*, also requires that all shared access ways are constructed to meet the requirements of Appendix 9 of the District Plan. As the right of way is not fully compliant, as per above, the application is a restricted discretionary activity under this rule. Council's discretion is restricted to the following:

i. Surfacing material;

ii. Gradient of the area to be surfaced;

iii. Amenity values;

iv. Stormwater control;

v. Type and frequency of use;

vi. Pedestrian safety;

vii. Traffic safety and visibility.

2.5 Rule 47.2.9, *Shared Access Widths*, requires shared access to be constructed in accordance with Appendix 6J of the District Plan. As the right of way is not fully compliant, as per above, the application is a restricted discretionary activity under this rule. Council's discretion is restricted to the following:

i. Effects on amenity values;

ii. Road safety and efficiency;

iii. Type and frequency of use;

iv. Traffic safety and visibility;

v. Effects of dust;

vi. Effects of stormwater.

2.6 The subdivision satisfies the controlled activity rules relating to building area, existing buildings, sites of significance to Maori (none identified), provision for extension of services, water supply, stormwater, sewage, electricity, telecommunications, and earthworks.

2.7 Overall, the subdivision is regarded as a **non-complying** activity.

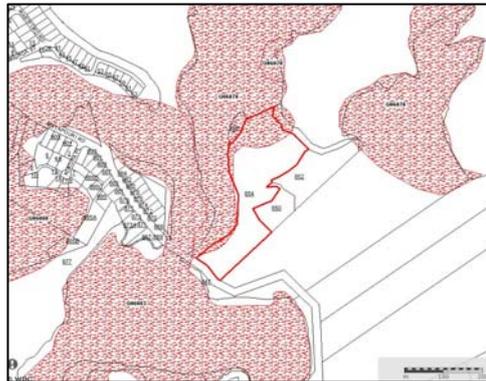
3. The Site and its Setting

3.1 The site and its setting are described in:

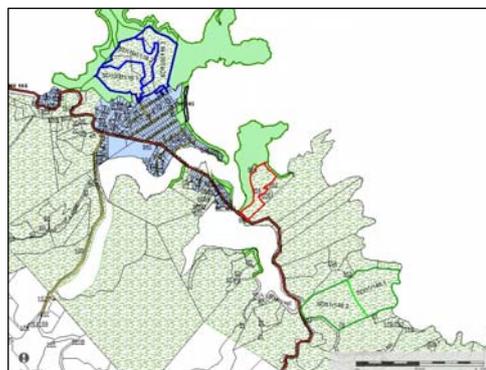
- ♦ section 1.2 of the application assessment prepared by Phillipa Campbell Environmental Planning Ltd dated the 25th August 2010,
- ♦ the engineering assessment by Hawthorne Geddes Engineers and Architects Ltd, dated the 29th July 2010, and
- ♦ section 2 of the '*Landscape and Visual Impact Assessment*' prepared by Hawthorn Landscape Architects dated August 2010.

As outlined in correspondence dated the 30th March 2011, Council's consultant landscape architect, Simon Cocker of Simon Cocker Landscape Architecture, is of the opinion that the landscape and visual impact assessment describes the site context and landscape values accurately. A copy of Mr Cocker's assessment is included in '*Attachment 2*'. I generally concur with these assessments insofar as they describe the site and built development.

3.2 The existing conservation covenant, and land immediately west of the site and further to the northeast are included within a natural area of ecological significance as identified in the Department of Conservation's 'Natural Areas of Whangaruru Ecological District – Reconnaissance Survey Report for the Protected Natural Areas Programme', dated 2005, survey number Q06/070 – Matapouri Coastal Remnants, approximately 82 hectares in area (PNAP). The ecological unit includes the presence of nationally endangered and regionally significant flora; and fauna that is in gradual decline, sparse, nationally endangered and regionally significant. Survey number Q06/083 – Matapouri Estuary of approximately 81 hectares is adjacent to the site on the southern side of Matapouri Road. This ecological unit includes the presence of sparse and regionally significant flora; and fauna that is in gradual decline, sparse, nationally endangered, nationally vulnerable, and regionally significant.



3.3 The adjacent zoning map shows the title area affected by the subdivision (outlined in red) and the development established in close proximity within the Coastal Countryside Environment (shown as the green stippled area), the areas of land zoned Open Space Environment (shown as green and including Otito Scenic Reserve of 11.6383 hectares immediately west of the site, and Otito Scenic and Matapouri Scenic Reserves further northwest on the western side of Matapouri Estuary). The coastal settlement of Matapouri is to the west (with the Living 1 Environment shown as blue). As is evident, the locality is characterised by a diverse range of lot sizes. This pattern of mixed development is also emphasised within the parcel lot size map that follows overleaf.



Notes: The mixed pattern of development demonstrated below is reflective of the more permissive subdivision and land use standards applying prior to the current District Plan rules becoming operative. For example, in terms of the lots immediately adjacent to the site (legal references shown on the subdivision plan) these were created as follows:

- ♦ Lots 1, 2 and 3 DP 191024 of 2,027 m², 1.504 hectares and 6,703 m² and the subject site (4.56 hectares) were approved as to survey on the 7th August 1998.

The application was assessed as a controlled activity subdivision (Council references WLJ and AM Ringer, subdivision of Lot 2 DP 79512, SD97/1011, lodged 4th December 1997). If assessed today, such an application would be either non-complying under the allotment areas rules or possibly discretionary under the environment benefit rules of the operative Whangarei District Plan.

Proposed Lot 1 was submitted under Clause 3(3)(f) of the County Section of the Transitional District Plan, where an exemption was available from the subdivision controls of the Rural AC zone if the subdivision is intended to provide a separate title for a surplus farm dwelling.

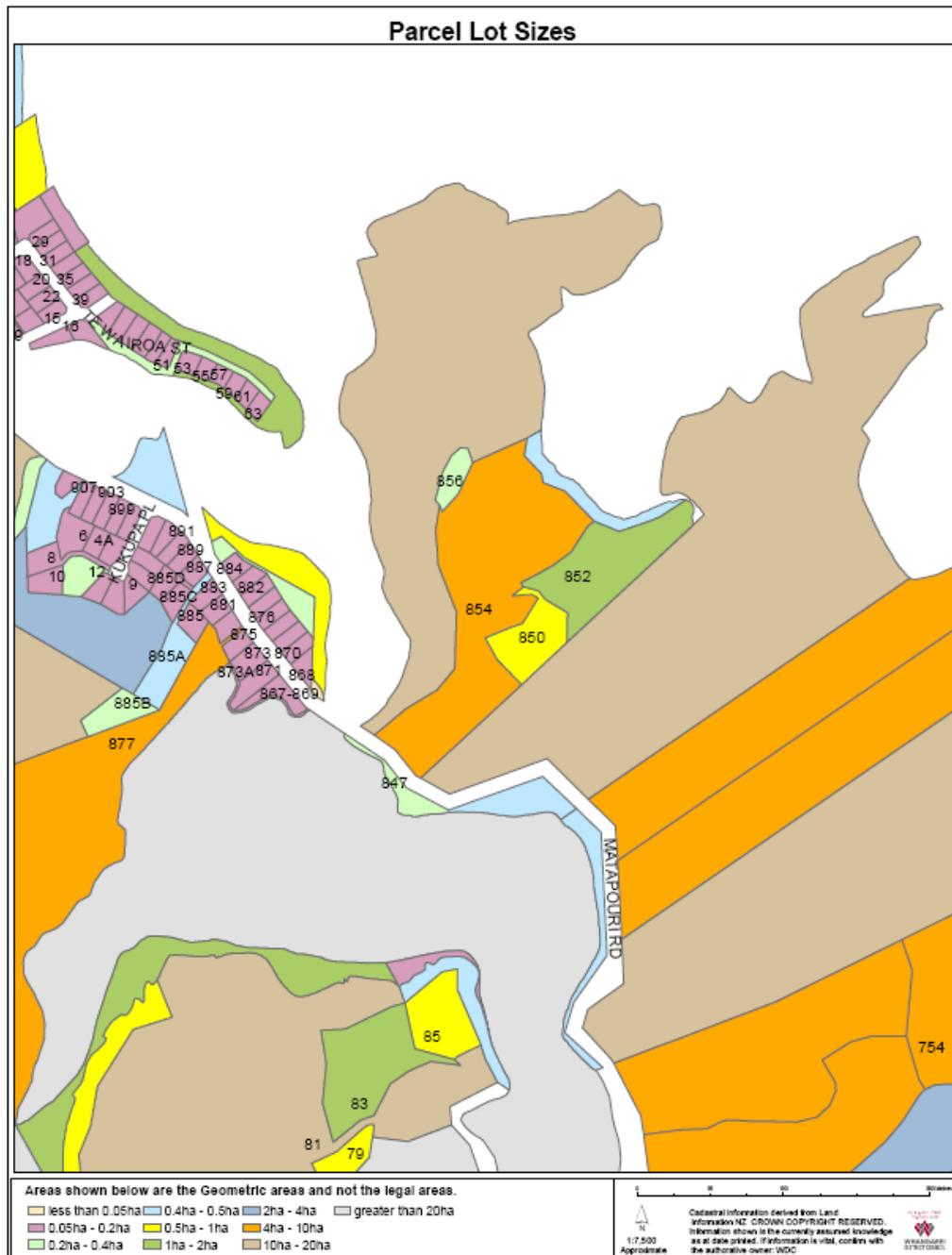
The proposal met the requirements of Clause 3(3)(f). The property already contained at least two dwellings and the lot proposed was between 2,000 m² and 4,000 m² in area. The dwelling had been on the property at least ten years and complied with the relevant Council bylaws and regulations, and no previous site subdivision had been undertaken under Clause 3(3)(f).

Lots 2 and 3 were proposed under Clause 3(3)(d), for the protection of

'Significant Historic or Natural Features'. Proposed Lot 2 contained one dwelling and a cabin. Proposed Lot 3 was vacant.

The bush area proposed to be covenanted had an area of 1.15 hectares stretching along the coastal edge of the property. The bush block proposed to be covenanted had been the subject of a report from Russell Fransham, Landscape Consultant. The bush area was described as "a spectacular piece of coastline" where the bush area had been enhanced by the current owners fencing off the bush area and planting native plants in amongst the existing native bush.

The areas shown below relate to lot areas as opposed to title boundaries. A review of Council's property identification references and proprietors does however indicate that the majority of the areas shown below relate to title areas.



3.4 The site is included within the study area associated with public Plan Change 95 that seeks to amend the District Plan maps to correct gaps and anomalies in the existing Coastal

Countryside Environment. There is no proposal under this plan change to alter the site's current zoning.

