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WHANGAREI
DISTRICT COUNCIL

Notice of Meeting

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

**Thursday
15 April 2010
9.15 am**

**Application by
JH & LK Henderson**

**Commissioner
Les Simmons**

Vision Statement

To be a vibrant, attractive and thriving District
by developing sustainable lifestyles based around
our unique environment; the envy of New Zealand
and recognised world wide.

Hearings Commissioner

Resource Management Act 1991

Hearing By: Hearings Commissioner Les Simmons for the Whangarei District Council of a retrospective restricted discretionary activity land use consent application by J.H & L.K Henderson for a pavilion and bathroom additions to a residential unit in the Coastal Countryside Environment at 957 Cove Road, Waipu Cove, legally described as lot 1 DP 308134, CT 31594.

Evidence By: Heather McNeal
B.A (Geog), Dip T.P, MNZPI
Team Leader (Consents)
Whangarei District Council

File Ref: LU0900192 P108881

Dated: 29 March 2010

1. The Proposal

- 1.1 Retrospective land use consent has been sought by J.H & L.K Henderson, the owners of Lot 1 DP 308134, (a coastal property at 957 Cove Road, approx. 500m south of Waipu Cove), for single-storey bathroom additions (approx. 5m x 4.5m or 22.5m² in area) to the eastern end of their existing dwelling and an additional detached building, described as a 'pavilion' located approximately 14.5m forward of the eastern end of the dwelling. Construction of these works has been completed.
- 1.2 The pavilion has an upper floor area of 60m² used for lounge, bedroom and bathroom purposes, plus a north-facing balcony (approx. 2m wide by 9.5m long or 19m² in area.). The lower floor is currently used by Mrs Henderson as a single room art studio and gym. There is no internal connection between the two levels of the building.
- 1.3 The design of the two storey pavilion includes a pitched roof that follows the slope of the terrain. The maximum height of the building is thus approx. 6.5m (max) above ground level, based on the rolling ground method of measurement. Materials (including horizontal weatherboards on the upper storey and long-run roofing) and recessive blue/green colour scheme complement those of the original dwelling.

Background to the proposal

- 1.4 The three lots (Lots 1, 2 and 3 DP308134), including the 2 lots owned by the Hendersons and Oman Holdings to the east (Lots 1 and 2 respectively) resulted from a subdivision consent granted on 12 February 2002. The dwelling on the Henderson's site was constructed in 2003/2004 and was permitted at the time of construction. However, it was subject to a consent notice (CO5423951.2) imposed on the subdivision, requiring construction of buildings within specified house sites (5 options) or alternative sites where approved by a geotechnical engineer and provision of a further landscape assessment plan. In addition, Lots 1 and 2 were subject to a requirement for buildings to use recessive colours with a reflective value of less than 40 percent.

- 1.5 The requirement for resource consent for residential units in the Coastal Countryside Environment (rule 38.4.1) stems from the Environment Court decision (*Director General of Conservation v Whangarei District Council (A024/2006)*) dated February 2006 which came into effect on 16 March 2006, the date that the District Plan was amended and became operative.
- 1.6 As detailed in paragraphs 2.1 and 2.2 of the applicant's AEE, building consent for the Hendersons' pavilion and bathroom additions was issued by Council on 12 April 2007 without resource consent. This was due to Council's practice at the time in interpreting rule 38.4.1 for the construction of a residential unit in the Coastal Countryside Environment to apply the rule only to new dwellings and not additions to such dwellings or residentially-related accessory buildings such as studios, garages or carports.
- 1.7 The current retrospective resource consent application resulted from an Application for Declaration pursuant to section 313 of the Resource Management Act 1991, (ENV-2008-AKL-000177), made by the adjoining neighbours (Oman Holdings Limited) on 16 June 2008. Copies of the two Environment Court decisions and a Court minute relating to this case are included in the current application. The wording of the declaration issued by the Environment Court on 31 July 2009 was:
- "That construction of a new pavilion building by John and Linda Henderson on their property at 957 Cove Road, Waipu, which new building has become one of a group of buildings making up a residential unit on the site, requires restricted discretionary consent under Rule 38.4.1 of the Whangarei District Plan."*
- 1.8 The above wording was identical to that applied for by Oman Holdings Limited in its declaration proceedings and did not include a specific ruling on the issue of additions to the existing building at 957 Cove Road requiring restricted discretionary activity, since no declaration had been specifically sought on this issue. Council now interprets the rule as per the declaration.
- 1.9 As a result of the Court's findings, Council has re-examined its practice in respect of 'residential units' in the Coastal Countryside Environment including a review of building consents issued prior to the Court proceedings and the seeking of retrospective resource consent application from persons whose buildings had not previously been considered to require resource consent. It is Council's current practice that additions to residential units in the Coastal Countryside Environment (and buildings such as garages and carports ancillary to residential activity) require restricted discretionary activity consent in terms of rule 38.4.1 of the District Plan.
- 1.10 As a result of the declaration, the Hendersons have lodged a retrospective resource consent application, including a landscape assessment, addressing the effects of both the pavilion and bathroom additions. Paragraphs 2.7 and 2.8 of the application provide reasons for inclusion of both the pavilion and the bathroom in the same application, citing the possible argument that the latter is part of the group of buildings making up the residential unit, and alignment with Council's current practice deeming such additions to be a restricted discretionary activity.
- 1.11 A copy of the application including an Assessment of Environmental Effects by Phillipa Campbell and an Assessment of Landscape Effects by landscape architect Stephen Brown of Stephen Brown Environments Ltd dated November 2009 are included as **Attachment 1**. An independent 'Landscape and Visual Effects Assessment Review' undertaken on behalf of Council by urban designer/landscape architect Rebecca Skidmore of R.A Skidmore Urban Design Ltd. is included as **Attachment 2**.