3.6 Council's GIS database shows the site:

- ♦ with medium effluent on-site disposal potential suitability,
- ♦ as subject to low, moderate and high instability hazards, and
- ♦ included within an area of kiwi presence.

3.7 There are no recorded archaeological or historical building sites located on or in close proximity to site.

3.8 The area of the site outside of the existing conservation covenant has a 'Land Use Capability' (LUC) of VI. Class VI land is not suitable for arable use, and has slight to moderate physical limitations and hazards under a perennial vegetative cover. Suitable uses include grazed pasture, tree crops and/or forestry, and in some cases vineyards.

3.9 'Attachment 3' includes a copy of the relevant planning maps, property information maps, an aerial, a stability hazard map, an effluent on-site disposal suitability map and a map of the Tutukaka Coastal Policy Area. The aerial shows the pattern of development within the locality.

4. Consultation, Public Notification and Submissions

4.1 In a cover letter to Council dated the 3rd December 2010 and as per section 11.1.3 of the applicant's 'Assessment of Effects on the Environment', the applicant requested that the application be publicly notified. Under section 95A(2)(b) Council must notify an application if an applicant requests public notification. Hence the application was fully notified pursuant to section 95A(2)(b) of the Resource Management Act 1991 on the 19th January 2011, with the closing date for receiving submissions lapsing on the 15th February 2011.

4.2 Copies of the application were served upon Ngatiwai Trust Board, Te Whanau a Rangiwahakaahu/Ngati Toki/Te Akitai, Northland Regional Council, the New Zealand Historic Places Trust, the Department of Conservation, Tutukaka Coast Residents and Ratepayers Association, Tutukaka Coastal Care, and ten surrounding landowners. Council received seven submissions within the timeframe, with six in opposition requesting that the application be declined. Each of the submitters opposing the application requested to be heard. One neutral submission was received from the New Zealand Historic Places Trust.

4.3 The individual submissions are summarised as follows:

Submitter	Issues and Relief Sought
New Zealand Historic Places Trust	♦ There are a number of archaeological sites in the wider vicinity of the site.
Neutral stance	<i>Relief sought: Include a standard advice note and require operations to be in accordance with an accidental discovery protocol.</i>

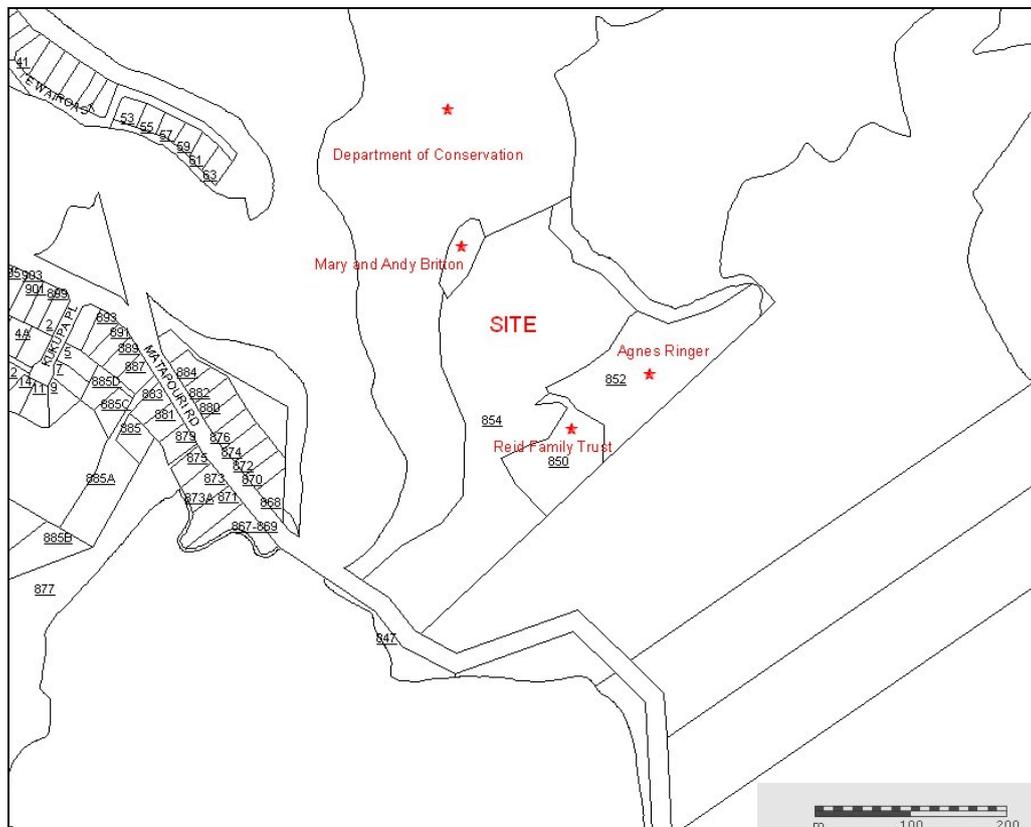
Submitter	Issues and Relief Sought
<p>Director General of Conservation</p> <p>Opposes</p> <p>Requests to be heard</p>	<ul style="list-style-type: none"> ◆ Site is within a high outstanding landscape identified in the Whangarei Landscape Review Project 2005. ◆ The proposal does not have regard to the New Zealand Coastal Policy Statement 2010. ◆ Application does not identify site's ecological or potential historic values. ◆ Does not achieve the purpose of the Resource Management Act 1991 in terms of sustainable management. <p><i>Relief sought: Decline the application.</i></p>
<p>Agnes Miriam Ringer of 852 Matapouri Road</p> <p>Opposes</p> <p>Requests to be heard</p>	<ul style="list-style-type: none"> ◆ Impacts upon submitter's adjacent property, privacy issues and density of development. ◆ Cumulative effects. ◆ Effects more than minor. ◆ Lack of consultation. ◆ Inadequate consideration of impacts upon adjacent properties. ◆ Effects of construction in terms of earthworks. Level of earthworks questionable given stability issues, steep contour and narrow width of option A building site. ◆ Effects of additional traffic and construction of passing bay. Slips on right of way which will be exacerbated by earthworks. Level of vehicle/pedestrian traffic. Maintenance issues on right of way. Increased use of right of way over submitter's property. Water run-off ◆ Lack of engineering information and data with respect to option B building site which is narrow and not flat. Effect on wetland. ◆ Impact upon Horseshoe Bay – aesthetically, environmentally and in terms of amenity values. ◆ Impacts upon environmental values of scenic reserve, outlook from reserve. ◆ Visual impact of future development, particularly from within Horseshoe Bay. ◆ Are mitigation measures enforceable? ◆ Proposal is a non-complying activity. <p><i>Relief sought: Decline the application.</i></p>

Submitter	Issues and Relief Sought
<p>John Ringer Opposes Requests to be heard</p>	<ul style="list-style-type: none"> ◆ Size of lots and non-complying status. ◆ Inadequate engineering assessment with respect to access, stability issues. ◆ Maintenance issues on right of way. ◆ Question on-site servicing on Lot 2. If consent granted, condition should be imposed relating to an above ground disposal system. ◆ Extensive earthworks already undertaken on-site. ◆ Will not maintain or enhance amenity values. If consent granted, enforceable conditions should be imposed to mitigate adverse effects upon visual and aesthetic values. ◆ Compromise the outlook and privacy of adjoining properties. ◆ Adverse effect on road transport, safety issues at access entrance and on right of way due to sightlines. ◆ Practicability of providing adequate parking, turning, and manoeuvring area on Lot 1. ◆ Additional excavation on driveway will increase runoff into scenic reserve and estuary. ◆ More than minor traffic and access effects. ◆ Cumulative effects. ◆ Precedent. ◆ Lack of consultation. ◆ Architectural guidelines unenforceable. ◆ Existing cut and fill batters have not been revegetated. ◆ Adverse effect upon property values. <p><i>Relief sought: Decline the application</i></p>
<p>Andy Britton Opposes Requests to be heard</p>	<ul style="list-style-type: none"> ◆ The proposal is a non-complying activity. ◆ Contrary to District Plan. ◆ More than minor adverse effects. ◆ Diminishes amenity values. ◆ Significant change in intensity, scale, character and design of residential units within the Bay with overall density exceeding environmental capacity of land to absorb impacts. ◆ Development density inappropriate to location. ◆ Proximity of option A building site upon submitter property – noise, visibility and privacy. <p><i>Relief sought: Decline the application.</i></p>

Submitter	Issues and Relief Sought
<p>Mary Britton</p> <p>Opposes</p> <p>Requests to be heard</p>	<ul style="list-style-type: none"> ◆ Inadequate consultation. ◆ No reference to actual and potential effects upon submitter's property, including privacy and amenity. ◆ Proximity of building site to submitter's dwelling. ◆ Maintenance issues with respect to right of way. Stability of retaining walls on right of way. ◆ Precedent. ◆ Subdivide the land to establish separate title for existing dwellings. <p><i>Relief sought: Decline the application.</i></p>
<p>The Reid Family Trust</p> <p>Opposes</p> <p>Requests to be heard</p>	<ul style="list-style-type: none"> ◆ As per submission points of Andy and Mary Britton. <p><i>Relief sought: Decline the application.</i></p>

A full copy of the submissions is included in 'Attachment 4'.

4.4 The submitters in the immediate locality are located as follows:



- 4.5 On the 9th March 2011 the applicant submitted further information addressing some of the submitter concerns; namely relating to prior understandings, consultation, impact upon the right of way, and the impact upon other landowners and the bay environment. A copy of this information is included in 'Attachment 5'.
- 4.6 Council circulated a copy of the above information to submitters on the 14th March 2011. Recognising that the further information was intended to address some submitter concerns, Council asked that submitters consider the detail submitted and matters raised within their submission, forwarding any additional comments to Council by the 28th March 2011. Council received the following responses:
- ♦ The New Zealand Historic Places Trust confirmed in email correspondence dated the 18th March 2011 that they did not wish to make any further comment, highlighting the procedures relating for an 'Accidental Discovery Protocol'.
 - ♦ In correspondence dated the 23rd March 2011, Andy Britton confirmed his opinion that the development could not be justified, commented on consultation, stated that the right of way should comply with Council standards, and queried the level of residential development i.e. a dwelling and a sleepout.
 - ♦ Mary Britton highlighted her concerns in correspondence dated the 27th March 2011, particularly with respect to consultation and the impacts of the development.
 - ♦ In correspondence received on the 28th March 2011, Sonny Reid commented further on consultation, impact upon the right of way, impact upon property, and his desire for no further houses to be established within the bay.

A copy of the above submitter responses is included within 'Attachment 6'.