2. The Site and Locality

- 2.1 The 2.553 hectare site enjoys an elevated position approximately 500m east of Waipu Cove, a popular coastal settlement. It is separated from Bream Bay by a rocky shoreline and cliff, and an esplanade reserve containing a scattering of pohutukawas. To the west of the site, linking with the esplanade reserve, is a recreation reserve of 5.1243 ha which is predominantly in bush. An adjacent estuary inhibits easy public pedestrian access from Waipu Cove.
- 2.2 The original 250m² dwelling on the site, constructed in 2003/2004, is set back a minimum of 21m from the inland boundary of the esplanade reserve and is generally linear in form and partially split-level. The bathroom extension subject to the current application comprises a 22.5m² addition to the eastern end of that building, while the rear of the pavilion is located approximately 14.5m away, closer to the coast. Both structures incorporate similar design features (e.g roof pitch) and materials. A lawn and a boardwalk separate the pavilion from the dwelling. Landscaping implemented in association with the construction includes karakas, puriris and Norfolk Island pines, with larger specimens between the pavilion and the eastern boundary.
- 2.3 The site is the western-most of three coastal sites approved for subdivision on 12 February 2002 (Council reference RC36108 – **Attachment 3**). All three lots have frontage to the esplanade reserve in the north and Cove Road in the south, (approx 300m away). Access is via a long common right-of-way off Cove Road. To the immediate east of the Hendersons' property is Lot 2 DP 30813, a site of 2.8600 hectares owned by the submitters (Oman Holdings Limited), and occupied by a large dwelling and terrace, with a swimming pool and associated retaining wall extending across its frontage.
- 2.4 Beyond the submitters' site, to the east, is Lot 3 DP 30813 which was the subject of a restricted discretionary activity resource consent (RC41041) granted on 26 September 2008 for a new residential unit, replacing an existing dwelling higher up the slope. The building, which is currently under construction, has been designed to step down the site, to the north. (Refer resource consent and plans included as **Attachment 4**). Two additional sites to the west form part of this coastal residential enclave, with all dwellings positioned close to the coastline, with expansive views over the ocean.
- 2.5 The site and the locality generally are zoned Coastal Countryside Environment under the Operative Plan and are not classified as 'Notable Landscape' or 'Outstanding Landscape' although the headland at the eastern end of Waipu Cove (100m west of the Henderson's site) has a 'Notable Landscape Area' notation. The broader landscape area encompassing the site is classified in the Whangarei Landscape Assessment Report (WLAR) prepared by LA4 Landscape Architects in 1995 as comprising *rocky coast interspersed with beaches* (coastal landscape unit C23). It has a landscape sensitivity rating of 5 (on a scale of 1-7) which is not sufficient to meet district plan Notable Landscape or Outstanding Landscape classifications that require a ranking of 6 or 7.
- 2.6 I have visited the site on two occasions – firstly in connection with the declaration proceedings and secondly in March 2010. Photographs of the site and locality are included in **Attachment 5**. GIS information (including aerial map and parcel lot size/density plans) is included in **Attachment 6**.

3. Limited Notification Process

- 3.1 The application was received on 27 November 2009, (i.e post 1 October 2009), and is therefore subject to the provisions of the Resource Management Simplifying and Streamlining Amendment Act 2009. Pursuant to sections 95A-95F a consent authority may, using its discretion, decide whether to notify an application for resource consent.

Where a consent authority decides under section 95A that the effects will not be more than minor and an application is not publicly notified, it is required to determine whether there are any affected persons in relation to the activity to determine whether limited notification is required.

- 3.2 No details of consultation or any written approvals were submitted with the application, with paragraph 8.1.3 of the application stating: *"In this particular application the neighbours have indicated to the applicant that they are an affected party and as a result of the situation surrounding this application, and outlined in section 2.0 of this report, written approval has not been sought."*
- 3.3 On 21 December 2009 it was determined by Council's Resource Consents Manager (Alister Hartstone) pursuant to sections 95B and 95E of the Act that the application proceed on a limited notified basis because:
- (i) *The effects of the proposal are assessed overall as being not more than minor but minor in relation to the immediate neighbours to the east in terms of visual intrusion of the pavilion.*
 - (ii) *The written approvals from all persons considered to be adversely affected by the activity, (namely Oman Holdings Limited), have not been obtained.*
- 3.4 On 22 December 2009, a copy of the application was served on a limited notification basis on the one party determined to be affected (i.e Oman Holdings Limited) with submissions closing on 5 February 2010. A submission (**Attachment 7**) was received from Oman Holdings Limited on 4 February 2010.
- 3.5 The submission opposes the application *"in its entirety"*, with nine grounds of opposition, summarised as follows:
- Contrary to objectives and policies of district plan (particularly those in Parts 5 (amenity values), 7 (subdivision and development) and 10 (Coastal Environment.)
 - Failure to enhance the environment of the immediate vicinity or the coastal environment in general, and creation of effects for submitters' property;
 - Adverse effects on amenity values of the immediate environment, particularly on the visual amenity and natural character of immediate environment enjoyed by the submitters.
 - Undue compromise of outlook from submitters' land, and incompatibility with character and amenity of surrounding environment.
 - Development contrary to character of locality and creation of conflict of incompatible land use with adjoining property.
 - Inappropriateness of proposed structure within natural character of the coastal environment at locality; high visibility from adjoining public esplanade reserve; adverse effects on enjoyment of the esplanade reserve and adjoining coastal environment by the public.
 - Adverse effect of pavilion on ridge landform.
 - Inability for adverse effects to be adequately mitigated.
 - Deficiencies of application documentation:
 - failure to consider alternative locations for pavilion;

- Application of an erroneous permitted baseline analysis;
 - Improper weighting exercise undertaken by landscape architect in attempt to downplay or minimise the adverse visual effects
- Overall, failure to meet sustainable management standard of the Act, contrary to sections 5, 6 and 7 of the Act and objectives, policies and assessment criteria of the district plan; inability to avoid, remedy or mitigate adverse effects; and failure to meet the purposes and principles of the Act.

The relief sought in the submission is: "*Decline the proposal in its entirety.*"

- 3.6 The hearing date for the application was initially tentatively scheduled for 1 March 2010 but due to other commitments of the applicant, it was requested to be deferred until late March or April. Consequently the hearing was deferred until 15 April 2010, with the extension to the timeframe authorised by the Resource Consents Manager pursuant to section 37 of the Act. Preliminary advice of the revised hearing date was referred to the applicant and submitters on 12 February 2010.

4. Resource Management Act 1991

- 4.1 Part 2 of the Resource Management Act 1991 sets out the purpose and principles of the Act, including matters of national importance.

The purpose of the Act as stated in **section 5** is "*to promote the sustainable management of natural and physical resources*", with "*sustainable management*" defined as:

"... *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 -*

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

- 4.2 The proposed development will assist in allowing the applicants, in particular, to provide for their social, economic and cultural wellbeing and health and safety through the addition of increased floor area to enable improved bathroom facilities for their existing permanent residence, accommodate visitors (in upper storey of pavilion) and enable recreational pursuits to be undertaken (in ground floor art studio and gym) while incorporating means of avoiding, remedying or mitigating adverse effects on the environment, particularly through existing planting and additional recommended tree planting. The view of landscape architect, Stephen Brown, (P10) is that the pavilion's effects should not be addressed via '*avoidance*', claiming that in this instance it is '*entirely appropriate*' to rely upon amelioration and mitigation measures such as existing and proposed supplementary vegetation to address effects. Additional mitigation planting is also supported by Council's consultant landscape architect, Rebecca Skidmore, to ensure the natural character values of the coastal environment are appropriately protected (P9).