- 4.7 Whilst various points of submission have been taken into account in the context of this report and staff reports as attached, it is considered appropriate at this stage to make general comment on some of the broader matters raised by submitters that fall outside the scope of the following assessment.

Non-complying status of the activity

Some submitters have commented on the appropriateness of the subdivision within the Coastal Countryside Environment. The subdivision standards do not prevent applications such as the proposal being lodged for Council's consideration, with the Resource Management Act 1991 providing for a range of activities, from the prohibited to the permitted activity status. In between are non-complying, discretionary, restricted discretionary and controlled activities. There is a clear difference between a prohibited activity and a discretionary one. An application may be lodged and consent may be granted for the latter but not for the former.

A non-complying activity is defined as an activity that is provided for in the plan as a non-complying activity, by a rule in a plan or a proposed plan; or contravenes a rule in a plan or a proposed plan, and is allowed only if resource consent is obtained in respect of the activity. In both respects a resource consent is required and may be granted only if the application fulfils the criteria of section 104D that states that Council may grant the application if it is satisfied that the activity will not be contrary to the policies and objectives of the District Plan or the adverse effects of the activity on the environment will be minor. The issue relating to this subdivision proposal is not whether the District Plan supports the activity but rather whether it is appropriate to allow it. Section 104D recognises that a non-complying activity will not be permitted by the District Plan, yet it may be granted provided either of the above criteria is met. In considering the application Council will therefore have regard to section 104D.

Detrimental effects on local property values

John Ringer is concerned regarding the adverse effect of the subdivision upon property values. There have been several Court decisions that have effectively held that it is not a valid resource management consideration, that where there is evidence of adverse effects on

property values this should not be considered as a separate adverse effect over and above effects on amenity. This would lead to a 'double weighting' of the effects on amenity where a reduction in property values was a consequence of effects upon amenity values. It is also noted that although the economic effects of the proposal on the environment have to be considered, it is only to the extent that it affects the community at large, not the effects on the expectations of individual investors.

Consultation

Agnes Ringer, John Ringer, Mary Britton and the Reid Family Trust have raised concerns with respect to the perceived lack of consultation. I note that Schedule 4 of the Resource Management Act 1991, 'Assessment of effects on the environment', only requires the identification of the persons affected by the proposal, the consultation undertaken, if any, and any response to the views of any person consulted. This obliges an applicant to report as to the persons identified as being affected by the proposal, but does not oblige the applicant to consult with any person; or create any ground for expecting that the applicant will consult with any person.

5. Resource Management Act 1991

5.1 Part 2

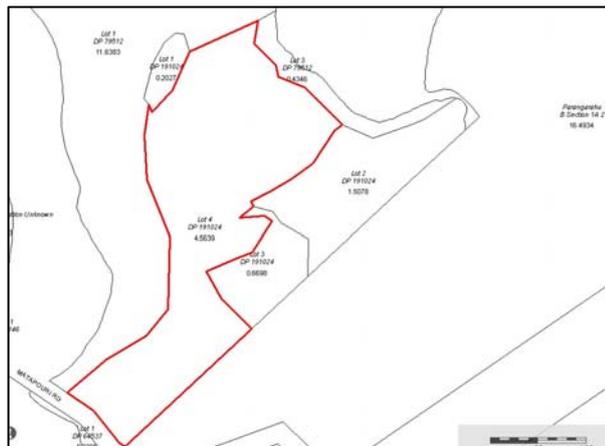
Section 5 sets out the Act's purpose, whilst sections 6, 7 and 8 include principles to assist in achieving that purpose.

The purpose of the Act as outlined in section 5(1) is to promote the sustainable management of natural and physical resources. As outlined in section 5(2), "sustainable management" means:

"... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while -

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

Comment: The site is situated within an area of localised coastal lifestyle development generally contained by local landform, a Department of Conservation estate to the west, lifestyle lots to the west and east, an esplanade reserve to the north, and a conservation covenant abutting the esplanade reserve within Lot 2.



Given the site's location within an area already fragmented by a pattern of large lot residential lifestyle development within the coastal environment I regard the proposal as consistent with the Act's purpose. Adequate open space will be maintained around the future dwelling and the proposal will not undermine the site features contributing to its natural character and amenity values, particularly having regard to the mitigation measures volunteered by the applicant. I therefore regard the subdivision as an efficient use of the land resource and an appropriate development in Horseshoe Bay.

I also regard the proposal as consistent with the Act's sustainable management purpose, in that the subdivision will not reduce the versatility of the land parcel which has limited productive capacity by virtue of its size, variable topography and land use capability classification (LUC VI).

Provided that the effluent disposal fields for 'building development area B' do not contaminate the wetland area and future built development is sensitive to the contextual Pohutukawa, with appropriate levels of future protection in perpetuity afforded to these trees, the development is unlikely to undermine the indigenous biological features in the vicinity, particularly the natural areas of ecological significance included within PNAPs Q06/070 and Q06/083.

Note: The applicant does not offer an opinion with respect to the ecological value of the wetland within the valley floor of Lot 2, in close proximity to 'building development area B'. The landscape plan submitted by the applicant does not propose any mechanisms to restore or provide for habitat enhancement and management, biodiversity and nature conservation, or enhancement of the amenity values of the wetland.

It is unclear if the wetland is included within the existing conservation covenant and further comment is required in this regard, with the potential for the applicant to volunteer measures to establish positive effects in the local environment in terms of local fauna and flora and maintaining the quality of the wetland after any restoration.

I therefore view the proposal for the most part as consistent with the purpose of the Act. With suitable development restrictions, such as the bulk and location restrictions and landscape mitigation measures volunteered by the applicant, I am of the opinion that with adequate on-site servicing any adverse effects on the environment will be adequately avoided, remedied or mitigated.

Section 6 of the Act, '*Matters of national importance*', lists seven matters of national importance. The site is not located in an Outstanding Landscape Area and therefore the matters that I regard as most relevant to the proposal relate to subsections (a), (c) and (d):

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*

Comment: Whilst the development will establish further built development within the coastal environment, it will not result in any further visual denigration given the location of the building development areas, the site characteristics and existing built development in the vicinity.

A portion of the site is included within the Department of Conservation's '*Natural Areas of Whangaruru Ecological District – Reconnaissance Survey Report for the Protected Natural Areas Programme*'; this includes the existing conservation covenant in Lot 2. In terms of the protection of significant indigenous vegetation and habitats of indigenous fauna, the application does not comment on the ecological value of 2,370 m² of indigenous vegetation in Lot 1 that will be subject to formal protection within restrictive land covenant B. Permanent protection of the bush feature as proposed by the applicant will however allow for positive ecological benefits, with the requirement for a pest or weed management plan as a condition of consent regarded as an important means of maintaining indigenous biodiversity. The bush proposed for covenanting is part of a wider catchment area and there are ecological benefits in covenanting the bush as it provides

feeding and protection nesting for local species with a threat ranking, with the potential to enhance wildlife corridors between other areas of protected bush in the locality.

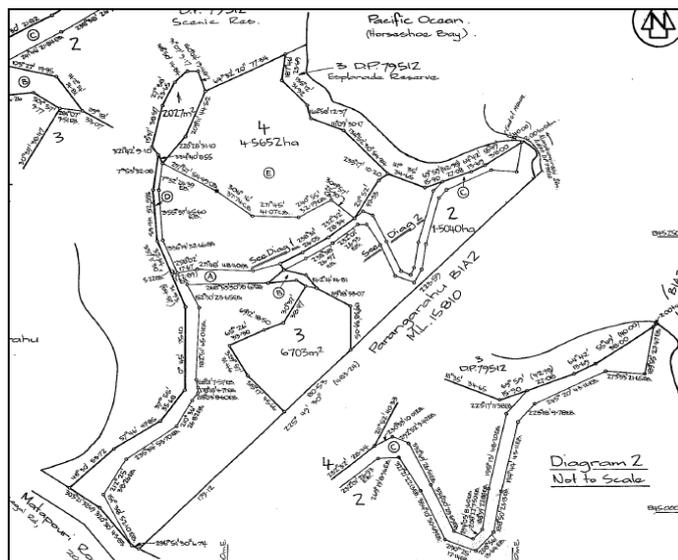
Given the proximity of the site to various PNAPs it is also recommended that the pest or weed management plan apply to the entire site, thereby capturing any indigenous vegetation that may fall outside of the existing covenant that is within the valley floor of Lot 2.

The Resource Management Act 1991 requires Council to recognise and provide for the preservation of the natural character of water bodies and their margins and to promote public access to and along the water bodies in the District. The Act enables Council to require esplanade reserves of up to 20 metres in width to be vested on subdivision without compensation where the area of adjacent lots created is less than 4 hectares. The site abuts a 5,000 m² 20 metre wide esplanade reserve that was created in 1975, being Lot 3 DP 79512. The 'Mean High Water Mark', which refers to the identification of the average high water level of the sea during all high tides, was used to demarcate the boundaries of the reserve. Since 1991 however the approach has been to adopt the line of 'Mean High Water Springs', which refers to the average height of successive spring tides. Whilst the applicant does not anticipate any significant changes to the coastline, this will be determined prior to lodging the new title plan with new land vested where necessary. Hence the proposal will not undermine public access to the coastal marine area

Private access to the coast in favour of Lots 1, 2, 3 and 4 DP 191024 is currently available via easement A over the subject site and easement C over Lot 2 DP 191094 that is owned by submitter Agnes Ringer (as shown on the plan below). The subdivision does not appear to undermine this pedestrian easement, with the rights of access to the coast extending to the proposed lot (I note that Simon Cocker has concerns in this respect, however it would appear that 'building development area B' is set back from the easement) .

Notes: Easement A is shown as easements A and F on the proposed subdivision plan.

In terms of easement F as shown on the subdivision plan, I would query whether this easement should also be shown in favour of Lot 1 DP 191024 as this right is confirmed as existing on the current certificate of title.



In achieving the purpose of the Act, section 7 imposes ten matters for Council to have regard to in managing the use, development, and protection of natural and physical resources. These matters include the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values; and the intrinsic values of ecosystems; and the maintenance and enhancement of the quality of the environment.

Comment: The subdivision of this property will not affect the sustainable management of the land for productive purposes as it is unlikely to be used for rural productivity given the title area, topography and existing levels of bush protection.

As the site is not part of an outstanding landscape; section 7(c) relating to the maintenance and enhancement of amenity values and section 7(f) relating to the maintenance and enhancement of the quality of the environment, are regarded as most relevant to the proposal. I do not view the development density proposed as contrary to the scattered pattern of lifestyle development already existing in the locality, with the amenity values in Horseshoe Bay unlikely to be significantly compromised. Recognising and accepting the level of rural-lifestyle amenity currently found in the vicinity of the site, the application and supporting documentation are therefore in my view consistent with section 7 of the Act.