- 4.3 **Section 6** of the Act lists '*matters of national importance*', including:

- (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;*

(d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.*

- 4.4 The above matters are of particular relevance to the current proposal, with (a) promoting the preservation of the natural character of the coastal environment and protection from inappropriate subdivision, use and development, and (d) seeking maintenance and enhancement of public access along the coastal marine area. Given that there are several other residences in the immediate vicinity overlooking the ocean, including the adjacent Oman Holdings residence, any impact of the current proposal needs to be considered in the overall context of this coastal locality.
- 4.5 The maintenance and enhancement of public access to and along the coastal marine area will not be compromised due to the existence of an esplanade reserve created at the time of subdivision and the siting of the pavilion and additions in compliance with the required 5.0m setback from the esplanade reserve (rule 38.4.7) with the actual separation distance of the pavilion being a minimum of 12m. Recommended supplementary planting of pohutukawas north of the pavilion will assist in minimising the visual impact of the pavilion and any sense of overlooking experienced by users of the esplanade reserve.
- 4.6 **Section 7** of the Act relating to '*other matters*' to have regard to in the use, development, and protection of natural and physical resources, include the following issues:
- (b) *The efficient use and development of natural and physical resources;*
 (c) *The maintenance and enhancement of amenity values;*
 (f) *Maintenance and enhancement of the quality of the environment*
- 4.7 **Section 8** requires council to take into account the principles of the Treaty of Waitangi. In this case, these issues were taken into account at the time of subdivision (2002). Council's GIS records do not indicate the presence of any registered archaeological sites in close proximity. In view of this and the small scale nature of the excavations undertaken, it is concluded that adequate consideration of this issue has been taken.
- 4.8 **Section 104 – Consideration of Applications** sets out those matters that, subject to Part 2, a consent authority must have regard to when considering an application for resource consent. These matters are:
- (a) *Any actual or potential effects on the environment of allowing the activity; and*
 (b) *Any relevant provisions of:*
 (i) *A National Policy Statement;*
 (ii) *A New Zealand Coastal Policy Statement;*
 (iii) *A Regional Policy Statement or Proposed Regional Policy Statement;*
 (iv) *A Plan or a Proposed Plan*
- (c) *Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- 4.9 In accordance with Section 104(2) of the Act, adverse effects of activities permitted by the Plan may be disregarded (i.e Council may consider the permitted baseline.) Point (i)(ii) of the Oman Holdings submission states that:
- (i) *With respect to the documentation in support of the proposal:*
 (ii) *The documentation applies a permitted baseline analysis which is in error.*

- 4.10 The applicant's permitted baseline argument is detailed in section 5.2 of the AEE and includes the claim that:

" ... the plan permits any sort of non residential building to be erected, so long as it complies with bulk and location requirements. For example, if the pavilion was used for non residential purposes it would not need resource consent." (Emphasis added.)

- 4.11 I agree that the above underlined statements are incorrect. Although buildings ancillary to farming are a permitted activity in the Coastal Countryside Environment (subject to compliance with development controls), commercial and industrial activities within 100m of an existing residential unit on a separate site require resource consent in terms of rule 38.3.1. In addition, the analysis fails to give recognition to the fact that *Minor Residential Units* as defined in Part B – Introduction – Meaning of Words and rule 38.4.2 of the District Plan are also permitted activities on sites in the Coastal Countryside with a minimum net site area of 1.2 hectares. This would allow the construction of a 70m² gross floor area minor residential unit plus (unrestricted) garaging area within 15m of the primary dwelling (as per the current siting of the pavilion). As with farming related buildings such as barns and sheds, no design and appearance controls apply to this form of activity. Consequently, a range of alternative buildings of a similar scale and location could be established on the site, without requiring resource consent.
- 4.12 Since the upper floor of the pavilion has a floor area of 60m² and a deck of approximately 19m², it is also conceivable that modifications to the existing pavilion could result in the existing building being classed a complying activity and building, with little difference in effects from those currently existing. (Such modifications could include a minor reduction in the deck and overhang and conversion of the upper storey to a minor residential unit area of 70m² together with enclosure of the lower storey or its utilization for farming purposes).
- 4.13 A restricted discretionary activity is an activity provided for by a rule in a Plan or Proposed Plan, and which is allowed only if a resource consent is obtained in respect of that activity, but the matters or standards to be assessed in considering an application for resource consent are limited to those specified in the Plan or Proposed Plan. The subject application is assessed as a restricted discretionary activity in terms of rule 38.4.1. As a restricted discretionary activity, those provisions and Part 2 are relevant to my assessment.
- 4.14 Pursuant to Section 104B of the Act, after considering an application for resource consent, a Consent Authority may grant or refuse the application, and if it grants the application, may impose conditions under Section 108 of the Act.

5. District Plan Provisions

- 5.1 The application was lodged on 27 November 2009 and is therefore required to be assessed in terms of the Operative District Plan. The proposal requires resource consent only in terms of rule 38.4.1(a), as listed below, being part of a '*group of buildings designed, used or intended to be used separately or in conjunction with each other as a single independent and separate household unit for a Residential Activity.*' All relevant bulk and location controls are met by the proposal.

<p>Rule 38.4.1 Residential Units states that construction of a residential unit in the Coastal Countryside Environment is a restricted discretionary activity if:</p> <p>a) <i>The residential unit, after completion, will be the only residential unit on the site; or</i></p> <p>b) <i>The residential unit will be an additional residential unit on the site; and there is at least 20.0ha of net site area associated with each residential unit; and</i></p> <p>c) <i>It is not within a Mineral Extraction Area as shown on the Planning Maps.</i></p> <p>d) <i>It is not within 500m of a Mineral Extraction Area.</i></p>	<p>Restricted Discretionary Activity Matters discretion is restricted to:</p> <p>i. <i>Extent of visual intrusion from the building;</i></p> <p>ii. <i>Colour and design;</i></p> <p>iii. <i>Landscaping;</i></p> <p>iv. <i>Effects on landscape values;</i></p> <p>v. <i>Size and shape of the site;</i></p> <p>vi. <i>Alternative building locations;</i></p> <p>vii. <i>Effects on the character of the coastal environment;</i></p> <p>viii. <i>Location;</i></p> <p>ix. <i>Visibility from road and public places;</i></p> <p>x. <i>The effect on the appearance of skylines and ridge lines;</i></p> <p>xi. <i>n/a.</i></p> <p>xii. <i>The additional matters listed in Section 2.3.3.</i></p> <p>The additional matters listed in 2.3.3 relate to financial contributions, bonds, administrative and statutory procedures etc and are of no particular relevance to the current proposal.</p>
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5.2 Details of the proposal's compliance with the relevant District Plan bulk and location controls are summarised in the following chart:

Rule	Actual
<p>38.4.3 (b) Building Height – specifies a maximum height of 8.5m in the Coastal Countryside Environment as a permitted activity. (The District Plan permits a choice of calculation for determining height.)</p>	<p>Based on the rolling height method of calculation, the max. height above GL is approx. 6.5m.</p>
<p>38.4.4 Building Coverage – specifies a total maximum building coverage of 500m² or 5% of the net site area (whichever is the greater) as a permitted activity.</p>	<p>The site has an area of 2.7954 ha therefore the existing dwelling and proposed additional buildings (with a total coverage of approx. 350m²) will be well within both the 2 coverage requirements.</p>
<p>38.4.5 Building Setbacks – applicable are (a) specifying a minimum setback of 8.0m from road boundaries, and (b) 3.0m minimum from other boundaries, as a permitted activity.</p>	<p>Cove Road is approx. 300m south of the proposed buildings. This distance easily satisfies the 8m road setback requirement. The existing 17m separation from the eastern boundary exceeds the 3.0m minimum requirement.</p>
<p>38.4.6 Building Setbacks from Water Bodies – applicable are (a) minimum setback of 27m from Mean High Water Springs <u>or</u> (d) 5.0m setback from the landward side of an esplanade reserve, as a permitted activity.</p>	<p>The front of the pavilion is setback 12m (minimum) from the landward side of the esplanade reserve and therefore satisfies requirement(d).</p>
<p>38.4.10 Building Daylight Angles – Requires non-penetration of building daylight angles in Appendix 11 as a permitted activity (i.e 3m + 45⁰ east boundary)</p>	<p>The pavilion is setback 17m (min) from the closest boundary (with Oman Holdings Limited). Taking into account the highest point of the structure relative to this boundary, the proposal easily satisfies this requirement.</p>

- 5.3 Overall, the application is considered to be for a **Restricted Discretionary Activity** in terms of rule 38.4.1(a).

6. Assessment of Objectives and Policies

- 6.1 The objectives and policies of the District Plan most relevant to the application relate to issues of amenity, subdivision and development, landscape and the coast, as contained in Parts 5, 8 and 10 of the District Plan.

*(Note: The application, Stephen Brown report, and the Oman Holdings submission all incorrectly refer to the outdated number references for the 'Subdivision and Development' section which should read Part 8 (not Part 7.) A copy of the current Part 8 provisions (which also include underlined deletions associated with Plan Change 92 which relates to proposed revisions to the Urban Form and Development Chapter) is included in full in **Attachment 8.**)*

- 6.2 The overriding District Plan objectives and policies relevant to the district's rural areas (including rural coastal areas) seek, where possible, to ensure the maintenance and possible enhancement of amenity values and the sustainable management of natural and physical resources while avoiding, remedying or mitigating adverse effects on the environment, in line with principles of the Resource Management Act 1991.
- 6.3 The following objectives and policies are considered of particular relevance, with emphasis on landscape and amenity effects and *appropriateness* of development.

Part 5 – Amenity Values

Objective 5.3.1

The characteristic amenity values of each Environment are maintained and, where appropriate enhanced.

Objective 5.3.4

The amenity values of the coast and open space are maintained and enhanced.

Objective 5.3.5

The actual or potential effects of Subdivision use and development is appropriately controlled and those activities located and designed, are to be compatible with existing and identified future patterns of development and levels of amenity in the surrounding environment.

Policy 5.4.4 Coastal-Countryside Environments (incorrectly referred to as 5.4.5)

To encourage development in the Coastal-Countryside Environment not to have adverse effects on the amenity values of the environment. The visual amenity and natural character, in particular, has to be protected from subdivisions, use or development that is sporadic or otherwise

Policy 5.4.7 Intensity and Design of Subdivision and Development

To 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. Particular regard should be given to (inter alia):

- *The location, design and siting of buildings and structures*

Comment

- 6.4 The Act defines amenity values as '*the natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.*' Amenity values of an area are recognised by the District Plan (5.2) as being determined by the natural and physical characteristics of an area, and the effects of activities. The Countryside Environment is seen as being used predominantly for primary production and also for low-density residential purposes. The Coastal Countryside Environment is acknowledged as having the same values and qualities, in addition to the particular values of the Coastal Environment.
- 6.5 As detailed in the explanation to policy 5.4.4, the Plan recognises that the Coastal Countryside Environment contains some of the most outstanding visual amenity values in the District, which could be compromised by sporadic and *inappropriate* subdivision, use and development. Accordingly the Plan advocates monitoring and management of development and possible restrictions on public access, where applicable.
- 6.6 Elements identified in the plan as contributing to the amenity of the Coastal Countryside Environment include low intensity of development, high landscape qualities, recreational qualities and limited vehicular traffic. Elements contributing to the amenity of the subject site and locality generally include high landscape qualities derived from proximity to the coast and elevation above it, northerly aspect and extensive views across Bream Bay. Although centrally located between Waipu Cove and Langs Beach and associated recreational facilities, the cluster of residences in proximity to the Henderson property enjoy seclusion from Cove Road and its associated traffic.
- 6.7 Developments that are *appropriate* in character, intensity, scale, location, design and siting and compatible with existing and future development, and the character or amenity levels, in accordance with policies 5.3.5, 5.4.4 and 5.4.7, are encouraged. Although private views are not necessarily protected by the Resource Management Act 1991, policy 5.4.7 is concerned at ensuring the *privacy and outlook* of adjoining properties is not '*unduly* compromised and that '*development should be compatible with the character and amenity of the surrounding environment*'. In this case, for the purposes of determining notification, it was assessed that there was only one potentially affected adjoining property, being the submitters' site to the east.
- 6.8 In assessing the *appropriateness* of the development on the adjacent property, effects on *privacy and outlook*, and *compatibility with the character and amenity* of the surrounding area, relevant factors include:
- the scale of the additions (with a total floor area of approx. 140m² for the two components and a total GFA for the enlarged residential unit of approximately 390m²) in comparison with the residential units on Lots 2 & 3 to the east (which have floor areas of 610m² (no. 959 Cove Rd) and 345m² or 384m² including decks (no. 961) - (refer plans included in **Attachments 4 & 9**);
 - the 17m (minimum) separation from the common boundary thus easily exceeding the required minimum setback of 3m);
 - a building height for the pavilion approximately 2.0m lower than that permitted by the district plan;
 - compliance with all other relevant development controls;
 - design features, colour scheme, and materials consistent with those of the original dwelling and the requirements of Consent Notice CO5423951.2;
 - the lack of low windows on the east-facing wall, and additional screening at upper and lower deck levels and to the rear of the pavilion, resulting in increased privacy for both sites;
 - expansive views experienced by the subject site and neighbouring sites; and

- extensive planting in the eastern yard supplementing planting on the neighbours' western yard.

6.9 **Part 8 – Subdivision and Development**¹

Objective 8.3.1

Subdivision and development that achieves the sustainable management of natural and physical resources whilst avoiding, remedying or mitigating adverse effects on the environment.

Objective 8.3.2

Subdivision and development that does not detract from the character of the locality and avoids conflicts between incompatible land use activities.

Objective 8.3.3

Subdivision and development that ensures consolidated development in appropriate locations and avoids sprawling or sporadic subdivision and ribbon development.

8.3.10

Subdivision and development that avoids, remedies or mitigates adverse effects on tangata whenua values.

Policy 8.4.1 Incompatible Land use Activities

To design and locate subdivision and development so as to avoid, as far as practicable, conflicts between incompatible land use activities.

Policy 8.4.3 Density of Development

To ensure that subdivision and development results in a pattern and density of land use which reflects flexibility in allotment size, and is of a density appropriate to the locality.

Policy 8.4.4 Cumulative Effects

To ensure that the cumulative effects of on-going subdivision and development do not compromise the objectives and policies of this Plan, in particular those objectives and policies relating to reducing conflicts between incompatible land use activities, the consolidated and orderly development of land and the density of development.