In terms of the intrinsic value of ecosystems, as previously discussed the applicant proposes to enhance the ecological value of the site via the formal protection of 2,370 m² of indigenous vegetation within restrictive land covenant B.

Section 8 of the Act requires that all persons exercising functions and powers under the Act take into account the principles of the Treaty of Waitangi in managing the use, development and protection of natural and physical resources. There is no evidence of previous habitation or reference to cultural or environmental issues on the site, it is not identified as being subject to any recorded archaeological features, and is not listed in the District Plan as being of significance to Maori.

I also note that a copy of the application was served upon Ngatiwai Trust Board, Te Whanau a Rangiwahakaahu/Ngati Toki/Te Akitai and the New Zealand Historic Places Trust as part of the public notification process and no submissions were forthcoming from local iwi. Whilst the New Zealand Historic Places Trust lodged a submission acknowledging that there are a number of archaeological sites in the wider vicinity of the site, they did not raise any concerns, recommending that Council include a standard advice note and require operations to be in accordance with an accidental discovery protocol.

As the Historic Places Act 1993 provides protection for unrecorded sites, it is not anticipated that the subdivision would impact adversely upon the relationship of Maori and their culture and traditions with their ancestral lands, water, sites of waahi tapu and other taonga. Therefore there are no issues arising under the Treaty of Waitangi and the proposal is considered to satisfy section 8. An advice note can be attached to any consent granted indicating the protective provisions of the Historic Places Act 1993.

5.2 Section 104

Section 104 of the Act sets out those matters that, subject to Part 2, the Council must have regard to when considering an application for resource consent. Section 104 (1) is as follows:

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to-

- (a) any actual and potential effects on the environment of allowing the activity; and*
- (b) any relevant provisions of-*
 - (i) a national environmental standard:*
 - (ii) other regulations:*
 - (iii) a national policy statement:*
 - (iv) a New Zealand coastal policy statement:*

- (v) *a regional policy statement or proposed regional policy statement: and*
- (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

In terms of section 104(1)(a), it is only the effect of a non-complying activity as it impacts upon the environment that is relevant, and not any precedent effect of the grant of the resource consent. The precedent effect may however be considered under section 104 (1)(b)(vi) and (1)(c).

There are no national environmental standards relevant to the current proposal. Given the location of the site, the New Zealand Coastal Policy statement will have an influence upon the development.

Under section 104 (3)(a)(ii), when considering an application the consent authority must not have regard to any effect upon a person who has given written approval to an application (unless this approval has been withdrawn). With respect to the current application, no written approvals have been provided.

Under section 104 (6), a consent authority may decline an application for resource consent on the grounds that it has inadequate information to determine the application. I believe that the information provided is sufficient to establish whether consent should be granted or refused.

5.3 **Section 104B**

Section 104B of the Act provides that the Council may grant or refuse the application for a non-complying activity, and if granted, may impose conditions under section 108 of the Act.

5.4 **Section 104D**

Being a non-complying activity, the proposal is subject to the thresholds outlined in section 104D of the Act, '*Particular restrictions for non-complying activities*'. Under section 104D, the Council cannot consider granting consent unless it is satisfied that:

- (a) *The adverse effects on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or*
- (b) *The application is for an activity which will not be contrary to the objectives and policies of the operative Whangarei District Plan.*

These thresholds are not tests, the passing of which would justify the grant of consent but are limits, which if passed, merely enable Council to consider granting consent to the proposal.

Subject to at least one of the above thresholds of section 104D being satisfied, after considering an application for non-complying resource consent, the Council may grant or refuse the application, and if it grants the application, may impose conditions under section 108 of the Act.

- 5.5 The following sections of this report address those matters considered relevant to this application - including the New Zealand Coastal Policy Statement 2010, the Regional Policy Statement for Northland, and regional plans. An assessment of the environmental effects and an analysis of the proposal against the objectives and policies of the operative Whangarei District Plan, will follow in order to reach a conclusion as to whether the application should be granted or declined pursuant to section 104D of the Resource Management Act 1991.

6. **New Zealand Coastal Policy Statement 2010 (NZCPS)**

- 6.1 The NZCPS is a national policy statement under the Resource Management Act 1991. Its purpose is to state policies in order to achieve the purpose of the Act, to promote the sustainable management of natural and physical resources, in relation to the coastal environment.

- 6.2 The NZCPS is of primary relevance to the proposal due to its location within the coastal environment. One of the objectives of the Statement is to safeguard the integrity, form, functioning, and resilience of the coastal environment and sustain its ecosystems. The Statement seeks to preserve the natural character of the coastal environment and protect natural features and landscapes. It recognises that the protection of values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits. It seeks to consolidate existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement. The NZCPS encourages development that maintains the character of the existing built environment, and where development resulting in change in character would be acceptable. In terms of preserving natural character, the NZCPS also places emphasis upon avoiding significant adverse effects and preserving natural character and protecting it from inappropriate subdivision, use and development.
- 6.3 These matters have been discussed previously. The operative Whangarei District Plan does not attribute any landscape quality to the site i.e. it is not included within a 'Notable' or 'Outstanding' Landscape Area. The landscape is not regarded as pristine, with adjacent lifestyle development on lots abutting the site modifying the natural character of the immediate locality. As the site will not be seen in isolation but in the context of the existing residential and lifestyle development, the proposal is regarded as meeting the intent of the NZCPS, with views of the site from the coastal marine area also contained by the rocky coastal escarpment that forms Horseshoe Bay. It is also noted that the conservation covenant in Lot 2 adjacent to the esplanade reserve, provides a natural buffer that will assist in containing 'building development area B'.
- 6.4 The mitigation measures volunteered by the applicant will ensure that future built development will be consistent with the intent of the Statement. These measures are as outlined in section 6 of the '*Landscape and Visual Impact Assessment*' prepared by Hawthorn Landscape Architects dated August 2010, they include architectural design guidelines; landscape enhancement and protection measures; and mitigation measures with respect to the formation of access strips, and rehabilitation of areas of cut and fill. Planting is intended to strengthen the existing vegetative framework and assist in integrating future buildings.
- 6.5 Whilst it is arguable that the proposal will intensify development, I do not consider the level of intensification as inappropriate or beyond the capacity of the local environment, with future development likely to be of similar character and effect to existing adjacent lifestyle development. A condition of consent will require that there shall be no structures erected outside of 'building development areas A or B' as delineated in the '*Landscape and Visual Impact Assessment*' prepared by Hawthorn Landscape Architects, and any trees to be planted outside of the curtilage area are to be indigenous species appropriate to the ecological district. Land outside of the curtilage areas should be managed to allow regeneration of indigenous species and control exotic weed species.
- 6.6 It is not anticipated that built development would occur in both options A and B, with the future landowner nominating one of the sites for development.
- 6.7 Therefore, having regard to the level of development within the immediate locality, and the proposed mitigation measures involving on-site landscaping and restricting the scale/appearance of built development, any associated effects are considered minor and the development is regarded as meeting the intent of the NZCPS.

7. Operative Whangarei District Plan

- 7.1 In terms of the objectives and policies of relevance to the proposal, these are included within Chapter 5 '*Amenity Values*', Chapter 8 '*Subdivision and Development*', Chapter 10 '*The Coast*', Chapter 11 '*Riparian and Coastal Margins*', Chapter 12 '*Water Bodies*', Chapter 16 '*Landscape*', and Chapter 19 '*Natural Hazards*'.

7.2 Plan Change 92 re-writes the objectives and policies of Chapter 6 '*Built Form and Development*'. There are currently appeals to the plan change, however as the appellants are seeking additional provisions and other minor amendments for consistency and legibility purposes, Council is placing almost full weighting upon the plan change.

7.3 A copy of the above chapters is included in '*Attachment 7*'.

7.4 With respect to the current application and the above Chapters, the District Plan includes objectives and policies seeking to:

- ♦ ensure that the characteristic amenity values of a locality are not compromised, particularly in terms of the coastal environment,
- ♦ ensure that the actual or potential effects of subdivision, land use and development is appropriately controlled and those activities located and designed, are to be compatible with existing and identified patterns of development and levels of amenity in the surrounding environment,
- ♦ ensure that activities do not produce, beyond the boundaries of the site, adverse effects that are not compatible with the amenity values characteristic of the surrounding and/or adjacent environment unless, such effects are authorised by a district plan, a designation, a resource consent or otherwise,
- ♦ ensure that subdivision and development do not unduly compromise the outlook and privacy of adjoining properties, and should be compatible with the character and amenity of the surrounding environment,
- ♦ promote subdivision and development that ensures consolidated development in appropriate locations and avoids sprawling or sporadic subdivision and ribbon development patterns in the coastal and rural environment,
- ♦ ensure subdivision and development is designed and located so as to avoid, remedy or mitigate adverse effects on, and where appropriate enhance the natural character of the coastal environment, lakes and rivers and their margins; landscape values; ecological values; amenity values and sense of place,
- ♦ ensure that, as far as practicable, subdivision, use and development is located in areas where the natural character has already been substantially modified,
- ♦ ensure that subdivision, use and development does not adversely affect the natural character of the coastal environment (particularly coastal headlands and promontories), and lakes and rivers and their margins,
- ♦ ensure that adverse effects of subdivision and development on riparian areas and adjacent water bodies are avoided, remedied or mitigated by appropriate riparian management and protection,
- ♦ ensure that all subdivision and development is capable of being provided with adequate services and infrastructure,
- ♦ recognise and protect riparian margins and the coastal environment as natural hazard buffers,
- ♦ provide for the protection of, and where appropriate enhance, the District's natural features, coastal landscapes, and significant ecological areas,
- ♦ ensure that subdivision, use and development is managed in a manner that seeks to preserve, enhance and restore (where appropriate) the natural character of the coastal environment, particular consideration will be given to landscapes, seascapes, landforms, intrinsic values of ecosystems, amenity values, and

- ♦ ensure that subdivision, use and development do not increase the risk from, occurrence of, or the adverse effects of natural hazards.

7.5 The site is within the study area associated with District Plan Change 16: Coastal Policy Areas. The Plan Change introduces new objectives and policies that recognise the different issues and values specific to the area. These objectives and policies apply when resource consents for discretionary and non-complying activities are applied for within the coastal environment.

This plan change has effect from the date of notification on the 7th July 2010. Whilst Council must have regard to '*Coastal Protection Area 3, Sandy Bay, Tutukaka*' and hearings were held from Monday 11th April 2011 to Thursday 14th April 2011, as a revised summary of submissions was open for further submissions until Tuesday 10th May 2011 and the hearing is yet to recommence, Council is applying limited weighing to the plan change.

In terms of the objectives (outcomes sought), CPA3 seeks, amongst other outcomes, to restore pohutukawa and other native coastal planting along backshore areas and escarpments, and improve public access to and along the coast where this will not compromise the protection of natural features and habitats or Sites of Significance to Maori. The policies of relevance to the current proposal are as follows:

- ♦ To identify and protect native coastal vegetation, including pohutukawa, along backshore areas and escarpments.
- ♦ To restore and manage riparian margins to improve water quality.
- ♦ To improve the ecological function of existing native coastal forest areas, coastal vegetation and gully systems.

A copy of 'CPA3 Sandy Bay - Tutukaka Coastal Policy Area' is included in '*Attachment 8*'.

7.6 Overall, the subdivision proposal is considered to be consistent with the emphasis of the above objectives and policies, particularly as they relate to natural character, local amenity, the protection of Pohutukawa trees adjacent to 'building development area B', enhancement of the wetland, and the protection of indigenous vegetation within proposed conservation covenant area B. I have commented on these matters previously, establishing that the associated effects will be no more than minor.

7.7 I do not regard the proposal as a form of sporadic subdivision or scattered form of residential development. I believe that the subdivision will consolidate the existing development pattern. Whilst it is arguable that the proposal will intensify development, I do not consider the level of intensification as unacceptable or beyond the capacity of the local environment, with future development likely to be of similar character and effect to the existing lifestyle development. It is not a significant departure from the existing form of lifestyle development characterising the locality, with no additional loss of coastal/rural character or significant change to local amenity.

7.8 Any additional bush/vegetation protection, albeit the limited area of bush conservation B and the Pohutukawa trees adjacent to 'building development area B', is consistent with the objectives and policies relating to amenity values, and indigenous vegetation and habitat; including those which seek protection and enhancement of indigenous vegetation and its ecological values, retention of trees and vegetation that contribute to the amenity values of the environment, and maintenance and enhancement of the characteristic amenity values of each Environment.

7.9 Although the proposal cannot be said to be consistent with all objectives and policies by virtue of their generality, taking a holistic approach, overall the proposal is not regarded as contrary to the general intent of the objectives and policies.

8. Regional Policy Statement for Northland (RPS)

- 8.1 A principal purpose of the RPS is to provide for policies and methods which achieve integrated management of the Region's natural and physical resources. As the site does not include any identified outstanding natural features/landscape, section 19 of the RPS has not been considered directly relevant to the site.
- 8.2 Section 17 'Water Quality' deals with the management of water quality in all natural water bodies, including; groundwater, lakes, wetlands, rivers, streams, estuaries, harbours and open coastal waters. Two significant water quality issues identified are:
- ♦ pollution of water bodies and coastal waters from point-source discharges of contaminants, particularly from sewage treatment and disposal, and
 - ♦ pollution of rural water bodies (including the coastal waters those water bodies flow into) from contaminants in non-point source discharges and stormwater runoff, including sediment from earthworks and vegetation clearance.
- 8.3 Council's GIS database shows the site as subject to low, moderate and high instability hazards. Section 21 'Natural Hazards' recognises the threat to existing and future communities from natural hazards. It emphasises the need to avoid or mitigate the adverse effects of natural hazards by minimising and where practicable, avoiding the risk to life and damage to property, infrastructural services and other aspects of the environment, from natural hazard events. The application is supported by an engineering assessment by Hawthorne Geddes Engineers and Architects Ltd, dated the 29th July 2010, addressing stability, on-site effluent treatment and disposal, and foundations available on Lot 2 with respect to 'building development area A'. The report concludes that subject to a number of recommendations there is sufficient land available for on-site effluent treatment and disposal and the land is suitable for the proposed subdivision. Council's Senior Environmental Engineering Officer is satisfied that with appropriate conditions of consent any effects associated with natural hazards will be no more than minor. With respect to 'building development area B', Mr Murphy has recommended a condition of consent requiring an alternative engineering report prepared by a suitably experienced Chartered Professional Engineer.
- 8.4 Section 22 'Coastal Management' identifies the following as significant issues:
- ♦ Impacts, including cumulative effects, of subdivision, use and development on the natural character of the coastal environment, particularly its ecological, cultural and amenity values.
 - ♦ Maintenance, and where possible enhancement of, public access to and along the coast.
 - ♦ Effects of point and non point discharges from land based activity on the quality of coastal waters and sediments and on marine biota.
 - ♦ Proliferation of structures and their effect on landscape values.
- These matters have been addressed previously, where it was concluded that the associated effects would be minor.
- 8.5 The overall emphasis of Section 29 'Transport' is placed upon impacts on the region's major transport network (particularly strategic and arterial roads and railways). Two of the issues identified in the RPS with respect to transport relate to the adverse impact that adjacent land use development and subdivision can have upon the efficiency and safety of roads, particularly heavily trafficked routes in rural areas, and potential contamination caused by vehicles on unsealed roads that can also be a nuisance to adjacent properties. In terms of the policies relating more directly to the effects of land use activities on transport the RPS also seeks to ensure that safe and convenient vehicle access is available to all sites.

- 8.6 Council's Senior Environmental Engineering Officer, Dean Murphy, is satisfied that any concerns with respect to water quality, the formation of the rights of way, traffic safety/efficiency, and natural hazards can be overcome by conditions of consent. Mr Murphy recommends that a maintenance contract for the on-site wastewater system shall be in place at all times which includes inspections and maintenance of both the wastewater treatment and disposal systems. Mr Murphy has no major concerns regarding the stability of the right of way, addressing this issue within recommended conditions of consent. A copy of Mr Murphy's report is included in 'Attachment 9'.
- 8.7 Therefore the application is regarded as achieving the relevant issues, objectives and policies of the Regional Policy Statement for Northland.

9. Regional Water and Soil Plan for Northland (RWSP)

- 9.1 The RWSP covers the land and water resources of the Northland region, it controls discharges and land disturbance activities. The Plan aims to prevent activities occurring which would result in unacceptable adverse effects.
- 9.2 Council's Senior Environmental Engineering Officer has considered matters relating to site servicing, and is satisfied that with appropriate conditions of consent, combined with the requirements of RWSP, future development will likely achieve the environmental results anticipated by the RWSP.

10. Actual and Potential Effects on the Environment

- 10.1 Section 3 of the Act defines the term 'effect' as including –

- (a) any positive or adverse effects; and
- (b) any temporary or permanent effect; and
- (c) any past, present or future effect; and
- (d) any cumulative effect which arises over time or in combination with other effects – regardless of the scale, intensity, duration, or frequency of the effect, and also includes-
- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact.”

- 10.2 **Permitted baseline -**

In terms of determining whether the adverse effects of the subdivision are more than minor, section 104(2) of the Act provides that Council 'may' have regard to permitted baseline comparisons, i.e. a comparison between the environment as it exists at the time that the application is being considered, in addition to that which would exist if the land were used in a manner permitted as of right. Technically, because there is no permitted activity subdivision in the District, these standards cannot be taken into account in determining the permitted baseline. The standards relating to land use activities can however be considered with respect to determining the permitted baseline and development densities. In this instance it is considered appropriate to have regard to the limits upon the number of residential units.

The existing physical environment includes a site of 4.56 hectares. As outlined in the application, the site includes a single residential unit and sleepout on Lot 1. In terms of land uses, where a single residential unit or extensions to an existing residential unit are proposed in the Coastal Countryside Environment, it is regarded as a restricted discretionary activity under Rule 38.4.1. In assessing such an application, Council will have regard to the extent of visual intrusion from the building, colour and design, landscaping, effects on landscape values, size and shape of the site, alternative building locations, effects on the character of the coastal environment, location, visibility from road and public places, and the effect on the appearance of skylines and ridgelines. Where more than one residential unit is proposed and

a minimum net site area of 20 hectares cannot be met for each unit, consent is required as a discretionary activity.

Subject to the requirements of Rule 38.4.1, the District Plan also allows for:

- ♦ Building coverage over 5% of the net site area of the property. Hence building coverage up to 2,280 m² is permitted on site, with no requirement for any landscaping or screening to soften the effects of the built development where it is not associated with a residential activity.
- ♦ There is no restriction upon the level of earthworks allowed on site or cut and/or fill.
- ♦ One minor residential unit as a permitted activity within 15 metres of the residential unit on Lot 2 and there is no limit upon the number of non-residential accessory buildings provided that the bulk and location criteria are satisfied.

Therefore, if Council was to consider the permitted baseline applying this would not allow for any additional residential units within the Coastal Countryside Environment, with future residential development that is permitted under the District Plan limited to providing for a minor residential unit with a maximum gross floor area of 70 m² within 15 metres of the primary authorised dwelling on Lot 1.

Having regard to the pattern of mixed development in the receiving environment, which includes what is best described as scattered lifestyle type development in close proximity to the site, I believe that it is inappropriate to place significant emphasis upon the permitted baseline in the following assessment.

10.3 The adverse effects of the activity are considered to relate to landscape character and amenity, access and traffic effects, privacy, cumulative effects and site suitability. These matters are assessed as follows:

10.3.1 Landscape character and amenity

The landscape assessment undertaken by Council's consultant landscape architect Simon Cocker of Simon Cocker Landscape Architecture, dated the 30th March 2011, has had regard to the '*Landscape and Visual Impact Assessment*' prepared by Hawthorn Landscape Architects dated August 2010. Mr Cocker has visited and walked over the site, viewing it from the surrounding landscape. A copy of Mr Cocker's assessment is included in '*Attachment 2*'. Mr Cocker is of the opinion that the '*Landscape and Visual Impact Assessment*' is detailed and generally accurate, although consideration of a number of matters is required to ensure that effects on specific and identified individuals are no more than minor. These are:

1. Treatment of the western boundary of Lot 2 and the interface between the Lot 1 DP191024 access and future building on 'building development area A'.
2. A requirement for an arborist report to assess the existing pohutukawa within and around 'building development area B', define constraints to development, and specify construction methods and physical measures for protection of trees and ongoing management of trees.
3. Prescription of legal methods for protection of the pohutukawa within and around the 'building development area B'.
4. It is recommended that all mitigation measures set out in the '*Landscape and Visual Impact Assessment*' be adopted and their implementation be required by conditions of consent. The requirement for lodgement and approval of a detailed landscape mitigation plan should be included within the land use consent or the future building within Lot 2 and should reflect additional matters highlighted previously by Mr Cocker in his assessment.

I accept Mr Cocker's conclusion that if the above minor amendments are accepted it is considered that the proposal will have no more than minor adverse visual, visual amenity and natural character effects.

10.3.2 Access and Traffic Effects

Council's Senior Environmental Engineering Officer, Dean Murphy, is of the opinion that despite the number of users there would be little adverse effect on the safety or function of the rights of way.