Policy 8.4.21 Natural Character

To maintain and where appropriate, restore or rehabilitate, the natural character of the coastal environment by avoiding inappropriate building development:

- *Adjoining Mean High Water springs;*
- *On notable ridgelines; or*
- *That which is incompatible in scale and character with the surrounding coastal landscape values.*

Comment

- 6.10 Emphasis is placed in the District Plan on appropriate control, location and design of subdivision and development, and a density that results in land use consistent with and appropriate to the surrounding area. Concern is also expressed that cumulative effects of on-going subdivision and development do not compromise the objectives and policies of the Plan (including those relating to conflicts between incompatible land use activities, the consolidated and orderly development of land and the density of development).

¹ *incorrectly referred to in application as Part 7.*
Hearings Commissioner

- 6.11 The explanation to policy 8.4.21 includes the statement: *'Building bulk and colour are particularly conspicuous at the water's edge, on ridgelines and where there is presently little or no development'*. In this case, the cumulative effects of similar residential developments has resulted in modification of the immediate coastal environment for a 400m (approx) stretch of coastline in the vicinity of the site, with the area's modified state having been recognised at the time of subdivision in 2002 when one of the reasons for the grant of consent was:

(1) *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 of the Act, New Zealand Coastal Statement, and District Plans relating to the protection of the natural character of the coastal environment from inappropriate subdivision and development."*

6.12 **Part 10 – The Coast**

Objective 10.3.1

Preservation and protection of the natural character of the coastal environment from inappropriate subdivision, use or development.

Objective 10.3.2

The maintenance or, where appropriate, enhancement of the amenity, landscape, cultural, intrinsic and ecological values of the coastal environment by taking account of the cumulative effects of subdivision development.

Policy 10.4.3

To ensure that, as far as practicable, subdivision, use and development is located in areas where the natural character has already been substantially modified.

Policy 10.4.1 Natural Character

To 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 should be given to:

- *Landscapes, seascapes and landforms;*
- *Significant indigenous vegetation and significant habitats of indigenous fauna;*
- *Intrinsic values of ecosystems;*

- 6.13 Policies 10.3.3 and 10.4.5 are also relevant in terms of point (f) of the Oman Holdings' submission which claims the pavilion to be highly visible from the adjoining public esplanade reserve and alleges adverse effects impinging upon enjoyment of that reserve. These policies read:

Policy 10.3.3

Maintain and enhance public access, where appropriate, to and along coastal areas.

Policy 10.4.5 Public Access

To ensure that subdivision, use and development of the coastal environment provides for, and where possible enhances, public access to and along the coast, except where it is desirable to restrict public access for the following reasons

Comment

- 6.14 The introduction to Chapter 38 Countryside and Coastal Countryside Environment Rules recognises the value of the district's coastline, stating:
- "The most distinctive feature of the District is, however, its long and varied coastline, which includes a wide range of landforms and landscapes. Most of the land within the Coastal Countryside Environment is uninhabited, but there are specific locations within the Environment, and especially in areas with access to beaches where development and settlement has occurred in the past, or where new development is being promoted at present."*
- 6.15 The provisions of Part 10 (The Coast) of the District Plan focus on *'the preservation and protection of the natural character of the coastal environment'* and are in line with section 6(a) of the Act. They seek to restrict *'inappropriate subdivision, use or development'*, and promote management of effects (including cumulative effects), and confinement of development to areas where amenity, landscape, cultural, intrinsic and ecological values of the coastal environment will not be compromised. District Plan objectives and policies 10.3.1, 10.4.1, 10.4.2, and 10.4.7 focus on the need to avoid adversely affecting natural character values of the coastal environment.
- 6.16 Where activities are undertaken within the coastal environment, the Plan expects that measures will be implemented to restore natural character and thus mitigate effects. Emphasis is placed on the location of subdivision, use and development in areas where the natural character has been *'substantially modified'* or *'compromised'* and the need to manage effects (including cumulative effects). In this case, both landscape architects concur that the immediate hinterland behind the coast in the vicinity of the subject site *'remains a clearly modified environment, with housing, pasture, shelterbelts and pine forestry pervasive features of the wider landscape setting for the application site.'*
- 6.17 Public access along coastal areas is encouraged in the district plan, where appropriate. In this case, the esplanade reserve, formed as part of the underlying subdivision, is limited in length and in accessibility (with access from Waipu Cove being via an estuary). According to the applicant, public use of the esplanade reserve is primarily confined to fishermen, with the daily numbers in summer being approximately 5-10. Having inspected the site and adjoining sites from the esplanade reserve, I can confirm that while the pavilion in no way impedes physical access of the reserve, it appears fairly visually dominant from parts of it, due to limited vegetation in places. However, there is scope for any visual impact of the pavilion from the esplanade reserve to be mitigated through additional planting of pohutukawas, as recommended by the two landscape architects. Other structures along the line of the esplanade reserve (eg the swimming pool retaining wall on the Oman Holdings' property) also have some degree of negative visual impact, while not physically obstructing public access.

Conclusion

- 6.18 Taking into account the above matters and Council's landscape assessment, it is concluded that the proposal is consistent with the District Plan policy framework, (including objectives and policies relating to amenity, appropriateness of development, and the coast) and will not undermine the amenity values of the environment, or unduly compromise existing adjacent development. In addition, recommended mitigation planting will provide appropriate protection of the natural character values of the coastal environment.

7. Assessment of Environmental Effects

- 7.1 The applicant's Assessment of Environmental Effects (5.0) focuses on three types of effect: extent of visual intrusion from the building; effects on natural character; and amenity effects. In addition, a table, (Table 2), provides an analysis of the matters to which Council's discretion is restricted.
- 7.2 In terms of determining whether the adverse effects of a Restricted Discretionary Activity are more than minor, Council is required (inter alia) to disregard any effects that do not relate to a matter over which it has restricted its discretion. For the purpose of my assessment of effects, I address each of the individual matters listed in 38.4.1, as follows:
- i. Extent of visual intrusion from the building*
- 7.3 The terms *visual intrusion* and *intrusive* are generally defined as relating to something that is *'intruding or intending to intrude'* whereas *'obtrusive'* tends to reflect something that is *'noticeable or prominent in an unwelcome or intrusive way.'* Both terms are referred to in the assessments of the two landscape architects.
- 7.4 In section 4.3 of his landscape assessment, Stephen Brown acknowledges that the pavilion profile (particularly its verticality in some perspectives) is less than ideal, and that this is the central issue in relation to the amenity effects of the proposal on the inhabitants of the Oman Holdings residence. In relation to views from that quarter, he states: *"I consider that the pavilion's form, combined with its siting close to the Oman Holdings boundary, results in a building that is intrusive and, in respect of views towards the Waipu Cove beachfront, perhaps even obtrusive."*
- 7.5 However, in addition to the pavilion's profile, another factor identified by Stephen Brown in relation to *'this inter-property situation'* is the benching-down of the Oman Holdings' residence and terrace, effectively resulting in its curtelage being lower and projecting the pavilion onto the western skyline. Also noted is the *'substantial panorama sweeping from Waipu Cove across Bream Bay'* remaining available to both properties, the current visual interaction of properties within the residential enclave, and the opinion that it is unrealistic to expect such views to be 'pristine' or devoid of interaction with neighbours, given the relatively close proximity of residential development.
- 7.6 In terms of coastal views, Ms Skidmore also notes in her report (para 5.8) that the Oman Holdings property enjoys expansive coastal views and expresses the opinion that the pavilion structure *'does not result in a significant interruption to the wider view.'* In terms of views of the *'upright structure'* from the terrace and residence (as evident from the application photos), Ms Skidmore states: *'Overall, while the building does result in some visual intrusion, as the mitigation planting becomes better established, the structure will not intrude to such extent that it becomes an obtrusive feature.'*
- 7.7 The proposal complies with all relevant bulk and location controls applicable to the Coastal Countryside Environment. Although Stephen Brown refers (P9) to *'the relatively close proximity of the existing dwellings and areas of residential activity,'* this degree of separation is within the setback rules for built development in the Coastal Countryside Environment. Additional measures incorporated in the design of the building for the purpose of reducing amenity effects associated with overlooking and loss of privacy include upper level windows being limited to high windows and louvre screens or trellis features installed at the eastern end of each deck, and to the rear of the pavilion.

ii. Colour and design;

- 7.8 The external colour scheme of both buildings on the site is primarily a recessive blue/green colour. A consent notice imposed on Lots 1 and 2 as part of the subdivision consent required use of recessive colours with a reflective value of less than or equal to 40% and where manufactured materials including sheet metallic products were to be used, their finished colours were to be *'those found on the immediate natural environment of sea and bush.'*
- 7.9 The bathroom extension is modest in area and its design follows the existing wall and roof lines of the existing dwelling, utilizing the same materials and external colour scheme. As such it appears (and functions) as a continuation of the existing building. This extension is located approximately 38m (min) from the eastern boundary. Due to the bathroom extension's function, the limited increase in floor area, use of comparable design, materials and colour scheme to the original residential unit, I agree with the views expressed by Ms Skidmore that the extension provides a *'discrete addition to the earlier building'* and that in terms of the relevant matters of rule 38.4.1 is *'appropriate and does not diminish the character or amenity of the site and its surrounding context.'*
- 7.10 The pavilion, sited approx. 12m north-east of the bathroom extension, is a detached building but utilizes similar design elements to the existing dwelling (e.g recessive blue/green colour scheme, use of horizontal weatherboards on the upper level, and a pitched roof following the sloping ground level and falling towards the sea). The ground floor is constructed in concrete block masonry, while joinery is aluminium. There is a roofed deck at first floor level with a screen at the eastern end, a low deck at ground level, screened from the east, and additional screening to the rear.
- 7.11 The district plan in its definition of *'residential unit'* anticipates that residential units can be comprised of a *'group of buildings'*, as in this case. Similarly, the residential unit under construction two sites to the east is designed to incorporate a series of buildings linked by a covered walkway. I consider the applicants' separation of guest accommodation and hobby activities from the balance of the residential unit to be appropriate to the functioning of the residential unit.
- 7.12 The building has been designed in accordance with all the bulk and location controls for the Coastal Countryside Environment, (as previously detailed). In applying a permitted baseline approach to development on this site, (as noted in paragraph 4.10 of my report) alternative buildings or activities that could generate similar effects without requiring resource consent (subject to compliance with relevant development controls) would include minor residential units and farming-related buildings with a similar footprint, but with no design and appearance controls applying to these forms of activity. My report also alludes to the possibility of minor modification to the pavilion to convert to a minor residential unit and enclosure of the lower floor (or utilization for farming purposes), with little difference in visual effects from the status quo.

iii. Landscaping

- 7.13 Extensive planting has been implemented in the vicinity of the pavilion within the last 2 years, (largely between it and the eastern site boundary), with planting required as a condition of subdivision consent. (A 'Landscape Enhancement Plan' by Nature Scapes of Wellsford dated 01.08.07 and annexed to the application, was submitted in accordance with condition 1(v) of subdivision consent RC36108 and was required to detail restorative and remedial planting, directed at mitigating the effects of future buildings on Lots 1 & 2 on the natural character of the coastal environment.)

- 7.14 The applicant's landscape assessment notes that while this vegetation is still getting established, it will provide a very substantial buffer/filter between the Oman Holdings residence within 2-3 years. Minimal supplementary planting is recommended to reduce effects of the pavilion *'to a much more limited, and acceptable level'*.
- 7.15 Mitigation measures referred to in the AEE (paragraphs 6.1 and 6.2) include supplementary planting (*'pohutukawa or otherwise'*), to east and west of the site, additional to planting already established on the eastern side of the property, with the intention of further softening the view from the Coastal Marine Area and from the viewpoint of the adjoining property.
- 7.16 Ms Skidmore's report is more specific as to what form the additional planting should take and where, recommending a minimum of 3 Pohutukawa trees (in total) planted either side and to the north of the pavilion no further than 8m from the building and within an arc of 30° from the sides of the building. Based on this recommendation (and the associated condition of consent), it is recommended that the applicant submit to the hearing an appropriate landscape plan for approval.
- 7.17 In addition to the existing and recommended supplementary planting on the applicants' site, in time it is anticipated that there will be increased cumulative benefits from planting on the adjoining Oman Holdings site, as depicted in the landscape plan for that property (included as **Attachment 10**).

iv. Effects on landscape values; and
vii. Effects on the character of the coastal environment

- 7.18 The site (and locality) are not within a *'Notable'* or *'Outstanding Landscape Area'* in terms of the District Plan, and much of the surrounding land is in pasture. In terms of the overall character of the area, Ms Skidmore (para 3.4) concurs with Stephen Brown's conclusion on this issue:

'Overall, I would still describe this landscape as having significant appeal, probably equating to a 'visual amenity landscape'. However, I don't believe that it displays the distinction, overall coherence or sufficient dominance of natural elements and patterns to qualify as either an outstanding natural landscape or an area of high natural character.'

- 7.19 The proposal has been assessed by Stephen Brown in terms of 5 environmental indicators, with the pavilion seen as being of little importance in respect of coastal vegetation patterns and cover (due to the pastoral nature of surrounding land and amenity planting installed to date); and not directly or indirectly affecting natural processes.
- 7.20 In terms of effects on coastal landform, views of the pavilion are described from various locations such as;
- from the rocks directly below the pavilion, (with its 2 storey profile seen as conflicting with the adjacent 'low slung' residential buildings);
 - from the near margins of the Oman Holdings property, (with the pavilion described as 'rearing up' and prominent on the western skyline);
 - from various oblique angles – reserve and adjoining properties above and east of the Oman Holdings property;
 - from the Waipu Cove beachfront (where pohutukawas tend to break up or screen it); and

- from out at sea (where it is described as '*sinking*' into its topographic setting and merging with the line of residential development, with the Oman Holdings building deemed to have greater visual presence and greater impact on the character of the coastline south-east of Waipu Cove due to its much larger structure. (Refer **Attachment 9**).