Vehicle access is generally as per the existing right of way alignment, and provided that it is designed and upgraded to appropriate engineering standards to address sightline visibility, natural hazards, scouring and stormwater runoff, Mr Murphy is satisfied that the increase in traffic levels will be minor, with no adverse effects upon traffic safety or efficiency. There will be no adverse cumulative effects in this regard, with eight additional traffic movements per day (as anticipated for a new dwelling) likely to have minimal adverse effects upon the existing users. The potential for vehicle and pedestrian conflict is considered remote as the applicant proposes to establish passing bays.

Hence Mr Murphy does not consider it appropriate in this instance to require a full upgrade to comply with Council's Environmental Engineering Standards.

Mr Murphy has not raised concern with respect to on-site car parking and manoeuvring, with such details capable of being addressed at building consent stage.

10.3.3 Privacy

Some of the submitters have raised concerns with respect to the impact of future development upon adjacent properties and their privacy and outlook. Mr Cocker has addressed this as follows in his assessment of the 30th March 2011 (refer to 'Attachment 2'):

"Turning to the immediate neighbours, the potential effects resulting from the various elements will vary due to the visibility of those individual elements. Of the two identified BDA, Option A is the most visible. A building on this site would, as the LVIA notes, be visible to each of the three neighbouring property owners as they accessed their properties.

Detailed submissions have been received from all of these owners. The submissions from the owners of Lot 1 DP 191024 and Lot 2 DP 191024 (Britton and Ringer respectively) both cite potential adverse effects on visual amenity. The submission from the owner of Lot 3 DP 191024 (Reid) adopts the comments contained in the Britton submission.

A future building located on the Option A BDA would have the potential to be partially visible through intervening vegetation from the sleep-outs (mentioned in the Britton submission) on Lot 1 DP 191024, and also partially visible from Lot 3 DP 1091024 (Ringer property – refer to Photo 1), again through intervening vegetation. Experienced by occupants of these properties, these glimpse views would have the potential to change the perception of the amenity of the environment of the site, but not to a level that is more than minor. There may be potential for views, in combination with associated noise from the proposed development to increase potential amenity effects, but this report cannot consider other influencing factors beyond its scope.

As noted in the LVIA, views of a building on the Option A BDA will be available as neighbouring owners access their property. A building would be highly visible in this location – and in this respect would differ from the subtle integration (when experienced from the right of way) afforded the existing buildings.

The transitory views of additional built development will alter the perception of amenity for the neighbours, particularly for the owners of Lot 1 DP191024 who will pass alongside and to the rear of a building on the Option A BDA. For these owners it is considered that the overall potential adverse visual amenity effects resulting from a building in this location may be minor – moderate (more than minor under the RMA). The level of effect would, however depend on the manner in which the western façade of the building was treated, including the height to which the building extended above the existing cut and the treatment or delineation of the western boundary. Sensitive design with consideration of the amenity of users of the Lot 1 DP

191024 access could result in the level of effect being no more than minor. It is envisaged that sensitive design would include matters such as minimising the level of 'enclosure' and 'obstruction' created by fencing, building facades or roofs, and softening of built form using planting. This matter may be something the applicant wishes to address at the hearing.

For the remainder of the neighbours it is considered that the overall potential adverse visual amenity effects would be less than minor for the owners of Lot 3 DP 191024, and minor for the owner of Lot 3 DP191024.

A future building located on the Option B BDA would be hidden from views from the neighbour's properties, although the accessway – as delineated on the Landscape Plan contained in the LVIA – would be visible from Lot 3 DP 191024. The accessway is likely to earthworks particularly at its steeper western end where it climbs to proposed accessway D. The LVIA recognises that revegetation of the batters will be required.

The building would be visible to neighbours as they accessed their properties, but would not obstruct views to the bay."

Taking Mr Cocker's comments into consideration, one of the primary issues with regard to privacy would appear to relate to lighting spill, particularly in terms of vehicle movements on the right of way network. With respect to the coastal environment the effects of lighting are considered minor given the enclosed nature of the bay, and the proximity of the site to adjacent lifestyle development and the Living 1 Environment within the coastal settlement of Matapouri.

Having regard to the location and primary orientation of residential units on adjacent sites, combined with the land topography and the mosaic of vegetation which restrict views towards the proposed development areas on Lot 2, any adverse effects in terms of light spill upon adjacent properties will be transitory, i.e. in terms of car lights, or seen in the context of lighting associated with existing dwellings adjacent to the site. Hence any effects in this respect are regarded as minor. A condition of consent can be imposed requiring that there shall be no driveway/access lighting, with exterior lighting to be low level, down lighting only and directed away from property boundaries, so that light spill is avoided.

10.3.4 Cumulative effects

Dye v Auckland Regional Council [2002] 1 NZLR 337 is regarded as the leading case on cumulative effects. In considering the characteristics of cumulative effects, the Court stated "A cumulative effect is concerned with things that will occur rather than with something that may occur, that being the connotation of a potential effect... The concept of cumulative effect arising over time is one of a gradual build up consequence.

The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration."

When considered in combination with the effects of the other lifestyle development in the vicinity, there is the potential that the proposal could have adverse cumulative effects on the fragmentation of land and on local character in the coastal environment that is more than minor through the on going intensification of subdivision and development in this locality.

I am of the opinion that through the mitigation measures offered by the applicant and those landscaping requirements recommended by Mr Cocker, the subdivision offers the opportunity for future site development to be successfully integrated within the existing landscape. On this basis, I do not consider that there are likely to be any significant adverse cumulative effects that will result from the intensity of subdivision proposed, either in terms of the existing landscape, the local traffic environment or factors contributing to the local amenity (i.e. noise and privacy).

10.3.5 Site Servicing

Council's Senior Environmental Engineering Officer is satisfied that matters relating to site servicing can be addressed by conditions of consent, with any associated effects regarded as no more than minor. A copy of Mr Murphy's assessment is included in 'Attachment 9'.

- 10.4 On the basis of the above assessment, I am of the opinion that the adverse effects on the environment will be minor. Hence the proposal satisfies one of the thresholds of section 104D of the Act and Council can consider granting consent to the proposal.

11. Other Matters (Section 104(1)(c))

11.1 Rezoning within the Locality – Coastal Management Strategy (CMS)

In September 2002, Council adopted the 'Whangarei Coastal Management Strategy', (CMS) establishing a strategic, integrated framework for managing the protection, use and development of the coastal environment within Whangarei District and to provide direction to many of Council's functions and documents including the District Plan. Following this, the 'Structure Plan: Matapouri-Woolleys Bay', dated November 2008 and adopted on the 11th February 2009, was introduced to integrate the protection, use and development of land and resources, and set out how to implement the CMS vision and mission statements at a local level.

The Structure Plan report identifies the following direction for development in Matapouri/Woolleys Bay – providing a clustered residential settlement within the Bay; promoting development that provides for protection of vegetation and landscape values in the hills and hinterland; using topography and natural features to guide boundaries of development; and protecting significant viewpoints, ridgelines and coastal margins viewed from the sea and other key public vantage points (including the road).

The following provides guidance on the methods/actions to be undertaken to achieve residential growth and development within Structure Plan area and of relevance to the current proposal –

- ♦ Expanded low-density residential settlement surrounding the existing settlement areas. This would include identification of long term urban 'limits' for residential growth; identification of a long-term growth corridor at Woolleys Bay; confirmation of topography and land suitability to confirm boundaries of 'village clusters', and change to the District Plan to provide for residential expansion.

The 'Matapouri 20 Year Structure Plan Concept' includes the site within an intended 'Coastal Countryside Zoning (rural living with landscape and bush protection)' area. This concept is however subject to relevant detailed investigation, design, survey and consenting/statutory processes. While not a legal document, the provisions in a structure plan may be considered as 'other matters' when assessing a resource consent application.

The Council's Team Leader Policy, Nick Williamson, has confirmed that Council is not actively progressing the Structure Plan at this point in time. Therefore having regard to the current status of the Structure Plan and recognising that further feasibility studies may alter the indicative zonings, I am of the opinion that virtually no weighting should be afforded to the Structure Plan in this assessment. Mr Williamson concurs with this approach. It is however recognised that Council will be conducting a review of the structure plan area that may or may not lead to a change of rules applying to the subject site and the study is considered relevant in that it has arisen as a consequence of the ongoing pressure for subdivision in the area.

11.2 Precedent effects

The recent Environment Court decision of *Berry v Gisborne District Council [2010] 16 ELRNZ 88* comments on precedent effects as follows:

"We have said in many other decisions, and must say again, that this argument does tend to be overused, and needs to be treated with some reserve. The short and inescapable point is that each proposal has to be considered on its own merits. If a proposal can pass one or other of the s104D thresholds, then its proponent is entitled to have it considered against the range of factors in Part 2 and s 104. If it does not measure up, it will not be granted. If it does, then the legislation specifically provides for

the possibility of it being granted a consent as a true exception to what the relevant Plan generally provides for....

Nevertheless, as the Judgment goes on to say, a decision maker in such an application would look to see whether there might be factors which take the particular proposal outside the generality of cases.”

“Only in the clearest cases, involving an irreconcilable clash with the important provisions, when read overall, of the Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined.”

I have a concern that the application may have wider implications in undermining the future development pattern anticipated by the District Plan in the Coastal Countryside Environment. These concerns extend to the likelihood that granting consent to the subdivision layout as proposed may lead to further dispersed and uncoordinated growth via the lodgment of similar applications.

Whilst the District Plan contains some objectives and policies discouraging applications of this type, the site is considered unique in that:

- ♦ the development will not establish any significant change in the natural character associated with Horseshoe Bay.
- ♦ the property is considered a discrete site that is contained by the bush and landform, and
- ♦ with respect to maintaining and enhancing amenity values, the development density proposed is not contrary to the pattern of mixed development already existing in the locality, with amenity values unlikely to be significantly compromised.

It is therefore considered that a distinction can be drawn between land in the general District included within the Coastal Countryside Environment and the subject site.

Having regard to these factors and section 104 (1)(c), the application is considered unlikely to have wider implications beyond the immediate area surrounding the site and the integrity of the District Plan is not considered an issue under sections 104 (1)(d) and (1)(c).

12. Conclusion

- 12.1 Given its non-complying activity status, in order for Council to consider granting consent the application must pass one of the thresholds under section 104(D) of the Resource Management Act 1991. The two limbs of section 104(D) require Council to assess whether the effects of the proposal will be no more than minor, or whether the proposal will not be contrary to the relevant objectives and policies of the operative Whangarei District Plan. I believe that the application satisfies each of these limbs and therefore Council can consider granting consent to the proposal.
- 12.2 Having considered the application against the relevant provisions of the Act, it is therefore recommended that this application be granted, subject to conditions relating to the width of the existing esplanade reserve, engineering requirements for the rights of way and sightline visibility, easements, tree protection and management, landscape and visual impact mitigation, weed and animal pest management and monitoring, and conservation covenant B which will avoid, remedy or mitigate any adverse effects of the activity on the environment.

Recommendation

THAT pursuant to sections 104, 104B, 104D, 108 and 220 of the Resource Management Act 1991, Commissioner Greg Hill **grants** consent to Peter Black (SD1000148), subject to conditions that follow, to subdivide a 4.5652 hectare site in the Coastal Countryside Environment, being Lot 4 DP 191024, to create Lot 1 of 1.6 hectares and Lot 2 of 2.38 hectares (net).

Lot 2 includes an existing conservation covenant and the applicant is proposing to covenant 2,370 m² of bush within Lot 1 adjacent to Matapouri Road, shown as restrictive land covenant B.

The site has a zoning of Coastal Countryside Environment under the operative provisions of the Whangarei District Plan and is not subject to any resource notation overlays. The proposal does not comply with the controlled activity provisions relating to allotment area and is a non-complying activity on this basis. Given the standard of access proposed, it has a restricted discretionary activity status under the property access and formation rules.

Conditions:

1. That before the survey plan is sealed the following requirements are to have been satisfied:

- (a) That subject to incorporating any changes necessitated by the following conditions of consent, the survey plan submitted for approval shall be in general accordance with the layout shown on the subdivision plan '*Proposed subdivision of Lot 4 DP 191024, Horseshoe Bay*' prepared by Simpson Shaw and Co, dated December 2010 and revised 23rd December 2010, reference 20045-21 (copy attached to this decision).
- (b) That written evidence shall be provided to the satisfaction of Council's Resource Consents Manager or their delegated representative that esplanade reserve Lot 3 DP 79512 has a minimum width of 20 metres from the landward side of Mean High Water Springs. Where this cannot be demonstrated, the survey plan shall show additional land vested to provide a minimum width of 20 metres.
- (c) The consent holder shall submit a detailed set of engineering plans prepared in accordance with Council's Environmental Engineering Standards (2010 Edition). The engineering plans are to be submitted to Council's Senior Environmental Engineering Officer for approval.

It is to be noted that certain designs may only be carried out by an Independently Qualified Person (IQP) or Chartered Professional Engineer (CPEng) working within the bounds of their assessed competencies. IQP's must have been assessed by Council and hold a current status to submit design work.

All work needing design/certification by a Council approved IQP/CPEng will require completion of a producer statement (design).

Plans are to include but are not limited to:

- i Design details of the upgrading of right of way A in accordance with the engineering assessment report compiled by Hawthorne Geddes Engineers and Architects Ltd, dated the 2nd December 2010, including a typical cross section and four passing bays.
- ii Design details of retaining and/or earthworks in the area of the existing failed timber crib wall on right of way A to be certified by a Chartered Professional Engineer.
- iii Details of vegetation clearance with the Matapouri Road reserve to achieve a complying sight distance of 65 metres to the south.

- (d) The consent holder shall create easements in gross over any overland stormwater flow paths. The easements are to be of sufficient width to cater for the 1% (+20% to cater for climate change) Annual Exceedance Probability (AEP) to the approval of Council's Senior Environmental Engineering Officer.

Note: Overland flow paths are to be assessed in accordance with Section 4.9 of Council's Environmental Engineering Standards (2010 Edition) and are to be certified by an IQP/CPEng.

- (e) The consent holder shall provide Council with three proposed access names in writing for right of way A, in accordance with Council policy, and in order of preference, giving reasons for each proposed name. A clear plan detailing the route of the access should also be submitted and any evidence of consultation relating to the proposed names. Please refer to the road naming policy and guidelines available on Council's website www.wdc.govt.nz.
- (f) The consent holder shall provide written confirmation from electricity and telecommunications utility service operators of their consent conditions in accordance with Council's Environmental Engineering Standards (2010 Edition) and show necessary easements on the survey plan to the approval of the Subdivision Officer.
- (g) That all easements are granted and reserved.
- (h) That the consent holder shall submit to Council for approval by the Resource Consent Manager or their delegated representative, a detailed '*Tree Protection and Management Plan*', prepared by a suitably qualified and experienced arborist to detail the following matters:
- ◆ Identification and evaluation of the existing pohutukawa identified for protection within and in the immediate vicinity of the 'building development area B' on Lot 2.
 - ◆ Specifying of all constraints to development of 'building development area B' so that adverse effects on identified trees are avoided or mitigated.
 - ◆ Specifying of methodology for construction and development around and in proximity to identified trees so that adverse effects on identified trees are avoided or mitigated.
 - ◆ Detailing of ongoing management required to ensure the ongoing protection and health of the identified trees.
- (i) That the consent holder shall submit to Council for approval by the Resource Consent Manager or their delegated representative, an Landscape and Visual Impact assessment prepared by a suitably qualified landscape architect based on the '*Landscape and Visual Impact Assessment*' prepared by Hawthorn Landscape Architects dated August 2010 and submitted with the application. The assessment shall address the matters identified in the letter from Simon Cocker Landscape Architecture, dated 30th May 2011; being methods for mitigating the adverse effects on amenity for users of the Lot 1 DP191024 access and methods for mitigating the adverse effects on amenity for users of the beach access track.
- (j) Conservation covenant B is to be shown on the survey plan as either subject to a conservation covenant under the Reserve Act 1977, Queen Elizabeth II National Trust Covenant or other similar legally binding covenant. Stock shall be permanently excluded from these areas.
- (k) That a comprehensive integrated '**Weed and animal pest management and monitoring plan**' shall be designed by a suitably qualified ecologist and implemented, targeting possums, rats, mustelids, feral cats and other mammalian predators, as well as monitoring for any future invasions of ecologically threatening pest plants. It shall be submitted for the prior written approval of Council's Resource Consents Manager or their delegated representative.

The Plan shall identify some practical methods to reduce the risk of introducing pest plants into the subdivision i.e. to reduce the risk of spreading plant pests, all earthworks equipment and machinery is to be washed down of soil from other site prior to entering the site and any brought in fill or access formation materials shall be free of weeds and contaminants. Details of the methods of ongoing control of all animal pests and weeds that pose a threat to the ecological values of the covenanted area shall be included.

It shall outline an intensive initial pest eradication plan, as well as a five year pest eradication plan.

It shall not be limited to the covenant areas but shall cover the entire property. It shall include an achievable method of monitoring results and reporting back to the Council for the bond release process. It shall include a costing schedule for the purposes of a bond (the bond will equate to 1.5 times the cost of carrying out and completing all works required under this condition). It shall include a five year monitoring programme.

With respect to the conservation covenant areas, where a Queen Elizabeth II National Trust Covenant is entered into, the Council shall accept evidence of the covenant agreement that will specify the responsibilities of the landowner.

2. Before a Certificate is issued pursuant to section 224(c) of the Act the following requirements are to have been satisfied:

- (a) All work on the approved engineering plans in condition 1(c) is to be carried out to the approval of Council's Senior Environmental Engineering Officer or their delegated representative.

All work needing design/certification by a Council approved IQP/CPEng will require completion of a producer statement (construction).

All staged details of construction works (e.g. road construction) shall be accompanied by the necessary test results in accordance with Council's Environmental Engineering Standards (2010 edition) requirements and good engineering practice, to the approval of Council's Senior Environmental Engineering Officer.

In the case of works to remain in private ownership, these may be inspected and approved by a Council approved IQP who has been certified to design/construct such works. A producer statement (construction) is to be provided by the Council approved IQP, along with copies of all test results/photographs etc. The Senior Environmental Engineering Officer is to be advised of any necessary inspections/testing of private works a minimum of 24 hours before they take place in order that the Senior Environmental Engineering Officer may observe the inspection/testing if so desired.

All works that are to be vested in Council require the presence of the Senior Environmental Engineering Officer their delegated representative at all inspections/testing.

Failure to comply with these requirements may result in the work not being accepted as complying with the resource consent conditions and Council's Environmental Engineering Standards (2010 Edition).

No construction works are to commence onsite until the engineering plans required in condition 1(c) have been approved and all associated plan inspection fees have been paid.

The consent holder shall notify Council, in writing, of their intention to begin works, a minimum of seven days prior to commencing works. Such notification shall be sent to the Senior Environmental Engineering Officer and include the following details:

- i. Name and telephone number of the project manager.
- ii. Site address to which the consent relates.

- iii. Activities to which the consent relates.
- iv. Expected duration of works

A copy of the approved engineering plans and a copy of the resource consent conditions and the above correspondence are to be held onsite at all times during construction.

- (b) The consent holder is to submit a Road Opening Notice application for all works carried out within Council road reserve in accordance with Council's Environmental Engineering Standards (2010 Edition) to the approval of Council's Subdivision Officer.
- (c) That the consent holder shall submit written confirmation from electricity and telecommunications utility services operators that their conditions for this development have been satisfied in accordance with Council's Environmental Engineering Standards (2010 edition) to the approval of the Senior Environmental Engineering Officer.
- (d) The consent holder shall provide written confirmation from a Licensed Cadastral Surveyor that all services and accesses are located within the appropriate easement boundaries.
- (e) That any damage to the road carriageway formation, berm, and any reticulated services by any construction works associated with the subdivision shall be reinstated at the expense of the consent holder.
- (f) The consent holder must supply and erect the private access name sign in accordance with sheet 25 of Council's Environmental Engineering Standards (2010 Edition), inclusive of the approved access name.
- (g) The following completion of construction the consent holder shall provide a works producer statement/s from the suitably qualified contractors who completed the works certifying that the works have been completed in accordance with the approved engineering plans, Council's Environmental Engineering Standards (2010 Edition) and best trade practise to the satisfaction of the Senior Environmental Engineering Officer or their delegated representative.
- (h) That a Conservation Covenant pursuant to section 77 of the Reserves Act 1977 in respect of Covenant B (*refer to condition 1(l)*) are to be prepared and registered by the Council at the consent holder's expense. The Conservation Covenant is to allow for:
 - i. Pest and weed management is the responsibility of the land owner, and shall be undertaken in accordance with the '**Weed and animal pest management and monitoring plan**' approved in *condition 1(h)*. Covenanted areas will be inspected periodically by the Council or their chosen representative.
 - ii. Access to the covenanted area by the landowner to continue by way of any existing track(s) and these track(s) can be maintained to existing standards should the need arise, including minor clearing of vegetation over, and/or adjacent to, the existing track(s); and
 - iii. Restoration and/or enhancement and/or pruning of vegetation cover in the covenanted area to be undertaken by the landowner should the need arise provided prior approval has been obtained from the Council's Resource Consents Manager or their delegated representative.
 - iv. The location of dripper lines for effluent disposal within the covenanted area.