7.21 The overall conclusion reached in the analysis from the above perspectives was that greater weight must be given to public views of the coastal environment than those specific to an individual private property, with the combined impact of development on the 5 residential properties outweighing any effects of the pavilion in its own right.

7.22 Given the subject buildings' location in a modified coastal location within a band of 5 residential units, on similar sized properties, in my opinion the effects of the proposal within this area generally, are no more than minor. Recommended supplementary planting will assist in mitigating visual effects of the pavilion when viewed specifically from in front of the Hendersons' property, (including from the esplanade reserve.)

v. Size and shape of the site;

7.23 The size (2.553 ha) and elongated shape of the site, (running north from Cove Road to the coastal esplanade reserve), is similar to the other four sites in this residential enclave. These features, requirements of consent notice CO5423951.2, site topography and the location of the right of way access contribute to the choice of location of the respective dwellings in similar positions fronting the coast. An effect of concentration of development in this manner has perhaps been a lesser separation between buildings on adjoining sites than might normally be expected with larger coastal properties, reflecting the greater intensity of development in this locality. Nevertheless, the degree of separation between the pavilion and the eastern site boundary is in excess of District Plan requirements.

vi. Alternative building locations;

7.24 The application is for retrospective consent and is referred to (page 6) as being for existing buildings in a specific location and for this reason, alternative building locations had not been considered. In terms of building location, the subdivision Consent Notice CO5423951.2 requires that buildings be sited in the areas specified as house sites on the survey plan, (refer Appendix 1 of application), with 5 options indicated for Lot 1, or be subject to additional geotechnical and landscaping requirements. Both the Henderson buildings are located within two of the designated building sites, although the Oman Holdings dwelling is located closer to the Hendersons' boundary than indicated on the subdivision plan, with the change in location having been supported by a geotechnical report.

7.25 While no alternative locations for construction/relocation of the pavilion have been canvassed in the application, Stephen Brown has expressed the view (p10) that the pavilion's effects should not be: '*addressed via 'avoidance', with reference to section 5 of the RMA: in this instance it is entirely appropriate to rely on amelioration and mitigation measures that will adequately address the effects identified.'*

ix. Visibility from road and public places

- 7.26 The pavilion in particular is visible from the rocky foreshore, and adjacent public places (i.e reserve abutting estuary, the esplanade reserve and Waipu Cove beachfront) and off-shore, but not from Cove Road due to the distance involved and vegetation screening. Stephen Brown's assessment notes that views from out at sea or from the beach at Waipu Cove tend to highlight the *'greater scale and physical extent of the Oman Holdings residence at the expense of the visual presence of the Hendersons' pavilion.'*
- 7.27 Likewise, while the pavilion is visible when viewed from sections of the adjacent esplanade reserve due to the steepness of the slope, other structures (eg the retaining walls of the adjacent swimming pool and the Peoples house currently under construction) also appear prominent when viewed from this lower location. However, recommended additional pohutukawas on the seaward side of the pavilion will assist in mitigating such effects in terms of that structure..

x. The effect on the appearance of skylines and ridge lines;

- 7.28 Although the pavilion is described in the application as protruding above the ridge landform on which it sits, this is to a similar extent as the residential buildings on either side of it. Its profile is described as *'another link in a chain of residential buildings located mid-slope above the CMA.'*
- 7.29 In terms of the western skyline viewed from the Oman Holdings property to the west, Stephen Brown (P9) refers to the benching-down of that residence and terrace, resulting in the house's curtelage sitting slightly lower, thus effectively raising it up and appearing to have *'contributed to some of the projection of the pavilion onto the near western skyline.'*
- 7.30 Overall, I consider the effects of the pavilion on the skyline to consistent with those generated by other residences in the area and thus cumulatively, the effects will be no more than minor.

xi. The impact of mineral extraction on residential safety and amenity including noise, traffic, dust, vibration and visual effects.

- 7.31 This matter is of no relevance to this application.

xii. The additional matters listed in Section 2.3.3.

- 7.32 These matters, (relating to financial contributions, bonds, administrative and statutory procedures etc) are of no particular relevance to assessment of the above effects.

Conclusion

- 7.33 Based on the above assessment, overall I do not consider the proposal to be contrary to the relevant district plan restricted discretionary activity criteria. In particular, the effects of visual intrusion of the pavilion on the neighbouring property and one section of the coastline are minor when weighed against effects on the wider landscape; while natural character effects are no more than minor due to the modified state of the coastal environment and the nature of existing and consented development within an enclave of residential development.

8. Section 104 Assessment

- 8.1 Section 104 of the Act requires that a consent authority must have regard to a number of different matters when considering an application for resource consent. These matters include actual or potential adverse effects, any relevant provisions of policy statements, regional and district plans, and any other matters considered relevant.
- 8.2 An assessment of the effects of the proposal and the District Plan provisions has been considered in the previous sections of this report. An assessment of other relevant matters follows.

New Zealand Coastal Policy Statement 1994 (NZCPS)

- 8.3 The purpose of the NZCPS, issued by the Department of Conservation in May 1994, is outlined in section 56 of the Resource Management Act 1991 and relates to the statement of policies to achieve the purpose of the Act in relation to the coastal environment. Of particular relevance to the subject application is Chapter 3 – Activities Involving the Subdivision, Use or Development of Areas of the Coastal Environment which cover issues of maintenance and enhancement of amenity values, provision for appropriate subdivision, use and development of the coastal environment. These matters are also incorporated in the District Plan objectives and policies addressed earlier in this report. Since the coastal environment in the immediate vicinity has been assessed as already compromised and the current proposal is compatible in scale and design with adjoining development, no conflict with the New Zealand Coastal Policy Statement is apparent.
- 8.4 The following provisions of the New Zealand Coastal Policy Statement are considered to be relevant to this application:

Policy 1.1.1: It is a national priority to preserve the natural character of the coastal environment by:

- (a) Encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal area;*
- (b) Taking into account the potential effects of subdivision, use or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location; and*
- (c) Avoiding cumulative adverse effects of subdivision, use and development in the coastal environment.*

Policy 3.2.2: Adverse effects of subdivision, use or development in the coastal environment should as far as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects

- 8.5 Of relevance also to the application is the Proposed New Zealand Coastal Policy Statement 2008, including its definition of the 'coastal environment', which includes '(f) landscapes and features that contribute to the natural character, visual qualities or amenity values of that environment.'

Regional Policy Statement for Northland (RPS)

- 8.6 The Regional Policy Statement recognises the responsibilities of both the Regional Council and District Councils in terms of land management, with the Regional Council having specific responsibilities in terms of soil conservation, mitigation of hazards and water quality management etc.
- 8.7 In terms of significant coastal management issues the RPS has regard to impacts, including cumulative effects of subdivision, use and development on the natural character of the coastal environment, particularly its ecological, cultural and amenity values.
- 8.8 The following coastal provisions are considered relevant to this application, reiterating concerns in the District Plan and the NZ Coastal Policy Statement on natural character of the coastal environment, inappropriate subdivision and development (including sporadic and sprawling subdivision):

Objective 22.3.1: The preservation of the natural character of the coastal environment, including the protection from inappropriate subdivision, use and development.