A formal request should be made to the Council to have the covenant prepared at the appropriate time.

OR

A Queen Elizabeth II National Trust Open Space Covenant is to be registered on the title in respect of Covenants B and C referred to in *condition 1(f)*. The applicant is to provide the

Council with the written confirmation from the Queen Elizabeth II National Trust that these areas have been accepted for the purposes of an Open Space Covenant.

- (i) Complete all initial works as shown on the approved '**Weed and animal pest management and monitoring plan**' as approved under *condition 1(m)*. Confirmation of completion of all initial works is to be provided to the Councils Resource Consents Manager by way of a written statement from a suitable qualified ecologist confirming that all works have been completed and that suitable measures are in place to ensure compliance with the Plan, as defined in the approved Plan.
- (j) That pursuant to section 108(1)(b) of the Act, a cash or bank bond shall be entered into in respect of the approved '**Weed and animal pest management and monitoring plan**' (*refer condition 1(m)*) to cover ongoing implementation and maintenance costs over a 5 year period from the date of issue of the section 224(c) certificate. The value of the bond shall be based on the information supplied in the approved **Weed and animal pest management and monitoring plan** and calculated by a suitably qualified person. Details of the bond and operations covered by the bond are to be submitted to the Resource Consents Manager for approval.

The bond shall be prepared at the consent holder's expense. The bond may be either a cash bond or bond that is guaranteed by a recognised trading bank in New Zealand. The bond shall be reduced by an amount up to 20% in any one year on certification by an appropriately qualified person that any works/management, replacement planting or supplementary planting identified in the plan has been effectively carried out.

Upon satisfactory proof of transfer of the title by the consent holder to a new owner of any one or more of the lots, the Council shall accept from the new registered proprietor a bond in substitution of the existing bond prepared at that new registered proprietor's expense and to the reasonable satisfaction of the Council's solicitor. Such bond shall include the same terms and conditions as are included in the initial bond securing performance of the '**Weed and animal pest management and monitoring plan**' for the subject lot. The substituted bond may be either a cash bond or a guaranteed bond at the discretion of the new proprietor's.

Note: This does not apply to any Queen Elizabeth II National Trust Covenant that is subject to a separate agreement with the Trust.

- (k) That the following conditions are to be complied with by the consent holder and/or their successor in title to the respective lots on a continuing basis and shall be the subject of a consent notice pursuant to section 221 of the Resource Management Act 1991 to be prepared at the consent holders cost and registered on the titles to the relevant allotments referred to in the conditions:
 - i. Any development to be undertaken on the lots shall comply with the restrictions and recommendations identified in the engineering assessment report compiled by Hawthorne Geddes Engineers and Architects Ltd, dated the 2nd December 2010, unless an alternative engineering report prepared by a suitably experienced Chartered Professional Engineer is approved in writing by Council.
 - ii. Where any dwelling is constructed and utilises on-site waste water disposal, a maintenance contract for the on-site wastewater system shall be in place at all times which includes inspections and maintenance of both the wastewater treatment and disposal systems.
 - iii. At the time of building consent, provide suitable evidence to illustrate that stormwater disposal across any boundaries will not exceed that which existed pre-development for storm events up to and including the 1% annual exceedance probability (+20% to accommodate for climate change).
 - iv. Upon construction of any habitable dwelling, sufficient water supply for fire fighting purposes is to be provided by way of tank storage or other approved means, and that this water supply be accessible by fire fighting appliances in

accordance with Council's Environmental Engineering Standards (2010 Edition) and more particularly with the "NZFS Fire Fighting Code of Practice SNZ PAS 4509:2008".

- v. No structures shall be erected outside of 'building development areas A or B' as delineated in the '*Landscape and Visual Impact Assessment*' approved under condition 1(k), and any trees to be planted outside of the curtilage area are to be indigenous species appropriate to the ecological district. Land outside of the curtilage areas should be managed to allow regeneration of indigenous species and control exotic weed species.
- vi. Built development shall occur only within either of options A and B (but not both), with the future landowner nominating to restrict all built development to one of the development areas within the lot.
- vii. That, at the time of lodging a land use consent for construction of a dwelling within a Building Development Area, the owner of Lot 2 shall submit a detailed '*Mitigation planting and maintenance plan*' in support of the application for the purpose of mitigating effects of the building and its access. The plan shall be prepared by a suitably qualified and experienced landscape architect and shall be based on the '*Landscape and Visual Impact Assessment*' approved under condition 1(k).

The plan shall detail the following:

- a. Location and extent of existing vegetation identified for retention;
- b. The size, number, position/extent, spacing and species of all proposed planting;
- c. The planting programme and methodology including details of staking and mulch if proposed;
- d. Proposed methodology for the revegetation of earthworks batters;
- e. Details of ongoing maintenance for the initial establishment period of 5 years, and subsequent ongoing maintenance in perpetuity;
- f. A schedule of costs of the works, including the five year establishment period.

All plants shall be ecosourced using stock from the ecological district. Plant density shall be a minimum of 5000sph.

No 'unwanted' plant species shall be introduced or kept on the site (NRC, ARC and Biosecurity NZ pest plant lists).

- viii. That all works required under the above '*Mitigation planting and maintenance plan*' are to be undertaken by the end of the planting season (March – September) following the occupation/use of the dwelling unit and/or completion of the earthworks on the site (whichever is considered to be the most practical by the Council's Resource Consents Manager) and shall be maintained in perpetuity.
- ix. That all development within Lots 1 and 2 shall be designed and constructed in accordance with the matters detailed in section 6.0 of the '*Landscape and Visual Impact Assessment*' approved under condition 1(k) to the satisfaction of Council's Resource Consents Manager or their delegated representative.
- x. That all built residential development within Lot 2 shall be designed and constructed in accordance with the matters detailed in the '*Tree Protection and Management Plan*', approved under condition 1(k) to the satisfaction of Council's

Resource Consents Manager or their delegated representative.

- xi. There shall be no driveway/access lighting to Lot and within Lot 2, with exterior lighting to be low level, down lighting only and directed away from property boundaries, so that light spill is avoided.
- xii. That the trees identified within the '*Tree Protection and Management Plan*', approved under condition 1(k) shall be retained and managed on an ongoing basis in accordance with that plan to the satisfaction of Council's Resource Consents Manager or their delegated representative.

Advice Notes:

1. Building Consents may be required for retaining structures.
2. All earthworks are required to comply with section 32.2 (Environmental Standards for Earthworks) of the Regional Water and Soil Plan for Northland, noting erosion and sediment control, and dust suppression requirements.
3. If any activity associated with this proposal, such as earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority for the New Zealand Historic Places Trust must be obtained for the work to proceed lawfully. An Authority is required whether or not the land on which an archaeological site may be present is designated, resource consent or building consent has been granted, or the activity is permitted under the District or Regional Plan.

Prior to the commencement of any works, a copy of the '*Accidental Discovery Protocol*' that is available from the New Zealand Historic Places Trust shall be made available to all contractors.

4. Section 120 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.
5. This resource consent will expire five years after the date of commencement of consent unless, before the consent lapses:
 - (a) It is given effect to before the end of that period; OR
 - (a) An application is made to the Council to extend the period after which the consent lapses and the Council decides to grant an extension. The statutory considerations that apply to extensions are set out in section 125(1)(b) of the Resource Management Act 1991.
6. The Consent Holder shall pay all charges set by the Council under section 36 of the Resource Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The applicant will be advised of the charges as they fall.
7. Section 357B of the Resource Management Act 1991 provides a right of objection in relation to the imposition of additional charges or recovery of costs.

8. Financial Contributions

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 relates 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 this consent relates or, in the case of a subdivision, prior to the issue of a Section 224(c) Certificate. Further information regarding Council's Development Contributions

Policy may be obtained from the Long Term Community Consultation Plan (LTCCP) or Councils web page at www.wdc.govt.nz.

Reasons for the Recommendation

Pursuant to Section 113 of the Resource Management Act 1991 the reasons for the decision are:

1. Given its non-complying activity status, in order for Council to consider granting consent the application must pass one of the thresholds under section 104(D) of the Resource Management Act. The two limbs of section 104(D) require Council to assess whether the effects of the proposal will be no more than minor, or whether the proposal will not be contrary to the relevant objectives and policies of the District Plan. The application satisfies each of these limbs and therefore Council can consider granting consent to the proposal.
2. The site is within a coastal area where the natural character has been modified and it does not have outstanding landscape values. The scale of the subdivision, and the building and landscape mitigation measures required as conditions of consent, will ensure that the proposal is in accordance with the provisions/intent of the Resource Management Act 1991, New Zealand Coastal Statement 2010, and operative Whangarei District Plan relating to the protection of the natural character of the coastal environment from inappropriate subdivision and development.
3. On the basis of the mitigation measures volunteered by the applicant, the development is regarded as consistent with the objectives and policies of the operative Whangarei District Plan and there are no apparent conflicts with Part 2, 'Purpose and Principles', of the Resource Management Act 1991.
4. The development is also regarded as achieving the relevant issues, objectives and policies of the Regional Policy Statement for Northland.
5. Having regard to the existing development pattern, the additional bush protection/enhancement volunteered by the applicant which will increase local amenity values and strengthen the landscape pattern, and the development restrictions that will be imposed, the potential adverse visual effects and adverse effects on rural/coastal amenity will be no more than minor.
6. There are unlikely to be any significant adverse cumulative effects that will result from the intensity of subdivision proposed, either in terms of the existing landscape, the local traffic environment or factors contributing to the local amenity (i.e. noise and privacy).
7. 'Rule 38.4.1 Residential Units' of the operative District Plan will provide for more specific assessment of the effects of future residential buildings on the lots through the land use resource consent process, thereby ensuring the successful integration of future built structures within the local environment. This subdivision proposal will not override this requirement. In assessing such applications, the Council will have regard to the extent of visual intrusion from the respective building, colour and design, landscaping, effects on landscape values, size and shape of the site, alternative building locations, effects on the character of the coastal environment, location, visibility from road and public places, and the effect on the appearance of skylines and ridgelines.
8. It is not considered that the subdivision would undermine the safety and efficiency of traffic on the rights of way.
9. The development of the property as proposed would be unlikely to have wider implications beyond the site, and precedent effects and the integrity of the District Plan would not be a significant issue.

Attachments:

1. The application and further information
2. Landscape assessment by Simon Cocker Landscape Architecture, dated 30th March 2011