Policy 22.4(a).1: In both the plan preparation and resource consent processes, to preserve the natural character of the coastal environment by, as far as practicable, avoiding adverse effects on:

- (h) Significant landscapes values, including seascapes and significant landforms which impart a distinctly coastal character; and*
- (iv) Intrinsic and amenity values, including the values of wild and scenic areas.*

Policy 22.4(a).2: In protecting the coastal environment from inappropriate subdivision use and development (including adverse effects associated with location, scale and/or character) Council will have particular regard:

- (a) In relation to preservation of natural character, avoiding:*
 - (i) Types of use and development (including sporadic and sprawling subdivision) that would be likely to have adverse effects on the coastal environment; and*
 - (ii) Cumulative Adverse effects (including those associated with incremental change and a shift towards dominance of the built form); and*
 - (iii) Any conflict (potential or actual) with current or existing uses, values and the natural character of adjacent land and water areas, and
Where it is not practicable to avoid these matters, Councils' will have regard to the extent to which they may be remedied or mitigated.*
- (b) In relation to other matters, to:*
- (c) Efficient use and development of finite coastal resources including (where appropriate the concentration of types of activity and the multiple use of any facility); and*
- (d) The extent to which alternative locations (both to the coastal environment and within the coastal environment) and/or methods of subdivision, use and development are either impractical or otherwise inappropriate.*

9. Conclusion

9.1 Section 104C of the Act requires that after considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which –

- (a) *a discretion is restricted in national environmental standards or other regulations;*
- (b) *it has exercised the exercise of its discretion in its plan or proposed plan.*

Only subsection (b) is relevant to this application.

9.2 In terms of matters discussed in section 6 of this report, it is concluded that the proposal is not contrary to the objectives and policies of the District Plan, particularly those that relate to amenity, appropriateness of location and development, and coastal landscapes.

9.3 In terms of matters discussed in Section 7 of this report, focussing on those matters to which Council's discretion is restricted, it is concluded that the adverse effects of the proposal on landscape and local amenity will be no more than minor, given the permitted baseline applicable to the site, the small scale nature of the additions and pavilion, the design and scale of other residences in the vicinity, and recommended mitigation of visual effects viewed from the coast by way of existing planting and the inclusion of at least 3 additional specimen trees such as pohutukawas. In addition, the proposal in conjunction with the original dwelling represents a form of development that is compatible in scale with the band of residential development to the east.

9.4 As part of the assessment of environmental effects, landscape and visual effects of the proposal have been assessed by landscape architects Stephen Brown (for the applicant) and Rebecca Skidmore (for the Council). As outlined in her landscape assessment, Ms Skidmore generally concurs with Mr Brown's findings, in particular regarding the overall character of the landscape and its inability to qualify as either an outstanding natural landscape or an area of high natural character (para 3.4); the appropriateness of location of the pavilion (para 5.6); the natural character analysis and conclusion that the combined impact of development on the 5 residential properties far outweighs the effects specifically attributable to the pavilion (para 5.7); and the desirability of additional mitigation planting of specimen trees (para 5.12).

9.5 In terms of statutory considerations assessed in Sections 5 to 7 of this report it is concluded that all necessary considerations have been taken into account and that the proposal is consistent with Part 2 of the Act and the NZ Coastal Strategy in that the proposal represents appropriate development within a modified coastal environment. In addition, the proposal satisfies the aim of sustainable management of natural and physical resources and incorporates sufficient means (such as additional planting to the north of the pavilion) to mitigate adverse effects on the environment.

9.6 Based on the foregoing assessment, it is my opinion that, on balance, the effects of the proposal on the environment and adjoining neighbours are no more than minor and that it is not contrary to the relevant objectives and policies of the District Plan, (particularly those relating to amenity, subdivision and development, landscape and the coast) or the matters to which Council's discretion is restricted.

Recommendation

That pursuant to Sections 104, 104C and 108 of the Resource Management Act 1991, Council grants retrospective land use consent for an extension to a dwelling and a pavilion at 957 Cove Road, Waipu Cove legally described as Lot 1 DP 308134 CT 31594 by J.H & L.K Henderson subject to the following conditions:

1. The residential unit shall proceed in accordance with the plans entitled 'Pavilion & Bathroom Extension at Lot 1 965 Cove Rd Waipu Cove for J & L Henderson', (reference R.C.1 Nov 09), and information submitted in conjunction with the application by Phillipa Campbell of Phillipa Campbell Environmental Planning Ltd dated November 2009.
2. The group of residential buildings on the site comprising the residential unit shall retain a common exterior colour scheme and any changes to the colour scheme shall be subject to the requirements of Consent Notice CO5423951.2 and the approval of the Resource Consents Manager.

The purpose of this condition is to maintain visual integration of the two buildings forming the residential unit.

3. Within 6 months of the date of this consent a minimum of 3 specimen pohutukawa trees (in total) shall be planted either side and to the north of the pavilion, in accordance with accepted horticultural practice. The specimen trees shall be planted no further than 8m from the pavilion and shall be within an arc of 30° away from the side facades (north-south axis) of the building. The specimen trees shall be spaced to relate to both sides of the building rather than clustered in one area. The specimen trees shall have a minimum size of Pb95 at planting and shall be maintained in a healthy state in perpetuity.

The purpose of the above condition is to mitigate the visual prominence of the pavilion when viewed from the esplanade reserve to the north.

Reasons for Consent:

- (a) The proposal is consistent with the District Plan policy framework, (including objectives and policies relating to amenity, appropriateness of development, and the coast) and will not undermine the amenity values of the environment, or unduly compromise existing adjacent development. In addition, recommended mitigation planting will provide appropriate protection of the natural character values of the coastal environment.
- (b) The adverse effects of the proposal on landscape and local amenity will be no more than minor, given the permitted baseline applicable to the site, compliance with all relevant building and location requirements, design and scale compatible with that of other residences in the vicinity, and recommended supplementary planting.
- (c) The proposal is not contrary to the New Zealand Coastal Policy Statement, the Proposed New Zealand Coastal Policy Statement 2008, and the Northland Regional Policy Statement as it represents an appropriate development in a modified coastal environment.
- (d) The activity satisfies the principle of sustainable management as defined in section 5 of the Resource Management Act 1991, in particular through mitigation of adverse effects on visual amenity and landscape values.

Advice Notes

1. 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.

Attachments:

1. Copy of application and associated specialist landscape report.
2. Landscape assessment by Council consultant landscape architect, Rebecca Skidmore
3. Copy of underlying subdivision consent
4. Copy of resource consent RC41041 and associated plans
5. Photographs of site and locality
6. GIS information
7. Oman Holdings Ltd Submission
8. Part 8 of WDC District Plan
9. Plans of Oman Holdings dwelling
10. Landscape plan, Oman Holdings site.